Council Regulation (EC) No 1292/2007 of 30 October 2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and terminating a partial interim review of such imports pursuant to Article 11(3) of Regulation (EC) No 384/96

COUNCIL REGULATION (EC) No 1292/2007

of 30 October 2007

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Articles 11(2) and 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) The Council, by Regulation (EC) No 1676/2001[(2)] as last amended by Council Regulation (EC) No 1424/2006[(3)] imposed a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, *inter alia*, in India. The measures, subject to the present reviews, consisted of an *ad valorem* anti-dumping duty ranging between 0 % and 18 % imposed on imports from individually named exporters, with a residual duty rate of 17,3 % imposed on imports from all other companies. The investigation that led to Regulation (EC) No 1676/2001 as modified will be referred to as 'the original investigation'.

(2) The measures imposed on imports from India in the original investigation were extended by Council Regulation (EC) No 1975/2004[(4)] to imports of PET film consigned from Brazil and from Israel, whether declared as originating in Brazil or Israel.

(3) The Commission, by Decision 2001/645/EC[(5)] accepted undertakings offered by five Indian producers in connection with the original investigation. These undertakings were repealed by Decision 2006/173/EC[(6)].

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1292/2007. (See end of Document for details)*

(4) The Council, by Regulation (EC) No 367/2006 as last amended by Council Regulation (EC) No 1124/2007[7] imposed a definitive countervailing duty on imports of PET film originating in India. The measures took the form of *ad valorem* duties ranging between 7 % 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 that led to Regulation (EC) No 367/2006 as amended will be referred to as 'the previous anti-subsidy investigation'.

2. Request for a review

(5) On 23 May 2006 and 3 July 2006 respectively, a request for an expiry review pursuant to Article 11(2) of the basic Regulation and a request for a partial interim review pursuant to Article 11(3) of the basic Regulation, limited to the examination of dumping by Jindal Poly Films Limited (Jindal), were lodged by the following Community producers: Du Pont Teijin Films, Mitsubishi Polyester Film GmbH and Nuroll SpA (the applicants). The applicants represent a major proportion of the Community production of PET film.

(6) The applicants alleged and provided sufficient prima facie evidence that: (a) there is a likelihood of continuation or recurrence of dumping and injury to the Community industry, and (b) the circumstances with regard to dumping on the basis of which measures were established for Jindal have changed and these changes are of a lasting nature.

3. Investigation

(7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation and a partial interim review pursuant to Article 11(3) of the basic Regulation, the Commission announced on 22 August 2006[8] and 25 August 2006[9] respectively, by notices of initiation published in the *Official Journal of the European Union*, the initiation of such reviews.

(8) The partial interim review was limited in scope to the examination of dumping in respect of Jindal. The review investigation period (RIP) was set for both reviews from 1 July 2005 to 30 June 2006. The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 2003 to the end of the RIP (period considered).

4. Parties concerned

(9) The Commission officially advised the exporting producers, the representatives of the exporting country, the Community producers, the importers and users known to be concerned of the initiation of the expiry review. For both reviews, 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 notices of initiation.

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

(11) With respect to the expiry review, in view of the apparently large number of exporting producers of PET film in India which were named in the request, the use of sampling techniques was envisaged in the notice of initiation in accordance with Article 17 of the basic Regulation. In order to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers were asked to make themselves known and to provide, as specified in the notice of initiation, basic information on their activities related to PET film during the RIP. Six exporting producers in India indicated their willingness to cooperate. From these six exporting producers, three companies (Ester Industries Limited, Garware Polyester Limited and Jindal), were selected for the sample and received a questionnaire. These companies were found to constitute the largest representative volume of exports to the Community of PET film which could reasonably be investigated within the time available, pursuant to Article 17(1) of the basic Regulation.

(12) In addition, the Commission sent questionnaires to all other parties known to be concerned or who made themselves known within the deadlines set in the notice of initiation. Complete replies were received from four Community producers, the three sampled exporting producers, one importer/user and four users.

(13) The Commission sought and verified all information it deemed necessary for the determination of dumping and injury as well as to determine whether there is a likelihood of continuation or recurrence of dumping and injury and whether maintaining the measures would be in the Community interest. Verification visits were carried out at the premises of the following interested parties:

(a) *Community producers*
- Dupont Teijin Films (Luxemburg),
- Mitsubishi Polyester Film GmbH (Germany),
- Nuroll SpA (Italy),
- Toray Plastics Europe (France),

(b) *Exporting producers in India*
- Ester Industries Limited, New Delhi,
- Garware Polyester Limited, Aurangabad,
- Jindal Poly Films Limited, New Delhi,

(c) *Related importer/user in the Community*
- Rexor SAS (France),

(d) *Importer/user*
- Coverne SpA (Italy),

(e) *users*
- Safta SpA (Italy),

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— Metalvuoto SpA (Italy).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(14) The product concerned is the same as in the original investigation, i.e. polyethylene terephthalate (PET) film originating in India, normally declared under CN codes ex 3920 62 19 and ex 3920 62 90.

2. Like product

(15) As in the original investigation, it was found that PET film produced and sold on the domestic market in India and PET film exported to the Community from India and PET film produced and sold by the Community producers have the same basic physical and technical characteristics and uses. Therefore, they are like products within the meaning of Article 1(4) of the basic Regulation.

C. PARTIAL INTERIM REVIEW: DUMPING

1. Normal value

(16) In order to establish normal value, it was first verified that the total domestic sales of Jindal were representative in accordance with Article 2(2) of the basic Regulation, i.e. that they accounted for 5 % or more of the total sales volume of the product concerned exported to the Community.

(17) It was then ascertained whether total domestic sales of each product type constituted 5 % or more of the sales volume of the same type exported to the Community.

(18) For those product types where domestic sales constituted 5 % or more of the sales volume of the same type exported to the Community, it was then examined whether sufficient sales had been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. For each product type where the volume of domestic sales made above the cost of production represented more than 80 % of sales, normal value was established on the basis of the weighted average price actually paid for all domestic sales. For those product types where the volume of profitable transactions was equal to or lower than 80 %, but not lower than 10 % of sales, normal value was based on the weighted average price actually paid for the profitable domestic sales only. For those product types where less than 10 %, by volume, was sold on the domestic market at a price not below unit cost, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore, normal value had to be constructed in accordance with Article 2(3) of the basic Regulation.

(19) For the product types where domestic prices of the exporting producer could not be used to establish normal value owing to insufficient representativity or to a lack of sales in the ordinary course of trade, normal value was constructed on the basis of the manufacturing costs incurred by the exporting producer concerned plus a reasonable

amount for selling, general and administrative costs (SG&A costs) and for profits, in accordance with Article 2(3) and (6) of the basic Regulation.

(20) The SG&A costs were based on such costs incurred by the exporting producer with regard to its domestic sales of the product concerned, which were found to be representative. The profit margin was calculated on the basis of the weighted average profit margin of the company for those product types sold on the domestic market in sufficient quantities in the ordinary course of trade.

2. Export price

(21) The vast majority of export sales of the product concerned to the Community during the RIP have been made to independent customers. Therefore, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of export price actually paid or payable.

(22) Some of the export sales have been made to a related company in the Community. The related company did not resell the goods directly but substantially transformed them, to the extent that constructing the export price of the exported product on the basis of the resale price of the transformed product pursuant to Article 2(9) of the basic Regulation was found to be unworkable. The prices charged by Jindal to this related company were compared to the prices made by Jindal to its unrelated customers in the Community for the same product types during the RIP. Since it was found that these two sets of prices were in line for each product type, it was concluded that the prices charged by Jindal to its related party in the Community were reliable and could be used for calculating the export price.

3. Comparison

(23) The normal value and export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Accordingly, adjustments were made for differences in discounts, rebates, transport, insurance, handling, loading and ancillary costs, packing, credit and commissions, where applicable and supported by verified evidence.

(24) Jindal claimed an adjustment to the normal value for the import duty not collected under the Advance Licence Scheme (ALS) on imports of raw material used in the manufacture of goods for export. The ALS permits the importation of raw materials free of duty, provided that the company exports a corresponding quantity and value of finished product determined in accordance with officially set standard input-output norms. Imports under the ALS can either be used for the production of export goods or for the replenishment of domestic inputs used to produce such goods. The company claimed that exports of the product concerned to the EC were used to satisfy the requirements under the ALS in respect of raw materials imported. No conclusion was made as to whether or not an adjustment was warranted for this claim, given that the company was, in any event, found not to be dumping in the RIP it would have no impact on the final outcome of the review investigation.