COMMISSION REGULATION (EC) No 394/96

of 4 March 1996

imposing a provisional anti-dumping duty on imports of polyester staple fibre originating in Belarus

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 1251/95 [2], 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 [3], as last amended by Regulation (EC) No 522/94 [4], and in particular Article 11 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) In August 1994, the Commission announced by a notice published in the *Official Journal of the European Communities* [5] the initiation of an anti-dumping proceeding concerning imports of polyester staple fibre originating in Belarus.

(2) The proceeding was initiated as a result of a complaint lodged by the International Committee of Rayon and Synthetic Fibres (CIRFS), acting on behalf of Community producers allegedly representing a major proportion of the total production of polyester staple fibre in the Community.

The complaint contained evidence of dumping of the said product and of material injury resulting therefrom which was considered sufficient to justify the initiation of a proceeding.

(3) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the exporting country and the complainants. Interested parties directly concerned were given the opportunity to make their views known in writing and to request a hearing.

(4) One producer in the country concerned, several importers and the complainant Community industry made their views known in writing. Parties who so requested were granted a hearing.

(5) The Commission sent questionnaires to the parties known to be concerned and received information from the complaining Community producers, from one Belarussian exporter, and from two cooperating importers in the Community.

(6) Submissions were also made by or on behalf of Community purchasers of processors of the product in question.

(7) The Commission sought and verified all information it considered necessary for a preliminary determination of dumping and injury and carried out investigations at the premises of the following:

(a) *Complainant Community producers:*

- Hoechst AG, Frankfurt am Main, Germany,
- Du Pont de Nemours, Bad Homburg, Germany,
- Montefibre Spa Enichem, Milano, Italy,
- Akzo Fibres and Polymers Division, Arnheim, Netherlands,
- Wellman International Ltd, Co Meath, Ireland,
- La Seda de Barcelona SA, El Prat de Llobrega, Spain,
- Nurel SA, Hospitalet de Llobrega, Spain;

(b) *Three producers in two market-economy countries:*

- Shinkong Synthetic Fibers Cooperation, Taiwan,
- Tuntex Distinct Cooperation, Taiwan,
- Zaklady Wlokien Chemicznych Elana SA, Poland.

[1] OJ No L 349, 31. 12. 1994, p. 1.
[2] OJ No L 122, 2. 6. 1995, p. 1.
[3] OJ No L 209, 2. 8. 1988, p. 1.
[4] OJ No L 66, 10. 3. 1994, p. 10.
[5] OJ No C 212, 3. 8. 1994, p. 5.

(8) The investigation of dumping covered the period from 1 July 1993 to 30 June 1994 (hereinafter referred to as 'the investigation period').

(9) The investigation exceeded the normal time period of one year laid down in Article 7 (9) of Council Regulation (EEC) No 2423/88 (hereinafter referred to as the 'basic Regulation'), due to the complexity of the investigation and in particular due to difficulties in obtaining reliable data in an appropriate market economy reference country (hereinafter referred to as 'analogue country').

In this respect the Commission contacted, as proposed by the complainant, a producer of polyester staple fibres in Poland, which provided some information and agreed to cooperate only at a very late stage of the proceeding. Subsequently the Commission contacted several Korean manufacturers, which declined to cooperate. Finally, two Taiwanese producers of polyester staple fibres responded to the Commission's request and agreed to cooperate in this proceeding (see recitals (24) to (28)).

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Description and use of the product concerned

(10) The product under consideration is synthetic staple fibre of polyester (hereinafter referred to as 'PSF'), not carded, combed or otherwise processed for spinning. It is a raw material used in various stages of textile production, depending on the nature of the textiles to be produced.

(11) The product can be split into two main categories: spinning- and non-spun application. Some 60 % of the PSF consumed in the Community is used for spinning yarn to make fabrics, mixed, where necessary, with other fibres such as wool or cotton. The rest is used as wadding for certain textile products (cushions, car seats, anoraks and the like), including other non-spun applications such as carpet manufacture. Within these two categories, different sizes or types of PSD, essentially determined by denier and cut length, exist.

(12) However, there are no differences between the basic physical characteristics of the two main categories, nor in the various types within these categories. In these circumstances and in line with previous investigations, PSF has to be considered as one product for the purpose of this proceeding.

2. Like product

(13) The Commission established that PSF exported to the Community from Belarus has basic characteristics and uses similar to those of the product produced and sold in the Community. PSF originating in Belarus also has basic characteristics and uses similar to the PSF produced and sold in the analogue country (see (24) to (28)).

(14) Eurofibrefill, an association formed by a group of users of PSF, claimed that the product exported from Belarus is not comparable to the allegedly more sophisticated, upper grade material produced and sold by the Community manufacturers.

(15) This argument cannot be accepted since the physical characteristics of the products are very similar and the use made of the alleged lower quality polyester staple fibres is not significantly different from the use made of those of supposedly better quality. It was found during the investigation that Belarussian products were described on customers' orders and invoices using identical classifications as compared to Community products, and were sold to end-users who also bought Community produced products for the same uses. Therefore, an alleged difference in quality, if any, is not sufficient to justify a distinction being made between these products.

(16) Also in this regard, one Belarussian exporter and Eurofibrefill questioned whether the PSF sold in Taiwan, which was chosen as an analogue country, forms a like product when compared with the PSF exported from Belarus to the Community, claiming an alleged difference in tenacity as a decisive factor negating other considerations indicating that the products were like products.

(17) The Commission reached the conclusion that, despite possible minor deviations in the appearance and characteristics, such as tenacity, resulting from a variation in the chemical composition or manu-

facturing process of the fibres sold on the two markets, these fluctuations are not material in relation to the product's basic characteristics, marketing, customer/consumer acceptance and use.

(18) Consequently, it was considered that PSF exported from Belarus to the Community, that sold on the Taiwanese domestic market and that produced and sold in the Community, are like products within the meaning of Article 2 (12) of the basic Regulation.

C. DUMPING

1. Normal value — choice of analogue country

(19) Since Belarus, with an annual PSF production of around 130 000 tonnes, is a non-market economy country, normal value had to be determined on the basis of information obtained for the domestic market of a market economy reference third country, in accordance with Article 2 (5) of the basic Regulation.

(20) For this purpose, the complainant suggested that Poland should be used as the analogue country. The Commission obtained the cooperation of the sole producer of PSF on the Polish market.

(21) After verification of the information provided and having analysed the general market conditions in Poland for the product concerned, the following conclusions were reached leading to the rejection of Poland as the analogue country.

(22) In Poland, which has a relatively small domestic consumption of approxiametely 25 000 tonnes, the sole Polish producer, whose production volume is small, holds more than 90 % of the market. There is an absence of price competition, given the negligible imports from third countries (Belarus, Germany and Slovakia) due to high import duties of up to 26 %. The low domestic consumption entails also, that the number of consumers in the market is relatively limited.

(23) In these circumstances it was concluded that an open, market-oriented environment for PSF did not exist in Poland during the investigation period. Indeed, after having verified the cost of production and domestic selling prices of the cooperating company, the Commission established that a 'normal value' established under these market conditions would not reflect normal market conditions and lead to a result which would unreasonably affect the Belarussian exporter.

(24) The Commission subsequently examined the appropriateness of Taiwan as analogue country, noting also that the two Taiwanese producers willing to cooperate had already participated in previous anti-dumping proceedings involving Taiwan as an analogue country. No objections to this proposal were raised by the Belarussian exporter except concerning the comparability of the product (see recital (34)) or Government authorities concerned. The following facts were taken into consideration when proposing Taiwan for the final decision:

— *openness and representativeness of the Taiwanese market:*

(25) The two Taiwanese manufacturers, which agreed to cooperate, produce on an economical scale with high production volumes, and their product enters an open and competitive domestic market with nine local producers. Domestic consumption of PSF amounts to more than 400 000 tonnes, which, with import duties of around 1 %, includes import volumes from various countries.

(26) There is therefore a competitive structure of supply and demand. Given the efficiency of the Taiwanese companies, the Commission verified that their costs and actual selling prices charged on the open domestic market represent a reliable base for normal value. Also, it was established that both Taiwanese producers, which sold on the Taiwanese market on a regular basis to a large number of independent customers in substantial quantities, had a representative domestic sales volume when compared to the total volume of the Belarussian exports to the Community during the investigation period.

— *access to basic raw materials*

(27) The Taiwanese producers had unimpeded access to raw materials at world-market prices during the investigation period, and nothing was found to suggest that domestic selling prices were not governed by the economical forces of a non-regulated, free market economy.

(28) On the basis of the above factors and in conformity with Article 2 (5) of the basic Regulation, Taiwan is therefore considered to be an appropriate and not unreasonable choice of analogue country for establishing normal value for the product under investigation.

2. Calculation of normal value

(29) Given the impossibility of determining export prices according to PSF category and type (see recital (30)), normal value was established for the purpose of the provisional determination on the basis of the weighted average of all sales of PSF during the investigation period (irrespective of category and grade) by the two cooperating producers on the Taiwanese market. In view of the significant development in prices both on the Taiwanese market and with regard to Belarussian exports and a marked increase in export quantities during the second half of the investigation period, two normal values were established, one for the first half of the investigation period and the other for the second half. The weighted average prices thus determined were above the relevant weighted average costs and therefore Taiwanese sales were considered to be made in the normal course of trade within the meaning of Article 2 (3) of the basic Regulation. In the light of the information available concerning the categories and types sold in Taiwan and those sold for export by the Belarussian exporter, this approach was not considered unreasonable.

3. Export price

(30) Since the usable information provided within a reasonable period of time by the sole cooperating Belarussian exporter covered only a fraction of total Belarussian exports of PSF towards the Community during the investigation period (700 tonnes of out 32 000 tonnes) and in view of the low level of cooperation from importers/distributors, which are understood to account for the vast majority of purchases from Belarus, the Commission established export prices, in accordance with Article 7 (7) (b) of the basic Regulation, on facts available.

(31) In respect, Eurostat data were considered the most reasonable basis. However ist was not possible to determine prices by category and type. The average export price thus obtained was comparable to that provided by the cooperating exporter. In the light of the development in prices and quantities during the investigation period (see recital (29)), a weighted average export price was calculated separately for the first and second half of that period.

4. Comparison

(32) Normal value was compared with the export price on an ex-national frontier fob level.

(33) Where appropriate (and where adequate information was available), normal value and export price were adjusted to take account of certain selling expenses specified in Article 2 (9) of the basic Regulation. These adjustments for differences affecting price comprised costs for transport, insurance, handling and credit.

(34) An adjustment for alleged quality differences resulting from differences in tenacity between the PSF exported by Belarus to the Community and the PSF sold on the dometic market in Taiwan was claimed by the Belarussian exporter. It was claimed that the Taiwanese product was of a higher quality due to its higher tenacity. Despite informing the Commission of its intention to corroborate this claim, the Belarussian exporter did not submit any evidence, and, in any event, no information was available to the Commission to suggest that such a claim was warranted. It had therefore to be rejected.

5. Dumping margin

(35) The comparison of the normal value with the export price showed the existence of dumping, the dumping margin being equal to the amount by which the normal value exceeds the price for export to the Community.

(36) Expressed as a percentage of the free-at-Community frontier price, duty unpaid, the weighted average dumping margin amounts to 43,5 %.

D. COMMUNITY INDUSTRY

(37) The investigation showed that the share of the total Community production held by the complainant Community producers during the investigation period amounted to more than 90 % of the Community output of the like product. They can therefore, in accordance with Article 4 (5) of the basic Regulation, be considered as constituting 'the Community industry'.

E. INJURY

1. Community consumption of PSF

(38) Apparent consumption of PSF in the Community followed overall a slight increasing tendency in the past four years: it went from 455 000 tonnes in

1991 to 475 000 tonnes in 1992 and, after a temporary fall back to 450 000 tonnes in 1993, with a half year consumption during the investigation period of 215 00 tonnes in the second half of 1993, to 250 000 tonnes in the first half of 1994.

2. Factors relating to the dumped imports

(a) Volume and market share of the dumped imports

(39) Eurostat data prior to 1992 relate to the former Soviet Union. Separate figures for Belarus are available from 1992. The total volume of imports into the Community originating from the USSR was 1 524 tonnes in 1991. The reported figure for Belarus imports of PSF amounted to 5 863 tonnes in 1992, 22 101 tonnes in 1993, and 32 063 tonnes during the investigation period. Data available suggest that the imports originating in the former Soviet Union were in fact mostly of Belarussian origin and have been treated as such in the injury analysis. The import evolution represents thus an increase of 2 100 % between 1991 and the investigation period.

(40) The market shares in the Community of imports of PSF originating in Belarus increased from 0,3 % in 1991, to 1,2 % in 1992, to 4,9 % in 1993, and to 6,9 % during the investigation period. The increasing trend also accelerated during that period: in the second half of 1993 the exports (11 788 tonnes) represented twice the volume exported in 1992, and during the first six months of 1994 the exports (20 275 tonnes) represented nearly four times the volume exported in 1992, constituting a market share of 8,0 % for that six month period.

(b) *Prices of the dumped imports*

(41) A comparison between the weighted average ex-works prices of the Community industry and the weighted average Belarussian export prices at cif-Community frontier (customs cleared) obtained from Eurostat, showed undercutting margins throughout the investigation period. For the period June to December 1993, undercutting amounted to 37,4 %; for the second half of the investigation period — January to June 1994 — the undercutting margin was 34,7 %, always expressed as a percentage of the Community producers' prices. The weighted average undercutting margin for the entire investigation period amounted to 35,7 %. This result was corroborated by a specific comparison based on the limited information available from the Belarussian exporter (see recital (30)).

3. Factors relating to the state of the Community industry

(42) The state of the Community industry should be examined in the light of the undermentioned existing anti-dumping measures:

— On 22 October 1992, following a review of existing anti-dumping measures, imposed by Council Regulation (EEC) No 3946/88 [1], the Council, by Regulation (EEC) No 3017/92 [2] modifed the rates of anti-dumping duties applicable to imports of polyester staple fibres originating in Romania, Taiwan, Turkey, the Republics of Serbia and of Montenegro, the former Yugoslav Republic of Macedonia, and terminated the proceeding in respect of imports originating in Mexico and the United States of America.

— On 15 January 1993, the Council by Regulation (EEC) No 54/93 [3], imposed definitive anti-dumping duties on imports of polyester staple fibres originating in India and the Republic of Korea.

(a) *Production*

(43) Community production of PSF remained relatively stable over the last four years: it went from 370 000 tonnes in 1991, to a temporary peak in 1992 of 390 000 tonnes, to 365 000 tonnes in 1993 and a total of 370 000 tonnes during the investigation period.

(b) *Production capacity, capacity utilizazion*

(44) The PSF production capacity has overall decreased from 485 000 tonnes in 1991 to 478 000 tonnes during the investigation period. Over the same period, capacity utilization rates varied from 76 % in 1991 to 78 %. The negligible recovery of the utilization rate in the investigation period has to be seen in the light of the fall of the Community producers' production capacity.

(c) *Stocks*

(45) The volume of stocks decreased from 33 000 tonnes in 1991 to 30 000 tonnes at the end of 1993, but remained, considering also the commodity type product, at a still significant level of around 6 to 8 % of annual Community production.

[1] OJ No L 348, 17. 12. 1988, p. 49.
[2] OJ No L 306, 22. 10. 1992, p. 1.
[3] OJ No L 9, 15. 1. 1993, p. 2.

(d) *Community industry's sales volume and market share*

(46) While the volume of PSF imports originating in Belarus increased significantly and steadily over the past four years (see recitals (39) and (40)), the sales of the Community producers at the same time fell from 373 000 tonnes in 1991 to 355 000 tonnes in 1993 and 358 000 tonnes for the investigation period. The evolution of market share coincided with this trend and dropped from 82,1 % in 1991 to 80,2 % in 1992 and 1993, and to 78,3 % for the investigation period. During the first half of 1994, the Community industry's market share went down to 76,5 %, at a time when consumption was somewhat increasing.

(e) *Price evolution on the Community market*

(47) Overall prices of PSF of the Community producers, in national currency and on their domestic markets, steadily weakened, on a weighted average basis, by some 15 % between 1991 and December 1993.

(48) It should be noted that prices of PSF have been influenced for all operators on the market by the evolution of prices of the basic raw materials like Pure Terephthalic Acid (PTA), Dimethylterephthalate (DMT) and Glycol, representing about 60 to 70 % of the cost of production of the finished product. Indeed, essentially, due to a worldwide shortage of these raw materials, starting at the end of 1993 and continuing into 1994, prices increased, and so prices of PSF have followed this trend, as from early 1994, reflecting the corresponding increase in the cost of production.

(f) *Profitability situation of the Community industry*

(49) There is a long dumping history for PSF products (see above recital (42)). This explains why the investigation showed that, overall, the Community industry has recorded poor financial results, a situation which already existed before 1991. This situation has deteriorated considerably since 1991 (loss of 7,9 %, on turnover). A slight recovery took place in 1992 (loss of 6,4 %, on turnover), a time at which anti-dumping measures were taken. However the losses increased again in 1993 (loss of 14,9 %, on turnover), with a particular worsening in the second half of 1993 (loss of 18,8 %, on turnover). The slight improvement of the financial situation during the first half of 1994 (loss of 13 %, on turnover) resulted partially from the fact that all operators on the Community market were forced to raise their prices due to the increase in cost of production (see recital (48)), and the Community industry could somewhat limit its losses in such a situation. Nevertheless, the financial situation clearly worsened over the period considered.

(g) *Employment*

(50) Although the PSF industry is not labour intensive, there has been a steady erosion in employment totaling 25 % (corresponding to 1 200 people) between 1991 and June 1994, due to a certain degree of reduction in production capacity, but more significantly to the dismissal of personnel in non-manufacturing areas like selling, administration and other overhead sectors. Such steps were taken to counteract low selling prices and their resulting insufficient profitability.

4. Conclusion as to injury

(51) In the light of the foregoing analysis and in particular the deterioration of the financial results, decline in sales and market share and employment cutbacks, the Commission has concluded, for the purpose of its preliminary findings, that the Community industry had suffered material injury within the meaning of Article 4 (1) of the basic Regulation.

F. CAUSATION OF INJURY

1. Effect of the dumped imports

(52) In its examination as to whether the material injury suffered by the Community industry was caused by the effects of dumping, the Commission found that the rapid increase in dumped PSF imports originating in Belarus, which led simultaneously to the only significant increase in market share of an importing country on the Commuity market during the investigation period, coincided with loss of market share and reduced profitability for the Community industry, despite the increasing consumption on the Community market. The worsening financial situation of the Community industry is due to the price erosion on the Community market, which was evidently influenced by the significant undercutting of the Community industry's prices by the Belarussian imports.

(53) It should be noted that due to the commodity type of this product, the market is transparent and highly price sensitive and therefore undercutting of prices by certain vendors with significant market share has a detrimental impact on prices in the whole market. Belarus has, since 1993, obtained the leading market share among all exporting countries, a fact which can only by explained by an aggressive pricing policy.

(54) In this context, it is worthwhile mentioning that the situation on the Belarussian home market, with stagnant domestic consumption and negligible profitability, owing to economic difficulties following political changes and the considerable production capacity still available, incites the exporter to expand on other markets. This was also confirmed during the investigation by data available from the Belarussian exporter, already indicating during the investigation period a persistent decreasing trend in domestic sales and buoyant export figures. This latter development bears no relation to normal economic conditions, as shown by the size of the dumping and undercutting margins found, a behaviour which injures the Community industry.

2. Effects of other factors

(a) *Other imports*

(55) The Commission also considered whether imports from other countries might have contributed to the injury suffered by the Community industry, bearing in mind that imports from other countries — Taiwan, Romania, the Republics of Serbia and Montenegro and the former Yugoslav Republic of Macedonia, India and Korea — are already subject to anti-dumping measures.

(56) In this context it could be observed that the volume of imports from the countries named above (representing around 5 % market share during the investigation peiod) remained relatively stable, with a decreasing trend since 1992. On the basis of Eurostat (see recital (31)), import prices for PSF originating in these countries subject to anti-dumping measures appeared to remain stable, with a level of prices significantly higher than Belarussian export prices to the Community.

(57) Concerning imports from other countries not subject to anti-dumping measures, but which were originally subject to measures which have subsequently been repealed, and/or have significant import volumes, the market share of USA and Poland — each having 1,4 % market share during the investigation period — has slightly increased over the last four years, whereas their prices have remained stable on a significantly higher level than Belarussian export prices. Imports from Switzerland have on the contrary decreased over the same time, falling to 1,6 % market share during the investigation period, and were also at a high level of prices in comparison to the other exporting countries.

(58) As for all other sources of imported PSF into the Community market, covering more than 15 countries, their combined market share evolved from 3,4 % in 1991 to almost 7 % in 1992 and dropped to 5,2 % during the investigation period, with an overall slight decrease in prices over the last four years, but still remaining on a level considerably above Belarussian export prices. Given also the small individual quantity of imports per country, the influence of each imports on the Community market appears to be negligible.

(59) Consequently, imports from other countries cannot be considered to have had a measurable impact on the performance of the Community industry.

(b) *Economic recession*

(60) The association of European users of PSF, Eurofibrefill, alleged that the precarious situation of the Community industry was not caused by imports of PSF from Belarus, but is directly attributable to low demand due to an overall economic recession and the consequent reduction in Community production, consumption and prices during the investigation period.

(61) While the weak economic situation reflecting low prices prevailing at the outset of 1993 could be expected to have an influence on the Community industry's performance, this recessionary environment cannot explain the increase in market share of the Belarussian improts (see recital (40)). Indeed, the loss in market share of the Community PSF industry is mirrored by the gain of market share of

the Belarussian exporter. Should the downturn of the Community industry have been caused exclusively by the unfavourable trend of the general economic conditions, the Belarussian imports should also have been affected by the unfavourable economic conditions, and could not have registered the increase in market share which was found.

(c) *Community PSF-producers' productivity*

(62) According to Eurofibrefill, the situation of the Economic PSF industry was aggravated by its alleged inefficiency with inherent over-capacity and structural imbalance leading to losses.

(63) Allegations of structural deficiences and uncompetitiveness, which were never substantiated by Eurofibrefill, are unfounded, considering the Community-industry's modern equipment and its constant investments in new machinery showing its steady endeavour to cut costs. Moreover, it should be noted that PSF-manufacturers worldwide use European-produced equipment, which is regarded as being highly reliable. Furthermore, in the light of Community consumption, no structural overcapacity of the Community industry exists.

(d) *Conclusion on causation*

(64) The Commission found no additional factors other than those mentioned above which could have contributed to the injury suffered by the Community PSF industry.

(65) Although the economic recession may have, together with other imports, to some extent negatively affected the situation of the Community industry, this cannot explain the full extent of the weakening of its position in terms of loss of profitability and decline in market share. Clearly the Belarussian dumped imports have, taken in isolation, by reason of their low prices and significant as well as increasing volume, caused material injury to the Community industry.

G. COMMUNITY INTEREST

1. General considerations

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

2. Interest of the Community industry and impact on competition

(67) In the framework of the investigation it has been established that the Community industry is facing injury in the form of a loss of sales and market shares, which together have led to substantial financial losses. In addition, it has had to reduce significantly the number of employees. Removing the unfair advantages gained by dumping practices should prevent the further deteriorarion of the situation of the Community industry which, unless a solution is found, cannot remain competitive. Competitiveness in this sector is for a large part dependent on regular modernization of production equipment, an investment which the Community industry might be unable to make in future in veiw of its very poor financial situation.

(68) When examining the effect on competition of possible anti-dumping measures in the present case, account has to be taken of the fact the Community PSF industy still holds a significant market share (78 % during the investigation period). In this connection, the following considerations appear relevant:

(69) It is the intended effect of the imposition of anti-dumping measures that the price levels of the Belarussian exporters in the Community increase. This may have subsequently some influence on the relative competitiveness of their products. Competition on the Community market is not, however, expected to be reduced as a consequence of such measures. Despite the high market share of the Community producers, they could not resist the price pressure exerted by the dumped imports. It is considered that anti-dumping measures would neither as a matter of general principle, nor in the particular case, necessarily lead to the exclusion from the Community market of imports from the country concerned. On the contrary, the removal of the unfair advantages gained by the dumping practices is designed to prevent the further decline of the Community industry and thus to help to maintain the availability of a wide choice of PSF producers and even to strengthen competition. Indeed, without such measures, there are convincing reasons that the situation of the Community industry would further deteriorate.

3. Other specific interests involved

(70) The effects of imposing anti-dumping measures on imports of PSF from Belarus in relation to the specific interests of parties other than the Community industry, including the processing industry and the consumers, have also to be considered.

(71) Eurofibrefill and the Belarussian exporter claimed that in the recent context of shortage of supply (1994), Community consumers are dependent on low priced imports.

(72) The Commission confirms that in 1994 demand of PSF in the Community increased. The increase had led to certain difficulties in supply on the Community market. However, no structural supply deficit seems to exist. Annual consumption of PSF in the Community market is around 480 000 to 500 000 tonnes, while the Community industry has some 530 000 tonnes of annual production capacity available.

(73) The Belarussian exporter alleged furthermore that the imposition of anti-dumping measures on its exports to the Community would be likely to weaken its position as a producer and could drive it out of production, thus reducing the variety of external sources of supply available for Community end-users and would therefore contribute to a higher dependence on other external suppliers.

(74) Referring to the arguments already mentioned in recital (69), the Commission has to reaffirm that the purpose of the anti-dumping measures is the elimination of the effect of unfair commecial practices. The trade practices of the exporting country concerned have distorted the functioning of the market for PSF in the Community and have led to a loss in market share and to depressed pricing as regards the Community producers. The absence of measures to correct this distortion could lead to a further erosion of the Community industry, an erosion which would not take place in a situation of effective competition.

(75) Furthermore, it is obvious from the information available, supplied by the exporter and obtained from Eurostat data, that the exporter has, since 1993, resolutely turned its sales to export markets, i.e. to the European Community and to other countries (see recital (54)). It is therefore extremely unlikely that this producer would be driven out of PSF production, as a result of anti-dumping measures imposed against its injuriously dumped exports to the Community.

(76) It has also to be borne in mind that the Community industry has been affected by imports from other third countries, namely Romania, Taiwan, Turkey, the Republics of Serbia and Montenegro, the former Yugoslav Republic of Macedonia, India and the Republic of Korea, which are currently subject to anti-dumping measures. All these countries would be treated in a discriminatory manner and the effectiveness of these measures would be undermined, if no measures were taken against the low priced imports from Belarus.

(77) Having examined the various interests involved, the Commission concludes that to leave the Community PSF industry without protection against this injurious dumping would not be in the interest of the Community. It is furthermore considered necessary to assure the non-discriminatory treatment of PSF originating in Belarus as compared to imports of PSF originating in other third countries, notably those currently subject to anti-dumping measures.

(78) Therefore, the Commission finds that the Community interest calls for the imposition of anti-dumping measures in order to prevent further injury being caused by the dumped imports concerned during the investigation.

H. IMPOSITION OF PROVISIONAL DUTIES

(79) The Commission considers that the measures should take form of a provisional *ad-valorem* duty. For the purpose of establishing the level of this duty, the Commission took account of the dumping margin found and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

(80) Since the injury consists principally of price depression, loss of market share and in particular financial losses, the removal of such injury requires that the Community industry should be able to increase prices to profitable levels without loss of sales volume. In order to achieve this, the prices of the dumped imports concerned should be increased to eliminate injurious dumping.

(81) Accordingly, the Commission calculated the level of prices at which the Community industry would be able to cover its costs and to obtain a reasonable return. To the weighted average costs of production of the Community PSF producers, on an ex-works basis, a profit margin of 6 % was added to reach the injury elimination level. The profit margin of 6 % on costs was considered, for the purpose of the preliminary determination, reasonable for guaranteeing the industry investment on a long term basis. The Commission compared, at the same level of trade, average cif prices of the dumped imports as obtained from Eurostat figures (see recital (31)) duty paid, with the corresponding injury elimination price level. The difference thus determined has been expressed as a percentage of the free-at-Community frontier price, duty unpaid, of the dumped imports. As the resulting percentage is higher than the dumping margin established, the level of the provisional anti-dumping duty to be imposed should be based, in this case on the lower level of dumping found, i.e. 43,5 %, in accordance with Article 13 (3) of the basic Regulation.

I. RIGHTS OF INTERESTED PARTIES

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of synthetic staple fibre of polyester, falling within CN code 5503 20 00, and originating in Belarus.

2. The rate of the provisional anti-dumping duty applicable shall be 43,5 % of the net, free-at-Community frontier price, before duty.

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

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

Article 2

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

Article 3

This Regulation shall enter into force on the day following 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, 4 March 1996.

For the Commission
Leon BRITTAN
Vice-President