COMMISSION REGULATION (EEC) No 1695/88

of 14 June 1988

imposing a provisional anti-dumping duty on imports of polyester yarn originating in Mexico, South Korea, Taiwan and Turkey

THE COMMISSION 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), as amended by Regulation (EEC) No 1761/87 (2), and in particular Article 11 thereof,

After informing the EEC-Turkey Association Council in conformity with the second paragraph of Article 47 of the supplementary Protocol to the Agreement establishing an Association between the European Economic Community and Turkey (3),

After consultations within the Advisory Committee as provided for by the abovementioned Regulation,

Whereas :

A. PROCEDURE

(1) In May 1987, the Commission received a complaint lodged by CIRFS, the International Rayon and Synthetic Fibres Committee (Paris), on behalf of producers of polyester yarn whose collective output constitutes the majority of Community production of the product in question. The complaint contained evidence of dumping and resultant material injury, which was considered sufficient to justify the initiation of an anti-dumping proceeding. As a result, the Commission announced in a notice published in the *Official Journal of the European Communities* (4) the initiation of an anti-dumping proceeding and commenced an investigation concerning imports of polyester yarn originating in Mexico, South Korea, Taiwan and Turkey.

The present proceeding concerns imports of both partially oriented polyester yarn (POY) and textured polyester yarn (PTY). POY is a feeder yarn exclusively used for the production on PTY which, in turn, is used to produce fabrics of polyester or of cotton and polyester. The products in question fall within the CN codes 5402 33 10, 5402 33 90 and 5402 42 00.

(2) The Commission officially notified the producers/exporters and importers known to be concerned, the representatives of the exporting countries, the complainant and the Community producers, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(3) Most of the Community producers and known producers/exporters and importers made their views known in writing. A number of them requested and obtained hearings.

(4) Certain firms which use the product also put forward observations.

(5) The Commission collected and verified all the information which is considered necessary for a preliminary assessment of the facts and carried out checks at the premises of the following companies :

(a) *Community producers :*

— Du Pont de Nemours GmbH, Düsseldorf,
— Enka AG, Wuppertal,
— Hoechst AG, Frankfurt am Main,
— La Seda de Barcelona SA, Barcelona,
— Mont fibre Spa of the Montedison group, Milano,
— Nurel SA, Barcelona,
— Rhone-Poulenc Fibres SA, Lyon,
— Sociedad Anonima de Fibras Artificiales, Barcelona ;

(b) *producers/exporters in third countries :*

Mexico :

— Celanese Mexicana SA, Mexico,
— Fibras Sinteticas SA, Monterrey,
— Fibras Quimicas SA, Monterrey,
— Nylon de Mexico SA, Monterrey,
— Kimex SA, Mexico,

South Korea :

— Kohap Ltd, Seoul,
— Kolon Industries Inc., Seoul,
— Sam Yang Co., Ltd, Seoul,
— Tong Yan Polyester Co., Ltd. Seoul,

(1) OJ No L 201, 30. 7. 1984, p. 1.
(2) OJ No L 167, 26. 6. 1987, p. 9.
(3) OJ No L 293, 29. 12. 1972, p. 3.
(4) OJ No C 173, 1. 7. 1987, p. 11.

Taiwan :

— Chung Shing Textile Company Ltd, Taipei,

— Far Eastern Textile Ltd, Taipei,

— Nan Ya Plastics Corp., Taipei,

— Shin Kong Synthetic Fibres Corp., Taipei,

— Tuntex Fibre Co., Ltd, Taipei,

Turkey :

— SASA Artificial and Synthetic Fibres Inc., Adana, exporting through EKSA,

— Sönmez Filament AS, Bursa, exporting through Sönmez Textil,

— Nergish AS, Bursa, exporting through Nerpas,

— SIFAS Sentetik Iplik Fabrikalari AS, Bursa, exporting through MEPA,

— Polylen AS, Bursa.

(6) The investigation covered the period from 1 January 1987 to 30 June 1987.

B. DUMPING

(7) Normal value, export prices and dumping margins were established separately for POY and PTY.

I. MEXICO

(a) *Normal value*

(8) In general, normal value was provisionally determined on the basis of domestic prices of the producers who exported to the Community and who provided sufficient evidence. Normal value was established on a monthly basis, by product type. In cases where, for a particular month, there were no domestic sales of a certain product type exported, normal value was established on the basis of the weighted average domestic price for the other months.

In cases where there were no domestic sales of the particular product type exported to the Community, the domestic prices of the most closely resembling type were chosen for determining normal value.

(b) *Export prices*

(9) Export prices were determined on the basis of the prices actually paid or payable for the products exported to the Community.

In cases where the importer was a related company, export prices were reconstructed on the basis of the prices charged by the related importer to the first independent customer in the Community. This price was duly adjusted to take into account all costs, including eventually custom duties, which were incurred between the importation and the reselling of the products investigated, as well as a reasonable profit margin. The latter was established taking into account the profit margins of independent importers of the product in question.

(c) *Comparison*

(10) The normal value per type was compared on a monthly basis with export prices for the corresponding type on a transaction-by-transaction basis.

As far as requests for allowances concerning differences in conditions and terms of sale are concerned, allowances were granted, pursuant to Article 2 (10) (c) of Regulation (EEC) No 2176/84, with regard to those differences which bear a direct relationship to the sales under consideration (commissions, handling, credit, transport and insurance) and for which satisfactory evidence was submitted.

Pursuant to Article 2 (10) (d) of Regulation (EEC) No 2176/84, an allowance for the exemption of import charges on imports of raw materials to be physically incorporated in products destined for export to the Community was requested by and granted to those firms who provided satisfactory evidence.

All comparisons were made at ex-works level.

(d) *Dumping margins*

(11) The preliminary investigation of the above facts revealed the existence of dumping, the dumping margins being equal to the difference between normal value and the export price to the Community, duly adjusted. The resulting weighted average dumping margins, using the free-at-Community-frontier price, are as follows :

— Celanese Mexicana SA, Mexico : PTY 34,73 %, POY 45,83 %,

— Fibras Sinteticas SA, Monterrey : PTY 26,03 %,

— Fibras Quimicas SA, Monterrey : PTY 7,01 %,

— Nylon de Mexico SA, Monterrey : POY 18,73 %,

— Kimex SA, Mexico : PTY 44,53 %.

II. South Korea

(a) *Normal value*

(12) In general, normal value was provisionally determined on the basis of domestic prices of the producers who exported to the Community and who provided sufficient evidence. Normal value was established on a monthly basis, by product type. In cases where, for a particular month, there were no domestic sales of a certain product type exported, normal value was established on the basis of the weighted average domestic price for the other months.

In cases where there were no domestic sales of the particular product type exported to the Community, the domestic prices of the most closely resembling type were chosen for determining normal value.

In cases where domestic sales of a certain product type were made at a loss, normal value was determined on the basis of constructed value, i.e. cost of production plus a reasonable profit margin as established on the basis of profits made on the total sales of polyester yarn.

(b) *Export prices*

(13) Export prices were determined on the basis of the prices actually paid or payable for the products exported to the Community.

(c) *Comparison*

(14) The normal value per type was compared on a monthly basis with export prices for the corresponding type on a transaction-by-transaction basis.

As far as requests for allowances concerning differences in conditions and terms of sale are concerned, allowances were granted, pursuant to Article 2 (10) of Regulation (EEC) No 2176/84, with regard to those differences which bear a direct relationship to the sales under consideration (commissions, handling, credit, transport and insurance) and for which satisfactory evidence was submitted.

Pursuant to Article 2 (10) (d) of Regulation (EEC) No 2176/84, an allowance for the exemption of import charges on imports of raw materials to be physically incorporated in products destined for export to the Community was requested by, and granted to, those firms who provided satisfactory evidence.

An adjustment was requested for the exchange losses incurred on certain domestic sales made in US dollars due to the dollar devaluation between the date of the invoice and the date of the actual receipt of the payment. Such allowance was not granted because Regulation (EEC) No 2176/84 does not provide for such adjustment and therefore, as for export prices, the Commission has used the exchange rates prevailing at the date of the invoice.

(d) *Dumping margins*

(15) The preliminary investigation of the above facts revealed the existence of dumping, the dumping margins being equal to the difference between normal value and the export price to the Community, duly adjusted. The resulting weighted average dumping margins, using the free-at-Community-frontier price, are as follows:

— Kohap Ltd, Seoul: PTY 8,17 %,
— Kolon Industries Inc., Seoul: PTY 5,71 %, POY 0
— Sam Yang Co., Ltd, Seoul: PTY 18,73 %,
— Tong Yan Polyester Co., Ltd, Seoul: PTY 23,66 %.

III. Taiwan

(a) *Normal value*

(16) In general, normal value was provisionally determined on the basis of domestic prices of the producers who exported to the Community and who provided sufficient evidence. Normal value was established on a monthly basis, by product type. In cases where, for a particular month, there were no domestic sales of a certain product type exported, normal value was established on the basis of the weighted average domestic price for the other months.

In cases where there were no domestic sales of the particular product type exported to the Community, the domestic prices of the most closely resembling type were chosen for determining normal value.

In cases where domestic sales of certain product types were made at a loss, normal value was determined on the basis of constructed value, i.e. cost of production plus a reasonsable profit margin as established on the basis of profits made on the total sales of polyester yarn.

(b) *Export prices*

(17) Export prices were determined on the basis of the prices actually paid or payable for the products exported to the Community.

(c) *Comparison*

(18) The normal value per type was compared on a monthly basis with export prices for the corresponding type on a transaction-by-transaction basis.

As far as requests for allowances concerning differences in conditions and terms of sale are concerned, allowances were granted, pursuant to Article 2 (10) (c) of Regulation (EEC) No 2176/84, with regard to those differences which bear a direct relationship to the sales under consideration (commissions, handling, credit, transport and insurance) and for which satisfactory evidence was submitted.

An adjustment was requested for the hedging of exchange rates which Taiwanese firms practice so as to avoid losses from a possible dollar devaluation. Such allowance was not granted because Regulation (EEC) No 2176/84 does not provide for such adjustments. At any rate, it was considered that hedging is a financial device which is external to the commercial transaction, and which, in the framework of an anti-dumping investigation, is likely to be disclosed by the exporter only if it works to his advantage.

(d) *Dumping margins*

(19) The preliminary investigation of the above facts revealed the existence of dumping, the dumping margins being equal to the difference between normal value and the export price to the Community, duly adjusted. The resulting weighted average dumping margins, using the free-at-Community-frontier price, are as follows :

— Chung Shing Textile Company Ltd, Taipei :	PTY	8,37 %,
— Far Eastern Textile Ltd, Taipei :	PTY	6,81 %,
	POY	0,27 %,
— Nan Ya Plastics Corp., Taipei :	PTY	5,84 %,
	POY	0,53 %,
— Shin Kong Synthetic Fibres Corp., Taipei :	PTY	5,79 %,
	POY	17,38 %,
— Tuntex Fibre Co., Ltd, Taipei :	PTY	0
	POY	0,45 %.

IV. Turkey

(a) *Normal value*

(20) In general, normal value was provisionally determined on the basis of domestic prices of the producers who exported to the Community and who provided sufficient evidence. Normal value was calculated on a monthly basis per product type.

In the case of POY, where there were no domestic sales, normal value was established on the basis of a constructed value, i.e. cost of production plus a reasonable profit margin as established on the basis of profits made on the total sales of polyester yarn.

(b) *Export prices*

(21) Export prices for all Turkish companies were determined on the basis of prices actually paid or payable for the products sold for export to the Community.

(c) *Comparison*

(22) The normal value per type was compared on a monthly basis with export prices for the corresponding type on a transaction-by-transaction basis.

As far as requests for allowances concerning differences in conditions and terms of sale are concerned, allowances were granted, pursuant to Article 2 (10) (c) of Regulation (EEC) No 2176/84, with regard to those differences which bear a direct relationship to the sales under consideration (commissions, handling, credit, transport and insurance) and for which satisfactory evidence was submitted.

Pursuant to Article 2 (10) (d) of Regulation (EEC) No 2176/84, an allowance for the exemption of import charges on imports of raw materials to be physically incorporated in products destined for export to the Community was requested by and granted to those firms who provided satisfactory evidence.

(d) *Dumping margins*

(23) The preliminary investigation of the above facts revealed the existence of dumping, the dumping margins being equal to the difference between normal value and the export price to the Community, duly adjusted. The resulting weighted average dumping margins, using the free-at-Community-frontier price, are as follows :

— SASA Artificial and Synthetic Fibres Inc, Adana :	PTY	11,13 %,
	POY	2,67 %,
— Sönmez Filament AS, Bursa :	PTY	13,18 %,
— Nergis AS, Bursa :	PTY	38,50 %,
— SIFAS Sentetik Iplik Fabrikalari AS, Bursa :	PTY	17,34 %,
— Polylen AS, Bursa :	PTY	27,60 %.

C. INJURY

I. Volume and price of imports

(a) *Volume*

(24) The Commission found that imports of POY from Mexico, Taiwan, Turkey and South Korea amounted to 1 924 tonnes in 1984, 1 697 tonnes in 1985, 6 087 tonnes in 1986 and 8 370 tonnes in 1987. During the period under investigation, from January to June 1987, the amounted to 4 201 tonnes. After a certain decrease between 1984 and 1985, the yearly increase amounted to 259 % from 1985 to 1986 and to 37 % from 1986 to 1987.

The four countries under investigation have increased their share of Community imports from 21 % in 1984 and 14 % in 1985, to 36 % in 1986 and to 49 % in 1987.

(25) It was also found that imports of PTY from Mexico, Taiwan, Turkey and South Korea amounted to 1 324 tonnes in 1984, 2 069 tonnes in 1985, 13 947 tonnes in 1986 and 23 982 tonnes in 1987. During the period under investigation, from January to June 1987, the amounted to 14 049 tonnes The yearly increase was 56 % from 1984 to 1985, 574 % from 1985 to 1986 and 72 % from 1986 to 1987.

The four countries under investigation have increased their share of Community imports from 15 % in 1984 to 18 % in 1985, to 62 % in 1986 and 73 % in 1987.

(26) The market share held in the Community by the imports of the four countries under investigation for POY was 2,8 % in 1984, 2,3 % in 1985 and increased to 7,8 % in 1986 and 10,6 % in 1987. For PTY, the market share of the four countries under investigation increased from 1,6 % in 1984 to 2,7 % in 1985, to 8,6 % in 1986 and to 13,4 % in 1987.

(b) *Prices*

(27) The Commission also provisionally determined that, during the reference period, prices of imports from the four countries in question were significantly below the prices practised by EEC producers. Price undercutting found by comparing prices practiced by exporters with those charged by EEC producers for similar representative product types during the same month and in the same EEC region ranged from 6 % to 15 % for POY and from 14 % to 33 % for PTY.

II. Impact on the industry concerned

The Commission has taken note of the following elements :

(a) *Production in the Community*

(28) From 1984 to 1987 Community production of polyester yarn has remained relatively stable between 230 000 and 240 000 tons.

(b) *Market share and consumption*

(29) An examination of the information available to the Commission and relating to the factors listed in Article 4 (2) (c) of Regulation (EEC) No 2176/84 indicated that although the imports in question have had no significant adverse effect in the period 1984 to 1987 on the production, sales, stocks and employment of the Community industry concerned, they have led to a considerable decrease of the market share held by Community producers ; while the market share of the four exporting countries in question has increased, the market share of Community producers has decreased from 91 % in 1984 to 89 % in 1985, to 83 % in 1986 and to 79 % in 1987. The increase in Community consumption by 19 % between 1984 and 1987 has manifestly benefited the imports from the four countries under investigation.

(c) *Prices*

(30) These imports have furthermore exerted a significant downward pressure on the prices prevailing on the Community marked : the price depression found over the refgerence period ranged from 6 % to 16 % for POY and from 9 % to 24 % for PTY. It is therefore clear that, attempting to maintain their sales and market share in the EEC, Community producers have been forced to sell their products at increasingly lower prices and even below costs.

(d) *Profitability*

(31) As a result, towards the end of 1986 and during the reference period profitability deteriorated substantially and a significant number of Community producers suffered losses.

The profit (loss) development for the EEC producers concerned is demonstrated in the following table :

		1986	*1987 (6 months)*
(a) POY : Company	A	12,5	(0,2)
	B	18,3	(8,9)
	C	18,8	5,4)
(b) PTY : Company	A	6,9	4,4
	B	8,0	(2,7)
	C	7,1	2,1
	D	9,3	2,6
	E	(11,0)	(15,0)
	F	3,5	(56,6)
	G	2,2	(9,7)
	H	1,3	(6,2)
	I	(23,8)	(37,5)

(e) *Cumulation*

(32) In establishing the impact of the dumped imports on the Community industry, the Commission has considered the effect of all dumped imports from the countries concerned in the present investigation. In analysing whether cumulation of these imports was appropriate, the Commission examined whether the imports at dumped prices contributed to the material injury suffered by the Community producers. For that purpose, the Commission has considered the comparability of the products imported with those manufactured in the Community in terms of physical characteristics. It has also examined the volumes imported, the level of prices of these imports and the extent to which imports from each country competed in the Communitry with a like product of the Community industry. The Commission noted that there has been an increase in 1986 and 1987 in imports of polyester yarn from each of the four countries concerned. The Commission has, on that basis, concluded that, for the purpose of establishing the level of injury sustained by the Community industry, regard should be paid to the effect of the dumpted imports cumulated from all exporting countries concerned.

(f) *Causation and other factors*

(33) The Commission noted that the rise in the imports in question during 1986 and in 1987 coincided with the weakening of the prices of the Community producers and, consequently, the deterioration in the profitability of the Community industry concerned.

The Commission has examined whether the injury suffered by Community producers has been caused by other factors such as imports from other third countries. it was found that, for POY, the market share of other imports into the Community was 10,7 % in 1984, 14,4 % in 1985, 13,5 % in 1986 and 11,0 % in 1987. For PTY, the market share held by other imports was 9,3 % in 1984, 7,6 % in 1985, 5,2 % in 1986 and 5,0 % in 1987. It is clear, from the above, that the other imports' market share has remained stable in the case of POY and has substantially diminished in the case of PTY. Moreover, there has been no indication that these other imports have been made at dumped prices.

As regards the argument that the decrease in raw material costs has not led to a corresponding diminution in the prices practiced by Community producers, the evidence at the Commission's disposal suggests that the price depression more than outweighs the incidence of the raw materials' cost reduction on total costs.

The Commission has therefore concluded, on the basis of the above elements, that the effects of imports from the four countries concerned by the present procedure constitute, taken in isolation, a cause of material injury to the Community producers concerned.

The Commission has, furthermore, taken into consideration all complainant Community producers, including Hoechst AG and ENKA AG, which are linked to the exporting companies Celanese Mexicana SA and fibras Quimicas SA, respectively, in view of the fact that the latter behave to a great extent as autonomous economic agents.

D. COMMUNITY INTEREST

(34) In view of the particularly serious difficulties facing the Community producers of polyester yarn the Commission has come to the conclusion that it is in the Community's interest that action be taken. In order to prevent further injury being caused during the remainder of this proceeding, such action should take the form of a provisional anti-dumping duty.

Community industries utilizing polyester yarn have argued that the introduction of protective meaasures would not be in the Community interest because it would make them less competitive. This argument, however, was not substantiated. In the view of the Commission, the incidence of a certain price increase on the cost of the processing industry is relatively low.

The Commission has also considered the fact that there are already certain regional quantitative restrictrions for Spain and Italy on imports into the Community of polyester yarn originating in South Korea and Taiwan, but considered these measures insufficient to relieve Community industry from the injury caused by dumping practices. In this context, the Commission has taken note of the fact that export prices practiced by these two countries undercut very significantly Community producers' prices. In any case, exports of polyester yarn from South Korea and Taiwan to the Community are oriented to the whole of the Community and not only to Spain and Italy.

E. PROVISIONAL DUTY

(a) *Rate*

(35) For the purpose of establishing the level of the provisonal duty, the Commission took account, on the one hand, of the dumping margins found and, on the other, of the level of duty necessary to eliminate injury, Consequently, import prices were compared to the cost of production plus a reasonable profit of a Community producer found to be the most representative.

The criteria utilized for establishing the most representative Community prodeucer were its size, its efficiency and its cost structure. The production costs over the reference period of this producer were therefore taken as a basis for establishing the injury threshold. The profit added was the same producer's profit rate in 1986, that is before the impact of dumped imports became manifest.

The export prices utilized for the purpose of this comparison are the cif Community frontier duty unpaid prices plus the conventional duty plus an importers' profit margin.

In the absence of dumping or of elements constituting injury, no duty is to be applied. This applies in particular, on the basis of the above analysis, to certain producers of POY in Mexico, South Korea and Taiwan.

(b) *Form*

(36) The Commission considered that, to ensure the efficiency of the protective measures and to ease customs clearance, the provisional duty should take the form of an *ad valorem* duty.

F. FINAL PROVISION

(37) In the interests of sound administration, a reasonable period should be allowed for the parties which have cooperated fully in the investigation to make known their point of view on the findings contained in this Regulation and to request a hearing,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of non-textured partially oriented polyester yarn (POY) falling within CN code 5402 42 00, originating in Mexico, Taiwan and Turkey.

2. The amount of the duty, based on the free-at-Community-frontier price, not cleared through customs, shall be :

— 18,7 % for POY originating in Mexico.
The following company is exempted from this duty :
— Celanese Mexicana SA, Mexico,

— 17,4 % for POY originating in Taiwan.
The following companies are exempted from this duty :
— Far Eastern Textile Ltd, Taipei,
— Nan Ya Plastics Corp., Taipei,
— Tuntex Fibre Co., Ltd, Taipei,

— 2,7 % for POY originating in Turkey.

3. The provisions in force concerning customs duties shall apply.

4. Release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

Article 2

1. A provisional anti-dumping duty is hereby imposed on imports of textured polyester yarn (PTY) falling within CN codes 5402 33 10 and 5402 33 90, originating in Mexico, Taiwan, Turkey and South Korea.

2. The amount of the duty, based on the free-at-Colmmunity-frontier price not cleared through customs, shall be :

— 34,7 % for PTY originating in Mexico.

— For the companies hereunder, the following duties shall apply :

— Fibras Synteticas SA, Monterrey : 26,0 %,
— Fibras Quimicas SA, Monterrey : 7,0 %,
— Kimex SA, Mexico : 21,6 %,

— 23,7 % for PTY originating in South Korea.

For the companies hereunder, the following duty shall apply :

— Kohap Ltd, Seoul : 8,2 %,
— Kolon Industries Inc., Seoul Industries Inc., Seoul : 5,7 %,
— Sam Yang Co., Ltd, Seoul : 18,7 %,

— 8,4 % for PTY originating in Taiwan.

For the companies hereunder, the following duty shall apply :

— Far Eastern Textile Ltd, Taipei : 6,8 %,
— Nan Ya Plastics Corp., Taipei : 5,8 %
— Shin Kong Synthetic Fibres Corp., Taipei : 5,8 %,
— Tuntex Fibre Co., Ltd, Taipei, is exempted from the above duty,

— 13,2 % for PTY originating in Turkey.

For the companies hereunder, the following duty shall apply :

— SASA Artificial and Synthetic Fibres Inc., Adana : 11,1 %,
— Nergis AS, Bursa : 8,6 %,
— Sifas Sentetik Iplik Fabrikalari AG, Bursa : 7,2 %,
— Polylen AS, Bursa : 7,2 %.

3. The provisions in force concerning customs duties shall apply.

4. Release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

Article 3

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2176/84, parties which have fully cooperated with the investigation may make known their point of view in writing and apply for a hearing by the Commission within one month from the entry into force of this Regulation.

Article 4

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

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2176/84, this Regulation shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 14 June 1988

For the Commission
Willy DE CLERCQ
Member of the Commission