COMMISSION DECISION

of 12 June 1991

terminating the anti-dumping proceeding concerning imports of thin polyester film originating in the Republic of Korea

(91/303/EEC)

THE COMMISSION 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 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 October 1989, the Commission, by Decision 89/560/EEC [2], terminated an anti-dumping proceeding concerning imports of all thicknesses of polyester film originating in the Republic of Korea without the imposition of measures. Subsequently, a second complaint was lodged by the European Plastic Films, Membrane and Covering Manufacturers Association (AEC) on behalf of producers representing the total Community output of the product concerning imports of polyester film below 25 microns in thickness (thin PET film) originating in the Republic of Korea (hereafter called 'Korea'). 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* [3], the initiation of an anti-dumping proceeding concerning imports into the Community of polyester film, falling within CN codes 3919 10 31, 3919 90 31, 3920 62 00, 3920 63 00, 3920 69 00, 3921 90 19 and commenced an investigation.

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

(3) The Commission, for the purpose of obtaining all the information it deemed to be necessary, sent questionnaires to the exporters in Korea and importers in the Community known to be concerned. Both the known exporters and certain importers completed the questionnaires.

(4) The Commission also sent questionnaires to the four companies on whose behalf the complaint was made, in order to allow each company to demonstrate the injury caused to it by imports of thin PET film from Korea. The Commission carried out a detailed analysis of those four companies who returned completed questionnaires and whose combined production represented the total Community output.

(5) Both the known producers/exporters and some importers known to be concerned submitted their views in writing and the producers/exporters requested and were granted hearings. The complainant also made its views known in writing and requested and was granted a hearing.

(6) The Commission verified the information received to the extent it deemed necessary and carried out investigations at the premises of the following companies :

(a) *Community producers :*

— Du Pont de Nemours, Luxembourg ;

— Hoechst AG, Wiesbaden, Germany,

— ICI, Welwyn Garden City, Hertfordshire, United Kingdom ;

— Rhône-Poulenc, Lyon, France ;

(b) *Korean producers/exporters :*

— Kolon Industries Inc., Seoul ;

— SKC Ltd., Seoul.

(7) The investigation of dumping covered the year 1989. The trends in the relevant economic factors to determine whether the Community industry is suffering material injury were examined for the years 1987 to 1989.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 305, 21. 10. 1989, p. 31.
[3] OJ No C 24, 1. 2. 1990, p. 7.

B. INJURY

(a) Imports — volumes and prices

(8) With regard to the injury allegedly being caused by the imports concerned, the evidence available to the Commission showed that imports of thin PET film to the Community from Korea increased from 2 532 tonnes in 1987 to 2 869 tonnes in 1989.

(9) As regards market share, it has not been found possible to reflect this development in the volume of imports in accurate percentage terms given the difficulties in assessing consumption of thin PET film in the Community, where certain figures (notably imports from third countries) more commonly relate to all thicknesses of polyester film. However, on the restricted basis of the quantity of the complainants' sales in the Community taken together only with the Korean imports, it was established that the Korean imports share of this total fell from 6,4 % in 1987 to 5,5 % in 1989. Given that this level of consumption if considerably lower than the actual rate since third country imports are not included, the Korean market share will be somewhat lower, certainly less than 5 % during the whole of the three-year period. The Commission also hade no reason to believe that the decreasing trend based on restricted sales would be any different had figures on all sales been available.

(10) With regard to price, it was established that, during the investigation period, on a product-by-product, Member State by Member State and customer-by-customer basis, the prices applied by the Korean exporters were invariably above the lowest prices of the Community producers and, in some cases, especially in the last quarter of 1989, were above even the highest prices of these producers.

(b) Community Industry — Impact

(11) Between 1987 and 1989 Community production of thin PET film increased from 53 045 tonnes to 62 027 tonnes. During this period, in view of the increased demand in the Community, the complainants increased production capacity by some 20 %. As a result of increased volumes, a utilization rate of between 86 and 90 % was maintained during the three years examined. Indeed, several Community producers were required to import quantities from third countries in order to meet customer demand.

(12) The complainants' sales in the Community increased from around 33 800 tonnes in 1987 to 41 900 tonnes in 1989, an increase of 24 %. Turnover also increased in this period but due to the lower prices, the increase was not commensurate with the increase in sales volulme.

(13) As far as the Community producers' prices for thin PET film are concerned, these have decreased on average by about 13 % between 1987 and 1989. Despite the complainants' claims to the contrary, this decrease appears to be independent of any competitive effect of the Korean imports in question. In the first place, as is indicated in recital 10, the prices of the Korean imports did not undercut those of the Community producers during the investigation period and, given their small (and declining market share, the Korean imports could hardly have caused price depression. Furthermore, it was noted that similar price decrease occurred in the market for thin base film for magnetic applications which accounts for 50 % of the total market for thin PET film. Korean imports of this type of film were not present in the Community market during the investigation period and were not, therefore, the cause of the complainants' fall in prices at this time.

(14) All Community producers suffered losses on their sales of thin PET film during the investigation period. However, a detailed analysis of all markets for this product in the Community showed that, for three out of the four companies, these losses occurred mainly on sales of types of thin PET film which, given their different properties and uses, did not compete directly with the Korean imports in question.

(c) Other factors

(15) The Commission also considered the effect of factors other than imports of the product concerned from Korea on the complainant industry, such as the volume and prices of imports from countries not subject to investigation or contraction in demand, which individually or in combination may have adversely affected the Community industry for this PET film. It was noted firstly that demand for the product had steadily increased in the Community between 1987 and 1989. As regards imports from other third countries, however, these had increased considerably during this period and by 1989 were estimated to hold a market share of some 27 %. The prices of these imports and notably of those originating in Japan were found to be in general similar to those of the Community producers, but related to types of thin PET film which were not exported by the Korean producers/exporters.

(d) **Conclusion**

(16) Taking into account the relevant economic factors referred to above, the Commission has come to the conclusion that, during the investigation period, the imports from Korea in question have not caused material injury to the complainant companies as far as the production of thin PET film is concerned. Indeed, the losses sustained by certain of the complainants on sales of thin PET film in the Community cannot be imputed to the Korean imports given the relatively high prices and low volume of these imports.

(e) **Issues raised**

(17) The complainants, during the course of the proceeding, made a number of allegations regarding the Korean exporters concerned which likened their behaviour to other Korean exporters on whose imports of audio tapes in cassettes to the Community a definitive anti-dumping duty has been imposed (1). These allegations were based mainly on the level of price undercutting established in that particular investigation but, since they concerned different exporters and a different product, the Commission saw no reason to alter its conclusions on the question of undercutting in the case of imports of thin PET film from Korea.

The complainants also submitted that the figures relating to the volume of the product concerned imported into the Community during the reference period established by the Commission during its investigation were considerably understated. There was, however, no evidence to substantiate this claim. Apart from the fact that these figures had been obtained from the exporters and were verified during the investigation, they were supported by Community statistics for imports of PET film of all thicknesses which were also in line with verified information. The complainants' figures, which were based on 'market estimates', corresponded neither to the verified figures nor to Community statistics nor even to Korean export statistics, which, in 1989, indicated a figure which was somewhat higher than those of the Community.

(18) The complainants also alleged that the 'Korean pricing policy together with its enormous overcapacity constitutes a serious threat' of material injury to the Community industry. On the question of threat the Commission noted that prices of Korean imports were, during the reference period, generally higher than those of the Community industry and that the rate of exports of the product concerned to the Community, while increasing between 1987 and 1989, had not kept pace with the increased demand during this period and had thus lost market share. Furthermore, the forecasts of the Korean exporters concerning the development of production capacity indicated that the total production of all types of PET film might increase. However, even if such an increase took place, Korean exports of thin PET film to the Community in 1989 amounted to only 3 % of total production and the Commission received no indication that there would be significant changes in the relative volumes of the different types of PET film exported to the Community in the future.

(19) The complainants also suggested that the imposition of an anti-dumping duty by the United States authorities concerning imports of all PET film originating in Korea to that country was sufficient reason for a finding of a threat of material injury, since the existence of such anti-dumping measures would be likely to divert the dumped imports to the Community. However, given the relatively low levels of duty (3 to 5 %), and the fact that the Korean exporters have traditionally found markets other than the Community, particularly the United States more attractive, the Commission considers that this situation does not at present create a serious threat of a diversion of Korean exports from the United States to the Community. Thus the provisions of Article 4 of Regulation (EEC) No 2423/88 on threat of injury are not applicable in the case under consideration, it being understood that a change in circumstances such as significant increase in import volumes, could, in the light of the indications of previous dumping practices, justify the immediate opening of a new investigation.

C. **DUMPING**

(20) In view of the above findings with respect to the cause of any material injury suffered by the Community industry, the Commission considered it unnecessary — notwithstanding the indications of the existence of dumping practices in 1989 — to further examine the question of dumping with regard to the imports concerned.

(1) OJ No L 119, 14. 5. 1991, p. 35.

D. **TERMINATION OF THE PROCEEDING**

(21) After having been informed by the Commission of the above findings, the complainant made further representations concerning the impact of the Korean imports in question on the Community industry. The Commission considered these representations but concluded that effectively no new information or arguments had been submitted and that accordingly its findings should stand.

(22) In these circumstances, protective measures are considered to be unnecessary and the proceeding should accordingly be terminated,

HAS DECIDED AS FOLLOWS:

Sole Article

The anti-dumping proceeding concerning imports of this polyester film of a thickness below 25 microns originating in the Republic of Korea is hereby terminated.

Done at Brussels, 12 June 1991.

For the Commission

Karel VAN MIERT

Member of the Commission