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Proposal for a

COUNCIL REGULATION

imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') in the expiry review proceeding concerning imports of certain polyethylene terephthalate originating in the People's Republic of China.

- **General context**

This proposal is made in the context of implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

Existing provisions in the area of the proposal

A definitive anti-dumping duty on imports of polyethylene 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 the People's Republic of China was imposed by Council Regulation (EC) No 1467/2004 (OJ L 271, 19.8.2004, p.1).

- **Consistency with other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 18 August 2009, the Commission announced by a notice ('notice of initiation'), published in the Official Journal of the European Union, the initiation of an expiry review of the anti-dumping measures applicable to imports of polyethylene terephthalate originating in the People's Republic of China.

The review proceeding was initiated following a substantiated request lodged on 13 May 2009 by the Polyethylene Terephthalate Committee of Plastics Europe ('the complainant') on behalf of producers representing a major proportion of the total Union production of certain polyethylene terephthalate.

The enclosed Commission proposal for a Council Regulation re-imposing a definitive anti-dumping duty contains the definitive conclusions regarding likelihood of recurrence and/or continuation of dumping and injury and Union interest.

The findings of the case were presented to Member States during the Anti-Dumping Committee of 13 October 2010. The majority of Member States were in favour of the proposed course of action.

It is proposed that the Council adopt the attached proposal for a Regulation which should be published in the *Official Journal of the European Union* by 17 November 2010 at the latest.

- **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation').

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason:

The above-mentioned basic Regulation does not provide for alternative options.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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THE COUNCIL OF THE EUROPEAN UNION

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 Community¹ ('the basic Regulation'), and in particular Article 9 and Article 11(2) thereof,

Having regard to the proposal submitted by the European Commission ('Commission') after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

- (1) The Council, following an anti-dumping investigation ('the original investigation'), by Regulation (EC) No 1467/2004², imposed a definitive anti-dumping duty on imports of certain polyethylene terephthalate (PET) originating inter alia in the People's Republic of China ('the definitive anti-dumping measures'). The duty levels imposed were up to 22,9% corresponding to 184 €/t for imports originating in the People's Republic of China ('the country concerned' or 'the PRC').
- (2) Following a 'new exporter' review pursuant to Article 11(4) of the basic Regulation, by Regulation (EC) No 2167/2005³, the Council amended Regulation (EC) No 1467/2004.

2. Request for a review

- (3) Following the publication of a notice of impending expiry⁴ of the definitive anti-dumping measures in force, the Commission received on 13 May 2009 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by the Polyethylene Terephthalate Committee of Plastics Europe (the applicant) on behalf of producers representing a major proportion, in this case more than 50 %, of total Union production of PET.

¹ OJ L 343, 22.12.2009, p. 51.

² OJ L 271, 19.8.2004, p. 1.

³ OJ L 345, 28.12.2005, p. 11.

⁴ OJ C 5, 10.1.2009, p. 3.

- (4) The request for the expiry review was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.
- (5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 18 August 2009, by a notice of initiation published in the Official Journal of the European Union⁵ ('the notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

3. **Parallel proceedings**

- (6) It is noted that on 3 September 2009, the Commission also announced the initiation of an anti-dumping proceeding⁶ pursuant to Article 5 of the basic Regulation and an anti-subsidy proceeding⁷ pursuant to Article 10 of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not member of the European Community⁸ concerning imports of certain PET originating in Iran, Pakistan and the United Arab Emirates.
- (7) The Council imposed a definitive countervailing duty on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates by Regulation (EU) No 857/2010 published on 29 September 2010⁹. At the same time the Commission terminated the anti-dumping proceeding¹⁰.

3. **Investigation**

3.1. Investigation period

- (8) The investigation of the likelihood of continuation or recurrence of dumping covered the period from 1 July 2008 to 30 June 2009 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2006 to the end of the RIP ('period considered').

3.2. Parties concerned by the investigation

- (9) The Commission officially advised the complaining producers, other known Union producers, importers/traders, users known to be concerned and their associations, exporting producers and representatives of the exporting country concerned, of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (10) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (11) In view of the apparent high number of Union producers, exporting producers and importers, it was considered appropriate, in accordance with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a

⁵ OJ C 194, 18.8.2009, p. 9.

⁶ OJ C 208, 3.9.2009, p. 12.

⁷ OJ C 208, 3.9.2009, p. 7.

⁸ OJ L 188, 18.7.2009, p. 93.

⁹ OJ L 254, 29.9.2010, p.10.

¹⁰ OJ L 254, 29.9.2010, p. 40.

sample, the above parties were requested to make themselves known within 15 days of the initiation of the review and to provide the Commission with the information requested in the notice of initiation.

- (12) Fourteen Union producers provided the requested information and agreed to be included in the sample. On the basis of the information received from the cooperating Union producers, the Commission selected a sample of five Union producers representing 65 % of the sales by all cooperating Union producers to unrelated customers in the EU.
- (13) As only two Chinese exporting producers came forward with the requested information, it was not necessary to select a sample.
- (14) Only one importing agent provided the requested information and agreed to be included in the sample. Consequently, no sampling with regard to unrelated importers was necessary.
- (15) The Commission sent questionnaires to the sampled Union producers, to exporting producers, and to all users and suppliers known to be concerned as well as to those that made themselves known within the deadlines set out in the notice of initiation. Questionnaires were also sent to known producers in the USA (the envisaged analogue country).
- (16) Questionnaire replies were received from the five sampled Union producers, seven users in the Union, three suppliers of raw materials, and two producers in the USA. In addition, seven cooperating Union producers provided the requested general data for the injury analysis. No questionnaire replies, however, were submitted by the Chinese exporting producers.
- (17) In the course of the investigation, one of the five sampled Union producers was not in a position to provide all requested data and the sample consequently had to be reduced to four producers representing 47% of the sales by all cooperating producers.
- (18) The Commission sought and verified all the information deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following companies:
 - (a) *Union producers*
 - Novapet SA, Spain,
 - Equipolymers srl, Italy,
 - UAB Orion Global PET (Indorama), Lithuania,
 - UAB Neo Group, Lithuania;
 - (b) *Users in the Union*
 - Puccetti, Italy.
 - (c) *Producers in the USA*
 - - M&G Polymers USA, LLC, USA
 - - StarPet Inc., USA.

B. PRODUCT CONCERNED AND LIKE PRODUCT

- (19) The product concerned is the same as the one in the original investigation i.e. polyethylene 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 the PRC.
- (20) The review investigation confirmed the finding of the original investigation that the product concerned, and the products manufactured and sold by the exporting producers on their domestic market and to third countries, as well as those manufactured and sold by the Union industry have the same basic physical and chemical characteristics and uses. Therefore, these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. **LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING**

1. **Preliminary remarks**

- (21) As explained above, it was not necessary to apply sampling in respect of exporting producers in the PRC.
- (22) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.

2. **Dumping of imports during the RIP**

- (23) Given the absence of significant import volumes from the PRC into the European Union, these did not form a basis for a representative dumping finding. Therefore, no dumping calculation was made on the basis of the export prices from the PRC and the investigation therefore focused on the likelihood of recurrence of dumping.

3. **Development of imports should measures be repealed**

- (24) Given the fact that no exporting producer in the PRC cooperated in this investigation, the conclusions below rely on facts available in accordance with Article 18 of the basic Regulation, namely Eurostat data and the review request.

3.1. Relationship between the normal value and export prices to third countries

- (25) Since no exporting producer in the PRC cooperated, domestic sales prices of a market economy third country were compared to export prices from the PRC to third countries in accordance with Article 2(7) of the basic Regulation.

Analogue country

- (26) Since the PRC is an economy in transition and in accordance with the provisions of Article 2(7)(a) of the basic Regulation, normal value had to be determined on the basis of the price or constructed normal value obtained in an appropriate market economy third country ('the analogue country'), or the price from the analogue country to other countries, including the Union, or where those are not possible on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.
- (27) In the notice of initiation, it was envisaged to use the USA as an appropriate analogue country for the purpose of establishing normal value for the PRC and interested parties were invited to comment on the appropriateness of this choice. No comments or objections were received from any parties in this respect. The USA was used as an analogue country in the original investigation. It is therefore considered that the USA is an appropriate analogue country.

Normal value

- (28) Pursuant to Article 2(7) of the basic Regulation, normal value was established on the basis of the verified information received from producers in the analogue country, i.e. on the basis of prices paid or payable on the domestic market in the USA, for product types which were found to be sold in the ordinary course of trade.
- (29) As a result, normal value was established as the weighted average domestic sales price to unrelated customers by the co-operating producers in the USA.
- (30) It was first established for each of the two US cooperating exporting producers whether their total domestic sales of the like product to independent customers were representative in accordance with Article 2(2) of the basic Regulation, i.e. whether they accounted for 5 % or more of the total sales volume of the product concerned exported to the European Union. The domestic sales of both US producers were considered sufficiently representative during the investigation period.
- (31) 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 US market the proportion of profitable domestic sales to independent customers during the RIP.
- (32) Since the volume of profitable sales of the like product represented less than 80 % of the total sales volume of the like product, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales.

Export price

- (33) As explained above, in the absence of significant import volumes and in view of the absence of any cooperation from PRC exporting producers, the export price was examined on the basis of data available from PRC export statistics on the quantity and value of exports from the PRC to its three most important export markets (Japan, Ukraine, United States), this being the best information available in accordance with Article 18 of the basic Regulation. Exports to these markets represented approximately 50 % of PRC exports of the product under investigation.

Comparison

- (34) Data from the PRC export statistics showed that export prices to the above mentioned third countries were lower than the established normal value for the PRC. In fact, the investigation found that overall this price difference ranged in the RIP between 14 % and 38 %. This indicates a likelihood of recurrence of dumping on exports to the European Union should measures be repealed.

3.2. Spare capacities

- (35) In the absence of other information concerning production and capacity, the analysis was made in accordance with Article 18 of the basic Regulation on the basis of the information contained in the review request.
- (36) On the basis of the information available, and in the absence of any information pointing to the contrary, production capacity in the PRC increased by 16 % over the period considered. During the RIP, the capacity utilisation was at a level of approximately 72 %. The spare capacity was therefore substantial and was in excess of 700.000 tonnes. By activating this spare capacity, Chinese production could supply up to 23 % of the EU consumption.
- (37) In addition, since production capacity in the PRC is expected to increase at a much higher rate than domestic demand, it is anticipated that a large part of any increase in production will be export oriented.

4. **Conclusion on the likelihood of recurrence of dumping**

- (38) Given that the prices of exports of the product under investigation to the PRC's main export markets are below the normal value established during the RIP, and on the basis of the increasing spare capacity, it is likely that the volume of Chinese exports into the EU would increase at dumped prices should measures lapse.
- (39) In the light of the above, there is a likelihood of recurrence of dumping should measures be repealed.

D. DEFINITION OF THE UNION INDUSTRY

- (40) During the RIP, the like product was manufactured by 17 producers in the Union. The output of these producers (established on the basis of the information collected from the cooperating producers and for the other Union producers on the data from the review request) is therefore deemed to constitute the Union production within the meaning of Article 4(1) of the basic Regulation.
- (41) Of these 17 producers, 12 producers fully cooperated with the investigation. These 12 producers were found to account for a major proportion, in this case more than 80 %, of the total Union production of the like product. The 12 cooperating producers therefore constitute the Union industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will be hereafter referred to as the 'Union industry'. The remaining Union producers will be hereafter referred to as the 'other Union producers'. These other Union producers have not actively supported or opposed the complaint.
- (42) For the purpose of the injury analysis, the injury indicators have been established at the following two levels:
- The macroeconomic elements (production, capacity, sales volume, market share, growth, employment, productivity, average unit prices and magnitude of dumping margins and recovery from the effects of past dumping) were assessed at the level of the whole Union production, on the basis of the information collected from the producers that came forward in the context of the sampling exercise and on an estimation based on the data from the review request for the other Union producers.
 - The analysis of microeconomic elements (stocks, wages, profitability, return on investments, cash flow, ability to raise capital and investments) was carried out for the sampled Union producers on the basis of their information.
- (43) It is noted that the EU market for PET is characterised by a relatively high number of producers, belonging usually to bigger groups with headquarters outside the EU. The market is in a process of consolidation with a number of recent takeovers and closures. For instance, since 2009, PET production plants of Tergal Fibers (France), Invista (Germany) and Artenius (UK) closed while Indorama took over the former Eastman plants in UK and the Netherlands.

E. SITUATION ON THE UNION MARKET

1. Union consumption

- (44) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, the import volumes data for the EU market obtained from Eurostat and, concerning the other Union producers, from estimations based on the review request.

- (45) Union consumption of the product under investigation increased between 2006 and the RIP by 11 %. In detail, the apparent demand grew in 2007 by 8 %, decreased slightly between 2007 and 2008 (by 2 percentage points) and increased by further 5 percentage points between 2008 and the RIP.

Table 1

	2006	2007	2008	RIP
Total EU consumption (tonnes)	2.709.400	2.936.279	2.868.775	2.996.698
<i>Index (2006=100)</i>	<i>100</i>	<i>108</i>	<i>106</i>	<i>111</i>

Source: questionnaire replies, Eurostat data and review request

2. Volume, market share and prices of imports from the People's Republic of China

- (46) The volume of dumped imports of the product concerned into the EU remained relatively low and even decreased in the period considered. It reached 13.483 tonnes in the RIP, corresponding to a market share of 0,4 %. Prices of Chinese imports remained stable between 2006 and 2008 and then sharply decreased to 897 EUR per tonne at CIF level in the RIP, i.e. by 12 percentage points in relation to prices during 2008.

Table 2

	2006	2007	2008	RIP
Volume of imports from the PRC (tonnes)	16.425	20.159	18.001	13.483
<i>Index (2006=100)</i>	<i>100</i>	<i>123</i>	<i>110</i>	<i>82</i>
Market share of imports from the PRC	0,6%	0,7%	0,6%	0,4%
Price of imports (EUR/tonne)	1.011	1.008	1.020	897
<i>Index (2006=100)</i>	<i>100</i>	<i>100</i>	<i>101</i>	<i>89</i>

Source: Eurostat

3. Imports from other third countries

(a) Imports from Iran, Pakistan and the United Arab Emirates

- (47) As mentioned above, in recitals (6) et seq., an anti-dumping and an anti-subsidy proceeding concerning imports of PET from Iran, Pakistan and the United Arab Emirates were conducted in parallel to the current review.
- (48) The volume of imports from Iran, Pakistan and the United Arab Emirates into the EU increased significantly in the period considered and reached 304.202 tonnes in the RIP, corresponding to a market share of 10,2 %. Prices of these imports were even lower than the prices of imports from the PRC.

Table 3

	2006	2007	2008	RIP

Volume of imports from Iran, Pakistan and the United Arab Emirates (tonnes)	55.939	67.067	218.248	304.202
<i>Index (2006=100)</i>	100	120	390	544
Market share of imports from Iran, Pakistan and the United Arab Emirates	2,1%	2,3%	7,6%	10,2%
Price of imports (EUR/tonne)	1.030	1.023	1.015	882

Source: Eurostat

(b) Imports from the Republic of Korea

- (49) The Republic of Korea is subject to anti-dumping duties since 2000. However, two Korean companies are subject to a zero anti-dumping duty and the investigation established that imports from the Republic of Korea remain at a high level and increased significantly in the period considered. The Korean imports increased by almost 150 % between 2006 and the RIP and their corresponding market share increased from 3,5 % in 2006 to 7,7 % in the RIP.

Table 4

	2006	2007	2008	RIP
Volume of imports from South Korea (tonnes)	94.023	130.994	177.341	231.107
<i>Index (2006=100)</i>	100	139	189	246
Market share of imports from South Korea	3,5%	4,5%	6,2%	7,7%
Price of imports (EUR/ton)	1.084	1.071	1.063	914

Source: Eurostat

- (50) The average price of the Korean imports remained in general slightly below the average prices of the Union producers. However, the Korean prices were higher than the average prices from the PRC.

(c) Imports from other third countries not mentioned above

- (51) The volume of imports from other third countries of the product concerned into the EU increased slightly in the period considered and reached 428.396 tonnes in the RIP, corresponding to a market share of 14,3 %. Prices of these imports are relatively high and above the respective prices from the PRC and the countries in the parallel investigations, as well as above the average level of prices of the Union industry.

Table 5

	2006	2007	2008	RIP
Volume of imports from other	337.036	407.253	344.626	428.396

third countries (tonnes)				
<i>Index (2006=100)</i>	100	121	102	127
Market share of imports from other third countries	12,4%	13,9%	12,0%	14,3%
Price of imports (EUR/ton)	1.159	1.127	1.135	978

Source: Eurostat

(52) It can be concluded from the above that the imports from the other third countries did not have any negative bearing on the situation of the Union industry.

4. Economic situation of the Union industry

(53) Pursuant to Article 3(5) of the basic Regulation all economic factors and indices having a bearing on the state of the Union industry during the period considered have been examined.

4.1. Macroeconomic elements

(a) Production

(54) The Union production decreased by 4 % between 2006 and the RIP. More specifically, it increased by 5 % in 2007 to around 2.570.000 tonnes, but sharply decreased by 10 percentage points in 2008 compared to 2007 and slightly increased by 1 percentage point between 2008 and the RIP, when it reached around 2.300.000 tonnes.

Table 6

	2006	2007	2008	RIP
Production (tonnes)	2.439.838	2.570.198	2.327.169	2.338.577
<i>Index (2006=100)</i>	100	105	95	96

Source: questionnaire replies and review request

(b) Production capacity and capacity utilisation

(55) The production capacity of the Union producers increased by 15 % throughout the period considered. Specifically, it increased by 1 % in 2007, by further 5 percentage points in 2008 and by even further 9 percentage points in the RIP.

Table 7

	2006	2007	2008	RIP
Production capacity (tonnes)	2.954.089	2.971.034	3.118.060	3.385.738
<i>Index (2006=100)</i>	100	101	106	115
Capacity utilisation	83%	87%	75%	69%
<i>Index (2006=100)</i>	100	105	90	84

Source: questionnaire replies and review request

(56) Capacity utilisation was 83 % in 2006, increased to 87 % in 2007 but later dropped to 75 % in 2008 and to only 69 % in the RIP. The dropping utilisation rate in 2008 and the RIP reflected the decreased production and increased production capacity in this period.

(c) *Sales volume*

(57) The sales volume of the Union producers to unrelated customers on the EU market modestly decreased in the period considered. The sales increased by 5 % in 2007, but in the following year decreased slightly below the 2006 level, and in the RIP they were 3 % lower than in 2006, at around 2.100.000 tonnes. Given the limited volume of stocks, the development of sales closely reflects the development in the production.

Table 8

	2006	2007	2008	RIP
EU sales (tonnes)	2.202.265	2.318.567	2.171.203	2.133.787
<i>Index (2006=100)</i>	<i>100</i>	<i>105</i>	<i>99</i>	<i>97</i>

Source: questionnaire replies and review request

(d) *Market share*

(58) During the period considered, the Union producers lost 10 percentage points of market share, which decreased from 85 % in 2006 to 75 % in the RIP. This loss of market share reflects the fact that, despite an increase in consumption, the Union industry's sales dropped by 3 % in the period considered. It is noted that this decreasing trend was also found for the sampled Union producers.

Table 9

	2006	2007	2008	RIP
Market share of the Union producers	84,9%	83,2%	79,8%	75,1%
<i>Index (2006=100)</i>	<i>100</i>	<i>98</i>	<i>94</i>	<i>88</i>

Source: questionnaire replies, review request and Eurostat

(e) *Growth*

(59) Between 2006 and the RIP, whilst the Union consumption increased by 11 %, the volume of sales by the Union producers on the EU market decreased by 3 %, and the Union producers' market share decreased by 10 percentage points. It is thus concluded that the Union producers could not benefit from any growth of the market.

(f) *Employment*

(60) The employment level of the Union producers shows a decrease of 15 % between 2006 and the RIP. More specifically, the number of people employed decreased significantly from 2.400 in 2006 to 2.100 in 2007 or by 13 % and remained close to this level in 2008 and in the RIP. The drop in 2007 is a reflection of the restructuring efforts by a number of EU producers.

Table 10

	2006	2007	2008	RIP
Employment (persons)	2.410	2.100	2.060	2.057
<i>Index (2006=100)</i>	<i>100</i>	<i>87</i>	<i>85</i>	<i>85</i>

Source: questionnaire replies and review request

(g) *Productivity*

- (61) Productivity of the Union producers' workforce, measured as output (tonnes) per person employed per year, increased by 12 % in the period considered. This reflects the fact that production decreased at a lower pace than the employment level and is an indication of increased efficiency by the Union producers. This is particularly obvious in 2007 when production increased while the employment level decreased and the productivity was 21 % higher than in 2006.

Table 11

	2006	2007	2008	RIP
Productivity (tonnes per employee)	1.013	1.224	1.130	1.137
<i>Index (2006=100)</i>	<i>100</i>	<i>121</i>	<i>112</i>	<i>112</i>

Source: questionnaire replies and review request

(h) *Factors affecting sales prices*

- (62) The annual average sales prices of the Union producers on the EU market to unrelated customers remained stable between 2006 and 2008 at around 1.100 EUR per tonne. In the RIP the annual average sale price decreased by 12 % and reached 977 EUR per tonne. The annual average sales price does not reflect the monthly or even daily price fluctuations of the PET on the European (and world) market, but is considered sufficient to show the trend during the period considered. The sales prices of PET normally follow the price trends of its main raw materials (mainly purified terephthalic acid - PTA - and monoethylene glycol - MEG) as they constitute up to 80 % of the total cost of PET.

Table 12

	2006	2007	2008	RIP
Unit price EU market (EUR/ton)	1.110	1.105	1.111	977
<i>Index (2006=100)</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>88</i>

Source: questionnaire replies and review request

(i) *Magnitude of the dumping margin and recovery from past dumping*

- (63) It is recalled that due to the currently very low import volumes of PET from the PRC, no dumping calculation was carried out. However, as stated in recital (39), a likelihood of recurrence of dumping was established based on prices to third countries and excess capacity. As regards recovery from past dumping, it is important to recall that after the imposition of definitive anti-dumping measures on imports from the PRC, the Union industry was faced with subsidised imports from Iran, Pakistan and the United Arab

Emirates, leading to the imposition of provisional countervailing measures in June 2010¹¹. Thus, no actual recovery from the past dumping could be established and it is considered that the Union industry remains vulnerable to the injurious effect of any dumped imports in the Union market.

4.2. Microeconomic elements

(a) *Stocks*

- (64) The level of closing stocks of the sampled producers decreased between 2006 and the RIP by 22 %. It is noted that the stocks represent less than 5 % of the annual production and therefore the relevance of this indicator in the injury analysis is limited.

Table 13

<i>Sample</i>	2006	2007	2008	RIP
Closing stock (tonnes)	61.374	57.920	46.951	47.582
<i>Index (2006=100)</i>	100	94	77	78

Source: questionnaire replies

(b) *Wages*

- (65) The annual labour cost increased by 11 % between 2006 and 2007, before decreasing by 2 percentage points in 2008 compared to 2007 and further 9 percentage points in the RIP compared to 2008 reaching the same level as in 2006. Overall, labour costs thus remained stable.

Table 14

<i>Sample</i>	2006	2007	2008	RIP
Annual labour cost (EUR)	27.671.771	30.818.299	30.077.380	27.723.396
<i>Index (2006=100)</i>	100	111	109	100

Source: questionnaire replies

(c) *Profitability and return on investments*

- (66) During the period considered, the profitability of the sampled producers' sales of the like product on the EU market to unrelated customers, expressed as a percentage of net sales, remained negative and even dropped from -6,9 % to -7,5 %. More specifically, the situation with regard to profitability of the sampled producers improved in 2007 when net losses accounted only -1,5 % of net sales, but losses increased sharply in 2008 to -9,3 %. The situation slightly improved in the RIP.

Table 15

<i>Sample</i>	2006	2007	2008	RIP
Profitability of EU (% of net	-6,9%	-1,5%	-9,3%	-7,5%

¹¹ OJ L 134, 1.6.2010, p. 25.

sales)				
<i>Index (2006=-100)</i>	-100	-22	-134	-108
ROI (profit in % of net book value of investments)	-9,6%	-3,1%	-16,8%	-12,3%
<i>Index (2006=-100)</i>	-100	-32	-175	-127

Source: questionnaire replies

(67) The return on investments ('ROI'), expressed as the profit in percent of the net book value of investments, broadly followed the profitability trend. It increased from a level of -9,6 % in 2006 to -3,1 % in 2007. It decreased to -16,8 % in 2008 and increased again in the RIP to -12,3 %. Overall, the return on investments remained negative and deteriorated by 2,7 percentage points over the period considered.

(d) *Cash flow and ability to raise capital*

(68) The net cash flow from operating activities was negative at -18,5 million EUR in 2006. It improved significantly in 2007 when it became positive at 19,5 million EUR, but deteriorated massively in 2008 (-42 million EUR) before reaching the negative -11 million EUR in the RIP. Overall, cash flow improved in the period considered although it remained negative.

(69) There were no indications that the Union industry encountered difficulties in raising capital, mainly due to the fact that some of the producers are incorporated in larger groups.

Table 16

<i>Sample</i>	2006	2007	2008	RIP
Cash flow (EUR)	-18.453.130	19.478.426	-42.321.103	-11.038.129
<i>Index (2006=100)</i>	-100	206	-229	-60

Source: questionnaire replies

(e) *Investments*

(70) The sampled companies' annual investments in the production of the like product decreased by 34 % between 2006 and 2007, by a further 59 percentage points between 2007 and 2008 and then it slightly decreased in the RIP compared to 2008. Overall, investments decreased by 96 % in the period considered. This sharp drop in investments can be partially explained by the fact that in 2006 and 2007 new production lines were acquired aiming at increasing capacity.

Table 17

<i>Sample</i>	2006	2007	2008	RIP
Net investments (EUR)	98.398.284	64.607.801	6.537.577	4.298.208
<i>Index (2006=100)</i>	100	66	7	4

Source: questionnaire replies

(71) The low level of investment in 2008 and the RIP is considered to be a result of the current vulnerable financial situation of the Union industry.

5. Conclusion on the situation of the Union industry

(72) The analysis of the macroeconomic data shows that the Union producers decreased their production and sales during the period considered. Although the observed decrease was not dramatic as such, it needs to be seen in the context of increased demand between 2006 and the RIP, which resulted in the Union producers' market share dropping by 10 percentage points to 75 %.

(73) At the same time the relevant microeconomic indicators show a clear deterioration of the economic situation of the sampled Union producers. The profitability and return on investment remained negative and they overall declined further between 2006 and the RIP. The cash flow, despite an overall positive development, also remained negative in the RIP.

(74) In the light of the foregoing, it is concluded that the Union industry has continued to suffer material injury within the meaning of Article 3(5) of the basic Regulation and that its situation is very fragile and vulnerable and far from the levels that could be expected had it recovered from the injury found in the original investigation.

F. LIKELIHOOD OF CONTINUATION OF INJURY

1. Impact of the projected volume of imports and price effects in case of repeal of measures

(75) As concluded in recital (38) above, the exporting producers in the PRC have significant spare capacities and a clear potential to increase their export volumes to the Union market.

(76) The CIF export prices to third countries of PET originating in the PRC were lower than the average prices of the Union industry in the RIP. It is noted that the difference was not significant and given that these imports are subject to a conventional customs duty and some post importation charges, they would have not undercut the Union industry's prices prevailing in the RIP. However, it must be stressed that the information from the parallel anti-subsidy proceeding mentioned in recital (6) shows that the prices of the Union industry in the RIP were significantly depressed by the subsidised imports from Iran, Pakistan and the UAE. Thus, the fact that there was no actual undercutting during the RIP does not mean that should imports from the PRC resume, their price levels would not be injurious.

(77) Indeed, a comparison of the actual import prices from the PRC with the non-injurious price level showed that imports from the PRC would undersell the (non-injurious) Union industry's prices. Consequently, in the absence of anti-dumping duties on imports originating in the PRC, any increased volumes of likely dumped imports from the PRC would exercise an even stronger price pressure on the Union industry and cause injury.

(78) Furthermore, given the existing spare capacities for PET in the PRC, combined with the fact that the exporters in the PRC would in all likelihood try to regain their lost market shares, a repeal of measures would in all likelihood result in lower export prices. This would reinforce the price pressure with an expected further negative impact on the already vulnerable and materially injured situation of the Union industry.

(79) Although the effect of imports from the PRC on the current precarious state of the Union industry was limited due to the low levels of imports during the period considered, this would in all likelihood change, should measures be repealed. Indeed,

if the measures were repealed and the Union industry was exposed to increased volumes of imports from the country concerned at dumped prices, this would result in further deterioration of its already precarious financial situation and further losses.

2. **Conclusion on the continuation / recurrence of injury**

- (80) On this basis, it is concluded that the repeal of measures against the PRC would in all likelihood result in the continuation of injury to the Union industry.

G. **UNION INTEREST**

- (81) In accordance with Article 21 of the basic Regulation, it was examined whether the maintenance of the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved. All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.

- (82) It should be recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

- (83) On this basis, it was examined whether, despite the conclusions on the likelihood of a continuation or recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

1. **Interest of the Union industry and other Union producers**

- (84) The continuation of the anti-dumping measures on imports from the country concerned would enhance the possibility for the Union industry to reach a reasonable level of profitability, as it would help avoiding that the Union industry is pushed out of the market by substantial volumes of dumped imports from the PRC. Indeed, there is a clear likelihood of injurious dumping in substantial volumes which the Union industry could not withstand. The Union industry would therefore continue to benefit from the maintenance of the current anti-dumping measures.
- (85) Accordingly, it is concluded that the maintenance of anti-dumping measures against the PRC would clearly be in the interest of the Union industry and other Union producers.

2. **Interest of unrelated importers in the Union**

- (86) As indicated above, only one importing agent submitted some information in the sampling exercise. This agent strongly opposed any continuation of the measures although it declared no imports from the PRC. Consequently, it is concluded that the maintenance of measures against imports from the PRC will not have any significant impact on the performance of this agent.
- (87) No other importer submitted relevant information. Given that imports from other countries where there are currently anti-dumping measures in force did not stop and that imports are available from countries without any anti-dumping measures (e.g. Oman, USA, Brazil), it is considered that importers could continue to source from the alternative sources of supply.

(88) Bearing in mind that there is no evidence suggesting that the measures in force considerably affected importers, it is concluded that the continuation of measures will not affect the EU importers to any significant extent.

3. Interest of the raw material suppliers in the Union

(89) Three raw material suppliers (two of PTA and one of MEG) cooperated with the investigation by submitting the questionnaire reply within the set time limit. The staff employed in their European facilities and involved in the production of PTA / MEG was around 700.

(90) The cooperating PTA producers represent around 50 % of the PTA purchases of the sampled Union producers. PTA producers are heavily dependant on the state of the PET producers that constitute their major clients. Low prices of PET translate into lower prices of PTA and lower margins for the PTA producers. Consequently, it is considered that the imposition of measures on the dumped imports of PET would benefit the PTA producers.

(91) For the cooperating MEG supplier, MEG represents less than 10 % of its total turnover. It is noted that with regard to MEG, PET is not its only or even the major possible application and MEG producers are less dependent on the situation of the PET industry. Nonetheless, the difficulties of the PET industry may have some limited impact on the suppliers of MEG, at least in a short to medium term.

(92) Given the above, it is concluded that continuation of measures against imports from the PRC would be in the interest of raw material suppliers.

4. Interest of the users

(93) PET subject to this proceeding (i.e. with the viscosity number of 78 ml/g or higher, so called 'bottle grade') is mostly used to produce bottles for water and other drinks. Its use for the production of other packages (solid foodstuff or detergents) and to produce sheet is developing, but it remains relatively limited. Bottles of PET are produced in two stages: (i) first a pre-form is made by mould injection of PET and (ii) later the pre-form is heated and blown into a bottle. Bottle making can be an integrated process (i.e. the same company buys PET, produces a pre-form and blows it into the bottle) or limited to the second stage (blowing the pre-form into a bottle). Pre-forms can be relatively easily transported as they are small and dense, while empty bottles are instable and due to their size very expensive to transport.

(94) PET bottles are filled with water and/or other beverages by the bottling companies ('bottlers'). The bottling companies are often involved in the PET business either via integrated bottle making operations or via tolling agreements with subcontracted converters and/or bottle makers for whom they negotiate the PET price with the producer (soft tolling) or even buy the PET for their own bottles (hard tolling).

(95) Consequently, two groups of users may be distinguished:

- converters and/or bottle makers – that buy PET directly from producers, convert it into pre-forms (or bottles) and sell it further for downstream processing (or filling), and
- bottlers – that buy PET for their subcontracting bottle makers/converters (hard tolling) or negotiate the price for which the subcontracted converter and/or bottle maker will get the PET (soft tolling).

- (96) Over 70 users have been contacted in this investigation, but only seven of them (converters and bottlers) decided to cooperate by filling in a questionnaire.
- (97) It has been established that the co-operating users imported only negligible quantities of PET from the country concerned and sourced it predominantly from the Union producers and/or from other countries.
- (98) Given that alternative sources of supply continue to exist and that currently the users imported only very limited volumes of the product concerned from the PRC, it is concluded that the continuation of measures against imports from the PRC will not have any significant negative effect on the users in the Union.
- (99) Following disclosure of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained some interested parties, in particular users, submitted their comments.
- (100) The Union producers that requested the review basically agreed with the findings of the investigation and in particular with the conclusions with regard to the Union interest.
- (101) On the other hand seven users and one association of users expressed their strong opposition against the re-imposition of the current anti-dumping measures, claiming that the Commission's findings with regard to the Union interest display serious deficiencies and inaccuracies; however, without substantiating their claims any further.
- (102) Given the lack of any evidence that would support the claims with respect to alleged inaccuracy of the Commission's findings, these claims are rejected as unfounded.
- (103) Following the disclosure the co-operating importing agent also strongly opposed the re-imposition of measures.
- (104) This party claimed that the Commission failed to properly take into account the interest of the PET users' industry, that would allegedly suffer from any PET price increase as they would not be in a position to pass forward any cost increase.
- (105) It is noted in this regard that this interested party failed to demonstrate how in practice the maintenance of already existing measures could lead to any increase of the PET price on the EU market and to what extent.
- (106) It is also reiterated that given the relatively low co-operation of users in this investigation, there is no information on the file that would show that the continuation of measures would have disproportionate effects on users.
- (107) Consequently, based on the information available, it is considered that maintaining the measures will not have any disproportionate negative effects on the level of PET prices in the EU and thus the claim regarding the negative impact on users as presented by the importing agent is rejected.
- (108) The same interested party claims that the Commission failed to examine the impact of the continuation of current measures on PET packaging companies and that consequently the Union interest analysis is incomplete and incorrect.
- (109) It is reiterated in this regard that following the initiation of this review only seven users came forward and the information available in the framework of this proceeding did not allow for the analysis of the interest of this sub-group of users in the Union.

(110) The comments submitted after the disclosure including the comments from packaging companies were (as indicated above in recitals (101) and (102)) not substantiated and could not be used for a more exhaustive analysis concerning the packaging industry.

5. Conclusion on Union interest

(111) Taking into account all of the factors outlined above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

H. ANTI-DUMPING MEASURES

(112) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period within which they could make representations subsequent to this disclosure. The submissions and comments were duly taken into consideration where warranted.

(113) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of PET originating in the PRC should be maintained. It is recalled that these measures consist of specific duties.

(114) The individual company anti-dumping duty rates specified in this Regulation are solely applicable to imports of the product concerned produced by these companies and thus by the specific legal entities mentioned. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(115) Any claim requesting the application of these individual anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission¹² forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be accordingly amended by updating the list of companies benefiting from individual duty rates,

HAS ADOPTED THIS REGULATION:

Article 1

(1) A definitive anti-dumping duty is hereby imposed on imports of polyethylene 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 the People's Republic of China.

(2) The rate of the anti-dumping duty applicable to the net, free-at-Union frontier price, before duty, for the products described in paragraph 1 and manufactured by the companies listed below shall be as follows:

Country	Company	Anti-dumping duty (EUR/t)	TARIC additional code
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¹² European Commission, Directorate-General for Trade, Directorate H, NERV-105, B-1049 Brussels.

PRC	Sinopec Yizheng Chemical Fibre Company Ltd,	184	A505
	Changzhou Worldbest Radici Co. Ltd,	0	A506
	Jiangyin Xingye Plastic Co. Ltd,	157	A507
	Far Eastern Industries Shanghai Ltd,	22	A508
	Yuhua Polyester Co. Ltd. of Zhuhai,	184	A509
	Jiangyin Chengsheng New Packing Material Co., Ltd	45	A510
	Guangdong Kaiping Polyester Enterprises Group Co. and Guangdong Kaiping Chunhui Co. Ltd.	184	A511
	Yibin Wuliangye Group Push Co., Ltd. (Sichuan) and Yibin Wuliangye Group Import & Export Co., Ltd. (Sichuan)	184	A512
	Hubei Changfeng Chemical Fibres Industry Co. Ltd	151	A513
	All other companies	184	A999

- (3) In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Common Customs Code¹³, the amount of anti-dumping duty, calculated on the basis of paragraph 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.
- (4) Unless otherwise specified, the provisions in force concerning customs duties shall apply.

¹³ OJ L 253, 11.10.1993, p. 1.

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council
The President*