II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 22 September 1986

accepting undertakings given in connection with the anti-dumping proceeding concerning imports of certain acrylic fibres originating in Israel, Mexico, Romania and Turkey and terminating the investigation

(86/468/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (1) and in particular Article 10 thereof,

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

Whereas :

A. Procedure

(1) In May 1985 the Commission received a complaint lodged by the Comité International de la Rayonne et des Fibres Synthétiques on behalf of Community producers representing substantially all Community production of the products in question.

The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding. The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* (2), the initiation of an anti-dumping proceeding concerning imports into the Community of discontinuous acrylic fibres, not carded, combed or otherwise prepared for spinning falling within subheading ex 56.01 A of the Common Customs Tariff (NIMEXE code 56.01-15), continuous filament tow for the manufacture of discontinuous acrylic fibres falling within subheading ex 56.02 A of the Common Customs Tariff (NIMEXE code 56.02-15), and discontinuous acrylic fibres carded, combed or otherwise prepared for spinning falling within subheading ex 56.04 A of the Common Customs Tariff (NIMEXE code ex 56.04-15) originating in Israel, Mexico, Romania and Turkey and commenced an investigation.

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

(3) All of the exporters and certain importers made their views known in writing. In addition, the exporters concerned requested and were granted hearings. Submissions were also made by a small number of Community processors of the products in question.

(4) The Commission requested and received detailed written submissions from all complainant Community producers, all exporters and certain importers. All information deemed necessary for the purposes of a preliminary determination was verified and investigations were carried out at the premises of the following :

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No C 159, 29. 6. 1985, p. 2.

(a) *Community producers*

Anic Fibre SpA, San Donato Milanese (Italy),
Bayer AG, Leverkusen (Federal Republic of Germany),
Courtaulds PLC, London (United Kingdom),
Courtaulds SA, Neuilly (France),
Hoechst AG, Frankfurt (Federal Republic of Germany),
Montefibre SpA, Milan (Italy),
Snia Fibre SpA, Cesano Maderno (Italy);

(b) *Non-Community producers/exporters*

Israel Chemical Fibres Ltd, Ashdod (Israel),
Celanese Mexicana SA, Mexico City (Mexico),
Celulosa y Derivados SA, Guadalajara (Mexico),
Akrilik Kimya Sanayii AS, Yalova (Turkey),
AK-PA Tekstil Ihracat Pazarlama AS, Istanbul (Turkey);

(c) *Community importers*

Cofis Srl, Prato (Italy),
Lafis, Calenzano (Italy),
Montebianco Industrie Tessili SpA, Biella (Italy),
Tessibel SAS, Prato (Italy),
Rohtex Textil GmbH, Mönchengladbach (Federal Republic of Germany),
Schaette Linder GmbH, Mönchengladbach (Federal Republic of Germany).

The investigation of dumping covered the calendar year 1984.

B. Normal value

(a) *Turkey*

(5) Normal value was provisionally determined on the basis of the domestic prices of the producer Akrilik Kimya Sanayii AS who provided sufficient evidence, and were considered to be representative of the domestic market concerned. Normal value was established only for continuous filament tow since there were no exports of the other types of acrylic fibres concerned by this procedure.

(b) *Israel*

(6) The preliminary investigation to determine the existence of dumping showed that the prices of the like products marketed by the exporter on his domestic market had, over an extended period of time, been lower than all costs both fixed and variable ordinarily incurred in its production. The normal value was therefore determined on the basis of constructed value which was computed by taking the company's total cost of materials and manufacture, including overheads, and adding a profit margin of 5 %, considered to be reasonable in the light of the industry's performance during a representative profitable period.

Normal value was established only for discontinuous acrylic fibres, not carded, combed or otherwise prepared and for continuous filament tow. Normal value was not established for discontinuous acrylic fibres, carded, combed or otherwise prepared because exports of this product to the Community were found to be occasional and considered to be *de minimis*.

(c) *Mexico*

(7) The preliminary investigation to determine the existence of dumping showed that the prices of the like products marketed by the two Mexican exporters on their domestic market had, over an extended period of time, been lower than all costs both fixed and variable ordinarily incurred in their production. Normal value was therefore determined on the basis of constructed value.

(8) For Celulosa y Derivados SA, the constructed value was computed by taking the company's total cost of materials and manufacature, including overheads, and adding a profit of 7 % considered to be reasonable in the light of the profitability of the company in the previous three-year period.

With regard to substandard fibres, normal value was determined on the basis of the selling prices on the domestic market, account being taken of the losses for the reference period and the abovementioned profit margin.

(9) For Celanese Mexicana SA the constructed value was computed by taking the company's total cost of materials and manufacture including overheads, and adding a profit of 5 %, considered to be reasonable in the light of the industry's performance during a representative profitable period.

As far as substandard fibres are concerned, in seeking to determine the normal value for Celanese Mexicana, the Commission had to take account of the fact that no sales of the like product were made by Celanese Mexicana on the domestic market. The Commission therefore determined normal value for this company and these fibres on the basis of the selling prices on the domestic market of the other Mexican producer and exporter, i.e. Celulosa y Derivados SA.

(d) *Romania*

(10) In order to establish whether the imports from Romania were dumped, the Commission had to take account of the fact that this country does not have a market economy and therefore had to base its determinations on the normal value in a market economy country. In this connection the complainants had suggested the Turkish market. There were no objections to this suggestion.

The Commission is satisfied that in Turkey there are no extraordinary differences in production processes with the exporting country or in the scale of production and that there is sufficient internal competition to ensure that price levels are in a reasonable proportion to production costs. The Commission, therefore, concluded that it would be appropriate and not unreasonable to determine normal value on the basis of domestic prices in Turkey.

(11) Normal value was established only for discontinuous acrylic fibres, not carded, combed or otherwise prepared and for discontinuous acrylic fibres, carded, combed or otherwise prepared. Normal value was not established for continuous filament tow because exports of this product to the Community were found to be occasional and considered to be *de minimis.*

C. Export price

(12) Export prices were determined on the basis of the prices actually paid or payable for the products sold for export to the Community.

D. Comparison

(13) In comparing normal value with export prices the Commission took appropriate account of the differences influencing the comparability of the prices, in so far as these were sufficiently substantial. Those differences concerned, in particular, the exemption of entry duties and domestic turnover tax on the raw materials used for manufacturing the exported acrylic fibres as well as in physical characteristics and payment terms.

In addition, adjustments were also proposed for differences in certain cost savings in producing large batches for export and for marketing expenses on the domestic market. However, the evidence submitted was not sufficient to prove the savings in the cost of producing different quantities or the existence of the alleged marketing expenses.

Finally, an adjustment was proposed by the Israeli exporter for amounts collected by him under an insurance contract intended to cover losses from differences between the inflation rate in Israel and the rate of devaluation of the national Israeli currency. The Commission did not accept this claim since this insurance did not have any direct effect on the price paid by Community customers for the product exported by the Israeli exporter.

All comparisons were made at an ex-works level.

E. Margins

(14) Dumping margins were established by comparing the normal value determined as described above with export prices on a transaction-by-transaction basis, exports at identical prices being grouped together. The above examination shows the existence of dumping in respect of all the exporters involved. The dumping margins vary according to the exporter, the importing Member State and the type and quality of the product concerned. The weighted average margins for each of the exporters investigated were as follows :

(%)

— AK-PA Tekstil Ihracat Pazarlama AS, Istanbul (NIMEXE code 56.02-15) :	5,50
— Israel Chemical Fibres Ltd, Ashdod (NIMEXE code 56.01-15) :	10,60
— Israel Chemical Fibres Ltd, Ashdod (NIMEXE code 56.02-15) :	6,60
— Celanese Mexicana SA, Mexico City (NIMEXE code 56.01-15) :	28,85
— Celulosa y Derivados SA, Guadalajara (NIMEXE code 56.01-15) :	58,47
— Celulosa y Derivados SA, Guadalajara (NIMEXE code 56.02-15) :	78,04
— Celulosa y Derivados SA, Guadalajara (NIMEXE code ex 56.04-15) :	78,28
— Danubiana, Bucharest (NIMEXE code 56.01-15) :	36,60
— Danubiana, Bucharest (NIMEXE code ex 56.04-15) :	18,50

F. Injury

(15) With regard to the injury caused by the dumped imports the evidence available to the Commission shows that imports into the Community from Israel, Mexico, Romania and Turkey of :

(a) discontinuous acrylic fibres, not carded, combed or otherwise prepared for spinning (NIMEXE code 56.01-15) increased from 892 tonnes in 1981 to 4 735 tonnes in 1984, and were 2 520 tonnes during 1985 ;

(b) continuous filament tow for the manufacture of discontinuous acrylic fibres (NIMEXE code 56.02-15) increased from 9 506 tonnes in 1981 to 12 534 tonnes in 1984 and to 17 468 tonnes in 1985;

(c) discontinuous acrylic fibres, carded, combed or otherwise prepared for spinning (NIMEXE code ex 56.04-15) increased from 901 tonnes in 1981 to 3 802 tonnes in 1984 and were 1 865 tonnes during 1985.

(16) Total imports of all fibres in question into the Communiy from the four countries under consideration increased from 11 299 tonnes in 1981 to 21 071 tonnes in 1984 and to 21 853 tonnes during 1985 with a consequent increase in market share held by the exporting countries from 3 % in 1981 to 5,1 % in 1984 and to 5,4 % in 1985.

(17) Imports into the Communiy from countries other than Israel, Mexico, Romania and Turkey have decreased from 24 396 tonnes in 1981 to 16 552 tonnes in 1984 and to 7 925 tonnes during the first half of 1985 with a consequent decrease in market share from 6,5 % in 1981 to 4 % in 1984 and to 3,7 % in 1985.

(18) The weighted average resale prices to the first independent buyer of the imports from Israel, Mexico, Romania and Turkey undercut those of the Community producers during the investigation period, depending on the exporter, the importing Member State, the type and the quality of the product concerned. The weighted average undercutting margins were as follows:

	%
— AK-PA Tekstil Ihracat Pazarlama, Istanbul (NIMEXE code 56.02-15):	from 0,8 to 4,3
— Israel Chemical Fibres Ltd, Ashdod (NIMEXE code 56.01-15):	from 1,0 to 10,0
— Israel Chemical Fibres Ltd, Ashdod (NIMEXE code 56.02-15):	from 3,7 to 10,8
— Celanese Mexicana SA, Mexico City (NIMEXE code 56.01-15):	from 28,7 to 35,3
— Celulosa y Derivados SA, Guadalajara (NIMEXE code 56.01-15):	from 9,3 to 20,2
— Celulosa y Derivados SA, Guadalajara (NIMEXE code 56.02-15):	from 9,3 to 20,2
— Celulosa y Derivados SA, Guadalajara (NIMEXE code ex 56.04-15):	from 7,5 to 20,3
— Danubiana, Bucharest (NIMEXE code 56.01-15):	from 21,4 to 28,6
— Danubiana, Bucharest (NIMEXE code ex 56.04-15):	from 7,4 to 20,1

(19) The Community industry concerned has increased its production of the acrylic fibres in question from 529 696 tonnes in 1981 to 642 357 tonnes in 1984 and to 668 800 tonnes in 1985. Utilization of capacity has progressed from 72,7 % in 1981 to 84,3 % in 1984 and to 83,3 % in 1985.

(20) However, the evidence available to the Commission shows that prices obtained by Community producers for the same fibres as those that are being dumped are not sufficient to cover the full cost of production of these fibres and allow them a modest profit. In many cases Community producers have had to reduce their prices in order to meet the prices of the dumped imports, thus avoiding reductions in production which would have resulted in further increases in unit costs.

Communiy producers have had to align their prices on a generally very low and insufficient level which has led certain of them to incur substantial losses for the product sector in question since 1981 and has left the others with an insufficient profit margin.

(21) The Commission also considered whether the Community industry faced a threat of injury. Anti-dumping action concerning acrylic fibres began in 1981 when an anti-dumping duty was imposed on exports of certain acrylic fibres originating in the United States of America. The rate of the duty, which is still in force, is 13,7 % for discontinuous acrylic fibres, not carded, combed or otherwise prepared for spinning and 17,6 % on continuous filament tow for the manufacture of discontinuous acrylic fibres.

Imports originating in the United States of America have decreased substantially since then and Community producers, who had suffered heavy losses since 1979, took advantage of this decrease in imports to start a restructuring process which involved reducing capacities and becoming more efficient, until finally, in 1984, some of them realized a small profit.

(22) Imports from Israel, Mexico, Romania and Turkey virtually started in 1980 and reached their highest level in 1984 and 1985. Although the volume of these imports represents only about 6 % of Community consumption, the prices at which these fibres were imported have prevented the restructuring programme of the Community from being completely achieved. The price-depressing effect of these imports has not allowed certain of the Community producers to become as profitable as was planned. Given the recent increase in imports and the price undercutting established, Community producers now run the risk of finding themselves in the same situation as in 1980 to 1981. In addition the Commission had to take account of the following factors :

(a) the significant rate of increase in imports of the dumped products into the Community market (93 % between 1981 and 1985) indicating the likelihood of substantially increased imports thereof ;

(b) the capacities, freely available, of the exporters (Mexico, Romania and Turkey) and the announcement of additional capacities in 1987 (Mexico and Turkey) indicating the likelihood of substantially increased dumped exports to the Community market taking into account the existing price level of Community producers in their market, which is considerably higher than the price level of the other possible export markets of the four countries in question ;

(c) the fact that imports from these countries are entering at prices that have a significant depressing effect on domestic prices and would most likely, as has been the case until now, increase demand for further imports.

All these factors lead the Commission to the conclusion that further dumped imports from Israel, Mexico, Romania and Turkey are imminent and that protective action is necessary, otherwise material injury will occur.

(23) In establishing the impact of the dumped imports on the Community industry the Commission had considered the effect of all dumped imports from all countries and companies concerned. Certain exporters argued that the impact of the individual exports should be looked at in isolation and considered that there was no threat of injury in view of the low level of their market share in the Community.

In analysing whether aggregation was appropriate in each case, the Commission considered whether the dumped imports in question contributed to the threat of injury sustained by the Community industry. In reaching its conclusion, the Commission considered the comparability of the imported products in terms of physical characteristics, the increase in volume of imports from previous comparable periods and the low level of prices attributable to the products of all supplying companies and the extent to which each of the imported product competed in the Community with the like product of the Community industry. On the basis of such analysis the Commission took the view that the dumped imports from the companies concerned could be considered as contributing to the threat of injury suffered and that these imports have been made under such conditions that, should the Commission treat any company in isolation, it would be acting in a discriminatory manner against the rest. Accordingly, the Commission concluded that for the purposes of establishing the level of the threat of injury sustained by the Community industry, regard should be had to the effect of the dumped imports aggregated from all exporting companies concerned.

G. Community interest

(24) Community processing industries have argued that the introduction of protective measures would not be in the Community interest because it would make them less competitive with processed products imported from third countries.

(25) In view of the economic and social importance of the Community industry on the one hand and the relatively low incidence of a price increase on the costs of the processing industry on the other hand, the Commission has nevertheless come to the conclusion that it is in the Community's interests that action be taken.

(26) However, since discontinuous acrylic fibre carded, combed or otherwise prepared, is among the products covered by the agreement between the European Community and Romania on trade in textile products (1) which establishes agreed quantitative limits for this category of products as well as special procedures, this category of products should, for the time being, be excluded from any measures to be taken with regard to Romania.

(1) Referred to in Council Regulation (EEC) No 3589/82 of 23 December 1982 (OJ No L 374, 31. 12. 1982, p. 106).

H. Disclosure

(27) The exporters concerned were informed of the main findings of the preliminary investigation and commented on them. The evidence and the calculations were re-examined in the light of these comments. Adjustments were made where necessary to take account of the exporters' arguments wherever these were justified (see paragraph 13).

I. Undertakings

(28) Undertakings were subsequently offered by all exporters with regard to their exports of acrylic fibres to the Community.

(29) The effect of the said undertakings will be to increase export prices to the Community to the level necessary to eliminate the margin of dumping or undercutting established in the course of the investigation, whichever is the lower.

In these circumstances, the undertakings offered are considered acceptable and the investigation may therefore be terminated without the imposition of anti-dumping duties.

(30) As objections to this course of action were raised in the Advisory Committee by one Member State, the investigation was not terminated by the Commission with respect to the companies in question but a proposal is being submitted to that effect by the Commission to the Council.

HAS DECIDED AS FOLLOWS:

Article 1

The Council hereby accepts the undertakings given by:

(a) AK-PA Tekstil Ihracat Pazarlama AS, Istanbul, Turkey, in connection with the anti-dumping proceeding concerning continuous filament tow for the manufacture of discontinuous acrylic fibres falling within subheading ex 56.02 A of the Common Customs Tariff (NIMEXE code 56.02-15) originating in Turkey;

(b) Israel Chemical Fibres Ltd, Ashdod, Israel, in connection with the anti-dumping proceeding concerning discontinuous acrylic fibres, not carded, combed or otherwise prepared for spinning falling within subheading ex 56.01 A of the Common Customs Tariff (NIMEXE code 56.01-15) and continuous filament tow for the manufacture of discontinuous acrylic fibres falling within subheading ex 56.02 A of the Common Customs Tariff (NIMEXE code 56.02-15) originating in Israel;

(c) Celanese Mexicana SA, Mexico City, Mexico, in connection with the anti-dumping proceeding concerning discontinuous acrylic fibres, not carded, combed or otherwise prepared for spinning falling within subheading ex 56.01 A of the Common Customs Tariff (NIMEXE code 56.01-15), continuous filament tow for the manufacture of discontinuous acrylic fibres falling within subheading ex 56.02 A of the Common Customs Tariff (NIMEXE code 56.02-15), and discontinuous acrylic fibres, carded, combed or otherwise prepared for spinning falling within subheading ex 56.04 A of the Common Customs Tariff (NIMEXE code ex 56.04-15) originating in Mexico;

(d) Celulosa y Derivados SA, Guadalajara, Mexico, in connection with the anti-dumping proceeding concerning discontinuous acrylic fibres, not carded, combed or otherwise prepared for spinning falling within subheading ex 56.01 A of the Common Customs Tariff (NIMEXE code 56.01-15), continuous filament tow for the manufacture of discontinuous acrylic fibres falling within subheading ex 56.02 A of the Common Customs Tariff (NIMEXE code 56.02-15), and discontinuous acrylic fibres, carded, combed or otherwise prepared for spinning falling within subheading ex 56.04 A of the Common Customs Tariff (NIMEXE code ex 56.04-15) originating in Mexico;

(e) Danubiana, Bucharest, Romania, in connection with the anti-dumping proceeding concerning discontinuous acrylic fibres, not carded, combed or otherwise prepared for spinning falling within subheading ex 56.01 A of the Common Customs Tariff (NIMEXE code 56.01-15) originating in Romania.

Article 2

The anti-dumping investigation concerning imports of certain acrylic fibres originating in Israel, Mexico, Romania and Turkey is hereby terminated.

Done at Brussels, 22 September 1986.

For the Council

The President

M. JOPLING