



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

repealing the anti-dumping duty on imports of synthetic staple fibres of polyesters originating in Australia, India, Indonesia and Thailand and terminating the proceedings in respect of such imports, following expiry reviews pursuant to Article 11(2) of Council Regulation (EC) No 384/96, and terminating the partial interim review pursuant to Article 11(3) of such imports originating in Thailand

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

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 2117/2005 of 21 December 2005 ('the basic Regulation') in the proceedings concerning imports of synthetic staple fibres of polyesters originating in Australia, India, Indonesia and Thailand, following two expiry reviews pursuant to Article 11(2) of the basic Regulation and one interim review pursuant to Article 11(3) of the basic Regulation.

- **General context**

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.

- **Existing provisions in the area of the proposal**

There are no existing provisions in the area of the proposal.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

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.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 14 July 2005, the Commission initiated an expiry review of the anti-dumping measures applicable to imports of synthetic staple fibres of polyesters (PSF) originating in Australia, Indonesia and Thailand.

On 3 December 2005, the Commission initiated a partial interim review of the anti-dumping measures applicable to imports of PSF originating in Thailand, limited in scope to the examination of dumping as far as one producer from Thailand is concerned.

On 20 December 2005, the Commission initiated an expiry review of the anti-dumping measures applicable to imports of PSF originating in India.

The two expiry review investigations revealed that it is unlikely that significant volumes of dumped exports of PSF to the Community recur from Australia, India, Indonesia and Thailand should the measures be repealed. Thus, there is no reason to maintain the existing measures on imports of PSF from these countries.

Therefore, it is suggested that the Council adopts the attached proposal for a Regulation in order to repeal the existing measures against Australia, India, Indonesia and Thailand and terminate the proceedings against these countries and the partial interim review concerning Thailand.

- **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 2117/2005 of 21 December 2005.

- **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.

- **Choice of instruments**

Proposed instruments: Regulation.

Other means would not be adequate for the following reason(s).

The above-mentioned basic Regulation does not foresee alternative options.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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repealing the anti-dumping duty on imports of synthetic staple fibres of polyesters originating in Australia, India, Indonesia and Thailand and terminating the proceedings in respect of such imports, following expiry reviews pursuant to Article 11(2) of Council Regulation (EC) No 384/96, and terminating the partial interim review pursuant to Article 11(3) of such imports originating in Thailand

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 Community¹ ('the basic Regulation'), and in particular Articles 11(2) and 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) In July 2000, the Council, by Regulation (EC) No 1522/2000², imposed a definitive anti-dumping duty on imports of synthetic staple fibres of polyesters ('polyester staple fibres' or 'PSF') originating in Australia, Indonesia and Thailand. The investigation that led to these measures will be referred to as 'the original investigation 1'.
- (2) In December 2000, the Council, by Regulation (EC) No 2852/2000³, imposed a definitive anti-dumping duty on imports of PSF originating in India and the Republic of Korea. The investigation that led to these measures will be referred to as 'the original investigation 2'.
- (3) The measures imposed by Regulation (EC) No 2852/2000 consisted of an *ad valorem* duty, except for imports from one Indian exporting producer from which an undertaking was accepted by Commission Decision 2000/818/EC⁴. Following an interim review covering both dumping and injury, the measures on imports originating

¹ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

² OJ L 175, 14.7.2000, p. 10.

³ OJ L 332, 28.12.2000, p. 17.

⁴ OJ L 332, 28.12.2000, p. 116.

in the Republic of Korea have been amended and renewed for five years by Council Regulation (EC) No 428/2005⁵.

2. Requests for reviews

- (4) Following the publication of two notices of impending expiry, one concerning the anti-dumping measures in force on imports of PSF originating in Australia, Indonesia and Thailand⁶ and another regarding the anti-dumping measures in force on imports of PSF originating in India⁷, the Commission, on 13 April 2005 and 23 September 2005, received requests to review these measures pursuant to Article 11(2) of the basic Regulation.
- (5) These requests were lodged by the Comité International de la Rayonne et des Fibres Synthétiques ('CIRFS') on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of PSF. The requests were based on the grounds that the expiry of the measures would be likely to result in a recurrence of dumping and injury to the Community industry.
- (6) Furthermore, a request for a partial interim review of Regulation (EC) No 1522/2000 was received from Tuntex (Thailand) Public Company Limited ('Tuntex'), a producer of PSF in Thailand subject to the anti-dumping measures in force.
- (7) In the request pursuant to Article 11(3) of the basic Regulation, Tuntex provided *prima facie* evidence to support its claims that, as far as it is concerned, the circumstances on the basis of which measures were established have changed and that these changes are of a lasting nature. Tuntex provided evidence showing that a comparison of normal value based on its own cost/domestic prices and its export prices to a third country market would lead to a reduction of dumping significantly below the level of the current measure (27,7 %). Therefore, Tuntex claimed that the continued imposition of measures at the existing levels, which were based on the level of dumping previously established, was no longer necessary to offset dumping.
- (8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of two reviews pursuant to Article 11(2) of the basic Regulation and one review, limited in scope to the examination of dumping, pursuant to Article 11(3) of the basic Regulation, the Commission initiated these three reviews by notices published in the *Official Journal of the European Union*⁸.

3. Investigations

- (9) The Commission officially advised the producers in Australia, India, Indonesia and Thailand, importers, users and their associations in the Community known to be concerned, the representatives of the exporting countries concerned, CIRFS and known Community producers of the initiation of the expiry reviews. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notices of initiation.

⁵ OJ L 71, 17.3.2005, p. 1.

⁶ OJ C 261, 23.10.2004, p. 2.

⁷ OJ C 130, 27.5.2005, p. 8.

⁸ OJ C 174, 14.7.2005, p. 15; OJ C 307, 3.12.2005, p. 2; OJ C 323, 20.12.2005, p. 21.

- (10) The Commission officially advised Tuntex, as well as the representatives of the exporting country, of the initiation of the partial interim review. Interested parties were also given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.
- (11) In view of the large number of Indian, Indonesian and Thai producers as well as Community producers listed in the requests for the expiry reviews, and the large number of Community importers of PSF known to be concerned, it was considered appropriate, in conformity with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the reviews and to provide the Commission with the information requested in the notices of initiation.
- (12) After examination of the information submitted and given the low number of co-operating producers in India, Indonesia and Thailand which indicated their willingness to co-operate, it was decided that sampling was not necessary as regards producers in these countries.
- (13) No importer provided the Commission with the information requested in the notices of initiation and, therefore, sampling for importers was not necessary. In fact, no importer co-operated in the reviews.
- (14) Ten Community producers completed the sampling form and formally agreed to co-operate further in the investigation. Five out of these ten companies, which were found to be representative of the Community industry in terms of volume of production and sales of PSF in the Community, were selected for the sample. This sample constituted the largest representative volume of production and sales of PSF in the Community which could reasonably be investigated within the time available.
- (15) Questionnaires were, therefore, sent to the five sampled Community producers, to the producers in Australia and to those which cooperated with the sampling exercise for their country and to known users. The five non-sampled Community producers were requested to provide information on certain injury indicators and to comment on the impact of the repeal or maintenance of the anti-dumping measures.
- (16) Replies to the questionnaires were received from four out of five sampled Community producers (so the sample represented 38 % of production and sales in the Community), one producer in Australia, three producers in India, four producers in Indonesia, four producers in Thailand (two of them related) and eight users. Two associations of users made submissions. Furthermore, four out of five non-sampled Community producers provided the information requested (so the cooperating producers represented 60 % of production in the Community).
- (17) The Commission sought and verified all the information it deemed necessary for its analysis and carried out verification visits at the premises of the following companies:

(a) *Sampled Community producers*

- Advansa GmbH, Hamm, Germany
- Elana, Branch Office of Boryszew S.A., Torun, Poland
- La Seda de Barcelona S.A., El Prat de Llobregat, Spain
- Wellman International Limited, Mullagh, Ireland

(b) *Producers in Australia*

- Leading Synthetics Pty Ltd., Campbellfield

(c) *Producers in India*

- Futura Polyesters Limited, Chennai
- Indo Rama Synthetics (India) Ltd., Nagpur
- Reliance Industries Limited, Mumbai

(d) *Producers in Indonesia*

- P.T. Global Fiberindo, Tangerang
- P.T. Indo-Rama Synthetics Tbk., Jakarta
- P.T. Pania Indosyntec Tbk., Bandung
- P.T. Susilia Indah Synthetic Fibers Industries, Tangerang

(e) *Producers in Thailand*

- New World Polyester Co., Ltd., Samutprakarn
- Teijin Polyester (Thailand) Limited, Bangkok
- Teijin (Thailand) Limited, Bangkok
- Tuntex (Thailand) Public Company Limited, Bangkok

- (18) As regards the expiry reviews, the investigation on the continuation and/or recurrence of dumping and injury covered the period from 1st July 2004 to 30 June 2005 ('review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1st January 2002 up to the end of the RIP ('period considered'). The investigation period used in the partial interim review for the investigation of dumping is the same as the RIP used in the expiry reviews.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (19) The definition of the product concerned corresponds to the one that was used in the original investigations mentioned under recitals (1) and (2) above.
- (20) The product concerned is synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning originating in Australia, India, Indonesia and Thailand, currently classifiable within CN code 5503 20 00. It is commonly referred to as polyester staple fibres or PSF.
- (21) PSF is a basic material used at various stages of the manufacturing process of textile products. PSF is either used for spinning, i.e. manufacturing filaments for the production of textiles, after mixing or not 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.
- (22) The product is sold in different product types which can be identified through different specifications such as denier or decitex, tenacity, lustre and silicon treatment. From a production point of view, a distinction can be made between virgin PSF, produced from virgin raw materials, and regenerated PSF, produced from recycled polyester. Finally, the quality may be first grade or sub-standard.
- (23) The investigation has shown that all types of the product concerned as defined in recital (20) above, despite differences in a variety of factors as defined in the preceding recital, have the same basic physical and chemical characteristics and the same uses. Therefore, and for the purpose of the current reviews, all types of the product concerned are considered as one product.

2. Like product

- (24) The current reviews have shown that the product concerned and the PSF produced and sold on the domestic markets of the countries concerned as well as the PSF manufactured and sold in the Community by the Community producers have the same basic physical and chemical characteristics and the same uses. Therefore, these products are considered to be a like product within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

- (25) Concerning the expiry reviews, in accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and whether the expiry of the measures would be likely to lead to a continuation or a recurrence of dumping.
- (26) During the RIP, exports to the Community of PSF originating in Australia, India, Indonesia and Thailand ('the countries concerned') were negligible. According to Eurostat, imports from the countries concerned amounted to only 1 056 tonnes during

the RIP (0,1 % of Community consumption), whilst they were more than 69 000 tonnes during the investigation periods of the original investigations.

- (27) All co-operating producers had no or negligible export sales of PSF to the Community in the RIP and, thus, no representative dumping calculations could be made in order to determine the likelihood of continuation of dumping.
- (28) Consequently, for the likelihood of recurrence of dumping analysis account was taken, amongst others, of prices for exports to other third countries.
- (29) Given the findings of the expiry reviews set out below, it was not considered necessary to pursue the interim review requested by Tuntex.

2. Likelihood of recurrence of dumping should measures be repealed

2.1. Australia

Preliminary remarks

- (30) The sole producer of PSF in Australia has stopped exporting PSF to all markets, including the Community, in 2003. The company has invested in a new flexible production line allegedly in order to cover only a regional part of the Australian PSF market; mainly the market of the State of Victoria where it is located.

Relationship between the domestic price level and the price level in the Community

- (31) Since there were no exports to any country during the RIP, the domestic prices in Australia, which were found to be loss making but above variable cost, were compared and found significantly lower than the average price of the Community producers in the RIP. This is an indication that the company might have an incentive to resume some exports to the Community should measures be repealed. However, as set out in recital (32) below, the company has no capacity to resume any significant volume of exports to the Community.

Unused capacity and stocks

- (32) Although the capacity utilisation of the Australian producer was not very high in the RIP, the available spare capacity is a small fraction of the Community consumption (significantly less than 0,5 %). Even if all this spare capacity were sold at dumped prices to the Community following the repeal of the measures in force, the effect on the Community market would be minimal. Stocks is not a meaningful indicator as regards PSF produced in Australia because the product is mainly sold on client order basis.
- (33) Finally, it is recalled that the company has not exported to any third country PSF since 2003, irrespective of the existence of similar spare capacity during this period. Consequently, it is concluded that there is no likelihood of recurrence of dumped exports in significant volumes from Australia to the Community should the existing measures be repealed.

2.2. India

Preliminary remarks

- (34) Three Indian PSF producers co-operated in the investigation. Two of them had some minor export sales to the Community in the RIP; the third had no exports to the Community. It is noted that one of these co-operating producers had three related companies producing PSF in India. However, these related producers were not investigated separately, since only one of them made some – very limited – direct sales of PSF in the RIP, all on the domestic market.
- (35) It is known that there was at least one small PSF producer in India in the RIP, which did not co-operate in the investigation. For those non-cooperating producer(s), the information available from Eurostat and other sources was analysed. On that basis, it was found that the Indian exports of PSF to the Community from other than the co-operating Indian producers were also negligible in the RIP. However, no reliable information as to the production capacity and volumes, stocks and sales was available for the non-cooperating company/companies. In this respect, and in the absence of any indication to the contrary, it was considered that findings for any non-cooperating companies would be in line with those established for co-operating companies.
- (36) Since there were no sufficient exports to the Community for a representative dumping analysis in the RIP and in order to establish whether dumping would be likely to recur should the measures be repealed, the pricing behaviour of the co-operating producers on other export markets and their production capacity and stocks were examined. The analysis was based on the information provided by the co-operating producers mentioned in recital (17) above.

Relationship between export prices to third countries and the price level in India

- (37) Data from the three Indian co-operating producers showed that export prices to third countries were lower than domestic prices in India. In fact, the investigation established that overall this price difference ranged in the RIP between 15 % and 27 %. This may indicate a likelihood of recurrence of dumping on exports to the Community should measures be repealed.

Relationship between export prices to third countries and the price level in the Community

- (38) It was found that the sales prices of the Community producers in the Community were on average considerably higher than the export prices of the co-operating Indian producers to other third countries in the RIP. This may indicate that the prevailing price level for the product concerned in the Community market could make this market attractive for the Indian producers. On this basis, it was considered that there is an economic incentive to shift exports from other third countries to the higher priced Community market in case of repeal of the measures in force. However, since prices in the Community are considerably higher than export prices to other third countries, it is unlikely that any exports to the Community would be made at dumped prices should measures be repealed.

Unused capacity and stocks

- (39) There were no significant spare capacities in the three co-operating companies in India during the RIP. However, two of these major producers were already implementing significant investments into their PSF production, which will result in an aggregated increase of their production capacity by 361 000 tonnes p.a. in the year 2007. These investments were said to be based on developments on the Indian PSF market, which they allege is expected to grow sharply this year and in the near future. According to the information available, the Indian PSF market size is currently about 610 000 tonnes p.a. It is noted that the above production capacity increase represents more than 50 % of the total production capacity of the three co-operating Indian producers in the RIP. It is also noted that, according to the information available, there was at least one new PSF producer in India in the start-up phase of production for this product at the time of the investigation. On the other hand, the biggest Indian producer acquired recently a Community producer which is non-cooperating with the investigation. Thus, this Indian exporter may have no interest to export to the Community significant quantities of PSF in the future. Moreover, data from the co-operating producers show that their domestic sales have been increasing during the period considered and that they will continue increasing in the future. Thus, the new capacities will meet the rising domestic demand although it cannot be excluded that there might be at times some excess capacity.
- (40) Stock levels for the three Indian producers did not show any significant change in the period considered. It is, however, noted that stocks can not be considered a meaningful indicator in the case of India because the production of one of the co-operating producers is based on orders from customers and another co-operating producer manufactures significant quantities of PSF for captive use.
- (41) Overall, it is considered that there is no likelihood of resumption of exports to the Community in significant quantities and that, even if a part of the new production capacities in India would end up in the Community should measures be repealed, it is unlikely that such exports would be made at dumped prices (see recital (38) above).

2.3. Indonesia

Preliminary remarks

- (42) Four Indonesian PSF producers co-operated in the investigation. None of these producers had related companies producing PSF in Indonesia. Three of them had some minor export sales to the Community in the RIP; the fourth had no exports to the Community.
- (43) It is known that there were at least five active PSF producers in Indonesia during the RIP, which did not co-operate in the investigation. For those non-cooperating producers, the information available from Eurostat and other sources was analysed. On that basis, it was found that the Indonesian exports of PSF to the Community from other than the co-operating Indonesian producers were also negligible in the RIP. No reliable information as to the production capacity and volumes, stocks and sales was available for these non-cooperating companies. In this respect, and in the absence of any indication to the contrary, it was considered that findings for any non-cooperating companies would be in line with those established for co-operating companies. The

examination of whether it would be likely that dumping recurs should the measures be repealed was therefore based on the information available, i.e. the information provided by the co-operating producers mentioned in recital (17) above.

- (44) In order to establish whether dumping would be likely to recur should the measures be repealed, the pricing behaviour of the co-operating producers on other export markets and the exporters' production capacity and stocks were examined.

Relationship between export prices to third countries and the price level in Indonesia

- (45) For one of the four co-operating Indonesian producers, no data related to export prices could be found since this company did not export PSF at all in the RIP. Data concerning the other three producers showed that export prices to third countries were in general slightly lower than domestic prices in Indonesia for two of them. In fact, the investigation established that this price difference was on average around 4 % in the RIP. For the third producer, export prices to third countries were found overall slightly higher than domestic prices in Indonesia. This does not indicate a likelihood of recurrence of any significant dumping on exports to the Community should measures be repealed.

Relationship between export prices to third countries and the price level in the Community

- (46) It was found that the sales prices of the Community producers in the Community were on average considerably higher than the export prices of the co-operating Indonesian producers to third countries in the RIP. This may indicate that the prevailing price level of the product concerned in the Community could make this market attractive for the Indonesian producers. On this basis, it is considered that should measures be repealed, there is an economic incentive to shift exports from third countries to the higher priced Community market. However, since prices in the Community are considerably higher than export prices to other third countries, it is unlikely that any exports to the Community would be made at dumped prices should measures be repealed.

Unused capacity and stocks

- (47) There was no uniform pattern concerning capacity utilisation of the co-operating producers in Indonesia during the RIP. While some of the companies were able to utilize almost all their installed capacity, others had significant spare capacities available. However, overall this spare capacity was less than 20 % of their total capacity. None of the co-operating companies in Indonesia appeared to be planning any significant investments in order to expand PSF production capacity in the future. Concerning the capacity utilisation of the non-cooperating Indonesian producers, an estimate of the spare capacity was made on the basis of information provided by the co-operating companies and the Indonesian association of PSF producers. According to this information, the installed capacity of the co-operating producers accounts for less than half of the total installed PSF production capacity in Indonesia. On this basis, it was estimated that the existing spare production capacity in Indonesia is maximum around 90 000 tonnes. Furthermore, data from the co-operating producers show that overall domestic sales have been increasing during the period considered and that they

will continue increasing in the future. Therefore, the spare capacity in Indonesia would be probably used for domestic sales rather than export sales to the Community.

- (48) Stock levels for the four Indonesian producers did not show any significant change in the period considered. It is, however, noted that stocks cannot be considered a meaningful indicator because the production of PSF is mostly based on orders from customers and/or captive use.
- (49) Overall, it is considered that there is no likelihood of resumption of exports to the Community in significant quantities and that, even if a part of the spare production capacity in Indonesia would end up in the Community should measures be repealed, it is rather unlikely for the reasons set out in recitals (45) and (46) above that the prices of such exports would be dumped.

2.4. Thailand

Preliminary remarks

- (50) There are eight producers of PSF in Thailand known to the Commission. Four of them co-operated in the current investigation. Only one of them has exported a minor quantity of PSF to the Community in the RIP.
- (51) The information on stocks and sales to markets other than the Community refers only to the co-operating producers. It was, however, possible to obtain data on production capacity in Thailand from the Thai Synthetic Fiber Manufacturer's Association and to make an estimate of the production volume of all producers in Thailand. This estimate was based on the assumption that the capacity utilisation of the non-cooperating producers was similar to that of the co-operating producers. In this respect, and in the absence of any indication to the contrary, it was considered that findings for non-cooperating companies would be in line with those established for co-operating companies.
- (52) In order to establish whether a recurrence of dumping would be likely should measures be repealed, the pricing behaviour of the co-operating producers in export markets other than the Community, production capacity in Thailand and stocks of co-operating producers were examined.
- (53) According to Eurostat, import volumes originating in Thailand were negligible during the RIP.

Relationship between export prices to third countries and the price level in Thailand

- (54) Data from the four co-operating producers showed that sales to third countries were made at prices below those on the domestic market or below cost of production - differences ranging overall from 10 % to 15 %. This may indicate a likelihood of recurrence of dumping on exports to the Community should measures be repealed.

Relationship between export prices to third countries and the price level in the Community

- (55) The export prices to third countries charged by the co-operating producers in Thailand were on average significantly below the sales prices of the Community producers in

the Community, which may indicate that the prevailing price level of PSF on the Community market would make this market attractive for producers in Thailand if the anti-dumping measures were repealed. On this basis, it is considered that there is an economic incentive to shift exports from third countries to the higher priced Community market in case the anti-dumping measures in force are repealed. However, since prices in the Community are considerably higher than export prices to other third countries, it is unlikely that any exports to the Community would be made at dumped prices should measures be repealed.

Unused capacity and stocks

- (56) The capacity utilisation of co-operating producers has been rather high in the period considered, on average around 92 %. At this level of capacity utilisation, and assuming that non-cooperating producers had a similar level of capacity utilisation, producers in Thailand had a spare capacity of not more than 50 000 tonnes in the RIP. Although such capacity could be partially used to resume export sales to the Community should measures be repealed, given the important share of domestic sales and the high number of export markets supplied by the co-operating producers, it is unlikely that significant volumes of PSF could end up in the Community market.
- (57) Stocks is not a meaningful indicator as regards PSF produced in Thailand. Production is mostly based on orders from customers and, therefore, stocks are mainly made up of PSF that is awaiting to be shipped to already known buyers.
- (58) Overall, it is considered that there is no likelihood of resumption of exports to the Community in significant quantities and that, even if a part of the spare production capacity in Thailand would end up in the Community should measures be repealed, it is rather unlikely for the reason set out in recital (55) above that the prices of such exports would be dumped.

2.5. Conclusion

- (59) For the examination as to whether it would be likely that dumping would recur should the anti-dumping measures be repealed, spare capacities and unused stocks as well as pricing and export strategies in different markets were analysed.
- (60) This examination revealed that, whilst there may be some spare production capacities in Australia, India, Indonesia and Thailand which could lead to a resumption of exports to the Community if measures are allowed to expire, there are no reasons to believe that the volume of such exports will be significant and, more importantly, any such exports are not expected to be made at dumped prices as established in the original investigations.
- (61) Consequently, since there is no likelihood of recurrence of dumped exports from the countries concerned which could cause injury, there is no need to analyse the likelihood of recurrence of injury and Community interest. The measures on imports of PSF originating in Australia, India, Indonesia and Thailand should therefore be repealed and the proceedings terminated.

D. PARTIAL INTERIM REVIEW CONCERNING THAILAND

- (62) Since in accordance with the preceding recital the measures against Thailand should be repealed and the proceeding terminated, the partial interim review concerning Tuntex should also be terminated.

E. DISCLOSURE

- (63) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to propose that the existing measures against Australia, India, Indonesia and Thailand be repealed and the proceedings terminated. All parties were given an opportunity to comment. Producers in the countries concerned and users in the Community supported the above conclusions. However, CIRFS and certain Community producers opposed but, overall, the comments received were not of a nature to change the conclusions.
- (64) CIRFS and certain Community producers argued that the Commission's own findings on spare capacity and dumping clearly indicated that there was likelihood of recurrence of injurious dumping.
- (65) As regards the sole Australian producer, they considered that it had not been explained whether the production capacity previously used for export to the Community is still available, and if so whether it is likely to be brought back on stream if the duties are allowed to expire. They noted that sales on the domestic market were below normal value and, taking into account that injurious dumping on exports to the Community was found in the original investigation as well as in another investigation on PET, a product closely related to PSF, it should be concluded that there is likelihood of recurrence of injurious dumping.
- (66) CIRFS and certain Community producers considered that an increase of the capacity of two major Indian producers by 361 000 tonnes in 2007 and the existence of at least one new PSF producer in the start-up phase with an estimated capacity of 180 000 tonnes means overall Indian capacity will exceed domestic demand for PSF by more than 300 000 tonnes in the whole period to 2010. This fact coupled with dumping margins between 15 % and 27 % on exports to third countries in the RIP, as well as the Commission's own admission that the prevailing price level on the Community market could make it attractive for Indian producers, shows that there can be little doubt as to the likelihood of recurrence of injurious dumped imports if the measures are repealed.
- (67) As regards Indonesia, they stressed the fact that the Commission draws conclusions only from the analysis of four co-operating producers when the market and financial situation of the non-cooperating producers, which the Commission estimates as having more than half of the total installed capacity in Indonesia, is significantly worse. They also considered that there are over 140 000 tonnes of spare capacity, i.e. 50 000 tonnes more than the Commission's estimate, and that excess capacity will still be over 100 000 tonnes in several years' time. Even the 90 000 tonnes of spare capacity estimated by the Commission make it likely that Indonesian producers, which already have commercial contacts in the Community for sales of polyester filament, will significantly increase their exports to the Community once the measures are repealed. As their margins on exports to third countries are still above *de minimis* levels, imports originating in Indonesia would be made at injurious dumped prices.

- (68) CIRFS and certain Community producers noted that dumping margins of 10 % to 15 % on exports of Thai co-operating producers to third countries, significant spare capacity and the fact that Thai PSF producers are already exporting polyester textile filament to the Community clearly indicate a likelihood of a rapid recurrence of dumping on imports originating in Thailand should measures be repealed.
- (69) They also claimed that countries such as China, India and Vietnam, which were until recently net importers of PSF and important export markets for the countries concerned, have built up capacity to an extent that they will be soon net exporters, thus putting further pressure on the countries concerned to resume exports of significant quantities to the Community at injurious dumped prices.
- (70) Finally, a Community producer stressed the strategic importance of upstream recycling industries, which could be negatively affected by the downsizing or even closure of Community producers of PSF.
- (71) In an expiry review, the findings on likelihood of continuation or recurrence of dumping and injury are prospective and, therefore, include an element of appreciation. Overall, the facts concerning capacity and capacity utilisation in the countries concerned as established in the investigation were not challenged. CIRFS and certain Community producers have simply made a different forecast on the likelihood of recurrence of dumped PSF exports to the Community for the countries concerned. It has tried to support its forecast by references to products other than PSF. However, the fact that certain producers in the countries concerned may export other products to the Community does not show by itself that there is a likelihood of resumption of significant quantities of dumped exports of PSF to the Community should measures be repealed.
- (72) In the current case, the fact that the price difference between exports from India, Indonesia and Thailand to third countries and their domestic sales in the RIP was found significantly lower than that established in the original investigations on their exports to the Community is an indication that the price situation in the markets has changed. Furthermore, the fact that prices in the Community are significantly higher than prices for sales to third countries indicates that such price differences may even be lower, if not negative, if significant exports to the Community from these three countries were to resume. Thus, under the current circumstances it is not expected that dumping could take place on exports to the Community from these countries. It is recalled that there were no exports from Australia whatsoever in the RIP and, thus, such assertions cannot be made for this country.
- (73) Furthermore, the capacity utilisation in India, Indonesia and Thailand was generally high and their domestic markets important and in some cases growing fast. In India, 90 % of the sales of the co-operating producers were made on the domestic market in the RIP. In Indonesia, the same ratio was 80 %. In Thailand, where this ratio was around 40 %, the estimated spare capacity was rather low and in any event significantly lower than that in India and Indonesia. No evidence was submitted that the situation of non-cooperating producers in these countries was different. As far as Australia is concerned, there are no indications that the old capacity of the sole producer could be easily reinstated and used to resume exports to the Community should measures be repealed. As already indicated, the existing capacity in Australia, even if it is to be used completely for exports to the Community, could not reach a share above the *de minimis* threshold of 1 % of the Community market. It is, thus,

considered that there are no indications that spare capacities could be used to resume significant exports to the Community should measures be repealed.

- (74) With regard to the argument that certain third countries have built new capacities and may reduce or even stop imports in the future, thus allowing more spare capacities for exports to the Community, it is noted that there is no indication that the fast growing demand for PSF worldwide would stop in the near future. In this respect, it is also noted that the existing capacity in the Community could cover maximum 60 % of the growing Community demand in the RIP. Consequently, it is not expected that a world wide overcapacity situation is imminent or that it could affect significantly the Community market.
- (75) Finally, it is true that upstream recycling industries could be negatively affected by the downsizing or even closure of Community producers of PSF, as the latter are the most important consumers of bottle flakes. However, this consideration is irrelevant to the determination on the likelihood of resumption of dumped exports from the countries concerned. It is therefore considered that the comments of CIRFS and certain Community producers cannot change the conclusion that there is no likelihood of resumption of significant quantities of dumped exports to the Community from the countries concerned and, thus, the measures should be repealed and the proceedings terminated,

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping measures on imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning originating in Australia, India, Indonesia and Thailand imposed by Council Regulations (EC) No 1522/2000 and No 2852/2000 are hereby repealed and the proceedings concerning these imports are terminated.

Article 2

The partial interim review of the anti-dumping measures applicable to imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning originating in Thailand is hereby terminated.

Article 3

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