COMMISSION REGULATION (EC) No 1662/2002

of 18 September 2002

imposing provisional anti-dumping duties on imports of certain filament yarns of cellulose acetate originating in Lithuania and the United States of America

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] (basic Regulation), as last amended by Regulation (EC) No 2238/2000 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 20 December 2001, the Commission announced by a notice (Notice of Initiation) published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding with regard to imports into the Community of certain non-textured artificial filament yarn of cellulose acetate originating in Lithuania and the United States of America.

(2) The anti-dumping proceeding was initiated as a result of a complaint lodged in November 2001 by the Comité international de la rayonne et des fibres synthetiques (CIRFS) on behalf of Community producers representing over 90 % of the total production in the Community. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) Certain exporting producers claimed that the United States of America should not have been included in the proceeding due to the lack of adequate and accurate information on injurious dumping and causality at initiation stage. It should be noted that complainants have to show that their complaints are non-discriminatory with respect to third countries. Therefore, they have to provide an analysis of the situation of all countries with significant imports with a view of concluding whether such countries' imports are made at injurious volumes and prices and whether such countries' export prices are, prima facie, dumped. The information contained in the complaint showed similar behaviour for Lithuanian and United States exports in this respect. Imports from both countries were allegedly dumped and undercut/undersold the Community industry's prices/costs. Furthermore, the difficult situation of the industry coincided with the increase in imports from both countries concerned, the market shares of which were significant. Given also the analyses of the other possible causes of injury, these imports were found to have contributed to the injury suffered and the initiation of an investigation was therefore warranted.

(4) The Commission officially advised the exporting producers and importers/traders known to be concerned as well as their associations, the representatives of the exporting countries concerned, users, suppliers and the complainant Community producers of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of Initiation.

(5) A number of parties made their views known in writing. All parties who so requested within the time limit and showed that there were particular reasons why they should be heard were granted the opportunity to be heard orally.

(6) 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 the two complaining Community producers, three exporting producers, and their related importers in the Community, seven users and one trader.

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

(A) *Exporting producers*

— AB Dirbtinis Pluostas, Kaunas, Lithuania,

— Celanese Acetate LLC, Charlotte (NC), United States of America,

— Eastman Chemical Company, Kingsport (TN), United States of America.

(B) *Companies related to the exporting producers*

— DPI, Milan, Italy,

— Celanese NV, Lanaken, Belgium,

— Eastman Chemical Company BV, Rotterdam, Netherlands.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 257, 11.10.2000, p. 2.
[3] OJ C 364, 20.12.2001, p. 3.

(C) *Community producers*

— Industrias del acetato de Celulosa, SA (INACSA), Barcelona, Spain,

— Novaceta SpA, Magenta, Italy.

(D) *Users*

— Marioboselli Yarns SpA, Garbagnate Monastero, Italy,

— Tessitura Serica A.M. Taborelli srl, Faloppio, Italy.

(8) The investigation of dumping and injury covered the period from 1 October 2000 to 30 September 2001 (investigation period or IP). The examination of trends in the context of the injury analysis covered the period from 1 January 1997 to the end of the IP (period under consideration).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(9) The product concerned is certain non-textured artificial filament yarn of cellulose acetate (CAY). CAY is used to make textile fabrics. It is classifiable within CN codes 5403 33 10, 5403 33 90 and 5403 42 00.

(10) The most important characteristics of CAY are the colour, the decitex (weight per length of yarn), and the package (known in the market in the form of cheese, beam or back beam). Nylon or polyester might also be added to the yarn of cellulose acetate. All types of models of the product concerned have the same basic physical and chemical characteristics in spite of the differences in packaging, colour and decitex. Therefore, CAY can be considered as one single product.

2. Like product

(11) The imported products, the Community produced products and the products sold on the market of both exporting countries are similar in their essential physical and technical characteristics and in their uses. They are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Lithuania

(a) *Normal value*

(12) For the sole Lithuanian exporting producer, since total domestic sales of the product concerned during the IP represented less than 5 % of export sales to the Community, normal value had to be constructed. In accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding an amount for selling, general and administrative (SG&A) costs and for profit to the exporter's cost of manufacturing. As domestic sales of the product concerned were not representative, and in the absence of any other apparent basis, for the purpose of a preliminary determination of dumping the information contained in the complaint was used for the establishment of SG&A costs and profit, in accordance with Article 2(6)(c) of the basic Regulation.

(b) *Export price*

(13) For those sales made to independent customers in the Community, the export price was established on the basis of the prices actually paid or payable for the product when sold to the Community, in accordance with Article 2(8) of the basic Regulation.

(14) For sales made via a related importer, the export price was constructed on the basis of resale prices to the first independent customers. Adjustments were made for all costs incurred between importation and resale. These costs included the related importer's SG&A costs and a reasonable profit margin. In order to establish a reasonable profit margin, and in the absence of any cooperating unrelated importer in the current investigation whose profit margin could be used for this purpose, the profit margin net of transport costs established for unrelated importers in another investigation covering the same general category of products (i.e. artificial filament yarns), was used. As a significant part of the exported product was further processed by the related importer through independent subcontractors in the Community before being resold to the first independent customer, the relevant processing costs, which represented a significant percentage of the selling price, were also deducted from the export price.

(c) *Comparison*

(15) For the purposes of a fair comparison between the normal value and the export price at an ex-works level, due allowance in the form of adjustments was made for differences that were claimed and demonstrated to affect prices and price comparability. These adjustments were made, where appropriate, in respect of discounts and rebates, transport, insurance, handling, loading and ancillary costs, commissions and credit costs in accordance with Article 2(10) of the basic Regulation.

(d) *Dumping margin*

(16) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export price. The provisional dumping margin expressed as a percentage of the cif Community frontier price duty unpaid, for the exporting producer concerned is:

Dirbtinis Pluostas: 30,8 %.

As the level of cooperation for Lithuania was high, the residual provisional dumping margin was set at the same level as for the cooperating company, i.e. 30,8 %.

2. **United States**

(a) *Cooperation*

(17) One of the two United States exporting producers submitted only the sections of the questionnaire relevant to the injury determination. However, the company allowed the Commission services to carry out on-spot verification visits at its premises, as well as the premises of its related importer. The company was warned in accordance with Article 18(6) of the basic Regulation that as a result of its only partial cooperation the dumping findings may be less favourable for it than if it had fully cooperated.

(b) *Normal value*

(18) For the other exporting producer which cooperated fully, in the absence of profitable domestic sales of the like product during the IP, normal value had to be constructed, in accordance with Article 2(3) of the basic Regulation. Normal value was constructed on the basis of this exporting producer's own cost of manufacturing and SG&A costs. Its own SG&A costs could be used because the domestic sales of the like product made by the exporting producer were representative as defined in Article 2(2) of the basic Regulation. For the profit margin, in the absence of profitable sales in the same general category of products and of any other basis, for the purpose of a preliminary determination of dumping, the information contained in the complaint was used, in accordance with Article 2(6)(c) of the basic Regulation.

(19) In the absence of relevant information from the partially cooperating exporting producer, the normal value for the partially cooperating producer was established on the basis of information obtained from the fully cooperating exporting producer in the United States of America, in accordance with Article 18(1) of the basic Regulation.

(c) *Export price*

(20) Since all the sales of the two exporting producers were made via related importers, export price was constructed on the basis of the resale prices to independent customers. Adjustments were made for all costs incurred between importation and resale. These costs included the related importer's SG&A costs and a reasonable profit margin. In order to establish a reasonable profit margin, and in the absence of any cooperating unrelated importer in the current investigation whose profit margin could be used for this purpose, the profit margin net of transport costs established for unrelated importers in another investigation covering the same general category of products (i.e. artificial filament yarns), was used. Some of the exports from one exporting producer were further processed by its related importer in the Community. These processing costs were also deducted from the export price.

(d) *Comparison*

(21) For the purposes of a fair comparison between the normal value and the export price at an ex-works level, due allowance in the form of adjustments was made for differences that were claimed and demonstrated to affect prices and price comparability. These adjustments were made, where appropriate, in respect of physical differences, discounts and rebates, transport, insurance, handling, loading and ancillary costs, commissions and credit costs in accordance with Article 2(10) of the basic Regulation.

(e) *Dumping margin*

(22) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal values with the weighted average export price. The provisional dumping margins expressed as a percentage of the cif Community frontier price, duty unpaid, for the exporting producers concerned are:

Celanese Acetate LLC: 84,8 % and

Eastman Chemical Company: 104,8 %.

(23) As the volume of imports from the United States companies which either partially or fully cooperated was high, the provisional residual dumping margin was set at the same level as for the United States company with the highest dumping margin established, i.e. 104,8 %.

D. **DEFINITION OF THE COMMUNITY INDUSTRY**

(24) Within the Community, the product considered was manufactured by:

— two producers located in Italy and Spain, on behalf of which the complaint was lodged and which fully cooperated in the investigation,

— one producer related to a United States exporter and not supporting the investigation.

(25) Due to a lack of cooperation and therefore a lack of data, the economic operator which is related to a producer in the countries concerned (Celanese) has provisionally been excluded from the definition of the Community industry.

(26) The two cooperating complaining Community producers fulfil the requirements of Article 5(4) of the basic Regulation, since they account for 93 % of Community production of the product concerned. They are therefore deemed to constitute the Community industry within the meaning of Article 4(1) of the basic Regulation.

E. **INJURY**

(a) *Apparent Community consumption*

(27) For the calculation of the apparent consumption of the product concerned on the Community market, the Commission added the sales volume of the Community industry and of the other Community producer to the total imports into the Community as shown under CN codes 5403 33 10, 5403 33 90 and 5403 42 00.

(28) On this basis, apparent consumption of the product concerned in the Community decreased from around 38 000 tonnes in 1997 to 29 000 tonnes in the IP, this means by 24 %.

(29) The drop was particularly marked between 1998 and 1999 (– 28 %), mainly in the aftermath of the Asian crisis which happened in autumn of 1997. Afterwards it partly recovered and consumption was up 6 % between 1999 and the IP. The overall decrease in Community consumption is mainly attributable to the substitution of filament yarn of cellulose acetate by lower-priced polyester yarn as well as final products, directly imported from Asia.

(b) *Cumulative assessment of the effects of the imports concerned*

(30) The Commission examined whether imports of CAY originating in Lithuania and the United States of America should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.

(31) The margin of dumping established in relation to the imports from each of the countries concerned was above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation and the volume of imports from each of these countries was not negligible.

(32) As regards the conditions of competition, the investigation showed that CAY imported from the countries concerned, were alike in all their essential physical and technical characteristics. Furthermore, on that basis, CAY was interchangeable and was marketed in the Community during the period under consideration through comparable sales channels under similar commercial conditions.

(33) It was argued that imports originating in the United States of America should be decumulated from the investigation as the complainants clearly distinguished the effects of imports from the United States of America and Lithuania. Secondly, it was argued that imports from the United States of America are not undercutting domestic prices to the same degree as imports from Lithuania. Thirdly, one exporting producer from the United States of America has decided not to make any future investments in the acetate yarn business. Fourthly, it was argued that the increase in imports from the United States of America is mainly due to the closing of a production facility in the Community and substitution by sales of United States origin. As far as the first argument is concerned, it should be noted that both countries are included in the complaint and both of them are underselling. Secondly, whilst it is true that United States prices are only slightly undercutting, it should however be borne in mind that prices of the Community industry have been depressed to a significant degree and that underselling occurred. As far as the remaining two arguments are concerned, they do not seem to be relevant in the context of the decision on decumulation.

(34) In the light of the above, the Commission services provisionally considered that all the criteria set out in Article 3(4) of the basic Regulation were met and that imports from the countries concerned should therefore be examined cumulatively.

(c) *Imports originating in the countries concerned*

Volume

(35) The volume of imports of the product concerned originating in Lithuania and the United States of America into the Community increased by 63 % over the period under consideration.

(36) Imports decreased by 13 % between 1997 and 1998. Imports remained practically stable in 1999 despite the fact that consumption in the Community market decreased by 28 % in this year. Subsequently, import volumes more than doubled in 2000 although consumption remained by and large stable during the period 1999-IP.

Market share

(37) Over the period under consideration the share of the Community market held by the dumped imports from the countries concerned increased by 14 percentage points.

(38) The joint market share held by the two countries concerned increased by 14 percentage points during the period under consideration. After a slight decrease in 1998, it increased significantly in 1999 and 2000.

(d) *Prices*

Price evolution

(39) Between 1997 and the IP, the average cif prices of imports originating in Lithuania and the United States of America decreased by 14 %. The decrease occurred steadily over the period under consideration.

Price undercutting

(40) A comparison for comparable types of the product concerned was made between the exporting producers' and the Community industry's average selling prices in the Community, net of all rebates and taxes to unrelated customers, at the same level of trade (both related importers and the Community industry sell to the same types of users). The prices of the Community industry were at an ex-works level. The constructed cif Community frontier prices of exporting producers of the countries concerned were adjusted for post importation costs, applicable duties (in the case of the United States imports) and a profit margin for importers. However, some of the exports from two exporting producers were further processed by their related importers in the Community. These processing costs were not deducted from the export price for reasons of comparability with the corresponding product types of the Community industry.

(41) This comparison showed that during the IP the products concerned originating in the countries concerned were sold in the Community at prices which undercut the Community industry's prices, when expressed as a percentage of the latter, as follows: Lithuania between 4 % and 8 %, United States of America: between 0 % and around 2 %. The relatively low undercutting margins are not an indication of non-injurious export prices. On the contrary, they are a result of the price depression exerted on the sales prices of the Community industry.

(e) *Situation of the Community industry*

Preliminary remarks

(42) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry. For reasons of confidentiality, figures are presented in an indexed or approximate form.

Capacity, production and capacity utilisation rate

(43) The production capacity was reduced significantly by 23 % during the period under consideration, mainly as a result of the rationalisation of the production facilities by one of the complaining Community producers. The first reduction of capacity was introduced in 1999 and downsizing continued in the IP.

(44) The production of the Community industry decreased by 28 % during the period under consideration.

(45) After a decrease of 5 % in 1998, production plummeted in 1999 with a drop of 28 %. This was in line with the shrinking market. After stabilisation in 2000, production recovered slightly during the IP. It should be noted that production decreased following the trend of Community industry's decreasing sales.

(46) Given the practically stable production capacity in the period 1997 to 1999, capacity utilisation first followed the same trend as production. After the sharp drop of production in 1999 of 25 %, the Community industry reduced capacity and thereby improved capacity utilisation by 11 % in 2000 and another 13 % during the IP, albeit against the background of an overall capacity reduction.

Inventories

(47) The level of closing stocks of the Community industry evolved as follows:

(48) Stocks decreased by 5 % during the period under consideration but constituted 13 % of the sales volume in 1997 whereas in the IP they accounted for 18 % of the sales volume.

Sales volume and market share

(49) The sales by the Community industry on the Community market decreased by 35 % in terms of volume and by 40 % in terms of value during the period under consideration.

(50) In line with the market, sales to unrelated customers dropped sharply in 1999. While the total consumption in the Community increased after 1999, the Community industry nevertheless sold less during the IP than in the year after the Asian crisis.

(51) The market share held by the Community industry decreased by 15 % over the period under consideration.

(52) The Community industry lost some market share in the year 1999 and incurred a further substantial loss in 2000. In the IP it was able to regain some market share but was still far below the of 1999.

Growth

(53) While the Community consumption decreased by 24 % between 1997 and the investigation period, the sales volume of the Community industry decreased by around 35 %. On the other hand, volume of imports concerned increased by 63 %. The Community industry thus lost 12 percentage points of its market share, whereas the imports concerned managed to increase their market share by 14 percentage points during the same period. This means that the Community industry reduced its presence in the market to an extent exceeding the decline in growth of the market between 1997 and the IP.