II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 24 May 1983

accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of polyethylene originating in the Soviet Union, the German Democratic Republic, Czechoslovakia and Poland and terminating that proceeding

(83/248/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,

After consultations within the Advisory Committee provided for in that Regulation,

Whereas in August 1982 the Commission received a complaint lodged by the European Council of Chemical Manufacturers' Federations (Cefic) on behalf of 13 producers accounting for the entire Community production of polyethylene ;

Whereas, since the complaint contained sufficient evidence of the existence of dumping in respect of a like product originating in the Soviet Union, the German Democratic Republic, Czechoslovakia and Poland and of material injury resulting therefrom, the Commission accordingly announced, in 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 polyethylene originating in the Soviet Union, the German Democratic Republic, Czechoslovakia and Poland and commenced its investigation at Community level ;

Whereas the Commission officially advised the exporters and importers known to be concerned of this decision ;

Whereas the Commission gave all the parties directly concerned the opportunity to make known their views in writing and to present them at an oral hearing ;

Whereas a number of those parties took this opportunity to present detailed objections in writing and/or orally ;

Whereas, in order to arrive at a preliminary assessment of the margin of dumping and the injury caused, the Commission sought and verified all information it deemed to be necessary from the exporters, importers and Community producers concerned who stated their willingness to cooperate in the investigation, and carried out inspections at the premises of the undertakings where necessary ; whereas information was sought from the following undertakings in particular :

— Community importers :

Deutsche Chemapol GmbH (Frankfurt),
Karl O. Helm AG (Hamburg),
Bochako GmbH (Hamburg),
SOGO SA (Paris),
Lubimex BV (Bussum),
Chr. Egelborg A/S (Holbaek),
TR International Ltd (London) ;

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No C 230, 3. 9. 1982, p. 2.

— Community producers :
BASF AG (Ludwigshafen),
Hoechst AG (Frankfurt),
Bayer AG (Leverkusen),
ATO Chimie (Paris — La Défense),
CdF Chimie EP (Paris — La Défense),
Montepolimeri (Milan),
BP Chemicals SA (Geneva),
ICI PLC (London),
Shell International Ltd (London),
DSM NV (Sittard),
Essochem Inc. (Machelen) ;

— exporters :
Sojuzchimexport (Moscow),
Ciech (Warsaw),
Petrimex (Bratislava),
AHB Chemie (Berlin, GDR) ;

Whereas the preliminary investigations carried out by the Commission relate to the period 1 July 1981 to 30 June 1982 ;

Whereas in its initial investigations, the Commission based all its calculations on the weighted average prices for low-density general-purpose polyethylene, i.e. used mainly for film production, since the exporting countries concerned export almost exclusively polyethylene types of this category to the Community ;

Whereas, in order to establish whether the abovementioned imports are being dumped, the Commission has to take account of the fact that the Soviet Union, the German Democratic Republic, Czechoslovakia and Poland are not market economy countries ;

Whereas the Commission has therefore to base its calculations on the normal value in a market economy country ; whereas, in this connection, the complaint referred to the Swedish domestic market ;

Whereas other parties advocated a comparison with the prices in the United States of America or Canada ; whereas the Commission considered this possibility but decided, in view of the special features of the production processes used by North American producers of polyethylene, that it was less suitable ; whereas the major reason for rejecting the above possibility was the fact that in the USA the price of natural gas, the main raw material used in that country for polyethylene production, is governed by official regulations ; whereas, in consequence, the cost price of this raw material in the USA is significantly lower than the price of other hydrocarbons, such as naphtha and gas oil, on which the European producers and also the exporters rely to a very large extent for the production of polyethylene ;

Whereas, following investigations at the premises of the Swedish producer and after taking note of the arguments put forward by the parties concerned in writing and orally, the Commission took as the basis for its initial calculations of the normal value the prices for general-purpose low-density polyethylene on the Swedish domestic market ; whereas in its decision the Commission took into account the fact that the basic conditions for the production of low-density polyethylene in Sweden, the exporting countries concerned and the Community are to a large extent comparable and that well over half of Swedish demand is covered by imports, mainly from other Scandinavian countries and the Community, and that the customs barriers affecting imports of low-density polyethylene into Sweden are relatively low ; whereas the Commission therefore came to the conclusion that the price level on the Swedish market is reasonable in view of the conditions of competition prevailing there ;

Whereas for the initial determination of dumping a comparison was therefore made of the Swedish weighted average ex-works prices for sales effected between July 1981 and June 1982 and the prices applied by the countries concerned during the same period in respect of exports to the Community ;

Whereas due consideration was given to the differences influencing the comparability of the prices ; whereas, in particular, the Commission was careful to base its calculations exclusively on the Swedish domestic prices for general-purpose low-density polyethylene sold to independent film manufacturers ; whereas sales of higher-value special types were excluded from the investigation ; whereas rebates, other reductions and transport costs were discounted from the Swedish prices for loose goods invoiced on the basis of delivery free at customer's premises ; whereas, in addition, an adjustment was made to bring the prices to a cash payment level ; whereas some of the export prices of the countries covered by the proceeding were on an fob basis and some on a cif basis, with the result that, where appropriate, a price adjustment had to be made in order to take account of the transport costs and payment terms included in these prices ; whereas, in addition, consignments of lower qualities, where this could be established, were not included in the calculation of the export prices ;

Whereas a preliminary examination of the facts revealed that dumping was being practised in respect of the imports covered by the investigation and that the margin of dumping corresponded to the amount by which the normal value established as described above was greater than the price of exports to the Community ; whereas the extent of the margin of dumping differs according to the country of exportation and the Member State of importation ; whereas the weighted average margin of dumping on imports into the Community is as follows : imports originating in the Soviet Union, 47 % ; in Poland, 40 % ; in the German Democratic Republic, 38 % ; and in Czechoslovakia, 34 % ;

Whereas, with regard to the injury caused to the Community industry by the dumped imports, the evidence available to the Community during the initial examination showed that total imports of low-density polyethylene from the countries in question into the Community (excluding intra-German trade) rose from

34 900 tonnes in 1979 to 129 000 tonnes in the investigation period of July 1981 to June 1982, representing an increase of 270 % ; whereas in the same period the share of the Community market held by these imports rose from 1,1 to almost 5 % ; whereas the market share won differed considerably in the individual Member States, being particularly marked in the Netherlands and in Belgium, where the shares rose from 0,6 to 19 % and from 1,6 to 11,5 % respectively ; whereas the market shares held by these imports rose, between 1979 and the end of the investigation period, from 0,4 to 6,1 % in France, from 1,4 to 6,3 % in Denmark, from 2,6 to 5,8 % in the Federal Republic of Germany and from 0,2 to 2,3 % in the United Kingdom ;

Whereas the selling prices in the Community of general-purpose low-density polyethylene of standard quality originating in the countries concerned undercut the prices of Community producers in the general-purpose sector to differing degrees, the maximum being 25 % ;

Whereas price undercutting in the Netherlands and in Belgium was particularly sharp and frequent, leading to a drastic increase in the market share held by the dumped imports in those countries ;

Whereas it further emerged from the evidence available to the Commission that the increase in the dumped imports and the winning of appreciable shares of the market were achieved while demand was declining in the Community ; whereas the Community producers therefore had to sustain additional losses of sales and, despite appreciable production limitations, were still not able to stabilize the market ; whereas the dumped imports constituted a significant factor in the inability to contain an accelerating fall in prices ; whereas the losses sustained by the Community producers were increasing to an extent that was no longer tolerable ;

Whereas the Commission also investigated the influence of other imports of low-density polyethylene into the Community and established that these had also increased appreciably and expanded their market share ; whereas closer investigation revealed that this largely involved low-density polyethylene from Scandinavian countries and Austria which was to some extent intended for higher-value areas of use and was imported into the Community at prices in line with the market ;

Whereas, in assessing the impact of the dumped imports, the Commission also took account of the fact that, given the existing overcapacity in the Community for the production of polyethylene, there is appreciable pressure on prices which cannot be attributed to the imports in question ; whereas under the prevailing market conditions, neither profits nor prices sufficient to cover costs can be achieved ;

Whereas, on the basis of these results, the Commission provisionally concluded that, particularly in the light of the adjustment problems facing the relevant Community industry, the harmful effects of the dumped imports considered in themselves are causing material injury which calls for protective measures ; whereas the Community industry engaged in further processing activities argues that the introduction of protective measures would prejudice its competitive position, which would not be in the Community's interest ; whereas, however, in view of the particularly difficult position of the polyethylene producers the Commission came to the view that the interests of the Community required immediate action in the form of a provisional anti-dumping duty ;

Whereas, confronted with these results, the exporters in the Soviet Union, the German Democratic Republic, Czechoslovakia and Poland, namely Sojuzchimexport (Moscow), AHB Chemie (Berlin), Petrimex (Bratislava) and Ciech (Warsaw), have offered undertakings which are considered appropriate by the Commission in order to eliminate the injurious effect of the imports concerned ; whereas the Advisory Committee provided for in Article 6 of Regulation (EEC) No 3017/79 has raised no objections to the above view ; whereas the undertakings from the above exporters can be accepted and the proceeding in respect of them terminated,

HAS DECIDED AS FOLLOWS :

Sole Article

The undertakings given by the exporters in the Soviet Union, the German Democratic Republic, Czechoslovakia and Poland, namely Sojuzchimexport (Moscow), AHB Chemie (Berlin, GDR), Petrimex (Bratislava) and Ciech (Warsaw), are hereby accepted and the proceeding concerning imports of polyethylene originating in the Soviet Union, the German Democratic Republic, Czechoslovakia and Poland is hereby terminated.

Done at Brussels, 24 May 1983.

For the Commission

Wilhelm HAFERKAMP

Vice-President