Council Regulation (EC) No 83/2005 of 18 January 2005 amending Regulation (EC) No 2604/2000 on imports of polyethylene terephthalate originating inter alia in the Republic of Korea and Taiwan

COUNCIL REGULATION (EC) No 83/2005

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amending Regulation (EC) No 2604/2000 on imports of polyethylene terephthalate originating *inter alia* in the Republic of Korea and Taiwan

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(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) The Council, by Regulation (EC) No 2604/2000[(2)] (the 'definitive Regulation'), imposed definitive anti-dumping duties on imports of polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand.

2. Present investigation

(2) On 22 May 2003, the Commission announced, by a notice published in the *Official Journal of the European Union*[(3)], the initiation of an interim review of the anti-dumping measures applicable to imports into the Community of PET originating in the Republic of Korea and Taiwan (the 'countries concerned').

(3) The interim review was initiated as a result of a request lodged in April 2003 by the Association of Plastic Manufacturers in Europe ('the applicant') on behalf of producers representing a major proportion, in this case more than 80 %, of the total Community production of PET. The request contained sufficient prima facie evidence that dumping and injury had recurred and that the existing measures were no longer sufficient to counteract the injurious dumping. The evidence provided was considered sufficient to justify the initiation of a full interim review of the existing measures, pursuant to Article 11(3) of the basic Regulation.

(4) On 30 June 2004, the applicant withdrew its request for the interim review.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 83/2005. (See end of Document for details)*

(5) Nevertheless, it was considered that, in view of the evidence available and the preliminary findings already obtained in the course of the investigation, the continuation of the investigation *ex officio* on dumping only was warranted. With regard to all other aspects of the review investigation, it was found that the interim review should be terminated following the withdrawal of the request. This approach has been communicated to all interested parties, none of which made any comment.

3. Other proceedings

(6) On 22 May 2003, the Commission announced, by a notice published in the *Official Journal of the European Union*[(4)], the initiation of an anti-dumping proceeding with regard to imports into the Community of PET originating in Australia, the People's Republic of China ('PRC') and Pakistan.

(7) By Regulation (EC) No 306/2004[(5)], the Commission imposed a provisional anti-dumping duty on imports of PET originating in Australia, the PRC and Pakistan. By Regulation (EC) No 1467/2004[(6)], the Council imposed definitive anti-dumping duties on imports of PET originating in Australia and the PRC and terminated the proceeding on imports of PET originating in Pakistan.

4. Parties concerned by the investigation

(8) The Commission services officially advised the applicant, the Community producers included in the complaint, the other Community producers, the exporting producers, importers, suppliers and users as well as associations known to be concerned, and representatives of the Republic of Korea and Taiwan, of the opening of the investigation. 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.

(9) The Community producers represented by the applicant, other cooperating Community producers, exporting producers, importers, suppliers, users and user associations made their views known. All interested parties who so requested were granted a hearing.

(10) Questionnaires were sent 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 represented by the applicant; four other Community producers; three exporting producers in the Republic of Korea, including one company not currently subject to an individual duty rate; four exporting producers in Taiwan, including one company not currently subject to an individual duty rate; and two suppliers, two related importers, four unrelated importers and nine unrelated users in the Community.

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

(12) The Commission services sought and verified all the information deemed necessary for 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

(b) Exporting producers/exporters in the Republic of Korea
- — Daehan Synthetic Fiber Co. Ltd, Seoul
- — SK Chemicals Co. Ltd, Seoul
- — KP Chemical Corp., Seoul

(c) Exporting producers in Taiwan
- — Far Eastern Textile Ltd, Taipei
- — Shinkong Synthetic Fibers Corp., Taipei
- — Hualon Corp., Taipei

(d) Related importers
- — SK Networks, Seoul, Republic of Korea
- — SK Global (Belgium) N.V., Antwerp, Belgium

(e) Unrelated importers
- — Mitsubishi Chemicals, Düsseldorf, Germany
- — Helm AG, Hamburg, Germany
- — Global Services International, Milano, Italy
- — SABIC Italia, Milano, Italy

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

(g) Community users
- — Danone Waters Group, Paris, France
- — Aqua Minerale San Benedetto, Scorze (VE), Italy

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— RBC Cobelplast Mononate, Varese, Italy

— Nestlé Espana SA, Barcelona, Spain

5. Investigation period

(13) The investigation of dumping covered the period from 1 April 2002 to 31 March 2003 ('IP').

6. Product concerned and like product

6.1. Product concerned

(14) The product concerned is the same as in the original investigation, i.e. PET with a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, originating in the Republic of Korea and Taiwan, currently classifiable within CN code 3907 60 20.

6.2. Like product

(15) As in the original investigation it was found that PET produced and sold on the domestic market of the Republic of Korea and Taiwan and PET produced and exported to the Community have the same basic physical and chemical characteristics and uses. It is therefore concluded that all types of PET with a viscosity number of 78 ml/g or higher are alike within the meaning of Article 1(4) of the basic Regulation.

B. DUMPING

1. General methodology

(16) The general methodology set out below has been applied to all exporting producers in the Republic of Korea and Taiwan and is the same as that used in the original investigation. 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

(17) For the determination of normal value, it was 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.

(18) Subsequently, 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, were identified.

(19) 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.

(20) 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 a PET type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % 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 80 % or less 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.

(21) It was found that profitable sales of all types of PET represented 10 % or more of the total sales volume of that type.

1.2. Export price

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

(23) In cases where sales were made via a related importer, the export price was constructed on the basis of the resale prices of that related importer to independent customers. Adjustments were made for all costs incurred between importation and resale by that importer, including sales, general and administrative expenses, and a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation. The appropriate profit margin was established on the basis of information provided by unrelated cooperating traders/importers operating on the Community market.

1.3. Comparison

(24) 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.

1.4. Dumping margin