Council Regulation (EC) No 862/2009 of 15 September 2009 terminating the partial interim review of the anti-dumping measures imposed by Regulation (EC) No 1487/2005 on imports of certain finished polyester filament fabrics originating in the People's Republic of China

COUNCIL REGULATION (EC) No 862/2009

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terminating the partial interim review of the anti-dumping measures imposed by Regulation (EC) No 1487/2005 on imports of certain finished polyester filament fabrics originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Article 11(3) thereof,

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

Whereas:

1. **MEASURES IN FORCE**

(1) By Regulation (EC) No 1487/2005[(2)] (the original Regulation), the Council imposed a definitive anti-dumping duty on imports of certain finished polyester filament fabrics ('PFF' or 'the product concerned') originating in the People's Republic of China ('PRC' or 'the country concerned'). The investigation period used in the investigation that led to the aforesaid Regulation (the original investigation) was the period from 1 April 2003 to 31 March 2004 (the original IP).

(2) Following an anti-absorption reinvestigation, these measures were amended by Regulation (EC) No 1087/2007[(3)]. The duty rates currently in force range from 14,1 % to 74,8 %.

2. **PROCEDURE**

2.1. **Request for review**

(3) On 1 April 2008, the Commission received a request pursuant to Article 11(3) of the basic Regulation to initiate a partial interim review to examine whether certain product types fall within the scope of the current anti-dumping measures.

(4) The request was lodged by Hüpeden GmbH & Co. KG (the applicant), an importer located in Germany.

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(5) The applicant alleged that the product it imports is only used to produce a special adhesive tape for insulation of cables within the wiring harnesses of engines, mainly engines of cars (hereinafter 'tape' grade), and that the technical and chemical characteristics of this 'tape' grade are different from those of the product concerned as defined in the original investigation. In particular, the tensile strength and the colouring of 'tape' grade seemed to be different. The applicant alleged that 'tape' grade should therefore be considered as being outside the scope of the original investigation and thus not be subject to the abovementioned measures.

2.2. **Initiation**

(6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced by a notice published on 26 June 2008 in the *Official Journal of the European Union*[(4)] the initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation, limited to the examination of the product scope. In particular, the review had to determine whether or not 'tape' grade is part of the product concerned as defined in the original investigation.

2.3. **Review investigation**

(7) The Commission officially advised the authorities of the PRC, and all other parties known to be concerned, namely exporting producers in the country concerned, producers as well as users and importers in the Community, of the initiation of the partial interim review investigation. Interested parties were given the opportunity to make their views known in writing and request a hearing within the time limit set in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(8) The Commission sent questionnaires to all parties known to be concerned and all other parties which made themselves known within the deadlines set out in the notice of initiation.

(9) In view of the scope of the review, no investigation period was set for the purpose of this review. The information received in the questionnaire replies covered the period from 1 July 2007 to 30 June 2008 (the period considered). For the period considered, information concerning sales/purchases volume and value, production volume and capacity for 'tape' grade and all PFF types was requested. In addition, the parties concerned were asked to comment on any differences or similarities between 'tape' grade and other types of PFF with respect to their production process, technical characteristics, end-uses, interchangeability, etc.

(10) Questionnaire replies were received from the applicant, one Chinese exporting producer of 'tape' grade, one Community producer of 'tape' grade, two Community producers of other types of PFF and one user of 'tape' grade.

(11) The Commission sought and verified all information deemed necessary for the purpose of the assessment as to whether there was a need for amendment of the

scope of the existing anti-dumping measures and carried out verification visits at the premises of the following companies:

— Hüpeden GmbH & Co. KG, Hamburg, Germany,

— TFE Textil, Nüziders, Austria,

— Wujiang Glacier Fabrics, Wujiang, PRC.

(12) All parties were informed of the essential facts and considerations on the basis of which the conclusions of the present review investigation were drawn (final disclosure). They were also granted a period within which they could make representations subsequent to this disclosure.

(13) The oral and written comments submitted by the parties have been duly considered and replied to in the recitals that follow.

3. PRODUCT CONCERNED

(14) The product concerned is, as defined in the original Regulation, woven fabrics of synthetic filament yarn containing 85 % or more by weight of textured and/or non textured polyester filament, dyed (including dyed white) or printed, originating in the PRC, currently falling within CN codes ex 5407 51 00, 5407 52 00, 5407 54 00, ex 5407 61 10, 5407 61 30, 5407 61 90, ex 5407 69 10, and ex 5407 69 90.

4. FINDINGS OF THE INVESTIGATION

(15) It was first examined whether ‘tape’ grade falls within the scope of the measures imposed on certain finished polyester filament fabrics originating in the PRC as described in the original Regulation. It was subsequently examined whether the product scope could be amended on the ground that ‘tape’ grade and the other types of PFF do not form a single product.

4.1. Scope of the original investigation

(16) It is recalled that PFF are produced by weaving yarns of polyester into a fabric and applying a finishing to this fabric. The yarns can be pre-dyed or not. The finishing consists generally of printing or dyeing the woven fabrics but further finishing can be applied to produce a peach skin effect or make the fabric, for instance, water-repellent.

(17) In recital 8 of the original Regulation it is mentioned that the product concerned should be distinguished from woven PFF of yarns of different colours, for which pre-dyed yarn is woven into cloth, and the design is created by weaving the pattern. These fabrics fall within CN codes 5407 53 00 and 5407 61 50 and are excluded from the scope of the product and thus from the anti-dumping measures in force.

(18) The applicant alleged in its request for review that ‘tape’ grade does not fall within the scope of the product concerned as defined in the original Regulation because it is made of pre-coloured yarns and therefore corresponds to the product described in recital 17 above. The applicant also explained that it had been consistently declaring its imports of ‘tape’ grade originating in the PRC under the CN code 5407 53 00, even before the imposition of anti-dumping measures in 2005. As regards this claim, it should

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be noted that an anti-dumping Regulation such as the present one is not the appropriate legal instrument to define under which CN code particular shipments should have been classified. That is primarily a question for the national authorities, if necessary using binding tariff information and/or with the help of a request for a preliminary ruling by the Court of Justice of the European Communities. Nevertheless, if none of the products imported by the applicant can possibly be covered by the anti-dumping duty imposed by the original Regulation, this review investigation would appear to have no practical sense. The investigation revealed in this regard that the 'tape' grade is made of pre-coloured yarns but that these yarns are not of different colour and that no apparent pattern is created by weaving these yarns. Therefore, for the purpose of this investigation, it is considered that 'tape' grade is distinguishable from the product described in recital 17 above.

(19) Subsequent to the final disclosure, the applicant claimed that 'tape' grade should be considered as made of yarns of different colours, because the carbon which is not homogeneously melted in the polyester yarn creates shades of black colour in the yarn. The applicant justifies this claim by a reference to the subheading notes to Section XI of Part two in Annex I of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff[(5)], in which the definition of woven fabric of yarns of different colours includes woven fabric which consists of yarns of different shades of the same colour and by reference to opinions of independent experts.

(20) In reply to this claim, it is recalled that this Regulation does not aim at defining under which CN code imports of 'tape' grade should be declared. Therefore, this claim was considered irrelevant for the purposes of this investigation since, as mentioned above, questions regarding customs classifications are primarily for the competent national authorities.

(21) In its request for review, the applicant also claimed that at the initiation and provisional stages, the original investigation focused on PFF for apparel applications only, and that only these types of fabrics were supposed to be included in the definition of the product concerned and targeted by the anti-dumping measures. The applicant also maintained that the product scope of the original investigation was expanded only in the original Regulation imposing definitive anti-dumping measures to cover all types of uses. It further claimed that 'tape' grade is used for a very specific application by the automotive industry and should therefore not be considered as being part of the product concerned.

(22) As regards this claim, it is noted that the notice of initiation of the original investigation[(6)] made reference to PFF 'normally used for apparel applications' and not to PFF exclusively used for apparel applications. This means that there has been no expansion of the product concerned between the initiation stage and the imposition of definitive measures, as alleged by the applicant. Moreover, apart from a clarification on the product scope regarding the inclusion of 'dyed white' PFF, there is no other difference between the product concerned as defined in Commission Regulation (EC) No 426/2005[(7)] (the provisional Regulation) and the definitive Regulation of the

original investigation (i.e. the original Regulation). In both Regulations, neither the operative part (Article 1(1)) nor the recitals regarding the definition of the product concerned exclude PFF imported for a specific end-use from the duty. In the provisional Regulation, particularly in the first sentence of its recital 11, the product concerned is described in terms of its physical characteristics. Again, it is merely stated that PFF are 'normally' used for apparel applications, without this being in any way a condition for them to be covered by the investigation and/or the (provisional) duty. Later, in view of the numerous possible applications that were discovered in the course of the original investigation, such as furniture or home decoration, it was explicitly recalled, in recital 6 of the original Regulation, that all PFF were covered by the product definition, regardless of their final use. Therefore, 'tape' grade and all other PFF, including PFF for automotive applications, were included in the definition of the product concerned in the original investigation.

(23) The applicant also claimed, along similar lines as the arguments described above, that it could not properly exercise its right of defence in the original investigation as the scope of the product concerned was broadened between the provisional and definitive stage while no specific information concerning this change was sent to possible interested parties. The applicant claimed that this was the reason why neither the applicant nor its Chinese supplier cooperated in the original investigation.

(24) It is recalled that, as mentioned in recital 22, the product definition was not expanded during the original investigation, as other possible uses than apparel were considered already as from the initiation stage. Moreover, the applicant is an experienced commercial importer which cooperated in other anti-dumping investigations and is therefore well aware of the procedures and information sources (such as the Official Journal) regarding these investigations. In this context, it is also important to note that, as shown in recitals 9 and 10 of the original Regulation, subsequent to the publication of the provisional Regulation, several interested parties raised claims against the imposition of measures on PFF for non-apparel applications (e.g. furniture, home decoration, umbrellas). This shows that interested parties understood that the investigation was never restricted to PFF used for apparel applications. In view of the above, the claim had to be rejected.

(25) Subsequent to the final disclosure, the applicant further claimed that it had submitted comments in the course of the original investigation and that in parallel it had also actively discussed the case with a number of textile associations involved in that investigation. According to the applicant, at no time was there any indication from the Commission that 'tape' grade fabric might fall within the scope of the investigation or the measures.

(26) It is first noted that it is clear that the applicant was fully aware of the existence of the original investigation. Moreover, as explained above, that investigation did cover PFF from the very beginning. In addition, the applicant did not bring any evidence that the Commission ever excluded 'tape' grade from the scope of the original investigation or that any party ever suggested that the Commission should do so. Indeed, the comments submitted by the applicant during the original investigation concerned