COMMISSION REGULATION (EEC) No 2999/80

of 20 November 1980

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

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), and in particular Articles 10 and 11 thereof,

After consultations within the Advisory Committee set up under that Regulation,

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 the Commission officially so advised the exporters and importers known to be concerned, as well as the representatives of the exporting country and the complainants;

Whereas the Commission has given all parties directly concerned the opportunity to make known their views in writing and to be heard orally; whereas most of the importing and exporting parties known to be concerned have taken this opportunity;

Whereas, in order to arrive at a preliminary determination of dumping and injury, the Commission sought and verified all information it deemed to be necessary and carried out inspections at the premises of exporters and importers accounting for almost all imports of the product concerned, including in the United States of America, Celanese Chemical Company Inc., Dallas; US Industrial Chemicals Co., New York; Borden Inc., New York and Union Carbide Corporation, New York; whereas one exporter, Fallek Chemical Company, New York, refused to provide the necessary information and another exporter, Gill and Duffus Chemicals Inc., New York, was not willing to receive Commission officials; whereas the Commission also carried out inspections at the premises of Amcel Europe SA, Brussels, Belgium, subsidiary of Celanese Chemical Company Inc.; of Fluidiks BV, Amsterdam, Netherlands, importer and agent for two US exporters; of Phillips Petroleum Chemicals NV/SA, Overijse, Belgium, on behalf of a related exporter, International Petroleum Sales Inc.; and of one of the main Community producers, Rhône Poulenc SA, Paris, France; whereas the Commission requested and received very detailed written submissions from all EEC producers with respect to the question of injury and causation thereof;

Whereas account was also taken of information submitted by various EEC consumers of vinyl acetate monomer and of the arguments advanced by them;

Whereas, for the preliminary examination of dumping, the Commission compared export prices to the Community with domestic prices on the US 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 preliminary examination showed, with respect to 1979 that virtually no dumping of vinyl acetate monomer of US origin has occurred; whereas with respect to the first six months of 1980, when exports increased sharply, investigations involving 70 % of all exports led to the preliminary finding that dumping had occurred; whereas the weighted average dumping margin found on dumped exports amounts to 10·6 %;

Whereas with respect to specific companies investigated the preliminary results are as follows:

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No C 169, 9. 7. 1980, p. 2.

— with respect to US Industrial Chemicals Co. dumping was found, the weighted average margin of which amounts to 10·6 % for the first six months of 1980 ; account has been taken of the fact that sales were made at different levels of trade ; a claim made by the company to allow for a 10 to 15 % discount to its distributor, as allegedly common in the United States in this branch of industry, could only be accepted in part as such an allowance had to be based on the lesser costs directly attributable to the difference in the levels of trade ;

— with respect to Union Carbide Corporation dumping was found on the basis of the best evidence available, the weighted average margin of which amounts to 10·6 % ; it has been confirmed by information provided by the company itself that a dumping margin of at least such an amount existed ;

— with respect to Borden Inc., it was found that no direct exports were made to the Community ;

— with respect to Celanese Chemical Company Inc. the price comparisons were influenced by the fact tht quantities and prices varied both for sales on the US domestic market and for exports to the Community ; it was decided for the purpose of the preliminary investigation to compare the most representative weighted average prices on the domestic market with the export prices to the Community, both at an ex-factory level ; on this basis, no dumping was found ;

— with respect to Philips Petroleum Company the price comparison was based on weighted average prices in the United States and export prices to the Community ; no price adjustments or allowances were claimed or deemed necessary for the purpose of the preliminary investigation ; on the basis of this comparison, no dumping was found ;

Whereas, with regard to the injury caused by the dumped imports to the Community industry, the evidence made available to the Commission during the preliminary investigation showed that total imports of US vinyl acetate monomer into the Community increased from 14 820 tonnes in 1977 to approximately 32 500 tonnes for the first six months of 1980 ; whereas it was shown that a substantial quantity of these were imported at dumped prices ;

Whereas the Commission has taken account of the fact that, both in the Community and in the United States, a large part of the vinyl acetate monomer production is consumed captively by the producers themselves ; whereas the share of the free, i.e. non-captive, market held by US imports has increased from 9·8 % in 1977 to approximately 31·5 % for the first six months of 1980 ; whereas the market share of dumped imports amounts to 17 % in the first six months of 1980 ;

Whereas a further increase in imports has occurred afterwards ; whereas these increases are due in large part to the fact that the Community market seems to form the most likely export market for the United States where actual production and production capacity exceed the domestic demand ;

Whereas with respect to resale prices in the Community of imported vinyl acetate monomer from the United States a distinction can be made between those, generally larger, exporters who have traditionally supplied a substantially identical group of customers in the Community and who have generally adhered to responsible pricing policies and those companies who tend to sell less regularly, mostly to different customers, as well as those who have recently entered the Community's vinyl acetate market ; whereas, particularly in the first and second quarters of 1980, resale prices of the latter companies have substantially undercut the prices of locally produced vinyl acetate monomer ;

Whereas the consequent impact on the Community industry originally consisted of price supression, recently took the form of price depression and led to a reduction of market shares held by EEC producers of approximately 21·5 % between 1977 and 1980 ; whereas some Community producers have sharply reduced their production levels as a result ; whereas others have tried to maintain remaining market shares by selling at ever lower prices ;

Whereas at present all Community producers are forced to sell at prices which are not sufficient to recover the increased costs and are unable to remedy this situation by means of using more product captively ; whereas as a result, all producers are incurring losses, some of which are extremely high ; whereas various producers are considering the termination of their production of vinyl acetate monomer altogether which may threaten the employment of approximately 1 070 workers ;

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 has remained relatively stable in spite of certain market fluctuations ; whereas, furthermore, the volume of non-dumped imports has not shown the same sudden increase as the volume of dumped imports, even if they amount to significant quantities and were sold at prices which, given the highly competitive nature of the market, were not substantially different ; 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 in the volume of imports of dumped vinyl acetate monomer and the prices at which such dumped imports have

been offered for sale have led the Commission to conclude that the impact caused by the dumped imports taken by themselves constitutes material injury;

Whereas in these circumstances and in order to prevent injury being caused during the proceeding, the interests of the Community call for immediate intervention consisting in the imposition of a provisional anti-dumping duty on imports of vinyl acetate monomer originating in the United States of America, at a rate which, having regard to the extent of injury caused, should be equal to the dumping margins provisionally established; whereas in this context, the Commission has considered the effects which any protective measures would have on the so-called non-integrated producers of paints and adhesives, products for which vinyl acetate monomer is one of the base raw materials; whereas those effects, coupled with the level of the provisional duty, have not led to other conclusions;

Whereas, one of the exporters, US Industrial Chemicals Co., has meanwhile voluntarily undertaken to increase its price to levels which eliminate the dumping margin found; whereas the Commission considers this undertaking to be acceptable; whereas it is consequently appropriate to exclude the imports of the products manufactured and exported by this company from the application of the duty;

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on vinyl acetate monomer falling within Common Customs Tariff subheading ex 29.14 A II c) 1 and corresponding to NIMEXE code 29.14-32 originating in the United States of America.

2. This duty shall not apply to vinyl acetate monomer exported by:

— Celanese Chemical Company Inc., Dallas, USA,

— International Petroleum Sales Inc., Panama, a member of the Phillips Petroleum group, and

— US Industrial Chemicals Co., a division of National Distillers and Chemical Corporation, New York, USA.

3. The duty referred to in paragraph 1 shall be at a rate of 10·6 % on the basis of the value declared in accordance with Commission Regulation (EEC) No 1496/80 of 11 June 1980 on the declaration of particulars relating to customs value and on documents to be furnished [1].

4. The provisions in force concerning customs duties shall apply for the application of this duty.

5. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to payment of a deposit, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 3017/79, the parties concerned may make known their views, and apply to be heard orally by the Commission, within a month of the entry into force of this Regulation.

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 3017/79, this Regulation shall be applicable for four months or until the adoption by the Council of definitive measures.

Article 3

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, 20 November 1980.

For the Commission

Wilhelm HAFERKAMP

Vice-President

[1] OJ No L 154, 21. 6. 1980, p. 16.