II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 19 April 1983

accepting an undertaking given in connection with the anti-dumping proceeding concerning imports of certain cellulose ester resins (cellulose-acetobutyrate and cellulose-acetopropionate) originating in the United States of America and terminating that proceeding

(83/192/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 10 thereof,

After consultations within the Adivsory Committee as provided for under the above Regulation,

Whereas in September 1982 the Commission received a complaint lodged by the European Council of Chemical Manufacturers Federations (CEFIC), on behalf of Bayer AG, the sole Community producer of cellulose ester resins; whereas the complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding; whereas the Commission accordingly announced, by 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 cellulose ester resins falling within subheading ex 39.03 B IV b) 1 of the Common Customs Tariff (NIMEXE code ex 39.03-43) and originating in the United States of America, and commenced an investigation;

Whereas the Commission officially so advised the exporter and importers known to be concerned as well as the representatives of the exporting country;

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

Whereas the sole American producer and exporter, who at the same time is the major importer into the Community, has made his views known in writing and has requested and been granted an oral hearing;

Whereas no submissions were made by the Community purchasers and processors of cellulose ester resins;

Whereas 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:

— EEC producer: Bayer AG, Leverkusen, Federal Republic of Germany,

— non-EEC producer/exporter: Eastman Chemical International Company, Kingsport, USA;

[1] OJ No L 339, 31. 12. 1979, p. 1.
[2] OJ No L 178, 22. 6. 1982, p. 9.
[3] OJ No C 299, 16. 11. 1982, p. 3.

Whereas the Commission investigation of dumping covered the calendar year 1982;

Whereas the Commission provisionally determined normal value on the vasis of the domestic prices of all sales of the only American producer who provided sufficient evidence;

Whereas, for one Community market, export prices were determined on the basis of the prices actually paid or payable for the products exported to the Community; whereas, for all other Community markets, where 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 import and resale, including mainly customs duty, customs clearance charges, warehousing, transport costs in the Community and commission on the sales paid to the subsidiaries;

Whereas, in comparing normal value with export prices, the Commission took account, where appropriate, of differences affecting price comparability; whereas these differences covered mainly payment conditions and the average tonnage per individual sale;

Whereas all comparisons were made at ex-works level;

Whereas the above preliminary examination of the facts shows the existence of dumping in respect of exports made by Eastman Chemical International Company, Kingsport, USA, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community;

Whereas differing margins were established on Community markets, the margins varying from 27,7 to 44,4 %; whereas the weighted average margin for the whole Community was 30,8 %;

Whereas, with regard to the injury caused by the dumped imports, the evidence available to the Commission shows that imports into the Community from the United States of America of cellulose ester resins increased from a 1980 index of 100 (exact figures are confidential) to a 1981 index of 108, and fell back to a 1982 index of 101; whereas this resulted in an increase in market share from an index of 100 in 1980 to 107 in 1981 and 119 in 1982;

Whereas the weighted average resale prices of these imports undercut the prices of the Community producer during the investigation period by up to 15,3 %; whereas the resale prices of these imports were lower than those required to cover the costs of the Community producer and provide a reasonable profit;

Whereas the consequent impact on the Community industry has been a decline in production from a 1980 index of 100 to a level of 81 in 1982;

Whereas, in order to avoid further reductions of capacity utilization, the Community industry has been reducing its capacity steadily during the last few years;

Whereas sales by the Community industry on the Community market have decreased from a level an index of 100 in 1980 to 80 in 1982 with a consequent loss in market share from an index of 100 in 1980 to 94 in 1982; whereas this has resulted in considerable losses for the Community industry which, despite attempts to reduce costs, have remained at an intolerable level;

Whereas the Commission has considered whether injury has been casued by other factors such as a decline of demand for cellulose ester resins; whereas consumption in the Community has declined from an index of 100 in 1980 to 85 in 1982; whereas, however, it has been established that this decline has affected the Community production more than it has affected the dumped imports which have not diminished in volume; whereas, therefore, the increase in market share held by dumped imports and the prices at which they are offered for sale in the Community led the Commission to determine that the effects of the dumped imports of cellulose ester resins originating in the United States of America, taken in isolation, have to be considered as constituting material injury to the Community industry concerned;

Whereas the exporter concerned was informed of the main findings of the preliminary investigation and commented on them; whereas an undertaking was subsequently offered by Eastman Chemical International Company concerning its exports of cellulose ester resins to the Community;

Whereas the effect of the said undertaking will be to increase the sales prices in the Community, free-customer, duty-paid, to the level which the Commission, having compared the Community producer's weighted average prices and costs, taking account of its profit situation, with the individual importers' costs and special marketing conditions, considered necessary to eliminate injury; whereas these increases are, however, smaller than the dumping margins;

Whereas the Commission has, therefore, determined that it is not now necessary to take protective action in respect of imports of cellulose ester resins originating in the United States of America;

Whereas, in these circumstances, the undertaking offered is considered acceptable and the proceeding may, therefore, be terminated without imposition of an anti-dumping duty;

Whereas no objection to this course was raised in the Advisory Committee,

HAS DECIDED AS FOLLOWS:

Article 1

The Commission hereby accepts the undertaking given by Eastman Chemical International Company, Kingsport, USA, in connection with the anti-dumping proceeding concerning cellulose ester resins falling within subheading ex 39.03 B IV b) 1 of the Common Customs Tariff (NIMEXE code ex 39.03-43) and originating in the United States of America.

Article 2

The anti-dumping proceeding concerning imports of cellulose ester resins originating in the United States of America is hereby terminated.

Done at Brussels, 19 April 1983.

For the Commission

Wilhelm HAFERKAMP

Vice-President