



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**COUNCIL REGULATION**

**extending the definitive anti-dumping measures imposed by Council Regulation (EC) No 1470/2001 on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

<b>1) CONTEXT OF THE PROPOSAL</b>	
	<ul style="list-style-type: none"><li>• <b>Grounds for and objectives of the proposal</b></li></ul> <p><i>This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 461/2004 of 8 March 2004 ("the basic Regulation") in the anti-circumvention investigation extending the definitive anti-dumping measures imposed by Council Regulation (EC) No 1470/2001 on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines</i></p>
	<ul style="list-style-type: none"><li>• <b>General context</b></li></ul> <p>This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.</p>
	<ul style="list-style-type: none"><li>• <b>Existing provisions in the area of the proposal</b></li></ul> <p>There are no existing provisions in the area of the proposal.</p>
	<ul style="list-style-type: none"><li>• <b>Consistency with other policies and objectives of the Union</b></li></ul> <p>Not applicable.</p>
<b>2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT</b>	
	<ul style="list-style-type: none"><li>• <b>Consultation of interested parties</b></li></ul>
	<p>Interested parties concerned by the proceeding have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.</p>
	<ul style="list-style-type: none"><li>• <b>Collection and use of expertise</b></li></ul>
	<p>There was no need for external expertise.</p>
	<ul style="list-style-type: none"><li>• <b>Impact assessment</b></li></ul> <p>This proposal is the result of the implementation of the basic regulation.</p> <p>The basic regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.</p>

### 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 10 September 2004, following a request lodged by the Lighting Industry and Trade in Europe (LITE) on behalf of producers and importers of integrated electronic compact fluorescent lamps ('CFL-i') in the Community, the Commission initiated an investigation into the possible circumvention of anti-dumping measures on CFL-i originating in the People's Republic of China by imports of the same product consigned from Vietnam, Pakistan and/or the Philippines, whether declared as originating in Vietnam, Pakistan or the Philippines or not.

The investigation revealed that the anti-dumping measures in force were circumvented in all three cases, either by transshipment or by assembly operations.

Imports of compact fluorescent lamps from Vietnam, Pakistan and the Philippines were also found to be dumped and to undermine the remedial effects of the anti-dumping measures in force against China.

Consequently, it is proposed to extend the definitive anti-dumping measures imposed on imports of certain compact fluorescent lamps originating in the People's Republic of China to imports of the same product consigned from Vietnam, Pakistan and/or the Philippines.

Four requests for exemptions were received and analysed. It was found that in three cases the companies requesting the exemption were circumventing the measures or were non co-operating. Therefore, their request had to be rejected. In the fourth case, no assessment could be made given that the company did not export during the investigation period.

It is therefore proposed that the Council adopt the attached proposal for a Regulation which should be published in the *Official Journal of the European Union* no later than 9 June 2005.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 461/2004 of 8 March 2004.

- **Subsidiarity principle**

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

- **Proportionality principle**

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

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

	Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.
	<ul style="list-style-type: none"> <li>• <b>Choice of instruments</b></li> </ul>
	Proposed instruments: regulation.
	<p>Other means would not be adequate for the following reason(s).</p> <p>The above-mentioned basic regulation does not foresee alternative options.</p>
	<b>4) BUDGETARY IMPLICATION</b>
	The proposal has no implication for the Community budget.

Proposal for a

## COUNCIL REGULATION

**extending the definitive anti-dumping measures imposed by Council Regulation (EC) No 1470/2001 on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines**

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<sup>1</sup> (the 'basic Regulation'), and in particular Article 13 thereof,

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

Whereas:

### A. PROCEDURE

#### 1. Existing measures and former investigations

- (1) By Regulation (EC) No 1470/2001<sup>2</sup>, (the 'original Regulation'), the Council imposed definitive anti-dumping duties ranging from 0% to 66,1% on imports of integrated electronic compact fluorescent lamps ('CFL-i') originating in the People's Republic of China (the 'original investigation').
- (2) In October 2002, the Commission initiated an absorption investigation pursuant to Article 12 of the basic Regulation<sup>3</sup> with regard to the above anti-dumping measures. This investigation was terminated in March 2004 after the applicant formally withdrew its request<sup>4</sup>.

#### 2. Request

- (3) On 16 August 2004, the Commission received a request pursuant to Article 13 (3) of the basic Regulation to investigate the alleged circumvention of the anti-dumping

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<sup>1</sup> OJ L 56, 6.3.1996, p.1. Regulation as last amended by Council Regulation (EC) N° 461/2004 (OJ L 77, 13.3.2004, p.12).

<sup>2</sup> OJ L 195, 19.7.2001, p.8.

<sup>3</sup> OJ C 244, 10.10.2002, p.2.

<sup>4</sup> OJ L 71, 10.3.2004, p.35.

measures imposed on CFL-i originating in the People's Republic of China (the 'PRC' or 'China'). The request was submitted by the Lighting Industry and Trade in Europe ('LITE') on behalf of producers and importers of CFL-i in the Community (the 'applicant'). The request alleged that the anti-dumping measures in force on imports of CFL-i originating in the PRC were being circumvented by means of transshipment and/or assembly operations via Vietnam, Pakistan and/or the Philippines.

- (4) The request further alleged that since the imposition of the anti-dumping measures, there had been a change in the pattern of trade (with decreasing Chinese imports and increasing imports from the above mentioned countries), for which there is insufficient due cause or economic justification other than the imposition of the anti-dumping measures and that the remedial effects of the existing anti-dumping measures on imports of CFL-i originating in the PRC were being undermined both in terms of quantity and price. In addition, there was sufficient evidence that these increased imports from Vietnam, Pakistan and the Philippines were made at prices below the non-injurious price established in the investigation that led to the existing measures.
- (5) Finally, the applicant alleged that the prices of CFL-i consigned from Vietnam, Pakistan and the Philippines were dumped in relation to the normal value established for the like product during the original investigation.

### **3. Initiation**

- (6) Having determined, after consulting the Advisory Committee, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Article 13 of the basic Regulation, the Commission initiated an investigation by Regulation (EC) No 1582/2004<sup>(5)</sup> (the 'initiating Regulation'). Pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission, by the initiating Regulation, also directed the customs authorities to register imports of CFL-i consigned from Vietnam, Pakistan and the Philippines whether declared as originating in Vietnam, Pakistan or the Philippines or not, as from 11 September 2004.

### **4. Investigation**

- (7) The Commission officially advised the authorities of the PRC, Vietnam, Pakistan and the Philippines, the producers/exporters, the importers in the Community known to be concerned and the applicant Community industry of the initiation of the investigation. Questionnaires were sent to the exporters/producers in Vietnam, Pakistan and the Philippines, to the exporters/producers in the PRC, to the importers in the Community named in the request, known to the Commission from the original investigation or which made themselves known within the deadlines specified in Article 3(1) of the initiating Regulation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation.
- (8) Four producers/exporters in Vietnam, one producer/exporter in Pakistan and five producers/exporters in China submitted a reply to the questionnaire whilst no reply was received from the producers/exporters in the Philippines. Replies to the

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<sup>5</sup> OJ L 289, 10.09.2004, p.54.

questionnaire were also submitted by two related and two unrelated importers in the Community.

- (9) The following companies co-operated in the investigation and submitted replies to the questionnaires:

*Unrelated importers:*

- Elektro Cirkel B.V., the Netherlands;
- Carrefour S.A., France,

*Related importers*

- Energy Research 2000 B.V., the Netherlands,
- e3light A/S, Denmark,

*Vietnamese producers/exporters:*

- Eco Industries Vietnam Co., Ltd, Haiphong (related to e3light A/S)
- Energy Research Vietnam Co., Ltd, Haiphong (related to Energy Research 2000 B.V.)
- Halong service and import export company (Halong Simexco), Haiphong
- Rang Dong Light Source and Vacuum Flask Joint Stock Company (Ralaco), Hanoi

*Pakistani producer/exporter:*

- Ecopak Lighting, Karachi

*Chinese producers/exporters:*

- Firefly Lighting Co. Ltd, Shenzhen
- Lisheng Electronic & Lighting (Xiamen) Co., Ltd
- City Bright Lighting (Shenzhen), Ltd, Shenzhen
- Ningbo Super Trend Electron Co. Ltd, Ningbo
- Zhejiang Sunlight Group Co. Ltd, Shangyu

- (10) Verification visits were carried out at the premises of the following companies:

- Ecopak Lighting, Karachi (Pakistan)
- Eco Industries Vietnam Co., Ltd, Haiphong and its related company e3 light in Denmark

- Energy Research Vietnam Co., Ltd, Haiphong
- Rang Dong Light Source and Vacuum Flask Joint Stock Company (Ralaco), Hanoi
- Carrefour S.A., France,

### **5. Investigation period**

- (11) The investigation period covered the period from 1 July 2003 to 30 June 2004 (the ‘IP’). Data was collected from 1999 up to the end of the IP to investigate the alleged change in the pattern of trade.

### **6. Disclosure**

- (12) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend:
- (i) the extension of the definitive anti-dumping measures imposed by Council Regulation (EC) No 1470/2001 on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China to imports of the same product consigned from Vietnam, Pakistan and the Philippines
  - (ii) not to grant exemptions to the companies having requested it

In accordance with the provisions of the basic Regulation, parties were granted a period in which they could make representations subsequent to this disclosure.

- (13) The oral and written comments submitted by the parties were considered and, where appropriate, the definitive findings have been modified accordingly.

## **B. RESULTS OF THE INVESTIGATION**

### **1. General considerations**

- (14) As mentioned above, the analysis of a change in the pattern of trade covered the period from 1999 up to the end of the IP, i.e. covering mainly the period before the enlargement of the European Union on 1st May 2004. A meaningful determination as to whether there has been a change of pattern in trade within this period could therefore only be made on the basis of a comparison of import levels of the product concerned into the 15 Member States before enlargement (‘EU-15’ or ‘the Community’). Indeed, it should be noted that, since before enlargement the existing measures only applied to EU-15, they could before enlargement only be circumvented with respect to EU-15. Moreover, any data relating to the period after enlargement with regard to the 10 new Member States would as such not allow to discern a trend, as comparable data for previous years do not exist.

### **2. Degree of co-operation and determination of the import volume**

- (15) As stated above in recital (9), four exporters/producers in Vietnam of which only one company exported CFL-i to the Community, 1 exporting producer in Pakistan and 5



exporting producers in China co-operated by submitting questionnaire replies. No cooperation was obtained from the Philippines.

- (16) The import volume recorded in Eurostat covered a larger product group than CLF-i, i.e. all fluorescent lamps.
- (17) The export volume of CFL-i reported by the sole cooperating exporter in Vietnam covered only 3% of the export volume recorded in Eurostat. The information received during the investigation indicated the existence of a number of other non co-operating exporters/producers in Vietnam which exported CFL-i to the Community during the IP. Therefore, it was considered that the data provided by the co-operating exporter did not sufficiently reflect the overall import volume of CFL-i from Vietnam.
- (18) With regard to Pakistan, and as mentioned below in recital (52), it was found that the data reported by the co-operating exporter were unreliable. With regard to the Philippines, no co-operation at all was obtained. There was also a low level of co-operation from exporters in the PRC, where out of at least 12 known Chinese exporting producers (representing approximately 30% of the total exports from China during the investigation period of the original investigation) only five submitted a questionnaire reply. Moreover, three of these questionnaire replies were largely incomplete. Therefore, on the basis of the information submitted by the co-operating parties no reasonable determination could be made as to import volumes of CFL-i into the Community.
- (19) Given the above, findings in respect of exports of CFL-I into the Community had to be made partially on the basis of facts available in accordance with Article 18 of the basic Regulation. In the absence of any other more reliable source of information, Eurostat data were therefore used to determine overall import volumes from the PRC, Vietnam, Pakistan and the Philippines. These data were cross-checked and confirmed by other statistical sources.

### **3. Methodology**

- (20) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of circumvention was done by analysing successively whether there was a change in the pattern of trade between third countries and the Community, if this change stemmed from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, if there was evidence of injury or that the remedial effects of the duty were being undermined in terms of the prices and/or quantities of the like product, and whether there was evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2 of the basic Regulation.
- (21) The practice, process or work referred to above includes, inter alia, the consignment of the product subject to measures via third countries; and, the assembly of parts by an assembly operation in the Community or a third country. For this purpose the existence of assembly operations was determined in accordance with Article 13(2) of the basic Regulation.

- (22) In this regard, and as explained below in recitals (42) and (82), it is noted that none of the co-operating companies submitted reliable information which could have been used as a basis for the calculation of the value of the parts used in the assembly operations or the value added to the parts brought in during the completion of the operations. Findings in this regard were therefore based on facts available in accordance with Article 18 of the basic Regulation.
- (23) To assess whether the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation, an analysis of trade flow of the imports into the Community which occurred since the imposition of definitive measures on imports originating in China was made.
- (24) To assess whether the imported products had in terms of quantities and prices undermined the remedial effects of the measures in force on imports of CFL-i from China, the quantities and prices to unrelated customers in the Community of the imports consigned from the three countries under investigation, when available, were used. In other cases, Eurostat data was used as the best data available concerning quantities and prices. The prices so determined were compared to the injury elimination level established for Community producers in the original investigation.
- (25) Finally, in accordance with Article 13(1) and (2) of the basic Regulation it was examined whether there was evidence of dumping in relation to the normal value previously established for the like or similar products. In this regard, export prices of the co-operating producer/exporter of CFL-i during the IP were compared with the normal value established in the investigation leading to the imposition of the definitive measures for the like product. In the original investigation normal value was established on the basis of prices or constructed value in Mexico, which was found to be an appropriate market economy analogue country for the PRC.
- (26) For the purpose of a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability. With regard to the product exported from Vietnam it was found that it had specific physical characteristics. Therefore, it was deemed appropriate to grant an adjustment for differences in physical differences in accordance with Article 2(10)(a) of the basic Regulation.
- (27) In accordance with Articles 2(11) and 2(12) of the basic Regulation, dumping was calculated by comparing the weighted average normal value as established in the original investigation and the weighted average export prices during this investigation's IP, expressed as a percentage of the CIF price at the Community frontier duty unpaid.

#### **4. Product concerned and like product**

- (28) The product concerned is, as defined in the original Regulation, CFL-i, currently classifiable within CN code ex 8539 31 90. A CFL-i is an electronic compact fluorescent discharge lamp with one or more glass tubes, with all lighting elements and electronic components fixed or integrated to the lamp foot.
- (29) The investigation showed that the CFL-i exported to the Community from the People's Republic of China and those consigned from Vietnam, Pakistan or the Philippines to

the Community have the same basic physical characteristics and have the same uses. They are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

### 5. Change in the pattern of trade

- (30) Imports from China more than halved after the imposition of measures in 2001, i.e. decreased from 85 million units in 2000 to 37 million units in 2002. Although imports recovered partially after 2002, their level in 2004 was still more than 20% below the level of 2000, i.e. before the imposition of the measures. On the other hand, imports from Vietnam, Pakistan and the Philippines, practically inexistent before 2001, increased significantly since the imposition of measures.
- (31) The following table 1 shows import quantities (pieces) of fluorescent lamps from the above mentioned countries into the EU15, including CFL-i as recorded in Eurostat at CN code level

Table 1

PARTNER \ PERIOD	1999	2000	2001	2002	2003	2004
China (units)	70 483 168	85 154 477	46 763 569	37 493 151	54 845 219	69 604 510
% of growth	151%	182%	100%	80%	117%	149%
Vietnam (units)	0	0	925 518	1 920 973	5 451 201	8 215 491
% of growth	0%	0%	100%	208%	589%	888%
Philippines (units)	768 406	82 840	1 487 219	2 995 323	3 250 691	3 956 526
% of growth	52%	6%	100%	201%	219%	266%
Pakistan (units)	0	0	196 240	584 065	674 119	1 255 456
% of growth	0%	0%	100%	298%	344%	640%

Source : Eurostat, CN code 85393190, EU15, Base 100 in 2001

- (32) Further analysis of these data, complemented and cross-checked by other statistical sources revealed that around half of the total exports for China as recorded in Eurostat consisted of CLF-i and that the evolution of the imports of the product concerned is correlated to the one of the fluorescent lamps, i.e. both showed similar trends.
- (33) In addition, it was found that the resurgence in the Chinese imports in 2003 and 2004 was mainly due to an increase in exports from companies subject to no or low anti-dumping duties - Lisheng Electronic & Lighting (Xiamen) Co., Ltd ('Lisheng') and Shenzhen Zuoming Electronic Co., Ltd ('Shenzhen')-, while import levels from the remaining companies were relatively stable during the same period.
- (34) The below table, based on statistical data collected by Member States and compiled by the Commission pursuant to Art. 14 (6) of the basic Regulation, shows the import quantities of CFL-i (in pieces) from Lisheng and Shenzhen on the one hand and the remaining Chinese companies subject to higher duty rates, on the other hand:

Table 2:

Company	AD in force	2002	2003	2004
Lisheng Electronic & Lighting (Xiamen) Co., Ltd,	0%	100	101	154
Shenzhen Zuoming Electronic Co., Ltd	8,4%	100	178	221
other companies	17,1 to 66,1%	100	119	128
Total		100	110	150

Source: Statistical data collected by Member States and compiled by the Commission pursuant to Art. 14 (6) of the basic Regulation

### The Philippines

- (35) As mentioned above in recitals (18) and (19), import volumes with regard to the Philippines were determined on the basis of Eurostat statistics.
- (36) Before 2001, the year of the imposition of the definitive anti-dumping measures, imports from the Philippines were insignificant. In 2001, after the imposition of the duties they, however, almost doubled, and increased further from 1,4 million units in 2001 to 2,9 million units in 2002. During the IP imports amounted to 3,9 million units, i.e. increased by a total of 262% in comparison to 2001.
- (37) The investigation revealed that exports from the PRC to the Philippines have consistently increased since 2000 and dramatically in 2003. At the same time, import statistics from the Philippines show consistently significantly higher volumes than export statistics from the PRC to the Philippines. The difference between the statistics corresponds to the volumes exported from the Philippines to the Community, which indicates that goods may have been transhipped from China via the Philippines to the Community.

### Pakistan

- (38) As indicated in recital (18) and as explained below in recital (52), the information submitted by the sole co-operating exporter in Pakistan, Ecopak Lighting, was unreliable, inter alia, with regard to its export sales to the Community and had therefore to be disregarded. Instead, Eurostat statistics were used to determine import volumes from Pakistan. Eurostat figures show that imports from Pakistan started in 2001, i.e. after the imposition of the definitive measures in the original investigation and increased by 490% during the IP, i.e. from 0,2 million units in 2001 to 0,9 million units in the IP.

### Vietnam

- (39) As mentioned above in recitals (17) and (19), import volumes with regard to Vietnam were established on the basis of Eurostat statistics. Thus, imports started after the

imposition of definitive measures in 2001 and doubled in 2002. In total, imports increased from 0.9 million units in 2001 to 7.1 million units in the IP, i.e. by 767%.

## **6. Conclusion on the change in the pattern of trade**

- (40) The overall decrease of Chinese exports to the Community and the parallel increase of exports from Vietnam, Pakistan and the Philippines after the imposition of the definitive measures constituted a change in the pattern of trade between the above mentioned countries on the one hand and the Community on the other hand.
- (41) It was considered also that the increase of imports from the PRC from 2002 up to the end of the IP is mainly due to an increase of imports of Lisheng and Shenzhen which were subject to no or low duty rates and which should therefore normally not have or at least have a lower interest in circumventing the measures in force by transshipment via and/or assembly operations in third countries. Therefore, this increase should not devaluate the conclusion outlined above.

## **7. The Philippines**

### *a) Nature of the circumvention practice*

- (42) Since no Philippine company co-operated in the present investigation, the assessment was based on information available in accordance with Article 18 of the basic Regulation, including information provided within the request. The applicant provided prima facie evidence for both, the existence of transshipment and of assembly operations in the Philippines.

### *b) Insufficient due cause or economic justification other than the imposition of the anti-dumping duty*

- (43) In the absence of any co-operation, the Commission had to base its findings on the facts available, in accordance with Article 18 of the basic Regulation. In the present case, the information submitted by the applicant contained prima facie evidence of transshipment and assembly operations circumventing the anti-dumping measures in force. Moreover, there is a coincidence in time between the imposition of the anti-dumping measures on the PRC and the change in the export trends from China on the one hand and of the import trends from the Philippines to the Community on the other hand as mentioned in recital (37). Since this confirmed the prima facie evidence already submitted in the request it was concluded that the change in the pattern of trade stemmed from the imposition of the anti-dumping measures rather than from any other due cause or economic justification within the meaning of Article 13(1) of the basic Regulation.

### *c) Undermining of the remedial effect of the anti-dumping duty*

- (44) The change in the pattern of Community imports occurred since the imposition of the anti-dumping measures on imports of CFL-i from China. This change in trade flows was translated in a significant increase in import volumes, i.e. as mentioned in recital (36) by over 250% between 2001 and the IP. It was therefore concluded that this increase of imports in terms of quantities has undermined the remedial effects of the anti-dumping measures in the Community market.

- (45) With regard to prices of the products consigned from the Philippines and in the absence of any co-operation from exporters in the Philippines, export prices were established on the basis of data recorded in Eurostat in accordance with Article 18 of the basic Regulation. On that basis, export prices from the Philippines were on average below the injury elimination level of Community prices as established in the original investigation.
- (46) Therefore, it was concluded that the imports of the product concerned from the Philippines undermined the remedial effects of the duty in terms of prices and quantities.

*d) Evidence of dumping*

- (47) The comparison of the weighted average normal value as established in the original investigation and the weighted average of export prices as established under recital (45) during this IP, expressed as a percentage of the CIF price at the Community frontier duty unpaid, showed dumping for the imports of CFL-i consigned from the Philippines.

*e) Conclusion*

- (48) Given the above, it was concluded that the definitive anti-dumping duty imposed on imports of CFL-i originating in China was circumvented by transshipment via the Philippines pursuant to Article 13(1) of the basic Regulation.

## **8. Pakistan**

*a) Nature of the circumvention practice*

- (49) The investigation revealed that Ecopak Lighting had a production/assembly facility for CFL-i in Pakistan. Ecopak Lighting is related to a Chinese company subject to the definitive anti-dumping duty, namely Firefly Lighting Firefly Lighting Co. Ltd.
- (50) Ecopak Lighting was registered in the beginning of 2001 (during the original investigation) and started actual operation in May 2001, after the imposition of provisional measures in the original investigation. Machinery and equipment were purchased from a trading company located in the PRC. The transfer of equipment from the PRC to Pakistan started in February 2001, immediately prior to the imposition of provisional measures in the original investigation. The investigation revealed, however, that Ecopak Lighting did not start the production of CFL-i in Pakistan, but only carried out assembly operations. Indeed, evidence was found showing that CFL-i components were manufactured by the related company located in the PRC and imported in semi-assembled 'kits'. Furthermore, Ecopak Lighting did not have the necessary machinery and equipment, which would have allowed it to produce CFL-i. At its premises in Pakistan, only assembly machinery was found.
- (51) It should be noted that at the time of the verification visit, it was found that no activity (neither production nor assembly) was taking place, no personnel was present and no stocks existed. The company explained that although they had assembly operations during the IP, as shown in particular by the machinery, and a personnel list which was provided, they had stopped the operations shortly before the initiation of the present

investigation and had not decided yet whether or not they would restart the activity. On this basis, the existence of a production capacity could not be established.

- (52) Moreover, it was found that Ecopak Lighting had two sets of accounting documents. The accounting records, including the reports of the auditors, were not in line with international accounting standards and therefore considered unreliable. Therefore, a reliable value of the machinery (needed for the calculation of the depreciation to be included in the value added calculation) could not be assessed, neither the precise value of the imported parts or the value added to these parts. In any event, the company did not provide any information which would have enabled the Institutions to examine the thresholds mentioned in Article 13(2)(b).
- (53) In the light of the evidence available, i.e. the information submitted by the applicant and the fact that almost all parts were imported from the PRC under the form of kits from a related company subject to measures, it was concluded that the operations taking place in Pakistan during the IP should be considered as assembly operations circumventing the definitive anti-dumping duties in force.

*b) Insufficient due cause or economic justification other than the imposition of the anti-dumping duty*

- (54) The investigation revealed further facts which confirmed that the assembly operations in Pakistan had no other due cause or economic justification than the imposition of the anti-dumping duty.
- (55) The above described change in the pattern of trade coincided with the establishment of assembly operations of CFL-i in Pakistan. It was also found that while sales of CFL-i to the Community were made from Pakistan, the Chinese related company continued supplying other markets directly from the PRC. Customers of Ecopak Lighting in the Community directly ordered CLF-i from the related company in China.
- (56) The exporter claimed that the reason for starting the operation in Pakistan was in particular the favourable environment for foreign investments, improved infrastructure and low labour costs in Pakistan. The company also claimed that the Community market is different from other markets with regard to demand, product types and prices which required a different export strategy than for other markets.
- (57) However, none of these arguments could be supported by sufficient evidence and the company could not show that these factors were taken into consideration at the time of the decision to start the operation in Pakistan. Indeed the results of the on-spot verification strongly contradicted the company's statements. Furthermore, as regards the interruption of the activity, the company was not able to provide a reasonable explanation. In any event, it is noted that the company could restart its assembly operations very easily, if they decided to do so.
- (58) Given the above and since the company also admitted itself that the assembly operation started due to the anti-dumping duties in place in the Community, it was concluded that there was insufficient due cause and no economic justification for the change in the pattern of trade other than the imposition of the anti-dumping duty.

*c) Undermining of the remedial effect of the anti-dumping duty*

- (59) The trade flow analysis on the basis of the Eurostat data, shows that the change in the pattern of Community imports, which occurred since the imposition of definitive measures on imports originating in China, has undermined the remedial effects of the anti-dumping measures in terms of quantities imported into the Community market. Indeed, the Pakistani company even exported significantly more to the Community during the IP of this investigation than its related company in China had done during the investigation period of the original investigation.
- (60) With regard to prices of the product consigned from Pakistan, it was found that the prices to unrelated customers in the Community are below the injury elimination level established for Community producers in the original investigation.
- (61) Therefore, it was concluded that the imports of the product concerned from Pakistan undermined the remedial effects of the duty in terms of prices and quantities.

*d) Evidence of dumping*

- (62) In accordance with Articles 2(11) and 2(12) of the basic Regulation, a comparison of the weighted average normal value as established in the original investigation and the weighted average of export prices during this investigation's IP, expressed as a percentage of the CIF price at the Community frontier duty unpaid, showed dumping for the imports of CFL-i consigned from Pakistan.

## **9. Vietnam**

*a) General considerations*

- (63) The request contained sufficient prima facie evidence of the existence of circumvention practices by means of transshipment and assembly of the anti-dumping measures in force by imports consigned in Vietnam.
- (64) Four exporters/producers in Vietnam submitted a reply to the questionnaire. On-spot verifications were carried out at the premises of three of them. The fourth company (Halong Simexco) did not allow for an on-spot verification and therefore its reply to the questionnaire had to be considered unreliable. Findings with regard to this company were based on facts available in accordance with Article 18 of the basic Regulation. On this basis it was concluded that there was no reason to believe that the operations of this company did not constitute circumvention as defined in Article 13 of the basic Regulation.
- (65) As regards the remaining three companies, all established assembly/production lines of CFL-i in Vietnam. However, only one of them exported the product concerned to the Community during the IP (Eco Industries Vietnam). Energy Research Vietnam started exporting after the IP, and therefore requested to be granted an exemption as a newcomer on the basis of Articles 11(4) and 13(4) of the basic Regulation).
- (66) Finally, Rang Dong Light Source and Vacuum Flask Joint Stock Company ('Ralaco'), did not export at all the product concerned during the IP or after this period. With regard to this company, no conclusions could therefore be drawn as to whether definitive anti-dumping duties were being circumvented or not. The situation of this



company will be reviewed upon request in case the conditions of Article 11(4) and 13(4) are fulfilled.

*b) Nature of the circumvention practice*

- (67) One of the companies mentioned in recital (65), Energy Research Vietnam Co Ltd, which did not export to the Community during the IP, started, however, exporting CFL-i after the IP and requested therefore to be treated as a newcomer in accordance with Articles 13(4) and 11(4) of the basic Regulation.
- (68) The verification of this company's questionnaire reply was, however, significantly impeded by, inter alia, the submission of misleading information (for instance hiding the existence of a stock of the product concerned sold to the Community), and the information submitted had thus to be considered as unreliable. Moreover, Energy Research Vietnam Co Ltd omitted information concerning its purchase of a Vietnamese company for which the applicant submitted prima facie evidence of circumvention practices within the request. Finally, Energy Research Vietnam Co Ltd did not allow an on-spot verification visit at the premises of its parent company in Hong Kong although it claimed that most of the documents relevant for the investigation would be located at that company.
- (69) Given the above, it was concluded that Energy Research Vietnam Co Ltd could not be considered as a cooperating party, and therefore the findings related to the company had to be made on the basis of the facts available. On that basis, and in particular the evidence submitted by the complainant and the fact that the information provided in the questionnaire reply was largely deficient, it was concluded that the request of the company to be granted a newcomer status could not be assessed.
- (70) Subsequent to disclosure, the company argued that it had been fully co-operating and denied most of the findings detailed in recital (68). However, on the basis of the factual evidence collected by the Commission, these objections were found to be unsubstantiated and groundless. Therefore, the conclusions in recital (69) are confirmed.
- (71) Eco Industries Vietnam, a company mentioned in recital (65), is part of a group whose parent company, Eco International Inc., is located in the United States of America (USA). The production facilities for CFL-i were established in August 2003 and exports to the Community started the same year. Two related companies in the Community (Denmark and Spain) are involved in the importation, sales and marketing of CLF-i in the Community. CLF-i manufactured in Vietnam are almost entirely exported to the Community (with the exception of some minor sales to Indonesia outside the IP). e3-light, the related Danish company, also purchased CFL-i via a related trader (Eco Industries China) from China and resold the product in the USA.
- (72) The investigation revealed that the company's accounts were not in line with international GAAP and that the accounts as a whole showed serious deficiencies and had therefore to be considered unreliable. The company's costs could therefore not be established on this basis. The investigation revealed also that, during the IP, the company in Vietnam imported almost all CLF-i components used for the production of CFL-i from China.

- (73) Given that the precise value of the imported parts could not be assessed, the value added to these parts could not be calculated. The company did not provide any reliable information which would have enabled an examination the thresholds mentioned in Article 13(2)(b).
- (74) As a consequence, the assessment regarding Eco Industries Vietnam had to be done on the basis of the facts available, in accordance with Article 18 of the basic Regulation. Consequently, in the light of the evidence available, i.e. the fact that the company started operations after the imposition of measures on the PRC, and that the majority of the parts are imported from the PRC, it was concluded that the operations of Eco Industries Vietnam during the IP should be considered as assembly operations circumventing the definitive anti-dumping duties in force.
- (75) Subsequent to disclosure, the company claimed that the Vietnamese production plant was almost exclusively supplying the Community because its capacity was not sufficient to supply other markets. However, it could be verified that no production had taken place during a significant part of the IP and that therefore sufficient spare capacities to supply markets other than the Community would have been available. The company also claimed that its accounts should be considered as reliable, since they were audited and stated to be in accordance with Vietnamese GAAP. In this context, it is recalled that the company did not keep any ledgers nor did the accounting system used by the company allow to verify the completeness and accuracy of the accounts. Therefore, the conclusions in recital (74) are maintained.

*c) Undermining of the remedial effect of the anti-dumping duty*

- (76) The trade flow analysis shows that the change in the pattern of Community imports, which occurred since the imposition of definitive measures on imports originating in China, has undermined the remedial effects of the anti-dumping measures in terms of quantities imported into the Community market.
- (77) Since only one company with exports of the product concerned during the IP to EU15 co-operated in the present investigation, the analysis for the rest of the companies, i.e. in terms of quantities and prices, had to be done on the basis of the data from Eurostat. As shown in recitals (17) and (39), imports increased significantly, i.e. by more than 700% since the imposition of definitive measures.
- (78) With regard to prices of the product consigned from Vietnam, it was found that the prices of Vietnamese exports were on average below the injury elimination level established for Community producers in the original investigation.
- (79) Therefore, it was concluded that the imports of the product concerned from Vietnam undermined the remedial effects of the duty in terms of prices and quantities. The same conclusions apply to the analysis made on the exports of Eco Industries.

*d) Evidence of dumping*

- (80) In accordance with Articles 2(11) and 2(12) of the basic Regulation, a comparison of the weighted average normal value as established in the original investigation and the weighted average of export prices during this investigation's IP, expressed as a percentage of the CIF price at the Community frontier duty unpaid, showed dumping

for the imports of CFL-i consigned from Vietnam. The same conclusion was reached when analysing the export prices of Eco Industries Vietnam.

- (81) Eco Industries Vietnam claimed that the normal values of the original investigation did not reflect the market characteristics in terms of prices during the IP and should therefore be recalculated or adjusted accordingly without further substantiating its claim. It is noted that Article 13(2) (c) of the basic Regulation provides explicitly that evidence of dumping should be established in relation to the normal values previously established for like or similar products. The methodology used by the Commission was therefore in line with the basic Regulation and no adjustments or recalculations of the normal value during the current IP were warranted. The company also claimed that in constructing the export price of Eco Industries Vietnam in accordance with Article 2(9) of the basic Regulation, a significant amount of SG&A of the Danish related importer (e3 light) was wrongly included in the calculation, since this amount would concern services provided to the American parent company and was therefore not related to the sales of the product concerned in the Community but did not provide any evidence supporting this claim. .. Furthermore, the company did not quantify the amount allegedly incorrectly included in the SG&A nor did it submit any information which would have allowed the Commission to determine these costs, even roughly.. The conclusions in recital (80) regarding this company are therefore maintained.

### **C. CONCLUSIONS**

- (82) The present investigation was characterised by a high level of non co-operation. The companies who were willing to co-operate submitted unreliable information and findings had therefore to a large extent be based on facts available in accordance with Article 18 of the basic Regulation.
- (83) The above findings showed that there is circumvention of the measures on CFL-i from the PRC within the meaning of Article 13 (1) and 13 (2) of the basic Regulation via the three above mentioned countries. In view of the above, the existing anti-dumping measures imposed on imports of the product concerned originating in the PRC should be extended to the same product consigned from Vietnam, Pakistan and/or the Philippines whether declared as originating in Vietnam, Pakistan or the Philippines or not.
- (84) The measures to be extended should be the ones established in Article 1(2) of the original Regulation for “all other companies”.
- (85) In accordance with Article 14(5) of the basic Regulation, which provides that any extended measures should apply to imports which entered the Community under registration imposed by the initiating Regulation, duties should be collected on those registered imports of CFL-I consigned from Pakistan, Vietnam and the Philippines.

### **D. REQUESTS FOR EXEMPTION**

- (86) The four companies in Vietnam and the one company in Pakistan submitting a questionnaire reply requested for an exemption in accordance with Article 13(4) of the basic Regulation.

- (87) As mentioned in recital (64), one of these companies (Halong Simexco) subsequently ceased co-operation and in the absence of any other more reliable information, it had to be concluded that this company was circumventing the antidumping measures in force. An exemption in accordance with Article 13(4) had therefore to be rejected.
- (88) A second company in Vietnam, Ralaco, as mentioned in recital (66), did not export the product neither during the IP nor after that period and no conclusions could be drawn as to the nature of its operations. Therefore, an exemption to this company could not be granted. However, should the conditions in Article 11(4) and 13(4) of the basic Regulation be fulfilled after extension of the anti-dumping measures in force, the company's situation may be reviewed upon request.
- (89) The third company, Energy Research Vietnam Co, Ltd., as outlined in recital (69), submitted misleading information and on this basis was found to be circumventing the definitive anti-dumping measures in force. Furthermore, its links to a Chinese company allegedly involved in circumvention practices could not be clarified. An exemption in accordance to Article 13(4) had therefore to be rejected.
- (90) The fourth company in Vietnam, Eco Industries Vietnam Co. Ltd., as outlined in recital (70) and following, did not have a reliable set of accounting records and the added value to the imported parts could thus not be determined. However, parts for the production of CFL-i were almost to their entirety imported from China. The assembly operation in Vietnam had therefore to be considered to circumvent the measures in force. Likewise, an exemption in accordance with Article 13(4) could therefore not be granted.
- (91) Finally, as explained in recital (49) and following, the company in Pakistan was found to circumvent the anti-dumping duty in force pursuant to Article 13(2) of the basic Regulation. Moreover, this company is related to a company under measures, Firefly Lighting Co. Ltd.. On this basis, its request for an exemption in accordance with Article 13(4) has to be rejected.
- (92) Other exporters concerned which were not contacted by the Commission in the frame of this proceeding and which intend to lodge a request for an exemption from the extended anti-dumping duty pursuant to Article 13(4) of the basic Regulation will be required to complete a questionnaire in order to enable the Commission to determine whether an exemption may be warranted. Such exemption may be granted after the assessment of the market situation of the product concerned, production capacity and capacity utilisation, procurement and sales and the likelihood of continuation of practices for which there is insufficient due cause or economic justification and the evidence of dumping. The Commission would normally also carry out an on-spot verification visit. The request would have to be addressed to the Commission forthwith, with all relevant information, in particular any modification in the company's activities linked to production and export sales of the product under consideration.

HAS ADOPTED THIS REGULATION:

*Article 1*

1. The definitive anti-dumping duty of 66.1% imposed by Regulation (EC) No 1470/2001 on imports of electronic compact fluorescent discharge lamps with one or more glass tubes, with all lighting elements and electronic components fixed to the lamps foot or integrated in the lamp foot, falling within CN code ex 8539 31 90 originating in the People's Republic of China, are hereby extended to electronic compact fluorescent discharge lamps with one or more glass tubes, with all lighting elements and electronic components fixed to the lamps foot or integrated in the lamp foot consigned from Vietnam, Pakistan and/or the Philippines whether declared as originating in Vietnam, Pakistan or the Philippines or not (TARIC code 8539 31 90\*92).
2. The duties extended by paragraph 1 of this Article shall be collected on imports registered in accordance with Articles 13(3) and 14(5) of Regulation (EC) No 384/96.
3. The provisions in force concerning customs duties shall apply.

*Article 2*

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the Community and must be signed by a person authorised to represent the applicant. The request must be sent to the following address:

European Commission  
Directorate-General for Trade  
Directorate B  
Office: J-79 05/17  
B - 1049 Brussels  
Fax (32 2) 295 65 05

2. In accordance with Article 13(4) of Regulation (EC) No 384/96, the Commission, after consulting the Advisory Committee, may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Regulation (EC) No 1470/2001, from the duty extended by Article 1.

*Article 3*

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EC) No 1582/2004.

*Article 4*

This Regulation shall enter into force on the day following that of 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,

*For the Council  
The President*