COUNCIL REGULATION (EEC) No 3946/88

of 16 December 1988

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

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 notified the EEC-Yugoslavia Cooperation Council in accordance with Articles 35 and 38 of the Cooperation Agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia [3],

Having regard to the proposal from the Commission, submitted after consultations within the Advisory Committee set up under the said Regulation,

Whereas :

A. PROVISIONAL MEASURES

(1) Under Regulation (EEC) No 1696/88 [4], the Commission imposed 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. This duty was extended for a period not to exceed two months by Regulation (EEC) No 3170/88 [5].

B. SUBSEQUENT PROCEDURE

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

Community producers, most exporters and certain importers and users also expressed their views on the Regulation imposing the provisional duty in writing.

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

C. DUMPING

1. Normal value

I. Overall method

(3) In the case of Mexico, Taiwan, Turkey and the United States, the 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 substantial domestic sales of a given type of product, either the internal market price of the nearest type or alternatively the constructed value was used. Where substantial quantities of the domestic sales of a given product 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 by the producer concerned.

II. The specific cases below should be noted:

(a) *United States*

(4) In the case of some American dealers, constructed value was calculated definitively 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.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 293, 29. 12. 1972, p. 3.
[3] OJ No L 41, 14. 2. 1983, p. 1.
[4] OJ No L 151, 17. 6. 1988, p. 47.
[5] OJ No L 282, 15. 10. 1988, p. 27.

(b) *Mexico*

(5) The normal value provisionally established for one exporter was adjusted at his 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.

(c) *Romania*

(6) In view of the fact that Romania is not a market economy, normal value was calculated definitively from the normal value on the Turkish market.

The Romanian exporter raised objections about the choice of the Turkish market, pointing to the level of market protection, differences in production methods and higher wage costs in Turkey and, after the imposition of the provisional duty, suggested that Yugoslavia should be the reference country.

No significant differences were found between Romania and Turkey as regards the production technique, scale of production or the types of product. On the contrary, price levels and production costs in Turkey were found to be in reasonable proportion.

On wage costs, the argument could not be taken into consideration in practice since any alleged advantage is difficult to quantify and may be negated by other disadvantages. Furthermore, in market economies prices are not set solely on the basis of production costs but also take into account demand.

Lastly, the choice of the Yugoslav market was not considered appropriate in so far as Yugoslav producers do not produce black fibres, which make up a large proportion of Romanian exports to the Community.

Accordingly, the Council confirms the validity of the choice of the Turkish market.

(d) *Taiwan*

(7) Two exporters opposed the choice of the constructed value rather than the normal value of a similar product where there were no domestic sales of the type of product exported. The constructed value was chosen in the case of one exporter because the Commission lacked sufficient information to choose a similar product. The other exporter's proposal to group sales of fibres into four main categories was not adopted because this method would not have allowed the Commission to make a sufficiently detailed comparison.

(e) *Yugoslavia*

(8) Normal value was determined definitively on the basis of the 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.

2. Export prices

(9) 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 custom duties, and a margin considered reasonable to cover general expenses and profit, given the profit margins of independent importers of the product in question.

The Taiwanese exporters' request for adjustment of the exchange rates for prices of exports to the Community was accepted, the evidence presented having been found satisfactory.

3. Comparison

(10) 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 were maintained.

The following specific cases should be noted:

(a) *United States*

(11) Certain requests for adjustment concerning transport pursuant to Article 2 (10) (c) (i) of Regulation (EEC) No 2423/88 were taken into consideration, convincing supporting evidence having been submitted. In the case of one dealer, an adjustment was made in connection with the commissions paid in respect of the sales under consideration, pursuant to Article 2 (10) (c) (v) of the said Regulation.

(b) *Mexico and Yugoslavia*

(12) Adjustments to take account of credit costs, pursuant to Article 2 (10) (c) (iii) of Regulation (EEC) No 2423/88, were reconsidered following requests accompanied by sufficient supporting evidence.

(c) *Taiwan*

(13) A further request was made for adjustment in respect of hedging of exchange rates but no new arguments were brought forward. The Council therefore confirms the Commission's conclusions rejecting this request in recital 17 of Regulation (EEC) No 1696/88.

(d) *Turkey*

(14) An adjustment to take account of credit costs, pursuant to Article 2 (10) (c) (iii) of Regulation (EEC) No 2423/88, was reconsidered following requests accompanied by sufficient supporting evidence.

However, 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.

4. Dumping margins

(15) 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:

United States of America

Producers

— BASF Corp., Williamsburg 23,1 %,
— E.I. Du Pont de Nemours & Co., Wilmington 0 %,
— Eastman Chemical Products Inc., Kingsport 9,9 %,
— Celanese Fibers Inc., Charlotte 9,2 %;

Dealers

— William Barnet and Son Inc., Arcadia 6,2 %,
— Consolidated Textiles, Charlotte 0 %,
— Leigh Fibers Inc., Spartanburg 5,4 %,
— RSM Co., Charlotte 2,5 %,
— Titan Textile Co. Inc., Paterson 4,5 %;

The dumping margin provisionally established for the R & M International Sales Co., Philadelphia, was not maintained since it had been calculated on the basis of exports of fibres of Mexican origin not originating in the United States.

Mexico

— Celanese Mexicana SA., Mexico City 22,1 %,
— Crisol Textil SA de CV, Mexico City 10,7 %,
— Fibras Sinteticas SA de CV, Mexico City 15,0 %,
— Kimex SA, Mexico City 9,5 %;

Romania

— Ice Danubiana, Bucharest 23,4 %;

Taiwan

— Chung Shing Textile Co. Ltd, T'aipei 15,8 %,
— Far Eastern Textile Ltd, T'aipei 5,1 %,
— Nan Ya Plastics Corp., T'aipei 6,3 %,
— Shinkong Synthetic Fibres Corp., T'aipei 9,2 %;

Turkey

— Sasa Artificial & Synthetic Fibres Inc., Adana 6,8 %,
— Sönmez Filament, Bursa 11,9 %;

Yugoslavia

— Ohis Commerce, Skopje 18,7 %.

For the exporters listed below which failed to cooperate satisfactorily with the Commission investigation, the definitive dumping margin 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 margin lower 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 15,8 %;
— Vartilen, Yugoslavia 18,7 %.

In the case of Tuntex, the evidence submitted after the imposition of provisional measures in respect of exports effected during the reference period was not considered sufficiently detailed or supported for carrying out a proper calculation.

D. INJURY

(16) Since no new evidence concerning recitals 19 to 25 of Regulation (EEC) No 1696/88 was forthcoming, the Council confirms the findings presented in the said recitals.

The Commission considered whether Community producers having links with United States 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 exporting companies concerned act as autonomous economic entities, that the volume of exports to the Community is small 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

(17) Exporters challenged the validity of the comparison made between the polyester fibres produced by their companies and those of Community producers, arguing that they were not similar products, that they were not used for the same purposes and that they were not interchangeable with Community products or that they were not produced in the Community. 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 differences in quality or basic 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 fibres is not significantly 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.

It was also alleged that the Community producers made mainly branded fibres, which the imports in question were not, and that in these circumstances the imports could not be considered to be similar products. The Council considers that branded and non-branded products have the same physical characteristics and uses and thus finds that they are similar products.

2. Causality and other factors

(18) In recitals 27 and 28 of Regulation (EEC) No 1696/88 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 fibre 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 may injury 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.

A number of exporters, importers and users claimed that the difficulties encountered by Community producers were caused not by the growth in the volume of imports but by the chronic crisis in the industry.

It is true that the Community industry has suffered a crisis. To overcome it, Community producers have taken a number of restructuring measures that have improved their performance considerably. But the Community industry's return to profitability was jeopardized in the reference period by the growth in dumped imports. This had a negative effect on the performance of Community producers, as explained in recital 24 of Regulation (EEC) No 1696/88.

In these circumstances, even if there were other reasons for the precarious state of the industry in question, the Council considers that the effects of imports at dumping prices, taken in isolation, have caused serious injury.

The Council confirms therefore that the difficulties encountered by the Community industry for reasons other than dumping do not constitute grounds for depriving the Community industry of all protection against injury from dumping.

In these circumstances, and in the absence of any fresh evidence in respect of the arguments set out in recitals 27 and 28 of Regulation (EEC) No 1696/88, the Council confirms the findings and conclusions presented by the Commission in these recitals.

E. QUANTITATIVE RESTRICTIONS AND ANTI-DUMPING MEASURES

(19) As regards the existence of quantitative restrictions on imports into the Benelux countries and Italy of polyester fibres originating in Romania, it was suggested that the imposition of an anti-duming duty on imports of polyester fibres originating in Romania on top of these quantitative restrictions could not be justified legally.

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 the quantitative restrictions cover only four Member States, namely the Benelux countries and Italy, and that all imports into these countries are prohibited. It also notes that over 80 % of Romanian polyester fibre imports go to Germany, a country not protected by quantitative restrictions, and that in that country as in other Member States price undercutting of up to 38 % has been recorded.

The quantitative restrictions in respect of the Benelux countries and Italy do not therefore constitute adequate protection against the unfair practices of the Romanian exporter and do not counterbalance the injury suffered by the greater part of the Community industry. In any case, the Benelux countries and Italy will not be affected by the anti-dumping duty.

The Council therefore believes that the imposition of anti-dumping measures on imports from Romania is necessary.

F. COMMUNITY INTEREST

(20) Some exporters, importers and users claimed that it was not in the Community's interest to impose anti-dumping measures and advanced the following arguments :

1. Supply problems

(21) It was argued that when imports became more expensive following the imposition of provisional anti-dumping measures, the Community producers were not able or ready to meet increased demand from the processing industry and users.

In reply, Community producers told the Commission that while there had indeed been some supply problems, they had been temporary and indeed limited to the months of June and July 1988 and the result of circumstantial factors, not their incapacity to meet demand ; they had much under-used capacity that would enable them to meet any demand within the usual commercial time limits.

In this respect, the Commission notes that, during the investigation period, the production capacity of the Community producers has reached a level of 79 %. As a result of this finding it appears that Community producers are able to boost their production to around 70 000 tonnes (without exceeding a 95 % level of capacity), corresponding more or less to the total volume of imports concerned in 1987.

In spite of this, certain fiberfill processors representing *circa* 20 % of the consumption of synthetic fibres of polyesters in the Community, informed the Commission that several Community producers were not in a position, during the last six months of 1988, to meet their needs. Since confidential treatment of information supplied to the Commission was requested by these companies, under Article 8 of Regulation (EEC) No 2423/88, the Commission was unable to check whether this information was correct with the parties directly concerned. However, the plaintiff has given assurances to the Commission that the Community industry did have the necessary capacity to satisfy the increasing demand for deliveries both of fiberfill and of certain specially dyed yarns. Moreover, the Commission learnt that one of the major Community producers was in the process of increasing its production capacity by 18 000 tonnes.

In these circumstances, the Commission considers that Community producers do have the necessary capacity to meet an increased demand for fibres.

2. The high prices charged by Community producers

(22) Importers and users claimed that Community producers had taken advantage of the higher import prices resulting from the anti-dumping measures to raise their prices substantially. As a result, supplies could not be obtained on terms suitable for facing international competition. On this point the Council notes that the rise in prices attributed to the imposition of provisional anti-dumping measures has in fact had little impact on the increase in the actual prices of the fibre. This increase is due mainly to the worldwide rise in the price of raw materials used to make the fibre, notably glycol and paraxylene, which is affecting all fibre producers.

Furthermore, the price advantage which certain users enjoyed previously was derived from unfair practices and they have no permanent right to retain this advantage.

3. Existence of a cartel of Community producers

(23) 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.

4. Conclusion

(24) The Commission, after having assessed all these factors, has concluded that it was in the Community's interest to take definitive anti-dumping measures in respect of imports of fibres originating in the exporting countries involved in this proceeding. These measures which would have a limited effect on the production costs of the user industry and be without any significant consequence for consumers, should take the form of a definitive anti-dumping duty. The Council confirms these conclusions.

G. DEFINITIVE DUTY

(25) 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 30 and 31 of Regulation (EEC) No 1696/88. The Council also confirms the grounds, mentioned in the said recital 30, by virtue of which there is no reason to apply any duty to producers in the United States of America.

(26) With regard to fiberfill, taking into account recent difficulties, raised by certain users of this type of fibre, the Council considers that the question should be examined of whether a review of the measures concerning fiberfill would be appropriate. To that end, the Commission will carry out a further investigation into the allegations of the existence of shortages, made by the said users. In these circumstances, the Council considers that, in the case in point, the application of the definitive anti-dumping duty should be suspended for fiberfill for a period of five months as from the entry into force of this Regulation, working on the supposition that a review might lead to different findings.

H. COLLECTION OF THE PROVISIONAL DUTY

(27) 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 should be released. With regard to fiberfill, the amounts secured by way of the provisional anti-dumping duty should be released,

HAS ADOPTED THIS REGULATION:

Article 1

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

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:

— 6,2 % for polyester fibres originating in the United States of America, excluding those produced and sold for export to the Community 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 Productsd Inc., Kingsport,
  - Celanese Fibers Inc., Charlotte,
  - Hoechst Celanese Inc., Charlotte,
  - Fibers Industry Inc., Charlotte;

— the following duties shall be applicable to fibres produced and sold for export to the Community by the companies listed below:
  - Leigh Fibers Inc., Spartanburg 5,4 %,
  - RSM Co., Charlotte 2,5 %,
  - Titan Textile Co. Inc., Paterson 4,5 %;

— 22,1 % for polyester fibres originating in Mexico, but as follows for such fibres produced and sold for export to the Community by the companies listed below:
  - Fibras Sinteticas SA de CV, Mexico City 15,0 %,
  - Crisol Textil SA de CV, Mexico City 10,7 %,
  - Kimex SA, Mexico City 9,5 %;

— 23,4 % for polyester fibres originating in Romania;

— 15,8 % for polyester fibres originating in Taiwan, but as follows for such fibres produced and sold for export to the Community by the companies listed below:

Far Eastern Textile Ltd, T'aipei	5,1 %,
Nan Ya Plastics Corp., T'aipei	6,3 %,
Shinkong Synthetic Fibres Corp., T'aipei	9,2 %;

— 11,9 % for polyester fibres originating in Turkey, but as follows for polyester fibres produced and sold for export to the Community by the company listed below:

Sasa Artificial & Synthetic Fibres Inc., Adana	6,8 %;

— 18,7 % for polyester fibres originating in Yugoslavia.

3. The definitive anti-dumping duty imposed by Article 1 (1) shall be suspended for a period of five months as from the date of entry into force of this Regulation with regard to fiberfill. This suspension shall only apply where there is an express mention on the necessary import documents of the term fiberfill and of the technical specifications mentioned hereinafter. In the event of a review procedure being opened by the Commission before the end of that period, the suspension of the said duty shall continue to apply for the time necessary to complete the review.

This suspension applies to synthetic textile fibres of polyesters for padding and quilting in bedclothes, furnishings, clothing, whether or not crimped, falling within CN code 5503 20 00, the technical specifications of which are as follows:

— decitex equal to or greater than 3,3,

— lenght equal to or greater than 38 mm.

Checking the use of the abovementioned fibres shall be carried out in accordance with the relevant provisions, and in particular of Regulation (EEC) No 4142/87 (1).

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

5. The amounts secured by way of the provisional anti-dumping duty under Regulation (EEC) No 1696/88 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. With regard to fiberfill, the amounts secured by way of the provisional anti-dumping duty shall be released.

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, 16 December 1988.

For the Council

The President

G. GENNIMATAS

(1) OJ No L 387, 31. 12. 1987, p. 81.