Commission Regulation (EU) No 472/2010 of 31 May 2010 imposing a provisional anti-dumping duty on imports of certain polyethylene terephthalate originating in Iran 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 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 7 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-dumping 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) 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. The complaint contained prima facie evidence of dumping of the product concerned originating in the countries concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

1.2. Parties concerned by the proceeding

(3) The Commission officially advised the complainant producers, other known Union producers, importers/traders and users known to be concerned, exporting producers and 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.

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

(5) In view of the apparent high number of Union producers and importers, sampling was envisaged in the notice of initiation, in accordance with Article 17 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).

(6) 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.

(7) 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.

(8) The Commission sent questionnaires to exporting producers, 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.

(9) Questionnaire replies were received from five sampled Union producers, one sampled importer, ten users in the Union, three suppliers of raw materials, one exporting producer in Iran and its related trader, one exporting producer in Pakistan and one exporting producer in the United Arab Emirates. In addition, seven cooperating Union producers provided the requested general data for the injury analysis.

(10) The Commission sought and verified all the information deemed necessary for a preliminary determination of dumping, resulting injury and 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) *Exporting producer in Iran*

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

(c) *Exporting producer in Pakistan*

— Novatex Limited, Karachi;

(d) *Exporting producer in the United Arab Emirates*

— JBF RAK LLC, Ras Al Khaimah.

1.3. **Investigation period**

(11) The investigation of dumping 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 investigation period ('period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. **Product concerned**

(12) 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 United Arab Emirates ('the product concerned'), currently falling within CN code 3907 60 20.

(13) 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**

(14) 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 1(4) of the basic Regulation.

3. DUMPING

(15) Given the considerable fluctuations in raw material costs and PET market prices observed during the IP, it was considered appropriate to make use of quarterly data in establishing the normal value and export price. However, this methodology could not be applied for Iran, since the sole Iranian producer was unable to provide full quarterly cost data.

3.1. **Iran**

3.1.1. *Normal Value*

(16) In accordance with Article 2(2) of the basic Regulation, the Commission first established whether the domestic sales of the sole Iranian producer were sufficiently representative, i.e. whether the total volume of such sales represented at least 5 % of its total volume of export sales of the product concerned to the Union. The domestic sales of the sole Iranian producer were considered sufficiently representative during the investigation period.

(17) 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 Iranian market the proportion of profitable domestic sales to independent customers during the IP.

(18) Since the volume of profitable sales of the like product represented 80 % or less 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.

3.1.2. *Export price*

(19) Since export sales to the Union were made through a related trading company located in Iran, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices of this related trader to independent customers in the Union.

3.1.3. *Comparison*

(20) The normal value and the export price of the sole exporting producer were compared on an ex-works basis.

(21) For the purpose of ensuring a fair comparison between the normal value and export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, adjustments for differences in level of trade, transport costs, handling, loading and ancillary costs, packing costs, credit costs, and other factors (bank charges) have been made where applicable and justified.

(22) The company claimed an adjustment for differences in level of trade due to different sales patterns between its customers in its domestic and EU market. This was granted to the extent that the company could substantiate its claim.

(23) The Iranian exporting producer furthermore submitted a particular claim regarding the alleged impact of the international sanctions against Iran. The company claimed that, due to the sanctions, certain big US based PET customers like Coca-Cola and Pepsi are not allowed to buy PET from Iran and consequently do not issue quality certificates for PET coming from Iran. This allegedly also has an impact on other European customers who require lower prices for PET that has not been certified by Coca Cola or Pepsi. However, the Iranian exporting producer was not able to quantify the alleged impact of the sanctions in a way that could be supported by any evidence. Finally, the company encountered similar problems on the domestic market where local Coca-Cola and Pepsi licensees were not allowed to source PET from Iranian producers and have to rely on imports from other countries. Consequently, the sanctions should also exert a downward pressure on domestic prices and, thus, there is no apparent difference for price comparison purposes. It was therefore concluded that there were no grounds to make an allowance in the form of an adjustment for the impact of sanctions on Iran.

3.1.4. *Dumping margin*

(24) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin for the sole Iranian producer was established on the basis of a comparison of the weighted average normal value with the weighted average export price.

(25) Based on information available from the complaint and the cooperating Iranian exporting producer, there are no other known producers of the product concerned in Iran. Therefore, the country-wide dumping margin to be established for Iran should be equal to the dumping margin established for the sole cooperating exporting producer in Iran.

(26) The provisional dumping margin for Iran, expressed as a percentage of the CIF Union frontier price, duty unpaid, is 28,6 %.

3.2. **Pakistan**

3.2.1. *Normal value*

(27) In accordance with Article 2(2) of the basic Regulation, the Commission first established whether the domestic sales of the sole Pakistani producer were sufficiently representative, i.e. whether the total volume of such sales represented at least 5 % of its total volume of export sales of the product concerned to the Union. The domestic sales of the sole Pakistani producer were considered sufficiently representative during the investigation period.

(28) 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 Pakistani market the proportion of profitable domestic sales to independent customers during the IP.

(29) Since the volume of profitable sales of the like product represented more than 80 % of the total sales volume of the like product on the domestic market, normal value was calculated as the weighted average of all domestic sales prices of the like product.

3.2.2. *Export price*

(30) The sole exporting producer in Pakistan exported the product concerned directly to independent customers in the Union. Export prices were therefore established on the basis of the prices actually paid or payable by these independent customers for the product concerned, in accordance with Article 2(8) of the basic Regulation.

3.2.3. *Comparison*

(31) The normal values and the export price of the sole exporting producer were compared on an ex-works basis.

(32) For the purpose of ensuring a fair comparison between the normal value and export price, due allowance in the form of adjustments was made for differences