Commission Implementing Regulation (EU) No 2019/1286 of 30 July 2019 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and the Council

COMMISSION IMPLEMENTING REGULATION (EU) No 2019/1286

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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 subsidied imports from countries not members of the European Union[(1)] ('basic Regulation'), and in particular Article 18 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 Regulation (EC) No 1645/2005[(3)], 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.

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

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

(5) A later partial interim review was terminated without amending the measures in force by Implementing Regulation (EU) No 559/2012[(7)].

(6) Following another expiry review, the Council by Regulation (EC) No 461/2013[(8)] imposed definitive countervailing duties for a further period of five years.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 2019/1286. (See end of Document for details)*

(7) By Decision 2000/745/EC[9], the Commission accepted a minimum import price offered by three exporting producers in India. 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.

(8) By Regulation (EC) No 2015/1350[11], the Council amended the level of countervailing measures in force against imports of PET from India, following two partial interim reviews.

(9) By Implementing Regulation (EU) No 2018/1468[12], the Commission amended the level of countervailing measures in force following two partial interim reviews.

(10) The measures currently in force are definitive countervailing duties imposed by Council Regulation (EU) No 461/2013, as amended by Commission Implementing Regulation (EU) 2018/1468 ('measures in force'). They consist of specific duties between 0 and 74,6 EUR per tonne for individually named Indian producers, with a residual rate of 69,4 EUR per tonne imposed on imports from all other producers.

1.2. **Request for an expiry review**

(11) Following the publication of a notice of impending expiry[13] of the countervailing measures in force on the imports of PET originating in India ('the country concerned'), the Commission received a request for review pursuant to Article 18 of basic Regulation.

(12) The request was lodged by the Committee of PET Manufacturers in Europe (C.P.M.E. aisbl) ('the applicant') representing more than 80 % of the total Union production of PET.

(13) The request was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of subsidisation and injury to the Union industry.

(14) Prior to the initiation of the expiry review, and in accordance with Articles 22(1) and 10(7) of the basic Regulation, the Commission notified the Government of India ('GOI') that it had received a properly documented review request and invited the GOI for consultations with the aim of clarifying the situation as regards the contents of the review request and arriving at a mutually agreed solution. The GOI requested a deadline extension of one week for holding the consultations. The Commission granted this deadline extension. At the same time, due to the legal deadlines applicable to this investigation, the initiation of the expiry review could, however, not be suspended. The expiry review investigation was, therefore, initiated on 22 May 2018 and the GOI was informed on the same date accordingly. Moreover, the GOI was informed that its comments made at that stage regarding the anti-subsidy request would nevertheless be taken into consideration in the investigation and consultations could still be organised at its earliest convenience. However, the Commission did not receive any confirmation from the GOI regarding its offer for consultations.

1.3. **Initiation**

(15) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 22 May 2018, by a notice published in the *Official Journal of the European Union*[(14)] ('the Notice of Initiation') the initiation of an expiry review pursuant to Article 18 of basic Regulation. In view of Article 18(2) of the basic Regulation, the Commission prepared a memorandum on sufficiency of evidence containing the Commission's assessment on all the evidence at its disposal and on the basis of which the Commission initiated this investigation.

(16) Following the disclosure, one interested party inquired on the applicant's standing. It is noted that the request has been made after the deadline for comments indicated in point 5.5. of the Notice of Initiation. However, the replies to the standing exercise available in the file for inspection by interested parties confirmed that the requirements for standing were fulfilled. The request of the party was therefore dismissed.

1.4. **Parallel investigation**

(17) On 25 March 2019, the Commission initiated a review pursuant to Article 19(1) of the basic Regulation[(15)]. This review investigation is limited in scope to the form of the measures. Consequently, the form of the measures, as extended by this regulation, might be affected by the ongoing review.

1.5. **Review investigation period and period considered**

(18) The investigation of continuation or recurrence of subsidisation covered the period from 1 April 2017 to 31 March 2018 ('the review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2014 to the end of the review investigation period ('the period considered').

1.6. **Interested parties**

(19) In the Notice of Initiation, the Commission invited all interested parties to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, exporting producers, importers and users in the Union known to be concerned and the authorities in India of the initiation of the expiry review and invited them to participate.

(20) All interested parties were invited to make their views known, submit information and provide supporting evidence within the time-limits set out in the Notice of Initiation. Interested parties were also granted the opportunity to request in writing a hearing by the Commission investigation services and/or the Hearing Officer in trade proceedings.

1.6.1. *Sampling*

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 2019/1286. (See end of Document for details)*

(21) In the Notice of Initiation, the Commission stated that it might sample interested parties, in accordance with Article 27 of the basic Regulation.

1.6.2. *Sampling of Union producers*

(22) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 27 of the basic Regulation the Commission selected the sample on the basis of the largest representative volume of production and sales which could reasonably be investigated within the time available, considering also the geographical location. This sample consisted of three Union producers. The sampled Union producers accounted for around 37 % of the total Union production. The Commission invited interested parties to comment on the provisional sample. No comments were received within the deadline and the sample was thus confirmed. The sample was considered representative of the Union industry.

1.6.3. *Sampling of unrelated importers*

(23) In order to enable the Commission to decide whether sampling was necessary and, if so, to select a sample, all unrelated importers/users were invited to participate in this investigation. Those parties were requested to make themselves known by providing the Commission with the information on their companies requested in Annex II of the Notice of Initiation. Two importers came forward. They were invited to cooperate by filling-in the questionnaire. However, neither of the two replied to the questionnaire sent by the Commission.

1.6.4. *Sampling of exporting producers*

(24) In order to enable the Commission to decide whether sampling was necessary and, if so, to select a sample, all exporting producers were invited to participate in this investigation. Those parties were requested to make themselves known by providing the Commission with the information on their companies requested in Annex I of the Notice of Initiation. Three exporting producers came forward. They were invited to cooperate by filling-in the questionnaire.

1.6.5. *Questionnaires and verification visits*

(25) In order to obtain the information deemed necessary for its investigation, the Commission sent questionnaires to the three sampled Union producers, the GOI, three exporting producers and two importers that came forward after initiation.

(26) Three sampled Union producers, the applicant, one Union raw material producer, the GOI and two exporting producers in India replied to the questionnaire. The importers that came forward did not reply to the questionaire.

(27) The Commission sought and verified all the information it deemed necessary for the determination of the likelihood of continuation or recurrence of subsidisation and injury and for the determination of the Union interest. A verification visit took place also at the premises of the GOI in New Delhi.

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(28) Furthermore, verification visits pursuant to Article 26 of the basic Regulation were carried out at the premises of the following companies:

(a) ***Union producers***

— Indorama Ventures Europe BV, Netherlands;

— Equipolymers GmbH, Italy, Germany;

— Neo Group, UAB, Lithuania;

(b) ***Exporting producers***

— Reliance Industries Limited, Mumbai ('RIL')

— IVL Dhunseri Petrochem Industries Private Limited, Kolkata ('IDIPL')

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

(29) 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

(30) It was 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. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATION

(31) On the basis of the subsidies investigated in the previous reviews, the information contained in the review request, the information submitted by the GOI and the concerned exporting producers, as well as the replies to the Commission's questionnaire, the following measures, which allegedly involve the granting of subsidy programmes, were investigated:

Nationwide subsidy programmes:

(a) Advance Authorisation Scheme (AAS)

(b) 'Duty Drawback Scheme' under rule 3(2) (DDS)

(c) Export Promotion Capital Goods Scheme (EPCGS)

(d) Merchandise Exports from India Scheme (MEIS)

(e) Regional subsidy programmes:Gujarat Electricity Duty Exemption Scheme (GEDES)