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►**B** **COUNCIL REGULATION (EC) No 83/2005**

of 18 January 2005

amending Regulation (EC) No 2604/2000 on imports of polyethylene terephthalate originating *inter alia* in the Republic of Korea and Taiwan

(OJ L 19, 21.1.2005, p. 1)

Corrected by:

►**C1** Corrigendum, OJ L 163 , 15.6.2006, p. 19 (83/2005)

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COUNCIL REGULATION (EC) No 83/2005

of 18 January 2005

amending Regulation (EC) No 2604/2000 on imports of polyethylene terephthalate originating *inter alia* in the Republic of Korea and Taiwan

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]) (the 'basic Regulation'), and in particular Article 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) The Council, by Regulation (EC) No 2604/2000 ([2]) (the 'definitive Regulation'), imposed definitive anti-dumping duties on imports of polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand.

2. Present investigation

(2) On 22 May 2003, the Commission announced, by a notice published in the *Official Journal of the European Union* ([3]), the initiation of an interim review of the anti-dumping measures applicable to imports into the Community of PET originating in the Republic of Korea and Taiwan (the 'countries concerned').

(3) The interim review was initiated as a result of a request lodged in April 2003 by the Association of Plastic Manufacturers in Europe ('the applicant') on behalf of producers representing a major proportion, in this case more than 80 %, of the total Community production of PET. The request contained sufficient prima facie evidence that dumping and injury had recurred and that the existing measures were no longer sufficient to counteract the injurious dumping. The evidence provided was considered sufficient to justify the initiation of a full interim review of the existing measures, pursuant to Article 11(3) of the basic Regulation.

(4) On 30 June 2004, the applicant withdrew its request for the interim review.

(5) Nevertheless, it was considered that, in view of the evidence available and the preliminary findings already obtained in the course of the investigation, the continuation of the investigation *ex officio* on dumping only was warranted. With regard to all other aspects of the review investigation, it was found that the interim review should be terminated following the withdrawal of the request. This approach has been communicated to all interested parties, none of which made any comment.

([1]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
([2]) OJ L 301, 30.11.2000, p. 21. Regulation as last amended by Regulation (EC) No 823/2004 (OJ L 127, 29.4.2004, p. 7).
([3]) OJ C 120, 22.5.2003, p. 13.

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3. **Other proceedings**

(6) On 22 May 2003, the Commission announced, by a notice published in the *Official Journal of the European Union* ([1]), the initiation of an anti-dumping proceeding with regard to imports into the Community of PET originating in Australia, the People's Republic of China ('PRC') and Pakistan.

(7) By Regulation (EC) No 306/2004 ([2]), the Commission imposed a provisional anti-dumping duty on imports of PET originating in Australia, the PRC and Pakistan. By Regulation (EC) No 1467/2004 ([3]), the Council imposed definitive anti-dumping duties on imports of PET originating in Australia and the PRC and terminated the proceeding on imports of PET originating in Pakistan.

4. **Parties concerned by the investigation**

(8) The Commission services officially advised the applicant, the Community producers included in the complaint, the other Community producers, the exporting producers, importers, suppliers and users as well as associations known to be concerned, and representatives of the Republic of Korea and Taiwan, of the opening of the investigation. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(9) The Community producers represented by the applicant, other cooperating Community producers, exporting producers, importers, suppliers, users and user associations made their views known. All interested parties who so requested were granted a hearing.

(10) Questionnaires were sent to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from the seven Community producers represented by the applicant; four other Community producers; three exporting producers in the Republic of Korea, including one company not currently subject to an individual duty rate; four exporting producers in Taiwan, including one company not currently subject to an individual duty rate; and two suppliers, two related importers, four unrelated importers and nine unrelated users in the Community.

(11) In the notice of initiation, it was indicated that sampling may be applied in this investigation. However, given that the number of exporting producers in the countries concerned which indicated their willingness to cooperate was lower than expected, it was decided that sampling was not required.

(12) The Commission services sought and verified all the information deemed necessary for determination of dumping and resulting injury and carried out verifications at the premises of the following companies:

(a) Community producers

— Aussapol SpA, San Giorgio Di Nogaro (UD), Italy

— Brilen SA, Zaragoza, Spain

— Catalana di Polimers, Barcelona, Spain

— Dupont Sabanci SA, Middlesbrough, United Kingdom

— INCA International, Milano, Italy

— KoSa, Frankfurt am Main, Germany

— M & G Finanziaria Industriale, Milano, Italy

([1]) OJ C 120, 22.5.2003, p. 9.
([2]) OJ L 52, 21.2.2004, p. 5.
([3]) OJ L 271, 19.8.2004, p. 1.

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— Tergal Fibres, Gauchy, France

— VPI SA, Athens, Greece

— Voridian, Rotterdam, Netherlands

— Wellman PET Resins, Arnhem, Netherlands

(b) Exporting producers/exporters in the Republic of Korea

— Daehan Synthetic Fiber Co. Ltd, Seoul

— SK Chemicals Co. Ltd, Seoul

— KP Chemical Corp., Seoul

(c) Exporting producers in Taiwan

— Far Eastern Textile Ltd, Taipei

— Shinkong Synthetic Fibers Corp., Taipei

— Hualon Corp., Taipei

(d) Related importers

— SK Networks, Seoul, Republic of Korea

— SK Global (Belgium) N.V., Antwerp, Belgium

(e) Unrelated importers

— Mitsubishi Chemicals, Düsseldorf, Germany

— Helm AG, Hamburg, Germany

— Global Services International, Milano, Italy

— SABIC Italia, Milano, Italy

(f) Community suppliers

— Interquisa SA, Madrid, Spain

— BP Chemicals, Sunbury-on-Thames, United Kingdom

(g) Community users

— Danone Waters Group, Paris, France

— Aqua Minerale San Benedetto, Scorze (VE), Italy

— RBC Cobelplast Mononate, Varese, Italy

— Nestlé Espana SA, Barcelona, Spain

5. **Investigation period**

(13) The investigation of dumping covered the period from 1 April 2002 to 31 March 2003 ('IP').

6. **Product concerned and like product**

6.1. *Product concerned*

(14) The product concerned is the same as in the original investigation, i.e. PET with a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, originating in the Republic of Korea and Taiwan, currently classifiable within CN code 3907 60 20.

6.2. *Like product*

(15) As in the original investigation it was found that PET produced and sold on the domestic market of the Republic of Korea and Taiwan and PET produced and exported to the Community have the same basic physical and chemical characteristics and uses. It is therefore concluded that all types of PET with a viscosity number of 78 ml/g or higher are alike within the meaning of Article 1(4) of the basic Regulation.

B. **DUMPING**

1. **General methodology**

(16) The general methodology set out below has been applied to all exporting producers in the Republic of Korea and Taiwan and is the same as that used in the original investigation. The presenta-

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tion of the findings on dumping for each of the countries concerned therefore only describes what is specific for each exporting country.

1.1. *Normal value*

(17) For the determination of normal value, it was first established, for each exporting producer, whether its total domestic sales of the product concerned 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 when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.

(18) Subsequently, those types of PET sold domestically by the companies having overall representative domestic sales, and that were identical or directly comparable to the types sold for export to the Community, were identified.

(19) For each type sold by the exporting producers on their domestic markets and found to be directly comparable to the type of PET sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of PET were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable PET type exported to the Community.

(20) An examination was also made as to whether the domestic sales of each type of PET could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the PET type in question. In cases where the sales volume of a PET type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of PET type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.

(21) It was found that profitable sales of all types of PET represented 10 % or more of the total sales volume of that type.

1.2. *Export price*

(22) In all cases where the product concerned was exported 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.

(23) In cases where sales were made via a related importer, the export price was constructed on the basis of the resale prices of that related importer to independent customers. Adjustments were made for all costs incurred between importation and resale by that importer, including sales, general and administrative expenses, and a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation. The appropriate profit margin was established on the basis of information provided by unrelated cooperating traders/importers operating on the Community market.

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1.3. *Comparison*

(24) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the 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. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

1.4. *Dumping margin*

(25) In accordance with Article 2(11) of the basic Regulation, a dumping margin was calculated for each cooperating exporting producer, by comparing the weighted average normal value with the weighted average export price.

(26) For those countries where the level of cooperation was found to be high (above 80 %), and where there was no reason to believe that any exporting producer abstained from cooperating, the residual dumping margin was set at the level of the cooperating company with the highest dumping margin in order to ensure the effectiveness of the measures.

(27) For those countries where the level of cooperation was found to be low, the residual dumping margin was determined in accordance with Article 18 of the basic Regulation, i.e. on the basis of the facts available.

2. **Republic of Korea**

(28) Questionnaire replies were received from three exporting producers, one of which did not export PET to the Community during the IP, and two importers related to one of the exporting producers. It was established that the cooperating exporters represented 100 % of Korean exports of the product concerned during the IP.

2.1. *Normal value*

(29) For all types of PET exported by the Korean exporting producers, it was possible to establish normal value on the basis of the prices paid or payable in the ordinary course of trade by independent customers on the domestic market, in accordance with Article 2 (1) of the basic Regulation.

2.2. *Export price*

(30) One of the Korean exporting producers made export sales to the Community both directly to independent customers and via related importers in Korea and the Community. Consequently, in the latter situation, a constructed export price has been established pursuant to Article 2(9) of the basic Regulation.

2.3. *Comparison*

(31) In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. On this basis, allowances for differences in transport, insurance, handling charges, commissions, credit, packing, customs duties and bank charges have been granted.

2.4. *Dumping margin*

(32) As provided by Article 2(11) of the basic Regulation, the weighted average normal values of each type of the product concerned exported to the Community were compared to the weighted average export price of each corresponding type of the product concerned.

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(33) The comparison showed the existence of either no dumping or *de minimis* dumping in respect of the three cooperating exporting producers. The dumping margins expressed as a percentage of the CIF import price at the Community border, duty unpaid are as follows:

— Daehan Synthetic Fiber Co. Ltd: 1,2 %

— SK Chemicals Co. Ltd: 0,0 %

— KP Chemical Corp.: 0,1 %

(34) Two known Korean exporting producers of PET which are currently subject to an individual duty rate showed that they had not made any exports during the IP. No evidence was provided by these exporters to indicate that a re-assessment of their duty margins was warranted.

(35) In light of the high level of cooperation by Korean companies (see recital (28)), the residual duty was set at the level of the cooperating company with the highest dumping margin in accordance with the approach outlined in recital (26). The level is the same as that in the original investigation.

3. **Taiwan**

(36) Questionnaire replies were received from four exporting producers, one of which did not export PET to the Community during the IP. It was established that the cooperating exporters represented less than 60 % of Taiwanese exports of the product concerned during the IP.

3.1. *Normal value*

(37) For all types of PET exported by the Taiwanese exporting producers, normal value was established on the basis of the prices paid or payable in the ordinary course of trade by independent customers on the domestic market, in accordance with Article 2(1) of the basic Regulation.

3.2. *Export price*

(38) Export prices were established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

3.3. *Comparison*

(39) In order to ensure a fair comparison, account was taken of differences in factors which were claimed and demonstrated to affect prices and price comparability, in accordance with Article 2(10) of the basic Regulation. On this basis, allowances for differences in transport, insurance, handling charges, commissions, credit, packing, customs duties and bank charges have been granted.

3.4. *Dumping margin*

(40) As provided by Article 2(11) of the basic Regulation, the weighted average normal values of each type of the product concerned exported to the Community were compared to the weighted average export price of each corresponding type of the product concerned.

(41) The comparison showed the existence of dumping in respect of two of the cooperating exporting producers. The dumping margins expressed as a percentage of the CIF import price at the Community border, duty unpaid are as follows:

— Far Eastern Textile Ltd: 0,0 %

— Shinkong Synthetic Fibers Corp.: 3,1 %

— Hualon Corp.: 9,6 %

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(42) One exporting producer, which is currently subject to an individual duty, cooperated in this proceeding even though it had made no export sales to the Community during the IP. On the basis of the information provided, it was deemed appropriate to leave its current dumping margin unchanged, because no information was submitted to indicate that a re-assessment of its duty margin was warranted.

(43) There is one known Taiwanese exporter of PET which is currently subject to an individual duty, but which did not cooperate in this proceeding. For this exporter, it was considered appropriate not to give it an individual duty so as not to reward non-cooperation. More importantly, no data were available which would have allowed the determination of an individual duty.

(44) In light of this fact and of the low level of cooperation by Taiwanese companies (see recital (36)), the residual dumping margin was determined in accordance with Article 18 of the basic Regulation, as outlined in recital (27).

(45) The residual dumping margin, which was calculated on the basis of data available from Eurostat and also from the cooperating exporting producers, expressed as a percentage of the CIF import price at the Community border, duty unpaid is as follows:

— Taiwan: 20,1 %

C. LASTING NATURE OF THE CHANGED CIRCUMSTANCES

(46) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances with respect to the original investigation regarding dumping could reasonably be considered to be of a lasting nature.

1. Republic of Korea

(47) For those companies which exported during the IP and cooperated with the investigation, the current review showed that their dumping margin either remained at, or had fallen to, a *de minimis* level. The main reason for this was that whilst the normal values and domestic sales prices for these companies had risen as compared to the data from the original investigation, sales prices on the Community market had risen by a greater margin. Indeed, it was found that export prices to the Community were on average 53 % higher during the IP of this investigation when compared with the export prices found during the IP of the original investigation. No indications were found, suggesting that these changes would not be of a lasting nature. It should also be noted that these companies had a high capacity utilisation, in excess of 80 %, during the IP. Additionally these companies do not have any plans to increase existing capacity, thereby restricting the scope for any future changes in circumstances. It is therefore considered that this situation as far as export price and volume is concerned is not likely to change.

(48) One company which did not export to the Community during the original investigation cooperated and exported the product concerned to the Community during this investigation. The dumping margin for this company was also found to be *de minimis*. The normal value, as well as domestic and export prices of this company were found to be in the same range as those for the other two cooperating exporters.

(49) For the two cooperating exporting producers that did not export to the Community during the IP, no evidence to justify a change in their duty was found as outlined in recital (34). It should also be recalled that there was a wide range of dumping margins found in the original investigation (1,4 % to 55,8 %), which indicates that considerable differences in the dumping behaviour of Korean companies existed. For these reasons, it cannot be concluded that the findings of *de minimis* dumping margins for the producers which exported to the Community during the IP are representative

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for those exporters which did not. Accordingly, for these companies, there is no evidence to suggest that a revision of their current anti-dumping duties is warranted, nor is there any data available that would allow a revised individual margin to be calculated for them. These findings were disclosed to the parties concerned, none of which made any comments nor provided any additional information.

2. **Taiwan**

(50) Three of the four companies in Taiwan, currently subject to an individual duty, cooperated in the current investigation. For one of these companies, the current investigation showed that its dumping margin had fallen to a *de minimis* level. For the second company the dumping margin fell from 7,8 % in the original investigation to 4,6 % in the current investigation. In line with the situation in the Republic of Korea, the main reason for this was that whilst the normal values and domestic sales prices for these companies had risen when compared with data from the original investigation, sales prices to the Community market had risen by a greater margin. For Taiwan, it was found that export prices to the Community were on average 42 % higher during the IP of this investigation when compared with the export prices found during the IP of the original investigation. It was also found for these companies that their capacity utilisation was similar to that found for the companies in Korea. Nor did they have any plans to increase their installed capacity.

(51) The third cooperating company, currently subject to an individual duty, provided evidence that it did not export the product concerned to the Community during the IP of this investigation.

(52) In addition, one company in Taiwan which did not export to the Community during the original investigation also cooperated during this investigation. The dumping margin for this company is 10,7 %.

(53) For the three cooperating producers which exported to the Community during the IP of the current investigation, there are no reasons to believe that the nature of the changes between the current and the original investigations, particularly the increase in export prices to the Community, are not lasting in nature. Accordingly, it is considered that the dumping margins for these companies, calculated on the basis of the data provided in this investigation are reliable.

(54) For the producer which cooperated but which did not export to the Community during the IP of the current investigation, there is no evidence to suggest that a revision of its current anti-dumping duties is warranted. It is, therefore considered appropriate to leave its current margin unchanged. As with the situation for Korea, there are no data available that would allow a revised individual margin to be calculated for this company. Again, following disclosure, the party concerned made no comments nor provided any additional information.

D. PROPOSAL FOR ANTI-DUMPING MEASURES

(55) In view of the conclusions reached with regard to dumping and the lasting nature of changed circumstances, the present anti-dumping measures against imports of the product concerned originating in the Republic of Korea and Taiwan should be amended to reflect the new dumping margins found.

(56) The fact that PET prices can fluctuate in line with fluctuations in crude oil prices, should not entail a higher duty. It was therefore considered appropriate that the amended duties should be expressed in the form of a specific amount per tonne. This approach was followed in the original investigation.

(57) The individual company anti-dumping duty rates were established on the basis of the findings of the present review. They, therefore, reflect the situation found during this review with respect to these

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companies. These duty rates, as opposed to the duty applicable to 'all other companies', are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies specifically mentioned in the operative part of this Regulation. Imported products produced by any other company not specifically mentioned in the operative part of the Regulation, including by entities related to those specifically mentioned, cannot benefit from these rates and will be subject to the duty rate applicable to 'all other companies'.

(58) The proposed anti-dumping duties for those companies which exported to the Community during the IP are as follows:

Country	Company	Dumping margin	Anti-dumping duty rate	Proposed duty (euro/t)
Republic of Korea	Daehan Synthetic Fiber Co. Ltd	1,2 %	0,0 %	0
	SK Chemicals Co. Ltd	0,0 %	0,0 %	0
	KP Chemical Corp.	0,1 %	0,0 %	0
Taiwan	Far Eastern Textile Ltd	0,0 %	0,0 %	0
	Shinkong Synthetic Fibers Corp.	3,1 %	3,1 %	24,5
	Hualon Corp.	9,6 %	9,6 %	81,9

(59) In line with the revised residual dumping margin outlined in recital (45), the residual anti-dumping duty for Taiwan should be increased to EUR 143,4/tonne.

E. **FINAL PROVISION**

(60) Interested parties were informed of all the facts and considerations on the basis of which it was intended to propose an amendment to the Regulation in force. No comments were received,

HAS ADOPTED THIS REGULATION:

Article 1

1. The table in Article 1(2) of Regulation (EC) No 2604/2000 shall be replaced by the following table:

'Country	Anti-dumping duty (EUR/tonne)	TARIC additional code
India	181,7	A999
Indonesia	187,7	A999
Malaysia	160,1	A999
Korea	148,3	A999
Taiwan	143,4	A999
Thailand	83,2	A999'

2. The table in Article 1(3) shall be replaced by the following table:

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‘Country	Company	Anti-dumping duty (EUR/tonne)	TARIC additional code
India	Pearl Engineering Polymers Ltd	130,8	A182
India	Reliance Industries Ltd	181,7	A181
India	Elque Polyesters Ltd	200,9	A183
►**C1** India ◄	►**C1** Futura Polyesters Ltd ◄	161,2	A184
Indonesia	P.T. Bakrie Kasei Corp.	187,7	A191
Indonesia	P.T. Indorama Synthetics Tbk	92,1	A192
Indonesia	P.T. Polypet Karyapersada	178,9	A193
Malaysia	Hualon Corp. (M) Sdn. Bhd.	36,0	A186
Malaysia	MpI Polyester Industries Sdn. Bhd.	160,1	A185
Republic of Korea	Daehan Synthetic Fiber Co., Ltd	0	A194
Republic of Korea	Honam Petrochemical Corp.	101,4	A195
Republic of Korea	SK Chemicals Co., Ltd	0	A196
Republic of Korea	Tongkong Corp.	148,3	A197
Republic of Korea	KP Chemical Corp.	0	A577
Taiwan	Far Eastern Textile Ltd	0	A188
Taiwan	Tuntex Distinct Corp.	69,5	A198
►**C1** Taiwan ◄	►**C1** Shinkong Synthetic Fibers Corp. ◄	24,5	A189
Taiwan	Hualon Corp.	81,9	A578
Thailand	Thai Shingkong Industry Corp. Ltd	83,2	A190
Thailand	Indo Pet (Thailand) Ltd	83,2	A468’

Article 2

This Regulation shall enter into force on the day following 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.