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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 490/90

of 26 February 1990

repealing Regulations (EEC) No 1826/84 and (EEC) No 1282/81 imposing definitive anti-dumping duties on imports of vinyl acetate monomer originating in Canada and the United States of America respectively

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Articles 9 and 14 thereof,

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

Whereas :

A. Procedure

(1) A definitive anti-dumping duty was imposed on imports of vinyl acetate monomer (VAM) originating in Canada by Council Regulation (EEC) No 1826/84 [2], as amended by Regulation (EEC) No 2879/87 [3].

A definitive anti-dumping duty on imports of VAM originating in the United States of America was imposed by Council Regulation (EEC) No 1282/81 [4], as amended by Regulation (EEC) No 2357/87 [5].

In November 1988 the Commission received a request lodged on behalf of Quantum Chemical Corporation, a US producer/exporter, for a review of the anti-dumping measures applicable to imports of VAM originating in the United States of America.

In that request, based on Article 14 of Regulation (EEC) No 2423/88, it was claimed that dumping was no longer taking place and that the imports of VAM from the USA had ceased to cause injury to the Community industry. The Commission considered that there was sufficient evidence to warrant a review of the measures.

In view of the allegations made by the US producer/exporter and the consequent possibility that exports of VAM originating in Canada were also no longer being dumped or causing injury to the Community industry, the Commission considered it appropriate to extend the review to include imports of VAM originating in Canada to ensure that the duty would remain in force only to the extent necessary to counteract dumping which is causing injury.

(2) The Commission accordingly announced, by a notice in the *Official Journal of the European Communities* [6], the initiation of a review of anti-dumping measures concerning imports into the Community of VAM originating in Canada and the United States of America and commenced an investigation.

(3) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainants, and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

The Conseil Européen des Fédérations de l'Industrie Chimique (Cefic), the Community producers of VAM, most exporters and some importers made their views known in writing, Cefic and some importers requested, and were granted, hearings.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 170, 29. 6. 1984, p. 70.
[3] OJ No L 275, 29. 9. 1987, p. 1.
[4] OJ No L 129, 15. 5. 1981, p. 1.
[5] OJ No L 213, 4. 8. 1987, p. 32.
[6] OJ No C 105, 25. 4. 1989, p. 3.

One of the largest free market consumers of VAM in the Community made its views known in writing and requested, and was granted, a hearing.

(4) The Commission sought and verified all information it deemed to be necessary for the purpose of its determination and carried out investigations at the premises of the following companies:

Community producers:

— BP Chemicals Ltd, London, United Kingdom,

— Montedipe Srl, Milan, Italy,

— Wacker Chemie GmbH, Munich, Germany,

— Rhône Poulenc SA, Paris, France.

Canadian producer/exporter:

— Celanese Canada Inc. Toronto, Canada.

US producers/exporters:

— Hoechst Celanese Chemical Group, Dallas, USA,

— Quantum Chemical Corporation, Cincinnati, USA.

Importers related to an exporter:

— Quantum Chemical Europe BV, Bavel, the Netherlands,

— Hoechst Celanese NV, Brussels, Belgium.

(5) The investigation of dumping covered the period from October 1988 to March 1989 inclusive.

B. Dumping

I. *Normal value*

(6) Normal value was established for all producers/exporters involved in the proceeding on the basis of the weighted average domestic prices of sales to independent customers. These prices were net of all discounts and rebates directly related to the sales of VAM. It was also established that domestic sales of the companies investigated in Canada and the United States of America were profitable.

One exporter, however, did not provide details on its profitability of domestic sales. The Commission considered that the data concerning profitability constituted an essential part of the information needed and therefore informed the company that, in the absence of such information, normal value would be established on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. In this connection, the Commission considered that the results of its investigation provided the most appropriate basis for determination of normal value and established normal value on the basis of the highest weighted average domestic price found for the exporters which did fully cooperate.

II. *Export price*

(7) With regard to exports by Canadian and US producers/exporters directly to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the product sold.

When exports to the Community were made to subsidiary companies, it was considered appropriate, in view of the relationship between exporter and importer, that export prices be constructed on the basis of prices at which the imported product was first resold to an independent buyer. Discounts and rebates were, where appropriate, deducted from the price to the first independent buyer. Suitable adjustments were made to take account of ail costs incurred between import and resale plus a 5 % profit on sales turnover.

One related importer disagreed with the rate of profit used by the Commission. However, the Council considered that 5 % was a minimum profit required for an independent importer of a chemical product like VAM. Moreover, a 5 % profit had also been used during the previous review proceeding.

Where cost allocations were necessary in constructing export prices they were made on the basis of turnover. The costs and turnover used for this purpose were generally those of the related importers' last available financial year and accordingly based on audited accounts.

C. Comparison

(8) For the purpose of a fair comparison between normal value and export price, and in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88, the Council took account of differences affecting price comparability, such as differences in terms of sale, where claims of a direct relationship of these differences to the sales under consideration could be satisfactorily demonstrated. This was the case in respect of differences in transport, insurance, handling and ancillary costs, credit terms, commissions and salaries paid to salesmen. All comparisons were made at ex-works level.

D. Dumping margins

(9) Normal value, which was established on a weighted average basis for each of the producers' domestic sales of VAM and in one case on the basis of the highest domestic price of another producer, was

compared with the export prices on a transaction-by-transaction basis. The examination of the facts showed that export prices exceeded normal value for every exporter investigated in both Canada and the United States of America.

E. Injury

(10) In view of the above findings with respect to dumping, it is considered unnecessary to deal with the issue of injury.

F. Termination

(11) In the light of the above findings, it is concluded that in the absence of dumping, this review proceeding should be terminated and the anti-dumping duties referred to under recital (1) should be repealed.

The Community producers concerned were informed of the essential facts and considerations on the basis of which it was intended to terminate the review proceeding and were given the opportunity to comment. The industry considered that the situation prevalent during the investigation period was abnormal, since prices in the market had increased abnormally following a shortage of raw materials and, consequently, of VAM. It was claimed that, once the shortage was eliminated from the market, this would lead to a recurrence of dumping and injury. The industry suggested therefore that the measures remain in force.

After giving due consideration to the objections raised by the industry, however, it is concluded that, in the absence of any dumping throughout the investigation period, the proceeding should be terminated and the anti-dumping measures repealed.

(12) No objections to the termination of this proceeding were raised in the Advisory Committee.

HAS ADOPTED THIS REGULATION:

Article 1

Regulations (EEC) No 1826/84 and (EEC) No 1282/81 are hereby repealed.

Article 2

The anti-dumping proceedings concerning imports of vinyl acetate monomer originating in Canada and the United States of America and falling under CN code 2915 32 00 are hereby terminated.

Article 3

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, 26 February 1990.

For the Council

The President

M. SMITH