Council Implementing Regulation (EU) No 206/2011 of 28 February 2011 amending Regulation (EC) No 367/2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India

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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 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Articles 15(1), 19(1) and 22(1) thereof,

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

Whereas:

A. **PROCEDURE**

1. **Previous investigation and existing countervailing measures**

(1) In December 1999, by Regulation (EC) No 2597/1999[(2)], the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) film (the product concerned) currently falling within CN codes ex 3920 62 19 and ex 3920 62 90, originating in India. The measures took the form of an *ad valorem* countervailing duty, ranging between 3,8 % and 19,1 % imposed on imports from individually named exporters, with a residual duty rate of 19,1 % imposed on imports of the product concerned from all other companies. The investigation period of the original investigation was 1 October 1997 to 30 September 1998.

(2) In March 2006, by Regulation (EC) No 367/2006[(3)] (Regulation (EC) No 367/2006), the Council, following an expiry review pursuant to Article 18 of the basic Regulation, maintained the definitive countervailing duty imposed by Regulation (EC) No 2597/1999 on imports of PET film originating in India. The review investigation period was 1 October 2003 to 30 September 2004.

(3) In August 2006, by Regulation (EC) No 1288/2006[(4)], the Council, following an interim review concerning the subsidisation of an Indian PET film producer, amended the definitive countervailing duty imposed on this company by Regulation (EC) No 367/2006.

(4) In September 2007, by Regulation (EC) No 1124/2007[(5)], the Council, following a partial interim review concerning the subsidisation of another Indian PET

film producer, amended the definitive countervailing duty imposed on this company by Regulation (EC) No 367/2006.

(5) In January 2009, by Regulation (EC) No 15/2009[6], the Council, following a partial interim review initiated by the Commission on its own initiative concerning the subsidisation of five Indian PET film producers, amended the definitive countervailing duty imposed on these companies by Regulation (EC) No 367/2006 and the definitive anti-dumping duties imposed by Regulation (EC) No 1292/2007[7].

(6) In June 2010, by implementing Regulation (EU) No 579/2010[8], the Council, following a partial interim review concerning the subsidisation of an Indian PET film producer, amended the definitive countervailing duty imposed on this company by Regulation (EC) 367/2006.

(7) It should be noted that Vacmet India Limited is currently subject to a countervailing duty of 19,1 % on the basis of Regulation (EC) 367/2006.

2. **Existing anti-dumping measures**

(8) It should be noted that Vacmet India Limited is subject to a residual anti-dumping duty of 17,3 % on the basis of Regulation (EC) 1292/2007.

3. **Initiation of a partial interim review**

(9) On 7 August 2009, the Commission received a request for a partial interim review pursuant to Article 19 of the basic Regulation. The request, limited in scope to the examination of subsidisation, was lodged by Vacmet India Limited, an exporting producer from India (the applicant). In its request, the applicant claimed that the circumstances on the basis of which measures were imposed have changed and that these changes are of a lasting nature. The applicant provided prima facie evidence that the continued imposition of the measure at its current level is no longer necessary to offset subsidisation.

(10) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced on 14 January 2010, by a notice published in the *Official Journal of the European Union*[9] (notice of initiation), the initiation of a partial interim review, in accordance with Article 19 of the basic Regulation, limited in scope to the examination of subsidisation in respect of the applicant.

(11) The partial interim review investigation was also to assess the need, depending on the review findings, to amend the rate of duty currently applicable to imports of the product concerned from exporting producers in the country concerned not individually mentioned in Article 1(2) of Regulation (EC) No 367/2006, i.e. the duty rate as applying to ‘all other companies’ in India.

(12) The Commission also announced on 14 January 2010, by a notice of initiation published in the *Official Journal of the European Union*[10], the initiation of a partial

interim review of the anti-dumping measures limited in scope to the examination of dumping as far as the applicant is concerned.

4. **Investigation**

(13) The investigation of the level of subsidisation covered the period from 1 January 2009 to 31 December 2009 ('review investigation period' or 'RIP').

(14) The Commission officially informed the applicant, the Government of India (GOI) and the Union industry of the initiation of the partial interim investigation. Interested parties were given the opportunity to make their views known in writing and to be heard.

(15) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the applicant. In addition, a questionnaire was sent to the GOI.

(16) While the applicant fully cooperated in the investigation, the relevant authorities of the GOI did not submit a questionnaire reply within the deadline. The Commission sought and verified all information it deemed necessary for the determination of subsidisation. A verification visit was carried out at the premises of the applicant.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(17) The product confirmed by this review is the same as that defined in the Regulation imposing the measures in force (Regulation (EC) No 367/2006), namely polyethylene terephthalate (PET) film, originating in India, currently falling within CN codes ex 3920 62 19 and ex 3920 62 90.

2. **Like product**

(18) As in previous investigations, this investigation has shown that PET film produced in India and exported to the Union and the PET film produced and sold domestically on the Indian market, as well as the PET film produced and sold in the EU by the Union producers have the same basic physical and chemical characteristics and the same basic uses.

(19) These products are therefore considered to be alike within the meaning of Article 2(c) of the basic Regulation.

C. **SUBSIDISATION**

1. **Introduction**

Nationwide Schemes

(20) On the basis of the information submitted by the applicant and the Union industry, the following schemes, which allegedly involve the granting of subsidies, were investigated:

(a) Duty Entitlement Passbook Scheme;

(b) Export Promotion Capital Goods Scheme;

(c) Advance Authorisation Scheme (formerly known as Advance Licence Scheme);

(d) Capital Subsidies.

(21) The schemes (a) to (c) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Foreign Trade Policy' documents, which are issued by the Ministry of Commerce every 5 years and updated regularly. Two Foreign Trade Policy documents are relevant to the RIP of this case, namely FT-policy 04-09 and FT-policy 09-14. In addition, the GOI also sets out the procedures governing the FT-policy 04-09 and FT-policy 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 04-09' and 'HOP I 09-14' respectively). The Handbook of Procedures is also updated on a regular basis.

(22) The scheme specified above under point (d) is managed by the authorities of the State of Uttar Pradesh.

2. **Duty Entitlement Passbook Scheme (DEPBS)**

(a) *Legal Basis*

(23) The detailed description of the DEPBS is contained in paragraphs 4.3 of the FT-policy 04-09 and FT-policy 09-14 as well as in chapter 4 of the HOP I 04-09 and of the HOP I 09-14.

(b) *Eligibility*

(24) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) *Practical implementation of the DEPBS*

(25) An exporter can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS rates have been established by the Indian authorities for most products, including the product concerned. They are determined on the basis of Standard Input Output Norms (SIONs) taking into account a presumed import content of inputs in the export product and the customs duty incidence on such presumed imports, regardless of whether import duties have actually been paid or not.

(26) To be eligible for benefits under this scheme, a company must export. At the time of the export transaction, a declaration must be made by the exporter to the Indian authorities indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue an export shipping bill during the dispatch procedure. This document shows, inter alia, the amount of DEPBS credit

which is to be granted for that export transaction. At this point in time, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit.

(27) It was found that in accordance with Indian accounting standards, DEPBS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods — except capital goods and goods where there are import restrictions. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. DEPBS credits are freely transferable and valid for a period of 12 months from the date of issue.

(28) Application for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. De facto no strict deadlines apply to DEPBS credits. The electronic system used to manage DEPBS does not automatically exclude export transactions exceeding the submission deadline mentioned in chapter 4.47 of the HOP I 04-09 and 09-14. Furthermore, as clearly provided in chapter 9.3 of the HOP I 04-09 and 09-14, applications received after the expiry of submission deadlines can always be considered subject to the imposition of a minor penalty fee (i.e. 10 % of the entitlement).

(29) It was found that the applicant used this scheme during the RIP.

(d) *Conclusions on the DEPBS*

(30) The DEPBS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A DEPBS credit is a financial contribution by the GOI since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would otherwise be due. In addition, the DEPBS credit confers a benefit upon the exporter because it improves its liquidity.

(31) Furthermore, the DEPBS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(32) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation. In particular, an exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I, and Annexes II and III to the basic Regulation. Lastly, an exporter is eligible for the DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even