COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9.3.2007
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Proposal for a

COUNCIL REGULATION

terminating the partial interim review of the anti-dumping measures concerning imports of synthetic staple fibres of polyesters originating in the People's Republic of China, Saudi Arabia, Belarus and the Republic of Korea

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ("the basic Regulation") in the proceeding concerning imports of synthetic staple fibres of polyesters originating in the People's Republic of China, Saudi Arabia, Belarus and the Republic of Korea.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

There are no existing provisions in the area of the proposal.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 22 December 2005, the Commission initiated *ex officio* a partial interim review, limited in scope to the examination of the product scope of the anti-dumping measures

applicable to imports of synthetic staple fibres of polyesters (PSF) originating in the People's Republic of China (PRC), Saudi Arabia, Belarus, Australia, Indonesia, Thailand, the Republic of Korea and India.

The basis for initiating this review was the information submitted by one Korean exporting producer, which indicated that low melt polyester staple fibres (LMP) should be excluded from the product scope, as they appeared to have different basic physical and chemical characteristics and end-uses in comparison to other types of PSF.

The investigation however revealed that LMP and other PSF types share the same basic physical and chemical characteristics and have the same basic end-uses. In particular, LMP and other PSF types are based on the same raw materials, their production process is basically the same, they share the same typical end-uses, they are distributed via the same channels and, finally, they are to a certain extend interchangeable. Therefore, it is concluded that LMP and other types of PSF should be considered as one single product for the application of the existing anti-dumping measures.

It is therefore proposed to terminate this partial interim review without amending the product scope of the anti-dumping measures applicable to imports of PSF from the PRC, Saudi Arabia, Belarus and the Republic of Korea. It is noted that the anti-dumping measures concerning imports of PSF originating in Australia, India, Indonesia and Thailand were repealed by Council Regulation (EC) No 1515/2006 of 13 October 2006 and, thus, such imports are no longer subject to this partial interim review.

Member States were consulted and supported this proposal unanimously.

It is proposed that the Council adopt the attached proposal for a Regulation which should be published in the Official Journal as soon as possible.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: Regulation.

Other means would not be adequate for the following reason(s).

The above-mentioned basic regulation does not foresee alternative options.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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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] ('the basic Regulation'), and in particular Article 11(3) thereof,

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

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) By Regulation (EC) No 1522/2000[2], the Council imposed a definitive anti-dumping duty on imports of synthetic staple fibres of polyesters ('PSF') originating in Australia, Indonesia and Thailand.

(2) By Regulation (EC) No 2852/2000[3], the Council imposed a definitive anti-dumping duty on imports of PSF originating in the Republic of Korea and India.

(3) By Regulation (EC) No 1799/2002[4], the Council imposed a definitive anti-dumping duty on imports of PSF originating in Belarus.

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1 OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

2 OJ L 175, 14.7.2000, p. 10.

3 OJ L 332, 28.12.2000, p. 17. Regulation as amended by Council Regulation (EC) No 428/2005 (OJ L 71, 17.3.2005, p. 1).

4 OJ L 274, 11.10.2002, p. 1.

(4) By Regulation (EC) No 428/2005[5], the Council imposed a definitive anti-dumping duty on imports of PSF originating in the People's Republic of China ('PRC') and Saudi Arabia and amended and renewed for five years the measures concerning the Republic of Korea.

(5) All these Regulations will be hereinafter referred to as 'the original Regulations'. The investigations that led to the measure imposed by the original Regulations will be hereinafter referred to as 'the original investigations'.Following the expiry reviews of the measures concerning imports of PSF originating in Australia, India, Indonesia and Thailand[6], the Council, by Regulation (EC) No 1515/2006[7], repealed the anti-dumping duties in respect of such imports.

(6) It is noted that a new anti-dumping proceeding concerning imports of PSF originating in Malaysia and Taiwan was initiated on 12 April 2006[8] and provisional measures were imposed by Commission Regulation (EC) No 2005/2006[9].

1.2. Grounds for the review

(7) The basis for initiating this review was the information submitted by the Korean exporting producer Saehan Industries Inc., which indicated that low melt polyester staple fibres ('LMP'), as defined in recital (20) below, should be excluded from the product scope, as they appeared to have different basic physical and chemical characteristics and end-uses in comparison to other types of PSF. In particular, unlike other PSF types, LMP appeared to have inherent binding properties.

1.3. Initiation

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced by a notice ('the notice of initiation') published in the Official Journal of the European Union[10] the initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of the product scope of the anti-dumping measures on imports of PSF originating in the PRC, Saudi Arabia, Belarus, Australia, Indonesia, Thailand, the Republic of Korea and India. It is noted that this review was initiated on the Commission's own initiative.

1.4. Review investigation

(9) The Commission officially advised the authorities of the PRC, Saudi Arabia, Belarus, Australia, Indonesia, Thailand, the Republic of Korea and India ('countries concerned'), and all other parties known to be concerned, i.e. producers/exporters in the countries concerned and their associations, users and importers in the Community and their associations and producers in the Community and their association, of the

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5 OJ L 71, 17.3.2005, p. 1. Regulation as amended by Council Regulation (EC) No 1333/2005 (OJ L 211, 13.8.2005, p. 1).
6 OJ C 174, 14.7.2005, p. 15; OJ C 323, 20.12.2005, p. 21.
7 OJ L 282, 13.10.2006, p. 1.
8 OJ C 89, 12.4.2006, p. 2.
9 OJ L 379, 28.12.2006, p. 65.
10 OJ C 325, 22.12.2005, p. 20.

initiation of the review investigation. Interested parties were given the opportunity to make their views known in writing and request a hearing within the time limit set in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(10) The Commission sent questionnaires to all parties known to be concerned, and all other parties which made themselves known within the deadlines set out in the notice of initiation.

(11) In view of the scope of the review, no investigation period was set for the purpose of this review. The information received in the questionnaires covered the period from 1998 to 2005 ('period considered'). For the period considered, information concerning sales/purchases volume and value, production volume and capacity for all PSF types and LMP was requested. In addition, the parties concerned were asked to comment on any differences or similarities between LMP and other types of PSF with respect to their production process, technical characteristics, end-uses, interchange-ability etc.

(12) Sufficiently complete questionnaire replies were received from one Thai, two Korean and one Saudi-Arabian exporting producer of PSF, four Community producers of PSF, five users and two importers of PSF in the Community. Several other parties, including the association of users and the association of Community producers of PSF, submitted their comments.

(13) The Commission sought and verified all information deemed necessary for the purpose of the assessment as to whether there is a need for amendment of the scope of the existing measures.

(14) It is noted that, since in October 2006, following parallel expiry reviews, the measures on imports of PSF originating in Australia, India, Indonesia and Thailand were repealed (see recital (5)), the present review has become obsolete with respect to these countries, and its findings concern only the measures on PSF originating in the PRC, Saudi Arabia, Belarus and the Republic of Korea.

2. PRODUCT CONCERNED

(15) The product concerned is, as uniformly defined in all original Regulations, synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning originating in the PRC, Saudi Arabia, Belarus, Australia, Indonesia, Thailand, the Republic of Korea and India (‘the product concerned’) and is currently classifiable within CN code 5503 20 00. It is commonly referred to as polyester staple fibres or PSF.

3. RESULTS OF THE REVIEW INVESTIGATION

3.1. Methodology

(16) In order to assess whether LMP and other types of PSF should be considered as one single product or two different products, it was examined whether LMP and other types of PSF shared the same basic physical and technical characteristics and end-uses. In this regard, the production process, the interchangeability and the distinction between LMP and other types of PSF were also assessed.

3.2. Findings

3.2.1. General remarks

(17) PSF is a basic material used in various stages of the manufacturing process of textile products. PSF is either used for spinning, i.e. manufacturing filaments for the production of textiles, after mixing or not with other fibres such as cotton and wool, or for non-woven applications such as filling, i.e. stuffing or padding of certain textile goods such as cushions, car seats and jackets.

(18) PSF is sold in different product types for use in spinning or non-woven applications, which have a mono- or bi- component composition and different specifications such as denier/decitex, tenacity, lustre, quality grade, etc. These product types are not always interchangeable with each other (e.g. fibres for spinning and non-woven applications, mono and bi-component fibres, fibres with specific thermal characteristics such as the flame retardant fibres, etc.). However, as the original investigations established, the physical and chemical characteristics and the end-uses of these types are basically the same. Moreover, while not every product type may be interchangeable with every other type, there is at least a partial interchangeability and overlapping use between different product types, none of them being clearly separated from at least certain others.

(19) It should be noted that LMP is not a new product. However, LMP, as one of the PSF types, was not separately examined within the original investigations, since none of the parties concerned pointed out its allegedly different physical and technical characteristics. This review confirmed that LMP, which was firstly produced in the 1980's and traded since then in countries like Japan, Taiwan and the Community, was already produced and traded in substantial quantities by at least three Community producers and in at least one of the countries concerned, i.e. the Republic of Korea, during the original investigations. In fact, imports of PSF including LMP from the Republic of Korea were found to be dumped and to have caused injury to the Community industry.

3.2.2. Physical and technical characteristics of LMP

(20) LMP is one of the bi-component PSF types. It is a low melting polyester fibre with a core-sheath structure; it is composed of a polyester core and a sheath of copolymer polyester. When heated, the outer copolymer sheath melts at a lower temperature than the polyester core, and the melted sheath acts as glue. There are several sub-types of LMP, having different composition resulting, for instance, in different melting temperatures.

(21) LMP is based on the same raw material and has the same look as other types of PSF. However, by definition, it contains two different polyester polymers. In this context, it should be noted that LMP is not the only bi-component PSF; numerous other bi-component PSF types exist, which have been always considered as constituting a single product for the purposes of anti-dumping proceedings.

(22) Some Community users and one exporting producer argued that LMP and other types of PSF, whether mono- or bi- component, are based on different raw materials. The association of Community producers and certain Community producers argued that the basic raw materials of all PSF types, including LMP, are the same. In this respect, it should be noted that all PSF types, including LMP, are based on terephthalic acid (TPA) and ethylene glycol (MEG). These raw materials constitute the basic component, to which additives or additional components can be added in order to ensure certain specific properties of the fibre, such as low melting temperature in the case of LMP. The claim that LMP is based on different raw materials is therefore rejected.

(23) One exporting producer also argued that the factor "look" is not relevant in analysing physical and technical characteristics of different products or product types. In this respect, it is noted that the look by itself would normally not constitute sufficient basis for defining the product concerned, in particular when chemical products are concerned. However, this does not imply that such factor should be completely disregarded. In this particular case, the same look constitutes an additional element for finding that LMP and other types of PSF cannot be easily distinguished from each other. The claim is therefore rejected.

(24) In view of the above, it is concluded that LMP cannot be considered as having different basic physical and chemical characteristics than other PSF types, in particular those with bi-component composition.

3.2.3. Production process

(25) It is recalled that the original investigations established that, from a production point of view, a general distinction can be made between virgin PSF, produced from virgin raw materials, and regenerated PSF, produced from recycled polyester.

(26) As regards LMP, this review investigation revealed that no significant difference in production of LMP and other bi-component PSF types exists. It was found that any producer of other bi-component PSF types could easily switch to the production of LMP. Bi-component spinning systems are in operation in the Community and elsewhere for more than 20 years. The bi-component fibres' production is more sophisticated than that of mono-component fibres; however, the difference between the two systems is not such as to be considered substantial.

(27) Some Community users argued that it would not be cost effective to switch to the production of LMP. It was argued that although the production lines for LMP and other bi-component PSF types are basically the same, a switch to the production of LMP would require certain modifications, in particular the change of spinnerets, and would cause considerable downtimes. Thus, although switching to the production of LMP or vice versa is technically feasible, it may not be efficient and this may affect the available capacity for LMP. The association of Community producers and one Community producer argued that the production process for all bi-component PSF is basically the same and switching to LMP production has no technical shortcomings, but that it purely depends on market forces such as demand and prices. Furthermore, they argued that there is sufficient overall capacity to satisfy demand for LMP in the Community if the market conditions would allow. In this respect, the following should be noted. Firstly, the conclusion that no substantial difference exists between

production of LMP and other PSF types was not challenged. Secondly, the cost effectiveness of switching to the production of LMP or vice versa may vary significantly from one producer to the other but it is in fact done by some Community producers. Finally, whether a producer would switch to the production of LMP depends largely on the sales prices it can obtain for the different PSF types in the market. In this respect, it is also noted that there are no exclusive producers of LMP in the Community or the exporting countries concerned. Therefore, this argument cannot alter the conclusions in respect of the production process.

(28) The production process, which is as such not decisive for the definition of a product, can thus in any event not be considered as a factor differentiating LMP from other PSF types.

3.2.4. Typical end-uses of LMP

(29) LMP is because of its low melting temperature typically used as a component in thermally bonded technical non-woven applications and in thermally bonded filling applications. The main end-uses are in the following groups of products: household (furniture, mattresses, pillows), automotive (carpets, filters), hygienic personal care (nappies, absorbents), apparel (insulation). In all its applications, LMP is mixed and melted with other PSF fibres and it usually represents around 15 % of the volume in such blends.

(30) Some Community users argued that only in normal thermally bonded wadding for furniture and bedding end-uses LMP represents around 15 % in the blend. In certain other applications, such as acquisition distribution layers, the blend ratio varies from 35 % to 50 % of LMP and in air filtration applications LMP represents up to 70 % in the blend. In this respect, it should be added that in some other applications, such as for instance apparel insulation wadding, LMP represents less than 15 % in the blend. The review investigation has shown that the LMP's relative volume in its different end applications indeed varies, but it is in the vast majority of applications a minority component (overall on average around 15 %) as compared to other PSF types blended in these products. The assessment made in recital (29) above is therefore confirmed.

(31) The main users of LMP in the Community are non-woven application industries. These companies typically use a whole range of other PSF types belonging to the non-woven family. There are no specific users of LMP in the Community. It was also found that there is no substantial difference in distribution channels of LMP and other types of PSF. It is recalled that LMP is always used mixed with other PSF types.

(32) One exporting producer argued that the fact that the same users use LMP and other types of PSF and that the distribution channels of LMP and other types of PSF are basically the same does not entail that LMP and other types of PSF are "like products". Indeed, this fact by itself does not entail that LMP and other PSF types should be considered as being one single product; however, it shows that no differences exist between LMP and other PSF types as far as their distribution is concerned. In other words, from a distribution point of view, no grounds exist for the exclusion of LMP from the scope of the measures. In addition, as it was demonstrated in recital (29) above, LMP has the same end-uses as other PSF types, since it can only be used in blend with these fibres. The argument is therefore rejected.

(33) In view of the above, it is concluded that LMP and other PSF types have the same basic end-uses and they are distributed via the same channels.

3.2.5. Interchangeability

(34) As shown above, although LMP has no different basic physical and chemical characteristics than other PSF types, it has certain distinct properties. However, in numerous applications LMP can be substituted by other types of PSF using different bonding technologies, such as resin bonding of PSF or thermo bonding of PSF with the use of other melt bonding fibres. It is thus substantially interchangeable with other PSF types.

(35) Some parties challenged the aforesaid conclusion in respect of the interchangeability of LMP with other PSF types. One exporting producer argued that since resin bonding and bonding with the use of other melt bonding fibres requires substitution of LMP by resin and bonding fibres not made of polyesters respectively, there is no interchangeability of LMP with other PSF types. Some Community users argued that the use of other bonding technologies referred to above would result in different properties of certain end products and, for this reason, in certain applications such substitution is not possible. These arguments were further examined. The investigation has shown that although different bonding technologies are not always interchangeable with each other in all end-applications, certain interchangeability exists and, thus, LMP is in competition with resin bonded PSF and with PSF bonded with other than core/sheath bonding fibres for certain applications. Thus, it cannot be generally concluded that no substitutes to LMP exist and that it is not interchangeable with certain other PSF types.

(36) One exporting producer also noted that its argument concerning the threat to the environment and to the health of workers posed by certain chemical resins was not properly examined. In this respect, it is noted that such argument is not relevant in this particular case, since in certain applications resin bonding cannot be substituted by other bonding technologies and, in any event, resin bonding must comply with any environmental requirements in the Community and its Member States. This argument is therefore rejected.

3.2.6. Distinction between LMP and other types of PSF

(37) There is no visual and tangible difference between LMP and other PSF types. The cross-section of LMP is different from that of mono-component fibres; however, it is not always different from the cross-section of other bi-component PSF types. It is recalled that LMP exists in numerous variants having, for instance, different melting temperatures. Thus, a clear distinction on the basis of melting temperature is not possible. Therefore, it appears that LMP cannot be easily distinguished from other PSF types and that any reliable identification of this product type would require the use of sophisticated equipment.

(38) Some Community users disagreed with the above conclusion that LMP cannot be easily distinguished from other PSF types, in particular as far as its melting temperature is concerned. It was argued that the melting point of the sheath component of LMP, although varying between 110°C and 190°C, would always be considerably lower than the melting point of other PSF types, which is allegedly around 255°C. It is

noted that the above range of melting temperatures confirms that LMP, as well as other PSF types, exist in numerous variants and that their identification is not always easily feasible. Thus, the conclusions drawn in recital (37) above cannot be amended.

(39) One exporting producer argued that the mere fact that LMP is visually similar to other PSF types cannot constitute a basis for non-excluding LMP from the scope of the measures. As explained in recital (23) above, although the "look" by itself is normally not decisive for answering the question whether or not different product types should fall into a "single product", it constitutes an additional element in the analysis (see also recital (16) above). The fact that different product types cannot be easily distinguished from each other cannot be ignored. The argument is therefore rejected.

4. CONCLUSIONS ON THE PRODUCT SCOPE

(40) The above findings show that LMP and other PSF types share the same basic physical and technical characteristics and have the same basic end-uses. In numerous applications, LMP directly or indirectly competes with other types of PSF on the Community market. On this basis, it is concluded that LMP and other types of PSF should be considered as one single product and that the partial interim review concerning the product scope for the application of the existing anti-dumping measures should be terminated.

(41) All interested parties were informed of the essential facts and considerations on the basis of which the above conclusions were reached. Parties were granted a period within which they could make representations subsequent to this disclosure.

(42) The oral and written comments submitted by the parties were considered, but have not changed the conclusions not to amend the product scope of the anti-dumping measures on imports of PSF in force,

HAS ADOPTED THIS REGULATION:

Sole Article

The partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the product scope of the anti-dumping measures applicable to imports of synthetic staple fibres of polyesters, falling within CN code 5503 20 00, originating in the People's Republic of China, Saudi Arabia, Belarus and the Republic of Korea is hereby terminated without amending the anti-dumping measures in force.

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

Done at Brussels,

For the Council
The President