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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 893/2008

of 10 September 2008

maintaining the anti-dumping duties on imports of polyester staple fibres originating in Belarus, the People's Republic of China, Saudi Arabia and Korea following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96

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),

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

Whereas:

A. PROCEDURE

1. Measures in force and subject to review

- (1) The Council, by Regulation (EC) No 428/2005⁽²⁾ imposed a definitive anti-dumping duty on imports of polyester staple fibres (PSF as defined in more detail in recital (15)) originating in the People's Republic of China (PRC) and Saudi Arabia and amended Regulation (EC) No 2852/2000⁽³⁾ imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the Republic of Korea (Korea). On 8 July 2008, the Court of First instance annulled Article 2 of Regulation (EC) No 428/2005, to a limited extent, in relation to the anti-dumping duty imposed on exports into the European Community of goods produced and exported by the Korean company Huvis Corp⁽⁴⁾.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 71, 17.3.2005, p. 1.

⁽³⁾ OJ L 332, 28.12.2000, p. 17.

⁽⁴⁾ Case T-221/05.

2. Measures expired and subject to review

- (2) The Council, by Regulation (EC) No 1799/2002⁽⁵⁾ imposed a definitive anti-dumping duty of imports of PSF originating in Belarus. The measures imposed by that Regulation expired on 11 October 2007.

3. Previous investigation concerning imports of PSF originating in Malaysia and Taiwan

- (3) Following a withdrawal of the complaint, the Commission, by Decision 2007/430/EC⁽⁶⁾ (the termination Decision) terminated an anti-dumping proceeding concerning imports of PSF originating in Malaysia and Taiwan (the previous investigation). In accordance with Article 9(1) of the basic Regulation it was considered that the termination of anti-dumping duties on imports from Malaysia and Taiwan was not against the Community interest.

4. Present investigation

- (4) Having determined that there was sufficient *prima facie* evidence that the measures in force at the time could be no longer appropriate because their maintenance could be against the Community interest, the Commission initiated, on its own initiative, on 30 August 2007, by a notice published in the *Official Journal of the European Union*⁽⁷⁾, a partial interim review of the measures, in force on that date, applicable to imports of PSF originating in Belarus, Korea, Saudi Arabia and the PRC (the countries concerned). The review is limited to the examination of whether or not the continued imposition of measures is not against the Community interest, with the decision thereon possibly having retroactive effect as of 22 June 2007, i.e. the entry into force of the termination Decision.

⁽⁵⁾ OJ L 274, 11.10.2002, p. 1.

⁽⁶⁾ OJ L 160, 21.6.2007, p. 30.

⁽⁷⁾ OJ C 202, 30.8.2007, p. 4.

(5) As mentioned above, the anti-dumping measures imposed on imports originating in Belarus lapsed on 11 October 2007. As a consequence, the review concerning Belarus has been discontinued. However, it was formally conducted until that date and the Commission considered in particular the question of retroactive repeal of measures in force between 22 June 2007 and 11 October 2007, should the conclusions warrant this.

5. Parties concerned

(6) The Commission officially advised the Community producers, the suppliers, the importers and users as well as associations of users and producers, exporters, and representatives of the countries concerned of the initiation of the proceeding. All interested parties were given the opportunity to make their views known in writing and to request a hearing.

(7) All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing. Complete questionnaire replies were received from 12 producers, 10 users, three importers, one European association of producers, one Austrian-German association of producers, one German federation of users, two associations belonging to this federation and one European association of users.

(8) Further, the Commission received submissions from other producers, users and importers which did not provide a complete answer to the questionnaire.

(9) Among the producers and users that participated in the investigation there are two vertically integrated groups that produce PSF (in part or in whole) for captive consumption.

(10) Finally, one association of Chinese exporters and two Korean exporters, assisted by their Authorities, have made their views known.

(11) Exporters from Belarus and Saudi Arabia did not make their views known. In addition, no parties made comments regarding the measures in relation to these two countries.

(12) The Commission sought and verified all information it deemed necessary to determine whether or not the continued imposition of the measures is against the Community interest. Verification visits were carried out at the premises of the following interested parties:

(a) Community producers

— Silon (Czech Republic),

— Trevira GmbH (Germany),

— Advansa (Germany),

— Wellman International Ltd (Ireland);

(b) Community users

— PGI Nonwovens B.V (The Netherlands),

— Libeltex BVBA (Belgium),

— Lück GmbH (Germany);

(c) Community user and producer

— ORV Manufacturing SpA (Italy);

(d) associations of users

— Gesamtverband Textil + Mode (Confederation of the German Textile and Fashion Industry),

— Edana (European Disposables And Non-woven Applications).

6. Investigation period

(13) The review investigation period (RIP) covered the period from 1 July 2006 to 30 June 2007. The examination of trends relevant for the assessment covered the period from 1 January 2004 to the end of the RIP (the period considered).

(14) It is recalled that in the previous investigation, the investigation period covered the period from 1 January to 31 December 2005 and the examination of trends relevant for the assessment covered the period from 1 January 2002 to 31 December 2005.

B. PRODUCT CONCERNED AND LIKE PRODUCT

Product concerned

(15) The product concerned is the same as in the investigations mentioned in recitals (1) to (3): synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning. It is currently classifiable within CN code 5503 20 00. It is commonly referred to as polyester staple fibres (PSF).

- (16) The product is a basic material used at various stages of the manufacturing process of textile products. The Community consumption of PSF is either used for spinning, i.e. manufacturing filaments for the production of textiles, mixed 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.

C. SITUATION ON THE COMMUNITY MARKET

1. Consumption in the Community

- (17) The determination of total Community consumption was based on the import and export statistics from Eurostat and the production of the Community industry (as defined in recital (26)), and other Community producers.

Table 1

Community consumption	2004	2005	2006	RIP
Volume (tonnes)	834 141	843 579	822 509	823 667
Index (2004 = 100)	100	101	99	99

- (18) As shown in the table above, consumption of PSF has slightly decreased during the period considered. This trend is in clear contrast with the situation examined in the previous investigation where consumption in the Community, as indicated in the Regulation imposing provisional duties ⁽⁸⁾, increased by 3 % during the period considered in that investigation (2002 to 2005).

2. Imports from Belarus, the PRC, Saudi Arabia and Korea: volume, market share and import prices

- (19) The volume of imports into the Community from the countries concerned decreased by 28 % between 2004 and the RIP and the market share went from 24,4 % to 18 % whereas prices increased by 16 %. The data are based on Eurostat statistics.

Table 2

Imports from the countries concerned	2004	2005	2006	RIP
Korea				
Volume (tonnes)	122 260	108 407	111 967	133 574
Index (2004 = 100)	100	87	92	109
Market share	15,1 %	13,2 %	14,1 %	16,9 %
Prices 000 EUR/tonne	0,987	1,115	1,079	1,114
Index (2004 = 100)	100	113	109	113
PRC				
Volume (tonnes)	45 713	38 103	2 283	8 935
Index (2004 = 100)	100	83	5	20
Market share	5,7 %	4,6 %	0,3 %	1,1 %
Prices 000 EUR/tonne	0,92	0,97	1,06	1,10
Index (2004 = 100)	100	105	115	120

⁽⁸⁾ Commission Regulation (EC) No 2005/2006 of 22 December 2006 imposing provisional anti-dumping duties on imports of synthetic staple fibres of polyesters (PSF) originating in Malaysia and Taiwan (OJ L 379, 28.12.2006, p. 65).

Imports from the countries concerned	2004	2005	2006	RIP
Belarus				
Volume (tonnes)	1 771	153	81	43
Index (2004 = 100)	100	8	4,5	2,4
Market share	0,2 %	0 %	0 %	0 %
Prices 000 EUR/tonne	0,97	1,17	1,16	1,26
Index (2004 = 100)	100	121	120	130
Saudi Arabia				
Volume (tonnes)	27 805	6 433	450	72
Index (2004 = 100)	100	23	2	0,3
Market share	3,4 %	0,8 %	0,1 %	0 %
Prices 000 EUR/tonne	0,93	1,05	1,21	0,9
Index (2004 = 100)	100	113	130	97
Total countries concerned				
Volume (tonnes)	197 549	153 096	114 781	142 624
Index (2004 = 100)	100	77	58	72
Market share	24,4 %	18,7 %	14,5 %	18 %
Prices 000 EUR/tonne	0,96	1,08	1,08	1,11
Index (2004 = 100)	100	112	112	116

- (20) The sharp increase of imports from Korea during the RIP was mainly due to the imposition of provisional anti-dumping duties on Taiwanese imports during the first semester of 2007 ⁽⁹⁾. Both Korea and Taiwan are the main suppliers of Low Melt Polyester (LMP) and Hollow Conjugated Siliconised polyester (HCS). Since the level of provisional duties imposed on Taiwanese imports reached 29,5 % for certain companies, Community importers decided to source LMP and HCS from Korea where the level of anti-dumping duties was significantly lower.

3. Imports from other third countries: volume, market share and import prices

Table 3

Imports from other third countries	2004	2005	2006	RIP
Volume (tonnes)	171 633	225 748	278 392	256 291
Index (2004 = 100)	100	132	162	149
Market share	21 %	28 %	35 %	32 %
Prices 000 EUR/tonne	1,09	1,20	1,15	1,15
Index (2004 = 100)	100	110	106	106

- (21) During the period considered imports from other third countries have increased by 49 %. The reason for such increase is linked to the imposition in March 2005 of anti-dumping duties on imports from Saudi Arabia and the PRC and the repeal of anti-dumping measures on imports from Indonesia, Thailand and India in October 2006.

⁽⁹⁾ See footnote 8.

- (22) Globally, imports have therefore increased from approximately 370 KT to approximately 400 KT over the period. If one uses the investigation period of the previous investigation as a starting point, the increase has been from approximately 380 KT to approximately 400 KT.

D. SITUATION OF THE COMMUNITY INDUSTRY

1. Level of cooperation

- (23) During the RIP, PSF was manufactured by 19 producers in the Community. Cooperation from Community producers was very high in this investigation. Amongst the 19 community producers, 12 producers accounting for 70 % of production have fully cooperated. Other Community producers have made submissions in relation to the investigation but have not provided full cooperation. Moreover, two associations of producers (CIRFS and IVC)⁽¹⁰⁾ have also submitted their comments. In addition, all Community producers have provided information on their production. If all submissions received (individual producers and associations) are taken into account, it can be concluded that Community producers accounting for 88 % of Community production have made their views known and are against the termination of the measures. This level of cooperation is significantly higher than in the previous investigation where only three companies accounting for slightly more than 25 % of Community production and one association of producers (CIRFS) cooperated with the Commission and subsequently withdrew the complaint.
- (24) The Commission examined all relevant economic factors and indices having a bearing on the situation of the Community producers.

2. Definition of Community production and Community industry

- (25) As indicated above, during the RIP, PSF was manufactured by 19 producers in the Community. These 19 producers thus constitute the total Community production within the meaning of Article 4(1) of the basic Regulation.
- (26) Twelve Community producers (Advansa GmbH, Fibracat Europa S.L., Fidion S.r.l., Frana Polifibre SpA, Greenfiber International S.A., IMP Comfort Sp.z o.o., Märkische Faser, Nurel S.A., ORV Manufacturing SpA, Silon s.r.o., Trevira GmbH and Wellman International Ltd) fully cooperated in the investigation. During the RIP they produced 347 640 tonnes and they account for 70 % of Community production. Accordingly they represented a major proportion of the total Community production of the product concerned during the RIP.
- (27) It was therefore considered that the 12 Community producers that have fully cooperated with the investigation represented the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation. They are herein referred to as the 'Community industry'.

3. Economic situation of the Community industry

Production

- (28) Between 2004 and the RIP, production and market share of the Community industry evolved as follows:

Table 4

	2004	2005	2006	RIP
Production volume (tonnes)	317 450	307 043	321 127	347 640
Index (2004 = 100)	100	97	101	110
Market share	36,9 %	32,4 %	38,6 %	41,8 %

⁽¹⁰⁾ CIRFS (The International Rayon and Synthetic Fibres Committee, the representative body for the European man-made fibre industry) and IVC (Industrievereinigung Chemiefaser e.V., Association of the German and Austrian Man-Made Fibres Industries).

- (29) After a decrease in 2005, Community production has increased by 10 % compared to the situation in 2004. This increase is linked, *inter alia*, to the setting up of new PSF plants in Poland and Romania in 2006. It is expected that production will continue to grow in the future with the consolidation of the activities of the new abovementioned plants and the starting up of another plant in Bulgaria with an annual capacity of between 12 000 and 14 500 tonnes. As for market share, it also decreased in 2005 and rose in 2006 and 2007. If we compare this table with production of the Community industry of the previous investigation (as defined in recital (70) of the Regulation imposing provisional duties) ⁽¹⁾ during the period considered in that investigation (2002 to 2005), the trend has changed. Indeed, between 2002 and 2005, the production of that Community industry decreased by 9 % whereas during the period considered in this investigation production of Community industry has increased by 10 %. As regards market share the situation is different as well. Indeed, market share of the Community industry in the previous investigation decreased by 2,3 percentage points whereas in the present investigation the market share of the Community industry has increased by almost 5 percentage points.

3.1. Production capacity and capacity utilisation

- (30) Between 2004 and 2005 there was a decrease in capacity of 6 %. As from 2006 capacity started to increase and reached a level of almost 413 000 tonnes during the RIP (almost 13 % higher than in 2004). This increase was mainly due to the fact that two of the cooperating producers have installed new plants in Poland and Romania that started to operate in 2006. As for capacity utilisation, it decreased by 2,4 percentage points during the period considered. The cause of this decrease was in all likelihood linked to the installation of new capacities and the decrease in consumption in the Community. Data concerning production capacity are in stark contrast with data obtained in the previous investigation where the capacity of the Community industry decreased by 9 % during the period considered (2002 to 2005).

Table 5

	2004	2005	2006	RIP
Capacity in tonnes	366 062	344 872	378 931	412 916
Index (2004 = 100)	100	94	103,5	112,7
Capacity utilisation	86,8 %	89,3 %	85 %	84,4 %

3.2. Turnover and quantities sold

Table 6

	2004	2005	2006	RIP
Turnover 000 EUR	391 259	388 502	403 189	443 540
Index (2004 = 100)	100	99	103	113
Sales in the Community (tonnes)	281 083	259 314	272 553	300 051
Index (2004 = 100)	100	92	97	107

- (31) During the period considered the turnover of the Community industry in the Community and the quantity of PSF sold have increased by 13 % and 7 % respectively. These increases are linked to the starting up of two new plants in 2006 in Poland and Romania. If we compare these data with those of the previous investigation where there was a decrease of 1 % in sales volume during the period considered, the situation has radically changed and evidence shows that Community industry has made a significant effort to meet the demand.

⁽¹⁾ See footnote 8.

3.3. Sales prices and costs

- (32) The unit sales price of the Community industry in the EU increased by 6,2 % during the period considered (from 1 392 EUR/tonne in 2004 to 1 478 EUR/tonne during the RIP). However, there has been a slight decrease in prices since 2005. The average cost rose by 9,7 % (from 1 388 EUR/tonne in 2004 to 1 523 EUR/tonne during the RIP). This increase in costs was mainly due to the fact that the average cost of most of the raw materials (due *in fine* to the worldwide surge of oil prices) rose significantly. These figures show that, in order to avoid losing market share, the Community industry was not in a position to fully cover its cost of production with its sales prices. Price increases of the Community industry have been far more moderate than in the previous investigation where they rose by 12 % during the period considered.

Table 7

	2004	2005	2006	RIP
Weighted average price (000 EUR/tonne)	1,39	1,50	1,48	1,48
Index	100	107	106	106
Weighted average cost (EUR/tonne)	1,388	1,511	1,556	1,523
Index (2004 = 100)	100	109	112	109,7

3.4. Employment and wages

- (33) The level of employment by the Community industry increased by 17,8 % between 2004 and the RIP and the average wage per employee decreased by 10 %. Although the production of PSF is not labour intensive, the capacity and production increase was coupled with a substantial increase in the number of jobs. In the previous investigation the level of employment decreased by 19 % during the period considered and the average labour cost per employee increased by more than 30 % – again a totally different situation.

Table 8

	2004	2005	2006	RIP
Employment	1 743	1 660	1 944	2 053
Index (2004 = 100)	100	95	111,5	118
Average labour cost/employee per month	3 191	3 411	3 015	2 859
Index (2004 = 100)	100	107	94	90

3.5. Profitability

- (34) The profitability on sales ⁽¹²⁾ of the product concerned to unrelated customers in the Community has deteriorated significantly, whether the starting point is 2004 or 2005. The situation has therefore significantly worsened.

Table 9

	2004	2005	2006	RIP
Profitability	0,3 %	– 0,8 %	– 5,4 %	– 3,2 %

⁽¹²⁾ Profitability for companies with start-up operations which take place within or during part of the investigation period has not been taken into account to avoid potential distortions in the figures.

3.6. Investments

Table 10

	2004	2005	2006	RIP
Investments in 000 EUR	15 604	16 580	39 865	32 618
Index (2004 = 100)	100	106	255	209

- (35) Between 2004 and the RIP, the level of investments of the Community industry increased by 109 %. This increase is explained to a large extent by the installation of new plants in Poland and Romania that started to operate in 2006.

3.7. Conclusion in relation to the situation of producers

- (36) The investigation has concluded that, contrary to the case mentioned under recital (3), the Community industry is expanding its interest in and production of this product, and that its viability has been reinforced.
- (37) The Community industry has been able to increase its market share by almost 5 percentage points during the period considered. However, this increase took place in a period where consumption decreased by more than 1 %.
- (38) Over the period considered the sales price of the Community industry increased by 6 % but there has been a slight decrease since 2005. In this context account should be taken of the fact that, as explained in recital (32) this price increase occurred at a time when costs rose by 10 %.
- (39) Furthermore, there has been a substantial increase in terms of employment due to the opening up of two new plants⁽¹³⁾. As far as profitability is concerned, the situation has deteriorated during the last years, although there has been an improvement between 2006 and RIP. In order to be able to maintain its position in the market, the Community industry is obliged to sell at a loss.
- (40) Having regard to the above, it can be concluded that, although the Community industry has benefited to some extent from the anti-dumping measures imposed on imports from the countries concerned, it has not recovered from past dumping and is still in a fragile and vulnerable situation. Should measures disappear, imports at the same and/or increased levels from the countries concerned would in all likelihood aggravate this situation.

4. Development of imports should measures be repealed

4.1. Unused capacities

- (41) Spare capacity in the PRC accounts for around 3 million tonnes which corresponds to 3,5 times total Community consumption. This spare capacity has increased by 37 % since 2005 (the year when the anti-dumping measures were imposed on imports from the PRC). As for Korea, spare capacity during the next year will be of 114 000 tonnes which corresponds to 14 % of total Community consumption. Even if part of this spare capacity corresponds to the company for which a 0 % anti-dumping duty is applicable, most of it corresponds to companies subject to anti-dumping duties. There is no data available for Saudi Arabia. As for Belarus, there is no need to make a prospective analysis on spare capacity because the measures expired in October 2007. The spare capacity of these countries could be directed to the Community should measures be repealed.

⁽¹³⁾ In 2005 one Community producer went bankrupt in the UK but new plants based in Poland and Romania have offset the loss of production and employment entailed by this bankruptcy.

4.2. Incentives to re-direct sales volumes to the Community

- (42) Some of the largest export markets in the world are protected by anti-dumping duties for imports of PSF originating in the PRC and Korea. Indeed, duties for imports from the PRC are in place in Turkey and the USA and they reach as much as 44,3 % in the USA. Moreover, Korean exports are subject to anti-dumping duties ranging between 0 % and 24,6 % in Japan, Turkey, Pakistan and the USA. If the measures in question, as outlined in recital (4), are repealed, the European Union will be the one of most important markets of some size for which exports from the PRC and Korea would not be subject to anti-dumping measures.
- (43) It has been claimed by a number of users that the PRC discourages export of raw materials such as PSF. This argument cannot be accepted. According to available statistics, net flow of PSF in the PRC (comparison between production and internal consumption) is steadily increasing and is expected to increase in the coming years as shown in the table below:

Table 11

	2004	2005	2006	2007	2008	2009
Net flow (comparing production and mill consumption) 000 tonnes	- 480	- 200	23	258	449	541

- (44) This is a clear sign that exports of PSF from the PRC are growing and are expected to grow in the future in spite of the claim that the PRC discourages exports of PSF. The argument is therefore rejected.

4.3. Sourcing policies

- (45) An association of users has indicated that producers of yarns and non-wovens made from PSF often have a clear interest to buy fibres originating in the EU in order to produce originating yarns and non-wovens and export them to countries with preferential agreements. However, the data provided by users in the present investigation show that 85-100 % of the turnover of companies in the non-woven sector for products incorporating PSF is made through sales in the Community. Accordingly, the rules of origin for exports to countries with preferential agreements should not play a significant role for users of PSF when making decisions on the origin of the products in the moment of their acquisition. In the absence of evidence to support the association's argument, the argument is therefore dismissed.

4.4. Conclusion on the development of imports should measures be repealed

- (46) It is therefore concluded that, given the incentives observed above, there is a likelihood that significant quantities will be exported to the Community, should anti-dumping measures in force be lifted.

5. Conclusion on Community industry

- (47) The Community industry has made a substantial effort in terms of investments which has been translated into a significant expansion. The Community industry situation has changed substantially over the last years, as evidenced in particular by the appearance of new industry in Poland and Romania and the foreseen expansion in Bulgaria.
- (48) Despite these renewed efforts in terms of expansion and investments it should however, as stated before, be noted that the situation of the Community industry in terms of profitability is still precarious. There will be, in all likelihood, a significant quantity of dumped imports if anti-dumping measures were to be removed.

- (49) Large import volumes at dumped prices would lead to additional price pressure on Community industry, reduced profit margins and profitability and increased losses. This could have as a consequence the likely cancellation of further investment, a decline in innovation, the erosion of the competitive position of integrated industry, cutbacks and closures.
- (50) Having regard to the above, if the Community industry were exposed to significant volumes of imports from the PRC, Korea and Saudi Arabia at dumped prices and without measures, this would cause a further deterioration of their financial situation. On this basis, it is therefore concluded that the repeal of the measures would be against the interest of Community industry.

E. COMMUNITY USERS

- (51) The market for products incorporating PSF is divided into (a) the spinning applications (i.e. the manufacturing of filaments for the production of textiles, after mixing or not with other fibres such as cotton or wool), (b) the non-woven applications: the manufacturing of sheets and webs, not converted into yarns, excluding paper and (c) the filling applications (i.e. the stuffing or padding of certain textile goods, as for example the cushions or car seats).

1. Level of cooperation of Community users

- (52) Sixteen industrial users have sent submissions in relation to the present investigation. They represent 17 % of total Community consumption of PSF and around 13 % of imports from the countries concerned. However, full cooperation was obtained only from 10 users ⁽¹⁴⁾ representing around 12 % of total Community consumption of PSF (all these users that have fully cooperated belong to the non-woven and filling sectors). As regards the other users having partially cooperated, only one operates in the spinning sector.
- (53) Furthermore, Gesamtverband Textil + Mode (the German federation of textile industries representing both the spinning and the non-woven sectors), two associations belonging to the said federation: Industrieverband Garne-Gewebe-Technische Textilien e.V. (IVGT) and Verband der Deutschen Heimtextilien-Industrie e.V. and one European association representing companies of the non-woven sector (EDANA) have made submissions asking the Commission to terminate the existing measures. All the users mentioned above are members of one or more of these associations. The representativity of these associations corresponds to around 30 % of total Community consumption of PSF.
- (54) The level of cooperation of individual users in this proceeding is higher than in the previous investigation. It should also be noted that in the previous investigation only the users in favour of non-imposition of duties (around 10 % of total consumption) made their views known whereas in this proceeding users which are in favour of maintaining the measures have also participated.

2. Arguments put forward by users

2.1. Users in favour of termination

- (55) Users representing around 11 % of total PSF consumption and 10 % of imports from the countries concerned have put forward a number of arguments against the maintenance of duties. All of these users are members of one or more of the users' associations mentioned above which are also in favour of termination. The arguments put forward by users and associations in favour of termination are examined below.

⁽¹⁴⁾ Libeltex, ORV, PGI Nonwovens, Ziegler, Tharreau, Sandler, Frankenstolz, Lück, TWE Vliesstoffwerke and IMP Comfort.

- (56) First, they claim that they are confronted with a difficult situation because of increasing competition on their finished products from countries which moved from exports of PSF to exports of non-woven products (e.g. the PRC). They argue that in case of termination of the existing measures, they will have the ability to source cheaper fibre and therefore become more competitive against finished products coming from Asia. If the market price for PSF decreases there will be a potential increase in profitability. Account should be taken of the fact that their customers are mainly discount chains for whom a rock-bottom price is decisive and the margin applied to finished products is very low.
- (57) In relation to these arguments, it should be pointed out that the information supplied by users that have cooperated in the investigation shows that their situation in terms of profitability has not changed in spite of the imposition in 2005 of anti-dumping duties on PSF originating in the PRC and the increase of imports from this country of finished products. This is due to the fact that the impact of PSF in their total costs in products incorporation PSF has also remained stable as shown in the table below:

Table 12

	2004	2005	2006	RIP
Profitability	3,48 %	4,07 %	3,88 %	3,79 %
Total costs of PSF as a percentage of total costs	22,3 %	24 %	24 %	24 %

- (58) The situation is thus different from the previous investigation where the imposition of new anti-dumping duties that could reach almost 30 % in certain cases would undoubtedly have had a substantially more negative impact in the costs structure of users of PSF and the possibility to make attractive offers to their clients.
- (59) Furthermore, their turnover in the Community related to products incorporating PSF has increased by more than 10 % during the period considered as indicated in Table 13:

Table 13

	2004	2005	2006	RIP
Turnover (000/EUR)	427 694	452 329	456 445	472 750
Index (2004 = 100)	100	106	107	111

- (60) These figures show that the increase of imports of finished goods from the PRC since 2005 has not prevented the Community users of PSF from expanding and selling their goods to retailers and maintaining their profit margin. As regards the possible impact on final prices paid by consumers, no argument has been put forward in this respect whereas in the previous investigation it was concluded that the imposition of new duties that could reach almost 30 % could have had an impact on consumers.
- (61) The users in favour of termination have also argued that prices of PSF are increasing within the Community despite a falling dollar. This statement does not correspond to the data obtained by the Commission during the investigation. Although the price of PSF rose sharply in 2005, it has remained stable afterwards as shown in Table 7 for PSF produced and sold within the Community and in the Table 14 for imported PSF ⁽¹⁵⁾:

⁽¹⁵⁾ Source: Eurostat. It has also been put forward by an association of producers that there has been a sharp increase in prices in June 2008 compared to June 2007. This sharp increase corresponds to prices in dollars but if we consider prices in EUR they have remained stable.

Table 14

	2004	2005	2006	2007	1st quarter 2008
Prices 000 EUR/tonne	1,02	1,15	1,13	1,15	1,15
Index (2004 = 100)	100	113	111	113	113

- (62) Having regard to the above, the existing measures do not appear to have had an overwhelming impact on the costs and profitability of the user companies.
- (63) Second, the users which are against the imposition of measures indicate that there is a substantial difference in the level of employment in the Community between the sector concerning production of PSF (around 3 000 people) and the downstream industry (allegedly 70 000 people).
- (64) As regards this claim, although the figure of 70 000 people seems to be exaggerated, it cannot be denied that the user industry is more labour intensive than the producer industry. Given the limited level of full cooperation among users (figures for jobs have only been supplied by users accounting for 12 % of total Community consumption of PSF) it has not been possible for the Commission to obtain accurate data on employment. Nevertheless in Table 15 it is shown that users that have fully cooperated in the investigation employ 5 009 people. This would indicate that at least 40 000-45 000 people would be involved in the production of goods incorporating PSF. The table below also contains indications on how employment has evolved among cooperating users:

Table 15

	2004	2005	2006	RIP
Employment	3 898	4 471	4 854	5 009
Index (2004 = 100)	100	115	125	129

- (65) Although the number of companies that have cooperated is limited, it can nonetheless be concluded that the existing anti-dumping duties have not prevented employment from significantly growing during the period considered. Accordingly this users' argument is rejected. Of course, the situation was different in the previous investigation where the imposition of additional anti-dumping duties that could reach 30 % could have led to job losses in the users' sector.
- (66) Third, the users mentioned in this section point out that there is a growing demand in the non-woven and filling sectors of two special types of PSF: HCS and LMP (as mentioned in recital (20)) and for which there is limited production in the Community whereas the PRC and Korea have large production capacities.
- (67) In this respect, according to best estimates of the Commission in the light of the information put forward by interested parties, total consumption of LMP in the Community during the RIP is in the range of 85 000-90 000 tonnes and total consumption of HCS is in the range of 65 000-70 000 tonnes. The Community industry is currently supplying 2 155 tons of LMP and 21 543 tons of HCS. The demand of these types of PSF is continuously growing and, according to a users' association, there will be a 6 % annual increase for both types in the coming years.
- (68) Community producers of PSF claim that production of these 'specialties' in the Community is limited because the existing level of dumped prices do not allow them to increase production. According to the data collected in the present investigation capacities for HCS and LMP in the Community industry during the period considered have evolved as follows:

Table 16

	2004	2005	2006	RIP
Capacity Community industry HCS	67 050	46 550	61 550	61 550
Index (2004 = 100)	100	69	92	92
Capacity Community industry LMP	32 050	32 050	32 050	32 050
Index (2004 = 100)	100	100	100	100

- (69) This table shows that the Community industry would be in a position to cover 88-95 % of total demand of HCS and around 37 % of total demand for LMP in case prices would reach a certain level. Moreover, even if the Community industry produces limited quantities of these 'specialties', users are able to source them from Korea and the PRC with limited anti-dumping duties (only 5,7 % from Huvis in Korea and 4,9 % from Far Eastern in the PRC). As far as the possibility to source from Taiwan is concerned, it has been claimed that production of PSF in Taiwan is decreasing and this will lead to price increases or shortages of supply and if it is to be substituted by imports from the PRC and Korea, the cost impact of the duties paid for these 'specialties' imported from the PRC and Korea would be significant due to the low profit margin of Community users. These arguments cannot be accepted. On the one hand, even if production of PSF in Taiwan is decreasing, spare capacity is expected to increase (the expected spare capacity for 2008 is around 122 000 tons and for 2 009 150 000 tons). In conclusion, it is not clear that there would be a structural shortage of these specialties.
- (70) As for prices in these 'specialties', there are no official statistics but, as shown in the table below, according to the data supplied by cooperating companies, the price of HCS (including anti-dumping duties) has increased only by 2 % between 2004 and the RIP. There was even a substantial decrease in price in 2006. The increase between 2006 and the RIP was in all likelihood due to the imposition during the first semester of 2007 of provisional anti-dumping duties on imports from Taiwan. As regards LMP, its price has increased by 18 % during the period considered.

Table 17

	2004	2005	2006	RIP
Price HCS '000 EUR/tonne	1,21	1,26	1,05	1,24
Index (2004 = 100)	100	104	87	102
Price LMP '000 EUR/tonne	1,31	1,44	1,43	1,54
Index (2004 = 100)	100	110	109	118

- (71) This data has to be analysed in relation to the weight of these specialties on total costs of products incorporating PSF. On the basis of the data supplied by the cooperating users, the impact of HCS on their total costs for products incorporating PSF would only account for 1,98 % and the impact of LMP would account for 4,38 %. Bearing in mind that the average profitability is around 4 % the impact on total costs linked to these 'specialties', in spite of the substantial increase of the price of LMP, is not significant. This claim is therefore rejected.
- (72) The situation was different in the previous investigation where the imposition of anti-dumping duties of almost 30 % on imports of LMP and HCS originating in Taiwan and the price increases that this would have entailed for the same products would have had a more significant impact on total costs.

2.2. Users against termination

- (73) Users representing around 6 % of total Community consumption of PSF and 3 % of imports from the countries concerned have pointed out that the termination of measures will jeopardize the profitability of the downstream industry as the bankruptcy of the PSF sector in the EU will lead to increases in PSF prices in two years time and consequently an increase of imports of goods incorporating PSF can be expected.
- (74) In the light of the arguments developed under D.4 above (likelihood of significant imports should measures be repealed), it is not excluded that this could indeed occur, with the associated risks for the maintenance of effective competition.

3. Conclusion

- (75) Taking into account all of the above factors, it is concluded that, although most of the users that have participated in the investigation consider that the maintenance of duties is against their interest, the investigation shows that the continuation of measures would not have a significantly negative effect on their economic and financial situation. Moreover, contrary to the previous investigation, users have varying views on the impact of a possible termination of existing measures on their business. Although, as explained above, most of them have asked the Commission to repeal the anti-dumping duties, among those which have cooperated in the investigation there is also a significant number that is against the termination of duties.

F. IMPORTERS AND TRADERS

- (76) Six importers/traders made submissions in relation to this investigation within the deadline indicated in the Notice of initiation but only three of them (Saehan Europe, GSI Global Service International and Marubeni) have fully cooperated and provided answers to all the questions raised by the Commission. All are profitable companies and the number of employees related to the import/trade of PSF product is negligible.
- (77) It does not appear that the maintenance of the duties would have any relevant negative impact on their business. Most of them are of the opinion that it is in their interest to terminate the measures imposed on imports from Korea but not on imports from the PRC because it will entail a huge flow of commodities and the price level will go down as well as their margin. On the other hand, according to their views, since Korean unused capacities are more limited than Chinese, they are of the opinion that the impact of the Korean imports on prices will not be to the detriment of their business.
- (78) On this basis, it is concluded that, whether measures are maintained or not, generally speaking, the activity of importers and traders will not be significantly affected.

G. OTHER CONSIDERATIONS

- (79) It has been argued by the Community producers which allegedly produce 56 % of PSF from recycled materials that imports of dumped PSF have adversely affected the profitability of recycling companies; it has also been claimed that 425 000 people are employed in the collection of polyethylene terephthalate in order to supply the recycling companies. In this respect, it has to be pointed out that recyclers of PET bottles were not interested in participating in this investigation in spite of the invitation made in the Notice of initiation and the questionnaires sent to them by the Commission, to which no reply was received. On the other hand, there is an important and growing demand of recycled PET bottles in Asia and the non-imposition of anti-dumping measures will not preclude PET bottle recyclers from selling their products on the world market. Consequently these claims are rejected.
- (80) Moreover, it has been pointed out by Community producers that making polyester staple fibre from recycled materials uses less energy than the chemical process and transport of imported PSF from Asia produces carbon emissions. Consequently, replacement of Community production by dumped imports, in particular from the PRC and Korea, would increase carbon emissions and set back the EU climate change objectives. In this context it is in any event recalled that the Community interest analysis in anti-dumping proceedings focuses on the economic impact of measures on the economic operators concerned and is not directly related to environmental concerns.
- (81) No arguments have been put forward regarding Saudi Arabia (or Belarus) which would justify a conclusion that maintaining measures would not be in the Community interest.

H. CONCLUSION

- (82) In the light of the above, it can be concluded that the Community producers of PSF, including the Community industry, are benefiting from the measures in force but are still in a vulnerable situation. During the period considered, they have been able to increase their market share, production, capacity, turnover and the level of employment. Furthermore, they have made substantial efforts in terms of investment, have opened new plants in Poland, Romania and Bulgaria. In addition, Tergal, an important supplier of the spinning industry, has overcome its financial difficulties and, according to the information supplied by the company, is no longer under safeguard procedure (procédure de sauvegarde) as from July 2007. However, their financial situation is still precarious and cannot face a sudden influx of dumped imports. The maintenance of the duties will continue to provide substantial benefits to the Community industry and contribute in all likelihood to the restoration of its viability. This situation is in stark contrast to the picture obtained in the previous investigation where it was

concluded that the supply of PSF could be problematic in the Community market due to industrial conversion of one company (La Seda) in order to increase output of other products, the bankruptcy of another producer (Pennine Fibers) and the former financial difficulties of Tergal.

- (83) As for users and importers, the existing anti-dumping duties on imports from the countries concerned have not jeopardised their viability and capacity to expand. Therefore, if measures are terminated, any advantages for users and importers are likely to be limited, given that the anti-dumping duties did not have a significant effect on their economic situation. Contrary to this conclusion, the analysis of the previous investigation showed that the imposition of new of anti-dumping duties that could reach almost 30 % would have had an impact on prices of PSF, in particular HCS and LMP, that could have potentially put into financial difficulties a substantial number of users.
- (84) It is therefore concluded that the possible limited advantages to be enjoyed by users and importers of PSF in the Community if duties were to be repealed, would clearly be disproportionate compared to the serious disadvantages to the Community industry.
- (85) Accordingly, it can be concluded that termination of the existing measures on imports from the countries concerned on Community interest grounds would not be justified.

I. APPLICATION OF THE PRINCIPLE OF NON-DISCRIMINATION

- (86) It has been put forward by a number of interested parties that anti-dumping measures may not be imposed on a discriminatory basis, as stated in Article 9(5) of the basic Regulation which provides that 'an anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, [...]'. It has been indicated as well that this principle of non-discrimination is also a fundamental principle of WTO law.
- (87) According to the interested parties that invoke the application of the principle of non-discrimination, imports of PSF from Taiwan and Malaysia were found to have been dumped and causing injury in Regulation (EC) No 2005/2006. It has been claimed that 'the reason why these two sources of PSF imports were not subject to anti-dumping duties is not that the Commission would have subsequently found that imports of PSF from Malaysia and Taiwan were not dumped or were not causing injury [...]'. Furthermore, it has been argued

that the Commission's Decision not to continue to impose anti-dumping measures on imports of PSF from Malaysia and Taiwan from 22 June 2007 despite the fact that these imports were found to be dumped and causing injury has the effect of invalidating the continued imposition of anti-dumping duties on imports of PSF from other countries.

- (88) First, it is underlined that in the case of Malaysia and Taiwan the complaint was withdrawn and that no definitive finding was made by the Council as to the adequacy of imposing anti-dumping duties. As a result, there is no discrimination.
- (89) Second, the nature of the legal tests regarding Community interest under Articles 9(1) (applicable in the Taiwan and Malaysia case) and 21 (applicable in the current case) of the basic Regulation is different. Under the former, the test is whether the balance of interests at hand is so positive that the Commission should continue the proceedings *ex officio* even in the absence of a supported complaint. Under the latter, the test is whether the balance of interests is so negative that measures should be terminated. Therefore, the different nature of the tests implies that there can be no discrimination.
- (90) Third, even in the hypothetical situation of a definitive decision taken by the Council concerning a non-imposition of anti-dumping duties on imports of PSF originating in Malaysia and Taiwan, there would be no discrimination in this case, given that the said principle is applicable only if similar conclusions are reached for different investigations concerning the same product. In other words, compliance with the principle of non-discrimination as set out in Article 9(5) the basic Regulation and Article 9(2) of the WTO Anti-dumping agreement requires that comparable situations must not be treated differently, and that different situations must not be treated in the same way. As explained above, the facts and conclusions in the present investigation are radically different from the facts and conclusions in the case of Malaysia and Taiwan and, consequently, the two situations are not comparable.
- (91) Having regard to the above the claims put forward in relation to the application of the principle of non-discrimination are rejected.

J. FINAL PROVISIONS

- (92) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure.

- (93) On the basis of the above facts and considerations, it is concluded that, in accordance with Article 11(3) of the basic Regulation, the interim review should be terminated and the existing anti-dumping duties imposed on imports of PSF produced and exported to the European Community by the countries concerned should be maintained,

HAS ADOPTED THIS REGULATION:

Sole Article

The partial interim review of the anti-dumping measures applicable on imports of synthetic staple fibres of polyesters (PSF) originating in Belarus, the Republic of Korea, Saudi Arabia and the People's Republic of China normally declared under CN code 5503 20 00, is hereby terminated without amending the anti-dumping measures in force.

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

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

Done at Brussels, 10 September 2008.

For the Council
The President
B. KOUCHNER
