

**STATEMENT BY INDONESIA ON EUROPEAN UNION
ANTI-DUMPING PRACTICES ON INDONESIAN
POLYESTER SYNTHETIC STAPLE FIBRE (PSF)**

Made at the Meeting of the Committee on Anti-Dumping Practices
2-3 November 2000

My delegation would like to draw attention to the Committee on our growing concern regarding EU actions related to anti-dumping practices generally, and especially to the recent imposition of anti-dumping and anti-subsidy on Polyester Staple Fibre (PSF) products originating in several countries, including Indonesia.

Allow me to briefly describe the case in general. Through Council Regulation No. 1522/2000 dated 10 July 2000, the European Commission has imposed various levels of anti-dumping duties to Indonesian PSF, ranging from 8.4 per cent to 15.8 per cent. Almost at the same time on 26 April 2000, the European Commission has also imposed countervailing duties ranging from 0 per cent to 10 per cent on the same product for alleged subsidies. The two measures imposed by the European Commission have resulted in total duties of 8.4 per cent to 25.8 per cent to Indonesian producers.

Having learned the process of investigation including "on the spot" investigation conducted by the EU in order to seek evidence, Indonesia concluded that some rules and procedures of the Anti-Dumping Agreement-WTO have been violated by the EU. Accordingly, as an interested party Indonesia requested consultations which were held on 25 September 2000. The consultations aimed at seeking further clarification on some issues related to the implementation of certain articles of the Agreement, *inter alia*, sampling methodology, the like product, currency fluctuations, level of profitability and special and differential treatment (S&D treatment). Unfortunately, most of the questions raised have not been satisfactorily answered by the EU during the consultation as it has remained firm with its position that the imposition of anti-dumping duties was based on positive evidence sought during the investigation.

Let me explain a brief description of five issues as follows:

1. Sampling methodology

As stated in Council Regulation No. 1522/2000, sampling methodology was used by the EU during the course of investigation. However, the problems occurred since the EU has by using the sampling methodology, chosen 2 (two) companies as samples out of 7 alleged dumped companies despite all of them having furnished all information as required by the EU and made them as known exporters. As known exporters they were considered by the EU as cooperating parties but excluded to be individually treated as sample companies. This situation has adversely affected them because three of them were imposed the weighted average dumping duties of 14 per cent and the remaining two companies were imposed the highest margin of 15.8 per cent. Furthermore, three companies which have never exported have lost their chance to be reviewed as newcomers, since they would be directly

imposed with dumping duties of 14 per cent after they apply for "newcomer review". In our bilateral consultations, the EU has also indicated that it would continue to use the sampling methodology when Indonesian companies seek for annual review. This decision has punished Indonesian companies who have not been even been involved in dumping into the EU's market. Indonesia questioned the sampling methodology used by the EU in order to determine the dumping margin. The EU's argument that 7 companies were "so large" was not acceptable and that is not in the meaning of Article 6.10 of the Anti-Dumping Agreement. Indonesia could not accept the argument on which the sampling methodology was based. It was very obvious that since the beginning, Indonesia has opposed and questioned the EU's decision to choose only 2 samples out of 7 companies. The procedure of limitation to a "reasonable number of parties" to be investigated according to Article 17 of the EU's basic Regulation was not applied, as the number of parties involved were very limited and there was no obvious reason why the EU failed to add additional cooperating companies to the sample. As the sample was not representative of various reasons, Article 6.10 of the Anti-Dumping Agreement provides that the authorities shall, as a general rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. Only in case the number of exporters is so large (repeat, so large) as to make such a determination impracticable, the authorities may limit their examination to a reasonable number of interested parties by using samples. Indonesia is of the view that the number of 7 companies cannot be considered as "so large" and that determination of individual margin would have been impracticable. As they were not included in the sample, those companies have lost their opportunity to defend themselves.

These companies could not seek individual treatment as they were allowed 13 days to reply to the questionnaire as against 37 days allowed to sample companies. Final selection of sample companies was announced on 18 May 1999 and they were allowed up to 24 June to file a questionnaire's response. Non-sample companies were given up to 1 June only, thus depriving them of any meaningful opportunity. Representations/objections made to the EU were rejected.

In this case, Indonesia is of the view that the EU has failed to comply with its obligations under certain articles of the Anti-Dumping Agreement and the EU Anti-Dumping Regulation.

2. Product Coverage and the Like Product

On the initiation of the anti-dumping proceedings on 22 April 1999, it was mentioned that the product concerned was *synthetic fibres of polyester* and not carded, combed or otherwise, processed for spinning. The product concerned currently falls within CN code 5503.20.000. As the initial allegation is only for PSF for spinning (PSF Sp), the EU should have excluded the SPF for non-spinning or non-woven (PSF NW).

Article 2.6 of the Anti-Dumping Agreement of the WTO regards the term of the like products as follows "the term 'like product' shall be interpreted to mean the product which is identical, i.e. alike in all respects to the product under consideration". Thus, consistent with EU law, the Anti-Dumping Agreement of the WTO requires that sales used in the comparison of export price and normal value be of identical product. Based on analysis and laboratory tests by the Indonesian Synthetic Fibre Makers Association and Euro Fibre-fill Association, PSF Sp and PSF NW are not the like product. Therefore, the EU has broadened the scope of allegation by including PSF NW into proceedings. From the technical and physical characteristic the two products are not the same because PSF SP has low denier count (finer fibre) which consists of maximum 3 denier, low tenacity (and thus low elongation). It has a large number of crimps and a low amplitude of those crimps and an extremely low number of fused fibres and a type of spin finish which permits the fibre to be used in high-speed spinning machines without melting. While PSF NW, on the other hand, primarily requires physical and technical characteristics which relate to high bulk, high denier count and high elongation (which in turn implies low tenacity). In addition, PSF NW does not have a finish of the type needed for spinning fibre because such a finish is by definition not needed for non-woven uses.

Furthermore, PSF Sp product is used for spinning while PSF NW is used for other purposes such as fibre fill for mattresses, toys and non-woven products such as carpets and upholstery.

With respect to end users, PSF Sp are primarily used by spinners, while end users of PSF NW are exclusively manufacturers of various filled products such as mattresses, jackets, as well as hygienic and other speciality of products. PSF Sp and PSF NW have no significant interchangeability because PSF NW is not and cannot be used for spinning purposes, while the vast majority of PSF Sp is not suitable for non-woven purposes. The markets for PSF Sp and PSF NW are for the most part clearly separate because their dissimilar end use generally separate set of end users and no significant interchangeability between end uses. Provisional Regulations do not indicate the breakdown of the sales of the community industry between PSF Sp and PSF NW, however, they do indicate the breakdown of the Community consumption (60 per cent for PSF Sp and 40 per cent of PSF NW). Since the EU has been inconsistent and conducted discriminatory practices in determining product coverage, the EU has failed to comply with its obligation under Article 9.2 of the Anti-Dumping Agreement of the WTO.

(Notes: In the imposition of anti-dumping duties to PSF originating from Chinese Taipei, Mexico, Romania, the United States and Yugoslavia in 1988 (OJ L348/49), the EU authority has temporarily excluded fibre-fill at the request of users. Indonesia, therefore, would like to have a clear explanation why PSF NW was not excluded from the imposition of anti-dumping duty. Furthermore, a country like the United States has separated the HS 550320000 classification into 3 categories based on denier: below 3 denier – which is usually used for spinning; between 3-12 denier; and above 12 denier).

3. Level of profitability

The level of profitability of the community industry was 6 per cent when the EC initiated anti-dumping allegations, as the EC argues that the level of profitability would reach 10 per cent for the community industry to prosper. As the Anti-Dumping Agreement of the WTO only stated about the "reasonable level of profit", Indonesia would like to request clarification from the Committee on how much is the "reasonable level of profit" for a country to impose dumping allegations on others.

4. Currency fluctuation

The method of dumping calculation by the EU is not appropriate and very unfair for Indonesian companies whose bookkeeping is in Rupiah currency, especially when the currency fluctuated significantly during the investigation period. Article 2(10)(i) of Basic Regulation stipulates that where the price comparison requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale. However, in the case of Indonesia, the EU has applied weighted average for local price and compared it with actual export price. Because of this methodology, one of the sample companies which has its financial statement in Rupiah was imposed a high dumping margin for the price which was not dumped. An illustration of dumping calculation was attached.

5. Special and Differential Treatment (S&D Treatment)

Article 15 of the Anti-Dumping Agreement recognizes that a special regard must be given by developed country members to the special situation of developing country members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement should be explored before applying anti-dumping duties where they would affect the essential interest of developing country members. The corresponding provision in the EU Regulation is Article 22 which states that special measures, provided that such action does not run counter to obligation pursuant to the GATT. In this context

there are some important elements which have not been considered by the EU related to the implementation of S&D treatment for developing countries. Of 86 anti-dumping actions taken in 1999, 36 anti-dumping actions were taken against the countries affected by the Asian Economic Crisis viz. Chinese Taipei, Indonesia, Korea, Thailand and Malaysia (more than five times of the seven new anti-dumping actions initiated by the EU against these countries in 1998). The above data have proven that the surge in the investigations against the countries affected by crises was more prompted by extremely abnormal business and economic conditions prevailing in such countries during the crisis period rather than unfair trade practices on the part of the exporters from these countries. When the EU filed its allegation in March 1998, Indonesia was experiencing its deepest economic crisis where the Indonesian Rupiah slumped from Rp. 2,300 to Rp. 16,000 per US dollar. This was an extremely abnormal business and the economic condition prevailing in Indonesia would suggest that anti-dumping measures should not be imposed. If at that situation there were Indonesian companies who could sell at low prices, it was believed that low prices could only exist in a temporary manner to survive from the crisis. In technical terms, the manufacturers and exporters in these countries suffered very substantial foreign exchange losses on their outstanding foreign exchange borrowing because of severe depreciation of the currencies of these countries on account of the Asian economic crisis. Such losses were undoubtedly extremely extraordinary unprecedented, one time and non recurring in nature. As those elements were never considered by the EU, while Indonesia has a great interest in this case, we are of the view that the EU has failed to comply with its obligations under Article 15 of the Anti-Dumping Agreement of the WTO and Article 22 of the Council Regulation (EC) No. 384/96.

To conclude, Indonesia expresses its grave concern in the face of the anti-dumping actions which the EU continues to take. This situation, of course, will create unpredictable trade to Indonesia. To date, anti-dumping actions have been frequently used to give relief to an industry whose competitiveness is on the wane, a situation that could create a potential abuse of the Anti-Dumping Agreement for protection which ultimately undermines the fruits and the balanced outcome of the multilateral trade liberalization.

Illustration of Dumping Calculation

Month 1999	Exchange rate	Local selling price		Export selling price		Average local selling price	Differences	Dumping/not dumping
		Per kg.		Per kg.				
		US\$	Rupiah	US\$	Rupiah	Rupiah	Rupiah	
April	8,500	1	8,500	1.1	9,350	7,250	2,100	Not dumping
May	8,000	1	8,000	1.1	8,800	7,250	1,550	Not dumping
June	6,000	1	6,000	1.1	6,600	7,250	-850	dumping
July	6,500	1	6,500	1.1	7,150	7,250	-100	dumping
Total			29,000					
Average Loc Average			7,250					
