COUNCIL REGULATION (EC) No 908/97

of 20 May 1997

amending Regulation (EEC) No 830/92 imposing a definitive anti-dumping duty on imports of certain polyester yarns (man-made staple fibres) originating in Taiwan, Indonesia, India, the People's Republic of China and Turkey and collecting definitively the provisional duty

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 11 (4) thereof,

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

Whereas:

A. PREVIOUS PROCEDURE

(1) By Regulation (EEC) No 830/92 (2), the Council imposed, *inter alia*, a definitive anti-dumping duty of 10,1 % on imports of single and multiple (folded) or cabled yarns containing 85 % or more by weight of polyester staple fibres, not put up for retail sale, and other yarns of polyester staple fibres mixed mainly or solely either with artificial staple fibres or with cotton, not put up for retail sale, commonly referred to as certain polyester yarns (hereinafter referred to as the 'product concerned' or 'yarn'), currently classifiable 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 Turkey, with the exception of imports from two Turkish exporters specifically mentioned, which were subject to a lesser rate of duty, and of 11,9 % on imports of the product concerned originating in Indonesia, with the exception of those imports from one Indonesian exporter specifically mentioned, which was subject to no duty at all.

(2) By Regulation (EC) No 1168/95 (3), the Council amended Regulation (EEC) No 830/92 in further excluding seven Indonesian exporters from any anti-dumping duty.

B. PRESENT PROCEDURES

(3) In October 1995, the Commission received from the Turkish producer Kipas AS (hereinafter referred to as 'Kipas' or the 'company') an application for a review of the measures currently in force, i.e. a request to initiate a 'new exporter' review proceeding of Regulation (EEC) No 830/92, pursuant to Article 11 (4) of Regulation (EC) No 384/96 (hereinafter referred to as the 'Basic Regulation'). Kipas claimed that it was not related to any of the exporters or producers in Turkey subject to the anti-dumping measures in force with regard to the product concerned.

Furthermore, it claimed that it did not export the product concerned during the period of investigation on which the current measures in force were based with regard to the determination of dumping, i.e. the period from 1 January to 31 December 1989 (hereinafter referred to as the 'original investigation period'). Finally, Kipas also claimed that it had actually exported the product concerned to the Community and that it had also entered into irrevocable contractual obligations to export significant quantities of yarn to the Community.

(4) In June 1996, an Indonesian manufacturer, PT World Yamatex Spinning Mills, Indonesia (hereinafter referred to as 'Yamatex' or the 'company') submitted a request to initiate a 'new exporter' review proceeding of Regulation (EEC) No 830/92. Yamatex claimed to have no link or relation to any of the Indonesian exporters or producers subject to the anti-dumping measures in force with regard to the product concerned, that it had not exported the product concerned during the original investigation period and that it had entered into irrevocable contractual obligations to export significant quantities of yarns to the Community.

(5) After having verified the evidence submitted by Kipas and Yamatex, which was in both cases considered sufficient to justify the initiation of a review in accordance with Article 11 (4) of the Basic Regulaiton, after consultation of the Advisory Committee and after the Community industry

(1) OJ No L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ No L 317, 6. 12. 1996, p. 1).
(2) OJ No L 88, 3. 4. 1992, p. 1.
(3) OJ No L 118, 25. 5. 1995, p. 1.

concerned had been given the opportunity to comment, the Commission initiated two separate reviews of Regulation (EEC) No 830/92 with regard to Kipas, under Regulation (EC) No 1284/96 [1], and Yamatex, under Regulation (EC) No 2237/96 [2], and commenced its investigations.

(6) In the Regulations initiating the two reviews, the Commission also repealed the anti-dumping duties imposed by Regulation (EEC) No 830/92 with regard to imports of the product concerned, produced and exported by Kipas and Yamatex, and directed customs authorities, pursuant to Article 14 (5) of the Basic Regulation, to take appropriate steps to register such imports.

Since both new exporter reviews relate to Regulation (EEC) No 830/92 it was decided to deal with them jointly.

(7) The product concerned covered by the present reviews is the same product as the one under consideration in Regulation (EEC) No 830/92.

(8) The Commission officially advised both Kipas and Yamatex as well as the representatives of the respective exporting country. Furthermore, it gave other parties directly concerned the opportunity to make their views known in writing and to request a hearing. However, no such request has been received by the Commission.

(9) The Commission sent a questionnaire to Kipas and Yamatex and received, in both cases, a proper and timely reply. The commission sought and verified all information it deemed necessary for the purposes of the investigations, and carried out, in the sole case of Kipas, a verification visit at the Kipas premises in Turkey.

(10) The investigation of dumping covered the periods:

— in the review proceeding carried out for Kipas, Turkey: 1 July 1995 to 30 June 1996;

— in the review proceeding carried out for Yamatex, Indonesia: 1 November 1995 to 31 October 1996.

(11) The same methodology as that used in the original investigation was applied in the present investigations where circumstances had not changed.

[1] OJ No L 165, 4. 7. 1996, p. 19.
[2] OJ No L 299, 23. 11. 1996, p. 14.

C. SCOPE OF THE REVIEWS

(12) No request for a review of the findings on injury was made in any of the investigations. The investigations are therefore limited to dumping.

D. RESULTS OF THE INVESTIGATIONS

1. New exporter qualification

Kipas

(13) The investigation confirmed that the Turkish exporter had not exported the product concerned during the original investigation period. Production of yarns by Kipas and export thereof to the Community started, in fact, only during the second half of 1994.

Furthermore, it was established during the investigation that the company did not have any links, either direct or indirect, with any of Turkish exporters subject to the anti-dumping measures in force with regard to the product concerned.

Accordingly, it is confirmed that Kipas should be considered as a new exporter in accordance with Article 11 (4) of the Basic Regulation, and thus its individual dumping margin should be determined.

Yamatex

(14) The evidence submitted by the Indonesian exporter confirmed that it had not exported the product concerned during the original investigation period. Production of the product concerned started in 1994. Export activities in the form of irrevocable contractual obligations of Yamatex vis-à-vis Community customers for the product concerned only started, according to the documents provided, during the present investigation period (May 1996).

Furthermore, according to documentary evidence submitted, Yamatex satisfactorily demonstrated that it did not have any links, either direct or indirect, with any of Indonesian exporters subject to the anti-dumping measures in force with regard to the product concerned.

Accordingly, it is confirmed that also Yamatex should be considered as a new exporter in accordance with Article 11 (4) of the Basic Regulation, and thus its individual dumping margin should be determined.

2. Dumping

A. *Normal value*

Kipas

(15) In accordance with Article 2 (2) of the Basic Regulation, an examination was conducted to ascertain whether the volume of Kipas' sales of the like product on the Turkish domestic market in total reached at least 5 % of the volume of its total exports of the product concerned to the Community. It was found that total domestic sales of the like product achieved a level considerably in excess of the aforementioned 5 % threshold.

For each of the types of yarn sold on the domestic market and found to be identical or directly comparable to types sold for export to the Community, the Commission then established whether domestic sales per type were made in sufficient quantities.

Domestic sales of each type were considered to have been made in sufficient quantities within the meaning of Article 2 (2) of the Basic Regulation as the volume of each type of yarn sold in Turkey during the investigation period represented 5 % or more of the quantity of the comparable type of yarn sold for export to the Community.

The Commission subsequently examined whether the domestic sales of each type of the product concerned exported to the Community could be considered to have been made in the ordinary course of trade.

Whether or not domestic sales were made in the ordinary course of trade was determined pursuant to Article 2 (4) of the Basic Regulation. Since, per product type, the weighted average selling price was equal to, or higher than, the weighted average unit cost and as the volume of sales below unit cost represented less than 20 % of the domestic sales, all domestic sales were regarded as having been made in the ordinary course of trade.

In accordance with Article 2 (1) of the Basic Regulation, normal value was therefore based on the weighted average prices of all domestic sales of the corresponding product types exported to the Community.

Yamatex

(16) When establishing normal value for the Indonesian exporter, the same methodology as described under recital (15) was applied.

It was concluded that comparable types of the product concerned, in relation to those exported to the Community during the investigation period, were sold on the domestic market, and that these sales were made in sufficient quantities in the ordinary course of trade.

In accordance with Article 2 (1) of the Basic Regulation, normal value was therefore based on the weighted average prices of all domestic sales of the corresponding product types exported to the Community.

B. *Export prices*

(17) For both companies, Kipas and Yamatex, export prices were established on the basis of the prices actually paid or payable for the product concerned when sold for export to the Community, in accordance with Article 2 (8) of the Basic Regulation.

C. *Comparison*

Kipas

(18) In accordance with Article 2 (11) of the Basic Regulation, the weighted average normal value by product type was compared, on an ex-factory basis, to the weighted average export price at the same level of trade.

For the purpose of a fair comparison, due allowance in the form of adjustments was made for differences which were claimed and demonstrated to affect price comparability. These adjustments were made, in accordance with Article 2 (10) of the Basic Regulation, in respect of commissions, transport, insurance, handling and ancillary costs, credit costs, discounts and rebates.

Yamatex

(19) The same methodology as described in recital 18 was applied for Yamatex.

D. *Dumping margin*

(20) The above comparison revealed that no dumping existed for exports to the Community of the product concerned made by both Kipas and Yamatex during the investigation period.

E. AMENDMENT OF THE MEASURES BEING REVIEWED

(21) Based on the findings of no dumping made during the investigations, it is considered that no anti-dumping measure should be imposed on imports

into the Community of the product concerned, produced and exported by Kipas and Yamatex. Regulation (EEC) No 830/92 should therefore be amended accordingly.

F. DISCLOSURE AND DURATION OF THE MEASURES

(22) Kipas and Yamatex were informed of the facts and considerations on the basis of which it is intended to propose the amendment to Regulation (EEC) No 830/92 and were given the opportunity to comment. No comments were received.

(23) The reviews carried out do not affect the date on which Regulation (EEC) No 830/92 will expire pursuant to Article 11 (2) of the Basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The following shall be added at the end of Article 1 (3) of Regulation (EEC) No 830/92:

', P.T. World Yamatex Spinning Mills, Indonesia (Taric additional code 8595), as well as Kipas AS, Turkey (Taric additional code 8011)'.

Article 2

Customs authorities are hereby directed to discontinue registration pursuant to Article 3 of Regulations (EC) No 1284/96 and (EC) No 2237/96 respectively.

Article 3

This Regulation shall enter into force on the day following that of 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, 20 May 1997.

For the Council

The President

J. VAN AARTSEN