COMMISSION DECISION

of 17 September 1986

accepting undertakings given in connection with the anti-dumping proceeding concerning imports of artificial corundum originating in Hungary, Poland and the USSR, and terminating the investigation

(86/464/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulations (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 consultation within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. Procedure

(1) In June 1983 the Commission received a complaint from the European Council of Chemical Manufacturers' Federations (CEFIC) on behalf of producers representing all Community production of artificial corundum, on the basis of which an anti-dumping proceeding was initiated [2] concerning imports of this products originating in the People's Republic of China, Czechoslovakia, Spain and Yugoslavia.

Dumping, on the part of certain exporters, and injury were found in the course of this investigation, which was finally terminated [3] in December 1984 with the acceptance of price undertakings offered by those exporters for whom dumping had been determined.

(2) In May 1984 the Commission received a supplementary complaint from the European Council of Chemical Manufacturers' Federations on behalf of producers representing all Community production of artificial corundum in which it was requested to extend the anti-dumping proceeding concerning imports of artificial corundum originating in the People's Republic of China, Czechoslovakia, Spain and Yugoslavia to include imports of this product originating in Hungary, Poland and the USSR.

The complaint contained evidence of dumping and material injury resulting therefrom, which was considered sufficient to justify the extension of the anti-dumping proceeding already pending.

The Commission accordingly announced by a notice published in the *Official Journal of the European Communities* [4] the extension of the anti-dumping proceeding concerning imports into the Community of artificial corundum falling within subheading 28.20 B of the Common Customs Tariff, corresponding to NIMEXE code 28.20-30, to include imports originating in Hungary, Poland and the USSR.

(3) The Commission officially so advised the exporters and importers known to be concerned, and the complainants, and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

(4) All the known exporters made their views known in writing and have been granted a hearing.

(5) Furthermore, submissions were made on behalf of users' associations and users themselves.

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

EEC producers :

— Dynamit Nobel AG, Troisdorf, Federal Republic of Germany,

— Herman C. Starck Berlin GmbH, Düsseldorf, Federal Republic of Germany,

— Lonza-Werke GmbH, Waldshut-Tiengen, Federal Republic of Germany,

— Pechiney Electrometallurgie (ex SOFREM), Paris, France,

— Samim Abrasivi SpA San Michele all'Adige, Italy ;

Non-EEC exporters :

Hungalox Handelsgesellschaft mbH, Vienna, Austria ;

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No C 261, 30. 9. 1983, p. 2.
(3) OJ No L 340, 28. 12. 1984, p. 82.
(4) OJ No C 201, 31. 7. 1984, p. 4.

EEC importers:

— Fa Alfred Hempel GmbH & Co. KG Düsseldorf, Federal Republic of Germany,

— Mineralienwerke Kuppenheim GmbH, Kuppenheim, Federal Republic of Germany,

— Wilfried Post, Gut Junkerswald, Saar, Federal Republic of Germany,

— Naxos Union, Frankfurt/Main, Federal Republic of Germany.

(7) The investigation of dumping covered the period from 1 July 1983 to 30 June 1984.

(8) At a late stage during the proceeding, it was learnt that Hungarian exports to the Community were not supplied on a direct basis, but were handled by an intermediary trading company, in which the Hungarian exporter has a minority shareholding, situated in Austria. At the request of the exporter, this company was approached and agreed to collaborate in the investigation, allowing a verification at its premises of the information it supplied.

B. Normal value

(9) In order to establish whether the imports from Hungary, Poland and the USSR were dumped, the Commission had to take account of the fact that these countries do not have market economies and the Commission therefore had to base its determinations on the normal value in a market economy country. In this connection, the complainants had suggested Yugoslav domestic prices. No objection was made to this suggestion.

The producer of artificial corundum in Yugoslavia was found to apply normal profitability criteria. Of the two basic grades of corundum taken into consideration for the purposes of the procedure, the white variety was found to be sold at a loss on the Yugoslav market. In this case, normal value was constructed by adding to the full production costs of the product a reasonable profit margin. This margin was based on the profitability of other grades of this material, and on that of similar materials, manufactured by the company. Domestic prices were taken as the basis of normal value for the other (brown) grade of artificial corundum. The approach followed was the same as that used in the original procedure.

C. Export prices

(10) Export prices were determined on the basis of the prices actually paid or payable for the product by independent importers within the Community.

D. Comparison

(11) 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, such as transport, credit terms, ancillary costs and agents' commission. Also, where applicable, allowances were made for differences in physical characteristics.

All comparisons were made at ex works level.

E. Dumping margins

(12) The preliminary examination of the facts revealed the existence of dumping in respect of exports from Hungary, Poland and the USSR, the margins of dumping in each case being equal to the amount by which the normal value as established exceeds the price for export to the Community.

(13) These margins vary according to the importing Member State and the variety of artificial corundum concerned. The margins are as follows, expressed as percentages of the Community cif frontier prices of the product grades concerned:

	Brown corundum	White corundum
Hungary	No exports	26,4 %
Poland	0,1 % (1)	12,4 %
USSR	33,5 %	No exports

(1) Considered as *de minimis*.

F. Injury

Import penetration

(14) With regard to injury caused by the dumped imports of artificial corundum, the evidence available to the Commission shows that such imports into the Community from Hungary, Poland and the USSR increased from 8 665 tonnes in 1981 to 12 295 tonnes in 1984, which represents an increase of 41,9 %.

The market share in the Community held by artificial corundum originating in Hungary, Poland and the USSR progressed from 5,1 % in 1981 to 7,0 % in 1984. This increase was attained despite an overall growth in consumption of only 4,9 %. These market share statistics must be evaluated in the light of two main considerations.

(15) Firstly, the market share held by the four exporting countries concerned by the original proceeding was 7,9 % in 1981 and 8,1 % in 1984, so that conside-

ration of these market shares together with those of the exporters concerned by the extension permits a more realistic appreciation of their combined importance in relation to consumption in the Community.

(16) Second close attention must be paid to the special situation of Hungarian exports within the above figures.

These decreased in a marked fashion between 1981 and 1984, according to the official trade statistics for this NIMEXE heading, which group together all types and qualities of corundum. Imports were 7 190 tonnes in 1981 and 2 820 tonnes in 1984. These statistics should be viewed in the light of the circumstances underlying them. During the 10 years up to 31 March 1983, the Hungarian exporter was bound by a cooperation agreement with a Community producer. Under this agreement, the Community producer supplied technological assistance and normal corundum to the Hungarian exporter, while purchasing white corundum from him. The major proportion of the white corundum imports from Hungary were in the form of semi-finished material, which was then processed by the Community producer. For example, in the last full year of the cooperation agreement, the calendar year 1982, 5 000 tonnes of semi-finished material were imported, together with some 1 750 tonnes of finished, classified material in grains. All sales to Community and third-country customers (outside the non-market-economy countries) were channelled through the commercial services of the Community producer.

With the ending of this agreement, the quantities imported into the Community were more than halved, the most important change in the composition of these imports being the absence of the large quantities of semi-finished material previously used to supplement the production of the Community producer. Significant imports of finished material continued, their commercialization now being handled by the Austrian company related to the exporter. According to the evidence available to the Commission, the quantities of such imports reached 2 820 tonnes in the reference period 1 July 1983 to 30 June 1984, which immediately followed the end of the cooperation agreement, and the same quantity in the calendar year 1984. These quantities represented a market share of some 1,6 % of total Community consumption during the periods concerned.

(17) It has been argued by the Hungarian exporter that an examination of the official trading statistics is sufficient to refute any charges relating to injury. This argumentation has centred on the large overall fall in Hungarian exports to the Community under the artificial corundum customs heading between 1981 and 1984. Such arguments cannot be accepted for the following reasons.

First, it is not possible to compare the imports of artificial corundum from Hungary prior to 31 March 1983 with those effected after that date on any but the most superficial basis — that of the NIMEXE code involved. As has been seen from points 15 and 16 above, imports before that date were essentially a supplement to the productive capacity of a Community producer, whose electric furnace capacity was inferior to that of his finishing plant. Nearly three-quarters of these imports were in fact semi-finished material requiring further processing, and all imports were in any case under the complete commercial control of the Community producer, who was able if he wished to export this material and not necessarily place it all on the Community market.

Second, it should be noted that, if comparison between quantities imported prior to 31 March 1983 and those after is to be attempted at all, then it should be restricted to what is genuinely comparable — i. e. the finished, classified material. On this basis a considerable progression can be observed, from 1 750 tonnes in the last full calendar year before 31 March 1983 to 2 820 tonnes in the period 1 July 1983 to 30 June 1984 inclusive, an increase of some 61 %.

(18) Third, further factors are present to suggest the threat of a significant increase of quantities exported in the future. The most important of these factors are : a large production capacity with only a restricted domestic market to serve ; a high quality material, produced to FEPA (Fédération européenne des fabricants de produits abrasifs) standards in installations built with Community technological assistance ; a body of potential customers, originally built up and supplied by the Community producer whose commercial services previously handled this material.

Price undercutting

(19) With regard to price undercutting, the investigation found a range of undercutting from 13 to 20 % on both grades of Polish artificial corundum. On brown artificial corundum from the USSR, undercutting was established in a range from 28 to 55 %. In the case of Hungarian white artificial corundum,

the range of undercutting was between 10 and 27 %. In all cases, the basis of comparison used was the weighted average prices of Community producers on the Community market concerned by the imports under consideration.

Impact on Community industry

(20) One impact of the combined increase in market share by exporters concerned in the two proceedings — against the background of increased Community consumption — has been a loss of sales by Community producers. Their market share fell from 74,4 % in 1981 to 69,0 % in 1984, corresponding to a fall of nearly 5 000 tonnes.

(21) Community production had not recovered to its 1981 level in 1984, after having fallen to its lowest level in 1982/83. Capacity utilization in 1984 had also not recovered to its level of 1981, despite the rise in Community consumption over the same period. The recovery in production in 1983/84, also, was largely related to increased exports outside the Community, and this improvement can be expected to be short-lived, in so far as the additional export volume has been due to to temporary exchange-rate advantages.

(22) The effect of the imports at low prices from the countries concerned in the proceeding has been to contribute to the seriously depressed profitability of the Community industry which had already been investigated at the time of the original proceeding. At that time (1983) it was found that Community producers were not earning profits or even covering, on average, more than 73 % of their total costs (1). Although Community producers' profitability improved slightly in 1984 compared with 1983, it nevertheless remained negative or, at best, marginal. The reduction of employement continued in the Community industry, whose total workforce was some 1 300 people in 1984 compared with 1 500 in 1981.

(23) In establishing the impact of the dumped imports on the Community industry, the Commission has considered the effect of all dumped imports from all exporting countries and producers concerned. There were wide variations in the market shares of Community consumption held by exporters found to be dumping. Certain of the exporters argued that the impact of their own exports on the Community should be considered in isolation and judged not to have caused material injury in view of the low or decreasing level of their share in this market. The market share of Hungary, in fact, went down from 4,3 % of Community consumption in 1981 to 1,6 % in 1984, but the special factors concerned in this exporter's case have already been discussed in points 16 and 17. The Polish market share increased from 0,4 to 2,4 %, and the market share of the USSR from 0,4 to 3,0 %, over the same period. In analysing whether aggregation was appropriate in such cases, the Commission took into account the comparability in terms of physical characteristics of the imported products with those produced in the Community, the volumes imported and the level of prices of the imported products compared with that of the competing grades produced in the Community. Account was also taken of the market shares held by exporters concerned in the original artificial corundum proceeding, which were mentioned in point 15. On the basis of this examination, it concluded that dumped imports from the exporters concerned should be considered as contributing to the material injury suffered by Community industry, and that these imports have been made under such conditiions that, should the Commission treat any one exporter in isolation, it would be acting in a discriminatory manner against the rest. Therefore, it was decided that dumped imports from all exporters should be aggregated in establishing the injury sustained.

(24) The Commission examined the possibility of other factors, such as imports from different sources or the trend of demand, causing the injury suffered by Community industry. Imports from other sources outside the Community, although considerable, do not possess the characteristics in terms of price and continuously developing market penetration which would permit the injury described above to be attributed to them. The quantities fluctuated widely in the years between 1980 and 1984, but the increased penetration was negligible since, at the end of that period, these imports stood at 41 600 tonnes, or 1 000 tonnes more than at the beginning of the period — a growth of 2,4 %. This contrasts with the rate of growth for imports covered by the proceeding, as shown by the figures already given in point 14. As for the trend of demand, it has already been mentioned that Community consumption expanded during this period, but that Community producers continued to lose market share.

(25) On the basis of the preceding analysis, dumped imports from Hungary, Poland and the USSR must be regarded as a significant cause of the material injury suffered by Community producers.

(1) OJ No L 255, 25. 9. 1984, p. 11.

G. Community interest

(26) The representatives of Community processing industries have argued that the introduction of protective measures would not be in the Community interest as it would make them less competitive with imports of final products originating in third countries. It would also render them less competitive on third-country markets to which many of the companies concerned exported. These arguments were strongly related to particular market sectors, especially that of the lower-priced range of abrasive grinding tools.

(27) While price increases on imports of artificial corundum can be expected to have an incidence on the costs of these consumers, the Commission has not received any detailed evidence permitting a satisfactory evaluation of either the extent of this incidence on costs or the degree to which the increased costs of the processing industries, when passed on in higher selling prices, would lead to harmful effects in terms of turnover and profitability. Measuring the impact of such price increases with any degree of certainty is not possible, therefore, and these hypothetical difficulties cannot be compared with the serious problems for Community producers which can be directly attributed to dumped imports, on account of which the Commission has concluded that action sould be taken.

H. Undertakings

(28) The Hungarian, Polish and USSR exporters were informed of the main findings of the preliminary investigation and commented on them. Subsequently, they offered price undertakings the effects of which are that the revised import prices to the Community of artificial corundum originating in these countries will eliminate the lower of the margins of dumping and of injury provisionally found, in respect of each exporter, during the investigation.

In these circumstances, the undertakings offered by the exporters are considered acceptable and the investigation may, therefore, be terminated without imposition of anti-dumping duties.

(29) No objection to this course of action was raised in the Advisory Committee.

(30) It should be recalled that Czechoslovakia and the People's Republic of China, found to be dumping in the original artificial corundum anti-dumping procedure, also offered price undertakings. These undertakings were found to be acceptable and the case was closed on that basis.

HAS DECIDED AS FOLLOWS:

Article 1

The undertakings given by:

— Hungarian Aluminium Corporation, Budapest, Hungary, jointly with Hungalox Handelsgesellschaft, Vienna, Austria,

— Inter-Vis, Warsaw, Poland,

— v/o Stankoimport, Moscow, USSR,

in connection with the anti-dumping proceeding concerning imports of artificial corundum originating in Hungary, Poland and the Soviet Union, and falling within subheading 28.20 B of the Common Customs Tariff, corresponding to NIMEXE code 28.20-30, are hereby accepted.

Article 2

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

Done at Brussels, 17 September 1986.

For the Commission

Willy DE CLERCQ

Member of the Commission