COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.6.2009
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Proposal for a

COUNCIL REGULATION

terminating the new exporter review of Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating, inter alia, in Malaysia, re-imposing the duty with regard to imports from one exporter in this country and terminating the registration of these imports

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation') in the proceeding concerning imports of polyethylene terephthalate ('PET') originating in Malaysia..

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Council Regulation (EC) No 192/2007 of 22 February 2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, the Republic of Korea, Thailand and Taiwan following an expiry review and a partial interim review pursuant to Article 11(2) and Article 11(3) of Regulation (EC) No 384/96.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have had the opportunity to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 6 November 2008 the Commission initiated a 'new exporter' review of Council Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating, inter alia, in Malaysia, repealed the duty with regard to imports from one exporter in this country and made these imports subject to registration. The company concerned is Eastman Chemical Malaysia SDN.BHD ('the applicant')

During the proceeding, Eastman Chemical (Malaysia) SDN.BHD decided to withdraw their application for the 'new exporter' review. It was therefore not possible to establish the applicant's individual dumping margin and duty rate.

In view of the above, the residual duty defined in the original investigation should be reimposed on the applicant.

It is therefore proposed that the Council adopts the attached proposal for a Regulation, which should be published in the *Official Journal of the European Union* by 4 August 2009 at the latest.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 and in particular article 11 (4) thereof.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

The form of action is described in the basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate because the basic Regulation does not foresee alternative options.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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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 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. PREVIOUS PROCEDURE

(1) By Regulation (EC) No 192/2007[2] the Council, following an expiry review investigation imposed a definitive anti-dumping duty on imports into the Community of certain polyethylene terephthalate ('PET'), originating, *inter alia*, in Malaysia. The measures in force consist of a duty rate of 160,1 EUR/tonne, with the exception of the companies expressly mentioned which are subject to individual duty rates. Pursuant to the same Regulation, anti-dumping duties were also imposed on imports of PET originating in India, Indonesia, the Republic of Korea, Thailand and Taiwan. The original measures were imposed, following an investigation (the 'original investigation'), by Regulation (EC) No 2604/2000[3].

B. PRESENT PROCEDURE

1. Request for a review

(2) The Commission subsequently received a request to initiate a 'new exporter' review of Regulation No 192/2007, pursuant to Article 11(4) of the basic Regulation, from Eastman Chemical (Malaysia) SDN.BHD (the 'applicant'). The applicant alleged that it did not export certain PET to the Community during the period of investigation on

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1 OJ L 56, 6.3.1996, p. 1.

2 OJ L 59, 27.2.2007, p. 1. *(BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, NL, PL, PT, RO, SK, SL, FI, SV)* ; OJ L 352M, 31.12.2008, p. 972 (*MT)*

3 OJ L 301, 30.11.2000, p. 21. Regulation as last amended by Regulation (EC) No 1646/2005 (OJ L 266, 11.10.2005, p. 10).

which the anti-dumping measures were based, i.e. the period from 1 October 1998 to 30 September 1999 (the 'original investigation period') and that it is not related to any of the exporting producers of certain PET which are subject to the above mentioned anti-dumping measures. The applicant further alleged that it began exporting certain PET to the Community after the end of the original investigation period.

2. Initiation of a 'new exporter' review

(3) The Commission examined the *prima facie* 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 1082/2008[4], a review of Regulation (EC) No 192/2007 with regard to the applicant.

(4) Pursuant to Article 2 of Commission Regulation (EC) No 1082/2008, the anti-dumping duty of EUR 160,1/tonne imposed by Regulation (EC) No 192/2007 on imports of certain PET produced and sold for export to the Community 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 these imports.

3. Product concerned

(5) The product concerned by the current review is the same as that in the original investigation, i.e. PET having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, falling within CN Code 3907 60 20.

4. Parties concerned

(6) The Commission officially advised the applicant, the Community industry 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 sent a questionnaire to the applicant and received a reply within the deadline set for that purpose. The Commission sought to verify all the information it deemed necessary for the determination of dumping, and a verification visit was carried out at the premises of the applicant.

5. Review investigation period

(8) The new exporter review investigation period covered the period from 01 October 2007 to 30 September 2008.

C. WITHDRAWAL OF THE REQUEST FOR A NEW EXPORTER REVIEW

[4] OJ L 296, 5.11.2008, p. 5

(9) By a letter dated 22 April 2009 addressed to the Commission, the applicant formally withdrew its request for a 'new exporter' review without providing any specific justification.

(10) Under these circumstances, the Commission could not establish the applicant's individual dumping margin and duty rate. It was therefore concluded that imports into the Community of PET having a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5 falling within CN code 3907 60 20 originating in Malaysia and produced and sold for export to the Community by Eastman Chemical (Malaysia) SDN.BHD should be subject to the country-wide duty applicable to 'all other companies' in Malaysia (EUR 160,1 per tonne) imposed by Council Regulation No 192/2007 and that that rate of duty should therefore be re-imposed.

D. RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY

(11) In the light of the above findings, the anti-dumping duty applicable to Eastman Chemical (Malaysia) SDN.BHD shall be levied retroactively from the date of initiation of the review on imports of the product concerned which have been made subject to registration pursuant to Article 3 of Commission Regulation (EC) No 1082/2008.

E. DISCLOSURE AND DURATION OF THE MEASURES

(12) The applicant and the other parties concerned were informed of the essential facts and considerations on the basis of which it was intended to re-impose a definitive anti-dumping duty on imports of certain PET originating, *inter alia*, in Malaysia and produced and sold for export to the Community by Eastman Chemical Malaysia SDN.BHD and to levy this duty retroactively on imports made subject to registration. Their comments were considered and taken into account as appropriate.

(13) This review does not affect the date on which the measures imposed by Council Regulation (EC) No 192/2007 will expire pursuant to Article 11(2) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The new exporter review initiated by Regulation (EC) No 1082/2008 is hereby terminated and the anti-dumping duty applicable according to Article 1 of Regulation (EC) No 192/2007 to 'all other companies' in Malaysia is hereby imposed on imports identified in Article 1 of Regulation (EC) No 1082/2008.

2. The anti-dumping duty applicable according to Article 1 of Regulation (EC) No 192/2007 to 'all other companies' in Malaysia is hereby levied with effect from 6 November 2008 on imports of certain polyethylene terephthalate which have been registered pursuant to Article 3 of Regulation (EC) No 1082/2008.

3. The customs authorities are hereby directed to cease the registration of imports carried out pursuant to Article 3 of Regulation (EC) No 1082/2008.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President