



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.3.2004
COM(2004) 199 final

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 2604/2000 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating, inter alia, in Thailand

(presented by the Commission)

EXPLANATORY MEMORANDUM

In July 2003, the Commission, by Regulation (EC) N° 1292/2003 announced the initiation of a “new exporter” review of Council Regulation (EC) N° 2604/2000 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating, inter alia, in Thailand. This Regulation also repealed the duty with regard to imports from Indo Pet (Thailand) Ltd., the Thai exporting producer that requested the initiation of the review, making these imports subject to registration. This *new exporter* also simultaneously requested a review of the anti-subsidy duties applicable to the same imports. That proceeding is subject to a separate draft Council Regulation.

The investigation revealed that the export transactions to the Community market by this exporting producer were not sufficiently representative in order to establish an individual margin of dumping for that company. The level of the duty should therefore be maintained at the level that was established in the original investigation. This duty should be cumulated with the individual countervailing duty established for this exporting producer in the parallel new exporter accelerated review of the corresponding countervailing duties currently in force.

It is therefore proposed that the Council adopt the attached proposal for a Regulation, in view of its publication in the Official Journal of the European Union no later than 19 April 2004.

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 2604/2000 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating, inter alia, in Thailand

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 Community¹ (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. Measures in force

- (1) The measures currently in force are definitive anti-dumping duty imposed by Council Regulation (EC) No 2604/2000², under which imports into the Community of certain polyethylene terephthalate (“the product concerned”) originating in Thailand are subject to a duty, in the form of a specific amount per tonne, of EUR 83.2 per tonne. By the same Council Regulation, anti-dumping duties were also imposed against imports of the product concerned from India, Indonesia, Malaysia, the Republic of Korea and Taiwan.
- (2) It should be noted that the imports originating in Thailand are also subject to a definitive countervailing duty of EUR 49.1 per tonne, as imposed by Council Regulation (EC) No 2603/2000³. Countervailing duties were also imposed concerning imports from India and Malaysia.

B. Current investigation

1. Request for a review

- (3) The Commission subsequently received a request to initiate a ‘new exporter’ review of Regulation (EC) No 2604/2000, pursuant to Article 11(4) of the basic Regulation, from the Thai producer Indo Pet (Thailand) Ltd. (‘Indo Pet’). This company claimed that it was not related to any of the exporting producers in Thailand subject to the anti-

¹ OJ L 56, 06.03.1996, p. 1., as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).

² OJ L 301, 30.11.2000, p. 21.

³ OJ L 301, 30.11.2000, p. 1.

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 (i.e. from 1 October 1998 to 30 September 1999), but had exported the product concerned to the Community since then.

- (4) It should be noted that the Commission simultaneously received, from the same Thai producer, a request to initiate an accelerated review of Regulation (EC) No 2603/2000. This parallel proceeding is subject to a separate Council Regulation.

2. Initiation of a ‘new exporter’ review

- (5) The Commission examined the evidence submitted by the Thai 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) 1292/2003⁴, a review of Regulation (EC) No 2604/2000 with regard to Indo Pet and commenced its investigation.
- (6) By the Regulation initiating the review, the anti-dumping duty imposed by Regulation (EC) No 2604/2000 with regard to imports of the product concerned produced by the company concerned were repealed. Simultaneously, pursuant to Article 14(5) of the basic Regulation, customs authorities were directed to take appropriate steps to register such imports.

3. Product concerned

- (7) 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. It is currently classifiable within CN code 3907 60 20.

4. Parties concerned

- (8) 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 concerned the opportunity to make their views known in writing and to request a hearing. No such request was however received.
- (9) The Commission also sent out a questionnaire to the company concerned and received a reply within the deadline. The Commission sought and verified all the information deemed necessary for the determination of dumping, and a verification visit was carried out at the premises of the company concerned.

5. Investigation period

- (10) The investigation of dumping covered the period from 1 January 2002 to 31 March 2003 (the ‘investigation period’, or IP).

⁴ OJ L 181, 19.07.2003, p. 20.

6. Methodology

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

C. Scope of the review

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

D. Results of the investigation

- (13) 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 only after this period.
- (14) Furthermore, according to documentary evidence submitted, Indo Pet was able to satisfactorily demonstrate that it did not have any direct or indirect links with any of the Thai exporting producers subject to the anti-dumping measures in force with regard to the product concerned.
- (15) By way of background, it should be noted that the exporter concerned is, however, related to another exporting producer located in Indonesia and which is, as mentioned above, also subject to anti-dumping duties on imports of the same product in the EU. The investigation revealed that after the current IP, this Indonesian exporting producer set up a factory in Thailand that became Indo Pet's exclusive source of supply for the essential raw material used to produce the product concerned. This raw material represents around 90% of the total cost of manufacturing of the product concerned.
- (16) The Commission examined whether the quantities exported by the exporting producer concerned in Thailand and their corresponding prices were significant enough to constitute a representative basis for the assessment whether or not there is dumping.
- (17) In the course of the investigation, it was found that during the investigation period, only two sales transactions to the EU were recorded, for a respective volume of 40 and 20 tonnes. These two transactions represented, during the same period, 0.1% of the total company sales volume and 0.4% of its total export volume.
- (18) These sales transactions took place in February and March 2002, i.e. shortly before Indo Pet firstly contacted the Commission with a view to request this newcomer review. By way of background, it should be noted that Indo Pet did not record any further export sales to the Community between then and the on-spot investigation.
- (19) As to prices, the investigation revealed that, for the grade of PET the most commonly sold both on domestic and export markets, the EU export price for the two above mentioned transactions was around 45% higher than Indo Pet's average export price to non EU countries.
- (20) If only the export sales to the EU neighbouring countries, that will shortly join the EU and which are partly supplied by traders located in the EU are considered, it was even found that the price of the two EU transactions concerned was around 60% higher than these exports. The sales transactions concerned in the case of the EU neighbouring

countries were much more substantial in volume during the IP than the export transactions to the EU, and therefore likely to better reflect the level of the export price normally practised by Indo Pet.

- (21) Finally, the investigation showed that Indo Pet's overall export price was on average not only below its domestic price, but also below its cost of production.
- (22) For the above reasons, it is considered that the two export sales transactions to the Community during the IP were not significant enough to constitute a representative basis for the assessment of existence of dumping. Hence, it is considered that the level of the duty should therefore be maintained at the level established in the original investigation.

E. Amendment of the measures being reviewed

- (23) In the light of the foregoing, it is considered that the individual definitive anti-dumping duty for the exporter concerned should be kept at the level of the definitive countrywide anti-dumping duty rate established in the original investigation, i.e. 14.2%.
- (24) The original investigation, however, concluded that it was appropriate to impose duties in the form of a specific amount per tonne, since PET prices can fluctuate in line with fluctuations in crude oil prices, thus significantly affecting the level of the duty. The same methodology should be applied in the current investigation. Therefore, the rate of the definitive individual anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, for the products manufactured by the exporting producer concerned should be EUR 83.2 per tonne.
- (25) In accordance with Article 14(1) of the basic Regulation, no product shall be subject to both anti-dumping and countervailing duties for the purposes of dealing with one and the same situation arising from dumping or from export subsidisation. As the 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.
- (26) In the parallel investigation referred to in recital (4) of the present Regulation, the subsidies found for the exporting producer concerned are not export subsidies and are therefore considered not to have affected the export price and the corresponding dumping margin. Consequently, the countervailing duties can be imposed together with the anti-dumping duties, to the extent that, pursuant to Article 9(4) of the basic Regulation, both duties taken together do not exceed the injury elimination margin of 22.6% established for Thailand in the framework of the original investigation. This situation does not arise in the present case and therefore both countervailing and anti-dumping duties should be imposed.

F. Retroactive levying of the anti-dumping duty

- (27) 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 Commission Regulation (EC) No 1292/2003.

G. Disclosure and duration of the measures

- (28) The company concerned and all other interested parties were informed of the facts and considerations on the basis of which it was intended to impose the definitive anti-dumping duty on its imports of the product concerned 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 table in Article 1(3) of Council Regulation (EC) No 2604/2000 is hereby amended by adding the following:

Country	Company	Definitive duty (EUR per tonne)	TARIC additional code
Thailand	Indo Pet (Thailand) Ltd	83.2	A468

2. The duty hereby imposed shall also be levied retroactively on imports of the product concerned which have been registered pursuant to Article 3 of Commission Regulation (EC) No 1292/2003.
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

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