Council Implementing Regulation (EU) No 857/2010 of 27 September 2010 imposing a definitive countervailing duty and collecting definitely the provisional duty imposed on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates

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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 (the 'basic Regulation')[(1)], and in particular Article 15(1) thereof,

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

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The Commission, by Regulation (EU) No 473/2010[(2)] ('the provisional Regulation'), imposed a provisional countervailing duty on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates ('the countries concerned').

(2) The proceeding was initiated following a complaint lodged on 20 July 2009 by the Polyethylene Terephthalate Committee of Plastics Europe ('the complainant') on behalf of producers representing a major proportion, in this case more than 50 %, of the total Union production of certain polyethylene terephthalate.

(3) As set out in recital (15) of the provisional Regulation, the investigation of subsidisation and injury covered the period from 1 July 2008 to 30 June 2009 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the IP ('period considered').

(4) In the parallel anti-dumping proceeding, the Commission by Regulation (EU) No 472/2010[(3)], imposed a provisional anti-dumping duty on imports of certain polyethylene terephthalate originating in Iran and the United Arab Emirates.

1.2. Subsequent procedure

(5) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional countervailing measures ('provisional disclosure'), several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were also granted the opportunity to be heard.

(6) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties following the provisional disclosure were considered and, where appropriate, the provisional findings were modified accordingly.

(7) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing duty on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). They were also granted a period within which they could make representations subsequent to this disclosure.

(8) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings were modified accordingly.

1.3. **Parties concerned by the proceeding**

(9) Some interested parties claimed that the sample of EU producers was not representative and inconsistent and that therefore the injury analysis was deficient. In particular, it was claimed that sampling was not necessary since the number of producers was not large. In addition, it was claimed that by 'artificially' splitting company groups into individual legal entities, the sample would not contain some of the market leaders (Artenius, M&G Polimeri) and that the methodology for the selection of the sample is inconsistent since the sample also included two groups of companies. It was also claimed that the sample was not representative since it did not contain any producer that is selling to a related PET processor in sufficient quantities. As a result, the institutions allegedly could not assess the real supply capability of the Union industry and did not take into account the Union industry's conflict of interest. Moreover, as one company did not provide all necessary information and was excluded from the sample, the representativity allegedly dropped to 28 % of EU production. The same parties claimed that the selected sample was not statistically valid.

(10) With regard to the argument that sampling was not necessary since the number of producers was not large, it is reiterated that in the sampling exercise 14 Union producers belonging to eight groups of companies came forward. Given the objectively high number of EU producers that cooperated, i.e. 14, sampling was applied in accordance with Article 27(1) of the basic Regulation on the basis of the largest representative volume of sales that could reasonably be investigated within the time available. The sample selected consisted of five individual companies (with six producing locations).

(11) With regard to the first claim concerning the representativity of the sample, it should be noted that the institutions can include individual companies which are part of a company group within the sample as long as they are representative and have separate financial accounts. Otherwise, investigating all fourteen EU producers belonging to the eight groups of companies would have prevented the timely completion of the investigation. However, the fact that two company groups have been included in the sample is not inconsistent with the sampling methodology applied in this case, i.e. the largest representative volumes of sales to EU clients.

(12) As regards Indorama, this group had two different production plants in the IP – one in the Netherlands and the other one in UK. Including this group in the sample is in line with the sampling methodology applied since those plants formed one entity from the legal and financial perspective. As regards Equipolymers, which had two separate entities producing PET in the IP (one in Italy and another one in Germany), the company reported consolidated figures for both locations. Given that the verification of these consolidated figures was possible during one visit at the company's headquarters, it was decided to treat Equipolymers PET producing companies as one entity for the purpose of this proceeding. With regard to the claim that Artenius and M&G Polimeri had to be included in the sample because they were the market leaders, it is noted that none of their individual entities belonged to the companies with the highest volumes of sales to EU clients.

(13) As regards the claim that the sample was not representative because it did not include one producer who produces mainly for internal consumption, it should be noted that the capability to supply can be examined in the framework of the Union interest analysis if such a claim is made and for that purpose the captive consumption can be deducted from the production volume. Thus, there is no need to have such a producer in the sample for the examination of certain injury factors. Secondly, any double interest resulting from the position of a company as EU producer and processor at the same time can also be assessed in the Union interest analysis. The position of a company as EU producer and processor is not linked with the performance of the Union industry where sales to unrelated customers in the EU are taken as a benchmark. The claim is thus rejected.

(14) With regard to the claim concerning the overall representativity of the sample, it is reiterated that the reduction of the sample to four companies lowered the representativity from 65 % to 47 % of the sales by all cooperating producers. The same four companies accounted for 52 % of the Union production. This is considered to be a representative sample of the EU producers in terms of sales to independent customers in the EU.

(15) As regards the claim that the sample selected was not statistically valid, it is noted that Article 27(1) of the basic Regulation clearly allows for a sample to be based on the largest representative volume of the sales that can reasonably be investigated in the time available, as an alternative for a 'statistically valid' sample.

(16) In the absence of any other comments concerning the sampling, the findings in recitals (5) to (14) of the provisional Regulation are hereby confirmed.

2. PRODUCT CONCERNED AND LIKE PRODUCT

(17) It is recalled that, in recital (16) of the provisional Regulation, the product concerned was defined as polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, originating in the countries concerned and currently falling within CN code 3907 60 20.

(18) Moreover, in recital (18) of the provisional Regulation, it was stated that the investigation showed that PET produced and sold in the Union by the Union industry, and the PET produced and sold on the domestic markets of the countries concerned, and exported to the Union were like products.

(19) Since the product under investigation was considered a homogeneous product, it was not further subdivided into different product types for calculating the injury margins.

(20) One exporting producer claimed that PET should be subdivided into different product types according to their different viscosity numbers since the viscosity number is essential to determine the different possible applications of the PET type produced. It was considered that the claim should be accepted and the methodology for calculating injury margins was adapted accordingly.

3. SUBSIDISATION

3.1. Iran

3.1.1. *Introduction*

(21) The Government of Iran and the cooperating exporting producer submitted comments on the following schemes, countervailed in the provisional Regulation:

(I) Measures connected to Special Economic Zones (‘SEZs’) – Petrochemical SEZ

(II) Financing from National Petrochemical Company to the PET exporting producer

3.1.2. *Specific Schemes*

(I) *Measures connected to Special Economic Zones (SEZs) – Petrochemical SEZ*

(22) The Government of Iran (GOI) disputed that duty-free imports in Free Trade Zones of raw materials and capital goods can be countervailed. Free Trade Zone and Special Economic Zones are by definition duty-free zones for import and export, compatible with the WTO. Besides, the GOI as well as the cooperating exporting producer asserted that the import of duty-free capital goods is not contingent in law on export performance because this exemption exists also for the companies established in the rest of the Iranian territory.

(23) With respect to the compliance of SEZs with WTO rules, it is noted that the general argument submitted cannot dispute the established facts that the subsidies in question are countervailiable as no elaborated analysis was provided to rebut the one presented in the provisional Regulation. With regards to the duty-free importation of capital goods in Iran, the information at the time submitting comments on the provisional disclosure suggests that this possibility exists only for companies that are modernizing their infrastructure, i.e. it is not an automatic provision applicable to all parties. Therefore, the above claims had to be rejected.

(24) The cooperating exporting producer argued that the Commission disregarded the principle of non-discrimination given that similar rules and regimes are also applied in other countries. The company also claimed that the Commission did not correctly inform it of the scope of the verification visit and the corresponding information requirements before such verification.

(25) As regards the general allegation of violation of the principle of non-discrimination, it is recalled that the Commission initiated this anti-subsidy investigation against the three countries mentioned in the complaint in line with the provisions of Article 10 of the basic Regulation. Thus the Commission's recommendation could only be based on the findings of this investigation. As to the alleged lack of advance information on the points to be investigated, it is noted that the Commission informed the cooperating exporting producer well in advance of the verification visit that it would seek information during the verification visit on the relationship between the exporting producer and its shareholder. Therefore, these claims had to be rejected.

(26) The cooperating exporting producer brought to the attention of the institutions two clerical mistakes in the calculation of the duty exemption on imports of one raw material of the production process and in the total import value of capital goods exempted. Those errors are herein corrected. The revised subsidy rates are 0,14 % for the duty-free import of input products and 0,72 % for the duty-free import of capital goods. The revised total subsidy rate for this scheme is 0,86 %.

(27) In the light of the above and in the absence of any other relevant comments, the findings in relation to this scheme as set out in recitals (20) to (44) of the provisional Regulation, as modified by recital (26) of this Regulation, are hereby confirmed.

(II) *Financing from National Petrochemical Company to the PET exporting producer*

(28) The cooperating exporting producer (Shahid Tondguyan Petrochemical Co. or STPC) claimed that its main shareholder, National Petrochemical Company (NPC), is not a public body and that the GOI neither entrusted nor directed NPC to make payments to STPC. In addition, it was submitted that the NPC financing to the STPC has to be considered as repayable and thus not a subsidy.

(29) In addressing these claims, it should be recalled that, in order to assess whether an entity should be considered as a public body for purposes of anti-subsidy