COUNCIL REGULATION (EEC) No 2899/91

of 1 October 1991

amending Regulation (EEC) No 3905/88 and repealing the definitive anti-dumping duty imposed on imports into the Community of polyester yarn originating in Mexico

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 submitted by the Commission after consultations within the Advisory Committee as provided for under the above Regulation,

Whereas,

A. PROCEDURE

(1) In November 1990 the Commission announced, by a notice published in the *Official Journal of the European Communities* [2], the initiation of a review of anti-dumping measures concerning imports of polyester yarn originating in Mexico, in accordance with Article 14 of Regulation (EEC) No 2423/88, and commenced an investigation. The measures in question consisted of definitive duties on imports of polyester yarn originating in Mexico imposed by Regulation (EEC) No 3905/88 [3].

(2) The proceeding was initiated as a result of a request lodged in September 1990 by several exporters in Mexico. The request alleged changed circumstances since the imposition of the definitive anti-dumping duty. In particular, it was alleged that imports of polyester yarn from Mexico to the Community were now being made at non-dumped prices. The evidence contained in this request was considered sufficient to justify opening a proceeding.

(3) The Commission officially advised the exporters known to be concerned, the representatives of the exporting country and the complainant in the original proceeding, the Comité international de la rayonne et des fibres synthetiques (CIRFS) representing the Community industry, and gave the parties concerned the opportunity to make their views known in writing and to request a hearing.

(4) The exporters and CIRFS made their views known in writing.

(5) The Commission sought and verified all information it deemed necessary for the purposes of this proceeding and carried out investigations at the premises of the following Mexican producers/exporters :

Fibras Quimicas SA, Monterrey, Mexico,

Nylon de Mexico SA, Monterrey, Mexico,

Kimex SA, Mexico City,

Fibras Sinteticas SA, Mexico City,

Celanese Mexicana SA, Mexico City.

(6) The investigation of dumping covered the period 1 January to 30 September 1990 (the investigation period).

B. PRODUCTS UNDER CONSIDERATION

1. Definition of products

(7) The products concerned are non-textured partially oriented filament yarn (POY), falling within CN code 5402 42 00, and textured polyester yarn filament (PTY), falling within CN codes 5402 33 10 and 5402 33 90.

2. Description of products

(8) POY is used to produce PTY and other types of yarn. PTY of varying quality is produced, and there are several different types.

(9) Threes qualities of PTY are produced, as follows :

— first quality :
mechanically perfect, guaranteed for dyeing ;

— second quality :
mechanically perfect, not guaranteed for dyeing ('whites only') ;

— third quality :
lower quality yarn.

The proportion of each quality produced depends on the efficiency of the production process. The exporters are producing all three qualities of PTY.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 289, 17. 11. 1990, p. 7.
[3] OJ No L 347, 16. 12. 1988, p. 10.

(10) There are different types of PTY. The relative thickness and weight of PTY is expressed in units of 1 dtex, which is equal to the weight in grams of 10 000 metres of yarn. (It is also sometimes expressed in denier, of which 1,1 equals 1 dtex). Therefore the yarn becomes finer as the number of dtex becomes smaller. Furthermore, every type of yarn contains a certain number of constituent filaments, given a certain dtex weight. The greater the number of filaments, the greater is the value of the yarn.

C. DUMPING

1. Normal value

(11) Normal value was calculated separately for each month (in view of the high inflation rate in Mexico) and for each different type and quality of yarn.

(12) In general, normal value was established on the basis of the price actually paid or payable for the product sold on the domestic market.

(13) In the case of two exporters, domestic price was consistently and substantially below cost of production during the investigation period. In these cases it was considered appropriate to establish a constructed normal value in accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88 using these companies' costs of production plus a profit (6 %), equivalent to that realized by other Mexican exporters on profitable sales in the domestic market, which was considered to be a reasonable level of profit.

2. Export price

(14) Export prices were determined on the basis of the price actually paid or payable for the product exported to the Community.

3. Comparison

(15) The normal value per type and quality (calculated on a monthly average basis) was compared with export prices of the same type and quality for the corresponding month on a transaction-by-transaction basis. Requests for allowances were accepted with regard to differences affecting price comparability and bearing a direct relationship to the sales under consideration and for which satisfactory evidence was submitted. All comparisons were made at the ex-factory level.

4. Dumping margins

(16) With the exception of one exporter of PTY, whose dumping margin (0,53 %) is, according to the consistent practice of the Commission, considered to be *de minimis*, no dumping was found as regards imports of PTY and POY originating in Mexico.

(17) The Council confirms the conclusions of the Commission relating to dumping.

D. CONCLUSION

1. Repeal of anti-dumping measures

(18) The investigation has demonstrated that imports of polyester yarn from Mexico are no longer being dumped. The Council notes that this absence of dumping, in the presence of a significant volume of imports, has continued over a substantial period and has been repeated on export markets outside the Community. The Council therefore concludes that there has been a durable change in the behaviour of the Mexican exporters, particularly in the area of pricing policy. In view of these changed circumstances, the Council considers that the anti-dumping measures concerning imports of polyester yarn originating in Mexico are now neither justified for necessary and should therefore be repealed.

(19) The exporters and the complainant requested, and were granted, the opportunity to be heard by the Commission.

At their request, the exporters and the complainant were also informed of the essential facts and considerations on the basis of which it was proposed to recommend the repeal of the anti-dumping measures, concerning imports of polyester yarns originating in Mexico.

The parties were granted a period within which to make representation on any of the above matters subsequent to disclosure. Where appropriate, their comments were taken into consideration.

(20) Since the imports originating in the Republic of Korea, Taiwan and Turkey were on such a scale that they have to be considered to have, by themselves, cumulatively caused material injury during the original investigation period, the repeal of the anti-dumping measures concerning imports of polyester yarn originating in Mexico cannot have any effect on the continuing validity of the anti-dumping measures imposed on imports of the same product originating in the Republic of Korea, Taiwan and Turkey.

2. Amendment to Regulation (EEC) No 3905/88

(21) Regulation (EEC) No 3905/88 relating to imports of polyester yarn originating in Mexico, the Republic of Korea, Taiwan and Turkey should accordingly be amended in order to repeal the definitive anti-dumping duty imposed by that Regulation on imports originating in Mexico.

(22) The provisions of Regulation (EEC) No 3905/88 which relate to imports of the same product originatng in the Republic of Korea, Taiwan and Turkey should remain unchanged.

(23) This amendment, which relates only to imports originating in Mexico, should have no effect on the expiry of the definitive anti-dumping duty imposed on imports of polyester yarn originating in the Republic of Korea, Taiwan and Turkey.

The date on which the measures concerning these countries shall lapse should continue to be based on the date of entry into force of Regulation (EEC) No 3905/88,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 (1) of Regulation (EEC) No 3905/88, the reference to 'Mexico' shall be deleted.

In Article 1 (2) of Regulation (EEC) No 3905/88, the following indent shall be deleted:

'— 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;'.

Article 2

In Article 2 (1) of Regulation (EEC) No 3905/88, the reference to 'Mexico' shall be deleted.

In Article 2 (2) of Regulation (EEC) No 3905/88 the following indent shall be deleted:

'— 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 %;'.

The remainder of Regulation (EEC) No 3905/88 shall remain unchanged.

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 Brussels, 1 October 1991.

For the Council

The President

H. VAN DEN BROEK