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EUROPEAN COMMISSION

Brussels, 31.3.2010  
COM(2010)123 final

2010/0069 (NLE)

Proposal for a

**COUNCIL REGULATION**

**amending Regulation (EC) No 1487/2005 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain finished polyester filament fabrics originating in the People's Republic of China**

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

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

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') in the proceeding concerning imports of certain finished polyester filament fabrics originating in the People's Republic of China.

- **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 1487/2005 imposing a definitive anti-dumping duty on imports of certain finished polyester filament fabrics originating in the People's Republic of China.

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

Not applicable.

### 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

The applicants and the Union industry have been informed of the findings of the examination and have had the opportunity to submit their comments 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 make provision for 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**

By Regulation (EC) No 1487/2005 (*OJ L 240, 16.9.2005, p. 1.*), the Council imposed a definitive anti-dumping duty on imports of certain finished polyester filament fabrics originating in the People's Republic of China.

During the investigation which led to the imposition of measures, given the large number of exporting producers of the product concerned in the People's Republic of China, sampling was applied.

Article 2 of Council Regulation (EC) No 1487/2005 gives the possibility to Chinese exporting producers which meet certain criteria to be granted the same treatment as the cooperating companies not included in the sample ('new exporting producer treatment' or 'NEPT').

One group of companies consisting of two companies involved in the production and sales of the product concerned have requested new exporting producer treatment and their claims have been examined.

It is therefore proposed that the Council adopts the attached proposal for a Regulation, which sets out the names and duty rates of the companies to which new exporting producer treatment is granted. The Regulation should be published in the *Official Journal of the European Union*.

- **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation').

Council Regulation (EC) No 1487/2005 imposing a definitive anti-dumping duty on imports of certain finished polyester filament fabrics originating in the People's Republic of China.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the European Union (EU). The subsidiarity principle therefore does not apply.

- **Proportionality principle**

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

Council Regulation (EC) No 1487/2005 imposing a definitive anti-dumping duty on imports of certain finished polyester filament fabrics originating in the People's Republic of China leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the EU, 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 for the following reason:

The above-mentioned basic Regulation does not foresee alternative options.

**4) BUDGETARY IMPLICATION**

The proposal has no implication for the EU budget.

Proposal for a

## **COUNCIL REGULATION**

**amending Regulation (EC) No 1487/2005 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain finished polyester filament fabrics originating in the People's Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community<sup>1</sup> repealing Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community<sup>2</sup> (the 'basic Regulation'), and in particular Article 9 thereof,

Having regard to Article 2 of Council Regulation (EC) No 1487/2005<sup>3</sup> of 12 September 2005 imposing a definitive anti-dumping duty on imports of certain finished polyester filament fabrics originating in the People's Republic of China,

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

Whereas:

### **1. MEASURES IN FORCE**

- (1) By Regulation (EC) No 1487/2005, the Council imposed a definitive anti-dumping duty on imports into the European Union of woven fabrics of synthetic filament yarn containing 85 % or more by weight of textured and/or non-textured polyester filament, dyed (including dyed white) or printed, originating in the People's Republic of China, currently falling within CN codes ex 5407 51 00, 5407 52 00, 5407 54 00, ex 5407 61 10, 5407 61 30, 5407 61 90, ex 5407 69 10 and ex 5407 69 90 (the product concerned).

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<sup>1</sup> OJ L 343, 22.12.2009, p.51.

<sup>2</sup> OJ L 56, 6.3.1996, p.1.

<sup>3</sup> OJ L 240, 16.9.2005, p. 1.

- (2) Given the large number of cooperating parties, a sample of Chinese exporting producers was selected during the investigation which led to the imposition of the measures.
- (3) The sampled companies were attributed the individual duty rates established during the investigation. The cooperating non-sampled companies which were granted market economy treatment ('MET'), in accordance with the provisions of Article 2(7)(c) of the Regulation (EC) No 384/96, were attributed the weighted average duty of 14,1% which was established for the sampled companies which were granted MET. The cooperating non-sampled companies which were granted individual treatment ('IT'), in accordance with the provisions of Article 9(5) of the same Regulation, received the weighted average duty of 37,1 % established for the sampled companies that were granted IT. A countrywide duty of 56,2 % was imposed on all other companies.
- (4) Following an anti-absorption reinvestigation pursuant to Article 12 of Regulation (EC) No 384/96, the Council, by Regulation (EC) No 1087/2007<sup>4</sup> increased the countrywide duty to 74,8%. Also, Chinese exporting producers with individual duty rates that did not cooperate in the reinvestigation were attributed higher anti-dumping duties in accordance with the provisions of Article 12(3) of Regulation (EC) No 384/96.
- (5) Article 2 of Regulation (EC) No 1487/2005 gives the possibility to Chinese exporting producers which meet the four criteria set out in that Article to be granted the same treatment as the one mentioned in recital (3) above for the cooperating companies not included in the sample ('New Exporting Producer Treatment' or 'NEPT').

## **2. NEW EXPORTING PRODUCERS' REQUEST**

- (6) One group of companies consisting of two related companies, namely AlbaChiara Printing and Dyeing (Jiaxing) Co. Ltd, and Jiaxing E. Boselli Textile Trading Co. Ltd. ('the applicant'), requested to be granted NEPT.
- (7) An examination has been carried out to determine whether the applicant fulfils the criteria for being granted NEPT as set out in Article 2 of Council Regulation (EC) No 1487/2005, by verifying that:
  - (a) it did not export to the European Union the product concerned during the investigation period on which the measures are based (1 April 2003 to 31 March 2004) (the first criterion),
  - (b) it is not related to any of the exporters or producers in the People's Republic of China which are subject to the anti-dumping measures imposed by that Regulation (the second criterion),
  - (c) it has actually exported to the European Union the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity of the product concerned to the European Union (the third criterion),

- (d) it operates under market economy conditions defined in Article 2(7)(c) of the basic Regulation or alternatively that it fulfils the requirements to have an individual duty in accordance with Article 9(5) of the basic Regulation (the fourth criterion).
- (8) Questionnaires were sent to the applicant who was asked to supply evidence to demonstrate that it met the criteria (1) to (3) mentioned above.
- (9) Since the fourth criterion implies that the applicants submit a claim for MET and/or IT, the Commission sent MET and IT claim forms to the applicant. The applicant requested MET pursuant to Article 2(7) of the basic Regulation.
- (10) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:
- (a) Business decisions and costs are made in response to market signals and without significant State interference; and costs of major inputs substantially reflect market values.
  - (b) Firms have one clear set of basic accounting records which are independently audited in line with international accounting standards<sup>5</sup> and are applied for all purposes.
  - (c) There are no significant distortions carried over from the former non-market economy system.
  - (d) Bankruptcy and property laws guarantee legal certainty and stability.
  - (e) Exchange rate conversions are carried out at market rates.
- (11) Exporting producers fulfilling the criteria mentioned in recital (7) above may, pursuant to Article 2 of Council Regulation (EC) No 1487/2005, be granted either the 14,1% duty rate applicable to companies to whom MET was granted in accordance with Article 2(7)(c) of Regulation (EC) No 384/96, or the weighted average duty rate of 37,1% applicable to companies to whom IT was granted in accordance with Article 9(5) of the same Regulation.
- (12) The European Commission sought and verified all information it deemed necessary for the purpose of the determination of the fulfilment of the four criteria set out in Article 2 of Regulation (EC) No 1487/2005. Verification visits were carried out at the premises of the following companies:
- AlbaChiara Printing and Dyeing (Jiaxing) Co. Ltd, Jiaxing,
  - Jiaxing E. Boselli Textile Trading Co. Ltd., Jiaxing.

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<sup>5</sup> International accounting standards refer to all major recognized international standards of accounting, including US GAAP and the works of the International Accounting Standard Committee Foundation ('IASCF') effectuated by the International Accounting Standards Board ('IASB'), covering the International Accounting Standard Board Framework ('IASBF'), the International Accounting Standard ('IAS'), the International Financial Reporting Standards ('IFRS') and the International Financial Reporting Interpretations Committee publications ('IFRIC').



### 3. FINDINGS

- (13) The applicant provided sufficient evidence to prove that it meets all the four criteria mentioned at recital (7) above. The applicant in fact could prove that i) it did not export to the European Union the product concerned during the period 1 April 2003 to 31 March 2004, ii) it is not related to any of the exporters or producers in the People's Republic of China which are subject to the anti-dumping measures imposed by Regulation (EC) No 1487/2005, iii) it actually exported a significant quantity of the product concerned to the European Union starting from the year 2008, iv) it fulfils all the requirements for MET and can therefore be granted an individual duty in accordance with Article 2(7)(c) of the basic Regulation. Therefore, the applicant could be granted the weighted average duty rate for companies granted MET applicable to the cooperating companies not included in the sample (i.e. 14,1%) in accordance with Article 2 of Regulation (EC) No 1487/2005, and should be added to the list of exporting producers in Article 1(2) of that Regulation.

### 4. MODIFICATION OF THE LIST OF COMPANIES BENEFITING FROM INDIVIDUAL DUTY RATES

- (14) In consideration of the findings of the investigation as indicated in recital (13) above, it is concluded that the companies AlbaChiara Printing and Dyeing (Jiaying) Co. Ltd, and Jiaying E. Boselli Textile Trading Co. Ltd. should be added to the list of individual companies mentioned under Article 1(2) of Council Regulation (EC) No 1487/2005 with a duty rate of 14,1%.
- (15) The applicant and the Union industry have been informed of the findings of the investigation and have had the opportunity to submit their comments. No additional information was brought forward permitting to lead to any different conclusion for the applicant,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Article 1(2) of Council Regulation (EC) No 1487/2005 shall be amended by adding the following companies in the table of companies with individual duty rates:

Company	Definitive anti-dumping duty	TARIC additional code
AlbaChiara Printing and Dyeing (Jiaying) Co. Ltd	14,1%	A617
Jiaying E. Boselli Textile Trading Co. Ltd.	14,1%	A617

*Article 2*

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,

*For the Council  
The President*