Council Implementing Regulation (EU) No 579/2010 of 29 June 2010 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 Article 19 thereof,

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

Whereas:

A. **PROCEDURE**

I. **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 investigation which led to the adoption of that Regulation is hereinafter referred to as the 'original 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 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)], 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, 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[5], the Council, following a partial interim review concerning the subsidisation of another Indian PET film producer, Jindal Poly Films Limited ('Jindal'), formerly known as Jindal Polyester Ltd, amended the definitive countervailing duty imposed on Jindal 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.

II. Existing anti-dumping measures

(6) It should be noted that Jindal Poly Films Limited is subject to an anti-dumping duty of 0 %[7].

III. Initiation of a partial interim review

(7) The request for a partial interim review was lodged by Jindal Poly Films Limited, an exporting producer from India ('the applicant'). The request is limited in scope to the examination of subsidisation as far as the applicant is concerned. The applicant has provided *prima facie* evidence that the circumstances with regard to subsidisation on the basis of which measures were established have changed significantly and that these changes are of a lasting nature.

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced on 9 September 2009, by a notice of initiation published in the *Official Journal of the European Union*[8] ('Notice of Initiation'), the initiation of a partial interim review, in accordance with Article 19 of the basic Regulation, limited to the level of subsidisation to the applicant, with a view to determining whether the measures should be removed or amended for the applicant,

(9) The partial interim review investigation would also 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.

IV. Investigation period

(10) The investigation of the level of subsidisation covered the period from 1 April 2008 to 31 March 2009 ('review investigation period' or 'RIP').

V. Parties concerned by the investigation

(11) The Commission officially informed the applicant, the Government of India (GOI), Du Pont Tejin Films, Luxembourg, Mitsubishi Polyester Film, Germany, Toray Plastics Europe, France and Nurell, Italy, which represent a major proportion of Union

PET film production (hereinafter '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 request a hearing within the time limit set out in the Notice of Initiation.

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

(13) The written and oral comments submitted by the parties were considered and, where appropriate, taken into account.

(14) 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.

(15) Replies from the questionnaire were received from the applicant and from the GOI.

(16) The Commission sought and verified all information it deemed necessary for the determination of subsidisation. Verification visits were carried out at the premises of the applicant and at the premises of the GOI in Delhi.

VI. Disclosure and comments on procedure

(17) The GOI and the other interested parties were informed of the essential facts and considerations upon which it was intended to propose to amend the duty rate applicable to the applicant. They were given a reasonable time to comment. All submissions and comments were taken duly into consideration as set out below.

B. PRODUCT CONCERNED

(18) The product covered by this review is the same product as the one concerned by Regulation (EC) No 367/2006, namely polyethylene terephthalate (PET) film falling within CN codes ex 3920 62 19 and ex 3920 62 90 originating in India.

C. SUBSIDISATION

1. Introduction

Nationwide Schemes

(19) On the basis of the information submitted by the GOI and the other interested parties and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

(a) Advance Authorization Scheme (formerly known as Advance Licence Scheme);

(b) Duty Entitlement Passbook Scheme;

(c) Export Promotion Capital Goods Scheme;

(d) Export Credit Scheme.

Regional Schemes

(e) Package Scheme of Incentives (PSI)

(20) 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 'Export and Import Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. One Export and Import Policy document is relevant to the RIP of this case, i.e. the five-year plan relating to the period 1 September 2004 to 31 March 2009 ('EXIM-policy 04-09'). In addition, the GOI also sets out the procedures governing the EXIM-policy 04-09 in a 'Handbook of Procedures – 1 September 2004 to 31 March 2009, Volume I' ('HOP I 04-09'). The Handbook of Procedure is also updated on a regular basis.

(21) The Export Credit Scheme specified above under (d) is based on sections 21 and 35A of the Banking Regulation Act 1949, which allow the Reserve Bank of India ('RBI') to direct commercial banks in the field of export credits.

(22) The scheme specified above under (e) is managed by State authorities in India.

2. **Advance Authorisation Scheme ('AAS')**

(a) *Legal basis*

(23) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the EXIM-policy 04-09 and chapters 4.1 to 4.30 of the HOP I 04-09. This scheme was called Advance Licence Scheme during the previous review investigation that led to the imposition by Regulation (EC) No 367/2006 of the definitive countervailing duty currently in force.

(b) *Eligibility*

(24) The AAS consists of six sub-schemes, as described in more detail in recital (25) below. Those sub-schemes differ , inter alia in the scope of eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement. Manufacturer–exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the EXIM-policy 04-09, such as suppliers of an export oriented unit ('EOU'), are eligible for AAS deemed export. Eventually, intermediate suppliers to manufacturer-exporters are eligible for 'deemed export' benefits under the sub-schemes Advance Release Order ('ARO') and back to back inland letter of credit.

(c) *Practical implementation*

(25) Advance authorisations can be issued for:

(i) Physical exports	:	This is the main sub-scheme. It allows for duty free import of input materials for the production of a specific resulting export product. 'Physical' in this context means that the export product has to leave Indian territory. An import allowance and export obligation including the type of export product are specified in the licence;
(ii) Annual requirement	:	Such an authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The licence holder can – up to a certain value threshold set by its past export performance – import duty free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resulting product falling under the product group using such duty-exempt material;
(iii) Intermediate supplies	:	This sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter who produces the intermediate product can import duty free input materials and can obtain for this purpose an AAS for intermediate supplies. The ultimate exporter finalises the production and is obliged to export the finished product;
(iv) Deemed exports	:	This sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of the EXIM policy 04-09. According to the GOI, deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an EOU or to a company situated in a special economic zone ('SEZ');
(v) ARO	:	The AAS holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases the Advance Authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of the EXIM-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter