II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 23 October 1984

accepting an undertaking given in connection with the anti-dumping proceeding concerning imports of paraformaldehyde originating in Spain and terminating the investigation

(84/512/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1), and in particular Article 10 thereof,

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

Whereas :

A. Procedure

(1) In April 1984 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* (2), the initiation of an anti-dumping proceeding concerning imports into the Community of paraformaldehyde falling within subheading 29.11 G of the Common Customs Tariff, corresponding to NIMEXE code 29.11-97, originating in Spain and commenced an investigation.

(2) The Commission officially so advised the exporter 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) All of the known Community producers, exporter and importers made their views known in writing. None of them requested a hearing.

(4) No submissions were made by or on behalf of Community purchasers of paraformaldehyde.

(5) 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 :

(1) *EEC producers :*

— Organichim SA (CDF — Chimie group), Paris, France,

— Degussa AG, Frankfurt, Federal Republic of Germany,

— Synthite Ltd, West Bromwich, United Kingdom,

— Alder SpA, Trieste, Italy ;

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No C 145, 1. 6. 1984, p. 7.

(b) *exporter:*

— Formol y Derivados SA, Barcelona, Spain ;

(c) *EEC importer:*

— Chimilux SA, Paris, France.

(6) The investigation of dumping covered the period 1 June 1983 to 31 May 1984.

B. Normal value

(7) Normal value was provisionally determined on the basis of the domestic prices of the Spanish producer who exported to the Community and who provided sufficient evidence concerning sales to unrelated customers.

C. Export price

(8) Export prices were determined on the basis of the prices actually paid for the product sold for export to the Community.

D. Comparison

(9) In comparing normal value with export prices the Commission took account, where appropriate, of differences in conditions and terms of sale affecting price comparability and allowances were made for differences in credit terms, commissions and transport.

(10) A request was made by the exporter for an adjustment to take account of a price differential resulting from a price discount for quantity sales given to the main customer on the Spanish domestic market. The Commission granted this request with regard to the qualities concerned since the conditions laid down in Article 2 (10) (b) (i) of Regulation (EEC) No 2176/84 were considered to be fulfilled.

(11) Furthermore, a request was made by the exporter for an adjustment to take account of the fact that quantities exported to the Community had been considerably larger than those sold on the Spanish domestic market. The Commission refused this claim for an adjustment on the grounds that the exporter did not prove that savings were made in the cost of producing different quantities exported as is provided for under Article 2 (10) (b) (ii) of the above Regulation.

(12) The Spanish exporter also requested the Commission on the basis of Article 2 (10) (d) of the above Regulation to take account of the export tax rebate ('Desgravación fiscal'), being the refund by the Spanish authorities of an amount corresponding to the taxes incurred during the production process, when the product concerned was exported. However, without prejudice to the question whether and to what extent this claim could be taken into consideration, the Commission did not grant this request, since the Spanish exporter did not submit satisfactory evidence concerning the amount of taxes refunded by the Spanish authorities with regard to the exports of the product concerned.

Furthermore, the question whether the tax rebate constitutes an export subsidy could only be examined if a complaint were lodged concerning the subsidy and a proceeding initiated accordingly.

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

E. Margin

(14) The above preliminary examination 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 17,4 %.

F. Injury

(15) 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 paraformaldehyde increased from 853 tonnes 1980 to 2 776 tonnes in 1982. In 1983 these imports increased to 3 392 tonnes and during the first five months of 1984 they amounted to 1 461 tonnes which corresponds to 3 506 tonnes on an annual basis.

(16) The development of these imports represents an increase in market share held by the exporting country from 3,4 % to 11,2 % between 1980 and 1982. Furthermore, it represents a further increase of the market share to 12,9 % in 1983 ; the market share achieved subsequently for the first five months of 1984 is estimated to have been 11,3 %.

(17) The resale prices of the dumped imports undercut the prices of the Community producers during the investigation period by 18 %.

(18) The consequent impact on the Community industry concerned has been a reduction of production and of sales within the Community of 2 % and 9,5 % respectively between 1980 and 1982. This development corresponds to a decrease in the market share of the Community producers from 96,2 % to 88,5 % in the same period, as opposed to the increase in the market share held by the dumped imports.

(19) It has been argued that in 1983 and during the first five months of 1984 production and sales of the Community producers increased. However, this was due more to their sales outside the Community than on the Community market. Moreover, despite this increase, the market share held by the Community producers dropped further to 85,9 % in 1983. During the first five months of 1984 their market share is estimated to have increased, but not enough to compensate for the loss suffered in 1983.

(20) Most of the Community producers have also suffered significant price depression, which made it impossible to increase their sales prices in order to cover their increased costs of production. Some of them had to lower their sales prices.

(21) Since 1980 the profit and loss situation of most of the Community producers developed in a negative way, although some improvement seems to have taken place since the beginning of 1984.

(22) The Commission has considered whether injury has been caused by other factors such as the development of the consumption of this product. In this respect the Commission found that, whilst consumption in the Community dropped by 1,4 % between 1980 and 1982, the market share of the imported products rose by 7,8 %, whereas the market share of the Community producers decreased by 7,7 % during the same period. Therefore, the decline in consumption during this period is considered to have affected the Community producers but not the imported products. Furthermore, although consumption in the Community increased by 6,6 % in 1983, the market share held by the Community producers further declined, whilst there was a further increase of the market share held by the dumped imports.

The volume of the dumped imports, their market share 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 paraformaldehyde originating in Spain taken in isolation have to be considered as constituting material injury to the Community industry concerned.

G. Community interests

(23) The Spanish exporter argued that it is not in the Community's interest that action be taken, since it would only serve to protect Community producers with a less efficient technology and production process. However, if action is to be taken, it would not be aimed at protecting Community producers against more efficient producers in third countries, but it would serve as a protection against unfair competition from an exporter who sold his products in the Community at dumped prices and who caused material injury to the Community industry concerned.

(24) 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

(25) The exporter concerned was informed of the main findings of the provisional investigation and commented on them. An undertaking was subsequently offered by Formol y Derivados SA concerning their exports of paraformaldehyde to the Community.

The effect of said undertaking will be to increase prices to the Community to the level necessary to eliminate the dumping. The weighted average of this increase in no case exceeds the weighted average dumping margin found in the investigation.

In these circumstances the undertaking offered is considered acceptable and the investigation may therefore be terminated without imposition of an anti-dumping duty.

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

HAS DECIDED AS FOLLOWS:

Article 1

The undertaking given by Formol y Derivados SA, Barcelona in connection with the anti-dumping proceeding concerning imports of paraformaldehyde falling within subheading 29.11 G of the Common Customs Tariff, corresponding to NIMEXE code 29.11-97 and originating in Spain is hereby accepted.

Article 2

The investigation in connection with the anti-dumping proceeding referred to in Article 1 is hereby terminated.

Done at Brussels, 23 October 1984.

For the Commission

Antonio GIOLITTI

Member of the Commission