COMMISSION REGULATION (EC) No 306/2004

of 19 February 2004

imposing a provisional anti-dumping duty on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and Pakistan

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 Communities [1], as last amended by Regulation (EC) No 1972/2002 [2] (the basic Regulation), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 22 May 2003, the Commission announced, by a notice published in the *Official Journal of the European Union* [3], the initiation of an anti-dumping proceeding with regard to imports into the Community of poly(-ethylene terephthalate) originating in Australia, the People's Republic of China (PRC) and Pakistan (countries concerned).

(2) The proceeding was initiated as a result of a complaint lodged in April 2003 by the Association of Plastic Manufacturers in Europe (APME) (the complainant) on behalf of producers representing a major proportion, in this case more than 80 %, of the total Community production of poly(ethylene terephthalate). The complaint contained evidence of dumping of the product concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The initiation of a partial interim review concerning imports of the same product originating in the Republic of Korea and Taiwan was announced by a notice published in the *Official Journal of the European Union* [4], on the same date.

2. Parties concerned by the proceeding

(4) The Commission officially advised the complainant, the exporting producers, importers, suppliers and users as well as user associations known to be concerned, and representatives of Australia, the PRC and Pakistan, of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(5) The complainant producers, other cooperating Community producers, exporting producers, importers, suppliers, users and user associations 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.

(6) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent market economy treatment and individual treatment claim forms to the Chinese companies known to be concerned. Eight companies requested MET pursuant to Article 2(7) of the basic Regulation or individual treatment should the investigation establish that they did not meet the conditions for MET, and one company requested only IT.

(7) In the notice of initiation, the Commission indicated that sampling may be applied in this investigation. However, given the lower than expected number of exporting producers in the PRC which indicated their willingness to cooperate, it was decided that sampling was not required.

(8) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from the seven Community producers included in the complaint, four other Community producers, two exporting producers in Australia, nine exporting producers in the PRC, two exporting producers in Pakistan, one importer related to one Australian exporter and located in the EC, two suppliers, four unrelated importers and nine unrelated users in the Community.

(9) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping and resulting injury and carried out verifications at the premises of the following companies:

(a) Community producers

— Aussapol SpA, San Giorgio Di Nogaro (UD), Italy

— Brilen SA, Zaragoza, Spain

— Catalana di Polimers, Barcelona, Spain

— Dupont Sabanci SA, Middlesbrough, United Kingdom

— INCA International, Milano, Italy

— KoSa, Frankfurt am Main, Germany

— M & G Finanziaria Industriale, Milano, Italy

— Tergal Fibres, Gauchy, France

— VPI SA, Athens, Greece

— Voridian, Rotterdam, Netherlands

— Wellman PET Resins, Arnhem, Netherlands;

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ C 120, 22.5.2003, p. 9.
[4] OJ C 120, 22.5.2003, p. 13.

(b) Exporting producers/exporters in Australia
- — Leading Synthetics Pty Ltd, Melbourne
- — Novapex Australia Pty Ltd, Melbourne;

(c) Exporting producers in the PRC
- — Sinopec Yizheng Chemical Fibre Company Ltd, Yizheng city
- — Changzhou Worldbest Radici Co. Ltd, Changzhou city
- — Jiangyin Xingye Plastic Co. Ltd, Jiangyin city
- — Far Eastern Industries Shanghai Ltd, Shanghai
- — Yuhua Polyester Co. Ltd. of Zhuhai, Zhuhai
- — Jiangyin Chengsheng New Packing Material Co. Ltd., Jiangyin
- — Hubei Changfeng Chemical Fibres Industry Co. Ltd, Yichang;

(d) Exporting producers in Pakistan
- — Gatron (Industries) Ltd, Karachi
- — Novatex Ltd, Karachi;

(e) Related importers
- — Mitsubishi Chemicals, Düsseldorf, Germany;

(f) Unrelated importers
- — Helm AG, Hamburg, Germany
- — Global Services International, Milano, Italy
- — ABIC Italia, Milano, Italy;

(g) Community suppliers
- — Interquisa SA, Madrid, Spain
- — BP Chemicals, Sunbury-on-Thames, United Kingdom;

(h) Community users
- — Danone Waters Group, Paris, France
- — Aqua Minerale San Benedetto, Scorze (VE), Italy
- — RBC Cobelplast Mononate, Varese, Italy
- — Nestlé Espana SA, Barcelona, Spain.

(10) In light of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country took place at the premises of the following company:

Producer in the United States of America (the US)
- — Wellman Inc., Charlotte.

3. **Investigation period**

(11) The investigation of dumping and injury covered the period from 1 April 2002 to 31 March 2003 (IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 1999 to the end of the investigation period (period considered).

4. **Product concerned and like product**

4.1 *General*

(12) Poly(ethylene terephthalate) (PET) is a chemical, which is normally used in the plastic industry, for the production of bottles and sheets. There is also another type of PET for use in polyester fibre production. The production process of the two types of poly(ethylene terephthalate) is identical up to a certain stage since they are both produced by the polycondensation of purified terephtalic acid (PTA) or dimethyl terephthalate (DMT) with mono ethylene glycol (MEG). Poly(ethylene terephthalate) for use in the plastics industry is polymerised in a similar way to that for polyester fibre production, in some cases in common facilities. The difference between the two types of poly(ethylene terephthalate) is primarily determined by the fact that the product concerned undergoes a further process called 'solid state processing' which increases its 'intrinsic viscosity' value (IV value or ItV value). It is thus the level of IV that differentiates the product concerned from the poly(ethylene terephthalate) used in the polyester fibre industry. Poly(ethylene terephthalate) with an IV value below 0,7 is used for the production of polyester fibre and is thus not concerned by this anti-dumping investigation.

(13) The viscosity of poly(ethylene terephthalate) may also be expressed in a different form, namely in terms of 'viscosity number'. The equivalent of an IV value of 0,7 as measured by tests performed according to ISO standard 1628-5 is a viscosity number of 78 ml/g which is the coefficient of viscosity for the type of poly(ethylene terephthalate) used in the production of plastic bottles and sheets.

4.2 *Product concerned*

(14) The product concerned is poly(ethylene terephthalate) with a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5 originating in Australia, the PRC and Pakistan, currently classifiable within CN code 3907 60 20.

(15) The investigation has shown that all types of the product concerned as defined in the preceding recital, despite differences in a variety of factors such as, *inter alia*, viscosity, additives, melting behaviour, have the same basic physical, and chemical characteristics and are used for the same purposes. Therefore, and for the purpose of the present anti-dumping proceeding, all types of the product concerned are regarded as one product.

4.3 *Like product*

(16) No differences were found between the product concerned and the PET produced and sold on the domestic market in Australia, the PRC, Pakistan and the US, which served as an analogue country for the purpose of establishing the normal value with respect to imports from the PRC. Indeed, PET has the same basic physical and chemical characteristics and uses compared with that exported from these countries to the Community.

(17) Likewise, no differences were found between the product concerned and the PET produced by the complainant Community industry and sold on the Community market. They both share the same physical and chemical characteristics and uses.

(18) Consequently, PET produced and sold on the domestic market of Australia, the PRC and Pakistan as well as that exported to the Community, PET produced and sold on the domestic market of the analogue country, and PET produced and sold in the Community by the Community industry have the same basic physical and chemical characteristics and uses. It is therefore concluded that all types of PET form one product family and are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

B. **DUMPING**

1. **General methodology**

(19) The general methodology set out hereinafter has been applied to all exporting producers in Australia and Pakistan as well as for the cooperating Chinese exporting producers for which MET was granted. The presentation of the findings on dumping for each of the countries concerned therefore only describes what is specific for each exporting country.

1.1 *Normal value*

(20) As far as the determination of normal value is concerned, the Commission first established, for each 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.

(21) The Commission subsequently identified those types of PET, sold domestically by the companies having overall representative domestic sales and that were identical or directly comparable to the types sold for export to the Community.

(22) For each type sold by the exporting producers on their domestic markets 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.

(23) 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 cases where the sales volume of PET type, sold at a net sales price equal to or above the calculated cost of production, represented 80 % or more of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of PET type represented less than 80 % of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.

(24) In cases where the volume of profitable sales of any type of PET represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(25) Wherever domestic prices of a particular type sold by an exporting producer could not be used, constructed normal value had to be used in preference to domestic prices of other exporting producers. Due to the number of different types and the variety of factors (such as viscosity, additives, melting behaviour, etc.) affecting them, using domestic prices of other exporting producers would have meant, in this case, making numerous adjustments, most of which would have had to be based on estimates. It was therefore considered that the construction of the normal value for each exporting producer formed a more appropriate method.

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

(27) Actual domestic SG and A expenses were considered reliable when the total domestic sales volume of the company concerned 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 was applied. Where these criteria were not met, a weighted average SG and A expenses and/or profit margin of the other companies with sufficient sales in the ordinary course of trade in the country concerned was used.

1.2 *Export price*

(28) In all cases where the product concerned was exported to independent customers in the Community, the export price was therefore established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

(29) In the case where sales were made via a related importer, the export price was constructed on the basis of the resale prices to independent customers. Adjustments were made for all costs incurred between importation and resale by that importer, including SG and A expenses, and a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation.

1.3 *Comparison*

(30) The normal value and export prices were normally 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.

1.4 *Dumping margin*

(31) According to Article 2(11) of the basic Regulation, for each exporting producer the weighted average normal value was compared with the weighted average export price.

(32) For non cooperating companies, a 'residual' dumping margin was determined in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(33) For those countries where the level of cooperation was high and where there was no reason to believe that any exporting producer abstained from cooperating, it was decided to set the residual dumping margin at the level of the cooperating company with the highest dumping margin, in order to ensure the effectiveness of any measures.

(34) In case where the level of cooperation for one country was low, the residual dumping margin was determined on the basis of the highest dumped export sales to the Community of representative quantities. This approach was also considered necessary in view of the fact that there were no indications that a non cooperating party had dumped at a lower level and in order to avoid giving a bonus for non cooperation.

2. **Australia**

(35) Questionnaire replies were received from two exporting producers and one importer related to one of the exporters.

2.1 *Normal value*

(36) For all types of PET exported by the Australian exporting producers, 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.

2.2 *Export price*

(37) One of the Australian exporting producers made export sales to the Community both directly to independent customers and via a related importer in the Community. Consequently, for the latter a constructed export price has been established pursuant to Article 2(9) of the basic Regulation.

2.3 *Comparison*

(38) In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. On this basis, allowances for differences in transport, insurance, handling charges, commissions, credit, packing and bank charges have been granted.

2.4 *Dumping margin*

(39) As provided by Article 2(11) of the basic Regulation, the weighted average normal values of each type of the product concerned exported to the Community were compared to the weighted average export price of each corresponding type of the product concerned.

(40) The comparison showed the existence of dumping in respect of the cooperating exporting producers. The provisional dumping margins expressed as a percentage of the cif import price at the Community border, duty unpaid are the following:

— Leading Synthetics Pty Ltd: 8,6 %,

— Novapex Australia Pty Ltd: 17,6 %.

(41) Since the level of cooperation was high (indeed, there are only two exporting producers of the product concerned in Australia), the residual provisional margin was set at the level of the cooperating company with the highest dumping margin to ensure the effectiveness of any measures.

— Residual dumping margin: 17,6 %.

3. **Pakistan**

(42) Two companies replied to the questionnaire for exporting producers. Both companies were found to be related to each other.

3.1 *Normal value*

(43) For all types of PET, except one, exported by one of the Pakistani exporting producers, 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 sole PET type where less than 10 % of the domestic sales are in the ordinary course of trade, constructed normal value was used, in accordance with Article 2(3) of the basic Regulation.

(44) The second exporting producer had no domestic sales. Therefore, given the sole two exporting producers in Pakistan were linked to each other, the normal value was established on the basis of the prices of the product concerned charged on the domestic market by the first exporting producer, in accordance with Article 2(1) of the basic Regulation.

3.2 *Export price*

(45) All sales of the product concerned made by the two related Pakistani exporting producers on the Community market were made to independent customers in the Community. Consequently, the export price was established according to Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable.

3.3 *Comparison*

(46) In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. On this basis, allowances for differences in transport, insurance, handling charges, commissions, credit and other factors have been granted.

3.4 *Dumping margin*

(47) As provided by Article 2(11) of the Basic Regulation, the weighted average normal values of each type of the product concerned exported to the Community were compared to the weighted average export price of each corresponding type of the product concerned.

(48) The comparison showed the existence of dumping in respect of the cooperating exporting producers. These two companies being related, the provisional dumping margin expressed as a percentage of the cif import price at the Community border has been calculated as the weighted average of the dumping margins of the two cooperating producers, in line with the Community's policy for related exporting producers. This margin amounts to:

— Gatron (Industries) Ltd: 14,8 %,

— Novatex Ltd: 14,8 %.

(49) Since the level of cooperation was high (indeed there are only two exporting producers of the product concerned in Pakistan), the residual provisional margin was set at the level of the cooperating company with the highest dumping margin to ensure the effectiveness of any measures.

— Residual dumping margin: 14,8 %.

4. **People's Republic of China**

4.1 *Market Economy Treatment*

(50) 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).

(51) Briefly, and for ease of reference only, these criteria are set out in summarised form below:

1. business decisions and costs are made in response to market conditions; and without significant State interference;

2. accounting records are independently audited and applied for all purposes;

3. there are no significant distortions carried over from former non-market economy system;