Council Regulation (EC) No 2167/2005 of 20 December 2005 amending Regulation (EC) No 1467/2004 imposing definitive anti-dumping duties on imports of polyethylene terephtalate ('PET') originating, inter alia, in the People's Republic of China

COUNCIL REGULATION (EC) No 2167/2005

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amending Regulation (EC) No 1467/2004 imposing definitive anti-dumping duties on imports of polyethylene terephtalate ('PET') originating, *inter alia*, in the People's Republic of China

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. MEASURES IN FORCE

(1) The measures currently in force on imports into the Community imports of polyethylene terephthalate ('PET') originating, *inter alia*, in the People's Republic of China ('PRC'), are definitive anti-dumping duties imposed by Council Regulation (EC) No 1467/2004[(2)]. Pursuant to the same Regulation, anti-dumping duties were also imposed on imports of PET originating in the Republic of Australia.

B. CURRENT INVESTIGATION

1. Request for a review

(2) After the imposition of definitive anti-dumping duties on imports of PET originating in the PRC, the Commission received a request to initiate a 'new exporter' review of Regulation (EC) No 1467/2004, pursuant to Article 11(4) of the basic Regulation, from Jiangyin Chengsheng New Packing Material Co., Ltd (the 'applicant'). The applicant claimed that it was not related to any of the exporting producers in the PRC subject to the anti-dumping measures in force with regard to PET. Furthermore, it claimed that it had not exported PET to the Community during the original investigation period ('the original IP', i.e. the period from 1 April 2002 to 31 March 2003), but had started to export PET to the Community thereafter.

2. Initiation of a 'new exporter' review

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 2167/2005. (See end of Document for details)*

(3) The Commission examined the evidence submitted by the applicant and considered it sufficient to justify the initiation of a review in accordance with 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 523/2005[(3)], a review of Regulation (EC) No 1467/2004 with regard to the applicant and commenced its investigation.

(4) Pursuant to the Commission Regulation initiating the review, the anti-dumping duty of EUR 184/t imposed by Regulation (EC) No 1467/2004 on imports of PET produced 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 such imports.

3. Product concerned

(5) The product concerned by the current review is the same as that in the investigation that led to the imposition of the measures in force on imports of PET originating in the PRC ('original investigation'), i.e. PET having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, classified under CN Code 3907 60 20.

4. Parties concerned

(6) The Commission officially advised the applicant 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 also sent a market economy treatment ('MET') claim form and a questionnaire to the applicant and received replies within the deadlines set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping, including the MET claim, and a verification visit was carried out at the premises of the applicant.

5. Investigation period

(8) The investigation of dumping covered the period from 1 October 2003 to 31 December 2004 ('the investigation period' or 'IP').

C. RESULTS OF THE INVESTIGATION

1. 'New exporter' qualification

(9) The investigation confirmed that the applicant had not exported the product concerned during the original IP and that it had begun exporting to the Community after this period.

(10) Furthermore, the applicant was able to demonstrate that it was not related to any of the exporters or producers in the PRC which are subject to the anti-dumping measures in force on imports of PET originating in the PRC.

(11) In this context, it is confirmed that the applicant should be considered a 'new exporter' in accordance with Article 11(4) of the basic Regulation.

2. Market economy treatment ('MET')

(12) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. These criteria are set out in a summarised form below:

— business decisions are made in response to market signals, without significant State interference, and costs reflect market values,

— firms have one clear set of basic accounting records which are independently audited in line with international accounting standards ('IAS') and are applied for all purposes,

— no distortions carried over from the non-market economy system,

— bankruptcy and property laws guarantee stability and legal certainty,

— exchange rate conversions are carried out at market rates.

(13) The Commission sought all information deemed necessary and verified all information submitted in the MET application at the premises of the company in question.

(14) The investigation showed that all five criteria laid down in Article 2(7)(c) of the basic Regulation were met by the applicant. It was therefore considered that MET should be granted to the applicant.

3. Dumping

Determination of normal value

(15) As far as the determination of normal value is concerned, the Commission first established whether the total domestic sales of the product concerned made by the applicant were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume was at least 5 % of the total export sales volume to the Community. The Commission established that PET was sold domestically by the applicant in overall representative volumes.

(16) No distinction of types was made for the product concerned. No additional examination therefore needed to be made whether domestic sales were sufficiently representative on a type-by-type basis for the purposes of Article 2(2) of the basic Regulation.

(17) An examination was also made as to whether the sales of PET sold domestically in representative quantities could be regarded as having been made in the

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ordinary course of trade, by establishing the proportion of profitable sales of PET to independent customers. Since the profitable sales volume of PET represented more than 80 % of the total domestic sales volume of PET, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of PET made during the IP, irrespective of whether these sales were profitable or not.

(18) Consequently, in accordance with Article 2(1) of the basic Regulation, normal value was based on the prices, paid or payable, on the domestic market of the PRC.

Export price

(19) The product concerned was exported directly to independent customers in the Community. Therefore, the export price was established in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of export prices actually paid or payable.

Comparison

(20) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

Dumping margin

(21) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value was compared with the weighted average export price of the product concerned.

(22) The comparison showed the existence of dumping. This dumping margin expressed as a percentage of the net, free-at-Community-frontier price, duty unpaid, for Jiangyin Chengsheng New Packing Material Co., Ltd is 5,6 %.

D. AMENDMENT OF THE MEASURES BEING REVIEWED

(23) In the light of the results of the investigation, it is considered that a definitive anti-dumping duty should be imposed for the applicant at the level of the dumping margin found.

(24) Regarding the form of the measure, it was considered that the amended anti-dumping duty should take the same form as the duties imposed by Regulation (EC) No 1467/2004. It was established that PET prices can fluctuate in line with fluctuations in crude oil prices. Therefore it was considered appropriate to impose duties in the form of a specific amount per tonne. Subsequently, the anti-dumping duty, calculated on the basis of the dumping margin expressed as a percentage, to imports of PET from Jiangyin Chengsheng New Packing Material Co. Ltd is EUR 45 per tonne.

(25) The dumping margin, established for the IP, of 5,6 % is below the country-wide injury elimination level of 27,3 %, which was established for the PRC in the original investigation. It is therefore proposed that a duty at the level of EUR 45 per