COMMISSION REGULATION (EEC) No 2297/80

of 29 August 1980

imposing a provisional anti-dumping duty on imports of certain polyester yarn originating in the United States of America

THE COMMISSION 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), and in particular Articles 10 and 11 thereof,

After consultations within the Advisory Committee set up under that Regulation,

Whereas at the end of April 1980 the Commission received a complaint lodged by the International Rayon and Synthetic Fibres Committee (CIRFS) on behalf of manufacturers accounting for almost all of the Community production of polyester yarn; whereas the complaint contained evidence of the existence of dumping in respect of the like product originating in the United States of America and of material injury resulting therefrom especially in Italy and the United Kingdom;

Whereas the said information supplied provided sufficient evidence to justify initiating a proceeding; whereas the Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* (2), the initiation of a proceeding concerning imports of certain polyester yarn originating in the United States of America, and commenced an investigation of the matter at Community level;

Whereas the Commission officially so advised the exporters and importers known to be concerned, as well as the representatives of the exporting country and the complainants;

Whereas the Commission has given the parties directly concerned the opportunity to make known their views in writing and to be heard orally; whereas only some of the importing and exporting parties known to be concerned have taken the opportunity to present detailed written submissions and none of them requested oral hearings;

Whereas in order to arrive at a preliminary determination of dumping and injury the Commission sought and verified all information it deemed to be necessary and carried out inspections at the premises of those exporters known to be concerned who had expressed an interest in the procedure and who had significant exports to the Community, namely the following American companies: Carter Moore and Co Inc. New York, N.Y.; Eastman Chemical International Company, Kingsport, Tennessee; Macfield Texturing Inc., Madison, North Carolina; Monsanto Textile Company, St. Louis, Missouri; Titan Textile Company Incorporated, New York, N.Y. and Unifi Incorporated, Greensboro, North Carolina; whereas the Commission also carried out inspections at the premises of the main complainant Community producers, including in France, Rhone Poulenc Textile; in the Federal Republic of Germany, Enka and Hoechst AG; in Italy Montefibre SpA and in the United Kingdom, Courtaulds Ltd and ICI Ltd; whereas, with the exception of the Monsanto Company, no importer has replied to the questionnaire sent by the Commission and consequently no visits have been made to importers' premises although the figures provided by the Monsanto Company's European offices were inspected in Brussels;

Whereas the product alleged to be dumped is exported to the Community in the form of either non-textured or textured yarn;

Whereas, in so far as non-textured yarn is concerned, in seeking to determine normal value the Commission had to take into account the allegation of the complainants that domestic sales of this product in the United States were being made at prices below their cost of production during the period under investigation which extended from 1 May 1979 to 30 April 1980;

Whereas Eastman Chemical International Company refused to state whether or not sales were made at prices less than their cost of production and refused to divulge any elements pertaining to the said cost; whereas Monsanto Textile Company, stated that losses were incurred on this product but declined to provide details of its cost of production; whereas E.I. Dupont de Nemours and Company declined to complete in full the questionnaire sent to it by the Commission on the basis that their exports to the Community were insignificant and, in particular, did not make any reply to that part of the questionnaire relating to profit and costs of production;

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No C 129, 30. 5. 1980, p. 2.

Whereas in these circumstances, the Commission had to base its preliminary determination on the basis of the information available, i.e., that contained in the complaint ; whereas it consequently concluded that non-textured yarn was sold at a loss on the domestic market during the investigation period cited above ;

Whereas, therefore, the Commission considered these sales as not having been made in the ordinary course of trade and established a constructed value using available information supplied by the complainants on the costs of materials, manufacture and overheads and including a 3 % profit margin considered to be reasonable ;

Whereas the constructed value was compared at fob level with the weighted average prices for export shipments to the EEC during the investigation period as established during the on-the-spot investigations in the United States ;

Whereas the preliminary examination showed a weighted average dumping margin of 15·6 % for Monsanto Textile Company, the largest known exporter of non-textured yarn to the Community ;

Whereas the information used for calculating the dumping margin for Monsato is considered to be the best evidence available in so far as calculations for all other US exports of this products to the EEC are concerned with the exception of these made by Eastman Kodak, for which the weighted average dumping margin disclosed by the preliminary examination is 13·7 % ;

Whereas, as regards textured yarn, it was also alleged by the complainant that US producers of this product were selling at below cost of production on the domestic market ; whereas, however, the Commission established during its investigations at the premises of the two major texturers concerned that this allegation was incorrect and that profits were made by these companies on the product in question during the investigation period ; whereas the third producer of this product refused to disclose any details regarding its profitability but stated that a profit had been earned on it during the period ; whereas on the basis of the information obtained from the two abovementioned companies the Commission provisionally concluded that sales of textured yarn on the domestic market during the investigation period were in the ordinary course of trade and that consequently normal value should be based on the domestic price ;

Whereas, with regard to domestic prices, the questionnaire sent to all companies requested the range of prices prevailing and full details of product specifications together with an indication of the quantities sold at different prices ; whereas Unifi and all other companies with the exception of Macfield Texturing Inc. either did not reply to the questionnaire or refused so to do ; whereas during the investigation carried out at the offices of Unifi Incs., despite the insistence of Commission officials, no indication of prevailing prices nor any list of all transactions was provided whose completeness could be checked ; whereas the investigators were thus unable to establish preponderant or weighted average domestic prices and thus had to limit themselves to spot-checks which disclosed dumping in certain transactions ; whereas, however, it could not be established from these spot-checks whether the results obtained were representative or not ; whereas in the circumstances it is considered that for Unifi Inc. the best solution available for the determination of normal value is to utilize the lowest US domestic fob prices contained in the complaint which refer to the products which represent the majority of exports to the Community and are situated in the middle of the price range of all products also exported ; whereas, with regard to Titan Textile Co Inc. and to all other exporters which refused to provide any details of domestic prices, normal value has been based on the evidence available as is the case for Unifi Inc. ; whereas, however, Macfield Texturing Inc., although it did not furnish all the necessary information relating to domestic sales during the investigation carried out at its offices, subsequently communicated to the Commission computer listings which the Commission has not yet been able to verify which claim to show all domestic sales and give a weighted average domestic price for each type concerned ;

Whereas, in seeking to dertermine export prices to the Community, the Commission was also confronted with a lack of information from the companies visited for verification purposes : Macfield Texturing Inc., Titan Textile Co Inc. and Unifi Inc. ; whereas in this respect no weighted average export prices or lists of all transactions were provided whose completeness could be verified ; whereas, in these circumstances, in the case of Unifi Inc. it is considered that the best solution available is to use the hightest export prices to the EEC contained in the complaint which refer to the products which represent the majority of exports to the Community and are situated in the middle of the price range of all such products ; whereas, as concerns Titan Textile Inc. and all other exporters which refused to provide any details of export prices, the export price has been based on the evidence available as is the case for Unifi Inc. ; whereas, in so far as Macfield Texturing Inc. is concerned, certain listings of export sales were presented whose completeness could not be established during the course of the investigation ;

Whereas the preliminary examination showed a weighted average dumping margin of 9·6 % for Unifi Inc. and all other exporters who refused to provide information ; whereas, with regard to Macfield Texturing Inc. which cooperated in providing some information as to its selling prices, calculation of a dumping margin is defferred until verification of the information supplied is completed ;

Whereas, with regard to the injury caused to the Community industry, the evidence available to the Commission shows that imports into the Community of the textured and non-textured yarn in question originating in the United States of America rose from 9 817 tonnes in 1978 to 27 878 tonnes in 1979 ; whereas imports of the polyester yarn in question originating in the United States of America into the United Kingdom and Italy, the two markets most affected, increased by 128·1 % and 938·5 % respectively between 1978 and 1979 ; whereas the American market share in the Community in 1979 was 10 % compared with 4 % in 1978 ; whereas in 1979 these imports took a market share of 9·9 % in Italy and 14·9 % in the United Kingdom compared to 1·6 % and 5·9 % respectively in 1978 ;

Whereas, in the second half of 1979 and the early months of 1980, the resale prices in the Community of the polyester yarn of American origin, for which dumping was found frequently undercut the prices of like yarn produced by Community manufacturers by margins reaching 20 % in some cases ; whereas these margins would have been greater had Community producers not reduced their prices in an unsuccessful attempt to meet US competition and to preserve their market share ;

Whereas the consequent impact on the Community industry takes the form principally of loss of market share and of a depression of Community prices for polyester yarn ; whereas, for example, the share of the Community market held by Community manufacturers is estimated to have fallen by 4·7 % from 1978 to 1979 ; whereas during the same period the estimated decrease has been 7·9 % in Italy and 7·2 % in the United Kindgom ; whereas the prices of yarn produced by Community manufacturers have on average gone down from January 1979 to April 1980 ; whereas the perccentage of price depression has reached 20 % for certain types of yarn ;

Whereas, with regard to the financial situation of Community producers, the Commission is aware that the Community industry has experienced grave financial problems occasioned by virtual stagnation of production accompanied by considerable over-capacity which have led to extremely high losses being incurred ; whereas, however, serious efforts have been made in 1978 and 1979 to remedy this situation by means of rationalization and in particular by substantially reducing capacity and by improving productivity ; whereas as a result of these rationalization efforts the financial results of most of the Community producers improved ; whereas, however, the depressive effect on selling prices resulting from the dumped imports at extremely low prices during the latter half of 1979 and early 1980 made it impossible for Community producers to increase their selling prices in order to cover sharply increased raw material costs and, therefore, Community producers' losses have again sharply increased ;

Whereas, even after allowing for the effects of the restructuration, the impact of the dumped imports has been to necessitate the laying-off of a substantial number of workers, the closure of several plants, and short-time working ; whereas employment in the Community industry has gone down by more than 1 300 units from January 1979 to April 1980 ; whereas, this reduction does not take account of some 1 400 workers who were during the same period either on short-time or being paid partially out of social welfare funds ;

Whereas the Commission has considered whether there is injury caused by other factors which, individually or in combination, are also adversely affecting the Community industry ; whereas the Commission has examined in particular in this context the level and prices of other imports, the level of demand in the Community for polyester yarn and the competition among Community producers ; whereas the level of other imports declined in 1979 ; whereas, according to the information available to the Commission, the level of Community demand for polyester yarn increased slightly in 1979, while over this period the number of Community producers declined and the market share of third countries other than the USA also decreased.

Whereas, therefore, it is considered that none of these factors makes a significant contribution to the worsening of the situation of the Community producers ; whereas the injurious effects attributed solely to dumping, i.e. loss of market share, personnel reduction and in particular a deterioration in the financial situation together represent material injury ;

Whereas, in these circumstances, to prevent injury being caused during the proceeding, the interests of the Community call for immediate intervention consisting in the imposition of a provisional anti-dumping duty on imports of certain polyester yarn, originating in the United States of America at a rate which, having regard to the extent of injury caused, should be equal to the dumping margins provisionally established ; whereas, since a dumping margin has not been established at this stage for Macfield Texturing Inc., the company should therefore be excluded from application of the provisonal anti-dumping duty until such time as the preliminary investigation concerning it is completed,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on certain polyester yarn, falling within Common Customs Tariff subheading ex 51.01 A and corresponding to NIMEXE codes 51.01-23, 25, 26 and 28, originating in the United States of America. This duty shall not apply to textured polyester yarn manufactured and exported by Macfield Texturing Inc., Madison, North Carolina.

2. The amount of the provisional anti-dumping duty referred to in paragraph 1 shall be as folows :

(a) for textured yarn falling within NIMEXE code 51.01-23, 9·6 % and

(b) for non-textured yarn falling within NIMEXE codes 51.01-25, 26 and 28, 15·6 %, except for non-textured yarn manufactured and exported by Eastman Chemical International Company, Kingsport, Tennessee for which the amount of duty shall be 13·7 %.

3. The duty shall be on the basis of the value declared in accordance with Commission Regulation (EEC) No 1496/80 of 11 June 1980 on the declaration of particulars relating to customs value and on documents to be furnished [1].

4. The provisions in force concerning customs duties shall apply for the application of this duty.

5. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to payment of a deposit, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 3017/79, the parties concerned may make known their views and apply to be heard orally by the Commission within a month of the entry into force of this Regulation.

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 3017/79, this Regulation shall be applicable for four months or until the adoption by the Council of definitive measures.

Article 3

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

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

Done at Brussels, 29 August 1980.

For the Commission

Étienne DAVIGNON

Member of the Commission

[1] OJ No L 154, 21. 6. 1980, p. 16.