

Notice of initiation of an anti-subsidy proceeding concerning imports of purified terephthalic acid and its salts originating in Thailand

(2009/C 313/09)

The European Commission ('the Commission') has received a complaint pursuant to Article 10 of 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'), alleging that imports of purified terephthalic acid and its salts, originating in Thailand ('the country concerned'), are being subsidised and are thereby causing material injury to the Community industry.

1. Complaint

The complaint was lodged on 13 November 2009 by BP Aromatics Limited NV and CEPESA Quimica S.A. ('the complainants') representing a major proportion, in this case more than 50 % of the total Community production of purified terephthalic acid and its salts.

2. Product under investigation

The product subject to this investigation is terephthalic acid and its salts of a purity by weight of 99,5 % or more ('the product under investigation').

3. Allegation of subsidisation

The product allegedly being subsidised is the product under investigation, originating in Thailand, currently falling within CN code ex 2917 36 00. This CN code is given for information only.

It is alleged that the producers of the product under investigation originating in Thailand have benefited from a number of subsidies granted by the Government of Thailand. The subsidies consist, inter alia, of schemes conferring benefits to industries located in specific industrial areas being subject to privileges granted by the Thailand's Board of Investment to projects within the Investment Promotion Zone 3. These benefits include, inter alia, an exemption from import duty on machinery, an exemption from or reduction of corporate income tax, double deduction from taxable income of transportation, electricity and water costs, and an exemption from import duty on raw materials used in the manufacturing for export.

It is alleged that the above schemes are subsidies since they involve a financial contribution from the Government of Thailand and confer a benefit to the recipients, i.e. to the exporting producers of the product under investigation. They

are alleged to be limited to operators located in specified industrial areas and, therefore, specific and countervailable.

4. Allegation of injury

The complainants have provided evidence that imports of the product under investigation from Thailand have increased overall in absolute terms and in terms of market share.

The *prima facie* evidence provided by the complainants shows that the volume and the prices of the imported product under investigation have, among other consequences, had a negative impact on the level of prices charged by the Community industry, resulting in substantial adverse effects on the overall performance, the financial situation and the employment situation of the Community industry.

5. Procedure

Having determined, after consulting the Advisory Committee, that the complaint has been lodged by or on behalf of the Community industry and that there is sufficient evidence to justify the initiation of a proceeding, the Commission hereby initiates an investigation pursuant to Article 10 of the basic Regulation.

The investigation will determine whether the product under investigation originating in the country concerned is being subsidised and whether this subsidisation has caused injury to the Community industry. If the conclusions are affirmative, the investigation will examine whether it is in the Community interest to impose measures.

5.1. Procedure for the determination of subsidisation

Exporting producers ⁽²⁾ of the product under investigation from the country concerned are invited to participate in the Commission investigation.

5.1.1. Investigating exporting producers

In order to obtain the information it deems necessary for its investigation with regard to exporting producers in Thailand, the Commission will send questionnaires to the

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ An exporting producer is any company in the country concerned which produces and exports the product under investigation to the European Union market, either directly or via third party, including any of its related companies involved in the production, domestic sales or exports of the product concerned. Non-producing exporters are normally not entitled to an individual duty rate.

known exporting producers in the country concerned, to any known association of exporting producers, and to the authorities of this exporting country. All exporting producers and associations of exporting producers are invited to contact the Commission immediately, by fax or by e-mail, but no later than 15 days after the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified, in order to make themselves known and to request a questionnaire.

The exporting producers must submit the completed questionnaire within 37 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified.

5.1.2. Investigating unrelated importers ⁽³⁾

In view of the potentially large number of unrelated importers involved in this proceeding and in order to complete the investigation within the statutory time-limits, the Commission may limit to a reasonable number the unrelated importers that will be investigated by selecting a sample (this process is also referred to as 'sampling'). The sampling will be carried out in accordance with Article 27 of the basic Regulation.

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all unrelated importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission. These parties should do so within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified, by providing the Commission with the following information on their company or companies:

name, address, e-mail address, telephone and fax numbers and contact person,

the precise activities of the company with regard to the product under investigation,

the volume in tonnes and value in euro of imports into and resales made on the European Union ('EU') market during the period 1 December 2008 to 30 November 2009 of the imported product under investigation originating in Thailand,

⁽³⁾ Only importers not related to exporting producers can be sampled. Importers that are related to exporting producers have to fill in Annex 1 to the questionnaire for these exporting producers. For the definition of a related party see footnote 4.

the names and the precise activities of all related companies ⁽⁴⁾ involved in the production and/or sales of the product under investigation,

any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is selected to be part of the sample, this will imply completing a questionnaire and accepting a visit at its premises in order to verify its response ('on-spot verification'). If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The Commission findings for non-cooperating importers are based on the facts available and the result may be less favourable to that party than if it had cooperated.

In order to obtain the information it deems necessary for the selection of the sample of unrelated importers, the Commission may also contact any known associations of importers.

All interested parties wishing to submit any other relevant information regarding the selection of the sample, excluding the information requested above, must do so within 21 days of the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified.

If a sample is necessary, the importers may be selected based on the largest representative volume of sales in the EU which can reasonably be investigated within the time available. All known unrelated importers and associations of importers will be notified by the Commission of the companies selected to be in the sample.

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to

⁽⁴⁾ In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognized partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife; (ii) parent and child; (iii) brother and sister (whether by whole or half blood); (iv) grandparent and grandchild; (v) uncle or aunt and nephew or niece; (vi) parent-in-law and son-in-law or daughter-in-law; (vii) brother-in-law and sister-in-law (OJ L 253, 11.10.1993, p. 1). In this context 'person' means any natural or legal person.

the sampled unrelated importers and to any known association of importers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified. The completed questionnaire will contain information on, inter alia, the structure of their company(ies), the activities of the company(ies) in relation to the product under investigation and on the sales of the product under investigation.

5.2. Procedure for the determination of injury

Injury means material injury to the Community industry, or threat of material injury to the industry, or material retardation of the establishment of such an industry. A determination of injury is based on positive evidence and involves an objective determination of the volume of subsidised imports, their effect on prices in the importing country and the consequent impact of those imports on the Community industry. In order to establish whether the Community industry is materially injured, Community producers of the product under investigation are invited to participate in the Commission investigation.

5.2.1. Investigating Community producers

In view of the potentially large number of Community producers involved in this proceeding and in order to complete the investigation within the set time limits, the Commission may limit to a reasonable number the Community producers that will be investigated by selecting a sample (this process is also referred to as 'sampling'). The sampling will be carried out in accordance with Article 27 of the basic Regulation.

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all Community producers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission. These parties should do so within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified, by providing the Commission with the following information on their company or companies:

name, address, e-mail address, telephone and fax numbers and contact person,

the precise activities of the company worldwide with regard to the product under investigation,

the value in euro of sales of the product under investigation made on the EU market during the period 1 December 2008 to 30 November 2009,

the volume in tonnes of sales of the product under investigation made on the EU market during the period 1 December 2008 to 30 November 2009,

the volume in tonnes of the production of the product under investigation during the period 1 December 2008 to 30 November 2009,

the volume in tonnes imported into the EU of the product under investigation produced in the country concerned during the period 1 December 2008 to 30 November 2009, if applicable,

the names and the precise activities of all related companies ⁽⁵⁾ involved in the production and/or sales of the product under investigation (whether produced in the European Union or in the country concerned),

any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is selected to be part of the sample, this will imply completing a questionnaire and accepting a visit at its premises in order to verify its response ('on-spot verification'). If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The Commission findings for non-cooperating Community producers are based on the facts available and the result may be less favourable to that party than if it had cooperated.

In order to obtain the information it deems necessary for the selection of the sample of Community producers, the Commission may also contact any known associations of Community producers.

All interested parties wishing to submit any other relevant information regarding the selection of the sample, excluding the information listed above, must do so within 21 days of the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified.

If a sample is necessary, the Community producers may be selected based on the largest representative volume of sales in the European Union which can reasonably be investigated within the time available. All known Community producers and associations of Community producers will be notified by the Commission of the companies selected to be in the sample.

⁽⁵⁾ See footnote 4.

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled Community producers and to any known association of Community producers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified. The completed questionnaire will contain information on, inter alia, the structure of their company(ies), the financial situation of the company(ies), the activities of the company(ies) in relation to the product under investigation, the cost of production and the sales of the product under investigation.

5.3. Procedure for the assessment of Community interest

Should the existence of subsidisation and injury caused thereby be established, a decision will be reached as to whether the adoption of countervailing measures would be against the Community interest pursuant to Article 31 of the basic Regulation. Community producers, importers and their representative associations, representative users and representative consumer organisations are invited to make themselves known within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. In order to participate in the investigation, the representative consumer organisations have to demonstrate, within the same deadline, that there is an objective link between their activities and the product under investigation.

Parties that make themselves known within the above deadline may provide the Commission with information on whether the imposition of measures is in the Community interest within 37 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. This information may be provided either in a free format or by completing a questionnaire prepared by the Commission. In any case, information submitted pursuant to Article 31 will only be taken into account if supported by factual evidence at the time of submission.

5.4. Other written submissions

Subject to the provisions of this notice, all interested parties are hereby invited to make their views known, submit information and provide supporting evidence. Unless otherwise specified, this information and supporting evidence should reach the Commission within 37 days of the date of publication of this notice in the *Official Journal of the European Union*.

5.5. Possibility to be heard by the Commission investigation services

All interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15

days of the date of publication of this notice in the *Official Journal of the European Union*. Thereafter, a request to be heard should be submitted within the specific deadlines set by the Commission in its communication with the parties.

5.6. Procedure for making written submissions and sending completed questionnaires and correspondence

All submissions, including information submitted for the selection of the sample, completed questionnaires and updates thereof, made by interested parties must be made in writing in both paper and electronic format, and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. If an interested party cannot provide its submissions and requests in electronic format for technical reasons, it must immediately inform the Commission.

All written submissions, including the information requested in this notice, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Limited' ⁽⁶⁾.

Interested parties providing 'Limited' information are required to furnish non-confidential summaries of it pursuant to Article 29(2) of the basic Regulation, which will be labelled 'For inspection by interested parties'. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such confidential information may be disregarded.

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6. Non-cooperation

In cases where any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 28 of the basic Regulation.

⁽⁶⁾ This document is a confidential document pursuant to Article 29 of the basic Regulation and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures. It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

Where it is found that any interested party has supplied false or misleading information, the information may be disregarded and use may be made of facts available.

If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 28 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

7. Hearing Officer

Interested parties may request the intervention of the Hearing Officer of Trade DG. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes on the confidentiality of documents, requests for extension of time limits and requests by third parties to be heard. The Hearing Officer may organise a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised.

A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this notice in the *Official Journal of the European Union*. Thereafter, a request to be heard must be submitted within specific deadlines set by the Commission in its communication with the parties.

The Hearing Officer will also provide opportunities for a hearing involving parties to take place which would allow different views to be presented and rebuttal arguments offered on issues pertaining, among others, to subsidisation, injury, causal link and Community interest. Such a hearing would, as a rule, take place at the latest at the end of the fourth week following the disclosure of provisional findings.

For further information and contact details interested parties may consult the Hearing Officer's web pages on Trade DG's website: http://ec.europa.eu/trade/issues/respectrules/ho/index_en.htm

8. Schedule of the investigation

The investigation will be concluded, according to Article 11(9) of the basic Regulation within 13 months of the date of the publication of this notice in the *Official Journal of the European Union*. According to Article 12(1) of the basic Regulation, provisional measures may be imposed no later than 9 months from the publication of this notice in the *Official Journal of the European Union*.

9. Processing of personal data

Any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽⁷⁾.

⁽⁷⁾ OJ L 8, 12.1.2001, p. 1.