II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 3 September 1993

accepting undertakings given in connection with the anti-dumping review in respect of imports of binder and baler twine originating in Brazil, terminating the anti-subsidy review proceeding with regard to these imports and terminating the anti-dumping and anti-subsidy review in respect of imports of binder and baler twine originating in Mexico

(93/521/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 Economic Community [1], and in particular Articles 9, 10, 14 and 15 thereof,

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

Whereas :

A. PROCEDURE

(1) In January 1987, by Decision 87/66/EEC [2], the Community terminated the investigations in connection with the review of anti-dumping and anti-subsidy measures concerning imports of binder and baler twine originating in Brazil and Mexico on the grounds that the Brazilian and Mexican producers gave and had confirmed undertakings which were considered acceptable.

(2) Following the publication in the *Official Journal of the European Communities* in August 1991 of a notice of the impending expiry of the measures in force [3], the Commission received a request for a review lodged by the Liaison Committee of EEC Twine and Cordage Industries (Eurocord) on behalf of producers representing substantially all production of the product concerned in the Community. Subsequently, in a notice published in the *Official Journal of the European Communities* [4], the Commission announced the initiation of a review of Decision 87/66/EEC concerning imports of binder and baler twine originating in Brazil and Mexico.

(3) The Commission officially advised the representative of the exporting countries, the Brazilian and Mexican producers, the sole importer known to be concerned and the Community producers, of the above initiation.

It called on the parties concerned to reply to the questionnaires sent to them, and gave them the opportunity to make known their views in writing and to request a hearing.

(4) The Brazilian and Mexican authorities made their views known in writing and cooperated with the Commission.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 34, 5. 2. 1987, p. 55.
[3] OJ No C 206, 7. 8. 1991, p. 2.
[4] OJ No C 111, 30. 4. 1992, p. 11.

All Community producers replied to the questionnaires and made their views known in writing. The Brazilian producers and their main agent in the Community made their views known in writing and requested and were granted a hearing.

(5) The following Brazilian companies which had offered undertakings in 1987, comprising all Brazilian producers known to export to the Community and their main agent in the Community, Vendcord Ltd, Farnham, Surrey (United Kingdom), co-operated with the Commission :

— Brascorda SA, Bayeux (Paraíba),

— Cisaf SA, Natal (Rio Grande do Norte),

— Cisal SA, Bayeux (Paraíba),

— Cosiba SA, Rio de Janeiro (Rio de Janeiro),

— Fibrasa SA, Bayeux (Paraíba),

— Fisalplast SA, Salvador (Bahia), (company acting also on behalf of Unisal SA, Salvador (Bahia)),

— Sisalana SA, Simões Filho (Bahia),

— Stella Azzurra SA, Simões Filho (Bahia).

(6) The Mexican authorities informed the Commission that Cordemex SA de CV (Mérida, Yucatán), the producer in Mexico that had offered an undertaking in 1977 which was confirmed in 1987, had now ceased to exist and that three of its factories had been sold. These producers were contacted by the Commission but having just started operations were unable to supply any relevant data.

(7) The Commission sought and verified all the information available for the purpose of determining dumping and all the information it deemed necessary for the purpose of determining injury and the threat of injury and carried out inspections at the premises of the following Community producers, representing at least 70 % of Community production of the product concerned :

— Bihr Frères SA, Uriménil, France,

— Cordex SA, Esmoriz, Portugal,

— Corfi SA, Espinho, Portugal,

— Filatures et Corderies de Sainte Germaine SA, Bruges, France,

— Quintas & Quintas SA, Povóa de Varzim, Portugal,

— L. P. Weidemann & Sønner I/S, Rudkøbing, Denmark.

(8) The period selected for the investigation of dumping and subsidization was 1 October 1990 to 30 September 1991.

B. DUMPING

1. Brazil

(9) No Brazilian producer provided the necessary information regarding its domestic selling prices, selling prices to third countries and costs of production in Brazil. As a result, the Commission was unable to make an examination of normal value as provided for in Article 2 (3) of Regulation (EEC) No 2423/88. On the basis of the information submitted neither the appropriateness of any method for establishing normal value could be determined nor individual dumping calculations completed. Accordingly, individual findings regarding dumping by the Brazilian producers had to be established in accordance with the provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88.

(10) For the purpose of determining dumping, the only verified facts available were the findings from the previous investigation, as detailed in recital 17 of Decision 87/66/EEC. No Brazilian producer questioned the conclusion that dumping persisted at least at this level. Indeed, this conclusion was confirmed by the examination of official statistical data regarding Brazilian sales to the United States in 1991. A global comparison on that basis with export prices to the Community during the investigation period showed an even higher dumping margin concerning Brazilian exports of binder and baler twine taken as a whole.

Furthermore, each Brazilian producer informed the Commission that they were ready to offer a new undertaking in respect of their exports of binder and baler twine to the Community and none of them questioned the fact that this offer implied a recognition of the persistence of dumping at a level which was at least equal to that established during the previous investigation.

2. Mexico

(11) As no producing companies in Mexico were fully operational during the period of investigation and as no imports into the Community of binder and baler twine originating in Mexico have been registered since 1989, no investigation into dumping could be carried out.

C. SUBSIDIES

1. Brazil

(12) Without any new allegations from the Community industry regarding subsidies, the Commission examined the current situation of the Brazilian

schemes that had been found to constitute countervailable subsidies during the previous investigation.

(a) *Income tax relief on profits from exports*

(13) It was established during the previous investigation that a scheme created by Decree Law No 1158 of 16 March 1971 (and subsequently extended by laws in 1977 and 1986) provided for exemption from income tax for profits earned on exports. The exporters of binder and baler twine benefited from this exemption, which was found to constitute a countervailable export subsidy.

(14) The Brazilian authorities provided evidence to the Commission that, from February 1988, a gradually increasing rate of income tax was levied on profits earned from exports, until, by Law No 8034 of 12 April 1990, the system of reduced tax rates on profits from exports was effectively abolished and such profits were taxed at the normal rate of income tax.

(b) *IPI tax credit premium*

(15) The Brazilian authorities produced evidence to confirm that this credit premium system was terminated on 1 May 1985, as stated in Decision 87/66/EEC.

(c) *Concessionary financing system for exports*

(16) It was established in the previous investigation that the system of granting loans at preferential rates to exports constituted an export subsidy. Indeed, in accordance with Resolution No 1009 of the Central Bank of Brazil of 2 May 1985, exporters in receipt of such loans were paying interest at the market rate minus an equalization rate of 15 %. The amount of this equalization rate was paid by the fund for the financing of exports (Finex) to the commercial banks providing the loans to, among others, the exporters of binder and baler twine.

(17) The Brazilian authorities showed that the programme in question was terminated by Resolution No 1744 of 30 March 1990 and that Finex was abolished in October 1990. Finex has been replaced by Proex (programme for financing of exports), for which it has been shown the exporters of binder and baler twine are not eligible.

(d) *Conclusion*

(18) In view of the above, the Commission considered that no countervailable subsidies were granted to exporters of binder and baler twine in Brazil during the investigation period.

2. **Mexico**

(19) Without any new allegations from the Community industry concerning subsidies, the Commission examined the current situation regarding subsidization of binder and baler twine exports from Mexico. In this respect, the 'Secretaria de Comercio y Fomento Industrial' of Mexico certified that no subsidies were given by the government of Mexico for the production or export of binder and baler twine.

D. EFFECTS OF THE EXPIRY OF THE UNDERTAKINGS

1. Current situation regarding the market and Community industry

(a) *Apparent consumption*

(20) Between the agricultural season 1986/87 (1 October 1986 to 30 September 1987) and the investigation period, the consumption of binder and baler twine in the Community decreased by 29 % (i.e. by 16 948 tonnes). This reflected a world-wide trend, which was slightly more pronounced within the Community.

In addition, contrary to what was generally expected six years ago, this decrease was not due to a switch to synthetic agricultural twine but mainly to changes in harvesting methods. Indeed, during the abovementioned period, the consumption of synthetic agricultural twine increased by only 8,9 % (i.e. by 3 779 tonnes, representing 7 558 tonnes of sisal equivalent).

(b) *Capacity, capacity utilization and production*

(21) Between 1987 and 1991, the Community spinning industry carried on with the restructuring process initiated in the early 1980s. The following Community producers ceased production of binder and baler twine :

— Bridon Fibres Ltd, Doncaster, United Kingdom,

— Campanini Ugo Spa, Pieve di Cento, Italy,

— Irish Ropes Ltd, Newbridge, County Kildare, Ireland,

— Lankhorst Touwfabrieken bv, Sneek, Netherlands,

— Ostend Stores nv, Oostende, Belgium,

— Sisal Spa, Piacenza, Italy,

— Filariane, Saint-Ouen, France.

In addition, one Community producer, Filature du Vert Gazon SA, Valenciennes, France, shut down completely.

(22) The restructuring process helped the remaining producers to maintain their production and capacity utilization rate at about 60 % of their installed capacity, although the overall production in the Community was reduced from 40 400 tonnes in 1986/87 to 38 550 tonnes in 1990/91.

(c) *Stocks*

(23) The examination of stock levels at the end of the four last agricultural seasons revealed that the Community industry was encountering increasing difficulties in selling its production.

(d) *Sales and market share*

(24) During the period 1986/87 to 1990/91, Community producers taken as a whole reduced their sales but were able to maintain their market share at about 60 % of the apparent consumption of binder and baler twine in the Community.

(e) *Price suppression*

(25) Over the period 1987/88 to 1990/91, Community producers' selling prices in the Community increased, on average, by 12,4 %. However their total costs increased, on average, by 21,5 %.

(26) The Commission therefore considered that, despite the price increase, Community producers suffered from price suppression during the last four agricultural seasons, since they were prevented from passing on to their customers the full amount of their cost increase.

(f) *Profitability*

(27) The Commission found that the Community industry's financial results for the binder and baler twine sector, already at a low level between 1986 and 1988, deteriorated during the agricultural season 1989/90, then slightly improved during the reference period.

(g) *Employment*

(28) The abovementioned restructuring process in the Community resulted in job losses (about 300 according to best estimates), worsened by the fact that the remaining producers were also obliged (or decided within the framework of plans aiming at an improved productivity) to reduce their personnel employed in the sisal sector by about 13 % between 1987 and 1991.

(h) *Conclusion*

(29) The examination of the above indicators led the Commisison to conclude that the Community industry was still in a relatively weak position, from the point of view of employment, capacity utilization, stocks and profitability. The restructuring process benefited the remaining producers, but appeared to have reached its efficiency limits.

2. Current situation regarding the volume, market share and prices of imports

(a) *Volume and market share of imports*

(30) Considered as a whole during the same period, imports from third countries have decreased by 30 %, i.e. in very close proportion to the decrease in consumption on the Community market. Indeed :

— Mexico has ceased to supply the Community market since 1989,

— Brazil's deliveries increased between the agricultural seasons 1986/87 and 1987/88, then substantially decreased mainly because of the impact on consumption of weather conditions in 1989/90 in the Community. Since the beginning of 1991, this decrease should be related to the withdrawal of tariff concession. Indeed, by Council Regulation (EEC) No 283/91 [1], the conventional rate applicable to binder and baler twine (12 %) was suspended, the autonomous duty restored and increased from 16 to 25 % regarding sisal products. Meanwhile, the Brazilian producers' market share (calculated on apparent consumption) dropped to 17,8 % during the agricultural season 1989/90 and 12,5 % during the season 1990/91,

— other third countries supplying binder and baler twine to the Community, mainly Tanzania (country benefiting from the GSP scheme) maintained their positions or even increased their deliveries. Taken as a whole, imports from third countries other than Brazil, which in 1986/87 represented a market share of 14 % (on apparent consumption), reached 17,6 % in 1989/90 and 22 % in 1990/91.

(b) *Prices of imports*

(31) During calendar years 1990 and 1991, the average selling prices (in ecus) of Brazilian producers within the Community, after release into free circulation, decreased by 11,5 %. This price decrease means that the increase in Community customs duty had no impact on the price finally paid by their customers in the Community.

(32) For the purposes of calculating whether undercutting had occurred, the weighted average sales prices of the six main Brazilian producers were compared with the weighted average sales prices of Community producers' like products on the Belgian,

[1] OJ No L 35, 7. 2. 1991, p. 1.

Danish, French, German and United Kingdom markets (Member States where the Brazilian producers sold binder and baler twine during the reference period). The comparison was made on the same types of products and the same level of trade was respected in all cases. The comparison was made at the customs cleared stage for the Brazilian sales (i.e. taking account of the 25 % duty applicable to these imports since February 1991) and at the delivered stage for the products sold by Community producers.

The comparison confirmed the existence of undercutting practices regarding all Brazilian exports to the Community. The weighted average level of price undercutting was found to be 13,1 %.

(33) As far as the other third countries supplying binder and baler twine to the Community are concerned (mainly Tanzania), it was found that their imports had been made at prices markedly higher than those for the product originating in Brazil.

(c) *Conclusion*

(34) From the above, it appeared that the weak position of Community industry during the investigation period was related to a substantial extent to the prices of Brazilian imports. Since the market is very price-transparent and price-sensitive, the Brazilian low-priced deliveries due to dumping had a negative effect, in the form of price suppression, on the prices of the Community industry.

Indeed, the price pressure exerted by Brazilian imports prevented Community producers from taking full account of their increasing costs. They managed to maintain their market share, but given the depressive effect of the Brazilian imports, did so to the detriment of their profitability.

3. Foreseeable effects of the expiry of the undertakings concerning Brazil

(35) The Commission examined, whether, considering the above data, the expiry of the anti-dumping measures in force regarding Brazil would lead again to material injury being caused to the Community industry. This forecast was mainly based on recent developments concerning Brazilian exports on third countries' markets and on the information provided by Brazilian producers regarding their available production capacity and capacity utilization rate.

(a) *Developments of Brazilian exports on third countries' markets*

(36) The examination of recent developmens on other third countries' markets where the Brazilian producers were very active, mainly the USA and Sweden, led the Commisison to consider that the risk of the disappearance of the Community industry was not theoretical.

(37) On the United States market, where the last domestic producers disappeared in the early 1980s, Brazilian spinners have now established a steady market share ranging between 60 to 75 % of total consumption (corresponding to annual deliveries of about 50 000 tonnes).

In recent years, Brazilian prices on the United States market increased steadily, reaching ECU 744 per tonne in 1991 (US $ 0,922 per kg in 1991, while the average price of total imports was US $ 0,884 per kg). This price of ECU 744 per tonne was 37 % higher than their average selling price to the Community (ECU 543,8 per tonne) during the same period. Such a pricing policy on the United States market certainly facilitated the practice by Brazilian producers of dumped prices on the Community market.

(38) In Sweden, where the sole domestic producer has also disappeared, Brazilian producers have now gained a major market share. In 1991/92, a slight price increase for Brazilian deliveries was noticed, together with a further increase in market share, which reached 72 %.

(39) This situation was made worse by the fact that Brazil is the major producer of both sisal fibre and twine in the world and constitutes a threat to a Community industry that could be the victim, in the near future, of a similar strategy as the one that Brazilian producers appear to have applied on the United States and Swedish markets.

(b) *Available capacities*

(40) The Brazilian producers did not make the same efforts as Community producers to reduce their over-capacity. They still have an overall annual production capacity of at least 120 000 tonnes and no domestic outlet at all for this capacity. In addition, their average capacity utilization rate appears to be below 55 %. In these conditions, it is highly foreseeable that they could use this capacity to increase their penetration on the Community market at low prices.

(c) *Conclusion*

(41) Considering the relatively weak situation (still caused by dumped imports) of the Community industry in a declining market which has been highly influenced by the prices of imports from Brazil, and the trends or facts set out above, it appeared that, if the measure concerning Brazil was allowed to lapse, the risk of recurrence of material injury was, in the short term, considerable. This threat is therefore both foreseeable and, should the measure lapse, imminent.

E. COMMUNITY INTEREST

(42) In considering the extent to which it would be in the Community interest to maintain measures in force, the Commission has taken account of the interest of the Community industry producing binder and baler twine and of the consumers of the product concerned. In this respect it is recalled that, in Decision 87/66/EEC, the Council had established that measures are in the Community interest.

The underlying elements for that conclusion have not changed substantially. Indeed, the investigation has shown that, in the absence of measures, a continuation of the trends observed would lead to the most negative consequences for the Community industry concerned and, following a period of severe restructuring, would endanger its continued viability. The loss of this industry would have serious consequences from the point of view of employment and investment expenditure.

(43) As far as consumers are concerned, it appeared that the product in question was generally traded by farmers' cooperatives and companies specialized in harvesting machinery. Neither these intermediaries nor any end users' representatives manifested themselves thoughout the proceeding.

(44) During the previous investigation, it was considered that, as binder and baler twine appeared to be substitutable with synthetic twine and the latter less expensive, Community producers were likely to convert production, if not in the short term, at least in the forthcoming years. Then, the only reasons for farmers' possible reluctance in adopting synthetic twine were found in tradition which was limited to certain areas. The measures were therefore set up with a view to permitting a smoother conversion to the alternative product (see recital 35 of Decision 87/66/EEC).

(45) This forecast has turned out to be inaccurate. Firstly, in the meantime increasing ecological concerns are now militating in favour of the use of natural products. Secondly, the replacement by farmers of their machinery was delayed by the difficulties encountered by this sector, which are not likely to disappear in the short term. As only the highest segment of the most modern harvesting machinery requires a thin synthetic twine, it appears that sisal agricultural twine still has a future and will remain a product that Community producers, considered as a whole, should be able to offer. Otherwise, the overall survival of the Community spinning industry, including synthetic, could be threatened.

(46) From all the above considerations, the Commission concluded that the interest of the Community clearly lies in maintaining protection for its binder and baler twine industry against unfair imports originating in Brazil.

F. TERMINATION AND ACCEPTANCE OF UNDERTAKING

(47) In view of the above findings, the Commission concluded that the anti-subsidy review proceeding should be terminated with regard to both Brazil and Mexico.

(48) Since there was no indication of dumping by Mexican producers, the Commission also concluded that the review of Decision 87/66/EEC as it concerned imports of binder and baler twine originating in Mexico should be terminated without imposing protective measures, with the effect that the anti-dumping and anti-subsidy measures in force with regard to Mexico lapse.

(49) As grounds for maintaining measures regarding Brazil were found within the framework of the anti-dumping review investigation, the Commission considered that the measures in force in respect of Brazil should be renewed in such a way that they will remain proportionate to the threat of injury found during the investigation in relation to dumping.

(50) For this purpose, the Commission examined whether price undertakings could replace the existing quantitative undertakings. In this respect, the Commission found that the arguments which had previously led to the acceptance of quantitative undertakings were still valid. Indeed, in the absence of an international spot quotation concerning sisal fibre, variations in price of the prime material cannot be monitored and create a factor of unpredictability as to whether a price undertaking would still be effective shortly after its acceptance. On the other hand, the quantitative measures in force in respect of Brazil were to a certain extent effective and could be adapted to changes in the size of the Community market.

The Commission examined the new undertakings offered by the Brazilian producers (see recital 10) and considered that the new terms and conditions of these undertakings, which would maintain the level of imports up to an amount that should avoid the reappearance of material injury to the Community industry, were acceptable.

In addition, these undertakings were considered as a proportionate and appropriate remedy since their correct observance can be effectively monitored by the Commission. To this effect, the Brazilian producers have undertaken to submit to the Commission detailed and regular reports on their exports to the Community.

(51) Should these undertakings not be complied with or be withdrawn by one or several producers concerned, the Commission could, in accordance with Article 10 (6) of Regulation (EEC) No 2423/88, immediately impose on imports from the producers concerned a provisional anti-dumping duty on the basis of the results and conclusions of the investigation set out in recitals 9 and 10.

(52) When the Advisory Committee was consulted on the acceptance of the undertakings offered, three Member States raised objections. Therefore, in accordance with Article 9 and 10 (1) of Regulation (EEC) No 2423/88, the Commission sent a report to the Council on the results of the consultations and a proposal that the investigation be terminated by the acceptance of undertakings. As the Council has not decided otherwise within one month, the present Decision should stand adopted,

HAS DECIDED AS FOLLOWS:

Article 1

The undertakings given by:

— Brascorda SA, Bayeux (Paraíba),
— Cisaf SA, Natal (Rio Grande do Norte),
— Cisal SA, Bayeux (Paraíba),
— Cosibra SA, Rio de Janeiro (Rio de Janeiro),
— Fibrasa SA, Bayeux (Paraíba),
— Fisalplast SA, Salvador (Bahia),
— Sisalana SA, Simões Filho (Bahia),
— Stella Azzurra SA, Simões Filho (Bahia),
— Unisal SA, Salvador (Bahia),

in connection with the anti-dumping review of Decision 87/66/EEC, as regards imports of binder and baler twine falling within CN code ex 5607 21 00 originating in Brazil, are hereby accepted.

Article 2

The anti-subsidy review proceeding with regard to imports of binder and baler twine falling within CN code ex 5607 21 00, originating in Brazil, is hereby terminated.

Article 3

The anti-dumping and anti-subsidy review of Decision 87/66/EEC, as regards imports of binder and baler twine falling within CN code ex 5607 21 00 originating in Mexico, is hereby terminated, with the effect that the anti-dumping and anti-subsidy measures in force concerning these imports lapse.

Article 4

This Decision shall take effect on the day following its publication in the *Official Journal of the European Communities.*

Done at Brussels, 3 September 1993.

For the Commission
Leon BRITTAN
Vice-President