Commission Implementing Regulation (EU) 2018/1468 of 1 October 2018 amending Council Implementing Regulation (EU) No 461/2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India

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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)] ('the basic Regulation') prior to its amendment by Regulation (EU) 2017/2321 of the European Parliament and of the Council[(2)], and in particular Article 19 thereof,

Whereas:

1. **PROCEDURE**

1.1. **Measures in force**

(1) By Regulation (EC) No 2603/2000[(3)], the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate ('PET') originating, inter alia, in India ('the original investigation').

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

(3) By Regulation (EC) No 193/2007[(5)], the Council imposed a definitive countervailing duty for a further period of five years, following an expiry review pursuant to Article 18 of the basic Regulation.

(4) By Regulation (EC) No 1286/2008[(6)] and Implementing Regulation (EU) No 906/2011[(7)], the Council subsequently amended the countervailing measures, following partial interim reviews pursuant to Article 19 of the basic Regulation.

(5) In 2012, another partial interim review was terminated without amending the measures in force by Council Implementing Regulation (EU) No 559/2012[(8)].

(6) By Implementing Regulation (EU) No 461/2013[(9)], the Council imposed a definitive countervailing duty for a further period of five years, following a second expiry review pursuant to Article 18 of the basic Regulation.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/1468. (See end of Document for details)*

(7) By Implementing Regulation (EU) 2015/1350[10], the Commission amended the countervailing measures, following two partial interim reviews pursuant to Article 19 of the basic Regulation.

(8) By Decision 2000/745/EC[11], the Commission accepted a minimum import price offered by three exporting producers in India. By Implementing Decision 2014/109/EU[12], the Commission withdrew the acceptance of the undertakings, due to a change in the circumstances under which the undertakings were accepted.

(9) The measures currently in force are a definitive countervailing duty imposed by Regulation (EU) No 461/2013, as amended by Implementing Regulation (EU) 2015/1350 ('measures in force'). They consist of a specific countervailing duty, ranging between 0 and EUR 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 two partial interim reviews**

(10) In September 2016, an Indian exporting producer, Dhunseri Petrochem Limited ('DPL') requested the Commission to amend the Regulation imposing the measures in force based on a change of the name of the company. The request however showed that DPL had entered into a joint venture partnership with Indorama Ventures Public Company Limited ('IVL'), resulting in the following structure:

(a) Indorama Ventures Global Services Limited, a subsidiary of IVL, acquired a 50 % stake in the PET resin business of DPL, through the establishment of a new company called IVL Dhunseri Petrochem Industries Limited ('IVDPIL');

(b) DPL acquired a 50 % stake in Micro Polypet Pvt. Ltd ('MPPL'), an Indian manufacturer of PET which had never exported to the EU and did not have an individual countervailing duty.

(11) In light of the above, the Commission considered that there was sufficient evidence that the circumstances with regard to subsidisation of DPL and its related companies had changed significantly and were of a lasting nature and that the measures should therefore be reviewed.

(12) On that basis, the Commission announced, by notice on 6 July 2017[13] the decision to initiate on its own initiative a partial interim review investigation pursuant to Article 19 of the basic Regulation limited in scope to the examination of subsidisation for DPL and its related companies in India. The purpose of the review is to establish the rate of subsidisation for the company's new structure.

(13) Another Indian exporting producer, Reliance Industries Limited ('Reliance') lodged a request for a partial interim review pursuant Article 19 of the basic Regulation. The request was limited to the examination of the subsidisation of Reliance.

(14) Reliance provided sufficient evidence that the continued application of the measures at their current level was no longer necessary to offset the countervailable subsidisation. The company alleged in particular that the overall subsidy level was

reduced due to the termination of applicability of the Focus Product Scheme and the Focus Market Scheme and the reduction of amounts availed by the applicant with regard to other schemes, like the Advanced Authorisation Scheme and the Duty Drawback Scheme.

(15) Having determined that the request contained sufficient evidence, the Commission announced, on 6 July 2017[(14)], the initiation of a partial interim review pursuant to Article 19 of the basic Regulation limited in scope to the examination of subsidisation for Reliance.

(16) In both Notices of initiation, the Commission announced that the investigations would also assess the appropriateness to amend the rate of duty imposed on imports of certain polyethylene terephthalate (PET) originating in India by 'all other companies' in India.

(17) Given that both interim reviews cover the same product under review, the same country of origin and the same investigation period, and as both measures are subject to the same proceeding, it was considered appropriate to conclude both reviews in the same legal act.

1.3. **Parties concerned by the investigation**

(18) The Commission officially informed Dhunseri, its related companies and Reliance ('the concerned exporting producers'), the association of Union producers, importers and users in the Union known to be concerned and the representatives of the exporting country of the initiation of the partial interim reviews. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notices of initiation.

(19) In order to obtain the information deemed necessary for its investigation, the Commission sent questionnaires to the concerned exporting producers and the Government of India ('GOI') and received replies within the deadlines set for that purpose.

(20) The Commission sought and verified all information deemed necessary for the determination of subsidisation. The Commission carried out verification visits at the premises of IVDPIL in Kolkata, at MPPL's headquarters in Delhi, at MPPL's factory in Karnal, at Reliance in Mumbai as well as at the premises of the GOI in New Delhi (Directorate-General of Foreign Trade and Ministry of Commerce).

1.4. **Review investigation period**

(21) The investigation of subsidisation covered the period from 1 April 2016 to 31 March 2017 ('the review investigation period').

1.5. **Disclosure**

(22) On 25 July 2018 the GOI and the other interested parties were informed of the essential facts and considerations upon which the Commission intended to propose to amend the duty rates applicable to the Dhunseri and Reliance. They were also given

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reasonable time to comment. All submissions and comments were taken duly into consideration as set out below.

(23) Reliance noted that the disclosure was made more than 12 months after initiation of the investigation and referred to Article 11.11 of the WTO Agreement on Subsidies and Countervailing Measures ('the ASCM') which provides that investigations 'shall' be concluded within one year 'except in special circumstances' and to Article 22(1) of the basic Regulation which provides that reviews shall be carried out 'expeditiously' and 'shall normally' be concluded within 12 months of the date of initiation. On this basis Reliance claimed that in the absence of special circumstances or justification from the Commission the investigation should be 'terminated without protective measures'.

(24) However, as far as deadlines are concerned, the Commission observes that the present review investigation is subject to Article 21.4 of the ASCM which provides that reviews of countervailing duties 'shall normally be concluded within 12 months of the date of initiation of the review' and does not refer to any special circumstances needed to justify an investigation duration longer than 12 months. Likewise, Article 22(1) of the basic Regulation does not refer to special circumstances needed to justify an investigation duration longer than 12 months. The current reviews are conducted within the 15-month deadline set out in Article 22(1) of the basic Regulation. Therefore, the claim was rejected.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

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

2.2. Like product

(26) The investigation revealed that the product under review is identical in terms of physical and chemical characteristics and uses to the product produced and sold on the domestic market in India. It is therefore concluded that products sold on the domestic and export markets are like products within the meaning of Article 2(c) of the basic Regulation.

3. RESULTS OF THE INVESTIGATION

3.1. Re-organisation of DPL and its related companies

(27) The investigation confirmed that DPL entered into a joint venture partnership with IVL. Under this partnership, DPL transferred its entire PET production facility to a new company, IVDPIL on 1 April 2016 and acquired 50 % share of that company, while the remaining 50 % were acquired by Indorama Ventures Global Services Limited, a subsidiary of IVL. DPL thus ceased to be an exporting producer of the product under review with effect from that date.

(28) The investigation also confirmed that DPL acquired 50 % of stake in MPPL, an Indian manufacturer of PET which previously did not export the product under review to the Union and has thus not been attributed an individual countervailing duty in previous investigations concerning PET originating in India. The remaining 50 % stake in MPPL belongs to Indorama Ventures Global Services Limited.

(29) Subsequently, on 12 May 2017, IVDPIL changed its name to IVL Dhunseri Petrochem Industries Private Limited ('IDIPL'), and MPPL transferred all its assets, debts, liabilities, and staff to IDIPL. On 4 December 2017, the High Court of Kolkata sanctioned this transfer.

(30) DPL, IDIPL (formerly IVDPIL), and MPPL are hereafter referred to as the 'Dhunseri group'. The purpose of the partial interim review was therefore to establish the rate of subsidisation applicable to the Dhunseri group. To that end the data regarding IDIPL and MPPL (which was still operating as a distinct exporting producer of the product under review during the review investigation period) were aggregated to calculate the subsidisation rate for the Dhunseri group as a whole since this rate is applicable to the final structure of the group where MPPL's plant is incorporated in IDIPL.

3.2. **Subsidisation**

(31) On the basis of the subsidies investigated in the previous reviews, the information submitted by the GOI and the concerned exporting producers, as well as the replies to the Commission's questionnaire, the following measures were investigated:

Nationwide subsidy programmes:

(a) Advance Authorisation Scheme (AAS)

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

(c) Duty Entitlement Passbook Scheme (DEPBS)

(d) Duty Free Import Authorisation Scheme (DFIA)

(e) Export Credit Scheme (ECS)

(f) Export Oriented Units (EOU) and Special Economic Zones (SEZ) Scheme

(g) Export Promotion Capital Goods Scheme (EPCGS)

(h) Focus Market Scheme (FMS)

(i) Focus Product Scheme (FPS)

(j) Incremental Exports Incentivisation Scheme (IEIS)

(k) Interest Equalisation Scheme (IES)

(l) Income Tax Incentive for Research and Development (ITIRAD)