

COMMISSION

COMMISSION DECISION

of 23 December 1982

accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of perchlorethylene originating in Czechoslovakia, Romania, Spain and the United States of America and terminating that proceeding

(82/881/EEC)

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 set up under that Regulation,

Whereas in May 1982 the Commission received a complaint lodged by the European Council of Chemical Manufacturers' Federations (CEFIC) on behalf of Community producers accounting for a large proportion of Community production of perchlorethylene;

Whereas the complaint contained evidence of the existence of dumping and of material injury resulting therefrom; whereas such information was considered sufficient to justify initiating a proceeding; whereas the Commission accordingly announced, in 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 perchlorethylene (Common Customs Tariff subheading ex 29.02 A II b); NIMEXE code 29.02-35) originating in Czechoslovakia, Romania, Spain and the United States of America and commenced its investigation;

Whereas the Commission officially so advised the exporters and importers known to be concerned;

Whereas the Commission has given all the parties directly concerned the opportunity to make known their views in writing and to request an oral hearing;

Whereas all the exporters and the majority of the importers known to be concerned have taken the opportunity to make known their views in writing; whereas all the exporters, except the Spanish exporter, and several of the principal importers have requested and been granted an oral hearing;

Whereas, at the request of the Czechoslovak exporter, the Commission organized a meeting between the exporter, his distributors in the Community and the complainants, so that opposing views might be presented and any rebuttal arguments put;

Whereas no information has been supplied by Community consumers of perchlorethylene or on their behalf;

Whereas, in order to arrive at a preliminary assessment of the margin of dumping and the injury caused, the Commission sought and verified all information it deemed to be necessary and carried out inspections at the premises of the following undertakings:

- Community producers: Rumianca SpA, Milan, Chemische Werke Hüls AG, Marl, Solvay et Cie, Brussels, Solvay et Cie, Paris;
- Exporters: PPG Industries Inc., Pittsburgh Pa.;
- Importers: Klöckner & Co. Chemie, Duisberg, Société Commerciale Lambert-Rivière, Bagnolet;

Whereas the Commission sought and obtained very detailed written comments from all the Community complainant producers regarding the question of injury and the causes thereof, and also from the US exporter and certain importers; whereas this information has, where necessary, been checked by the Commission;

⁽¹⁾ OJ No L 339, 31. 12. 1979, p. 1.

⁽²⁾ OJ No L 178, 22. 6. 1982, p. 9.

⁽³⁾ OJ No C 133, 25. 5. 1982, p. 12.

Whereas the period of investigation adopted by the Commission to assess the possible existence of dumping was the 12 months prior to 30 April 1982;

Whereas, in order to establish whether dumping had been carried out by Spain, the Commission determined normal value on the basis of the weighted average selling price ex-works for perchlorethylene sold on the Spanish domestic market to customers with which they have no business connections;

Whereas, in the case of the United States, the preliminary investigation to determine the existence of dumping showed that the price at which the perchlorethylene produced by the US exporter was sold on the market was less than all costs, both fixed and variable, ordinarily incurred in its production and that this applied in the case of almost all sales effected during the investigation period; whereas, in determining the normal value for the United States, the Commission therefore used the constructed value obtained by adjusting the sub-cost price referred to above by the sum required to make up the losses incurred;

Whereas, moreover, in the case of the United States, the Commission made certain adjustments at the request of the exporter to the constructed normal value referred to above, in order to take account of the differences between the conditions and terms of supply on the domestic market and on export markets;

Whereas, in order to establish whether the imports from Czechoslovakia and Romania were dumped, the Commission had to take account of the fact that the countries in question were not market economies; whereas the Commission therefore had to base its calculations concerning those countries on the normal value in a market-economy country; whereas, in this connection, the complainants had suggested as a reference the US domestic market;

Whereas, in discussions with the Czechoslovak and Romanian exporters, the comparability of the US perchlorethylene market and *a fortiori* the reference made to the constructed normal value for that market were contested on the ground that the prices thus determined would not be representative; whereas a suggestion that the Austrian market be chosen as a reference market proved unacceptable to the Commission because of the absence of sufficient data on the Austrian market; whereas, moreover, it cannot be ruled out that Austrian domestic prices are influenced by low-cost imports;

Whereas the Commission, having examined the various possibilities of which it was aware, therefore

considered that it would be appropriate and fair to determine the normal value applicable to Czechoslovakia and Romania on the same basis as for the US exporter, by making adjustments justified by the differences observed in conditions and terms of sale and in the quality characteristics of the products;

Whereas in order to determine the export price, the Commission based its calculations in the case of Spain and the United States on the price actually paid or payable for the products exported to the Community; whereas in the case of Czechoslovakia and Romania, for which the Commission lacks full and reliable information on the real export prices, the export price was determined on the basis of the free-at-Community frontier value shown in the Community's official import statistics; whereas such figures are not contradicted by the partial information on export prices sent to the Commission by the exporters and importers concerned;

Whereas, in the case of Spain, the ex-works price of products for export is adjusted by an export tax relief (*desgravación fiscal*) granted by the Spanish Government to the exporter which is equivalent to 11.875 % of the free-at-frontier export price; whereas the Commission has insufficient information to determine whether or not this relief exceeds the amount of the duties or taxes to which the same product is subject when intended for domestic consumption; whereas, therefore, in the absence of an anti-subsidy complaint in this connection, the Commission has taken account of this relief in its calculation of the export prices by increasing them by the corresponding percentages;

Whereas the assessment of whether dumping was being practised by the four countries concerned was made on the basis of a comparison at the ex-works stage between the normal values as defined above and the prices for exports to the Community's principal markets from each of the countries concerned during the investigation period; whereas a monthly comparison was carried out, using weighted averages where appropriate; whereas the Commission took account, where necessary, of the factors affecting price comparability, and in particular of the differences in the technical characteristics of the perchlorethylene exported to the Community by the countries concerned; whereas it also took account, on the basis of checked information, of the conditions of payment, transport costs to the Community frontier and related costs;

Whereas a preliminary examination of the above facts revealed that dumping was being practised in respect of the imports covered by the investigation originating in Czechoslovakia, Romania, Spain and the United States;

Whereas the extent of the dumping varied according to the exporting country and Member State concerned; whereas the dumping margins — being equal to the difference between the normal values as defined above and the export prices of perchlorethylene to the Community — amounted to the following percentages of the free-at-Community frontier price, not cleared through customs:

- Spain: from 70.4 % to 101.8 %, with weighted averages of 82.6 %, 82.6 % and 80.0 % in respect of sales effected respectively in Germany, the Netherlands and Belgium; or, after adjusting the export price to take account of the whole of the tax relief, from 58 % to 87.4 %, with weighted averages of 69.5 %, 69.5 % and 67.1 % in respect of sales effected respectively in Germany, the Netherlands and Belgium;
- United States: from 47.70 % to 124.0 %, with weighted averages of 90.50 %, 89.70 %, 87.10 % and 57.20 % in respect of sales effected respectively in France, Italy, Germany and the United Kingdom;
- Romania: from 47.7 % to 84.9 %, with a weighted average of 67.90 % in respect of sales effected in Germany;
- Czechoslovakia: from 62.4 % to 113.1 %, with a weighted average of 78.0 % in respect of sales effected in Germany;

Whereas, with regard to the injury caused to the Community industry by the dumped imports, the evidence available to the Commission shows that the total volume of perchlorethylene imports into the Community from the countries practising dumping rose from 7 769 tonnes in 1977 to 26 965 tonnes in 1981 and stood at 5 061 tonnes for the first quarter of 1982; whereas the average annual rate of increase of such imports was therefore 36.5 % over the period 1977 to 1981; whereas, correlatively, their market share increased substantially, from 3.4 % in 1977 to 13.6 % in 1981;

Whereas the penetration of the dumped imports varied according to the Member State; whereas it was particularly great in the Federal Republic of Germany, which took 11 600 tonnes during 1981 alone — 43 % of total dumped imports — bringing to 15.6 % the share of the German market taken by such imports;

Whereas the evidence available to the Commission shows that the resale prices of the dumped imports in the Community undercut the prices of Community

producers by as much as 17 %; whereas, moreover, the resale prices of these imports were lower than the minimum required to enable Community producers to cover their production costs;

Whereas, having regard to the impact of such imports on the Community industry, the facts available to the Commission show that Community production of perchlorethylene fell from 179 455 tonnes in 1977 to 145 265 tonnes in 1981, a reduction of 19 % which far exceeded the percentage decline in consumption in the Community over the same period; whereas the average rate of utilization of production capacity rose from 51.7 % in 1977 to 55.7 % in 1981 and to 59.8 % in the first quarter of 1982, but only at the cost of a drastic decline in production capacity of approximately 24.8 % between 1977 and 1981; whereas, in particular, two Community production plants were obliged to cease operating in 1981 and at the beginning of 1982 and a third had to substantially reduce its production capacity;

Whereas, according to the information available to the Commission, the market share accounted for by Community producers fell from 95 % in 1977 to 84.9 % in 1981; whereas, in terms of change in market share, the percentage share lost by Community producers corresponds almost entirely to the increased penetration of the dumped imports; whereas producers were able in the first quarter of 1982 to recover part of their lost market share, but only by progressively aligning their prices on the resale prices of the dumped imports;

Whereas this gradual fall in the prices charged by Community producers and the decline in production have considerably eroded their profitability, to the extent that in 1981 and the first quarter of 1982 in particular, almost all producers suffered losses on perchlorethylene, in most cases very substantial ones;

Whereas the Commission has considered whether injury to Community production has also been caused by other factors, individually or collectively; whereas it has in particular considered the prices and volume of imports, concerning which no complaint of dumping has been made, the level of consumption of perchlorethylene in the Community and the extent to which the pricing of perchlorethylene in the Community has been affected by the current availability of chlorine and the excess perchlorethylene production capacity;

Whereas the volume of imports from countries not accused of dumping was low during the investigation

period and fell from 3 651 tonnes in 1977 to 2 973 tonnes in 1981, equivalent to a Community market share of only 1.5 % ; whereas, nevertheless, the deterioration of the Community market in 1982 could have been exacerbated by certain low-price imports not alleged to have been dumped ;

Whereas the evidence available to the Commission shows that the total Community demand for perchlorethylene fell from 226 240 tonnes in 1977 to 197 777 tonnes in 1981, an overall reduction of 12.6 % over the period in question ; whereas although this reduction unquestionably affected the Community industry, the sales losses suffered by Community producers on the internal market were substantially greater than the fall in demand over the said period ;

Whereas the Commission has ascertained that, given current chlorine availabilities, this product was priced fairly in Community producers' costs ;

Whereas, in assessing the impact of the dumped imports, the Commission has also taken account of the fact that the excess perchlorethylene production capacity in the Community exerts pressure on prices which cannot be attributed to such imports ;

Whereas, therefore, while recognizing that certain factors other than dumped imports have caused manifest injury to Community producers, the Commission is convinced, on the basis of the information in its possession, that the injury caused by the increase in dumped imports and by the resulting fall in prices, judged in isolation, must nevertheless be considered substantial ;

Whereas, in these circumstances and in order to prevent injury being caused during the investigation, the interests of the Community call for immediate action involving the imposition of a provisional anti-dumping duty on imports of perchlorethylene originating in Czechoslovakia, Romania, Spain and the United States ; whereas the Commission considers that a duty amounting to less than the dumping margins established should suffice to eliminate the injury caused to the Community industry by the dumped imports, the duty being based on the price required to ensure that Community producers no longer have to sell their perchlorethylene at a loss ;

Whereas the exporters concerned were informed of the main findings of this investigation and submitted

their comments ; whereas undertakings were subsequently offered by Chemapol (Prague), Chimimport Export (Bucharest), Societed Anónima Cros (Barcelona) and PPG Industries Inc. (Pittsburgh) in respect of exports from Czechoslovakia, Romania, Spain and the United States ;

Whereas the price increases proposed will eliminate the injurious effects of the dumping practised ; whereas such increases in no case exceed the average dumping margins established ;

Whereas the Commission has, therefore, determined that it is not now necessary to take protective action in respect of imports of perchlorethylene originating in Czechoslovakia, Romania, Spain and the United States ;

Whereas, in these circumstances, the undertakings offered are considered acceptable and the proceeding may therefore be terminated without imposition of anti-dumping duties ;

Whereas no objection was raised by the Advisory Committee,

HAS DECIDED AS FOLLOWS :

Sole Article

1. The Commission hereby accepts the price undertakings given by the exporters concerned.
2. The anti-dumping proceeding concerning imports of perchlorethylene originating in Czechoslovakia, Romania, Spain and the United States of America is hereby terminated.

Done at Brussels, 23 December 1982.

For the Commission

Étienne DAVIGNON

Vice-President