Council Regulation (EC) No 681/2009 of 27 July 2009 terminating the 'new exporter' review of Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating, inter alia, in Malaysia, re-imposing the duty with regard to imports from one exporter in this country and terminating the registration of these imports

COUNCIL REGULATION (EC) No 681/2009

of 27 July 2009

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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 Community[(1)] (the 'basic Regulation') and in particular Article 11(4) thereof,

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

Whereas:

A. PREVIOUS PROCEDURE

(1) By Regulation (EC) No 192/2007[(2)] the Council, following an expiry review investigation, imposed a definitive anti-dumping duty on imports into the Community of certain polyethylene terephthalate (PET), originating, inter alia, in Malaysia. The measures in force consist of a duty rate of 160,1 EUR/tonne, with the exception of the companies expressly mentioned which are subject to individual duty rates. Pursuant to the same Regulation, anti-dumping duties were also imposed on imports of PET originating in India, Indonesia, the Republic of Korea, Thailand and Taiwan. The original measures were imposed, following an investigation (the 'original investigation'), by Regulation (EC) No 2604/2000[(3)].

B. PRESENT PROCEDURE

1. Request for a review

(2) The Commission subsequently received a request to initiate a 'new exporter' review of Regulation (EC) No 192/2007, pursuant to Article 11(4) of the basic Regulation, from Eastman Chemical (Malaysia) SDN.BHD (the 'applicant'). The applicant alleged that it did not export certain PET to the Community during the period of investigation on which the anti-dumping measures were based, i.e. the period from 1 October 1998 to 30 September 1999 (the 'original investigation period') and that it

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 681/2009. (See end of Document for details)*

is not related to any of the exporting producers of certain PET which are subject to the abovementioned anti-dumping measures. The applicant further alleged that it began exporting certain PET to the Community after the end of the original investigation period.

2. **Initiation of a 'new exporter' review**

(3) The Commission examined the *prima facie* evidence submitted by the applicant and considered it sufficient to justify the initiation of a review pursuant to Article 11(4) of the basic Regulation. After consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, the Commission initiated, by Regulation (EC) No 1082/2008[(4)], a review of Regulation (EC) No 192/2007 with regard to the applicant.

(4) Pursuant to Article 2 of Regulation (EC) No 1082/2008, the anti-dumping duty of 160,1 EUR/tonne imposed by Regulation (EC) No 192/2007 on imports of certain PET produced and sold for export to the Community by the applicant was repealed. Simultaneously, pursuant to Article 14(5) of the basic Regulation, customs authorities were directed to take appropriate steps to register these imports.

3. **Product concerned**

(5) The product concerned by the current review is the same as that in the original investigation, i.e. PET having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, falling within CN Code 3907 60 20.

4. **Parties concerned**

(6) The Commission officially advised the applicant, the Community industry and the representatives of the exporting country of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to be heard.

(7) The Commission sent a questionnaire to the applicant and received a reply within the deadline set for that purpose. The Commission sought to verify all the information it deemed necessary for the determination of dumping, and a verification visit was carried out at the premises of the applicant.

5. **Review investigation period**

(8) The 'new exporter' review investigation period covered the period from 1 October 2007 to 30 September 2008.

C. **WITHDRAWAL OF THE REQUEST FOR A 'NEW EXPORTER' REVIEW**

(9) By a letter dated 22 April 2009 addressed to the Commission, the applicant formally withdrew its request for a 'new exporter' review without providing any specific justification.

(10) Under these circumstances, the Commission could not establish the applicant's individual dumping margin and duty rate. It was therefore concluded that imports into the Community of PET having a viscosity number of 78 ml/g or higher,

according to ISO Standard 1628-5 falling within CN code 3907 60 20 originating in Malaysia and produced and sold for export to the Community by Eastman Chemical (Malaysia) SDN.BHD should be subject to the country-wide duty applicable to 'all other companies' in Malaysia (160,1 EUR/tonne) imposed by Regulation (EC) No 192/2007 and that that rate of duty should therefore be re-imposed.

D. RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY

(11) In the light of the above findings, the anti-dumping duty applicable to Eastman Chemical (Malaysia) SDN.BHD shall be levied retroactively from the date of initiation of the review on imports of the product concerned which have been made subject to registration pursuant to Article 3 of Regulation (EC) No 1082/2008.

E. DISCLOSURE AND DURATION OF THE MEASURES

(12) The applicant and the other parties concerned were informed of the essential facts and considerations on the basis of which it was intended to re-impose a definitive anti-dumping duty on imports of certain PET originating, inter alia, in Malaysia and produced and sold for export to the Community by Eastman Chemical Malaysia SDN.BHD and to levy this duty retroactively on imports made subject to registration. Their comments were considered and taken into account as appropriate.

(13) This review does not affect the date on which the measures imposed by Regulation (EC) No 192/2007 will expire pursuant to Article 11(2) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1 The 'new exporter' review initiated by Regulation (EC) No 1082/2008 is hereby terminated and the anti-dumping duty applicable according to Article 1 of Regulation (EC) No 192/2007 to 'all other companies' in Malaysia is hereby re-imposed on imports identified in Article 1 of Regulation (EC) No 1082/2008.

2 The anti-dumping duty applicable according to Article 1 of Regulation (EC) No 192/2007 to 'all other companies' in Malaysia is hereby levied with effect from 6 November 2008 on imports of certain polyethylene terephthalate which have been registered pursuant to Article 3 of Regulation (EC) No 1082/2008.

3 The customs authorities are hereby directed to cease the registration of imports carried out pursuant to Article 3 of Regulation (EC) No 1082/2008.

4 Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

This Regulation shall enter into force on the day following 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.