Council Regulation (EC) No 1124/2007 of 28 September 2007 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 establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community[(1)] (basic Regulation) and in particular Article 19 thereof,

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

Whereas:

A. PROCEDURE

I. Previous investigation and existing measures

(1) The Council, by Regulation (EC) No 2597/1999[(2)], imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) film falling within CN codes ex 3920 62 19 and ex 3920 62 90, originating in India (the product concerned). 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 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 countervailing duty imposed on imports of PET film manufactured and exported by Jindal Poly Films Limited, formerly known as Jindal Polyester Ltd[(3)], (Jindal or the company) was 7 %. The original investigation period was 1 October 1997 to 30 September 1998.

(2) The Council, by Regulation (EC) No 367/2006[(4)], 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) The Council, by Regulation (EC) No 1288/2006, following an interim review concerning the subsidisation of another Indian PET film producer, Garware Polyester Limited (Garware), amended the definitive countervailing duty imposed on Garware by Regulation (EC) No 367/2006.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1124/2007. (See end of Document for details)*

II. Ex officio initiation of a partial interim review

(4) Prima facie evidence was available to the Commission indicating that Jindal benefited from increased levels of subsidisation, compared to the original investigation, and that the changes to such levels were of a lasting nature.

III. Investigation

(5) As a result, the Commission decided, after consulting the Advisory Committee, to initiate ex officio a partial interim review in accordance with Article 19 of the basic Regulation, limited to the level of subsidisation to Jindal, in order to assess the need for the continuation, removal or amendment of the existing countervailing measures. On 2 August 2006 the Commission announced, by a notice of initiation published in the *Official Journal of the European Union*[(5)], the initiation of this review.

(6) The review investigation period (review IP) ran from 1 April 2005 to 31 March 2006.

(7) The Commission officially advised Jindal, the Government of India (GOI) and Du Pont Tejin Films, Luxembourg, Mitsubishi Polyester Film, Germany, Toray Plastics Europe, France and Nuroll, Italy, which represent the overwhelming majority of Community PET film production (hereinafter the Community industry), of the initiation of the partial interim review. 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.

(8) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to Jindal, which cooperated by replying to the questionnaire. A verification visit was carried out at Jindal's premises in India.

(9) Jindal, the GOI and the Community industry were informed of the essential results of the investigation and had the opportunity to comment. Comments were received by Jindal and are discussed below. The GOI did not submit any comments.

B. PRODUCT CONCERNED

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

C. SUBSIDIES

I. Introduction

(11) On the basis of the information available and the reply to the Commission's questionnaire, the following schemes, allegedly involving the granting of subsidies, were investigated:

(a) Nationwide schemes

(i) Advance Licence Scheme;

(ii) Duty Entitlement Passbook Scheme;

(iii) Export Oriented Units Scheme/Special Economic Zones Scheme;

(iv) Export Promotion Capital Goods Scheme;

(v) Export Income Tax Exemption Scheme;

(vi) Export Credit Scheme;

(vii) Duty-Free Replenishment Certificate.

(12) The schemes (i) to (iv) and (vii) above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (the Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding export and import policy. A multi-annual plan relating to the Indian foreign trade policy for the period 1 September 2004 to 31 March 2009, which succeeded the former export and import (EXIM) policy, was published by the GOI (FTP 2004 to 2009). In addition, a handbook of procedures governing the FTP 2004 to 2009 (HOP I 2004 to 2009) was published by the GOI and is updated on a regular basis[6].

(13) The Export Income Tax Exemption Scheme specified in (v) above is based on the Income Tax Act 1961, which is amended annually by the Finance Act.

(14) The Export Credit Scheme specified in (vi) above is based on Sections 21 and 35A of the Banking Regulation Act 1949, which allows the Reserve Bank of India to instruct commercial banks regarding export credits.

(b) Regional Schemes

(15) On the basis of the information available and the reply to the Commission's questionnaire, the Commission also investigated the Package Scheme of Incentives (hereinafter, the 'PSI') of the Government of Maharashtra (the GOM) 1993. This scheme is based on resolutions of the GOM Industries, Energy and Labour Department.

II. Nationwide Schemes

1. **Advance Licence Scheme (ALS)**

(a) Legal basis

(16) The detailed description of the scheme is contained in paragraphs 4.1.3 to 4.1.14 of the FTP 2004 to 2009 and Chapters 4.1 to 4.30 of the HOP I 2004 to 2009. The scheme was replaced in April 2006, i.e. after the end of the review IP, by the 'Advance Authorisation Scheme'. However, this appears to be essentially a name change. The following analysis focuses on the ALS in place during the review IP.

(b) Eligibility

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1124/2007. (See end of Document for details)*

(17) The ALS consists of six sub-schemes. Those sub-schemes differ, inter alia, in the criteria for eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the ALS for physical exports and for the ALS for annual requirement. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the FTP 2004 to 2009, such as suppliers of an export oriented unit (EOU), are eligible for ALS deemed export. Manufacturer-exporters supplying the ultimate exporter are eligible for ALS for intermediate supplies. Finally, 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. Since only the first four of the six sub-schemes were used by Jindal during the review IP, only those will be described in more detail below.

(c) Practical implementation

(18) An Advance Licence can be issued for:

(i) *Physical exports*: This is the main sub-scheme. It allows the duty-free import of input materials for the production of a specific resultant export product. 'Physical' in this context means that the export product has to leave Indian territory. An import allowance and an export obligation, including the type of export product, are specified in the licence.

(ii) *Annual requirement*: Such a licence is not linked to a specific export product, but to a wider product group (e.g. chemical and related 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 resultant product falling under the product group using such duty-exempt material.

(iii) *Deemed exports*: This sub-scheme allows a main contractor the duty-free import of inputs 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 FTP 2004 to 2009. 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 are 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).

(iv) *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 produces the intermediate product. It can import duty free input materials and can obtain for this purpose an ALS for intermediate supplies. The ultimate exporter finalizes the production and is obliged to export the finished product.

(19) As stated above, Jindal used the ALS during the review IP. More precisely, it made use of the four sub-schemes indicated under (i) to (iv) above.

(20) For verification purposes by the Indian authorities, a licence holder is legally obliged to maintain 'a true and proper account of licence-wise consumption and utilisation of imported goods' in a specified format (Chapter 4.30 HOP I 2004 to 2009) (hereinafter the consumption register). The verification showed that the company did not properly maintain its consumption register, i.e. that it did not record the link between input material and the final destination of the resultant product, as required by the format required by the GOI, despite the fact that it not only exports the resultant product but sells it on the domestic market as well.

(21) With regard to sub-schemes (i) and (iii) above, both the import allowance and the export obligation (including deemed export) are fixed in volume and value by the GOI and are documented on the licence. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the licence. The volume of imports allowed under this scheme is determined by the GOI on the basis of standard input-output norms (SIONs). SIONs exist for most products including the product concerned and are published in Volume II of the HOP I 2004 to 2009. The SIONs for PET film and PET chips, an intermediate product, were revised downwards in October 2005.

(22) With regard to sub-scheme (iii) it was noted that the deemed exports fulfilling the respective obligation under the ALS were essentially intra-company sales, i.e. a PET chip manufacturing unit of Jindal (which is not a separate legal entity) sold the PET chips for further downstream production of PET film to Jindal's EOU. The import of raw materials took place in the context of the manufacture of the intermediate product (PET chips). In other words, under sub-scheme (iii) domestic sales are considered to be exports.

(23) With regard to sub-scheme (iv) input materials domestically procured by Jindal are written off from Jindal's Advance Licence and an intermediate Advance Licence is issued to the domestic supplier. The holder of such intermediate Advance Licence can import, duty-free, the goods needed to produce the product that will subsequently be supplied to Jindal as raw material for the production of the product concerned.

(24) In the case of sub-scheme (ii) listed above (Advance Licence for annual requirement), only the import allowance in value is documented on the licence. The licence holder is obliged to 'maintain the nexus between imported inputs and the resultant product' (paragraph 4.24A(c) HOP I 2004 to 2009).

(25) Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (18 months with two possible extensions of six months each, i.e. a total of 30 months).

(26) The verification showed that the company's specific consumption rate of key raw materials needed to produce one kilogram of PET film, in various degrees depending on the quality of the PET film and as reported in the consumption register,