# Council Implementing Regulation (EU) No 205/2011 of 28 February 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 205/2011

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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 Community[(1)] ('the basic anti-dumping Regulation'), and in particular Article 9(4) and Article 11(3), (5) and (6) 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 anti-dumping measures**

(1) In August 2001, by Regulation (EC) No 1676/2001[(2)], the Council imposed a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, inter alia, in India. The measures consisted of an *ad valorem* anti-dumping duty ranging between 0 % and 62,6 % imposed on imports from individually named exporting producers, with a residual duty rate of 53,3 % on imports from all other companies.

(2) In March 2006, by Regulation (EC) No 366/2006[(3)], the Council amended the measures imposed by Regulation (EC) No 1676/2001. The anti-dumping duty imposed ranged between 0 % and 18 %, taking into account the findings of the expiry review of the definitive countervailing duties which are detailed in Regulation (EC) No 367/2006[(4)].

(3) In August 2006, by Regulation (EC) No 1288/2006[(5)], the Council, following an interim review concerning the subsidisation of an Indian PET film producer, amended the definitive anti-dumping duty imposed on that producer by Regulation (EC) No 1676/2001.

(4) In September 2006, by Regulation (EC) No 1424/2006[(6)], the Council, following a new exporting producer request, amended Regulation (EC) No 1676/2001 in respect of an Indian PET film producer. The amended Regulation established a dumping margin of 15,5 % and an anti-dumping duty rate of 3,5 % for the company

concerned taking into account the company's export subsidy margin as ascertained in the anti-subsidy investigation which led to the adoption of Regulation (EC) No 367/2006. Since the company did not have an individual countervailing duty, the rate established for all other companies was applied.

(5) In November 2007, by Regulation (EC) No 1292/2007[7], the Council imposed a definitive anti-dumping duty on imports of PET film originating in India following an expiry review pursuant to Article 11(2) of the basic anti-dumping Regulation. By the same Regulation a partial interim review, pursuant to Article 11(3) of the basic anti-dumping Regulation, limited to one Indian exporting producer was terminated.

(6) In January 2009, by Regulation (EC) No 15/2009[8], 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 anti-dumping duty imposed on these companies by Regulation (EC) No 1292/2007 and the definitive countervailing duties imposed by Regulation (EC) No 367/2006.

(7) Regulation (EC) No 1292/2007 also maintained the extension of the measures to Brazil and Israel with certain companies being exempted. The last amendment to Regulation (EC) No 1292/2007 in this regard was made by Council Implementing Regulation (EU) No 806/2010 of 13 September 2010 amending Regulations (EC) No 1292/2007 and (EC) No 367/2006 as regards the granting of an exemption from the measures imposed under those Regulations to one Israeli exporter of polyethylene terephthalate (PET) film originating in India and terminating the registration of imports from that exporter[9].

(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) No 1292/2007.

## 2. Existing countervailing measures

(9) It should also be noted that Vacmet India Limited is subject to a countervailing duty of 19,1 % on the basis of Regulation (EC) No 367/2006.

## 3. Request for a partial interim review

(10) On 7 August 2009, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation. The request, limited in scope to the examination of dumping, 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 dumping.

## 4. Initiation of a review

(11) 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*[10] ('notice of initiation'), the initiation of a partial interim review, in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping in respect of the applicant.

(12) 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 2(2) of Regulation (EC) No 1292/2007, i.e. the anti-dumping duty rate as applying to 'all other companies' in India.

(13) On 14 January 2010, the Commission also announced, by a notice of initiation published in the *Official Journal of the European Union*[11], the initiation of a partial interim review of the countervailing measures limited in scope to the examination of subsidisation as far as the applicant is concerned.

### 5. Investigation

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

(15) The Commission officially informed the applicant, and the authorities of the exporting country and the Union industry, of the initiation of the partial interim review investigation. Interested parties were given the opportunity to make their views known in writing and to be heard.

(16) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the applicant and received a reply within the deadline set for that purpose.

(17) The Commission sought and verified all information it deemed necessary for the determination of dumping. A verification visit was carried out at the premises of the applicant.

## B. PRODUCT CONCERNED AND LIKE PRODUCT

### 1. Product concerned

(18) The product concerned by this review is the same as that defined in the Regulation imposing the measures in force (Regulation (EC) No 1292/2007), 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

(19) As in previous investigations, this investigation has shown that PET film produced in India and exported to the EU 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.

**Changes to legislation:** *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 205/2011. (See end of Document for details)*

(20) These products are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. **DUMPING**

(a) *Normal Value*

(21) In order to establish normal value, it was first determined whether the total volume of domestic sales of the like product was representative in accordance of Article 2(2) of the basic Regulation, namely whether these sales represented 5 % of the sales volume of the product concerned exported to the EU. The Commission established that the like product was sold domestically by the applicant in overall representative volumes. This representativity test was then carried out on a type-by-type basis. It was found that two types were not sold domestically at all.

(22) 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 Indian market, the proportion of profitable domestic sales to independent customers during the RIP. It was found that more than 90 % of the domestic sales were profitable.

(23) For the product types sold domestically and which passed the representativity test mentioned in recital 21 above, it was established that for one product type, all domestic transactions were not profitable and thus were not made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation.

(24) For the product types which were sold in sufficient quantities and sold in the ordinary course of trade in India, normal value was established on the basis of prices paid or payable by unrelated customers pursuant to Article 2(1) of the basic Regulation. For the other types, namely the type mentioned in recital 23 above and the types not sold domestically, normal value was constructed on the basis of the costs of manufacturing incurred by the applicant for the exported model in question plus a reasonable amount for sales, general and administrative (SG&A) costs and for profit in accordance with Article 2(3) of the basic Regulation.

(25) Given the high level of profitable domestic sales made in the ordinary course of trade, the SG&A costs and the profit were based on all domestic sales of the like product on the domestic market.

(b) *Export price*

(26) In all cases where PET film was directly exported to independent customers in the EU, the export prices were established in accordance with Article 2(8) of the basic Regulation, namely on the basis of prices actually paid or payable.

(27) For the export sales to the EU made through a related company, the export price was established on the basis of prices at which the imported products were first resold to an independent buyer in accordance with Article 2(9) of the basic Regulation.