Council Regulation (EC) No 367/2006 of 27 February 2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97

COUNCIL REGULATION (EC) No 367/2006

of 27 February 2006

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

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 member of the European Community[(1)] (hereinafter referred to as the basic Regulation), and in particular Article 18 thereof,

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

Whereas:

A. PROCEDURE

1. EXISTING MEASURES AND TERMINATED INVESTIGATIONS CONCERNING THE SAME PRODUCT

(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 and originating in India (hereinafter referred to as the definitive countervailing measures). 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 from all other companies.

(2) The Council, by Regulation (EC) No 1676/2001[(3)], imposed definitive anti-dumping duties on imports of PET film originating in India and the Republic of Korea. The measures took the form of an *ad valorem* duty ranging between 0 % and 62,6 % on imports of PET film originating in India (hereinafter referred to as the definitive anti-dumping measures), with the exception of imports from five Indian companies (Ester Industries Limited (hereinafter referred to as Ester), Flex Industries Limited (hereinafter referred to as Flex), Garware Polyester Limited (hereinafter referred to as Garware), MTZ Polyesters Limited (hereinafter referred to as MTZ), and Polyplex Corporation Limited (hereinafter referred to as Polyplex)) from whom undertakings had been accepted by Commission Decision 2001/645/EC[(4)].

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EC) No 367/2006. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) It is noted that the company formerly known as MTZ Polyesters Limited changed name. Its new name is MTZ Polyfilms Limited. This change of name in no way affected the findings of Regulation (EC) No 2597/1999 and the right of the company to benefit from the individual duty rate applied to it under its previous name. The Commission announced on 17 February 2005 the change of name of MTZ by a notice published in the *Official Journal of the European Union*[(5)]. It is further noted that MTZ changed its address with effect from July 2005, with no other changes to either the company's ownership, structure or operations. The address of the company should therefore be amended.

(4) The Council, by Regulations (EC) No 1975/2004[(6)] and (EC) No 1976/2004[(7)], extended the definitive countervailing and anti-dumping measures on imports of PET film originating in India, to imports of the same product consigned from Brazil and Israel, whether declared as originating in Brazil or Israel or not.

(5) On 28 June 2002[(8)], the Commission initiated a partial interim review limited to the form of the definitive countervailing measures and, in particular to the examination of the acceptability of an undertaking offered by one Indian exporting producer, pursuant to Article 19 of the basic Regulation. This investigation has been terminated by Council Regulation (EC) No 365/2006[(9)].

(6) On 22 November 2003[(10)], the Commission initiated a partial interim review limited to the form of the definitive anti-dumping measures. This investigation has been concluded by Council Regulation (EC) No 365/2006.

(7) On 4 January 2005[(11)], the Commission initiated a partial interim review limited to the level of the definitive anti-dumping measures. This investigation has been concluded by Council Regulation (EC) No 365/2006, which amended the level of the definitive anti-dumping measures.

(8) On 23 August 2005[(12)], the Commission initiated a review of Regulations (EC) No 1975/2004 and (EC) No 1976/2004 with respect to the application of an Israeli producer for an exemption from the extended measures. This investigation has been terminated by Council Regulation (EC) No 101/2006.

2. REQUEST FOR AN EXPIRY REVIEW

(9) Following the publication of a notice of impending expiry[(13)] of the definitive countervailing measures in force, the Commission received a request for the initiation of an expiry review of Council Regulation (EC) No 2597/1999 pursuant to Article 18 of the basic Regulation, from Community producers of the like product, i.e. DuPont Teijin Films, Mitsubishi Polyester Film GmbH, Nuroll SpA and Toray Plastics Europe (hereinafter referred to as the applicants). The applicants represent a major proportion, in this case over 50 %, of the total Community production of PET film.

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

***Changes to legislation:** There are outstanding changes not yet made to Council Regulation (EC) No 367/2006. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(11) Prior to the initiation of the expiry review, and in accordance with Articles 10(9) and 22(1) of the basic Regulation, the Commission notified the Government of India (hereinafter referred to as the 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. INITIATION OF AN EXPIRY REVIEW

(12) The Commission examined the evidence submitted by the applicants and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 18 of the basic Regulation. After consultation of the Advisory Committee, the Commission initiated an expiry review of Council Regulation (EC) No 2597/1999 by means of a notice published in the *Official Journal of the European Union*[(14)].

4. INVESTIGATION PERIOD

(13) The investigation covered the period from 1 October 2003 to 30 September 2004 (hereinafter referred to as the review investigation period or IP). The examination of trends in the context of injury covered the period from 1 January 2001 up to the end of the review investigation period (hereinafter referred to as the period considered).

5. PARTIES CONCERNED BY THE INVESTIGATION

(14) The Commission officially advised the applicants, other known Community producers, exporting producers, importers, upstream suppliers, users and the GOI of the initiation of the investigation. Interested parties had the opportunity to make their views known in writing. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing. The written and oral comments submitted by the parties were considered and, where appropriate, taken into account.

(15) 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 for the investigation of subsidisation was envisaged in the notice of initiation in accordance with Article 27 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 the product concerned during the IP. After examination of the information submitted, and given the high number of exporting producers which indicated their willingness to cooperate, it was decided that sampling was necessary.

(16) The Commission sent questionnaires to all parties known to be concerned or who made themselves known within the deadlines set in the notice of initiation.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EC) No 367/2006. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Replies were received from four Community producers, eight exporting producers, one importer/user, one up-stream supplier and the GOI.

(17) From the eight Indian exporting producers, four companies (Ester, Flex, Garware and Jindal Poly Films Limited (hereinafter referred to as Jindal)), were selected for the sample. These were found to constitute the largest representative volume of the production, sales and exports to the Community of PET film, which could reasonably be investigated within the time available, pursuant to Article 27(1) of the basic Regulation.

(18) By a notice published in the *Official Journal of the European Union*[(15)], the Commission announced that the company formerly known as Jindal Polyester Limited changed its address. The address of the company should therefore be amended.

(19) By a notice published in the *Official Journal of the European Union*[(16)], the Commission announced that the company formerly known as Jindal Polyester Limited changed its name to Jindal Poly Films Limited. The name of the company should therefore be amended.

(20) The Commission sought and verified all information it deemed necessary for the determination of subsidisation and injury as well as to determine whether there is a likelihood of continuation or recurrence of subsidisation 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 and Middlesbrough, United Kingdom,

— Mitsubishi Polyester Film GmbH, Wiesbaden, Germany,

— Nuroll SpA, Pignataro Maggiore, Italy,

— Toray Plastics Europe, Miribel, France;

(b) **Government of India**

— Ministry of Commerce, New Delhi;

(c) **Exporting producers in India**

— Ester Industries Limited, New Delhi,

— Flex Industries Limited, New Delhi,

— Garware Polyester Limited, Aurangabad,

— Jindal Poly Films Limited, New Delhi;

(d) **Importer/user**

— Coveme SpA, San Lazzaro di Savena, Italy;

(e) **Up-stream supplier**

— Oxxynova GmbH, Marl, Germany.

6. DISCLOSURE

***Changes to legislation:** There are outstanding changes not yet made to Council Regulation (EC) No 367/2006. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(21) Pursuant to Article 30 of the basic Regulation, the GOI and the other interested parties were informed of the essential facts and considerations upon which it is intended to propose the continuation of measures. They were also given a reasonable time to comment. Certain parties presented their comments in writing. In addition, the GOI was offered, and accepted, consultation pursuant to Article 10(11) of the basic Regulation. All submissions and comments were taken duly into consideration.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(22) The product covered by this review is the same product as the one concerned by Council Regulation (EC) No 2597/1999, namely PET film falling within CN codes ex 3920 62 19 and ex 3920 62 90 originating in India (hereinafter referred to as the product concerned).

(23) The investigation confirmed that, as in the original investigation, the product concerned and the PET film produced and sold on the domestic market in India, as well as the PET film produced and sold in the Community by the Community producers had the same basic physical characteristics and uses to the product concerned and were thus a like product within the meaning of Article 1(5) of the basic Regulation.

C. SUBSIDIES

1. INTRODUCTION

(24) 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:

1.1. Nationwide schemes

(a) Advance licence/Advance release order;

(b) Duty entitlement passbook;

(c) Special economic zones/Export oriented units;

(d) Export promotion capital goods;

(e) Duty free replenishment certificate;

(f) Income tax exemption;

(g) Export credit:
- pre-export,
- post-export,

(h) Capital infusions.

(25) The schemes (a) to (e) are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (hereinafter referred to as Foreign Trade Act). The Foreign Trade Act authorises the