II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 29 October 1990

terminating the anti-dumping review proceeding concerning imports of propan-1-ol originating in the United States of America

(90/540/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Article 9 thereof,

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

Whereas :

A. PROCEDURE

(1) In 1983 the Commission initiated an anti-dumping proceeding concerning imports of propan-1-ol (propyl alcohol) originating in the United States of America [2]. In the course of this proceeding and after the investigation had been completed the exporters involved offered undertakings which were accepted by Commission Decision 84/229/EEC [3].

(2) In December 1988 the Commission received from the European Chemical Manufacturers' Federation (Cefic) a request for a review of the existing measures lodged in accordance with Article 15 of Regulation (EEC) No 2423/88, alleging that the expiry of the existing measures would lead to renewed injury to the Community industry. The evidence furnished was considered to be sufficient to justify the initiation of a review. The complainant acted on behalf of one Community producer whose production exceeded three-quarters of total Community production.

(3) The Commission gave notice in the *Official Journal of the European Communities* [4] of the initiation of the review proceeding. In accordance with the provisions of Article 15 (3) of Regulation (EEC) No 2423/88 the application of the measures in force was extended pending the outcome of the review.

(4) The product concerned by the proceding is propan-1-ol. It is used as a solvent in printing inks, paints and cosmetics and as an intermediate for production of pesticides and insecticides. It falls within CN code ex 2905 12 00 (previously Nimexe code ex 29.04-12).

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

The exporters and the Community producer made their views known in writing.

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

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 275, 14. 10. 1983, p. 3.
[3] OJ No L 106, 19. 4. 1984, p. 55.
[4] OJ No C 140, 6. 6. 1989, p. 7.

(a) *Community producer:*

— BASF AG, Ludwigshafen, Germany

(b) *United States producers/exporters:*

— Eastman Kodak Company, Kingsport, Tennessee

— Hoechst Celanese Chemical Group Inc., Dallas, Texas

— Union Carbide Corporation, Danbury, Connecticut

(c) *Importers into the Community:*

— Eastman Chemicals International AG, Zug, Switzerland

— Hoechst Celanese SA, Brussels, Belgium

— Union Carbide Chemicals and Plastics (Europe) SA, Geneva, Switzerland

(7) The dumping investigation covered the period from 1 January 1988 to 31 May 1989 (the reference period).

(8) This investigation has exceeded the normal time period because of the complexity of the data initially gathered and examined, and because the completion of the investigation has required the study of related issues which arose during the proceeding and which could not have been foreseen at its outset.

B. COMMUNITY INDUSTRY

(9) The complainant Community producer which cooperated with the investigation manufactured over 80 % of the total Community production in the years immediately preceeding the lodging of the review request. A second Community producer, namely Hoechst AG, was sent a questionnaire by the Commission and chose not to provide a reply.

The Commission considered that the complainant did constitute the Community industry within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

C. INJURY

(10) The present proceeding being an Article 15 review, the Commission had to assess on its investigation, not only whether injury had been suffered by the Community industry but also whether the expiry of the measures in force would lead again to injury or threat of injury.

1. Present situation of the Community industry

(i) *Volume of imports*

(11) The imports into the Community from the United States decreased from 8 738 tonnes in 1983 to 5 323 tonnes in 1984, in all likelihood as a result of the entry into force of the undertakings. Since then the imports grew to 6 949 tonnes in 1988 but fell sharply in the first five months of 1989 to 1 845 tonnes (which extrapolated for the whole year would amount to 4 428 tonnes).

(ii) *Price of imports*

(12) The price of the imported product varies considerably depending on whether the product is released for free circulation, and subject to undertakings or whether it is imported under cover of T1 documents for inward processing trade.

(13) The Commission investigated whether the prices of the imports had undercut the selling prices of the Community producer. For this purpose the Commission compared the average selling price of the Community producer with the cif prices of the exporters at a duty paid level. The prices were calculated 'ex tank', there being no significant differentiation for different types of customers, the result of that comparison being that for two of the exporters involved no undercutting existed while for Hoechst Celanese the level of undercutting found was 28,47 %. The practice of undercutting despite the existence of undertakings is explained by the fact that almost all transactions of this exporter are made under the inward processing trade schemes, and these were excluded from the application of undertakings.

(iii) *Impact on the Community industry*

(14) The Community production which had recovered in 1984 with an increase of 20 % over the previous year, has been decreasing since then. The use of indices shows that for a production of 100 in 1984, the figure for 1986 is 90 and for 1989 (January to May) is 62.

Consumption, in the Community market, increased from 10 660 tonnes in 1984 to 11 931 tonnes in 1988 and the market share of the United States producers grew from 53,6 % in 1984 to 65,2 % in 1988. However, in the first five months of 1989 an important reduction of that market share to 54,6 % is noticeable.

Sales by the Community industry in the Community market have been fairly stable with no significant changes between 1984 and 1987, but have shown a decrease in 1988 and 1989. However, sales by the complainant in third countries have fallen sharply, as compared to 1984 sales, to around 30 % of these sales in 1986 and 1987 and to 45 % in 1988. The reduction in the production figures is to a great extent attributable to this decrease in the sales in third countires.

The prices practised by the Community producers in the Community market show a certain erosion between 1984 and 1989. Data verified by the Commission during the investigation show that for an index 100 in 1984 the prices of the largest Community producer in 1988 were 83,6 and 82,7 for the first five months of 1989. To a certain extent, this erosion can be explained by the decrease in the prices of ethylene, the prime raw material for *n*-propyl alcohol, which have shown, quoted in German marks, a sharp reduction after 1985. This explains why the complainant has been able to maintain its profits, despite the considerable price erosion of the product.

The profits of the complainant which had suffered a serious setback between 1978 and 1983 recovered after the imposition of measures in 1984 to a level permitting an adequate return. Since then the profits of the complainant have continued to improve, reaching levels that may be considered satisfactory.

(iv) *Conclusion*

(15) Despite some negative elements, the overall situation of the Community industry is a positive one. Sales in the Community market have been maintained and profits have been substantial. On the negative side, the decrease in production and capacity utilization is due mainly to the fall in sales to third countries while price erosion is the result of the decrease in the price of raw materials. The existence of price undercutting is explained by the fact that the imports made under the inward processing schemes were excluded from the application of the undertakings.

2. Foreseeable effects of the expiry of the existing anti-dumping measures

(i) *Capacity utilization of United States exporters and exports to third countries*

(16) The capacity of the US exporters increased slightly from 96 904 tonnes in 1984 to 102 121 tonnes in 1985 and has remained stable since then. Production, on the contrary, has risen from 67 898 tonnes in 1984 to 95 054 tonnes in 1988, which represents around a 40 % increase, in that period while domestic consumption has grown much more slowly, increasing from 32 838 tonnes in 1984 to 39 230 tonnes in 1988, a rate of 19 %. The capacity utilization of the US exporters has been increasing substantially since 1984 to reach a utilization of 93 % in 1988 and 89 % in the first five months of 1989. The fact that the US producers are close to fully using their capacity reduces the risk, in the future, of sudden large increases in imports into the Community.

That portion of US production not absorbed domestically has gone in part to increased exports into the Community, as explained above under paragraph 11 and to increased exports to third countries. Exports to third countries have shown an increase of more than 200 % in the last five years increasing from 4 349 tonnes in 1984 to 13 147 tonnes in 1988.

The increased demand in the US domestic market and the enlarged market in third countries for US exports reduce the possibility of a sharp increase of US exports being directed towards the Community should the existing measures expire. This is confirmed by the fact that prices in third countries are higher than in the Community.

(ii) *Impact of the expiry of the measures on the Community market*

(17) If the present measures are allowed to expire it is possible that prices in the market may suffer a certain price depression. However there are certain factors which tend to indicate that this depression will be limited. First of all the fact that prices of the US exporters in third markets are in most cases higher than those practised in the Community. A second consideration relates to the fact that most of the Community industry's sales are made to the non-amine or printing industry market which is the higher-priced market segment. The examination of these and all other relevant factors made known in the course of the investigation leads the Commission to conclude that the reduction in prices will be of a limited nature still permitting in any case the Community industry to obtain a reasonable profit.

(iii) *Conclusion*

(18) In these circumstances, the Commission concludes that the expiry of the measures would not lead to renewed injury or threat of injury to the Community industry. In view of the high rate of capacity utilization in the United States and high sales to third countries by US producers, the negative impact of the expiry of the measures on the market can be expected to be very limited, not justifying the adoption of measures at present. In addition, the Community industry, due to the efficacy of the measures adopted in 1984, has now achieved a healthy situation which is evidenced by steady sales in the Community and substantial profits allowing them to confront any negative impact which might result.

D. DUMPING

(19) In view of the conclusions reached by the Commission concerning the lack of injury and the improbability of renewed injury the Commission did not consider it necessary to further consider any dumping issues.

E. TERMINATION OF THE PROCEEDING

(20) Accordingly, the anti-dumping review proceeding concerning imports of propan-1-ol originating in the United States of America should be terminated without protective measures being imposed.

On reaching this conclusion the Commission has taken into account the fact that if the Community industry were to suffer some injury as a result of dumped imports made by US exporters in the Community market in the future, the Community industry might resort to the Commission for a new investigation to be opened.

(21) No objections to this conclusion were raised in the Advisory Committee.

(22) The complainant and the other parties concerned were informed of the facts and principal considerations on the basis of which the Commission intended to terminate the proceeding and did not dispute the arguments,

HAS DECIDED AS FOLLOWS:

Sole Article

The anti-dumping review proceeding concerning imports of propan-1-ol originating in the United States of America is hereby terminated.

Done at Brussels, 29 October 1990.

For the Commission

Frans ANDRIESSEN

Vice-President