COMMISSION REGULATION (EEC) No 1432/91

of 27 May 1991

imposing a provisional countervailing duty on imports of polyester fibres and polyester yarns originating in Turkey

THE COMMISSION 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 11 thereof,

After consultation within the Advisory Committee as provided for by Regulation (EEC) No 2423/88,

Whereas :

A. PROCEDURE

(1) In June 1988 the Comité Internationale de la Rayonne et des Fibres Synthetiques (CIRFS) lodged a complaint with the Commission on behalf of producers of polyester fibres and polyester yarns who produce the majority of the Community production of these products. The complaint contained evidence of subsidization and resultant material injury, which was considered sufficient to warrant the opening of an anti-subsidy investigation. The Commission accordingly announced in a notice published in the *Official Journal of the European Communities* [2] the initiation of an anti-subsidy proceeding concerning imports of polyester fibres and polyester yarns originating in Turkey, and commenced an investigation. The products concerned are :

(a) polyester fibre falling within CN code 5503 20 00 ;

(b) polyester POY filament yarn falling within CN code 5402 42 00 ;

(c) polyester textured filament yarn falling within CN codes 5402 33 10 and 5402 33 90, and

(d) polyester filament yarn falling within CN codes 5102 43 10, 5402 43 90, 5402 52 10, 5402 62 10, 5402 52 90 and 5402 62 90.

(2) The Commission officially notified the Government of Turkey and the exporters and importers known to be concerned, and the complainant, and gave the interested parties the opportunity to make known their views in writing and to request a hearing.

(3) The Government of Turkey, the majority of the known producers/exporters, most of the Community producers and two importers made their views known in writing. Some of them requested and were granted hearings.

(4) The Commission sought and verified all information it considered necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following :

(a) Community producers

— Du Pont de Nemours GmbH (Dusseldorf, Germany),
— Enka AG (Arnhem, Netherlands),
— Hoechst AG (Frankfurt, Germany),
— Montefibre SpA (Milan, Italy),
— Rhône-Poulenc Fibres SA (Lyon, France),
— La Seda de Barcelona (Barcelona, Spain),
— Nurel SA (Barcelona, Spain),
— Sociedad Anónima de Fibras Artificiales (Barcelona, Spain),
— ICI Fibres (Harrogate, UK) ;

(b) Turkish Government and other organizations

— State Planning Organization,
— Under-Secretariat for Treasury and Foreign Trade,
— Central Bank (Headquarters in Ankara and branches in Adana and Bursa),
— Ministry of Finance and Customs,
— Turkish Export Import Bank,
— Tax Office, Bursa ;

(c) Non-Community producers/exporters

— SASA Artificial & Synthetic Fibres, Inc., Adana,
— Sonmez Filament, Bursa,
— Sonmez ASF, Bursa,
— SIFAS Sentetik Iplik Fabrikalari AS, Bursa,
— Polylen Sentetik Iplik Sanayii AS, Bursa,
— Polyteks Tekstil Sanayi Arastirma ve Egitim AS, Bursa ;

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 33, 9. 2. 1989, p. 7.

(d) Community importers

Coats Viyella plc, UK (trading as India Mills).

(5) The investigation of subsidies covered the period from 1 July 1987 to 31 December 1988.

(6) This investigation has exceeded the normal time period because of the volume and complexity of the data initially gathered and examined.

B. PREVIOUS ANTI-DUMPING PROCEEDING

(7) The imports of the products concerned (except polyester filament yarn) have been subject to anti-dumping duties since 18 June 1988 [3].

C. SUBSIDIES

1. General

(8) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission investigated a total of 11 subsidy schemes. Five subsidy schemes investigated are contingent upon export performance and are therefore considered to be export subsidies. Five schemes are domestic subsidy schemes. The remaining scheme can be regarded as both an export and a domestic scheme as it can have a part export performance requirement.

2. Export subsidy schemes

Resource utilization support fund (RUSF)

(9) This fund came into effect on 1 January 1985 and was designed to support the utilization of domestic resources in products for export. On the basis of an export incentive certificate delivered by the State Planning Organization 2 to 4 % of the volume of net foreign exchange income corresponding to exports realized, is paid as a premium to the exporter. This scheme was abolished in November 1986. However, some payments were made to the companies concerned during the investigation period for exports realized before November 1986 or when the incentive certificate was due to expire after November 1986. As this scheme ended before the start of the investigation period, and as no benefits are due to accrue in the future under this scheme, the Commission has decided not to take into account the benefits received from this scheme in determining the levels of provisional countervalling duties.

Rebate of indirect taxes

(10) The tax rebate system was based primarily on the indirect taxes paid on goods used in the manufacture of products intended for export. This system was officially terminated at the end of 1988.

(11) With effect from 1 January 1987, exports of the products concerned were not eligible for tax rebates, but they were eligible for a supplementary tax rebate (which was a separate sub-scheme). The basis on which the supplementary tax rebate was granted was not directly related to the amounts of indirect taxes paid but was that of a grant which was paid at various rates depending on the level of foreign exchange repatriated. The supplementary tax rebate programme was officially terminated at the end of 1988. As the termination of this scheme coincided with the end of the investigation period and as no benefits are due to accrue in the future under this scheme, the Commission has decided not to take into account the benefits received from this programme in determining the levels of provisional countervailing duties.

Corporate tax exemption

(12) The corporate tax exemption scheme exempts from corporate taxation 20 % of the export earnings of manufacturing companies. Where an exporting company does not produce the goods itself, a 5 % exemption is granted to the exporter on top of the 20 % granted to the producer. This scheme is available only after minimum annual export earnings of US$ 1 000 000 have been reached.

(13) Under Turkish tax legislation, a corporate tax rate of 46 % is normally payable by Turkish companies. Where a company is eligible to benefit from this scheme, 20 % of export earnings are exempt from this tax. However, a 10 % income tax is payable on the exempt export earning. Similarly, for a company exporting products which it has not produced, 5 % of export earnings are exempted from corporate tax. The 10 % income tax is, however, payable on the exempt export earnings. A further small benefit accrues to companies availing of this scheme through reduced payments to various funds which are levied on the corporate tax amount due.

(14) The benefits received by each of the Turkish companies have been calculated on the basis of the difference between the amount of taxes which would normally have to be paid and the reduced amounts paid under this scheme. Account has also been taken of reduced contributions to various funds and of the benefit to the exporting compa-

[3] Provisional duty : OJ No L 151, 17. 6. 1988, pp. 39 and 47 ; Definitive duty : OJ No L 347, 16. 12. 1988, p. 10 and OJ No L 348, 17. 12. 1988, p. 49.

nies. The benefit received in 1988 by each company is then expressed as a percentage of total export sales for 1988 (being a full financial year falling in the investigation period.)

Export credits

(15) Export credit programmes were introduced in 1987/88. There are two types :

(a) the export rediscount credit programme, which is implemented by the Central Bank ;

(b) the post-shipment credit programme, which is implemented by the Export Import Bank of Turkey.

The interest rates paid by the companies on credits used during the investigation period were from 36 to 37 %. However, the interest rates on bonds issued by the Turkish Government during the investigation period ranged from 44 to 58 %. It is clear that there is a cost to the Turkish Government in terms of revenue foregone in granting these credits which constitutes a countervailable subsidy.

(16) The amount of subsidy was calculated as the difference between the rate of interest charged to the companies and the rate of interest paid on government bonds (on a quarterly basis). The subsidy amount is expressed as a percentage of export sales of the products concerned.

Support and price stabilization fund

(17) Premiums are only paid from this fund for exports of certain goods and the rate varies according to the goods concerned. Payments are based on the weight or volume of goods exported. This scheme is intended to make the export of certain goods attractive and to make them competitive on the international market.

Exports to the Community of the products concerned are not eligible for payments from this fund. Thus the Commission provisionally determines that no countervalling duty will be imposed in respect of this scheme.

Low-interest credits for investment purposes

(18) Applications for these credits are submitted through a commercial bank which submits them to the Central Bank. A portion of the investment cost must be provided by the company from its own resources. The remaining portion is provided by the Central Bank (50 %) and a commercial bank (50 %). Where a company gives on export commitment, as the companies did for some credits received in this case, the Central Bank provides 70 % of the remaining portion and the commercial bank 30 %. The additional credits received from the Central Bank in cases where an export commitment was given, are regarded as export credits. Otherwise the credits are treated as domestic subsidies (see recital 24 below).

(19) Interest rates for these investment credits vary from 33 to 45 %. As with the export credits above (recital 15), there is a cost to the Turkish Government in granting these credits as the interest rates on bonds issued by the Government are greater than the interest rates paid on the credits by the companies. The basis of the calculation is the same as for export credits above.

3. Domestic subsidy schemes

(20) To avail of domestic subsidy schemes, companies must be in receipt of an incentive certificate from the State Planning Organization. To obtain an incentive certificate, companies must apply to the State Planning Organization giving details of proposed investments. Applications are examined on a case-by-case basis by the State Planning Organization and the certificate is not granted to certain types of investments which are specifically not encouraged. Investments in the synthetic fibres industry involved in this case are encouraged. The incentive certificate, when granted, specifies which subsidy schemes can be availed of.

(21) In availing of certain subsidy schemes, amount must be taken of the region in which industries are located. In this regard, Turkey is divided into four regions : first priority development regions, second priority development regions, normal regions and developed regions. The companies concerned by this case are all located in developed regions.

(22) Article 3 (4) (c) of Regulation (EEC) No 2423/88 requires that 'where the subsidy is not granted by reference to the quantities manufactured, produced, ... the amount shall be determined by allocating the value of the subsidy ... over the level of production ...'. In the case of domestic subsidies, however, the amounts of subsidy have been provisionally determined by allocating the value of the subsidy over the level of sales as production figures were not available. The Commission considers that the sales and production volumes would not differ substantially over the period required under recital 23 below and, consequently, would not result in a significant differential in the calculation of the benefits received from the various schemes.

(23) For the allocation of the capital subsidies based on the acquisition or future acquisition of fixed assets (resource utilization support premium; incentive premium; investment incentive allowance and customs exemption), Article 3 (4) (c) of Regulation (EEC) No 2423/88 requires the use of a period reflecting normal depreciation of such assets in the industry concerned. It has been established that the depreciation period in Turkish textile industries is four years. The Commission considers this is an appropriate period of time for the purposes of Article 3 (4) (c) of Council Regulation (EEC) No 2423/88. The subsidies have accordingly been allocated over this period.

Low-interest credits for investment purposes

(24) This is the same scheme referred to in recital 18 above. However, where no export commitments were given by the companies, the benefits received are regarded as domestic subsidies. The basis of calculation is the same as for the export credits above (recitals 15 and 16) except that the benefit is spread over total sales to arrive at the percentage subsidy.

Resource utilization support premium

(25) This incentive, comprising a cash premium, came into effect on 1 January 1985. In 1985, 1986 and 1987, the premium was based on the credit used for total fixed investments or on the total fixed investment realized. From 5 April 1988 the premium was based on the level of a company's own resources used for total fixed investments. The Commission has provisionally determined the benefits received under this scheme by each company. These benefits are expressed as a percentage of total sales to arrive at the subsidy amount for each company.

Incentive premium

(26) The incentive premium is a cash grant, available to all sectors where an incentive certificate has been granted, based on a percentage of the value of purchases of locally produced machinery and equipment. The rate is fixed annually — 20 % in 1987, 25 % in 1988. The Commission has provisionally determined the benefits received under this scheme by each company. These benefits are expressed as a percentage of total sales to arrive at the subsidy amount for each company.

Investment incentive allowance

(27) A tax deduction based on a percentage of the total fixed investment may be granted to investors by the Ministry of Finance and Customs jointly with the State Planning Organization. An allowance is deducted from the taxable profits until it has been used up. This allowance is based both on industry sector and region in such a way that only specific sectors benefit from this allowance. In 1987, the percentage was 30 % for investments in developed regions. It was 40 % in 1988 in organized industrial sites in developed regions. The unused portion of this allowance, if any, may be carried forward from year to year. The Commission has provisionally determined the benefit received under this scheme by each company. The benefit accruing to each company is expressed as a percentage of total sales of all products produced.

Customs duty exemption

(28) A complete exemption of customs duty is granted on imports of machinery and equipment of qualifying investors (which includes the industry investigated). Normal duty rate during the investigation period was 30 % *ad valorem*. By virtue of not having paid customs duties on certain machinery, the cost of production is accordingly lower for the products concerned. The benefit determined for each company has been allocated over total sales of the products concerned.

Low-interest credit for operational phase

(29) This subsidy scheme is intended to assist the operations phase of an investment in the sector concerned during the first three months of production. 50 % of the credit is provided by the Central Bank and 50 % by a commercial bank. The interest rates vary between 48 and 60 %. Only one company has been using this scheme and its effect was considered negligible as a subsidy (0,001 %).

4. Termination of schemes

(30) During consultations held in December 1988 pursuant to Article 3 of the GATT Subsidies Code (Agreement on interpretation and application of Articles VI, XVI and XXIII of the GATT), the Turkish Government stated that a commitment had been given to the GATT to terminate the corporate tax exemption of 20 % contingent upon export performance. Nevertheless, the corporate tax-exemption scheme was still in force in 1990.

(31) Some other schemes were ended before or during the investigation period (i. e. Resource utilization support fund and the supplementary tax rebate).

The Commission found, moreover, that no benefits are due to accrue in the future under these schemes. Under these circumstances the Commission does not impose countervailing duties against those schemes.

(32) All other schemes investigated are considered countervailable. Subsidy schemes implemented at the end or after the end of the investigation period and subsidy schemes where benefits will accrue after the end of the investigation period and which cannot be considered in the context of this investigation, can only be considered in the context of a review pursuant to Article 14 of Regulation (EEC) No 2423/88.

5. Specific arguments from the Turkish Government and the exporting companies

(33) The Turkish Government and/or exporting companies have raised a number of issues regarding the countervailability of admitted subsidies.

The additional protocol to the EEC-Turkey Association Agreement

(34) According to the Turkish Government, Article 43 (2) of the Additional Protocol to the EEC-Turkey Association Agreement of 23 November 1970 [1] allows Turkey to use aids to promote its economic development until the end of the 'transitional period' of the Association Agreement. This transitional period has not yet been terminated. It should however be noted that Article 43 (2) which allows Turkey to be considered as being in a situation specified in Article 92 (3) (a) of the EEC Treaty, considers such aid compatible with the proper functioning of the Association only if its does not alter the conditions of trade to an extent inconsistent with the mutual interest of the contracting parties. In the light of the increases of Turkish market-shares of yarns and fibres and of the findings of injury (section D), the Commission is of the opinion that this last condition is not satisfied.

(35) In addition, Article 46 of the Additional Protocol allows parties to take safeguard measures which they feel appropriate in order to overcome difficulties due to the absence of a decision by the Council of Association on the rules and conditions for the application of the principles laid down in Article 92 of the EEC Treaty, as provided for in Article 43 (1) of the Protocol. No such decision having been taken, the Community is fully entitled to take measures which will remedy the material injury caused to the Community industry, resulting from the subsidized exports originating in Turkey.

Compliance with GATT obligations

(36) The Turkish Government has further put forward that the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (GATT Code on Subsidies and Countervailing Measures) to which both the Community and Turkey are signatories provides for a special and differential treatment for less-developed countries.

(37) The Commission took fully into account the requirements of the GATT Subsidies Code and in particular Article 14.

Domestice subsidies and the issue of specificity

(38) The Turkish Government stated that domestic subsidies available in Turkey are not countervailable since they are not sector-specific.

(39) Domestic incentives are not generally available in Turkey. They are restricted in terms of sectors of industry and region. There exists a 'negative list' of sectors of activity not benefiting from those grants.

(40) The Commission therefore concludes that the domestic subsidies investigated have been granted in a specific manner because they are granted to specific sectors and/or designated regions and are accordingly considered countervailable.

6. Total amounts of subsidies found

(41) The total amounts of countervailable subsidies found by the Commission were as follows :

Company	
SASA	11,48 %
Sonmez Filament	10,73 %
Sonmez AŞF	19,03 %
SİFAŞ	12,54 %
Polylen	9,52 %
Polyteks	10,84 %

The individual amounts of countervailable subsidies found by scheme have been notified to each of the companies concerned. For reasons of confidentiality they are not published here.

[1] OJ No L 293, 29. 12. 1972, p. 4.

D. INJURY

(42) In examining the relevant factors to determine the impact of the subsidized imports on the Community industry, the Commission took account of the fact that the anti-dumping duties were in effect on imports of the products concerned during the last six months of the investigation period.

(43) In accordance with Article 4 (4) of Regulation (EEC) No 2423/88 separate figures have been used for fibres and for the three yarn products in assessing injury. For some statistical data the Turkish exporters and Community producers could not supply sufficiently detailed figures of the yarn products.

The Commission has used separate data, where available, but in other cases has used global data, which it considers nevertheless to be sufficiently representative.

Like product

(44) The Commission has determined for each of the four products under investigation, the like product in the Community. The like products have the same physical characteristics and end uses as the Turkish imported products. Turkish exporters have challenged the validity of the comparisons made, claiming that these products do not have exactly the same physical characteristics, are not of the same quality and are not used for the same purpose.

(45) Differences in quality, however, are not a sufficient reason for considering the imported fibres and yarns and the corresponding Community products as not being like products. While the Commission accepts that there are minor differences in quality between the Turkish products and the Community products, minor differences are not such as to make a product distinction between the Turkish products and the like products. This is also supported by the end uses of these products.

Volume and market shares of imports

(46) Fibres : From 1984 to 1987, subsidized imports of Turkish polyester fibres increased from 12 514 to 17 271 tonnes, a 38 % increase. In 1988, the figure went down to the level of 1984. The Turkish share of the Community market was 4 % in 1984 and increased to over 5 % in 1987. In 1988 their share decreased to 3,3 %.

(47) Yarns : Imports of textured yarns increased from 185 to 8 686 tonnes between 1984 and 1988. POY imports increased from zero in 1984 to 3 182 tonnes in 1988 while polyester filament yarns increased from 48 to 1 447 tonnes over the same period. The total imports of the three yarn products represent a growth in Turkish market share in the Community from 0 % in 1984 to over 5 % in 1987 and 1988. Turkey is the second largest exporter of yarns to the Community.

Price undercutting

(48) Fibres : The sharp fall in prices of Turkish imported fibres started in 1985 and continued through to 1988. During the investigation period the prices of fibre imports were lower than the prices charged by the Community producers by 18 to 22 %. As quality differences of fibres had no material impact on consumer prices, price adjustments based on quality are not warranted.

(49) Yarns : For polyester filament yarn, import prices during the investigation period were lower than Community prices by 65 %, for POY by 30 %. Turkish textured yarn prices were between 25 to 43 % lower than Community prices during the investigation period. As for fibres above, price adjustments for quality differences are not warranted.

Situation of the Community industry

(a) Market shares

(50) Total sales of fibre and yarns by the Community industry increased modestly during the period 1984 to 1988. For fibre, the quantity sold in 1984 was 247 000 tonnes and increased to 272 000 tonnes in 1988. However, these figures should be seen against the continuously rising consumption in the Community of fibre between 1984 and 1988. For fibre, the Community industry gradually lost market share : from 79 % in 1984 to a low of 72 % in 1987 with an increase to 75,5 % in 1988.

For the three yarn products, the same trend is visible with sales of 165 000 tonnes in 1984, increasing to 166 000 tonnes in 1987 and 178 000 tonnes in 1988. The market share of the Community industry fell, however, continuously from 81 % in 1984 to 70 % in 1987 with a further decrease to 69,8 % in 1988.

(b) Prices

(51) The average selling prices of Community producers fell considerably between 1985 and the investigation period. The average decreases varied from 5 % for textured yarn to 12 % for polyester filament yarn, 20 % for fibre and 26 % for POY.

(c) Profitability

(52) The profitability of the Community producers for both fibres and yarns deteriorated dramatically in the period 1984 to 1988 with its lowest point in 1987. The figures show the same picture for fibres as for yarns. In 1987 almost all producers in the Community had come down to almost a breakeven point or (the majority) to a loss-making situation. Some major companies have, for some years, been in an increasingly loss-making situation.

The current losses, or sometimes very modest profits, are clearly preventing the Community industry from financing the expenses required to keep the Community industry competitive. The profit/loss situation of the Community producers for the products concerned is shown below:

	Fibre		Yarns	
Company	1987	1988	1987	1988
	%	%	%	%
A	− 3,0	− 3,8	− 4,0	− 4,0
B	−19,5	−26,0	0,8	− 3,4
C	6,5	6,8	−10,4	− 7,2
D	Breakeven		Breakeven	− 1,2
E	1,7	−15,6	− 1,7	− 3,1
F	−15,0	−10,3	1,6	0,8
G	− 1,3	1,9	−18,0	−15,0
H	7,3	4,5	−24,0	− 3,0
I	−26,2	−15,2	− 7,4	− 4,6
J	− 1,4	1,6	−17,5	−10,0
K	—	—	1,0	4,1.

Determination of injury

(53) From an examination of the factors enumerated above, the Commission provisionally considers that the Community industry has suffered material injury in this case through the gradual but persistent loss in market share for fibre as well as for the three yarn products. This material injury was suffered despite the fact that anti-dumping duties were in force during part of the investigation period. The Community industry has only partly benefited from the increased EC consumption and prices for Community products have been depressed throughout the investigation period.

The Community industry did not expand its production facilities and only very modestly increased its sales; therefore the utilization rate stagnated at an unsatisfactorily low level. The profitability of this industry has reached a very poor state and has continuously deteriorated in recent years. Consequently, the viability of the industry is at risk.

Causation of injury

(54) As regards causality, it should be considered that each of the products investigated is in direct competition with the like Community product on the Community market. Since the products concerned are price sensitive and allowing for the transparency of the Community market, the price cutting effect of subsidised Turkish fibre, POY, textured yarn and polyester filament yarn has had a direct depressing effect on the prices of the Community produced like products.

(55) This can be shown in the combined impact of import increases and falling selling prices of Turkish products which coincided exactly with the losses in market share and deteriorating profitability of the Community industry.

(56) Considering whether the injury suffered by the Community producers had been caused by other factors, the Commission found that the percentage of market share of third country imports of fibre did not change since 1986, and for all yarns, showed an increase of 20 % between 1985 and 198. For each of the three yarns the proportionate increase from Turkey is much larger (see recital 47) whilst for fibre the imports fluctuate considerably. At the same time prices were continually decreasing during the period 1985 to 1988.

(57) For some of the products concerned, the anti-dumping duties have reduced partly or totally injury suffered by the Community industry. For some products there is remaining injury, while additional injury has been caused to Community producers by the improts benefiting from the Turkish subsidy schemes.

(58) The conclusion is that the subsidized imports from Turkey have on their own caused material injury to the Community industry.

E. COMMUNITY INTEREST

(59) The purpose of anti-dumping and/or countervalling duties is to remedy unfair competition which injures Community industry. The remedy should result in the re-establishment of a fair competitive situation which, as such, is in the Community's interest. In this case, the viability of a large Community industry is seriously affected. It is in the Community's interest to keep such a Community industry viable, which provided important

produts for many uses while numerous other industries depend on a continuous supply of these products by the Community industry. Furthermore, a large labour force is employed in this industry. It is therefore in the Community's interest to provide measures to eliminate the injury caused to Community producers of fibres and yarns.

(60) A large Community consumer of fibre from Turkey stated that it would be in great difficulties due to duties from the anti-dumping proceeding and possible countervailing duties. This company also claims that the coloured fibres which it uses are not readily available in the range which they require from Community producers. Contrary to the latter claim, it has been determined that the like product (melt-dyed) is produced by Community industry and has been offered to textile weavers several times. The interests of this company have to be considered against the interests of Community producers who are suffering from unfair competition. The Commission considers that it is more in the Community's interest to provide measures to eliminate injury caused to Community producers than to allow users of the products to continue to benefit from the effects of unfair trade practices.

(61) The Commission further found that the measures proposed would have a relatively small impact on the production costs of the users of the products concerned. Since fibres and yarns form only a small part of the costs for the transforming industry, it can be expected that, generally, only a very modest price increase will be passed on to the processing industry regardless of the origin of the yarns and fibres concerned. The measures should, therefore, result in removing the injury by a price increase of fibres and yarns equally to Community as to Turkish products. Consequently, this effect should equally be felt by all European processing industries.

(62) As far as the end consumer is concerned, the final impact on consumer prices would probably be insignificant.

(63) The Commission considers, having taken account of all the interests involved, that the application of provisional countervailing duties is in the Comunity interest in order to prevent further injury to the Community during the proceeding.

F. INJURY THRESHOLD

(64) For the purposes of establishing the level of the provisional duties, the Commission took account, on the one hand, of the countervailable subsidies found and, on the other, of the level of duty necessary to eliminate injury. To that end, the Commission compared, for each of the four products, Turkish export prices during the investigation period with the production costs for each product of representative Community producers plus a reasonable profit margin. The profit margin was that previously used in the anti-dumping cases and was based on producers' profits in the period 1985 to 1986 (6 % for fibre and 7 % for yarns) when the impact of Turkish imports was still moderate. The injury threshold thus calculated has been reduced by the rate of the anti-dumping duty already applying (since June 1988) to each product in order to determine the remaining injury threshold. In two cases (polyester filament yarn from Sonmez Filament and POY from Sonmez ASF), this injury threshold was less than the level of countervailable subisidies found.

(65) Sonmez ASF and Polylen are both strong related to Sonmez Filament and Sifas respectively (i.e. directors and shareholders are common to both companies and/or are members of the same family, the companies share the same offices and Sifas has a considerable shareholding in Polylen). In order to prevent circumvention of duties, average countervailing duties should be imposed on both Sonmez companies as well as on Sifas and Polylen.

Form

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

G. CUMULATION OF ANTI-DUMPING DUTIES AND COUNTERVAILING DUTIES

(67) Anti-dumping duties were imposed on the products concerned (except polyester filament yarn) in June 1988. Article 13 (9) of Regulation (EEC) No 2423/88 states that no products shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from the granting of any subsidy. Ite is therefore necessary to consider whether a countervailing duty can be imposed in addition to the anti-dumping duties.

(68) In order to determine this, the impace of the countervailable subsidies (both domestic subsidies and export subsidies) on the domestic prices and on the export prices of the products concerned has to be examined.

Domestic subsidies

(69) All domestic subsidies have to be considerd as production subsidies (with adverse trade effects), which reduce the production costs of the products investigated. The reduction in production costs allows an equal drop in domestic prices and export prices. The domestic subsidies can therefore not have influenced the dumping margins previously found. The domestic subsidies should be considered to be neutral in their effect on the dumping margin. Article 13 (9) of Regulation (EEC) No 2423/88 does not therefore preclude in these circumstances the imposition of both anti-dumping and countervailing duties.

Export subsidies

(70) The Commission found two export subsidy schemes (corporate tax exemption and the export credit programme) which are, in principle, countervailable since they are granted on condition that the products are exported. Therefore, these types of subsidies must be assumed to have the effect of reducing the export price. However, since they are not granted on domestic sales, they can have no effect no normal value, which was calculated on the basis of domestic prices.

Consequently, these export subsidies, reducing export prices while leaving normal value unchanged, will have led to an equivalent amount of dumping being found in the anti-dumping investigation. Therefore, the imposition of a countervailing duty covering such export subsidies up to the level of the anti-dumping duty would be contrary to Article 13 (9) of Regulation (EEC) No 2423/88.

It is therefore appropriate to collect countervailing duty only to the extent to which the rate of export subsidies exceeds the dumping margin in force, where this rate (of export subsidies) does not exceed the injury threshold found.

This only applies, however, to those export subsidies which were in force during the investigation period of the anti-dumping cases, (January 1987 to June 1987), i.e. the corporate tax exemption and low-interest credits for investment purposes. the companies concerned first availed of the export credit programme in 1988 and consequently this scheme cannot have influenced the anti-dumping margins. The duty to countervail this export subsidy need not be suspended.

H. FINAL PROVISION

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

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional countervailing duty is hereby imposed on imports of polyester fibre falling within CN code 5503 20 00 and originating in Turkey.

The vote of the duty, based on the free-at-Community frontier price, not cleared through customs, shall be 15,18%, (Taric additional code : 8517).

For the company hereunder, the following duty shall apply :

SASA Artificial & Synthetic Fibres Inc., Adana = 11,48%, (Taric additional code : 8516).

2. A provisional countervailing duty is hereby imposed on imports of polyester textured filament yarn falling within CN codes 5402 33 10 and 5402 33 90 and originating in Turkey.

The rate of the duty, based on the free-at-Community frontier price, not cleared through customs, shall be 15,18%.
(Taric additional code : 8521)

For the companies hereunder, the following duties shall apply :

— SASA Artificial & Synthetic Fibres, Inc., Adana : 11,48%
(Taric additional code : 8518)

— SİFAŞ Sentetik Iplik Fabrikalari AŞ, Bursa : 11,57%
(Taric additional code : 8519)

— Polylen Sentetik Iplik Sanayii AŞ, Bursa : 11,57%
(Taric additional code : 8519)

— Polyteks Tekstil Sanayi Arastirma ve Egitim AŞ, Bursa : 10,84%
(Taric additional code : 8520).

3. A provisional countervailing duty is hereby imposed on imports of polyester filament yarn falling within CN Codes 5402 43 10, 5402 43 90, 5402 52 10, 5402 52 90, 5402 62 10 and 5402 62 90 and originating in Turkey.

The amount of the duty based on the free-at-Community frontier price, not cleared through customs, shall be 11,48%, (Taric additional code : 8523).

The following company is exempted from this duty :

Sonmez Filament, Bursa
(Taric additional code : 8522)

4. A provisional countervailing duty is hereby imposed on imports of partially-oriented polyester yarn (POY) falling within CN code 5402 42 00 and originating in Turkey.

The vote of the duty, based on the free-at-Community frontier price, not cleared through customs, shall be 11,48%.
(Taric additional code : 8525)

The following company is exempted from this duty :

Sonmez ASF, Bursa
(Taric additional code : 8524).

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

6. The release for free circulation in the Community of the products referred to in paragraphs 1, 2, 3 and 4 and originating in Turkey shall be subject to the provision of a security equivalent to the amount of the provisional duty.

Article 2

Part of the provisional countervailing duties imposed by Article 1 is hereby suspended in view of anti-dumping duties imposed by Council Regulation (EEC) No 3905/88 (1) and 3946/88 (2). Consequently the net provisional countervailing duties imposed shall, for the period during which these Regulations apply, be as follows :

(i) polyester fibre 4,68%
(Taric additional code : 8527) ;

for the Company hereunder, the following duty shall apply :

Sonmez Filament 3,85%
(Taric additional code : 8526) ;

(ii) Polyester textured filament yarn 4,37%
(Taric additional code : 8532) ;

for the companies hereunder, the following duties shall apply :

— SASA 1,93%
(Taric additional code : 8531)
— Sonmez Filament 3,85%
(Taric additional code : 8530)
— Sonmez AŞF 3,85%
(Taric additional code : 8529)
— Polyteks 1,48%
(Taric additional code : 8528) ;

(iii) polyester filament yarn 11,48%
(Taric additional code : 8534).

The following company is exempted from this duty :

Sonmez Filament
(Taric additional code : 8533) ;

(iv) Partially-oriented polyester yarn (POY) 8,78%
(Taric additinal code : 8536) ;

the following company is exempted from this duty :

Sonmez AŞF
(Taric additional code : 8535).

Article 3

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard by the Commission within one month of the entry into force of this Regulation.

Article 4

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 2423/88, it shall apply for a period of four months, unless the Council adopts definitive measures before that period has elapsed.

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

Done at Brussels, 27 May 1991.

For the Commission
Frans ANDRIESSEN
Vice-President

(1) OJ No L 347, 16. 12. 1988, p. 10.
(2) OJ No L 348, 17. 12. 1988, p. 49.