COUNCIL REGULATION (EC) No 1936/95

of 3 August 1995

repealing Regulation (EEC) No 1391/91 imposing a definitive anti-dumping duty on imports of aspartame originating in Japan and the United States of America

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community [1], and in particular Article 23 thereof, which laid down that Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [2], shall continue to apply to proceedings in relation to which an investigation pending on 1 September 1994 has not been concluded by the date of entry into force of Regulation (EC) No 3283/94,

Having regard to Regulation (EEC) No 2423/88 and in particular Article 14 thereof,

Having regard to the proposal submitted by the Commission, after consultations within the Advisory Committee,

Whereas :

A. PREVIOUS PROCEDURE

(1) By Regulation (EEC) No 1391/91 [3], the Council imposed a definitive anti-dumping duty on imports of asparmate originating in Japan and the United States of America (hereinafter referred to as 'the USA').

B. PRESENT PROCEDURE

1. Review application

(2) In January 1994, a United States (US) exporter, the NutraSweet Company (hereinafter referred to as 'NSC'), requested the Commission to review the anti-dumping duty applicable to imports of aspartame originating in the USA and to reopen the investigation. NSC argued in its review application that the following significant changes had occured since the imposition of the definitive duty which constitute substantially changed circumstances sufficient to justify the need for a review within the meaning of Article 14 of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the basic Regulation') :

— domestic US prices have significantly decreased as a result of the expiry of the US patent held by NSC. As a consequence, NSC's normal value has dramatically decreased, thus eliminating the conditions for a dumping margin,

— a state-of-the art plant has been established in France, for the production of aspartame, which is co-owned by NSC. The production capacity of this plant will be sufficient to cover the normal Community demand for aspartame,

— exports of US aspartame by NSC to the Community have significantly decreased and are being replaced by sales of aspartame produced in the Community.

2. Initiation of review investigation

(3) It was considered, after consultation of the Advisory Committee, that the request contained sufficient evidence of changed circumstances to warrant a review pursuant to Article 14 of the basic Regulation.

(4) The Commission therefore published a notice in the *Official Journal of the European Communities* [4] and commenced an investigation.

3. Scope of the review

(5) The product concerned by this review investigation is the same as the product subject to the definitive anti-dumping duty, namely aspartame, a sweetening ingredient with a taste profile similar to sugar but a smaller caloric value, falling within CN code ex 2924 29 90.

(6) The investigation of dumping covered the period 1 October 1993 to 31 March 1994.

(7) Although the review application lodged by NSC was explicitly limited to the anti-dumping duty imposed on imports from the USA, the Commission considered whether such a limitation was jsutified and informed the Japanese exporter of aspartame involved in the previous investigation, Ajinomoto Co. Ltd, Tokyo (hereinafter referred to as

[1] OJ No L 349, 31. 12. 1994, p. 1. Regulation as last amended by Regulation (EC) No 355/95 (OJ No L 41, 23. 2. 1995, p. 2).
[2] OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).
[3] OJ No L 134, 29. 5. 1991, p. 1.
[4] OJ No C 115, 26. 4. 1994, p. 4.

'Ajinomoto'), prior to opening the investigation. However, this company indicated that it was now supplying the Community market from manufacturing facilities in the Community and had no interest in participating in a review investigation.

(8) Because of an explicit indication in the review application that 'the requested review should be limited to the dumping margin of NSC', the Commission did not address injury aspects during the first phase of the investigation. However, when it subsequently became apparent that the anti-dumping duty in force would not be repealed based on dumping findings, NSC decided to shift the emphasis of its argumentation to injury aspects and explicitly requested the Commission to verify that 'there (was) no threat injurious dumping of aspartame exported from the US would resume if the anti-dumping measures under review were repealed'.

4. Investigation

(9) The Commission officially notified the sole Community producer of aspartame and complainant in the previous investigation, the Holland Sweetener Company Vof (hereinafter referred to as 'HSC'), the US exporter NSC and the US authorities of the initiation of the investigation and gave the parties concerned the opportunity to make their views known in writing and to request a hearing.

(10) The Commission sought and verified all the information it deemed to be necessary for the purpose of its investigation and visited the premises of the US exporter NSC in Deerfield, Illinois.

(11) The Commuity producer HSC, the US exporter NSC and the Japanese exporter Ajinomoto were offered the possibility of being informed of the essential facts and considerations on the basis of which it was intended to repeal the anti-dumping duty. However, none of the parties concerned made a request to this effect.

C. RESULT OF INVESTIGATION

1. Dumping

1.1. *Normal value*

(12) During the investigation period, NSC was selling aspartame on the US market in quantities which were clearly sufficient to base normal value on domestic prices. It was established that these sales were in the ordinary course of trade.

(13) The essential element in the investigation of the normal value was the decrease in US domestic prices which, according to NSC, occurred following the expiry of the exclusive patent held by this company. It was confirmed that the patent had effectively expired in December 1992, thereby allowing competition on the US aspartame market, and that prices had substantially decreased as compared with those recorded during the previous investigation.

1.2. *Export price*

(14) NSC made only two export transactions to the Community during the investigation period. This is due to the fact that this company had virtually ceased to export following the establishment of a production plant in France which is now supplying all Community customers of NSC. It was found that these transactions, concerning relatively small quantities of aspartame, had been specificially arranged with European customers for the purpose of the review investigation. For this reason, the information relating to the prices paid by the customers concerned was considered as misleading and it was decided to disregard it in accordance with Article 7 (7) (b) of the basic Regulation.

(15) Under these circumstances, and in the absence of any other reasonable basis for the export price, the Commission chose to look at the 'old' export prices recorded during the previous investigation.

1.3. *Comparison*

(16) The comparison of the 'new' normal value, bassed on US domestic prices during the investigation period, with the 'old' export prices, recorded during the previous investigation, revealed that, although NSC's normal value had decreased significantly since the previous investigation, this decrease was not altogether sufficient to eliminate completely the dumping margin.

2. Injury

2.1. *Argumentation presented by NSC*

(17) Out of the elements presented by NSC, the following were of direct relevance for an evaluation of the injury aspects of the case :

— a plant has been established in the Community by NSC, as a joint venture with the Japanese producer Ajinomoto, with sufficient production to satisfy the demand of NSC's customers in the Community,

— as a result, NSC has virtually ceased to export aspartame to the Community since the middle of 1993,

— the capacity of the French plant being sufficient to cover all anticipated demand in the Community market, there is no reason to believe that exports from the US would resume to a sizeable market share if the anti-dumping measures were lifted.

The evidence supplied by NSC to substantiate these points was examined.

2.2. *No comments by Community producer*

(18) HSC was invited to comment on the argumentation presented by NSC in relation to injury aspects. Its attention was drawn to the fact that, in the absence of any objection, the decision may be taken to repeal the anti-dumping duties currently in force on imports of aspartame originating in both the USA and Japan. However, HSC did not raise any objection to such an outcome.

2.3. *Conclusions on injury*

2.3.1. No risk of resumption of injury

(19) HSC being the sole producer as aspartame in the Community and the only complaining party in the previous procedure, the absence of comments on its part is to be interpreted as a loss of interest in the continuation of the anti-dumping measures and a confirmation of NSC's argument that a repeal of these measures would not entail any risk of injurious dumping being resumed.

2.3.2. Validity of this conclusion for Japan as well as the USA

(20) Although the scope of the review was explicitly limited to imports from the USA, the conclusion of no injury reached in this investigation made it unavoidable also to reconsider the validity of the anti-dumping duty imposed on imports from Japan. This was done under Article 14 (3) of the basic Regulation without a specific re-opening of the investigation in this respect.

(21) The information available suggests that the main reason why the Community industry no longer feels injured by imports of aspartame is that such imports have been discontinued as a result of the setting up of production facilities in France and are not likely to resume to a sizeable market share. The sole Japanese producer of aspartame, Ajinomoto, is an equal partner of NSC in this joint venture and information obtained from this company (see recital (7) *supra)* indicates that they also are now exclusively supplying the Community market with Community produced aspartame.

(22) Under these circumstances, the conclusion of no risk of resumption of injury arrived at in relation to NSC equally applies to Ajinomoto.

D. REPEAL OF ANTI-DUMPING DUTIES

(23) In view of the foregoing, the anti-dumping duties in force on imports as aspartame originating in both the USA and Japan should be repealed, thereby terminating the proceeding.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1391/91 is hereby repealed.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 3 August 1995.

For the Council

The President

J. SOLANA