Council Implementing Regulation (EU) No 917/2013 of 23 September 2013 amending Implementing Regulation (EU) No 857/2010 imposing a definitive countervailing duty and collecting definitely the provisional duty imposed on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates

COUNCIL IMPLEMENTING REGULATION (EU) No 917/2013

of 23 September 2013

amending Implementing Regulation (EU) No 857/2010 imposing a definitive countervailing duty and collecting definitely the provisional duty imposed on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Article 15(1) thereof,

Having regard to the proposal from the European Commission after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

(1) By Council Implementing Regulation (EU) No 857/2010[(2)] ('the contested Regulation'), the Council imposed definitive countervailing duties ranging from EUR 42,34 per tonne to EUR 139,70 per tonne on imports of certain polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, originating in Iran, Pakistan and the United Arab Emirates.

(2) On 6 December 2010, the cooperating exporting producer in Pakistan, namely Novatex Ltd ('Novatex' or 'the company concerned'), lodged an application at the General Court seeking the annulment of the contested Regulation in so far as it applied to the applicant[(3)].

(3) On 11 October 2012, the General Court in its judgment in Case T-556/10 ('the General Court judgment') found that the failure by the Commission and the Council to take account of the figure resulting from the revision of line 74 of the 2008 tax return of the company concerned, and the error resulting therefrom, affected the legality of Article 1 of the contested Regulation in so far as the definitive countervailing duty fixed by the Council exceeded the duty applicable in the absence of that error. Therefore, the General Court annulled Article 1 of the contested Regulation in so far as it concerned

Novatex and in so far as the definitive countervailing duty exceeded that applicable in the absence of the error.

(4) In Case T-2/95[4], the General Court held that, in cases where a proceeding consists of several administrative steps, the annulment of one of those steps does not annul the complete proceeding. This anti-subsidy proceeding is an example of such a multi-step proceeding. Consequently, the annulment of a part of the contested Regulation does not imply the annulment of the entire procedure prior to the adoption of that Regulation. Moreover, according to Article 266 of the Treaty on the Functioning of the European Union, the Union institutions are obliged to comply with the General Court judgment. This also implies the possibility to remedy the aspects of the contested Regulation which led to its partial annulment, while leaving unchanged the uncontested parts which are unaffected by the General Court judgment. It should be noted that all other findings made in the contested Regulation remain valid.

(5) Following the General Court judgment, on 17 May 2013 the Commission partially reopened the anti-subsidy investigation concerning imports of certain polyethylene terephthalate originating, inter alia, in Pakistan ('the notice')[5]. The reopening was limited in scope to the implementation of the General Court judgment in so far as Novatex is concerned.

(6) The Commission officially advised the exporting producers, importers, users and raw material suppliers known to be concerned, the representatives of the exporting country and the Union industry of the partial reopening of the investigation. 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 notice. No interested party requested to be heard.

(7) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of an amended definitive countervailing duty on Novatex. They were granted a period within which to make representations subsequent to disclosure.

B. IMPLEMENTATION OF THE GENERAL COURT JUDGMENT

1. Preliminary remark

(8) It is recalled that the reason for the partial annulment of the contested Regulation was that the Commission and the Council should have taken account of the fact that line 74 of the 2008 tax return of the company concerned had been revised.

2. Comments of interested parties

(9) Within the applicable deadline for submitting comments, the company concerned commented that following the General Court judgment, the definitive countervailing duty for imports into the Union of certain polyethylene terephthalate originating in Pakistan should be reduced by 1,02 %. Novatex further stated that the countervailing duty applicable to Novatex should be set at 4,1 % or EUR 35,39 per tonne as from 1 June 2010 (the alleged date of entry into force of the provisional duty).

***Changes to legislation:** There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 917/2013. (See end of Document for details)*

(10) No further comments of any substance on the partial re-opening were received.

3. Analysis of comments

(11) Having analysed the above comments, it is confirmed that the annulment of the contested Regulation with regard to Novatex, insofar as the definitive countervailing duty exceeded the duty applicable in the absence of the error identified by the Court, should not imply the annulment of the entire procedure prior to the adoption of that Regulation.

(12) The recalculation of Novatex's subsidy duty rate, taking account of the revised line 74 of the company's tax return, indeed results in a corrected amount of EUR 35,39 per tonne.

(13) The revised duty rate should indeed be applied retroactively, i.e. from the date of entry into force of the contested Regulation.

4. Conclusion

(14) Account has been taken of the comments made, and having analysed them it is concluded that the implementation of the General Court judgment should take the form of a revision of the countervailing duty rate applicable to Novatex, which should be reduced from EUR 44,02 per tonne to EUR 35,39 per tonne. As Novatex was the sole exporting producer of the product concerned in Pakistan during the investigation period, this revised duty rate applies to all imports from Pakistan. The revised duty rate should be applied retroactively, i.e. from the date of entry into force of the contested Regulation. However, as provided for by Article 2 of that Regulation, the amounts secured by way of provisional countervailing duty pursuant to Regulation (EU) No 473/2010[(6)] on imports from Pakistan can only be definitively collected at the rate of the definitive countervailing duty of EUR 35,39 per tonne, imposed pursuant to the present amendment to Article 1 of the contested Regulation. The amounts secured in excess of the rate of the definitive countervailing duty should be released. In addition, for the sake of transparency, it should be pointed out that Regulation (EU) No 473/2010 entered into force on the day following that of its publication in the *Official Journal of the European Union*, namely on 2 June 2010 (and not on 1 June 2010, as stated by Novatex).

(15) Customs authorities should be instructed to proceed with the reimbursement of the amount of duties paid in excess of the amount of EUR 35,39 per tonne for the imports concerned, in compliance with the applicable customs legislation.

C. DISCLOSURE

(16) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to implement the General Court judgment. All interested parties were given an opportunity to comment within the 10-day period prescribed in Article 30(5) of the basic Regulation.

(17) No comments of substance were received.