II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 April 1987

terminating the anti-dumping proceeding on imports of synthetic fibres of polyesters originating in the German Democratic Republic, Romania, Turkey and Yugoslavia

(87/236/EEC)

THE COMMISSION 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 9 thereof,

After consultations within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. Procedure

(1) In December 1985 the Commission received a complaint lodged by CIRFS, the International Rayon and Synthetic Fibres Committee (Paris), on behalf of producers of synthetic fibres of polyesters whose collective output constitutes practically all Community production of the product in question. The complaint, which was subsequently completed and updated, 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 synthetic fibres of polyesters falling within Common Customs Tariff subheadings 56.01 A and 56.02 A, corresponding to NIMEXE codes 56.01-13 and 56.02-13 and originating in the German Democratic Republic, Romania, Turkey and Yugoslavia, 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 known producers/exporters and some importers made their views known in writing. Most of the known producers/exporters and some importers requested and were granted hearings.

(4) The exporter of the product concerned originating in Romania and the main Turkish producer, assisted by a user of the product concerned, requested and were granted the opportunity to meet representatives of the complainants for the purpose of presenting their opposing views.

(5) Submissions were made by and on behalf of some Community processors of synthetic fibres of polyesters.

(6) The Commission sought and verified all information to deemed to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following :

(a) *EEC producers*

— Du Pont de Nemours GmbH (Düsseldorf), Federal Republic of Germany,

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No C 125, 24. 5. 1986, p. 2.

— Enichem Fibre spA (Milano), Italy,

— Hoechst AG (Frankfurt am Main), Federal Republic of Germany,

— Montefibre SpA (Milano), Italy,

— Rhône-Poulenc Fibres SA (Lyon), France.

(b) *Non-EEC producers/exporters*

(i) In Turkey :

— Sasa Artificial and Synthetic Fibres (Adana) subsidiary company of Sabanci Holding,

— Sönmez Filament (Bursa) belonging to the Sönmez Industrial Holding.

(ii) In Yugoslavia :

— Ohis Commerce (Skopje),

— Vartilen (Varazdin), assisted by their main exporter Textil Import-Export (Zagreb).

(7) The investigation of dumping and price undercutting covered the period from 1 July 1985 to 30 April 1986.

B. NORMAL VALUE

(a) Turkey

(i) *Sasa*

(8) Normal value was provisionally determined on the basis of the domestic prices of this producer who exported to the Community and who provided sufficient evidence.

(9) However, normal value was calculated excluding the following :

(1) The prices charged by Sasa to two related companies, i.e. Bossa and Teksa, both large producers of textiles. As no satisfactory evidence was available showing that these prices were comparable to those involved in transactions between unrelated parties as provided for by Article 2 (7) of Regulation (EEC) No 2176/84, they were considered to relate to transactions not being in the ordinary course of trade.

(2) The prices charged by Sasa to Bozkurt, an unrelated customer which purchased the products exclusively for transformation into material destined for exports. These prices were on the basis of a special contract between Sasa and Bozkurt frozen at a level significantly (up to 15 %) below the prices charged to other unrelated customers, because Sasa had to match foreign suppliers' prices which, due to Turkey's foreign currency and import duties regulations relating to imports of raw materials used for production of finished goods destined for export, were particularly low. In these circumstances, it is considered that the prices charged to Bozkurt do not constitute comparable prices actually paid or payable in the ordinary course of trade for the product intended for consumption in Turkey.

(10) Normal value was established on a monthly basis for each of the following categories, types and qualities :

(a) staple :

— white : first quality,
second quality,

— black : first quality,
second quality,

— coloured : first quality,
second quality ;

(b) tow ;

(c) fiberfill.

(ii) *Sönmez Filament*

(11) Normal value was provisionally determined on the basis of the domestic prices of this producer, who exported to the Community and who provided sufficient evidence.

(12) For this purpose, the sales prices charged by the producer's sales companies to independent customers were used. Article 2 (3) (a) of Regulation (EEC) No 2176/84 requires normal value to be based on prices actually paid or payable in the ordinary course of trade ; Article 2 (7) entitles the Commission to disregard the prices charged in transactions between associated companies, unless the prices and costs involved are comparable to those involved in transactions between parties which have no such link. In this case, since there were no sales by the manufacturing company to non-associated third parties, the Commission could not satisfy itself that the prices and costs involved in the sales to the sales companies corresponded to transactions between non-associated companies.

The evidence given during the investigation showed that the manufacturing company and the sales companies form an integral part of the corporate structure, in which these sales companies have functions which are substantially similar to those of a sales branch or sales department. The fact that they are legally separate entities does not alter the existence of a single economic entity. What is relevant is not the legal structure but the fact that the principal function of these sales companies is to sell or to facilitate the sale of the corporate product, that they are either wholly

owned or controlled by the corporate parent company, or that there are strong links with respect to management personnel and staff.

One or more of these three conditions was fulfilled in this case. Consequently, the sales companies are to be considered part of Sönmez corporate structure and it is only the sales prices of these sales companies to their customers that can be relied on to reflect the true normal value of the product.

(b) **Yugoslavia**

(i) *Ohis Commerce*

(13) Normal value was provisionally determined on the basis of the domestic prices of this producer, who exported to the Community and who provided sufficient evidence.

(14) During the on-the-spot investigation it was found that the product concerned was sold on the domestic market, during the period under investigation, under several categories, mainly staple (of which there were several types). Since it was not possible to determine, on the basis of the data made available by the company, the quantities sold of each type of staple, normal value was determined on the basis of the prices actually paid in the ordinary course of trade for the most representative type, i.e. T-140. As not only staple but also fiberfill was exported to the Community, normal value for fiberfill was provisionally determined on the basis of the prices payable for this type on the domestic market as they appeared on the price lists ; it was found that the actual prices for staple were in line with the list prices, and that there appear not to be significant differences between staple and fiberfill as far as the cost of production is concerned.

(ii) *Vartilen*

(15) Normal value was provisionally determined on the basis of the domestic prices of this producer, who exported to the Community and who provided sufficient evidence. Since exports to the Community during the period under investigation consisted only of first quality, which is staple, it was considered appropriate to determine normal value only for this product.

(c) **German Democratic Republic and Romania**

(16) In order to establish whether the imports from the German Democratic Republic and Romania were dumped, the Commission had to take account of the fact that these countries do not have market economies, and the Commission 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. Objections were made to this suggestion by the exporters in the German Democratic Republic and Romania, mainly on the grounds that the Turkish market is protected by high duties on imports of the product concerned, making it very difficult for suppliers in third countries to compete with the local manufacturers. Both exporters were unable, however, to propose any other viable alternative method for establishing normal value on any other basis provided for under Article 2 (5) of Regulation (EEC) No 2176/84. The Romanian exporter suggested that establishing normal value on the basis of a constructed value in Turkey would be the fairest solution.

(17) Contrary to the argument put forward by these exporters, the Commission has not found that there were extraordinary differences between the production process and scale of production in Turkey and those in the GDR and Romania ; price levels in Turkey are in 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.

Accordingly, and after having taken account of the range of the products exported by these exporters during the period under investigation, normal value of Sasa was taken for the following categories and types :

German Democratic Republic

— white staple : first quality,
— tow : white, first quality ;

Romania :

— white staple : first and second quality,
— black staple : first and second quality.

C. EXPORT PRICE

(a) **Turkey**

(i) *Sasa*

(18) With regard to exports made during the period under investigation to unrelated customers in the Community, export prices were determined on the basis of the prices actually paid or payable for the products sold for export to the Community.

(ii) *Sönmez Filament*

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

(c) **Yugoslavia**

(i) *Obis*

(20) Export prices were determined on the basis of the prices actually paid or payable for the products sold for export to the Community. It was found that the types exported were white staple and fiberfill.

(ii) *Vartilen*

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

(d) **German Democratic Republic and Romania**

(22) 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**

(a) **Turkey**

(i) *Sasa*

(23) Since the export prices were expressed in foreign currencies, it was necessary, for making a proper comparison, to convert the export prices to national currency of the exporting country or *vice versa.*

(24) The normal value determined per category, type and quality was then compared with the export prices charged for the corresponding category, type and quality.

(25) When comparing normal value and export price account was taken, where appropriate, of differences affecting price comparability. As far as differences in conditions and terms of sale are concerned, allowances were limited to those differences which bear a direct relationship to the sales under consideration, such as differences in credit terms, commissions, transport and insurance.

(26) Sasa requested the Commission to make an allowance for differences in import charges on raw material physically incorporated in the product concerned exported to the Community, as is provided for under Article 2 (10) (d) of Regulation (EEC) No 2176/84. This request was granted.

(27) All comparisons were made at an ex-works level.

(ii) *Sönmez Filament*

(28) When comparing normal value and export price account was taken, where appropriate, of differences affecting price comparability. As far as differences in conditions and terms of sale are concerned, allowances were limited to those differences which bear a direct relationship to the sales under consideration, such as commissions, transport and insurance.

(29) The request for an allowance for differences in import charges on raw materials physically incorporated in the product concerned exported to the Community was granted.

(30) All comparisons were made at ex-works level.

(b) **Yugoslavia**

(i) *Obis*

(31) In comparing normal value with export prices the Commission took account, where appropriate, of differences affecting price comparability.

(32) As far as differences in conditions and terms of sale are concerned, allowances were limited to those differences which bear a direct relationship to the sales under consideration, such as differences in credit terms, transport, insurance and commissions. Since no evidence supporting the claim for differences in servicing and salesmen's salaries was submitted, no adjustments were made for them.

(33) The company requested the Commission also to take account of differences in quantities, as is provided for under Article 2 (10) (b) of Regulation (EEC) No 2176/84. However, no evidence in support of this claim was provided and therefore no adjustment was made.

(ii) *Vartilen*

(34) In comparing normal value with export prices the Commission took account, where appropriate, of differences affecting price comparability.

(35) As far as differences in conditions and terms of sale are concerned, allowances were limited to those differences which bear a direct relationship to the sales under consideration, such as differences in credit terms, transport, insurance and commissions.

(c) **German Democratic Republic and Romania**

(36) In comparing normal value with export prices the Commission took account, where appropriate, of differences affecting price comparability.

(37) As far as differences in conditions and terms of sale are concerned, allowances were limited to those differences which bear a direct relationship to the sales under consideration, such as differences in credit terms, transport, insurance and commissions.

E. MARGINS

(38) The margin of dumping was calculated for each exporter as the amount by which the normal value as established exceeds the price for each export transaction to the Community on the transaction by transaction basis.

The preliminery examination of the facts showed the existence of dumping in respect of the producers/exporters involved in this proceeding.

(39) These margins vary according to the exporter, the weighted average margin for each of the exporters investigated being as follows :

(a) *Turkey*

Sasa :	6,6 %
Sönmez Filament :	11,2 %

(b) *Yugoslavia*

Ohis Commerce :	36,6 %
Vartilen :	60,8 %

(c) *German Democratic Republic*

Textil Commmerz :	12,6 %

(d) *Romania*

Danubiana :	37,8 %

F. MATERIAL INJURY

(40) With regard to the injury allegedly being caused by the dumped imports, the evidence available to the Commission shows that imports of synthetic fibres of polyesters into the Community originating in the German Democratic Republic, Romania, Turkey and Yugoslavia increased from 17 626 tonnes in 1982 to 33 835 tonnes in 1985. During the first four months of 1986 these imports amounted to 13 912 tonnes ; on the assumption that imports continued at this rate for the rest of the year, imports for these countries would have shown an increase of more than 20 % in 1986 compared to 1985.

The development of these imports represented an increase of the combined market share held by the dumped imports from 5,2 % in 1982 to 8,1 % in 1985 and to 9,5 % during the first four months of 1986, whereas the market share held by the Community producers decreased from 85,3 % in 1982 to 81,7 % in 1985 and further to 79,3 % during the first four months of 1986.

(41) With regard to the resale prices of the imports involved in this proceeding it was found that during the period under investigation they undercut the prices of the Community producers by the following levels :

German Democratic Republic :	up to 16,1 %,
Romania :	up to 20,9 %,
Turkey :	up to 33,2 %,
Yugoslavia :	up to 28,7 %.

(42) As far as the possible impact of the dumped imports on the situation of the Community producers is concerned, account had to be taken of the following factors :

(a) the reduction of the production capacity of Community producers by 11 % between 1982 and 1985 is to be disregarded from the injury assessment, since it was carried out pursuant to an agreement signed by the majority of the producers in the Community, as constituted prior to 1 January 1986, in order to enable the Community manufacturers to achieve a rate of capacity utilization of a least 85 %.

The total production capacity in the Community increased during 1986, when compared to its 1985, level due mainly to expansion in the Netherlands, Ireland and Portugal ;

(b) the production of synthetic fibres of polyesters by the Community industry increased from approximately 369 000 tonnes in 1982 to approximately 412 000 tonnes in 1985, i.e. by more than 11 %. During the first four months of 1986 it increased further by 9 % on the basis of extrapolated figures for the full calendar year ; sales by Community producers of polyester fibres in the Community increased by 18 % from 1982 to 1985. During the first four months of 1986 they increased further by 2 % on the basis of extrapolated figures for the full year.

Stocks in 1985 were approximately 20 % lower than in 1982. This trend, however, was reversed in 1986, whereby an increase of 12 % was registrered ;

(c) the rate of the capacity utilization of the Community manufacturers increased from 69,7 % in 1982 to 87,7 % in 1985 and further to more than 90 % during the first four months of 1986. This trend is in line with the expectations of the Community producers who consider at present a target of 90 % as necessary for achieving a reasonable profitability;

(d) the profitability of the Community producers generally improved between 1982 and 1985, and also during the first four months of 1986. Even Italian producers, who have been operating at a loss, improved their profitability situation over the years under consideration.

(43) It is considered, therefore, that neither the increase in volume and market share of the dumped imports nor the price undercutting had a significant impact on the Community industry, as indicated by actual of potential trends of the relevant economic factors referred to above, and that the dumped imports did not cause material injury to the Community manufacturers of the product concerned.

G. THREAT OF INJURY

(44) In order to examine whether a threat of injury existed, it was examined whether a change in circumstances that would create a situation in which the dumping would cause material injury could be clearly foreseen and was imminent.

(45) As to the rate of increase of the dumped imports it was found that those originating in Turkey, Yugoslavia and Romania increased between 1982 and 1985 from 8 513 tonnes to 25 474 tonnes, and reached 11 656 tonnes during the first four months of 1986. Given the decrease of the dumped imports originating in the German Democratic Republic, from 9 113 tonnes to 8 361 tonnes in 1985 and to 2 256 tonnes during the first four months of 1986, and the lower level of price undercutting, it is considered appropriate not to aggregate these imports with those originating in the order countries involved in the proceeding.

(46) With regard to production and export capacity, the manufacturers in Turkey, Yugoslavia and Romania have an estimated spare capacity of 22 000 tonnes available (based on 1985 figures).

(47) As to the likelihood that this spare capacity will be used to produce exports to the Community, it is possible that, given the import trend over the last years, at least, part of this production will be exported to the Community. However, it was found that, during the last years, despite an increase of the dumped imports from 8 543 tonnes in 1982 to 25 474 tonnes in 1985, the Community industry was able to increase its production, its capacity utilization rate and its profitability (see recital 42). This was at least to some extent due to a reduction of the production capacity of the Community industry.

(48) It follows, therefore, that, even if it were assumed that a change of circumstances which would make the dumped imports likely to affect the Community industry could at present be foreseen and was imminent, it would, on the basis of the facts relating to the period under investigation, not be possible to assess the impact on the Community industry of such a threat of injury.

H. REGIONAL INJURY OR THREAT OF REGIONAL INJURY

(49) In the light of the claim of the Community industry that the Italian market was the most affected by the dumped imports, the conditions laid down in Article 4 (5) second indent of Regulation (EEC) No 2176/84 were examined with a view to possible measures on a regional basis. However, given the size of the market share (approximately 30 % in 1985) held in Italy by other EEC producers and the volume of sales made by the Italian producers outside their home market, the Italian market could not, in the present proceeding, be considered as constituting an isolated market within the meaning of Regulation (EEC) No 2176/84.

I. TERMINATION OF THE PROCEEDING

(50) In these circumstances, therefore, the proceeding concerning imports of synthetic fibres of polyesters originating in the German Democratic Republic, Romania, Turkey and Yugoslavia should be terminated without the imposition of measures.

(51) The complainants were informed of the essential facts and considerations on the basis of which the Commission intended to terminate this proceeding. Subsequently, they made their comments known to the Commission.

(52) Objections to this course of action were raised in the Advisory Committee, but were withdrawn after further consultations,

HAS DECIDED AS FOLLOWS:

Sole Article

The anti-dumping proceeding concerning imports of synthetic textile fibres and continuous filament tow of polyesters, falling within Common Customs Tariff subheadings 56.01 A and 56.02 A, corresponding to NIMEXE codes 56.01-13 and 56.02-13 and originating in the German Democratic Republic, Romania, Turkey and Yugoslavia, is hereby terminated.

Done at Brussels, 10 April 1987.

For the Commission

Willy DE CLERCQ

Member of the Commission