

## COMMISSION DECISION

of 19 January 2011

## terminating the anti-subsidy proceeding concerning imports of purified terephthalic acid and its salts originating in Thailand

(2011/31/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community<sup>(1)</sup> ('the basic Regulation'), and in particular Article 14 thereof,

After consulting the Advisory Committee,

Whereas:

## 1. PROCEDURE

## 1.1. Initiation

- (1) On 22 December 2009, the European Commission (the 'Commission') announced by a notice published in the *Official Journal of the European Union*<sup>(2)</sup> ('Notice of initiation'), the initiation of an anti-subsidy proceeding concerning imports into the Union of purified terephthalic acid and its salts ('PTA') originating in Thailand ('the country concerned').
- (2) The anti-subsidy proceeding was initiated following a complaint lodged on 13 November 2009 by BP Aromatics Limited NV and CEPESA Química S.A. ('the complainants') representing a major proportion, in this case more than 50 %, of the total Union production of PTA. The complaint contained *prima facie* evidence of subsidisation of the product concerned originating in the country concerned and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.
- (3) On the same day, the Commission announced, by a notice published in the *Official Journal of the European Union*<sup>(3)</sup>, the initiation of an anti-dumping proceeding with regard to imports into the Union of PTA originating in Thailand. This investigation has been terminated by means of Commission Decision 2011/32/EU<sup>(4)</sup>.
- (4) Prior to the initiation of the proceeding and in accordance with Article 10(7) of the basic Regulation, the Commission notified the Government of Thailand that it had received a properly documented complaint alleging that subsidised imports of PTA originating in Thailand were causing material injury to the Union industry. The Government of Thailand was invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a

mutually agreed solution. The Government of Thailand accepted the offer of consultations and consultations were subsequently held. During the consultations, no mutually agreed solution could be arrived at. However, due note was taken of comments made by the authorities of Thailand in regard to the allegations contained in the complaint regarding the lack of countervailability of the schemes. During the consultations, submissions were received from the Government of Thailand.

## 1.2. Parties concerned by the proceeding

- (5) The Commission officially advised the complainants, other known producers in the Union, the known exporting producers in Thailand, the representatives of the exporting country concerned and known importers and users 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 out in the Notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.
- (6) The Commission sent questionnaires to the authorities of the exporting country, the complainants, other known producers in the Union, the known exporting producers in Thailand and to the known importers and users of product concerned and to all other parties that requested a questionnaire within the deadlines set out in the Notice of initiation.
- (7) Questionnaire replies were received from the authorities of Thailand, from the three known Thai exporting producers, from three Union producers, from one Union importer, and from five Union users.
- (8) The Commission sought and verified all the information deemed necessary for the determination of subsidisation, resulting injury and Union interest.
- (9) Verification visits were carried out at the premises of the following State authorities:
 

Office of Board of Investment, Bangkok, Thailand.
- (10) Verification visits were carried out at the premises of the following companies:
  - (a) Union producers:
    - BP Aromatics Limited NV, Geel, Belgium,
    - CEPESA Química, S.A., Madrid, Spain,
    - Lotte Chemical UK Ltd (formerly Artenius), Wilton, Redcar, United Kingdom;

<sup>(1)</sup> OJ L 188, 18.7.2009, p. 93.

<sup>(2)</sup> OJ C 313, 22.12.2009, p. 22.

<sup>(3)</sup> OJ C 313, 22.12.2009, p. 17.

<sup>(4)</sup> See page 22 of this Official Journal.

## (b) Union importers:

- Mitsui & Co. Benelux NV, Brussels, Belgium;

## (c) Union users:

- DSM Powder Coating Resins B.V., Zwolle, Netherlands,
- M&G Polimeri Italia SPA, Patrica (Frosinone), Italy,
- NOVAPET S.A., Barbastro (Huesca), Spain,
- UAB NEO Group, Klaipeda, Lithuania;

## (d) Exporting producers in Thailand:

- TPT Petrochemicals Public Company Ltd, Bangkok, Thailand (hereinafter 'TPT'),
- TPT Petrochemicals Public Company Ltd, Rayong, Thailand (hereinafter 'TPT'),
- Indorama Petrochem Ltd, Rayong, Thailand (hereinafter 'Indorama'),
- Siam Mitsui PTA Company Ltd, Rayong, Thailand (hereinafter 'SMPC').

- (11) Given that both TPT and Indorama are owned by the same holding company, they will be referred to in this document as the 'Indorama group'.

### 1.3. Investigation period and period considered

- (12) The investigation of subsidisation and injury covered the period from 1 December 2008 to 30 November 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 ('the period considered').

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product concerned

- (13) The product concerned is terephthalic acid and its salts of a purity by weight of 99,5 % or more, currently falling within CN code ex 2917 36 00 ('the product concerned').
- (14) PTA is obtained by the purification of crude terephthalic acid, which is a result of making paraxylene (PX) react with a solvent and a catalyst solution.

### 2.2. Like product

- (15) The product concerned and the PTA produced and sold on the domestic market of Thailand, as well as the PTA produced and sold in the Union by the Union industry were found to have the same basic physical and chemical

characteristics and uses. They are therefore considered to be alike within the meaning of Article 2(c) of the basic Regulation.

## 3. SUBSIDISATION

### 3.1. Introduction

- (16) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involved the granting of subsidies by a Governmental authority, were investigated:

- exemption or reduction on duties on imports of machinery,
- exemption from corporate income tax,
- exemption of import duties on raw and essential materials used in the manufacturing of export products,
- double deduction from taxable income of transportation, electricity and water costs for 10 years from the date of first revenue derived from the promoted activity,
- deduction from net profit of 25 % of the project's infrastructure installation or construction costs in addition to normal depreciation,
- tax and duty compensation of the exported goods produced in Thailand.

### 3.2. General

- (17) Investment Promotion Act B.E. 2544 ('IPA') provides incentives to promote development of the Thai economy. The IPA, which is administered by the Board of Investment of Thailand ('BOI'), grants the benefits resulting from the schemes mentioned in section 3.1. above with respect to the qualifying projects. In order to receive IPA benefits, each company makes an application to the BOI for a 'Certificate of promotion', which specifies the goods to be produced and benefits granted.
- (18) Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act B.E.2524 (1981) prescribes the criteria and conditions for the participation in tax and duty compensation of exported merchandise scheme. This scheme is administered by the Thai Ministry of Finance.
- (19) The sum of all calculated subsidies for each individual company is under the *de minimis* threshold, i.e. less than 2 % ad valorem. Therefore, in accordance with Article 14(3) and 14(5) of the basic anti-subsidy Regulation, even if all the subsidies in question were counter-avoidable, no anti-subsidy duties could be imposed on the Thai exporters. Because of the *de minimis* subsidisation the specificity of the subsidy schemes mentioned in recital 16 was not examined.

- (20) However, for the purpose of clarity, details of the schemes and the corresponding subsidy rates for individual companies are set out below, without prejudice to whether or not the subsidies are considered to be countervailable.

### 3.3. Individual Schemes

#### 3.3.1. Exemption or reduction on duties on imports of machinery

##### (a) Legal Basis

- (21) Article 28 of the IPA provides the legal basis for an exemption from duties on machinery imports. Under this scheme companies are entitled to the full exemption from payment of import duty on machinery as approved by the BOI, providing that no such machinery comparable in quality is being produced or assembled within Thailand. Article 29 of IPA provides the legal basis for the 50 % reduction on import duties on imported machinery.

##### (b) Practical implementation

- (22) In order to benefit from this scheme, the company must possess a Certificate of promotion which specifies that it is entitled to an exemption or reduction on duties on imports of machinery pursuant to Articles 28 and 29 of the IPA. The Customs Department will receive a copy of the licence and the so-called 'Master list of Machinery', previously approved by the BOI, and will, on importation of the machinery, release this machinery without import duty being paid.

##### (c) Calculation of the subsidy amount

- (23) The benefit to the exporters was calculated on the basis of the amount of unpaid customs duty due on imported capital goods, by spreading this amount across a period which reflects the normal depreciation of such capital goods in the industry of the product concerned. This period has been established to be 15 years, which is in line with the depreciation periods used by the majority of the companies producing product concerned, both in Thailand and in the EU. The amount so calculated which is attributable to the investigation period has been adjusted by adding interest during the investigation period, in order to establish the full benefit to the recipient under this scheme, the commercial interest rate in Thailand during the investigation period being considered appropriate. This amount has then been allocated over total sales during the investigation period.

##### (d) Conclusion

- (24) Indorama Group received a benefit of 0,3 %, and Siam Mitsui PTA Co., Ltd received a benefit of 0,19 %.

#### 3.3.2. Exemption from corporate income tax

##### (a) Legal Basis

- (25) Article 31 of the IPA provides the legal basis for corporate income tax exemption. Normal corporate income tax in Thailand is 30 %.

##### (b) Conclusion

- (26) None of the investigated companies benefited from this scheme during the investigation period. All of the Thai exporting producers offset the profits generated during the investigation period against losses they were carrying forward from previous accounting periods. This practice is allowed by the Thai Revenue Code for all companies, both promoted by BOI and non-promoted by BOI, and does not constitute a subsidy. Due to this fact investigated companies did not use the corporate income tax exemption scheme.

#### 3.3.3. Double deduction from taxable income of transportation, electricity and water costs for 10 years from the date of first revenue derived from the promoted activity

##### (a) Legal Basis

- (27) Article 35(2) of the IPA provides the legal basis for the double deduction from taxable income of transportation, electricity and water costs for 10 years from the date of first revenue derived from the promoted activity.

##### (b) Practical implementation

- (28) In order to benefit from this scheme, the company must possess a Certificate of promotion which specifies that it is entitled to double deduction from taxable income of transportation, electricity, and water costs pursuant to Article 35(2) of the IPA. In addition to the usual deduction of the abovementioned costs, the BOI-promoted companies are allowed to deduct the same amount a second time from their profit on the tax return certificate. The company must fill out a special column in its annual tax return designated for the promoted activity. Consequently the taxable net profit is decreased by this amount; or the net loss is increased by this amount.

##### (c) Calculation of the subsidy amount

- (29) The benefit of this scheme should be calculated on the basis of the amount deducted a second time from the net profit as recorded on the tax return in the special column for promoted activities. For non-promoted activities this amount would be part of the net profit liable for corporate income tax, therefore 30 % of this amount (normal corporate tax rate in Thailand) forms the benefit for the companies. This amount has then been allocated over total sales during the investigation period.

##### (d) Conclusion

- (30) Indorama Group received a benefit of 0,55 %, and Siam Mitsui PTA Co., Ltd received a benefit of 0,57 %.

### 3.3.4. Deduction from net profit of 25 % of the project's infrastructure, installation or construction costs in addition to normal depreciation

#### (a) Legal Basis

- (31) Article 35(3) of the IPA provides the legal basis for this scheme. The scheme involves a permission to deduct from the net profit, in addition to normal depreciation, an amount not exceeding 25 % of the project's cost of installation or construction of facilities used in the promoted activity. The beneficiary should avail himself of the benefit within 10 years from the date the income is derived from the promoted activity.

#### (b) Conclusion

- (32) None of the investigated companies benefited from this scheme during the investigation period. In the periods before the investigation period all of the exporting producers either did not benefit from the income tax exemption scheme (since they were netting of profits against cumulated losses from the past) or were making losses. For these reasons they could not obtain benefits from this scheme.

### 3.3.5. Exemption of import duties on raw and essential materials used in the manufacturing of export products

#### (a) Legal Basis

- (33) Article 36(1) of the IPA provides the legal basis for this scheme. Under this scheme the BOI is authorised to grant the exemption of import duties on raw materials and essential materials used in the manufacture of goods for export. Companies in any zone are eligible for this scheme provided that they are promoted.

#### (b) Conclusion

- (34) None of the investigated companies benefited from this scheme during the investigation period. The import duty on the main raw materials used in production of PTA is zero. Therefore there was no benefit from this scheme for the investigated Thai exporters.

### 3.3.6. Tax and duty compensation of the exported goods produced in Thailand

#### (a) Legal Basis

- (35) 'Notification of the Compensation of Tax of Export Merchandise Produced in the Kingdom 1/2547 – Rate of Compensation' provides for the benefit from this scheme.

#### (b) Practical implementation

- (36) Companies receive refund in the value of 0,38 % of the FOB value of exported goods. The benefit is calculated per export transaction, but companies usually submit several applications for refund at the same time. The companies submit applications for refunds to the relevant authority and receive the refund.

#### (c) Calculation of the subsidy amount

- (37) The benefit for this scheme is the actual amount received as a refund and consequently recorded in companies' accounts as income. This amount has then been allocated over export sales during the investigation period.

#### (d) Conclusion

- (38) Indorama Group received a benefit of 0,36 % and Siam Mitsui PTA Co., Ltd also received a benefit of 0,36 %.

### 3.4. Amount of subsidies

- (39) The provisional amounts of subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the Thai exporting producers are:

— Indorama Petrochem Limited: 1,3 %,

— TPT Petrochemical Public Company Limited: 1 %,

— Siam Mitsui PTA Co., Ltd: 1,1 %.

- (40) Due to the fact that Indorama Petrochem Limited and TPT Petrochemical Public Company Limited are part of the same group, a common anti-subsidy duty rate was established for them. The final rate for Indorama/TPT group is 1,2 %.

Summary table

	Import duty exemption or reduction on machinery Scheme	Double deduction from taxable income Scheme	Export Tax compensation Scheme	Total subsidy margin
Siam Mitsui	0,19 %	0,57 %	0,36 %	1,1 %
Indorama	0,18 %	0,78 %	0,35 %	1,3 %
TPT	0,47 %	0,23 %	0,36 %	1 %
Indorama/TPT Group	0,3 %	0,55 %	0,36 %	1,2 %

- (41) In view of the *de minimis* amounts of countervailable subsidies for the Thai exporting producers, provisional measures on imports of PTA originating in Thailand should not be imposed.

### 4. INJURY, CAUSATION AND UNION INTEREST

- (42) In view of the above findings with respect to subsidies it is not considered necessary to present any analysis on injury, causation and Union interest.

#### 5. TERMINATION OF THE PROCEEDING

- (43) The proceeding should therefore be terminated as the amounts of countervailable subsidies for the Thai exporting producers are less than 2% *ad valorem*. Interested parties were informed accordingly and were given the opportunity to comment.
- (44) With respect to subsidy aspects comments were received from the Government of Thailand ('GOT') and one of the complainants.
- (45) The GOT argued that the schemes investigated cannot be considered as specific subsidy schemes since they form part of the country's decentralisation policy, they are not export contingent and do not limit access to certain business sectors or regions. In this respect it is noted that the investigation has established clearly that the investigated schemes that the exporting producers used during the IP (import duty exemption on machinery, double deduction from taxable income, and export tax compensation) are countervailable subsidies in line with the provisions of the basic anti-subsidy Regulation. Therefore, the claims of the GOT have to be rejected.
- (46) One of the complainants argued that some subsidies, in particular the income tax exemption scheme, should have been spread on a shorter period. This had to be rejected because none of the exporting producers benefited from this scheme during the IP.
- (47) As far as injury aspects are concerned no representations were submitted by any interested party.
- (48) In conclusion, no comments from any interested party undermine the findings that protective measures are unnecessary.
- (49) In light of all the above, the Commission therefore concludes that the anti-subsidy proceeding concerning imports into the Union of purified terephthalic acid and its salts originating in Thailand should be terminated without the imposition of anti-subsidy measures,

HAS ADOPTED THIS DECISION:

#### *Sole Article*

The anti-subsidy proceeding concerning imports of terephthalic acid and its salts of a purity by weight of 99,5% or more, currently falling within CN code ex 2917 36 00, originating in Thailand, is hereby terminated.

Done at Brussels, 19 January 2011.

*For the Commission*

*The President*

José Manuel BARROSO