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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2513/97

of 15 December 1997

extending the definitive anti-dumping duty imposed by Regulation (EC) No 1490/96 on polyester staple fibre originating in Belarus to imports of polyester filament tow from Belarus and levying the extended duty on the latter imports as registered under Commission Regulation (EC) No 693/97

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Coucil 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 13 (3) thereof,

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

Whereas:

A. PROCEDURE

(1) On 19 April 1997, by Regulation (EC) No 693/97 [2], the Commission initiated an investigation, pursuant to Article 13 of Regulation (EC) No 384/96, hereafter referred to as the 'Basic Regulation', concerning the alleged circumvention of the anti-dumping duties imposed by Council Regulation (EC) No 1490/96 [3] on imports of polyester staple fibre, hereafter 'PSF', originating in Belarus, by imports of polyester filament tow, hereafter 'PFT', originating in that country which are subsequently converted into PSF in the Community and directed customs authorities, pursuant to Article 13 (3) of the Basic Regulation, to register imports of such PFT. The present investigation was initiated following a complaint lodged on 4 March 1997 by the International Committee of Rayon and Synthetic Fibres (C.I.F.R.S) on behalf of Community producers whose output is considered to represent over 90 % of the total Community production of PSF.

(2) The product concerned by the present investigation is PFT, falling under CN code 5501 20 00, used for conversion in the Community into PSF, falling under CN code 5503 20 00.

(3) The Commission officially advised the authorities of Belarus about the initiation of the new investigation and sent questionnaires to the Community companies concerned mentioned in the complaint. No additional companies made themselves known within the prescribed time limit.

(4) The new investigation covered the period 1 January 1996 to 31 March 1997 (hereafter 'the investigation period').

(5) The Commission received complete replies from the following companies:

(a) *Germany*

— Barnet Europe W. Barnet GmbH & Co. KG,

— Rheinische Faser GmbH,

— Kemokomplex GmbH;

(b) *Italy*

— SALT & Co. Snc,

— TA.SFI Snc,

— SIMP Srl (formerly CO.FI.S SpA).

The Commission requested and examined all information it deemed necessary and carried out verification visits at the premises of the companies located in Italy and of one company located in Germany (Barnet).

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).
[2] OJ L 102, 19. 4. 1997, p. 14.
[3] OJ L 189, 30. 7. 1996, p. 13.

(6) All companies mentioned above made their views known in writing and requested and were granted a hearing by the Commission.

B. SCOPE OF THE INVESTIGATION

(7) Article 13 (1), first sentence, of the Basic Regulation provides that, if certain conditions establishing circumvention are met, anti-dumping measures in force may be extended to imports of like products or parts thereof from a third country.

The scope of the present investigation is to examine whether anti-dumping measures on imports of PSF originating in Belarus are being circumvented by means of imports of PFT originating in that country which are used in conversion operations in the Community.

(8) The importers and converters have argued that the present investigation could not be initiated under Article 13 of the Basic Regulation because an investigation under this provision would only be possible with regard to a 'third country', which would exclude the exporting country in respect of which the anti-dumping measures were imposed. This argument is rejected because the term 'third country', as used in Article 13 (1) of the Basic Regulation is, also in view of its legislative history, a broad term which simply refers to any country outside the Community as opposed to trade between two or more Member States of the Community.

(9) It was considered that the alleged circumvention practice had to be assessed on the basis of the second sentence of Article 13 (1) of the Basic Regulation. The objective of the present investigation was in particular to examine whether the operation described above fulfilled all conditions set out in that provision, so that anti-dumping measures in force with respect to PSF could be extended to PFT pursuant to Article 13 (1), first sentence of the Basic Reguation.

In this respect, it should be noted that PFT and PSF share the same basic physical and chemical characteristics. Indeed, the only difference between PFT and PSF results from a simple cutting process. The imported PFT has therefore to be viewed as a product which has been slightly altered in order to avoid the anti-dumping measures currently applicable to PSF. Differences of this nature, which can be created or eliminated by minor alterations, cannot put into question the fact that PSF and PFT are essentially the same product. Such differences are therefore not sufficient to avoid payment of anti-dumping duties on PFT. As far as the uses of PFT and PSF are concerned, the investigation has also shown that all PFT imported from Belarus was used for cutting into PSF rather than for worsted spinning to produce tops, the other recognized application of PFT. Worsted spinning is a considerably more complex process requiring special technology. Tops are sold in a small and relatively stable niche market commanding a price premium.

In any event, it should be borne in mind that, as in the case of parts destined for assembly, the imports of PFT ultimately end up as a product which is not only alike but identical to the imports subject to the original investigation, i.e. PSF. Thus, although the alteration process from PFT into PSF is not as such an assembly operation, it is of such a nature that it has to be considered as a practice which is carried out to avoid the measures in force.

It follows from the foregoing that PFT and PSF are alike within the meaning of Article 1 (4) of the Basic Regulation.

C. RESULTS

1. Nature of the circumvention operation

(10) The present investigation has established that all the PFT concerned is produced by a single company in Belarus and exported to the Community mainly via two channels. A first channel involves a German trader which purchases the PFT from the Belarus exporter and sells it, for the major part, to an Italian importer. The PFT thus imported is subsequently processed into PSF by Italian subcontractors and thereafter sold by the Italian importer in the Community, mainly on the Italian market. A second channel involves a Swiss trader which sells the PFT it purchases from the Belarus exporter to a German importer. The German importer itself processes the PFT into PSF and sells the PSF in the Community, mainly on the German market.

(11) The question as to whether Belarus can be considered as a 'third country' in terms of Article 13 (1) of the Basic Regulation has already been addressed in recital 8. The question of whether PSF and PFT can be considered to be like products has been addressed in recital 9.

2. **Conditions of Article 13 (1), second sentence**

(a) *Circumvention*

— Change in the pattern of trade

(12) Immediately following the imposition in March 1996 of a provisional anti-dumping duty of 43,5 % on PSF originating in Belarus by Commission Regulation (EC) No 394/96 [1], imports of PSF from Belarus were almost entirely substituted by imports of PFT from that country. While in the period subsequent to the initiation of the original anti-dumping proceeding (August 1994) PFT imports from Belarus only represented at most 1 % of combined PFT-PSF imports from that country, the PFT-PSF mix changed radically and abruptly immediately following the imposition of provisional anti-dumping measures in March 1996: in the period April to June 1996, PSF accounted for only 3,02 % while PFT represented 96,98 %. This marked change in the pattern of trade continued and even increased throughout the entire 15-month investigation period as volumes of PFT were increasing rapidly and PSF imports were further phased out. At the end of the investigation period (period January-March 1997), PFT accounted for 99,27 % and PSF merely for 0,73 % of the PSF-PFT mix.

In addition, import levels of PFT from Belarus as such increased rapidly and reached significant levels. While imports of PFT from Belarus in 1995 amounted to merely 169 tonnes, such imports rose to 13 619 tonnes in the 12-month period following the imposition of the provisional anti-dumping measures on PSF from Belarus.

The companies involved have argued that no change in the pattern of trade occurred because PFT imports have not substituted for imports of PSF at the same import levels of PSF in 1994 and 1995. This argument is to be rejected. It is not required that the substitution is found to have attained the highest import levels which the substituted product ever reached in a particular segment in the benchmark period — i.e. since or just prior to the initiation of the original anti-dumping proceeding (August 1994) — provided, as was found to be the case in the present investigation, that there is a clear and consistent trend of substitution over an extended period. In this respect, it should be noted that a particularly long investigation period of 15 months was deliberately selected so as to increase its representativity.

[1] OJ L 54, 5. 3. 1996, p. 10.

— Insufficient due cause or economic justification

(13) The abovementioned substitution of PSF by PFT following the imposition of a significant provisional anti-dumping duty (see recital 12) must reasonably be considered to have stemmed from the anti-dumping measures rather than from any other sufficient due cause or economic justification within the meaning of Article 13 (1), second sentence of the Basic Regulation.

If there were to exist a sufficient due cause or economic justification — other than the anti-dumping measures in force — for importing PFT and cutting it into PSF in the Community rather than directly importing PSF already cut in the exporting country, then it might be expected that at least some PFT would have been imported for conversion in the Community prior to the imposition of the provisional measures. However, as imports of PFT originating in Belarus prior to the imposition of the provisional measures were negligible, it must be concluded that the substitution of PSF by PFT and the strong increase of PFT imports stem from a practice lacking sufficient due cause or economic justification and were in fact primarily prompted by the imposition of anti-dumping measures.

This inference would be displaced if a new significant factor — other than the anti-dumping measures — arising around the time when the substitution took place, could be identified. Such is not the case and no interested party has put forward any such claim.

(14) This conclusion is corroborated by the following findings. Importing PFT for conversion in the Community into PSF, as opposed to directly importing PSF already cut in a continuous, integrated operation — as is standard practice — in the exporting country, generates a number of extra costs in terms of packaging and labour which are not offset by any significant cost savings or price premiums but which are even compounded by the higher hourly labour cost in the Community, if compared with that in Taiwan, selected in the original investigation as analogue country to calculate normal value. In addition, exports of PFT were found to be targeting the Community since other export markets continued to be supplied with PSF by the Belarus exporter concerned, which shows a lack of economic justification because, if the practice were economically justified, it might reasonably be expected that it would also have occurred in other industrialized markets similar to the Community.

(15) The importers and converters have argued that there is sufficient due cause or economic justification for the importation for conversion in the Community of PFT rather than direct importation of PSF already cut in the exporting country because this entails certain cost savings in terms of stock keeping and allows for greater flexibility to meet customer demand for various sizes and small orders of PSF.

(16) This argument was rejected as such benefits were not quantified by the importers and even if such benefits do exist, they would appear not to outweigh the additional cost in terms of packaging and labour referred to above. In any event, such alleged benefits would also have existed prior to the imposition of the anti-dumping measures and, if significant, it could reasonably be expected that some operators in the Community or in other comparable markets would have availed themselves, at least to some extent, of this opportunity prior to the imposition of the anti-dumping measures. As this was found not to be the case (PFT imports from Belarus prior to the imposition of the provisional anti-dumping measures were statistically negligible), it must be concluded that the benefits claimed are, at most, of secondary importance only.

(17) The converters and importers also submitted that it was economically justifiable for them to convert PFT imported from Belarus since the necessary cutting capacity did already exist in the Community so that no special, new investments were required (absence of 'opportunity cost'). It was also argued that the fact that PFT from sources other than Belarus was converted prior to the initiation of the anti-dumping investigation showed that importation of PFT from Belarus for conversion in the Community was also justifiable. This argument was rejected for the following reasons.

Except for a limited trial production during the first three months of 1996, the particular circumvention practice under investigation (importation of PFT from Belarus for conversion into PSF in the Community) only began after the imposition of the provisional anti-dumping measures in March 1996. It follows that it can reasonably be concluded that prior to the imposition of the anti-dumping measures it was not considered justifiable to use this cutting capacity to convert PFT imported from Belarus rather than directly importing PSF.

In addition, imports of PFT from countries other than Belarus have been small and even declining. It would also appear that such imports concern, to a large extent, PFT used to produce tops — which, as stated above (see recital 9) is a stable and small niche market requiring more complex processing and commanding a price premium — rather than PFT for cutting into PSF, which is a commodity product. In this respect, it should be noted that imports of PFT from other countries remained stable but were dwarfed in relative terms by the massive influx of PFT from Belarus which in itself accounted for 70 % of all PFT imports in 1996.

In any event, the argument is factually flawed since it was established during the verifications that at least one converter in Italy specifically invested in additional cutting equipment in order to meet growing supplies of PFT from Belarus. This contradicts the alleged absence of opportunity cost mentioned above.

(b) *Undermining of the remedial effects of the duty and evidence of dumping*

— Undermining

(18) The Commission first determined whether the remedial effects of the duty are being undermined in terms of prices. To that end, a comparison was made between the average sales price in the Community of PSF cut from PFT originating in Belarus during the investigation period, and the 'undumped' export price to the Community of PSF originating from Belarus as established in the original investigation period.

The 'undumped' export price of PSF was calculated at a CIF Community border level on the basis of the export price as established in the initial investigation. To this price customs duties (5,5 %) and anti-dumping duties (43,5 %) were added to arrive at an 'undumped' level.

A weighted average price ex-converter was determined for PSF cut from PFT originating in Belarus. Adjustments to this price ('netting back') were made in order to ensure that a comparison was established at the same level (CIF Community border). To this aim, discounts, selling, general and administrative (SG&A) and intra-Community transport costs (not included in SG&A) were deducted. Subsequently, it was established to what extent the average price of PSF converted from PFT origin-

ating in Belarus has undercut the 'undumped' export price thus undermining the remedial effects of the duties.

The total undermining amounts were expressed as a percentage of the total CIF Community border value of imports of PSF at the 'undumped' price level. The comparison showed that the average sales price of PSF converted from PFT originating in Belarus has undercut the 'undumped' export price of PSF imported from Belarus by 19,45 %.

The Commission has also verified whether the remedial effects of the duty are being undermined in terms of quantities. As explained in detail above (see recital 12), PSF imports from Belarus were nearly totally substituted by imports of PFT from that country immediately after imposition of provisional anti-dumping duties on PSF from Belarus.

In the light of the foregoing, it must be concluded that the sales of PSF converted from PFT originating in Belarus have undermined the remedial effect of the anti-dumping duties both in terms of prices and quantities.

— Evidence of Dumping

(19) In order to determine whether evidence of dumping could be found with respect to the PFT imported in the Community for conversion into PSF during the investigation period, the following methodology was followed.

Delivered duty unpaid purchase prices charged to the importers for PFT from Belarus were used as a point of departure. In order to increase the comparability of this price with the normal value established for PSF during the original anti-dumping investigation, the conversion cost in the Community established in the present investigation was added so as to effectively construct a PSF price. From this price, intra-Community freight/handling costs and credit costs were then deducted to calculate a CIF Community border price for PSF.

This CIF price was then netted back to FOB Belarus level by deducting freight and handling cost from Belarus to the Community border and by deducting the respective mark-up of intermediary trading houses. The difference between this FOB Belarus price and the FOB Taiwan normal value as established in the original anti-dumping investigation — Taiwan having been selected in the original investigation as analogue country to calculate normal value — was then expressed as a percentage of the CIF Community border price for PSF.

The aggregated, weighted average dumping margin thus established was found to be 12,31 %. It is therefore concluded that there is evidence of dumping in relation to the normal value previously established.

D. PROPOSED MEASURES

1. Nature of the measures: extension of the duty

(20) In view of the above findings and considerations, the anti-dumping duty in force with respect to PSF originating in Belarus should be extended to PFT originating in that country.

2. Levy of the extended duty on imports entered under registration

(21) The extended duty should be levied on the PFT which entered the Community under registration, as described in recital 1.

E. PROCEDURE

(22) Interested parties were informed of the essential facts and considerations on the basis of which the Commission intended to propose the extension of the definitive anti-dumping duty in force to the PFT concerned and have been given the opportunity to comment and their comments have been duly considered,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed by Regulation (EC) No 1490/96 on imports of polyester staple fibre falling within CN code 5503 20 00 originating in Belarus is hereby extended to imports of polyester filament tow falling within CN code 5501 20 00 originating in Belarus.

2. The duty extended by paragraph 1 of this Article shall also apply to imports of polyester filament tow originating in Belarus which have been registered in accordance with Article 2 of Commission Regulation (CE) No 693/97 and Article 13 (3) and 14 (5) of Regulation (CE) No 384/96.

Article 2

Customs authorities are hereby directed to discontinue registration of polyester filament tow originating in Belarus and falling within CN code 5501 20 00 pursuant to Article 2 of Commission Regulation (EC) No 693/97.

Article 3

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, 15 December 1997.

For the Council

The President

J.-C. JUNCKER