Council Regulation (EC) No 383/2007 of 4 April 2007 terminating the partial interim review of the anti-dumping measures concerning imports of synthetic staple fibres of polyesters originating in the People's Republic of China, Saudi Arabia, Belarus and the Republic of Korea

COUNCIL REGULATION (EC) No 383/2007

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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. PROCEDURE

1.1. Existing measures

(1) By Regulation (EC) No 1522/2000[(2)], the Council imposed a definitive anti-dumping duty on imports of synthetic staple fibres of polyesters (PSF) originating in Australia, Indonesia and Thailand.

(2) By Regulation (EC) No 2852/2000[(3)], the Council imposed a definitive anti-dumping duty on imports of PSF originating in the Republic of Korea and India.

(3) By Regulation (EC) No 1799/2002[(4)], the Council imposed a definitive anti-dumping duty on imports of PSF originating in Belarus.

(4) By Regulation (EC) No 428/2005, the Council imposed a definitive anti-dumping duty on imports of PSF originating in the People's Republic of China (PRC) and Saudi Arabia and amended and renewed for five years the measures concerning the Republic of Korea.

(5) All these Regulations will be hereinafter referred to as ‘the original Regulations’. The investigations that led to the measure imposed by the original Regulations will be hereinafter referred to as ‘the original investigations’. Following the expiry reviews of the measures concerning imports of PSF originating in Australia,

India, Indonesia and Thailand[5], the Council, by Regulation (EC) No 1515/2006[6], repealed the anti-dumping duties in respect of such imports.

(6) It is noted that a new anti-dumping proceeding concerning imports of PSF originating in Malaysia and Taiwan was initiated on 12 April 2006[7] and provisional measures were imposed by Regulation (EC) No 2005/2006[8].

1.2. Grounds for the review

(7) The basis for initiating this review was the information submitted by the Korean exporting producer Saehan Industries Inc., which indicated that low-melt polyester staple fibres (LMP), as defined in recital (20) below, should be excluded from the product scope, as they appeared to have different basic physical and chemical characteristics and end-uses in comparison to other types of PSF. In particular, unlike other PSF types, LMP appeared to have inherent binding properties.

1.3. Initiation

(8) 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 (the notice of initiation) published in the *Official Journal of the European Union*[9] the initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of the product scope of the anti-dumping measures on imports of PSF originating in the PRC, Saudi Arabia, Belarus, Australia, Indonesia, Thailand, the Republic of Korea and India. It is noted that this review was initiated on the Commission's own initiative.

1.4. Review investigation

(9) The Commission officially advised the authorities of the PRC, Saudi Arabia, Belarus, Australia, Indonesia, Thailand, the Republic of Korea and India (countries concerned), and all other parties known to be concerned, i.e. producers/exporters in the countries concerned and their associations, users and importers in the Community and their associations and producers in the Community and their association, of the initiation of the 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.

(10) 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.

(11) In view of the scope of the review, no investigation period was set for the purpose of this review. The information received in the questionnaires covered the period from 1998 to 2005 (period considered). For the period considered, information concerning sales/purchases volume and value, production volume and capacity for all PSF types and LMP was requested. In addition, the parties concerned were asked to comment on any differences or similarities between LMP and other types

of PSF with respect to their production process, technical characteristics, end-uses, interchangeability etc.

(12) Sufficiently complete questionnaire replies were received from one Thai, two Korean and one Saudi-Arabian exporting producer of PSF, four Community producers of PSF, five users and two importers of PSF in the Community. Several other parties, including the association of users and the association of Community producers of PSF, submitted their comments.

(13) The Commission sought and verified all information deemed necessary for the purpose of the assessment as to whether there is a need for amendment of the scope of the existing measures.

(14) It is noted that, since in October 2006, following parallel expiry reviews, the measures on imports of PSF originating in Australia, India, Indonesia and Thailand were repealed (see recital 5), the present review has become obsolete with respect to these countries, and its findings concern only the measures on PSF originating in the PRC, Saudi Arabia, Belarus and the Republic of Korea.

2. PRODUCT CONCERNED

(15) The product concerned is, as uniformly defined in all original Regulations, synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning originating in the PRC, Saudi Arabia, Belarus, Australia, Indonesia, Thailand, the Republic of Korea and India (the product concerned) and is currently classifiable within CN code 5503 20 00. It is commonly referred to as polyester staple fibres or PSF.

3. RESULTS OF THE REVIEW INVESTIGATION

3.1. Methodology

(16) In order to assess whether LMP and other types of PSF should be considered as one single product or two different products, it was examined whether LMP and other types of PSF shared the same basic physical and technical characteristics and end-uses. In this regard, the production process, the interchangeability and the distinction between LMP and other types of PSF were also assessed.

3.2. Findings

3.2.1. General remarks

(17) PSF is a basic material used in various stages of the manufacturing process of textile products. PSF is either used for spinning, i.e. manufacturing filaments for the production of textiles, after mixing or not with other fibres such as cotton and wool, or for non-woven applications such as filling, i.e. stuffing or padding of certain textile goods such as cushions, car seats and jackets.

(18) PSF is sold in different product types for use in spinning or non-woven applications, which have a mono- or bi-component composition and different specifications such as denier/decitex, tenacity, lustre, quality grade, etc. These product types are not always interchangeable with each other (e.g. fibres for spinning and

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 383/2007. (See end of Document for details)*

non-woven applications, mono- and bi-component fibres, fibres with specific thermal characteristics such as the flame retardant fibres, etc.). However, as the original investigations established, the physical and chemical characteristics and the end-uses of these types are basically the same. Moreover, while not every product type may be interchangeable with every other type, there is at least a partial interchangeability and overlapping use between different product types, none of them being clearly separated from at least certain others.

(19) It should be noted that LMP is not a new product. However, LMP, as one of the PSF types, was not separately examined within the original investigations, since none of the parties concerned pointed out its allegedly different physical and technical characteristics. This review confirmed that LMP, which was firstly produced in the 1980's and traded since then in countries like Japan, Taiwan and the Community, was already produced and traded in substantial quantities by at least three Community producers and in at least one of the countries concerned, i.e. the Republic of Korea, during the original investigations. In fact, imports of PSF including LMP from the Republic of Korea were found to be dumped and to have caused injury to the Community industry.

3.2.2. Physical and technical characteristics of LMP

(20) LMP is one of the bi-component PSF types. It is a low melting polyester fibre with a core/sheath structure; it is composed of a polyester core and a sheath of copolymer polyester. When heated, the outer copolymer sheath melts at a lower temperature than the polyester core, and the melted sheath acts as glue. There are several sub-types of LMP, having different composition resulting, for instance, in different melting temperatures.

(21) LMP is based on the same raw material and has the same look as other types of PSF. However, by definition, it contains two different polyester polymers. In this context, it should be noted that LMP is not the only bi-component PSF; numerous other bi-component PSF types exist, which have been always considered as constituting a single product for the purposes of anti-dumping proceedings.

(22) Some Community users and one exporting producer argued that LMP and other types of PSF, whether mono- or bi- component, are based on different raw materials. The association of Community producers and certain Community producers argued that the basic raw materials of all PSF types, including LMP, are the same. In this respect, it should be noted that all PSF types, including LMP, are based on terephthalic acid (TPA) and ethylene glycol (MEG). These raw materials constitute the basic component, to which additives or additional components can be added in order to ensure certain specific properties of the fibre, such as low melting temperature in the case of LMP. The claim that LMP is based on different raw materials is therefore rejected.

(23) One exporting producer also argued that the factor ‘look’ is not relevant in analysing physical and technical characteristics of different products or product types. In this respect, it is noted that the look by itself would normally not constitute sufficient

basis for defining the product concerned, in particular when chemical products are concerned. However, this does not imply that such factor should be completely disregarded. In this particular case, the same look constitutes an additional element for finding that LMP and other types of PSF cannot be easily distinguished from each other. The claim is therefore rejected.

(24) In view of the above, it is concluded that LMP cannot be considered as having different basic physical and chemical characteristics than other PSF types, in particular those with bi-component composition.

3.2.3. Production process

(25) It is recalled that the original investigations established that, from a production point of view, a general distinction can be made between virgin PSF, produced from virgin raw materials, and regenerated PSF, produced from recycled polyester.

(26) As regards LMP, this review investigation revealed that no significant difference in production of LMP and other bi-component PSF types exists. It was found that any producer of other bi-component PSF types could easily switch to the production of LMP. Bi-component spinning systems are in operation in the Community and elsewhere for more than 20 years. The bi-component fibres' production is more sophisticated than that of mono-component fibres; however, the difference between the two systems is not such as to be considered substantial.

(27) Some Community users argued that it would not be cost-effective to switch to the production of LMP. It was argued that although the production lines for LMP and other bi-component PSF types are basically the same, a switch to the production of LMP would require certain modifications, in particular the change of spinnerets, and would cause considerable downtimes. Thus, although switching to the production of LMP or vice versa is technically feasible, it may not be efficient and this may affect the available capacity for LMP. The association of Community producers and one Community producer argued that the production process for all bi-component PSF is basically the same and switching to LMP production has no technical shortcomings, but that it purely depends on market forces such as demand and prices. Furthermore, they argued that there is sufficient overall capacity to satisfy demand for LMP in the Community if the market conditions would allow. In this respect, the following should be noted. Firstly, the conclusion that no substantial difference exists between production of LMP and other PSF types was not challenged. Secondly, the cost-effectiveness of switching to the production of LMP or vice versa may vary significantly from one producer to the other but it is in fact done by some Community producers. Finally, whether a producer would switch to the production of LMP depends largely on the sales prices it can obtain for the different PSF types in the market. In this respect, it is also noted that there are no exclusive producers of LMP in the Community or the exporting countries concerned. Therefore, this argument cannot alter the conclusions in respect of the production process.