COUNCIL REGULATION (EC) No 1822/98

of 14 August 1998

amending Regulation (EC) No 2160/96 imposing a definitive anti-dumping duty on imports of polyester textured filament yarn originating, *inter alia*, in Indonesia

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 (EC) No 2160/96 [2], the Council imposed a definitive anti-dumping duty of 20,2 % on imports of polyester textured filament yarn (hereinafter referred to as 'product concerned' or 'PTY') originating, *inter alia*, in Indonesia, with the exception of imports from four Indonesian exporters specifically mentioned, which are either subject to a lesser rate of duty or to no duty at all. The product is currently classifiable within CN code 5402 33 00.

B. PRESENT PROCEDURE

(2) The Commission subsequently received an application for a review of the measures currently in force, i.e. a request to initiate a 'new exporter' review of Regulation (EC) No 2160/96, pursuant to Article 11(4) of Regulation (EC) No 384/96 (hereinafter referred to as the 'Basic Regulation'), from the Indonesian producer PT Polyfin Canggih (hereinafter referred to as 'the company').

The company claimed that it was not related to any of the exporters or producers in Indonesia subject to the anti-dumping measures in force with regard to the product concerned. Furthermore, it claimed that it had not exported the product concerned during the original period of investigation (1 July 1993 to 30 June 1994) but had exported the product concerned to the Community since then.

(3) The Commission, having examined the evidence submitted by the Indonesian exporter concerned, which was considered sufficient to justify the initiation of a review in accordance with Article 11(4) of the Basic Regulation, after consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, initiated, by Regulation (EC) No 2544/97 [3], a review of Regulation (EC) No 2160/96 with regard to the company and commenced its investigation.

By the Regulation initiating the review, the Commission also repealed the anti-dumping duty imposed by Regulation (EC) No 2160/96 with regard to imports of the product concerned, produced and exported to the Community by the company, and directed customs authorities, pursuant to Article 14(5) of the Basic Regulation, to take appropriate steps to register such imports.

(4) The product covered by the present review is the same product as the one under consideration in Regulation (EC) No 2160/96.

(5) The Commission officially advised the company and the representatives of the 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 was received by the Commission.

The Commission sent a questionnaire to the company and received a full reply within the deadline. The Commission sought and verified all information it deemed necessary for the purpose of the investigation and carried out a verification visit at the company's premises.

(6) The investigation of dumping covered the period from 1 October 1996 to 30 September 1997 (hereinafter referred to as the 'investigation period').

(7) The same methodology as that used in the original investigation was applied in the present investigation.

C. SCOPE OF THE REVIEW

(8) As no request for a review of the findings on injury was made in this investigation, this review is limited to dumping.

[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30. 4. 1998, p. 18).
[2] OJ L 289, 12. 11. 1996, p. 14.
[3] OJ L 347, 18. 12. 1997, p. 31.

D. RESULTS OF THE INVESTIGATION

1. New exporter qualification

(9) The investigation confirmed that the company had not exported the product concerned during the original period of investigation. PTY production and exports to the Community started only in the second half of 1994.

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

Accordingly, it is confirmed that the company 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*

(10) In accordance with Article 2(2) of the Basic Regulation, it was examined whether the volume of the company's sales of PTY on the domestic market constituted overall at least 5 % of the volume of the exports of the like product to the Community. In this respect, a number of transactions reported were found not to be of the like product and were therefore excluded from the calculations. It was nonetheless established that the volume of domestic sales of the like product was at a level considerably in excess of the 5 % threshold mentioned above.

For each type of PTY exported to the Community, it was then examined whether or not there were representative domestic sales of identical or directly comparable types.

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

For the purposes of examining whether sales of the like product had been made in the ordinary course of trade, information supplied on cost of production was verified.

A number of material errors in the costs reported by the company were corrected. Amounts for exchange rate gains and losses, interest expenditue and interest income were also adjusted.

The Commission subsequently examined whether the domestic sales of each type of PTY exported to the Community could be considered to have been made in the ordinary course of trade, pursuant to Article 2(4) of the Basic Regulation. For each product type, it was determined that the volume of sales below unit cost was less than 20 % of total sales being used to determine normal value.

All domestic sales were therefore regarded as having been made in the ordinary course of trade. In accordance with Article 2(1) of the Basic Regulation, normal value was based on the weighted average prices of all domestic sales of the product types corresponding to those exported to the Community.

B. *Export price*

(11) Export prices were established on the basis of the prices actually paid, or payable, for the product concerned when sold for export to independent customers in the Community, in accordance with Article 2(8) of the Basic Regulation.

C. *Comparison*

(12) 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 prices and 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.

D. *Dumping margin*

(13) The comparison showed that no dumping existed for exports of PTY to the Community made by the company during the investigation period.

E. AMENDMENT OF THE MEASURES BEING REVIEWED

(14) Based on the findings of no dumping made during the investigation, it is considered that imports into the Community of PTY, produced and exported by the company should not be subject to an anti-dumping duty. Regulation (EC) No 2160/96 should therefore be amended accordingly.

F. **DISCLOSURE AND DURATION OF THE MEASURE**

(15) The company was informed of the facts and considerations on the basis of which it is intended to propose the amendment of Regulation (EC) No 2160/96, and was given the opportunity to comment. No comments were received.

(16) The review carried out does not affect the date on which Regulation (EC) No 2160/96 will expire pursuant to Article 11(2) of the Basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Regulation (EC) No 2160/96 is hereby amended by adding the following to the end of the section on Indonesia:

'nor to such imports produced and exported by PT Polyfin Canggih (TARIC additional code 8885)'.

Article 2

Customs authorities are hereby directed to discontinue registration pursuant to Article 3 of Regulation (EC) No 2544/97.

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, 14 August 1998.

For the Council

The President

W. SCHÜSSEL