Council Regulation (EC) No 1467/2004 of 13 August 2004 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed

COUNCIL REGULATION (EC) No 1467/2004

of 13 August 2004

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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 Communities[(1)] (the basic Regulation), and in particular Article 9 thereof,

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

Whereas:

A. PROCEDURE

1. PROVISIONAL MEASURES

(1) On 19 February 2004, the Commission imposed, by Regulation (EC) No 306/2004[(2)] (the provisional Regulation), a provisional anti-dumping duty on the imports into the Community of polyethylene terephthalate (PET) originating in Australia, the People's Republic of China and Pakistan (the countries concerned).

(2) It is recalled that the investigation period of dumping and injury (IP) covered the period from 1 April 2002 to 31 March 2003. The examination of trends relevant for the injury analysis covered the period from 1 January 1999 to the end of the IP (period considered).

2. PARALLEL INVESTIGATION PROCEDURE

(3) It is recalled that an interim review concerning imports of PET originating in the Republic of Korea and Taiwan was initiated by a notice published in the *Official Journal of the European Union* on 22 May 2003[(3)].

3. SUBSEQUENT PROCEDURE

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1467/2004. (See end of Document for details)*

(4) Following the imposition of a provisional anti-dumping duty on imports of PET from the countries concerned, all parties received a disclosure of the facts and considerations on which the provisional Regulation was based. All parties were granted a period within which they could make representations in relation to these disclosures.

(5) Some interested parties submitted comments in writing. Those parties who so requested were also granted an opportunity to be heard orally. The Commission sought and verified all information it deemed necessary. The oral and written comments submitted by the parties were examined, and, where considered appropriate, the provisional findings were modified accordingly.

(6) The Commission services further disclosed all the essential facts and considerations on the basis of which it intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of amounts secured by way of the provisional duty. The interested parties were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, the proposal for a definitive anti-dumping duty has been modified accordingly.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(7) It is recalled that, in recital 14 of the provisional Regulation, the product concerned was defined as polyethylene terephthalate with a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, currently classifiable within CN Code 3907 60 20, and originating in the countries concerned.

(8) Moreover, in recital 18 of the provisional Regulation, it was stated that the Commission had found that PET produced by the Community industry and sold on the Community market as well as PET produced in the countries concerned and exported to the Community were like products, since no differences in the basic physical and chemical characteristics and Uses of the existing different types of PET had been found.

(9) In the absence of any comments regarding the definition of the product concerned and the like product, the contents and provisional conclusions of recitals 14 to 18 of the provisional Regulation are hereby confirmed.

C. DUMPING

1. GENERAL METHODOLOGY

(10) The general methodology used to establish whether the imports into the Community of the product concerned have been dumped was described in recitals 19 to 34 of the provisional Regulation.

1.1. Normal value

(11) In the absence of any comments, the provisional findings concerning normal value as set out in recitals 20 to 27 of the provisional Regulation are confirmed.

1.2. Export price

(12) Several companies argued that the exchange rates used by the Commission in making its provisional findings were incorrect, were not from a reliable public source and claimed that such exchange rates should rather come from an official verifiable source.

(13) These claims have been thoroughly investigated and after verification, it was found that there were some errors in the exchange rates applied by the Commission in making its provisional findings. Therefore, calculations have been revised on the basis of the monthly average exchange rates published by (i) the Commission for all conversions involving the euro (EUR); (ii) the Federal Reserve of the United States of America for all conversions between the USA dollar, the Chinese Yuan (CNY) and the Hong Kong dollar (HKD); and (iii) the Bank of China for conversions between HKD and CNY. All these exchange rates have been applied, as was the case for the provisional calculations, on the basis of the monthly average exchange rate applicable to the month in which the sales invoice was issued.

1.3. Comparison

(14) In the absence of any comments concerning the basis on which normal value and export prices were compared, recital 30 of the provisional Regulation is confirmed.

1.4. Dumping margin

(15) In the absence of any comments, recitals 31 to 34 of the provisional Regulation concerning the methodology applied for the calculation of the dumping margin are confirmed.

2. AUSTRALIA

(16) Only one of the two cooperating exporting producers made submissions following the imposition of the provisional measures.

2.1. Normal value

(17) In the absence of any comments, the provisional findings concerning normal value, as set out in recital 36 of the provisional Regulation are confirmed.

2.2. Export price

(18) In the absence of any comments other than those already mentioned in the above recitals 12 and 13, the methodology explained in recital 37 of the provisional Regulation is confirmed.

2.3. Comparison

(19) One exporting producer claimed that different allowances regarding after-sales technical assistance and marketing expenses had not been taken account of by the Commission in making its provisional findings. The claim in regard to technical assistance was accepted after verification in accordance with Article 2(10)(h) of

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the basic Regulation. The claim regarding marketing expenses was accepted after verification in accordance with Article 2(10)(k) of the basic Regulation.

2.4. Dumping margin

(20) In the absence of any comments, the findings in recitals 39 to 41 of the provisional Regulation concerning the methodology applied for the calculation of the dumping margin, are hereby confirmed.

(21) The definitive dumping margins, expressed as a percentage of the cif import price at the Community border, are:

— Leading Synthetics Pty Ltd: 7,8 %

— Novapex Australia Pty Ltd: 15,9 %

— Residual dumping margin: 15,9 %

3. PAKISTAN

(22) The two cooperating exporting producers made submissions following the imposition of provisional measures in which they claimed that they should not have been regarded as two separate albeit related parties but rather, in view of their relationship as a unique exporting producer and that consequently, only one dumping calculation should be made.

(23) This request was thoroughly analysed on the basis of the arguments developed by these exporting producers subsequent to the provisional findings.

(24) It was found that the particular characteristics of the relationship between the companies concerned and the very close interlinks in their operation was such as to distinguish their position from the typical situation of two related companies. In particular, account was taken of the very significant financial and other links between the two exporting producers, the fact that they sell the product concerned under the same brand name, the fact that they share the same administrative premises and organisation as well as marketing division. Moreover, they share largely the same staff members and Directors and have a common production plan. The combination of all these elements is deemed sufficient to consider that under these particular circumstances the situation of the two exporting producers warrants that they be treated as a unique exporting producer in the Pakistani PET business rather than as two separate companies. Therefore, in view of all these elements, it was considered that the claim should be accepted.

3.1. Normal value

(25) In view of the above, the general methodology explained in recitals 20 to 34 of the provisional Regulation was applied for the unique exporting producer and the methodology explained in recitals 43 and 44 of the provisional Regulation has been revised.

(26) The Commission first established, for the unique exporting producer, whether its total domestic sales of the product concerned 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 of each exporting producer was at least 5 % of its total export sales volume to the Community.

(27) The Commission subsequently identified those types of PET, sold domestically by the unique exporting producer that had overall representative domestic sales and that were identical or directly comparable to the types sold for export to the Community.

(28) For each type sold by the unique exporting producer on its domestic market and found to be directly comparable to the type of PET sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of PET were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable PET type exported to the Community.

(29) An examination was also made as to whether the domestic sales of each type of PET could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the PET type in question, in accordance with recitals 23 and 24 of the provisional Regulation.

(30) Wherever domestic prices of a particular type sold by the unique exporting producer could not be used, constructed normal value had to be used.

(31) Consequently, in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the weighted average manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit. To this end, the Commission examined whether the SG&A incurred and the profit realised by the unique exporting producer on the domestic market constituted reliable data.

(32) Actual domestic SG&A expenses were considered reliable when the total domestic sales volume of the unique exporting producer could be regarded as representative when compared to the volume of export sales to the Community. The domestic profit margin was determined on the basis of domestic sales of those types which were sold in the ordinary course of trade. For this purpose, the methodology set out in recital 23 of the provisional Regulation was applied.

(33) For two types of PET exported by the unique exporting producer, the Commission could establish normal value on the basis of the prices paid or payable in the ordinary course of trade by independent customers on the domestic market, in accordance with Article 2(1) of the basic Regulation. For the three PET types whose domestic sales were found to be not representative, constructed normal value was used, in accordance with Article 2(3) of the basic Regulation.

3.2. Export price