Council Regulation (EC) No 1987/2005 of 2 December 2005 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of granular polytetrafluoroethylene (PTFE) originating in Russia and the People's Republic of China

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THE COUNCIL OF THE EUROPEAN UNION,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 Articles 9 and 10(2) thereof,

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

Whereas:

A. PROCEDURE

1. Provisional Measures

(1) By Regulation (EC) No 862/2005[(2)], (provisional Regulation), the Commission imposed provisional anti-dumping duties on imports into the Community of granular polytetrafluoroethylene (PTFE) originating in Russia and the People's Republic of China (PRC).

2. Subsequent Procedure

(2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping duties on imports of PTFE from Russia and the PRC, several interested parties submitted comments in writing. In accordance with the provision of Article 20(1) of the basic Regulation, all interested parties which requested a hearing were granted an opportunity to be heard by the Commission.

(3) The Commission continued to seek and verify all information deemed necessary for the definitive findings.

(4) An additional verification visit was carried out at the premises of the following companies:

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1987/2005. (See end of Document for details)*

— Heroflon (Italy), granular PTFE transformer,

— Fluorseals (Italy), granular PTFE processor.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of amounts secured by way of provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.

(6) The oral and written arguments submitted by the parties were considered, and, were deemed appropriate, taken into account for the definitive findings.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(7) The provisional Regulation described the product concerned as granular polytetrafluoroethylene (PTFE), containing not more than 3 % of other monomer unit than tetrafluoroethylene, without fillers, in the form of powder or pellets, with the exclusion of micronised material. The product concerned can also be presented as raw polymer (reactor bead) in wet or dry form. Further to comments received by interested parties, it is clarified that 'micronised material' means a fluoropolymer micropowder as defined by norm 'ASTM D5675-04'. The product concerned is currently classifiable within CN code ex 3904 61 00.

(8) One users'/importers' organisation (the European Fluoropolymer Fair Trade Association or EFFTA) and one exporters' association objected to the provisional conclusions that all granular PTFE constitute a single product. It was argued that granular PTFE can be divided into three product groups based on quality differences (high/medium/low). It was claimed that each product group would be used in different applications not competing with one another in the same market.

(9) Despite quality differences, all granular PTFE types were found to have the same basic physical, technical and chemical characteristics, which were neither contested by EFFTA nor by the exporters' association. As far as granular PTFE applications are concerned, it was found that granular PTFE of a lower quality could be used after post-treatment in almost all applications, including some high-end applications (e.g. billets for skiving). In general, as also admitted by EFFTA, there was an overlapping in applications for various types and qualities of granular PTFE and no clear dividing line could thus be established.

(10) It was therefore concluded that, notwithstanding the different possible product types due to different form, average particle size, thermo treatment or co-monomer content, and despite quality differences, all of them constituted one single product for the purpose of this proceeding because all types and qualities had the same physical characteristics and essentially the same basic end-uses. In recitals 13, 145 and 147 of the provisional Regulation it was erroneously mentioned that granular PTFE would also be contained in anoraks and in the inner shield of cables and that it is used in textile

and biomedical applications as well as isolation agents. The definitive findings revealed that granular PTFE is not used in any of the aforementioned applications.

(11) Taking into account the abovementioned considerations, the product definition and the provisional findings set out in recital 14 of the provisional Regulation are hereby confirmed.

2. Like product

(12) A number of importers and users reiterated that the granular PTFE produced and sold in the Community market could not be likened to the products imported from the PRC and Russia. It was argued that the products imported from the countries subject of the present investigation, would be of a much lower quality than the product produced by the Community industry and would therefore be sold on different markets, thus not competing with each other. These parties did not, however, come forward with new information or evidence in this matter.

(13) It should first be noted that, as outlined in recital 16 of the provisional Regulation, the investigation has shown that the Community industry also produced and sold scrap or 'off-spec' material during the investigation period (IP) to the same customers as the exporting producers concerned. On the other hand, the investigation revealed that at least the Russian exporting producers sold a quality of granular PTFE to the Community, which was, even without post-treatment, comparable to the high quality Community grades, albeit in very limited quantities. Furthermore, even low quality granular PTFE imported from the countries concerned could, after post-treatment, be used in a similar range of applications as the product produced and sold in the Community market by the Community industry.

(14) Considering the above, it was concluded that the product concerned and the granular PTFE produced and sold in the Community by the Community industry share the same physical and technical characteristics and the same basic end-uses. They were therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

(15) In the absence of any other comments in this regard, the provisional conclusions set out in recital 15 of the provisional Regulation are hereby confirmed.

C. DUMPING

1. People's Republic of China

1.1. Market economy treatment (MET)

(16) Following the imposition of provisional measures, the three Chinese cooperating exporting producers claimed that they should have been granted MET and reiterated the arguments they had previously submitted. These comments were already addressed in recitals 33 to 39 of the provisional Regulation. Consequently, it was considered that the decision to reject MET to the three companies should be maintained.

1.2. Individual treatment (IT)

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1987/2005. (See end of Document for details)*

(17) Two exporting producers argued that they should be granted IT. One exporter submitted that the Commission was not entitled to reject IT on the basis of possible State interference, since Article 9(5) requires that only export prices and quantities are freely determined. In this respect, it should be noted that a company can, by definition, not be considered to freely determine its export prices and quantities and conditions and terms of sale, if the latter can be influenced by the State. Therefore, the conditions of Article 9(5)(b) of the basic Regulation cannot be considered to be met by companies that are not able to demonstrate that they are not subject to possible State interference. The exporting producer concerned has not provided any evidence showing that the State could neither influence its decisions with regard to export prices and quantities, and conditions and terms of sale, nor that possible State interference was not such as to permit circumvention of the measures. This is mainly due to the fact that, as outlined in recital 33 of the provisional Regulation, the relationship of this company to the State-owned shareholder was unclear and the Articles of Association were considered unreliable. Therefore, the fact that such State interference would allegedly not have occurred in the past, would, even if it were demonstrated, not offer any guarantee that it will not take place in future, in particular should an individual duty rate be attributed to this company.

(18) Another exporter argued that its shareholding structure, in particular the fact that it is partly State-owned, did not as such allow the conclusion that the State interfered in the setting of prices and other sales terms. First of all, the company did not substantiate its claim with any evidence. On the other hand, it was found that the State owned the majority of the company's capital and furthermore, nominated the General Manager and the majority of the Board of Directors of this company. Therefore, it was concluded that Article 9(5)(c) is not fulfilled and IT should therefore be rejected.

(19) In the absence of any other comments, the findings of the provisional Regulation, as set out in recital 45 of that Regulation, are hereby confirmed.

1.3. Analogue country

(20) All three Chinese cooperating exporting producers disagreed with the choice of the United States of America (USA) and claimed that Russia should have been chosen as the analogue country instead. Two of them reiterated the comments made before the imposition of provisional measures, which have already been addressed in recitals 47 to 54 of the provisional Regulation. In the absence of any new information and evidence, the claims of these exporting producers had to be rejected.

(21) Another Chinese exporting producer argued that, due to the lower economic development of the PRC, production factors, such as labour costs and overhead expenses, would be lower and therefore not comparable to the USA. Nevertheless, as mentioned in recital 54 of the provisional Regulation, the different level of overall economic development is, in itself, not a relevant factor when selecting an analogue country. This company also alleged that as a consequence of the lower economic development in China, public services such as water, power and gas supply would be less expensive than in the USA. In this regard, it must be noted that it is precisely

the aim of Article 2(7)(a) of the basic Regulation that an analogue country is selected to determine the normal value on the basis of prices and costs, unbiased by non-market economy conditions. Thus, a simple comparison of prices in the non-market economy country or in the country with an economy in transition with those in the analogue country is as such not meaningful. In any event, no information was submitted which would have substantiated the alleged differences and allowed a quantification, or which would have demonstrated that this exporting producer benefited from any natural comparative advantage. The argument was therefore rejected. Finally, this exporting producer also claimed that, due to a simpler production process, the equipment, as well as the related investments and depreciation rates would be significantly different. However, the exporter did not submit any information showing that its production process was indeed simpler than that used by the USA producers or which would allow the Commission services to quantify the effect of such alleged differences.

(22) This exporter also argued that the USA and the Chinese granular PTFE have a different quality which would result in different applications and that the choice of the USA as analogue country was therefore not appropriate. In this regard it is noted that, as explained in recital 53 of the provisional Regulation, an adjustment was made for differences of quality, in particular contamination, the level of which the Chinese exporting producer did not contest. This argument was therefore also rejected.

(23) In the absence of any other comments, the findings set out in recitals 47 to 54 of the provisional Regulation regarding the choice of the USA as an appropriate analogue country are hereby confirmed.

1.4. Determination of normal value for Chinese exporting producers not granted MET

(24) One Chinese exporting producer argued that the adjustment for quality differences described in recital 53 of the provisional Regulation was insufficient and that normal value should have been adjusted to the same extent as the Community industry price when calculating undercutting and underselling margins, as explained in recital 98 of the same Regulation.

(25) It should be noted that while the adjustment to the normal value is designed to capture differences between the like product sold on the market of the analogue country and the product concerned, the adjustment made in the injury analysis takes into consideration differences between the latter and the like product sold in the Community. Although the like product sold in the analogue country and the one sold in the Community market may be of a similar quality and may have similar characteristics, differences in the product concerned are not necessarily identical. Consequently, the adjustments were made on their own merits and on the basis of the information and evidence collected during the investigation. The exporting producer did not submit any evidence showing that the methodology used by the Commission in its provisional determinations was unreasonable and that indeed, differences between the product concerned and the like product produced and sold in the Community on the one hand and in the analogue country on the other hand would be identical, nor was there any