Council Implementing Regulation (EU) No 469/2011 of 13 May 2011 amending Regulation (EC) No 1292/2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India

COUNCIL IMPLEMENTING REGULATION (EU) No 469/2011

of 13 May 2011

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 Community[(1)] ('the basic anti-dumping Regulation'), and in particular Articles 9(4) and 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 Community[(2)] ('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 India[(3)]. 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 2001[(4)], a definitive anti-dumping duty on PET film originating in India was imposed by Regulation (EC) No 1676/2001[(5)].

(2) On 8 March 2006, two Council Regulations concerning imports of PET film originating in India were published: Regulation (EC) No 367/2006[(6)] which followed an expiry review investigation and maintained the definitive countervailing duty ('the expiry review anti-subsidy Regulation'); and Regulation (EC) No 366/2006[(7)] ('the amending anti-dumping Regulation') which followed a partial interim review investigation and 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 1292/2007[(8)].

(4) On 20 May 2010, a notice[9] was published in the *Official Journal of the European Union*. In that notice, parties were informed that, in view of the judgment of the General Court of 17 November 2009 in Case T-143/06[10] ('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 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 2011[11] 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, 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 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 redetermined.

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, 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 Regulation (EC) No 367/2001 and confirmed by recital 74 of 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 %	Regulation (EC) No 366/2006
Garware Polyester Limited	0 %	Implementing Regulation (EU) No 38/2011[a]
Jindal Poly Films Limited	0 %	Regulation (EC) No 1676/2001[d]
Polyplex Corporation Limited	3,7 %	Regulation (EC) No 366/2006
SRF Limited	15,5 %	Regulation (EC) No 1424/2006[b]
Uflex Limited	3,2 %	Regulation (EC) No 366/2006[e]
Vacmet India Limited	0 %	Implementing Regulation (EU) No 205/2011[c]
All other companies (except MTZ Polyfilms)	29,3 %	Regulation (EC) No 366/2006

a OJ L 15, 20.1.2011, p. 1.

b OJ L 270, 29.9.2006, p. 1.

c OJ L 58, 3.3.2011, p. 14.

d Jindal Poly Films Limited was at that time known as Jindal Polyester Limited.

e 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 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 since, following an interim review, Garware Polyester Limited, which was one of the companies in the sample, had recently 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 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.