COMMISSION REGULATION (EEC) No 1696/88

of 14 June 1988

imposing a provisional anti-dumping duty on imports of synthetic fibres of polyesters originating in Mexico, Romania, Taiwan, Turkey, the United States of America or Yugoslavia

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,

Having informed the EEC-Turkey Association Council pursuant to Article 47 (2) of the Additional 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 International Rayon and Synthetic Fibres Committee (IRSFC) lodged a complaint with the Commission on behalf of producers of synthetic fibres of polyesters whose collective output accounts for the bulk of Community production of the product in question. Two Community producers, Hoechst AG and Du Pont de Nemours GmbH, are not complainants with respect to the US exporters, on account of their respective interests in two exporting companies involved in the proceeding, Hoechst Celanese Corporation (New Jersey) and E. I. Du Pont de Nemours Co. Inc. (Delaware).

This complaint followed an earlier complaint lodged in December 1985 by the same organization concerning imports of the same product originating in the German Democratic Republic, Romania, Turkey and Yugoslavia, which was terminated by Commission Decision 87/236/EEC [4] without measures being imposed.

The complaint relating to the current proceeding contained evidence of dumping and of material injury resulting therefrom which was considered sufficient to warrant the opening of an investigation. The Commission accordingly announced, in a notice published in the *Official Journal of the European Communities* [5], the initiation of an anti-dumping proceeding concerning imports into the Community of synthetic fibres of polyesters, not carded, combed or otherwise processed for spinning, falling from 1 January 1988 within CN code 5503 20 00 and originating in Mexico, Romania, Taiwan, Turkey, the United States of America or Yugoslavia, and commenced an investigation.

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

(3) Most of the known producers/exporters and a number of importers made known their views in writing. Some of them requested and were granted hearings.

(4) The Commission sought and verified all information it considered necessary for a preliminary determination of dumping. It inspected the premises of the following companies :

(a) *Community producers*

— Du Pont de Nemours GmbH, Düsseldorf, Federal Republic of Germany,

— Enichem Fibre SpA, Milan, Italy,

— Enka AG, Wuppertal, Federal Republic of Germany,

— Hoechst AG, Frankfurt am Main, Federal Republic of Germany,

— Montefibre SpA, Milan, Italy,

— Nurel SA, Barcelona, Spain,

— Rhône Poulenc Fibres SA, Lyons, France,

— La Seda de Barcelona SA, Barcelona, Spain,

— Sociedad Anónima de Fibras Artificiales, Barcelona, Spain.

[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. 5.
[4] OJ No L 103, 15. 4. 1987, p. 38.
[5] OJ No C 173, 1. 7. 1987, p. 10.

(b) *Non-Community producers/exporters*

United States of America :

— BASF Corp., Williamsburg, Virginia,
— CIMCO Celanese Int. Marketing Co., New York,
— Consolidated Textiles, Charlotte, North Carolina,
— Eastman Chemical Products Inc., Kingsport, Tennessee,
— E. I. Du Pont de Nemours and Co., Wilmington, Delaware,
— Celanese Fibers Inc., Charlotte, North Carolina,
— Leigh Fibers Inc., Spartanburg, South Carolina,
— R & M International Sales Co., Philadelphia, Pennsylvania,
— RSM Co., Charlotte, North Carolina,
— Titan Textile Co. Inc., Paterson, New Jersey,
— William Barnet and Son Inc., Arcadia, South Carolina.

Mexico :

— Celanese Mexicana SA, Mexico City,
— Crisol Textil SA de C. V., Mexico City,
— Fibras Sinteticas SA, Monterrey,
— Kimex SA, Mexico City.

Taiwan :

— Chung Shing Textile Co. Ltd, Taipei,
— Far Eastern Textile Ltd, Taipei,
— Nan Ya Plastics Corp., Taipei,
— Shinkong Synthetic Fibres Corp., Taipei,
— Tuntex Distinct Corp., Taipei.

Turkey :

— SASA Artificial and Synthetic Fibres Inc., Adana, exporting exclusively through the associated company EXSA, Adana,
— Sönmez Filament, Bursa, exporting exclusively through Sönmez Textile, Bursa.

(5) The Commission did not inspect the premises of exporters in the following countries :

(a) *Romania*

— Producer : Uzina de Fibre Sintetica Iasi, Iasi,
— Exporter : Ice Danubiana, Bucharest.

Romania does not have a market economy (see paragraph 10).

(b) *Yugoslavia*

— Ohis Commerce, Skopje :

In view of the results of the previous investigation, which showed that market prices corresponded with list prices, the Commission considered that at this stage of the proceeding the list prices and other evidence supplied in response to the questionnaire provided an adequate basis for an examination of whether this company's exports were dumped.

— Vartilen, Varazdin :

This company replied to the questionnaire after the time limit had expired and the Commission accordingly disregarded the evidence supplied and established its preliminary conclusions on the basis of the information available, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2176/84.

(6) The Commission received and used information from the following importers :

— Celanese SA, Brussels, Belgium,
— Libeltex, Meulebeke, Belgium,
— Tasibel, Hamme, Belgium,
— TOB Herman Industries NV, Antwerp, Belgium,
— Industria Bures, Barcelona, Spain,
— Mitasa, Barcelona, Spain,
— Sociedad Anónima Sans, Mataró, Spain,
— Dolfus Mieg & Cie, Paris, France,
— Soft SpA, Cerreto Castello, Biella, Italy,
— Chicopee BV, Cuijk, The Netherlands,
— Freudenberg, Weinheim, Federal Republic of Germany,
— Hugo Bartram, Neumünster, Federal Republic of Germany,
— J. Grundherr, Bremen, Federal Republic of Germany,
— Schoeller Textil FmbH, Düvon, Federal Republic of Germany,
— James Robinson & Son, Bradford, United Kingdom,
— Mutual Mills, Heywood, United Kingdom.

(7) The investigation covered the period 1 January to 1 July 1987.

B. DUMPING

(a) Normal value

United States of America

(8) Normal value was provisionally determined on the basis of the domestic prices charged by the producers and dealers concerned to independent customers or, in the case of products sold at a loss or where there were no domestic sales, on the basis of constructed value. In the case of producers, constructed value was calculated on the basis of the cost of production plus a reasonable profit margin, corresponding to the profit made by those producers in previous periods.

In the case of dealers, constructed value was calculated on the basis of the prices which the dealers actually paid the producers, plus a reasonable margin to cover their expenses and a profit margin established on the basis of their sales of similar products.

Mexico

(9) In general, normal value was provisionally calculated on the basis of the prices charged by Mexican producers which exported to the Community and which supplied sufficient information. It was established on a monthly basis and by type of product. Where there were no domestic sales of the type of product exported to the Community during a given month, the weighted average of domestic sales for the other months was used.

Where there were no domestic sales of a type of product exported to the Community, either the domestic prices of the nearest type or the constructed value was used. Constructed value was calculated by adding together the cost of production and a reasonable profit margin established on the basis of the overall profits made on sales of similar products.

Romania

(10) In order to establish whether the imports originating in Romania were being dumped, the Commission had to take account of the fact that Romania does not have a market economy, and accordingly based its calculations on the normal value of the products in question in a market economy country. As in the previous proceeding, the complainants suggested the Turkish market. Although a number of objections were raised concerning the high price levels on the Turkish market, the Commission received no properly reasoned request for another country to be chosen. The Commission found that there were no significant differences between the two countries in the production process, scale of production or type of products. It further established that the price levels and costs of production were in reasonable proportion. It accordingly concluded that it was appropriate and not unreasonable to determine the Romanian normal value on the basis of the domestic prices of the most efficient Turkish producer. (For the method used see Turkey.)

Taiwan

(11) In general, normal value was provisionally calculated on the basis of the prices charged by Taiwanese producers which exported to the Community and supplied sufficient information. It was established on a monthly basis and by type of product. Where there were no domestic sales of the type of product exported to the Community during a given month, the weighted average of domestic sales for the other months was used.

Where there were no domestic sales of a type of product exported to the Community, either the domestic prices of the nearest type or the constructed value was used. Where domestic sales were made at a loss, constructed value was used as normal value. Constructed value was calculated by adding together the cost of production and a reasonable profit margin established on the basis of the overall profits made on sales of similar products.

Turkey

(12) Normal value was provisionally calculated on the basis of the prices charged by Turkish producers which exported to the Community and supplied sufficient information. It was established on a monthly basis and by type of product. Where sales were made at a loss, constructed value was used as normal value. It was calculated by adding together the cost of production and a reasonable profit margin established on the basis of the overall profits made on sales of similar products.

Yugoslavia

(13) Normal value was provisionally determined on the basis of the domestic prices paid or payable for the product on the internal market as shown in the firm's price lists. During the previous investigation, it was established that actual prices were in line with list prices.

(b) Export prices

(14) In general, export prices were established on the basis of the prices actually paid or payable for products sold for export to the Community. Where products were exported through subsidiaries established in the Community, the Commission calculated export prices on the basis of the prices at which they were sold on to the first independent buyer, adjusted to take account of all costs — including, where appropriate, customs duties — incurred between importation and resale, and a profit margin actually identified and considered reasonable in view of the profit margins of independent importers of the product in question.

(c) Comparison

(15) In general, in its comparison of normal value and export prices, the Commission took account, in accordance with Article 2 (10) (c) of Regulation (EEC) No 2176/84 and according to the circumstances, of differences directly affecting price comparability such as credit terms and transport, insurance, handling and other costs, wherever it was satisfactorily established that the corresponding requests were justified. All comparisons were made deal by deal at the ex-works stage.

Mexico and Turkey

(16) In accordance with Article 2 (10) (d) of Regulation (EEC) No 2176/84, the Commission accepted all justified requests for adjustments to the export prices charged by the Mexican and Turkish producers to take account of exemption from customs duties on the raw materials used for the production of goods exported to the Community.

Taiwan

(17) However, the Commission did not accept requests for adjustments to the export prices charged by the Taiwanese producers to allow for the hedging of exchange rates, since such adjustments are not provided for in Regulation (EEC) No 2176/84. In any case, the Commission considered the hedging of exchange rates to be a financial technique independent of the commercial transaction proper. Moreover, such adjustments were requested only where they favoured the exporter.

(d) Dumping margins

(18) The preliminary comparison of the above facts showed that imports had been dumped. The dumping margins were equal to the difference between normal value and the price on export to the Community duly adjusted, and varied from one exporter to the next. The weighted average dumping margins, adjusted to free-at-Community-frontier prices, were as follows for each of the exporters monitored :

United States of America

Producers :

— BASF Corp. : 23,1 %,
— E. I. Du Pont de Nemours & Co. : 0 %,
— Eastman Chemical Products Inc. : 9,9 %,
— Hoechst Celanese Corp. : 9,2 %.

Dealers :

— William Barnet and Son Inc. : 6,5 %,
— Consolidated Textiles : 0 %,
— Leigh Fibers Inc. : 6,7 %,
— R & M International : 2,5 %,
— RSM Co. : 2,5 %,
— Titan : 3,6 %.

Mexico

— Celanese Mexicana SA : 33,7 %,
— Crisol Textil SA de C.V. : 10,1 %,
— Fibras Sinteticas SA : 22,9 %,
— Kimex SA : 43,6 %.

Romania

— Ice Danubiana : 46,7 %.

Taiwan

— Chung Shing Textile Co. Ltd : 20,4 %,
— Far Eastern Textile Ltd : 5,8 %,
— Nan Ya Plastics Corp. : 7,2 %,
— Shinkong Synthetic Fibres Corp. : 6,3 %.

Turkey

— Sasa Artificial & Synthetic Fibres Inc. : 12,4 %,
— Sönmez Filament : 11,9 %.

Yugoslavia

— Ohis : 24,6 %.

For the exporters listed below, who failed to cooperate satisfactorily with the Commission investigation, dumping was determined on the basis of available information. The Commission considered the results of its investigation to be the most appropriate basis for determining the dumping margin, and that the fixing of a lower margin than the highest margin determined for an exporter which cooperated with the investigation would reward failure to cooperate and make it possible to evade duty. It accordingly applied the highest margin determined to the following exporters :

— Tuntex Distinct Corp., Taiwan : 20,4 %,
— Vartilen, Yugoslavia : 24,6 %.

C. INJURY

Volume and price of imports

(a) *Volume*

(19) Imports into the Community of polyester fibres originating in Mexico, Romania, Taiwan, Turkey, the United States of America and Yugoslavia increased from 33 859 tonnes in 1984 to 37 897 tonnes in 1985, an increase of 12 %, and to 55 552 tonnes in 1986, an increase of 46,6 % compared with 1985. In 1987, imports originating in the said countries rose to 71 474 tonnes, a further increase of 28,6 % compared with 1986.

The Commission discovered that the said countries' share of total imports into the Community fell from 51,9 % in 1984 to 50,7 % in 1985 and then rose to 66,1 % in 1986 and 73,3 % in 1987. The said countries' market share increased from 9,6 % in 1984 to 17,8 % in 1987.

(b) *Prices*

(20) The evidence available to the Commission shows that during the reference period the prices of the imports concerned were lower than the prices charged by Community producers. The differences in the prices of the most representative types on the main Community markets were as follows :

— Mexico : around 30 % and up to 38 %,

— Romania : around 30 % and up to 38 %,

— Taiwan : around 22 % and up to 30 %,

— Turkey : around 20 % and up to 34 %,

— United States : around 10 % and up to 15 % (sub-standard fibres),

— Yugoslavia : around 20 % and up to 25 %.

Impact on Community production

The Commission noted the following :

(a) *Community production*

(21) From 1984 to 1987 Community production of polyester fibres remained relatively stable at between 370 000 and 380 000 tonnes.

(b) *Market share and consumption*

(22) The market share of Community producers fell from 81,8 % in 1984 to 80,9 % in 1985, 78,6 % in 1986 and 75,7 % in 1987. Consumption of polyester fibres increased from 360 000 tonnes in 1984 to 402 000 tonnes in 1987, an increase of about 12 %, largely to the advantage of the exporters concerned by the investigation.

(c) *Prices*

(23) In addition to the negative influence on Community producers' capacity utilization and market share, the imports concerned had a depressive effect on the prices charged by the Community producers. During the reference period the average price of first-quality fibres, which account for the bulk of Community production, fell by some 13 to 15 %.

(d) *Profits*

(24) With the exception of two producers, the Community industry saw its profits fall, its profits turn to losses or its losses grow during the reference period by comparison with 1986, calculated on the basis of net sales, as shown in the following table :

Company	1986	06/1987	Company	1986	06/1987
A	+ 10	+ 3	E	+ 6	− 1
B	+ 14	+ 9	F	− 8	− 12
C	+ 5	+ 4	G	− 1	− 14
D	+ 3	− 2	H	− 6	− 8

(25) The above data show that although the growth of imports did not lead to a fall in production it did deprive the Community industry of the benefits of increased consumption and had a depressive effect on prices ; this led both to a fall in market share and a net worsening of the financial results of the Community industry.

Cumulation

(26) In order to determine the impact of dumped imports on the Community industry, the Commission had to decide whether or not to cumulate overall imports originating in the countries concerned by the investigation.

In determining whether it was appropriate in this case to cumulate the imports referred to in the complaint, the Commission took account of the comparability of the imported products in terms of physical characteristics, the volumes imported, price levels and the degree to which they competed with similar Community products.

The US exporters claimed that the impact of their exports should be examined in isolation and judged not to have caused injury in so far as the volume of their exports was small, their market share had fallen and the quality of their products differed from the products both of the other countries referred to in the complaint and of Community producers.

The Commission discovered that in spite of the fall in US exports between 1985 and 1987, their volume remained some 17 % higher than in 1984 and was noticeably higher than that achieved by other exporters.

Nevertheless, the bulk of the exports of US producers were found to be speciality products exported to the Community at relatively high prices. The same did not apply to the exports of dealers, most of which were sub-standard fibres sold at very low prices.

The Commission accordingly concluded that the exports of the US producers should not be cumulated with the exports of the other countries covered by this proceeding, both because the physical characteristics of their products generally differed from those of Community products and other imported products and because these exports did not compete with Community production and other imports on account of their price levels.

The exports of the US dealers, on the other hand, although of a lower quality, were comparable to certain products of the Community industry and were sold at low prices. They therefore competed directly with Community products and should accordingly be cumulated.

Turning to Romanian exports, the Commission found that although their volume fell by 28 % between 1984 and 1987, they still accounted for 1,9 % of consumption and 10 % of the exports of the countries covered by this proceeding and exceeded the volume achieved by the exports originating in certain countries concerned. Furthermore, they involved the highest level of price undercutting. For these reasons, the Commission concluded that they should also be cumulated.

On the basis of the above, the Commission accordingly concluded that all imports of polyester fibres originating in the third countries concerned by this proceeding should be cumulated, with the exception of those exported by the producers investigated in the United States of America.

Causality and other factors

(27) As regards causality, the Commission found that the increase in the imports in question between 1984 and the first six months of 1987 coincided with the fall in prices on the Community market and the worsening in the financial results of the Community producers concerned.

The Commission examined whether the injury suffered by the Community producers had been caused by other factors, such as imports originating in other third countries. It found that the market share held by other third countries fell from 8,7 % in 1984 to 6,5 % in 1987. No evidence was supplied to show that these imports had been dumped.

A number of importers claimed that the growth in imports was the result of the fact that Community producers had been alone in not reducing their selling prices in line with the fall in the cost of raw materials. The information available to the Commission shows that this fall had only a small effect on total production costs. Thus this argument does not explain the fall in the prices of polyester fibres on the Community market.

(28) In these circumstances, the Commission concluded that, taken in isolation, the effects of imports originating in the countries concerned by this proceeding, excluding imports from US producers, should be considered to have caused material injury to the Community producers concerned. The Commission took account of all the complainant Community producers, including those having links with the exporters concerned, such as Hoechst Celanese AG and Celanese Mexicana SA, since their subsidiaries behave largely as independent economic agents.

Community interest

(29) In view of the serious difficulties confronting the Community industry concerned, the Commission concluded that it was in the Community interest to take steps to eliminate the injury caused to Community producers of polyester fibres. These measures, which would have a relatively small impact on the production costs of the textile industry and would have no significant impact on consumers, should take the form of a provisional anti-dumping duty.

In reaching this conclusion, the Commission was aware that exports originating in Romania were subject to quantitative restrictions in the Benelux countries and Italy. It nevertheless considered those restrictions to be insufficient to eliminate the injury suffered by all Community producers. In any case, the bulk of the exports concerned are sent to the Federal Republic of Germany and involve substantial price undercutting.

D. PROVISIONAL DUTY

(a) Rate of duty

(30) In determining the rate of the provisional duty, the Commission took into account the dumping margins and the level of duty needed to eliminate the injury. To that end, it compared import prices with the production costs of the most representative Community producers, plus a reasonable profit margin.

The Commission selected those Community producers which it considered to be most representative on the basis of their size, the efficiency of their production plant and their overall costs of production.

The Commission noted the costs of production of the most representative Community producers during the reference period. It took as a reasonable profit margin the average positive margin of the said producers in 1985 and 1986, since for most of that period the impact of imports originating in the countries concerned was still moderate and only began to intensify during the second half of 1986.

The average costs of production plus the said profit margin were compared with the free-at-Community-frontier export prices plus customs duties and a profit margin for the importer.

However, no duty should be imposed on imports which are not dumped or where there is no evidence of injury, in particular on account of the high prices charged by the US producers covered by this investigation.

(b) **Form**

(31) To ensure that these defensive measures are effective and to facilitate customs clearance, the Commission considered that the provisional duty should take the form of an *ad valorem* duty.

E. **FINAL PROVISION**

(32) In the interests of good administration, a reasonable period should be fixed within which the parties which cooperated fully with this investigation can make known their views on the findings set out in this Regulation and request a hearing,

HAS ADOPTED THIS REGULATION:

Article 1

1. An anti-dumping duty is hereby imposed on imports of polyester fibres falling within CN code 5503 20 00 and originating in Mexico, Romania, Taiwan, Turkey, the United States of America or Yugoslavia.

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

— 6,7 % for polyester fibres originating in the United States of America, excluding those produced and exported by the following companies, which shall not be subject to such a duty:

  — BASF Corp., Williamsburg,
  — Consolidated Textiles, Charlotte,
  — E. I. Du Pont de Nemours and Co., Wilmington,
  — Eastman Chemical Products Inc., Kingsport,
  — Hoechst Celanese Corp., Charlotte,

— as follows for the companies indicated below:

  — William Barnet and Son Inc., Arcadia: 6,5 %,
  — R & M International Sales Co., Philadelphia: 5,6 %,
  — RSM Co., Charlotte: 2,5 %,
  — Titan Textile Co. Inc., Paterson: 3,6 %,

— 43 % for polyester fibres originating in Mexico, but as follows for the companies indicated below:

  — Fibras Sinteticas SA, Monterrey: 22,9 %,
  — Crisol Textil SA de C.V., Mexico: 10,1 %,
  — Celanese Mexicana SA, Mexico: 28,0 %,

— 45,8 % for polyester fibres originating in Romania,

— 20,4 % for polyester fibres originating in Taiwan, but as follows for the companies indicated below:

  — Far Eastern Textile Ltd, Taipei: 5,8 %,
  — Nan Ya Plastics Corp., Taipei: 7,2 %,
  — Shinkong Synthetic Fibres Corp., Taipei: 6,3 %,

— 12,4 % for polyester fibres originating in Turkey, but as follows fo the company indicated below:

  — Sönmez Filament, Bursa 11,9 %,

— 24,6 % for polyester fibres originating in Yugoslavia.

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 lodging of a security equivalent to the amount of the provisional duty.

Article 2

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

Article 3

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

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2176/84, it shall apply for a period of four months or until the Council adopts definitive measures, whichever is the earlier.

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