COMMISSION REGULATION (EEC) No 1337/81

of 18 May 1981

imposing a provisional anti-dumping duty on imports of certain textured polyester fabrics 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 Article 11 thereof,

After consultations within the Advisory Committee set up under Regulation (EEC) No 3017/79,

Whereas in October 1980 the Commission received a complaint lodged by four companies accounting for the major part of the Community production of textured polyester fabrics;

Whereas since the complaint provided sufficient evidence of dumping in respect of like products originating in the United States of America, and of material injury resulting therefrom, the Commission accordingly announced, by a notice published in the *Official Journal of the European Communities* [2], the initiation of an anti-dumping proceeding concerning imports of certain textured polyester fabrics 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 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 none of the importers but all of the known exporters took advantage of that opportunity;

Whereas the complainants, the importers and the exporters known to be concerned were given the opportunity to acquaint themselves with all the information supplied to the Commission that was non-confidential and pertinent to the defence of their interests; whereas only one of the above parties took advantage of that opportunity;

Whereas, in order to arrive at a preliminary determination of dumping and injury, the Commission sought to obtain and verify all information which it deemed to be necessary and carried out inspections at the premises of seven US producers which had made themselves known, namely Burlington Industries, Inc., Greensboro, North Carolina and its subsidiary Burlington Industries (Ireland) Ltd, Gilloge, Clonlara; Texfi Industries, Inc., Greensboro, North Carolina; Milliken and Co., Spartanburg, South Carolina; Greenwood Mills, Inc., Greenwood, South Carolina; Bloomsburg Mills, Inc., New York; J. P. Stevens and Co., Inc., New York; and Frank Ix and Sons, New York;

Whereas the Commission also carried out inspections at the premises of two of the complainant producers, namely Carrington Vyella Ltd, London, and Samuel Courtauld and Co. Ltd, London;

Whereas it emerged that the other two complainant producers were at the same time importers of the products in question; whereas they were therefore excluded from the examination of the injury suffered by the complainant industry;

Whereas the preliminary investigation to determine the existence of dumping has partially confirmed the allegations in the complaint, namely that the average prices of certain products marketed by the exporters on their domestic market had, during the period covered by the investigation, that is the calendar year 1980 or the corresponding tax period, been lower than the fixed and variable costs normally incurred in the course of their production; whereas in such cases the normal value was constructed by adjusting the prices below the production costs referred to above in order to eliminate the losses and allow a reasonable profit; whereas, for the purposes of the preliminary determination of dumping and without prejudice to a different assessment at a later stage in the investigation, the Commission held, after hearing the views of the firms in question, that 5 % could be considered as a reasonable profit; whereas the constructed value was also used as the normal value in those cases where the product exported to the Community had not, during the reference period, been marketed on the domestic market by the firms in question;

[1] OJ No L 339, 31. 12. 1979, p. 1.
[2] OJ No C 337, 24. 12. 1980, p. 7.

Whereas, in those cases where the weighted average prices on the US domestic market had not been below production costs, the Commission used those domestic prices as the normal value ;

Whereas the Commission compared the normal value determined using one or other of the methods described in the preceding two paragraphs with the prices actually paid for the exports of the said products to the Community during the same reference period ; whereas those comparisons were made at the ex-factory stage ; whereas the export prices were adjusted when this appeared necessary, in order to take account of differences in the physical characteristics of the product or in the terms of sale — transport costs or payment terms for example ;

Whereas Burlington Industries, Inc., Greensboro, North Carolina expressly requested the Commission not to use the prices of the products which it exported to its subsidiary in the Community, Burling (Ireland) Ltd, as a reference for the establishment of the export prices ; whereas the export prices of Burlington Industries, Inc., to its subsidiary in the Community were therefore reconstructed on the basis of the prices at which the imported products were first resold to an independent purchaser ; whereas in that case adjustments were made to take account of all the costs incurred between importation and resale by Burlington (Ireland) Ltd, including in particular general and administrative costs, sales, transport, insurance and handling costs, customs duties and, where the products were not resold in the state in which they had been imported, the processing costs ; whereas a profit margin of 5 %, which was deemed reasonable, was taken into consideration for the purposes of this reconstruction exercise ;

Whereas the results of the investigations carried out at the seven US companies concerned show that their prices for exports to the Community were below the normal value and that the weighted average dumping margins were 38 % for J. P. Stevens and Co., Inc., New York ; 30·8 % for Frank Ix and Sons Inc., New York ; approximately 3·9 % for Texfi Industries Inc., Greensboro, North Carolina, Burlington Industries, Inc., Greensboro, North Carolina, Bloomsbury Mills Inc., New York and Milliken and Co., Spartanburg, South Carolina, and 0·7 % for Greenwood Mills, Greenwood, South Carolina ;

Whereas the available information should be used in respect of consignments to the Community from the US exporters which did not make themselves known ; whereas at the present stage in the investigation it is impossible to conclude on the basis of the available information that the weighted average dumping margin for those imports is less than 38 % ;

Whereas, with regard to the injury caused to the Community industry, the evidence available to the Commission shows that imports into the Community of certain textured polyester fabrics originating in the United States of America rose from 8·7 million m^2 in 1979 to 16·2 million m^2 in 1980 ; whereas imports of the fabrics in question from the United States of America into the United Kingdom, the market most affected, increased by 23 % between 1979 and 1980 ; whereas the share of the Community market held by the United States increased from 8·7 % in 1979 to 17·1 % in 1980 ; whereas imports from the United States held 12 % of the United Kingdom market in 1979 and 16·4 % in 1980 ;

Whereas, in the second half of 1979 and in 1980, resale prices in the Community for the textured polyester fabrics of US origin which were found to be dumped frequently undercut the prices of like fabrics produced by Community manufacturers, by margins reaching 30 % 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 took the form, principally, of a loss of market share and the depression of Community prices for textured polyester fabric ; whereas, for example, the share of the Community market held by Community manufacturers fell by around 9 % between 1979 and 1980 ; whereas the prices of fabric produced by Community manufacturers fell on average by 6 % from January 1979 to December 1980 ;

Whereas the Commission is aware that 1978 and 1979 were marked by an extremely severe competitive situation due mainly to the efforts of Community producers to increase their share of an expanding market ; whereas that expansion has been halted since 1979, which has led the Community industry to implement rationalization measures and in particular to reduce substantially its capacity and to improve productivity ; whereas, however, at the same time as they have been carrying out this rationalization effort, the depressive effect on selling prices resulting from the extremely low-priced imports effected in the second half of 1979 and in 1980 have made it impossible for Community producers to raise their selling prices in order to cover sharply increased raw material costs and, therefore, Community producers' losses are rising ;

Whereas, even after allowing for the effects of the restructuring, 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 an increase in short-time working; whereas employment in the Community industry fell by more than 400 units in 1980;

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 textured polyester fabrics and the competition among Community producers; whereas the level of other imports remained stable between 1979 and 1980 at around 5 million m^2; whereas, according to the information available to the Commission, the level of Community demand for textured polyester fabrics fell slightly in 1980, while over this period the numbers of Community producers declined and the market share of third countries other than the United States of America remained relatively stable;

Whereas, therefore, it is considered that none of these factors has made a significant contribution to the worsening of the situation of the Community producers; whereas the injurious effects attributed solely to dumping, that is 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 textured polyester fabrics 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 the dumping margin for the exports of Greenwood Mills, Inc. is minimal imports of certain polyester fabrics manufactured and exported by that company should be excluded from the application of the provisional anti-dumping duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of woven fabrics consisting wholly of yarn of textile fibres of textured polyester weighing not less than 175 g/m^2 and not more than 200 g/m^2 for unbleached fabrics and not less than 200 g/m^2 and not more than 225 g/m^2 for dyed fabrics falling within Common Customs Tariff subheading ex 51.04 A and corresponding to NIMEXE codes ex 51.04-21 and 25, originating in the United States of America. This duty shall not apply to imports of products described above manufactured and exported by Greenwood Mills, Inc., Greenwood, South Carolina.

2. Subject to the provisions of paragraph 3, the rate of the provisional anti-dumping duty shall be 38 %.

3. The rate of the provisional anti-dumping duty applicable to imports of products described in paragraph 1 manufactured and exported by Frank Ix and Sons, New York, shall be 30·8 %; the rate for imports of the same products manufactured and exported by Texfi Industries, Inc., Greensboro, North Carolina, Burlington Industries Inc., Greensboro, North Carolina, Bloomsburg Mills Inc., New York, and Milliken and Co., Spartanburg, South Carolina shall be 3·9 %.

4. The duty shall be calculated on the basis of the value for customs purposes determined in accordance with Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes [1].

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

6. 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*.

[1] OJ No L 134, 31. 5. 1980, p. 1.

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

Done at Brussels, 18 May 1981.

For the Commission

Wilhelm HAFERKAMP

Vice-President