COMMISSION REGULATION (EEC) No 2681/84

of 18 September 1984

imposing a provisional anti-dumping duty on imports of pentaerythritol originating in Canada and accepting an undertaking given in connection with the anti-dumping proceeding concerning imports of pentaerythritol originating in Sweden and terminating that proceeding

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 Articles 10 and 11 thereof,

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

Whereas :

A. Procedure

(1) In February 1984 the Commission received a supplementary complaint from the European Council of Chemical Manufacturers' Federations (CEFIC) on behalf of the producers representing all Community production of pentaerythritol in which it was requested to extend the anti-dumping proceeding concerning imports of pentaerythritol originating in Spain to include imports of this product originating in Canada and Sweden.

(2) The complaint contained evidence of dumping and material injury therefrom, which was considered sufficient to justify the extension of the anti-dumping proceeding concerning imports of pentaerythritol originating in Spain.

The Commission accordingly announced by a notice published in the *Official Journal of the European Communities* (2) the extension of the anti-dumping proceeding concerning imports into the Community of pentaerythritol falling within subheading ex 29.04 C I of the Common Customs Tariff, corresponding to NIMEXE code 29.04-66, to include works originating in Canada and Sweden.

(3) The Commission officially advised the exporters and importers known to be concerned, the representatives of the exporting countries 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 of the known exporters made their views known in writing and have been granted a hearing. With regard to the importers the Commission received information from the following companies :

— Ernst Jäger, Fabrik Chemischer Rohstoffe GmbH, Düsseldorf, Federal Republic of Germany,

— Usvico SpA, Milan, Italy.

(5) Furthermore, submissions were made on behalf of two users of the product concerned in the Community.

(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 :

— *EEC producers :*

  — Degussa AG, Frankfurt, Federal Republic of Germany,

  — Montedison-Resem, Castellanza, Italy ;

— *non-EEC exporters :*

  — Celanese Canada Inc., Canada and its subsidiary Celanese AG, Baar, Switzerland,

  — Perstorp Chemicals, Perstorp, Sweden ;

— *EEC importers :*

  — KWR Chemicals, London, United Kingdom,

  — Chimilux, Paris, France.

(7) The Commission also requested and received information from ICI Ltd, United Kingdom, who had stopped manufacturing the product concerned in the course of 1983.

(8) The investigation of dumping covered the following periods :

— with regard to imports originating in Canada : 1 January 1983 to 31 January 1984,

— with regard to imports originating in Sweden : 1 March 1983 to 29 February 1984.

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No C 72, 13. 3. 1984, p. 2.

B. Normal value

(9) Normal value was provisionally determined on the basis of the domestic prices of the Canadian and Swedish producers, who exported to the Community and who provided sufficient evidence concerning their sales to unrelated customers on their domestic market.

C. Export prices

(a) Canada

(10) Since all exports to the Community were made through Celanese AG, Switzerland, who purchased the product concerned from Celanese Canada Inc., its parent company, and who resold it to customers in the Community, the export prices were constructed on the basis of the prices at which the imported product was sold by Celanese AG to independent buyers in the Community.

(b) Sweden

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

D. Comparison

(a) Canada

(12) 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 delivery and handling costs in the Community, customs duty, discounts and commissions, insurance, freight, warehousing, palletizing and payment terms.

Account was also taken of a reasonable margin for overheads and profit at Celanese AG.

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

(b) Sweden

(14) In comparing the 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 discounts and commissions, insurance, freight, customs clearance costs and payment terms.

(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 Canadian and Swedish 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. The weighted average margins amount to 71,9 and 3,6 % respectively.

F. Injury

(17) With regard to the injury caused by the dumped imports the evidence available to the Commission shows that imports of pentaerythritol into the Community from Spain, Canada and Sweden increased from 13 071 tonnes in 1980 to 15 166 tonnes in 1982 which represents an increase of 16,0 % and to 16 785 tonnes in 1983 which represents a further increase of 10,7 %.

(18) The market share held by the product concerned originating in Spain, Canada and Sweden increased from 26,9 % in 1980 to 31,7 % in 1982 and remained almost stable in 1983.

(19) The consequent impact on the Community industry has been a reduction of their sales in the EEC, which decreased from 31 442 tonnes in 1980 to 29 877 tonnes in 1982 representing a decrease of 5 %. In 1983 the total Community sales of the product concerned increased to 33 575 tonnes. Despite this increase in 1983, the market share of the Community producers shows a decrease from 64,6 % in 1980 to 62,8 % in 1983, as opposed to the increased market share held by the dumped imports (see recital 18). Furthermore, production by Community producers, which may also have been affected by the development of consumption in the Community, dropped from 50 931 tonnes in 1980 to 45 247 tonnes in 1983, representing a decrease of 11,2 %. With regard to the capacity utilization of the Community producers, it decreased from 82 % in 1980 to 73 % in 1982; the increase of their capacity utilization to 85 % in 1983 is mainly due to the plant closure of a former Community producer in the same year.

(20) With regard to the development of the sales' prices of the Community producers it has been established that a significant price depression has taken place on their main markets in the Community, particularly in the period 1982 to 1983.

(21) With regard to the development of the profitability of the Community producers, it has been established that the profits realized in 1980 and 1981 by the main Community producer turned into significant losses in 1982 and 1983 and that the profits realized by the other Community producer dropped significantly between 1980 and 1983.

(22) The Commission has considered whether injury has been caused by other facts such as the development of consumption in the Community. It has been established that the consumption showed an irregular development, but that the share of the market held by the Community producers dropped, whereas the share of the market held by dumped imports increased (see recitals 18 and 20). Furthermore, one of the exporters concerned disputed strongly that the plant closure of one of the main producers of pentaerythritol in the Community in April 1983 was caused by the dumped imports, but argued that it was due to its outdated technology. Although it may be true that this producer may not have had the most efficient technology, it considered building a new plant, but decided not to do so, because of the depressed market prices of the product concerned. Therefore, the Commission determined that the effect of all the dumped imports of pentaerythritol originating in Spain, Canada and Sweden taken in isolation, have to be considered as constituting material injury to the Community industry concerned.

G. Community interest

(23) 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.

(24) In order to prevent further injury being caused during the remainder of the proceeding and in view of the high level of the dumping margin with regard to imports of the product concerned originating in Canada (see recital 16), the action should take the form of a provisional anti-dumping duty with regard to imports from Canada.

(25) Since the dumping margin with regard to imports of pentaerythritol originating in Sweden is lower than the dumping margin established with regard to imports originating in Spain in respect of which an undertaking has been accepted (1), it was considered reasonable and appropriate to give the Swedish exporter concerned the opportunity to offer a price undertaking.

H. Undertaking

(26) The Swedish exporter was informed of the main findings of the preliminary investigation and commented on them. Subsequently, he offered a satisfactory price undertaking of which the effect is that the import prices to the Community of pentaerythritol originating in Sweden have been increased.

(27) In these circumstances, the undertaking offered is considered acceptable and the proceeding with regard to imports of pentaerythritol originating in Sweden, therefore, be terminated without the imposition of an anti-dumping duty.

(28) No objection to this course was raised in the Advisory Committee.

I. Rate of duty

(29) Having regard to the extent of injury caused, the rate of the provisional anti-dumping duty with regard to imports of pentaerythritol originating in Canada should be less than the dumping margin provisionally established but adequate to remove the injury caused.

(30) Having taken into account, on the one hand, the selling price necessary to provide an adequate profit to Community producers and, on the other hand, the purchase price of Community importers, the Commission determined the amount of duty necessary to eliminate the injury to be 15 %.

(31) The Canadian exporter was informed of the main findings of the preliminary investigation and commented on them. Furthermore, he was informed of the Commission's intention to impose a provisional anti-dumping duty of 15 %.

(32) A period should be fixed within which the parties concerned may make their views known and request an oral hearing.

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

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of pentaerythritol originating in Canada and falling within subheading ex 29.04 C I of the Common Customs Tariff, corresponding to NIMEXE code 29.04-66.

2. The duty shall be equal to 15 % on the price per tonne net, free-at-Community-frontier, before duty.

(1) Commission Decision 84/187/EEC (OJ No L 88, 31. 3. 1984, p. 74).

3. 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 for payment.

4. The provisions in force concerning customs duties shall apply.

5. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provisions 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 2176/84, the parties concerned by the provisional anti-dumping duty imposed by Article 1 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

The undertaking given by Perstorp AB, Perstorp, Sweden, in connection with the anti-dumping proceeding concerning pentaerythritol originating in Sweden and falling within subheading ex 29.04 C I of the Common Customs Tariff, corresponding to NIMEXE code 29.04-66, is hereby accepted.

Article 4

The anti-dumping proceeding referred to in Article 3 is hereby terminated.

Article 5

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

2. Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2176/84, Articles 1 and 2 of this Regulation 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, 18 September 1984.

For the Commission

Wilhelm HAFERKAMP

Vice-President