Council Regulation (EC) No 1458/2007 of 10 December 2007 imposing a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China and consigned from or originating in Taiwan and on imports of certain refillable pocket flint lighters originating in the People's Republic of China and consigned from or originating in Taiwan

COUNCIL REGULATION (EC) No 1458/2007

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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 Articles 9 and 11(2) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) In 1991, the Council, by Regulation (EEC) No 3433/91[(2)], imposed a definitive anti-dumping duty of 16,9 % on imports of gas-fuelled, non-refillable pocket flint lighters originating, *inter alia*, in the People's Republic of China ('PRC' or 'China').

(2) In 1995, by Council Regulation (EC) No 1006/95[(3)] the original *ad valorem* duty was replaced by a specific duty of ECU 0,065 per lighter.

(3) Further to an investigation in accordance with Article 13 of the basic Regulation[(4)] the above measures were extended by Council Regulation (EC) No 192/1999[(5)] to (1) imports of gas-fuelled, non-refillable pocket flint lighters consigned from or originating in Taiwan and (2) imports of certain refillable lighters originating in the PRC or consigned from or originating in Taiwan with a free-at-Community frontier, duty unpaid value per piece below EUR 0,15.

(4) In 2001, the Council, by Regulation (EC) No 1824/2001[(6)] confirmed the definitive anti-dumping duties imposed by Regulation (EC) No 1006/95 as extended

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by Council Regulation (EC) No 192/1999 (existing measures) pursuant to Article 11(2) of the basic Regulation.

2. Request for a review

(5) Following the publication of a notice of impending expiry[7] of the existing measures, on 16 June 2006, the Commission received a request to review these measures pursuant to Article 11(2) of the basic Regulation.

(6) This request was lodged by BIC S.A., a Community producer representing more than 80 % of the total Community production of gas-fuelled, non-refillable pocket flint lighters. The request for an expiry review was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

(7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation, the Commission, by notice published in the *Official Journal of the European Union* (notice of initiation) initiated this review on 16 September 2006[8].

3. Investigation

3.1. Investigation period

(8) The investigation into the continuation and/or recurrence of dumping and injury covered the period from 1 July 2005 to 30 June 2006 (the 'review investigation period' or 'RIP'). The examination of the trends relevant to the assessment of the likelihood of a continuation and/or recurrence of injury covered the period from 1 January 2003 to the end of the RIP (the period considered).

3.2. Parties concerned by the investigation

(9) The Commission officially advised the applicant Community producer, the two other Community producers, the exporters/producers in the PRC and the importers known to be concerned, as well as the authorities in the PRC and Taiwan of the initiation of the expiry review. 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 of initiation.

(10) The applicant Community producer, two other Community producers opposing the maintenance of the anti-dumping measure and an importers' association made their views known. All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(11) In the notice of initiation the Commission indicated that sampling might be applied in this investigation for exporters/producers in the PRC. However, since none of the known exporters/producers in the PRC made themselves known, it was decided that sampling was not required.

(12) Questionnaires were sent to the applicant Community producer, the two other Community producers, the 62 known exporters/producers in the PRC and 33 importers and the European Lighter Importers' Association (ELIAS). In addition, the producer in the proposed analogue country, Brazil, as well as eight producers in other possible analogue countries, were contacted and sent a questionnaire. Replies were only received from the applicant Community producer and the producer in Brazil, as well as a company in Malaysia, which had been contacted as an alternative analogue country. None of the known producers/exporters in the PRC replied to the questionnaire. Furthermore, none of the importers contacted replied to the questionnaire stating that they do not import the product concerned, but only electronic (piezo) lighters.

(13) The Commission sought and verified all the information deemed necessary for its investigation and carried out verification visits at the premises of the following companies:

Community producers:

— BIC S.A. HQ — Clichy, France

— BIC IBERIA S.A. — Tarragona, Spain

Producer and related company in the analogue country:

— BIC Amazonia S.A. — Manaus, Brazil

— BIC Brasil S.A. — Cajamar, Brazil

B. PRODUCT CONCERNED AND LIKE PRODUCT

(14) The product concerned is the same as in the investigation which led to the imposition of the existing measures, i.e. gas-fuelled, non-refillable pocket flint lighters. As described above in recital (3), the product scope was extended in 1999 to include gas fuelled, refillable pocket flint lighters incorporating a plastic tank body ('flint lighters' or 'the product concerned'). The product concerned is currently classified within CN codes ex 9613 10 00 and ex 9613 20 90 (TARIC codes 9613 10 00 11, 9613 10 00 19, 9613 20 90 21 and 9613 20 90 29).

(15) One of the non-complainant producers in the Community claimed that the products produced and sold in the analogue country Brazil were not alike with the products produced in and exported from China into the Community. It was in particular argued that the lighters produced in Brazil were of a higher quality and had a longer lifetime than the ones produced in China. Quality differences as such are, however, not decisive when determining whether products are alike within the meaning of Article 1(4) of the basic Regulation. The investigation revealed that the lighters produced in China and the ones produced in Brazil had indeed the same basic technical, physical and chemical characteristics and end-uses. This claim was therefore rejected.

(16) Consequently, as shown in the previous investigations mentioned in recitals (1) to (4), and as confirmed by the current investigation, gas-fuelled, non-refillable pocket flint lighters manufactured by Chinese exporting producers and sold in the PRC and on the Community market and the product manufactured and sold by the applicant Community producer on the Community market are in all respects identical or share

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at least the same basic physical and technical characteristics and no differences in usage exist among them. The same is true for those produced and sold in Brazil. These products are therefore alike within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

(17) As in the previous review investigations, the Chinese exporting producers did not cooperate. Therefore no reliable information on imports of the product concerned to the Community during the RIP could be gathered directly from the exporting producers. Under these circumstances, and in accordance with Article 18 of the basic Regulation, the Commission resorted to the use of the facts available, i.e. Eurostat, the request for the initiation of the review and the data published by the European Anti-Fraud Office (OLAF) on 30 January 2007 (OLAF/07/01) regarding the circumvention of the anti-dumping duty in force.

2. Dumping during the investigation period

2.1. Analogue country

(18) The existing measures provide for a single, country-wide duty on all imports to the Community of the product concerned originating in the PRC. In accordance with Article 11(9) of the basic Regulation the Commission applied the same methodology as in the original investigation. Accordingly, the normal value was determined on the basis of the information obtained in a market economy third country (the analogue country).

(19) Thailand was the analogue country in the original investigation. However, in the subsequent reviews, the Philippines was used as the analogue country since the Thai producers refused to cooperate and since the Philippines was found to be an appropriate choice of analogue country, in view, *inter alia*, of the size and openness of its domestic market.

(20) In the notice of initiation of the present investigation the Commission indicated its intention to use Brazil as an appropriate analogue country for the purpose of establishing the normal value for the PRC. Brazil was considered appropriate in view of the size and openness of its domestic market and the fact that one Brazilian producer had agreed to cooperate fully in the investigation. Interested parties were invited to comment on this.

(21) An importers' association opposed the choice of Brazil as analogue country, arguing that there was only one main producer in Brazil and that domestic prices were extremely high. One of the non-complainant Community producers claimed that the level of competition in Brazil was lower than the one on the Chinese domestic market and therefore the markets were not comparable. However, while the number of producers in Brazil was lower than the alleged number of producers in China, the investigation confirmed that there were two producers of the product concerned in Brazil as well as imports from the EU and the PRC. Regarding the lighters imported from the PRC, invoices obtained during the on-spot investigation in Brazil showed that

these entered the country at very low prices, thus exerting a downward pressure on the prices charged on the Brazilian market. Moreover, none of the known producers contacted in other possible analogue countries, including the Philippines, agreed to cooperate. A company in Malaysia replied to the questionnaire for producers in the analogue country but since it appeared that this company did not produce lighters itself, Malaysia could not be considered as an analogue country.

(22) In view of the foregoing it was concluded that Brazil was the most appropriate and reasonable analogue country in accordance with Article 2(7) of the basic Regulation.

2.2. Normal value

(23) Pursuant to Article 2(7)(a) of the basic Regulation, normal value was established on the basis of verified information received from the producer in the analogue country.

(24) The Commission first established that the total domestic sales of the Brazilian producer were made in sufficient quantities and could thus be considered representative within the meaning of Article 2(2) of the basic Regulation.

(25) It was subsequently examined whether each type of the product concerned sold in representative quantities on the analogue country's domestic market could be considered as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. It was found that the sales volume on a per type basis, sold at a net sales price equal to or above the cost of production, represented 80 % or more of the total sales volume and the weighted average price of that type was equal to or above the cost of production. Therefore the actual domestic prices, calculated as a weighted average of the prices of all domestic sales made during the RIP, irrespective of whether these sales were profitable or not, could be used.

(26) Normal value was thus determined, as set out in Article 2(1) of the basic Regulation, on the basis of prices paid or payable, in the ordinary course of trade, by independent customers on the domestic market of the analogue country.

2.3. Export price

(27) Since none of the Chinese producers cooperated, the export price of the product concerned was calculated on the basis of facts available in accordance with Article 18(1) of the basic Regulation, in this case Eurostat data.

2.4. Comparison

(28) In order to ensure a fair comparison of the normal value and the export price, due allowance, in the form of adjustments, was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments concerning transport, insurance, and credit costs were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.