Council Regulation (EC) No 193/2007 of 22 February 2007 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97

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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)] (the basic Regulation), and in particular Article 18 thereof,

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[(2)], and in particular, Article 14(1) thereof,

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

Whereas:

A. PROCEDURE

1. MEASURES IN FORCE

(1) On 30 November 2000, by Regulation (EC) No 2603/2000[(3)], the Council imposed definitive countervailing duties on imports of certain polyethylene terephthalate (PET) originating in India, Malaysia, and Thailand (the countries concerned) (the original investigation). The measures imposed had been based on a countervailing measures investigation initiated pursuant to Article 10 of the basic Regulation. At the same time, by Regulation (EC) No 2604/2000[(4)], the Council imposed definitive anti-dumping duties on imports of the same product originating in the same countries. The measures imposed had been based on an anti-dumping investigation initiated pursuant to Article 5 of Regulation (EC) No 384/96.

(2) The amendments made to Regulation (EC) No 2604/2000 were the results of either review investigations initiated pursuant to Article 11(3) and (4) of Regulation (EC) No 384/96 or of price undertakings being accepted under Article 8(1) thereof.

(3) Moreover, by Regulation (EC) No 1467/2004[(5)], the Council imposed definitive anti-dumping duties on imports of certain PET originating in Australia and

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the People's Republic of China (PRC) and terminated the proceeding on imports of PET originating in Pakistan.

(4) On 11 October 2005, the Council amended the level of countervailing measures in force against imports of PET from India[6]. The amendments were a result of an accelerated review initiated pursuant to Article 20 of the basic Regulation.

2. REQUEST FOR A REVIEW

(5) Following the publication of a notice of impending expiry, the Commission, on 30 August 2005, received a request to review the measures in force pursuant to Article 18 of the basic Regulation (expiry review).

(6) The request was lodged on 30 August 2005 by the Polyethylene Terephthalate Committee of Plastics Europe (the applicant) on behalf of producers representing a major proportion, in this case more than 90 %, of total Community production of PET.

(7) The request for the expiry review was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of subsidisation and injury to the Community industry.

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of the review, pursuant to Article 18 of the basic Regulation respectively, the Commission initiated these reviews on 1 December 2005[7].

(9) It should be noted that prior to the initiation of the expiry review, and in accordance with Articles 22(1) and 10(9) of the basic Regulation, the Commission notified the Government of India (GOI) that it had received a properly documented review request and invited the GOI for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. However, the Commission did not receive any answer from the GOI regarding its offer for consultation.

3. PARALLEL INVESTIGATIONS

(10) On 1 December 2005, the Commission also opened a review pursuant to Article 11(2) of Regulation (EC) No 384/96 on the anti-dumping measures in force on imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Thailand and Taiwan[8]. A partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 limited to dumping was initiated at the same time concerning imports of the same product originating in the Republic of Korea and Taiwan[8].

4. REVIEW INVESTIGATION PERIOD

(11) The review investigation period (RIP) covered the period from 1 October 2004 to 30 September 2005. The examination of trends in the context of injury covered the period from 1 January 2002 up to the end of the RIP (hereinafter referred to as the period considered).

5. PARTIES CONCERNED BY THE INVESTIGATION

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(12) The Commission officially advised the exporting producers, the representatives of the exporting country, importers, Community producers, users and the applicant of the initiation of the expiry review. 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. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

(13) In view of the apparent large number of Indian exporting producers as well as Community producers and importers listed in the request for the expiry reviews, it was considered appropriate, in accordance with Article 27 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 27 of the basic Regulation, to make themselves known within 15 days of the initiation of the reviews and to provide the Commission with the information requested in the notice of initiation.

(14) After examination of the information submitted, given the low number of exporting producers in India indicating their willingness to cooperate, it was decided that sampling was not necessary as regards exporting producers in India.

(15) Having examined the information submitted by Community producers and importers, and given the relative small number of replies, it was considered that sampling for none of these categories would be warranted.

(16) Questionnaires were therefore sent to all known exporting producers in the country concerned, importers, suppliers, Community producers and users.

(17) Replies to the questionnaires were received from three Indian producers, from 12 Community producers, from one importer, one supplier and from 10 converters/ users.

(18) The Commission sought and verified all the information it deemed necessary for its analysis and carried out verification visits at the premises of the following companies:

1. Community producers

Voridian BV (the Netherlands)
M & G Polimeri Italia Spa (Italy)
Equipolymers Srl (Italia)
La Seda de Barcelona SA (Spain)
Novapet SA (Spain)
Selenis Industria de Polímeros SA (Portugal)
Selenis Italia Spa (Italy)

Community Suppliers

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Interquisa SA (Spain)

Unrelated importers in the Community

Global Service International SRL (Italy)

Community users

Coca Cola Enterprises Europe Ltd (Belgium)

2. Government of India

Ministry of Commerce, New Delhi

Government of Maharashtra — Directorate of Industries, Mumbai

3. Exporting producers in India

SENPET Ltd, Kolkata (formerly Elque Polyesters Limited)

Futura Polyesters Limited, Chennai (formerly Futura Polymer Limited)

Pearl Engineering Polymers Limited, New Delhi

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. PRODUCT CONCERNED

(19) The product concerned is the same as in the original investigation, i.e. PET with a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, originating in the country concerned. It is currently classifiable within CN code 3907 60 20.

2. LIKE PRODUCT

(20) As in the original investigation, it was found that the product concerned, PET produced and sold on the domestic markets in the country concerned and PET produced and sold by the Community producers have the same basic physical and chemical characteristics and uses. It is therefore concluded that all types of PET with a viscosity of 78 ml/g or higher are alike within the meaning of Article 1(5) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATION

I. CONTINUATION OF SUBSIDISATION — INTRODUCTION

(21) On the basis of the information contained in the review request and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated.

1. SUBSIDY SCHEMES ORIGINALLY INVESTIGATED

Nationwide schemes

(a) Duty Entitlement Passbook Scheme (DEPBS)

(b) Income Tax Exemption Scheme (ITES)

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(c) Export Promotion Capital Goods Scheme (EPCGS)

(d) Export Processing Zones (EPZ)/Special Economic Zones (SEZ)/Export Oriented Units (EOU)

2. SUBSIDY SCHEMES NOT ORIGINALLY INVESTIGATED

Nationwide schemes

(e) Advance Licence Scheme (ALS)

(f) Export Credit Scheme (pre-shipment and post-shipment) (ECS)

Regional schemes

(g) Gujarat Sales Tax Incentive Scheme (GSTIS)

(h) Gujarat Electricity Duty Exemption Scheme (GEDES)

(i) West Bengal Incentive Schemes (WBIS)

(j) Package Scheme of Incentives (PSI) of the Government of Maharashtra

(22) Schemes (a) and (c) to (e) 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, since 1 September 2004 named Foreign Trade Policy, and 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 2004-2009). In addition, the GOI also sets out the procedures governing the EXIM-policy 2004-2009 in a Handbook of Procedures — 1 September 2004 to 31 March 2009, Volume I (HOP I 2004-2009). The Handbook of Procedure (HOP) is also updated on a regular basis.

(23) Scheme (b) is based on the Income Tax Act of 1961, which is amended yearly by the Finance Act.

(24) Scheme (f) is based on sections 21 and 35A of the Banking Regulation Act 1949, which allows the Reserve Bank of India (RBI) to direct commercial banks in the field of export credits.

(25) Scheme (g) is administered by the Government of Gujarat and based on its industrial incentive policy; scheme (h) is based on the Bombay Electricity Duty Act of 1958.

(26) Scheme (j) is managed by the state of Maharashtra and is based on resolutions of the Government of Maharashtra Industries, Energy and Labour Department.

(27) Scheme (i) is set up by the Government of West Bengal through the Commerce and Industries Department notification No 588-CI/H of 22 June 1999 (WBIS 1999)