I

*(Acts whose publication is obligatory)*

# COUNCIL REGULATION (EC) No 1168/95

## of 22 May 1995

## amending Regulation (EEC) No 830/92 imposing a definitive anti-dumping duty on imports of certain polyester yarns (man-made staple fibres) with regard to those originating in Indonesia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Article 14 thereof,

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

Whereas :

### A. PREVIOUS PROCEDURE

(1) By Regulation (EEC) No 830/92 [2], the Council imposed a definitive anti-dumping duty on imports of certain polyester yarns falling within CN codes 5509 21 10, 5509 21 90, 5509 22 10, 5509 22 90, 5509 51 00 and 5509 53 00, and originating in Indonesia and several other countries, with the exception of goods produced and sold for export to the Community by one Indonesian producer for which the anti-dumping duty does not apply.

### B. REVIEW

(2) Six Indonesian companies, PT Bitratex Industrial Corp., PT Elegant Textile Industry, PT Gokak Indonesia, PT Indorama Synthetics, PT Lotus Indah Textile Industries, PT Sunrise Bumi Textiles claimed that their export ex-works price was higher than their domestic ex-works price, that their domestic selling prices were profitable, and that in consequence they were no longer dumping.

(3) Two other Indonesian companies, PT Kanindo Success Textile Industries and PT Sulindafin Permai Spinning Mills (PT Sulindamills) claimed that they did not export the products concerned during the period covered by the previous investigation and only started doing so after that period and that they were not related to any company subject to the previous investigation. Therefore, they requested that a newcomer review be opened.

(4) Those companies provided evidence of the facts they alleged, which was considered sufficient to justify the initiation of a review in accordance with the provisions of Article 14 of Regulation (EEC) No 2423/88. By a notice published in the *Official Journal of the European Communities* [3], the Commission, after consultation within the Advisory Committee, initiated a review of Regulation (EEC) No 830/92 with regard to the eight companies cited above and commenced its investigation. The review was limited to an examination of changed circumstances in dumping.

It should be noted that the exports of these companies represent 35 % of total exports of mixed yarn to the European Community by Indonesian exporters.

(5) The Commission sent questionnaires to the parties concerned and gave them the opportunity to make their views known. The Commission sought and verified all information it considered necessary and inspected the information submitted in the premises of all the companies abovementioned. The Commission also received information from the complainant in the original investigation.

(6) The investigation covered the period 1 January 1993 to 31 December 1993 (investigation period).

[1] OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).
[2] OJ No L 88, 3. 4. 1992, p. 1.
[3] OJ No C 74, 12. 3. 1994, p. 3.

## C. RESULT OF INVESTIGATION

### 1. Normal value

(7) Domestic sales of the producers under consideration were used where they exceeded 5 % of sales of the type concerned, therefore represented a volume sufficient to constitute a representative market and an adequate basis for calculating the normal value. Normal value was therefore calculated, by type, on the basis of the weighted average domestic prices in the domestic market at prices actually paid or payable in the ordinary course of trade, in accordance with Article 2 (3) of Regulation (EEC) No 2423/88.

The prices were net of all discounts and rebates directly linked to the sales under consideration.

(8) Constructed value was used where domestic prices did not permit recovery of all costs in the normal course of trade, or where the sales in the Indonesian market of the similar type did not exist. In accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88, the normal value was determined, by type, by adding costs, both fixed and variable, of raw materials and manufacture, plus a reasonable amount for selling, administrative and other general expenses and a reasonable profit margin.

The profit margin used was based on the weighted average profit realized by the producer on all profitable sales of the same type of the like product or when there were no sales of the same type, it was based on the profitable sales of the like product of the Indonesian producer concerned.

### 2. Export price

(9) Where sales were made to independent importers in the Community, export price was determined on the basis of the price actually paid or payable for the product sold for export to the Community, in accordance with Article 2 (8) (a) of Regulation (EEC) No 2423/88.

As far as the two newcomers are concerned, the investigation showed that they had exported the product concerned to the Community during the investigation period. Therefore the Commission was able to calculate the dumping.

### 3. Comparison

(10) For the purpose of ensuring a fair comparison between normal value and export price, account was taken of differences directly affecting price comparability, such as commissions, credit terms, transport, insurance, handling, packing and technical assistance, in accordance with Article 2 (10) of Regulation (EEC) No 2423/88.

Export prices were compared, on a transaction by transaction basis, with normal value at ex-works level.

(11) The Indonesian producers claimed an adjustment for the salaries paid to salesmen. However, the investigation showed that the so-called salesmen were all employed at management level as shown by their position in the organigram of the companies and the corresponding salaries. Therefore, it was considered that these companies failed to prove that this personnel was wholly engaged in direct selling activities. In these circumstances, the adjustment was not granted.

(12) The Indonesian producers also claimed that normal value should be reduced by an allowance corresponding to import charges borne by materials physically incorporated in the like product when destined for domestic consumption and refunded when exported to the Community. After examining the evidence submitted by the claimants in this context, the adjustment was duly allowed pursuant to Article 2 (10) (b) of Regulation (EEC) No 2423/88.

### 4. Dumping margin

(13) The examination of the facts showed the existence of dumping with respect to the product concerned. The margins of dumping, being equal to the amount by which normal value exceded the price for export to the Community, expressed as a percentage of the net, free-at-Community-frontier price, customs duty unpaid, were as follows:

| | |
|---|---|
| — PT Bitratex Industrial Corp.: | 0,64 %, |
| — PT Elegant Textile Industry: | 0,68 %, |
| — PT Indorama Synthetics: | 0,10 %, |
| — PT Kanindo Success Textile Industries: | 0,00 %, |
| — PT Lotus Indah Textile Industries: | 0,00 %, |
| — PT Sulindamills: | 1,89 %, |
| — PT Sunrise Bumi Textiles: | 0,08 %. |

Except for PT Kanindo Success Textile Industries and PT Lotus Indah Textile Industries for which no dumping was found, the dumping margins of the other companies are to be considered as *de minimis.*

(14) As far as PT Gokak Indonesia is concerned, it was found that this company did not export the product under consideration to the Community during the investigation period. Therefore, as no new calculation concerning the dumping margin could be made, it was proposed by the company that either a variable duty be imposed on

the basis of the minimum export prices, or the weighted average dumping margin found for the other companies involved in the review be used.

The on-the-spot investigation showed that all its domestic sales were made at a loss and there was every indication that its exports to third countries were dumped.

In the light of the above the Commission services have considered that, for this company, the conditions under which the duty would be withdrawn were not fulfilled, contrary to the other companies involved in the review.

In these circumstances, taking into consideration the fact that the large variety of types of yarns concerned makes it impossible to impose a minimum price based on the constructed normal value, it is proposed to maintain the anti-dumping duty imposed in the original investigation, i.e. 11,9 %, bearing in mind that this company exported the product concerned to third countries at dumped prices and that there is nothing to suggest that it might behave differently regarding exports to the Community.

D. INJURY AND COMMUNITY INTEREST

(15) No request for review of the findings on injury and Community interest was made and there is no reason to doubt the validity of the injury findings in the original investigation.

E. AMENDMENT OF THE REVIEWED MEASURES

(16) In the present case, since, for seven Indonesian producers, there is either no dumping, or the dumping margins found are *de minimus,* the Commission considers that Regulation (EEC) No 830/92 should be amended and that the anti-dumping duty be withdrawn for these companies.

(17) The duty of 11,9 % imposed in the original investigation is to be maintained for PT Gokak Indonesia.

(18) The companies concerned and the complainant in the original investigation have been informed of these findings.

(19) In accordance with Article 15 (1) of Regulation (EEC) No 2423/88, the duration of validity of the measures imposed by Regulation (EEC) No 830/92 is not affected by this Regulation which neither modifies nor confirms these measures,

HAS ADOPTED THIS REGULATION :

*Article 1*

Article 1 (3) of Regulation (EEC) No 830/92 shall be replaced by the following :

'3. None of the duties shall apply to imports of the products specified in paragraph 1 produced by PT Kewalram Indonesia, Bandung, Indonesia, PT Bitratex Industrial Corp., Jakarta Selatam, PT Elegant Textile Industry, Jakarta, PT Kanindo Success Textile Industries, Jakarta, PT Indorama Synthetics, Jakarta, PT Lotus Indah Textile Industries, Surabaya, PT Sulindafin Permai Spinning Mills (PT Sulindamills), Jakarta, PT Sunrise Bumi Textiles, Jakarta (Taric additional code : 8595) and Guangying Spinning Co., Ltd, Guangzhou, People's Republic of China (Taric additional code : 8596).'

*Article 2*

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 May 1995.

*For the Council*

*The President*

A. MADELIN