II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 28 March 1984

accepting an undertaking in connection with the anti-dumping proceeding concerning imports of pentaerythritol originating in Spain, and terminating that proceeding

(84/187/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 consultation within the Advisory Committee as provided for by that Regulation,

Whereas :

A. Procedure

(1) In July 1983, the Commission received a complaint lodged by the European Council of Chemical Manufacturers' Federation (CEFIC) on behalf of producers representing all Community production of pentaerythritol.

The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify initiating a proceeding. The Commission accordingly announced, by a notice in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding concerning imports into the Community of pentaerythritol falling within subheading ex 29.04 C I of the Common Customs Tariff (NIMEXE code 29.04-66), originating in Spain, and commenced an investigation.

(2) The Commission officially so advised the exporter and importers known to be concerned, the representatives of the exporting country and the complainants, and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(3) The exporter and the main importer of the product concerned made their views known in writing. The latter also requested and was granted a hearing.

(4) The Commission sought and verified all information it deemed necessary for a preliminary determination and carried out investigations at the premises of the following companies :

— Degussa AG, Frankfurt, Federal Republic of Germany,

— Resem (Montedison Group), Castellanza, Italy,

— Polialco SA, Barcelona, Spain,

(5) The investigation of dumping covered the period 1 September 1982 to 31 August 1983.

[1] OJ No L 339, 31. 12. 1979, p. 1.
[2] OJ No L 178, 22. 6. 1982, p. 9.
[3] OJ No C 244, 13. 9. 1983, p. 2.

B. Normal value

(6) The preliminary investigation to determine the existence of dumping in respect of imports of the product concerned originating in Spain showed that the prices of the like products marketed by the exporter on the Spanish domestic market had, over an extended period of time and in respect of substantial quantities, been lower than all costs in the ordinary course of trade, both fixed and variable, of material and manufacture, plus a reasonable amount for selling, administrative and other general expenses as well as a reasonable margin of profit. The normal value was, therefore, determined by adjusting production costs of the product concerned in order to allow a reasonable profit.

C. Export prices

(7) Export prices were determined on the basis of the prices actually paid or payable for the product originating in Spain and sold for export to the Community.

D. Comparison

(8) In comparing normal value with export prices the Commission took account, where appropriate, of differences affecting price comparability resulting from differences in conditions and terms of sale.

(9) The exporter claimed that an adjustment should be made for the amount of the import duties on imported raw material used for the production of the product concerned and for which he claimed to be exempted when the product concerned was exported. Furthermore, the exporter claimed that an adjustment should be made for the amount of the export tax rebate ('desgravación fiscal') refunded to him by the Spanish authorities when the product concerned was exported. This amount was said to be 10,5 % of the fob value of the product concerned plus the general customs tariff of 13 % applicable on imports of the product concerned into Spain. It was considered that the exporter submitted sufficient evidence concerning both claims and the requests were, therefore, granted in conformity with Article 2 (11) of Regulation (EEC) No 3017/79.

(10) All comparisons were made at ex-works level.

E. Margin

(11) The above preliminary determination of the facts shows the existence of dumping in respect of the Spanish exporter, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community. The weighted average margin amounts to 6,2 %.

F. Injury

(12) With regard to the injury caused by the dumped imports the evidence available to the Commission shows that imports into the Community from Spain of pentaerythritol increased from 816 tonnes in 1981, when Polialco started exporting the products concerned, to 2 224 tonnes in 1982, which represents an increase of 173 %. During the first six months of 1983 exports to the Community amounted to 1 006 tonnes, which on an annual basis would be 2 012 tonnes. Although this figure is lower than in 1982, it still represents a significant increase compared with the volume exported to the Community in 1981. The market share held by the product concerned originating in Spain increased from 1,7 % in 1981 to 5,1 % in 1982, and amounts to 4,7 % during the period covering the first six months of 1983.

(13) The resale prices of these imports undercut the prices of the Community producers during the investigation period by up to 6 %.

(14) The consequent impact on the Community producers concerned has been a significant reduction of their sales in the Community. Between 1981 and 1982 their sales dropped from 32 852 tonnes to 29 881 tonnes, which means a reduction of 9 %. During the first six months of 1983, sales by Community producers amounted to 14 016 tonnes, which on an annual basis would represent a decrease of 6 % between 1982 and 1983. Furthermore, the market share held by the Community producers concerned dropped from 70,3 to 68,9 % between 1981 and 1982 and amounted to 66,1 % during the first six months of 1983. With regard to the injury by the Community industry, account should be taken of the fact that one of the main producers of pentaerythritol in the Community had to stop manufacturing the product concerned in the beginning of 1983.

(15) With regard to the prices charged by the Community producers concerned to their customers, a significant price depression occurred in the period 1982/83 on their main markets.

(16) During the same period and particularly during the first six months of 1983, the profits of the Community producers dropped significantly and even turned into losses.

(17) The Commission has considered whether injury has been caused by other factors such as decline of the consumption in the Community and it has been established that this decline has affected the Community producers more than it has affected the dumped imports. Furthermore, the substantial increase in dumped imports and the prices at which they are offered for sale in the Community led the Commission to determine that the effects of the dumped imports of pentaerythritol originating in Spain taken in isolation have to be considered as constituting material injury to the Community industry concerned.

G. **Community interest**

(18) In view of the particularly serious difficulties facing the Community industry, the Commission has come to the conclusion that it is in the Community's interests that action be taken.

H. **Undertaking**

(19) The exporter concerned was informed of the main findings of the preliminary investigation and commented on them. An undertaking was subsequently offered by Polialco concerning their exports of pentaerythritol to the Community.

(20) The effect of the said undertaking will be to increase the export prices to the extent that the dumping margin will be eliminated. The increase does not exceed the dumping margin found in the investigation.

(21) In these circumstances the undertaking offered is considered acceptable and the proceeding may, therefore, be terminated without imposition of an anti-dumping duty.

(22) No objections to this course were raised in the Advisory Committee,

HAS DECIDED AS FOLLOWS:

Article 1

The Commission hereby accepts the undertaking given by Polialco (Barcelona) in connection with the anti-dumping proceeding concerning imports of pentaerythritol originating in Spain and falling within Common Customs Tariff subheading ex 29.04 C I, corresponding to NIMEXE code 29.04-66.

Article 2

The anti-dumping proceeding concerning imports of pentaerythritol originating in Spain is hereby terminated.

Done at Brussels, 28 March 1984.

For the Commission

Wilhelm HAFERKAMP

Vice-President