Commission Regulation (EC) No 1082/2008 of 4 November 2008 on initiating a 'new exporter' review of Council Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating, inter alia, in Malaysia, repealing the duty with regard to imports from one exporter in this country and making these imports subject to registration

COMMISSION REGULATION (EC) No 1082/2008

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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),

Whereas:

A. REQUEST FOR A REVIEW

(1) The Commission has received an application for a 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The application was lodged by Eastman Chemical (Malaysia) SDN.BHD (the applicant), an exporting producer in Malaysia (the country concerned).

B. PRODUCT

(2) The product under review is polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5 originating in Malaysia (the product concerned), currently classifiable within CN code 3907 60 20.

C. EXISTING MEASURES

(3) The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 192/2007[(2)] under which imports into the Community of the product concerned originating in Malaysia, and produced by the applicant, are subject to a definitive antidumping duty of EUR 160,1/t with the exception of several companies specially mentioned which are subject to individual duties.

D. GROUNDS FOR THE REVIEW

(4) The applicant alleges that it did not export the product concerned 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 is not related to any of the exporting producers of the product which are subject to the above mentioned anti-dumping measures.

(5) The applicant further alleges that it began exporting the product concerned to the Community after the end of the original investigation period.

E. PROCEDURE

(6) Community producers known to be concerned have been informed of the above application and have been given an opportunity to comment. No comments have been received.

(7) Having examined the evidence available, the Commission concludes that there is sufficient evidence to justify the initiation of a 'new exporter' review, pursuant to Article 11(4) of the basic Regulation, with a view to determine the applicant's individual margin of dumping and, should dumping be found, the level of the duty to which their imports of the product concerned into the Community should be subject.

(8) If it is determined that the applicant fulfils the requirements to have an individual duty established, it may be necessary to amend the rate of duty currently applicable to imports of the product concerned from companies not individually mentioned in Article 1 of Regulation (EC) No 192/2007.

(a) **Questionnaires**

In order to obtain the information it deems necessary for its investigation, the Commission will send a questionnaire to the applicant.

(b) **Collection of information and holding of hearings**

All interested parties are hereby invited to make their views known in writing and to provide supporting evidence.

Furthermore, the Commission may hear interested parties, provided that they make a request in writing showing that there are particular reasons why they should be heard.

Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the parties making themselves known within the period provided for by the present Regulation.

F. REPEAL OF THE DUTY IN FORCE AND REGISTRATION OF IMPORTS

(9) Pursuant to Article 11(4) of the basic Regulation, the anti-dumping duty in force should be repealed with regard to imports of the product concerned which are produced and sold for export to the Community by the applicant. At the same time, such imports should be made subject to registration in accordance with Article 14(5) of the basic Regulation, in order to ensure that, should the review result in a finding of dumping in respect of the applicants, anti-dumping duties can be levied retroactively

from the date of the initiation of this review. The amount of the applicant possible future liabilities cannot be estimated at this stage of the proceeding.

G. TIME LIMITS

(10) In the interest of sound administration, time limits should be stated within which:

(a) interested parties may make themselves known to the Commission, present their views in writing and submit the replies to the questionnaire mentioned in Article 4(1) of this Regulation or provide any other information to be taken into account during the investigation,

(b) interested parties may make a written request to be heard by the Commission.

H. NON-COOPERATION

(11) In cases in which any interested party refuses access to or does not provide the necessary information within the time limits or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(12) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 18 of the basic Regulation, of the facts available. If an interested party does not cooperate or cooperates only partially, and findings are therefore based on the facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

I. PROCESSING OF PERSONAL DATA

(13) It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(3)].

J. HEARING OFFICER

(14) It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of DG Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this investigation, in particular with regard to issues concerning access to the file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details, interested parties may consult the Hearing Officer's web pages on the website of DG Trade (http://ec.europa.eu/trade),

HAS ADOPTED THIS REGULATION: