

COUNCIL REGULATION (EEC) No 2357/87

of 31 July 1987

amending Regulation (EEC) No 1282/81 imposing a definitive anti-dumping duty on imports of 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 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 Article 12 thereof,

Having regard to the proposal submitted by the Commission after consultations within the Advisory Committee as provided for by the above Regulation,

Whereas :

A. Procedure

- (1) In November 1980 the Commission accepted by Regulation (EEC) No 2999/80⁽²⁾ a price undertaking offered by US Industrial Chemical Company of the United States of America in the course of the anti-dumping procedure initiated in June 1980 concerning vinyl acetate monomer originating in the United States of America. In May 1981 the Council imposed by Regulation (EEC) No 1282/81⁽³⁾ a definitive anti-dumping duty on imports of vinyl acetate monomer originating in the United States of America exported by other producers.

In November and December 1985, the Commission gave notice of the impending expiry of the undertaking⁽⁴⁾ and the duty⁽⁵⁾ pursuant to Article 15 of Council Regulation (EEC) No 2176/84.

- (2) Subsequently, the Commission received a review request from the Conseil européen des fédérations de l'industrie chimique (CEFIC) representing the totality of Community production of the product concerned.

In July 1986 the Commission, having decided that there was sufficient evidence to warrant a review, published a notice of re-opening of the anti-dumping proceeding concerning imports of vinyl acetate monomer falling within subheading 29.14 A II c) 1 of the Common Customs Tariff — corres-

ponding to NIMEXE code 29.14-32 — and originating in the United States of America⁽⁶⁾ and commenced an investigation.

- (3) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting countries and the Community producers and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.
- (4) All Community producers, a number of US exporters and certain importers replied to the Commission's questionnaire. Certain Community producers and all the exporters and importers who replied to the questionnaires have requested and have been granted hearings.

In addition, submissions were made and hearings were requested by and were granted to processors of the product in question.

- (5) The Commission sought and verified all information it deemed to be necessary for the purposes of a determination and carried out investigations at the premises of the following :

(a) *Community producers*

France : Rhône Poulenc (Paris),
Germany : Hoechst AG (Frankfurt/Main),
Wacker-Chemie GmbH (München),
Italy : Montedipe (Milano),
United Kingdom : BP Chemicals Ltd (London) ;

(b) *American producers/exporters*

Celanese Chemical Co., Dallas, Texas,
Gantrade Corp., Montvale, New Jersey,
Phillips Petroleum Chemicals SA, Bartlesville, Oklahoma,
US Industrial Chemicals Co., Cincinnati, Ohio ;

(c) *Community importers*

Belgium : Celanese SA (Brussels), Phillips Petroleum Chemicals (Overijse),
Netherlands : U.S.I. Chemicals Europe BV (Breda),
Portugal : Resiquimica (Mem Martins),
Spain : Hoechst Iberica SA Barcelona).

- (6) The investigation of dumping and prices on the Community market covered the period from 1 January to 30 June 1986.

⁽¹⁾ OJ No L 201, 30. 7. 1984, p. 1.

⁽²⁾ OJ No L 311, 21. 11. 1980, p. 13.

⁽³⁾ OJ No L 129, 15. 5. 1981, p. 1.

⁽⁴⁾ OJ No C 300, 23. 11. 1985, p. 4.

⁽⁵⁾ OJ No C 338, 31. 12. 1985, p. 6.

⁽⁶⁾ OJ No C 164, 2. 7. 1986, p. 2.

B. Normal value

- (7) Normal value was determined on the basis of the domestic prices of those producers who exported to the Community and provided sufficient evidence, since these were considered to be representative of the domestic market concerned.

C. Export prices

- (8) Since all exports were made to subsidiary companies 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 incurred between importation and resale, including customs duty and anti-dumping duty, and of a profit margin of 5 %. This profit margin was considered appropriate in the light of the profit margin of independent traders of the product concerned who cooperated in the course of the investigation and provided sufficient evidence.
- (9) Two of the related importers concerned, Celanese SA, Brussels Belgium, and U.S.I. Chemicals Europe BV, Breda, the Netherlands, have put forward arguments against the 5 % profit margin. They submitted evidence showing lower profit margins of certain traders. In addition, they provided statistics of certain national banks.

The Commission, however, was unable to verify the evidence put forward by the two importers concerned relating to certain traders since these traders refused to cooperate. The statistics of certain national banks reflect an average profit margin of independent importers for a range of industrial chemical products for which the profit margins may differ widely. Consequently, the profit margin of 5 % found is to be used for the purpose of constructing the export price.

D. Comparison

- (10) In comparing normal value with export prices the Commission took account, where appropriate, of differences affecting price comparability. These covered mainly the conditions and terms of sales (direct sales expenses, commissions, discounts, payment terms, etc.) All comparisons were made on an ex-works basis. The exporters did not contest these adjustments.

E. Margin

- (11) Normal value, on a monthly weighted average basis, was compared with export prices during the corresponding months on a transaction by transaction basis.

The above examination of the facts shows the continuous existence of dumping in respect of imports of vinyl acetate monomer originating in the United States of America, the margin of dumping being equal to the amount by which the normal value as established exceeds the price 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:

— Celanese Chemical Company	15,06 %
— Gantrade Corporation	5,97 %
— Phillips, Petroleum Chemicals SA	17,41 %
— US Industrial Chemicals Co.	5,88 %

- (12) For those exporters who neither replied to the Commission's questionnaire nor made themselves known otherwise in the course of the investigation, dumping was determined on the basis of the facts available. In this connection it is considered that the results of its investigation provide the most appropriate basis for determination of the dumping margin and that it would constitute a bonus for non-cooperation and would create an opportunity for circumvention of the duty to hold that the dumping margin for these exporters was any lower than the highest dumping margin of 17,41 % determined with regard to an exporter who had cooperated in the investigation. For these reasons it is considered justified to use this latter dumping margin for this group of exporters.

F. Injury

- (13) With regard to the injury caused by the dumped imports the evidence available shows that imports into the Community from the United States of America of vinyl acetate monomer increased from 32 996 tonnes in 1983 to 39 926 tonnes in 1985 and to 33 021 tonnes during the first half of 1986 with a consequent increase in market share held by the exporters concerned from 11,7 % to 12,6 % and to 21,5 % in the same periods.
- (14) The resale prices of these imports undercut the prices of the Community producers during the investigation period; the extent of undercutting varies from 0,7 % to 11,3 % of Community prices.

The resale prices of these imports were lower than those required to cover the costs of Community producers and provide a reasonable profit, the differences being (per exporter investigated):

— Celanese Chemical Company	19,14 %
— Gantrade Corporation	6,89 %
— Phillips Petroleum Chemicals SA	10,56 %
— US Industrial Chemicals Co.	7,35 %

- (15) The consequent impact on the Community industry has been a reduction of the sales other than sales for captive use from 243 133 tonnes in 1983 to 117 160 tonnes during the first half of 1986 with a consequent decrease in market share from 86,4 % to 76,1 % in the same period.

Sales prices have decreased substantially in the Community market and at a higher rate than the costs of production of vinyl acetate monomer, thus reducing the profits of the Community industry.

- (16) The Commission has considered whether injury has been caused by other factors. It was found, though, that imports of the product in question originating in other countries have decreased from 15 517 tonnes in 1983 to 3 733 tonnes during the first half of 1986. Free market consumption in the Community has increased by approximately 10 % between 1983 and the first half of 1986; this increased consumption has been entirely taken up by the US exporters.

In view of the substantial increase in dumped imports and the prices at which they are offered for sale in the Community, the effects of the dumped imports of vinyl acetate monomer originating in the United States of America, taken in isolation, have to be considered as constituting material injury to the Community industry concerned.

- (17) Certain exporters argued that the impact of their individual exports should be looked at in isolation and considered not to have caused material injury in view of the low level of their market share in the Community.

The Commission considered the comparability of the imported product in terms of physical characteristics, the increase in volume of imports from a previous comparable period and the low level of prices attributable to the products of all supplying companies and the extent to which each of the imported products competed in the Community with the like product of the Community industry. The Commission concluded that no persuasive arguments have been submitted showing that the dumped imports from the companies concerned could not be considered as contributing to the material injury suffered. Should any company be treated in isolation, the rest would be discriminated against. Accordingly, the Commission concluded that for the purposes of establishing the level of injury sustained by the Community industry, regard should be paid to the cumulative effect of the

dumped imports from all exporting companies concerned.

The Council confirms the Commission's conclusion.

- (18) One American exporter, US Industrial Chemical Co., argued that sales in Spain should not be taken into account in the calculation of the dumping margin. The company alleged that although sales were made at prices below price levels in the Community of Ten, these prices were consistent with market patterns in Spain, and the four sales made in the Spanish market during the reference period did not injure the Community industry because

- (a) the Spanish market was insulated from the Community for many years by strict government controls, import licences and duties;
- (b) Community producers did not suffer injury merely because an isolated market became politically part of the Community;
- (c) Community producers are working at full capacity, exports of the Community of Ten to Spain of vinyl acetate monomer have increased substantially in absolute and relative terms while US exports to Spain have increased by a smaller percentage, and the French producer has about 50 % of the Spanish market.

- (19) The Commission examined these arguments and it was found on the basis of the facts available that

- (a) the four export sales to Spain made by US Industrial Chemicals Co. represented about one quarter of their exports to the Community and 12 % of total US exports to Spain;
- (b) American exporters provide more than 50 % of the total imports into the Spanish market and almost doubled their exports in the first half of 1986, i.e. during the investigation period. During 1985, 8 870 tonnes were exported compared to 8 040 tonnes exported during the first half of 1986. This increase was maintained in the second half of 1986 (12 807 tonnes imported from January 1986 to September 1986 into Spain from the United States) following the cessation of production by the Spanish producer in May 1986;

Finally, the argument that sales into Spain should not be taken into account, on the ground that in the past, before accession, Spain favoured low prices, does not take into account that as of 1 January 1986 the Community includes a new market and this market must be treated in the same way as the rest of the Community.

- (20) Furthermore, the Commission examined in the light of the criteria laid down in Article 4 (3) of Regulation (EEC) No 2176/84 whether further injury would be threatened if the duty on these imports was to be removed. In this connection account was taken of the fact that imports of vinyl acetate monomer originating in the United States have increased substantially even though they were subject to anti-dumping measures. In addition, it was found that the US industry had sufficient capacity to increase its exports and that there was a likelihood that the exports would be directed to the Community since US exports to other traditional markets may be expected to decline as a result of new capacity which has been established in Brazil and Taiwan. Moreover, the trend towards increased exports is likely to be reinforced by the substantial fall which has occurred in the value of the US dollar.

In view of these facts, the Commission considers that the expiry of the existing measures would lead to even more severe injury for the Community industry than has already occurred and that anti-dumping duties should therefore continue to apply.

The Council confirms the Commission's conclusion.

G. Community interest

- (21) Community processing industries have argued that the maintenance of protective measures would not be in the Community interest because it would make them less competitive with regard to imported derivatives of vinyl acetate monomer.

In view of the relatively low incidence of a price increase on the costs of the processing industry the Council has, however, come to the conclusion that it is in the Community's interest that action be taken.

- (22) In these circumstances, a definitive anti-dumping duty on imports of vinyl acetate monomer origina-

ting in the United States of America should be maintained and fixed at a rate corresponding to the results of this investigation.

H. Amendment of the duty

- (23) In the light of the above determination the existing anti-dumping duties should be modified, account being taken of the dumping margins established during the investigation period. Since, however, the difference between the resale prices of the US imports and the price required to cover the costs of Community producers and provide a reasonable profit in one case is lower than the dumping margin found, the duty should be limited to that lesser amount, the modified duties being as follows:

— Celanese Chemical Company	15,0 %,
— Gantrade Corporation	6,0 %,
— Phillips Petroleum Chemicals SA	10,5 %,
— US Industrial Chemicals Co.	5,9 %,
— Others	15,0 %.

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 (2) and (3) of Regulation (EEC) No 1282/81 are hereby replaced by the following:

2. The rate of the anti-dumping duty shall be 15 %.

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

- 6 % for Gantrade Corporation
- 10,5 % for Phillips Petroleum Chemicals SA, and
- 5,9 % for US Industrial Chemicals Co.'

Article 2

This Regulation shall enter into force on the day following that 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, 31 July 1987.

For the Council,

The President

K.E. TYGENSEN