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*(Acts whose publication is obligatory)*

# COUNCIL REGULATION (EC) No 1799/2002
## of 8 October 2002
## imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in Belarus

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] (hereinafter referred to as 'the basic Regulation'), and in particular Article 11(2) and (3) and Article 13 thereof,

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

Whereas:

### A. PROCEDURE

#### 1. Previous investigations

(1) In July 1996, by Regulation (EC) No 1490/96 [2], a definitive anti-dumping duty was imposed on imports of polyester staple fibre (PSF) originating in Belarus. In 1997, by Regulation (EC) No 2513/97 [3], the measures were extended to cover imports of polyester filament tow (PFT), originating in Belarus, which were made in circumvention of the original measures.

#### 2. Investigations concerning other countries

(2) There are definitive anti-dumping measures currently in force on imports of PSF originating in Taiwan (Council Regulation (EC) No 1728/1999 [4]), Australia, Indonesia and Thailand (Council Regulation (EC) No 1522/2000 [5]) as well as South Korea and India (Council Regulation (EC) No 2852/2000 [6]).

(3) By Council Regulation (EC) No 902/2001 [7] definitive countervailing duties were imposed on imports of PSF originating in Australia and Indonesia.

#### 3. Present investigation

3.1. *Requests for an interim and an expiry review*

(4) In October 1999, the Commission received a request to open an interim review of the definitive anti-dumping duties in force (Regulation (EC) No 1490/96) with regard to imports into the Community of PSF originating in Belarus. This request was followed by a request to open an expiry review on 27 April 2001.

(5) The request for an interim review was lodged by the sole exporter in Belarus, Khimvolokno Industrial Group VSV Trading Co. ('Khimvolokno'). The request for the interim review was based on the prima facie evidence, provided by the applicant, that circumstances, *inter alia* the domestic prices in the analogue country, on the basis of which the measures were established, have changed and that these changes are of lasting nature.

(6) The request for expiry review was lodged by the International Rayon and Synthetic Fibres Committee ('CIRFS') acting on behalf of Community producers representing a major proportion of the total Community production of PSF. The request for the expiry review was based on the grounds that the expiry of measures would be likely to result in a recurrence of dumping and injury to the Community industry.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 189, 30.7.1996, p. 13.
[3] OJ L 346, 17.12.1997, p. 1.
[4] OJ L 204, 4.8.1999, p. 3.
[5] OJ L 175, 14.7.2000, p. 10.
[6] OJ L 332, 28.12.2000, p. 17.
[7] OJ L 127, 9.5.2001, p. 20.

3.2. *Notices of initiation*

(7) The Commission, having determined that sufficient evidence existed for the initiation of an interim review, and after consultation of the Advisory Committee, announced by a notice ('notice of initiation') published in the *Official Journal of the European Communities* [1] the initiation of an investigation pursuant to Article 11(3) of the basic Regulation with regard to imports into the Community of PSF originating in Belarus, limited in scope to the examination of dumping.

(8) The Commission, after consultation of the Advisory Committee, announced by a notice of initiation published in the *Official Journal of the European Communities* [2] the initiation of an investigation with regard to imports into the Community of PSF originating in Belarus in accordance with Article 11(2) of the basic Regulation.

3.3. *Period of investigation*

(9) The investigation period for dumping for the interim review is 1 October 1999 to 30 September 2000 ('interim IP'). The investigation period for dumping for the expiry review is 1 July 2000 to 30 June 2001 ('expiry IP'). The period considered for the assessment of the situation of the Community industry, as applied in the expiry review, covered the period from 1 January 1997 to the end of the expiry IP ('the period considered').

Given the partial overlap of the interim IP and the expiry IP, it was considered appropriate for reasons of administrative efficiency to merge the two investigations into one investigation.

## 4. **Parties concerned by the investigation**

(10) The Commission officially advised the applicant exporting producer in Belarus, CIRFS and the applicant Community producers, exporting producers and importers known to be concerned, the authorities of the exporting country and their representatives, Community users and associations known to be concerned of the initiation of the reviews. The parties directly concerned were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the applicable notice of initiation.

(11) The Commission sent questionnaires to all parties known to be concerned and received replies from four applicant Community producers, the sole exporting producer in Belarus, one producer in the analogue country, Poland, and two importers.

(12) The exporting producer in Belarus, the applicant Community producers, Community users and importers made their views known in writing. All parties, who so requested within the applicable time limit and which indicated that there were particular reasons why they should be heard, were granted a hearing.

(13) The Commission sought and verified all the information it deemed necessary for the purpose of a determination of the continuation or recurrence of dumping and injury and of the Community interest and carried out verifications at the premises of the following companies:

(a) Community producers:

— Wellman International Ltd, Co. Meath, Ireland,

— Trevira GmbH & Co., Frankfurt am Main, Germany,

— Trevira Fibras, SA, Portalegre, Portugal,

— Montefibre SpA, Milano, Italy;

(b) Unrelated importer in the Community:

— Barnett Europe, Aachen, Germany;

(c) Producer in the analogue country:

— Elan SA, Torun, Poland.

## B. **PRODUCT CONCERNED AND LIKE PRODUCT**

### 1. **Product concerned**

(14) The product under consideration is synthetic staple fibres of polyester, not carded, combed or otherwise processed for spinning, which is currently classifiable under CN code 5503 20 00. It is commonly referred to as polyester staple fibres or PSF. It is recalled that because of circumvention the measures were extended to polyester filament tow, abbreviated as PFT, falling under CN code 5501 20 00, used for conversion in the Community into PSF.

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

(16) The product is sold in different product types which can be identified through different specifications such as thickness, length, tenacity, shrinkage, lustre and silicon treatment or through their classification into product families such as regular, hollow, spiral and bi-component fibres and specialities such as coloured, branded and trilobal fibres.

[1] OJ C 352, 8.12.2000, p. 6.
[2] OJ C 211, 28.7.2001, p. 51.

(17) The different types are considered as one product family for the purpose of the investigation because the basic physical characteristics of the different types do not entail any significant differences, even though the uses and the quality of PSF sold might differ. There exist no clear dividing lines between the various types as there is overlapping and consequently competition between adjacent types.

(18) As was the case in previous anti-dumping investigations concerning PSF, some parties, in particular the user industry, argued that a differentiation should be made according to the use of PSF for spinning or non-spinning purposes because the price setting for the two applications is completely different. They suggested that the CN code for PSF should be divided into three or four different subcodes by denier (thickness) distinction and that the comparison of the PSF produced in the Community with the PSF imported into the Community should be carried out separately within each subcode.

(19) In recital 9 of Regulation (EC) No 2852/2000 it was indicated that a significant overlap between different types of PSF concerning their substitutability and competition between these types was found to exist. The present investigation confirmed this finding. It also confirmed the fact that there is no clear dividing line between the various PSF types which would establish a unique link between the physical product characteristics and the use of the product. Consequently, based on the facts available to date a product differentiation is not possible. In addition, it should be recalled that a laboratory analysis cannot possibly determine definitely the ultimate use of the PSF.

(20) In the present case, it should also be pointed out that no party put forward convincing arguments or criteria which would allow reclassification of PSF into subcodes. Indeed, as stated above the physical characteristics do not necessarily determine the ultimate use of the product, and the thickness (denier) is only one of the characteristics of the product.

(21) Based on the above facts and considerations, it is confirmed that the various types of PSF involved constitute one single product for the purpose of this proceeding.

### 2. **Like product**

(22) It was concluded in the original investigation, recital 6 of Regulation (EC) No 1490/96, that both the PSF produced and sold by the Community industry on the Community market and the PSF produced and sold on the market of the analogue country were, within the meaning of Article 1(4) of the basic Regulation, alike to the PSF imported into the Community from Belarus. Indeed, there are no differences in the basic physical characteristics and uses of the PSF imported into the Community from Belarus and the PSF produced by the applicant Community producers and sold on the Community market. PSF originating in Belarus also has basic characteristics and uses similar to the PSF produced and sold in the analogue country. No new arguments were put forward to deviate from these findings which are therefore confirmed.

## C. **CONTINUATION AND LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING**

### 1. **Interim review**

#### 1.1. *Analogue country*

(23) Since Belarus is a non-market economy within the meaning of Article 2(7) of the basic Regulation, normal value had to be based on information obtained in an appropriate market economy third-country in which the product was produced and marketed. In the notice of initiation of the interim review, the Commission suggested Taiwan as an appropriate analogue country, due to the fact that the request for the interim review was based, *inter alia*, on the fact that the domestic prices in the analogue country Taiwan which were used to determine the normal value in the previous investigations had decreased significantly.

(24) Questionnaires were sent to known producers of the product in Taiwan but, despite considerable efforts by the Commission, no cooperation was obtained. The Commission sought the cooperation of other known producers of the product concerned in six other market economy countries. Only one producer in Poland was prepared to cooperate fully and provided the necessary information which was subsequently verified.

(25) The information provided by the Polish cooperating company has shown that Poland is an appropriate analogue country, for the following reasons:

— the manufacturing process and access to raw materials were, to a large extent, similar in Poland and in Belarus,

— the Polish producer was producing and selling the product in substantial quantities,

— despite the fact that there was only one producer of the product in Poland and despite the existence of import duties on the product in respect of its import from a number of countries, the Polish domestic market for the product was subject to normal conditions of competition, and large quantities of the product to which no import duties were applied, were imported from different originating countries.

1.2. *Normal value*

(26) As stated above, normal value was calculated on the basis of the data verified at the premises of the Polish producer which cooperated fully in the investigation.

(27) It was examined first whether the Polish producer's total sales of PSF and PFT were sufficiently large to constitute a reliable basis in order to determine normal value. As it sold large quantities on its domestic market, it was concluded that this was the case.

(28) Subsequently it was examined whether the PSF and PFT produced and sold in Poland could be considered identical or directly comparable to the PSF and PFT sold for export to the Community by the Belarusian exporter. As, within each type, they have the same chemical properties and physical characteristics, the Polish and Belarusian products were considered to be comparable products.

(29) For each type of the product sold by the Polish producer on the Polish market, it was established whether its sales on the Polish market were sufficiently large to constitute a reliable basis to determine normal value. This was found to be the case.

(30) It was finally examined whether the Polish producer's sales of the product on the Polish market could be considered as having been made in the ordinary course of trade, by looking at the proportion of profitable sales of the type in question.

(31) In cases where profitable sales of each type represented 80 % or more of the total sales volume, the normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the respective IP (either interim IP or expiry IP), irrespective of whether all these sales were profitable or not. In cases where profitable sales represented less than 80 % but more than 10 % of the total sales volume per type, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only.

(32) In cases where the volume of profitable sales of any product type represented less than 10 % of the total sales volume, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(33) For those types where normal value could not be based on domestic prices, normal value was constructed in accordance with Article 2(3) of the basic Regulation. This was done by adding to the manufacturing cost for each type of the Polish producer, a reasonable amount for selling, general and administrative expenses (SG & A) and for profit. In line with Article 2(6) of the basic Regulation, the amounts for SG & A expenses and for profit were based on sales made in the ordinary course of trade, of the like product, by the Polish producer.

1.3. *Export price*

(34) Khimvolokno, the sole Belarusian exporting producer claimed to have exported a substantial volume of the product to the Community during the interim IP. However, these 'exports' were in reality sold on barter trade conditions to one unrelated company in the Community via a trading company, taking a small margin, in Switzerland. The rest was sold to three other unrelated traders in the Community. Prices made under barter trade arrangements are normally considered to be unreliable. In such cases, the export price has to be constructed, in line with Article 2(9) of the basic Regulation, on the basis of the first sale made at reliable prices. In this case, the export price could effectively be reconstructed by examining the transactions from Khimvolokno to the Swiss trading company and further to the unrelated Community company. Indeed it was possible to establish the export price to the Community by deducting the Swiss intermediary's margin from the price they charged to the unrelated Community company. This price then corresponded to the price charged by Khimvolokno to the Swiss company, and could be considered as the export price as described in Article 2(8) of the basic Regulation.

(35) Both the Swiss intermediate company and the unrelated company in the Community cooperated in the proceeding and replied to a questionnaire sent by the Commission. The verification at the premises of the unrelated company in the Community has shown that the whole quantity purchased by that company during the interim IP was destined for markets outside the Community, mainly the United States of America, and effectively not imported into the Community. According to Eurostat data, no PSF or PFT originating in Belarus was imported into the Community during the interim IP. Hence, it is deducted that the remaining quantities reported by Khimvolokno as being sold to the Community have also not effectively been imported into the Community. It should however be noted that Khimvolokno had apparently reported these sales as exports to the Community in good faith, and was not aware of the fact that these products were not effectively imported into the Community.

(36) Following the above, since there were effectively no exports to the Community, an export price could not be established for sales from Khimvolokno to the Community for the interim IP.

(37) It nevertheless appears that if the Belarusian exporting producer was actually exporting the product concerned to the Community, this would have been at prices which would lead to a lesser dumping margin than the duty of 43,5 % actually in force. Indeed the prices of the quantities reported by Khimvolokno as allegedly exported to the Community during the interim IP indicate a considerably lower dumping margin than the actual duty in force. Furthermore, applications for refund of anti-dumping duties paid by a German importer on imports before the interim IP, namely between April 1997 and October 1997, have also shown that the dumping actually practised during that period was less than half of the actual duties applied.

(38) It was therefore decided to use the prices of the product allegedly exported to the Community during the interim IP as a basis for determining the export price to the Community, since these prices represent in this specific case the most reliable information, and show that the circumstances concerning dumping have changed significantly, as required by Article 11(3) of the basic Regulation.

(39) Given that Belarus is considered to be a non-market-economy country, a single export price for the country as a whole has normally to be established. In this respect, as Khimvolokno is the only known exporting producer of the Belarusian product, the exports of this company have been considered representative of all exports of Belarus to the Community and thus the information submitted by this company was used in order to determine the export price of the product from Belarus.

1.4. *Comparison*

(40) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were made in all cases where they were found to be reasonable, accurate and supported by evidence as was the case for transport and credit cost.

1.5. *Dumping margin*

(41) The dumping margin was established on the basis of a comparison of the weighted average normal value per product type with a weighted average export price by product type. In this case, this method reflects the full degree of dumping being practised. The dumping margin, established during the interim IP expressed as a percentage of the cif net free-at-Community-frontier price before duty, is 21,0 %.

1.6. *Amendment of the measures under review*

(42) According to Article 9(4) of the basic Regulation, the duties should not exceed the margin of dumping established but should be less than the margin if such lesser duty would be adequate to remove the injury of the Community industry. Given the fact that this review is limited to the examination of the dumping aspects, the level of duties imposed should not be higher than the injury margins found during the original investigation.

(43) Since the injury level found in the original investigation is higher than the dumping margin found in the present review, the level of the duties should be set at that of the dumping margin found, namely at 21,0 %.

## 2. **Expiry review**

2.1. *Analogue country*

(44) For the reasons set out in recitals 23 to 25, Poland was also used as an appropriate market-economy third country to determine the normal value for the expiry review.

2.2. *Normal value*

(45) For the expiry review, normal value was established on the same basis as for the interim review, as explained in recitals 26 to 33.

2.3. *Export price*

(46) Khimvolokno, the sole Belarusian exporting producer, claimed to have exported a substantial volume of the product to the Community during the expiry IP.

(47) The verification at the premises of the unrelated company in the EC who allegedly imported the bulk of the Belarusian product has confirmed that none of the quantity purchased by that company was effectively imported into the Community during the expiry IP. However, according to Eurostat data less than 10 tonnes of PFT, i.e. less than 1 % of the quantity reported by the exporting producer, was imported into the Community during the expiry IP.

(48) The less than 10 tonnes could be identified as one transaction of the applicant to one of the unrelated importers in the Community. The export price of this transaction has been used as the export price to the Community, in line with Article 2(8) of the basic Regulation.