Commission Regulation (EC) No 523/2005 of 1 April 2005 initiating a 'new exporter' review of Council Regulation (EC) No 1467/2004 imposing definitive anti-dumping duties on imports of polyethylene terephthalate (PET) originating, inter alia, in the People's Republic of China, repealing the duty with regard to imports from one exporter in this country and making these imports subject to registration

COMMISSION REGULATION (EC) No 523/2005

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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[(1)] of 22 December 1995 on protection against dumped imports from countries not members of the European Community (the basic Regulation) and in particular Article 11(4),

After consulting the Advisory Committee,

Whereas:

A. REQUESTS 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 Jiangyin Chengsheng New Packaging Material Co., Ltd (the applicant). The applicant is an exporting producer in the People's Republic of China (the country concerned).

B. PRODUCT

(2) The product under review is polyethylene terephthalate (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 and originating in the People's Republic of China (the product concerned).

C. EXISTING MEASURES

(3) The measures currently in force are definitive anti-dumping duties imposed by Council Regulation (EC) No 1467/2004[(2)] under which imports into the Community of the product concerned originating in the People's Republic of China, and produced by the applicant, are subject to definitive anti-dumping duties of EUR 184 per tonne with the exception of several companies specially mentioned which are subject to individual duty rates.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 523/2005. (See end of Document for details)*

D. GROUNDS FOR THE REVIEW

(4) The applicant alleges that it operates under market economy conditions as defined in Article 2(7)(c) of the basic Regulation, 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 April 2002 to 31 March 2003 (the original investigation period) and that it is not related to any of the exporting producers of the product concerned which are subject to the abovementioned anti-dumping measures.

(5) The applicant further alleges that it has begun 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 whether the applicant operates under market economy conditions as defined in Article 2(7)(c) of the basic Regulation or alternatively whether the applicant fulfils the requirements to have an individual duty established in accordance with Article 9(5) of the basic Regulation and, if so, the applicant's individual margin of dumping and, should dumping be found, the level of the duty to which its imports of the product concerned into the Community should be subject.

(a) Questionnaires

(8) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the applicant.

(b) Collection of information and holding of hearings

(9) 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.

(c) Market economy status

(10) In the event that the applicant provides sufficient evidence that it operates under market economy conditions, i.e. that it meets the criteria laid down in Article 2(7)(c) of the basic Regulation, normal value will be determined in accordance with Article 2(7)(b) of the basic Regulation. For this purpose, duly substantiated claims must be submitted within the specific time limit set in Article 4(3) of this Regulation. The Commission will send claim forms to the applicant, as well as to the authorities of the People's Republic of China.

(d) Selection of the market economy country

(11) In the event that the applicant is not granted market economy status but fulfils the requirements to have an individual duty established in accordance with Article 9(5) of the basic Regulation, an appropriate market economy country will be used for the purpose of establishing normal value in respect of the People's Republic of China in accordance with Article 2(7)(a) of the basic Regulation. The Commission envisages using the United States of America (USA) again for this purpose as was done in the investigation which led to the imposition of measures on imports of the product concerned from the People's Republic of China. Interested parties are hereby invited to comment on the appropriateness of this choice within the specific time limit set in Article 4(2) of this Regulation.

(12) Furthermore, in the event that the applicant is granted market economy status, the Commission may, if necessary, also use findings concerning the normal value established in an appropriate market economy country, e.g. for the purpose of replacing any unreliable cost or price elements in the People's Republic of China which are needed in establishing the normal value, if reliable required data are not available in the People's Republic of China. The Commission envisages using the United States of America (USA) also for this purpose.

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

(13) Pursuant to Article 11(4) of the basic Regulation, the anti-dumping duties 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 applicant, anti-dumping duties can be levied retroactively from the date of the initiation of this review. The amount of the applicant's possible future liabilities cannot be estimated at this stage of the proceeding.

G. TIME LIMITS

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

— interested parties may make themselves known to the Commission, present their views in writing and submit the replies to the questionnaire mentioned in recital 8 of this Regulation or provide any other information to be taken into account during the investigation,

— interested parties may make a written request to be heard by the Commission,

— interested parties may comment on the appropriateness of the USA which, in the event that the applicant will not be granted market economy status, is envisaged as a market-economy country for the purpose of establishing normal value in respect of the People's Republic of China,

— the applicant should submit duly substantiated claims for market economy status.