Commission Regulation (EC) No 426/2005 of 15 March 2005 on imposing a provisional anti-dumping duty on imports of certain finished polyester filament apparel fabrics originating in the People's Republic of China

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 17 June 2004, the Commission announced, by a notice published in the *Official Journal of the European Union*[(2)], the initiation of an anti-dumping proceeding with regard to imports into the Community of certain finished polyester filament apparel fabrics ('FPFAF') originating in the People's Republic of China ('PRC' or 'country concerned').

(2) The proceeding was initiated as a result of a complaint lodged by AIUFFASS ('the complainant'), an affiliate of Euratex, on behalf of 7 individual producers representing a major proportion of the production of the product concerned in the EU, i.e. in this case 26 % of the Community production. The complaint contained evidence of dumping of the said product and of material injury resulting there from, which was considered sufficient to justify the initiation of a proceeding.

2. Parties concerned by the proceeding

(3) The Commission officially advised the complainant, the exporting producers, importers, suppliers and users as well as user associations known to be concerned, and the representatives of the PRC, of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(4) The complainant producers, other co-operating Community producers, exporting producers, importers, suppliers, users and their respective associations made

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their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(5) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from six of the seven Community producers included in the complaint (one company being unable to fully cooperate due to bankruptcy), one other Community producer, one supplier, one unrelated importer and nine unrelated users in the Community.

(6) In order to allow exporting producers in the PRC to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission also sent MET and IT claim forms to the Chinese companies known to be concerned, and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. In this respect, 49 companies requested MET pursuant to Article 2(7) of the basic Regulation, and 7 companies requested only IT.

(7) In view of the apparent high number of exporting producers, importers and Community producers, sampling was envisaged in the notice of initiation for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers, importers and Community producers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the investigation period (1 April 2003 to 31 March 2004). After examination of the information submitted, it was decided that sampling was only necessary with regard to exporters. The sample selected is based on the largest representative volume of exports that can reasonably be investigated within the time available. It consists of the 8 largest exporting Chinese exporting producers (and their related parties), representing over 50 % of the export volume to the Community of the co-operating parties.

(8) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the cooperating Community producers and the following companies:

(a) *Community producers*

— Verification visits were carried out at the premises of seven Community producers located in four different countries. The cooperating Community producers requested in terms of Article 19 of the basic Regulation that their details are not published, as to do so would have a significantly adverse effect upon them. The request was found to be sufficiently substantiated and therefore granted.

(b) *Exporting producers in the PRC*

— Wujiang Chemical Fabric Mill Co. Ltd.

— Shaoxing Tianlong import and export Ltd.
— Wujiang Canhua Import & Export Co. Ltd.
— Fuzhou Fuhua Textile & Printing Dyeing Co. Ltd.
— Fuzhou Ta Tung Textile Works Co. Ltd.
— Hangzhou Delicacy Co. Ltd.
— Shaoxing County Huaxiang Textile Co. Ltd.
— Shaoxing Ronghao Textiles Co. Ltd. (and related company Shaoxing County Qing Fang Cheng Textile Import and export Co Ltd).

(c) *Unrelated importers*
— LE-GO — Hof (Germany)

(d) *Community industry suppliers*
— Elana SA — Torun (Poland)

(e) *Community users*
— LE-GO — Hof (Germany)

(9) In view of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country, Turkey in this case, took place at the premises of the following company:
— Italteks Expo Grup A.A., Istanbul

3. Investigation period

(10) The investigation of dumping and injury covered the period from 1 April 2003 to 31 March 2004 ('IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2000 to the end of the investigation period ('period considered').

4. Product concerned and like product

4.1. Product concerned

(11) The product concerned is finished polyester filament apparel fabrics ('FPFAF') which is woven fabric of synthetic filament yarn containing 85 % or more by weight of textured or non textured polyester filaments, dyed or printed. It 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.

(12) The product concerned is produced by weaving polyester filament yarn (which is not pre-dyed) and then printed or dyed in order to obtain a specific design or colour. It is therefore distinguished from unbleached or bleached woven fabric of synthetic filament yarn that is a product formed after weaving but before dyeing, and which forms the raw material for the product concerned. It can also be distinguished from woven polyester filament fabrics for which pre-dyed yarn is woven into cloth,

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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.

(13) The investigation has shown that all types of the product concerned as defined in recital 11, despite differences in a variety of factors such as colour, size of the yarns and finish, have the same basic physical, and chemical characteristics and are used for the same purposes. Therefore, and for the purpose of the present anti-dumping proceeding, all types of the product concerned are regarded as one product. The product concerned falls within CN codes 5407 52 00, 5407 54 00, 5407 61 30, 5407 61 90 and ex 5407 69 90.

4.2. Like product

(14) No differences were found between the product concerned and the FPFAF produced and sold on the domestic market in the PRC or in Turkey, which served as an analogue country for the purpose of establishing the normal value with respect to certain imports from the PRC. Indeed, they both have the same basic physical and chemical characteristics and uses.

(15) Likewise, no differences were found between the product concerned and the FPFAF produced by the Community industry and sold on the Community market. They both also were found to share the same physical and chemical characteristics and uses.

(16) Therefore, these products are provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

B. DUMPING

1. Market economy treatment (MET)

(17) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c).

(18) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:

1. Business decisions and costs are made in response to market conditions and without State interference;

2. Acounting records independently audited in line with international accounting standards and applied for all purposes;

3. There are no significant distortions carried over from the former non-market economy system;

4. Legal certainty and stability is provided by bankruptcy and property laws;

5. Currency exchanges are carried out at the market rate.

(19) 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. In view of the large number of companies concerned, on-spot investigations were carried out only at the premises of eight companies (see recital (7)). For the remaining companies, a detailed desk analysis of all information submitted was carried out, and an extensive exchange of correspondence took place with the companies concerned, where elements in their submission were missing or unclear. Where a subsidiary or any other company related to the applicant in the People's Republic of China is a producer and/or an exporter of the product concerned, the related party was also invited to complete the MET claim form. Indeed, MET can be granted only if all related companies meet the criteria set above.

(20) As regards the companies for which on-spot investigations were carried out, the investigation revealed that three of the eight Chinese exporting producers fulfilled all the conditions for MET (see list of companies in recital (23)). The remaining five claims had to be rejected. The criteria not met by the five exporting producers are set out in the table below.

(21) As regards the remaining 41 companies, the analysis carried out individually for each company concluded that MET should not be granted to 19 companies, since they manifestly did not meet the criteria of Article 2(7)(c) of the basic Regulation. It was considered that 10 out of these 19 companies did not sufficiently co-operate in the investigation by not submitting the necessary information requested. Indeed, even after a deficiency letter, those companies failed to sufficiently demonstrate that either themselves, or any related company(ies) involved in the production/sales of the product concerned, fulfilled the relevant MET criteria. For the other 9 out of these 19 companies, the criteria not met are also set out in the table below. The remaining 22 companies could successfully demonstrate that they met the five relevant MET criteria.

(22) The following table summarises the determination for each company not granted MET, against each of the five criteria as set out in Article 2(7)(c) of the basic Regulation:

Company	**Criteria**				
	Article 2(7)(c)indent 1	**Article 2(7)(c)indent 2**	**Article 2(7)(c)indent 3**	**Article 2(7)(c)indent 4**	**Article 2(7)(c)indent 5**
1	Not MET	Not MET	MET	MET	MET
2	MET	Not MET	Not MET	MET	MET
3	MET	Not MET	Not MET	MET	MET

Source: verified questionnaire replies of cooperating Chinese exporters.