

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 October 1989

terminating the investigation concerning imports of dicumyl peroxide originating in Taiwan and accepting an undertaking offered in the context of the review concerning imports of dicumyl peroxide originating in Japan and terminating the proceeding

(89/573/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 Community⁽¹⁾, and in particular Articles 9 and 10 thereof,

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

Whereas :

A. PROCEDURE

- (1) In 1983 the Commission initiated an anti-dumping proceeding concerning imports of dicumyl peroxide in Japan⁽²⁾, and imposed a provisional anti-dumping duty on this product⁽³⁾. The Council later accepted the undertakings offered by the Japanese exporters of the product concerned⁽⁴⁾.
- (2) In November 1988, pursuant to Article 15 of Regulation (EEC) No 2423/88, the Commission received requests from the European Council of Chemical Manufacturers' Federations (CEFIC) for a

review of the measures taken against the Japanese exporter and for the initiation of an anti-dumping proceeding concerning imports of dicumyl peroxide originating in Taiwan.

The requests contained what was judged to be sufficient evidence of dumping and of resulting material injury to warrant the initiation of an anti-dumping proceeding.

- (3) Consequently, in a notice published in the *Official Journal of the European Communities*⁽⁵⁾, the Commission announced a review and the initiation of an anti-dumping proceeding concerning imports of dicumyl peroxide originating in Japan and Taiwan respectively. The Commission also pointed out that pursuant to Article 15 (3) of Regulation (EEC) No 2423/88 the undertakings given by the Japanese exporters covered by the review would remain in force pending the outcome of the review.
- (4) The Commission officially advised the exporters/producers and importers known to be concerned. Japan's representatives and the complainants and gave the parties directly concerned an opportunity to make known their views in writing and request a hearing.
- (5) The Community, the exporters/producers and some importers made known their views in writing. One exporter requested and obtained a hearing.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 46, 17. 2. 1983, p. 21.

⁽³⁾ OJ No L 203, 27. 7. 1983, p. 13.

⁽⁴⁾ OJ No L 329, 25. 11. 1983, p. 19.

⁽⁵⁾ OJ No C 39, 16. 2. 1989, p. 4.

- (6) The Commission sought and verified all the information it deemed necessary for the purposes of making a preliminary determination of dumping and carried out inspections at the premises of:

(a) **Community producers:**

- N.V. Hercules Europe SA, Brussels, Belgium,
- Montefluos, Milan, Italy;

(b) **producers/exporters in non-member countries:**

- Concord Chemical industrial Co., Taipei, Taiwan,
- Nippon Oils and Fats Co. Ltd (NOF), Tokyo, Japan.

- (7) The investigation covered the period from 1 January 1988 to 31 December 1988.

B. PRODUCT

- (8) This proceeding concerns imports of dicumyl peroxide falling within CN code 2909 60 10 (formerly Nimex code 29 08 91). The product is used to vulcanize rubber and as an additive in fireproofed polystyrene.

- (9) In order to assess the effect on the Community industry of imports of dicumyl peroxide originating in Japan or Taiwan, the Commission examined the degree to which the chemical and physical characteristics of the imported products and those from Community producers were comparable, and concluded that these characteristics and the use to which the product was put were identical.

C. INITIATION OF ANTI-DUMPING PROCEEDING AND TERMINATION — TAIWAN

1. Dumping

(a) *Normal value*

- (10) Normal value was calculated on the basis of the prices charged each month in transactions on the domestic market by the Concord Chemical Industrial Co., which exported the product to the Community and provided satisfactory evidence.

(b) *Export price*

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

(c) *Comparison*

- (12) In comparing normal value with export prices the Commission, in accordance with Article 2 (10) (c) of Regulation (EEC) No 2423/88, took account where appropriate of differences affecting price comparability, such as transport, commissions and credit terms. Monthly normal value figures were compared with export prices for the corresponding month on an ex works basis, transaction by transaction.

(d) *Dumping margins*

- (13) The dumping margin was calculated as being the difference between the normal value established and the duly adjusted export price in the Community. On the basis of the free-at-Community-frontier price no dumping margin emerged.

2. Injury

- (14) In the light of this failure to find that dumping was taking place, the Commission considered that there were no grounds for determining whether or not injury had occurred as a result of the imports in question and thus whether or not there was a threat of injury.

3. Termination of the proceeding

- (15) In the light of the above, notably the absence of dumping, the Commission considers that no protective measures are needed and that the proceeding should be terminated.

D. REVIEW (SUNSET) — JAPAN

1. Dumping

(a) *Normal value*

- (16) Normal value was calculated on the basis of the prices charged each month in transactions on the domestic market by NOF, which exported the product to the Community and provided satisfactory evidence.

(b) *Export price*

- (17) Export prices were determined on the basis of the prices actually paid or payable for the product sold for export to the Community.

(c) *Comparison*

- (18) In comparing normal value with export prices the Commission, in accordance with Article 2 (10) (c) of Regulation (EEC) No 2423/88, took account where appropriate of differences affecting price comparability, such as transport, commissions and credit terms. Monthly normal value figures were compared with export prices for the corresponding month on an ex-works basis, transaction by transaction.

(d) *Dumping margins*

- (19) The dumping margin was calculated as being the difference between the normal value established and the duly adjusted export price in the Community. On the basis of the free-at-Community-frontier price the weighted average margin was 52 % for NOF.

2. Injury over the period covered by the investigation

- (20) In order to determine whether the dumped imports had injured the Community industry, the Commission took account of the following factors.

(a) *Volume of dumped imports*

- (21) The Commission observed that between 1985 and 1988 imports of dicumyl peroxide originating in Japan remained stable at the level of the quantitative undertaking given by the Japanese producer.
- (22) Japan's market share has fallen from 14 % to 8 % as a result of the growth in the consumption of dicumyl peroxide in the Community, which has risen by 79 %, from 880 tonnes to 1 576 tonnes.

(b) *Difference in prices*

- (23) As regards the import prices, the evidence in the Commission's possession reveals no undercutting of the Community industry's prices during the reference period. It should be noted that over 60 % of the Japanese exports go to Belgium, where their only buyer, for reasons of security of supply, purchases at the same price from all its suppliers, whether these be from within the Community or not. The price is quite substantially higher than that paid by other customers.
- (24) Given the specific nature of this situation, the Commission examined the impact of the price of Japanese imports in relation to production costs in the Community, with a profit level of 15 % added, this being considered reasonable and usual in the industry in order to ensure its development. The Commission established that the prices of the Japanese imports were 32 % lower on the German market, the only representative one in this case, since the Japanese exporter's sales on the Spanish market are low and the Belgian market is influenced by the dominant position of the user.

(c) *Impact on the Community industry*

- (25) The Commission noted the following:

— Community production

Between 1985 and 1988 Community production of dicumyl peroxide rose from 590 tonnes to 1 403 tonnes, an increase of approximately 138 %.

— Utilization of capacity

Utilization of Community production capacity has risen from 39 % to 62 %. Though this is not an insignificant rise, utilization of production capacity remains far below what it should be, particularly in comparison with that of the producers in the non-member countries covered by the investigation.

— Sales and market share

Between 1985 and 1988 Community producers' sales of dicumyl peroxide rose both on the

Community market (up 128 %) and on export markets (up 193 %). Their market share in the Community therefore rose from 52 % to 66 %.

— Price reductions

An examination of the information obtained showed an appreciable drop in prices on the Community market between 1985 and 1988.

— Profitability

The profitability of Community producers has deteriorated substantially in the last two years. Within the Community industry since 1987, one producer's losses have risen considerably, and the profits of another decreased drastically.

- (26) On the basis of the figures given above the Commission has come to the following conclusions:

- a situation of contrast emerges; while some negative points, such as under-utilization of production capacity and particularly a deterioration of financial performance, are apparent, other aspects show a degree of buoyancy. Community production has risen considerably over the last four years, sales inside and outside the Community have increased sharply and the market share of Community producers has improved substantially.

in addition to these factors, the following were considered:

- imports from the Japanese exporter have remained stable in quantity terms. Its market share has decreased, as it has been unable to profit from the increase in Community consumption of dicumyl peroxide because of the quantity undertaking. Moreover, no price undercutting on its part could be found (see point 23), although some instances of prices lower than those prevailing on the Community market were found (see point 24),

- in addition, it should be noted that the drop in prices which occurred on the Community market can be put down partly to competition from Taiwanese imports and partly to technical progress in production processes.

- (27) The considerations set out above led the Commission to conclude that even if the Community industry's situation is not flourishing the difficulties confronting it are not a result of the impact of dumped Japanese imports.

3. Threat of injury as a result of the expiry of the measures in force

- (28) It should none the less be determined whether the expiry of the anti-dumping measures in force is likely to cause or threaten to cause injury.

In this connection the Commission has taken the following into account:

- the Japanese producer, which already produces substantially more than any of the Community producers, anticipates a rise in its dicumyl peroxide production of 16 % by 1990. Given the situation of the Community market this can be regarded as a significant increase,
- considering that its exports to the Community in 1988 accounted for less than 7 % of its sales, there is a high probability that the exporter in question will be led to increase its share of the Community market in the near future, since its prospects on its domestic market and the markets of non-Community countries seem limited,
- the Commission also took account of the fact that a dumping margin of 52 % had been calculated for 1988. Although the difficulties the Community industry is facing are largely attributable to other factors it is very likely that a serious distortion of the Community market would occur if the restrictions currently in force were lifted. The reason is that the exporter concerned would see an advantage in dumping products on the Community market: the exporter can rely on substantial profits from the domestic market, and would be able to align prices on those of other producers or even undercut them.

This would expose the Community producers to unfair competition from the Japanese exporter, something which would be likely to increase their financial losses and thus cause considerable injury.

E. COMMUNITY INTEREST

- (29) In the light of the observations set out above, and considering particularly the size of the dumping margin, the genuine threat of injury and the absence of representations from users and consumers, the Commission takes the view that a failure to institute measures would in time lead to the disappearance of the Community industry; this in turn would make the downstream industries, notably the cable industry, more vulnerable from the point of view of supply.

In this connection, the Japanese exporter expressed the opinion that it would not be in the Community's interest to institute measures solely against Japan. According to the exporter, Japan itself would then not be in a position to compete against its competitors, particularly the Taiwanese, which charged very low prices; it would as a result be excluded from the Community market, to the profit of its competitor.

- (30) The Commission regards this argument as unfounded in so far as the retention of protective measures against Japan should not have any substantial effect on the present state of competition between the two countries, considering the destination of Japanese exports. Whatever the case, the Commission considers that the protective measure it intends to take will ensure fair competition on the Community market.
- (31) In the light of the above, the Commission confirms that it is in the interest of the Community to retain protective measures against the imports concerned.

F. UNDERTAKING AND TERMINATION OF THE REVIEW

- (32) Having been notified of the main conclusions, NOF, the Japanese exporter, offered an undertaking on the price of its exports of dicumyl peroxide to the Community.

This undertaking will bring the price of exports to the Community to a level which the Commission considers sufficient to prevent the injury which the expiry of the anti-dumping measures currently in force would otherwise inevitably have brought about.

- (33) In these circumstances the undertaking should be considered acceptable, and since the Advisory Committee has expressed no objection to the proposals the investigation may therefore be terminated.

HAS DECIDED AS FOLLOWS:

Article 1

The undertaking offered by the Nippon Oils and Fats Co. Ltd (NOF) in the context of a review concerning imports of dicumyl peroxide falling within CN code 2909 60 10 originating in Japan is hereby accepted.

Article 2

The review procedure referred to in Article 1 is hereby terminated.

Article 3

The investigation concerning imports of dicumyl peroxide falling within CN code 2909 60 10 originating in Taiwan is hereby terminated.

Done at Brussels, 30 October 1989.

For the Commission

Frans ANDRIESEN

Vice-President