



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.05.1997  
COM(97) 186 final

Proposal for a

COUNCIL REGULATION (EC)

**amending Council Regulation (EEC) N° 54/93 imposing a definitive anti-dumping duty on imports of synthetic fibres of polyester originating in India and the Republic of Korea**

**(presented by the Commission)**



## EXPLANATORY MEMORANDUM

1. By Regulation (EEC) N° 54/93, the Council imposed a definitive anti-dumping duty on imports of synthetic fibres of polyester originating, *inter alia*, in India. This Regulation imposed a residual duty of 7.2% on Indian exporter, which failed to cooperate or which 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 a request was made to the Commission by the Indian producer Viral Filaments Limited., India, (hereinafter referred to as "Viral" or "the company") which claimed that it was not in existence at the time of the original investigation.
3. Since the documentary evidence submitted by Viral 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opportunity given to the Community industry to comment, opened, by Regulation (EC) N° 1285/96, a "new exporter" review, repealed the anti-dumping duty imposed by Regulation (EEC) N° 54/93 with regard to imports of the product concerned, produced and exported by Viral, and directed customs authorities, pursuant to Article 14(5) of the Basic Regulation, to take appropriate steps to register such imports. The review was limited to the question of dumping as no request for a review of the findings on injury was received.
4. The investigation carried out resulted in the finding of no dumping. It is therefore proposed that the Council adopts the annexed proposal for a Regulation which accordingly adapts the current measure in force for the exporter concerned.

**COUNCIL REGULATION (EC) N°.../97**

**of ... 1997**

**amending Council Regulation (EEC) N° 54/93 imposing a definitive anti-dumping duty on imports of synthetic fibres of polyester 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) N° 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup>, as amended by Council Regulation (EC) N° 2331/96<sup>(2)</sup>, 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° 54/93<sup>(3)</sup>, 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 "product concerned" or "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 either subject to a lesser rate of duty or to no duty at all.

---

<sup>1</sup> OJ No L 56, 6.3.1996, p.1.

<sup>2</sup> OJ No L 317, 6.12.1996, p.1.

<sup>3</sup> OJ N° L 9, 15.1.1993, p.2.

## B. PRESENT PROCEDURE

- (2) In January 1996, the Commission received 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° 54/93, pursuant to Article 11 (4) of Council Regulation (EC) N° 384/96 (hereinafter referred to as the "Basic Regulation") from the Indian producer Viral Filaments Limited (hereinafter referred to as "Viral" or the "company"). 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 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 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, by Commission Regulation (EC) N° 1285/96<sup>(4)</sup>, a review of Council Regulation (EEC) N° 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 Council Regulation (EEC) N° 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.

---

<sup>4</sup> OJ N° 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 Council Regulation (EEC) N° 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 verified 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 its export 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 it was examined 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 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. Council Regulation (EEC) N° 54/93 should therefore be amended accordingly.

## **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 of Council Regulation (EEC) N° 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 Council Regulation (EEC) N° 54/93 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° 54/93 is hereby amended as follows: the following shall be added at the end of the text:

" ,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 Commission Regulation (EC) N° 1285/96.

*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) 186 final

# DOCUMENTS

EN

02 11

---

Catalogue number : CB-CO-97-178-EN-C

ISBN 92-78-19058-6

---

Office for Official Publications of the European Communities

L-2985 Luxembourg