Commission Regulation (EU) No 473/2010 of 31 May 2010 imposing a provisional countervailing duty on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates

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THE EUROPEAN COMMISSION,

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 12 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 3 September 2009 the Commission announced, by a notice published in the *Official Journal of the European Union*[(2)] ('notice of initiation'), the initiation of an anti-subsidy proceeding with regard to imports into the Union of certain polyethylene terephthalate ('PET') originating in Iran, Pakistan and the United Arab Emirates ('the countries concerned').

(2) On the same day, the Commission announced, by a notice published in the *Official Journal of the European Union*[(3)], the initiation of an anti-dumping proceeding with regard to imports into the Union of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates and commenced a separate investigation ('AD proceeding').

(3) The anti-subsidy 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. The complaint contained *prima facie* evidence of subsidisation of the said product and material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-subsidy proceeding.

(4) Prior to the initiation of the proceeding and in accordance with Article 10(7) of the basic Regulation, the Commission notified the Governments of Iran, Pakistan and the United Arab Emirates ('UAE') that it had received a properly documented complaint

alleging that subsidised imports of PET originating in Iran, Pakistan and the UAE were causing material injury to the Union industry. The respective Governments were invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. All the Governments accepted the offer of consultations and consultations were subsequently held. During the consultations, no mutually agreed solution could be arrived at. However, due note was taken of comments made by the authorities of the countries concerned in regard to the allegations contained in the complaint regarding the lack of countervailability of the schemes. During or following the consultations, submissions were received from the governments of Pakistan and the UAE.

1.2. **Parties concerned by the proceeding**

(5) The Commission officially advised the complainant producers, other known Union producers, importers/traders and users known to be concerned, the exporting producers and the representatives of the exporting countries concerned, of the initiation of the proceeding. 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.

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

(7) In view of the apparently large number of Union producers and importers, the use of sampling techniques for the investigation of injury was envisaged 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, all Union producers and importers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product under investigation during the investigation period (1 July 2008 – 30 June 2009).

(8) 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.

(9) Eight importers provided the requested information and agreed to be included in the sample. On the basis of the information received from the cooperating importers, the Commission selected a sample of two importers representing 83 % of imports by all cooperating importers and 48 % of all imports from the UAE, Iran and Pakistan.

(10) The Commission sent questionnaires to the authorities of the countries concerned, to the exporting producers, to the sampled Union producers, sampled importers 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.

(11) Questionnaire replies were received from the authorities of the countries concerned, one exporting producer in Iran and its related trader, one exporting producer

in Pakistan and one exporting producer in the United Arab Emirates, from five sampled Union producers, one sampled importer, ten users in the Union, three suppliers of raw materials. In addition, seven cooperating Union producers provided the requested general data for the injury analysis.

(12) The Commission sought and verified all information deemed necessary for the determination of subsidisation, resulting injury and Union interest.

(13) Verification visits were carried out at the premises of the following State authorities:

Government of Iran

— Iranian Ministry of Commerce, Trade Representation Office, Tehran, Iran;

— Iran Customs Office, Bandar Imam Khomeini, Iran;

Government of the United Arab Emirates

— Ministry of Economy and Industry of the United Arab Emirates, Abu Dhabi, United Arab Emirates;

— RAK Investment Authority, Government of Ras Al Khaimah, Ras Al Khaimah, United Arab Emirates;

(14) Verification visits were also carried out at the premises of the following companies:

Union producers

— Novapet SA, Spain

— Equipolymers Srl, Italy

— UAB Orion Global PET (Indorama), Lithuania

— UAB Neo Group, Lithuania

Exporting producer in Iran

— Shahid Tondguyan Petrochemical Co. (STPC) and its related companies, Bandar Imam Khomeini and Tehran;

Exporting producer in Pakistan

— Novatex Limited, Karachi

Exporting producer in the United Arab Emirates

— JBF RAK LLC, Ras Al Khaimah

1.3. Investigation period

(15) The investigation of subsidisation and injury covered the period from 1 July 2008 to 30 June 2009 (‘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 investigation period (‘period considered’).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(16) The product concerned is polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, originating in Iran, Pakistan and the UAE ('the product concerned'), currently falling within CN code 3907 60 20.

(17) PET is a chemical product which is normally used in the plastics industry, for the production of bottles and sheets. Since this grade of PET is a homogeneous product, it was not further subdivided into different product types.

2.2. **Like product**

(18) The investigation showed that the PET produced and sold in the Union by the Union industry, and the PET produced and sold on the domestic markets of Iran, Pakistan and the United Arab Emirates, and exported to the Union have essentially the same basic chemical and physical characteristics and the same basic uses. They are therefore provisionally considered to be alike within the meaning of Article 2(c) of the basic Regulation.

3. **SUBSIDISATION**

3.1. **Iran**

3.1.1. *Introduction*

(19) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involved the granting of subsidies by a Governmental authority, were investigated:

(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***

(20) According to the legal provisions, a company established in an SEZ benefits from the duty-free import of input material under the condition that it is used in the production process of a product for subsequent exports. During the verification, it was also found that companies in SEZs also benefit from the duty-free import of capital goods.

(a) *Legal Basis*

(21) The full legal description of the SEZs scheme is currently set out in the following laws and regulations: 'The Law for Establishment and Management of the Special Economic Zones in the Islamic Republic of Iran' No. 257/184168, enacted on May 19, 2005; Approval of Commission of Art. 138 of Constitutional Act Secretariat of

High Council of Free Industrial-Trade Zones, dated May 27, 2007; Executive By-law for Establishment and Management of Special Economic Zone of the Islamic Republic of Iran; Approval of Board of Ministers dated April 29, 2006.

(22) The Petrochemical SEZ was founded on 30 April 1997 (year 1376 according to the Persian calendar) by Act No. 58548, published in the Official Gazette No. 15275 on 25 May 1997.

(b) *Eligibility*

(23) No specific rule on eligibility has been found in the set of Legislative/ Administrative Acts provided by the Iranian Government during the investigation. The sole Iranian cooperating exporting producer has its factory premises established in the Petrochemical SEZ of Mahshahr, Bandar Imam Khomeini. According to the information made available by the Iranian authorities, this zone is the only Petrochemical SEZ in Iran.

(c) *Practical implementation*

(24) Each SEZ is considered as being situated outside the country's Customs territory. Hence, all imports are exempted from duties under the condition that the imported input materials are used to produce the resulting export product.

(25) In order to monitor the amount of duty-free imported raw materials consumed in the production of the resultant export product, the Customs offices register both the import allowance and export obligation at the time of import and of export on the basis of standard input-output norms specified in a certificate entitled 'Production Permit' released by the Ministry of Health, General Department and which is valid for five years. For every transaction the Customs offices releases upon request a code-number (B-Jack) necessary for the company to clear goods through Customs.

(26) In addition, the company provides periodically to the relevant authority with the exports and domestic sales that it intends to carry out in the following year. On the basis of the aforesaid available information, the Customs offices supervise the correct use of the benefits availed by the company.

(27) As regards a domestic sale, i.e. a sale from the SEZ into the mainland, a customs duty will be imposed on the part of the imported duty-free input incorporated in the final product according to the standard input-output norms.

(d) *Findings of the investigation*

(28) During the verification visit, it has been found that there are no concrete, statutory and publicly available criteria that govern the decision of the granting authority on who is entitled to be established in the Petrochemical SEZ. A company willing to establish in that zone has to lodge an application to the relevant authority but no guidelines are available in order to show on what basis the request can be accepted or rejected. Moreover, the founding Act of the Petrochemical SEZ entrusts National