

**REPLY OF THE EUROPEAN COMMUNITIES TO STATEMENT BY
INDONESIA ON EUROPEAN UNION ANTI-DUMPING PRACTICES ON
INDONESIAN POLYESTER SYNTHETIC STAPLE FIBRE (PSF)¹**

Made at the Meeting of the Committee on
Anti-Dumping Practices on 26 April 2001

The following communication, dated 30 April 2001, has been received from the Permanent Delegation of the European Commission.

The Permanent Delegation of the European Commission would like to reply to the statement by Indonesia on the imposition of anti-dumping and anti-subsidy measures on Polyester Staple Fibre (PSF) originating in several countries, amongst them, Indonesia.

We would like to address the different issues presented by the Indonesian delegation in the last meeting of the Committee on Anti-Dumping Practices on 2-3 November 2000:

1. Sampling methodology

The Indonesian delegation alleged *inter alia* that,

- (a) given the number of producers of the product concerned, the use of sampling methodology was not justified;
- (b) the sample was not representative since only two companies were selected for the sample;
- (c) as a consequence of sampling, no opportunity for a “newcomer-review” will be available for three companies which did not export to the EC during the Investigation Period;
- (d) non-sampled companies did not get the opportunity to defend themselves;
- (e) companies who wanted to seek individual treatment were not given sufficient time to answer the questionnaire.

In reply to the arguments put forward by the Indonesian delegation, my delegation would like to outline the following:

¹ G/ADP/W/416

- At the time of the initiation, the EC was aware of the existence of ten producers of the product concerned in Indonesia. This number of companies was considered sufficiently large to warrant sampling, all the more considering the fact that further exporting producers unknown to the EC might have existed. Seven companies came forward and provided information with a view to being included in the sample. Furthermore, the use of the sampling methodology was at no point put into question by the Indonesian authorities at the time when the sampling process took place².
- The statement that only two companies were selected for the sample is not correct. In fact, the EC initially selected three exporting producers according to their representativity with regard to the EC and the domestic market. However, two of these three companies failed to further co-operate. Furthermore, of the two companies that requested individual treatment, only one provided a questionnaire response. Insofar the allegation by the Indonesian delegation that all seven companies have “furnished all information as required by the EU” is not corroborated by the facts. Only the basic data requested to constitute the sample was furnished by all seven companies.

The reconstitution of a completely new sample as a consequence of the non-co-operation could not be envisaged given the statutory time limits of the proceeding. It should also be noted that available time had been further reduced by the many extensions exceptionally given in particular to one of the Indonesian companies in the initial sample in order to give it the opportunity to provide a meaningful questionnaire response.

Under these circumstances, the only other Indonesian company that had provided a satisfactory questionnaire response, with a view of being granted individual treatment, was added to the sample. There was no other satisfactory response from any other of the seven companies that would have allowed to include other exporting producers in the new sample. The EC therefore, as a consequence of the high level of non-co-operation, had no other choice than to work on a basis of a sample of two companies.

The unusual fact that companies declared their readiness to be sampled and then did not co-operate once they had been included in the sample led to considerable delays in the proceeding and left the EC therefore with no alternative but to use the only two producers that had provided a meaningful questionnaire response for the sample. It should be noted that the EC could have taken more stringent action at this stage. It could legitimately have declared the sampling process as impossible to implement. As a consequence it would simply have investigated the two exporters and would have given a residual duty to the rest of the country.

However, another course of action was followed and the Indonesian authorities were informed and raised no objection to the revised sample. The two companies selected were, moreover, two of those that had, since the beginning, been suggested to be included in the sample by the Anti-Dumping Committee of Indonesia (letter of 17 May 1999). It should also be noted that this final sample still covered more than 50 per cent of the Indonesian exports of the product concerned to the EC and more than 30 per cent of the domestic sales. Therefore, we cannot share the assessment of the Indonesian delegation that this sample was “not representative”.

- As concerns the treatment of companies which did not export during the Investigation Period, a special newcomer treatment is not granted automatically but only on request of the companies concerned under the conditions set out in Art 2 of the Regulation imposing

² In this respect, the argument was raised by the Indonesian Fibre Makers Association in a letter of 14 May 1999 and the European Commission addressed this point in its answer on 18 May 1999.

definitive duties on imports of PSF originating, amongst other, in Indonesia (Council Regulation N°1522/2000). In this respect, provided that the conditions for a newcomer are fulfilled and the necessary information is provided, an accelerated procedure for new exporters could be carried out with the aim of modifying the existing Regulation. However, given that sampling was used in the original investigation, no individual treatment would be given to newcomers as this would discriminate co-operating companies in the initial proceeding that were not included in the sample and would turn the concept of sampling *ad absurdum*. The rate for companies for which a new exporting producer status would be granted would be the rate for co-operating exporting producers not included in the sample, i.e. the weighted average of the rates of the sampled companies.

- The non-sampled co-operating companies were given ample opportunities to defend themselves. In this respect, all their submissions were examined and answered by the Commission.
- With regard to the time available to the companies seeking individual treatment, my delegation would like to stress that individual treatment is not an automatic alternative for companies that have not been included in the sample. The conditions on individual treatment have to be fulfilled on their own merit. The timeframe to answer to the questionnaire in view of seeking individual treatment is independent from the date of communication of the result of the sampling exercise. In fact the notice of initiation in point 5(c), last paragraph stipulates that exporting producers seeking individual treatment should as soon as possible request a questionnaire because all such questionnaires should be completed within the general time limit, i.e. within 40 days from the date of initiation. Therefore all companies had time, from the date of the publication of the notice of initiation on 22 April 99 to answer to the questionnaire in view of receiving individual treatment. This was also stressed and further explained in the letter sent to all known Indonesian companies the day of publication of the notice of initiation of the proceeding: "If any exporting producers wish to submit a request for individual examination....It is in their interest to immediately request a questionnaire..." (last paragraph, p.2). One company seeking individual treatment acted accordingly, was granted the full period of 37 days to reply and submitted a questionnaire response while the other companies did not. As mentioned above this Indonesian company was finally added to the sample. The allegation that companies seeking individual treatment were only granted 13 days to answer to the questionnaire is therefore not correct.

2. Product coverage and Like product

With respect to product coverage and like product, the Indonesian delegation is of the view that the product coverage as set out in the notice of initiation is more limited than that of the measures adopted. Indeed, Indonesia claims that given that non-spinning and non-woven polyester fibres were not mentioned at the moment of the initiation of the proceedings, they should have been excluded from the product scope.

In this respect, the following points should be stressed:

- The definition of the product concerned based on the description of the CN-code 5503 20 00, as used in the notice of initiation, is not limited to PSF for spinning. In fact, that CN-code covers all types of non-further-processed PSF indifferently of their final use;
- This definition was in line with that of the complaint which included all types of PSF and was not restricted to PSF used for spinning purposes;

- The EC has replied to all relevant arguments raised in the course of the investigation (see recitals (8) to (22) of Regulation (EC) N°1522/2000 imposing a definitive anti-dumping duty).

3. Level of profitability

The Indonesian delegation complained on the use of 10 per cent by the EC as a reasonable level of profit for the domestic industry, instead of 6 per cent which was the level of profits of the Community industry at the time of the initiation of the proceeding. Moreover, it requested a clarification on the concept of "reasonable level of profit" in the light of the WTO Anti-Dumping Agreement.

In this respect, it should be noted that the 10 per cent level of profit used by the EC when calculating the amount of duty necessary to eliminate the injury sustained by its domestic industry was considered a reasonable level of profit which would be obtained by that industry in the absence of dumped imports from several countries, amongst other, Indonesia. The level of profits was therefore correctly determined.

4. Currency fluctuation

Although the statement of the Indonesian Delegation is not fully clear on this point, my delegation would, at this stage, like to clarify that in its calculations the EC compared, by product type, the weighted average normal value for the entire investigation period with the weighted average export price for the entire investigation period and not with monthly export prices or export prices of individual transactions as the table attached to the statement of the Indonesian delegation seems to suggest. The conversion of the export prices in foreign currency into Indonesian Rupiah was carried out using the rate of exchange on the date of sale as requested by the WTO Anti-Dumping Agreement.

5. Special and Differential Treatment

The Indonesian delegation stated that the EC failed to comply with its obligations under Article 15 of the WTO Anti-Dumping Agreement and Article 22 of its Basic Anti-Dumping Regulation since it did not take into account that as a consequence of the Asian economic crisis and the subsequent depreciation of the currencies of certain Asian countries, exporting producers in those countries had substantial foreign exchange losses which were extraordinary, unprecedented and not recurring in nature.

Article 15 of the WTO Anti-Dumping Agreement provides in particular that possibilities of constructive remedies should be explored before applying anti-dumping duties which would affect the essential interest of developing country members.

In this respect, the EC took account of the specific situation of Indonesia as a developing country. It should be noted that Indonesian exporters did not co-operate sufficiently with the investigation and that, as a consequence, findings with regard to dumping had to be based on facts available. Notwithstanding this insufficient co-operation, the Commission did not apply this in an adverse way but used the company's own information. This lenient treatment can only be justified on the basis of Article 15 of the WTO Anti-Dumping. The EC therefore considers that constructive remedies have been provided in this case in the form of an imposition of a lower duty.

Furthermore, due to the fact that Indonesia did not make any submission showing that the imposition of an anti-dumping duty on PSF would affect its essential interest, the EC did not actively suggest a price undertaking particularly in view of the significant non co-operation. However,

notwithstanding the foregoing, the EC would have carefully examined, pursuant to Article 15 of the WTO Anti-Dumping Agreement, any offer for price undertakings as well as any other remedy proposed either by Indonesian companies, or by the Indonesian authorities.
