

COMMISSION DECISION

of 18 April 1985

terminating the anti-subsidy proceeding concerning imports of soya meal
originating in Argentina

(85/239/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,Having regard to the Treaty establishing the European
Economic Community,Having regard to Council Regulation (EEC) No
2176/84 of 23 July 1984 on protection against
dumped or subsidized imports from countries not
members of the European Economic Community⁽¹⁾,
and in particular Article 9 thereof,After consulting with the Advisory Committee set up
under that Regulation,

Whereas :

A. Procedure

1. In August 1983, the Commission received a complaint from the EEC Seed Crushers' and Oil Processors' Federation (FEDIOL) on behalf of producers accounting for almost the entire Community production of oil cake. With regard to soya meal, the complaint contained evidence of subsidization and material injury resulting therefrom that was sufficient to justify opening an investigation.

The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-subsidy proceeding concerning imports into the Community of soya meal falling within subheading ex 23.04 B of the Common Customs Tariff (NIMEXE code 23.04-40), originating in Argentina, and commenced an investigation.

2. The Commission gave official notice of his investigation to exporters and importers known to be concerned, the representatives of the exporting country and the complainants; directly interested parties were given the opportunity to make their views known in writing and to be heard orally.

The Argentinian Government, most of the exporters, all Community producers and some of the

known importers put forward their views and made detailed observations.

3. The Commission gathered and verified all the information it regarded as necessary for establishing the existence of subsidies and injury, and made on-the-spot checks on the premises of Community producers. An on-the-spot investigation in Argentina was not regarded as necessary since the Argentinian authorities were able to give the Commission satisfactory information concerning the existence of the subsidies alleged by FEDIOL.

The investigation into subsidization related to the period 1 October 1982 to 30 September 1983.

B. Subsidies

4. The complaint lodged by FEDIOL alleges the existence of the following four types of subsidy :

- preferential financing for exports,
- refunding of charges and direct or indirect taxes,
- differential taxes on exports of products of the soya bean family,
- barriers to soya bean exports.

5. *Preferential financing for exports*

- 5.1. FEDIOL alleges that Argentinian soya meal exports receive preferential financing in accordance with the Argentinian Central Bank's circular No 153 of 6 December 1977, which sets out the provisions for financing exports that are being promoted.

- 5.2. The Commission's examination of this circular revealed that soya meal did not appear among the products eligible for financing under this programme. The circular referred to above was, moreover, replaced on 24 October 1981 by circular OPRAC — 1 (communication 'A' 49). Again, the circular does not include soya meal among the exports eligible for the promotional measures provided for therein.

⁽¹⁾ OJ No L 201, 30. 7. 1984, p. 1.

⁽²⁾ OJ No C 283, 20. 10. 1983, p. 5.

The Commission's investigation has thus shown that during the period covered by the investigation, Argentinian exports of soya meal did not receive preferential financing.

exploit when exporting soya meal to the Community. The Community industry also alleges that the lower rate of taxation on meal by comparison with that on beans gives an additional advantage to Argentinian exporters.

6. *Refunding of charges and direct or indirect taxes*

6.1. The Community industry's complaint alleges that the Argentinian authorities illegally reimburse, in accordance with resolutions 770 of 17 July 1979 and 659 of 10 May 1980 of Argentina's Ministry of Economic Affairs, charges and direct or indirect taxes on exports of soya bean oil and meal.

6.2. The Commission noted that the two texts referred to above did indeed provide for the refunding of 10 % of certain charges and direct or indirect taxes on exports of both soya bean oil and meal.

These two resolutions, however, were replaced by resolution 437 of 5 May 1982, which abolished the abovementioned refunds and instituted a 0 % tax on the exportation of a number of products including soya bean oil and meal. Resolution 437 was replaced on 5 July 1982 by resolution 8, which set the level of tax on exports of the products in question at 10 %.

It thus appears, contrary to the allegations contained in the complaint, that exports of soya meal did not benefit from such reimbursements during the period covered by the investigation.

7. *Differential taxes on exports of products of the soya bean family*

7.1. FEDIOL argues that the Argentinian Ministry of Foreign Affairs' resolution 8 of 5 July 1982 set the level of the export tax at 10 % for meal and oil and at 25 % for soya beans. It alleges that these differential tax levels, namely a higher level of tax on exports of beans than on those of soya meal, constitute an export subsidy for the latter products. The Community industry alleges that the taxes referred to above have the effect of restricting exports of beans, so guaranteeing the Argentinian oil seed crushing industry supplies of the raw material at low cost. According to FEDIOL, the Argentinian industry thus has an advantage in terms of the cost price that it can

7.2. The Commission noted that the abovementioned resolution 8 has indeed applied during the investigation period and that its provisions correspond to the substance of FEDIOL's allegations.

7.3. The Commission realizes that official action to impose or remove disincentives to external trade, particularly in the form of export taxes or restrictions, can affect competition or trade in the product immediately concerned, as well as upstream or downstream products.

However, not all official measures can be classed as subsidies within the meaning of the international rules governing this matter simply because they have an actual or potential effect on competition or trade; this would be to blur the distinction made in GATT between subsidies and other measures which may have an impact on competition or trade. The importance of this distinction is that Article VI of the General Agreement allows the Contracting Parties to take unilateral action against certain specific practices but allows no such action against other practices, such as quantitative restrictions and import or export charges, even though they may produce distortions of competition or trade.

As far as international trade is concerned, the crucial characteristic of a subsidy is that it involves a financial contribution by government. This results *inter alia* from item (L) of the *Illustrative List of Export Subsidies* appended to the *Code on Subsidies*. The list, which is also annexed to Regulation (EEC) No 2176/84, makes it clear that any subsidy must involve a charge on the public account. To extend the concept of subsidies to include practices other than those involving such a charge would be excessive, and taken to its extreme could lead to any government intervention whatsoever in the economy being regarded as a subsidy, including tax measures or even regulatory action such as the introduction of price controls or pollution standards.

7.4. It is clear from both GATT rules and the relevant Community legislation (the Annex to Regulation (EEC) No 2176/84) that the concept of a charge on the public account includes the waiving by the authorities of taxes or other dues owed. The Commission notes that the case in point, however, involves not the waiving of a tax but the non-creation of an additional tax burden. To regard such a non-creation generally as a subsidy would be to hold the very fact that a government levies tax on some people or products but not others as equivalent to a financial contribution to the latter.

One might ask whether the above line of reasoning would still hold true if the new tax obligation constituted the general rule and the non-creation of such an obligation was an exception to this general rule. The question does not arise in this case, however, since the tax arrangements applied to exports of soya meal do not constitute an exceptional situation in the exporting country concerned.

7.5. Thus differential taxation of the various soya-based products does not constitute a charge on the public account of the country involved and cannot be regarded as a subsidy.

The distortion complained of by the Community industry results not from subsidization of exports of the processed product, soya meal, but from the levying of a tax at a higher rate on exports of the raw product, soya beans. This does not, by its very nature, constitute a financial contribution by government.

8. *Barriers to soya bean exports*

8.1. The Community industry alleges that Argentina is imposing restrictions on the exportation of soya beans.

This restriction on exports of the raw material, according to FEDIOL, keeps bean prices on the domestic market substantially lower than world market prices, so giving Argentinian oil seed crushers an advantage in terms of the cost price, which they can exploit when exporting soya meal to the Community.

8.2. For the reasons set out in 7 above, the Commission believes that a restriction of this type does not constitute a subsidy capable of giving rise to countervailing duties.

C. Termination of the proceeding

9. Under these circumstances, the examination of the possible injury caused by imports of soya meal originating in Argentina is not necessary and the anti-subsidy proceeding concerning these imports should be terminated.

HAS DECIDED AS FOLLOWS:

Sole Article

The anti-subsidy proceeding concerning imports of soya meal originating in Argentina is hereby terminated.

Done at Brussels, 18 April 1985.

For the Commission

Willy DE CLERCQ

Member of the Commission