I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3121/89

of 16 October 1989

modifying the anti-dumping measures applicable to imports of certain acrylic fibres originating in Mexico by introducing an anti-dumping duty on such imports, other than those from exporters to the Community whose undertakings are accepted

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 14 thereof,

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

Whereas :

A. PROCEDURE

(1) In June 1985 the Commission initiated an anti-dumping proceeding concerning imports into the Community of certain acrylic fibres originating in Israel, Mexico, Romania and Turkey (2).

(2) By Decision 86/468/EEC (3) the Council accepted undertakings regarding imports originating in Mexico from Celanese Mexicana SA (Mexico DF) and Celulosa y Derivados SA (Guadalajara), and therefore terminated the investigation in respect of those firms.

(3) Early in 1988 the International Rayon and Synthetic Fibres Committee (IRSFC), acting on behalf of producers accounting for virtually the entire Community output of the fibre products concerned, asked the Commission to review the anti-dumping measures applicable to imports of certain acrylic fibres originating in Mexico and to reopen the anti-dumping investigation.

The Advisory Committee having been consulted, it was felt that the request contained sufficient evidence of changed circumstances to warrant a review, under Article 14 of Regulation (EEC) No 2176/84 (4), of the anti-dumping measures applicable to imports of the products concerned originating in Mexico.

(4) The Commission therefore published a notice in the *Official Journal of the European Communities* (5) announcing a review of the measures and reopening of the investigation with reference specifically to the alleged dumping and pricing of the imports, in the light of the claim that the measures are inadequate to eliminate the injury to the Community industry as established in Decision 86/468/EEC. The review concerns imports of: acrylic staple fibres, not carded, combed or otherwise prepared for spinning, falling with CN code ex 5503 30 00 (formerly Common Customs Tariff subheading 56.01 A and Nimexe code 56.01-15), known as staple; tow of acrylic fibres falling within CN code ex 5501 30 00 (formally Common Customs Tariff subheading 56.02 A and Nimexe code 56.02-15), known as tow; and acrylic staple fibres, carded, combed or otherwise prepared for spinning, falling within CN code ex 5506 30 00 (formerly Common Customs Tariff subheading 56.04 A and Nimexe code 56.04-15), known as acrylic tops.

The Commission officially so advised the producers/exporters and importers known to be concerned, the representatives of the producing country, the complainant and Community

(1) OJ No L 209, 2. 8. 1988, p. 1.
(2) OJ No C 159, 29. 6. 1985, p. 2.
(3) OJ No L 272, 24. 9. 1986, p. 29.
(4) OJ No L 201, 30. 7. 1984, p. 1.
(5) OJ No C 117, 4. 5. 1988, p. 3.

producers and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.

Most of the Community producers, the producers/exporters and one importer made known their views in writing. A number of them asked for and were granted a hearing.

No comments were submitted by purchasers/users of the product.

(5) The Commission gathered and verified all the information it considered necessary to establish the facts and carried out inspections at the premises of the following:

(a) *Community producers:*

— Bayer AG, Leverkusen, Federal Republic of Germany,
— Courtaulds Fibres SA, Barcelona, Spain,
— Courtaulds Fibres Ltd, Coventry, United Kingdom,
— Courtaulds SA, Coquelles, France,
— Enichem Fibre Spa, San Donato Milanese, Italy,
— Fibras Sintéticas de Portugal sarl, Barreiro, Portugal,
— Hoechst AG, Frankfurt-am-Main, Federal Republic of Germany,
— Montefibre Hispania SA, Barcelona, Spain,
— Montefibre Spa, Milan, Italy,
— SNIA Fibre Spa, Cesano Maderno, Italy;

(b) *Producers/exporters:*

— Celulosa y Derivados SA, Guadalajara, Mexico,
— Fibras Sintéticas SA, Mexico DF, Mexico,
— Fibras Nacionales de Acrilico SA (Finacril), Mexico DF, Mexico,
— R & M International Sales Corporation, Philadelphia, United States;

(c) *Importer:*

— Diprotex SA, Barcelona, Spain;

(d) *Other:*

— Celanese Mexicana SA, Mexico DF, Mexico,
— Kaltex, Mexico DF, Mexico.

(6) The investigation into dumping and price differences covered the period 1 November 1987 to 30 April 1988.

(7) Those parties which cooperated fully with the investigation were informed of the main facts and considerations on the basis of which the Commission proposed to modify or recommend the modification of the anti-dumping measures applicable to imports of the products concerned originating in Mexico. They were given time to submit any comments.

B. DUMPING

I. Known producers/exporters

(a) *Normal value*

(8) The normal value for each fibre product was established on the basis of the weighted average of the prices actually paid or payable in the ordinary course of trade for like products intended for consumption on the Mexican market.

(b) *Export prices*

(9) For each product the export prices were calculated on the basis of the prices actually paid or payable for goods sold for export to the Community.

(c) *Comparison*

(10) In comparing normal value with export prices the Commission made allowance, where appropriate, for differences affecting price comparability, such as credit terms, transport, insurance, handling and ancillary costs. Due account was taken of these differences where claims for such adjustment were found to be justified. All comparisons were made at the ex-works stage.

(d) *Dumping margins*

(11) Upon examination of the facts it appeared that the goods were still being dumped, the dumping margin being equivalent to the difference between the normal value and the export prices, duly adjusted.

The dumping margins established in this way, expressed as a percentage of total free-at-Community-frontier value, are as follows:

Producers/exporters	Staple CN code ex 5503 30 00	Tow CN code ex 5501 30 00	Tops CN code ex 5506 30 00
Fibras Sintéticas	see others	19,23 %	see others
Celulosa y Derivados	12,64 %	13,29 %	8,76 %
Crisol Textil	see others	see others	18,07 %
Others	12,64 %	19,23 %	18,07 %

II. Other producers/exporters

(12) Where the information supplied by the producers/exporters was insufficient to establish a precise dumping margin for one or other of the fibre products, the margin for such product(s) was established on the basis of the facts available, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88.

In this connection the Commission considered that if it allowed the above producers/exporters' dumping margins on such product(s) to be lower than the highest margin identified by the investigation procedure, this would provide a means of escaping the duty.

C. INJURY AND INADEQUACY OF MEASURES TAKEN IN THE LIGHT OF IMPORT TRENDS AND PRICES

(13) Material injury attributable to imports originating in Mexico was established by Decision 86/468/EEC. It was found that the measures then adopted had not eliminated the injury.

(14) The information acquired by the Commission indicates that since the finding was made imports of all these fibre products originating in Mexico have increased, from 722 tonnes in 1985 and 7 618 tonnes in 1986 to 12 025 tonnes in 1987, following the introduction of the anti-dumping measures — an increase in absolute terms of 57,85 % from 1986 and 1 565,51 % from 1985. Imports in the first four months of 1988 totalled 2 753 tonnes. Assuming that they continued at the same rate for the remaining eight months of that year, they would have totalled 8 259 tonnes, 8,41 % up on 1986 and 1 043,91 % up on 1985.

Regarding import prices, our information shows that the average price for all the fibre products had fallen from ECU 1 620/tonne in 1985 and ECU 1 650/tonne in 1986 to approximately ECU 1 456/tonne in 1987 and ECU 1 437/tonne in the first four months of 1988, down 10,12 and 11,3 % respectively from the 1985 prices which themselves, it will be recalled, were low enough to justify the adoption of defensive measures against imports from Mexico.

(15) The figures for the reference period show that the prices of imports originating in Mexico were not only lower than Community producers' prices (undercutting them by an average of over 18 %, net of customs duty), but fell short of their average production costs. Since 1985, the Community industry has lost market share to Mexican producers. Between 1985 and 1987, while the producers/exporters of the Mexican products were increasing their sales in the Community, Community producers saw their sales fall. If the figure for their sales in the first four months of 1988 are extrapolated for the rest of the year this would represent a decline of 9,5 % from the 1985 sales volume. The good results recorded in 1986 by Community producers as a whole were generally eroded in 1987, so that over the reference period and, in particular, in the first quarter of 1988 some firms started to make losses.

(16) The substantial rise in imports, the fall in prices resulting in significant undercutting and the worsening financial position of the Community producers show sufficiently that the defensive measures introduced in 1986 are not adequate to eliminate the injury being caused to the Community by imports originating in Mexico, as definitively established in Decision 86/468/EEC.

This is due, *inter alia*, to the fact that undertakings other than those named in Decision 86/468/EEC have been exporting the goods to the Community and to the 20 %-plus depreciation of the US dollar against most European currencies since the price undertakings given in dollars by the named exporters were accepted, making those undertakings inadequate.

No information was found to suggest that the situation of the Community industry and the inadequacy of the existing measures were due to other factors such as the volume and price of imports originating in other third countries, including those named in the earlier proceeding.

D. COMMUNITY INTEREST AND CONCLUSION

(17) In the light of the above and given that the earlier finding of dumping is still valid, it is necessary to tighten up the existing measures to ensure that their initial aim of eliminating injury to the Community industry, in the Community interest, can finally be achieved.

The substantial restructuring carried out by the Community's man-made fibre industry in the last decade and the considerable investment undertaken by some Community producers on environmental protection measures will be pointless at Community level unless backed up by measures to provide the industry with adequate protection against dumping by any outside producers/exporters.

Accordingly, the existing measures concerning imports of these products originating in Mexico introduced by Decision 86/468/EEC must be revised and replaced by those indicated below.

E. MODIFICATION OF EXISTING ANTI-DUMPING MEASURES

I. Price undertakings

(18) Celulosa y Derivados, Crisol Textil, Finacril, Fibras Sintéticas and R & M International Sales Corporation were informed of the main findings of the investigation and offered undertakings concerning their export sales to the Community.

The effect of these undertakings will be to raise the price of exports to the Community to a level considered acceptable to eliminate the dumping margins or at any rate to enable the Community industry to earn an adequate return and continue in business, and hence to eliminate the injury to that industry.

In view of the small number of companies concerned, the Commission concluded it would be realistic to accept these undertakings. This is, moreover, a constructive measure which takes into account Mexico's situation as a developing country.

Accordingly, the undertakings which have been offered should be accepted and the review should be terminated without imposing an anti-dumping duty on the producers/exporters concerned.

II. Duty

(19) In order not to leave any loopholes and to prevent a recurrence of the events which led to the initiation of this review, an anti-dumping duty should be imposed on sales of these products to the Community by exporters other than those named above; this would apply to all imports of the products concerned originating in Mexico, sold for export to the Community by companies other than those from which a price undertaking has been accepted.

To facilitate customs clearance the Commission considers that this should take the form of an *ad valorem* duty.

(20) The duty will be set at a rate reflecting the gap between the minimum threshold price within the Community at which the Community industry can earn a return sufficient to continue in business and the prices at which, according to the facts available, the goods in question have been imported. In no case will it exceed the established dumping margin.

Expressed as a percentage of the net price of the product free at Community frontier, before duty, this would give:

— CN code ex 5503 30 00 (staple) 12,6 %,

— CN code ex 5501 30 00 (tow) 19,2 %,

— CN code ex 5506 30 00 (tops) 18,0 %.

F. FINAL PROVISION

(21) In the interests of legal certainty, Article 1 (c) and (d) of Decision 86/468/EEC should be repealed with effect from the entry into force of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of acrylic staple fibres, not carded, combed or otherwise prepared for spinning, falling within CN code ex 5303 30 00, tow of acrylic fibres falling within CN code ex 5501 30 00 and acrylic fibres carded, combed or otherwise prepared for spinning (tops) falling within CN code ex 5506 30 00, originating in Mexico.

2. The duty, expressed as a percentage of the net free-at-Community-frontier price of the product before duty, shall be:

— CN code ex 5503 30 00 12,6 %,

— CN code ex 5501 30 00 19,2 %,

— CN code ex 5506 30 00 18,0 %.

Free-at-Community-frontier prices shall be net if the conditions of sale provide for payment within 30 days of the date of consignment. They shall be increased or reduced by 1 % for each month's increase or decrease in the period for payment.

3. The duty shall not apply to the products referred to in paragraph 1 exported direct to the Community by:

— Celulosa y Derivados SA, Guadalajara, Mexico,
— Crisol Textil, Mexico DF, Mexico,
— Fibras Nacionales de Acrilico SA (Finacril), Mexico DF, Mexico,
— Fibras Sintéticas SA, Mexico DF, Mexico,
— R & M International Sales Corporation, Philadelphia, United States of America,

whose price undertakings are hereby accepted.

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

Article 2

Points (c) and (d) of Article 1 of Decision 86/468/EEC are hereby repealed.

Article 3

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 Luxembourg, 16 October 1989.

For the Council

The President

M. DELEBARRE