I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 407/83

of 21 February 1983

amending Regulation (EEC) No 3439/80 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), as amended by Regulation (EEC) No 1580/82 (2), and in particular Article 12 thereof,

Having regard to the proposal from the Commission, submitted after consulting the Advisory Committee set up by the said Regulation,

Whereas the Council, by Regulation (EEC) No 3439/80 (3), imposed definitive anti-dumping duties on imports of certain polyester yarn originating in the United States of America ;

Whereas that Regulation was subsequently amended by Regulation (EEC) No 3198/81 (4) to exclude certain types of yarn from imposition of the duties ;

Whereas the duties imposed were 16,4 % for textured yarn (corresponding to NIMEXE codes 51.01-29 and 30) and 15,6 % for non-textured yarn (corresponding to NIMEXE codes 51.01-ex 02, ex 32, ex 34, ex 38, ex 41 and ex 42) except for the non-textured yarn of Eastman Chemical International Company for which the rate of duty was 13,7 % ;

Whereas nine exporters of textured yarn and three exporters of non-textured yarn were exempted from the relevant definitive duty since sale of the products concerned to the Community were not made at dumped levels ;

Whereas the Commission has since received requests from 14 United States companies to review the duties in so far as they apply to them ;

Whereas the Commission also received a request from the International Rayon and Synthetic Fibres Committee (CIRFS) on behalf of manufacturers accounting for almost all Community production for a review of the duty imposed on textured yarn, together with evidence that dumping was again being practised in respect of these imports from the United States of America ;

Whereas, since the said information provided sufficient evidence to justify a review of the proceedings, the Commission accordingly announced by a notice published in the *Official Journal of the European Communities* (5), a review of the definitive anti-dumping duties on imports of polyester yarn originating in the United States of America and started an investigation of the matter at Community level ;

Whereas the Commission officially so advised the exporters and importers known by it 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 most of the exporters known to be concerned and several importers took this opportunity to submit written and oral observations ;

(1) OJ No L 339, 31. 12. 1979, p. 1.
(2) OJ No L 178, 22. 6. 1982, p. 9.
(3) OJ No L 358, 31. 12. 1980, p. 91.
(4) OJ No L 322, 11. 11. 1981, p. 2.
(5) OJ No C 48, 23. 2. 1982, p. 2.

Whereas the request for the review made on behalf of the Community producers referred only to imports of textured polyester yarn from the United States of America and none of the exporting companies known to be concerned requested a review of the anti-dumping duty on non-textured polyester yarn; whereas the Commission accordingly limited its investigation to a review of the duty on textured polyester yarn;

Whereas the Commission sought and verified all information it deemed to be necessary for the purposes of the review procedure and carried out investigations at the premises of the following:

EEC producers:

Rhône-Poulenc Fibres, Lyon
Deutsche Rhodia AG, Freiburg
Enka BV/AG, Wuppertal
Hoechst, Frankfurt am Main
Anicfibre SpA, Milan
Società italiana Poliestere SpA (Montefibre), Milan
Snia Fibre SpA, Milan
Courtaulds Ltd, Coventry
ICI Fibres, Harrogate

exporters:

Burlington Industries Inc., Greensboro, NC
Carter Moore & Co. Inc., New York, NY
Collins & Aikman, Corp., Graham, NC
Glen Raven Mill Inc., Glen Raven, NC
International Fiber Industries Ltd, New York, NY
Macfield Texturing, Inc., Madison, NC
Meyers Fibers, Willow Grove, Pennsylvania
Titan Textile Co. Inc., New York, NY
Unifi Inc., Greensboro, NC
Uni-Tex International, New York, NY

importer:

Pax Yarn Ltd, Leicester;

Whereas the written submissions of certain of the exporters which had requested that their products be exempted from the duty currently in force indicated that they had not exported to the Community during the reference period; whereas a comparison of export price and normal value could therefore not be made and further investigation as regards these companies was accordingly not undertaken;

Whereas the Commission selected the period from 1 January 1981 to 31 January 1982 as the relevant investigation period;

Whereas for Burlington, Collins & Aikman, Glen Raven, Macfield, Titan and Unifi normal values were established by taking the weighted average prices of their domestic sales;

Whereas Burlington has contested the normal values established for two yarn types; whereas for one type they contended that the normal value should be established by reference to third country sales because a weighted average price for the whole investigation period would be unfair given that the export sales took place towards the end of the period and the domestic sales which took place at that time involve quantities too small to permit a proper comparison; whereas, for the second type, the company argued that the export sales should be compared to domestic sales to one particular company which took place at the same time; whereas the Commission rejected these arguments on the grounds that although the company was able to show overall profitability on sales of textured polyester yarn it refused to give specific cost information regarding the two types in question; whereas, therefore, the Commission based its calculation of normal value for the two types concerned on the weighted average prices for the full period of investigation; whereas the Commission is satisfied, having taken account of prices of comparable yarns of the producers investigated, that this method of calculating normal value does not constitute a bonus for non-cooperation; whereas, in calculating normal value, the Commission also excluded sales made by Burlington to companies situated in the United States of America but which were intended for export;

Whereas Unifi argued that for three types of yarn like qualities had not been compared but this was rejected as the company did not provide any evidence to support this claim; whereas, in calculation normal values, the Commission excluded sales made by Unifi to companies situated in the United States of America but which were intended for export;

Whereas Macfield has contested the exclusion of transactions from the calculation of a normal value where the customer supplied the raw material and paid only for the texturing of the yarn; whereas the Commission did not take these sales into account since it considered that they were not in the normal course of trade; whereas the yarn was, in any event, not intended for consumption on the domestic market;

Whereas, since Carter Moore, International Fibers and Uni-Tex did not sell any of the product concerned on the domestic US market, normal values were established with reference to the prices actually paid to other companies investigated, these prices being considered representative by the Commission;

Whereas Meyers Fibers' normal values were also established by reference to other companies' domestic sales since for one type sales were made at a loss and for the other type in question sales involved quantities too small to permit a proper comparison ;

Whereas, for Uni-Tex, normal values for certain types of yarn were established with reference to prices for the product for sales to third countries since the Commission in its investigation found no sales of a comparable product on the US domestic market and Uni-Tex is not a yarn producer ;

Whereas, in establishing the profitability of the domestic sales, it was found that texturizers in certain cases paid a higher raw-yarn price when that yarn was intended for sale on the domestic market in its textured form than when it was intended for export ; whereas, therefore, the higher raw-yarn cost was used when verifying the profitability of domestic sales ; whereas this reflected the actual costs borne by the producer for these sales ; whereas profitability was established in all relevant instances ;

Whereas export prices were determined on the basis of the prices actually paid or payable for the products exported to the Community during the period of investigation ;

Whereas, in comparing normal value with export prices, the Commission took account where appropriate of differences affecting price comparability ; whereas all comparisons were made at ex-works level ;

Whereas the above examination of the facts showed the existence of dumping, the margins being equal to the amount by which the normal value as established exceeded the price for export to the Community ;

Whereas these margins vary according to the exporter ; whereas the weighted average margin for each of the exporters investigated was as follows :

— Burlington Industries Inc.	4,5 %
— Carter Moore & Co. Inc.	11,9 %
— Collins & Aikman Corp.	2,5 %
— Glen Raven Mills Inc.	0 %
— International Fiber Industries Inc.	5,4 %
— Macfield Texturing Inc.	4,1 %
— Meyers Fibers	0 %
— Titan Textile Co. Inc.	3,5 %
— Unifi Inc.	1,87 %
— Uni-Tex International	2,40 %

Whereas, for those exporters who neither replied to the Commission's questionnaire nor made themselves known otherwise in the course of the review investigation, the Commission considered that it would constitute a bonus for non-cooperation to assume that the dumping margin for these exporters was any lower than the dumping margin determined with regard to them following the original investigation ;

Whereas, as regards injury, the Commission received no new evidence to alter its view that the continued application of the existing duty was a requirement for the elimination of injury and the prevention of its recurrence ;

Whereas, with regard to exports of three companies investigated in the review proceedings, these three exporters and certain Community importers and consumers of the yarns concerned alleged that some yarns exported from these companies, albeit at dumped prices, caused no injury to the Community industry since these yarns could not be made available by Community producers ;

Whereas, for each yarn concerned, the Commission was satisfied by information supplied by the Community producers that the yarns concerned were currently being produced by, had been produced by or could be produced by a Community producer ; whereas, furthermore, the Community producers concerned alleged that where production of a particular yarn for which there was demand had stopped this was due to the inability of the Community producers to compete with the low prices of the dumped imports from the United States of America ;

Whereas two US exporters, Burlington and Macfield, offered price undertakings regarding future exports to the Community ; whereas, after consultation, the Commission did not consider these undertakings acceptable ;

Whereas, accordingly, the facts as finally established show that there is dumping and injury caused thereby and the interests of the Community call for Community intervention ; whereas Regulation (EEC) No 3439/80 should now be further amended in order to impose definitive anti-dumping duties in accordance with the above findings,

HAS ADOPTED THIS REGULATION :

Article 1

Regulation (EEC) No 3439/80 is hereby amended as follows :

1. Article 1 (2) (a) shall be replaced by the following :

'(a) for textured yarn falling within NIMEXE codes 51.01-29 and 30, 16,4 % except for textured yarn exported by Burlington Industries Inc., Greensboro, North Carolina, for which the rate of duty shall be 4,5 %, Carter Moore and Co. Inc., New York, NY, for which the duty shall be 11,9 %, Collins and Aikman Corp., Graham, North Carolina, for which the duty shall be 2,5 %, International Fiber Industries Inc., for which the duty shall be 5,4 %, Macfield Texturing Inc., Madison, North Carolina, for which the duty shall be 4,1 %, Titan Textile Company Inc., New York, NY, for which the duty shall be 3,5 %, Unifi Inc., Greensboro, North Carolina, for which the duty shall be 1,87 %, and Uni-Tex International, New York, NY, for which the duty shall be 2,4 %, and'

2. Article 3 (a) shall be replaced by the following :

'(a) textured yarn exported by Glen Raven Mills, Inc., Glen Raven, North Carolina, and Meyers Fibers, Willow Grove, Pennsylvania ;'.

Article 2

This Regulation shall enter into force on the day following 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, 21 February 1983.

For the Council

The President

H. W. LAUTENSCHLAGER