COMMISSION DECISION

of 28 September 2010

terminating the anti-dumping proceeding concerning imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates and releasing the amounts secured by way of the provisional duties imposed

(2010/577/EU)

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 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Provisional measures

(1) On 3 September 2009, the Commission announced, by a notice published in the *Official Journal of the European Union* [2], 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). On 1 June 2010, the Commission, by Regulation (EU) No 472/2010 [3] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of certain polyethylene terephthalate originating in Iran and the United Arab Emirates.

(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 11 of the provisional Regulation, 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 IP (period considered).

(4) In the parallel anti-subsidy proceeding, the Commission by Regulation (EU) No 473/2010 [4] imposed a provisional countervailing duty on imports of certain polyethylene terephthalate originating in Iran and the United Arab Emirates.

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 anti-dumping 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 termination of the proceeding and the release of amounts secured by way of provisional duties imposed (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] OJ L 343, 22.12.2009, p. 51.
[2] OJ C 208, 3.9.2009, p. 12.
[3] OJ L 134, 1.6.2010, p. 4.
[4] OJ L 134, 1.6.2010, p. 25.

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 17(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 14 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 accept this consolidated reporting and 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 17(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 findings, recitals 3 to 10 of the provisional Regulation are hereby confirmed.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

(17) It is recalled that, in recital 12 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 14 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 dumping and 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 applications for the PET types produced. It was considered that the claim should be accepted and the methodology for calculating the dumping and injury margins was adapted accordingly.

C. **DUMPING**

(21) As explained in recital 20, the methodology for the calculation of the dumping margin was adapted and the dumping margin for each country concerned is now calculated for each product type separately.

1. **Iran**

1.1. *Normal value*

(22) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recitals 16 to 18 of the provisional Regulation is confirmed.

1.2. *Export price*

(23) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recital 19 of the provisional Regulation is confirmed.

1.3. *Comparison*

(24) In recital 23 of the provisional Regulation it was stated that the Iranian exporter was not able to quantify the alleged impact of the sanctions against Iran in a way that could be supported by any evidence. In its comments to the provisional Regulation, the company claimed that it would be upon the investigating authority to ensure a fair comparison, not the exporter. However, in accordance with Article 2(10)(k) of the basic Regulation, an adjustment may be made for differences in other factors if it is demonstrated that they affect the price comparability, in particular that customers consistently pay different prices on the domestic market because of the differences in such factors. As it is for the exporting producer to demonstrate the existence of any other factor, the claim is rejected and the methodology explained in recitals 20 to 23 of the provisional Regulation is confirmed.

1.4. *Dumping margin*

(25) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recitals 24 to 25 of the provisional Regulation is confirmed.

(26) The definitive dumping margin for Iran, expressed as a percentage of the cif Union frontier price, duty unpaid, is 26,8 %.

2. **Pakistan**

2.1. *Normal value*

(27) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recitals 27 to 29 of the provisional Regulation is confirmed.

2.2. *Export price*

(28) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recital 30 of the provisional Regulation is confirmed.

2.3. *Comparison*

(29) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recitals 31 to 32 of the provisional Regulation is confirmed.

2.4. *Dumping margin*

(30) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recital 33 of the provisional Regulation is confirmed.

(31) The definitive dumping margin for the sole Pakistani exporting producer, Novatex Limited, expressed as a percentage of the cif Union frontier price, duty unpaid, is 0,6 %, i.e. below *de minimis* in the sense of Article 9(3) of the basic Regulation.

(32) Since there are no other producers of the product concerned in Pakistan, no definitive measures should be imposed.

3. **United Arab Emirates**

3.1. *Normal value*

(33) Following the change in methodology explained in recitals 20 and 21, the results of the ordinary course of trade test as described in recitals 37 and 38 of the provisional Regulation changed with regard to some product types. Thus, where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only.

(34) Where there were no profitable sales of a certain product type, it was considered that this product type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(35) Wherever domestic prices of a particular product type sold by the exporting producers could not be used in order to establish normal value, the normal value was constructed in accordance with Article 2(3) of the basic Regulation.

(36) When constructing normal value pursuant to Article 2(3) of the basic Regulation, the amounts for selling, general and administrative costs and for profits have been based, pursuant to Article 2(6) of the basic Regulation, on the actual data pertaining to the production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation.

3.2. *Export price*

(37) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recital 39 of the provisional Regulation is confirmed.

3.3. *Comparison*

(38) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recitals 40 to 41 of the provisional Regulation is confirmed.

3.4. *Dumping margin*

(39) In the absence of any comments other than those already mentioned in the above recitals 20 and 21, the methodology explained in recital 42 of the provisional Regulation is confirmed.

(40) The definitive dumping margin for the sole UAE exporting producer, JBF RAK LLC, expressed as a percentage of the cif Union frontier price, duty unpaid, is 0,6 %, i.e. below *de minimis* in the sense of Article 9(3) of the basic Regulation.

(41) Since there are no other producers of the product concerned in the UAE, no definitive measures should be imposed.

D. **INJURY**

1. **Union production, Union industry and Union consumption**

(42) No comments have been received with regard to Union production, Union industry and Union consumption. Consequently, the recitals 45 to 50 of the provisional Regulation are hereby confirmed.

2. **Imports from the countries concerned**

2.1. *Cumulative assessment of the effects of the imports concerned*

(43) It is reiterated that in recital 52 of the provisional Regulation, it was considered that as the dumping margin found for Pakistan was *de minimis*, the effect of those imports could not be assessed together with imports provisionally found to be dumped from Iran and the UAE.

(44) Given that the further investigation showed that the dumping margin for the UAE is also *de minimis*, it is considered that the effect of those imports cannot be assessed together with dumped imports from Iran. Consequently, no cumulative assessment of the imports is made.

2.2. *Volume of the imports concerned*

(45) The volume of dumped imports of the product concerned into the EU started from a relatively low level in 2006, but increased gradually until the IP, reaching 55 500 tonnes in the IP. More specifically, imports from Iran more than doubled between 2006 and 2007, before further increasing by over 100 percentage points in 2008 compared to 2007 and almost another 130 percentage points between 2008 and the IP.

Table 1

	2006	2007	2008	IP
Volume of dumped imports from Iran (tonnes)	11 752	26 624	40 101	55 500
Index (2006 = 100)	100	227	341	472
Market share of dumped imports from Iran	0,4 %	0,9 %	1,4 %	1,9 %

Source: Eurostat.

2.3. *Market share of the imports concerned*

(46) The market share held by dumped imports from Iran stood at 0,4 % during 2006 and increased steadily by 1,5 percentage points throughout the period considered. More specifically, it rose by 0,5 percentage points between 2006 and 2007, by further 0,5 percentage points between 2007 and 2008 and by 0,5 percentage points between 2008 and the IP. In the IP, the market share of dumped imports from Iran was 1,9 %.

2.4. *Prices*

(i) Price evolution

(47) The average import price decreased by 11 % in the period considered with the sharpest decline between 2008 and the IP. More specifically, the average price remained stable in 2007 and decreased by 2 percentage points in 2008, before dropping by further 9 percentage points in the IP.

Table 2

	2006	2007	2008	IP
Price of imports from the Iran (EUR/tonne)	1 033	1 034	1 008	920
Index	100	100	98	89

Source: Eurostat.

(ii) Price undercutting

(48) Following the provisional disclosure, the Iranian exporter commented that its injury margin was overstated since the weighted average unit sales price established was understated, incorrectly calculating the amount of level of trade adjustment; however, no alternative quantification of the level of trade adjustment was proposed. Indeed, the basis for the level of trade used for the provisional calculation was a fixed amount per tonne that is a commission charged by the cooperating importing agent and represent around 1 % of the average cif price. No other information is available for such adjustment and the claim is thus rejected. The same party also claimed that the 2 % rate taken for post-importation costs appeared to be understated. It is reiterated in this regard that no importer cooperated in this investigation and it was not possible to verify the actual post-importation cost. Thus, in absence of any other information available, the rate used in previous proceedings was applied.

(49) Given the above, it is definitively confirmed that the dumped products originating in Iran sold in the Union undercut the prices of the Union industry by 3,2 %.

3. **Situation of the Union industry**

(50) Some interested parties claimed that injury did not exist as given the alleged wrong sample no results could be extrapolated for the total Union industry. As an example it was claimed that since one company (not in the sample) had indicated that it was using over 100 % of its capacity it would be a clear sign of no injury. It is noted that the information submitted is an extract of this company's submission to the stock exchange authorities and not verified. This information does not square with the information on the file. Moreover, and in any event, the capacity utilisation of one EU producer alone cannot alter the findings of injury concerning almost all other injury indicators for the sampled EU producers and the other EU producers.

(51) In the absence of any other claims or comments, recitals 63 to 82 of the provisional Regulation are hereby confirmed.

4. **Conclusion on injury**

(52) In the absence of any specific comments, the conclusion on injury laid down in recitals 83 to 85 of the provisional Regulation is hereby confirmed.

E. **CAUSATION**

1. **Effect of the dumped imports**

(53) The increase in the volume of the dumped imports from Iran by almost five times between 2006 and the IP, and of its corresponding share of the Union market, i.e. by 1,5 percentage points, as well as the undercutting found (3,2 % during the IP) generally coincided with the deterioration of the economic situation of the Union industry. Therefore, it can be concluded that dumped imports from Iran had an impact on the injury found to the Union industry.

(54) It is important to stress that in the parallel anti-subsidy proceeding, the cumulated subsidised imports from Pakistan, the UAE and Iran were found to cause material injury to the Union industry.

(55) On the other hand, given the considerable volumes and the low prices of imports from Korea and Pakistan, it is also confirmed, as stated in recitals 94 and 96 of the provisional Regulation, that those imports contributed to a certain extent to the injury suffered by the Union industry.

(56) Additionally, in this proceeding, considerable imports from the UAE (around 150 000 t) were also undercutting the Union industry prices.

(57) At the same time, the market share of the Iranian imports was below 1 % in 2006 and in 2007 and in the IP it was only close to 2 %, corresponding to 55 000 t.

(58) It also has to be noted that the undercutting established for the Iranian producer was lower than in the case of non-dumped imports from the UAE.

2. **Conclusion on causation**

(59) In conclusion, while the above analysis showed that dumped imports originating in Iran have had some negative impact on the situation of the Union industry, this impact, taken in isolation, did not exist to a degree that could be considered material as required by Article 3(6) of the basic Regulation.

F. **TERMINATION OF THE PROCEEDING**

(60) The investigation has shown that imports of the product concerned from Pakistan and from the UAE were not sold at dumped prices. Consequently the proceeding with regard to Pakistan and the UAE shall be terminated without the imposition of measures.

(61) The investigation has shown that imports of the product concerned from Iran were made at dumped prices and contributed to some extent to the injury suffered by the Union industry.

(62) However, as indicated in recital 59, it was established that the negative impact of the Iranian imports on the situation of the Union industry did not exist to a degree that would enable it to be classified as material.

(63) In light of the above, considering the lack of material injury caused by the dumped imports originating in Iran, it is concluded that the proceeding should be terminated without the imposition of measures also with regard to Iran.

(64) The amounts secured by way of the provisional anti-dumping duty imposed pursuant to Regulation (EU) No 472/2010 should be released,

HAS ADOPTED THIS DECISON:

Article 1

The anti-dumping proceeding concerning imports of poly-ethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in Iran, Pakistan and the United Arab Emirates is hereby terminated.

Article 2

Regulation (EU) No 472/2010 is hereby repealed. The amounts secured by way of the provisional anti-dumping duty imposed pursuant to Regulation (EU) No 472/2010 on imports of poly-ethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in Iran and the United Arab Emirates shall be released.

Article 3

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 28 September 2010.

For the Commission
The President
José Manuel BARROSO