COMMISSION REGULATION (EEC) No 2079/83

of 25 July 1983

imposing a provisional anti-dumping duty on imports of dicumyl peroxide originating in Japan

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 11 thereof,

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

Whereas :

A. Procedure

1. In 1982 the Commission received a complaint lodged by the European Council of Chemical Manufacturers' Federations (CEFIC) on behalf of the producers of dicumyl peroxide whose collective output constitutes practically 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 dicumyl peroxide falling within subheading ex 29.08 D of the Common Customs Tariff, corresponding to NIMEXE code ex 29.08-70, originating in Japan, and commenced an investigation.

2. The Commission officially so advised the exporters 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 complainant producers, the known exporters and some importers made their views known in writing. One of the exporters concerned requested and was granted a hearing.

4. Submissions were made by certain Community processors of the product.

5. The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out investigation at the premises of the following :

   — Amdic SA, Amersfoort, Netherlands,
   — Hercules NV, Beringen, Belgium,
   — Mitsubishi Corporation, Tokyo, Japan,
   — Mitsui Petrochemical Industries Ltd, Tokyo, Japan,
   — Nippon Oil and Fats Co. Ltd, Tokyo and Taketoyo, Japan.

6. The Commission requested and received detailed written submissions from the complainant Community producers, the known exporters and certain importers and verified the information therein to the extent considered necessary.

   The investigation of dumping covered the period from January to December 1982.

B. Normal value

Sales on the domestic market in the normal course of trade

7. Normal value was provisionally determined on the basis of the weighted average of the domestic prices of the two Japanese producers who exported to the Community.

C. Export price

8. Nippon Oil and Fats Co. Ltd, a producer, and Mitsubishi Corporation their exporter, of dicumyl peroxide to the Community, did not supply evidence to support the figures given by them regarding export prices. Accordingly, the Commission has used the information available to it on export prices, i.e. that contained in the complaint and has so informed these two companies.

9. Where exports were made to a subsidiary company in the Community export prices were constructed 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

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No C 46, 17. 2. 1983, p. 21.

incurred between importation and resale including customs duty, and of a profit margin of 5 % considered reasonable in the light of the profit margins of independent importers of comparable products.

D. Comparison

10. In comparing normal value with export prices the Commission took account, where appropriate, of differences affecting price comparability. Allowance was made for differences in conditions and terms of sale and transport costs. Although one exporter requested that allowance be made for differences in salesmen's salaries, commissions and technical assistance, no evidence of these differences was made available and accordingly no allowance was made.

E. Margins

11. The above preliminary examination of the facts shows the existence of dumping in respect of dicumyl peroxide produced by Nippon Oil and Fats Co. Ltd and exported by Mitsubishi Corporation and produced and exported by Mitsui Petrochemical Industries Ltd, the margins of dumping being equal to the amount by which the normal values as established exceed the prices for export to the Community.

These margins vary according to the exporter concerned, the weighted average margin for each of the exporters investigated being as follows :

Nippon Oil and Fats Co. Ltd : 30,7 %,

Mitsui Petrochemical Industries Ltd : 61,1 %.

12. For those exporters, if any, who neither replied to the Commission's questionnaire nor made themselves known otherwise in the course of the preliminary investigation, dumping was determined on the basis of the facts available. In this connection the Commission considered that the results of its investigation provided an accurate basis for determination of the level of dumping and that it would constitute a bonus for non-cooperation to assume that the dumping margin for these exporters was any lower than the higher dumping margin of 61,1 % determined with regard to an exporter who had cooperated in the investigation. For these reasons it is considered appropriate to use this latter dumping margin for this group of exporters.

F. Injury

13. With regard to injury, although imports of dicumyl peroxide from Japan showed a significant decrease from 1978 to 1980, such a situation is mainly the result of the initiation and subsequent growth of production of this product in the Community during this period by the two complainants who remain the sole Community producers. Nevertheless, since the establishment of these two production facilities in the Community, imports of dicumyl peroxide from Japan have remained relatively constant, holding approximately a 20 % market share from 1980 to 1982.

14. The resale prices of these imports undercut the prices of the Community producers during the investigation period by up to 5 % and the resale prices of these imports were lower than those required to cover the costs of Community producers and provide a reasonable profit.

15. The consequent impact on this Community industry comprising the two firms mentioned above has been that, despite the increase in production and capacity utilization which both complainant companies have achieved since the inception of their production in 1979, neither company has been able to realize prices in the Community at a level sufficient to cover costs nor, consequently, to allow an adequate return on investment.

16. The Commission has considered whether injury has been caused by other factors such as, as alleged by an exporter, significant investment in overcapacity leading to artifically high unit costs. However, the Commission considers that the present relatively high unit costs of the two Community producers do not indicate an inherent lack of competitiveness on their part ; indeed, it is a normal consequence of the early years of any industry that unit costs do not reach an optimum level. In addition the capacity utilization achieved by the two companies concerned since the inception of their production of dicumyl peroxide in 1979 and the forecasts of both Community and Japanese producers regarding increased future consumption in the EEC and other markets has led the Commission to consider that no significant miscalculations were made regarding investment. The Commission has accordingly determined that the combined effects of the conside-

rable volume of dumped imports and the prices at which they are offered for sale in the Community have, taken in isolation, to be considered as constituting material injury to the Community industry concerned.

G. Community interest

17. Community processing industries have argued that the introduction of protective measures would not be in the Community interest because it would make them less competitive. In view of the particularly serious difficulties facing the Community industry and the relatively low incidence of a price increase on the costs of the processing industry, the Commission has, however, come to the conclusion that it is in the Community's interests that action be taken. In order to prevent further injury being caused during the remainder of the proceeding, this action should take the form of a provisional anti-dumping duty.

H. Rate of duty

18. Having regard to the extent of the injury caused, the rate of such duty should be less than the dumping margins provisionally established but adequate to remove the injury caused.

19. Having compared the Community producers' weighted average prices and costs, taking account of their profit situation, with the evidence available on costs relating to imports of the Japanese product and any special marketing conditions, where available, the Commission has determined the amount of duty necessary to eliminate the injury to be 23,1 % for imports of dicumyl peroxide from Japan with the exception of imports of the product manufactured by Nippon Oil and Fats Co. Ltd and exported by Mitsubishi Corporation, for which the duty should be 12,7 %.

20. A period should be fixed within which the parties concerned may make their views known and request a hearing,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of dicumyl peroxide falling within subheading ex 29.08 D of the Common Customs Tariff, corresponding to NIMEXE code ex 29.08-70, originating in Japan.

2. The amount of the duty shall be equal to 23,1 % of the price per tonne net, free-at-Community-frontier, before duty, except for products manufactured by Nippon Oil and Fats Co. Ltd and exported by Mitsubishi Corporation, in respect of which the rate of duty shall be 12,7 %.

The free-at-Community-frontier prices shall be net if the conditions of sale provide for payment within 30 days from the date of shipment; they shall be increased or reduced by 1 % for each increase or decrease of one month in the period of payment.

3. The provisions in force concerning customs duties shall apply for the application of the duty.

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 3017/79, the parties concerned may make known their views and apply to be heard orally by the Commission within one month of the entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 3017/79, it shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 July 1983.

For the Commission

Wilhelm HAFERKAMP

Vice-President