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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 907/97

of 20 May 1997

amending Regulation (EEC) No 54/93 imposing a definitive anti-dumping duty on imports of synthetic fibres of polyesters originating in India and the Republic of Korea

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⁾, and in particular Article 11 (4) thereof,

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

Whereas:

A. PREVIOUS PROCEDURE

(1) By Regulation (EEC) No 54/93⁽²⁾, the Council imposed, inter alia, a definitive anti-dumping duty of 7,2 % on imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, commonly referred to as synthetic fibres of polyester (hereinafter referred to as the 'product concerned' of 'PSF'), currently classifiable within CN code 5503 20 00 and originating in India, with the exception of imports from five Indian exporters specifically mentioned, which were subject either to a lesser rate of duty or to no duty at all.

B. PRESENT PROCEDURE

(2) In January 1996, the Commission received, from the Indian producer Viral Filaments Limited (hereinafter referred to as 'Viral' or the 'company'), an

application for a review of the measures currently in force, i.e. a request to initiate a 'new exporter' review proceeding of Regulation (EEC) No 54/93, pursuant to Article 11 (4) of Regulation (EC) No 384/96 (hereinafter referred to as the 'Basic Regulation'). Viral claimed that it was not related to any of the exporters or producers in India subject to the anti-dumping measures in force with regard to the product concerned. Furthermore, it claimed that it did not export the product concerned during the period of investigation on which the current measures in force were based with regard to the determination of dumping, i.e. the period from 1 January to 31 August 1990 (hereinafter referred to as the 'original investigation period'). Finally, Viral also claimed that it had actually exported the product concerned to the Community and that it had also entered into irrevocable contractual obligations to export significant quantities of PSF to the Community.

(3) The Commission, after having verified the evidence submitted by the Indian exporter concerned, which was considered sufficient to justify the initiation of a review in accordance with Article 11 (4) of the Basic Regulation, after consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, initiated, by Commission Regulation (EC) No 1285/96⁽³⁾, a review of Regulation (EEC) No 54/93 with regard to Viral and commenced its investigation.

In the Regulation initiating the review, the Commission also repealed the anti-dumping duty imposed by Regulation (EEC) No 54/93 with regard to imports of the product concerned, produced and exported to the Community by Viral, and directed customs authorities, pursuant to Article 14 (5) of the Basic Regulation, to take appropriate steps to register such imports.

⁽¹⁾ OJ No L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ No L 317, 6. 12. 1996, p. 1).

⁽²⁾ OJ No L 9, 15. 1. 1993, p. 2. Regulation as amended by Regulation (EC) No 1489/96 (OJ No L 189, 30. 7. 1996, p. 10).

⁽³⁾ OJ No L 165, 4. 7. 1996, p. 21.

- (4) The product covered by the present review is the same product as the one under consideration in Regulation (EEC) No 54/93.
- (5) The Commission officially advised Viral and the representatives of the exporting country. Furthermore, it gave other parties directly concerned the opportunity to make their views known in writing and to request a hearing. However, no such request has been received by the Commission.
- The Commission sent a questionnaire to Viral and received a proper and timely reply.
- The Commission sought and verify all information it deemed necessary for the purpose of the investigation.
- (6) The investigation of dumping covered the period from 1 July 1995 to 30 June 1996.
- (7) The same methodology as that used in the original investigation was applied in the present investigation where circumstances had not changed.

C. SCOPE OF THE REVIEW

- (8) As no request for a review of the findings on injury was made in this investigation, this review is limited to dumping.

D. RESULTS OF THE INVESTIGATION

1. New exporter qualification

- (9) The investigation confirmed that Viral had not exported the product concerned during the original investigation period. Production of PSF by Viral and export thereof to the Community started, in fact, only during the second half of 1995.

Furthermore, according to documentary evidence submitted, Viral satisfactorily demonstrated that it did not have any links, either direct or indirect, with any of Indian exporters subject to the anti-dumping measures in force with regard to the product concerned.

Accordingly, it is confirmed that Viral should be considered as a new exporter in accordance with Article 11 (4) of the Basic Regulation, and thus its individual dumping margin should be determined.

2. Dumping

A. Normal value

- (10) In accordance with Article 2 (2) of the Basic Regulation, an examination was conducted to ascertain

whether the volume of Viral's sales of PSF on the Indian domestic market in total reached at least 5 % of the volume of the Indian exports of the product concerned to the Community. It was established, based on the documentary evidence submitted in the company's questionnaire reply, that domestic sales of the like product achieved a level considerably in excess of the aforementioned 5 % threshold.

For each of the types of PSF sold on the domestic market and found to be identical or directly comparable to types sold for export to the Community, the Commission then established whether domestic sales per type were made in sufficient quantities.

Domestic sales of each type were considered to have been made in sufficient quantities within the meaning of Article 2 (2) of the Basic Regulation as the volume of each type of PSF sold in India during the investigation period represented 5 % or more of the quantity of the comparable type of PSF sold for export to the Community.

The Commission subsequently examined whether the domestic sales of each type of PSF exported to the Community could be considered to have been made in the ordinary course of trade.

Whether or not domestic sales were made in the ordinary course of trade was determined pursuant to Article 2 (4) of the Basic Regulation. Since, per product type, the weighted average selling price was equal to, or higher than, the weighted average unit cost and as the volume of sales below unit cost represented less than 20 % of the sales being used to determine normal value, all domestic sales were regarded as having been made in the ordinary course of trade.

In accordance with Article 2 (1) of the Basic Regulation, normal value was therefore based on the weighted average prices of all domestic sales of the corresponding product types exported to the Community.

B. Export price

- (11) Export prices were established on the basis of the prices actually paid or payable for the product concerned when sold for export to the Community, in accordance with Article 2 (8) of the Basic Regulation.

C. Comparison

- (12) In accordance with Article 2 (11) of the Basic Regulation, the weighted average normal value by product type was compared, on an ex-factory basis, to the weighted average export price at the same level of trade.

For the purpose of a fair comparison, due allowance in the form of adjustments was made for differences which were claimed and demonstrated to affect price comparability. These adjustments were made, in accordance with Article 2 (10) of the Basic Regulation, in respect of commissions, transport, insurance, handling and ancillary costs, credit costs, discounts and rebates.

D. Dumping margin

- (13) The above comparison revealed that no dumping existed for exports to the Community of the product concerned made by Viral during the investigation period.

E. AMENDMENT OF THE MEASURES BEING REVIEWED

- (14) Based on the findings of no dumping made during the investigation, it is considered that no anti-dumping measure should be imposed on imports into the Community of PSF, produced and exported by Viral. Regulation (EEC) No 54/93 should therefore be amended accordingly.

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

Done at Brussels, 20 May 1997.

F. DISCLOSURE AND DURATION OF THE MEASURE

- (15) Viral was informed of the facts and considerations on the basis of which it is intended to propose the amendment to Regulation (EEC) No 54/93 and was given the opportunity to comment. No comments were received.
- (16) This review carried out does not affect the date on which Regulation (EEC) No 54/93 will expire pursuant to Article 11 (2) of the Basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The following shall be added at the end of Article 1 (3) of Regulation (EEC) No 54/93:

‘, as well as Viral Filaments Limited, India (Taric additional code 8642)’.

Article 2

Customs authorities are hereby directed to discontinue registration pursuant to Article 3 of Regulation (EC) No 1285/96.

Article 3

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

For the Council

The President

J. VAN AARTSEN