Council Implementing Regulation (EU) No 461/2013 of 21 May 2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 597/2009

COUNCIL IMPLEMENTING REGULATION (EU) No 461/2013

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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) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community[(1)] ('the basic Regulation') and in particular Article 18 thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Regulation (EC) No 2603/2000[(2)], the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate ('PET') originating, inter alia, in India. 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. Following an expiry review, the Council by Regulation (EC) No 193/2007[(4)] imposed a definitive countervailing duty for a further period of five years. 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. A later partial interim review was terminated without amending the measures in force by Implementing Regulation (EU) No 559/2012[(7)]. By Decision 2000/745/EC[(8)] the Commission accepted undertakings setting a minimum import price offered by three exporting producers in India.

(2) The countervailing measures consist of a specific duty. The rate of the duty is between 0 and 106,5 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.

2. Existing anti-dumping measures

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 461/2013. (See end of Document for details)*

(3) By Regulation (EC) No 2604/2000[9], the Council imposed a definitive anti-dumping duty on imports of PET originating, inter alia, in India. Following an expiry review, the Council, by Regulation (EC) No 192/2007[10], imposed a definitive anti-dumping duty for a further period of five years.

3. **Request for an expiry review**

(4) Following the publication of a Notice of impending expiry[11] of the definitive countervailing measures in force, the Commission, on 25 November 2011, received a request for the initiation of the review, pursuant to Article 18 of the basic Regulation ('the expiry review'). The request was lodged by the Committee of Polyethylene Terephthalate Manufacturers in Europe ('the applicant') on behalf of producers representing nearly 95 % of the Union production of certain polyethylene terephthalate.

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

(6) 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. However, the Commission did not receive any answer from the GOI regarding its offer for consultations.

4. **Initiation of an expiry review**

(7) Having determined, after having consulted the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 24 February 2012, by a notice published in the *Official Journal of the European Union*[12] ('the notice of initiation'), the initiation of an expiry review pursuant to Article 18 of the basic Regulation.

5. **Parallel investigation**

(8) On 24 February 2012, the Commission also opened a review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 on the anti-dumping measures in force on imports of PET originating in India, Indonesia, Malaysia, Taiwan and Thailand[13].

6. **Investigation**

6.1. *Review investigation period and the period considered*

(9) The investigation of the likelihood of a continuation or recurrence of subsidisation covered the period from 1 January 2011 to 31 December 2011 (the 'review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2008 to the end of the RIP (hereinafter referred to as the 'period considered').

6.2. *Parties concerned by the investigation*

(10) The Commission officially advised the applicant, the exporting producers in the country concerned, the importers, the users known to be concerned, and the representatives of the country concerned of the initiation of the expiry review.

(11) 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 Notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(12) In view of the apparent large number of exporting producers in India as well as Union producers and importers it was considered appropriate to examine whether sampling should be used in accordance with Article 27 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the exporting producers and unrelated importers were requested to make themselves known within 15 days of the initiation of the review and to provide the Commission with the information requested in the Notice of initiation.

(13) Seven exporting producers responded to the sampling exercise and indicated a willingness to cooperate with the review investigation. On this basis, a sample of three exporting producers was selected based on the volume of exports to the Union. No objections were made to this sample either by the sampled producers themselves, non-sampled producers or the relevant authorities in India.

(14) The three sampled exporting producers were duly sent questionnaires to complete and replies were received from them all. However the questionnaire reply of one Indian sampled producer revealed that it only exported insignificant volumes of the product concerned during the RIP and therefore it was not relevant to calculate subsidy rates for that company. Verification visits were eventually completed in the two remaining exporting producers which together represented 99 % of total imports in volume from India to the Union during the RIP.

(15) Following the disclosure of the essential facts and considerations (‘disclosure’), one Indian cooperating producer requested a calculation of a subsidy margin. In this respect it was reconfirmed that the exports from this company were insignificant and consequently had no impact on the determination of the likelihood of continuation or recurrence of subsidisation in the present expiry review. Therefore, this request was rejected.

(16) The Commission announced in the notice of initiation that it had provisionally selected a sample of Union producers. This sample consisted of four companies, out of the thirteen Union producers that were known prior to the initiation of the investigation, selected on the basis of the largest representative volume of production and sales that can reasonably be investigated within the time available. The sample represented over 50 % of the total estimated Union production and sales during the RIP. Interested parties were invited to consult the file and to comment on the appropriateness of this choice within 15 days of the date of publication of the notice of initiation. All interested parties,

who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(17) Certain interested parties raised objections concerning the sampling of Union producers. They claimed that: (i) the Commission should not resort to sampling, in particular, since no sampling was used in the previous investigation; (ii) the method used for the selection of the sample was contested on the grounds that it 'confuses three different steps', namely, standing exercise, definition of the Union industry and sampling exercise; (iii) the provisional sample was set up on the basis of incorrect and incomplete information; (iv) selected provisional sample is not representative because it includes entities rather than groups; it was also claimed that including companies that in one case went through a recent divestment or in another case have related sales diminishes the representativity of the sample.

(18) The arguments raised by the parties were addressed as follows:

— The decision to use a sample of Union producers is made for each investigation independently depending on the particular circumstances of each case and Article 22(6) of the basic Regulation does not govern the use of such a sample for the determination of injury in the context of an expiry review. Unlike the previous investigations, where the investigation of all companies that came forward and cooperated was feasible, the Commission considered in the current review that, in view of their large number, not all Union producers could be reasonably investigated in the time available and that the conditions of Article 27 were therefore met.

— The Commission did not 'confuse' the determination of the standing, the determination of the Union industry and the selection of the provisional sample as these steps remained independent from each other and were decided upon separately. It was not demonstrated to what extent the use of the production and sales data provided by the Union producers in the context of the standing exercise had affected the representativity of the sample.

— The sample was set up on the basis of the information available at the time of selection in accordance with Article 27 of the basic Regulation. The representativity of the sample was reviewed following the comments of the parties concerning specific company data. None of the comments made were considered founded.

— As required by Article 27 of the basic Regulation the sample was established to represent the largest representative volume of production and sales that can be reasonably investigated within the time available. The entities belonging to larger groups that were found to operate independently from other subsidiaries of the same group were considered representative of the Union industry and there was therefore no need to investigate the entire group on a consolidated basis. At the same time, the companies were sampled as economic entities, ensuring that all relevant data could be verified. Moreover, the divestments and existence of related sales were part of the characteristics of the sector in

the period considered and therefore none of these elements was considered to diminish the representativity of the sample.

(19) Following the disclosure the parties reiterated the above-mentioned arguments which have already been addressed.

(20) Sampling for unrelated importers was foreseen in the notice of initiation. None of the twenty four contacted unrelated importers cooperated in the present investigation.

(21) All five known suppliers of raw material were contacted upon the initiation and received relevant questionnaire. Two suppliers came forward and replied to the questionnaire.

(22) All known users and users' associations were contacted upon the initiation. Seventeen users submitted a questionnaire reply. Twenty associations of users from 16 Member States made themselves known and made submissions.

7. Verification of information received

(23) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of a continuation or recurrence of subsidisation and resulting injury and of the Union interest. Verification visits were carried out at the premises of the GOI in Delhi and the following interested parties:

(a) *Exporting producers*
- Dhunseri Petrochem and Tea Limited, Kolkata, India;
- Reliance Industries Limited, Navi Mumbai, India;

(b) *Union producers*
- Indorama Polymers Europe, UAB, Netherlands;
- Equipolymers, Italy, Germany;
- Neo Group, UAB, Lithuania;
- Novapet SA, Spain;

(c) *Users in the Union*
- Coca-Cola Europe, Belgium;
- Nestle Waters France, France.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(24) The product concerned by this review is the same as the one in the original investigation, namely PET with a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, originating in India. It is currently falling within CN code 3907 60 20.

2. Like product