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EUROPEAN COMMISSION

Brussels, 14.4.2011
COM(2011) 207 final

2011/0086 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 1292/2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India

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 proceeding concerning imports of polyethylene terephthalate (PET) film originating in India.

Definitive measures are in force and were imposed by Council Regulation (EC) No 1292/2007 of 30 October 2007. They take into account countervailing duties, which were in force, in parallel, at the time of imposition of definitive measures. These countervailing duties expired on 9 March 2011 and, therefore, the duty rates need to be re-adjusted.

- **General context**

This proposal is made in the context of the 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**

Definitive measures are in force and were imposed by Council Regulation (EC) No 1292/2007 of 30 October 2007.

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

Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community.

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 contain provisions 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**

The attached proposal for a Council Regulation provides for the following actions:

1) The level of the residual anti-dumping duty as well as of the individual company-specific anti-dumping duties will be revised. In particular, the reduction which was applied in view of the fact that countervailing duties were also in place, will be cancelled.

2) As concerns the exporting producer MTZ Polyfilms Ltd ('MTZ Polyfilms'), following the judgment of the General Court of 17 November 2009 in Case T-143/06¹ ('the judgement'), imports into the European Union of PET film manufactured by MTZ Polyfilms are no longer subject to the anti-dumping measures imposed by Regulation (EC) No 366/2006 and Regulation (EC) No 1292/2007. Therefore, MTZ Polyfilms is not affected by the attached proposal and will remain exempted from the anti-dumping duty. The situation of MTZ Polyfilms is subject to an implementation procedure initiated in a notice published in the *Official Journal of the European Union*².

It is proposed that the Council adopts the attached proposal for a Regulation.

- **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.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the European 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:

¹ European Court reports 2009, Page II-04133.

² OJ C 131, 20.5.2010, p. 3.

Other means would not be adequate because the basic Regulation does not provide for alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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amending Regulation (EC) No 1292/2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India

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 Community³ ('the basic anti-dumping Regulation') and in particular Article 14(1) thereof,

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 Community⁴ ('the basic anti-subsidy Regulation') and in particular Article 18(1) thereof,

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

Whereas:

1. Procedure

- (1) On 10 December 1999 and following an investigation ('the original anti-subsidy investigation'), the Council imposed, by Regulation (EC) No 2597/1999, a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India⁵. Following an anti-dumping investigation ('the original anti-dumping investigation') and after imposition, by Commission Regulation (EC) No 367/2001, of a provisional anti-dumping duty on 24 February 2001⁶, a definitive anti-dumping duty on PET film originating in India was imposed by Council Regulation (EC) No 1676/2001 of 13 August 2001⁷.
- (2) On 8 March 2006, two Council Regulations concerning imports of PET film originating in India were published: Regulation (EC) No 367/2006⁸ which followed an expiry review investigation and which maintained the definitive countervailing duty ('the expiry review anti-subsidy

³ OJ L 343, 22.12.2009, p. 51.

⁴ OJ L 188, 18.7.2009, p. 93.

⁵ OJ L 316, 10.12.1999, p. 1.

⁶ OJ L 55, 24.2.2001, p. 16.

⁷ OJ L 227, 23.8.2001, p. 1.

⁸ OJ L 68, 8.3.2006, p. 15.

regulation'); and Regulation (EC) No 366/2006⁹ ('the amending anti-dumping regulation') which followed a partial interim review investigation and which amended the definitive anti-dumping duty on such imports.

- (3) On 6 November 2007, following an expiry review, a definitive anti-dumping duty on imports of PET film originating in India was imposed by Council Regulation (EC) No 1292/2007¹⁰.
- (4) On 20 May 2010, a notice¹¹ was published in the *Official Journal of the European Union*. In the notice, parties were informed that, in view of the judgment of the General Court of 17 November 2009 in Case T-143/06¹² ('the judgement'), imports into the European Union of PET film manufactured by MTZ Polyfilms Limited ('MTZ Polyfilms') are no longer subject to the anti-dumping measures imposed by the amending anti-dumping regulation and Regulation (EC) No 1292/2007 and that definitive anti-dumping duties paid pursuant to these regulations on imports of PET film manufactured by MTZ Polyfilms should be repaid or remitted. The notice also partially reopened the relevant anti-dumping review investigation concerning imports of PET film originating, *inter alia*, in India in order to implement the above judgment of the General Court as far as MTZ Polyfilms is concerned.
- (5) The countervailing duty imposed by the expiry review anti-subsidy Regulation expired on 9 March 2011¹³ according to Article 18(1) of the basic anti-subsidy Regulation. In line with the principle that no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation, the level of the anti-dumping duty rates imposed by Regulation (EC) No 1292/2007 was set taking into account the amount of the countervailing duty imposed by the expiry review anti-subsidy Regulation, in accordance with Article 14(1) of the basic anti-dumping Regulation. In view of the expiry of the countervailing duty, the anti-dumping duty rates now have to be adjusted.

2. **Anti-dumping duty rates after expiry of the countervailing duty on the same imports**

Introductory remark

- (6) As indicated in recital (5) above, the expiry of the countervailing duty on PET film originating in India, on 9 March 2011, requires an adjustment of the anti-dumping duty rates. Indeed, the anti-dumping duty established by Council Regulation (EC) No 1292/2007 consists of the dumping margin minus the subsidisation margin relating to export subsidies. As the countervailing duty has now expired, the level of the anti-dumping duty rates has to be re-determined.

Determination of anti-dumping duty level

- (7) Pursuant to Article 9(4) of the basic anti-dumping Regulation, the amount of the anti-dumping duty shall not exceed the margin of dumping established but should be less than that margin if such lesser duty would be adequate to remove the injury to the Union industry. Consequently,

⁹ OJ L 68, 8.3.2006, p. 6.

¹⁰ OJ L 288, 6.11.2007, p. 1

¹¹ OJ C 131, 20.5.2010, p. 3.

¹² European Court reports 2009, Page II-04133.

¹³ Notice of expiry, OJ C 68, 3.3.2011, p. 6.

the duty level should be established at the lowest level of the dumping margin and injury elimination level.

- (8) In this respect, it is recalled that, in the original anti-dumping investigation, the injury elimination level was in all cases above the dumping margins, as laid out in recital (195) of Commission Regulation (EC) No 367/2001 and confirmed by recital (74) of Council Regulation (EC) No 1676/2001. Therefore, the anti-dumping duty should be set at the level of the dumping margins established in respect of the various Indian manufacturers, which are as follows:

Company	Dumping margin and AD duty rate	Reference
Ester Industries Limited	29,3%	Council Regulation (EC) No 366/2006
Garware Polyester Limited	0%	Council Implementing Regulation (EU) No 38/2011 ¹⁴
Jindal Poly Films Limited	0%	Council Regulation (EC) No 1676/2001*
Polyplex Corporation Limited	3,7%	Council Regulation (EC) No 366/2006
SRF Limited	15,5%	Council Regulation (EC) No 1424/2006 ¹⁵
Uflex Limited	3,2%	Council Regulation (EC) No 366/2006**
Vacmet India Limited	0%	Council Implementing Regulation (EU) No 205/2011 ¹⁶
All other companies (except MTZ Polyfilms)	29,3%	Council Regulation (EC) No 366/2006

* Jindal Poly Films Limited was at that time known as Jindal Polyester Limited

** Uflex Limited was at that time known as Flex Industries Limited

- (9) All known Indian exporting producers of PET film, the Indian authorities and the Union industry of PET film have received disclosure of the above course of action.
- (10) Following this disclosure, several Indian companies argued that, as no expiry review was requested for the countervailing measures, the Union industry was apparently in a good shape and, therefore, the anti-dumping measures should be terminated as well. In addition, one exporting producer argued that the average dumping margin of the sample should be recalculated as recently, following an interim review, Garware Polyester Limited, which was one of the companies in the sample, had been made subject to a revised individual dumping margin. It should be noted that both claims go beyond the limited scope of the current regulation which only aims at adjusting the level of the existing anti-dumping duty rates following the expiry of the concurrent countervailing measures on the same imports. Any

¹⁴ OJ L 15, 20.1.2011, p. 1.

¹⁵ OJ L 270, 29.9.2006, p. 1.

¹⁶ OJ L 58, 3.3.2011, p. 14.

request to amend the level of the anti-dumping duty rates following an alleged change in circumstances should be presented pursuant to Article 11(3) of the basic Regulation. Therefore, these claims have to be rejected.

- (11) One Indian exporting producer argued that, as the countervailing duties had expired, the Commission should now grant a price adjustment to the Indian exporters using the DEPB scheme, which it had refused during the original investigation and interim review investigation. Without prejudice to whether such claim could be examined in the context of the current amending regulation, it should be noted that, as summarised in recital (50) of Commission Regulation (EC) No 367/2001 and recital (47) of the amending anti-dumping regulation, the price adjustment claim for DEPB had not been accepted as the producers concerned had not demonstrated that price comparability between domestic and EU sales prices had been affected by the DEPB benefits. That situation has not changed with the expiry of the countervailing duty and this claim, therefore, has to be rejected.
- (12) No further substantive comments were received. Consequently, the duty rates should be revised to the levels of the dumping margin, as indicated in the table under recital (8) above,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1292/2007 is hereby amended as follows:

1. Article 2(2) shall be replaced by the following:
 - '2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products manufactured by the companies listed below shall be as follows:

Company	Definitive Duty (%)	TARIC Additional Code
Ester Industries Limited 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi — 110 003, India	29,3	A026
Garware Polyester Limited Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	0	A028
Jindal Poly Films Limited 56 Hanuman Road, New Delhi 110 001,	0	A030

India		
Polyplex Corporation Limited B-37, Sector-1, Noida 201 301, Dist. Gautam Budh Nagar, Uttar Pradesh, India	3,7	A032
SRF Limited Block C, Sector 45, Greenwood City, Gurgaon 122 003, Haryana, India	15,5	A753
Uflex Limited A-1, Sector 60, Noida 201 301, (U.P.), India	3,2	A027
Vacmet India Limited Anant Plaza, IInd Floor, 4/117-2A, Civil Lines, Church Road, Agra 282 002, Uttar Pradesh, India	0	A992
All other companies (except MTZ Polyfilms Limited – TARIC additional code A031 ¹⁷)	29,3	A999'

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*

¹⁷ As regards MTZ Polyfilms Limited (New India Centre, 5th Floor, 17 Co-operage Road, Mumbai 400039, India), reference is made to the notice published in OJ C 131, 20.5.2010, p. 3.