COMMISSION DECISION

of 11 November 1982

accepting undertakings given in connection with the anti-dumping procedure concerning decabromodiphenylether originating in the United States of America and terminating the procedure

(82/757/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 10 thereof,

Whereas in October 1981 the Commission received a complaint lodged by the European Council of Chemical Manufacturers' Federations (CEFIC) on behalf of a German company alleged to be the major Community producer of decabromodiphenylether; whereas the complaint contained sufficient evidence of the existence of dumping in respect of decabromodiphenylether originating in the United States of America and of material injury resulting therefrom;

Whereas the said evidence was sufficient to justify initiating an investigation;

Whereas the Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* (3), the initiation of a procedure concerning imports of decabromodiphenylether originating in the United States of America and commenced an investigation at Community level;

Whereas the Commission officially so advised the exporters and importers known to be concerned;

Whereas in the course of the investigation it has been established that the German company on whose behalf the complaint had been lodged was not in fact producing decabromodiphenylether but nonabromodiphenyl, claimed to be a like product; whereas, however, a French producer of decabromodiphenylether submitted, in response to the notice of initiation of the procedure, a complementary complaint, non-confidential copies of which were distributed to the exporters and importers known to be concerned;

Whereas the Commission announced by a notice published in the *Official Journal of the European Communities* (4), that the procedure would be continued on the basis of the complementary complaint lodged by the French producer of decabromodiphenylether;

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

Whereas the majority of the parties concerned have taken this opportunity;

Whereas, in order to arrive at a preliminary determination of the existence of dumping, the Commission sought to obtain and verify all information which it deemed to be necessary and carried out inspections at the premises of the US producers , viz. Dow Chemical Company, Midland, Michigan; Great Lakes Chemical Corporation, West Lafayette, Indiana and Saytech Inc., Sayreville, New Jersey; whereas the Commission compared export prices to the Community with US domestic prices for each company in the USA; whereas, for Dow Chemical Company and Great Lakes Chemical Corporation, in view of the inter-company relationship with their importers in the Community, these export prices were constructed on the basis of the prices at which the imported product was first resold to an independent buyer with allowances being made where appropriate for duties, taxes, transport, handling and for a reasonable margin for overheads allocated according to sales and administration costs; whereas the price comparisons were made at the ex-factory level for sales made during the period 1 January to 31 December 1981;

Whereas the investigations on dumping showed the following weighted average dumping margins:

— Dow Chemical Company 49·66 %
— Great Lakes Chemical Corporation 41·76 %
— Saytech Inc. 27·69 %

Whereas, in order to arrive at a preliminary determination of the existence of injury, the Commission contacted a number of agents and importers and carried out investigations at the premises of Dow Chemical (Nederland) BV, the Netherlands, and Great Lakes Chemical Europe Ltd, United Kingdom;

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No C 337, 24. 12. 1981, p. 6.

whereas the Commission also carried out — investigations at the premises of the main complainant Community producer, namely Produits Chimiques Ugine Kuhlmann, Paris, France ;

Whereas, with regard to the injury caused to the Community industry, the evidence available to the Commission shows that total imports into the Community of decabromodiphenylether originating in the United States of America rose from approximately 1 099 tonnes in 1979 to 1 267 tonnes in 1980 and 1 288 tonnes in 1981 ;

Whereas, in the absence of separate import figures relating to decabromodiphenylether, it is difficult to gauge exactly the size of the Community market for this product ; whereas, nevertheless, the best information available suggests that US exports held a market share in the Community of 78·7 % in 1981 ;

Whereas market conditions in this sector have been such that the Community producer has aligned his sales prices with those of the US exporters ; whereas this has allowed the Community producer to increase sales but at the cost of serious financial losses ;

Whereas material injury to the Community industry is characterized by depression of Community prices and prevention of price increases which otherwise would have occurred, with consequent operating lossses ;

Whereas the Commission has considered the injury caused by other factors which, individually or in combination, may also be affecting the Community industry ; whereas the information available suggests that there have been little or no imports from countries other than the USA and that there has been no contraction in demand which might have adversely affected the Community industry ;

Whereas the preliminary examination of the facts shows that there is dumping of decabromodiphenylether exported by Dow Chemical Company, Great Lakes Chemical Corporation and Saytech Inc., and that these dumped imports have in themselves consequences which have to be considered as material injury to the Community industry ;

Whereas the exporters concerned were informed of the main findings of the preliminary investigation and commented on them ; whereas undertakings were subsequently offered by Dow Chemical Company, Great Lakes Chemical Corporation and Saytech Inc., concerning imports originating in the USA ;

Whereas the effect of these undertakings will be to increase resale prices in the Community to a level considered necessary by the Commission to eliminate injury, having taken account of the Community producer's prices, costs and profitability and the marketing conditions governing the importers' reselling costs ; whereas these increases in no case exceed the dumping margin ;

Whereas the Commission has, therefore, determined that it is not now necessary to take protective action in respect of imports of decabromodiphenylether originating in the USA ;

Whereas, in these circumstances, the undertakings offered are considered acceptable and the procedure may, therefore, be terminated without imposition of anti-dumping duties ;

Whereas no objection to this course was raised in the Advisory Committee,

HAS DECIDED AS FOLLOWS :

Article 1

The undertakings given by Dow Chemical Company, Great Lakes Chemical Corporation and Saytech Inc. in connection with the anti-dumping procedure concerning decabromodiphenylether falling within Common Customs Tariff subheading ex 29.08 A III c) and corresponding to NIMEXE code ex 29.08-18, originating in the United States of America are hereby accepted.

Article 2

The anti-dumping procedure concerning imports of decabromodiphenylether originating in the United States of America is hereby terminated.

Done at Brussels, 11 November 1982.

For the Commission

Wilhelm HAFERKAMP

Vice-President