COMMISSION REGULATION (EEC) No 2904/91

of 27 September 1991

imposing a provisional anti-dumping duty on imports of certain polyester yarns (man-made staple fibres) originating in Taiwan, Indonesia, India, the People's Republic of China and Turkey and terminating the anti-dumping proceeding in respect of imports of these yarns originating in the Republic of Korea

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,

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Community and Turkey [2], and being aware that the measures concerning Turkey imposed by this Regulation should be repealed if the Association Council issues a recommendation within the time period provided for in this Article,

After consultations within the Advisory Committee as provided for under the above Regulation,

Whereas:

A. PROCEDURE

(1) In March 1990 the Commission announced, by a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding concerning imports into the Community of certain yarns of staple polyester fibres (hereafter referred to as 'polyester yarns') originating in the Republic of Korea, Taiwan, Indonesia, India, the People's Republic of China and Turkey and commenced an investigation. The product investigated falls within CN codes 5508 10 11, 5509 21 10, 5509 21 90, 5509 22 10, 5509 22 90, 5509 51 00 and 5509 53 00.

The proceeding was initiated as a result of a complaint lodged by the Committee of the Cotton and Allied Textile Industries of the EEC (Eurocoton) on behalf of producers whose collective output constituted substantially all Community production of the polyester yarns concerned. The complaint contained evidence of dumping of this product originating in the countries indicated in the previous paragraph and of material injury resulting therefrom which was considered sufficient to justify opening a proceeding.

(2) The Commission officially advised the exporters and importers known to be concerned, the representatives of the exporting countries and the complainants and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

Representatives of the exporters, some importers, a large number of Community producers and the complainant made their views known in writing. Representatives of the Turkish, the Indian, the Indonesian and the Korean exporters and one importer requested and were granted a hearing.

(3) In view of the extremely large number of Community producers mentioned in the complaint, the Commission would have been unable adequately to verify the information received from all of them as this would have resulted in an extremely long delay in completing the investigation which would have been incompatible with the very purpose of anti-dumping proceedings. For this reason the Commission decided to make a representative selection of firms on the basis of their size and geographic situation. A certain number of firms of large, medium and small size located in 10 Member States were chosen for questionnaires to be sent. The producers from which acceptable replies were received were found to be representative of the Community industry within the meaning of Article 4 (5) of Regulation (EEC) No 2423/88.

(4) This conclusion does not apply to sewing thread yarns described in recital (10) for which the combined production of the Community producers which replied to the questionnaire is not considered to be representative of the Community industry of this product. Indeed, of all firms reported by the complainant to be finishers of sewing thread those supporting the complaint which supplied the information deemed to be necessary for the investigation only represented a minimal share of the total Community output of

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 293, 29. 12. 1972, p. 4.
[3] OJ No C 80, 30. 3. 1990, p. 6.

sewing thread in 1989 on the basis of the information submitted by the Federation internationale de la filterie.

The Commission concludes therefore that, while for Community producers of yarns other than sewing thread the provisions of Article 4 (5) of Regulation (EEC) No 2423/88 are met, that is not the case as far as Community producers of sewing thread are concerned.

(5) In India, the large number of exporters prevented the Commission from carrying out verifications at the premises of all of them. Because of this the Commission, in order to achieve the most equitable method of completing the investigation within a reasonable period, proceeded as follows :

The Commission forwarded questionnaires to all Indian exporters known (43 firms). Most of these exporters replied to the questionnaire and no requests for questionnaires were received from other firms. The Commission selected, on the basis of criteria such as their production and sales both in India and in the Community, seven firms of small, medium and large size. The Commission informed the Synthetic and Rayon Textiles Export Promotion Council (SRTEPC) which represents virtually all the exporters of the product concerned in India, of the criteria used for choosing the selected companies and of its intention to apply the weighted average findings established for these seven companies to the rest of the cooperating exporters. No objections were raised by the SRTEPC to the proposed methodology.

(6) The Commission sought and verified all information it deemed to be necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following firms :

(a) *Community producers :*

Germany :

— Neue Baumwoll-Spinnerei und Weberei Hof AG, Hof,

— Vogtländische Baumwoll Spinnerei AG, Hof,

— Schoeller Textil GmbH & Co. Kg, Düren ;

Spain :

— CA Hilaturas de Fabra y Coats, Barcelona,

— Estabanell y Pahisa SA, Barcelona,

— Hilaturas Gossypium SA, Barcelona,

— Hilaturas MAB SA, Barcelona,

— J Espona SA, Barcelona,

— Grupo MITASA, Barcelona,

— Manufacturas Antonio Gassol SA, Barcelona ;

Italy :

— Bossi SpA, Cameri,

— Filatura Giovanni Graziani SRL, Busto Arsizio,

— Manifattura del Circeo SpA, Milano,

— Manifattura Maffeis, Industria Filati SpA, Gazzaniga,

— Filatura della Valtrompia SpA, S. Vittore Olona,

— Linificio e Canapificio Nazionale SpA, (Divisione Cotonificio di Conegliano), Vimercate ;

Portugal :

— Coelima Indústrias Têxteis SA, Pevidem ;

United Kingdom :

— Courtaulds Textiles plc, (Courtaulds Spinning), Oldham,

— CV Woven Fabrics Ltd (India Mills), Darwen, Lancashire ;

France :

— P & J Leurent SA, Tourcoing,

— La Cotonnière d'Armentières SA, Armentières,

— La Cotonnière du Touquet SA, Armentières ;

Belgium :

— NV Utexbel, Renaix ;

(b) *Exporters :*

India :

— Banswara Syntex Ltd, Bombay,

— The Coimbatore Pioneer Mills Ltd, Peelamedu, Coimbatore,

— Modern Syntex Ltd, Bombay,

— Rajasthan Spinning & Weaving Mills Ltd, Gulapura,

— Reliance Chemotex Industries Ltd, Bombay,

— The Shree Meenakshi Mills Ltd, Madurai,

— Shree Satyam Sp., and Wvg Mills Ltd, Secunderabad ;

Indonesia :

— P T Kewalram Indonesia, Bandung ;

Republic of Korea :

— Choongnam Spinning Co. Ltd, Seoul,

— Taekwang Industrial Co. Ltd, Seoul ;

Taiwan :

— Chung Shing Textile Company Ltd, Taipei ;

Turkey :

— Bisas Bursa Iplik Sanayii AŞ, Bursa,

— Ceytas Ceyhan Tekstil Sanayii AŞ,Ceyhan, Adana,

— Soktas Pamuk ve Tarim Ürünlerini Değer Pendirme Ticaret ve Sanayii AŞ,Söke.

(c) *Importers in the Community :*

France :

— Sartel Tootal SA, Wattrelos,

— Cousin Frères SA, Wervicq-sud ;

Belgium :

— Chemitex SA, Brussels ;

United Kingdom :

— Broome and Wellington, Manchester,

— English Sewing Ltd, Poynton/Cheshire.

(7) The following producers in India responded to the questionnaire sent by the Commission and agreed to cooperate in the investigation but were not visited for the reasons outlined in recital (5) :

— Deepak Spinners Ltd, Baddi, Solan,

— Gokak Patel Volkart Ltd, Gokak Mills Division, Bombay,

— Himachal Fibres Ltd, New Delhi,

— Hind Syntex Ltd, Dewas,

— Indo Rama Synthetics (India) Ltd, New Delhi,

— Loyal Textile Mills Ltd, Kovilpatti,

— Orient Syntex Ltd, Bombay,

— Precot Mills Ltd, Coimbatore,

— Rajasthan Textile Mills (prop. Sutlej Cotton Mills Ltd), Bhawanimandi,

— Sholingur Textiles Ltd, Dindigul,

— Soundaraja Mills Ltd, Dindigul,

— The Madhavnagar Cotton Mills Ltd, Madhavnagar,

— Vardhman Spinning & General Mills Ltd, Ludhiana,

— Yarn Syndicate Ltd, Calcutta.

(8) The investigation of dumping covered the period from 1 January 1989 to 31 December 1989 (the investigation period).

(9) This investigation has exceeded the normal time period of one year because of the volume and complexity of the data initially gathered and examined, and because the investigation has required the study of related issues which arose during the proceeding and which could not have been foreseen at its outset.

B. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT

(i) Definition of product

(10) The products covered by the complaint and for which the proceeding was opened are the following :

— sewing thread of polyester staple fibres, not put up for retail sale (CN code 5508 10 11),

— single and multiple (folded) yarn containing 85 % or more by weight of polyester staple fibres, not put up for retail sale (CN codes 5509 21 10, 5509 21 90, 5509 22 10 and 5509 22 90),

— other yarn of polyester staple fibres mixed mainly or solely either with artificial staple fibres or with cotton (CN codes 5509 51 00 and 5509 53 00).

With the exception of sewing thread all other yarns covered by the proceeding can be basically divided into three categories : polyester yarns of staple fibres, polyester yarns of staple fibres mixed with viscose and polyester yarns of staple fibres mixed with cotton. Within each category yarns are divided into different count numbers depending on their thickness and on whether they are single or multiple. For the purpose of this Regulation each one of these is called a 'product type'.

These yarns have very similar physical characteristics, are manufactured using the same basic technology and on the same type of equipment and are marketed under a similar commercial policy. They have, for the same product types, similar costs of production and selling prices per unit and a high degree of interchangeability in their uses.

The sewing thread of polyester staple fibres falling within CN code 5508 10 11 has, however, distinct technical characteristics and end uses. In addition to the manufacturing processes common to all yarns, i.e. spinning and in certain cases twisting, the production of sewing thread requires at least three other manufacturing processes, i.e. dyeing, lubricating and winding which result in different physical characteristics of the finished product. The end uses are clearly different ; sewing thread is used for sewing whereas the other yarns are primarily used for weaving or knitting.

For all these reasons, the Commission has come to the conclusion that, for the purpose of the present proceeding, polyester yarns of staple fibres, polyester yarns of staple fibres mixed with viscose and polyester yarns of staple fibres mixed with cotton can be considered as one product, whereas sewing thread falling within CN code 5508 10 11 should be considered as a distinct product.

(11) A Community importer and finisher of sewing thread alleged that the so-called unfinished sewing thread or 'grey yarn', which is a 100 % polyester yarn used to produce finished sewing thread, should be considered as a distinct product and should, either be excluded from the scope of the proceeding, or be considered separately for all purposes of the proceeding. In support of its argument this importer argued that these 'grey yarns' had different technical characteristics, economics of production and end uses.

The Commission came to the conclusion that the alleged differences in technical characteristics were not exclusive to these 'grey yarns' but were common to many other yarns used for weaving and knitting purposes and that the arguments put forward concerning economics of production and end uses could not justify a distinct treatment for a product which could not be differentiated in its physical characteristics.

(ii) **Like product**

(12) The results of the investigation carried out by the Commission have shown that the yarns manufactured in the exporting countries concerned by this proceeding use the same basic technology as those produced in the Community and are alike in their essential physical and technical characteristics and in their end uses.

The Commission also found that the yarns sold by the exporting countries in their domestic markets are alike, within the meaning of Regulation (EEC) No 2423/88, to the yarns exported to the Community.

C. **DUMPING**

(i) **Normal value**

(13) For all exporting countries, normal values were preliminarily established by the methods provided for by Article 2, (3), (4) and (5) of Regulation (EEC) No 2423/88, for each individual product type exported to the Community.

(a) *Republic of Korea*

(14) Normal value for the cooperating Korean exporters was established on the basis of the comparable price actually paid or payable in the ordinary course of trade for the like product in the Republic of Korea.

Where a particular product type exported to the Community was not sold on the domestic market or where such sales were made in insufficient quantities, given the difficulties in making a reasonable estimate of the value of the differences between product types, normal value was constructed on the basis of the costs of production plus a reasonable profit margin. The selling, general and administrative expenses included in the cost of production and the profit margins were calculated by reference to the expenses incurred and the profits realized by the exporter concerned on sales of other types of the like product on the domestic market.

(b) *Taiwan*

(15) Normal value for the cooperating Taiwanese exporter was established on the basis of the comparable price actually paid or payable in the ordinary course of trade for the like product in Taiwan.

Where substantial quantities of domestic sales of a particular product type were sold at a loss, normal value was established on the basis of the prices actually paid or payable for the remaining profitable sales of this product type in accordance with Article 2 (4) of Regulation (EEC) No 2423/88.

(c) *Indonesia*

(16) Normal value for the cooperating Indonesian exporter was established on the basis of the comparable price actually paid or payable in the ordinary course of trade for the like product in Indonesia.

Where a particular product type exported to the Community was not sold on the domestic market or domestic sales were in insufficient quantities or made at a loss, given the difficulties in making a reasonable estimate of the value of differences between product types, normal value was constructed on the basis of the cost of production plus a reasonable profit margin. The selling, general and administrative expenses included in the cost of production and the profit margins were calculated by reference to the expenses incurred and the profits realized by the exporter concerned on sales of other types of the like product on the domestic market.

(d) *India*

(17) Normal value for the cooperating Indian exporters was established on the basis of the comparable price actually paid or payable in the ordinary course of trade for the like product in India.

Where a particular product type exported to the Community was not sold on the domestic market or where such sales were in insufficient quantities or were made at a loss, given the difficulties in making a reasonable estimate of the value of the differences between product types, normal value was constructed on the basis of the cost of production plus a reasonable profit margin. The selling, general and administrative expenses included in the cost of production and the profit margins were calculated by reference to the expenses incurred and the profits realized by the exporter concerned on sales of other types of the like product on the domestic market.

In a certain number of cases it was not possible to follow this approach on establishing the profit margin as either no sales of other types of the like product were made by the particular exporters concerned or they were made at a loss or with profit margins not suitable for use. In those cases the profit margin used was the weighted average profit realized by other exporters in India on profitable sales of other types of the like product on the domestic market.

(e) *People's Republic of China*

(18) Since the People's Republic of China is a non-market economy country within the meaning of Article 2 (5) of Regulation (EEC) 2423/88, normal value was based on information obtained in a market economy third country. To that effect, the complainant's suggestion that normal value be determined on the basis of the constructed value of the like product manufactured in India has been retained in the absence of domestic sales in India of the product types exported from the People's Republic of China. India is considered to be the most appropriate and reasonable choice of market economy third country among these subject to the proceeding as far as similarities in production techniques and level of development are concerned.

For one of the producers concerned, the product was not exported directly from China to the Community but via Hong Kong. Normal value for these exports, however, was not established on the basis of prices in Hong Kong as the product in question was merely transhipped through that country.

(f) *Turkey*

(19) In view of the high level of inflation in Turkey during the investigation period, normal values were established on a monthly basis for one cooperating exporter and on a quarterly basis for the other two cooperating exporters given that, in these cases, data on a monthly basis was not available.

As the number of sales made by all three exporters in the domestic market of the product types exported to the Community was insignificant, normal value was constructed on the basis of the cost of production plus a reasonable profit margin. This profit margin and the selling, administrative and general expenses included in the cost of production were established, for two exporters, by reference to the profit realized and to the expenses incurred in their spinning and weaving activities. This was considered to be the most reasonable solution in view of the fact that neither the selling, general and administrative expenses nor the profit could be determined by reference to the domestic sales of the like product and that in such circumstances these costs and profit are, according to Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88, to be calculated by reference to the sales made by the exporter in the same business sector which, in the present case, is spinning and weaving.

For the third Turkish exporter, as its spinning and weaving activities did not show any profit during the investigation period, the weighted average profit margin of the other two exporters, as determined above, was used.

(ii) **Export price**

(20) Export prices were determined for the purpose of the preliminary findings on the basis of the prices actually paid or payable for the products sold for export to the Community.

(21) One of the exporters concerned carried out some of its sales to the Community through a branch established in the Community. Export prices in respect of these sales were constructed on the basis of the price at which the imported product was first resold to an independent buyer in the Community. These prices were adjusted in order to take account of all costs incurred between importation and resale including customs duties and a reasonable profit margin which was established on the basis of the profit margins normally made by independent importers of the product in question.

(22) One of the Chinese exporters involved made all of its sales to the Community through a company in Hong Kong. The company in Hong Kong and some of the purchasers in the Community were financially linked to the Chinese exporter and are, for the purposes of this proceeding, considered to be related. However, given the fact that there were no resales of the product in the same condition as it had been imported and that the prices of the

goods sold for export to these related importers were equivalent to those to independent importers it was concluded that there was no need to resort to the reconstruction of the export price, as these sales could be considered to have been made in the ordinary course of trade.

(iii) **Comparison**

(23) The normal value by product type was compared with the export price for the corresponding type on a transaction-by-transaction basis at an ex-works level and for the same level of trade. As far as differences in conditions and terms of sale are concerned, allowances were limited to those claimed which bore a direct relationship to the sales under consideration and for which satisfactory evidence was submitted.

(24) Cooperating Korean, Indonesian exporters requested an allowance with regard to import charges on raw materials physically incorporated in the like product when destined for consumption in the country of origin and refunded or not collected in respect of the product exported to the Community. These allowances were granted to the extent that satisfactory justification was provided.

(25) Several Indian exporters claimed an allowance in respect of prior stage duties and indirect taxes on inputs to the like product destined for consumption in India which were refunded by the Indian Government under the cash compensatory support system, in respect of the product exported to the Community. Following the examination of the evidence provided by the claimant exporters, the amount actually refunded (8 % of the fob value of the exported goods) was found to correspond to the duties and indirect taxes effectively borne. The claim has, therefore, been fully allowed pursuant to Article 2 (10) (b) of Regulation (EEC) No 2423/88. Moreover, the Commission has been officially informed by the Indian authorities of the abolition of the cash compensatory support system with effect from 3 July 1991 and, therefore, it is reasonable to expect that export prices will increase accordingly.

(iv) **Dumping margins**

(a) *Cooperating exporters*

(26) Normal values and export prices were compared on a transaction-by-transaction basis for each of the exporters concerned. The preliminary examination of the facts shows the existence of dumping in respect of imports of the product concerned originating in the Republic of Korea, Taiwan, Indonesia, India, the People's Republic of China and Turkey, from all the exporters involved, the margin of dumping being equal to the amount by which the normal value, as established, exceeds the price for export to the Community.

(27) As far as the exporters from the People's Republic of China other than Guangying Spinning Co., Ltd are concerned and in accordance with previous Community practice the Commission considered that, because of the lack of independence of these exporters in setting their export prices, a single dumping margin should be determined. To do otherwise would favour circumvention as exports to the Community could, in the future, be channelled through the company with the lowest dumping margin.

In the case of Guangying Spinning Co., Ltd, however, evidence was submitted establishing the fact that this company is a joint venture formed by Chinese and Hong Kong partners, the latter being related to a Community group, is free to establish its export prices and can transfer profits obtained to its foreign shareholders subject to certain administrative requirements. This led the Commission to conclude that an individual dumping margin could be determined for this company by comparing its actual export prices with the relevant normal value established for the People's Republic of China in accordance with recital (18).

(28) The weighted average margins of dumping for each exporter, expressed as a percentage of cif Community frontier prices are as follows:

(a) Republic of Korea

Choongnan Spinning Co., Ltd, Seoul:	15,88 %
Taekwang Industrial Co., Ltd, Seoul:	3,68 %;

(b) Taiwan

Chung Shing Textile Company Ltd, Taipei:	2,24 %;

(c) Indonesia

P.T. Kewalram Indonesia, Bandung:	0,26 %;

(d) India

Banswara Syntex Ltd, Bombay:	6,04 %
The Coimbatore Pioneer Mills Ltd, Coimbatore:	3,34 %
Modern Syntex Ltd, Bombay:	3,32 %
Rajasthan Spinning & Weaving Mills Ltd, Gulapura:	2,00 %
Reliance Chemotex Industries Ltd, Bombay:	2,16 %
The Shree Meenakshi Mills Ltd, Madurai:	11,82 %
Shree Satyam Spinning & Weaving Mills Ltd, Secunderabad:	9,84 %.

The weighted average of the dumping margins found for the sampled exporters above amounts to 3,76 %. This percentage is considered as the dumping margin to be attributed to the cooperating exporters in India not investigated :

(e) People's Republic of China

Chinatex Non-Cotton Yarns & Fabrics Import and Export Co., Beijing : 29,69 %,

Guangying Spinning Co., Ltd, Guangzhou : 0,42 % ;

(f) Turkey

Blsas Bursa İplik Sanayii AŞ, Bursa : 10,14 %,

Ceytas Ceyhan Tekstil Sanayii AŞ,Ceyhan, Adana : 2,66 %,

Soktas Pamuk ve Tarim Ürünlerini Değer Pendirme Ticaret ve Sanayii AŞ, Söke : 4,13 %.

(29) The dumping margins found for Guangying Spinning Co., Ltd, Guangzhou and P.T. Kewalram Indonesia, Bandung can be regarded as *de minimis* and consequently, for the purposes of this proceeding, imports from these two companies are considered as not to have been dumped.

(b) *Non-cooperating exporters*

(30) In addressing the issue of establishing the dumping margin for the exporters which neither replied to the Commission's questionnaire within the established time limit nor otherwise made themselves known, the Commission noted that the proportion of imports into the Community, as recorded in Eurostat statistics, covered by the exports reported by the cooperating exporters varied according to the countries concerned. Thus for the Republic of Korea, India and the People's Republic of China the reported exports covered almost the totality of imports into the Community as recorded in Eurostat. By contrast, for Taiwan, Indonesia and Turkey this proportion showed a large degree of non-cooperation.

(31) In these circumstances, it was concluded that, in applying Article 7 (7) (b) of Regulation (EEC) No 2423/88, two different approaches were required for the establishment of dumping margins for non-cooperating exporters in order that cooperating exporters would not be discriminated against and, at the same time, that measures to be taken would constitute an effective protection for the Community industry.

(32) For countries with a high coverage of exports, namely the Republic of Korea, India and the People's Republic of China it was considered that the most reasonable assumption was that the dumping margins were equal to the highest dumping margin found for a cooperating exporter in the same country.

As to countries with a low coverage of exports, i.e. Taiwan, Indonesia and Turkey it was considered that the information obtained from cooperating exporters could not be held to be representative and other available information, in particular that contained in the complaint for the determination of normal value and in Eurostat statistics with regard to export prices, was used.

On the basis of the above, the following dumping margins, expressed as a percentage of cif Community frontier prices, have been determined :

— Republic of Korea : 15,8 %,
— Taiwan : 24,5 %,
— Indonesia : 21,1 %,
— India : 11,8 %,
— People's Republic of China : 29,6 %,
— Turkey : 52,1 %.

D. INJURY

(i) Cumulation of the effects of the dumped imports

(33) In establishing the impact of the dumped imports on the Community industry, the Commission has considered the effect of all dumped imports from the countries concerned in the present investigation. In analysing whether cumulation of these imports was appropriate, the Commission examined whether the imports at dumped prices contributed to the material injury suffered by the Community producers. For that purpose, the Commission has considered the comparability of the products imported from all the countries concerned in terms of physical characteristics and interchangeability of end uses. It has also examined the volumes imported, the level of prices of these imports and the extent to which imports from each country competed in the Community with each other and with the like product of the Community industry. After examination of these facts the Commission found that with the exception of the Republic of Korea (see recital (34)) and for the purpose of establishing the level of injury sustained by the Community industry, regard should be paid to the cumulated effect of the dumped imports from all exporting countries concerned.

(34) It was considered that, given the small and distinctly lower market share held since the end of 1987 by the Republic of Korea compared to the other five countries concerned, there were insufficient grounds to cumulate the imports from that country with those of the remaining five exporting

countries for which, the similar and simultaneous effect on the Community industry must be assessed jointly.

(ii) **Volume and market share of dumped imports**

(35) The volume of dumped imports into the Community of the product concerned originating in the exporting countries which are the subject of the proceeding, other than the Republic of Korea, increased from 7 877 tonnes in 1986 to 17 672 tonnes during the investigation period (January 1989 to December 1989). Imports from the Republic of Korea in the same period increased from 713 tonnes to 976 tonnes.

(36) The development of imports, assessed in the light of the apparent Community consumption over the same period led to a combined market share of the Community market held by the exporting countries concerned, other than the Republic of Korea, taken together, which increased from 3,7 % in 1986 to 9,5 % during the investigation period. The market share held by the Republic of Korea in the same period increased from 0,3 % to 0,5 %.

(iii) **Prices of dumped imports**

(37) Prices of the imported product from the six countries concerned were, during the investigation period, significantly below the prices practised by the Community producers. Price undercutting was established for each of the exporters investigated by comparing, at the same level of trade, prices of the exporter concerned for sales to the first independent customer in the Community with weighted average prices of the Community producers.

This comparison was made on a per product type basis for each of the types imported which were considered for the dumping determination. In cases where a particular product type imported had not been sold during the investigation period by any of the Community producers, the price of the nearest resembling type, duly adjusted, was used.

Adjustments were also made to ensure comparability in terms of transport costs deducted from the Community selling prices as well as in terms of customs duty and importers' profit margin added to the import prices, to the extent it was applicable.

The results of the comparison showed margins of undercutting for all countries concerned and for almost all the exporters investigated. The weighted average undercutting, expressed at a free-at-Community-frontier level, ranged up to 56,48 %.

(iv) **Situation of the Community industry**

(a) *Production and capacity utilization*

(38) The volume of production of the product concerned by the Community producers investigated remained generally stable on an annual basis during the period from 1986 to 1989.

Regarding capacity utilization, it should be noted that the product concerned is generally manufactured on equipment which is also used for the manufacture of other products (e.g. cotton and viscose yarns). Because of this, it is not possible in all cases to determine capacity utilization rates which are specific for that product. In spite of these difficulties, capacity utilization in respect of the product concerned has been estimated to have remained stable for the investigated producers, on average since 1986, at 75 %.

(39) The above description reflects the situation of the Community producers investigated. The overall situation of the Community industry presents more negative aspects. Thus, the total volume of production in the Community, as estimated by the complainant, has decreased from 202 700 tonnes in 1986 to 157 150 tonnes during the investigation period. This decline in production appears to be in line with the fact that a high number of production units were closed down in the Community, (see recital (43).

(b) *Sales, stocks and market share*

(40) The volume of sales of the product concerned by the Community industry was in line with that of production since 1986. As a result, the year-end stock levels showed no real trend. This development in sales volume compared to that of the apparent Community consumption led to a decrease in market share from 90,4 % in 1986 to 79,0 % during the investigation period.

(c) *Prices*

(41) Because of the continued downward pressure on prices resulting from the dumped imports, Community producers were obliged, in general, to maintain their prices when the upward development of costs of production would normally have led to increasing them. In many cases, since the end of 1988 they were, in order to maintain their capacity utilization and market share, even forced to reduce their prices to levels which in most cases did not cover the costs of production and which, in any case, did not allow a reasonable profit to be made.

(d) *Profitability*

(42) While in 1986 and 1987 profits could be kept stable by rationalization factors such as modernization of equipment and reduction of the personnel employed, these remedies could no longer compensate in 1988 and 1989 for the increasing penetration of the Community market by the low priced imports concerned. Thus, the Community producers investigated showed returns on sales of more than 4,6 % on average in 1986 and 1987 but incurred losses in 1988 and 1989 amounting, on average, to 1,3 % and 5,9 % in the respective years.

(e) *Plant closures*

(43) The general deterioration of the financial situation of the Community industry since 1988 has led to drastic decisions such as further restructuring and closures of production units in order to stop further decay.

From 1986 to 1989, 77 production units in nine Community countries were closed down either as a result of restructuring or of cessation of activities.

(f) *Employment*

(44) More than 1 000 jobs have been lost by the Community producers investigated during 1988 and 1989. This represents nearly a 20 % reduction of the personnel employed by them in 1987 and is the result of an ongoing restructuring intended to defend profitability and which goes beyond a mere modernization investment programme.

With regard to the employment situation of the whole cotton type spinning sector which includes the polyester spinning industry in the Community, the combined effect of restructuring plans and closures of factories is estimated to have led to more than 10 000 jobs being lost in 1988 and 1989 alone.

(v) **Conclusion**

(45) In assessing the situation of the Community industry, account has to be taken of the fact that the manufacture of the product concerned is a capital intensive business in which low capacity utilization becomes generally more costly than to maintain high capacity utilization and sell all the production at prices which neither allow an adequate return nor even cover the full costs of production.

In view of this characteristic of the industry, Community producers investigated decided to maintain capacity utilization as high as possible in an attempt to avoid greater deterioration of profitability which otherwise would have occurred. As a result, economic indicators such as production, sales, stocks and market share did not show, for these producers, the negative trends experienced by the Community industry as a whole. These indicators do not clearly reflect, in all cases, the difficult market conditions in which the Community industry has had to operate. Injury must, in these circumstances, be assessed mainly, on the basis of other parameters such as prices, profitability and employment.

The price erosion, the deterioration of the financial situation with insufficient profitability or even losses, and the reduction in employment affecting practically all the Community producers, all led the Commission to conclude, for the purpose of its provisional findings, that the Community industry has been suffering material injury within the terms of Article 4 (1) of Regulation (EEC) No 2423/88.

E. CAUSATION OF INJURY

(46) The Commission examined whether the injury suffered by the Community industry had been caused by the dumped imports and whether other factors might have caused or contributed to that injury.

(i) **Effect of dumped imports**

(47) On its examination the Commission found that the increase in volume and market share of the dumped imports from the six countries involved in the proceeding coincided with the deterioration of the situation of the Community industry. As explained before in recital (41), as a result of the low prices at which the imported yarns were sold in the Community market, the Community producers were either prevented from increasing their selling prices or forced to reduce them in order to maintain their levels of capacity utilization and market share. This suppression of price increases and reduction in prices led, in turn, to a general decrease in profitability and employment in the Community. The development of negative parameters in these areas, specifically demonstrated by the financial losses incurred and the jobs lost in 1988 and 1989 corresponds in time with the highest penetration of the imports concerned. However, given the negligible and steady market share held by the Republic of Korea since 1987, the Commission considers that dumped imports from this country have not significantly contributed to the injury suffered by the Community industry.

(ii) **Effect of other factors**

(48) The Commission examined whether factors other than the dumped imports might have caused or contributed to the injury suffered by the Community industry. The Commission particularly examined the evolution of Community exports to third countries, the evolution and impact of imports from third countries not included in this proceeding and the trend of consumption in the Community market.

(49) Exports by the Community industry to third countries only represent approximately 6 % of total sales and have not shown any significant changes since 1986.

(50) Imports from third countries not included in the proceeding have been increasing since 1986 and reached an estimated share of 10,1 % of the Community market during the investigation period. More than half of these imports originate in Egypt and Brazil which have been steadily gaining market share since 1986. Some of the exporters argued that the non-inclusion of these two countries in the proceeding would be particularly discriminatory.

The Commission has noted the substantial increase in the imports from Egypt and Brazil as well as the low level of their prices as they appear in the Eurostat statistics. In this last respect the Commission considers that no conclusions can be drawn from the prices shown in the Eurostat statistics as these mask the extremely important differences in prices among different product types and no information is available concerning the product types being exported from Egypt and Brazil.

The Commission has also noted that no evidence concerning the existence of dumping practices by Egypt and Brazil has been received.

Furthermore the Commission considers that even if it was admitted that the imports from Egypt and Brazil, whether dumped or non dumped, had caused injury to the Community industry, this would not change the fact that the injury caused by the dumped imports originating in the countries concerned by the proceeding other than the Republic of Korea is material.

(51) Apparent consumption of the product concerned in the Community decreased during the investigation period by 12,3 % when compared to the consumption in 1986. This decline in consumption explains only in part the decrease in sales by all Community producers, but not the reduction of their market share. Thus, in that period, dumped imports from all the countries concerned, other than the Republic of Korea, gained a Community market share which increased from 3,7 % to 9,5 %. By contrast, estimated sales by the Community industry in the Community market decreased distinctly faster (by 23,3 %) than Community consumption and, consequently, the corresponding market share also decreased from 90,4 % to 79,0 %.

(52) The Commission has also examined the argument that, because of the existence of quantitative restrictions applied to the imports of the product in question originating in some of the countries concerned, no injury could be caused to the Community industry by these imports. The Commission considers, in this respect, that quantitative restrictions protect the Community industry from excessive volumes of imports but do not necessarily prevent injury resulting from unfair trading practices such as dumping imports at very low prices.

(53) Consequently, the Commission has concluded that, for purposes of its provisional findings, the dumped imports originating in Taiwan, Indonesia, India, the People's Republic of China and Turkey because of their prices and their penetration in the Community market and the resulting loss of profitability, market share and employment, have, taken in isolation, caused material injury to the Community industry.

F. COMMUNITY INTEREST

(54) The purpose of anti-dumping duties is, in general, to stop distortion of competition arising from unfair commercial practices and thus to re-establish open and fair competition on the Community market, which is fundamentally in the general Community interest.

The deterioration of the Community industry is especially noticeable from the decrease in profitability and from the number of production units which have shut down during the reference period. This deterioration appears to have continued in 1990 and would, in all likelihood, continue in the future if no measures to counteract the injurious dumping practices were taken.

(55) Some exporters have argued that an increase in the price of the imported yarns as a result of the adoption of anti-dumping measures would be detrimental to the interest of the Community weavers. The Commission notes that neither weavers nor garment makers in the Community have expressed any objections to the possible adoption of protective measures in this proceeding and that, in any

case, the incidence of a certain price increase on the cost of the processing industries does not appear to be significant enough to render these industries less competitive.

(56) In conclusion, after balancing the various interests involved, the Commission considers that the adoption of measures in the present case will re-establish fair competition by eliminating the injurious effects of dumping practices.

The Commission considers that it is therefore in the Community interest to adopt anti-dumping measures in order to prevent further injury being caused by the dumped imports concerned before the end of the proceeding. These measures should take the form of provisional anti-dumping duties.

G. DUTY

(57) For the purpose of establishing the level of the provisional duty the Commission took account of the dumping margins found and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

(i) Cooperating exporters

(58) Since the injury consists mainly of lack of profitability or losses, the removal of such injury requires that industry should be put in a position in which its prices can be increased to a profitable level. In order to achieve this, export prices should be increased accordingly.

For calculating the necessary price increase, the Commission considered that prices of the dumped imports had to be compared with the cost of production of the Community producers investigated plus a profit margin of 5 %. This profit margin is based on the level of profits realized on average by Community producers prior to the deterioration of their profitability as a result of the dumped imports. The Commission considers that this profit margin is the minimum required to ensure the viability of the Community industry concerned.

(59) On this basis, the weighted average export prices for each product type, on a free-at-Community-frontier level increased by customs duties and a certain profit margin for the importer, as applicable, were compared, during the investigation period, with the weighted average cost of production of the Community producers investigated, for the corresponding product type, plus a 5 % profit margin.

These comparisons show for all exporters concerned, lower export prices with margins which, expressed on a weighted average basis as a percentage of the free-at-Community-frontier price, varied, according to the exporter concerned, between 5,55 % and 82,72 %.

(60) Since, in all cases, the margins of dumping found, in respect of each particular exporter, were below the corresponding increases in export prices necessary to remove the injury, as calculated above, provisional duties to be imposed should therefore correspond to the dumping margins established.

(61) For the cooperating Indian exporters not selected for investigation, the Commission, following the methodology described in recital (5), applied the weighted average duty of the investigated exporters.

(62) For the reasons given in recital (27), the Commission has established a single duty for all the Chinese exporters with the exception of the joint venture concerned for which, in the absence of dumping (see recital (29)) no duty is established.

(ii) Non-cooperating exporters

(63) In establishing the level of provisional duty for exporters which neither replied to the questionnaire within the established time limit nor otherwise made themselves known, the Commission took account of the level of exports coverage of each of the countries concerned as described in recital (30).

For countries with a high coverage of exports, the Commission considered it appropriate to impose a duty at the level of the highest duty determined for the cooperating exporters in the country concerned. Indeed, it would create an opportunity for circumvention of the duties and would constitute a bonus for non-cooperation to hold that the duties for non-cooperating exporters in a particular country were any lower than the highest duty determined in that country with regard to any exporter who had cooperated in the investigation.

With regard to countries with a low coverage of exports for which the information obtained from cooperating exporters could not be considered to be representative, other information available to the Commission was used to establish both the dumping margin (see recital (31)) and the increase in export prices necessary to eliminate the injury. In particular, information contained in the complaint and in Eurostat statistics, duly adjusted, was taken into account. Since dumping margins thus established were in all cases below the corresponding increase in export prices, duties should be imposed at the level of the dumping determined.

H. TERMINATION OF THE PROCEEDING IN RESPECT OF IMPORTS OF SEWING THREAD ORIGINATING IN ALL THE COUNTRIES CONCERNED AS WELL AS IN RESPECT OF IMPORTS OF ALL OTHER YARNS CONCERNED ORIGINATING IN THE REPUBLIC OF KOREA

(64) In view of the fact that the provisions of Article 4 (5) of Regulation (EEC) No 2423/88 are not met as far as the Community producers of sewing thread are concerned, as described in recital (4) above, the Commission considers that the proceeding should be terminated in respect of imports of sewing thread falling within CN code 5508 10 11 originating in all the countries concerned without protective measures being imposed.

(65) As referred to in recital (47), imports of the product concerned originating in the Republic of Korea have not significantly contributed to the injury suffered by the Community industry. In these circumstances, the Commission considers that the proceeding should be terminated in respect of imports of yarns other than sewing thread originating in this country without protective measures being imposed.

(66) No objections to these conclusions were raised in the Advisory Committee.

(67) The complainant and the 'Fédération Internationale de la Filterie' were informed of the facts and principal considerations on the basis of which the Commission intended to terminate the proceeding with regard to imports of sewing thread originating in all the countries concerned as well as imports of all other yarns concerned originating in the Republic of Korea and did not object to them.

I. FINAL PROVISION

(68) In the interest of sound administration, a period should be fixed within which the parties concerned may make their views known and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of single and multiple (folded) or cabled yarns containing 85 % or more by weight of polyester staple fibres, not put up for retail sale, falling within CN codes 5509 21 10, 5509 21 90, 5509 22 10 and 5509 22 90 and other yarns of polyester staple fibres mixed mainly or solely either with artificial staple fibres or with cotton, not put up for retail sale, falling within CN codes 5509 51 00 and 5509 53 00 and originating in Taiwan, Indonesia, India, the People's Republic of China and Turkey.

2. The rate of the duty applicable to the net free-at-Community-frontier price before duty, shall be as follows:

	Rate of duty %	*Taric additional code*
Taiwan	24,5	8578
Indonesia	21,1	8579
India	11,8	8580
People's Republic of China	29,6	8581
Turkey	52,1	8582;

with the exception of imports which are manufactured and sold for export to the Community by the following companies. These companies shall be subject to the rate of duty mentioned hereunder.

	Rate of duty %	*Taric additional code*
Taiwan		
Chung Shing Textile Company Ltd, Taipei	2,2	8583
India		
Rajasthan Spinning & Weaving Mills Ltd, Gulapura	2,0	8584
The Shree Meenakshi Mills Ltd, Madurai	11,8	8585
Deepak Spinners Ltd, Baddi, Solan	3,7	8586

	Rate of duty %	*Taric additional code*
Gokak Patel Volkart Ltd, Gokak Mills Division, Bombay	3,7	8586
Himachai Fibres Ltd, New Delhi	3,7	8586
Hind Syntex Ltd, Dewas	3,7	8586
Indo Rama Synthetics (India) Ltd, New Delhi	3,7	8586
Loyal Textile Mills Ltd, Kovilpatti	3,7	8586
Orient Syntex Ltd, Bombay	3,7	8586
Precot Mills Ltd, Coimbatore	3,7	8586
Rajasthan Textile Mills, (Prop. Sutlej Cotton Mills Ltd), Bhawanimandi	3,7	8586
Sholingur Textiles Ltd, Dindigul	3,7	8586
Soundaraja Mills Ltd, Dindigul	3,7	8586
The Madhavnagar Cotton Mills Ltd, Madhavnagar	3,7	8586
Vardhman Spinning & General Mills Ltd, Ludhiana	3,7	8586
Yarn Syndicate Ltd, Calcutta	3,7	8586
Modern Syntex Ltd, Bombay	3,3	8587
Sree Satyam Spinning & Weaving Mills Ltd, Secunderabad	9,8	8588
Reliance Chemotex Industries Ltd, Bombay	2,1	8589
The Coimbatore Pioneer Mills Ltd, Peelamadu, Coimbatore	3,3	8590
Banswara Syntex Ltd, Bombay	6,0	8591
Turkey		
Bisas Bursa Iplic Sanayii AŞBursa	10,1	8592
Soktas Pamuk ve Tarim Ürünlerini Değer Pendirme Ticaret ve Sanayii AŞSöke	4,1	8593
Ceytas Ceyhan Tekstil Sanayii AŞCeyhan, Adana	2,6	8594.

The free-at-Community-frontier price shall be net if the actual conditions of payment provide for payment within 30 days of the arrival of the goods on the customs territory of the Community. It shall be increased by 1 % for each further month by which the period for payment is extended.

3. None of the duties shall apply to imports of the products specified in paragraph 1 manufactured and sold for export to the Community by P.T. Kewalram Indonesia, Bandung, Indonesia (Taric additional code : 8595) and Guangying Spinning Co. Ltd, Guangzhou, People's Republic of China (Taric additional code : 8596).

4. In cases where the exporting company is not the same as the producing company, the rate applicable to the producing company shall apply.

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 paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

The anti-dumping proceeding concerning the imports of sewing thread falling within CN code 5508 10 11 and originating in the Republic of Korea, Taiwan, Indonesia, India, the People's Republic of China and Turkey is hereby terminated.

Article 3

The anti-dumping proceeding concerning imports of certain yarns of staple polyester fibres falling within CN codes 5509 21 10, 5509 21 90, 5509 22 10, 5509 51 00 and 5509 53 00 and originating in the Republic of Korea is hereby terminated.

Article 4

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

Article 5

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities.*

Subject to Articles 11, 12 and 13 of Regulation (EEC) No 2423/88, Article 1 of this Regulation shall apply for a period of four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 27 September 1991.

For the Commission

Frans ANDRIESSEN

Vice-President