

DRAFT TECHNICAL PAPER FOR COOPERATION ON TEXTILE FIBRE NAMES IN TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP

EUROPEAN UNION

1. INTRODUCTION

Both the EU and the US require that textile and clothing products sold to the consumer contain a label with the fibre composition (i.e. the fibre names). For certain fibres, the name used in the EU labels is different than the one used in the US (e.g. elastane in EU and spandex in the US). In this context, one of the areas identified for possible EU-US cooperation is textile and clothing labelling including the approximation or alignment of the names used to designate textile fibres. Whereas for existing (well known) fibres this cooperation/potential alignment should be seen on a long term perspective, both Parties could start by cooperating on new fibres for which a name has not yet been identified. The objective would be to determine, to the extent possible, common names for those new fibres.

The cooperation could be set as a formal or informal system of mutual consultation and/or development of joint procedures for the assessment and denomination of new fibre names. The exchange of information could take place at each step of the internal decision procedure from the application of a company for the recognition of a new fibre to the final step of the definition of the fibre name, its characteristics and the test methods to be used in market surveillance activities.

The objective of this paper is to provide details about the existing processes and proposed potential cooperation by using specific examples of current pending new fibre names applications.

Some possible areas/steps of cooperation could be:

- a) sharing information in case of the submission of a new fibre by a company to one of the competent authorities,
- b) development of common criteria for the initial acceptance of the request,
- c) coordination of the procedures related to the initial analysis and development of testing methods to assess the characteristics of the fibre.
- d) development of a common methodology for the classification and denomination of the fibre.
- e) Cooperate on existing fibre names

The EU has received petitions/applications for two new fibres names: "polyacrylate" and "compo-co-ester". State of play of the decision procedure for each fibre and possibilities of cooperation is provided below.

2. POSSIBLE COOPERATION STEPS

2.1. Sharing information in case of submission of a new fibre name application

EU –Regulation: Textile Regulation EU N°1007/2011 on textile fibres and related labelling and marking of the fibre composition of textile products foresees:

Article 6: any stakeholder can submit to the European Commission an application for the registration of a new fibre name. The application has to be accompanied by a technical file according to annex II of the Regulation; there is a list of technical information included in the file to be submitted to the EU authorities (proposed name, and definition, identification of the fibre/chemical formula, differences vs existing fibres and relevant data such as density, burning behaviour, FTIR spectrum, agreed allowance and sufficiently developed quantification methods, available scientific information on allergies and finally any other information related to production process, etc.).

US Regulation: (ASF 16/303.8) Rules and Regulations under the Textile Fiber Products Identification Act -Procedures for establishing new generic names for manufactured fibres – Procedures for establishing generic names for manufactured fibres.

Point 303.8: any stakeholder can submit an application accompanied by a file including information such as chemical composition including fibre forming substances and respective percentages, reasons for the application, suggested name(s) and proposed definition, information on existing or future commercial use, data in the form of test methods and finally any other information.

- **Conclusion:** Both EU and US have the same procedures and requirements for the application for a new fibre name with only one difference. US regulation requires the applicant to provide the fibre forming substances and percentages at this preliminary stage whereas the EU requires this info from the applicant in the second step of the EU procedure (this requirement is foreseen to be added in annex II of the EU Regulation).

<i>Proposal</i>
<ul style="list-style-type: none">- <i>Both Parties could agree that once a petition for a new fibre name reaches one of the two Administrations, it undertakes to inform the other Party about that petition.</i>- <i>Both Parties could commit to recommend to the applicant to submit a similar file and application to the other Party.</i>- <i>On request of one of the Parties a dialogue and an exchange of information on the technical requirements for the submission of a new petition may be established.</i>

Polyacrylate & compo-co-ester cases:

In January 2014 the company Toyobo (Japan) submitted to the EU an application for a new generic name with the proposed name "polyacrylate".

On 9 February 2015, the EU side informed the US side about the reception of the new application and provided summary information about the fibre. The EU noted that the decision on the initial acceptance for the further examination of the fibre had been taken on September 2014. Should EU and US agree on cooperation on new fibre names in the future, the information on the petition files should be exchanged before the decision on the initial acceptance of the file has been taken.

A new application was received recently by the EU from the company Lauffen-mühle with the proposed name "compo-co-ester". An initial decision on the acceptability or not of the application has not been taken yet. Summary information for this fibre was sent to the US on 2 April 2015.

2.2. Development of common criteria for the initial acceptance of an application

EU Regulation: There is no particular regulatory framework for the examination of the initial acceptance of the fibre name application/request. EU Commission's services have developed a number of criteria related to the acceptability of applications based on the completion of the technical file submitted with the application. The first examination of the following established criteria was carried out by the specific technical experts committee of the EU MS upon proposal of the Commission services. The criteria used currently for the initial assessment are:

- a) Fibre radically different from others by chemical composition and /or manufacturing rooting and production process
- b) Fibre detectable and distinguishable from others by standard test methods
- c) Fibre commercially available from at least 2 independent producers
- d) Fibre cannot be classified using an existing generic name

US Regulation: (ASF 16/303.8) Rules and Regulations under the Textile Fibber Products Identification Act -Procedures for establishing new generic names for manufactured fibres – Procedures for establishing generic names for manufactured fibres. The regulation defines only a time frame of 60 days for the acceptance or not of the application for further examination. In addition, the regulatory framework foresees the adoption of a provisional name or code until the final decision is taken. The criteria for the initial acceptance are established also by the US Administration and are similar or the same as those of the EU.

➤ **Conclusion:** Despite differences in the decision process (there is a central decision making on the initial acceptance of the fibre in the US while in the EU the decision process lies with MS and Commission) the whole assessment process follows the same criteria and same timeframe (provided that 60 days to deliver an opinion by EU experts is respected despite no legal obligation). The only substantial difference is the provision by the US Administration of a temporary name at the end of this step.

<i>Proposal:</i>
<i>-The Parties could undertake to exchange information on the information/petition file received</i>

from the applicants and coordinate their position for the initial acceptance or not of the application.

- On request of one of the Parties, the criteria for the determination of the initial acceptance of the application could be modified by common agreement.

Polyacrylate & compo-co-ester cases: The positive decision for the initial acceptance of the fibre was taken by the EU in September 2014 on the basis of the criteria mentioned above. The delay on the decision making was linked to the fact that the technical file submitted by the applicant was not complete, specially the definition of the fibre. The case of "compo-co-ester" is under examination. Decision on the initial acceptance or not of the fibre will be taken shortly.

2.3. Coordination of procedures related to the initial analysis and development of testing methods to prove characteristics of fibres, including public consultation

EU regulation: Annex VIII of the Regulation N°1007/2011 on textile fibres and related labelling and marking of the fibre composition of textile products provides detailed information on a number of testing methods to be used for the quantitative analysis of fibres in binary and ternary mixtures. This process does not exclude other valid methods including ISO standards.

In practice this step implies two parallel processes:

- a) a public consultation on basis of a number of questions aiming to test the market relevance of the fibre (duration 90 days) and,
- b) thorough analytical work using the appropriate test method(s) including a ring trial among 12 laboratories within the EU.

The aim is to develop the technical verification of the fibre (fibre characteristics, on basis of samples provided by the applicant) and validation of testing methods and assessment review. The process can last about 12 to 14 months with a proposal of the appropriate name of the fibre (if accurate results are obtained). The final assessment is carried out involving the experts of the MS, and the Commission decides on basis of the expert opinions and publishes a Delegated act.

US Regulation: No specific regulation. The Federal Trade Committee, after the preparation of the whole technical file, launches a public consultation covering all issues related to the fabric including the proposed name (in practice this process can last about 14 months).

Proposal

- The Parties could agree to exchange information on the evolution of the process for the determination of a new fibre name at every step of the assessment.

- The EU side is ready to consult the US side on the mandate to be send to the laboratories involved in the ring trials and send appropriate information on each step of the process.

Polyacrylate & new Fibre Case: The work of the ring trial of 12 different laboratories in the MS is about to start for the *Polyacrylate*. The text of the technical specifications for the ring trial could be sent soon to the US. The EU side can also send the results of each step of the examination.

2.4. Methodology for classification and denomination.

EU Regulation: Article 5 of the Regulation N°1007/2011 on textile fibres and related labelling and marking of the fibre composition of textile products foresees that fibre names have to be accompanied by their definitions as stated in annex I. However, there is no specific regulatory obligation about the characteristics of the name of a new fibre. Commission's services and MS experts agreed to follow a method based on a number of criteria;

- a) the name has to provide information about the chemical family of the fibre,
- b) the name has to provide information about the specific characteristics of the fibre,
- c) the name must be user friendly,
- d) the name may not create confusion with a trade mark.

US Regulation: Similarly, ASF 16/303.8 on Rules and Regulations under the Textile Fiber Products Identification Act -Procedures for establishing new generic names for manufactured fibres – Procedures for establishing generic names for manufactured fibres stipulates that the generic names have to be accompanied by their definition. However, the criteria for the denomination and classification are at the discretion of the FTC on basis of the results of public consultation.

- **Conclusion:** Despite similarities in the assessment steps, the approach for the final decision on the new fibre names diverge and lead to the use of different names (e.g. spandex in US and elastane in EU) in both sides of the Atlantic. In addition, the approaches diverge on one specific area of particular importance the usefulness of the creation of sub-family products (e.g. polyesters)

<i>Proposal:</i>
<i>Both Parties could agree to further cooperate on:</i>
<i>a) the basic characteristic of the names of new fibres (the EU approach is based on combination of the chemical family + distinguishing characteristics of the fibre)</i>
<i>b) the acceptance or not of the creation of sub-categories of names (the EU approach until now, avoided to create those sub-categories).</i>

Polyacrylate & compo-co-ester cases: EU considers that for the polyacrylate case, if test results prove to be convincing, there would not be particular problems for the classification or denomination of this fibre. However, for the case of "compo-co-ester" it would be important to establish a cooperation among both administrations as the assessment is at a relatively early stage.

2.5 Cooperation on existing fibre names

Proposal:

Both Parties could explore possibilities to cooperate in view of aligning current/existing fibre names in cooperation with the ISO