

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 18 July 1983

terminating the anti-dumping proceeding in respect of imports of certain pears in syrup, originating in Australia, the People's Republic of China and the Republic of South Africa

(83/360/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 European Economic Community⁽¹⁾, as amended by Regulation (EEC) No 1580/82⁽²⁾, and in particular Article 9 thereof,

After consultations within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. Procedure

- (1) In September 1981, the Commission received a complaint lodged by l'Organisation européenne des industries transformatrices de fruits et légumes (OEITFL) on behalf of French and Italian producers representing most of the Community production of pears in syrup, relating to imports of the product in question originating in Australia. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding. The Commission

accordingly announced, by a notice published in the *Official Journal of the European Communities*⁽³⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of certain pears in syrup, falling within subheadings 20.06 B II a) 6 and b) 6 of the Common Customs Tariff (NIMEXE codes 20.06-41, 43, 68 and 69) and originating in Australia, and commenced an investigation.

- (2) In June 1982, the Commission received, on behalf of the same producers, an amended complaint requesting that the anti-dumping enquiry in progress be extended to imports of the product in question originating in the People's Republic of China and the Republic of South Africa. This complaint contained evidence of dumping and material injury resulting therefrom which was considered sufficient to justify the extension of the anti-dumping proceeding; the Commission accordingly announced, in a notice published in the *Official Journal of the European Communities*⁽⁴⁾, the extension of the anti-dumping proceeding concerning imports of certain pears in syrup, which was originally opened in respect of Australia, to include certain pears in syrup originating in the People's Republic of China and the Republic of South Africa.

⁽¹⁾ OJ No L 339, 31. 12. 1979, p. 1.

⁽²⁾ OJ No L 178, 22. 6. 1982, p. 9.

⁽³⁾ OJ No C 33, 10. 2. 1982, p. 2.

⁽⁴⁾ OJ No C 276, 19. 10. 1982, p. 7.

- (3) The Commission officially so advised the exporters and importers, known to be concerned and the representatives of the exporting countries and the complainants, and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.
- (4) All of the exporters and most of the importers made their views known in writing; the exporters and some importers were granted hearings.
- (5) The Australian exporters requested an opportunity to meet the Community producers for the purpose of presenting their opposing views. The Commission was prepared to grant this request but the Community producers refused to attend a meeting and it was not, therefore, possible to arrange a confrontation.
- (6) The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination; it carried out investigations at the premises of the Community producers:

Conserve Gard, Nîmes, France;

Sica ASO, Montauban, France;

Falguieres Conserves, Castelsarrasin, France;

SELF, Bagnacavallo, Italy;

Parmasole, Parma, Italy;

Italfrutta, Ravenna, Italy;

Colombani Lusuco, Bologna, Italy;

with the non-EEC producers/exporters:

Ardmona Fruit Products Co-Operative Co. Ltd, Mooroopna, Australia;

SPC Limited, Shepparton, Australia;

Australian Canned Fruit (IMO) (Pty.) Ltd, Melbourne, Australia;

South African Preserving Co. (Pty.) Ltd, Cape Town, Republic of South Africa;

All Gold Foods (Pty.) Ltd, Strand, Republic of South Africa,

Langeberg Co-Op Limited, Cape Town, Republic of South Africa;

Gant's Foods (Pty.) Ltd, Strand, Republic of South Africa;

with the importers:

Irish Agricultural Wholesale Society, Dublin, Ireland;

Edeka Zentrale AG, Hamburg, Germany;

C. L. Eduard Blume, Hamburg, Germany;

Gedelfi Großeinkauf GmbH & Co. KG, Köln, Germany;

Wünsche Handelsgesellschaft, Hamburg, Germany;

Hüpeden & Co., Hamburg, Germany.

- (7) The enquiry into dumping covered the calendar year 1981.

B. Normal value

- (8) Normal value for Australian and South African exporters was provisionally determined on the basis of the domestic prices of those producers who exported to the EEC. In the case of Australian producers this basis was contested since it was argued that the prices prevalent on the Australian domestic market were not paid in the ordinary course of trade as they resulted from minimum prices fixed by the Australian Canned Fruits Corporation which is an Australian Statutory Authority. It was contended that the establishment of such a minimum price system means that the usual forces of supply and demand are not operative and that the resulting domestic prices are thus not appropriate as a basis for calculating normal value. The Commission does not consider that the term 'ordinary course of trade' presupposes the existence of perfect competition and is of the opinion that, even where competition is restricted by situations such as a cartel or a monopoly, selling prices are in the ordinary course of trade provided that they are generally available to all actual and potential customers and cover the total cost of production. The Commission has taken into account that, in the present case, the restriction on competition results from State rather than private intervention. However, the evidence available to the Commission indicates that the domestic price for canned pears is fixed bearing in mind competition from other fruits, on the one hand, and the costs of production of the canners, on the other hand, and thus takes market considerations into account. In these circumstances the Commission considers that it is reasonable, in making its preliminary determination, to use Australian domestic prices as the basis for the calculation of normal value.
- (9) In seeking to determine normal value for one of the South African exporters, South African Preserving Co. (Pty.) Ltd, the Commission had to take into account that this company had no sales of the like product on the domestic market. The Commission determined therefore that the

normal value for this company could be established on the basis of its constructed value; this was computed by taking the company's total cost of materials and manufacture, including overheads and adding a profit margin of 5 %, considered to be reasonable in the light of the industry's performance during a representative profitable period.

- (10) In order to establish whether the imports from the People's Republic of China were dumped, the Commission had to take account of the fact that this country does not have a market economy and the Commission therefore had to base its determination on the normal value in a market economy country; in this connection the complainants had suggested the Australian domestic market. However, the Chinese exporters objected to this suggestion on the basis that there were large differences between China and Australia in production techniques and the level of domestic consumption and proposed that Argentina should be used as the analogue country. The Commission considers, however, that the particular economic conditions in Argentina render its domestic market prices unsuitable for use as a basis for the normal value calculation and is satisfied that in South Africa there are no extraordinary differences in production processes and that there is sufficient international competition to ensure that price levels are in a reasonable proportion to production costs. Consequently, the Commission concluded that it would be appropriate and not unreasonable to determine normal value for imports originating in China on the basis of domestic prices in South Africa.

C. Export price

- (11) Export prices were determined on the basis of the prices actually paid or payable for the products sold for export to the Community.

D. Comparison

- (12) In comparing normal value with export prices, the Commission took account, where appropriate, of differences affecting price comparability and, particularly, differences in conditions and terms of sale. All comparisons were made at ex-works level.

E. Margins

- (13) The above preliminary examination of the facts shows the existence of dumping in respect of the three countries concerned, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community. These margins vary according to the country concerned, the weighted average margins being as follows: 44,95 % for Australia, 35,5 % for the People's Republic of China and 14,4 % for South Africa.

F. Injury

- (14) Statistical evidence available to the Commission shows that imports into the Community from Australia, the People's Republic of China and South Africa decreased from 49 922 tonnes in 1979 to 37 416 tonnes in 1980 and subsequently increased to 39 470 tonnes in 1981. During the same period the market share of these exporters decreased from 43,8 % in 1979 to 36,0 % in 1980 and to 35,8 % in 1981. The resale prices of these imports during the investigation period were lower than those required to cover the costs of many of the Community producers and provide a reasonable profit for them. While Community production increased by almost 12 % between 1979 and 1981 and the market share of Community producers rose from 54,4 to 61,9 %, approximately 25 % of Community producers incurred losses ranging from 9 to 13 % of turnover during the investigation period.

- (15) In interpreting the above statistical data the Commission has had to take into account that, in the particular circumstances, it is not possible to rely completely on the usual criteria used to assess the impact of dumping. This is due to the fact that since 1979 the Community has granted production aid to EEC canned pear producers which has enabled them to sell in competition with low-priced imports from non-EEC sources. In summary the production aid for canned pears results from the difference between the costs of production of the Community producers and the import price of non-EEC products. Thus the effect of any dumping is neutralized to a great extent. In seeking therefore to assess injury to Community producers the Commission has had to envisage what would have been the situation in the absence of production aid. While realizing the difficulty of establishing with certainty the impact

of low-priced imports on the Community industry if production aid had not been available, the Commission is nevertheless of the opinion that it is very probable that more producers would have suffered losses and that existing losses would have been greater; it is also unlikely that the market share of Community producers could have been maintained at the same level. For these reasons the Commission feels that it is appropriate to use as a criterion for assessing injury to Community industry that part of the production aid granted during the investigation period which enabled Community producers to compete with dumped imports and which is estimated to have amounted to eight million ECU.

- (16) The use of the increased burden on production aid as an indicator of injury has been contested by Australian producers and their Government and also by South African and Chinese producers. In this connection it has been argued that neither the Community's anti-dumping regulations nor the GATT Anti-Dumping Code specifically provide for the impact of dumped imports on the Communities' aid programme to be taken into consideration. The Commission considers, however, that the Communities' framework legislation and that of GATT clearly do not intend to limit the assessment of the injurious effects of dumping to any specific indicators. The Subsidy Code makes it quite clear that, where the impact of State subsidies in the exporting country is counterbalanced by government support programmes in the importing country, the increased burden on the budget is an appropriate indicator of injury caused to the domestic industry in the importing country. The Commission considers that, where the impact of dumped imports is counterbalanced by a production aid programme, it is quite reasonable by analogy to use the increased burden on public funds as one of the indicators of injury caused by the dumped imports in question.

- (17) The Commission has considered whether injury has been caused by other factors. It has been argued that the Community's production aid is artificially high since the production costs of Community producers on which the aid is partly based have been greatly overstated. The Commission's anti-dumping investigation has revealed that the data used for the calculation of produc-

tion aid is provided by the Member States of the producing countries and that no evidence in support of the allegation has been disclosed during the enquiry. The Commission is of the opinion, moreover, that even if the above argument were correct either the granting of aid would have been unnecessary or would have been at a considerably reduced level if there had been no dumped imports.

- (18) The Commission has therefore been led to determine that the effects of the dumped imports of canned pears originating in Australia, the People's Republic of China and South Africa, taken in isolation, have to be considered as constituting material injury to the Community industry concerned.

G. Community interest and termination of proceeding

- (19) The exporters concerned were informed of the main findings of the preliminary investigation. Australian, Chinese and South African exporters argued that, since in their opinion no injury had been caused to the Community industry, no action was necessary. However, while refusing to accept the Commission's determination of dumping and resultant injury, Australian, Chinese and South African exporters nevertheless agreed to ensure that their future export prices to the Community would be at a level which is considered by the Commission to be sufficient to eliminate the burden caused to the Community's budget and to provide also an adequate return to those Community producers who have made losses during the investigation period. This increase in prices in no case exceeds the dumping margins found in the investigation.
- (20) In these circumstances, the assurances given with regard to price are deemed satisfactory and the Commission considers that it is therefore not in the Community interest to impose a provisional anti-dumping duty and the anti-dumping proceeding may thus be terminated in respect of Australian, Chinese and South African exporters.
- (21) No objection to this course of action was raised in the Advisory Committee.

HAS DECIDED AS FOLLOWS:

Sole Article

The anti-dumping proceeding concerning imports of certain pears in syrup, originating in Australia, the People's Republic of China and the Republic of South Africa is hereby terminated.

Done at Brussels, 18 July 1983.

For the Commission

Wilhelm HAFERKAMP

Vice-President
