Council Implementing Regulation (EU) No 1030/2010 of 17 November 2010 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

COUNCIL IMPLEMENTING REGULATION (EU) No 1030/2010

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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 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Article 9 and Article 11(2) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) The Council, following an anti-dumping investigation (the original investigation), by Regulation (EC) No 1467/2004[(2)], imposed a definitive anti-dumping duty on imports of certain polyethylene terephthalate (PET) originating, inter alia, in the People's Republic of China (the definitive anti-dumping measures). The duty levels imposed were up to 22,9 % corresponding to 184 EUR/tonne for imports originating in the People's Republic of China ('the country concerned' or 'the PRC').

(2) Following a 'new exporter' review pursuant to Article 11(4) of the basic Regulation, the Council, by Regulation (EC) No 2167/2005[(3)], amended Regulation (EC) No 1467/2004.

2. Request for a review

(3) Following the publication of a notice of impending expiry[(4)] of the definitive anti-dumping measures in force, on 13 May 2009, the Commission received a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by the Polyethylene Terephthalate Committee of Plastics Europe (the applicant) on behalf of producers representing a major proportion, in this case more than 50 %, of total Union production of PET.

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

(5) After consulting the Advisory Committee, the Commission determined that sufficient evidence existed for the initiation of an expiry review. Accordingly, on 18 August 2009, the Commission announced by a notice of initiation[5] (the notice of initiation), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

3. Parallel proceedings

(6) It is noted that on 3 September 2009, the Commission also announced the initiation of an anti-dumping proceeding[6] pursuant to Article 5 of the basic Regulation and an anti-subsidy proceeding[7] pursuant to Article 10 of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not member of the European Community[8] concerning imports of certain PET originating in Iran, Pakistan and the United Arab Emirates.

(7) The Council imposed a definitive countervailing duty on imports of certain polyethylene terephthlate originating in Iran, Pakistan and the United Arab Emirates by Regulation (EU) No 857/2010 published on 29 September 2010[9]. At the same time the Commission terminated the anti-dumping proceeding[10].

4. Investigation

4.1. *Investigation period*

(8) The investigation of the likelihood of continuation or recurrence of dumping covered the period from 1 July 2008 to 30 June 2009 (‘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 2006 to the end of the RIP (period considered).

4.2. *Parties concerned by the investigation*

(9) The Commission officially advised the complaining producers, other known Union producers, importers/traders, users known to be concerned and their associations, exporting producers and representatives of the exporting country concerned, of the initiation of the expiry 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) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(11) In view of the apparent high number of Union producers, exporting producers and importers, it was considered appropriate, in accordance with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the

Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties 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.

(12) Fourteen Union producers provided the requested information and agreed to be included in the sample. On the basis of the information received from the cooperating Union producers, the Commission selected a sample of five Union producers representing 65 % of the sales by all cooperating Union producers to unrelated customers in the EU.

(13) As only two Chinese exporting producers came forward with the requested information, it was not necessary to select a sample.

(14) Only one importing agent provided the requested information and agreed to be included in the sample. Consequently, no sampling with regard to unrelated importers was necessary.

(15) The Commission sent questionnaires to the sampled Union producers, to exporting producers, and to all users and suppliers known to be concerned as well as to those that made themselves known within the deadlines set out in the notice of initiation. Questionnaires were also sent to known producers in the USA (the envisaged analogue country).

(16) Questionnaire replies were received from the five sampled Union producers, seven users in the Union, three suppliers of raw materials, and two producers in the USA. In addition, seven cooperating Union producers provided the requested general data for the injury analysis. No questionnaire replies, however, were submitted by the Chinese exporting producers.

(17) In the course of the investigation, one of the five sampled Union producers was not in a position to provide all requested data and the sample consequently had to be reduced to four producers representing 47 % of the sales by all cooperating producers.

(18) The Commission sought and verified all the information deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following companies:

(a) *Union producers*
- Novapet SA, Spain,
- Equipolymers SRL, Italy,
- UAB Orion Global PET (Indorama), Lithuania,
- UAB Neo Group, Lithuania;

(b) *Users in the Union*
- Puccetti, Italy;

(c) *Producers in the USA*

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 1030/2010. (See end of Document for details)*

— M & G Polymers USA, LLC, USA,

— StarPet Inc., USA.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(19) The product concerned is the same as the one in the original investigation, i.e. polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, currently falling within CN code 39076020 and originating in the PRC.

(20) The review investigation confirmed the finding of the original investigation that the product concerned, and the products manufactured and sold by the exporting producers on their domestic market and to third countries, as well as those manufactured and sold by the Union industry have the same basic physical and chemical characteristics and uses. Therefore, these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

(21) As explained above, it was not necessary to apply sampling in respect of exporting producers in the PRC.

(22) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

2. Dumping of imports during the RIP

(23) Given the absence of significant import volumes from the PRC into the Union, these did not form a basis for a representative dumping finding. Therefore, no dumping calculation was made on the basis of the export prices from the PRC and the investigation therefore focused on the likelihood of recurrence of dumping.

3. Development of imports should measures be repealed

(24) Given the fact that no exporting producer in the PRC cooperated in this investigation, the conclusions below rely on facts available in accordance with Article 18 of the basic Regulation, namely Eurostat data and the review request.

3.1. *Relationship between the normal value and export prices to third countries*

(25) Since no exporting producer in the PRC cooperated, domestic sales prices of a market economy third country were compared to export prices from the PRC to third countries in accordance with Article 2(7) of the basic Regulation.

Analogue country

(26) Since the PRC is an economy in transition and in accordance with the provisions of Article 2(7)(a) of the basic Regulation, normal value had to be determined on the basis of the price or constructed normal value obtained in an appropriate market

economy third country (the analogue country), or the price from the analogue country to other countries, including the Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.

(27) In the notice of initiation, it was envisaged to use the USA as an appropriate analogue country for the purpose of establishing normal value for the PRC and interested parties were invited to comment on the appropriateness of this choice. No comments or objections were received from any parties in this respect. The USA was used as an analogue country in the original investigation. It is therefore considered that the USA is an appropriate analogue country.

Normal value

(28) Pursuant to Article 2(7) of the basic Regulation, normal value was established on the basis of the verified information received from producers in the analogue country, i.e. on the basis of prices paid or payable on the domestic market in the USA, for product types which were found to be sold in the ordinary course of trade.

(29) As a result, normal value was established as the weighted average domestic sales price to unrelated customers by the cooperating producers in the USA.

(30) It was first established for each of the two US cooperating exporting producers whether their total domestic sales of the like product to independent customers were representative in accordance with Article 2(2) of the basic Regulation, i.e. whether they accounted for 5 % or more of the total sales volume of the product concerned exported to the Union. The domestic sales of both US producers were considered sufficiently representative during the investigation period.

(31) The Commission subsequently examined whether the domestic sales of the like product could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for the like product sold on the US market the proportion of profitable domestic sales to independent customers during the RIP.

(32) Since the volume of profitable sales of the like product represented less than 80 % of the total sales volume of the like product, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales.

Export price

(33) As explained above, in the absence of significant import volumes and in view of the absence of any cooperation from PRC exporting producers, the export price was examined on the basis of data available from PRC export statistics on the quantity and value of exports from the PRC to its three most important export markets (Japan, Ukraine, United States), this being the best information available in accordance with Article 18 of the basic Regulation. Exports to these markets represented approximately 50 % of PRC exports of the product under investigation.

Comparison