

V

*(Announcements)*PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON
COMMERCIAL POLICY

EUROPEAN COMMISSION

Notice concerning anti-dumping measures on imports of polyethylene terephthalate film originating in India and a partial reopening of the anti-dumping interim review investigation concerning imports of polyethylene terephthalate film originating in India

(2010/C 131/03)

By its judgment of 17 November 2009 in Case T-143/06, the General Court of the European Union annulled Council Regulation (EC) No 366/2006 of 27 February 2006 amending Regulation (EC) No 1676/2001 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, inter alia, in India ⁽¹⁾, to the extent that it imposes an anti-dumping duty on MTZ Polyfilms Ltd (MTZ Polyfilms). Following an expiry review, the measures imposed by Regulation (EC) No 1676/2001 were confirmed by Regulation (EC) No 1292/2007 ⁽²⁾.

As a consequence of the judgment of 17 November 2009, imports into the European Union of polyethylene terephthalate film manufactured by MTZ Polyfilms are no longer subject to the anti-dumping measures imposed by Regulation (EC) No 366/2006 and confirmed by Regulation (EC) No 1292/2007.

1. Information to customs authorities

The definitive anti-dumping duties paid pursuant to Regulation (EC) No 366/2006 and Regulation (EC) No 1292/2007 on imports into the European Union of polyethylene terephthalate film currently falling under CN codes ex 3920 62 19 and ex 3920 62 90, originating in India, manufactured by MTZ Polyfilms (TARIC additional code A031) should be repaid or remitted. The repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation. However, to the extent that such a request can not reasonably be made under that legislation since the deadline for doing so has already expired before the moment of publication of this notice, or in cases where that deadline expires shortly after publication of this notice, that deadline is not applicable. Nevertheless, the importers

concerned by this notice are urged to file their claims for reimbursement as soon as possible.

Moreover, imports into the European Union of polyethylene terephthalate film manufactured by MTZ Polyfilms are no longer subject to the anti-dumping measures imposed by Regulation (EC) No 366/2006 and confirmed by Regulation (EC) No 1292/2007.

2. Partial reopening of the anti-dumping interim review investigation

The General Court, through its judgment of 17 November 2009, annulled Council Regulation (EC) No 366/2006 because it considered that it was adopted on an incorrect legal basis. The General Court considered in particular that Article 11(3) of Council Regulation (EC) No 1225/2009 ⁽³⁾ (the basic Regulation) cannot serve as a legal basis allowing the institutions, when determining the export price, not to apply the methodology prescribed by Article 2(8) and (9) of the basic Regulation.

It is recognised by the Courts ⁽⁴⁾ that, in cases where a proceeding consists of several administrative steps, the annulment of one of those steps does not annul the complete proceeding. The anti-dumping proceeding is an example of such a multi-step proceeding. Consequently, the annulment of parts of the anti-dumping Regulation imposing definitive measures does not imply the annulment of the entire procedure prior to the adoption of the Regulation in question. On the other

⁽¹⁾ OJ L 68, 8.3.2006, p. 6.

⁽²⁾ OJ L 288, 6.11.2007, p. 1.

⁽³⁾ OJ L 343, 22.12.2009, p. 51.

⁽⁴⁾ Case T-2/95 *Industrie des poudres sphériques (IPS) v Council* (1998) ECR II-3939.

hand, according to Article 266 of the Treaty on the Functioning of the European Union, the institutions of the European Union are obliged to comply with the judgment of 17 November 2009 of the General Court. Accordingly, the Union's institutions, in so complying with the judgment, have the possibility to remedy the aspects of the contested Regulation which led to its annulment ⁽¹⁾. It must be noted that all other findings made in the contested Regulation, which are not affected as a consequence of the judgment, remain valid.

The Commission has thus decided to reopen the anti-dumping interim review investigation concerning imports of polyethylene terephthalate film originating, inter alia, in India in order to implement the above mentioned Court judgment as far as MTZ Polyfilms is concerned. Should MTZ Polyfilms consider that other aspects of the findings which led to the adoption of Regulation (EC) No 366/2006 are no longer valid, it is invited to present a duly substantiated request for review in accordance with the provisions of Article 11(3) of the basic Regulation.

3. Procedure

Having determined, after consulting the Advisory Committee, that a partial reopening of the anti-dumping interim review investigation is justified, the Commission hereby partially reopens the anti-dumping interim review investigation concerning imports of polyethylene terephthalate film originating, inter alia, in India initiated pursuant to Article 11(3) of the basic Regulation by a notice published in the *Official Journal of the European Union* ⁽²⁾.

The reopening is limited in scope to the implementation of the above mentioned judgment as far as MTZ Polyfilms is concerned.

All interested parties are hereby invited to make their views known, submit information and provide supporting evidence. This information and supporting evidence must reach the Commission within the time limit set in point 4(a).

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in point 4(b).

⁽¹⁾ Case C-458/98 P *Industrie des poudres sphériques (IPS) v Council* (2000) ECR I-08147.

⁽²⁾ OJ C 1, 4.1.2005, p. 5.

4. Time limits

(a) For parties to make themselves known and to submit information

All interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views and submit any information within 20 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on a party making itself known within the aforementioned period.

(b) Hearings

All interested parties may also apply to be heard by the Commission within the same 20-day time limit.

5. Written submissions and correspondence

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this notice and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' ⁽³⁾ and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties'.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: N-105 04/92
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Fax +32 22956505

6. Non-cooperation

In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

⁽³⁾ This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of the basic Regulation and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 18 of the basic Regulation, of the facts available. If an interested party does not cooperate or cooperates only partially, and use of facts available is made, the result may be less favourable to that party than if it had cooperated.

7. Processing of personal data

It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movement of such data ⁽¹⁾.

8. Hearing Officer

It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of the Directorate-General for Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with regard to issues concerning access to file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details interested parties may consult the Hearing Officer's web pages of the website of the Directorate-General for Trade (<http://ec.europa.eu/trade>).

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.