



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.05.1997
COM(97) 185 final

Proposal for a

COUNCIL REGULATION (EC)

amending Council Regulation (EEC) N° 830/92 imposing a definitive anti-dumping duty on imports of certain polyester yarns (man-made staple fibres) originating in Taiwan, Indonesia, India, the People's Republic of China and Turkey

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. By Regulation (EEC) N° 830/92, the Council imposed a definitive anti-dumping duty on imports of certain polyester yarns originating, *inter alia*, in Turkey and Indonesia. This Regulation imposed a residual duty of 10.1% on Turkish exporters and of 11.9% on Indonesian exporters, which failed to cooperate or were unknown at the time of the original investigation.
2. In accordance with Article 11 (4) of Council Regulation (EC) N° 384/96, the Basic Anti-dumping Regulation, every new exporter has the right to request the calculation of his individual dumping margin. Such requests were made to the Commission by the Turkish producer Kipas A.S. (hereinafter referred to as "Kipas"), and the Indonesian producer P.T. World Yamatex Spinning Mills (hereinafter referred to as "Yamatex"), which both claimed that they were not in existence at the time of the original investigation.
3. Since the documentary evidence submitted by Kipas and Yamatex was considered sufficient, the Commission, after consultation of the Anti-dumping Advisory Committee and after the opportunity given to the Community industry to comment, opened, by Regulations (EC) N° 1284/96 and 2237/96, two "new exporter" reviews, repealed the anti-dumping duties imposed by Regulation (EEC) N° 830/92 with regard to imports of the product concerned, produced and exported by Kipas and Yamatex, and directed customs authorities, pursuant to Article 14(5) of the Basic Regulation, to take appropriate steps to register such imports. The reviews were limited to the question of dumping as no requests for a review of the findings on injury were received.
4. The investigations carried out resulted in the findings of no dumping. It is therefore proposed that the Council adopts the annexed draft Regulation which accordingly adapts the current measures in force for the two exporters concerned.

COUNCIL REGULATION (EC) N°

of ... 1997

amending Council Regulation (EEC) N° 830/92 imposing a definitive anti-dumping duty on imports of certain polyester yarns (man-made staple fibres) originating in Taiwan, Indonesia, India, the People's Republic of China and Turkey

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) N° 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾, as amended by Council Regulation (EC) N° 2331/96⁽²⁾, 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) N° 830/92⁽³⁾, the Council imposed, *inter alia*, a definitive anti-dumping duty of 10.1% on imports of single, multiple (folded) or cabled yarn containing 85% or more by weight of polyester staple fibres, not put up for retail sale, and other yarns of staple fibres mixed mainly or solely either with artificial staple fibres or with cotton, not put up for retail sale, commonly referred to as certain polyester yarns (hereinafter the "product concerned" or "yarn"), currently classifiable within CN codes 5509 21 10, 5509 21 90, 5509 22 10, 5509 22 90, 5509 51 00 and 5509 53 00, and originating in *Turkey*, with the exception of imports from two

¹ OJ N° L 56, 6.3.1996, p.1

² OJ No L 317, 6.12.1996, p.1.

³ OJ N° L 88, 3.4.1992, p.1

Turkish exporters specifically mentioned, which were subject to a lesser rate of duty, and of 11.9% on imports of the product concerned originating in *Indonesia*, with the exception of those imports from one Indonesian exporter specifically mentioned, which was subject to no duty at all.

- (2) By Regulation (EC) N° 1168/95⁽⁴⁾, the Council amended the above mentioned Regulation in further excluding seven Indonesian exporters from any anti-dumping duty.

B. PRESENT PROCEDURES

- (3) In October 1995, the Commission received from the Turkish producer Kipas A.S. (hereinafter referred to as "Kipas" 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 Council Regulation (EEC) N° 830/92, pursuant to Article 11 (4) of Council Regulation (EC) N° 384/96 (hereinafter referred to as the "Basic Regulation"). Kipas claimed that it was not related to any of the exporters or producers in Turkey 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 December 1989 (hereinafter the "original investigation period"). Finally, Kipas 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 yarn to the Community.
- (4) In June 1996, an Indonesian manufacturer, P.T. World Yamatex Spinning Mills, Indonesia, (hereinafter referred to as "Yamatex" or the "company") submitted a request to initiate a "new exporter" review proceeding of Council Regulation (EEC)

⁴ OJ N° L 118, 25.5.1995, p.1

N° 830/92. Yamatex claimed to have no link or relation to any of the Indonesian exporters or producers subject to the anti-dumping measures in force with regard to the product concerned, that it had not exported the product concerned during the original investigation period, and that it had entered into irrevocable contractual obligations to export significant quantities of yarns to the Community.

- (5) The Commission, after having verified the evidence submitted by Kipas and Yamatex, which was in both cases considered sufficient to justify the initiation of a review in accordance with the provisions of 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 two separate reviews of Council Regulation (EEC) N° 830/92 with regard to Kipas⁽⁵⁾, and Yamatex⁽⁶⁾ and commenced its investigations.
- (6) In the Regulations initiating the two reviews, the Commission also repealed the anti-dumping duties imposed by Council Regulation (EEC) N° 830/92 with regard to imports of the product concerned, produced and exported by Kipas and Yamatex, and directed customs authorities, pursuant to Article 14(5) of the Basic Regulation, to take appropriate steps to register such imports.

Since both new exporter reviews relate to Council Regulation (EEC) N° 830/92 it was decided to deal with them jointly.

- (7) The product concerned covered by the present reviews is the same product as the one under consideration in Council Regulation (EEC) N° 830/92.
- (8) The Commission officially advised both Kipas and Yamatex as well as the representatives of the respective 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.

⁵ Commission Regulation (EC) N° 1284/96 of 3 July 1996, OJ N° L 165, 4.7.1996, p.19

⁶ Commission Regulation (EC) N° 2237/96 of 22 November 1996, OJ N° L 299, 23.11.1996, p.14

- (9) The Commission sent a questionnaire to Kipas and Yamatex and received, in both cases, a proper and timely reply. The Commission sought and verified all information it deemed necessary for the purposes of the investigations, and carried out, in the sole case of Kipas, a verification visit at the Kipas' premises in Turkey.
- (10) The investigation of dumping covered the periods:
- in the review proceeding carried out for Kipas, Turkey:
1 July 1995 to 30 June 1996;
 - in the review proceeding carried out for Yamatex, Indonesia:
1 November 1995 to 31 October 1996.
- (11) The same methodology as that used in the original investigation was applied in the present investigations where circumstances had not changed.

C. SCOPE OF THE REVIEWS

- (12) No request for a review of the findings on injury was made in any of the investigations. The investigations are therefore limited to dumping.

D. RESULTS OF THE INVESTIGATIONS

1. New exporter qualification

Kipas

- (13) The investigation confirmed that the Turkish exporter had not exported the product concerned during the original investigation period. Production of yarns by Kipas and its export to the Community started, in fact, only during the second half of 1994.

Furthermore, it was established during the investigation that the company did not have any links, either direct or indirect, with any of Turkish exporters subject to the anti-dumping measures in force with regard to the product concerned.

Accordingly, it is confirmed that Kipas 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.

Yamatex

- (14) The evidence submitted by the Indonesian exporter confirmed that it had not exported the product concerned during the original investigation period. Production of the product concerned started in 1994. Export activities in the form of irrevocable contractual obligations of Yamatex vis-à-vis Community customers for the product concerned only started, according to the documents provided, during the present investigation period (May 1996).

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

Accordingly, it is confirmed that also Yamatex 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

Kipas

- (15) In accordance with Article 2 (2) of the Basic Regulation it was examined whether the volume of Kipas' sales of the like product on the Turkish domestic market in total reached at least 5% of the volume of its total exports of the product concerned to the Community. It was found that total domestic sales of the like product achieved a level considerably in excess of the aforementioned 5% threshold.

For each of the types of yarn 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 yarn sold in Turkey during the investigation period represented 5% or more of the quantity of the comparable type of yarn sold for export to the Community.

The Commission subsequently examined whether the domestic sales of each type of the product concerned exported to the Community 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 domestic sales, 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.

(16) *Yamatex*

When establishing normal value for the Indonesian exporter, the same methodology as described under recital (15) was applied.

It was concluded that comparable types of the product concerned, in relation to those exported to the Community during the investigation period, were sold on the domestic market, and that these sales were made in sufficient quantities 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 prices*

- (17) For both companies, Kipas and Yamatex, 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*

Kipas

- (18) 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 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.

- (19) **Yamatex**

The same methodology as described in recital (18) was applied for Yamatex.

D. *Dumping margin*

- (20) The above comparison revealed that no dumping existed for exports to the Community of the product concerned made by both, Kipas and Yamatex, during the investigation period.

E. AMENDMENT OF THE MEASURES BEING REVIEWED

- (21) Based on the findings of no dumping made during the investigations, it is considered that no anti-dumping measure should be imposed on imports into the Community of the product concerned, produced and exported by Kipas and Yamatex. Council Regulation (EEC) N° 830/92 should therefore be amended accordingly.

F. DISCLOSURE AND DURATION OF THE MEASURES

- (22) Kipas and Yamatex were informed of the facts and considerations on the basis of which it is intended to propose the amendment of Council Regulation (EEC) N° 830/92, and were given the opportunity to comment. No comments were received.
- (23) The reviews carried out do not affect the date on which Council Regulation (EEC) N° 830/92 will expire pursuant to Article 11(2) of the Basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(3) of Council Regulation (EEC) N° 830/92 is hereby amended as follows: the following shall be added at the end of the text:

" ,P.T. World Yamatex Spinning Mills, Indonesia (Taric additional code **8595**),
as well as Kipas A.S., Turkey (Taric additional code **8011**) "

Article 2

Customs authorities are hereby directed to discontinue registration pursuant to Article 3 of Commission Regulations (EC) N° 1284/96 and N° 2237/96 respectively.

Article 3

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

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

Done at Brussels, 1997

For the Council

The President

ISSN 0254-1475

COM(97) 185 final

DOCUMENTS

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Catalogue number : CB-CO-97-177-EN-C

ISBN 92-78-19047-0

Office for Official Publications of the European Communities
L-2985 Luxembourg