

COMMISSION DECISION

of 12 June 1998

terminating the countervailing duty proceeding concerning imports of polyester fibres and polyester yarns originating in Turkey*(notified under document number C(1998) 1599)*

(98/378/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

information and that provided by a number of Turkish exporters in 1992 and 1995.

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community⁽¹⁾, and in particular Article 14(2) thereof,

After consulting the Advisory Committee,

Whereas:

B. REVIEW INVESTIGATION

- (2) A notice of the impending expiry of the above-mentioned measures (i.e. undertaking) was published in the *Official Journal of the European Communities* on 20 April 1996⁽⁶⁾. On 24 June 1996, the complainants, CIRFS, lodged a request for an expiry review in accordance with the provisions of Article 13(5) of Regulation (EC) No 3284/94⁽⁷⁾. The review request alleged that the repeal of the measures would be likely to result in a continuation or recurrence of subsidisation and injury.

A. PREVIOUS PROCEDURE

- (1) Following a complaint lodged by CIRFS (the International Rayon and Synthetic Fibres Committee), the Commission initiated an anti-subsidy proceeding concerning imports of polyester fibres and polyester yarns from Turkey on 9 February 1989⁽²⁾. A provisional countervailing duty was subsequently imposed on 31 May 1991⁽³⁾. On completion of the investigation which found evidence of injurious subsidisation, the Government of Turkey offered an undertaking to: (i) gradually phase out the main export subsidy scheme (the corporate tax exemption scheme — CTE); and (ii) not to grant new subsidies nor to compensate the producers/exporters concerned for the commitment to phase out the main export subsidy scheme. The Commission accepted this undertaking by Decision 91/511/EEC⁽⁴⁾ and did not impose a definitive countervailing duty. Provisional duties were definitively collected by Council Regulation (EEC) No 2834/91⁽⁵⁾.
- (3) The Commission considered that the complainants had provided sufficient evidence to justify the initiation of an expiry review pursuant to Article 13(3) of Regulation (EC) No 3284/94. Given the nature of the measures in force, the Commission decided on its own initiative to initiate an interim review pursuant to Article 13(6) of that Regulation. A notice of initiation of a review of the countervailing measures was accordingly published on 21 September 1996⁽⁸⁾.
- (4) With regard to the compatibility of such an initiation with the EC/Turkey Customs Union rules, it has to be borne in mind that, pending the implementation by Turkey of provisions on competition, State aid control and other relevant parts of the *acquis communautaire* which are related to the internal market, the Customs Union Agreement does not preclude the application of trade defence instruments by one party in its relations with the other. The Customs Union Agreement provides that Turkey shall adopt all the necessary decisions to comply with this requirement within two years after the entry into force of the Customs Union
- At regular intervals since 1991 the Turkish authorities reported on their commitments contained in the undertaking and provided supporting documentation. The Commission services verified this

⁽¹⁾ OJ L 288, 21. 10. 1997, p. 1.⁽²⁾ OJ C 33, 9. 2. 1989, p. 7.⁽³⁾ OJ L 137, 31. 5. 1991, p. 8.⁽⁴⁾ OJ L 272, 28. 9. 1991, p. 92.⁽⁵⁾ OJ L 272, 28. 9. 1991, p. 3.⁽⁶⁾ OJ C 116, 20. 4. 1996, p. 7.⁽⁷⁾ OJ No L 349, 31. 12. 1994, p. 22 (subsequently replaced by Regulation (EC) No 2026/97).⁽⁸⁾ OJ C 276, 21. 9. 1996, p. 5.

Agreement, i.e. on 31 December 1997. Pending confirmation of such action, countervailing measures can, therefore, be taken in the framework of this proceeding, if considered appropriate.

- (5) The period used for the investigation of subsidies was 1 January 1995 to 31 December 1995 (herein after referred to as the 'investigation period').
- (6) The Commission sent questionnaires to all parties known to be concerned. It received replies to its questionnaire from eight Community producers, the Government of Turkey, nine exporting producers and one importer. The Commission sought and verified all information it deemed necessary for the purpose of a determination and carried out verification visits at various Government of Turkey ministries/agencies and at the premises of the companies listed below.

(a) *Community producers*

- Hoechst Trevira GmbH & Co. KG, Frankfurt Am Main, Germany,
- Montefibre SpA, Milan, Italy,
- Nurel SA, Barcelona, Spain,
- La Seda de Barcelona SA, Barcelona, Spain,
- Catalana de Polimers SL, Barcelona, Spain,
- Wellman International Ltd, Co. Meath, Ireland,
- Unifi Textured Yarns Europe Ltd, Co. Donegal, Ireland.

Tergal Fibres SA (Group Rhône-Poulenc), Gauchy, France was not visited.

The abovementioned companies account for approximately 80 % of Community production of the products concerned.

(b) *Government of Turkey ministries/agencies*

- Under-Secretariat for Foreign Trade,
- Central Bank,
- Under-Secretariat for Customs,
- Türk Eximbank,
- Under-Secretariat for the Treasury,
- Ministry of Finance.

(c) *Producers/exporters in Turkey*

- SASA Artificial and Synthetic Fibres Inc., Adana,
- Sönmez Filament Sentetik Iplik ve Elvaf Sanayii AS, Bursa,
- Korteks Mensucat Sanayi ve Ticaret AS, Bursa,

- Sifas Sentetik Iplik Fabrikalari AS, Bursa (part of Nergis group),
- Polylen Sentetik Iplik Sanayii AS, Bursa (part of Nergis group),
- Nergis Tekstil Sanayi ve Ticaret AS, Bursa (part of Nergis group),
- Nergis Holding AS, Bursa (part of Nergis group),
- Polyteks Tekstil Sanayi Arastirma ve Egitim AS, Bursa.

Sancak Tül Sanayi AS, Istanbul stated that it had not exported to the EU during the investigation period.

These producers are all the known producers of the products concerned in Turkey.

(d) *Importer in the Community*

EXSA (UK) Ltd, Leeds, United Kingdom. This company was not visited.

- (7) This investigation has exceeded the normal time-frame for the completion of review investigations due to the large volume and complexity of information gathered. In particular, as the State-aid framework in Turkey has undergone substantial change in recent years, it was considered necessary to undertake a full re-examination of the various schemes.

C. PRODUCTS UNDER CONSIDERATION AND LIKE PRODUCT

1. Products under consideration

- (8) The products under consideration are:

- polyester partially oriented filament yarn (POY), falling within CN code 5402 42 00,
- polyester textured filament yarn (PTY), falling within CN codes 5402 33 10 and 5402 33 90,
- polyester staple fibre, falling within CN code 5503 20 00,
- polyester flat yarn, falling within CN codes 5402 43 10, 5402 43 90, 5402 52 10, 5402 52 90, 5402 62 10 and 5402 62 90.

Polyester fibres and yarns have an extensive range of uses and can be used on their own or blended with other products such as cotton to produce clothing, sleepwear, curtain material and floor coverings. Polyester fibre can also be used as a filling material for use in quilted jackets, pillows, cushions, etc.

2. Like product

- (9) In Regulation (EEC) No 2834/91, it was concluded that Community production was considered as a like product to the imported subsidised product. None of the interested parties to this review investigation offered any further comments on the 'like product' issue. It is therefore concluded that the product under consideration, i.e. that exported from Turkey to the Community, is a like product to that produced by the Community industry, within the meaning of Article 1(5) of Regulation (EC) No 2026/97 (hereinafter referred to as the 'Basic Regulation').

D. SUBSIDIES

1. Introduction

- (10) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission investigated a large number of subsidy schemes. These schemes are not necessarily the same ones that were examined in the original investigation. Turkey introduced new State-aid schemes at the end of 1994 (partly in view of the harmonisation of State aid law to the EU State aid law in accordance with the provisions of the Customs Union Agreement) which regulate both domestic and export incentives and amend or replace older schemes. Moreover, important developments took place also at an international level; in 1995, the World Trade Organisation Agreement on Subsidies and Countervailing Measures (ASCM) entered into force and a new Basic Regulation was enacted at the end of 1994 to reflect the new definition of subsidies⁽⁹⁾. In view of the above, the Commission re-examined all relevant subsidy schemes in Turkey.

2. Export schemes

- (11) The Commission investigated the following five export schemes, further details of which are set out below:

- I. State assistance for exports;
- II. corporate tax exemption scheme;
- III. export credits;
- IV. electricity premium;
- V. transport premium.

I. State assistance for exports

- (12) The declared objective of Turkey's export incentive policy is to enhance the export potential of Turkish industry in accordance with the targets and guidelines laid down in the five-year governmental development plans. The aim of these incentives is to eliminate the adverse effects of high domestic inflation on exporters and compensate for the shortage and high cost of financing.
- (13) The main instrument involving, *inter alia*, export-related assistance is Decree 94/6401 which entered into force on 1 January 1995 and provides for the following measures:
- assistance for research and development programmes,
 - assistance for environmental costs,
 - assistance for market research,
 - support for participation in fairs and exhibitions abroad,
 - support for participation in domestic fairs of an international character,
 - support for promotion activities abroad.
- (14) The Commission found that no producers of the product concerned had received aid under any of the abovementioned measures provided under Decree 94/6401 during the investigation period. There was therefore no need to examine whether any of the measures involved the granting of countervailable subsidies.

II. Corporate tax exemption scheme (CTE)

- (15) In the Turkish Government's undertaking which was accepted by the Commission in 1991 (see paragraph 1 above), the main commitment was to phase out the CTE. This scheme exempted from corporate taxation a certain percentage of the export earnings of manufacturing companies.

In accordance with the Turkish Government's undertaking, the rate of the CTE was gradually reduced from 20 % in 1991 to 5 % in 1993. The scheme was finally terminated in 1993 by means of Article 30 of Decree 21804 of 25 December 1993. Documentary evidence has been provided in this regard. The Commission also verified that no producers subject to the investigation received outstanding CTE aid during the investigation period.

⁽⁹⁾ See footnote 7.

III. *Export credits*

- (16) Türk Eximbank (hereinafter referred to as 'Eximbank') is the sole official export credit agency in Turkey; it is a public body which was founded in 1987 with the aim of meeting the financing requirements of exporters and overseas contractors. Eximbank provides specialised financial services through a variety of credit, insurance and guarantee programmes as follows:

(a) Pre-shipment export credit (PSEC) programme

PSEC is a short-term credit facility extended by Eximbank through intermediary commercial banks, which is available to all export-oriented industries. Applications are made to Eximbank, but the credit is disbursed by a commercial bank. The total interest rate paid on these types of credits is generally more favourable than the rates available for short-term loans from commercial banks.

These credits provide a subsidy because they involve a financial contribution from the Government and confer a benefit because the interest rate is below that payable on a comparable commercial loan. The subsidy is available only for export transactions and is therefore an export subsidy.

A number of producers benefited from this scheme during the investigation period.

(b) Target market export credit programme

This programme concerned financial support for the export of textile products to non-EU countries (i.e. NAFTA, Japan and South Africa). It was abolished in January 1996.

(c) SME export credit programme

This programme provides short-term credit to companies employing up to 150 employees. None of the producers under investigation obtained such credits due to their size.

(d) Foreign currency credit programme

This is a short-term credit facility, similar to PSEC, extended by Eximbank through intermediary commercial banks, which is available to all export-oriented industries. The credit is extended on the basis of the foreign currency value of the export transactions (the credit is actually paid to the exporter in the Turkish lira

(TRL) equivalent) and re-payment is made by the exporter in the foreign currency concerned. Interest rates are significantly lower than under the PSEC programme. The total interest rate paid on these types of credits is generally more favourable than the rates available for short-term loans from commercial banks.

These credits provide a subsidy because they involve a financial contribution from the Government and confer a benefit because the interest rate is below that paid on a comparable commercial loan. The subsidy is only available to export transactions and is therefore an export subsidy.

A number of producers benefited from this scheme during the investigation period.

(e) Past performance-related foreign currency credit programme

This programme provides short-term credit to exporters without the mediation of commercial banks. No producers concerned obtained such credit during the investigation period.

(f) Short-term export credit insurance programme

Under this programme all shipments to be made by an exporter within one year are insured at favourable terms. Exporters pay a premium which varies per country of export directly to Eximbank. Such insurance was mandatory up to 1995 for companies which obtained pre-shipment export credits from Eximbank. Some of the producers concerned used this programme during the investigation period. As this programme was linked to the Pre-Shipment Export Credit (PSEC) programme, it has been quantified together with the PSEC and the foreign currency credit programme (see Tables 1 and 2 in paragraph 29 below).

This insurance is now optional.

(g) Buyers' credit, insurance and guarantee programmes

This programme concerns credits to finance projects in the Central and Western Asian Republics. None of the producers concerned used this programme during the investigation period.

IV. *Electricity premium*

- (17) Under this programme companies that manufacture goods for export can take advantage of a special discount (25 %) of the cost of electricity used in the production of the exported goods. The scheme, which was clearly an export subsidy, was abolished in 1995 by means of Decree 22510 of 31 December 1995.

No producer under investigation obtained benefits under this scheme during the investigation period.

V. *Transport premium*

- (18) Under this scheme exporters could obtain cash premiums from the Central Bank of Turkey to cover export transportation costs. The scheme was abolished in 1994 by an order of the Turkish Council of Ministers. The cash premiums are a subsidy because they involve a financial contribution from the Government which confers a benefit. Since the subsidy is limited to export transport costs, it is an export subsidy.

Premiums paid under this scheme, which was administered by the Central Bank, differed depending on destination. Even though the scheme had been abolished in 1994, benefits continued to accrue to exporters during the investigation period (i.e. 1995). This is because at the time of implementation of the scheme there were no funds available for payments to exporters. Outstanding benefits earned therefore in the years before termination of the programme were being granted during the investigation period. All of the producers investigated had obtained such outstanding benefits during the investigation period.

3. Summary of export schemes

- (19) It was found that exporters used two export schemes during the investigation period i.e. export credits (pre-shipment export credit programme/foreign currency credit programme/short-term export credit insurance programme) and the transport premium

4. Domestic schemes

- (20) The Commission investigated the following three domestic schemes, further details of which are set out below:

I. Decree 94/6411;

II. Resources utilisation support premium (RUSP);

III. Fund sourced credit.

I. *Decree 94/6411*

- (21) Incentives to producers in Turkey are, as from 1 January 1995 to be provided within the framework of Decree 94/6411 of 26 December 1994. Decree 94/6411 constitutes the general framework regulating incentives to industry in accordance with the guidelines set out in the development plans and the annual programmes adopted by the Turkish Council of Ministers. Decree 94/6411 provides for incentives for investment activities related to the production of goods and services, research and development, environmental protection, improvement of quality and standards and investments targeting advancement of regional handicrafts and supporting small and medium enterprises. Decree 94/6411 has been further applied by Communiqué No 2 issued by the Under-secretariat of the Treasury and published in the Official Gazette of 4 April 1995.

- (22) All applications for assistance under Decree 94/6411 need to be approved by the General Directorate of Incentives and Implementation of the Under-secretariat of Treasury which issues an investment certificate to the successful applicants. The investment certificate describes the types of assistance granted to the company concerned as well as any ceilings on such assistance. Companies may obtain investment certificates on a project basis. The duration of the validity of the investment certificate varies in accordance with the project.

- (23) The various types of assistance which are provided for under Decree 94/6411 can be categorised as follows:

(a) Schemes from which exporters obtained benefits during the investigation period

(i) Exemption from customs duty and charges

Under this scheme companies are entitled to import equipment and machinery, without the payment of customs duties, for the purposes of the project for which the relevant investment certificate was granted.

(ii) Investment allowance

Under this scheme companies are granted an income tax exemption proportionate to the amount of the investment for which the investment certificate was granted; the tax allowance can equal up to 100 % of the amount of the investment.

Both the above schemes involve subsidies because government revenue is foregone and a benefit is thereby conferred.

effects of the scheme would, in any event be negligible.

(iii) Financing fund

Under this scheme firms obtain a tax postponement to be used for the financing of investments. Companies are entitled to the tax postponement when they obtain an investment certificate.

(ii) Postponement of VAT

Under this scheme, VAT that has to be paid for importation of equipment listed in the Incentive Certificates, can be postponed until the date when such tax may be actually deducted. In case the investment is not realised as foreseen by the incentive certificate, the VAT postponed shall be collected plus interest.

The tax postponement is equivalent to an interest-free loan and is a subsidy because the absence of interest confers a benefit.

(c) Schemes not yet implemented

Decree 94/6411 also provides for a range of other schemes which have not yet been implemented. These are:

(iv) VAT support for purchases of machinery and equipment

Under this scheme firms are refunded any VAT paid on purchases of domestically produced machinery. This refund is a financial contribution from the Government which confers a benefit; it is therefore a subsidy. This scheme is contingent upon the use of domestic goods and the subsidy is therefore specific in accordance with Article 3(4)(b) of the Basic Regulation. One producer received benefits under this scheme during the investigation period but at a negligible level.

(i) Exemption from building construction charges

Under this scheme companies are exempted from the payment of building construction charges.

(ii) Subsidising moving expenses

This scheme provides for assistance for investments which are transferred from developed regions to industrial belts or priority development regions. A grant of 50 % of the disassembly, delivery and the re-installation expenses can be made.

(b) Schemes from which exporters did not obtain benefits during the investigation period

(iii) Energy subsidies

New investments realised in priority development regions with an incentive certificate, can obtain aid up to 25 % of their electricity consumption in the first five years of operations under criteria to be defined by the Monetary, Credit and Co-ordination Board.

(i) Exemption from charges for medium and long-term investment credits

Under this scheme companies are exempted from paying taxes, duties and charges for banking, notary, land registry etc. transactions relating to credits. It applies to companies which undertake to export the production to which investment relates. In view of its link to anticipated exportation this scheme should be more properly classified as an export subsidy. No producer obtained benefits under this scheme during the investigation period. The

(iv) Land allocation support

Under this scheme firms may obtain free land for investments to be realised in priority development regions or in industrial belts. Land is provided from the property of the General Directorate of Land Office.

- (v) Contribution to foreign credit letters of guarantee

This scheme provides for aid to producers to cover 50 % of the expenses incurred in connection with foreign credits obtained through public banks.

- (vi) Procurement of quality and standards

Under this scheme firms are refunded fees paid in connection with applications for quality and standardisation certificates according to ISO and ITS (Institute of Turkish Standards) norms.

- (vii) Credits

There are several different types of low interest rate credit schemes for SMEs and for investments in priority development regions.

and therefore a subsidy. The scheme was set out in Decree 92/2805 and administered by the General Directorate of Incentives and Implementation. It was officially terminated on 15 July 1994 although outstanding benefits kept accruing to firms during the investigation period.

Some producers received benefits under the fund source credit scheme during the investigation period.

5. Summary of domestic schemes

- (26) It was found that exporters used six domestic schemes during the investigation period, i.e. exemption from customs duty and charges, investment allowance, financing fund, VAT support for purchases of machinery and equipment, RUSP and fund sourced credit.

II. Resource utilisation support premium (RUSP)

- (24) Under this scheme, firms were entitled to a cash premium payable by the Under-secretariat of the Treasury. The premium was based on a percentage (from 15 % to 40 %) of the value of investments made. The percentage applied depended on the region in which the investment was made.

RUSP was terminated in 1991 by means of Decree 91/1468. Firms continued, however, to receive benefits under this scheme in later years, including the investigation period. These payments were outstanding (due to the shortage of government funds at the time) from the period when the scheme was in operation. The cash premiums are a subsidy because they involve a financial contribution from the Government which confers a benefit.

Some producers received benefits under this scheme during the investigation period.

III. Fund sourced credit

- (25) Under this scheme, firms were entitled to loans which were re-payable at rates of interest less than those normally charged on comparable commercial loans. There is consequently a benefit conferred

6. Amount of subsidisation

- (27) Two of the cooperating exporters, Korteks and Polyteks, were found not to have exported the product concerned to the EU during the investigation period. In these circumstances, individual findings concerning subsidy levels have not been established for these companies.
- (28) For the purposes of calculating the amount of subsidisation, the amounts of subsidies received in the investigation period were allocated over a firms' total (domestic and export) turnover in the case of domestic subsidies and over export turnover only in the case of export subsidies.
- (29) The amounts of subsidies established in the investigation period for the producers subject to the investigation are set out below. Table 1 shows the full amount of benefit in the investigation period, while Table 2 shows the benefits if the schemes which were terminated before the beginning of the investigation period are excluded.

As four of the cooperating exporters are related (Nergis Tekstil, Nergis Holding, Sifas and Polylen), the benefits received have been averaged and are shown below under 'Nergis Group'.

Table 1

(%)

	SASA	Nergis Group	Sonmez
Export schemes			
Export credits	0,25	0,81	0,08
Transport premium	2,68	2,6	6,9
Domestic schemes			
Fund sourced credit	0,01	0,03	0
Financing fund	0,06	0	0,06
Investment allowance	0,23	0,33	0,76
RUSP	0,15	0,01	0
Customs exemption	0,01	0,01	0,04
VAT support	0	Negligible	0
Total benefit in investigation period	3,39	3,79	7,84

Table 2

(%)

	SASA	Nergis Group	Sonmez
Export schemes			
Export credits	0,25	0,81	0,08
Domestic schemes			
Financing fund	0,06	0	0,06
Investment allowance	0,23	0,33	0,76
Customs exemption	0,01	0,01	0,04
Benefit in investigation period excluding terminated schemes	0,55	1,15	0,94

7. Specificity

- (30) Given that the amount of benefit to exporters from those schemes which were still in force during the investigation period was found to be *de minimis* (see recital 34 below), it is not necessary to make a determination regarding specificity.

of domestic goods. The transport premium scheme, which was contingent upon exports, was terminated in 1994.

8. Conclusions on countervailability

- (31) Concerning export schemes, two schemes are considered to be specific and therefore countervailable — the export credit scheme, which is contingent upon export performance and the VAT support scheme, which is contingent upon the use

- (32) Concerning domestic schemes, the RUSP was abolished in 1991, while the fund sourced credit scheme was abolished in 1994. With regard to the three schemes found to have been used and still in force during the investigation period (i.e. financing fund, investment allowances, customs exemption), no countervailability determination needs to be made in view of the overall *de minimis* levels of subsidies found.

(33) Concerning the terminated schemes (transport premium, fund sourced credit and RUSP), it is not considered necessary to take countervailing measures as, on the one hand any RUSP and fund sourced credit outstanding benefits have been at negligible levels while, on the other hand, any outstanding transport benefits, although at more substantial levels, were linked to individual export transactions in the past when the scheme was in force and as such are no longer available.

(34) Article 14(5)(a) of the Basic Regulation provides that the amount of countervailable subsidies shall be considered as *de minimis* if such amount is less than 2 % concerning imports from developing countries. As Turkey is regarded as a developing country and the amount of subsidy provided by schemes which were still in force during the investigation period is less than 2 % (see Table 2 above), the amount of countervailable subsidies is therefore considered to be *de minimis*.

E. INJURY AND COMMUNITY INTEREST

(35) As it has been concluded that the level of subsidisation is *de minimis*, it is not necessary to establish findings relating to injury and Community interest.

F. CONCLUSION

(36) Article 14(3) of the Basic Regulation provides that there shall be immediate termination of a proceeding where it is determined that the amount of countervailable subsidies is *de minimis*. It is therefore proposed that the proceeding be terminated and that the measures in force expire forthwith,

DECIDES:

Sole Article

The countervailing duty proceeding concerning imports of polyester fibres and polyester yarns falling within CN codes 5402 42 00, 5402 33 10, 5402 33 90, 5503 20 00, 5402 43 10, 5402 43 90, 5402 52 10, 5402 52 90, 5402 62 10 and 5402 62 90 and originating in Turkey is hereby terminated.

Done at Brussels, 12 June 1998.

For the Commission

Leon BRITTAN

Vice-President
