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COUNCIL REGULATION (EC) No 1074/96

of 10 June 1996

further amending Regulation (EEC) No 3905/88 as regards definitive anti-dumping duties on imports of polyester yarn originating in Taiwan and Turkey

(OJ L 141, 14.6.1996, p. 45)

Corrected by:

►**C1** Corrigendum, OJ L 238, 29.8.1997, p. 48 (1074/96)

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COUNCIL REGULATION (EC) No 1074/96

of 10 June 1996

further amending Regulation (EEC) No 3905/88 as regards definitive anti-dumping duties on imports of polyester yarn originating in Taiwan and Turkey

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], and in particular Article 23 thereof,

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 [2], and in particular Article 15 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

(1) In December 1988, by Regulation (EEC) No 3905/88 [3], the Council imposed a definitive anti-dumping duty on imports of polyester yarn originating in the Republic of Korea, Mexico, Taiwan and Turkey.

(2) On 1 October 1991, by Regulation (EEC) No 2899/91 [4], the Council amended Regulation (EEC) No 3905/88 and repealed the definitive anti-dumping duty imposed on imports into the Community of polyester yarn originating in Mexico.

B. REVIEW PROCEDURE

(3) Following the publication, in June 1993, of a notice [5] of the impending expiry of the measures in force, the Commission received a request for a review lodged by the International Rayon and Synthetic Fibres Committee (Cirfs) representing the producers of allegedly 85 % of Community polyester yarn output.

In December 1993, a notice [6] concerning the intention of reviewing the anti-dumping measures in force on imports of polyester yarn originating in the Republic of Korea, Taiwan and Turkey was published.

(4) On 16 June 1994, in a notice published in the *Official Journal of the European Communities* [7], the Commission announced the review of Regulation (EEC) No 3905/88 pursuant to Article 15 of Regulation (EEC) No 2423/88, the Regulation applicable in this review pursuant to Article 23 of Regulation (EC) No 384/96, and hereinafter referred to as 'the basic Regulation'. Given the quasi absence of Korean imports on the Community market, it had not been shown in the view of the Commission that the expiry of the measures would have led again to recurrence of injury. It therefore decided to exclude from the review the measures concerning

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[1] OJ No L 56, 6. 3. 1996, p. 1.
[2] 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).
[3] OJ No L 347, 16. 12. 1988, p. 10.
[4] OJ No L 275, 2. 10. 1991, p. 21.
[5] OJ No C 175, 26. 6. 1993, p. 9.
[6] OJ No C 340, 17. 12. 1993, p. 15.
[7] OJ No C 164, 16. 6. 1994, p. 4.

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imports originating in the Republic of Korea which consequently lapsed ([1]).

(5) The Commission officially advised the producers, 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. It also sent questionnaires to all parties known to be concerned.

(6) All complainant producers and another producer in the Community replied to the questionnaire and made their views known in writing.

(7) Some Turkish and Taiwanese exporters replied to the questionnaire and made their views known in writing. No importer replied to the Commission's questionnaire.

(8) The Commission sought and verified all information it deemed necessary for the purposes of a determination and carried out investigations at the premises of the following companies:

(a) *Community producers:*

— Rhône Poulenc, France,
— Hoechst AG, Germany,
— Nylstar, Germany,
— Unifi, Ireland,
— Montefibre Spa, Italy,
— Akzo Fibres and Polymers Division, Netherlands,
— La Seda de Barcelona SA, Spain,
— Nurel SA, Spain,
— Exsa, United Kingdom;

(b) *Producers/exporters in the countries of origin:*

TAIWAN

— Chung Shing Textile Co. Ltd, Taipei,
— Far Eastern Textiles, Taipei,
— Hsin Pao Textile Co. Ltd, Taipei,
— Lanfa Textile Co., Taipei,
— Lea Lea Enterprise Co. Ltd, Taipei,
— Nan-Ya Plastics Corporation, Taipei,
— Shinkong Synthetic Fibres Corp, Taipei,
— Tuntex Distinct Corp, Taipei,
— Zig Sheng Ind Co., Ltd, Tapei;

TURKEY

— Korteks, Bursa,
— Nergis Tekstil Sanayi Ve Ticaret, Bursa,
— Sasa Artificial and Synthetic Fibres Inc, Adana,
— Sifas Sentetik Iplik Fabrikalari A.S., Bursa.

(9) The investigation of dumping covered the period from 1 July 1993 to 30 June 1994 (investigation period).

(10) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the amendment of existing definitive measures. They were also granted a period within which to make representations subsequent to these disclosures.

(11) Because of the large number of interested parties, the volume of data gathered and analysed and the complexity of certain issues, in particular the difficulties inherent to the fact that, as described in recitals (12) and (13) below, POY is a semi-finished product destined for the PTY production, the investigation has exceeded

([1]) OJ No C 165, 17. 6. 1994, p. 12.

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the normal period of one year as provided for in Article 7 (9) of the basic Regulation.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

I. Description of the product concerned

(12) The products covered by the complaint and for which the review investigation was initiated are partially oriented polyester yarn (POY) falling within CN code 5402 42 00 and polyester textured filament yarn (PTY) falling within CN codes 5402 33 10 and 5402 33 90. They are identical to the products which were the subject of the previous investigation.

POY is a feeder yarn used mainly to produce PTY, which is in turn used in both the weaving and knitting sectors to make polyester or polyester/cotton fabrics.

There are different types of POY as well as PTY, depending on the denier, the number of filaments and the lustre. There are also different qualities, depending on the efficiency of the production process.

(13) The original investigation was concluded by measures imposed by Regulation (EEC) No 3905/88, on POY and PTY separately. In this respect, the present investigation has confirmed that the essential process to obtain PTY is texturization consisting mainly of twisting and drawing POY, which imparts to PTY its essential characteristics. However, the necessity for and costs of further processing indicates that POY does not belong to the same category of product as PTY since the added-value required to produce PTY from POY is substantial. In addition, the end-use of POY and PTY is different and the two products are not interchangeable. Consequently, different markets for each product exist.

It is worthwhile noting that the manufacturing processes described above can sometimes be integrated in one company or group, or be undertaken by two independent companies. Both situations (integrated, or independent manufacturing) exist in Taiwan, Turkey and the European Community. Part of the Community production of POY is sold on the Community market to independent texturizers (see recital 22 below).

(14) In view of the above, it has been concluded that POY and PTY do not belong to the same category of product and, thus, have to be considered as two distinct products. These findings have not been contested by any interested party. Consequently, the two products have been dealt with separately in the framework of the present review.

II. Like product

POY

(15) The investigation showed that POY sold on the domestic markets of Turkey and Taiwan were alike to those exported from those countries to the Community. Similarly, the POY manufactured by the Community industry and sold on the Community market and those exported to the Community from the countries in question are alike in all respects as regards their physical, chemical and technical characteristics and end-uses.

PTY

(16) The same findings were made with regard to PTY sold on the domestic markets of Turkey and Taiwan, produced and sold in the Community and that exported to the Community from the countries in question.

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(17) Consequently, in each case, the product sold on the domestic market of the exporting countries, those exported from these countries to the Community and those produced and sold in the Community are like products within the meaning of Article 2 (12) of the basic Regulation.

D. **PARTIALLY ORIENTED POLYESTER YARN (POY)**

I. **The scope of the review**

(18) In Regulation (EEC) No 3905/88, three Taiwanese producers, Far Eastern Textile Ltd, Nan Ya Plastics Corp and Tuntex Distinct Corp were not subject to the anti dumping duty imposed on imports of POY from Taiwan.

These Taiwanese exporters claimed that the present review investigation could not cover producers expressly exempted from the anti-dumping measures, because no dumping was found in their case and that the absence of existing anti-dumping measures led to the conclusion that there were no grounds for including these Taiwanese producers in the scope of the 'sunset' review.

(19) Since the review request was made under the provisions of Article 15 of the basic Regulation, it has to be examined whether the expiry of the measures in force would lead again to injury. On this basis, and given that the three Taiwanese producers concerned were exempted from measures on the grounds that no dumping was found for them, they should be kept outside the scope of the present review investigation.

(20) Consequently, this review does not cover imports of POY from Tuntex Distinct Corp., Far Eastern Textile Ltd, Nan Ya Plastics Corp.

II. **Community industry**

(21) In defining the Community industry, data obtained from information received in the responses to the questionnaires, from Eurostat figures and from Cirfs concerning output of Community produced POY were used since not all the producers active in the Community POY market cooperated in the investigation.

(22) The complaining Community producers were found to represent 76 % of the total Community POY production intended for sales and thus a major proportion of that production.

(23) On this basis, the complaining Community producers constitute the Community industry within the meaning of Article 4 (5) of the basic Regulation.

III. **The situation of the Community industry**

(a) *Community consumption*

(24) The apparent Community consumption increased from 119 000 tonnes in 1991 to 122 000 tonnes in 1992, fell back to 119 000 tonnes in 1993, to increase again to 125 000 tonnes in the investigation period.

(b) *Production, production capacity and capacity utilization*

(25) The Community industry's production for sales increased from 58 000 tonnes in 1991 to 77 000 tonnes in 1992, fell back to 72 000 tonnes in 1993, to increase again to 76 000 tonnes during the investigation period.

(26) Over the last three years, the production capacity remained the same and the capacity utilization rate was stable at 80 %.

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(c) *Sales volume and market share*

(27) The quantity of POY sold on the Community market by the Community industry dropped from 50 000 tonnes in 1991 to 49 000 tonnes in 1992 to 47 000 tonnes in 1993 and 46 000 tonnes in the investigation period, though the consumption increased from 119 000 tonnes in 1991 to 125 000 tonnes in the investigation period.

(28) The Community industry's market share developed as follows: 42 % in 1991, 40 % in 1992, 39 % in 1993 and 36,5 % during the investigation period. Overall, the market share has declined by 5,5 percentage points while the apparent consumption increased by around five percentage points.

(d) *Price of evolution*

(29) Prices of the Community industry for POY have fluctuated in line with the prices of the raw materials PTA (pure terephthalic acid), DMT (dimethylterephthalate) and glycol. The increasing price trend of POY recorded at the end of the investigation period (first half 1994) is the result of the worldwide shortage of raw materials and their subsequent price increases. These price increases occurred consequently for all operators in the market at the same time, but should not hide the fact that the Community industry's prices always remained consistently undercut by the exporters' prices during the investigation period (see recital 38).

(e) *Profitability*

(30) The Commission found that, overall and from 1991 onwards, the POY Community industry has recorded poor financial results. The situation has deteriorated considerably from 1992 with an average loss of 22 % on turnover during the investigation period. All complaining Community producers suffered heavy losses.

(f) *Employment and investment*

(31) Given the integrated nature of the polyester yarn industry, it has not been possible to isolate employment and investment data for POY production only. Data available concerning the industry globally indicates that there has been a steady curtailment in employment forces of about 15 % since 1991 even if this industry is not labour intensive. Investments by the complaining Community producers were reduced in some cases to a level below that needed to ensure optimal production.

(g) *Conclusion*

(32) In spite of the measures in force, an overall assessment of the main economic indicators leads to the conclusion that the POY Community industry continues to show signs of economic difficulties. Its situation has constantly deteriorated since 1991, as demonstrated in particular by a loss in market share of up to 5,5 % over four years, notwithstanding an increase in Community consumption over the same period, reduction of employment and substantial financial losses.

IV. **Recurrence of injury**

(33) In accordance with Article 15 of the basic Regulation, the Commission examined whether the expiry of the measures in force would lead again to injury or threat of injury to the Community industry.

TAIWAN

(34) Import of Taiwanese POY regressed from 2 812 tonnes in 1991 (2,4 % market share) to 1 117 tonnes in 1992 (0,9 % market share), to 551 tonnes in 1993 (0,5 % market share) and to 448 tonnes during the investigation period (0,4 % market share). It should be noted in this respect that the three major Taiwanese

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producers were not subject to any anti-dumping duty. When excluding the imports from these three producers, which are not concerned by the review investigation, the Community market share held by the remaining imports from Taiwan amounts to 0,1 % only. Information available suggests that the Taiwanese producers have re-oriented their exports to other third countries geographically closer where a steady growth for POY is being registered. Furthermore, these producers have apparently moved to a greater extent into the downstream product, PTY. Consequently, there is no reasonable indication that the expiry of the anti-dumping measures on imports of POY originating in Taiwan would lead to a recurrence of injury or threat of injury to the Community industry.

TURKEY

(a) *Volume and Community market share of imports from Turkey*

(35) It was found that imports of POY from Turkey have increased substantially between 1991 and the investigation period from 7 933 tonnes to 22 436 tonnes. This corresponds to an increase in market share over the same period from 6,7 % to 17,9 %.

(36) This evolution has to be seen in the context of the setting-up of a PTY production facility in the Community by the largest Turkish producer andexporter of POY and PTY. Nevertheless, a significant part of the exports of POY to the Community by this Turkish producer were destined to unrelated customers.

(37) It was claimed that Turkish imports of POY merely filled the gap left by the decreasing exports of POY yarn from Taiwan. This is factually incorrect since the Taiwanese imports have continuously decreased from less than 3 000 tonnes in 1991, while Turkish imports increased from around 8 000 tonnes in 1991 to 22 400 tonnes during the investigation period.

(b) *Prices of the imports*

(38) On the basis of price information available, a comparison has been made between the weighted average Community industry's selling price and the weighted average price of the imports concerned at the same level of trade. The Community industry's price was at ex-works and, the prices of the imports were at free-at-Community frontier, customs cleared. This comparison showed in the case of Turkey an undercutting margin, persisting throughout the entire investigation period, higher than that established in the original investigation.

(c) *Impact of other factors on the situation of the Community industry*

(39) Among all imports of POY in the Community from other third countries, only those from the USA and Switzerland were of significant volume, all others taken together were negligible. However, the sales volume and market share in the Community of the US imports steadily decreased since 1991 (6,9 % market share) to the investigation period (1,9 % market share). Imports from Switzerland remained relatively stable (around 13 % market share) at very high prices, and the main Swiss exporter concerned is a subsidiary of a complaining Community producer.

(40) It was alleged that the Community industry did not make the necessary investments in order to remain competitive. In this regard, an industrial rationalization process has been in operation for some years among several Community producers. This process, however, requires financial resources which have been limited due to the existence of low-priced dumped imports on the Community market.

(41) The claim was made that, like other industrial sectors in the Community, the producers of POY suffered from the recession and not from the Turkish imports and, in particular that, because

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of the recession, the Community producers were not in a position to reflect the increasing costs of raw materials in their prices of POY.

In this respect it has to be noted that the development of the apparent Community consumption described in recital (24) above does not reflect any recession in the POY market.

(42) Finally, it was asserted by the Turkish exporter that a capacity utilization rate of 70 % allows any 'fibres-business' to achieve a situation of breakeven. This statement has not been substantiated by the information gathered in Taiwan and among the Community industry's producers. According to this information, capacity utilization for this industry should normally reach a rate of 90 % in order to achieve breakeven. Indeed, the majority of Taiwanese producers report utilization rates above 95 %. The Community industry's utilization rate was, throughout the period under consideration, around 80 %.

In any event, the capacity utilization factor has to be examined in conjunction with other injury factors such as prices and volumes at which production is sold before any decisive conclusions can be drawn. It is clear that, in cases such as this, even a 90 % utilization rate could result in a loss-making situation if prices of the Community producers were severely depressed by the low-priced imports concerned.

(d) *Conclusion*

(43) In these circumstances, it appears that there are no other factors but the imports of POY originating in Turkey which may explain the difficult situation of the Community industry, notwithstanding the anti-dumping measures in force. It is therefore concluded that the expiry of these measures as regards Turkey could only worsen the situation of the Community industry through a recurrence of injury to this industry.

V. **Dumping**

(44) The continued existence of dumping was verified, to ascertain firstly whether there were grounds for the continuation of measures against POY from Turkey and, if so, whether any change in the dumping margin required the existing measures to be adapted accordingly.

(a) *Normal value*

(45) It was first examined whether the volume of sales of the sole Turkish producer which had exported to the Community during the investigation period on the domestic market attained at least 5 % of thevolume of the exports of the like product to the Community, percentage which has consistently been considered to constitute sales in sufficient quantities to permit a proper comparison. This producer achieved only a percentage of domestic sales of 2,6 % of the quantity exported to the Community. Accordingly, those sales were considered as insufficient to establish a representative domestic price, and normal value had to be constructed, in accordance with Article 2 (3) (b) (ii) of the basic Regulation.

(46) For all the types of the product concerned sold for export to the Community by the Turkish producer, a constructed normal value was calculated, by adding to the manufacturing costs of the exported types, a reasonable amount for selling, general and administrative expenses (SG& A) and a profit.

Since there were insufficient sales of POY made by the producer concerned on the domestic market, and this was the only producer/exporter involved in the investigation which sold POY on that market, the amount for SG& A and profit was calculated by reference to the sales made by this producer in the same

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business sector, in Turkey, i.e. in the polyester yarn sector, in accordance with Article 2 (3) (b) (ii) of the basic Regulation.

(b) *Export prices*

(47) The Turkish producer shipped POY to independent importers in the Community and to one related importer in the Community.

(48) Since the POY imported by the related company was transformed into PTY by the same company and sold to the first independent buyer as such, it would have been necessary to construct an export price for POY from the resale price of PTY. Given the inherent difficulties of such an exercise and taking into consideration the large quantities sold by the Turkish exporter to independent importers (more than 60 % of its exports to the Community) it was considered that the transactions between related parties should be disregarded all together and export prices were determined exclusively on the basis of the prices relating to transaction to independent importers.

(c) *Comparison*

(49) Normal value by product type was compared with the export price for the corresponding type, on a transaction-by-transaction basis at the ex-works stage and at the same level of trade.

(50) For the purpose of a fair comparison, normal value was adjusted in accordance with the provisions of Article 2 (9) and 2 (10) of the basic Regulation to take account of differences directly affecting price comparability. These adjustments concerned import charges and indirect taxes and differences in selling expenses arising from sales made under different conditions and terms of sale, i.e. credit terms and transport costs.

(d) *Dumping margins*

(51) The above comparison revealed the existence of dumping, the margins of dumping being equal to the amount by which the normal value, as established, exceeds the price for export to the Community.

(52) The weighted average dumping margin for the Turkish producer concerned, expressed as a percentage of the free-at-Community frontier price, customs duty unpaid, is as follows:

Sasa Artificial and Synthetic Fibres Inc 3,3 %.

(53) In the case of Turkish companies which cooperated in the investigation but were found neither to have sold POY on their domestic market nor to have exported during the investigation period, the weighted average dumping margin found for the sole company which did export during the investigation period is considered as appropriate, since it takes into account the cooperation of the companies concerned by distinguishing them from those which did not cooperate in the investigation. Accordingly, the dumping margin of 3,3 % is also applicable to the following companies: Korteks and Nergis Tekstil Sanayi Ve Ticaret.

(54) In the case of Turkish producers which failed to make themselves known or did not reply satisfactorily to the Commission's questionnaire, the dumping margin was determined on the basis of the facts available in accordance with Article 7 (7) (b) of the basic Regulation. It was considered that the most reasonable facts were those established during the investigation and that, in order to avoid giving a premium for non-cooperation, and to ensure that the anti-dumping measures introduced constitute effective protection from unfair trade, the dumping margin attributable to these producers should be based on the POY type with the highest dumping margin found for the sole cooperating Turkish producer which exported to the Community during the investigation period.

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On this basis, the POY type retained represented around 10 % of all exports to the Community by the Turkish producer concerned, and the dumping margin established for Turkish non-cooperating companies amounts to 6,8 %.

VI. **Community interest**

(55) A determination as to whether the Community interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including those of the producers, users and consumers in the Community. In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration.

(56) It has to be recalled that in the previous investigation, the adoption of measures was considered to be in the interest of the Community. It was stated that the measures would have a fairly negligible effect on the production costs of the user industry and no serious consequences for consumers.

(57) These considerations remain valid in considering the extent to which it would be in the Community interest to maintain measures in force. No arguments were submitted by the users as concerns the impact of the price of POY in the end product, although questionnaires were sent to those users made known to the Commission. In any event, given the range of the measures proposed and the figures available with regard to the weight of POY in the manufacturing of PTY, the impact of the reviewed measure on the prices for the end product appears to be negligible.

(58) On the contrary, to allow the measures to expire would put the Community industry at a risk since it would suffer increasingly from the dumped low prices of the Turkish imports, thus being unable to redress its precarious financial situation.

It appears therefore that the interests of the Community industry by far outweigh the possible, and in any case limited, disadvantages for users and final consumers.

(59) On this basis it is concluded that Community interest calls for maintaining the anti-dumping measures in force duly amended to eliminate the injurious effects of dumped imports originating in Turkey.

VII. **Measures**

TAIWAN

(60) On the basis of the reasons given in recital (34) with regard to Taiwanese imports, the existing anti-dumping measures on those imports should be allowed to lapse.

TURKEY

(61) In order to prevent the recurrence of injury and provide adequate protection from continued injurious dumping by Turkish imports, it is considered that the anti-dumping duty should be established in such a way as to allow the Community industry to obtain the reasonable profit it has been deprived of through the negative impact of the dumped imports.

(62) When calculating the adequate amount of duty, the Council had to consider that the precarious situation of the Community industry consists mainly of a steady loss of market share and substantial financial losses due to depressed prices resulting from price undercutting. It is thus necessary that the measures taken allow the Community industry to make a reasonable profit in the future.

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(63) In this respect, the Council has calculated the price level considered adequate to remove injury on the basis of the weighted average cost of production of the Community industry adding a profit of 6 % estimated reasonable for guaranteeing the industry productive investment on a long term basis. This price level was then compared to the average import prices on a free-at-Community frontier basis, duty paid. Since the result of this comparison shows an injury margin higher than the dumping margin established, the duty should be based on the dumping margin found.

E. **POLYESTER TEXTURED FILAMENT YARN (PTY)**

I. **The scope of the review**

(64) In Regulation (EEC) No 3905/88 one Taiwanese producer, Tuntex Distinct Corp., was exempted from the anti-dumping duty of 6,2 % on imports of PTY originating in Taiwan because a de minimis dumping margin (0,31 %) was found for this company.

(65) For the same reasons as those developed under chapter D, I, recital (19), this Taiwanese company, Tuntex Distinct Corp., has to be excluded from the scope of the review as far as PTY is concerned.

II. **Community industry**

(66) The production of PTY by companies on behalf of which the complaint was lodged was found to represent 50 % of the total PTY output in the Community during the investigation period (1 July 1993 to 30 June 1994) and hence a major proportion of this output. Therefore, the complaining companies constitute the Community industry in the meaning of Article 4 (5) of the basic Regulation.

These complaining companies produced PTY from in-house POY production with the exception of one company which purchased POY on the market.

(67) A producer in the Community was found to be a wholly-owned subsidiary of a Turkish exporter of POY, the upstream product. Although not cited in the initial complaint, this producer cooperated in the investigation. It was considered whether this producer operating in the Community should be excluded from the definition of the Community industry in the meaning of Article 4 (5) of the basic Regulation. In this respect, it should be recalled that the provisions of this Article do not provide for the automatic exclusion of Community producers related to the exporters or producers located in exporting countries, or producers which are themselves importing the allegedly dumped product, but rather impose on the Community institutions the obligation to consider on a case-by-case basis whether the exclusion of any producer is warranted.

(68) Following previous practice of the Community institutions, it was considered that this Community producer, through its relationship with the producer/exporter concerned in Turkey was shielded from the injurious effects of the dumped imports. It was further considered, in accordance with that practice, that to include this producer in the definition of the Community industry would distort the assessment of these effects. Indeed, the fact that the Community producer concerned produces PTY from POY bought at transfer prices from the related Turkish exporter found to have been dumping and causing injury to the complainants renders the production cost data for the product concerned unreliable. On these grounds, it was considered that the producer in the Community concerned had to be excluded from the definition of the Community industry. For the remainder of chapter E, the term ‘Community industry’ therefore, refers to the complaining Community producers of PTY only.

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III. **The situation of the Community industry**

(a) *Community consumption*

(69) The Commission determined that the total apparent Community consumption of PTY increased from 230 000 tonnes in 1991, to 237 000 tonnes in 1992 and, after a fall back to 221 000 tonnes in 1993, increased again to 241 000 tonnes in the investigation period. This represents an overall increase of consumption of around 5 % over the period considered.

(b) *Production, production capacity, utilization rate*

(70) The Community industry's production of PTY dropped steadily from 104 000 tonnes in 1991 to 92 000 tonnes in 1993 and recovered to 95 000 tonnes during the investigation period. This represents an overall decrease in Community industry's production of 8,6 %, while Community consumption increased by 5 % over the same period.

(71) The PTY production capacity of the Community industry has increased over the last three years by about 7 % from 114 000 tonnes in 1991 to 122 000 tonnes during the investigation period. This increase in PTY production capacity is specifically the result of significant investment in 1992 and 1993 by one company, related to a third country producer. This company reduced drastically its imports of POY from the parent company and as counterpart extended its production of POY and consequently its PTY capacity in the Community.

(72) The utilization rate of production capacity of the Community industry globally decreased from 91 % in 1991 to 78 % in the investigation period. Given the fact that the polyester yarn industry is very capital intensive (up to 90 % utilization rate being considered to be normal), the decreasing utilization rate has a significant effect on the allocation of fixed costs.

(c) *Sales volume and market share*

(73) The quantity of PTY sold in the Community by the complaining Community producers declined from about 87 000 tonnes in 1991 and 1992 to 83 000 tonnes in 1993, to increase again to 87 000 tonnes during the investigation period in a context of growing demand.

(74) The Community industry's share of the Community market developed as follows: 37,7 % in 1991, 36,8 % in 1992, 37,7 % in 1993 and 36 % during the investigation period. The overall relative stability of sales led however to a slight decrease of the market share due to the increase in Community consumption.

(d) *Price evolution*

(75) Prices of PTY have fluctuated in line with the prices of the raw materials used for producing the upstream product POY, i.e. PTA, DMT, glycol. The increasing price trend of PTY recorded at the end of the investigation period (first half 1994) as compared to 1993 (second half), is the result of the worldwide shortage of these raw materials and their subsequent price increases. These price increases occurred consequently for all operators in the market at the same time.

(e) *Profitability*

(76) It was found that, in general and from 1992 onwards, the Community industry has recorded deteriorating financial results. The overall profitable situation in 1991 turned into losses and has particularly worsened during the investigation period to reach average losses of around 10 % on turn-over. All complaining Community producers suffered heavy losses, or decreasing profitability.

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(f) *Employment and investment*

(77) It should be noted that though the polyester yarn industry is not labour intensive, since 1991 there has been a steady curtailment in employment by the Community industry.

Investments by the Community industry were reduced in most cases to levels not allowing optimal production.

(g) *Conclusion*

(78) In spite of the measures in force on imports of PTY originating in Turkey and Taiwan, an overall assessment of the main economic indicators leads to the conclusion that the Community industry continues to show clear signs of economic difficulties. Its situation has constantly deteriorated since 1991, as demonstrated in particular by a decline of production capacity utilization and market share, notwithstanding a certain increase of consumption of PTY in the Community, as well as by increasing financial losses.

IV. **Recurrence of injury**

(79) In accordance with Article 15 of the basic Regulation, it was examined whether the expiry of the measures in force would lead again to injury or threat of injury to the Community industry.

(a) *Volume and market share of imports from the exporting countries concerned*

(80) Imports of PTY from Taiwan have remained stable since 1991 at an annual level of around 7 000 tonnes. The assessment of these imports in the light of the development of Community consumption shows a market share of 3 % in 1991, 2,9 % in 1992, 3,2 % in 1993 and 2,9 % during the investigation period.

(81) Imports of PTY originating in Turkey decreased from 4 504 tonnes in 1991 (1,9 % market share) to 3 406 tonnes in 1992 (1,4 % market share) and to 1 546 tonnes in 1993 (0,7 % market share), but increased to 2 348 tonnes during the investigation period (0,98 % market share). The development of these imports and market shares appears to have been somewhat influenced by the setting-up of a PTY production facility in the Community by the largest producer and exporter of PTY in Turkey.

(b) *Prices of the dumped imports*

(82) In order to examine whether price undercutting existed, all the types manufactured by the Community industry and those imported into the Community from the countries concerned have been divided into three groups depending on their weight ('denier'). A weighted average Community industry's selling price of each group was then compared with a weighted average price of each exporter concerned for the comparable group at the same level of trade. The undercutting margins thus obtained per group were then weighted in order to reach one margin per exporting company. The Community industry's prices were taken at an ex-works basis and the exporters' prices were at free-at-Community frontier, customs cleared. As far as Turkey is concerned, this comparison showed an overall weighted average undercutting margin for the entire investigation period of 33,7 %.

As regards Taiwan an overall weighted average undercutting margin of 23,6 % for the entire investigation period was found, ranging from 0,9 % to 34,6 % depending on the exporter concerned.

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(c) *Impact of other factors on the situation of the Community industry*

Other imports

(83) Imports of PTY from other third countries, i.e. Indonesia, India, Malaysia, Thailand, the USA, South Africa and Slovakia were claimed to have influenced the situation of the Community industry.

(84) Anti-dumping investigations concerning imports from India, Indonesia, Thailand and Malaysia are currently being carried out. With the exception of imports from India, which have continuously decreased since 1992 to reach, during the investigation period, a volume considered to be negligible. Community market share of the other three countries taken together increased significantly from 1,7 % in 1991 to 9,6 % during the investigation period. Prices of these imports into the Community appear to be higher than Turkish prices but lower than Taiwanese prices. However, no conclusions can be made yet on the prices and the possible dumping by these imports since the anti-dumping investigations are in course.

(85) Imports of PTY from the USA, although still significant (4,1 % market share in the investigation period) dropped by 16 % in volume between 1991 and the investigation period. As to imports of PTY from South Africa, they increased in terms of Community market share from 1,07 % in 1991 to 1,47 % during the investigation period. Eurostat figures, however, do not provide information on the types of PTY imported and, therefore, no conclusions can be made with regard to the prices at which imports of PTY from the USA and South Africa were made.

(86) As far as Slovakia is concerned, imports of PTY into the Community reached a market share in the investigation period of 3,1 %. However, it appeared that since 1993 due to an investment of a Community producer in Slovakia, a major part of imports into the Community originating in that country was made at transfer prices between related parties. It can reasonably be assumed that such imports cannot have been made by the Community producer in question with a view to adversely affect its own profitability. Consequently, it is concluded that the Slovakian imports cannot have had a meaningful impact on the situation of the Community industry.

(87) It can therefore be concluded that imports of PTY from countries other than Taiwan and Turkey, for which injurious dumping is being investigated following evidence presented by the complainants, i.e. Indonesia, Thailand and Malaysia, may have exacerbated the already unfavourable situation of the Community industry. For the other abovementioned countries, for which no anti-dumping investigation is in course, any contribution to the injury suffered by the Community industry cannot be substantiated.

Other Community producers

(88) Since the Community industry represents 50 % of the total Community production of PTY, it was considered necessary to examine the behaviour of the other Community producers of PTY in the Community and their possible impact on the situation of the Community industry.

The estimated production capacity of Community producers not included in the Community industry has remained stable over the last four years. The same applies to their actual production which showed a slight increase similar to the Community industry's production, in the first half of 1994 only. As to the Community market share of these other Community producers, it showed during the investigation period a slight decrease similar to that of the Community industry.

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(89) Therefore, it does not appear that these producers' behaviour had injurious effects on the precarious situation of the Community industry, other than that resulting from normal competition.

Investment level and recession

(90) The same arguments as in the case of POY concerning the influence of insufficient investment and of the recession on the situation of the Community industry were made by the Turkish exporter with regard to PTY. The reasoning developed in recitals (40) and (41) for POY also applies to PTY. Indeed, investments by the Community industry have been limited by the lack of the necessary financial resources resulting from the low-priced dumped imports of PTY, and the development of the apparent Community consumption of PTY does not reflect any recession.

(d) *Conclusion*

(91) Although the anti-dumping measures in force have had a somewhat positive effect, in terms of the volume of the Turkish and Taiwanese imports of PTY into the Community, they did not prevent the pressure on Community prices to continue. Therefore, even if imports from other third countries subject to anti-dumping investigations may have had some injurious effect on the situation of the Community industry, it remains that, taken in isolation, the dumped imports from Taiwan and Turkey, notwithstanding the existence of protective measures, have continued to contribute materially to the precarious situation of the Community industry.

(92) In these circumstances, to allow the measures to expire is likely to further weaken the Community industry through a recurrence of injury to this industry.

V. **Dumping**

(93) The continued existence of dumping was verified, to ascertain firstly whether there were grounds for the continuation of measures against PTY from Turkey and Taiwan and, if so, whether any change in the dumping margins required the existing measures to be adapted accordingly.

(a) *Normal value*

TURKEY

(94) As far as the determination of normal value for the Turkish producers is concerned, it was first established, for each producer, whether its total domestic PTY sales had been made in sufficient quantities to permit a proper comparison with its total PTY exports to the Community.

(95) Only two out of the three Turkish producers, which cooperated in the investigation exported PTY to the Community during the investigation period. These two producers were found to have sold PTY also in their domestic market during that period. For each producer, the total domestic PTY sales volume was higher than 5 % of its total export sales volume to the Community. Accordingly those domestic sales were considered to have been made in sufficient quantities.

(96) For each of the PTY types sold by the two Turkish producers on the domestic market and found to be identical or directly comparable to types sold for export to the Community, the Commission also examined whether domestic sales per type were made in sufficient quantities.

(97) Domestic sales of each particular type were found to have been made in sufficient quantities, as the volume of each type of PTY sold in Turkey during the investigation period represented 5 % or

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more of the volume of the comparable type sold for export to the Community.

(98) It was subsequently examined for both producers whether the domestic sales of each type of PTY could be considered to have been effected in the ordinary course of trade, by looking at the proportion of profitable sales of the types in question.

(99) Given the high inflation rate in Turkey, the methodology to assess the ordinary course of trade of domestic sales was applied on a monthly basis, as follows:

— in cases where the monthly volume of a type of PTY sold at a net sales price equal to, or above the calculated monthly cost of production, as defined in Article 2 (3) (b) (ii) of the Basic Regulation, represented more than 80 % of the total monthly sales volume of that type, the normal value was established as a monthly weighted average of all domestic sales transactions of the type concerned made in each month of the investigation period, whether profitable or not,

— in cases where the monthly volume of a type of PTY sold at a net sales price equal to or above the calculated monthly cost of production represented less than 80 % but more than 20 % of the total monthly sales volume of that type, the normal value was established as a monthly weighted average of the profitable domestic sales transactions only for the type concerned in each month of the investigation period,

— in cases where the monthly volume of a type of PTY sold at a net sales price equal to or above the calculated monthly cost of production represented less than 20 % of the total monthly sales volume of that type, it was considered that the type in question was not sold in the ordinary course of trade and that the monthly normal value had therefore to be constructed.

(100) As a result of the methodology referred to above for one Turkish producer, the monthly normal value for the type of PTY exported to the Community has been based on the monthly domestic price of the comparable type, after deducting from the sales price all discounts and rebates directly linked to the sales under consideration, in accordance with Article 2 (3) (a) of the basic Regulation. For the types exported by the other Turkish producer, the monthly normal value was based for the first seven months of the investigation period on a monthly constructed normal value, as more than 80 % of the monthly domestic sales were made at a loss, and for the last five months of the investigation period, normal value was based on the monthly domestic sales price of the comparable types, since domestic sales in these latter months were found to have been made in the ordinary course of trade.

(101) The constructed normal value was determined by adding to the manufacturing costs of the product types concerned, a reasonable amount for selling, general and administrative expenses (SG& A) and profit.

(102) This amount was established for the Turkish producer concerned by reference to the expenses incurred and the profit realized by each producer on profitable sales of the like product on the domestic market.

TAIWAN

(103) In assessing whether domestic sales of the product concerned by the Taiwanese cooperating producers were made in sufficient quantities to permit a proper comparison and in the ordinary course of trade, the Commission applied the same methodology followed with regard to the Turkish producers (see recitals (94) to (98)) but for the whole investigation period instead of on a monthly basis.

(104) It was found that for each of the Taiwanese producers concerned, both the total volume of domestic sales of PTY and the domestic sales volume of each type of PTY, were higher than 5 % of the corresponding volumes of the like product sold for export to the

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Community. As a consequence, total domestic sales and domestic sales of each product type were considered to have been made in sufficient quantities to permit a proper comparison.

(105) It was also found that out of a total of 32 types of PTY sold for export to the Community by the Taiwanese producers concerned, only for 16 types had the corresponding like product been sold on the domestic market in the ordinary course of trade. Normal value was therefore established for these types on the basis of the domestic price of comparable types, after deducting all discounts and rebates directly linked to the sales under consideration, in accordance with Article 2 (3) (a) of the basic Regulation.

(106) For the remaining 16 types of PTY sold for export to the Community, normal value needed to be constructed since the comparable types were not found to have been sold on the domestic market in the ordinary course of trade.

(107) For each of the Taiwanese producers concerned, the constructed normal value was determined by adding to the manufacturing costs of the product types in question a reasonable amount for selling, administrative and general expenses (SG& A) and profit. This amount was established by reference to the expenses incurred and the profit realized by each producer on the profitable sales of the like products on the domestic market.

(b) *Export prices*

(108) Since all imports of PTY into the Community originating in Taiwan and Turkey were made directly by independent importers, export prices were determined on the basis of the prices actually paid or payable for the product sold for export to the Community, in accordance with Article 2 (8) of the basic Regulation.

(109) In the case of one of the Taiwanese producers concerned, the Commission was unable to use its reply to the questionnaire as the basis for establishing export prices. The reply was deemed unreliable because information supplied concerned one sales transaction only which could not be satisfactorily verified. It was therefore considered that this company did not export the product concerned to the Community during the investigation period.

(c) *Comparison*

(110) Weighted average normal value by product type was compared with the export price for the corresponding type, on a transaction-by-transaction basis at an ex-works level and at the same level of trade.

(111) For the purpose of a fair comparison, normal value was adjusted in accordance with the provisions of Article 2 (9) and (10) of the basic Regulation to take account of differences directly affecting price comparability. These adjustments concerned selling expenses arising from sales made under different conditions and terms of sale. Adjustment claimed for the above differences were limited to those for which satisfactory evidence was submitted that they had a direct relationship to the sales under consideration.

(d) *Dumping margins*

(112) The above comparison revealed the existence of dumping, the margins of dumping being equal to the amount by which the normal value, as established, exceeds the price for export to the Community. The weighted average dumping margins by producer, expressed as a percentage of the free-at-Community frontier prices, customs duty unpaid, are as follows:

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TURKEY

— Korteks: 7,6 %

— Sasa-Artificial and Synthetic Fibres Inc.: 8,7 %

TAIWAN

— Chung Shing Textile Co. Ltd: 5,5 %

— Far Eastern Textiles: 6,6 %

— Hsin Pao: 0 %

— Nan-Ya Plastics Corporation: 10,6 %

— Lea Lea Enterprise Co. Ltd: 12,9 %

— Lanfa Textile Co.: 16,1 %

(113) For the reasons given in recital (53), for producers which cooperated in the investigation but were found not to have exported during the investigation period, the weighted average dumping margin found for the cooperating producers which did export was considered appropriate.

In the case of the Turkish producers hereby concerned, the margin amounts to 8,3 % and should apply to the company Nergis-Tekstil Sanayi Ve Ticaret.

In the case of the Taiwanese producers hereby concerned, the margin amounts to 7 % and is applicable to the following companies: Shingkong Synthetic Taiwanese Fibres Corp. and Zig Sheng Ind. Co. Ltd.

(114) For those producers in the exporting countries concerned which neither replied satisfactorily to the Commission's questionnaire nor otherwise made themselves known, the dumping margin was determined on the basis of the facts available in accordance with Article 7 (7) (b) of the basic Regulation.

In this respect, the most reasonable facts available were considered to be those established during the investigation. In order to avoid giving a premium for non-cooperation and to ensure that the measures introduced constitute effective protection for the Community industry from unfair trade, it is considered appropriate to establish the dumping margin for the non-cooperating producers in each of the countries concerned at the level of the highest dumping margin found for the cooperating producers in the respective country.

On this basis, for Turkey, the highest dumping margin found for a cooperating producer is 8,7 %. However, considering the low level of cooperation of Turkish producers as shown by the fact that imports of non-cooperating producers represent 40 % of total imports from Turkey during the investigation period, this dumping margin would constitute a bonus for non-cooperation in this proceeding. Therefore, it is considered appropriate to calculate the dumping margin for non-cooperating producers in Turkey by reference to the highest dumping found for a type of PTY sold for export to the Community by the cooperating producers in that country. This dumping margin is 15,2 % and corresponds to a PTY type which represented more than 3 % of total exports to the Community during the investigation period by one of the cooperating Turkish producers. Consequently, the dumping margin for non-cooperating producers in Turkey amounts to 15,2 %.

With regard to Taiwan, the highest dumping margin found for a cooperating producer in that country is 16,1 %. This dumping margin is considered appropriate in the light of the high level of cooperation shown by Taiwanese producers. Indeed, exports of PTY by these producers represent 90 % of total Taiwanese exports to the Community during the investigation period. Consequently, the dumping margin for non-cooperating producers in Taiwan amounts to 16,1 %.

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VI. **Community interest**

(115) A determination as to whether the Community interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including those of the producers, users and consumers in the Community. In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration.

(116) It has to be recalled that in the previous investigation, the adoption of measures was considered to be in the interest of the Community. It was stated that the measures would have a fairly negligible effect on the production costs of the user industry and no serious consequences for consumers.

(117) These considerations remain valid in considering the extent to which it would be in the Community interest to maintain measures in force. No arguments were submitted by the users as concerns the impact of the price of PTY in the end product. Nevertheless, given the range of the measures proposed, the impact of the reviewed measures on the prices for the end products, mainly fabrics and carpets, has been estimated to be moderate.

(118) On the contrary, to allow the measures to expire would put the Community industry at a risk since it would suffer increasingly from the dumped low prices of Taiwanese and Turkish imports being unable to redress its precarious financial situation. It thus appears that the interests of the Community industry by far outweigh the possible, and in any case limited, disadvantages for users and final consumers.

(119) It is therefore concluded that Community interest calls for maintaining the anti-dumping measures in force duly amended to eliminate the injurious effects of dumped imports originating in Turkey and Taiwan and that these measures should still take the form of anti-dumping duties.

VII. **Measures**

(120) In order to provide adequate protection from continued injurious dumping by Turkish and Taiwanese imports and to prevent the recurrence of injury, it is considered that anti-dumping duties should be established in such a way as to allow the Community industry to obtain the reasonable profit it has been deprived of through the negative effects of the dumped imports.

(121) When calculating the adequate amount of duty, consideration was given to the precarious situation of the Community industry which consisted mainly of loss of market share and substantial financial losses due to depressed prices resulting from price undercutting. It is thus necessary that the measures taken allow the Community industry to make a reasonable profit in the future.

(122) In this respect, the Commission has calculated the price level considered adequate to remove injury on the basis of the weighted average cost of production of the Community industry, adding a profit of 6 % estimated reasonable for guaranteeing the industry productive investment on a long-term basis. The price level was then compared to the average import prices on a free-at-Community frontier basis, duty paid.

(123) Since the result of this comparison, for all producers in the countries concerned, shows higher injury margins than the respective dumping margins established, the duties should be based on the dumping margins found,

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HAS ADOPTED THIS REGULATION:

Article 1

Definitive anti-dumping duties imposed by Regulation (EEC) No 3905/88 on imports of partially oriented polyester yarn (POY) falling within CN code 5402 42 00 originating in Taiwan shall be repealed.

Article 2

Article 1 of Regulation (EEC) No 3905/88 shall be replaced by the following:

'Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of partially oriented polyester yarn (POY) falling within CN code 5402 42 00 originating in Turkey.

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

Country	Manufacturer	Rate of duty	Additional Taric code
Turkey			
	Sasa-Artificial and Synthetic Fibres Inc. Adana	3,3 %	8895
	Korteks-Mensucat Sanayi Ve Ticaret A.S. Bursa	3,3 %	8895
	Nergis-Tekstil Sanayi Ve Ticaret A.S. Bursa	3,3 %	8895
	Others	6,8 %	8536

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.'

Article 3

Article 2 of Regulation (EEC) No 3905/88 shall be replaced by the following:

'Article 2

1. A definitive anti-dumping duty is hereby imposed on imports of polyester textured filament yarn (PTY) falling within the CN codes 5402 33 10 and 5402 33 90 originating in Taiwan and Turkey.

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

Country	Manufacturer	Rate of duty	Additional Taric code
Taiwan			
	Lea Lea Enterprise Co. Ltd Taipei	12,9 %	8893
	Nan-Ya Plastics Corporation Taipei	10,6 %	8162
	Shingkong Synthetic Fibres Corp. Taipei	7 %	8163
	Zig Sheng Ind. Co. Ltd	7 %	8163
	Far Eastern Textiles Ltd Taipei	6,6 %	8894
	Chung Shing Textile Co. Ltd Taipei	5,5 %	8161

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Country	Manufacturer	Rate of duty	Additional Taric code
Turkey	Others	16,1 %	8164
	Sasa-Artificial and Synthetic Fibres Inc. Adana	8,7 %	8166
	Nergis-Tekstil Sanayi Ve Ticaret A.S. Bursa	8,3 %	8167
	Korteks-Mensucat Sanayi Ve Ticaret A.S. Bursa	7,6 %	8892
	Others	15,2 %	8170

with the exception of imports which are manufactured and sold for export to the Community by the following Taiwanese companies which shall not be subject to any anti-dumping duty:

Country	Manufacturer	Rate of duty	Additional Taric code
Taiwan	Tuntex Distinct. Corp., Taipei	0 %	8160
	►**C1** Hsin Pao Textile Co., Ltd, Taipei ◄	0 %	8160

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.'

Article 4

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.