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Proposal for a

COUNCIL IMPLEMENTING REGULATION

amending Implementing Regulation (EU) No 857/2010 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating, inter alia, in Pakistan

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community, ('the basic Regulation') in the partial reopening of the anti-subsidy proceeding concerning imports of certain polyethylene terephthalate originating, inter alia, in Pakistan.

- General context

This proposal is made in the context of the implementation of a judgment of the General Court on the implementation of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community¹ ("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 Implementing Regulation (EU) No 857/2010 of 27 September 2010².

- Consistency with other policies and objectives of the Union

Not applicable.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

- Consultation of interested parties

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, 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 provide 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

On 17 May 2013, the Commission announced by a notice ('notice of partial reopening'), published in the *Official Journal of the European Union*³, the partial reopening of the anti-subsidy investigation concerning imports of certain polyethylene terephthalate originating, inter alia, in Pakistan.

¹ OJ L 188, 18.7.2009, p. 10

² OJ L 254, 29.9.2010, p. 10.

³ OJ C 138, 17.5.2013, p. 32–34.

This reopening was triggered by the partial annulment by the General Court of Article 1 of the Council Implementing Regulation No 857/2010 in so far as it concerns the Pakistani exporting producer Novatex Ltd ('Novatex' or 'the company concerned'). In line with Article 266 of Treaty on the Functioning of the European Union, the institutions of the European Union are obliged to comply with the judgment of the General Court. Consequently, the European Commission initiated the partial reopening of the anti-subsidy investigation in so far as it concerns Novatex.

The enclosed Commission proposal for a Council Regulation imposing an amended definitive countervailing duty on Novatex is made upon the interested parties having been given sufficient time to provide comments to the revised final disclosure document of 25 June 2013.

It is proposed that the Council adopt the attached proposal for a Regulation which should be published in the *Official Journal of the European Union* as soon as possible.

- Legal basis

Council Regulation (EC) 597/2009 on protection against subsidised imports from countries not members of the European Community.

- Subsidiarity principle

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

- Proportionality principle

The proposal complies with the proportionality principle because the form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, 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: Council Regulation.

Other means would not be adequate because the basic Regulation does not provide for alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community⁴ ('the basic Regulation'), and in particular Article 15(1) thereof,

Having regard to the proposal from the European Commission ('the Commission') after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) By Council Implementing Regulation (EU) No 857/2010⁵ ('the contested Regulation'), the Council imposed definitive anti-subsidy duties ranging from 44,02 euro per tonne to 139,70 euro per tonne on imports of certain polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, originating in Iran, Pakistan and the United Arab Emirates.
- (2) On 6 December 2010, the co-operating exporting producer in Pakistan, namely Novatex Ltd ('Novatex' or 'the company concerned'), lodged an application at the General Court seeking the annulment of the contested Regulation in so far as it applied to the applicant⁶.
- (3) On 11 October 2012, the General Court in its judgment in case T-556/10 ('the General Court judgment') found that the failure of the Commission and the Council to take account of the figure resulting from the revision of line 74 of the 2008 tax return and the error resulting therefrom affect the legality of Article 1 of the contested Regulation in so far as the definitive countervailing duty fixed by the Council exceeded the duty applicable in the absence of that error. Therefore, the General Court annulled Article 1 of the contested Regulation in so far as it concerned Novatex and in so far as the definitive countervailing duty exceeded that applicable in the absence of the error.
- (4) The General Court in case T-2/95⁷ (the 'IPS case') has recognised that, in cases where a proceeding consists of several administrative steps, the annulment of one of those steps does not annul the complete proceeding. This anti-subsidy proceeding is an example of such a multi-step proceeding. Consequently, the annulment of part of the

⁴ OJ L 188, 18.07.2009, p.104-105.

⁵ OJ L 254, 29.9.2010, p. 10.

⁶ Case T-556/10 Novatex Ltd v Council of the European Union.

⁷ Case T-2/95 Industrie des poudres sphériques (IPS) v Council [1998] ECR II-3939.

contested anti-subsidy Regulation does not imply the annulment of the entire procedure prior to the adoption of that Regulation. Moreover, according to Article 266 of the Treaty on the Functioning of the European Union ('TFEU'), the Union institutions are obliged to comply with the General Court judgment of 11 October 2012. This also implies the possibility to remedy the aspects of the contested Regulation which led to its partial annulment, while leaving unchanged the uncontested parts which are not affected by the General Court judgment⁸. It should be noted that all other findings made in the contested Regulation remain valid.

- (5) Following the General Court judgment of 11 October 2012, the Commission partially reopened, on 17 May 2013, the anti-subsidy investigation concerning imports of certain polyethylene terephthalate originating, inter alia, in Pakistan⁹. The reopening was limited in scope to the implementation of the General Court judgment in so far as Novatex is concerned.
- (6) The Commission officially advised the exporting producers, importers, users and raw material suppliers known to be concerned, the representatives of the exporting country and the Union industry of the partial reopening of the investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the notice. None of the interested parties requested to be heard.
- (7) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of an amended definitive countervailing duty on Novatex. They were granted a period within which to make representations subsequent to disclosure.

B. IMPLEMENTATION OF THE GENERAL COURT JUDGMENT

1. Preliminary remark

- (8) It is recalled that the reason for the partial annulment of the contested Regulation was that the Commission and the Council should have taken account of the fact that line 74 of the 2008 tax return of the company concerned had been revised.

2. Comments of interested parties

- (9) Within the applicable deadline for submitting comments the company concerned, Novatex, commented that following the judgment of 11 October 2012, the definitive countervailing duty for imports into the European Union of certain polyethylene terephthalate originating in Pakistan should be reduced by 1.02%. Novatex further stated that the countervailing duty applicable to Novatex should be set at 4.1% or EUR 35,39 per tonne as from 1 June 2010 (the alleged date of entry into force of the provisional duty).
- (10) No further comments of any substance on the partial re-opening were received.

3. Analysis of comments

- (11) Having analysed the above comments, it is confirmed that the annulment of Implementing Regulation (EU) No 857/2010 with regard to Novatex, insofar as the definitive countervailing duty exceeded the duty applicable in the absence of the error identified by the Court, should not imply the annulment of the entire procedure prior to the adoption of the Regulation.

⁸ Case T-2/95 *Industrie des poudres sphériques (IPS) v Council* [1998] ECR II-3939.

⁹ OJ C 138, 17.5.2013, p. 32–34.

- (12) The recalculation of Novatex' subsidy duty rate, taking account of the modified line 74 of the company's tax return, indeed results in a corrected amount of EUR 35,39 per tonne.
- (13) The revised duty rate should indeed be applied retroactively, i.e. from the date of entry into force of Implementing Regulation (EU) No 857/2010. By virtue of Article 2 of that regulation, it will also apply from the entry into force of Commission Regulation (EU) No 473/2010 imposing a provisional countervailing duty. That Commission Regulation entered into force the day following its publication in the Official Journal of the European Union, i.e. on 2 June 2010 (and not on 1 June 2010 as stated by Novatex).

4. Conclusion

- (14) Account taken of the comments made and the analysis thereof it is therefore concluded that the implementation of the General Court judgment should take the form of a revision of the countervailing duty rate applicable to Novatex, which should be reduced from 44.02 euro/tonne to 35.39 euro/tonne. As Novatex was the sole exporting producer of the product concerned in Pakistan during the investigation period, this revised duty rate applies to all imports from Pakistan. The revised duty rate should be applied retroactively, i.e. as from the date of entering into force of Implementing Regulation (EU) No 857/2010. By virtue of Article 2 of that Regulation, it should also apply from the entry into force of Commission Regulation (EU) No 473/2010 imposing a provisional countervailing duty..
- (15) Customs authorities should be instructed to proceed with the reimbursement of the amount of duties paid in excess of the amount of 35,39 euro/tonne for the imports concerned in compliance with the applicable customs legislation.

C. DISCLOSURE

- (16) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to implement the General Court judgment. All interested parties were given an opportunity to comment, applying the 10-day period prescribed in Article 30(5) of the basic Regulation.
- (17) No substantial comments were received.

D. AMENDMENT OF THE MEASURES

- (18) In the light of the results of the partial reopening, it is considered appropriate to amend the countervailing duty applicable to imports of the product concerned originating in Pakistan to 35,39 euro/tonne.
- (19) This procedure does not affect the date on which the measures imposed by the contested Regulation will expire, which is 30 September 2015,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Table in Article 1(2) of Council Implementing Regulation No 857/2010 shall be amended to read as follows:

Country	Definitive countervailing duty rate (EUR/tonne)
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Iran: all companies	139,70
Pakistan: all companies	35,39
United Arab Emirates: all companies	42,34

2. The revised duty rate of 35,39 EUR/tonne for Pakistan shall be applicable as from 30 September 2010.
3. The amounts of duties paid or entered into the accounts pursuant to Article 1 of Implementing Regulation (EU) No 857/2010 in its initial version and the amounts of provisional duties definitively collected pursuant to Article 2 of the same Regulation in its initial version, which exceed those as established on the basis of Article 1 of this Regulation, shall be repaid or remitted. Repayment and remission shall be requested from national customs authorities in accordance with applicable customs legislation. 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*