Council Implementing Regulation (EU) No 559/2012 of 26 June 2012 terminating the partial interim review concerning the countervailing measures on imports of certain polyethylene terephthalate (PET) originating in, inter alia, India

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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 Articles 19 and 24 thereof,

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

Whereas:

1. **PROCEDURE**

1.1. **Previous investigation and existing countervailing measures**

(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. The definitive findings and conclusions of an accelerated review pursuant to Article 20 of the basic Regulation are set out in Council Regulation (EC) No 1645/2005[(3)]. 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 amended by Council Regulation (EC) No 1286/2008[(5)] following a partial interim review ('the last review investigation'). The countervailing measures consist of a specific duty. The rate of the duty is between EUR 0 and EUR 106,5 per tonne for individually named Indian producers with a residual duty rate of EUR 69,4 per tonne imposed on imports from all other producers.

(2) Following a name change of one Indian company, South Asian Petrochem Ltd, by Notice 2010/C 335/07[(6)], the Commission concluded that the anti-subsidy findings in respect of South Asian Petrochem Ltd should apply to Dhunseri Petrochem & Tea Limited.

1.2. **Existing anti-dumping measures**

(3) By Regulation (EC) No 2604/2000[(7)], the Council imposed a definitive anti-dumping duty on imports of PET originating, inter alia, in India. A review pursuant to Article 11(4) of Council Regulation (EC) No 1225/2009[(8)] ('the basic

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 559/2012. (See end of Document for details)*

anti-dumping Regulation') concerning South Asian Petrochem Ltd was subsequently conducted and its definitive findings and conclusions are set out in Council Regulation (EC) No 1646/2005[9]. 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. The anti-dumping measures were amended by Regulation (EC) No 1286/2008 following a partial interim review investigation. The measures were set at the level of the injury elimination and consisted of specific anti-dumping duties. The rate of the duty is between EUR 87,5 and EUR 200,9 per tonne for individually named Indian producers with a residual duty rate of EUR 153,6 per tonne imposed on imports from all other producers ('the current anti-dumping measures').

(4) Following a name change of one Indian company, South Asian Petrochem Ltd, by Notice 2010/C 335/06[11], the Commission concluded that the anti-dumping findings in respect of South Asian Petrochem Ltd should apply to Dhunseri Petrochem & Tea Limited.

(5) By Decision 2005/697/EC[12], the Commission accepted undertakings offered by South Asian Petrochem Ltd setting a minimum import price ('the undertaking'). Following a name change, the Commission concluded by Notice 2010/C 335/05[13] that the undertaking offered by South Asian Petrochem Ltd should apply to Dhunseri Petrochem & Tea Limited.

1.3. Initiation of a partial interim review

(6) A request for a partial interim review pursuant to Article 19 of the basic Regulation was lodged by Dhunseri Petrochem & Tea Limited, an Indian exporting producer of PET ('the applicant'). The request was limited in scope to subsidisation and to the applicant. The applicant at the same time also requested the review of the current anti-dumping measures. The residual anti-dumping and countervailing duties are applicable to imports of products produced by the applicant and sales of the applicant to the Union are covered by the undertaking.

(7) The applicant provided prima facie evidence that the continued application of the measure at its current level was no longer necessary to offset the countervailable subsidisation. In particular, the applicant provided prima facie evidence showing that its subsidy amount has decreased well below the duty rate currently applicable to it. This reduction in the overall subsidy level would mainly be due to the termination of its export oriented unit (EOU) status. With a magnitude of 13,5 %, the EOU scheme accounted for the vast majority of the 13,9 % subsidies established during the accelerated review.

(8) Having determined, after consulting the Advisory Committee, that the request contained sufficient prima facie evidence, the Commission announced on 2 April 2011 the initiation of a partial interim review ('the present review') pursuant to Article 19 of the basic Regulation by Notice 2011/C 102/08[14]. The review was limited in scope to the examination of subsidisation in respect of the applicant.

1.4. Parties concerned by the investigation

(9) The Commission officially informed the applicant, the representatives of the exporting country and the association of Union producers about the initiation of the review. 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.

(10) One interested party requested and was granted a hearing.

(11) In order to obtain the information deemed necessary for its investigation, the Commission sent a questionnaire to the applicant and the Government of India (GOI) and received replies within the deadline set for that purpose.

(12) The Commission sought and verified all information deemed necessary for the determination of subsidisation. The Commission carried out verification visits at the premises of the applicant in Kolkata, India and at the premises of the GOI in New Delhi (Directorate-General of Foreign Trade and Ministry of Commerce) and Kolkata (Commerce & Industries Department, Government of West Bengal).

1.5. **Review investigation period**

(13) The investigation of subsidisation covered the period from 1 April 2010 to 31 March 2011 (‘the review investigation period’ or ‘RIP’).

1.6. **Parallel anti-dumping investigation**

(14) On 2 April 2011 by Notice 2011/C 102/09[(15)] the Commission announced the initiation of a partial interim review of the current anti-dumping measures pursuant to Article 11(3) of the basic anti-dumping Regulation, limited in scope to the examination of dumping in respect of the applicant.

(15) In the parallel anti-dumping investigation it was found that the changes are not of a lasting nature. As a consequence, the review investigation was terminated without amending the measures in force.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. **Product concerned**

(16) The product under review is PET having a viscosity of 78 ml/g or higher, according to the ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in India (‘the product concerned’).

2.2. **Like product**

(17) The investigation revealed that the product concerned produced in India and sold to the Union 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

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 559/2012. (See end of Document for details)*

3.1. **Subsidisation**

(18) On the basis of the information submitted by the GOI and the applicant and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

Nationwide schemes:

(a) Duty Entitlement Passbook Scheme (DEPBS);

(b) Export oriented units (EOU)/export processing zones (EPZ)/special economic zones (SEZ);

(c) Export Promotion Capital Goods Scheme (EPCGS);

(d) Focus Market Scheme (FMS);

(e) Export Credit Scheme (ECS);

(f) Income Tax Exemption Scheme (ITES).

Regional schemes:

(g) West Bengal Incentive Scheme (WBIS).

(19) The schemes (a) to (d) specified in recital 18 are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in Foreign Trade Policy (FTP) documents, which are issued by the Ministry of Commerce every five years and updated regularly. Two FTP documents are relevant to the RIP of this case, i.e. FTP 04-09 and FTP 09-14. The latter entered into force in August 2009. In addition, the GOI also sets out the procedures governing FTP 04-09 and FTP 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 04-09' and 'HOP I 09-14' respectively). The Handbook of Procedures is also updated on a regular basis.

(20) Scheme (e) is based on sections 21 and 35A of the Banking Regulation Act 1949, which allows the Reserve Bank of India (RBI) to direct commercial banks in the field of export credits.

(21) Scheme (f) is based on the Income Tax Act of 1961, which is amended by the yearly Finance Act.

(22) Scheme (g) is administered by the Government of West Bengal and set out in Government of West Bengal Commerce & Industries Department notification No 580-CI/H of 22 June 1999, replaced by notification No 134-CI/O/Incentive/17/03/I of 24 March 2004.

3.2. **Duty Entitlement Passbook Scheme (DEPBS)**

(a) *Legal Basis*

(23) The detailed description of the DEPBS is contained in paragraphs 4.3 of FTP 04-09 and FTP 09-14 as well as in chapter 4 of HOP I 04-09 and HOP I 09-14.

(b) *Eligibility*

(24) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) *Practical implementation of the DEPBS*

(25) An eligible exporter can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS rates have been established by the Indian authorities for most products, including the product concerned. They are determined regardless of whether import duties have actually been paid or not. The DEPBS rate for the product concerned during the RIP of the current investigation was 8 % of fob value, subject to a value cap of INR 58/kg. As a result, the maximum benefit is INR 4,64/kg.

(26) To be eligible for benefits under this scheme, a company must export. At the time of the export transaction, a declaration must be made by the exporter to the authorities in India indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue, during the dispatch procedure, an export shipping bill. This document shows, inter alia, the amount of DEPBS credit which is to be granted for that export transaction. At the time of issuing the export shipping bill, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit. The relevant DEPBS rate to calculate the benefit is that which applied at the time the export declaration was made. Therefore, there is no possibility for a retroactive amendment to the level of the benefit.

(27) It was found that, in accordance with Indian accounting standards, DEPBS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods unrestrictedly importable, except capital goods. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. DEPBS credits are freely transferable and valid for a period of 24 months from the date of issue.

(28) Applications for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. De facto, no strict deadlines to apply for DEPBS credits exist. The electronic system used to manage DEPBS does not automatically exclude export transactions exceeding the deadline submission periods mentioned in paragraph 4.47 of HOP I 04-09 and of HOP I 09-14. Furthermore, as clearly provided in paragraph 9.3 of the HOP I 04-09 and of HOP I 09-14, applications received after the expiry of submission deadlines can always be considered with the imposition of a minor penalty fee (i.e. 10 % of the entitlement).

(29) It was found that the applicant used this scheme during the RIP.