

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(83) 151 final

Brussels, 15 March 1983

Proposal for a

COUNCIL DECISION

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

(83/ /EEC)

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(submitted to the Council by the Commission)

COM(83) 151 final



EXPLANATORY MEMORANDUM

1. On 3 April 1982, the Commission published a notice of the initiation of an anti-dumping proceeding in respect of imports of acrylonitrile originating in the United States.

2. The investigation revealed that, depending on the year, 90% to 97% of these imports entered the Community as processing traffic (imports under cover of customs document T1).

The position adopted with regard to temporary imports was obviously the same as that adopted in an earlier case where such imports had to be taken into account for the purpose of determining the incidence of dumping, i.e. the VAM case (vinyl acetate).

The dumping margin was therefore determined by including in the basis of calculation all acrylonitrile exports to the Community, irrespective of whether they were intended for home use or effected under the inward processing arrangements.

3. The investigation revealed dumping margins varying from 11.5% to 16.41%, depending on the exporter.

4. With regard to the injury caused, the total volume of acrylonitrile imports originating in the United States - including T1 imports - after having reached a maximum of 55 000 t in 1979, has subsequently fluctuated between only 40 000 and 45 000 t, never exceeding 4.9% of the total market.

Although the complainants' production decreased by 5.7% between 1979 and 1981, and their total sales on the Community market went down by 25.8% - from 659 000 t to 489 000 t - this is due mainly to factors other than US imports:

- i) notably the fact that, whereas the level of acrylonitrile consumption on the open Community market fell by 12.5% between 1979 and 1981, during the same period Community producers increased their production capacity by 60 000 t, resulting in a drop in the average rate of use of this capacity and inevitable pressure on prices;

ii) furthermore, the volume of imports against which no allegation of dumping was made - therefore originating in countries other than USA - rose from 60 000 t in 1978 to 104 000 t in 1981, i.e. a considerable increase which aggravated the imbalance on the Community market.

In the light of the foregoing, the Commission reached the conclusion that the injury caused by imports of acrylonitrile originating in the United States could not be regarded as material, since the real causes underlying the difficulties affecting the Community industry were largely the following:

- i) a sharp drop in demand on the open market;
- ii) the simultaneous increase in production capacity;
- iii) the sharp increase in imports from other countries.

5. In these circumstances and given the very keen competition on the world market in acrylic fibres, of which acrylonitrile represents 40% of the production costs, the Commission considers that no measures are called for at present to protect the Community's interests.

6. The Member States were informed of this proposal for the termination of the proceeding when the Anti-Dumping Committee was consulted. France and the United Kingdom expressed reservations on behalf of their producers.

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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<sup>1</sup>, as amended by Regulation (EEC) No 1580/82<sup>2</sup>, and in particular Article 9 thereof,

Having regard to the proposal from the Commission, submitted following consultation within the Committee set up under the above-mentioned Regulation,

Whereas:

A. Procedure

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 production in the Community;

The complaint contained evidence of the existence of dumping and resultant material injury. This was considered sufficient to justify the initiation of a proceeding. The Commission therefore announced, in a notice published in the Official Journal of the European Communities<sup>3</sup>, the initiation of an anti-dumping proceeding concerning imports of acrylonitrile falling within Common Customs Tariff heading ex 29.27, corresponding to NIMEXE code 29.27-10, originating in the United States of America, and opened an investigation.

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<sup>1</sup> OJ No L 339, 31.12.1979, p. 1.

<sup>2</sup> OJ No L 178, 22.06.1982, p. 9.

<sup>3</sup> OJ No C 84, 03.04.1982, p. 2.

The Commission officially informed the exporters and importers known to be concerned, and the US Government.

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

Most of the US exporters and a number of importers known to be concerned took the opportunity to make their views known in writing; one of the exporters, Vistron Corporation, Cleveland, Ohio, requested and obtained a hearing.

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; the International Rayon and Synthetic Fibres Committee also made its opinion known in writing.

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:

- 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
- Falleg Chemicals Corp., New York

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; the information obtained was checked by the Commission insofar as necessary.

The investigation period adopted by the Commission to determine whether dumping had occurred was the twelve months to 31 March 1982.

B. Normal value

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.

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. 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 co-operate, 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. 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

As regards export prices, the Commission adopted the prices actually paid or payable for exports to the Community, as ascertained from the exporters' documents. A number of standard adjustments were made to enable a FOB export price to be calculated. The Commission accordingly took into account, on the basis of the checked information, the terms of payment, transport costs to the Community frontier and allied costs such as insurance premiums and any warehousing costs.

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.

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 T1 should not be taken into account for calculating export prices. Furthermore, according to that firm, taking such transactions into consideration in the calculation of dumping margins would run counter to Article VI of the GATT and Article 2 of the Anti-Dumping Code<sup>1</sup>.

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 T1 with customs duties temporarily suspended, for the following reasons of principle:

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<sup>1</sup> Agreement of 1979 on implementation of Article VI of the General Agreement on Tariffs and Trade.

- firstly, there is a possibility that Community producers may suffer injury as a result of these imports in respect of <sup>which</sup> customs duties are temporarily suspended, owing either to the indirect effect on Community market prices or a reduction in the outlets offered to producers;
- furthermore, excluding T1 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.

The Anti-Dumping Code and Community legislation confine the collection of anti-dumping duties to goods imported and consumed in the importing country. As for the determination 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

Accordingly, in order to determine whether the goods were being dumped, the normal values as defined above were 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; a quarterly comparison was effected, using weighted averages where appropriate.

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. According to Vistron, the US market is made up of transactions carried out under long-term or medium-term contracts while export markets, including the Community, are spot markets, and normal value ought therefore 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 comparability.

After giving full consideration to 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. 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 conditions of sale directly relevant to the sales here considered.

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. The only adjustments made were the normal ones for terms of payment, transport and related costs, designed to permit comparison at the FOB - place of production stage.

#### E. Margins

It emerged from the above facts that imports of the product in question originating in the United States were being dumped.

The extent of dumping varied from exporter to exporter. 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. 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

As regards 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 for home use and imports under temporary admission arrangements, rose from 28 143 tonnes in 1978 to 54 251 tonnes in 1979, falling back to ...\* tonnes in 1981 and rising again to ...\* tonnes in the first quarter of 1982. This corresponded to an increase in the market share taken by these imports from 3.3% in 1978 to 4.9% in 1981; for the open market only, the figures are 5.8% and 9.5% respectively.

Depending on the year, between 90% and 97% of these imports come in under the inward processing arrangements (T1 imports).

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\*The figures are confidential.

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 were nevertheless below the minimum level which would enable those producers to cover their costs.

As regards the 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 from the USA 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 (T2 imports), viz. the price of (dumped) T1 imports plus customs duties, which is below the break-even level for almost all producers;
- the volume of imports from 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 tonnes to 662 906 tonnes) and the 25.8% decline in their total sales on the Community market (from 658 953 tonnes 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.

This indicates 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; most producers have made huge losses on acrylonitrile.

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.

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 authorizations over the years, which indicates on the basis of Article 5 of Council Directive 67/73/EEC<sup>1</sup> that the imports do not conflict with the essential interests of Community producers.

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<sup>1</sup>OJ No L 58, 08.03.1969, p. 1.

Acrylonitrile is the feedstock for the acrylic fibre industry, accounting for 40% of its production costs. Given the harsh competition on the Community and world acrylic fibre markets, protective measures would not be in the Community's interests at present. Accordingly, the investigation may be closed and the proceeding in respect of imports of acrylonitrile from the United States terminated.

Two of the Member States consulted raised objections.

HAS DECIDED AS FOLLOWS:

Sole Article

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

Done at Brussels,

For the Council