Council Implementing Regulation (EU) No 1064/2010 of 17 November 2010 terminating the partial interim review of the anti-dumping and countervailing measures applicable to 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 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 11(3) and (5) 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 Articles 19 and 22(1), first sentence thereof,

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

Whereas:

1. MEASURES IN FORCE

1.1. Previous investigations and existing countervailing measures

(1) In December 1999, by Regulation (EC) No 2597/1999[(3)], the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) film (the product concerned), originating in India. The investigation which led to the adoption of that Regulation is hereinafter referred to as the 'original anti-subsidy investigation'. 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 from all other companies. The investigation period of the original anti-subsidy investigation was 1 October 1997 to 30 September 1998.

(2) In March 2006, by Regulation (EC) No 367/2006[(4)], the Council, following an expiry review pursuant to Article 18 of the basic anti-subsidy 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.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 1064/2010. (See end of Document for details)*

(3) In August 2006, by Regulation (EC) No 1288/2006[(5)], the Council, following a partial interim review concerning the subsidisation of an Indian PET film producer, Garware Polyester Limited (Garware), amended the definitive countervailing duty imposed on Garware by Regulation (EC) No 367/2006.

(4) In September 2007, by Regulation (EC) No 1124/2007[(6)], the Council, following a partial interim review concerning the subsidisation of another Indian PET film producer, Jindal Poly Films Limited, formerly known as Jindal Polyester Ltd (Jindal), amended the definitive countervailing duty imposed on Jindal by Regulation (EC) No 367/2006.

(5) In January 2009, by Regulation (EC) No 15/2009[(7)], 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.

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

1.2. **Previous investigations and existing anti-dumping measures**

(7) In August 2001, by Regulation (EC) No 1676/2001[(9)], the Council imposed a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, inter alia, in India. The investigation which led to the adoption of that Regulation is hereinafter referred to as the 'original anti-dumping investigation'. 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.

(8) In March 2006, by Regulation (EC) No 366/2006[(10)], 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 carried out pursuant to Regulation (EC) No 367/2006.

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

(10) In September 2006, by Regulation (EC) No 1424/2006[(11)], the Council, following a new exporting producer request, amended Regulation (EC) No 1676/2001 in respect of SRF Limited. The amended Regulation established a dumping margin of 15,5 % and a 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.

(11) In November 2007, by Regulation (EC) No 1292/2007[12], 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.

(12) In January 2009, by Regulation (EC) No 15/2009, 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.

2. PROCEDURE

2.1. Grounds for the review

(13) The request for a partial interim review pursuant to Article 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation was lodged by Polyplex Corporation Limited, an exporting producer from India (the applicant). The request was limited to the examination of the product scope as regards the clarification of whether certain product types fall within the scope of the anti-dumping and countervailing measures applicable to imports of PET film.

(14) The applicant requested the exclusion of 'siliconised polyester release liner' (SPRL) in so far as it falls within the definition of the product concerned, from the scope of the current anti-dumping and countervailing measures on imports of PET film originating in India. The applicant provided prima facie evidence that the basic physical, technical and chemical characteristics of SPRL significantly differ from those of the product concerned.

2.2. Initiation

(15) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced by a notice published on 9 September 2009 in the *Official Journal of the European Union*[13] (the Notice of Initiation) the initiation of a partial interim review in accordance with the provisions of Article 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation limited to the examination of the product scope. In particular, the review had to determine whether or not SPRL is part of the product concerned as defined in the original investigation.

2.3. Review investigation

(16) The Commission officially informed the authorities of the Republic of India (the country concerned) and all other parties known to be concerned, i.e. known exporting producers in the country concerned, users and importers in the Union and producers in the Union, of the initiation of the partial interim review investigation.

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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.

(17) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(18) The Commission sent questionnaires to all parties known to be concerned, and all other parties which made themselves known within the the time limit set out in the Notice of Initiation.

(19) Questionnaire replies were received from the applicant, two other Indian exporting producers, four Union producers and two Union importers.

(20) The Commission sought and verified all information deemed necessary for the purpose of the assessment as to whether there was a need for amendment of the scope of the existing anti-dumping and countervailing measures and carried out verification visits at the premises of the following companies:

— Garware Polyester Limited, Mumbai, India,

— Mitsubishi Polyester Film, Wiesbaden, Germany,

— Polyplex Corporation Limited, Noida, India.

(21) The investigation covered the period from 1 April 2008 to 31 March 2009 (‘review investigation period’ or ‘RIP’).

3. PRODUCT CONCERNED

(22) The product concerned is the same product as the one defined by Regulations (EC) No 367/2006 and (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.

4. FINDINGS OF THE REVIEW INVESTIGATION

4.1. Background

(23) PET film is a non-self-adhesive film of polyethylene terephthalate. PET film is always produced from PET polymer and consists of a base film which may be subject to further treatment either during or after the production process. Such treatment of the base film may typically include corona treatment, metallisation or chemical coating.

(24) PET film has specific physical, chemical and technical characteristics which distinguishes it from other films. Some of the characteristics of PET film are, for example, its high tensile strength, the very good electrical properties, low moisture absorption and humidity resistance, low shrinkage and good barrier properties. Therefore, while these specific characteristics determine various types of PET film, these types retain the same basic physical, technical and chemical characteristics of base PET film. PET film has five broad end-uses which fall within five market segments, i.e. magnetic media, packaging, electrical, imaging and industrial applications.

4.2. Methodology

(25) In order to assess whether SPRL and other types of PET film should be considered as one single product or two different products, it was examined whether SPRL and other types of PET film shared the same basic physical and chemical characteristics. Moreover, the production process, differences in end-uses and interchangeability as well as differences in costs and prices were examined.

4.3. **Main arguments of the parties**

(26) The applicant claimed that the basic physical, technical and chemical characteristics of SPRL differ from those of the product concerned. In particular, the relatively low release force of SPRL and its low surface tension make the film slippery and consequently its surface becomes inactive to inks, coatings, adhesives and metallisation. According to the applicant, due to the migration of uncured silicone within the SPRL, even the reverse side of a single side coated SPRL exhibits marked differences in physical and technical properties compared to other types of PET film. These features allegedly impede the usage of SPRL in base PET film industry segments identified in the original investigation, i.e. packaging, magnetic media, electrical, imaging and industrial applications. On the other hand, the functionally active surface of other types of PET film makes it impossible to use them as release liners, since they would irretrievably stick to adhesive surfaces. Consequently, the applicant argued that SPRL is not interchangeable in its applications with any other kind of PET film.

(27) The Union industry claimed that the applicant's arguments relied on two successive sets of artificially limited comparisons. First, the applicant compared SPRL against a narrow set of PET films, i.e. base PET film, and not against other types of coated PET film that are more comparable with SPRL. Second, this allegedly limited comparison was carried out only with regard to a highly selective and limited set of physical and chemical properties. The Union industry claimed that when comparing SPRL with a wide range of other types of PET film, and over a representative number of chemical and physical properties, it is clear that SPRL is the same product as other types of PET film and should remain within the scope of the anti-dumping and countervailing measures. According to the Union industry, SPRL is effectively PET film subsequently coated with a silicone layer. It is not conceptually different from other types of coated film, such as metallised film or film with an anti-static coating or film with barrier coating, and as such is clearly product concerned. In support for its claims, the Union industry provided a comparison of a number of different physical and chemical properties over a number of different types of PET film.

4.4. **Findings**

4.4.1. *Physical and chemical characteristics*

(28) The investigation showed that the two characteristics mentioned in recital 27, i.e. the relatively low release force of SPRL and its low surface tension, are additional features compared to the basic physical, technical and chemical characteristics of PET film as defined in the original anti-dumping investigation[(14)] and mentioned in recital