COUNCIL REGULATION (EC) No 1012/2002

of 10 June 2002

amending Regulation (EC) No 2334/97 imposing a definitive anti-dumping duty on certain imports of flat pallets of wood originating in the Republic of Poland and collecting definitively the provisional duty imposed

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], and in particular Article 8(9) and Article 9(4) thereof,

Having regard to Council Regulation (EC) No 2334/97 [2], and in particular Article 4(1) and (2) thereof,

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

Whereas:

A. **PREVIOUS PROCEDURE**

(1) The Council, by Regulation (EC) No 2334/97, imposed definitive anti-dumping duties on certain imports of flat pallets of wood falling within CN code ex 4415 20 20 originating in the Republic of Poland and accepted undertakings offered by certain producers in connection with these imports. Sampling was applied to Polish producers/exporters and individual duties ranging from 4,0 % to 106 % were imposed on the companies in the sample, while a weighted average duty of 6,3 % was imposed on other cooperating companies not included in the sample. A duty of 10,6 % was imposed on companies which either did not make themselves known or did not cooperate in the investigation. The producers from whom undertakings were accepted were exempted from anti-dumping duties with regard to imports of one specific pallet type, the EUR-pallet, which is the only pallet type covered by the undertakings.

(2) Article 4(1) of Regulation (EC) No 2334/97 stipulates that where any party provides sufficient evidence to the Commission that:

— it did not export to the Community or produce the wooden pallets described in Article 1(1) of that Regulation during the investigation period,

— it is not related to any of the producers or exporters in Poland which are subject to the anti-dumping duties imposed by that Regulation,

— it has actually exported to the Community the goods concerned after the investigation period, or it has entered into any irrevocable contractual obligation to export a significant quantity to the Community,

then that Regulation can be amended by granting the party in question the duty rate applicable to cooperating producers who were not in the sample, i.e. 6,3 %. Exporting producers meeting the criteria of Article 4(1) and thus subject to the weighted average duty of 6,3 % are listed in Annex I to Regulation (EC) No 2334/97.

(3) Article 4(2) of Regulation (EC) No 2334/97 provides furthermore that any party meeting the criteria set out in Article 4(1) thereof can also be exempted from the payment of the anti-dumping duty if an undertaking with regard to the so-called EUR-pallets is accepted from such a party. Exporting producers from which such an undertaking is accepted are listed in Annex II to Regulation (EC) No 2334/97.

(4) The Council, by Regulations (EC) No 2079/98 [3], (EC) No 2048/1999 [4], (EC) No 1521/2000 [5] and (EC) No 1678/2001 [6] amended Annexes I and II to Regulation (EC) No 2334/97.

B. **ACCEPTANCE OF UNDERTAKING**

(5) One Polish exporting producer, P.P.H. 'Astra' Sp. z o.o., Nawojowa, which received the weighted average duty of 6,3 %, has also offered an undertaking with regard to EUR-pallets which was accepted by Commission Decision 2002/380/EC [7]. Consequently, this company should be added to Annex II to Regulation (EC) No 2334/97.

C. **FAILURE TO COMPLY WITH THE UNDERTAKING**

(6) The following six Polish exporting producers from which the Commission accepted undertakings have violated the undertaking by not respecting the minimum price specified therein:

— P.W. 'Intur-kfs' Sp. z o.o., Inowroclaw (TARIC additional code 8662),

— Z.P.H.U. 'Miroslaw Przybylek', Klonowa (TARIC additional code 8574),

[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 324, 27.11.1997, p. 1. Regulation as last amended by Regulation (EC) No 1678/2001 (OJ L 227, 23.8.2001, p. 22).
[3] OJ L 266, 1.10.1998, p. 1.
[4] OJ L 255, 30.9.1999, p. 1.
[5] OJ L 175, 14.7.2000, p. 1.
[6] OJ L 227, 23.8.2001, p. 22.
[7] OJ L 135, 23.5.2002, p. 24.

— Import-Export 'Elko' Sp. z o.o., Kalisz (TARIC additional code 8532),

— 'Drewpal' sp. j., Blizanow (TARIC additional code 8534),

— 'D&M&D' Sp. z o.o., Blizanow (TARIC additional code 8566),

— 'CMC' Sp. z o.o., Andrychow, Inwald (TARIC additional code 8528).

The Commission therefore informed these six exporting producers that it was intended to remove their names from the list of companies from which an undertaking was accepted. These exporting producers commented on the breaches pointed out by the Commission and were granted a hearing where so requested. However, none of these exporting producers put forward any arguments which put into question the finding of a violation of the undertaking.

(7) In order to prevent CMC Sp. z o.o.-Andrychow continuing to benefit from an exemption from the anti-dumping duties by simply channelling its exports through its related company, the Commission considered it appropriate to withdraw its acceptance of the undertaking given by the following exporter/producer and to impose definitive anti-dumping duties:

— P.P.H.U. 'Zbigniew Marek', Andrychow (TARIC additional code A113).

(8) As breaches of the undertakings have been found to have occurred, acceptance of the undertakings has been withdrawn by Commission Decision 2002/380/EC. Definitive anti-dumping duties should therefore be imposed forthwith against the six companies mentioned in recital 6, as well as against the related company mentioned in recital 7 with regard to their exports of the EUR-pallets.

D. **AMENDMENT OF ANNEX II TO REGULATION (EC) No 2334/97**

(9) In view of all the above, Annex II to Regulation (EC) No 2334/97 which lists the companies from which undertakings have been accepted should be amended accordingly. The exporting producers which are no longer subject to undertakings shall be subject to the appropriate duty provided for in Article 1(2) of Regulation (EC) No 2334/97.

(10) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission forthwith [1] with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 2334/97 shall be replaced by the Annex shown in the Annex to this Regulation.

Article 2

1. Definitive anti-dumping duties are hereby imposed on imports of EUR-pallets falling within CN code ex 4415 20 20 (TARIC code: 4415 20 20*10) originating in the Republic of Poland and exported by the following companies:

— P.W. 'Intur-kfs' Sp. z o.o., Inowroclaw,

— Z.P.H.U. 'Miroslaw Przybylek', Klonowa,

— Import-Export 'Elko' Sp. z o.o., Kalisz,

— 'Drewpal' sp. j., Blizanow,

— 'D&M&D' Sp. z o.o., Blizanow,

— 'CMC' Sp. z o.o., Andrychow, Inwald,

— P.P.H.U. 'Zbigniew Marek', Andrychow.

2. The rate of the anti-dumping duty applicable to the net, free-at-Community frontier prices, before duty, on EUR-pallets, shall be as follows:

Name of the company	Anti-dumping rate	TARIC code
P.W. 'Intur-kfs' Sp. z o.o., Inowroclaw	9,7 %	8016
Z.P.H.U. 'Miroslaw Przybylek', Klonowa	6,3 %	8019
Import-Export 'Elko' Sp. z o.o., Kalisz	6,3 %	8019
'Drewpal' sp. j., Blizanow	6,3 %	8019
'D&M&D' Sp. z o.o., Blizanow	6,3 %	8019
'CMC' Sp. z o.o., Andrychow, Inwald	6,3 %	8019
P.P.H.U. 'Zbigniew Marek', Andrychow	6,3 %	8019

[1] Commission of the European Commission, Directorate-General for Trade, Terv 00/13, B-1049 Brussels, Belgium.