I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 830/92

of 30 March 1992

imposing a definitive 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 collecting definitively the provisional duty

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 12 thereof,

Having made a formal application to the EEC-Turkey Association Council pursuant to Article 47 (1) of the Additional Protocol to the Agreement establishing an association between the European Economic Community and Turkey [2], and in the absence of a decision of the said Association Council within the time limit referred to in Article 47 (2) of this Protocol,

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

Whereas :

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EEC) No 2904/91 [3] imposed a provisional anti-dumping duty on imports into the Community of certain yarns of polyester staple fibres falling within CN codes 5509 21 10, 5509 21 90, 5509 22 10, 5509 22 90, 5509 51 00 and 5509 53 00 originating in Taiwan, Indonesia, India, the People's Republic of China and Turkey and terminated the anti-dumping proceeding in respect of imports of the yarns concerned originating in the Republic of Korea and in respect of imports of sewing thread falling with CN code 5508 10 11 originating in all the countries concerned by the proceeding.

The Council, by Regulation (EEC) No 202/92 [4] extended this duty for a period not exceeding two months.

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional anti-dumping duty, the interested parties, who so requested, were granted an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings.

(3) Some exporters, who did not make themselves known to the Commission within the time limit specified in the opening notice, submitted responses to the Commission questionnaire, in general, well after the on-the-spot investigations in the exporting countries concerned took place and, in many cases, following the adoption of the provisional measures. Upon request, these exporters were heard by the Commission and, while their views were considered, to carry out a new investigation for any exporter would have unduly delayed the proceeding. The responses to the questionnaires submitted by them had, therefore, to be disregarded.

(4) Upon request, parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.

(5) The oral and written comments submitted by the parties were considered and, where appropriate, the Commission's findings were modified to take account of them.

[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 293, 29. 12. 1972, p. 4.
[3] OJ No L 276, 3. 10. 1991, p. 7.
[4] OJ No L 21, 30. 1. 1992, p. 31.

(6) Due to the complexity of the proceeding, in particular to the detailed verification of the voluminous data involved and the numerous arguments put forward, the investigation could not be concluded within the normal time limit as was mentioned in recital 9 of Regulation (EEC) No 2904/91.

C. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT

(i) Definition of the product

(7) The Féderation internationale de la filterie has argued, and the Community importer and finisher of sewing thread, referred to in recital 11 of Regulation (EEC) No 2904/91, has continued to maintain, that the so called 'grey yarns', i.e. 100 % polyester yarns used to produce sewing thread, should be considered as a distinct product from the other polyester yarns of staple fibre covered by the proceeding since they have different technical characteristics and end uses. However, in the main, no new evidence has been submitted to demonstrate that the alleged special characteristics of these 'grey yarns' are not also found in other yarns used for knitting and weaving purposes.

The Council confirms the Commission's conclusions on this matter outlined in recitals 10 and 11 of Regulation (EEC) No 2904/91.

(ii) Like product

(8) In recital 12 of Regulation (EEC) No 2904/91 the Commission found all polyester yarns manufactured in the exporting countries concerned by the proceeding and those produced in the Community to be like products. One Chinese exporter has argued that the yarns that it exported to the Community cannot be considered a like product, either to the yarns produced in the Community or to those manufactured in the other countries covered by the proceeding. In support of this argument, the exporter concerned alleges that the yarns it exported to the Community in the investigation period were manufactured differently, i.e. were not air-spliced, had substandard winding, had a reputation for poor quality and were used to weave low quality cloths.

The fact that the Chinese yarns concerned are not air-spliced and have inferior winding does not alter the fact that they and all the other yarns concerned are manufactured using the same basic technology and are alike in their essential physical and technical characteristics.

Furthermore, the differences alleged in respect of the uses and the customer's perception of the Chinese yarns in question merely concern the quality of these yarns and cannot be considered fundamental to the definition of like product in this proceeding.

In these circumstances, the Commission concludes that the Chinese yarns in question and both the polyester yarns manufactured in the other exporting countries concerned and in the Community are alike within the meaning of Regulation (EEC) No 2423/88.

The Council confirms this conclusion.

D. DUMPING

(i) Normal value

(9) For the purpose of definitive findings, normal value was established on the basis of the same methods as those used in the provisional determination.

(10) Two Indian exporters claimed that, in constructing normal value for the exported yarns, certain costs and expenses should be allocated on a spindle shift basis, i.e. the quantity of yarns produced in a certain period of time, rather than in proportion to turnover. The Commission considered this claim acceptable for one exporter in respect of certain manufacturing overheads, on the basis of the further evidence submitted. As to financial expenses, the Commission has reconsidered its provisional determination and has also accepted this allocation method for both exporters concerned for that part of the expenses in question which appeared to be clearly linked to the financing of plant and machinery. In the absence of accounting data justifying the allocation of the other expenses on a basis other than turnover, the Commission considers that the claims of the exporters concerned in respect of these expenses should be rejected.

(11) One of the exporters referred to in recital 10 also claimed that the expenses taken into account in the construction of the normal value should have been reduced by a part of certain income to the company. Since this income appeared to be neither regularly received nor directly linked to the product concerned, it is considered that the claim should be rejected.

(12) Two Indian exporters claimed that in constructing normal value for the exported product, which was not domestically sold, the Commission had wrongly considered that the yarns in question were fully dyed when, in fact, they were only partially

dyed. On the basis of the evidence submitted by one of the exporters concerned, the Commission has re-calculated the constructed normal value accordingly for certain of these yarns. As to the other exporter, the evidence received is considered insufficient to lead the Commission to amend its provisional findings.

(13) Another Indian exported claimed that the cost of raw materials used by the Commission in constructing normal value for the exported yarns was higher than that incurred. However, the evidence submitted by the exporter, in support of his claim, differed substantially from that made available to, and investigated by, the Commission during the on-the-spot investigation and, therefore, it is considered that the claim should be rejected.

(14) In the light of the considerations set out above, the council confirms the Commission's conclusions.

In the absence of new arguments from the interested parties other than those referred to in recitals 10 to 13, the Council also confirms the method used to establish normal value outlined in recitals 13 to 19 of Regulation (EEC) No 2904/91.

(ii) **Export price**

(15) The Council confirms the method used to establish export prices set out in recitals 20 to 22 of Regulation (EEC) No 2904/91 as no substantial comments in this respect were made by the interested parties.

(iii) **Comparison**

(16) At the provisional determination stage of the proceeding, cooperating Indian exporters requested an allowance with regard to import charges on raw materials physically incorporated in the like product, when destined for consumption in India and not collected in respect of the product exported to the Community. The allowance was granted to the extent that satisfactory justification was provided.

(17) For three Indian exporters, the quantities of raw materials actually used for the manufacture of the product concerned exported to the Community during the investigation period exceeded the quantity which has been subject to the exemption of import charges, the balance being covered by raw materials sourced at domestic prices which, under the Indian replenishment scheme, may be replaced, at a later date, by raw materials exempted from import charges.

Two of the three exporters concerned have contested the amount of the allowance granted in respect of import charges, on the grounds that the cost used by the Commission in calculating this allowance for that quantity of raw materials in excess of that exempted from import charges was not that incurred. From the documents made available to the Commission at the time of the on-the-spot investigation it was not possible to establish the cost of the raw materials in question since these documents were incomplete and did not permit the Commission to allocate the later imports of raw materials, exempted from import charges, to the export transactions in the investigation period for which raw materials at domestic prices were used. In these circumstances, in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88, the Commission considered it reasonable to calculate the allowance, in respect of the raw materials concerned, on the basis of other information available i.e. international polyester fibre prices for December 1989 as published in *Cotton Outlook*.

In support of their claim, the exporters concerned have, several months after the on-the-spot investigation took place, submitted documents and invoices which, at this stage of the proceeding, cannot be verified and therefore must be disregarded. The Commission maintains its findings in respect of the allowances granted for import charges on raw materials for the two exporters concerned.

(18) One of the Indian exporters concerned in recital 17 also claimed that, for certain export transactions of samples sent by air freight, the transport costs adjustment to the export price should be made at the level of the average transport cost for the remaining export transactions. In the light of the quantities concerned by the transactions in question, the Commission is of the view that they cannot be considered as samples and, therefore, the adjustment has to be based on the actual transport costs accounted for. The same exporter also contested the amount of the adjustment to normal value made by the Commission in respect of cash discounts. Given that the evidence submitted in support of this claim does not match with that investigated on-the-spot at the exporters premises, the Commission sees no grounds to change its provisional determination.

(19) In recital 25 of Regulation (EEC) No 2904/91, following the claims of several Indian exporters, the Commission accepted an allowance with regard to prior stage duties and indirect taxes on inputs to the like product destined for consumption in India, which were refunded by the Indian Government in respect of the product exported to the Community.

(20) The complainant has argued that the amount of the allowance granted is not in accordance with Article 2 (10) (b) of Regulation (EEC) No 2423/88 as it exceeds the amount of the duties and taxes borne by the inputs to the like product.

The Commission reiterates that verified information confirms that the amount actually refunded and allowed corresponded to the duties and indirect taxes effectively borne.

(21) In recital 18 of Regulation (EEC) No 2904/91 the Commission outlined the reasons for using the constructed normal value of the like product manufactured in India as a basis for the establishment of the normal value in China.

(22) For the reasons given in recital 8, the Chinese exporter concerned claimed that, if the Commission did not accept that its yarns were not a like product to the other polyester yarns covered by the proceeding, an adjustment should be made to normal value to take account of the differences in physical characteristics affecting price comparability between the Chinese yarns concerned and the Indian yarns.

The findings made by the Commission during its investigation and the further evidence supplied by this exporter lead the Commission to consider it appropriate to make an adjustment to normal value only to the extent of the effect on the market value of some of the quality differences concerned, namely, not air-splicing and sub-standard winding. The amount of the adjustment claimed has therefore been reasonably estimated at 5 % and the normal value reduced accordingly.

(23) The Council confirms the above findings and conclusions.

(iv) **Dumping margins**

(24) Normal value and export prices were compared on a transaction-by-transaction basis for each of the cooperating exporters investigated. The final examination of the facts shows the existence of dumping in respect of imports of the product concerned originating in 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 finally established following adjustment as outlined in recitals 10, 12 and 22, exceeds the price for export to the Community.

(25) In recital 27 of Regulation (EEC) No 2904/91 the Commission considered that, because of the lack of independence of exporters in the People's Republic of China in setting their export prices, a single dumping margin should be determined for all of them with the exception of one company, Guangying Spinning Co. Ltd, for which an individual dumping margin was determined. This company is a joint venture formed by Chinese and Hong Kong partners, the latter being related to a Community group which imports the product concerned.

(26) The complainant has argued that to provide individual treatment to this exporter constitutes a discrimination against other producers in the Community which also import the product concerned.

The fact that Guangying Spinning Co. Ltd is related, through its Hong Kong partner, to this Community group, is irrelevant to the Commission's consideration of granting individual treatment to this exporter. As outlined in recital 27 of Regulation (EEC) No 2904/91, the reasons for giving individual treatment to Guangying Spinning Co. Ltd are that it enjoys, in the People's Republic of China, a certain degree of economic independence. In the opinion of the Commission, this is sufficient to consider that any measures will not be circumvented by exports, being channelled through this company, from other exporters in China with higher dumping margins. In these circumstances, no discrimination is observed and the arguments of the complainant cannot be accepted.

(27) For the cooperating Indian exporters not selected for investigation, the Commission, for the reasons given in recital 5 of Regulation (EEC) No 2904/91, has applied the weighted average dumping margin finally established for the investigated Indian exporters.

The complainant has contested this methodology on the grounds that any dumping margin established, distinct from either an individual dumping margin or a country-wide dumping margin,

becomes arbitrary. However, the alternative methodology suggested by the complainant merely implied a similarly distinct level of dumping margin for the cooperating exporters not selected for investigation but at a higher level than that determined by the Commission.

Given the fact that the decision as to the companies to be investigated was made by the Commission and that all the cooperating exporters were advised of it at the outset of the investigation and did not object, no grounds exist for the Commission to change the methodology applied.

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

(a) *Taiwan*

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

(b) *Indonesia*

PT Kewairam Indonesia, Bandung:	0,2 %

(c) *India*

Banswara Syntex Ltd, Bombay:	2,2 %
The Coimbatore Pioneer Mills Ltd, Coimbatore:	3,3 %
Modern Syntex Ltd, Bombay:	2,0 %
Rajasthan Spinning & Weaving Mills Ltd, Gulapura:	2,0 %
Reliance Chemotex Industries Ltd, Bombay:	2,1 %
The Shree Meenakshi Mills Ltd, Madurai:	7,8 %
Shree Satyam Spinning & Weaving Mills Ltd, Secunderabad:	5,4 %.

The weighted average of the dumping margins found for the investigated exporters above amounts to 2,9 %. This percentage is considered appropriate as the dumping margin to be attributed to the cooperating exporters in India not investigated.

(d) *People's Republic of China*

Chinatex Non-Cotton Yarns & Fabrics Import and Export Co., Beijing:	23,5 %
Guangying Spinning Co. Ltd, Guangzhou:	0,2 %

(e) *Turkey*

Bisas Bursa Iplik Sanayii AS, Bursa:	10,1 %
Ceytas Ceyhan Tekstil Sanayii AS, Ceyhan, Adana:	2,6 %
Soktas Pamuk ve Tarim Urünlerini Deger Pendirie Ticaret ve Sanayii AS, Söke:	4,1 %.

(29) The dumping margins found for Guangying Spinning Co. Ltd, Guangzhou and PT 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 having been dumped.

(30) In recitals 30 and 31 of Regulation (EEC) No 2904/91, the Commission addressed the issue of establishing the dumping margin for exporters which neither replied to the Commission questionnaire within the established time limit nor otherwise made themselves known and the consequent recourse to facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. The Commission distinguished between the various countries concerned, depending on the level of coverage of the exports reported by cooperating exporters in relation to the total exports from the respective country. On that basis, dumping margins for the exporters in countries with a high coverage of exports. i.e. India and the People's Republic of China, were estimated to be equal to the highest dumping margin found for an investigated exporter in the respective country. For the exporters in the countries with a low coverage of exports, i.e. Taiwan, Indonesia and Turkey, dumping margins were calculated on the basis of other available information, in particular that contained in the complaint and in Eurostat statistics, duly adjusted, as information obtained from cooperating exporters in these countries could not be held to be representative for all other exporters.

(31) Representatives of the Indonesian Government and of the exporters in Indonesia and Taiwan have argued that the high level of the country-wide dumping margin provisionally established, is far from reflecting the actual prices and costs prevailing in these countries. As a consequence, the Commission should not rely on the allegations contained in the complaint for the establishment of normal value but make determinations more in line with the information verified during the investigation. Furthermore, they have provided the Commission with statistics relative to the actual product type concerned by the majority of the imports into the Community from these two countries, such information not being available in Eurostat statistics.

Further to these arguments, the Commission notes that, while the costs of raw materials of the yarns concerned alleged in the complaint are more or less in line with the average costs investigated in all the exporting countries involved in the proceeding, this is not the case for the overheads and profits which, on average, are far below those alleged in the complaint. This situation, supported by independent sources, namely the 1989 production costs comparison study made by the international Textile

Manufacturers' Federation, and the data submitted with regard to the product types actually exported by firms other than those investigated in Taiwan and Indonesia, have led the Commission to reassess the normal value to be used for the final establishment of the country-wide dumping margins for these two countries, by further adjusting, as appropriate, the information in the complaint.

(32) The Association of Exporters in Turkey expressed serious doubts concerning the accuracy of Eurostat statistics used for the establishment of the country-wide dumping margin for Turkey. Upon request, the national customs authorities concerned carried out an investigation, the outcome of which is that a substantial proportion of the imports recorded in Eurostat under the CN codes corresponding to the yarns concerned originating in Turkey, have been misclassified, as they should have been entered under a CN code heading not covered by the proceeding. The result of this misclassification is that the coverage of exports by the investigated exporters in Turkey increases considerably and, therefore, the Commission considers that the highest dumping margin found for an investigated exporter is an appropriate basis for estimating the country-wide dumping margin for this country.

(33) The complainant has objected to this change in the method to establish the country-wide dumping margin for Turkey. It is argued that, in spite of the misclassification, Turkey should not be considered as a country with a high coverage of exports and therefore the country-wide dumping margin for this country should not be based on the highest dumping margin found for a cooperating exporter, but at a higher level.

The Commission notes that, as a result of the misclassification, the proportion of total imports from Turkey covered by the imports of the product concerned reported by the three investigated exporters in Turkey is now such that the information obtained from these three companies is representative for all other exporters in this country and, thus, the most reasonable information available pursuant to Article 7 (7) (b) of Regulation (EEC) No 2423/88.

(34) On the basis of the foregoing, the following dumping margins expressed as a percentage of cif-Community-frontier-prices have been determined :

Taiwan	14,3 %
Indonesia	11,9 %
India	7,8 %
People's Republic of China	23,5 %
Turkey	10,1 %

(35) The Council confirms the abovementioned findings and conclusions.

E. INJURY

(i) Cumulation of the effects of the dumped imports

(36) In recital 34 of Regulation (EEC) No 2904/91, the Commission concluded that the effect on the Community industry of dumped imports from the five countries concerned by the proceeding had to be assessed jointly. One Chinese exporter has objected to this conclusion and claimed that the injurious impact of imports from the People's Republic of China should not be cumulated with that of the other imports concerned but looked at in isolation. This exporter argued that imports from the People's Republic of China should be ascribed to the lower quality segment of the market which does not compete with the medium or high segment where the other yarns are found. In support of its claim, the Chinese exporter also alleged that the trend of the volume of Chinese imports had, in sharp contrast to the increase shown by imports from the other countries concerned, declined steadily since 1987, and that, in assessing cumulation, the Commission should take into account the further decline of the Chinese imports after the investigation period.

(37) The fact that imports of Chinese yarns during the investigation period were not air-spliced and were of sub-standard winding, does not permit a clear dividing line to be established, separating these yarns from those either imported from the other countries concerned or manufactured in the Community. As is concluded in recital 8, all yarns concerned by the proceeding are alike, whatever their source. In addition, there is, to a considerable extent, commercial interchangeability and competition between yarns originating in all sources ; this is shown by the limited difference in the user's perception of the Chinese yarns compared to the yarns concerned manufactured elsewhere. The argument is therefore rejected.

As to the volume development of the dumped Chinese imports concerned into the Community, they increased from 3 546 tonnes in 1986 to 6 755 tonnes in 1987, to 4 490 tonnes in 1988 and reached 3 310 tonnes during the investigation period. Thus, these imports showed no real trend but remained during the investigation period, after a peak in 1987 and 1988, more or less at the level of 1986, which cannot be considered to be negligible as such. In assessing cumulation, it is the standard practice of the Commission not to examine the development of imports after the investigation period as they could be influenced, in some cases, by the initiation of the proceeding.

(38) As a result of the misclassification referred to in recital 32, the Turkish exporters argued that the revised Community market share held in 1989 by the imports concerned originating in Turkey should be considered *de minimis* and, therefore, not capable of causing material injury to the Community industry. As a consequence, the proceeding should be terminated in respect of these imports without the imposition of protective measures.

The revised level of these imports compared to the apparent Community consumption shows that they continue to hold a non negligible market share during the investigation period. Consequently the argument put forward must be rejected.

(39) In the light of the consideration set out above, the Council confirms the Commission's findings outlined in recitals 33 and 34 of Regulation (EEC) No 2904/91 and concludes that the effects of the Chinese and the Turkish dumped imports have to be analysed cumulatively with the other imports concerned.

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

(40) Following the misclassification referred to in recital 32 with regard to imports of the yarns concerned originating in Turkey, the cumulated volume and market share of the dumped imports from the five countries involved, outlined in recitals 35 and 36 of Regulation (EEC) No 2904/91, need to be adjusted accordingly. Thus, the volume of dumped imports into the Community originating in these countries is now 15 047 tonnes during the investigation period, which corresponds to a Community market share of 8,3 %. The volume and market share of these imports in 1986 were respectively 7,877 tonnes and 3,7 %.

The Council confirms these findings.

(iii) **Prices of dumped imports**

(41) In its provisional findings, the Commission established price undercutting for all countries concerned and for almost all the exporters investigated. The weighted average undercutting ranged up to 56,48 %. The Chinese exporter referred to in recital 22 claimed that, in establishing price undercutting, the Commission should, for the purpose of comparing prices of the Chinese yarns imported and of the Community yarns, make a quality adjustment. The Commission has considered it justified to take into account the same adjustment made to normal value for the establishment of the level of undercutting by the exporter concerned which has been reduced accordingly.

The Council confirms the above conclusion as well as the findings of the Commission with regard to the undercutting margins as described in recital 37 of Regulation (EEC) No 2904/91.

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

(42) In assessing the situation of the Community industry, the Commission took into account several economic indicators in respect of the Community producers investigated and considered it reasonable to make reference to some of these indicators in a larger context, i.e. the overall situation of producers of the yarns concerned in the Community.

With regard to the Community producers investigated, the following facts emerge :

— the volume of production and capacity utilization remained generally stable on an annual basis during the period from 1986 to 1989,

— since 1986 volume of sales was in line with that of production and, as a result, the year-end stock levels showed no real trend,

— the development in sales volume compared to that of the apparent Community consumption led to a certain increase in the market share held by these producers since 1986,

— Community producers were forced, in general, to refrain from increasing their prices when the upward development of costs of production would normally have so advised. In many cases, since the end of 1988 they were even obliged to reduce their prices to levels which did not allow reasonable profits to be made and, in most cases, were below the costs of production,

— losses on sales incurred in 1988 and 1989 amounted, on average, to 1,3 and 5,9 % respectively,

— more than 1 000 jobs were lost during 1988 and 1989. This represents nearly a 20 % reduction of the personnel employed in 1987.

The Commission also noted certain relevant economic factors in respect of all Community producers of the like product, as follows :

— total volume of production in the Community, as estimated by the complainant and not contested by any interested party, decreased from 202 700 tonnes in 1986 to 157 150 tonnes during the investigation period, i.e. by more than 22 %,

— from 1986 to 1989, 77 production units totally or partially involved in the spinning of the polyester yarns concerned were closed down in nine Community countries, either as a result of restructuring or of cessation of activities.

(43) No other new facts concerning the injury findings were put forward to the Commission, although one Chinese exporter challenged these findings on a number of points.

(44) The exporter concerned argued that the findings made by Commission in respect of production, capacity utilization, sales, stocks and market share of the Community producers investigated, do not point to injury. It is further alleged that the provisional findings contain no indication of the price trend established by the Commission and that, since the Community producers investigated generally manufactured the yarns concerned as well as other textile products, findings on profitability, plant closures and employment should not be made on a company-wide basis but refer only to the yarns specifically concerned. On the basis of these arguments, the exporter concludes that in the Commission's findings there are not sufficient indicators as to injury.

The Commission considers that, in accordance with Article 4 (1) (c) of Regulation (EEC) No 2423/88, in assessing the injurious situation of the Community industry, the trends in the relevant economic factors should not be evaluated in isolation since no one or several of them can necessarily give decisive guidance. Indeed, recital 45 of Regulation (EEC) No 2904/91 indicates that, in view of the characteristics of the industry concerned, economic factors such as production, sales, stocks and market share did not clearly reflect, in all cases, the difficult market conditions in which the Community producers investigated have had to operate and, as a result, injury is better reflected by the development of other parameters such as prices, profitability and employment.

The prices practised by the Community producers investigated decreased, on average, by 2,9 % during the investigation period in comparison with those prevailing in 1988. However, what is relevant on this matter is that these producers were constantly prevented from increasing their prices since 1986, notwithstanding the pressure exerted by the upward development of costs of production during that period.

The Commission confirms that findings on profitability specifically refer to the yarns concerned and that the jobs lost by the Community producers investigated can mainly be allocated to the spinning activities related to the yarns in question, since these activities were either exclusive or predominant in the majority of the producers selected for investigation.

(45) The same exporter submitted that no injury conclusions can be drawn from data which were not verified by the Commission. Recital 3 of Regulation (EEC) No 2904/91 states the reason why the Commission decided in this proceeding to select a certain number of firms for investigation as well as the criteria followed in this selection. The Commission concluded in its provisional findings that the Community industry had suffered material injury which manifested itself, in particular, by price erosion, insufficient profitability or even losses and reduction in employment. The negative trend of all these parameters, on which the provisional injury conclusions are based, were found in practically all the producers investigated, which are representative of the Community industry, and, therefore, it cannot be maintained that these conclusions are drawn from unverified data.

(46) The Council confirms the above findings and concludes that the Community industry has suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88, specially demonstrated by the suppression of price increases which normally would have occurred and the deterioration in profitability and employment.

F. CAUSATION OF INJURY

(i) **Effect of dumped imports**

(47) In its provisional findings, the Commission determined that the development of the negative parameters in the Community, with regard to prices, profitability and employment, corresponds in time with the highest penetration of the dumped imports concerned. Apart from the matters already discussed in recitals 36 and 38, no other argument has been raised by the interested parties with regard to causation of injury by the dumped imports concerned.

(ii) **Effect of other factors**

(48) Several exporters have argued that the Commission, in its provisional findings, has not properly taken into account the impact of imports of the product concerned originating in Egypt and Brazil when considering that the dumped imports from the countries covered by the proceeding have, taken in isolation, caused material injury. They further argued that Article 4 of Regulation (EEC) No 2423/88 imposes on the Commission the requirement to measure the injurious impact of other factors which might also have caused material injury.

(49) In recital 50 of Regulation (EEC) No 2904/91 the Commission noted a substantial increase in imports of the product concerned originating in Egypt and Brazil and the apparent low level of their prices. However, it also considered that no conclusion could be drawn from the prices recorded in Eurostat statistics, as they masked extremely important differences among product types and no other information was available in this respect. The Commission further considered that, even if imports from the two countries concerned had caused injury, there was no indication that the injury caused by the dumped imports originating in the countries concerned by the proceeding would thereby be rendered non-material.

Thus, in the absence of reliable information on export prices, having further examined the matter, the Commission has no basis, at present, to consider that imports from Egypt and Brazil have caused injury.

According to Article 4 of Regulation (EEC) No 2423/88, responsibility for the injury caused by dumping can be attributed to the exporters concerned even if this injury is merely a part of more extensive injury attributable to other factors. This Article only requires that other possible causal factors of injury should not be ascribed to the dumped imports.

In the present case, given the price sensitivity of the yarns in question, the low level of prices of the imports concerned constitutes, through the effects of dumping, the most relevant factor leading to price suppression and hence deterioration in profitability and employment. This is demonstrated by the fact that, in spite of the market share gained by the Community producers investigated, practically all of them incurred losses as a result of the suppressed increase in prices.

As described in recital 58 of Regulation (EEC) No 2904/91, the prices practised by each of the exporters investigated were compared to the addition of the cost of production in the Community, which, due to stable capacity utilization was not influenced by imports, and a margin of profit equal to that made before the impact of any imports were felt. Thus, no significant injury attributable to other imports is ascribed to the dumped imports concerned by the proceeding.

(50) Some exporters argued that the Commission attributes the injury caused to the Community industry to the dumped imports concerned, when such injury is, in fact, inherent to the slow restructuring that the textile industry in the Community is undergoing and the subsequent decline in demand. As far as this process concerns the polyester spinning industry in the Community, the Commission noted in recital 44 of Regulation (EEC) No 2904/91 that the loss in employment by the Community producers investigated was the result not only of an ongoing restructuring but also of the adverse impact of the dumped imports concerned. As to the restructuring in the downstream industries, and the consequent reduction in demand for the yarns concerned, this should normally have led to a decrease in the volume of the dumped imports concerned. However, this has not been the case, as these imports have increased both in volume and market share.

(51) The Council confirms the above considerations as well as the conclusions in recitals 47 to 53 of Regulation (EEC) No 2904/91.

G. COMMUNITY INTEREST

(52) One exporter submitted that the imposition of duties on the dumped imports concerned would merely result in replacing such imports, at least partially, by other low-priced imports which may or may not have been dumped but which caused equal injury to the Community industry.

In this respect, the Commission refers to the considerations in recital 51 with regard to the lack of evidence on reliable export prices from countries other than those concerned by the proceeding. Therefore the likelihood of such displacement of imports cannot be inferred. Even if a certain displacement were to occur, this would not necessarily be against the Community interest in as far as it would demonstrate that the exporters concerned by the proceeding were able to sell on the Community market only by having recourse to unfair commercial practices.

(53) Some exporters and several weavers and importers in the Community raised the argument that an increase in the price of the imported yarns concerned, as the result of the adoption of anti-dumping measures, would aggravate the difficult competitive situation already faced by the downstream textile industry in the Community with regard to the imports of fabrics and garments from low cost producing countries. Some of the weavers concerned have further submitted that, since a large number of spinning units in the Community, which might have been protected by anti-dumping measures, had already gone out of business, the impostion of anti-dumping duties on imported yarns at this time would pass the pressure down to the weavers and put them at risk.

(54) As outlined in recital 54 of Regulation (EEC) No 2904/91, anti-dumping duties are intended, in general, to eliminate distortion of competition arising from unfair commercial practices so that open and fair competition can be re-established on a certain market. In the present case, the basic purpose of the adoption of anti-dumping measures is to counteract the injurious impact of the dumped imports on the Community spinners of the yarns concerned.

As to the interests of the Community processing industry of these yarns, the Commission considers that to refrain from re-establishing fair competition on the Community market for the product concerned, while being, in terms of lower prices, advantageous to weavers and knitters in the short term only, would seriously threaten the viability of the remaining spinning industry which is already in a precarious financial situation. Moreover, the fact that a considerable number of spinners in the Community have closed down should not lead to the conclusion that those which are still in operation do not need to be protected from injurious dumping practices.

Furthermore, the complainant in this proceeding, which represents not only spinners but also weavers, in balancing the various interests involved, considers that priority should be given to eliminating the adverse effects of dumping on the Community spinning industry. This view is shared by the European Trade Union Committee on textiles, clothing and leather, whose members belong to both the spinning and the weaving industry and which, after carefully weighing the conflicting claims of the two industries, has manifested in writing to the Commission its strong support for the adoption of definitive protective measures in this proceeding.

(55) The Fédération international de la filterie and two Community producers of sewing thread have argued that the termination of the proceeding in respect of sewing thread falling within CN code 5508 10 11 (see recital 64 of Regulation (EEC) No 2904/91), combined with the adoption of anti-dumping measures with regard to imports from the countries concerned of polyester yarns falling within CN codes 5509 22 10 and 5509 22 90 which are alleged to be, in the main, the raw material used in the manufacture of sewing thread, will result in a displacement of imports of these yarns by imports of sewing thread, thereby adversely affecting the manufacturing activities of the sewing thread producers in the Community. It is consequently alleged that these yarns should also be excluded from the proceeding and that, in any case, since they represented only 5,36 % of the total imports concerned in the investigation period, their exclusion could not affect significantly the interests of the complainant Community industry.

In this respect, the complainant, even if it did not contest the legal basis for the termination of the proceeding in respect of sewing thread, has argued that it would have been more appropriate to adopt protective measures for this product. As to the yarns falling within CN codes 5509 22 10 and 5509 22 90, the complainant contests that these yarns are only marginally used for purposes other than the manufacture of sewing thread. As a consequence, it is argued by the complainant that not to adopt measures in respect of these yarns, origina-

ting in the countries concerned by the proceeding, would indeed significantly affect the interests of the spinners concerned in the Community, a fact further demonstrated by the enormous increase in imports of these yarns, which have doubled since the end of the investigation period.

The Commission, confronted with these conflicting arguments, has examined all information available to it and has requested both parties to substantiate their allegations. However, no evidence which demonstrates that the yarns concerned are, or are not, used almost exclusively for the production of sewing thread has been received. Furthermore, the Commission understands that, whatever might be the impact on the competitiveness of the Community producers of sewing thread of the adoption of measures in respect of the yarns concerned, this impact is mitigated by the comparative advantages in terms of marketing, of these producers *vis-à-vis* producers of sewing thread in third countries, i.e. the availability of a full range of colours and proximity to the customer. In these circumstances, taking account of the fact that dumping and injury have been established with regard to the yarns in question and in view of the need to avoid circumvention which would render ineffective the protection of the Community industry, the Commission considers that the exclusion claimed is not justified.

(56) The Council confirms the Commission's findings and concludes that it is in the Community interest to adopt anti-dumping measures to eliminate the injurious effects of the imports concerned originating in Taiwan, Indonesia, India, the People's Republic of China and Turkey. These measures should take the form of anti-dumping duties.

H. DUTY

(57) In establishing the level of the definitive duty to be imposed, the Council confirms the Commission's methodology and findings outlined respectively in recitals 57 to 62 and in recital 63 of Regulation (EEC) No 2904/91, with regard to imports from cooperating exporters and from exporters which neither replied to the Commission's questionnaire within the established time limit nor otherwise made themselves known.

(58) In calculating the increase in export price necessary to remove the injury with regard to one Chinese exporter, due account has been taken of the quality adjustment granted by the Commission in recitals 22 and 41.

(59) One exporter argued that before the imposition of anti-dumping duties, the Commission should follow the consultation procedure provided for in the Multi-fibre Agreement (MFA). The Council notes, however, that the MFA does not prevent participating countries from taking justified anti-dumping measures and there is no obligation for prior consultation on these matters.

(60) The Council has considered the situation of companies which started, or will start, exporting the product concerned to the Community after the end of the investigation period. It came to the conclusion that the situation would create an opportunity for circumvention to apply any anti-dumping duty lower than the highest determined with regard to any exporter in the countries concerned. However, the Council notes that the Commission is ready to initiate, without delay, a review proceeding whenever the exporting company can show the Commission, and supply to that effect satisfactory evidence, that it did not export the product concerned to the Community during the period of investigation covered by the present proceeding, that it only started those exports after the said period or has the firm intention of so doing and that it is not related to, or associated with, any of the companies subject to the present proceeding whose imports into the Community are deemed to have been dumped.

I. UNDERTAKING

(61) One Chinese exporter offered a price undertaking. However, it was considered that, since the exporter concerned is not fully autonomous in setting its export prices, there was a risk that the undertaking would not be respected. Thus, after consultations, this undertaking was not considered acceptable. After being informed of the reasons for not accepting the undertaking, the exporter concerned withdrew its offer.

J. COLLECTION OF PROVISIONAL DUTIES

(62) In view of the dumping margins established, and the seriousness of the injury caused to the Community industry, the Council considers it necessary that amounts secured by way of provisional anti-dumping duties should be definitively collected to the extent of the amount of the duty definitively imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive 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	14,3	8578
Indonesia	11,9	8579
India	7,8	8580
People's Republic of China	23,5	8581
Turkey	10,1	8582

with the exception of imports of the products specified in paragraph 1 which are produced by the following companies, the rates of duty applicable to which are set out below.

	Rate of duty (%)	*Taric additional code*
TAIWAN		
Chung Shing Textile Company Ltd	2,2	8583
INDIA		
Rajasthan Spinning & Weaving Mills Ltd	2,0	8584
The Shree Meenakshi Mills Ltd	7,8	8585
Deepak Spinners Ltd	2,9	8586
Gokak Patel Volkart Ltd	2,9	8586
Himachal Fibres Ltd	2,9	8586
Hind Syntex Ltd	2,9	8586
Indo Rama Synthetics (India) Ltd	2,9	8586
Loyal Textile Mills Ltd	2,9	8586
Orient Syntex Ltd	2,9	8586
Precot Mills Ltd	2,9	8586
Rajasthan Textile Mills (prop. Sutlej Cotton Mills Ltd)	2,9	8586
Sholingur Textiles Ltd	2,9	8586
Soundaraja Mills Ltd	2,9	8586
The Madhavnagar Cotton Mills Ltd	2,9	8586
Vardhman Spinning & General Mills Ltd	2,9	8586
Yarn Syndicate Ltd	2,9	8586
Modern Syntex Ltd	2,0	8587
Sree Satyam Spinning & Weaving Mills Ltd	5,4	8588
Reliance Chemotex Industries Ltd	2,1	8589
The Coimbatore Pioneer Mills Ltd	3,3	8590
Banswara Syntex Ltd	2,2	8591
TURKEY		
Bisas Bursa İplik Sanayii AS	10,1	8592
Soktas Pamuk Ve Tarim Urünierini Deger Pendirme Ticaret Ve Sanayii AS	4,1	8593
Ceytas Ceyhan Tekstil Sanayii AS	2,6	8594

The free-at-Community 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 produced by PT Kewalram Indonesia, Bandung, Indonesia (Taric additional code : 8595) and Guangying Spinning Co. Ltd, Guangzhou, People's Republic of China (Taric additional code : 8596).

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

Article 2

The amounts secured by way of provisional anti-dumping duty imposed by Commission Regulation (EEC) No 2904/91 shall be definitively collected at the rate corresponding to the definitive duty. Amounts secured in excess of the definitive rate of duty shall be released.

Article 3

This Regulation shall enter into force on the day following that of 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, 30 March 1992.

For the Council

The President

Arlindo MARQUES CUNHA