

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

COMMISSION

Notice of initiation of an anti-subsidy proceeding concerning imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates

(2009/C 208/07)

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 ('the basic Regulation')⁽¹⁾, alleging that imports of certain polyethylene terephthalate, originating in Iran, Pakistan and the United Arab Emirates ('the countries concerned'), are being subsidised and are thereby causing material injury to the Community industry.

1. Complaint

The complaint was lodged on 20 July 2009 by 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 Community production of certain polyethylene terephthalate ('PET').

2. Product

The product allegedly being subsidised 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. This CN code is given only for information.

3. Allegation of subsidisation

(a) Iran

It is alleged that the sole producer of the product concerned in Iran has benefited from a number of subsidies granted by the Government of Iran. The subsidies consist of schemes conferring benefits to industries located in the Petrochemical Special Economic Zone including inter alia capital tax exemption, direct income tax exemption and imports of raw materials and capital goods without the payment of import duties.

It is alleged that the above schemes are subsidies since they involve a financial contribution from the Government of Iran and confer a benefit to the recipient, i.e. to the sole

exporting producer of the product concerned. They are alleged to be limited to operators located in special economic zones and therefore specific and countervailable.

(b) Pakistan

It is alleged that the producers of the product concerned in Pakistan have benefited from a number of subsidies granted by the Government of Pakistan. The subsidies consist of schemes conferring benefits to industries recognised as value-added or export industries. They include inter alia exemption from customs duty on imported raw materials used in manufacturing for export, reduction in customs duty levied on imports of plant, machinery and equipment, tax relief in the form of a first-year-allowance on investments in plant, machinery and equipment, and re-investment allowance.

It is alleged that the above schemes are subsidies since they involve a financial contribution from the Government of Pakistan and confer a benefit to the recipients, i.e. to exporters/producers of the product concerned. They are alleged to be limited to value-added and export industries and therefore specific and countervailable.

(c) United Arab Emirates

It is alleged that the sole producer of the product concerned in the United Arab Emirates has benefited from a number of subsidies granted by the Government of the United Arab Emirates. The subsidies consist of schemes conferring benefits inter alia to export-oriented industries as well as industries established in areas determined by the Government. They include inter alia assignment of a building-site for projects, either free or at a reduced price, rent on the necessary industrial buildings at optimal conditions, supply of electricity and water at incentive rates, customs-free imports of raw materials and capital goods, tax-exemption for the profits made by projects, re-investment allowances, exemption of locally made products from duties and taxes and subsidies to exports.

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

It is alleged that the above schemes are subsidies since they involve a financial contribution from the Government of the United Arab Emirates and confer a benefit to the recipient, i.e. to the sole exporting producer of the product concerned. They are alleged to be primarily given to certain specified types of projects including export-oriented projects and projects located in areas determined by the Government, and therefore specific and countervailable.

4. Allegation of injury

The complainant has provided evidence that imports of the product concerned from Iran, Pakistan and the United Arab Emirates have increased overall in absolute terms and in terms of market share.

It is alleged that the volumes and the prices of the imported product concerned have, among other consequences, had a negative impact on the market share held and the level of prices charged by the Community industry, resulting in substantial adverse effects on the financial situation and the situation with regard to employment, 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.

5.1. Procedure for the determination of subsidisation and injury

The investigation will determine whether the product concerned originating in Iran, Pakistan and the United Arab Emirates is being subsidised and whether this subsidisation has caused injury.

(a) Sampling

In view of the apparent large number of parties involved in this proceeding, the Commission may decide to apply sampling in accordance with Article 27 of the basic Regulation.

(i) Sampling for importers

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission and to provide the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone and fax numbers, and contact person,
- the total turnover in euro of the company during the period 1 July 2008 to 30 June 2009,

- the total number of employees,
- the precise activities of the company with regard to the product concerned/like product,
- the volume in tonnes and value in euro of imports into and resales made in the Community market during the period 1 July 2008 to 30 June 2009 of the imported product concerned originating in Iran, Pakistan and the United Arab Emirates,
- the names and the precise activities of all related companies⁽¹⁾ involved in the production and/or selling of the product concerned/like product,
- 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 chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion or inclusion in the sample, it will be deemed to not have cooperated in the investigation. The consequences of non-cooperation are set out in point 8 below.

In order to obtain the information it deems necessary for the selection of the sample of importers, the Commission will, in addition, contact any known associations of importers.

(ii) Sampling for Community producers

In view of the large number of Community producers supporting the complaint, the Commission intends to investigate injury to the Community industry by applying sampling.

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 provide the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone and fax numbers, and contact person,
- the total turnover in euro of the company during the period 1 July 2008 to 30 June 2009,

⁽¹⁾ For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

- the precise activities of the company worldwide with regard to the like product,
- the value in euro of sales of the like product made in the Community market during the period 1 July 2008 to 30 June 2009,
- the volume in tonnes of sales of the like product made in the Community market during the period 1 July 2008 to 30 June 2009,
- the volume in tonnes of the production of the like product during the period 1 July 2008 to 30 June 2009,
- the names and the precise activities of all related companies ⁽¹⁾ involved in the production and/or selling of the like product,
- 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 chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed to not have cooperated in the investigation. The consequences of non-cooperation are set out in point 8 below.

(iii) Final selection of the samples

All interested parties wishing to submit any relevant information regarding the selection of the sample must do so within the time limit set in point 6(b)(ii).

The Commission intends to make the final selection of the samples after having consulted the parties concerned that have expressed their willingness to be included in the sample.

Companies included in the samples must reply to a questionnaire within the time limit set in point 6(b)(iii) and must cooperate within the framework of the investigation.

If sufficient cooperation is not forthcoming, the Commission may base its findings, in accordance with Articles 27(4) and 28 of the basic Regulation, on the facts available. A finding based on facts available may be less advantageous to the party concerned, as explained in point 8.

⁽¹⁾ For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

(b) Questionnaires

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled Community industry and to any association of producers in the Community, to the exporters/producers in Iran, Pakistan and the United Arab Emirates, to any known association of exporters/producers, to the sampled importers, to any known association of importers, and to the authorities of the exporting countries concerned.

(c) Collection of information and holding of hearings

All interested parties are hereby invited to make their views known, submit information other than questionnaire replies and to provide supporting evidence. This information and supporting evidence has to reach the Commission within the time limit set in point 6(a)(ii).

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in point 6(a)(iii).

5.2. Procedure for assessment of Community interest

In accordance with Article 31 of the basic Regulation and in the event that the allegations of subsidisation and injury caused thereby are substantiated, a decision will be reached as to whether the adoption of countervailing measures would not be against the Community interest. For this reason the Commission may send questionnaires to the sampled Community industry, importers, their representative associations, representative users and representative consumer organisations. Such parties, including those not known to the Commission, provided that they prove that there is an objective link between their activity and the product concerned, may, within the general time limits set in point 6(a)(ii), make themselves known and provide the Commission with information. The parties which have acted in conformity with the preceding sentence may request a hearing setting the particular reasons why they should be heard within the time limit set in point 6(a)(iii). It should be noted that any information submitted pursuant to Article 31 of the basic Regulation will only be taken into account if supported by factual evidence at the time of submission.

6. Time limits

(a) General time limits

(i) For parties to request a questionnaire

All interested parties should request a questionnaire as soon as possible, but not later than 10 days after the publication of this notice in the *Official Journal of the European Union*.

- (ii) For parties to make themselves known, to submit questionnaire replies and any other information

All interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views and submit questionnaire replies or any other information within 40 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the aforementioned period.

Companies selected in a sample must submit questionnaire replies within the time limits specified in point 6(b)(iii).

(iii) Hearings

All interested parties may also apply to be heard by the Commission within the same 40-day time limit.

(b) Specific time limit in respect of sampling

- (i) The information specified in points 5.1(a)(i) and 5.1(a)(ii) should reach the Commission within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, given that the Commission intends to consult parties concerned that have expressed their willingness to be included in the sample on its final selection within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.
- (ii) All other information relevant for the selection of the sample as referred to in point 5.1(a)(iii) must reach the Commission within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.
- (iii) The questionnaire replies from sampled parties must reach the Commission within 37 days from the date of the notification of their inclusion in the sample.

7. Written submissions, questionnaire replies and correspondence

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this notice, questionnaire replies and correspondence provided by interested

parties on a confidential basis shall be labelled as 'Limited' ⁽¹⁾ and, in accordance with Article 29(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties'.

Commission address for correspondence:

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8. Non-cooperation

In cases in which 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 in accordance with Article 28 of the basic Regulation, on the basis of the facts available.

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

9. 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*.

10. Processing of personal data

It is noted that 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 of 18 December 2000 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 ⁽²⁾.

⁽¹⁾ This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 29 of the basic Regulation and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures.

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

11. Hearing Officer

It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of Trade DG. He acts as an interface between the interested parties and the Commission services, offering,

where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with regard to issues concerning access to file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details interested parties may consult the Hearing Officer's web pages of the website of Trade DG (<http://ec.europa.eu/trade>).
