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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1282/81

of 12 May 1981

imposing a definitive anti-dumping duty on vinyl acetate monomer originating in the United States of America

THE COUNCIL 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⁾, and in particular Article 12 thereof,

Having regard to the proposal submitted by the Commission after consultation with the Advisory Committee set up under Article 6 of Regulation (EEC) No 3017/79,

Whereas, in June 1980, the Commission received a complaint lodged by the European Council of Chemical Manufacturers' Federations (CEFIC) on behalf of manufacturers accounting for all of the Community production of vinyl acetate monomer; whereas the complaint contained evidence of the existence of dumping in respect of the like product originating in the United States of America, and of material injury resulting therefrom;

Whereas the said information provided sufficient evidence to justify initiating a proceeding; whereas the Commission accordingly announced by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of a proceeding concerning imports of vinyl acetate monomer originating in the United States of America, and commenced an investigation of the matter at Community level;

Whereas, for the preliminary investigation, the Commission compared export prices to the Community with domestic prices on the United States market; whereas, for these comparisons representative or weighted average ex-factory prices were used for 1979 and the first six months of 1980, and account was taken, where appropriate, of differences affecting

price comparability, such as differences in quantities, differences in conditions and terms of sale and differences in the level of trade; whereas the Commission established on this basis that virtually no dumping occurred in 1979 but that for the first six months of 1980 exports of the product in question were dumped at a weighted average margin of 10.6 %; whereas there was sufficient evidence of injury resulting from their entry for consumption into the Community and, since the interests of the Community called for immediate intervention in order to prevent further injury being caused during the investigation, the Commission, by Regulation (EEC) No 2999/80⁽³⁾, imposed a provisional anti-dumping duty on vinyl acetate monomer originating in the United States of America; whereas exports by three companies were excluded from the application of this duty because no recorded dumping by two of them had been established and because the undertaking by the third company to increase its export prices was adjudged acceptable;

Whereas the period of validity of this provisional duty was extended for a period not exceeding two months by Council Regulation (EEC) No 683/81⁽⁴⁾;

Whereas, in the course of the subsequent examination of the matter, completed after the imposition of this duty, the interested parties had the opportunity to make known their views in writing, to be heard by the Commission and to develop their views orally, to inspect non-confidential information relevant to the defence of their interests and to be informed of the essential facts and considerations on the basis of which it was intended to make a final determination; whereas the complainants and most of the exporters and importers concerned availed themselves of these possibilities by making known their views in writing and orally;

Whereas one further exporter, Gantrade Corporation (New Jersey), came forward with an offer to provide

⁽¹⁾ OJ No L 339, 31. 12. 1979, p. 1.

⁽²⁾ OJ No C 169, 9. 7. 1980, p. 2.

⁽³⁾ OJ No L 311, 21. 11. 1980, p. 13.

⁽⁴⁾ OJ No L 73, 19. 3. 1981, p. 3.

information on the normal value and on the export prices applied by it; whereas the Commission, after a careful analysis of the information available, decided to carry out inspections at the premises of Union Carbide Corporation (Connecticut), Celanese Chemical Company, Inc. (Texas) and Gantrade Corporation (New Jersey); whereas Phillips Petroleum Company (Oklahoma) did not consider an on-the-spot investigation to be necessary because it did not wish to apply for an adjustment of its normal value;

Whereas, in seeking to determine the existence of dumping, the Commission compared the export prices to the Community with the normal value of the product in question;

Whereas, since all the companies concerned have sold vinyl acetate monomer on the United States domestic market, the normal value was established on the basis of their respective prices on the American market during the last six months of 1980, the most recent period for which all available information could be verified and one which was considered as being representative in the light of the worsening situation during the latter half of 1980; whereas, for those companies fixing prices on a quarterly basis, certain months were selected and examined jointly with the companies concerned so as to ensure that the comparison covered a representative period;

Whereas, after discussion and by agreement with the companies concerned, sales to certain customers were considered as being representative for the purpose of calculating the normal value; whereas, however, certain sales were excluded from this calculation as they were not considered as having been made in the ordinary course of trade and did not permit a proper comparison, since they involved special processing arrangements; whereas the prices charged by some of the companies visited to their largest customer could not be compared because of the quantities involved and were, therefore, adjusted to the level of prices charged to their American customers whose annual requirements could be compared with the annual requirements of the largest customer in the Community;

Whereas export prices were determined for the same period on the basis of prices actually paid or payable for the product concerned sold for export to the Community;

Whereas the comparisons were made on a month-by-month, transaction-by-transaction, ex-factory or, where applicable, fob basis for all of the companies investigated;

Whereas, where appropriate and where allegations in these areas were satisfactorily established, the Commission also took account of major differences affecting price comparability which arose because of variable distribution and selling costs and of payment terms;

Whereas, subsequent to the establishment of oral contacts, certain companies submitted detailed infor-

mation on certain secondary cost items, which they said differed only marginally from information previously submitted by them; whereas this information has not been taken into consideration because the Commission has been unable to verify it;

Whereas the examination shows that exports during the investigation period were dumped; whereas the weighted average dumping margins were 12.20 % in the case of Union Carbide Corporation, 12.94 % in that of Celanese Chemical Company, Inc., 2.63 % in that of Gantrade Corporation, and 14.27 % in that of Phillips Petroleum Company;

Whereas, in the case of brokers and exporters who were either unknown to the Commission or who decided not to cooperate, it was not possible to establish that the dumping margin was less than 14.27 %;

Whereas, with regard to the injury caused by the dumped imports to the Community, the considerations which led to the introduction of the provisional duty remain valid;

Whereas further information received by the Commission after the introduction of the provisional duty showed that imports into the Community of the product in question increased from 33 894 tonnes for the whole of 1979 to 40 665 tonnes in the first half of 1980 and to 55 415 tonnes in the first three-quarters of 1980, i.e. an annual increase of approximately 101 %;

Whereas the share of the free, i.e. non-captive, vinyl acetate market held by US imports amounted to 9.8 % in 1977 and to 16 % in 1979, increasing to approximately 32.3 % in 1980; whereas the total market share of dumped imports increased from 0 % in 1979 to 21.6 % in the first six months of 1980, and to 23.9 % for the second half of 1980, i.e. by 22.7 % for the whole year;

Whereas this increase in dumped imports was accompanied by a sharp decrease in the already depressed vinyl acetate monomer prices in the Community, especially the second half of 1980;

Whereas the consequent impact of the increased imports and lower prices accentuated the price depression and led to a further reduction of market shares held by the EEC producers from 89.5 % in 1977 to 83.1 % in 1979, to approximately 65.8 % in 1980; whereas some Community producers have been forced to reduce their production levels sharply; whereas others have tried to maintain remaining market shares by selling at very low prices;

Whereas all Community producers are still forced to sell at prices which are not sufficient to recover the increased costs and are unable to remedy this situation through a greater share of the captive market production; whereas, as a result, all producers are incurring losses, which in some cases are extremely high;

Whereas the Commission has considered the injury caused by other factors which, individually or in combination, are also affecting the Community industry; whereas it has determined in this context that the level of demand and consumption in the Community is still relatively stable in spite of certain market fluctuations; whereas, furthermore, the volume of non-dumped imports was relatively small compared to total imports, and represented less than 13.1 % thereof in the last half of 1980 or 29.6 % for the whole year; whereas the influence of these non-dumped imports on the vinyl acetate monomer market has been isolated from the dumped imports; whereas the substantial and sudden increase of imports of dumped vinyl acetate monomer since 1977 and the prices at which they were offered for sale in the Community have led the Commission to conclude that the US exports of dumped vinyl acetate monomer, considered in isolation, have caused material injury to the Community industry concerned;

Whereas, therefore, protection of the Community's interests calls for the introduction of a definitive anti-dumping duty on vinyl acetate monomer originating in the United States of America which, having regard to the extent of injury caused, should be equal to the dumping margins recorded, and for the definitive collection, of the rate of the provisional duty, of the amounts secured by way of that duty;

Whereas, prior to the introduction of the provisional anti-dumping duty, the Commission accepted the undertaking entered into by US Industrial Chemicals Co.; whereas it is, consequently, appropriate to continue to exclude imports of the products manufactured and exported by this company from the application of the anti-dumping duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on vinyl acetate monomer falling within

Common Customs Tariff subheading ex 29.14 A II c) 1, corresponding to NIMEXE code 29.14-32 and originating in the United States of America.

2. The rate of the anti-dumping duty shall be 14.27 % of the customs value determined in accordance with Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (¹).

3. Notwithstanding paragraph 2 above, the rate of the anti-dumping duty shall be:

- 12.94 % for the Celanese Chemical Company,
- 2.63 % for the Gantrade Corporation, and
- 12.20 % for the Union Carbide Corporation.

4. The customs duty provisions in force shall apply to the duty referred to in this Article.

Article 2

The definitive anti-dumping duty imposed by Article 1 shall not apply to vinyl acetate monomer exported by US Industrial Chemical Co.

Article 3

The amounts secured by way of the provisional anti-dumping duty, pursuant to Regulation (EEC) No 2999/80, shall be definitively collected.

Article 4

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

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

Done at Brussels, 12 May 1981.

For the Council

The President

G. BRAKS

(¹) OJ No L 134, 31. 5. 1980, p. 1.