

## COMMISSION DECISION

of 19 June 2007

**terminating the anti-dumping proceeding concerning imports of synthetic staple fibres of polyesters (PSF) originating in Malaysia and Taiwan and releasing the amounts secured by way of the provisional duties imposed**

(2007/430/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

(4) Some interested parties submitted comments in writing. Those parties who so requested were also granted an opportunity to be heard orally.

Having regard to the Treaty establishing the European Community,

(5) The Commission continued to seek all information it deemed necessary for the purpose of its definitive findings. Based on these findings it arrived at the conclusion that compelling reasons existed on Community interest not to impose anti-dumping measures on imports of PSF from the countries concerned.

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> ('basic Regulation'), and in particular Article 9 thereof,

After consulting the Advisory Committee,

(6) The Commission disclosed all the essential facts and considerations on the basis of which it intended to terminate the proceeding. The interested parties were also granted a period within which to make presentations subsequent to this disclosure and were granted an opportunity to be heard orally. The written and oral comments submitted by the interested parties were considered and, where appropriate, taken into account for the definitive findings.

Whereas:

## A. PROCEDURE

(1) On 3 March 2006, the Commission received a complaint pursuant to Article 5 of the basic regulation concerning injurious dumping of imports of synthetic staple fibres of polyesters (PSF) originating in Malaysia and Taiwan. The complaint was lodged by CIRFS (Comité International de la Rayonne et des Fibres Synthétiques) representing more than 50 % of the total Community production of PSF.

(7) Originally, after consultation of the advisory Committee, the Commission submitted to the Council a report on the results of the consultation, together with a proposal that the proceeding be terminated on grounds of Community interest.

(2) Following the initiation of an anti-dumping investigation on 12 April 2006, the Commission, by Regulation (EC) No 2005/2006<sup>(2)</sup>, imposed provisional anti-dumping duties on imports into the Community of synthetic staple fibres of polyesters ('PSF') originating in Malaysia and Taiwan ('provisional Regulation'). The provisional anti-dumping duties which took the form of ad valorem duties ranging between 12,4 % and 23 % for Malaysia and 14,7 % and 29,5 % for Taiwan applied as of 29 December 2006.

## B. WITHDRAWAL OF THE COMPLAINT AND TERMINATION OF THE PROCEEDING

(8) In the meantime, by letter dated 23 May 2007 and addressed to the Commission, the complainant formally withdrew its complaint concerning the imports of synthetic staple fibres of polyesters (PSF) originating in Malaysia and Taiwan.

(3) Following the publication of the provisional Regulation, parties received disclosure of the facts and considerations on which the provisional Regulation was based. All parties were granted a period within which to make presentations subsequent to the disclosures.

(9) In accordance with Article 9(1) of the basic Regulation, the proceeding may be terminated where the complaint is withdrawn unless such termination would not be in the Community interest.

(10) The Commission considered that the present proceeding should be terminated since the investigation had not brought to light any considerations showing that such termination would not be in the Community interest.

<sup>(1)</sup> 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).

<sup>(2)</sup> OJ L 379, 28.12.2006, p. 65.

(11) Indeed, during the investigation the Commission contacted all parties known to be concerned to obtain their views. In addition to the Community industry, users and users associations made submissions and/or have been heard concerning the possible impact of the imposition of definitive measures. Based on these new findings, the Commission arrived at the conclusion that compelling reasons exist on grounds of Community interest not to impose anti-dumping measures on imports of PSF from the countries concerned. An appreciation of the various interests taken as a whole was made on the basis of the arguments explained below.

#### Impact on importers and users

(12) Indeed, following the imposition of provisional measures, one importer, a large number of users and users associations came forward and claimed that the level of the measures was particularly high and that they were, as a consequence, prevented from importing from their largest sources of supply in Asia. They confirmed the arguments already put forward by other users before the imposition of provisional measures, described in recitals 156 to 158 of the provisional Regulation, and made new claims.

(13) In order to examine in detail the relevance of the new issues raised by users' industries, the Commission requested the parties to provide data and supporting evidence encouraging all users and their associations to further cooperate in the investigation. Cooperation increased compared to the situation before the imposition of provisional measures, as users representing over 10 % of total Community consumption of PSF and about 15 % of total imports from the countries concerned cooperated in the investigation. The participation of major users associations in the investigation (representing companies that account for more than 50 % of total consumption of PSF in the Community) was also taken into consideration, thereby confirming that the findings and conclusions reached on the need to terminate the investigation on grounds of Community interest were sufficiently substantiated.

(14) According to users, the imposition of measures will aggravate the shortages of PSF supply because the Community industry is not able to satisfy EU demand. This situation will also play a role in increasing the price of PSF and thus prices of products in the downstream industries, threatening their competitiveness in a market where low-priced imports of finished products play an important role. Under these circumstances, losses in employment in the Community industries using PSF are to be expected in the short term.

#### (a) Shortages of supply

(15) PSF users claim that they will become more dependent on imports from a very limited number of producers in other third countries as the supply offered by

Community producers in general for all types of PSF is deteriorating. This is due to the industrial conversion of Community producers from PSF to other products. For example, La Seda de Barcelona has reduced its production of PSF in order to increase its output of Polyethylene Terephthalate (PET). Similarly, the production problems caused by the fire in Trevira in December 2006 and the financial difficulties of Tergal (under administration due to insolvency ('procedure de sauvegarde') since November 2006) which was the most reliable supplier of PSF for the spinning industry are aggravating the supply problems. Finally, it must be recalled that one of the Community producers (Pennine Fibres) went bankrupt.

(16) Users, mainly bedding and upholstering material manufacturers fear serious shortages, in particular for the following fibres used in the non-woven industry<sup>(1)</sup>:

1. HCS (hollow conjugated siliconised) for which only one Korean producer (apart from the Taiwanese suppliers) is able to deliver large quantities within a reasonable period of time;

2. LMP: Allegedly, only one firm in Korea would be able to supply that fibre in rather large quantities.

(17) Furthermore, the additional data supplied by one co-operating Community producer after provisional disclosure show that the types of PSF sold by the Community industry and the imported types of PSF from Malaysia and Taiwan are different.

(18) Community users also claimed that it is difficult to switch to other sources of supply, notably in third countries not subject to anti-dumping measures. It was argued that it takes time for exporting producers of PSF to resume their exports to the Community, especially in the light of the risk that duties would be re-introduced as soon as their import volumes reached a certain volume level. Moreover, even if users were able to purchase PSF from new suppliers located in other countries, they need to test whether the types of PSF manufactured by these producers are suitable for their specific productions. In any event, users stated that there are no producers in the Community or in third countries not subject to anti-dumping measures which have the requested capacities to supply enough of the specific fibres produced in Taiwan.

<sup>(1)</sup> This is confirmed by independent sources. It is indeed stated in the August 2006 PCI report at page 16 that 'In certain cases, the European industry is unable to replicate the offering of the East Asian Industry-particularly in the low melt and bicomponents sector- and this will remain an area of vulnerability for European textile companies'.

- (19) The available Eurostat figures show that imports from Indonesia, Thailand and India, for which anti-dumping measures were repealed as from the end of October 2006, have increased rapidly in relative term up to the end of 2006. This may suggest that other sources of supply are already available in the Community market. However, the volume concerned is still relatively low and they cannot respond rapidly to the users' demand. It is therefore very likely that, if measures are imposed on imports from Taiwan and Malaysia, users will have to order a large share of their fibres from countries subject to anti-dumping duties.
- (20) In relation to the argument raised in recital 158 of the provisional Regulation regarding the limited capacity of the Community industry compared to the needs of Community users of PSF, the Community industry did not offer any comment. The evidence indicates that the Community industry and other Community producers are not in a position to make the necessary efforts to satisfy the Community demand. Moreover, the investigation carried out after the imposition of provisional measures has shown that Community users are running into serious difficulties when trying to obtain certain types of PSF from third countries not subject to anti-dumping measures.
- (21) There are also indications showing that the increased demand in other third countries of certain types of PSF not available in the Community has already led to price increases. The other sources of supply are therefore also affected by the situation created by imposition of measures.
- (22) Based on the above, even if there are some alternative sources of supply which are available to Community users, and in spite of the fact that new plants of PSF would have been installed recently<sup>(1)</sup> and the capacity in Trevira would have been restored by the end of March 2007, the supply of PSF may remain problematic in the Community market.
- (b) *Price increases for PSF*
- (23) Community users of PSF claimed that following the imposition of provisional measures, they are suffering from significant price increases for certain types of PSF not only from the countries concerned but also from
- other suppliers located in Korea and in India. The fact that the demand has increased compared to available sources of supply not subject to anti-dumping measures also led to increase the price of PSF on the Community market.
- (24) Users provided information showing price increases in specialty fibres offered by suppliers in other third countries following the imposition of provisional anti-dumping measures on imports originating in Taiwan and Malaysia. The fact that Community users cannot fully rely on Community suppliers for certain types of PSF or on others established in other third countries not subject to anti-dumping measures, is likely to lead to further price increases in the short term.
- (c) *Cost impact of the proposed measures*
- (25) The further analysis carried out on the possible impact of the imposition of measures revealed that the bedding and upholstering industry may probably be more sensitive to possible raw material price increases than the spinning sector. Manufacturers of pillows, quilts, cushions, upholstery etc. have a profit margin below 5 % on average and PSF accounts for up to 30 % of their total cost of production. Given that they are the main users of LMP and HCS for which the alleged shortage of supply in the Community is likely to worsen with the imposition of measures, the likely impact on their costs of production may be as high as 6-8 %.
- (26) It is clear that with such an increase in costs, the bedding industry will be seriously affected by the increasing competition they are facing from China on finished products and they will not be able to make attractive offers to their clients, namely the large chains of retailers with an extremely strong buyer market power. A decision to impose anti-dumping duties on imports from Malaysia and Taiwan will lead to further weaken their competitiveness.
- (27) It was concluded in recital 164 of the provisional Regulation that the impact of the proposed measures on the downstream industry will be limited. Based on the above facts and considerations, the further investigation showed that on average the costs increase of users will be in a range of 0,4-1,5 % and can attain 6 %-8 % in the bedding industry, in particular in the case of users that obtain most of their PSF from Taiwan. Thus, the impact will not be evenly spread on the users and the economic situation of certain users will be seriously affected.

<sup>(1)</sup> According to the claims made by the Community industry, new plants of PSF have been installed in Poland, Romania and Bulgaria in 2006. However, no data have been provided on whether this would lead to an increase in capacity compared to the situation during the IIP. No indications have been supplied either on the evolution of the capacity of the EU industry in correlation to the evolution of demand.

*(d) Price increases for downstream products*

(28) Users also claimed that should the anti-dumping measures be maintained at the current level on imports originating in Taiwan and Malaysia, it is inevitable that prices for downstream products will increase in the Community market. This in turn would trigger an increase in imports of low-priced downstream products and add to the problems encountered by the users industries. Recent statistics clearly show that after anti-dumping measures were imposed on imports of PSF from China import volumes of certain ready goods incorporating PSF <sup>(1)</sup> increased by 39 %.

(29) It is true that there has been a correlation between the imposition of anti-dumping measures on Chinese PSF and the increase of imports of downstream products from China. The statistics show that this is not an isolated situation and past anti-dumping measures on PSF from various third countries have led to the same reaction from the countries concerned. Either the price increases of PSF will be borne fully by consumers of downstream products or there will be cuts in employment in the Community downstream industry if they cut their production due to increased imports from third countries.

*(e) Consequences for employment in the Community market*

(30) The investigation showed that the production of PSF is not a labour intensive activity. The Community industry employs less than 700 people in the Community and total employment for PSF production in the Community is less than 3 000 jobs. Since, as indicated above, most of the PSF types sold by the Community industry are different from the types of imported PSF from Malaysia and Taiwan, and taking into account that demand of PSF in the Community is steadily increasing, it is not considered that many jobs are at risk if definitive measures are not imposed.

(31) However, according to the figures provided to the Commission, users accounting for around 10 % of Community PSF consumption employ more than 7 000 people in the manufacture of products incorporating PSF. It can therefore be assumed that around 70 000 jobs depend on the users' industry in the present case and at least 10 % are in the bedding and upholstery industry which, as indicated above, has very low profit margins and is the main user of LMP and HCS fibres. Moreover, based on the share of labour costs on the cost of production of the users' industries, it was found that an average cost impact of 1 % is equivalent to 2,5 % to

7,75 % labour costs. Accordingly, the imposition of definitive measures may lead to substantial job losses in the short term in the Community downstream industry to compensate for the raw material cost increase or following the likely shutdown or decrease of production in the bedding industry.

**Impact on the Community industry**

(32) Impact on the Community industry was also analysed before they withdrew their complaint. The information available showed that Community producers are not supplying all users in the Community with the quantities and types of PSF requested.

(33) Furthermore, the investigation showed that the level of investment by the Community industry was low for a capital intensive activity and producers preferred to invest in other products such as PET.

**Impact on suppliers of raw materials**

(34) As indicated in recital 166 of the provisional Regulation, only one provider of raw material cooperated in the investigation. He expressly supported the imposition of duties, which would allow the Community industry to remain viable and would also secure its own position. He did not provide information concerning the impact of imposition or non-imposition of measures on his business.

**Impact on the environment**

(35) It was argued by the Community industry, which allegedly produces 40 % of PSF from recycled PET bottles, and by one association of producers active in the recycling sector that failure to take definitive measures on dumped PSF imports from Malaysia and Taiwan will reduce the capacity of the Community industry to convert waste bottles into PSF. Also, they argued that the non-imposition of measures will have a negative impact on the environment since it will increase the emissions of CO<sub>2</sub> if the recycling industry were to ship outside Europe the plastic wastes it sells now to the Community producers of PSF.

(36) First, it has to be pointed out that a substantial amount of the fibres imported from the countries concerned are LMP or used by the spinning industry and, according to the information available at this stage, LMP and most of the fibres used for the spinning industry need to be made from virgin material.

<sup>(1)</sup> Articles of bedding and similar furnishings (quilts, eiderdowns, cushions, pouffes and pillows) fitted with other material than feathers whether or not covered (CN code 9404 90 90).

- (37) Second, according to the evidence submitted to the Commission, there is an important and growing demand of recycled PET bottles from Asia and the non-imposition of anti-dumping measures will not preclude PET bottle recyclers from selling their products on the world market.
- (38) Finally to the extent that the arguments on CO<sub>2</sub> could play a role in trade defence policy, it has been put forward for the first time one year after the initiation of the present procedure, which makes it impossible to duly verify its veracity.

#### Conclusion on Community interest

- (39) Taking into account the submissions made by the various parties and the results of the investigation, it is concluded that the imposition of definitive anti-dumping measures against dumped imports of PSF originating in Malaysia and Taiwan will impact significantly on the Community users. The conclusion, as set out in recital 168 of the provisional Regulation, cannot therefore be confirmed.
- (40) The overall advantages to be gained by the Community industry must be weighted against the probable disadvantages, in particular for users and, to some extent for consumers. The volume and the variety of supply offered by Community producers are deteriorating. This is due, among other reasons, to the industrial conversion of Community producers from PSF to other products (for example la Seda de Barcelona) and the financial difficulties of Tergal. There is a supply problem in the Community market for certain types of fibres and the Community producers cannot or are not willing to make the necessary efforts to meet the demand. Furthermore, it is likely that the imposition of duties will lead to substantial price increases of certain types of PSF which are not available in sufficient quantities in the Community. Moreover, account should be taken of the fact that certain users of PSF (in particular the bedding industry) have very low profit margins and will have to pass on to consumers any price increase in PSF or abandon their activities in case competition from third countries would not allow them to increase their prices.
- (41) Having regard to the above, it cannot be concluded that, following the withdrawal of the complaint, termination would not be in the Community interest.

- (42) Interested parties were informed accordingly and were given the opportunity to comment.
- (43) It is therefore concluded that the anti-dumping proceeding, concerning imports into the Community of synthetic staple fibres of polyesters (PSF) originating in Malaysia and Taiwan should be terminated without the imposition of anti-dumping measures.
- (44) Any duties provisionally secured on the basis of Regulation (EC) No 2005/2006 should be released,

HAS DECIDED AS FOLLOWS

#### Article 1

The anti-dumping proceeding concerning imports of synthetic staple fibres of polyesters, not carded, not combed or otherwise processed for spinning, falling within CN code 5503 20 00, originating in Malaysia and Taiwan is hereby terminated.

#### Article 2

Regulation (EC) No 2005/2006 is hereby repealed.

#### Article 3

The amounts secured by way of provisional anti-dumping duty imposed pursuant to Regulation (EC) No 2005/2006 shall be released.

#### Article 4

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, 19 June 2007.

For the Commission  
Peter MANDELSON  
Member of the Commission