II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 April 1984

accepting undertakings given in connection with the anti-dumping proceeding concerning imports of propan-1-ol (propyl alcohol) originating in the United States of America, and terminating that proceeding

(84/229/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 as provided for under the above Regulation,

Whereas :

A. Procedure

(1) In September 1983 the Commission received a complaint lodged by the European Council of Chemical Manufacturers' Federations (CEFIC) on behalf of producers representing all Community production of the product in question. 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 propan-1-ol (propyl alcohol) falling within subheading ex 29.04 A II of the Common Customs Tariff, corresponding to NIMEXE code ex 29.04-12 and originating in the United States of America, and commenced an investigation.

(2) The Commission officially so advised the exporters and importers known to be concerned and 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) Shortly after the opening of the proceeding, one of the exporting companies requested the Commission that it be excluded from the dumping investigation, since it was of the opinion that it had not caused any injury to the Community industry. However, the Commission considered it inappropriate to grant such a request at the initial stage of a proceeding, since a decision concerning the exclusion of a company cannot be taken as long as the prima facie evidence submitted by the complainants has not been verified.

(4) All of the known exporters and some of the importers made their views known in writing. Furthermore, one exporter and one of the main importers requested and were granted a hearing.

(5) A submission was made by one of the main Community purchasers of the product concerned.

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No C 275, 14. 10. 1983, p. 3.

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

(a) *Community producers :*

BASF AG, D-Ludwigshafen,
Höchst AG, D-Frankfurt am Main, which distributes the product manufactured by Ruhr Chemie AG, D-Oberhausen ;

(b) *US exporters :*

Celanese Chemical Company, Texas,
Eastman Chemical International Company, Tennessee,
Union Carbide, Connecticut ;

(c) *Importer :*

Celanese SA, B-Brussels ;

(d) User :

Virchem SA, B-Brussels.

(7) The investigation of dumping covered the period 1 October 1982 to 30 September 1983.

B. Normal value

(8) Normal value was provisionally determined on the basis of domestic prices to independent customers of those producers who exported to the EEC.

(9) Although Eastman Chemical International Company was not in a position to submit evidence showing that the prices at which the product concerned was sold for consumption in the country of origin were not less 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 Commission has in view of the information available no reasonable grounds for believing or suspecting that such sales were not made at profitable prices. Therefore, the prices of this exporter for sales on the domestic market are considered as constituting the appropriate basis for determining normal value.

C. Export price

(10) With regard to the exports of the product concerned made by Celanese Chemical Company to the Community, the great majority of the sales were made for the purpose of inward processing under cover of customs document T 1 to a related company which processes the product into propylamine. The derived product is afterwards mainly sold to another company within the Community which uses it for the manufacture of herbicides destined for export outside the EEC. Although Celanese's sales are made to a related company, the prices actually paid for these exports may be considered as reasonable, since they were almost identical to those charged during the period of investigation by the main competitor of the same company.

Celanese contested the fact that the Commission took account of the sales made to a related company under the inward-processing regime. However, neither the GATT anti-dumping code nor Regulation (EEC) No 3017/79 provide for the exclusion of goods exported in such circumstances to the EEC. Furthermore, the exclusion of T 1 imports from the basis of calculation of export prices would offer considerable scope for abuse in anti-dumping proceedings, since the subsequent release of such goods for consumption within the EEC could easily be decided on by the companies concerned and would be difficult for the Commission or the Member States to substantiate. In this respect account has to be taken of the fact that this company related to Celanese has put part of the T 1 goods purchased for inward processing into consumption within the Community, as well as of the fact that the bulk of the processed goods are resold to another company within the EEC.

(11) With regard to the other exports of the product concerned made by Celanese to the Community, the export price was calculated on the basis of the prices at which the imported product was first resold to an independent buyer, suitably adjusted to take account of all costs incurred between importation and resale and a reasonable profit margin.

(12) With regard to the exports of the product concerned made by Eastman to the Community, the export price was calculated on the basis of the prices actually paid.

(13) Since the exports of the product concerned made by Union Carbide to the Community were made to a related company, the export price was calculated on the basis of the price at which the imported product was first resold to an independent buyer, duly adjusted to take account of all costs incurred between importation and resale and a reasonable profit margin.

D. Comparison

(14) 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, i.e. transport, insurance, handling, loading and ancillary costs.

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

E. Margin

(16) The above preliminary determination of the facts shows the existence of dumping in respect of the US exporters, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

(17) The weighted average margins with regard to each of the exporters are as follows :

— Celanese 24,7 %,
— Eastman 23,3 %,
— Union Carbide 18,5 %.

F. Injury

(18) With regard to the injury caused by the dumped imports, the evidence available to the Commission shows that total imports into the Community from the United States of America of propan-1-ol increased from 3 992 tonnes in 1979 to 8 489 tonnes in 1980 and to 9 723 tonnes in 1981, which represents an increase of 113 % between 1979 and 1980 and of 15 % between 1980 and 1981 ; in 1982 these imports showed a slight decrease to 9 527 tonnes, but they amounted to 8 738 tonnes during the first nine months of 1983, which on an annual basis represents an increase of 22 %. The figures concerning the imports of the product concerned relate not only to goods which were released for free circulation under cover of customs document T 2 but also to the transactions which were carried out for the purposes of inward processing under cover of customs document T 1. The latter constituted a reduction in outlets available to the Community industry and had a downward effect on the prices charged by the Community producers.

(19) The market share held by US imports increased from 44 % in 1979 to 67 % in 1980, which represents an increase of 52 %. It remained stable in 1981 and increased further to 70 % in 1982 and to 72 % during the first nine months of 1983.

(20) The resale prices of these imports undercut the prices of the Community producers during the investigation period by up to 25 %.

(21) The consequent impact on the Community producers concerned has been a significant reduction of their production, which decreased by 52 % between 1981 and 1982. Although the level of production of the Community industry increased during the first months of 1983, it is still below the level of 1980.

(22) The capacity utilization of the Community producers dropped from 46 % in 1980 to 45 % in 1981 and decreased further to 21 % in 1982, which represents a decrease of 53 % between 1981 and 1982. Although the capacity utilization of Community producers increased during the first nine months of 1983, it is still significantly below the level in 1980.

(23) Sales by Community producers concerned in the EEC dropped by 18 % between 1979 and 1980 ; between 1981 and 1982, their sales dropped by 16 %. Although sales by Community producers increased during the first nine months of 1983, they were still significantly below their earlier levels.

(24) The market share of the imported product increased continuously between 1979 and 1983 (see recital 19), whilst the market share of the Community producers decreased over the same period by 50 % despite an increase of 35 % in the size of the market.

(25) With regard to the prices charged by the Community producers concerned to their customers, a significant price depression occurred in the period 1982/83, particularly in the Federal Republic of Germany, Belgium and Luxembourg.

(26) During the period from 1979 to 1983, the profits of the main Community producer dropped substantially and losses were even incurred. The improvement which took place during the first nine months of 1983 does not make up for the reduced profits and the losses, which occurred following a significant increase of the dumped imports from the United States of America, in 1980 and 1981.

(27) The substantial increase in dumped imports, the substantial loss of market share of the Community producers, particularly in view of the increase of the size of the market in the EEC, and the prices at which the dumped imports are offered for sale in the Community led the Commission to determine that the effect of the dumped imports originating in the United States of America have to be considered as constituting material injury to the Community industry concerned.

(28) With regard to the request from Union Carbide to be excluded from any measure on the basis that the exports to the EEC by this company would not have caused any injury to the Community industry, the Commission is of the opinion that such request cannot be granted since these exports, although they did not constitute the main cause of injury, have at least contributed to the injury suffered by the Community industry as determined in recitals 18 to 26.

Furthermore, the Commission is of the opinion that it is appropriate to cumulate the factors of injury caused by several exporters from one particular exporting country, since a possible exclusion from an anti-dumping measure would grant the other exporters of the same country a competitive disadvantage for the future, which is not the object of an anti-dumping proceeding. In addition, the practice of cumulating injury to which several exporters of the same exporting country contributed is not contrary to GATT rules nor to the provisions of Regulation (EEC) No 3017/79. It is also in line with the practice of the Community's major trading partners, such as the United States of America.

G. Community interest

(29) Some users and processors of the product concerned have argued that the introduction of protective measures would not be in the Community interest because it would deprive them of an external source of supply and make them dependent on one Community supplier. However, the introduction of protective measures is not intended to eliminate the imported product from the Community market but its object is to increase export prices to such extent that the dumping margin or the injury, if this is lower than the dumping margin, be eliminated

Furthermore, the argument according to which users would become dependent on one Community supplier should be rejected, since another supplier established in the Community with a large production capacity is operational and started selling on the EEC market in 1983.

(30) In view of the significant reduction of profits and the fact that the main Community producer incurred losses because of the dumped imports, the Commission has come to the conclusion that it is in the Community's interest that action be taken.

H. Undertakings

(31) The exporters concerned were informed of the main findings of the preliminary investigation and commented on them. Undertakings were subsequently offered by Celanese Chemical Company (Texas), Eastman Chemical International Company (Tennessee) and Union Carbide (Connecticut) concerning their exports of propan-1-ol (propyl alcohol) to the Community, originating in the United States of America.

(32) The effect of the said undertakings will be to increase the export prices to the Community to the level necessary to eliminate the dumping margin or, depending on the exporter concerned, the injury.

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

(34) No objection to this course was raised in the Advisory Committee,

HAS DECIDED AS FOLLOWS:

Article 1

The undertakings given by Celanese Chemical Company (Texas), Eastman Chemical International Company (Tennessee) and Union Carbride (Connecticut) in connection with the anti-dumping proceeding concerning propan-1-ol (propyl alcohol) falling within subheading ex 29.04 A II of the Common Customs Tariff and corresponding to NIMEXE code ex 29.04-12, originating in the United States of America, are hereby accepted.

Article 2

The anti-dumping proceeding referred to in Article 1 is hereby terminated.

Done at Brussels, 13 April 1984.

For the Commission

Wilhelm HAFERKAMP

Vice-President