

## COMMISSION DECISION

of 19 January 2011

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

(2011/32/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<sup>(1)</sup> (the basic Regulation), and in particular Article 9 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-dumping proceeding concerning imports into the Union of purified terephthalic acid and its salts (PTA) originating in Thailand (the country concerned).
- (2) The anti-dumping proceeding was initiated following a complaint 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 Union production of PTA. The complaint contained *prima facie* evidence of dumping 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-subsidy proceeding with regard to imports into the Union of PTA originating in Thailand. This investigation has been terminated by means of Commission Decision 2011/31/EU<sup>(4)</sup>.

## 1.2. Parties concerned by the proceeding

- (4) 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.

- (5) The Commission sent questionnaires to the complainants, other known producers in the Union, the known exporting producers in Thailand and to the known importers and users of the product concerned and to all other parties that requested a questionnaire within the deadlines set out in the Notice of initiation.
- (6) Questionnaire replies were received from the three known Thai exporting producers, from three Union producers, from one Union importer and from five Union users.
- (7) The Commission sought and verified all the information deemed necessary for the determination of dumping, resulting injury and Union interest. Verification visits were carried out at the premises of the following companies:
  - (a) Union producers:
    - BP Aromatics Limited NV, Geel, Belgium
    - CEPESA Quimica, S.A., Madrid, Spain
    - Lotte Chemical UK Ltd (formerly Artenius), Wilton, Redcar, United Kingdom
  - (b) Union importers:
    - Mitsui & Co. Benelux NV, Brussels, Belgium
  - (c) Union users:
    - DSM Powder Coating Resins BV, Zwolle, Holland
    - 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')
    - Indorama Petrochem Ltd, Bangkok, Thailand (hereinafter 'Indorama')
    - Siam Mitsui PTA Company Ltd, Bangkok, Thailand (hereinafter 'SMPC')

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> OJ C 313, 22.12.2009, p. 17.

<sup>(3)</sup> OJ C 313, 22.12.2009, p. 22.

<sup>(4)</sup> See page 17 of this Official Journal.

(e) Related exporter:

- Mitsui Chemicals Inc, Tokyo, Japan (hereinafter 'MCI') — export sales representative and shareholder of SMPC.

(8) 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

(9) The investigation of dumping 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

(10) 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).

(11) 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

(12) 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 were therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

## 3. DUMPING

### 3.1. Preliminary remarks

(13) All three Thai exporting producers named in the complaint submitted questionnaires responses. The investigation revealed that no other Thai exporting producers of PTA exist and that the responses covered 100 % of Thai exports to the EU market.

(14) The three companies requested dumping calculations to be performed on the basis of monthly data on the grounds that costs of the main raw material and consequently prices for the product concerned varied significantly through the IP. For the reasons shown in recital 26 below, the use of the requested methodology was not considered warranted.

(15) It should be noted that sales on the domestic and EU markets were based on either spot prices or contracts based on the PX cost (the main raw material) or a

formula based on a PTA pricing index in China. In the latter case, there was a significant time lag in a number of instances after which the final index was available. In order to implement the formula, an invoicing arrangement had to be operated whereby the final price could be settled some months after the initial provisional invoice was issued. Debit/credit notes were issued to correct the final price agreed in the contract.

(16) The general methodology set out below has been applied to all the cooperating exporting producers in Thailand.

### 3.2. Normal value

(17) In accordance with Article 2(2) of the basic Regulation, the Commission first established whether the domestic sales of the Thai producers were sufficiently representative, i.e. whether the total volume of such sales represented at least 5 % of their total volume of export sales of the product concerned to the Union. The domestic sales of the Thai producers were considered sufficiently representative during the investigation period.

(18) The Commission subsequently examined whether the domestic sales of the like product could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for the like product sold on the domestic market the proportion of profitable domestic sales to independent customers during the IP.

(19) Since the volume of profitable sales of the like product represented more than 80 % of the total domestic sales volume of the like product for all 3 producers, normal value was based on the actual domestic price, calculated as a weighted average of all domestic sales.

### 3.3. Export price

(20) This investigation showed that one of the cooperating exporting producers (SMPC) sold to the EU market via its largest shareholder (MCI, a company located in Japan), which then resold to a series of Japanese traders, which ultimately sold to parties on the EU market. It was investigated whether MCI and the largest Japanese trader were related and if such a relationship had an impact on prices.

(21) It was found that the most important relationship concerned common shareholdings at a very low percentage held by Japanese banks on behalf of numerous trustees. It was, therefore, established that the relationship was not of such a nature to impact price levels. Indeed, given (i) the pricing/contractual arrangements outlined above which are typical for this industry and (ii) the nature of the relationship between the companies described above, prices are at arm's length. It was therefore determined that the export price of the product concerned could be established on the basis of MCI's sales to the Japanese traders.

- (22) A letter was sent to MCI informing it of the consequences of non-cooperation because during the verification in Tokyo the case handlers involved were not granted full access to accounting information relating to certain allowances.
- (23) It was therefore decided to calculate the allowances on the basis of facts available, in accordance with Article 18 of the basic Regulation. As a result the following methodology was used. For freight costs the allowance was adjusted upwards on the basis of information gathered on spot. For the remaining allowances the amounts reported as well as the net sales prices were also checked by reference to other independent sources, in this case information established for the other two Thai exporting producers and were found to be in line for the same type of sales. An alternative method of using Eurostat prices as a substitute was considered but not used because for this product the value in Eurostat was the cif price at the date of importation and not the adjusted final price established in accordance with the sales contract and the invoicing systems outlined above. This approach was exceptionally appropriate given the structure of the market as explained in recital 15 above. Note that the vast majority of allowances had already been verified in Thailand.

#### 3.4. Comparison

- (24) The comparison between normal value and export price was made on an ex-works basis.
- (25) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, adjustments for differences in transport, insurance, packing, credit, handling and commission costs were made where applicable and justified.
- (26) The comparison between export price and normal value was made on an annual basis. The request of the exporting producers to make comparisons on a monthly basis was considered but not pursued since it was obvious that it would not have changed the overall conclusion with respect to dumping, i.e. the countrywide *de minimis* dumping.

#### 3.5. Dumping margin

- (27) Pursuant to Article 2(11) and (12) of the basic Regulation, the dumping margin for the cooperating exporting producers in Thailand were established on the basis of a comparison of a weighted average normal value with a weighted average export price as established above.
- (28) On the basis of the above methodology the dumping margins, expressed as a percentage of the cif Union frontier price, duty unpaid, were set as follows:

	Dumping Margin
Indorama group	3,7 %
SMPC	No dumping

- (29) The three exporting producers (the two of the Indorama group and SMPC) represent the entirety of exports originating in Thailand when compared to the Eurostat data. In order to assess whether, on a countrywide basis, the dumping margin was below *de minimis*, a weighted average countrywide dumping margin was established. It was found that this margin was below *de minimis*, i.e. 1,8 %.
- (30) In view of the countrywide *de minimis* dumping margin, provisional measures on imports of PTA originating in Thailand should not be imposed.

#### 4. INJURY, CAUSATION AND UNION INTEREST

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

#### 5. TERMINATION OF THE PROCEEDING

- (32) The proceeding should therefore be terminated as the dumping margin determined for Thailand is less than 2 %. Interested parties were informed accordingly and were given the opportunity to comment.
- (33) As to dumping issues, comments were received from one of the complainants which considered that the Commission should have imputed to SMPC the dumping margin established for the other two exporting producers (3,7 %) as a consequence of facts available. In such a case it was argued that there would have been a *de minimis* dumping margin. This had to be rejected. The Commission did apply facts available with respect to the Japanese related company by using the company's available data, adjusting it upwards and comparing it to other verifiable sources. To impute in these circumstances the dumping margin of the other exporters would not have been in line with the provisions of Article 18.
- (34) The same complainant also argued that other governments take a different view on investigations concerning PTA for a similar IP. This had to be rejected. In this respect it is noted that the evidence provided by the party refers to an anti-dumping duty imposed by the People's Republic of China on imports of PTA from Korea and Thailand. The information provided cannot corroborate the party's claim since no evidence exists on how normal value and export price were established in this Chinese anti-dumping investigation. Furthermore, in the investigation by the Chinese authorities, the IP runs from 1 October 2007 to 30 September 2008, while the IP used in the current

EU investigation runs from 1 December 2008 to 30 November 2009. Therefore the periods taken into consideration in the EU and the Chinese investigations were very different.

- (35) As far as injury aspects are concerned no representations were submitted by any interested party.
- (36) In conclusion, no comments from any interested party undermine the finding that protective measures are unnecessary.
- (37) In light of all the above, the Commission therefore concludes that the anti-dumping proceeding concerning imports into the Union of purified terephthalic acid and its salts originating in Thailand should be terminated without the imposition of anti-dumping measures,

HAS ADOPTED THIS DECISION:

*Sole Article*

The anti-dumping 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

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