COMMISSION REGULATION (EEC) No 1956/92

of 7 July 1992

imposing a provisional anti-dumping duty on imports of synthetic fibres of polyesters originating in India and 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 Community [1], and in particular Article 11 thereof,

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

Whereas :

A. PROCEDURE

(1) In September 1990 the Commission received a written complaint lodged by the International Rayon and Synthetic Fibres Committee (IRSFC) on behalf of producers whose collective output of synthetic fibres of polyester was stated to constitute a major proportion of Community production of the product in question. The complaint contained evidence of dumping of the product concerned originating in India and the Republic of Korea (Korea), and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

The Commission accordingly announced, by notice published in the *Official Journal of the European Communities* [2] the initiation of an anti-dumping proceeding concerning imports into the Community of synthetic fibres of polyester, falling within CN code 5503 20 00 and originating in India and Korea and commenced an investigation.

It has to be noted that a review of the anti-dumping measures imposed by Council Regulation (EEC) No 3946/88 [3] on imports of synthetic fibres of polyesters originating in Mexico, Romania, Turkey, Taiwan, the United States of America and Yugoslavia based on Article 14 of Regulation (EEC) No 2423/88 was carried out concurrently [4].

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

(3) All the known Korean exporters, most of the Indian exporters, and all complainant Community producers made their views known in writing. Submissions were also made by a number of importers.

(4) 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 :

(a) *Community producers*

— Hoechst AG, Frankfurt/Main, Germany,

— Du Pont de Nemours GmbH, Bad Homburg, Germany,

— Enka AG, Wuppertal, Germany,

— Rhône Poulenc Fibres SA, Lyon, France,

— Weliman International Ltd, Mullagh-Kells, Ireland,

— Enichem Fibre Spa, Milano, Italy,

— Montefibre Spa, Milano, Italy,

— Akzo NV, Arnhem, Netherlands,

— Nurel SA, Barcelona, Spain,

— La Seda de Barcelona SA, Barcelona, Spain,

— Rhône Poulenc Fibras SA, Barcelona, Spain,

— Brilen SA, Barcelona, Spain,

— Hoechst Fibras SA, Portalegre, Portugal.

These Community producers are all members of IRSFC.

(b) *Indian exporting producers*

— ICI India Ltd, Bombay,

— India Polyfibres Ltd, Lucknow,

— Indian Organic Chemicals Ltd, Bombay,

— JCT Fibres ltd, New Delhi,

— Orissa Synthetics Ltd, New Delhi,

— Reliance Industries Ltd, Bombay,

— Swadeshi Polytex Ltd, New Delhi.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No C 291, 21. 11. 1990, p. 20.
[3] OJ No L 348, 17. 12. 1988, p. 49.
[4] OJ No C 230, 15. 9. 1990, p. 3.

(c) *Korean exporting producers*

— Samyang Co Ltd, Seoul,

— Sunkyong Industries Ltd, Seoul,

— Cheil Synthetic Textiles Co Ltd, Seoul.

(5) The Commission requested and received detailed written and oral submissions from the complainant, from the exporting producers named and from a number of importers and verified the information provided to the extent considered necessary.

One Indian exporting producer refused full access to the information requested concerning the establishment of normal value. The Commission has therefore made its findings concerning normal value for this company on the basis of the facts available, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88.

(6) The investigation of dumping covered the period from 1 January 1990 to 31 August 1990 (investigation period).

B. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT AND COMMUNITY INDUSTRY

1. Product under consideration

(7) The product concerned by the notice of initiation of this antidumping proceeding is synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning; it is commonly referred to as polyester synthetic fibres (hereafter PSF).

This product is a basic material used at various stages of the manufacturing process of textile goods, depending on the nature of textiles concerned. Around 60 % of the Community consumption of PSF is used for spinning, that is to say manufacturing filaments for the production of textiles, after mixing or not with other fibres such as cotton or wool. Approximately 25 % is used for filling, that is to say the stuffing or padding of certain textile goods (for example cushions, car seats, jackets, . . .) while the remaining 15 % is used for other non-woven applications, in particular the production of carpets.

(8) Although the potential use and the quality of PSF sold may differ, this does not entail any significant differences in the basic physical characteristics, consumer's perception or marketing of the various types of PSF concerned. They should therefore be considered as one product for the purpose of this proceeding.

The question was indeed raised by some importers whether a differentiation should not be made between PSF used for filling and the others because of a different use. Such differentiation is however not acceptable since it is only possible at the downstream stage of processing PSF. By contrast, before such processing all types of PSF show in general the same physical characteristics.

Some exporters and importers also requested that PSF having special features, such as conjugate fibres, low-melt fibres or thermofusable fibres should be considered as a product different from the above defined product and excluded from the scope of the present proceeding, since their prices exceeded by far the selling prices of other fibres.

However, the investigation showed that, although there are several types of PSF having various features in order to meet specific needs, their basic physical characteristics, application and use were the same as for other PSF. In addition, the market of this product is in fact formed by overlapping series of PSF types with no clearly defined boundaries between them. Accordingly, it was found that any specific feature did not render the allegedly special PSF different and that, in order to avoid any discrimination, they should be covered by the scope of the present proceeding.

2. Like product

(9) The investigation showed that the various types of PSF sold on the Indian and Korean market are, despite minor differences in length, thickness or quality, alike to the PSF exported from these countries to the Community.

Likewise, apart from the abovementioned possible minor differences, the PSF exported from India and Korea to the Community are alike in all respects to the Community-produced PSF.

3. Community industry

(10) The Commission found that the complainants manufactured more than 80 % of the total Community output of the like product and thus

form a major proportion of the total Community production in accordance with Article 4 (5) of Regulation (EEC) No 2423/88.

C. NORMAL VALUE

1. Normal value based on prices in the exporting country

(11) As regards four Korean and Indian exporting producers, PSF were sold in sufficient quantities and at prices which permitted recovery of all costs reasonably allocated in the normal course of trade on the domestic market and normal value was provisionally determined on the basis of the weighted average domestic prices of the types of PSF considered. These prices were net of all discounts and rebates directly linked to the sales of PSF.

Where the volume of such sales was less than the threshold established by the Commission in previous cases as 5 % of the volume of exports of these types to the Community, the Commission considered such sales to be insufficient to be representative and determined normal value on the basis of constructed value.

2. Normal value based on constructed value

(12) As regards the remaining Indian and Korean exporting producers, types of PSF suitable for direct comparison were sold in substantial quantities during the investigation period on the domestic market at prices which did not permit recovery, in the normal course of trade, of all costs reasonably allocated and the normal value was determined on the basis of a constructed value of each type concerned.

In such circumstances the constructed value was established on the basis of the costs, both fixed and variable, in the country of origin, of materials and manufacture for the types sold on the domestic market plus a reasonable amount for selling, general and administrative expenses, established with regard to the domestic sales on the basis of the audited accounts of the producing exporter concerned and duly allocated on the basis of the turnover of the type under consideration, and for profit.

As regards profit, when the exporting producers concerned had no profitable sales of any type of the like product, profit was established on the basis of the average profit realized by the other producers on their profitable sales of the like product on the domestic market, in accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88.

(13) For the remaining Korean producer referred to in recital 12, in the absence of any information on the costs of production of the types of PSF concerned, the Commission was unable to assess the profitability of these sales. Therefore, it had to establish normal value on the basis of the costs of manufacture and selling, general and administrative expenses of other types of PSF sold on the domestic market by this producer, in accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88.

This company claimed that the costs of production of the types of PSC concerned were not reported because these were substandard products, for which only the net realizable value could be supplied. This was not accepted since the quantity of the alleged substandard PSC exceeded by far the proportion of by-product which could be considered as generated by the production process. Furthermore, the Commission was not in possession of any evidence showing that the types concerned were of a different quality than any other. As far as profit was concerned, it was established on the basis of the average profit achieved on the domestic market on the remaining PSF sales of this exporter.

D. EXPORT PRICE

(14) The Commission verified for the products of each exporter at least 70 % of all transactions during the investigation period. This quantity was considered representative of all transactions of these exporters during this period.

Since the exports by all Indian and two Korean exporting producers were made directly to independent importers in the Community, the export prices were determined on the basis of the prices actually paid or payable for the products sold which were found to be reliable. For one Korean exporting producer, the export price was based on the price paid or payable by an independent sales company in Korea for the product when sold for export to the Community.

E. COMPARISON

1. General

(15) For the purpose of a fair comparison between normal value and export price and in accordance with Article 2 (9) and (10) of Regulation (EEC) No 2423/88, the Commission took account of differences affecting price comparability such as different physical characteristics, import charges and selling expenses, where a direct relationship between these differences and the sales under consideration could be found. All comparisons were made at ex-works level and at the same level of trade.

2. Differences in physical characteristics

(16) As far as differences in physical characteristics are concerned, normal value was adjusted, when the claim of a difference was substantiated, by an allowance based on the effect of these differences on the market value of the product in the country of origin or export.

For this purpose, the differences in market value were determined, as in previous cases, on the basis of the significant physical differences in full cost of production terms, including a ratio of selling, general and administrative expenses and the profit margin which are normally included in the prices of the domestic models used for comparison.

3. Difference in import charges

(17) Several Indian exporters claimed that normal value should be reduced by an allowance corresponding to import charges borne on materials physically incorporated in the like product when destined for domestic consumption and refunded when exported to the Community.

However no satisfactory evidence was given on the exact nature and amount of the import charges borne on these materials.

Therefore, in accordance with Article 2 (10) of Regulation (EEC) No 2423/88, the Commission, for its provisional findings, rejected this claim.

F. DUMPING MARGINS

(18) Since export prices varied considerably, normal value for the domestically sold models of the exporters were compared with the export price of comparable models on a transaction-by-transaction basis. The preliminary examination of the facts shows the existence of dumping in respect of PSF originating in India and Korea on the part of most of the exporters investigated, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community. The margin of dumping varied according to the exporter, but the weighted average margin for all the Indian exporting producers were substantial and in any case higher than the amount necessary to remove the injury caused by that dumping (see recitals 50 to 57).

For the Korean exporting producers, the weighted average margins were as follows:

— Sunkyong 1,68 %,

— Samyang 9,02 %.

(19) For those producers that neither replied to the Commission's questionnaire, nor otherwise made themselves known, or refused access to information deemed to be necessary by the Commission, dumping was determined on the basis of the facts available in accordance with the provision of Article 7 (7) of Regulation (EEC) No 2423/88. In this connection, since the quantity exported by the cooperating Indian and Korean exporting producers represents more than 90 % of the exports to the Community, the Commission considered that the result of its investigation in each of the exporting countries concerned provided the most appropriate basis for determination of the margin of dumping. Since it could create an opportunity for circumvention of the duty if the dumping margin for those producers was any lower than the highest dumping margin for India and for Korea, it is considered appropriate to use these dumping margins for these groups of producers.

(20) As far as the Korean producer Cheil is concerned, no dumping was found.

G. INJURY

(21) The Commission considered that the effects of Indian and Korean imports had to be analysed cumulatively. Indeed, the exported products of each of the countries concerned were like products, sold or offered for sale in the same geographical markets, had common or similar channels of distribution, were simultaneously present in the market, and were not negligible as such.

Consequently, these imports produced a similar and simultaneous effect on the Community industry which must be assessed jointly.

(22) In addition, it should be noted that the imports subject to the anti-dumping measures imposed by Regulation (EEC) No 3496/88 and currently under review (see recital 1), were also present on the Community market.

2. Community consumption

(23) The size of the Community market is relatively stable. It increased from 431 535 tonnes in 1988 to 441 033 tonnes in 1989 but decreased to 424 194 tonnes in 1990 (277 507 tonnes during the investigation period).

3. Volume and market shares of the dumped imports

(24) The volume of dumped PSF imported form India increased from 1 258 tonnes in 1988 to 5 551 tonnes in 1989, 8 877 tonnes in 1990 and 5 886 tonnes in the investigation period. This represented an increase in market share from 0,3 to 2,1 %.

The volume of dumped PSF imported form Korea increased from 3 459 tonnes in 1988 to 6 996 tonnes in 1989, and in 16 150 tonnes in 1990 and 11 282 tonnes in the investigation period. This represented an increase in market share from 0,8 to 4,1 %.

(25) The cumulated volume of dumped imports from India and Korea showed an increase form 4 717 tonnes in 1988 to 25 027 tonnes in 1990 and 17 168 tonnes in the investigation period. This represented an increase in market share from 1,1 to 6,2 %.

Therefore the market share of the dumped imports has to be considered as significant. In addition, account must be taken of the fact that their volume is increasing at a very rapid rate between 1988 and 1990, i. e. by a factor of 4.

4. Prices of the dumped imports

(26) The Commission investigated whether the Indian and Korean exporting producers practised price undercutting during the investigation period. This was examined in relation to the sales of the exporting producers in the Member States where the majority of the PSF concerned was sold.

The Commission first selected representative PSF of the various types and categories marketed by the Community producers, then selected representative Indian and Korean export types which were directly comparable.

The types so determined were compared on the basis of sales to the first independent customer at the same level of trade. The average selling price of each Indian and Korean export type was thus compared in each of the Community markets considered with the corresponding figures for the appropriate Community industry types.

Adjustments were made, when necesssary, to take account of differences in direct selling expenses where comparison could not be made within the same sales channel. Adjustments, as described in recital 16, were also made when necessary to reflect any differences in the quality of the product sold.

(27) The comparison outlined above showed significant price undercutting on the part of the Indian and Korean exporters.

As far as the Indian exporters are concerned, the price undercutting found ranged from 10 to 29 %. For the Korean exporters, price undercutting found ranged from 15 to 20 %.

5. Other relevant economic factors

(a) *Capacity, utilization rate, production and stocks*

(28) The production of PSF by the Community industry rose from 379 286 tonnes in 1988 to 107 251 tonnes in 1990 (extrapolated from the production figures for the investigation period, i. e. 271 110 tonnes).

Since its production capacity was increased from 432 903 to 471 723 tonnes over the same period, its utilization rate remained relatively stable, i. e. 86 to 88 %.

During this period the stocks of the Community industry increased from 29 146 to 56 533 tonnes, i. e. by 94 %.

(b) *Volume of sales and market share of the Community industry*

(29) The quantity of PSF sold in the Community by the Community industry increased by 5,6 % from 337 424 tonnes in 1988 to 365 465 tonnes in 1989, and fell by 7,3 % to 330 310 tonnes in 1990, (220 207 tonnes in the investigation period).

As far as market share is concerned, figures remained relatively stable : after an increase from 78,2 % in 1988 to 80,8 % in 1989, the market share of the Community industry slightly decreased to 79,4 % in 1990.

(c) *Price evolution*

(30) A detailed investigation of PSF pricing in the Community was made by reference to the selling prices of the PSF models by the Community industry and the exporters concerned.

This investigation showed that PSF prices increased in the Community between 1988 and 1989, owing to the imposition of anti-dumping measures on imports originating in several countries (see recitals 2 and 21) and decreased again in 1990 to the level of prices in 1988.

(d) *Profitability*

(31) The Commission found that there was a negative return on sales of the Community industry from 1988 onward. Although these negative results showed a slight improvement in 1989, a further deterioration took place during the investigation period. In 1990, none of the Community producers reached reasonable profitability and several of them incurred severe losses. On average, the Community industry suffered losses during the investigation period by approximately 2,3 %.

(e) *Employment and investment*

(32) Between 1988 and 1990, 237 jobs were lost in the Community industry, that is to say 5 % of the workforce.

The Communty industry also cut its investments over this period, and two plants were closed.

6. Conclusion

(33) In order to determine whether the Community industry is suffering material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88 the Commission took account of the following facts :

— the Community producers were unable to increase their sales significantly between 1988 and 1989, and suffered a significant erosion of their sales in 1990, below the level of 1988,

— the Community industry incurred losses in spite of rationalization measures involving cuts in the workforce and plant closures.

(34) The abovementioned decline of sales and losses lead the Commission to conclude, for the purpose of its provisional findings, that the Communty industry has been suffering material injury within the terms of Article 4 (1) of Regulation (EEC) No 2423/88.

H. CAUSATION OF INJURY

1. Effect of the dumped imports

(35) In determining whether the material injury is caused by the dumped imports, the Commission took account of the following facts :

— imports of PSF from India and Korea have increased at a very rapid rate since their volume was rising by a multiple of 4 between 1988 and 1990,

— the Indian and the Korean exporters practised a significant price undercutting which undoubtedly led to the rapid penetration of the dumped imports,

— although an increase in prices might have been expected after the imposition of anti-dumping duties on imports of PSF from several countries (see recitals 2 and 21), the level of price for PSF in the Community remained stagnant and showed a downward trend again in the investigation period.

(36) It has to be recalled that, as mentioned in recitals 2 and 21, anti-dumping duties were imposed in December 1988 on imports of PSF originating in six countries, not including India and Korea whose respective market shares were at this time minimal. As a result of these measures, the situation of the Community industry improved in 1989. In addition, owing to the elimination of the unfair price advantage, the imports subject ot the above anti-dumpimg duties decreased by 38 %, i. e. a decrease of 22 000 tonnes between 1988 and 1990.

However, the Commission found that this improvement was quickly followed by a renewed deterioration of performances in the Community industry during the investigation period. This deterioration could be characterized by a decline of its sales by 7,3 % in 1990, i. e. approximateldy 26 000 tonnes, an erosion of its market share, and an aggravation of its profit situation, already insufficient, resulting in substantial losses for several Community producers.

(37) The Commission found that the above negative elements, irrespective of the imposition of the abovementioned anti-dumping measures, coincided in fact with the arrival on the Community market of the imports from India and Korea and their rapid penetration. It is noteworthy in this respect that the volume of sales lost in the Community industry coincided approximately with the volume of sales gained by the Indian and Korean exporters, and with the volume of sales lost by the imports subject to anti-dumping measures.

In fact, the rapid penetration of the Indian and Korean imports, achieved through constant and substantial price undercutting, was obtained at the expense of the imports subject to the anti-dumping measures, and had the effect of impeding the improvement of the situation of the Community industry notwithstanding the decrease of the latter and eventually of provoking a further deterioration.

Indeed, given the sensitivity of the customers to price considerations in this sector, the presence of low-priced dumped imports from India and Korea on a market recently shielded from the effect of other unfair commercial practices could not fail to have a very negative effect on sales volumes, sales prices and consequently the profits of the Community industry.

2. Effect of other factors

(38) The Commission has also considered the effect of other factors. Although the Commission has found, as discussed above, that material injury has been caused to the Community industry by dumped Indian and Korean exports, this does not entail any assumption that all injury suffered in recent years is to be attributed to those exports. Indeed, the stagnant demand on this market might have had some negative effects on the Community industry.

(39) However, in view of the stable level of consumption and capacity utilization, the losses of the Community industry cannot be attributed to the market situation. The Commission has also examined the effect of non-dumped imports. Although these may have had some negative effects on the situation of the Community industry, it was found that these imports, which remained stable over the period examined, do not affect the conclusion that dumped imports from Korea and India had, in isolation, a clear detrimental impact on the Community industry.

(40) Several Korean exporters argued in this respect that the main effect of their exports was to replace or displace the imports on which anti-dumping measures were imposed. Although this might be true, these exporters had no right to acquire, through dumping, the market share of other exporters subject to anti-dumping measures, because of unfair commercial practice, and thus to impede the recovery of the Community industry and to provoke a further deterioration in its situation.

(41) Several Indian exporters also claimed that injury could result from the effect of other factors since their market share in the Community was to small to have any effect on the Community industry. However, as explained in recitals 21 and 22, the effect of the market share of the dumped imports has to be assessed cumulatively. This market share, which represents 6,2 %, is sufficient to have a clear detrimental impact on the Community industry, to which dumped imports from India contributed substantially.

(42) All the above elements led the Commission to determine that the effects of dumped imports of PSF from India and Korea, taken in isolation, have to be considered as causing material injury to the Community industry.

I. COMMUNITY INTEREST

1. General considerations

(43) The purpose of anti-dumping duties is to eliminate dumping which is causing injury to the Community industry and thus to re-establish a situation of open and fair competition on the Community market which is fundamentally in the general Community interest.

(44) While the Commission recognizes that the imposition of anti-dumping duties should affect price levels of the exporters concerned in the Community and subsequently may have some influence on the relative competitiveness of their products, it does not expect fair competition on the Community market to be reduced by the taking of anti-dumping measures. On the contrary, the removal of the unfair advantages gained by the dumping practices is designed to prevent the decline of the Community industry and thus to help to maintain the availability of the widest choice of producers.

(45) The Commission has also considered and balanced the effects of anti-dumping duties on PSF imported from India and Korea in relation to the specific interest of the Community industry and other interested parties including consumers.

2. Interests of Community industry

(46) In view of the nature of the material injury suffered by the Community industry, in particular the fact that it was prevented from recovering from the unhealthy situation caused by other dumped imports, the Commission considers that, in the absence of intervention, the disappearance of certain Community producers is quite probable in the short term, given the level of losses incurred by them over an extended period. This could entail a severe reduction in numbers employed and may lead to a reduction of the choice suppliers which is not in the interest of consumers.

3. Interests of other parties

(47) Arguments have been raised that the imposition of anti-dumping measures would be contrary to the Community interest, because they would result in higher prices, less competition and may harm other Community industries.

(48) Although it is clear that price advantages based on unfair practices are unjustifiable and may in the longer term be harmful even to the interests of consumers when they have the effect of weakening competitors and provoking their disappearances, it is unclear in this case that, for the consumers of textile goods, the imposition of protective measures will result in higher prices since PSF is only a raw material which undergoes many processes before reaching the consumer level.

As far as the processing industry is concerned, the extent of any price rise is expected to be limited in vies of the fact that competition between the numerous different Community producers and exporters will not be reduced. Indeed, the duties proposed are relatively low in particular with respect to the fact that in most cases they do not cover the undercutting margins referred to in recital 27. In addition, they will be imposed on imports on which the processing industry is far from being dependent, given the choice of suppliers available on this market.

4. Conclusion

(49) In conclusion, after balancing the various interests involved, the Commission considers that the imposition 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 impose anti-dumping measures in the form of a provisional anti-dumping duty.

J. DUTY

(50) When calculating the amount of duty adequate to remove the injury, the Commission had to consider that the Community industry as a whole is not profitable. Accordingly it is considered necessary that the measures taken allow the Community industry to cover its costs of production and to obtain the reasonable profit it has been deproved of through the effects of the dumped imports.

(51) In the circumstances of the industry concerned, it was found that an adequate annual return on sales of 8 %, based on the normal profit rate achieved in previous years in this industrial sector and the need for long-term investments, could be regarded as an appropriate minimum.

(52) In order to establish the margin by which the exporting producers should increase their prices the Commission then calculated for the complainant Community industry on a weighted average basis, the increase in prices which would be required to enable them to cover their total cost and earn an 8 % profit before tax.

(53) In order to allow the Community industry to make price increases necessary to remove injury, the prices of the corresonding types of the exporting producers should increase on average by the same amount expressed as a percentage of the individual exporting producer's actual prices.

(54) In order to determine the level of the duty, price increases thus established have been expressed as a percentage of the weighted average cif value of the goods when imported.

(55) The result of this calculation was an injury margin for each exporter, which will eliminate the injury caused by dumping and thus enable the Community industry to increase its prices in order to reestablish a healthy situation. For the Korean companies concerned, since the injury margin was higher than the dumping margin found, the duty was established on the basis of the latter.

(56) For those companies which neither replied to the Commission questionnaire nor otherwise made themselves known or refused full access to information deemed to be necessary by the Commission for its verification of the company's records, the Commission considered it appropriate to impose the highest duty calculated, i.e. 15,9 % for products originating in India and 9,0 % for products originating in Korea. Indeed, it would constitute a bonus for non-cooperation to hold that the duties for these exporters were any lower than the highest anti-dumping duty determined.

(57) 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 synthetic staple fibres of polyesters, not carded, combed, or otherwise processed for spinning, (polyester synthetic fibres) falling within CN code 5503 20 00 and originating in India and the Republic of Korea.

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

(a) 15,9 % for polyester synthetic fibres specifed in paragraph 1, originating in India (Taric additional code : 85645), with the exception of imports of the products wich are produced by the following companies, the rates of duty applicable to which are set out below :

— India Polyfibres : 12,6 % (Taric additional code : 8639),

— Indian Organic Chemicals : 14,2 % (Taric additional code : 8640),

— Swadeshi Polytex : 15,3 % (Taric additional code : 8641),

— JCT Fibres : 15,4 % (Taric additional code : 8642),

— ICI India : 15,7 % (Taric additional code : 8643),

— Reliance Industries : 15,9 % (Tric additional code : 8644) ;

(b) 9,0 % for polyester synthetic fibres specified in paragraph 1 originating in the Republic of Korea (Taric additional code : 8648), with the exception of imports of the products which are produced by the following company, the rate of duty applicable to which is set out below :

Sunkyong Industries : 1,6 % (Taric additional code : 8646).

3. The duty specified in paragraph 1 shall not apply to polyester synthetic fibres manufactured by Cheil Synthetic Textiles, Republic of Korea (Taric additional code 8647).

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

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

Article 2

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

Article 3

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 mesures before the expiry of that period.

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

Done at Brussels, 7 July 1992.

For the Commission

Karel VAN MIERT

Member of the Commission