Council Regulation (EC) No 1487/2005 of 12 September 2005 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain finished polyester filament fabrics originating in the People's Republic of China

COUNCIL REGULATION (EC) No 1487/2005

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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 9 thereof,

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

Whereas:

A. PROCEDURE

1. Provisional measures

(1) On 15 March 2005, the Commission imposed, by Regulation (EC) No 426/2005[(2)] (the provisional Regulation), a provisional anti-dumping duty on imports of certain finished polyester filament fabrics originating in the People's Republic of China (PRC).

(2) It is recalled that the investigation period of dumping and injury (IP) covered the period from 1 April 2003 to 31 March 2004. The examination of trends relevant for the injury analysis covered the period from 1 January 2000 to the end of the IP (period considered).

2. Subsequent procedure

(3) Following the imposition of a provisional anti-dumping duty on imports of certain finished polyester filament fabrics from the PRC, all parties received a disclosure of the facts and considerations on which the provisional Regulation was based. All parties were granted a period within which they could make representations in relation to these disclosures.

(4) Some interested parties submitted comments in writing. Those parties who so requested were also granted an opportunity to be heard orally. The Commission

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sought and verified all information it deemed necessary. The oral and written comments submitted by the parties were examined, and, where considered appropriate, the provisional findings were modified accordingly.

(5) The Commission further disclosed all the essential facts and considerations on the basis of which it intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of amounts secured by way of the provisional duty. The interested parties were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, the proposal for a definitive anti-dumping duty has been modified accordingly.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(6) It is recalled that, in recital (11) of the provisional Regulation, the product concerned was defined as finished polyester filament apparel fabrics, which are woven fabric of synthetic filament yarn containing 85 % or more by weight of textured and/or non-textured polyester filaments, dyed or printed. It is hereby clarified that even if the product concerned is normally used for apparel applications, i.e., *inter alia*, for making lining for clothing and for making anoraks, sports wear, ski wear, underwear and fashion items, it can also be used, although to a lesser extent, for other applications. Therefore, all finished polyester filament fabrics as described above are covered by the product definition, regardless of their final use. Whether the product concerned is used for one or another application, its basic physical technical and chemical characteristics remain identical and therefore the difference in use does not affect the definition of the product concerned.

(7) It is also confirmed that fabrics dyed white also fall within the scope of the product definition. Those fabrics are however to be distinguished from unbleached woven fabric of synthetic filament yarn (also called grey fabrics) that is a product formed after weaving but before dyeing, and which forms the raw material for the product concerned. The latter is therefore not covered by the scope of the product definition. As dyed white woven fabrics as defined above fall within CN codes ex 5407 51 00, ex 5407 61 10, and ex 5407 69 10, these CN codes had to be added to the operational part of this Regulation.

(8) Finally, it is also confirmed that the product concerned should be distinguished from woven polyester filament fabrics of yarns of different colours, for which pre-dyed yarn is woven into cloth, and the design is created by weaving the pattern. The latter product has different basic physical and chemical characteristics, since the raw material used (pre-dyed yarn) is different, and the design is obtained through weaving and not printing or dyeing. In addition, such type of finished fabric is normally used for soft furnishing applications, whereas the product concerned is almost exclusively used for making clothing.

(9) Several interested parties claimed that finished polyester filament fabrics (FPFF), which are used for furniture or home decoration, should not be included in the anti-dumping measures. One interested party, importing polyester fabrics for umbrellas,

argued also that the use of the textile they import is different and not suitable for the clothing industry, due to a difference in weight.

(10) Indeed, it was confirmed in the investigation that a certain part of product concerned, although to a lesser extent, is used for furniture and home decoration purposes. However, these fabrics have, despite differences in a variety of factors such as colour, size of the yarns and finish, the same basic technical, physical and chemical characteristics as the fabrics for apparel use. It is, therefore, concluded that they should not be excluded from the product definition.

(11) One interested party argued that depending on the use of the product, e.g. as lining for low-end garments or as fabric material for high-end garments the price and the quality is significantly different and that these products should not be seen as one product concerned.

(12) It should be recalled in this respect that differences in type and in price have been accounted for by the product control numbers (PCN) codes established for the investigation, which ensure that different product types are compared like with like.

(13) In recital (15) of the provisional Regulation, it was stated that the Commission had found that FPFF produced by the Community industry and sold on the Community market as well as FPFF produced in the countries concerned and exported to the Community were like products, since no differences in the basic physical and chemical characteristics and uses of the existing different types had been found.

(14) In the absence of any further comments regarding the product definition and the like product, the contents and provisional conclusions of recitals (11) to (16) of the provisional Regulation are hereby confirmed.

C. PARTIES CONCERNED BY THE PROCEEDING

(15) One interested party requested that the details of the cooperating Community producers should be published in order to make it possible for interested parties to assess whether the standing requirements are satisfied. As stated in recital (8)(a) of the provisional Regulation, the Community producers requested in terms of Article 19 of the basic Regulation that their details should not be published, as to do so would have a significantly adverse effect upon them. As some of them buy polyester yarns (their main raw materials) from Chinese suppliers, there is a risk of retaliation. Their request was found to be sufficiently substantiated and was, therefore, granted.

D. DUMPING

1. Market economy treatment (MET)

(16) It is recalled that in the present investigation, 49 exporting producers in the PRC made themselves known and requested MET pursuant to Article 2(7)(c) of the basic Regulation. Each single MET application was analysed against the five criteria laid down in that Article.

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(17) On this basis, as set out in recital (23) of the provisional Regulation, 25 companies could successfully demonstrate that they met the five relevant MET criteria. MET could not be granted to the remaining companies: 10 of them did not sufficiently cooperate in the investigation by not submitting the necessary information requested, and the 14 others were found not to meet the criteria of Article 2(7)(c) of the basic Regulation, for the reasons summarised in the table below:

Company	**Criteria**				
	Article 2(7)(c) first indent	**Article 2(7)(c) second indent**	**Article 2(7)(c) third indent**	**Article 2(7)(c) fourth indent**	**Article 2(7)(c) fifth indent**
1	Not met	Not met	Met	Met	Met
2	Met	Not met	Not met	Met	Met
3	Met	Not met	Not met	Met	Met
4	Not met	Not met	Not met	Met	Met
5	Not met	Not met	Not met	Met	Met
6	Met	Met	Not met	Met	Met
7	Met	Met	Not met	Met	Met
8	Met	Met	Not met	Met	Met
9	Not met	Not met	Met	Met	Met
10	Not met	Met	Met	Met	Met
11	Met	Not met	Met	Met	Met
12	Met	Met	Not met	Met	Met
13	Met	Met	Not met	Met	Met
14	Not met	Not met	Met	Met	Met

Source: verified questionnaire replies of cooperating Chinese exporters.

(18) The companies concerned and the complainant were given the opportunity to comment on the above findings. The results of the analysis of the comments received by the various interested parties are addressed below.

(19) As a general remark, it should be recalled that in accordance with Article 2(7)(c) of the basic Regulation the burden of proof is on the exporting producers claiming MET, since this Article provides that it is up to the companies to supply sufficient evidence that they operate under market economy conditions. If doubts remain, for example because the company/ies concerned did not, or was/were not able to provide

the necessary information, or that this information was insufficient, MET cannot be granted.

(20) It is further noted that each one of all five criteria listed under Article 2(7)(c) of the basic Regulation needs to be fully met in order for MET to be granted to a company. In other words, MET cannot be granted if one criterion is only partly fulfilled. Likewise, it is the EC Institutions' consistent practice to examine whether a group of related companies as a whole fulfils the conditions for MET, which means that each related company producing and/or selling the product concerned should demonstrate it fulfils the MET criteria.

(21) In this context, Companies 4, 5, 9 and 14 claimed that the assessment on whether a company should be granted MET has to be made on an overall basis and, since the Commission found that only certain aspects for the relevant criteria were not fulfilled, MET should be granted to them. Those claims were rejected on the grounds mentioned in recital (20).

(22) Companies 4 and 5 also claimed that the findings of the Commission were insufficient to conclude that they did not fulfil the first criterion. In this respect, it should be noted that in the case of both companies, the verification visit revealed that either misleading information was submitted by the companies in their MET claim form or important information was simply omitted. For one company, a significant supplier of raw material was reported to be a private company, but later found to be State-owned during the on-spot investigation. The argument made by the company that it cannot be expected to know the details concerning ownership of its suppliers could not be accepted since the company explicitly reported in the MET claim form that this supplier was private-owned, which was also expressly confirmed by the company during the verification visit. As to the second company, it was found during the verification visit that, although specifically requested in the MET claim form, the company omitted to report its purchases of the main raw material, thus no information was given as to the details of the relevant suppliers. Under those conditions, the verification was strongly impeded and it could not be verified whether the corresponding costs were made in response to market signals and without State interference. The claims made by the companies were therefore rejected.

(23) Companies 3, 9 and 14 claimed that the mere fact that the auditors issued a qualified opinion on their annual accounts is not sufficient to consider that the second criterion of Article 2(7)(c) of the basic Regulation is not fulfilled. Company 2 challenged the Commission's conclusions that this company does not have one clear set of independently audited accounting records used for all purposes. Finally, Companies 4 and 5 claimed that since they have a clear set of accounts independently audited, the second criterion should be considered fulfilled.

(24) From a general point of view, it is recalled that the second criterion of Article 2(7)(c) of the basic Regulation requires the companies concerned to demonstrate that they have a basic set of accounts independently audited in line with international accounting standards, in order to assess the reliability of those accounts in view