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*(Acts whose publication is obligatory)***COUNCIL REGULATION (EEC) No 738/92****of 23 March 1992****imposing a definitive anti-dumping duty on imports of cotton yarn originating in Brazil and Turkey****THE COUNCIL OF THE EUROPEAN COMMUNITIES,**

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, and in particular Article 12 thereof,

Having regard to the fact that the Commission applied on 18 December 1991 to the EEC-Turkey Association Council, pursuant to Article 47 (1) of the Additional Protocol to the Agreement establishing an Association between the European Economic Community and Turkey⁽²⁾ and that the Association Council has taken no decision in this respect, within the time limit referred to in Article 47 (2) of that Protocol,

Having informed the EEC-Turkey Association Council, pursuant to Article 47 (2) of the above Additional Protocol,

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

Whereas :

A. PROVISIONAL MEASURES

- (1) The Commission, by Regulation (EEC) No 2818/91⁽³⁾, imposed a provisional anti-dumping duty on imports into the Community of cotton yarn originating in Brazil, Egypt and Turkey and terminated the anti-dumping proceeding in respect of this product originating in India and Thailand. The Council, by Regulation (EEC) No 171/92⁽⁴⁾, extended this duty for a period not exceeding two months.

B. SUBSEQUENT PROCEDURE

- (2) Following the imposition of the provisional anti-dumping duty, the interested parties who so requested were granted an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings.
- (3) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.
- (4) The oral and written comments submitted by the parties were considered and, where appropriate, the Commission's findings were modified to take account of them.
- (5) Certain producers of cotton yarn in the exporting countries concerned made themselves known and indicated that they had not exported cotton yarn to the Community during the reference period, but had since started such exports or had the intention of doing so. These companies asked the Commission to take their particular situation into consideration.
- (6) Due to the complexity of the procedure and the other reasons indicated in recital (11) of Regulation (EEC) No 2818/91, the investigation could not be concluded within the time period mentioned in Article 7 (9) (a) of Regulation (EEC) No 2423/88.

C. PRODUCT UNDER CONSIDERATION

- (7) In its provisional findings (recitals (4) to (6) of Regulation (EEC) No 2818/91) the Commission found that although there are various types of cotton yarn, differing namely in thickness, they have physical characteristics closely resembling each other and are manufactured using essentially the same technology and the same type of equipment. Moreover, they have a high degree of inter-

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No L 293, 29. 12. 1972, p. 4.

⁽³⁾ OJ No L 271, 27. 9. 1991, p. 17.

⁽⁴⁾ OJ No L 18, 25. 1. 1992, p. 33.

changeability in their end use. These findings have not been substantially questioned by the producers/exporters. Some of them, however, claimed again that certain specific types of cotton yarn which exported to the Community were of different quality than the products manufactured and sold by the Community industry and should not be treated as a like product.

- (8) The Commission, having re-examined this claim, found that the differences in quality did not significantly affect the physical characteristics nor the use of the different types of cotton yarn imported as compared to those manufactured in the Community.

The Council confirms therefore the conclusion that the cotton yarn manufactured and sold by the Community industry is to be considered as a 'like product', within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88, of both the product manufactured and sold on the domestic market of each of the exporting countries concerned and of that manufactured and exported to the Community.

- (9) A Brazilian producer/exporter contested that its exports of cotton yarn wound on cones and then requiring further processing (such as dyeing) after having been imported into the Community should not be considered as falling within the scope of the present procedure.

This producer/exporter argued that while the complaint related only to cotton yarn not put up for retail sale, the above product was destined for retail sale for home knitting and not suitable for industrial use, i.e. weaving or knitting on industrial machines. In addition, the machinery used to produce this particular type of cotton yarn could not, without expensive modifications, be used for the production of cotton yarn for industrial use.

This exporter requested therefore that this product should not be subject to any anti-dumping duty.

The Commission, having consulted a specialized institute for the purpose of determining the exact characteristics of the cotton yarn concerned and possible uses of this product, has found that it is in fact suitable for special industrial uses which are undertaken in the Community on a regular basis. Moreover, it was found that the machines used to produce this type of cotton yarn could also be used for other types without significant modification expenditures. For these reasons the Commission considers that the product concerned falls within

the framework of the proceeding. The Council confirms this conclusion.

D. COMMUNITY INDUSTRY

- (10) Some producers/exporters claimed that the Community producers investigated by the Commission were not fully representative of the Community cotton yarn industry.

In recital (7) of Regulation (EEC) No 2818/91, the Commission outlined the method employed for investigating the Community industry and the reasons for its approach. In the view of the Commission, the selection of producers carried out according to size and geographic location ensures that the companies concerned are representative.

The Council confirms the Commission's approach on this point.

E. PRODUCERS/EXPORTERS

- (11) As regards the selection of the exporting companies by the Commission for determination of normal values, the following objections have been made :

— one cooperating Turkish producer/exporter, not selected for verification, claimed that the method used by the Commission is not specifically provided for by Regulation (EEC) No 2423/88.

Consequently it requested an examination of its individual situation concerning the dumping determination,

— some importers argued that the exporting companies selected for verification were not fully representative of the other cooperating companies.

- (12) The Commission notes that neither Regulation (EEC) No 2423/88 nor the GATT anti-dumping code requires that the entirety of the producing/exporting companies be investigated for the purposes of establishing normal values. Consequently, the Commission as well as the authorities of other GATT members, signatories to the code, have, in cases involving a great number of exporters selected companies which together can be considered as representative. In the present case, the selection criteria applied by the Commission ensures representativity as explained in recital (8) of Regulation (EEC) No 2818/91. Furthermore, the methodology used by the Commission was agreed in advance by all national associations, which acted on behalf of the member companies, including the Turkish association.

As regards the claim by the Turkish producer/exporter that its situation be individually investigated, the Commission recalls that it had, prior to on-the-spot verification in Turkey, offered all exporters which so wished, including this exporter, such an opportunity. No request to this effect was made at that time by the above producer/exporter. Moreover, the claim in question was received well after the adoption of the provisional measures, and at a moment in time where the completion of the investigation would have been unduly delayed, had a new on-the-spot verification to be carried out by the Commission.

In these circumstances, the Community confirms the position taken by the Commission.

F. NORMAL VALUE

(a) General

- (13) For the purposes of the definitive findings, normal value was in general established on the basis of the same methods as those used in the provisional determination of dumping, after taking into consideration new facts and arguments presented by the parties.

(b) Brazil

- (14) Two of the verified Brazilian exporters claimed that the Commission had wrongly considered sales of cotton yarn on the domestic market in certain months of 1989 as having been made at a loss. These exporters objected to the Commission having deducted the cost of credit to customers from the domestic selling price when comparing it with the cost of production of cotton yarn, since financing costs were included in the latter.

In order to establish whether domestic sales were in the ordinary course of trade within the meaning of Article 2 (3) (a) of Regulation (EEC) No 2423/88, the Commission had to examine whether these sales were profitable. To this end, the cost of production was calculated by taking into account all cost elements, including production financing costs. The resulting amount was then compared to the domestic sales prices at ex-works level. Since these prices do not include, by definition, credit to customers, the amounts relating to credit contained in actual invoiced prices were deducted.

The Council confirms the appropriateness of this calculation.

- (15) As regards the non-cooperating Brazilian producers/exporters, the Commission had found for the purposes of its provisional determinations that the level of cooperation had been so low as to render the use of the findings made in the investigation unrepresentative. Consequently, normal value was determined on the basis of information relating to cost of production, supplied by the complainant Community industry, plus a reasonable profit margin.

The Brazilian producers/exporters in question objected, maintaining that normal value determined on the basis of the complaint was the result of a mere estimation and that the calculation should be based on more neutral information available from independent sources such as published price lists, official import statistics, etc.

- (16) The Commission has reconsidered this situation in the light of the above comments and accepts the use of information concerning certain cost items for Brazilian cotton yarn contained in a specialized publication, which, in the present case, can be considered as a reliable source.

Thus, the Commission constructed normal value for the Brazilian non-cooperating producers/exporters by using for raw material costs and profit the weighted average of data concerning the cooperating companies, while all other costs are calculated on the basis of the information from the above publication.

(c) Egypt

- (17) For the reasons explained in recital (13) (a) of Regulation (EEC) No 2818/91, the Commission constructed normal value of Egyptian cotton yarn. All Egyptian exporters objected to this calculation and claimed that normal value should have been calculated on the basis of the actual domestic selling prices.

Furthermore, they insisted that, if constructed values were to be applied, the cost of cotton imported from third countries (invoiced in dollars) should be calculated on the basis of the special rate of exchange in force for raw cotton transactions during the investigation period.

Finally, the Egyptian producers/exporters claimed that the Commission had erroneously disregarded certain cost factors such as the percentage of waste resulting from the cotton yarn manufacturing process and the value of this waste when subsequently utilized.

- (18) In addition to the comments above, one Egyptian producer/exporter contested the results of the verification, claiming that its manufacturing structure was very similar to that of other Egyptian producers/exporters for which a lower margin of dumping had been determined; that in 1989 costs of production were exceptionally high and had decreased in following years; and that export prices of Egyptian cotton yarn had been increasing since 1989.
- (19) As regards the use of constructed normal values for Egyptian cotton yarn, the arguments submitted by interested parties were the same as for the preliminary determination. The Council therefore confirms that the Commission's approach, as outlined in recital (13) of Regulation (EEC) No 2818/91, is justified.
- (20) With regard to the rate of exchange used for the calculation of the cost of imported cotton, the Commission found that the claim of the Egyptian producers/exporters was justified. Consequently the cost was re-calculated and this modification led to a decrease of normal value.
- (21) With regard to the costs of production for Egyptian cotton yarn, the Commission re-examined its calculations and made the necessary modifications to take into account, whenever appropriate, the claim relating to the value of the waste. These modifications also led to a decrease of normal value.
- (22) As regards the objections listed in recital (18), the Commission considers them unfounded, since the differences in normal values are explained by differences in the cost of production found in the course of the investigation. Furthermore, factors relating to a period outside the period of investigation cannot be taken into consideration to determine whether dumping exists. The Council confirms this position.

(d) Turkey

- (23) Two Turkish producers/exporters claimed errors in the calculation of the cost of production and the determination of profit. The claims were found to be justified and adjustments to normal values were made accordingly.

(e) Complainants

- (24) The complainants contested the Commission's provisional findings concerning normal value. In particular they argued that the Commission should, in every instance, have constructed normal value. Furthermore, where constructed values were established, they questioned the results of the Commis-

sion's calculations, referring to the figures contained in specialized publications.

The Commission cannot accept these comments. Indeed, normal values can be constructed only when conditions set out in Article 2 (3) (b) of Regulation (EEC) No 2423/88 are fulfilled. This rule has been respected in the present procedure. Furthermore, normal values have been calculated on the basis of costs verified during the investigation and these data must receive priority over information which has not been the subject of a comparable verification.

The Council confirms the Commission's view on this matter.

G. EXPORT PRICE

(a) General

- (25) With the exception of point (b) below, no substantial objections have been raised by any party concerning the provisional determination of export prices. Consequently, the Council confirms these findings.

(b) Brazil

- (26) The Brazilian exporters maintained the claim mentioned in recital (17) of Regulation (EEC) No 2818/91. They insisted that the application of the official rate of exchange of 1 novo cruzado for 1 US dollar, during the first quarter of 1989, had depressed export prices, with the effect of creating artificial dumping, since at the same time inflation had continuously increased prices on the Brazilian market.
- (27) This position was supported by the Brazilian authorities, which confirmed that the exchange rate between the novo cruzado and the US dollar was frozen in the first quarter of 1989 for the purposes of domestic economic policy.

The Brazilian authorities expressed the view that, as a result of that exceptional situation, the use of the official exchange rates applicable for that period would prevent a fair comparison between normal value and export price. They requested that the exchange rate be adjusted so as to fully reflect the actual depreciation of the novo cruzado in 1989 in accordance with the rate of inflation in Brazil.

- (28) The establishment, by the competent authorities, of the exchange rate of a third country's currency is a decision which cannot be the subject of appreciation by the Community institutions in the framework of an anti-dumping proceeding. It is, therefore, the Commission's constant practice,

confirmed in the case-law of the Court of Justice, to use the official exchange rate applied to international commercial transactions. To adjust this exchange rate for the purposes of dumping calculations would be inappropriate and contrary to the principle of neutrality as regards the monetary aspects of an anti-dumping case.

The Council confirms this position and consequently considers the claim unacceptable.

H. COMPARISON

- (29) No new arguments were made by the interested parties concerning the method followed by the Commission in the comparison between normal value and export price, as described in recitals (18) to (20) of Regulation (EEC) No 2818/91. Thus, the Council confirms this method.

I. DUMPING MARGIN

(a) Cooperating producers/exporters

- (30) In comparing normal values for domestically sold cotton yarn of the cooperating producers/exporters with their export prices to the Community, the final examination of the facts shows the existence of dumping in respect of cotton yarn originating in Brazil, Egypt and Turkey. For the cooperating producers/exporters which were visited, individual dumping margins have been established on the basis of the amount by which the normal value exceeds the export price to the Community.

Furthermore, for the cooperating producers/exporters which were not visited, the dumping margins were established according to the method described in recital (8) of Regulation (EEC) No 2818/91.

- (31) The dumping margins, expressed as a percentage of the total cif value of the product concerned varied according to the exporters as follows :

— (i) Brazil

Fábrica de Rendas Arp SA	7,0 %
Fiação e Tecelagem Kanebo do Brasil	15,8 %
Nisshinbo do Brasil Indústria Têxtil Lda	12,1 %.

The weighted average of the dumping margins found for the above companies is 12,9 %.

— (ii) Egypt

Misr El Amria Spinning & Weaving Co.	0,4 %
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Misr Iran Textile Co. 'Miratex'	0,1 %
Misr Shebin El Kom For Spinning & Weaving (Shebintex)	0,1 %
Unirab Spinning & Weaving Co.	0,0 %.

The weighted average of the dumping margins found for the above companies is 0,1 %. These margins are of such a level as to be considered *de minimis*.

— (iii) Turkey

Yalova Elyaf ve Iplik Sanayi ve Ticaret AS	5,6 %
Ceytas (Ceyhan Tekstil Sanayii AS)	12,1 %
Yidas	4,9 %
Birko (Birllesik Koyunlular Mensucat Tic ve San AS)	7,7 %
Taris (Tarim Statis Kooperatifleri Birli Keri)	8,6 %
Söktas Pamuk ve Tarim Urunerini Degerlendirme Ticaret ve Sanayii AS	9,5 %.

The weighted average of the dumping margins found for the above companies is 9 %.

(b) Non-cooperating producers/exporters

- (32) For the purposes of the provisional findings concerning those Brazilian producers/exporters that neither replied to the Commission's questionnaire nor otherwise made themselves known, dumping had been determined on the basis of the facts available in accordance with the provision of Article 7 (7) (b) of Regulation (EEC) No 2423/88.

The Commission considered it appropriate to apply the highest margin of dumping found for non-cooperating producers/exporters from Turkey.

The Council confirms this view since no new evidence has been provided showing that the margin of dumping of the non-cooperating producers/exporters was actually lower than that of the highest margin found for a cooperating company.

- (33) For the Brazilian non-cooperating producers/exporters, the margin of dumping resulting from the re-calculation of normal value as described in recital (16) is 16,6 %.

- (34) The Council has also considered the situation of producers of cotton yarn in the exporting countries concerned that did not have any exports of cotton yarn to the Community during the reference period, but have since started such exports or have the intention of doing so (so-called 'newcomers').

The Council notes that the Commission is ready to initiate without delay a review proceeding for exporters who supply sufficient evidence to the Commission they they did not export cotton yarn to the Community during the reference period; that they only started such exports after the said period or have a firm intention of doing so; and that they are not related to or associated with any of the exporters subject to the anti-dumping duty.

J. INJURY

(a) Cumulation

- (35) In its provisional findings, the Commission concluded that the effects of Brazilian, Egyptian, and Turkish dumped imports had to be assessed cumulatively. A number of exporters and importers objected to this conclusion.
- (36) The Commission notes that its provisional findings were based on the standard practice of the Community institutions to cumulate imports from several countries when these imported products compete with each other and with the like product of the Community industry and when the dumped imports are not negligible as such.

The Council considers that, in the present case, these conditions are met for the imports from Brazil and Turkey, while the Egyptian imports, for which no significant dumping has been finally determined, are not to be taken into account for the purpose of injury assessment.

- (37) The Brazilian exporters claimed that their exports should not be cumulated with those from other countries, since the volume of their exports in 1989 was different from that considered by the Commission in its provisional findings and at such a low level as to be negligible. In this context they provided the Commission with the Brazilian official statistics concerning exports of cotton yarn to the Community showing a total volume of exports actually lower than that indicated by Eurostat.
- (38) The Commission has again examined this question and confirms the accuracy of the data used which corresponds to Eurostat figures.

The Council agrees with this position.

- (39) The Brazilian exporters argued also that their market share in 1989 was lower than that considered by the Commission in its provisional findings. They claimed that, based upon an overall Community consumption of 1 728 571 tonnes of cotton yarn in 1989, the Brazilian market share did not exceed 1,55 %.

The Commission notes that, as indicated in recital (28) of Regulation (EEC) No 2818/91, the overall Community consumption amounted to 1 184 000

tonnes. Under these conditions, the market share of dumped imports from Brazil corresponded in 1989 to 2,25 %, which cannot be considered as negligible.

- (40) The Council confirms the above findings and concludes therefore that the effects of Brazilian and Turkish imports have to be assessed cumulatively.

(b) Volume and market share of dumped imports

- (41) As concluded in recital (36), for the purposes of the definitive findings the volume and market share of dumped imports must refer to the products exported from Brazil and Turkey. In considering the period between 1986 and 1989, dumped imports from these two countries were approximately 111 305 tonnes in 1986, 120 682 tonnes in 1987, 117 824 tonnes in 1988 and 104 130 tonnes in 1989. The market share of the Brazilian and Turkish exporters considered together was as follows: 9,6 % in 1986, 9,3 % in 1987, 9,8 % in 1988 and 8,7 % in 1989.

The Council confirms these findings.

(c) Price undercutting of dumped imports

- (42) No comments having been made by the interested parties, the Council confirms the findings and conclusions of the Commission, as described in recitals (31) and (32) of Regulation (EEC) No 2818/91.

(d) Other relevant economic factors

- (43) The Commission concluded in its provisional findings (recitals (33) to (40) of Regulation (EEC) No 2818/91) that the Community industry had suffered material injury which manifested itself, in particular, by a sharp decline of selling prices, financial losses especially in 1988 and 1989, lack of return in investment, closure of a large number of plants and a substantial loss of jobs.
- (44) No new facts concerning the injury findings were submitted to the Commission but the exporters concerned objected that some relevant economic factors relating to the Community industry, such as the development of its production and of its market share, proved that this industry was not suffering from material injury. The producers/exporters pointed to the fact that the Community producers investigated increased their production in the period from 1986 to 1989 by 5 % and their market share from 19,5 to 20,5 %, while their capacity utilization was stable. Furthermore, they invested the amount of ECU 542 million in only two years.

- (45) The Commission considers that, as established by Regulation (EEC) No 2423/88, the relevant economic factors of injury must not be evaluated in isolation since no one or several of them can necessarily give decisive guidance. When examining these factors, the Commission agrees that the figures concerning the evolution of the Community producers' output as well as of their market share were not substantially negative from 1986 to 1989. Nevertheless, these figures must be analysed in close conjunction with those relating to other important factors such as profitability, investment, plant closure, employment, etc.

As explained in Regulation (EEC) No 2818/91, the cotton yarn prices of the Community producers declined from ECU 3,47 per kilo in 1986 to ECU 3,12 in 1989. During the same period there was a decrease in profitability of 14 percentage points. In particular, in 1989 losses were registered amounting to 5,7 %, and out of all the Community producers investigated only four showed profits.

This situation had strong negative consequences especially in terms of job losses and plant closures. Taking only the figures in the Community companies investigated, the job losses in the years 1988 and 1989 amounted to 2 149. When the situation is considered in respect of the entire Community industry, it appears from the information available to the Commission that, in 1989 alone, 29 cotton spinners definitively closed their plants with a loss of 7 263 jobs.

(e) Conclusion on injury

- (46) In the light of the above, the Council concludes that the Community industry suffered material injury, within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

K. CAUSATION OF INJURY

(a) General

- (47) For the purposes of its provisional findings, the Commission had concluded that the investigation had not revealed any factors causing material injury to the Community industry other than the dumped imports from Brazil, Egypt and Turkey. This conclusion was based mainly on the fact that the loss of profitability and the other negative economic circumstances had coincided with the continuing price depression and price undercutting on the Community market, owing to the low prices of dumped imports.

The exporters concerned objected, maintaining that the difficulties faced by the Community industry were due to reasons other than the imports of cotton yarn in question. They argued that the Commission had omitted to consider the following points:

- the Community industry had taken wrong commercial and financial decisions when investing heavily in automated spinning mills and concentrating on open-end technology instead of persisting in the traditional ring spun cotton yarn. Moreover, these investments have had the effect of eliminating many manual tasks,
- a part of the Community industry had voluntarily withdrawn from the Community cotton yarn market, since their production efforts were concentrated on viscose and other blended yarns,
- Community producers' costs had gone up in the period between 1986 and 1989 because of a substantial increase in interest rates,
- some of the Community industry's difficulties were the consequence of internal factors such as the increased competition among Community producers in the course of the achievement of the Community's internal market.

- (48) The Commission considers that most of the arguments listed in recital (47) have already been answered in the Regulation imposing the provisional duties. It agrees that, as indicated in recital (37) of Regulation (EEC) No 2818/91, the Community industry made considerable investments to modernize plant and equipment but this was due to the reasonable intention to remain in the ranks of the technologically most advanced spinners in the world in order to maintain a high level of competitiveness.

Furthermore, as regards investments in open-end technology, a comparison relating to the period between 1980 and 1989 showed that in fact the Community producer investments in the sector were less than those of the North American spinners.

Indeed, regarding the installation of new machinery, for every 100 new spindles there were 49 new rotors in North America and only 21 in the Community. This clearly shows that the Community industry investments in the sector were not, in the period considered, abnormally high.

Furthermore, the Commission notes that the considerable amounts invested by the Community industry for restructuring indicate its precise inten-

tion to be present and competitive in the whole cotton yarn market, rather than to partially withdraw from this market or to concentrate on the production of special types of cotton yarn.

As regards the interest rates operating in the cotton yarn manufacturing sector, the Commission found that they increased in the Community from 1987 to 1989 by only 0,5 % which cannot be considered a cause of abnormal increase of the Community industry's costs.

As indicated in recital (43) of Regulation (EEC) No 2818/91, the Commission is aware of the fact that some job losses might have been the consequence of investments in high technology plants eliminating manual tasks. In addition, the Commission cannot exclude that the internal competition between Community spinners may have had negative effects for some of them. However these factors do not exclude the fact that the dumped imports had a clear detrimental impact, due especially to their low prices, on the state of the Community industry.

(b) Effects of quantitative restrictions

- (49) Exporters argued that the existence of bilateral agreements with the interested countries establishing quantitative restrictions for imports of cotton yarn had the consequence that no injury could have been caused to the Community industry by these imports.

The Commission reiterates in this context its considerations in recital (45) of Regulation (EEC) No 2818/91. Indeed, quantitative restrictions protect the Community industry from excessive volumes of imports, but do not prevent injury resulting from unfair trading practices such as dumping imports at very low prices.

- (50) Furthermore, it has been argued by the Turkish exporters that their exports of cotton yarn to the Community were subject, in addition to quantitative restrictions, to a system of minimum prices applied until 1988 and that it followed, from the combined effect of this system and the quantitative restrictions, that no injury could have been caused by Turkish exports, at least up to 1988.

This argument cannot be accepted since the price mechanism mentioned above was suspended in 1988 upon the request of the Commission because it was ineffective and could easily be circumvented.

(c) Effects of other factors

- (51) The Commission examined whether its conclusions on causation of injury in Regulation (EEC) No 2818/91 could be maintained, given that dumping margins for cotton yarn imports from Egypt were found to be insignificant and that these imports therefore have to be disregarded from the framework of the present proceeding.

The Commission considers that, taking due account of the considerable market share held by Brazilian and Turkish exports and the important margin by which these exports undercut Community producers' prices, the dumped imports from Brazil and Turkey taken in isolation have to be considered as causing material injury to the Community industry.

The Council confirms this conclusion.

L. COMMUNITY INTEREST

- (52) In its provisional findings, the Commission considered and weighed up the interests of the Community industry as well as those of other parties such as importers of cotton yarn, end-users, etc. For the reasons given in recitals (42) to (49) of Regulation (EEC) No 2818/91, it concluded that the interest of the Community called, on balance, for granting protection to the Community industry against unfair competition from dumped imports.

- (53) Following the provisional measures, a number of submissions were received from Community importers and, in particular, users of cotton yarn. In these submissions it was argued that an increase in import prices of cotton yarn from the countries concerned due to anti-dumping duties would have negative effects on their businesses.

Weavers of cotton yarn especially complained that an increase in the price of their raw material would reduce their competitiveness *vis-à-vis* weavers in third countries, and would bring about an increase in ready-made textiles exports to the Community. It was submitted that the result could be job losses and mill closures in the Community weaving industry, especially in the case of single-stage weavers (weaving mills that are not integrated with spinning mills). Some weavers claimed difficulties in sourcing cotton yarn from a particular area of the Community arguing that the spinning industry in that area had already been 'decimated beyond revival'.

Others argued that it would have been more logical if the Community, in taking action against unfairly low-priced imports, had started at a higher stage in the production process leading to finished garments and fabrics.

- (54) Since the basic purpose of anti-dumping duties is to remove the injury which dumped imports cause to a Community industry and thereby to re-establish open and fair competition in the Community market for the product concerned, prices of cotton yarn should normally increase due to anti-dumping duties on dumped imports. As regards end-users of cotton yarn, the Commission considers that an advantage, in terms of low prices, cannot justify unfair commercial practices, which are detrimental to the Community producers of this product and that the importers have no vested rights that this advantage persists.

- (55) With respect to the alleged difficulties of sourcing cotton yarn in a particular area of the Community, the Council sees no reason why sourcing should be restricted to a particular area of the internal market. Taking the Community spinning industry as a whole, it appears unfounded, provided that measures are taken against unfairly priced imports, to declare its demise beyond revival.

- (56) Furthermore, the Council notes that, should definitive anti-dumping measures not be taken, the number of cotton yarn spinners in the Community would continue to decline with an additional loss of jobs. Indeed, the trend in factory closures due to dumped imports is such that, without measures, the continued existence of the industry as a whole may be said to be in danger. From 1989 to the end of 1991, 87 production units of cotton yarn in the Community, including three of the Community producers verified, were forced to close, causing a loss of 17 423 jobs. This amounts does not include job losses due to the restructuring of companies which are still operational.

Similar views were expressed by the European Trade Union Committee for Textiles, Clothing and Leather, representing Community workers in these industrial sectors.

- (57) The Council also notes that Eurocoton and the European Trade Union Committee for Textiles, Clothing and Leather represent producers and workers in both the spinning and the weaving

industries of the Community. It can be assumed that, in strongly supporting definitive anti-dumping duties, both organizations have carefully weighed the interests of all their members, including weavers.

Provided that the injury from dumped imports is removed, the Community spinning industry should be able to be fully competitive, the more so as it has made significant investments in technology, enabling it to compete with low-labour cost countries, to well adapt to market requirements in the Community.

- (58) No submissions were received from Community consumers of products made from cotton yarn. The Council considers that in the medium-term consumers should benefit from a sound competitive situation in which the number of suppliers of cotton yarn is not diminished by unfair trading.

- (59) In the light of the above, the Council confirms the Commission's findings that it is in the Community's interest to impose anti-dumping measures to eliminate the injurious effects of imports of cotton yarn originating in Brazil and Turkey.

M. UNDERTAKINGS

Both the Turkish and Brazilian authorities, having been informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties, offered, on behalf of the exporters concerned, a form of undertaking.

In the case of Turkey, this offer did not correspond to the provisions of Article 10 of Regulation (EEC) No 2423/88, and in particular the possibility of imposing duties in the case of violation or withdrawal as provided for in paragraph 6 of that Article. In addition, the Commission considers that effective monitoring of the adherence of companies to such an undertaking would not be practicable.

As regards the Brazilian offer which provides for voluntary quantitative export restrictions, the Commission was not satisfied that its acceptance would eliminate the injurious effects of the dumping.

The Council notes that for these reasons both these offers of undertaking have, after consultation, been rejected.

injury caused. On the basis of the definitive findings, this result remains unchanged.

O. COLLECTION OF PROVISIONAL DUTIES

N. DUTY

- (60) Provisional anti-dumping duties were imposed at the level of the dumping margins determined, with the exception of one Brazilian exporter for which the level imposed was that sufficient to remove the

- (61) In view of the dumping margins established and the seriousness of the injury caused to the Community industry, the Council considers it necessary that amounts secured by way of provisional anti-dumping duties, with the exception of those relating to the imports of Egyptian cotton yarn, should be definitively collected to the extent of the amount of the duty definitively imposed.

HAS ADOPTED THIS REGULATION :

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of cotton yarn falling within CN codes 5205 11 00 to 5205 45 90 and 52 11 00 to 5206 45 90 and originating in Brazil and Turkey.

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

- (a) 16,6 % for cotton yarn originating in Brazil, Taric additional code 8551, with the exception of imports manufactured by the following companies, which shall be subject to the rate of duty mentioned hereunder :

	<i>Rate of duty</i>	<i>Taric additional code</i>
Fábrica de Rendas Arp. SA	7,0 %	8552
Nisshinbo do Brasil Indústria Têxtil Ltda	12,1 %	8553
Fiação e Tecelagem Kanebo do Brasil	11,2 %	8554
Filobel SA Indústrias Têxteis do Brasil	12,9 %	8555
Toyobo do Brasil Indústria Têxtil Ltda	12,9 %	8555
Indústria Têxtil Tsuzuki Ltd	12,9 %	8555
SA Têxtil Nova Odessa	12,9 %	8555
Cotófcio de São Bernardo	12,9 %	8555
Companhia Brasileira de Fiação	12,9 %	8555

- (b) 12,1 % for cotton yarn originating in Turkey, Taric additional code 8562, with the exception of imports manufactured by the following companies, which shall be subject to the rate of duty mentioned hereunder :

	<i>Rate of duty</i>	<i>Taric additional code</i>
Birko (Birlesik Koyunlulular Mensucat Tic ve San AS)	7,7 %	8563
Ceytas (Ceyhan Tekstil Sanayii AS)	12,1 %	8564
Söktas Pamuk ve Tarım Urunerini Degeriendirme Ticaret ve Sanayii AS	9,5 %	8565
Taris (Tarim Satis Kooperatifleri Birli keri)	8,6 %	8566
Yalova Elyaf ve iplik Sanayii ve Ticaret AS	5,6 %	8567
Yidas	4,9 %	8568
Sönnez Pamuklu Sanayii AS	9,0 %	8569
Cukurova Sanayi isletmeleri TAS	9,0 %	8569
Akip Tekstil	9,0 %	8569
Karsu (Tekstil Sanay ve Tic AS)	9,0 %	8569
Trakya Iplik Sanayi AS	9,0 %	8569
Bisas Bursplik Sanayii AS	9,0 %	8569
Meptas Manisali Errensel Pazadama ve Ticaret AS	9,0 %	8569
Hateks (Hatay Tekstil Isletmeieria AS)	9,0 %	8569

3. The free-at-Community-frontier price as indicated in paragraph 2 shall be net if the actual conditions of payment provide for payment within 30 days of the arrival of the goods on the customs territory of the Community. It shall be increased by 1 % for each further month by which the period for payment is extended.

4. In cases where the exporting company is not the same as the producing company, the rate of duty applicable to the imports of the products of the producing company shall apply.

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

Article 2

The amounts secured by way of provisional anti-dumping duty under Regulation (EEC) No 2818/91 concerning the imports from Brazil and Turkey, shall be definitively collected at the duty rate definitively imposed. Amounts secured in excess of the definitive rate of duty shall be released.

Article 3

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

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

Done at Brussels, 23 March 1992.

For the Council

The President

Carlos BORREGO
