

COMMISSION REGULATION (EEC) No 2017/81

of 15 July 1981

imposing a provisional anti-dumping duty on phenol originating in the United States of America

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, and in particular Article 11 thereof,

After consultations within the Advisory Committee set up under Regulation (EEC) No 3017/79,

Whereas in January 1981 the Commission received a complaint lodged by the European Council of Chemical Manufacturers' Federations (CEFIC) on behalf of manufacturers accounting for the major part of the Community production of phenol;

Whereas, since the complaint provided sufficient evidence of dumping in respect of the like product originating in the United States of America and of material injury resulting therefrom, the Commission accordingly announced, by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of a proceeding concerning imports of phenol originating in the United States of America and commenced an investigation of the matter at Community level;

Whereas the Commission officially so advised the exporters and importers known to be concerned, as well as the representatives of the exporting country and the complainants;

Whereas the Commission has given all parties directly concerned the opportunity to make known their views in writing and to be heard orally; whereas several of the importing and exporting parties known to be concerned have taken the opportunity to make known their views in writing; whereas certain traders and exporters did not reply to the questionnaires addressed to them by the Commission;

Whereas, in order to arrive at a preliminary determination of dumping and injury, the Commission sought to obtain and verify all information which it deemed

to be necessary and carried out inspections at the premises of the major exporters, namely: Allied Corporation, Morristown, New Jersey; Dow Chemical Company, Midland, Michigan; Georgia Pacific, Plaquemine, Louisiana; ICC Industries Inc., New York, NY; Monsanto Company, St Louis, Missouri; Shell Chemical Company, Houston, Texas; United States Steel Corporation, Pittsburgh, Pennsylvania; whereas inspections were also carried out at the premises of Dow Chemical Belgium NV, Tessenderlo, Belgium and Monsanto Europe SA, Brussels, Belgium;

Whereas the Commission also verified information at the premises of all the complainant producers: BP Chemicals Ltd, London, United Kingdom; DSM Marketing Centre Chemicals & Polymers, Urmond, Netherlands; Imperial Chemical Industries Ltd, Wilton, Middlesbrough, United Kingdom; Montedipe, Milan, Italy; Phenolchemie GmbH, Gladbeck, Germany; Rhône Poulenc Industries, Courbevoie, France; and SIR Spa, Milan, Italy;

Whereas the Commission provisionally determined normal value on the basis of the domestic prices of those US producers who exported to the EEC excluding, however, certain sales from the calculation of normal value, such sales having been considered not to have been made in the normal course of trade either because of special conversion arrangements or of the particular competitive situation relating to a customer; whereas for those exporters who did not sell on the domestic market, normal value was determined on the basis of the weighted average selling prices of their suppliers;

Whereas export prices were determined on the basis of the price actually paid for the products exported to the Community, except for Dow Chemical Company and Monsanto Company, whose exports were made to subsidiary companies in the Community; whereas for these latter companies export prices were constructed on the basis of the prices at which the imported product was first resold to an independent buyer, suitably adjusted to take account of costs incurred and profits; whereas, in the case of Monsanto Company the amount shown as being transferred to the European subsidiaries as a commission was not used in the Commission's calculations, which were based on the actual costs incurred, as established during the investi-

⁽¹⁾ OJ No L 339, 31. 12. 1979, p. 1.

⁽²⁾ OJ No C 51, 10. 3. 1981, p. 4.

gation, and a profit margin considered reasonable by the Commission; whereas the deductions thus made were considerably lower than the transfers shown in the internal accounting system; whereas the Dow Chemical Company did not disclose the amount of any commission received by its European subsidiaries and calculations were thus made on the same basis as detailed above; whereas in those cases where producers did not sell directly to the Community the export price was taken as being that at which they sold to traders or dealers for onward export to the Community;

Whereas for the comparisons between normal value and export prices weighted average ex-plant prices were used for the last six months of 1980, except for those companies which did not export during this period, for whom the comparison was made as nearly as possible at the same time; whereas account was taken, where appropriate, of differences affecting price comparability such as differences in conditions and terms of sale and differences in level of trade relating in particular to transport, payment terms and selling costs;

Whereas, with respect to specific companies investigated, the preliminary results were as follows:

<i>Company</i>	<i>Weighted average dumping margin</i>
— Allied Corporation	12.2 %
— Dow Chemical Company	13.0 %
— ICC Industries Inc.	10.5 %
— Monsanto Company	9.7 %
— Shell Chemical Company	8.8 %
— US Steel Corporation	19.9 %
— Georgia Pacific Corporation	0

Whereas, for those exporters who neither replied to the Commission's questionnaire nor made themselves known otherwise in the course of the preliminary investigation, dumping was determined on the basis of the facts available; whereas, in this context, it had to be borne in mind that the complaint alleged dumping margins varying from 25 to 32 %; whereas, however, the Commission considered that the results of its investigation provided a more accurate determination of the level of dumping and that furthermore it would constitute a bonus for non-cooperation to assume that the dumping margin for these exporters was any lower than the highest dumping margin of 19.9 % determined with regard to an exporter who had fully cooperated;

Whereas, with regard to the injury caused by the dumped imports to the Community industry, the

evidence available to the Commission during the preliminary investigation showed that total imports of US phenol into the Community increased from approximately 61 088 tonnes in 1978 to approximately 71 573 tonnes in 1980; whereas it was shown that the majority of the imports during the investigation period were made at dumped prices;

Whereas the market share of these dumped imports in the Community was approximately 8 % in 1980;

Whereas, although some of the importers concerned were not willing to provide information to the Commission, the Commission was able in the majority of cases to verify the resale prices of phenol imported at dumped prices and to conclude therefrom that the selling prices of the Community industry had steadily fallen in 1980; whereas there was evidence that customers had cancelled their contracts with the Community industry or had considerably reduced their purchases therefrom in order to buy dumped material from the United States, thus further depressing the EEC producers' prices; whereas nearly all the Community industry has suffered heavy losses in 1980 or greatly reduced profits;

Whereas production of phenol in the Community fell from 944 639 tonnes in 1978 to 824 003 tonnes in 1980 and capacity utilization fell from 72 % in 1978 to 59 % in 1980;

Whereas the Commission has considered the injury caused by other factors which, individually or in combination, may also be affecting the Community industry; whereas it was determined that the level of demand and consumption in the Community remained relatively stable; whereas, whilst imports from countries other than that named in the complaint have increased, they have been at considerably lower volumes than those from the United States of America and have been at prices similar to those obtained by Community industry;

Whereas, in view of the foregoing, the Commission has provisionally concluded that the dumped imports are causing material injury;

Whereas, in these circumstances and in order to prevent further injury being caused during the proceeding, the interests of the Community call for immediate intervention consisting in the imposition of a provisional anti-dumping duty on imports of phenol originating in the United States of America at a rate which, having regard to the extent of injury caused, should be equal to the dumping margin provisionally established;

Whereas Dow Chemical Company has meanwhile voluntarily undertaken to increase its prices to levels which eliminate the dumping margin found; whereas the Commission considers this undertaking to be acceptable; whereas it is consequently appropriate to exclude the imports of the products manufactured and exported by this company from the application of the duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on phenol falling within Common Customs Tariff subheading ex 29.06 A I and corresponding to NIMEXE code ex 29.06-11, originating in the United States of America.

2. This duty shall not apply to phenol manufactured and exported by Dow Chemical Company and Georgia Pacific Corporation.

3. The rate of the duty shall be 19.9 % on the basis of the customs value determined in accordance with Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes⁽¹⁾, except for exports made by the following companies for which the rate of duty shall be:

- Allied Corporation, Morristown,
New Jersey : 12.2 %
- ICC Industries Inc., New York, NY : 10.5 %

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

Done at Brussels, 15 July 1981.

- Monsanto Company, St Louis, Missouri : 9.7 %
- Shell Chemical Company, Houston, Texas : 8.8 %

4. The provisions in force concerning customs duties shall apply for the application of this duty.

5. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 3017/79, the parties concerned may make known their views and apply to be heard orally by the Commission within a month of the entry into force of this Regulation.

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 3017/79, this Regulation shall be applicable for four months or until the adoption by the Council of definitive measures.

Article 3

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

For the Commission

Wilhelm HAFERKAMP

Vice-President

⁽¹⁾ OJ No L 134, 31. 5. 1980, p. 1.