

**COMMISSION DECISION****of 5 April 2005****terminating the anti-dumping proceeding concerning imports of polyester high tenacity filament yarn originating in Belarus, the Republic of Korea and Taiwan**

(2005/289/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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<sup>(1)</sup> (the basic Regulation) and in particular Article 9 thereof,

After consulting the Advisory Committee,

Whereas:

**A. PROCEDURE****1. General**

- (1) On 28 January 2004, the Commission announced, by a notice (notice of initiation) published in the *Official Journal of the European Union*<sup>(2)</sup>, the initiation of an anti-dumping proceeding concerning imports into the Community of polyester high tenacity filament yarn originating in Belarus, the Republic of Korea (Korea) and Taiwan.
- (2) The proceeding was initiated as a result of a complaint lodged in December 2003 by the Comité International de la Rayonne et des Fibres Synthétiques (CIRFS) (the complainant), acting on behalf of producers representing a major proportion, in this case more than 70 %, of the total Community production of polyester high tenacity filament yarn. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-dumping proceeding.
- (3) Subsequently one of the complaining producers, KoSa, withdrew its support for the complaint on 8 March 2004. In the meantime a Spanish producer, Brilén, expressed its willingness to co-operate in the proceeding and expressed its support for the complaint. On 16 June 2004, CIRFS withdrew its complaint by stating that it had serious doubts that the proceeding will resolve satisfactorily the problems of dumping and resultant injury to all Community producers. However, the largest Community producer (Acordis) asked that the proceeding be continued. Since Acordis and Brilén account together for 40 % of the total Community production of polyester high tenacity yarn, it was decided that there was still sufficient standing to continue the investigation.

**2. Initiation**

- (4) The Commission officially advised the complainant and the known Community producers, the exporting producers in Belarus, Korea and Taiwan and the authorities of these countries, importers and users in the Community which were identified in the complaint as being concerned, as well as their associations, of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

<sup>(2)</sup> OJ C 24, 28.1.2004, p. 20.

- (5) One exporting producer in Belarus, three exporting producers in Korea, and two exporting producers in Taiwan, as well as three producers in the Community, forty users, two associations of users and three importers made their views known in writing. All parties who so requested within the prescribed time limit and showed that there were particular reasons why they should be heard were granted a hearing.
- (6) In the notice of initiation, the Commission indicated that, in view of the apparent large number of exporters/producers in Korea and of importers in the Community, sampling may be applied in this investigation. However, given the lower than expected number of exporting producers in Korea and of importers in the Community which indicated their willingness to co-operate, it was decided that sampling was not necessary.

### 3. Questionnaires

- (7) The Commission sent questionnaires to all parties known to be concerned and to all other companies who made themselves known within the deadlines set in the notice of initiation.
- (8) Replies were received from six exporting producers (one from Belarus, three from Korea and two from Taiwan), from one complainant Community producer and two additional producers in the Community, from five user companies and from three importers.
- (9) The Commission sought and verified all information it deemed necessary for the purpose of a determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:
- (a) *Producers in the Community:*
- Acordis, Arnhem, the Netherlands,
  - Brilén SA, Barbastro, Spain.
- (b) *Importers in the Community:*
- Pössiger GmbH, Rosendahl, Germany,
  - Mitsui Ltd., London, United Kingdom.
- (c) *Users in the Community:*
- Cordstrap, Deurne, the Netherlands,
  - Güth & Wolf, Gütersloh, Germany,
  - OLBO Industrietextilien GmbH, Solingen, Germany,
  - Gurt & Bandweberei Oppermann GmbH, Einbeck, Germany.
- (d) *Exporting producers in Korea:*
- Honeywell Sysko Co., Inc., Seoul, Korea,
  - Hyosung Corporation, Seoul, Korea,
  - Kolon Industries Inc., Seoul, Korea.
- (e) *Exporting producers in Taiwan:*
- Far Eastern Textiles Co. Ltd., Taipei, Taiwan,
  - Shinkong Corporation, Taipei, Taiwan.
- (f) *Related importers in the Community:*
- Honeywell Performance Fibers, Longwy, France,
  - Hyosung Deutschland GmbH, Neu-Isenburg, Germany.

- (10) The investigation of dumping and injury covered the period from 1 January 2003 to 31 December 2003 (the IP). The examination of trends relevant for the assessment of injury covered the period from January 2000 to the end of the IP (the period considered).

## B. PRODUCT CONCERNED AND LIKE PRODUCT

### 1. Product concerned

- (11) The product is high-tenacity yarn of polyesters (other than sewing thread), not put up for retail sale, including monofilament of polyesters of less than 67 decitex (the product concerned) originating in Belarus, Korea and Taiwan, normally declared within CN code 5402 20 00.
- (12) The product concerned features outstanding properties and is used for a number of diverse end-use applications. These include reinforcement applications for mechanical rubber goods, for example conveyor belts, transmission belts and hoses, radial tyres; coated and uncoated fabrics, for example tarpaulins, billboards, geotextiles, protective clothing and seat belts; and linear tension applications, for example, ropes, nets and strapping.

### 2. Like product

- (13) No differences were found between the product concerned exported from Belarus, Korea and Taiwan to the Community and the product produced and sold on the domestic market in Korea and Taiwan. Indeed, these products have the same basic physical and chemical characteristics and uses.
- (14) The exporting producer from Belarus claimed that the products it exports to the Community do not resemble those produced and sold in the Community and, therefore, cannot be considered to be like products. This claim was based on alleged quality differences and alleged differences in uses between the products exported to the Community by this exporting producer and comparable models produced by the Community producers. However, the investigation showed that the products manufactured by the Community producers and sold on the Community market have the same basic physical characteristics and uses when compared to those exported to the Community from the exporting producer concerned.
- (15) In conclusion, the product exported to the Community from Belarus, Korea and Taiwan, the product produced and sold domestically in Korea and Taiwan as well as the one manufactured and sold in the Community by the Community producers were found to have the same basic physical and technical characteristics as well as the same uses and are therefore considered as like products within the meaning of Article 1(4) of the basic Regulation.

## C. DUMPING

### 1. General methodology

- (16) The general methodology set out hereinafter has been applied to all exporting producers in Korea, Taiwan and, taking into account the notion of an analogue country, also for the exporting producer in Belarus. The presentation of the findings on dumping for each of the countries concerned therefore only describes what is specific for each exporting country.

#### 1.1. Normal value

- (17) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of the like product to independent customers by each exporting producer were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community.
- (18) The Commission subsequently identified those types of the like product sold domestically by the companies having overall representative sales which were identical or directly comparable to the types sold for export to the Community.

- (19) Additionally and for each product type sold by the exporting producer on the domestic market, which was found to be directly comparable with the type sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered as sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable product type exported to the Community.
- (20) The Commission subsequently examined whether the domestic sales of each company could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable domestic sales to independent customers, of each exported product type: (a) for those product types where more than 80 % by volume of sales on the domestic market were not below unit costs, and where the weighted average sales price was equal to or higher than the unit cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question; (b) for those product types where at least 10 %, but no more than 80 %, by volume of sales on the domestic market were not below unit costs, normal value, by product type, was calculated as the weighted average of domestic sales prices which were found to be equal to or above unit costs only, of the type in question; (c) for those product types where less than 10 %, by volume of sales, on the domestic market, were not below unit costs, it was considered that the product type concerned was not sold in the ordinary course of trade.
- (21) For sales of product types not made in the ordinary course of trade, as well as for product types which were not sold in representative quantities on the domestic market, normal value had to be constructed.
- (22) To construct normal value pursuant to Article 2(3) of the basic Regulation, the selling, general and administrative (SG&A) expenses incurred and the weighted average profit realised by each of the co-operating exporting producers concerned on domestic sales of the like product, in the ordinary course of trade, during the investigation period, was added to their own average cost of production during the investigation period. Where necessary, the costs of production and SG&A expenses reported were adjusted, before being used in the ordinary course of trade test and in constructing normal values.

#### 1.2. *Export price*

- (23) In all cases where the product concerned was exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.
- (24) In the case where sales were made via a related importer, the export price was constructed on the basis of the resale price to independent customers in accordance with Article 2(9) of the basic Regulation. Adjustments were made in the resale price to the first independent buyer in the Community for all costs including duties and taxes, incurred between importation and resale, in order to establish a reliable export price at ex-works level. These costs were freight, handling, loading, insurance and ancillary expenses, as well as SG&A expenses incurred by the related importer. The resale price was further adjusted for a reasonable profit margin which was found in the investigation to have been attained by independent importers of the product concerned.

#### 1.3. *Comparison*

- (25) The comparison between normal value and export price was made on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

#### 1.4. *Dumping margin*

- (26) According to Article 2(11) of the basic Regulation, for each co-operating exporting producer, the weighted average normal value was compared with the weighted average export price.

### 2. **Belarus**

#### 2.1. *Analogue country*

- (27) Since Belarus is a non-market economy within the meaning of Article 2(7) of the basic Regulation, normal value had to be based on information obtained in an appropriate market economy third country in which the product was produced and marketed. In the notice of initiation of the investigation, the United States of America (USA) was envisaged as the appropriate analogue country for the purpose of establishing normal value for Belarus.
- (28) The sole exporting producer in Belarus, JSC 'Mogilevkhimvolokno', and the government of Belarus objected to this proposal and suggested the use of Taiwan. The relevant arguments put forward were:
- the fact that Taiwanese exporters were alleged to be dumping is irrelevant for the purpose of choosing a suitable analogue country;
  - the complainants have related companies with extensive production facilities in the USA and it would not be appropriate to base the normal value on the information provided by these related companies;
  - the similarity of economic development level of the countries, production volumes and end products between Taiwan, on the one hand, and Belarus, unlike the situation in the USA; and
  - Taiwan was selected as an analogue country for Belarus in previous investigations concerning textile products and is subject to the same investigation.
- (29) The Commission contacted all known producers of polyester high tenacity filament yarn in the USA. However, in spite of considerable efforts made by the Commission, co-operation was not obtained from any of these companies within the extended time limits set for this purpose. Consequently, the Commission did not consider it appropriate anymore to consider the USA as an analogue country for this investigation.
- (30) The Commission, taking into account the time limits of the investigation and the lack of co-operation from the USA, then investigated whether one of the exporting countries subject to the investigation (Korea or Taiwan) would qualify as a possible market economy third country for the purpose of establishing normal value for Belarus.
- (31) Both countries would qualify because of similarity of development level and production volumes. However, between Korea and Taiwan, Korea was found to qualify most, as there was a higher degree of comparability of end products between Belarus and Korea than between Belarus and Taiwan. It is also to be noted that there are more operators involved in the production and sales of the product concerned in Korea than in Taiwan and that the Korean market of the product concerned is more representative than the Taiwanese one both in total value and total quantities.
- (32) On this basis, in accordance with Article 2(7) of the basic Regulation, the Commission decided to use Korea as an analogue country.

## 2.2. Normal value

- (33) Following the choice of Korea as an analogue country, normal value was calculated on the basis of the data verified at the premises of the Korean exporting producers which co-operated fully with the investigation. Normal value was based on prices paid or payable on the domestic market of Korea for comparable product types, if these were found to be made in representative quantities and in the ordinary course of trade. This was the case for a number of exported product types.
- (34) For the other exported product types, which were either not made in the ordinary course of trade in Korea or not sold in representative quantities by the Korean producers on their domestic market, constructed normal values were used. Normal value was constructed on the basis set out in recital 22 above.

## 2.3. Export price

- (35) As the quantity and value of the export sales reported by the sole exporting producer in Belarus, JSC 'Mogilevkhimvolokno', could be reconciled with Eurostat data regarding the overall imports of the product concerned from Belarus, it was considered appropriate to use the reported export sales of this sole exporting producer even though this information was not verified on-spot.
- (36) All export sales of JSC 'Mogilevkhimvolokno' were made directly to independent customers in the Community. The export price was therefore established in accordance with Article 2(8) of the basic Regulation, on the basis of the prices actually paid or payable.

## 2.4. Comparison

- (37) In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which affect price comparability. Allowances for differences in transport costs, freight and insurance costs, handling, loading and ancillary costs, import charges and indirect taxes, credit costs, after-sales costs, commissions, discounts and rebates were granted where applicable and justified.
- (38) JSC 'Mogilevkhimvolokno' claimed that, if its products, in spite of the arguments mentioned in recital 14 above, were to be considered like products, an adjustment would be appropriate due to the alleged differences in quality and uses. As this claim was not substantiated, it had to be rejected.

## 2.5. Dumping margin

- (39) As provided by Article 2(11) of the basic Regulation, the adjusted weighted average normal value established for each product type in the analogue country was compared with the adjusted weighted average export prices of each corresponding product type of the product concerned originating in Belarus. On the basis of this comparison, a zero dumping margin was found in respect of exports from Belarus to the Community.
- (40) The co-operating exporter in Belarus accounted for the totality of the production and the exports of the product concerned from Belarus. Therefore, the country wide dumping margin was also found to be zero. In view of the countrywide zero dumping margin, it has been concluded that the investigation should be terminated without the adoption of measures with regard to imports originating in Belarus, in accordance with Article 9(3) of the basic Regulation.

## 3. Republic of Korea

### 3.1. Normal value

- (41) For certain product types sold for export to the Community by all three investigated companies, domestic sales were found to have been made in representative quantities and in the ordinary course of trade. Normal value for these product types was based on the actual prices paid or payable, by independent customers in the domestic market of Korea, during the investigation period, in accordance with Article 2(1) of the basic Regulation.

- (42) For sales of product types not made in the ordinary course of trade, as well as for product types which were not sold in representative quantities on the domestic market, normal value had to be constructed. All three investigated companies sold certain such product types for export to the Community. Normal value was constructed on the basis set out in recital 22 above.

### 3.2. *Export price*

- (43) All export sales of one exporting producer and part of those of another exporting producer were made directly to related importers in the Community. Consequently, the export price was established in accordance with Article 2(9) of the basic Regulation on the basis of the prices at which the products were first resold to an independent buyer and in accordance with the methodology described in recital 24.
- (44) The remaining exports of the product concerned by two exporting producers were made directly to independent customers in the Community. For those sales, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of prices actually paid or payable.

### 3.3. *Comparison*

- (45) In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which affect price comparability. For all investigated exporting producers, allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, indirect taxes, credit costs, after-sales costs, commissions, discounts and rebates were granted where applicable and justified.
- (46) One exporting producer requested an adjustment for a quantity discount in its related importer's resale price to the first independent customer claiming that its resale prices to some customers who had quarterly contracts were lower than the prices of those customers who were purchasing on a spot basis. Furthermore, it claimed that such contracts are not made with domestic customers and, therefore, an adjustment should be made in the export price to enable fair comparison of the export price and the normal value.
- (47) The Commission investigated the appropriateness of the claimed adjustment. The investigation showed that some customers in the Community indeed had quarterly contracts with the related importer. Since it was found that domestic customers did not have such contracts, it was further investigated whether the normal value and the export price were on a comparable basis. It could not be established that the prices for the customers in the Community included the claimed discount. Furthermore, the claimed discount was not shown as a discount on the invoices, no Credit Notes were issued concerning the discount nor was the alleged discount entered neither into the accounting of the producer nor in that of the related importer. It should be noted that quantity discounts can only be considered for an adjustment when they are actually given for differences in quantities directly linked to the sales under consideration. In this case, however, it could not be established that such discounts were given by the company concerned. Consequently, and in view of the fact that the normal value and the export price were found to be on a comparable basis, the claimed adjustment concerning the quantity discount was rejected.
- (48) All three investigated companies claimed a duty drawback adjustment pursuant to Article 2(10)(b) of the basic Regulation on the grounds that import charges were allegedly borne by the like product when intended for consumption in the exporting country but were refunded or not paid when the product was sold for export to the Community.
- (49) This claim was considered unfounded because all three companies failed to show that import charges refunded to the companies were due to the exports of the product concerned exported to the Community.

- (50) One company claimed an adjustment pursuant to Article 2(10)(f) of the basic Regulation for differences in the directly related packing costs between the exported and the domestically sold products. In this respect, the company failed to demonstrate any cost difference affecting price comparability, between the packing of the product concerned and that of the like product sold by the co-operating Korean exporters on their domestic market. Thus, this claim was rejected.

#### 3.4. Dumping margins

- (51) As provided by Article 2(11) of the basic Regulation, for each company the adjusted weighted average normal value established for each product type was compared with the adjusted weighted average export prices of each corresponding product type.
- (52) On this basis, the dumping margins, expressed as a percentage of the cif import price at the Community border, duty unpaid, are the following:

|                           |       |
|---------------------------|-------|
| Honeywell Sysko Co., Inc. | 4,5 % |
| Hyosung Corporation       | 0 %   |
| Kolon Industries Inc.     | 0 %.  |

- (53) With regard to imports originating in Korea, it should be noted that the three exporting producers above represent the entirety of exports originating in this country when compared to the Eurostat data. In order to assess whether, on a countrywide basis, the dumping margin was below *de minimis*, a weighted average countrywide dumping margin was established. It was found that this margin was below *de minimis* because of the weight of Hyosung's and Kolon's exports as compared to Honeywell's exports. In view of the countrywide *de minimis* dumping margin, it has been concluded that the investigation should be terminated without the adoption of anti-dumping measures with regard to imports originating in the Republic of Korea, in accordance with Article 9(3) of the basic Regulation.

### 4. Taiwan

#### 4.1. Normal value

- (54) For the vast majority of the product types sold for export to the Community by both investigated Taiwanese companies, domestic sales were found to have been made in representative quantities and in the ordinary course of trade. Normal value for these product types was based on the actual prices paid or payable, by independent customers in the domestic market of Taiwan, during the investigation period, as set out in Article 2(1) of the basic Regulation.
- (55) For sales of product types not made in the ordinary course of trade, as well as for product types which were not sold in representative quantities on the domestic market, normal value had to be constructed. All three investigated companies sold certain such product types for export to the Community. Normal value was constructed on the basis set out in recital 22 above.

#### 4.2. Export price

- (56) All sales of the product concerned made by the two exporting producers on the Community market were made directly to independent customers in the Community. Consequently, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable.

#### 4.3. Comparison

- (57) In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which affect price comparability. For both investigated exporting producers allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, import charges and indirect taxes, credit costs, after-sales costs, commissions, discounts and rebates were granted where applicable and justified.

#### 4.4. Dumping margins

- (58) As provided by Article 2(11) of the basic Regulation, for each company the adjusted weighted average normal value established for each product type was compared with the adjusted weighted average export prices of each corresponding product type.
- (59) On this basis, the dumping margins, expressed as a percentage of the cif import price at the Community border, duty unpaid, are the following:

|                                  |       |
|----------------------------------|-------|
| Far Eastern Textiles Corporation | 5,5 % |
| Shinkong Corporation             | 0 %   |

- (60) Since the level of co-operation was high (more than 80 % of the exports of the product concerned from Taiwan to the Community), the residual dumping margin was set at the same level as the one established for the co-operating exporting producer Far Eastern Textiles Corporation, namely 5,5 %.

### D. INJURY

#### 1. Definition of the Community Industry

- (61) Within the Community, the like product is manufactured by six producers, i.e. the two companies on behalf of which the complaint was lodged (Acordis and KoSa) and four additional producers. As indicated in recital 3 above, KoSa withdrew its support for the complaint on 8 March 2004.
- (62) One of the four other Community producers of the like product, the Spanish company Brilén, came forward after initiation to support the complaint and fully co-operated in the course of the proceeding.
- (63) Another Community producer, Honeywell, with production facilities, *inter alia*, in France submitted a questionnaire reply. After the submission of the questionnaire reply, Honeywell decided to oppose the proceeding.
- (64) The two Community producers that support the investigation, Acordis and Brilén, represented together around 40 % of the Community production of the product concerned during the IP. They are deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereafter be referred to as the 'Community industry'.
- (65) Given that the Community industry comprises only two producers, data relating to the Community industry had to be indexed in order to preserve confidentiality, pursuant to Article 19 of the basic Regulation.

## 2. Community consumption

- (66) Community consumption was established on the basis of the production of all producers of the like product in the Community, as estimated by the complainant, plus imports from all countries as reported by Eurostat, less exports to all countries as reported by Eurostat.
- (67) The Community consumption was found to have remained substantially stable for the period considered as it increased by only 1 %. Detailed data is as follows:

| Consumption  | 2000    | 2001    | 2002    | 2003 (IP) |
|--------------|---------|---------|---------|-----------|
| Tonnes       | 206 000 | 206 900 | 207 900 | 207 400   |
| <i>Index</i> | 100     | 100     | 101     | 101       |

## 3. Volume of the dumped imports and market share

- (68) Given that there was only one Taiwanese exporting producer of the product concerned found to be dumping during the IP, data relating to imports of the product concerned into the Community from that exporting producer had to be indexed in order to preserve confidentiality pursuant to Article 19 of the basic Regulation.
- (69) Information regarding volumes of dumped imports for the period between 2000 and the IP is based on that supplied by the co-operating exporting producer who was found to be dumping in the IP. Dumped imports originating in Taiwan decreased by 16 % between 2000 and 2001, but increased significantly in 2002 and during the IP for a total increase of 112 % during the period considered. The market share of dumped imports originating in Taiwan developed along the same lines. It should be noted that such market share was limited during the period considered and was always below 4 %.

| Imports          | 2000                                       | 2001 | 2002 | 2003 (IP) |
|------------------|--|------|------|-----------|
| Volumes (tonnes) | Cannot be disclosed (see recital 68 above) |      |      |           |
| <i>Index</i>     | 100  | 84   | 136  | 212       |
| Market share     | Cannot be disclosed (see recital 68 above) |      |      |           |
| <i>Index</i>     | 100  | 84   | 135  | 211       |

## 4. Prices of the imports concerned

- (70) Information regarding prices of dumped imports for the period between 2000 and the IP is based on that supplied by the co-operating exporting producer who was found to be dumping in the IP.

### (a) Evolution of prices

- (71) According to data collected in the course of the investigation, import prices from Taiwan continually decreased by a total of 29 % during the period considered.

| Import Prices   | 2000                                       | 2001 | 2002 | 2003 (IP) |
|-----------------|--|------|------|-----------|
| EUR (per tonne) | Cannot be disclosed (see recital 68 above) |      |      |           |
| <i>Index</i>    | 100  | 99   | 80   | 71        |

(b) *Price undercutting*

- (72) A comparison for comparable models of the product concerned was made between the exporting producer's and the Community industry's average selling prices in the Community. To this end, Community industry's ex-works prices to unrelated customers, net of all rebates and taxes have been compared with the cif Community frontier prices of the Taiwanese exporting producer who was found to be dumping in the IP, duly adjusted for post importation costs. The comparison showed that during the IP the product concerned originating in Taiwan sold in the Community undercut the Community industry's prices by around 25 %-30 %.

**5. Situation of the Community industry**

- (73) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

(a) *Production, production capacity and capacity utilisation*

- (74) After a period of relatively stable production between 2000 and 2002, the production of the product concerned by the Community industry increased by 4 % in the IP. The production capacity increased throughout the period considered by a total of 8 %.
- (75) Capacity utilisation initially decreased by 7 % between 2000 and 2001, but subsequently increased by 3 % until 2003 for a total decrease of 4 % during the period considered.

| Production           | 2000                                       | 2001 | 2002 | 2003 (IP) |
|----------------------|--|------|------|-----------|
| Production           | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i>         | 100  | 99   | 100  | 104       |
| Production capacity  | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i>         | 100  | 106  | 107  | 108       |
| Capacity utilisation | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i>         | 100  | 93   | 94   | 96        |

(b) *Stocks*

- (76) Stocks of the product concerned could only be analyzed for the period between 2001 and 2003, as the Community industry was not in a position to provide consistent information for the previous period. This was because one Community producer only started operations in 2001 and therefore had no stocks prior to that year and the other Community producer could not provide consistent information due to internal re-organisations.
- (77) Stocks decreased by 14 % between 2001 and 2002 and remained rather stable during the IP, for a total decrease of 12 % between 2001 and the IP.

| Stocks       | 2000                                       | 2001 | 2002 | 2003 (IP) |
|--------------|--|------|------|-----------|
| Tonnes       | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i> | N/A  | 100  | 86   | 88        |

(c) *Sales volume and market share*

- (78) The sales on the Community market of the product concerned manufactured by the Community industry decreased by 2 % from 2000 until 2002, but increased during the IP by 5 % for a total increase of 3 % during the period considered. At the same time, the market share decreased by 3 % between 2000 and 2002, but subsequently increased by 5 % in the IP for a total increase of 2 % in the period considered. The Community industry held a market share between 20 % and 30 % throughout the period considered.

| Sales                             | 2000                                       | 2001 | 2002 | 2003 (IP) |
|-----------------------------------|--|------|------|-----------|
| Community industry sales (tonnes) | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i>                      | 100  | 100  | 98   | 103       |
| Community industry market share   | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i>                      | 100  | 99   | 97   | 102       |

(d) *Sales prices*

- (79) The weighted average sales prices of all types of the like product sold by the Community industry initially increased by 4 % between 2000 and 2001. Prices subsequently fell by 12 % in 2002 and fell further by 5 % in the IP, for a total decrease of 13 % during the period considered.

| Sales Price                 | 2000                                       | 2001 | 2002 | 2003 (IP) |
|-----------------------------|--|------|------|-----------|
| Sales price (EUR per tonne) | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i>                | 100  | 104  | 92   | 87        |

- (80) Cost of production was calculated on the basis of the weighted average of all types of the like product produced by the Community industry in the respective year.
- (81) Cost of production increased between 2000 and 2001, but fell in 2002 before remaining relatively stable in the IP. It did not follow the decrease in sales prices to the same extent in 2002 and the IP.

| Costs                              | 2000                                       | 2001 | 2002 | 2003 (IP) |
|------------------------------------|--|------|------|-----------|
| Cost of production (EUR per tonne) | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i>                       | 100  | 108  | 101  | 102       |

(e) *Profitability*

- (82) The overall profitability of the Community industry in respect of the product concerned was initially between 10 % and 15 % in 2000. Profitability subsequently deteriorated and turned negative during the IP. This profitability relates to all types of the product concerned manufactured and sold by the Community industry in the Community. Profitability of Brilén was not taken into consideration in its first business year (2001) as it would have distorted the picture due to significant negative profitability during its start-up period of production of the like product.

| Profitability            | 2000                                       | 2001 | 2002 | 2003 (IP) |
|--------------------------|--|------|------|-----------|
| Profitability (EC sales) | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i>             | 100  | 92   | 28   | -22       |

- (83) It should be noted that one company claimed that their profitability would have been significantly worse if account had been taken of costs relating to underutilisation of their production facility. These additional costs, however, could not be taken into consideration as they were not sufficiently substantiated and could therefore not be verified.

(f) *Investments and return on investments*

- (84) Investment in the business of the product concerned significantly decreased during the period considered. It has to be noted that investments in 2000 were particularly high due to the expenses for building a new plant of one of the Community producers which accounts for roughly 50 % of all investments in that year. Detailed data is shown below:

| Investments            | 2000                                       | 2001 | 2002 | 2003 (IP) |
|------------------------|--|------|------|-----------|
| Investments (EUR '000) | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i>           | 100  | 77   | 34   | 51        |
| Return on investment   | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i>           | 100  | 94   | 20   | - 18      |

- (85) Return on investment continually decreased during period considered, turning negative during the IP. This decrease is in line with the deterioration of the overall profitability during the period considered.

(g) *Cash flow and ability to raise capital*

- (86) Cash Flow of the Community industry was relatively stable in 2000 and 2001 but deteriorated in 2002 and the IP, both in absolute values as well as expressed as a percentage of turnover. This development is in line with the development of the overall profitability during the period considered.

| Cash flow                                     | 2000                                       | 2001 | 2002 | 2003 (IP) |
|---|--|------|------|-----------|
| Cash flow (EUR '000)                          | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i>                                  | 100  | 101  | 48   | - 3       |
| Cash flow expressed as percentage of turnover | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i>                                  | 100  | 91   | 53   | - 4       |

- (87) Both Community producers raise capital internally within the company group. Investments and R&D expenses did not suffer significantly as a result of the negative profitability of the operations so far.

(h) *Employment, productivity and wages*

- (88) Employment decreased by 10 % during the period considered. Given that production increased over the period considered, the decrease in employment means that productivity, as measured by output per worker, has significantly increased by 16 % during the period considered. The increase in wage costs per worker is a result of collective bargaining at industry level and was less than the average inflation rate in the Community of 6,4 % during the period considered.

| Employment                            | 2000                                       | 2001 | 2002 | 2003 (IP) |
|---------------------------------------|--|------|------|-----------|
| Number of employees                   | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i>                          | 100  | 101  | 98   | 90        |
| Labour costs per employee (in EUR)    | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i>                          | 100  | 100  | 105  | 104       |
| Production per employee (tonnes/year) | Cannot be disclosed (see recital 65 above) |      |      |           |
| <i>Index</i>                          | 100  | 98   | 102  | 116       |

(i) *Magnitude of dumping*

- (89) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the prices of the imports from Taiwan, this impact cannot be considered to be negligible even though volumes of the imports were limited.

(j) *Recovery from past dumping or subsidization*

- (90) In the absence of any information on the existence of dumping or subsidization prior to the situation assessed in the present proceeding, this issue is considered irrelevant.

**6. Conclusion on injury**

- (91) Between 2000 and the IP, the volume of the dumped imports of the product concerned originating in Taiwan increased significantly by 112 %. However, as imports from Taiwan are relatively low in absolute figures, their share of the Community market increased by less than 2 %. The average prices of dumped imports from Taiwan were consistently lower than those of the Community industry during the period considered. Moreover, during the IP, the prices of the imports from Taiwan undercut those of the Community industry. On a weighted average basis, price undercutting was in the IP close to 30 %.
- (92) Some indicators experienced positive developments: over the period considered, production increased by 4 % and production capacity increased by 8 %, while stocks decreased by 12 %. Sales in the Community increased by 3 %, increasing the market share by 2 %. Production per employee increased by 16 % while labour costs per employee increased only by 4 % (below the average EU inflation rate of 6,4 % over the period considered).
- (93) Other indicators show a deterioration in the situation of the Community industry over the period considered. Over the period considered, the unit sales price declined by 13 % while the unit cost of production increased by 2 %, resulting in negative profitability. The return on investments and the cash-flow from operating activities followed the same negative trend. Employment decreased by 10 % and investment declined by 49 % (largely due to the building of a new plant in 2000 which accounted for roughly 50 % of total investments in that year).
- (94) In the light of the foregoing, it is concluded that the Community industry has suffered material injury within the meaning of Articles 3(1) and 3(5) of the basic Regulation.

**E. CAUSALITY**

**1. Introduction**

- (95) In accordance with Articles 3(6) and 3(7) of the basic Regulation, the Commission examined whether the dumped imports from Taiwan have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

## 2. Effects of the dumped imports

- (96) During the period considered, the volume of dumped imports increased by 112% and the price of dumped imports from Taiwan decreased by 29%. The Community industry's prices dropped by 13% over the same period, at a time when the costs of production increased by 2% thereby triggering a deterioration of profitability (around 10-15 percentage points over the period considered). The Community industry was, in fact, in a loss-making situation in the IP. Furthermore, the undercutting found was around 30% on average during the IP. Under these circumstances, it was found that the dumped imports exerted a certain pressure on the Community industry's prices and had some negative impact on the situation of the Community industry.
- (97) However, in assessing the effect of the dumped imports, it should also be considered that the volumes of dumped imports was always below 4%, and that their market share increased over the period considered by less than two percentage points, remaining always below 4%. In the light of these elements, it is difficult to establish with certainty the impact of the dumped imports on the injurious situation of the Community industry.

## 3. Effects of other factors

### Imports originating in other countries

- (98) Imports from other third countries decreased from 60 075 tonnes in 2000 to 51 813 tonnes in the IP, for an overall decrease of 14%. Average prices decreased from EUR 2,39 in 2000 to EUR 2,17 during the IP, an overall decrease of 9%. Prices varied significantly between the various exporting countries. Imports from other third countries mainly originated in Belarus, Japan, Korea, South Africa, Switzerland and the USA, collectively accounting for 25% of Community consumption. Although there are imports from a large number of other third countries, they individually account for less than 1% of Community consumption during the period considered.

| All Types      | 2000   |              |                | 2001   |              |                | 2002   |              |                | 2003 (IP) |              |                |
|----------------|--------|--------------|----------------|--------|--------------|----------------|--------|--------------|----------------|-----------|--------------|----------------|
|                | Tonnes | Market share | Price (EUR/kg) | Tonnes | Market share | Price (EUR/kg) | Tonnes | Market share | Price (EUR/kg) | Tonnes    | Market share | Price (EUR/kg) |
| Belarus        | 3 459  | 1,7 %        | 2,24           | 3 920  | 1,9 %        | 2,34           | 3 842  | 1,8 %        | 2,05           | 4 683     | 2,3 %        | 1,83           |
| <i>Indexed</i> | 100    | 100          | 100            | 113    | 113          | 104            | 111    | 110          | 92             | 135       | 134          | 82             |
| Japan          | 2 384  | 1,2 %        | 2,61           | 2 224  | 1,1 %        | 2,77           | 5 960  | 2,9 %        | 2,28           | 5 079     | 2,4 %        | 2,15           |
| <i>Indexed</i> | 100    | 100          | 100            | 93     | 93           | 106            | 250    | 248          | 87             | 213       | 212          | 82             |
| Korea          | 19 962 | 9,7 %        | 2,07           | 24 381 | 11,8 %       | 2,05           | 23 021 | 11,1 %       | 1,61           | 17 264    | 8,3 %        | 1,66           |
| <i>Indexed</i> | 100    | 100          | 100            | 122    | 122          | 99             | 115    | 114          | 78             | 86        | 86           | 80             |
| South Africa   | 3 533  | 1,7 %        | 2,80           | 3 236  | 1,6 %        | 3,14           | 3 071  | 1,5 %        | 2,48           | 3 318     | 1,6 %        | 2,45           |
| <i>Indexed</i> | 100    | 100          | 100            | 91     | 91           | 112            | 86     | 86           | 89             | 93        | 93           | 88             |
| Switzerland    | 10 751 | 5,2 %        | 3,13           | 9 804  | 4,7 %        | 3,40           | 11 472 | 5,5 %        | 2,65           | 7 728     | 3,7 %        | 3,16           |
| <i>Indexed</i> | 100    | 100          | 100            | 91     | 91           | 108            | 107    | 106          | 84             | 72        | 71           | 101            |
| USA            | 6 496  | 3,2 %        | 2,50           | 3 915  | 1,9 %        | 3,28           | 2 515  | 1,2 %        | 2,90           | 3 156     | 1,5 %        | 2,20           |
| <i>Indexed</i> | 100    | 100          | 100            | 60     | 60           | 131            | 39     | 38           | 116            | 49        | 48           | 88             |
| Others         | 13 466 | 6,5 %        | 2,12           | 9 172  | 4,4 %        | 2,34           | 9 632  | 4,6 %        | 2,32           | 10 581    | 5,1 %        | 2,35           |
| <i>Indexed</i> | 100    | 100          | 100            | 68     | 68           | 110            | 72     | 71           | 110            | 79        | 78           | 111            |
| Total          | 60 075 | 29,2 %       | 2,39           | 56 654 | 27,4 %       | 2,52           | 59 515 | 28,6 %       | 2,12           | 51 813    | 25,0 %       | 2,17           |
| <i>Indexed</i> | 100    | 100          | 100            | 94     | 94           | 106            | 99     | 98           | 89             | 86        | 86           | 91             |

- (a) *Imports not having a negative impact on the situation of the Community industry*
- (99) Imports originating in South Africa decreased by 7 % during the period considered. They only had a *de minimis* market share of 1,6 % during the IP and, based on Eurostat data, were not undercutting the Community industry prices during the IP either.
- (100) Imports originating in Switzerland decreased by 28 % during the period considered, and, based on Eurostat data, were not undercutting the Community industry prices. In addition, they represented a moderate market share of 3,7 % during the IP.
- (101) Imports originating in the USA decreased by 51 % during the period considered, and, based on Eurostat data, were undercutting the Community industry prices during the IP by less than 5 %. In addition, they only had a *de minimis* market share of 1,5 % during the IP.
- (102) The above findings are based on the available data, i.e. Eurostat statistics, which do not provide detailed information regarding the split of product types. However, it is concluded that, given the *de minimis* or moderate market shares held and the absence or low level of undercutting found, these imports from South Africa, Switzerland and the USA did not have a negative impact on the situation of the Community industry.
- (b) *Imports having a negative impact on the situation of the Community industry*
- (103) Imports originating in Japan increased by 113 % during the period considered, but were initially at a very low level. They represented a market share of 2,4 % during the IP and, based on Eurostat data, were undercutting the Community industry prices during the IP by less than 8 %.
- (104) Imports originating in Belarus increased by 35 % during the period considered, but were initially at a low level. They represented a market share of 2,3 % during the IP, but were significantly undercutting the Community industry prices during the IP by around 30 %. Imports originating in Belarus were subject to the investigation and the aforementioned result of the undercutting is the result of a detailed product comparison.
- (105) Imports originating in Korea initially increased by 22 % between 2000 and 2001, but subsequently decreased by 36 %, for an overall drop of 14 %. They represented a market share of 8,3 % during the IP and were undercutting the Community industry prices during the IP by around 5 %-15 %. Imports originating in Korea were subject to the investigation and the aforementioned result of the undercutting is the result of a detailed product comparison.
- (106) It should be noted that dumped imports from Taiwan only account for less than 4 % of the EC market, while the combined market share of imports from Korea, Japan and Belarus and the non-dumped imports from Taiwan was about 13 %-14 %, i.e. almost around four times the share of the Taiwanese dumped imports. The imports from the four aforementioned sources undercut Community industry prices significantly. A type-by-type comparison between, on the one hand, the imports from Belarus, Korea and the non-dumped imports from Taiwan and, on the other hand, the sales of the Community industry has been done. This comparison showed that more of the imports from Belarus, Korea and the non-dumped imports from Taiwan compete directly with higher value Community products than the dumped imports from Taiwan. Thus, imports from Belarus, Korea and the non-dumped imports from Taiwan had a clear impact on the Community industry. On this basis, it was concluded that the volume and price effect of the imports from Korea, Japan, and Belarus and the non-dumped imports from Taiwan are such that it is no longer possible to establish a causal link between the dumped imports from Taiwan and the material injury suffered by the Community industry. Indeed, in these circumstances the dumped imports from Taiwan cannot have played more than a peripheral role.

#### 4. Conclusion on causation

- (107) The above analysis has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the dumped imports. The injury suffered by the Community industry is mainly due to a price depression caused by import prices from third countries which undercut those of the Community industry. Given (i) the limited market share of the dumped imports from Taiwan (less than 4%) and the much more important market share of imports from countries other than Taiwan plus the non-dumped imports from Taiwan (around 13%-14%) and (ii) the undercutting practiced by these imports, it can be concluded that the injury suffered by the Community industry is to a substantial part caused by imports of high tenacity polyester yarns other than those from the dumping Taiwanese exporter. The causal link within the meaning of Article 3(6) and 3(7) of the basic Regulation between the dumped imports from Taiwan, taken in isolation, and the material injury suffered by the Community industry could therefore not be established.

#### F. CONCLUSION

- (108) The proceeding should therefore be terminated, as dumping margins from both Belarus and Korea are *de minimis* and due to the lack of a clear causal link between dumping and injury insofar as imports originating in Taiwan are concerned,

DECIDES:

##### *Article 1*

The anti-dumping proceeding concerning imports of high-tenacity yarn of polyesters (other than sewing thread), not put up for retail sale, including monofilament of polyesters of less than 67 decitex, falling within CN code 5402 20 00 and originating in Belarus, the Republic of Korea and Taiwan, is hereby terminated.

##### *Article 2*

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

Done at Brussels, 5 April 2005.

*For the Commission*  
Peter MANDELSON  
*Member of the Commission*

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