COMMISSION REGULATION (EC) No 283/2004

of 18 February 2004

initiating an investigation concerning the possible circumvention of countervailing measures imposed by Council Regulation (EC) No 2597/1999 on imports of polyethylene terephthalate (PET) film originating in India by imports of polyethylene terephthalate (PET) film consigned from Brazil and from Israel, whether declared as originating in Brazil or Israel or not and making such imports subject to registration

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 1973/2002 [2], (the basic Regulation), and in particular Article 23(2) and Article 24(3) and (5) thereof,

After having consulted the Advisory Committee,

Whereas:

A. REQUEST

(1) The Commission has received a request pursuant to Article 23(2) of the basic Regulation to investigate the possible circumvention of the countervailing measures imposed on imports of polyethylene terephthalate (PET) film (PET film) originating in India.

(2) The request was lodged on 6 January 2004 by the following Community producers: DuPont Teijin Films, Mitsubishi Polyester Film GmbH and Nuroll SpA.

B. PRODUCT

(3) The product concerned by the possible circumvention is PET film originating in India, normally declared under CN codes ex 3920 62 19 and ex 3920 62 90 (the product concerned). These codes are given for information only.

(4) The product under investigation is polyethylene terephthalate (PET) film consigned from Brazil and from Israel (the product under investigation) normally declared under the same codes as the product concerned.

C. EXISTING MEASURES

(5) The measures currently in force and possibly being circumvented are countervailing measures imposed by Council Regulation (EC) No 2597/1999 [3].

D. GROUNDS

(6) The request contains sufficient prima facie evidence that the countervailing measures on imports of PET film originating in India are being circumvented by means of transhipment via Brazil and via Israel.

(7) The evidence submitted is as follows:

The request shows that a significant change in the pattern of trade involving exports from India, Brazil and Israel to the Community has taken place following the imposition of measures on the product concerned, and that there appears to be insufficient due cause or justification other than the imposition of the duty for such a change. This change in the pattern of trade appears to stem from the transhipment of PET film originating in India via Brazil and via Israel.

(8) Furthermore, the request contains sufficient prima facie evidence that the remedial effects of the existing countervailing measures on the product concerned are being undermined in terms of quantities. Significant volumes of imports of PET film from Brazil and from Israel appear to have replaced imports of the product concerned originating in India.

(9) Finally, the request contains sufficient prima facie evidence that the imported PET film still benefits from the subsidies as established in the original investigation.

(10) Should circumvention practices covered by Article 23 of the basic Regulation, other than transhipment, be identified in the course of the investigation, the investigation may cover these practices also.

E. PROCEDURE

(11) In the light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 23 of the basic Regulation and to make imports of PET film consigned from Brazil and from Israel, whether declared as originating in Brazil or Israel or not, subject to registration, in accordance with Article 24(5) of the basic Regulation.

[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ L 305, 7.11.2002, p. 4.
[3] OJ L 316, 10.12.1999, p. 1.

(a) **Questionnaires**

(12) In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the exporters/producers and to the associations of exporters/producers in Brazil and Israel, to the exporters/producers and to the associations of exporters/producers in India, to the importers and to the associations of importers in the Community which cooperated in the investigation that led to the existing measures or which are listed in the request, and to the authorities of India, Brazil and Israel. Information, as appropriate, may also be sought from the Community industry.

(13) In any event, all interested parties should contact the Commission forthwith, but not later than the time limit set in Article 3 of this Regulation in order to find out whether they are listed in the request and, if necessary, request a questionnaire within the time limit set in Article 3(1) of this Regulation, given that the time limit set in Article 3(2) of this Regulation applies to all interested parties.

(14) The authorities of India, Brazil and Israel will be notified of the initiation of the investigation and provided with a copy of the request.

(b) **Collection of information and holding of hearings**

(15) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

(c) **Exemption from registration of imports or measures**

(16) In accordance with Article 23(3) of the basic Regulation, imports of the product under investigation may be exempted from registration or measures if the importation does not constitute circumvention.

(17) The possible circumvention takes place outside the Community. Article 23 of the basic Regulation is aiming at countering circumvention practices without affecting operators which can prove that they are not involved in such practices, but it does not contain a specific provision providing for the treatment of producers in the countries concerned which could establish that they are not involved in circumvention practices. Therefore, it appears necessary to introduce a possibility for producers concerned to request an exemption from the registration of imports of their exported products or from measures on these imports.

(18) Producers wishing to obtain an exemption should apply for it and submit any requested questionnaire reply within the appropriate time limits, in order for it to be established that they are not circumventing the countervailing duties within the meaning of Article 23(1) of the basic Regulation. Importers could still benefit from exemption from registration or measures to the extent that their imports are from producers which are granted such an exemption, and in accordance with Article 23(3) of the basic Regulation.

F. **REGISTRATION**

(19) Pursuant to Article 24(5) of the basic Regulation, imports of the product under investigation should be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, countervailing duties of an appropriate amount can be levied retroactively from the date of registration of such imports consigned from Brazil and from Israel.

G. **TIME LIMITS**

(20) In the interest of sound administration, time limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,

— interested parties may make a written request to be heard by the Commission.

(21) Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the time limits mentioned in Article 3 of this Regulation.

H. **NON-COOPERATION**

(22) In cases in which any interested party refuses access to or otherwise does not provide necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 28 of the basic Regulation, on the basis of the facts available.

(23) 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 28 of the basic Regulation, of the facts available. If an interested party does not cooperate, or cooperates only partially, and use of the facts available is made, the result may be less favourable than if it had cooperated,

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is hereby initiated pursuant to Article 23(2) of Regulation (EC) No 2026/97, in order to determine if imports into the Community of polyethylene terephthalate (PET) film, falling within CN codes ex 3920 62 19 and ex 3920 62 90 (TARIC codes 3920 62 19 01, 3920 62 19 04, 3920 62 19 07, 3920 62 19 11, 3920 62 19 14, 3920 62 19 17, 3920 62 19 21, 3920 62 19 24, 3920 62 19 27, 3920 62 19 31, 3920 62 19 34, 3920 62 19 37, 3920 62 19 41, 3920 62 19 44, 3920 62 19 47, 3920 62 19 51, 3920 62 19 54, 3920 62 19 57, 3920 62 19 61, 3920 62 19 67, 3920 62 19 74, 3920 62 19 92, 3920 62 90 31, 3920 62 90 92), consigned from Brazil and from Israel, whether originating in Brazil or Israel or not, are circumventing the measures imposed by Council Regulation (EC) No 2597/1999 on imports of polyethylene terephthalate (PET) film, originating in India.

Article 2

The Customs authorities are hereby directed, pursuant to Article 23(2) and Article 24(5) of Regulation (EC) No 2026/97, to take the appropriate steps to register the imports into the Community identified in Article 1 of this Regulation.

Registration shall expire nine months following the date of entry into force of this Regulation.

The Commission, by regulation, may direct Customs authorities to cease registration in respect of imports into the Community of products manufactured by producers having applied for an exemption of registration and having been found not to be circumventing the countervailing duties.

Article 3

1. Questionnaires should be requested from the Commission within 15 days from publication of this Regulation in the *Official Journal of the European Union*.

2. 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 in writing and submit questionnaire replies or any other information within 40 days from the date of the publication of this Regulation in the *Official Journal of the European Union*, unless otherwise specified.

3. Interested parties may also apply to be heard by the Commission within the same 40-day time limit.

4. Any information relating to the matter, any request for a hearing or for a questionnaire as well as any request for authorisation of certificates of non-circumvention must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone, fax and/or telex numbers of the interested party. All written submissions, including the information requested in this Regulation, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' ([1]) and, in accordance with Article 29(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 B
Office: J-79, 5/16
B-1049 Brussels
Fax (32-2) 295 65 05
Telex COMEU B 21877

Article 4

This Regulation shall enter into force on the day following that of 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, 18 February 2004.

For the Commission
Pascal LAMY
Member of the Commission

([1]) 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 (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 29 of Council Regulation (EC) No 2026/97 (OJ L 288, 21.10.1997, p. 1) and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures.