

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 18 April 1983

**terminating the anti-dumping proceeding in respect of imports of acrylonitrile
originating in the United States of America**

(83/162/EEC)

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⁾,
as amended by Regulation (EEC) No 1580/82⁽²⁾, and
in particular Article 9 thereof,

Having regard to the proposal from the Commission,
submitted following consultation of the Committee set
up under the abovementioned Regulation,

A. Procedure

Whereas in April 1982 the Commission received a
complaint from the European Council of Chemical
Manufacturers' Federations (CEFIC), lodged on behalf
of the great majority of Community producers of
acrylonitrile, which account for some 90 % of produc-
tion in the Community;

Whereas the complaint contained evidence of the
existence of dumping and resultant material injury;
whereas this was considered sufficient to justify the
initiation of a proceeding; whereas the Commission
therefore announced, in a notice published in the

Official Journal of the European Communities⁽³⁾, the
initiation of an anti-dumping proceeding concerning
imports of acrylonitrile falling within heading No ex
29.27 of the Common Customs Tariff (NIMEXE code
29.27-10), originating in the United States of America,
and opened an investigation;

Whereas the Commission officially informed the
exporters and importers known to be concerned, and
the US Government;

Whereas the Commission gave all interested parties
the opportunity to make their views known in writing
and to request a hearing;

Whereas most of the US exporters and a number of
importers known to be concerned took the opportu-
nity to make their views known in writing; whereas,
in particular, one of the exporters, Vistron Corpora-
tion, Cleveland, Ohio, requested and obtained a
hearing;

Whereas a major Community end user of acrylonitrile,
Courtaulds Ltd, Coventry, United Kingdom, took the
opportunity to make its views known in writing and at
a hearing; whereas the International Rayon and
Synthetic Fibres Committee also made its opinion
known in writing;

Whereas for the purposes of arriving at a preliminary
finding as to whether dumping and injury had
occurred, the Commission endeavoured to gather and
check all the information it considered necessary, and
carried out on-the-spot checks at the following
companies:

⁽¹⁾ OJ No L 339, 31. 12. 1979, p. 1.

⁽²⁾ OJ No L 178, 22. 6. 1982, p. 9.

⁽³⁾ OJ No C 84, 3. 4. 1982, p. 2.

— Community producers :

- CdF Chimie — Norsolor, Paris La Défense,
- Erdölchemie GmbH, Köln,
- ANIC, Milano,
- Montedipe, Milano,
- Border Chemicals, London,
- Monsanto Europe SA, Bruxelles,
- DMS Marketing Centre Chemicals and Polymers, nv, Urmond ;

— Exporters :

- Dupont de Nemours, Wilmington, Delaware,
- Vistron Corporation, Cleveland, Ohio,
- Monsanto, Saint-Louis, Missouri,
- ICC Industries, Inc., New York,
- Fallek Chemicals Corp., New York ;

Whereas the Commission requested and obtained detailed written comments on the alleged dumping, injury and its causes from complainant producers in the Community and also from most US exporters and certain importers ; whereas the information obtained was checked by the Commission in so far as necessary ;

Whereas the investigation period adopted by the Commission to determine whether dumping had occurred was the 12 months up to 31 March 1982 ;

B. Normal value

Whereas in order to determine whether the imports originating in the United States of America had been dumped, the Commission requested exporters to provide it with details of their sales during the investigation period on the US domestic market to non-associated customers, or details of their production costs ;

Whereas, in order to establish whether exporters had engaged in dumping, the Commission determined the normal value on the basis of the weighted average quarterly selling price at the fob — place of production stage of acrylonitrile sold on the US domestic market to non-associated customers ; whereas in the case of Dupont de Nemours, which refused to divulge the prices at which it effected sales on the domestic market or details of its production costs, the Commission considered that, in order not to encourage a refusal to cooperate, the normal value should be established every quarter on the basis of the highest normal value determined for the other producers exporting to the Community ; whereas for exporters not selling on the domestic market, the normal value

was established on the basis of the quarterly average of the other exporters' selling prices on the US market ;

C. Export prices

Whereas with regard to export prices, the Commission adopted the prices actually paid or payable for exports to the Community, as ascertained from the exporters' documents ; whereas a certain number of standard adjustments were made to enable an export price at the fob stage to be calculated ; whereas the Commission accordingly took into account, on the basis of the checked information, the terms of payment, transport costs to the Community frontier and related costs such as insurance premiums and any warehousing costs ;

Whereas the Commission included in its calculation of the export prices all consignments of acrylonitrile to the Community which formed the subject of transactions during the investigation period ;

Whereas in this connection Vistron Corporation asserted that, under the terms of Council Regulation (EEC) No 3017/79, transactions carried out for the purposes of inward processing under cover of customs document T 1 should not be taken into account for calculating export prices ; whereas, furthermore, according to that firm, taking such transactions into consideration in the calculation of dumping margins would run counter to Article VI of GATT and Article 2 of the Anti-Dumping Code (Agreement of 1979 on implementation of Article VI of the General Agreement on tariffs and trade) ;

Whereas the Commission considers that it would be entirely out of the question to exclude from the basis of calculation transactions effected under cover of customs document T 1 with customs duties temporarily suspended, for the following reasons of principle :

- firstly, there is a possibility that Community producers may suffer injury as a result of these imports in respect of which customs duties are temporarily suspended, owing either in particular to the indirect effect on Community market prices or to a reduction in the outlets offered to producers,
- furthermore, excluding T 1 imports from the basis of calculation of the export prices would offer considerable scope for abuse in anti-dumping proceedings since subsequent release for home use (or re-export) would be difficult for either the Commission or the Member States themselves to substantiate ;

Whereas the Anti-Dumping Code and Community legislation confine the collection of anti-dumping duties to goods imported and consumed in the importing country ; whereas with respect to the determi-

nation of dumping, the Anti-Dumping Code and Regulation (EEC) No 3017/79 specify that the calculation should be based not on import prices but on export prices, which implies that all export transactions should be taken into consideration ;

D. Comparison

Whereas, in order to determine whether the goods were being dumped, the normal values as defined above were therefore compared transaction by transaction at the fob stage with the export prices to the Community at the same stage, over the period of the investigation ; whereas a quarterly comparison was effected, using weighted averages where appropriate ;

Whereas although Vistron Corporation disclosed details of its sales on the domestic market and its production costs, it claimed that the prices charged on sales on the US domestic market were not comparable with the prices charged on its exports to the Community ; whereas according to Vistron, the US market is made up of transactions carried out under long-term or medium-term contracts while export markets, and especially the Community market, are spot markets, and normal value ought to be calculated either on the basis of the export price of US acrylonitrile to third countries, or by using a constructed value, or by correcting selling prices recorded on the domestic market by the amounts necessary to establish price comparability ;

Whereas after a detailed examination of Vistron's arguments, the Commission has concluded that the prices ascertained by it, whether on the US acrylonitrile market or on exports to the Community, are intrinsically comparable, since both correspond to normal commercial transactions ; whereas, in addition, the adjustments to the normal value requested by Vistron, to reflect the lower 'infrastructure costs' which the corporation and its US customers would enjoy if the domestic market were also a spot market, are unacceptable as they do not correspond to differences in the conditions of sale directly relevant to the sales here considered ;

Whereas on the basis of the information available to it, therefore, the Commission failed to find any differences which could significantly affect price comparability in terms of either physical characteristics, quantity, conditions or manner of sale or stage of transaction, between sales of acrylonitrile on the US market and exports to the Community ; whereas the only adjustments made were the standard ones for terms of payment, transport and related costs, designed to permit comparison at the fob — place of production stage ;

E. Margins

Whereas it emerged from the above facts that imports which had been the subject of investigation and had originated in the United States were being dumped ;

Whereas the extent of dumping varied from exporter to exporter ; whereas in each case, the dumping margin has been taken as the difference between the normal values, as defined above, and the prices charged for exports of acrylonitrile to the Community ; whereas the dumping margins arrived at for the various exporters expressed as a percentage of the free at Community frontier price, not cleared through customs, were as follows :

- Fallek Chemical Corporation :
no exports of US acrylonitrile during the period covered by the investigation,
- ICC Industries :
dumping margins varying from 10,70 to 15,00 % with a weighted average of 12,76 %,
- Dupont de Nemours :
dumping margins varying from 10,68 to 16,51 % with a weighted average of 13,67 %,
- Monsanto Company :
dumping margins varying from 1,00 to 22,80 % the weighted average being 11,50 %,
- Vistron Corporation :
dumping margins varying from 11,52 to 20,07 % with a weighted average of 16,41 % ;

F. Injury

Whereas with regard to injury to the Community industry from imports of dumped US acrylonitrile, the information available to the Commission shows that total imports into the Community, including both goods released from home use and imports under temporary admission arrangements, rose from 28 143 tonnes in 1978 to 54 251 tonnes in 1979, falling back to ...⁽¹⁾ tonnes in 1981 and rising again to ... tonnes in the first quarter of 1982 ; whereas this corresponded to an increase in the market share taken by these imports from 3,3 % in 1978 to 4,9 % in 1981, and from 5,8 to 9,5 % on the open market only ;

Whereas depending on the year, between 90 and 97 % of these imports come in under the inward processing arrangements (T 1 imports) ;

⁽¹⁾ The figures are confidential.

Whereas according to the evidence available to the Commission, the selling prices of the dumped imports in the Community were only 3 % lower than the prices charged by Community producers, but the selling price of these imports were nevertheless below the minimum level which would enable those producers to cover their costs;

Whereas with regard to the possible impact of the imports on the Community industry, the evidence available to the Commission shows that:

- imports of US acrylonitrile on which customs duties were temporarily suspended under the inward processing arrangements, which accounted for 97 % of imports originating in the United States of America during the period covered by the investigation, exercised a downward pressure on prices on the open Community market, in that during the quarterly price negotiations the main Community end users aim not to buy Community acrylonitrile at a higher price than they would have to pay for US acrylonitrile released for home use (T 2 imports), viz. the price of (dumped) T 1 imports plus customs duties, which is below the break-even level for almost all producers,
- the volume of imports originating in the United States, whether under the temporary admission arrangements or for home use, reduces demand for Community products where, as in this case, they come in at low prices over a long enough period,
- consequently, imports of US acrylonitrile, most of which come in under temporary admission arrangements, do cause some injury to Community producers,
- however, the Commission is firmly of the opinion that the 5,7 % drop in the complainants' production between 1979 and 1981 (from 703 276 to 662 906 tonnes) and the 25,8 % decline in their total sales on the Community market (from 658 953 to 488 806 tonnes) over the same period are due mainly to factors other than imports from the United States which are affecting Community production either individually or in combination,
- in particular, consumption of acrylonitrile on the open Community market fell from approximately 511 250 tonnes in 1979 to an estimated 447 400 tonnes in 1981, a decline of 12,5 %, while over the same period total Community production capacity

increased by 60 000 tonnes (+ 5 %), which is far in excess of the small increase (16 000 tonnes) in captive use by industry; as a result, the average capacity utilization rate in the Community industry fell from 67 to 59 %,

- in addition, the volume of imports against which no dumping is alleged increased from 60 322 tonnes in 1978 to 103 665 tonnes in 1981, an increase of 71,8 %, which further unbalanced the Community market;

Whereas, in these circumstances, it appears that the slump in demand on the open market coupled with a simultaneous increase in production capacity and the steep rise in imports against which no dumping is alleged are the main causes of the difficulties experienced by the Community industry and in particular the disastrous financial results of the producers, most of whom have made huge losses on acrylonitrile;

Whereas, accordingly, while it accepts that dumped imports have caused some injury to Community producers, the Commission cannot conclude from the evidence available to it that such injury taken in isolation can be regarded as material;

Whereas the Commission finds confirmation for this view in the fact that the authorities in the Member States responsible for issuing processing authorizations have regularly renewed such import authorizations over the years, which indicates on the basis of Article 5 of Directive 69/73/EEC⁽¹⁾, that the imports do not conflict with the essential interests of Community producers;

Whereas, in addition, acrylonitrile is the feedstock for the acrylic fibre industry, accounting for 40 % of its production costs; whereas, given the harsh competition on the Community and world acrylic fibre markets, protective measures would not be in the Community's interests at present; whereas the investigation need not, therefore, be continued and the proceeding in respect of imports of acrylonitrile from the United States should be terminated;

Whereas two of the Member States consulted raised objections,

⁽¹⁾ OJ No L 58, 8. 3. 1969, p. 1.

HAS DECIDED AS FOLLOWS:

Done at Luxembourg, 18 April 1983.

Sole Article

The anti-dumping proceeding in respect of imports of acrylonitrile originating in the United States is hereby terminated.

For the Council

The President

I. KIECHLE
