

DECISIONS

COMMISSION DECISION

of 24 April 2013

amending Decision 2000/745/EC accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand

(2013/223/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 anti-dumping Regulation'), and in particular Articles 8 and 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. EXISTING MEASURES

- (1) The Council, by Regulation (EC) No 192/2007⁽²⁾, imposed a definitive anti-dumping duty on imports of certain polyethylene terephthalate ('PET') originating in India, Indonesia, Malaysia, the Republic of Korea, Thailand and Taiwan following an expiry review and a partial interim review. The measures were originally imposed in August 2000⁽³⁾. Measures are currently subject to another expiry review⁽⁴⁾.
- (2) The Commission, by Decision 2000/745/EC⁽⁵⁾ ('the Decision'), accepted a price undertaking ('the undertaking'), inter alia, from the Indonesian company P.T. Polypet Karyapersada ('Polypet'). Following the findings and conclusions relating to a 'new exporter' review⁽⁶⁾, the Commission, by Decision 2002/232/EC⁽⁷⁾ amending Decision 2000/745/EC, accepted an undertaking from the Indian company Futura Polyesters Limited ('Futura').

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 59, 27.2.2007, p. 1.

⁽³⁾ OJ L 199, 5.8.2000, p. 48.

⁽⁴⁾ OJ C 55, 24.2.2012, p. 4.

⁽⁵⁾ OJ L 301, 30.11.2000, p. 88.

⁽⁶⁾ OJ L 78, 21.3.2002, p. 4.

⁽⁷⁾ OJ L 78, 21.3.2002, p. 12 and OJ C 116, 15.5.2003, p. 2.

B. OBLIGATIONS ARISING FROM THE UNDERTAKING

- (3) One of the fundamental obligations arising from an undertaking is the quarterly reporting of sales, which enables the Commission to effectively monitor the undertaking. The monitoring obligation also covers the situation that no sales were carried out during a given quarter (a so-called 'no sales' report).
- (4) In addition, the exporting producers must immediately notify the Commission of any changes of the corporate structure of the company which might occur during the application of the undertaking.
- (5) The provisions of the undertaking stipulate that failure to cooperate with the Commission on these issues shall be considered as a breach of the undertaking. A recent ruling of the Court of Justice⁽⁸⁾ also confirmed that reporting obligations must be regarded as primary obligations for the proper functioning of an undertaking.

C. BREACHES OF THE UNDERTAKING

- (6) The company Polypet did not send any sales report regarding the third quarter 2012, despite repetitive reminders. In addition, contrary to the provisions of the undertaking to which the company committed, Polypet did not inform the Commission immediately that its assets had been sold to another Indonesian company in August 2012. No report was received regarding the fourth quarter 2012.
- (7) The company Futura did not send any reports for the third and fourth quarter 2012, despite repetitive reminders.
- (8) These failures to submit reports and notifications on the change of company structure qualify as continuous non-cooperation, thus breaching the provisions of the undertakings. This justifies withdrawing both undertakings.

⁽⁸⁾ Case C-552/10 P, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=130244&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=825501>

D. WRITTEN SUBMISSIONS

- (9) Both companies were granted the opportunity to be heard and make written submissions. No written submissions were received from the companies.

E. AMENDMENT OF DECISION 2000/745/EC

- (10) Therefore, in accordance with Article 8(9) of the basic anti-dumping Regulation and also in accordance with the relevant clauses of the undertakings authorising the Commission to withdraw the undertaking, the Commission has concluded that the acceptance of the undertakings offered by the companies Polypet and Futura should be withdrawn and Decision 2000/745/EC as amended by Decision 2002/232/EC should be amended. Accordingly, the definitive anti-dumping duties imposed by Article 1 of Regulation (EC) No 192/2007 should automatically apply to imports of PET manufactured by the companies Polypet and Futura (TARIC additional code A193 for Polypet and TARIC additional code A184 for Futura),

HAS ADOPTED THIS DECISION:

Article 1

The acceptance of the undertakings in relation to the companies P.T. Polypet Karyapersada, Indonesia (TARIC additional code A193) and Futura Polyesters Limited, India (TARIC additional code A184) is hereby withdrawn.

Article 2

The table of Article 1 in Decision 2000/745/EC is replaced by the following table:

Country	Companies	TARIC additional code
India	Reliance Industries Limited	A181
India	Pearl Engineering Polymers Limited	A182
India	Dhunseri Petrochem & Tea Limited	A585'

Article 3

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

Done at Brussels, 24 April 2013.

For the Commission

The President

José Manuel BARROSO