

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 4 December 1980

accepting undertakings offered by the exporters of saccharin and its salts originating in China and the United States of America and terminating the proceedings concerning imports of saccharin and its salts from China, Japan and the United States of America

(80/1116/EEC)

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 Community⁽¹⁾, and in particular Articles 9 and 10 thereof,

After hearing the opinions expressed by the Advisory Committee set up under that Regulation,

Whereas in May 1979 the Commission received a complaint lodged by the Boots Company Ltd of Nottingham, England, the sole Community producer of saccharin and its salts; whereas the complaint contained evidence of the existence of dumping in respect of like products originating in China, Japan and the United States of America, and of material injury resulting therefrom;

Whereas, since the said evidence was sufficient to justify the initiation of proceedings, 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 saccharin and its salts originating in China, Japan and 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 countries;

Whereas the Commission has given the parties directly concerned the opportunity to make known their views in writing, to be heard orally and to meet so that opposing views might be presented and rebuttal arguments put forward;

Whereas most of the importing parties and all the exporting parties concerned have taken this opportunity;

Whereas in the course of these proceedings the Commission sought and verified all information it deemed to be necessary and carried out investigations at the premises of the principal producers and exporters including, in Japan, Aisan Chemical Co. Ltd (Nagoya), Daito Chemical Industrial Co. Ltd (Kawasaki), Daiwa Chemical Co. Ltd (Osaka), Kanematsu Goshu Co. Ltd (Tokyo) and in the United States of America, the Sherwin Williams Company (Cleveland, Ohio); whereas the Commission also carried out an investigation at the premises of the complainant Community producer;

Whereas to make an examination of the existence of dumping by the Japanese producers and exporters the Commission compared the export prices of soluble saccharin to the Community in the period 1 August 1978 to 31 July 1979 with the weighted average prices ruling on the Japanese domestic market; whereas because there are no sales of insoluble saccharin on

⁽¹⁾ OJ No L 339, 31. 12. 1979, p. 1.

⁽²⁾ OJ No C 207, 17. 8. 1979, p. 4.

the Japanese domestic market the Commission compared the export prices to the Community for this type of saccharin in the same period with a normal value constructed by taking the Japanese producers' costs of materials and manufacture and adding an amount for overheads as well as a 6 % profit margin, considered to be reasonable, for the market under consideration; whereas account was taken of the fact that insoluble saccharin produced by Ikuwa Chemical Co. Ltd in Japan was exported to the Community by another Japanese producer and that certain saccharin produced by the Japanese producers appeared to be exported by companies related to these producers; whereas, therefore, the export prices were constructed on the basis of the prices at which the products were first sold to an independent buyer; whereas comparisons were made at the ex-factory level;

Whereas, in order to establish whether imports from China were dumped, the Commission had to take account of the fact that this country is not a market economy; whereas, therefore, the Commission determined the normal value on the basis of the prices at which the like product of a market economy third country was sold to other countries; whereas it was considered appropriate to compare the average export prices of the Chinese exporter to the Community with the weighted average prices of Korean exports to Australia and the United States of America; whereas such comparison was made at the fob level on sales made in 1979 and the first quarter of 1980;

Whereas during the examination of the existence of dumping by the American producer a claim was made that the domestic prices in the United States of America should be based on the price of their sales to their sole distributor on the American market; whereas, however, the Commission concluded on the basis of information supplied by the American producer that the prices of these sales in 1979 did not permit recovery of all costs ordinarily incurred in their production and considered these sales as not having been made in the normal course of trade; whereas, therefore, the Commission compared the export prices of the American producer with the weighted average price of all sales on the domestic market during the period 1 August 1978 to 31 July 1979; whereas this comparison was made at the ex-factory level;

Whereas, to ensure that export prices and normal values were on a comparable basis, allowance has been made, where appropriate, for differences claimed in the conditions and terms of sale on each market, and in particular to differences in the costs of credit and packaging; whereas, however, in the case of exports by the American producer no allowance was made for differences claimed in respect of the costs of administration and technical research, since these costs were not considered to bear a direct relationship to sales in the domestic market only;

Whereas it emerged from the examination of dumping by the Japanese producers and exporters that in no case during the reference period were the Japanese export prices to the Community lower than the corresponding prices on their domestic market and that the export prices exceeded their normal value by 0.4 to 15.6 %;

Whereas consequently no dumping existed in the case of exports from Japan of saccharin and its salts to the Community;

Whereas in these circumstances it is appropriate to terminate the proceedings concerning imports into the Community of saccharin and its salts originating in Japan;

Whereas, however, the examination of the facts shows the existence of dumping in respect of imports of saccharin and its salts from China, the margin of dumping in 1979 being 13.9 % for all exports to the Community and 15.2 % for exports to the United Kingdom; whereas such examination shows also the existence of dumping in respect of imports from the United States of America, the margins of dumping being 40 and 51 % in respect of exports to the United Kingdom and 51 % in respect of exports to France and Germany;

Whereas with regard to the injury caused to the Community industry, the evidence available to the Commission shows that the market share of imports from China in the Community increased from 3.9 % in 1976 to 16.5 % in 1979, and that in the same period the market share of imports from the United States of America in the Community increased from 2.9 to 6.0 %; whereas during the same period the share of imports from China in the market in the United Kingdom, the market most affected by these imports, rose from 3.4 to 22.1 % and the market share of imports from the United States of America increased from 3.2 to 5.2 %;

Whereas the resale prices of the products imported into the United Kingdom from China and the United States of America are substantially lower than those of the Community producer;

Whereas the consequent impact on the Community industry is characterized by a fall in production by low capacity utilization and by a loss of market share from 1976 to 1979, leading to a reduction of profits or to losses during the same period;

Whereas injuries caused by other factors which would adversely affect the Community industry, such as the volume and prices of other imports or the overall demand for saccharin and its salts, have been examined and any adverse effects caused by these factors have not been attributed to the imports under consideration;

Whereas, in view of the foregoing, the examination of the facts shows the existence of dumping in respect of imports from China and the United States of America and that there is sufficient evidence of consequent material injury;

Whereas the producers and exporters concerned were informed of the findings of the investigation and commented on them; whereas undertakings were subsequently offered by the American and Chinese exporters in respect of exports to the United Kingdom; whereas the effect of these undertakings will be to increase export prices to the United Kingdom to levels eliminating but not exceeding the margins of dumping;

Whereas, having regard to the capacity of the Community industry, the Commission has therefore determined that it is not now necessary to take protective action in respect of imports originating in China and the United States of America and has decided to accept the undertakings offered and to terminate the proceedings without the imposition of anti-dumping duties,

HAS DECIDED AS FOLLOWS:

Article 1

The Commission hereby accepts the undertakings given in connection with the anti-dumping proceedings concerning saccharin and its salts⁽¹⁾ originating in China and the United States of America.

Article 2

The anti-dumping proceedings concerning imports of saccharin and its salts originating in China, Japan and the United States of America are hereby terminated.

Done at Brussels, 4 December 1980.

For the Commission

Wilhelm HAFERKAMP

Vice-President

⁽¹⁾ CCT subheading 29.26 A I; NIMFEXE code 29.26-11.