COUNCIL REGULATION (EEC) No 3905/88

of 12 December 1988

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Article 12 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 [2], and in the absence of a decision by the said Association Council,

Having regard to the proposal from the Commission, submitted after consultations within the Advisory Committee set up under Regulation (EEC) No 2423/88,

Whereas :

A. PROVISIONAL MEASURES

(1) Under Regulation (EEC) No 1695/88 [3], as amended by Regulation (EEC) No 2871/88 [4], the Commission imposed a provisional anti-dumping duty on imports of partially oriented polyester yarn (POY) and textured polyester yarn (PTY) originating in Mexico, South Korea, Taiwan and Turkey. POY is a feeder yarn used in the main for the production of PTY which, in turn, is used to produce fabrics of polyester or of cotton and polyester. The duty was extended for a period not exceeding two months by Regulation (EEC) No 3171/88 [5].

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping duty, Community producers and a number of exporters of the product in question applied to be heard by the Commission and hearings were granted.

Community producers and some exporters also expressed their views on the Regulation imposing the provisional duty in writing.

Certain exporters asked the Commission to inform them of the main facts and consideration on the basis of which the Commission proposed to recommend definitive measures. The Commission complied with these requests.

C. DUMPING

1. Normal value

(a) *Korea, Taiwan and Mexico*

(3) In general, normal value was calculated definitively by the method used for the provisional calculation of the value, namely on the basis of the domestic prices charged by the producers which exported to the Community and had supplied sufficient information. It was established on a monthly basis and by type of product.

During the months, where there were no sales on the internal market of a certain type of exported product, 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, or where, if they existed, they were insufficient, the internal market price of the most similar type of product or alternatively the constructed value was used. Where a substantial volume of domestic sales of a given type of product was 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 profits made on the domestic sales of the product concerned, POY or PTY, or on total sales of polyester yarn by the exporting company concerned.

In the case of one Korean exporter and some Mexican exporters, normal value was established, at their request, on the basis of domestic prices net of all discounts and rebates directly linked to the sales under consideration, pursuant to Article 2 (3) (a) of Regulation (EEC) No 2423/88, after evidence, deemed to be convincing, had been adduced.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 293, 29. 12. 1972, p. 3.
[3] OJ No L 151, 17. 6. 1988, p. 39.
[4] OJ No L 257, 17. 9. 1988, p. 24.
[5] OJ No L 282, 15. 10. 1988, p. 28.

Also accepted was the request of a Taiwanese exporter that the constructed value be established on the basis of the profit margin on POY sales alone rather than all PTY sales, a margin determined with reference to another exporter in this case.

(b) *Turkey*

(4) Normal value was calculated definitively using the method set out in the first and second paragraphs of recital 3 of this Regulation.

However, in the case of POY, the normal value of which had been calculated on the basis of the constructed value, one exporter challenged the amount of the profit margin established in respect of the profits made on all polyester yarn sales, arguing that the only acceptable margin was that calculated in respect of profits on POY sales. Since the Commission was unable to find a profit margin relating only to POY in the accounts of any of the Turkish companies involved in the proceeding, the Council agreed with the Commission that the method used to calculate the provisional measures should stand.

2. **Export prices**

(5) 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, export prices were calculated on the basis of the price at which they were resold to the first independent buyer, duly adjusted to take account of all costs incurred between import and resale, including, where appropriate, transport, insurance and customs duties and a margin considered reasonable to cover general expenses and profit, given the profit margins of independent importers of the product in question.

Adjustments were made to the exchange rates for prices of exports to the Community effected by Taiwanese exporters, the evidence submitted having been found satisfactory.

An adjustment was made to the exchange rate used to calculate the export price of a Mexican producer in response to a request accompanied by sufficient supporting evidence.

3. **Comparison**

(6) The normal monthly value for each type of product was generally compared, transaction by transaction, with the export prices of the corresponding type of product at the ex works stage. Any adjustments provisionally allowed according to the circumstances to take account of differences directly affecting price comparability pursuant to Article 2 (10) (c) and (d) of Regulation (EEC) No 2423/88 were maintained on the terms set out in recitals 10, 14, 18 and 22 of Regulation 1695/88.

(a) *Korea*

(7) One exporter's renewed request concerning differences in selling conditions, based on Article 2 (10) (c) (v) of Regulation (EEC) No 2423/88, was not supported by sufficient evidence as to their direct link with the sales in question, and was thus rejected.

(b) *Mexico*

(8) An adjustment to take account of credit costs pursuant to Article 2 (10) (c) (iii) of Regulation (EEC) No 2423/88, has been taken into consideration following a request accompanied by supporting evidence judged to be satisfactory.

In the case of one Mexican exporter, to whom an adjustment to the export prices had been accorded in respect of 'bank charges' for the provisional calculation of the dumping margin, additional information showing that these expenses were not in fact bank charges led the Commission to reconsider the adjustment.

Requests for additional adjustments in respect of commissions paid to salesmen and of certain credit and domestic freight costs were also refused on the grounds that the evidence adduced was either in flagrant contradiction with the findings of the investigation, of insufficient.

(c) *Taiwan*

(9) A further request was made for adjustment in respect of hedging of exchange rates but no new arguments were brought forward. The Council therefore agrees with the Commission's conclusions rejecting this request in the third paragraph of recital 18 of Regulation (EEC) No 1695/88.

(d) *Turkey*

(10) A renewed request from one exporter for an adjustment in respect of the refinancing by international banks of sums owing to him abroad, when he had already been accorded adjustments in respect of credit costs for export sales, was not accepted. The request, made under Article 2 (10) (c) (iii) of Regulation (EEC) No 2423/88, was rejected on the grounds that the Article did not provide for adjustment on such grounds.

Nor was any adjustment accorded pursuant to Article 2 (10) (b) of Regulation (EEC) No 2423/88 concerning the refunding of import charges to which a product exported to the Community is subject because the firms concerned had either made their request too late of not adduced satisfactory evidence.

4. Dumping margins

(11) The dumping margin calculated for each exporter is equal to the difference between normal value and the price on export to the Community, duly adjusted.

The weighted average dumping margins for each of the exporters concerned, adjusted to free-at-Community-frontier prices, are as follows :

(a) *Korea*

— Kohap Ltd, Seoul	PTY	8,13 %
— Kolon Industries Inc., Seoul	PTY	5,71 %
	POY	0,02 %
— Sam Yang Co. Ltd, Seoul	PTY	3,38 %
— Tong Yang Polyester Co. Ltd, Seoul	PTY	4,09 %

(b) *Mexico*

— Celanese Mexicana SA, Mexico City	PTY	15,85 %
	POY	4,43 %
— Fibras Sinteticas SA de C.V., Mexico City	PTY	26,74 %
— Fibras Quimicas SA, Monterrey	PTY	5,79 %
— Nylon de Mexico SA, Monterrey	POY	15,80 %
— Kimex SA, Mexico City	PTY	18,72 %

(c) *Taiwan*

— Chung Shing Textile Co. Ltd, T'aipei	PTY	1,67 %
— Far Eastern Textile Ltd, T'aipei	PTY	6,21 %
	POY	0,09 %
— Nan Ya Plastics Corp., T'aipei	PTY	4,92 %
	POY	0,52 %
— Shin Kong Synthetic Fibres Corp., T'aipei	PTY	4,96 %
	POY	22,11 %
— Tuntex Distinct Corp., T'aipei	PTY	0,31 %
	POY	0,00 %

(d) *Turkey*

— Nergis AS, Bursa	PTY	38,50 %
— Polylen AS, Bursa	PTY	27,60 %
— Sasa Artificial & Synthetic Fibres Inc., Adana	PTY	11,13 %
	POY	2,67 %
— Sifas Sentetik Iplic Fabrikalari AS Bursa	PTY	17,34 %
— Sönmez Filament AS, Bursa	PTY	13,18 %

D. INJURY

(12) In Regulation (EEC) No 1695/88 the Commission described the effect of imports at dumping prices on Community industry, notably as regards volume, prices, market share and profitability. It explained that to do this, imports from the various countries involved in the proceeding had to be aggregated.

On the point it was claimed that the figures given in recital 26 of the said Regulation were not correct in that they did not indicate the use of POY in the production of PTY.

Since no data were available to identify the proportion of POY in Community production and consumption, the Commission used production and consumption figures drawn from data relating to PTY only; the data took into account the internal transfer of POY used to make PTY.

In these circumstance, and with no new evidence forthcoming, the Council upholds the findings set out in recitals 24 to 32 of Regulation (EEC) No 1695/88.

The Commission considered whether Community producers having links with Mexican exporters should be excluded when establishing injury, pursuant to Article 4 (5) of Regulation (EEC) No 2423/88.

Since the purpose of this Article is to exclude Community producers that might complain about companies with whom they have links, the Council notes that none of the Community producers import polyester yarn from the exporting

companies concerned, that the latter act as autonomous economic entities, that the volume of exports to the Community is small, that one of the Community producers has only indirect links with an exporting company and that the Community producers concerned are not protected against the unfair practices of other exporting companies.

For all of these reasons, and in view of the fact that the links between certain Community producers and exporting companies should not lead to these producers being deprived of protection against unfair practices, the Council finds that the Community producers concerned should not be excluded from the proceeding.

1. Product comparability

(13) Exporters challenged the validity of the comparison made between the polyester yarn produced by their companies and those of Community producers, arguing that they were not similar products, notably as regards quality, that they were not used for the same purposes and that they were not interchangeable with Community products. These arguments were not accepted since the Commission believes that the requirement that a product be similar to an imported product should not be interpreted narrowly, and that only fundamental differences in quality or use are grounds for considering that a product is not similar to another.

In this case the physical characteristics of the products are very similar and the use made of lower-quality polyester yarn is not wholly different from the use made of those of supposedly better quality.

The Council therefore considers that the alleged differences in quality and use are not sufficient to justify a distinction being made between these products.

2. Causality

(14) In recital 33 of Regulation (EEC) No 1695/88 the Commission established a causal link between the injury suffered by Community producers and the imports sold at dumping prices.

However, a number of exporters argued that their polyester yarn exports to the Community were either small or diminishing in volume, and so could not have contributed to the injury.

Under Regulation (EEC) No 2423/88 injury may still be caused even if the volume of each individual exporter is very small. This argument does not therefore justify the exclusion of these exporters from the proceeding.

In these circumstances, and in the absence of any fresh evidence in respect of the arguments set out in recital 33 of Regulation (EEC) No 1695/88, the Council confirms the findings and conclusions presented by the Commission in that recital.

E. QUANTITATIVE RESTRICTIONS AND ANTI-DUMPING MEASURES

(15) As regards the existence of quantitative restriction on imports into Spain and Italy of polyester yarn originating in Korea, and on imports into Spain of polyester yarn originating in Taiwan, it was argued that the imposition of an anti-dumping duty on polyester yarn imports from these countries on top of the quantitative restrictions was incompatible with Article XIX of the GATT and paragraph 6 of the Fourth Multifibre Arrangement (MFA IV).

The Council finds that, contrary to what was argued, neither Community law nor international rules — notably the MFA — prohibit the imposition of anti-dumping duties, customs duties or any other measure affecting imports subject to quantitative restrictions, provided it is established that injury has been caused despite the restrictions.

As to the wisdom of applying such measures in this case, the Council notes that as far as the overall Community industry is concerned, even if the volume of polyester yarn imports of Korean and Taiwanese origin is small, the level of undercutting involved is as much as 30 % in the case of polyester yarn from Korea and 38 % in that of polyester yarn from Taiwan.

In these circumstances, the Council finds that the Community industry has been exposed to unfair competition from these countries.

The Council notes that substantial undercutting has occurred with regard to imports into Spain and Italy: up to 35 % in Italy and 41 % in Spain in the case of Korean polyester yarn, and 33 % in Spain in the case of Taiwanese polyester yarn. The quantitative restrictions introduced for these countries have therefore not protected them from unfair price competition nor prevented injury. It should also be pointed out that these countries' producers suffered serious financial losses in the reference period.

The Council therefore believes that the imposition of anti-dumping mesures on imports from Korea and Taiwan is necessary.

F. COMMUNITY INTEREST

(16) Certain importers and users have argued that the Community producers behaved as if they were members of a cartel, in so far as high prices were charged, difficulties in obtaining supplies were noted, and a certain segmentation of the Community fibres market was set up. However, no element of proof to support these arguments has been advanced which would allow the Commission to open an investigation under the Community competition rules.

In these circumstances, in view of the serious difficulties facing the Community industry concerned, the Commission concluded that it was in the Community interest to take appropriate steps to remove the injury caused to Community polyester yan producers. These measures, which would have fairly negligible effects on the production costs of the user industry and no serious consequences for consumers, should take the form of a definitive anti-dumping duty.

The Council therefore confirms that it is in the Community interest to adopt definitive anti-dumping measures in respect of imports originating in the four exporting countries named in this proceeding.

G. DEFINITIVE DUTY

(17) Arguments were advanced concerning the way that differences in the production of POY and PTY had been taken into account. It is confirmed that the Commission has, as far as possible, taken these differences into account, notably as regards production costs, price comparison and the calculation of the injury threshold.

The Council confirms the Commission's conclusions concerning both the method used for the establishment of the duty to be applied and the form of the duty, as described in recitals 35 and 36 of Regulation (EEC) No 1695/88.

H. COLLECTION OF THE PROVISIONAL DUTY

(18) In view of the dumping margins recorded and the injury caused, the Council believes that the amounts secured by the provisional anti-dumping duty should be definitively collected, either in their entirety or up to the maximum duty definitively imposed if the definitive duty is lower than the provisional duty. The balance remaining after the definitive duties have been covered shall be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive 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 or Turkey.

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

— 15,8 % for POY originating in Mexico, excluding yarn produced and sold for export to the Community by Celanese Mexicana SA, Mexico City, which shall not be subject to such a duty;

— 8,7 % for POY originating in Taiwan, excluding yarn produced and sold for export to the Community by the following firms, which shall not be subject to duty:

Far Eastern Textile Ltd, T'aipei,
Nan Ya Plastics Corp., T'aipei,
Tuntex Distinct Corp., T'aipei;

— 2,7 % for POY originating in Turkey.

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

Article 2

1. A definitive 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, South Korea, Taiwan or Turkey.

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

— 8,1 % for PTY originating in South Korea. The following duties shall be applicable to PTY produced and sold for export to the Community by the companies listed below:

Kohap Ltd, Seoul	8,1 %,
Kolon Industries Inc., Seoul	5,7 %,
Sam Yang Co. Ltd, Seoul	3,4 %,
Tong Yang Polyester Co. Ltd, Seoul	4,1 %;

— 26,7 % for PTY originating in Mexico. The following duties shall be applicable to PTY produced and sold for export to the Community by the companies listed below:

Celanese Mexicana SA, Mexico City	15,9 %,
Fibras Quimicas SA, Monterrey	5,8 %,
Kimex SA, Mexico City	18,7 % ;

— 6,2 % for PTY originating in Taiwan. The following duties shall be applicable to PTY produced and sold for export to the Community by the companies listed below :

Chung Shing Textile Co. Ltd, T'aipei	1,7 %,
Nan Ya Plastics Corp., T'aipei	4,9 %,
Shinkong Synthetic Fibres Corp., T'aipei	5,0 %.

Tuntex Distinct Corp., T'aipei, shall be exempted from the duty referred to above ;

— 13,2 % for PTY originating in Turkey. The following duties shall be applicable to PTY produced and sold for export to the Community by the companies listed below :

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

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

Article 3

The amounts secured by way of provisional anti-dumping duty under Regulation (EEC) No 1695/88 shall be definitively collected, either in their entirety or up to an amount not exceeding the rates specified in this Regulation. The balance of these secured amounts after coverage of the definitive duties shall be released.

Article 4

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, 12 December 1988.

For the Council

The President

P. ROUMELIOTIS