COUNCIL REGULATION (EC) No 496/2002

of 18 March 2002

amending Regulation (EC) No 2604/2000 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating, amongst other countries, in India

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], and in particular Article 11(4) thereof,

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

Whereas:

A. MEASURES IN FORCE

(1) By Regulation (EC) No 2603/2000 [2], the Council imposed a definitive countervailing duty in the form of a specific amount per tonne of EUR 41,3/tonne on imports of certain polyethylene terephthalate (hereinafter referred to as 'the product concerned') originating, *inter alia*, in India, with the exception of imports from several Indian companies specifically mentioned, which are subject to a lesser rate of duty. By Regulation (EC) No 2604/2000 [3], the Council imposed a definitive anti-dumping duty in the form of a specific amount per tonne of EUR 181,7/tonne on imports of certain polyethylene terephthalate originating, *inter alia*, in India, with the exception of imports from several Indian companies specifically mentioned, which are subject to different rates of duty. The product is currently classifiable under CN code 3907 60 20.

B. CURRENT INVESTIGATION

(2) The Commission subsequently received a request to initiate a 'new exporter' review of Regulation (EC) No 2604/2000, pursuant to Article 11(4) of Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation'), from the Indian producer Futura Polymers Ltd (hereinafter referred to as 'the company concerned'). This company claimed that it was not related to any of the exporting producers in India subject to the anti-dumping measures in force with regard to the product concerned. Furthermore, it claimed that it had not exported the product concerned during the original period of investigation (1 October 1998 to 30 September 1999), but had exported the product concerned to the Community since then.

(3) The product covered by the current review is the same as in the original investigation, i.e. polyethylene terephthalate ('PET') with a coefficient of viscosity of 78 ml/g or higher, according to DIN (Deutsche Industrienorm) 53728.

(4) The Commission examined the evidence submitted by the Indian exporting producer concerned and considered it sufficient to justify the initiation of a review in accordance with the provisions of 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 1240/2001 [4], a review of Regulation (EC) No 2604/2000 with regard to the company concerned and commenced its investigation.

(5) By the Regulation initiating the review, the Commission also repealed the anti-dumping duty imposed by Regulation (EC) No 2604/2000 with regard to imports of the product concerned, produced and exported to the Community by the company concerned and directed customs authorities, pursuant to Article 14(5) of the Basic Regulation, to take appropriate steps to register such imports.

(6) The Commission officially advised the company concerned and the representatives of the exporting country of the initiation of the review. Furthermore, it gave other parties directly concerned the opportunity to make their views known in writing and to request a hearing. However, no such request was received by the Commission.

(7) The Commission sent a questionnaire to the company concerned and received a reply within the deadline. The Commission also sought and verified all the information deemed necessary for the determination of dumping. A verification visit was carried out at the premises of the company concerned.

(8) The investigation of dumping covered the period from 1 April 2000 to 31 March 2001 (hereinafter referred to as 'the investigation period').

(9) The same methodology as that used in the original investigation was applied in the current investigation.

[1] OJ L 56, 06.03.1996, p.1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 301, 30.11.2000, p. 1.
[3] OJ L 301, 30.11.2000, p. 21.
[4] OJ L 171, 26.6.2001, p. 3.

C. SCOPE OF THE REVIEW

(10) As no request for a review of the findings on injury was made in this investigation, the review was limited to dumping.

D. RESULTS OF THE INVESTIGATION

1. New exporter qualification

(11) The investigation confirmed that the company concerned had not exported the product concerned during the original period of investigation and that it had begun exporting to the Community after this period.

Furthermore, according to documentary evidence submitted, the company was able to satisfactorily demonstrate that it did not have any links, direct or indirect, with any of the Indian exporting producers subject to the anti-dumping measures in force with regard to the product concerned.

Accordingly, it is confirmed that the company concerned should be considered a new exporter in accordance with Article 11(4) of the Basic Regulation, and thus an individual dumping margin should be determined for it.

2. Dumping

Normal value

(12) As far as the determination of normal value is concerned, the Commission first established, for the company, whether its total domestic sales of polyethylene terephthalate 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 since the total domestic sales volume of the exporting producer was at least 5 % of its total export sales volume to the Community. Domestic sales of the product type exported to the Community were also representative, i.e. at least 5 % of the sales volume exported to the Community.

(13) An examination was also made as to whether the domestic sales could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers. The sales volume of the product concerned sold at a net sales price equal to or above the calculated cost of production ('profitable sales') represented 80 % or more of the total sales volume and the weighted average price of that type was above cost of production. Consequently, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales made during the investigation period, irrespective of whether all these sales were profitable or not.

Export price

(14) Since all export sales to the Community were made 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.

Comparison

(15) For the purpose of ensuring a fair comparison between normal value and 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.

(16) All the export sales allowances were accepted. These related to inland freight, other freight, bank charges, other charges and packing.

(17) All the domestic sales allowances claimed by the company were accepted, i.e. credit costs, commissions and indirect taxes. Since test certificates for the product showed a quality difference between that sold domestically and that exported to the Community, an adjustment for differences in physical characteristics was made. This difference was quantified by comparing prices of the two qualities sold to third countries.

Dumping margin

(18) According to Article 2(11) of the Basic Regulation, the dumping margin was established on the basis of a comparison between the weighted average normal value by type and the weighted average export price.

(19) This weighted average dumping margin established for the company, expressed as a percentage of the free-at-Community-frontier price, amounts to 14,7 %.

E. AMENDMENT OF THE MEASURES BEING REVIEWED

(20) In the light of the foregoing, it is considered that a definitive anti-dumping duty should be imposed at the level of the dumping margin found but, in accordance with Article 9(4) of the Basic Regulation, should not be higher than the country-wide injury margin established for India by the definitive Regulation in the original anti-dumping investigation. In this case the anti-dumping duty was based on the dumping margin mentioned above since the investigation, pursuant to Article 11(4) of the Basic Regulation, was limited to the examination of the situation of dumping of the company concerned and the country-wide injury margin of the original investigation was higher.

(21) In accordance with Article 14(1) of the Basic Regulation, no product shall be subject to both antidumping and countervailing duties for the purposes of dealing with one and the same situation arising from dumping or from export subsidisation. As anti-dumping duties should be imposed on imports of the product concerned it is necessary to determine whether, and to what extent, the subsidy and the dumping margin arise from the same situation.

(22) In the case in question the company concerned cooperated in the initial anti-subsidy case and the countervailing duty has been established at 0 %.

F. **RETROACTIVE LEVYING OF THE ANTI-DUMPING DUTY**

(23) As the review has resulted in a determination of dumping in respect of the company concerned, the anti-dumping duty applicable to this company shall also be levied retroactively from the date of initiation of this review on imports which have been made subject to registration pursuant to Article 3 of Regulation (EC) No 1240/2001.

G. **UNDERTAKING**

(24) The company, Futura Polymers Ltd, offered a price undertaking concerning its exports of the product concerned to the Community, in accordance with Article 8(1) of the Basic Regulation.

(25) After examination of the offer, the Commission considered the undertaking as acceptable since it would eliminate the injurious effects of dumping pursuant to Article 8(1) of the Basic Regulation. Moreover, the regular and detailed reports which the company undertook to provide to the Commission will allow effective monitoring. Furthermore, the nature of the product and the sales structure of the company is such that the Commission considers that the risk of circumvention is limited.

(26) In order to ensure the effective respect and monitoring of the undertaking, when the request for release for free circulation pursuant to the undertaking is presented, exemption from the duty is conditional upon presentation to the customs service of the Member State concerned a valid 'Commercial Invoice' issued by Futura Polymers Ltd and containing the information listed in the Annex of Regulation (EC) No 2604/2000. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty should be payable in order to ensure the effective application of the undertaking.

(27) In the event of a breach or withdrawal of the undertaking, an anti-dumping duty may be imposed, pursuant to Article 8(9) and (10) of the Basic Regulation.

H. **DISCLOSURE AND DURATION OF THE MEASURES**

(28) The company concerned was informed of the facts and considerations on the basis of which it was intended to impose the amended definitive anti-dumping duty on its imports into the Community.

(29) This review does not affect the date on which Regulation (EC) No 2604/2000 will expire pursuant to Article 11(2) of the Basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The text concerning Futura Polymers Limited in Article 1(3) of Regulation (EC) No 2604/2000 is hereby replaced by:

Country	Company	Definitive duty (Euro/t)	TARIC additional code
India	Futura Polymers Limited	161,2	A184

2. The table in Article 2(3) of Regulation (EC) No 2604/2000 is hereby amended by the insertion of the following as a third entry:

Company	Country	TARIC additional code
Futura Polymers Limited	India	A184

3. The duty hereby imposed shall also be levied retroactively on imports of the product concerned which have been registered pursuant to Article 3 of Regulation (EC) No 1240/2001.

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

Article 2

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

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

Done at Brussels, 18 March 2002.

For the Council
The President
M. ARIAS CAÑETE