COUNCIL REGULATION (EEC) No 2585/85

of 12 September 1985

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 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], in particular Article 14 thereof,

Having regard to the proposal from the Commission, submitted after consultation within the Advisory Committee as provided for under the above Regulation,

Whereas :

A. Procedure

(1) The Council, by Regulation (EEC) No 3439/80 [2], imposed definitive anti-dumping duties on imports of certain polyester yarn originating in the United States of America.

That Regulation was subsequently amended by Regulation (EEC) No 3198/81 [3] to exclude certain types of yarn from imposition of the duties and, following review proceedings, by Regulation (EEC) No 407/83 [4].

(2) The product concerned is polyester yarn both textured and non-textured falling within subheading ex 51.01 A of the Common Customs Tariff and corresponding to NIMEXE codes 51.01-29 and 30 for textured and 51.01 ex 02, ex 32, ex 34, ex 38, ex 41 and ex 42 for non-textured yarn.

(3) The Commission has since received a request from a United States exporter, Macfield Texturing Incorporated, Madison, North Carolina, (hereinafter referred to as 'Macfield') to review the duty in so far as it applies to yarn produced by that company.

(4) Since the said request 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 commenced an investigation of the matter at Community level ;

In the opening notice, the Commission gave all interested parties the opportunity to submit evidence of change in their particular circumstances sufficient to warrant their inclusion in the review proceedings.

(5) The Commission officially advised Macfield and the representatives of the exporting country of the re-opening of the proceedings.

Macfield took the opportunity given to it by the Commission to submit written and oral observations.

(6) The request for review was made by one exporter, Macfield, of textured polyester yarn from the United States of America. No other exporter, importer or Community producer submitted evidence sufficient to warrant a review of the anti-dumping duties on either textured or non-textured polyester yarn and the Commission accordingly limited its investigation to a review of the duty on textured polyester yarn produced by Macfield.

(7) The Commission sought and verified all information it deemed to be necessary for the purposes of the review proceedings and carried out investigations at the premises of Macfield.

Certain US producers requested that their products be exempted from the duty currently in force. Since these producers had not exported to the Community during the reference period, further investigation as regards these companies was not undertaken and their request for review was not granted.

The Commission selected the period from 1 September 1983 to 31 August 1984 as the relevant investigation period.

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(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No L 358, 31. 12. 1980, p. 91.
(3) OJ No L 322, 11. 11. 1981, p. 2.
(4) OJ No L 50, 23. 2. 1983, p. 1.
(5) OJ No C 257, 25. 9. 1984, p. 3.

B. Normal value

(8) Normal values for the company concerned were established by taking the weighted average prices of the domestic sales of the various types of yarn exported during the reference period by Macfield.

The Commission was satisfied of Macfield's overall profitability in domestic sales of the product concerned.

(9) In calculating normal values, the Commission excluded sales made by Macfield to companies situated in the United States of America but which were intended for export and could not, therefore, be considered as having been made in the ordinary course of trade intended for consumption in the exporting country.

Certain sales of the yarns concerned were made at a loss on the domestic market during the reference period and were also excluded for the purposes of establishing normal value, as not having been made in the ordinary course of trade intended for consumption in the exporting country.

C. Export prices

(10) 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 by the company concerned.

(11) Macfield claimed that certain export shipments were samples and the Commission, on the basis of the evidence supplied to it, accepted this claim and, accordingly, these shipments were not taken into consideration.

D. Comparaison

(12) In comparing normal values with export prices, the Commission took account, where appropriate, of differences affecting price comparability.

However, a claim by Macfield that, for one type of yarn, like qualities had not been compared was rejected as it did not provide any evidence to support this claim.

All comparisons were made at ex-works level.

E. Margin

(13) Normal values on a weighted average basis were compared with export prices on a transaction-by-transaction basis for the exporter investigated.

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

The margins varied according to shipment and the weighted average margin was 3,6 %.

(14) The Commission considered that there was no reason to alter the dumping margin determined following the original investigation or following the first review proceedings for those exporters who did not make themselves known during the course of the review investigation.

F. Injury

(15) As regards injury, the Commission received no new evidence to alter its view that the continued application of the existing duties, in the case of Macfield, as amended, was a requirement for the elimination of injury and the prevention of its recurrence.

G. Community interest

(16) Thus the facts as finally established show that there is dumping and injury caused thereby and no submissions having been received from Community consumers or producers of the product or any other interested party, the interests of the Community call for continued Community intervention.

H. Rate of duty

(17) Accordingly, Regulation (EEC) No 3439/80 should now be further amended in order to modify the definitive anti-dumping duty imposed on textured yarn exported by Macfield to the Community in accordance with the above findings

HAS ADOPTED THIS REGULATION :

Article 1

In Article 1 (2) (a) of Regulation (EEC) No 3439/80, the figure of 4,1 % relating to yarn exported by Macfield Texturing Incorporated shall be replaced by 3,6 %.

Article 2

This Regulation shall enter into force on the day following that 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, 12 September 1985.

For the Council

The President

J. POOS