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In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(83) 29 final

Brussels, 20 January 1983

Proposal for a

COUNCIL REGULATION (EEC)

amending Regulation (EEC) No 3439/80 imposing a definitive anti-dumping duty on imports of certain polyester yarn originating in the United States of America

(submitted to the Council by the Commission)

COM(83) 29 final

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EXPLANATORY MEMORANDUM

In 1980 the Council imposed a definitive anti-dumping duty of 16.4% on textured polyester yarn from the USA. The products of nine US companies were exempt from this duty since they were found not to have been dumping during the reference period.

Following the imposition of this duty the Commission received requests from fourteen United States producers to undertake a review procedure regarding this duty. In 1982 the Commission also received a request from the International Rayon and Synthetic Fibers Committee (CIRFS) representing almost all Community production for a review of the duty imposed on textured polyester yarn.

This request contained evidence that dumping was again being practised by certain US exporters of the yarn concerned and that the Community industry was being injured thereby. The Commission, after consultation, re-opened the procedure and commenced its investigation. This investigation has shown that eight of the exporters previously exempt from the duty had been dumping, the margins being as follows:

Burlington Industries Inc.	4.5%
Carter, Moore & Co Inc.	11.9%
Collins & Aikman Corp.	2.5%
Glen Raven Mills Inc.	0
International Fiber Industries Inc.	5.4%
Macfield Texturing Inc.	4.1%
Meyers Fibers	0
Titan Textile Co. Inc.	3.5%
Unifi Inc.	1.87%
Uni-Tex International	2.4%

Certain exporters either did not co-operate in the investigation or did not make themselves known to the Commission and for these companies the Commission considered it would be a bonus for non-cooperation to determine a dumping margin below the level found in the previous investigation.

As regards injury the Commission received no new evidence to alter its view that the continued application of the existing duty was a requirement for the elimination of injury and the prevention of its recurrence.

On the basis of these facts, therefore, the Commission proposes that the Council amend its Regulation (EEC) N° 3439/80 to the extent that the above-mentioned companies' exports of textured polyester yarn previously exempt from duty, be subject to definitive anti-dumping duties in accordance with the margins found.

Proposal for a
COUNCIL REGULATION (EEC)

amending Regulation (EEC) No 3439/80 imposing a definitive anti-dumping duty on imports of certain polyester yarn originating in the United States of America

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation EEC No 3017/79 of 20 December 1979 on protection against dumped or subsidised imports from countries not members of the European Economic Community(1) as amended by Regulation (EEC) No 1580/82 (2), and in particular Article 12 thereof,

Having regard to the proposal from the Commission,

After consultations within the Advisory Committee provided for by the said Regulation,

(1) OJ No L 339, 31.12.1979, p. 1

(2) OJ No L 178, 22.6.1982, p. 9

Whereas the Council, by Regulation (EEC) No 3439/80¹, imposed definitive anti-dumping duties on imports of certain polyester yarn originating in the United States of America;

Whereas this Regulation was subsequently amended by Council Regulation (EEC) No 3198/81² to exclude certain types of yarn from imposition of the duties;

Whereas the duties imposed were 16.4 % for textured yarn³ and 15.6 % for non-textured yarn⁴ except for the non-textured yarn of Eastman Chemical International Company for which the rate of duty was 13.7 %;

Whereas nine exporters of textured yarn and three exporters of non-textured yarn were exempt from the relevant definitive duty since sale of the products concerned to the Community were not made at dumped levels;

Whereas the Commission has since received requests from fourteen United States companies to review the duties insofar as they apply to them;

Whereas the Commission also received a request from the International Rayon and Synthetic Fibres Committee (CIRFS) on behalf of manufacturers accounting for almost all Community production for a review of the duty imposed on textured yarn, together with evidence that dumping was again being practised in respect of these imports from the United States of America;

Whereas since the said information provided sufficient evidence to justify a review of the proceedings the Commission accordingly announced by a notice published in the Official Journal of the European Communities⁵ a review of the definitive anti-dumping duties on imports of polyester yarn originating in the United States of America and commenced an investigation of the matter at Community level;

¹ OJ No L 358, 31.12.1980, p. 91

² OJ No L 322, 11.11.1981, p. 2

³ NIMEXE Codes 51.01-29 and 30

⁴ NIMEXE Codes 51.01- ex 02, ex 32, ex 34, ex 38, ex 41 and ex 42

⁵ OJ No C 48, 23.02.1982, p. 2

Whereas the Commission officially so advised the exporters and importers known by it to be concerned as well as the representatives of the exporting country and the complainants;

Whereas the Commission has given the parties directly concerned the opportunity to make known their views in writing and to be heard orally;

Whereas most of the exporters known to be concerned and several importers took this opportunity to present written and oral observations;

Whereas the request for the review made on behalf of the Community producers referred only to imports of textured polyester yarn from the United States and none of the exporting companies known to be concerned requested a review of the anti-dumping duty on non-textured polyester yarn; whereas the Commission accordingly limited its investigation to a review of the duty on textured polyester yarn;

Whereas the Commission sought and verified all information it deemed to be necessary for the purposes of the review procedure and carried out investigations at the premises of the following:

EEC producers: Rhone-Poulenc Fibres, Lyon
Deutsche Rhodia AG, Freiburg
Enka BV/AG, Wuppertal
Hoechst, Frankfurt am Main
Anicfibre SpA, Milan
Società Italiana Poliestere SpA (Montefibre), Milan
Snia Fibre SpA, Milan
Courtaulds Ltd, Coventry
ICI Fibres, Harrogate

Exporters: Burlington Industries Inc., Greensboro, NC
Carter Moore & Co Inc., New York, NY
Collins & Aikman, Corp., Graham, NC
Glen Raven Mills Inc., Glen Raven, NC
International Fiber Industries Ltd, New York, NY
Macfield Texturing, Inc., Madison, NC
Meyers Fibers, Willow Grove, Pennsylvania
Titan Textile Co Inc., New York, NY
Unifi Inc., Greensboro, NC
Unitex International, New York, NY

Importer: Pax Yarn Ltd., Leicester

Whereas the written submissions of certain of the companies which had requested that their products be exempted from the duty currently in force indicated that they had not exported to the Community during the reference period; whereas a comparison of export price and normal value could therefore not be made and further investigation as regards these companies was accordingly not undertaken;

Whereas the Commission selected the period from 1 January 1981 to 31 January 1982 as the relevant investigation period;

Whereas for Burlington, Collins & Aikman, Glen Raven, Macfield, Titan and Unifi normal values were established by taking the weighted average prices of their domestic sales;

Whereas Burlington has contested the normal values established for two yarn types; whereas for one type they contended that the normal value should be established by reference to third country sales because a weighted average price for the whole investigation period would be inequitable given that the export sale took place towards the end of the period and the domestic sales which took place at that time involve quantities too small to permit a proper comparison; whereas for the second type the company argued that the export sale should be compared to domestic sales to one particular company which took place at the same time; whereas the Commission rejected these arguments on the grounds that although the company was able to show overall profitability on sales of textured polyester yarn it refused to give specific cost information regarding the two types in question; whereas, therefore, the Commission based its calculation of normal value for the two types concerned on the weighted average prices for the full period of investigation; whereas the Commission is satisfied, having taken account of prices of comparable yarns of the producers investigated, that this method of calculating normal value does not constitute a bonus for non-cooperation; whereas in calculating normal value the Commission also excluded sales made by Burlington to companies situated in the United States of America but which were destined for export;

Whereas Unifi argued that for three types of yarn like qualities had not been compared but this was rejected as the company did not provide any evidence to support this claim; whereas in calculating normal values the Commission excluded sales made by Unifi to companies situated in the United States of America but which were destined for export;

Whereas Macfield has contested the exclusion of transactions from the calculation of a normal value where the customer supplied the raw material and paid only for the texturing of the yarn; whereas the Commission did not take these sales into account since it considered that they were not in the normal course of trade; whereas the yarn was, in any event, not destined for consumption on the domestic market;

Whereas since Carter Moore, International Fibers and Unitex did not sell any of the product concerned on the domestic US market normal values were established with reference to the prices actually paid to other companies investigated, these prices being considered representative by the Commission;

Whereas Meyers Fibers' normal values were also established by reference to other companies' domestic sales since for one type sales were made at a loss and for the other type in question sales involved quantities too small to permit a proper comparison;

Whereas for Unitex normal values for certain types of yarn were established with reference to prices for the product for sales to third countries since the Commission in its investigation found no sales of a comparable product on the US domestic market and Unitex is not a yarn producer;

Whereas in establishing the profitability of the domestic sales it was found that texturisers in certain cases paid a higher raw yarn price when that yarn was destined for sale on the domestic market in its textured form than when it was destined for export; whereas, therefore, the higher raw yarn cost was used when verifying the profitability of domestic sales; whereas this reflected the actual costs borne by the producer for these sales; whereas profitability was established in all relevant instances;

Whereas export prices were determined on the basis of the prices actually paid or payable for the products exported to the Community during the period of investigation;

Whereas in comparing normal value with export prices, the Commission took account where appropriate of differences affecting price comparability; whereas all comparisons were made at ex-works level;

Whereas the above examination of the facts showed the existence of dumping the margins being equal to the amount by which the normal value as established exceeded the price for export to the Community;

Whereas these margins vary according to the exporter; whereas the weighted average margin for each of the exporters investigated was as follows:

Burlington Industries Inc.	4.5 %
Carter, Moore & Co Inc.	11.9 %
Collins & Aikman Corp	2.5 %
Glen Raven Mills Inc.	0 %
International Fiber Industries Inc.	5.4%
Macfield Texturing Inc.	4.1 %
Meyers Fibers	0 %
Titan Textile Co Inc.	3.5 %
Unifi Inc.	1.87 %
Unitex International	2.40 %

Whereas for those exporters who neither replied to the Commission's questionnaire nor made themselves known otherwise in the course of the review investigation the Commission considered that it would constitute a bonus for non-cooperation to assume that the dumping margin for these exporters was any lower than the dumping margin determined with regard to them following the original investigation;

Whereas as regards injury the Commission received no new evidence to alter its view that the continued application of the existing duty was a requirement for the elimination of injury and the prevention of its recurrence;

Whereas with regard to exports of three companies investigated in the review proceedings these three exporters and certain Community importers and consumers of the yarns concerned alleged that some yarns exported from these companies, albeit at dumped prices, caused no injury to the Community industry since these yarns could not be made available by Community producers;

Whereas, for each yarn concerned, the Commission was satisfied by information supplied by the Community producers that the yarns concerned were currently being produced by, had been produced by or could be produced by a Community texturiser; whereas furthermore the Community producers concerned alleged that where production of a particular yarn for which there was demand had stopped this was due to the inability of the Community producers to compete with the low prices of the dumped imports from the United States of America;

Whereas two US exporters, Burlington and Macfield, offered price undertakings regarding future exports to the Community; whereas, after consultation, the Commission did not consider these undertakings acceptable;

Whereas, accordingly, the facts finally established show that there is dumping and injury caused thereby and the interests of the Community call for Community intervention; whereas Regulation (EEC) No 3439/80 should now be further amended to impose definitive anti-dumping duties in accordance with the above findings,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3439/80 is hereby amended as follows:

1. Article 1(2) (a) is replaced by the following:

"a) for textured yarn falling within NIMEXE Codes 51.01-29 and 30, 16.4 % except for textured yarn exported by Burlington Industries Inc, Greensboro, North Carolina for which the rate of duty shall be 4.5 %, Carter Moore and Co Inc, New York, NY for which the duty shall be 11.9 %, Collins and Aikman Corp, Graham, North Carolina for which the duty shall be 2.5 %, International Fiber Industries Inc. for which the duty shall be 5.4 %, Macfield Texturing Inc, Madison, North Carolina for which the duty shall be 4.1 %, Titan Textile Company Inc, New York, NY for which the duty shall be 3.5 %, Unifi Inc, Greensboro, North Carolina for which the duty shall be 1.87 %, Unitex International, New York, NY for which the duty shall be 2.4 %."

2. Article 3(a) is replaced by the following:

"a) textured yarn exported by Glen Raven Mills Inc, Glen Raven, North Carolina and Meyers Fibers, Willow Grove, Pennsylvania"

Article 2

This Regulation shall enter into force on the day following that 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,

For the Council