COUNCIL REGULATION (EC) No 902/2001

of 7 May 2001

amending Regulation (EC) No 978/2000 imposing a definitive countervailing duty on imports of synthetic fibres of polyester originating in Australia, Indonesia and Taiwan

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1], and in particular Article 15 thereof,

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

Whereas:

(1) Regulation (EC) No 978/2000 [2] imposed a definitive countervailing duty on imports of synthetic fibres of polyester originating in Australia, Indonesia and Taiwan.

(2) Further to two applications to the Court of First Instance brought against the Council by Taiwanese exporting producers seeking annulment of Regulation (EC) No 978/2000 in accordance with Article 230 of the Treaty, it has become apparent that part of the methodology applied in determining the level of subsidisation for Taiwan in Regulation (EC) No 978/2000 is inconsistent with the Community institutions' consideration and treatment of virtually identical data in subsequent proceedings. For one particular subsidy scheme, the 'tax credit for the purchase of automation and pollution control equipment' granted for locally purchased equipment, was found to be countervailable according to the Regulation the subject of challenge. However, the calculations concerning the amount of countervailable subsidy derived from a methodology that was revised in subsequent proceedings concerning imports of certain polyethylene terephthalate originating in Taiwan. Reference is made to Commission Regulation (EC) No 1741/2000 [3], Council Regulation (EC) No 2603/2000 [4], *inter alia* terminating the antisubsidy proceeding concerning imports of certain polyethylene terephthalate originating in Taiwan. In these circumstances, it was decided to re-examine the calculations concerning the amount of subsidy for imports originating in Taiwan, in particular in order to establish whether the application of the revised methodology would materially impact on the findings for that country. This particular subsidy scheme was only found to exist in Taiwan and was not therefore considered as part of the investigation into subsidisation in respect of imports originating in Australia and Indonesia.

(3) The re-examination for Taiwan showed that the revised methodology led to a *de minimis* finding of subsidisation, i.e. a countrywide subsidy level of less than 1 %. Therefore, the countervailing measures concerning imports of synthetic fibres of polyester from Taiwan should be repealed with retroactive effect.

(4) As regards the potential impact of the repeal of measures for Taiwan on the original findings concerning imports of synthetic fibres of polyester from Australia and Indonesia, it was examined whether the finding of *de minimis* subsidisation for Taiwan adversely affected the conclusions in relation to injury, causation and Community interest. It was concluded that, in particular given the significant increase in the volume of imports and market share, and the high levels of undercutting for imports originating in Australia and Indonesia, the original findings are not undermined insofar as they concern imports originating in those countries,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 978/2000 is hereby amended as follows:

1. Article 1(1) shall be replaced by the following:

'1. A definitive countervailing duty is hereby imposed on imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, falling within CN code 5503 20 00 and originating in Australia and Indonesia.';

2. Article 1(2) shall be replaced by the following:

[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ L 113, 12.5.2000, p. 1.
[3] OJ L 199, 5.8.2000, p. 6.
[4] OJ L 301, 30.11.2000, p. 1.

'2. The duty rate applicable to the net, free-at-Community-frontier, before duty, for products produced by the companies indicated shall be as follows for products originating in:

1. **Australia**

Company	Rate of duty (%)	TARIC additional code
Leading Synthetics Pty Ltd, Melbourne, Victoria	6,0	A059
All other Australian companies	6,0	A999

2. **Indonesia**

Company	Rate of duty (%)	TARIC additional code
PT. Indorama Synthetics TbK Graha Irama, 17th floor Jl. H. R. Rasuna Said Blok X-1 Kav. 1-2 PO Box 3375 Jakarta 12950	0	A051
PT. Panasia Indosyntec TbK Jl. Garuda 153/74 Bandung 40184	0	A052
PT. Susilia Indah Synthetic Fiber Industries Jl. Kh. Zainul Arifin Kompleks Ketapang Indah Blok B 1 n. 23 Jakarta 11140	0	A054
PT. GT Petrochem Industries TbK Exim Melati Building, 9th floor Jl. M.H. Thamrin Kav. 8-9 Jakarta 10230	0	A053
PT. Teijin Indonesia Fiber Corporation TbK 5th floor Mid Plaza 1 Jl. Jend. Sudiman Kav. 10-11 Jakarta 10220	0	A055
All other companies	10	A999'

3. Article 2(1) shall be replaced by the following:

'The amounts secured by way of the provisional countervailing duty on imports originating in Australia under Regulation (EC) No 123/2000 shall be collected at the rate of the duty definitively imposed by this Regulation. Amounts secured in excess of the rate of definitive countervailing duty shall be released.'.

Article 2

Any countervailing duties collected on imports originating in Taiwan under Regulation (EC) No 978/2000 shall be reimbursed to the importers concerned.

Article 3

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

Article 1 shall apply with effect from 13 May 2000.

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

Done at Brussels, 7 May 2001.

For the Council
The President
B. RINGHOLM