COUNCIL REGULATION (EEC) No 1100/80

of 30 April 1980

imposing a definitive anti-dumping duty on certain acrylic fibres originating in the United States of America

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 [1],

Having regard to the proposal submitted by the Commission after consultation with the Advisory Committee set up under Article 6 of Regulation (EEC) No 3017/79,

Whereas, on 11 May 1979, the Commission received a complaint submitted by the International Rayon and Synthetic Fibres Committee, CIRFS, on behalf of almost all the Community producers of acrylic fibres, setting out evidence as to the existence of dumping of the like products originating in Greece, Japan, Spain, Turkey and the United States of America and of material injury resulting therefrom ;

Whereas, since there was sufficient evidence to justify initiating a procedure, the Commission published in the *Official Journal of the European Communities* of 12 June 1979 a notice of the initiation of an anti-dumping procedure concerning imports of certain acrylic fibres originating in Greece, Japan, Spain, Turkey and the United States of America [2] so advised the exporters and importers known by the Commission to be concerned, as well as representatives of the countries concerned and the complainants and commenced the investigation at Community level and gave the parties directly concerned the opportunity to make known their views in writing and to be heard orally, and to meet so that opposing views might be presented and rebuttal arguments put forward ;

Whereas, for the purposes of a preliminary determination of dumping and injury, the Commission made on the spot investigations at the offices of the American exporters whose operations were deemed to require investigation, namely the American Cyanamid Company, Wayne, New Jersey, USA and the Badische Corporation, Williamsburg, Virginia, USA ; whereas similar investigations were carried out at the offices of Vomvicryl SA Athens, Greece and Akrilik Kimya Sanayii AS, Istanbul, Turkey ; whereas the Commission had carried out on the spot investigations at the offices of the main Community producers involved, namely the Italian companies ANIC SpA, Milan, Montefibre SpA, Milan, Societa Italiana Resina SpA (SIR), Milan and SNIA Viscosa SpA, Milan ;

Whereas it emerged from the investigations carried out in Greece and Turkey that no dumping existed in the case of the exports by these producers to the Community and the investigation was consequently closed in so far as they are concerned ;

Whereas, to make a preliminary examination of the existence of dumping by American producers, the Commission compared their export prices to the Community with those ruling on the American market ;

Whereas weighted averages were used for these comparisons, which were made at the ex-factory level for sales during the period 1 June 1978 to 31 May 1979 ;

Whereas all the allowances claimed by the Badische Corporation for transport and selling expenses were granted ; whereas, however, the company's claim that first quality material sold as development samples at low prices should not be included in the overall net weighted average calculation for first quality material was disallowed since the volume of the sales concerned constituted such a high proportion of total sales and the company did not provide sufficient evidence to justify its claim ;

Whereas the allowance claimed by the American Cyanamid Company for transport costs was granted ; whereas, in the absence of sufficient evidence in support of their claim that there were virtually no selling expenses on exports to the Community, the breakdown of these costs was based on the available accounting data, allocated proportionately to the turnover for each product and market under consideration ; whereas the exporter in question requested

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No C 146, 12. 6. 1979, p. 2.

a supplementary adjustment for certain administrative and other expenses ; whereas, in the absence of sufficient proof as to the direct relationship of these expenses with the sales under consideration, the Commission was not able to take this request into account ; whereas a claim made by the American Cyanamid Company for differences in the production cost of certain acrylic fibres sold in the domestic market as opposed to those sold in the Community market was not allowed since the exporter in question refused to provide documentary proof in support of its claim ;

Whereas, with regard to injury, the evidence available to the Commission during the preliminary examination showed that the Community industry had been making strenuous efforts to recover from the effects, experienced over many years, of virtual stagnation of production and consumption accompanied by considerable overcapacity and extremely high losses ;

Whereas this process of recovery had entailed major efforts to reduce capacity and to rationalize, which had resulted in an overall reduction of approximately 8 % of the workforce since 1977, and attempts by the European producers to increase their selling prices in order to cover sharply increased raw material costs and to reach a reasonable profit situation ;

Whereas, whilst these attempts were being made by Community producers a significant increase in imports had taken place especially from the United States of America ; whereas the evidence available to the Commission showed that imports into the Community of acrylic fibres originating in the United States of America had increased from 7 611 tonnes in 1977 to 10 719 tonnes in 1978 representing an increase of 41 %, and to 4 301 tonnes in the first quarter of 1979 ; whereas, on the basis of available statistics, continuous filament tow represented approximately 60 % and discontinuous acrylic fibre represented 40 % of American imports ; whereas the American market share had nearly doubled since 1977 from 1·7 % in 1977 to 3·4 % in the first three months of 1979 ;

Whereas United States' imports were concentrated in Italy which, for the first quarter of 1979, received almost 75 % of American exports to the Community ; whereas these exports to Italy had increased from 1 794 tonnes in 1977 to 6 225 tonnes in 1978 representing an increase of 246 % and to 3 181 tonnes for the first quarter of 1979 indicating an annual increase of 104 % compared with 1978 ; whereas the market share of these imports had increased from 1·1 % in 1977 to 2·9 % in 1978 and to 6·0 % for the first three months of 1979 ; whereas these increased American exports to Italy had been at extremely low prices undercutting Italian producers by approximately 25 % ; whereas this had resulted in a loss of orders for Italian producers and depression of prices and additional losses for Italian producers ;

Whereas the evidence available to the Commission also indicated that this situation in Italy which represents approximately 30 % of Community production and approximately 40 % of Community consumption had a considerable impact on other Community producers who traditionally export to Italy and who were also facing a difficult situation characterized by heavy losses, and who were forced to meet artificially low American prices ;

Whereas, therefore, there was sufficient evidence to show that the dumped imports originating in the USA were undermining the process of recovery of Community producers ; whereas, consequently, these imports constituted injury to a Community industry ;

Whereas, since this preliminary examination of the matter showed that there was dumping, that there was sufficient evidence of injury and that the interests of the Community called for immediate intervention, the Commission, by Regulation (EEC) No 2712/79 [1], imposed a provisional anti-dumping duty on certain acrylic fibres originating in the United States of America ;

Whereas, since it had emerged from the preliminary examination of the facts that no dumping existed on imports from E. I. Dupont de Nemours and Company, Wilmington, Delaware, USA, this firm was excluded from the application of the provisional duty ;

Whereas, furthermore, one of the American exporters, Badische Corporation, Williamsburg, Virginia, USA, had voluntarily undertaken to increase its prices to levels which were considered satisfactory ; whereas this undertaking was accepted by the Commission, which accordingly decided to terminate the procedure concerning this company and to exclude it from the application of the provisional duty ;

Whereas, subsequently, the Commission by Regulation (EEC) No 61/80 [2], excluded Eastman Chemical International AG and Monsanto International Sales Company from the application of the provisional duty ;

Whereas, moreover, investigations were carried out with the main Spanish exporter in the course of which a price undertaking was received which was considered satisfactory by the Commission and the procedure was consequently terminated as regards imports from Spain [3] ;

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(1) OJ No L 308, 4. 12. 1979, p. 11.
(2) OJ No L 10, 15. 1. 1980, p. 7.
(3) OJ No C 2, 4. 1. 1980, p. 6.

Whereas, since the examination of the facts of the matter had not yet been completed and the American Cyanamid Company, the only known exporter to whom the provisional duty applied, had requested that the duty be extended for a period not exceeding two months, the Council by Regulation (EEC) No 522/80 [1] so extended the duty;

Whereas, following this extension, the Commission completed its investigation into Japanese exports of acrylic fibres to the Community; whereas dumping and injury resulting therefrom having been provisionally established, the principal Japanese exporters offered price undertakings, the effect of which was to increase import prices into the Community to a level necessary to eliminate injury; whereas these undertakings have been accepted by the Commission which has decided to terminate the anti-dumping procedure in so far as Japan is concerned;

Whereas in the course of the subsequent examination of the exports of products manufactured by American Cyanamid Company, completed on 12 March 1980, after the imposition of the provisional anti-dumping duty, the interested parties had the opportunity to make known their views in writing, to be heard by the Commission and orally to develop their views, to inspect non-confidential information relevant to the defence of their interests and to be informed of the essential facts and considerations on the basis of which it was intended to make a final determination; whereas the Community producers and some of the exporters and importers concerned availed themselves of these possibilities by making known their views in writing and orally; whereas the Commission also carried out a further on-the-spot investigation at the offices of the American Cyanamid Company;

Whereas, for the purpose of a final determination as to whether dumping existed, the Commission endeavoured to establish whether American domestic sales were made in the ordinary course of trade; whereas, since American Cyanamid asserted that its sales on the American market were not made at a loss, comparisons were made on the basis of the company's prices ruling on the domestic market;

Whereas weighted averages were used for these comparisons, which were made at the ex-factory level for sales during the period 1 December 1979 to 29 February 1980, the latest date for which information is available;

Whereas, with regard to the elements affecting the determination of injury, new information was received which showed that imports into the Community of acrylic fibres originating in the United States of America amounted to 17 400 tonnes in 1979, representing an increase of 62 % compared to 1978; whereas the American market share had more than doubled from 1·7 % in 1977 to 3·5 % in 1979; whereas it has been borne in mind that the above figures include 3 457 tonnes imported from Eastman Chemical International AG and Monsanto International Sales Company which shipments of high-priced modacrylic fibre were found not to cause injury;

Whereas, in so far as Italy was concerned, American exports to that country amounted to 11 400 tonnes in 1979, representing an increase of 85 % compared with 1978; whereas the market share of these imports had increased from 2·9 % in 1978 to 5·0 % in 1979;

Whereas the total market share held by American exports and those held by Japanese and Spanish firms also found to have dumped amounted in 1979 to 7·6 % in the Community and to 9·8 % in Italy;

Whereas, on 26 March 1980, American Cyanamid Company voluntarily offered to undertake to increase its export prices to a level corresponding to the prices on the domestic market, thus eliminating in their opinion dumping margins calculated on that basis;

Whereas, however, subsequent to the offering of the above undertaking the complainant, CIRFS, provided to the Commission information indicating that the domestic sales of like products by American Cyanamid Company have been made at prices below cost of production since early 1979; whereas this information which is based on a report prepared by an American research organization, First Boston Corporation, gives reasonable grounds for believing that American Cyanamid Company's sales of acrylic fibres on the domestic market are in fact not being made in the ordinary course of trade because the weighted average selling prices have been below cost of production since the beginning of 1979 and have not been at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade;

Whereas American Cyanamid Company, despite repeated requests by the Commission, has firmly denied access to necessary financial information pertaining to costs of production; whereas, in these circumstances, dumping calculations concerning this

[1] OJ No L 59, 4. 3. 1980, p. 1.

company have been based on the constructed value of acrylic fibre as derived from the best evidence available, the abovementioned report prepared by the First Boston Corporation, having taken into account known factors applicable to American Cyanamid Company ;

Whereas, more precisely, the cost of production extracted from the report in question for an American producer considered to be the most efficient in this area has been increased by four or respectively five US dollar cents per lb to allow for differences in the production process of American Cyanamid Company and by a profit margin before tax of 3 % on the selling price ;

Whereas, on the above basis, it was finally established that the weighted average dumping margin for discontinuous acrylic fibre is nil in December 1979 and 13·7 % in the early months of 1980 respectively, and for continuous filament tow of acrylic fibre is 3·7 % in December 1979 and 17·6 % in the early months of 1980 respectively ;

Whereas, therefore, the facts as finally established show the existence of dumping practised by American Cyanamid Company and material injury resulting therefrom for the Community industry concerned ;

Whereas, in these circumstances, protection of the Community's interests calls for the definitive collection of the amounts secured by way of provisional duty in respect of acrylic fibres originating in the United States of America up to the rates (set out in Article 2 of this Regulation) and for the imposition of a definitive anti-dumping duty at the rate of 13·7 % on discontinuous acrylic fibre and 17·6 % on continuous filament tow of acrylic fibre,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on discontinuous acrylic fibre falling within Common Customs Tariff subheading ex 56.01 A and corresponding to NIMEXE code 56.01-15 and continuous filament tow of acrylic fibre falling within Common Customs Tariff subheading ex 56.02 A and corresponding to NIMEXE code 56.02-15, both originating in the United States of America.

2. The rate of duty shall be as follows :

— 13·7 % on discontinuous acrylic fibre,

— 17·6 % on continuous filament tow of acrylic fibre,

on the basis of the value declared in accordance with Commission Regulation (EEC) No 375/69 of 27 February 1969 on the declaration of particulars relating to the value of goods for customs purposes ([1]).

3. The provisions in force for the application of customs duties shall apply to this duty.

Article 2

The amounts secured by way of provisional duty pursuant to Regulation (EEC) No 2712/79, as amended by Regulation (EEC) No 61/80, shall be definitively collected as follows :

— for discontinuous acrylic fibre, no duty for imports during December 1979, and for imports effected thereafter at a rate of 7·2 %,

— for continuous filament tow of acrylic fibre, at the rate of 3·7 % for imports during December 1979, and at the rate of 17·6 % thereafter.

Article 3

The definitive anti-dumping duty instituted by Article 1 shall not apply to acrylic fibres produced and exported by :

— the Badische Corporation, Williamsburg, Virginia, USA,

— E. I. Dupont de Nemours and Company, Wilmington, Delaware, USA,

— Eastman Chemicals Division of Eastman Kodak Company, Kingsport, Tennessee, USA (exported by Eastman Chemical International AG, Zug, Switzerland),

— Monsanto International Sales Company, Missouri, USA.

Article 4

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

([1]) OJ No L 52, 3. 3. 1969, p. 1.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 April 1980.

For the Council

The President

G. ZAMBERLETTI