COUNCIL REGULATION (EEC) No 3439/80

of 22 December 1980

imposing a definitive anti-dumping duty on imports of certain polyester yarn 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 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 such information 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, in order to arrive at a preliminary determination of dumping and injury, the Commission carried out investigations at the premises of those American producers known to be concerned and of the main complainant Community producers;

Whereas, since the preliminary examination of the matter showed that there was dumping, except in the case of one exporter where no dumping margin was established, that there was sufficient evidence of injury, and that the interests of the Community called for immediate intervention, the Commission by Regulation (EEC) No 2297/80 (3) imposed a provisional anti-dumping duty on certain polyester yarn originating in the United States of America;

Whereas, subsequently, the Commission by Regulation (EEC) No 2695/80 (4) excluded Macfield Texturing Inc., and Unifi Incorporated from the scope of the provisional duty;

Whereas, moreover the Commission by Regulation (EEC) No 2843/80 (5) subsequently excluded imports of sewing thread composed of multiple or cabled yarn from the anti-dumping procedure concerning imports of certain polyester yarn originating in the United States of America;

Whereas, in the course of the subsequent examination of the matter completed 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 American producers and exporters and some importers availed themselves of these possibilities by making known their views in writing or orally; whereas the Commission also carried out further investigations in the United States of America at the offices of Burlington Inc., Greensboro, North Carolina; Carter Moore and Co. Inc., New York, Ny; Collins and Aikman Corp., Graham, North Carolina; E. I. Du Pont de Nemours and Company, Wilmington, Delaware; Meyers Fibers Company, Willow Grove, Pennsylvania; Spectrum Inc., Kings Mountain, North Carolina; Titan Textile Inc., Patterson, New Jersey and Uni-Tex International, New York, NY;

Whereas in so far as non-textured yarn is concerned, for the purpose of a final determination as to whether dumping existed, the Commission compared the export prices to the Community during the investigation period which lasted from 1 May 1979 to 30 April

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No C 129, 30. 5. 1980, p. 2.
(3) OJ No L 231, 2. 9. 1980, p. 5.
(4) OJ No L 279, 23. 10. 1980, p. 18.
(5) OJ No L 294, 4. 11. 1980, p. 5.

1980, of Burlington Inc., E. I. Du Pont de Nemours and Company and Meyers Fibers Company either with the domestic prices on the US market or the constructed value, where sales were made at a loss or where there were no sales of a like product on the domestic market; whereas the constructed value was established by using the cost of production of the producers in question and including a 3 % profit margin considered to be reasonable; whereas account was taken, where appropriate of differences affecting price comparability, such as differences in freight charges and differences in payment terms; whereas on the above basis, it was finally established that there was no evidence of dumping by Meyers Fibers Company and that the weighted average dumping margin for the exports of Burlington Inc. and E. I. Du Pont de Nemours and Company was 0·2 %, which in this case may be considered to be minimal;

Whereas the preliminary examination concerning Monsanto Textile Company, showed a weighted average dumping margin of 15·6 % for its exports to the Community; whereas in the absence of any representations from Monsanto or any new information concerning normal value, the dumping margin as finally established for this company remains at 15·6 %; whereas Uni-Tex International, which does not sell non-textured yarn on the United States domestic market, obtains the quantities which it exports to the EEC mainly from Monsanto Textile Company; whereas the information used for calculating the dumping margin for Monsanto is considered to be the best evidence available in so far as calculations for Uni-Tex's and all other US exports of non-textured yarn to the EEC are concerned, with the exception of Eastman Chemical International Company, for which the weighted average dumping margin of 13·7 % resulting from the preliminary examination and never subsequently contested by the company is considered to be finally established, and also excepting those companies detailed in the preceding recital;

Whereas, as regards textured yarn, the Commission carried out an investigation subsequent to the imposition of the provisional anti-dumping duty of those independent texturers known to be concerned and who offered their cooperation; whereas, in this context, it had to be borne in mind that the complainant alleged that textured yarn was being sold at a loss on the US domestic market and that normal value therefore should be based on constructed value; whereas the investigation showed that the texturers visited were not selling textured yarn at less than all costs, both fixed and variable, incurred by them in its production and that therefore the allegations of the complainant were incorrect; whereas, consequently, their sales were considered to have been made in the ordinary course of trade and the normal values of textured yarn exported by them to the Community were based on US domestic prices; whereas these domestic prices were compared with export prices to the Community, account being taken, where appropriate, of differences affecting price comparability, such as differences in quality and differences in conditions and terms of sale, i.e. differences in freight charges and in payment terms;

Whereas the examination finally established that no dumping occurred on exports by Carter Moore and Co. Inc., Collins and Aikman Corp., Meyers Fibers Company, Spectrum Inc., and Uni-Tex International whilst there were weighted average dumping margins of 0·5 % for Burlington Inc. and 1·1 % for Titan Textile Inc., which margins may be considered to be minimal;

Whereas, with regard to American exports of textured yarn other than from those companies cited above, the Commission had to take into account the statement of the complainant that such exports were both of products manufactured by integrated producers, i.e. those producing non-textured yarn and subsequently texturing it, who were selling this product in the United States of America at prices below its cost of production, and also of products manufactured by independent texturers; whereas, in the absence of any cooperation from the exporters concerned, the Commission assumed, for the purposes of establishing an average dumping margin, that equal amounts of the exports in question were manufactured by integrated and independent producers;

Whereas integrated producers either refused to divulge any elements of their cost of production or stated that they did not export directly to the Community or did not make themselves known to the Commission;

Whereas, in these circumstances, the Commission had to base its final determination regarding exports of textured yarn produced by these manufacturers on the information available, i.e. that contained in the complaint; whereas it consequently concluded that the sales of these manufacturers on the domestic market were made at a loss during the investigation period;

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 for non-textured yarn supplied by the complainants; whereas this information consisted of the costs of materials, manufacture and overheads and included a 3 % profit margin considered reasonable;

Whereas the constructed value was compared at fob level with the export prices for shipments to the EEC during the investigation period as established during investigations with major exporters of textured yarn ;

Whereas the dumping margin finally established for all exports of textured yarn considered to have been produced by integrated companies is 23·1 % ;

Whereas, with regard to exports considered to have been manufactured by independent texturers who are either unknown to the Commission or who have not cooperated fully in the investigation, the average dumping margin of 9·6 % resulting from the preliminary investigation and never subsequently contested is considered to be finally established ;

Whereas, the average dumping margin for textured yarn other than for those companies named in the preceding recitals, having taken into account the abovementioned factors, is finally established as 16·4 % ;

Whereas, with regard to the injury caused to the Community industry the Commission had to take into consideration the fact that, although the product found to have been dumped is classified either as non-textured or textured yarn, following recent changes in the technology employed for the production of polyester filament yarn, a large proportion of the yarn imported into the EEC is partially oriented yarn (poy), which product is at an intermediary stage of production between non-textured and textured yarn ; whereas, for this reason, it is appropriate to consider non-textured and textured yarn together when determining injury ;

Whereas, with regard to the elements affecting the determination of injury, new information was received which showed that imports into the Community of non-textured, partially oriented and textured yarn originating in the United States of America together amounted to 18 004 tonnes in the first six months of 1980, representing an increase of 88·1 % over the corresponding period in 1979 ; whereas the American market share increased from 6·4 % for the first six months of 1979 to 15·1 % for the corresponding period in 1980 ; whereas the increased imports of non-textured yarn have been mainly to the United Kingdom and Belgium and Luxembourg where US imports reached a market share of 47·6 % and 50·4 % respectively during the first half of 1980 ; whereas, for textured yarn, the greatest increase in American imports has been in Italy and Belgium and Luxembourg where the United States' market share increased from 6·7 % and 1·1 % respectively in 1979 to 16·8 % and 26·8 % respectively in the first half of 1980 ;

Whereas, with regard to the other elements affecting the determination of injury, the latest information available relating to the first six months of 1980 concerning the production and capacity utilization, the financial results and the employment situation of Community producers confirmed the preliminary determination and no new information was received nor further arguments advanced which could have altered that determination ;

Whereas, in considering the facts as finally established, the effect of all imports of non-textured and textured yarn from the United States of America on the industry concerned was first examined ; whereas, however, since approximately one third of these imports into the Community were not at dumped prices, it was considered that at least two thirds of the total impact should be attributed to the dumped imports and that this should be considered to constitute material injury when taken in isolation ;

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 certain polyester yarn originating in the United States of America and for the imposition of a definitive anti-dumping duty at the rate of 16·4 % on textured yarn and 15·6 % on non-textured yarn ; whereas the definitive anti-dumping duty shall be limited to 13·7 % in respect of Eastman Chemical International ; whether neither definitive collection nor definitive duty shall apply to those companies whose exports have been found either not to have been dumped or to have a minimal dumping margin,

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on certain polyester yarn originating in the United States of America and falling within subheading ex 51.01 A of the Common Customs Tariff, corresponding to NIMEXE codes 51.01-23, 25, 26 and 28.

2. The rate of the definitive anti-dumping duty shall be as follows :

(a) for textured yarn falling within NIMEXE code 51.01-23, 16·4 %, 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 rate 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 be valid for the application of this duty.

Article 2

The amounts secured by way of provisional duty under Regulation (EEC) No 2297/80 as amended by Regulations (EEC) Nos 2695/80 and 2843/80 shall be definitively collected.

Article 3

The definitive duty established by Article 1 and the definitive collection provided for in Article 2 shall not apply to :

(a) textured yarn produced and exported by Burlington Inc., Greensboro, North Carolina ; Carter Moore and Co. Inc., New York, NY ; Collins and Aikman Corp., Graham, North Carolina ; MacField Texturing Inc., Madison, North Carolina ; Meyers Fibers Company, Willow Grove, Pennsylvania ; Spectrum Inc., Kings Mountain, North Carolina ; Titan Textile Inc., Patterson, New Jersey ; Unifi Inc., Greensboro, North Carolina and Uni-Tex International, New York, NY ;

(b) non-textured yarn produced and exported by Burlington Inc., E. I. Du Pont de Nemours and Company, Wilmington, Delaware and Meyers Fibers Company ;

(c) sewing thread composed of multiple or cabled yarn which is :

(i) put up on supports (reels, tubes, etc.) of a weight (including support) not exceeding 1 000 grams ;

(ii) dressed ;

(iii) has a final 'Z' twist.

Article 4

This Regulation shall enter into force on 3 January 1981.

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

Done at Brussels, 22 December 1980.

For the Council

The President

J. SANTER

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(1) OJ No L 154, 21. 6. 1980, p. 16.