Commission Implementing Regulation (EU) 2020/738 of 2 June 2020 amending Implementing Regulation (EU) 2019/1286 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India

COMMISSION IMPLEMENTING REGULATION (EU) 2020/738

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THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union[(1)] ('basic Regulation'), and in particular Article 19 thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By Regulation (EC) No 2603/2000[(2)], the Council imposed definitive countervailing duties on imports of polyethylene terephthalate ('PET') originating, inter alia, in India ('original investigation').

(2) By Decision 2000/745/EC[(3)], the European Commission ('the Commission') accepted a minimum import price offered by three exporting producers in India.

(3) By Regulation (EC) No 1645/2005[(4)], the Council amended the level of countervailing measures in force against imports of PET from India. The amendments were a result of an accelerated review initiated pursuant to Article 20 of the basic Regulation.

(4) By Regulation (EC) No 193/2007[(5)], following an expiry review, the Council imposed definitive countervailing duties for a further period of five years.

(5) The countervailing measures were subsequently amended by Council Regulation (EC) No 1286/2008[(6)] and Council Implementing Regulation (EU) No 906/2011[(7)], following partial interim reviews.

(6) A later partial interim review was terminated without amending the measures in force by Council Implementing Regulation (EU) No 559/2012[(8)].

(7) By Regulation (EC) No 461/2013[(9)], following another expiry review, the Council imposed definitive countervailing duties for a further period of five years.

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(8) By Implementing Decision 2014/109/EU[10], the Commission withdrew the acceptance of the undertakings, due to a change in the circumstances under which the undertakings were accepted.

(9) By Implementing Regulation (EU) 2015/1350[11], the Commission amended the level of countervailing measures in force against imports of PET from India, following two partial interim reviews.

(10) By Implementing Regulation (EU) 2018/1468[12], the Commission amended the level of countervailing measures in force following two partial interim reviews ('the 2018 Regulation').

(11) By Implementing Regulation (EU) 2019/1286[13], following the latest expiry review, the Commission imposed definitive countervailing duties for a further period of five years ('the 2019 expiry review'). These measures, which are currently in force ('measures in force'), consist of specific duties between EUR 0 and 74,6 per tonne for individually named Indian producers, with a residual rate of EUR 69,4 per tonne imposed on imports from all other producers.

1.2. **Initiation of a partial interim review**

(12) By means of the 2018 Regulation, the Commission amended the level of countervailing measures in force for the two exporting producers subject to the reviews and concluded that, in contrast to the original investigation, specific duties may no longer be the most appropriate form of measures.

(13) However, the Commission also noted that it could not change the form of the measures in those reviews, as it was concluding two partial interim reviews limited to subsidisation of only two exporting producers.

(14) As a result, on 25 March 2019, the Commission initiated an *ex officio* partial interim review investigation pursuant to Article 19(1) of the basic Regulation, limited to the form of the measures on imports of PET originating in India[14] ('Notice of Initiation'). The initiation was supported by the Committee of PET Manufacturers in Europe ('CPME'), European trade association that represents all of the European PET resin producers.

(15) In the Notice of Initiation, the Commission noted that there is sufficient evidence that the circumstances on the basis of which the existing measures were imposed have changed and that these changes are of a lasting nature. This evidence was related to the specific context of prices evolution and of the anti-dumping and countervailing measures in the original investigation as well as the increased importance of subsidies providing financial benefits that are mostly proportional to the value of exports.

1.3. **Interested parties**

(16) In the Notice of Initiation, the Commission invited interested parties to come forward in order to participate in the investigation. In addition, the Commission

specifically informed known Union producers, the known exporting producers and the Indian authorities, known importers and users about the initiation of the investigation and invited them to participate.

(17) Interested parties had the opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

(18) European trade association representing PET producers, one Indian exporting producer and six users provided comments on initiation of the investigation. Two other exporting producers came forward but provided no comments on initiation.

(19) On 11 June 2019, the Commission held a hearing with three of the users that came forward.

1.4. **Disclosure**

(20) On 6 April 2020, the Government of India ('GOI') and the other interested parties were informed of the essential facts and considerations upon which the Commission intended to propose a change of the form of the measures applicable to imports of PET from India. They were also given reasonable time to comment.

(21) The GOI and one exporting producer submitted comments on this disclosure, which were taken duly into consideration as set out below.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

(22) The product subject to this review is the same as in the original investigation, namely polyethylene terephthalate ('PET') having a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, currently falling under CN code 3907 61 00 and originating in India ('the product under review').

2.2. Like product

(23) The Commission considered that the product under review produced in India and exported to the Union and the product produced and sold in the Union by the Union industry have the same basic physical and chemical characteristics, and the same basic uses. They were therefore considered to be like products within the meaning of Article 2(c) of the basic Regulation.

3. THE INVESTIGATION

3.1. Background

(24) The original investigation imposed specific countervailing duties (as opposed to *ad valorem* rates). These measures were coupled with specific anti-dumping duties[(15)], which were imposed on the same day. At that time, it was considered more appropriate to impose specific duties, instead of the *ad valorem* duties (based on the actual level of export prices). This choice was made in order to avoid that fluctuations in PET

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prices caused by fluctuations in crude oil prices should result in higher duties being collected[16].

(25) The anti-dumping measures were terminated by the Council in 2013[17], whereas the countervailing duties were partially reviewed several times and currently are ranging from EUR 0 to 74,6 per tonne.

(26) In the 2018 Regulation, the Commission noted that, in contrast to the original investigation, specific duties might no longer be the most appropriate form of the measures to offset the subsidies granted. This is because the two main subsidy schemes (Duty Drawback Scheme ('DDS') and Merchandise Exports from India Scheme ('MEIS')) available to the exporting producers of PET during the review investigation period conferred financial benefits that were mostly linked to the export price.

(27) The Commission's analysis was based on the findings of the 2018 Regulation. These findings were considered to be of lasting nature and indeed confirmed by the 2019 expiry review. These findings were based on verified data provided by the Government of India and two exporting producers, namely, IVL Dhunseri Petrochem Industries Private Limited ('Dhunseri') and Reliance Industries Limited ('Reliance'). These exporting producers represented the quasi totality of all exports of PET from India to EU during the review investigation period of the 2019 expiry review (1 April 2017 to 31 March 2018). They are subject to countervailing duties of EUR 18,73 per tonne and EUR 29,21 per tonne (based on an *ad valorem* subsidy rate of 2,3 % and 4 %), respectively.

(28) In their comments on definitive disclosure, the exporting producer reiterated their comments made upon initiation with regard to *ex officio* initiation, which are summarised in recital (50). In their comments on definitive disclosure, the GOI made similar comments. The Commission already addressed these comments in recital (51). These claims were therefore rejected.

3.2. Purpose and effect of the current duties

(29) In accordance with Article 1(1) of the basic Regulation a countervailing duty may be imposed to offset any subsidy granted, directly or indirectly, for the manufacture, production, export or transport of any product whose release for free circulation in the Union causes injury.

(30) According to Article 19(2) of the basic Regulation, the Commission may review the continued imposition of measures, if there is sufficient evidence that the existing measure is not, or is no longer, sufficient to counteract the countervailable subsidy which is causing injury. If the investigation proves the allegations is correct, the countervailing duties may be increased to achieve the price increase required to counteract the subsidy.

(31) It is therefore clear from these two provisions that the very objective of a countervailing duty is to offset or counteract a subsidy.

(32) The current subsidisation amounts established in the 2018 Regulation are predominantly based on two subsidy schemes, namely DDS and MEIS. These schemes are responsible for 97 % and 89 % of the subsidy amounts that were established at that time for Dhunseri and Reliance, respectively. By these two schemes, the GOI excessively refunds a percentage of the average export value of the eligible exported products to the exporting producers. Therefore, the higher the value per tonne of exports, the higher the excessive amount of refund that is being received by the exporting producers and thus the amount of subsidisation. This means that the amount of countervailable subsidies increases in line with an increase in the export price.

(33) When these duties were imposed in 2018, the subsidy amounts were recalculated into specific duties based on the PET prices of the cooperating exporting producers during the review investigation period of that investigation, namely from 1 April 2016 to 31 March 2017. These prices were relatively low during that period, ranging between around EUR 730 and 815 per tonne, depending on the exporting producer. Indeed, according to the 2019 expiry review, the average import price of PET of India in 2016 was particularly low at EUR 776 per tonne[(18)]. These were the lowest average yearly prices throughout the entire period considered in that Regulation (1 January 2014 to 31 March 2018). The average import price of PET from India during the review investigation period of the 2019 expiry review (1 April 2017 to 31 March 2018), which is the most recent period investigated by the Commission in the context of PET imports from India, was EUR 916 per tonne[(19)]. Considering that, as mentioned in recital (32), the subsidisation of exports of PET from India is proportionally linked to export price, specific duties calculated on prices from 1 April 2016 to 31 March 2017, would be insufficient to offset subsidisation based on prices from 1 April 2017 to 31 March 2018.

(34) The Commission, therefore, considered that, due to the nature of this particular subsidisation, specific duties may be inadequate in offsetting it as required by Article 1(1) of the basic Regulation. *Ad valorem* duties are be better suited for this purpose.

3.3. Change of circumstances and their lasting nature

(35) As specified above, based on the Union interest, the specific duties were considered more appropriate in the original investigation in order to avoid that fluctuations in PET prices, caused by fluctuations in crude oil prices, would result in higher duties being collected. Whilst the crude oil prices and thus PET prices continue to fluctuate, the decision to impose fixed duties has to be read in the context in which it had been taken.

(36) The current circumstances, described in recitals (32) to (34) are very different from the situation back in 2000, when the countervailing duties were first imposed. The original subsidy amounts were based on three subsidy schemes: (i) Duty Entitlement Passbook Scheme ('DEPS'); (ii) Export Promotion Capital Goods Scheme ('EPCGS'); and (iii) Export Processing Zones ('EPZ')/Export Oriented Unit ('EOU'). The most beneficial of these were DEPS and EOU/EPZ. Unlike the schemes that are currently in force, they did not automatically give right to a refund based on the exported value.