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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1318/94

of 6 June 1994

terminating the review of anti-dumping measures concerning imports of certain acrylic fibres originating in Mexico and repealing the measures applying to such imports

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European 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 Articles 9 and 14 thereof,

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

Whereas :

A. PREVIOUS PROCEDURE

(1) By Decision 86/468/EEC [2], the Council accepted price undertakings for imports of certain acrylic fibres originating in, *inter alia,* Mexico.

(2) Early in 1988, the International Rayon and Synthetic Fibres Committee ('IRSFC') acting on behalf of producers accounting for virtually the entire Community output of the acrylic fibres concerned, asked the Commission to review the anti-dumping measures applicable to imports from Mexico and to reopen the investigation.

(3) The Advisory Committee having been consulted, it was considered that the request contained sufficient evidence of changed circumstances to warrant a review, pursuant to Article 14 of Regulation (EEC) No 2423/88 (hereafter referred to as 'the basic Regulation').

(4) The Commission therefore published a notice in the *Official Journal of the European Communities* [3] announcing a review of the measures and reopening of the investigation.

(5) As a result of this review, the Council, by Regulation (EEC) No 3121/89 [4], modified the measures applicable to imports of certain acrylic fibres originating in Mexico by imposing residual duties and accepting new or revised undertakings from five companies.

(6) Subsequently, the Commission received a request for a review of the measures from three of the Mexican companies which had given undertakings in 1989. These companies requested to be released from their price undertakings and have Regulation (EEC) No 3121/89 repealed on the grounds that the prices of imports originating in Mexico were higher than those of the Community producers, that Mexican export prices were significantly higher than those of other third countries selling to the Community and that the Mexican products concerned held a *'de minimis'* share of the overall Community market. Following consultations with the Advisory Committee, it was considered that the request contained sufficient evidence to justify initiating a review pursuant to Article 14 of the basic Regulation on the grounds of changed circumstances.

(7) Accordingly, the Commission published a notice in the *Official Journal of the European Communities* [5] and commenced an investigation.

[1] OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).
[2] OJ No L 272, 24. 9. 1986, p. 29.
[3] OJ No C 117, 4. 5. 1988, p. 3.
[4] OJ No L 301, 19. 10. 1989, p. 1.
[5] OJ No C 154, 5. 6. 1993, p. 7.

(8) The Commission officially notified the Community producers, exporters and importers known to be concerned and the representatives of the exporting country of the initiation of the proceeding and gave the parties concerned the opportunity to make their views known in writing and to request a hearing.

(9) The Commission sought and verified all the information it deemed to be necessary for the purpose of its investigation and visited the premises of the following companies:

(a) *Community producers:*

— Courtaulds Fibres Ltd, Bradford,

— Courtaulds España SA, Barcelona,

— Enichem Fibre SpA, San Donato Milanese,

— Fibras Sinteticas de Portugal SA, Barreiro,

— Montefibre SpA, Milan;

(b) *Mexican exporters:*

— Acrilia SA de CV, Mexico City,

— Celulosa y Derivados SA de CV, Guadalajara,

— Crisol International SA de CV, Mexico City,

— Crisol Textil SA de CV, Mexico City,

— Fibras Sinteticas SA de CV, Mexico City;

(c) *unrelated importer:*

— Kaben SA, Terrassa (Barcelona).

It should be noted that one Community producer, Bayer AG of Dormagen, submitted a reply to the Commission's questionnaire outside the time limit laid down for the purposes of receipt of replies to the questionnaire. Since taking the information into account would have delayed investigation, in this proceeding, in accordance with Article 7 (7) (b) of the basic Regulation, the findings on injury have been based on the facts available, i.e. data submitted by the cooperating Community producers which accounted for a major proportion (56 %) of the Community output of the product concerned and verified by the Commission.

(10) The Community producers, the exporters and the unrelated importer which cooperated requested and were informed of the essential facts and considerations on the basis of which it was intended to recommend the termination of the review and repeal the anti-dumping measures. The Commission took into account, where appropriate, the submissions of the parties concerned.

(11) The investigation of dumping covered the period 1 April 1992 to 31 March 1993.

B. PRODUCT

(12) The products concerned by this review proceeding are identical to the products subject to the definitive measures referred to in recital 5, namely:

— acrylic filament tow (commonly known as 'acrylic tow'),

— acrylic staple fibres, not carded, combed or otherwise processed for spinning (commonly known as 'acrylic staple'),

— acrylic stapel fibres, carded, combed or otherwise processed for spinning (commonly known as 'acrylic tops').

It should be noted that acrylic staple and acrylic tops are derived directly from acrylic tow and thus form a family of closely related products. As it is also normally the case that acrylic fibre producers manufacture and sell all three products, for the purposes of this investigation they have been regarded as one product and, unless otherwise specified, are referred to in this Regulation as 'acrylic fibres'.

C. DUMPING

(13) The question of dumping by the Mexican exporters was investigated fully by the Commission. However, in view of the conclusions drawn later in this Regulation with regard to injury and likelihood of further injury in the event of repeal of the existing measures, it is not considered necessary to examine this question in the present Regulation.

D. INJURY

1. Volume, market share and prices

(a) *Volume of dumped imports*

(14) It was established that between 1989 and the investigation period, the volume of acrylic fibres imported into the Community of Mexican origin rose slightly from 2 331 tonnes to 2 576 tonnes. In terms of the market share of these Mexican imports over the same period, this remained stable at around 0,6 % of the Community market.

(b) *Prices of the dumped imports*

(15) A price comparison was made between the ex works prices of the Community producers and the duty paid prices of acrylic tops exported by the Mexican producers during the investigation period. The comparison shows that the Mexican imports were undercutting the Community producers by 2,3 %.

(c) *Consumption in the Community*

(16) With regard to consumption of acrylic fibres in the Community, it was found that this had fallen from 430 461 tonnes in 1989 to 404 653 tonnes during the investigation period, a drop of 5,9 %.

2. Situation of the Community industry

(a) *Production, capacity and utilization of capacity*

(17) Total production volumes of those companies which cooperated with the Commission's investigation rose from 374 000 tonnes in 1989 to 410 000 tonnes in the investigation period, an increase of 9,6 %. It should also be noted that information available to the Commission indicates that there was a rise in production volume of 7,6 % among those companies which failed to cooperate with the investigation.

(18) Capacity utilization for the cooperating Community producers during the investigation period was found to be at least 90 %.

(b) *Sales volumes and market share*

(19) The quantities of acrylic fibres sold in the Community by all the Community producers dropped from 402 000 tonnes in 1989 to 378 000 tonnes during the investigation period, a fall of 6 %. On the other hand, the overall market share of these Community producers remained stable at around 93 % over the same period.

(c) *Price evolution*

(20) The investigation showed that weighted average ex works sales price in the Community of the Community producers dropped by 8,1 % in the case of acrylic tow between 1989 and the investigation period, by 6,3 % in the case of acrylic staple and by 2,3 % in the case of acrylic tops.

(d) *Profits*

(21) During the investigation period, the cooperating Community producers achieved a weighted average net profit on turnover of 9,6 % for sales of acrylic fibres. The profit margin was 10,5 % in 1992 and 9,8 % in 1991.

(e) *Conclusions*

(22) In drawing conclusions from the above data, it should be remembered that between 1986 and the investigation period, anti-dumping measures in the form of price undertakings were in force against imports of Mexican acrylic fibres and acrylic fibres of other third country origin. Overall demand in the Community for acrylic fibres has shrunk since 1989 and this decline in demand has caused a corresponding downturn in both the sales volumes and sales prices achieved by the Community producers.

On the other hand, the Community producers have increased their production volume over this period, maintained very high capacity utilization levels and also achieved levels of profitability which are not unreasonable.

(23) In view of the above factors, it is concluded that the Community industry did not suffer material injury within the meaning of Article 4 (1) of the basic Regulation.

E. LIKELIHOOD OF FURTHER INJURY IN THE EVENT OF REPEAL OF THE EXISTING ANTI-DUMPING MEASURES

1. Preliminary considerations

(24) The fact that the dumped imports are not currently causing injury is not, in itself, a reason for removing the existing anti-dumping measures. In such circumstances and within the framework of a review initiated at the request of the majority of Mexican producers, the question has to be considered of whether repealing the anti-dumping measures would lead again to injury or threat of injury. In this regard, it must be determined whether a recurrence of injury to the Community industry caused by dumping of Mexican products would be foreseeable in the absence of measures.

(25) To this end, the production volume and capacities in Mexico, the profits and sales levels of Mexican producers on the Mexican market, the profits and sales levels of Mexican producers on markets other than Mexico or the Community and general developments in trade have all been taken into account.

2. Production volume and capacity in Mexico

(26) The investigation established that the production volume of acrylic fibres of the Mexican producers had risen by approximately 20 % between 1989 and the investigation period. Capacity utilization had remained fairly static at around 88 %.

In this regard, the Community industry stated that the Mexican producers have plans to further enlarge their capacity and step up exports to the Community to fill this extra capacity. However, no evidence to support these allegations was provided and no indications leading to this conclusion were found during the investigation.

3. Sales and profits in Mexico

(27) Contrary to the allegations made during the course of the investigation by the Community producers, it was found that the Mexican producers had made reasonable profits on their sales of acrylic fibres in Mexico. In recent years, weighted average domestic profits ranged from 13,8 to 19 %. Such domestic sales represent, on average, approximately 75 % of the Mexican producers' total sales and, in terms of volume, had increased by approximately 12 % between 1989 and the investigation period.

4. Sales and profits in the Community

(28) The investigation showed that the Mexican producers' export sales to the Community account for less than 1 % of their total sales. With regard to the profits and sales in the Community achieved by such sales, it was found that the Mexican peso had appreciated against the ecu when comparing the exchange rate at the beginning of the investigation period with the exchange rate at the end of that period. In conjunction with the Community producers' declining sales prices in the Community, this led to a situation where exports at the new exchange rate levels left the Mexican producers with relatively uncompetitive duty paid import prices.

5. Volume and profits in other markets (excluding the Community)

(29) During the investigation period, it was found that the sales of acrylic fibres to markets other than Mexico and the Community and which accounted for approximately 24 % of the investigated Mexican producers' total sales, were mainly in Latin America. Such sales achieved weighted average profits of approximately 2 % on turnover.

6. General developments in trade

(a) *Decline of the Chinese market*

(30) Information supplied during the investigation showed that until the end of 1992, the People's Republic of China was a major buyer of acrylic fibres manufactured by Community producers. Data concerning sales to China showed that such sales represented approximately 16 % of the total output of the Community acrylic fibre industry. In 1993, however, China drastically reduced its import requirements and the latest information available shows that Community producers only exported amounts there equivalent to 1,7 % of total Community production during the first half of 1993.

(31) Clearly, in order to maintain high production and capacity utilization levels, the Community producers have had to react very quickly and find alternative markets for their products. The problem for them has been exacerbated by the declining demand within the Community for acrylic fibres (see recital 16) and, unless new export markets can be found, the Community producers will be faced with excess capacity combined with falling prices and profits as competition amongst themselves increases both inside and outside the Community.

(b) *General decline in demand*

(32) As has been shown in this Regulation, consumption and demand for acrylic fibres has fallen and this decline looks set to continue into the future. In addition to the loss of the Chinese market, the Community producers have attributed the fall in demand partly to a trend among Community clothing manufacturers to make lighter weight garments which means that less acrylic fibre is required. Also, consumer taste in the major developed markets the world has moved away from articles made from artificial and synthetic fibres to articles made from natural fibres such as cotton, wool, linen, etc.

Given this situation and in view of the problems already faced by Mexican exporters in remaining competitive at current price levels, it is considered unlikely that they will be able to increase their sales levels of acrylic fibres to the Community particularly if prices fall even further.

(c) *The North American Free Trade Agreement (NAFTA)*

(33) It has been argued that another factor which will have an impact on the way that Mexican producers trade in acrylic fibres is the NAFTA Agreement. Notwithstanding the overall decline in demand for acrylic fibres as mentioned in recital 32, North America will still remain a huge market and it is likely that improved access to this market for finished and part-finished Mexican textile products will significantly increase the demand for Mexican acrylic fibres. In the present circumstances, it is considered that the North American market is likely to be a more attractive market for the Mexican exporters than the Community.

(d) *Conclusion*

(34) All the above factors lead to the conclusion that it is unlikely that the Mexican producers will significantly increase their exports to the Community, even if the anti-dumping measures were no longer in force.

F. GENERAL CONCLUSION ON THE IMPACT OF REPEALING THE EXISTING MEASURES

(35) Taking into account all factual data available, it has been concluded that it is not foreseeable that the repeal of the anti-dumping measures would result in dumped imports of acrylic fibres from Mexico regaining a share of the market sufficient to cause injury. Accordingly, it is considered that such repeal would not lead to a recurrence of material injury to the Community industry concerned. The present review should therefore be terminated and the anti-dumping measures currently in force be repealed.

(36) It is noted, however, that should there be any significant increase of imports of acrylic tow, acrylic staple or acrylic tops originating in Mexico at dumped prices, the Community institutions would, on the basis of a duly supported complaint by the Community industry, consider reopening expeditiously a new anti-dumping proceeding concerning such imports,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3121/89 is hereby repealed.

Article 2

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

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

Done at Luxembourg, 6 June 1994.

For the Council

The President

Y. PAPANTONIOU