Council Regulation (EC) No 366/2006 of 27 February 2006 amending Regulation (EC) No 1676/2001 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, inter alia, in India

COUNCIL REGULATION (EC) No 366/2006

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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 Article 11(3) 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 ('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, *inter alia*, in India ('the definitive anti-dumping measures'). Sampling was applied to the Indian exporting producers, and individual duties ranging from 0 % to 62,6 % were imposed on the companies in the sample, while other cooperating companies not included in the sample received a duty based on the weighted average dumping margin of 57,7 % reduced by their individual export subsidy margin. A duty of 53,3 % was imposed on all other companies. The original investigation period was 1 April 1999 to 31 March 2000 ('the original IP').

(3) On 22 August 2001, the Commission, by Decision 2001/645/EC[(4)], accepted undertakings offered by five Indian producers: Ester Industries Limited (Ester), Flex Industries Limited (Flex), Garware Polyester Limited (Garware), MTZ Polyfilms Limited (MTZ), and Polyplex Corporation Limited (Polyplex). The Commission

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 366/2006. (See end of Document for details)*

announced on 17 February 2005 the change of name of MTZ by a notice published in the *Official Journal of the European Union*[5].

(4) The Council, by Regulations (EC) Nos 1975/2004 and 1976/2004, 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[6], the Commission initiated a partial interim review of Regulation (EC) No 2597/1999 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 Regulation (EC) No 365/2006[7].

(6) On 22 November 2003[8], the Commission initiated a partial interim review of Regulation (EC) No 1676/2001 limited to the form of the definitive anti-dumping measures. This investigation has been concluded by Regulation (EC) No 365/2006, which amended Regulation (EC) No 1676/2001.

(7) On 10 December 2004[9], the Commission initiated an expiry review of the definitive countervailing measures. This investigation has been concluded by Council Regulation (EC) No 367/2006[10] which maintained the definitive countervailing measures.

(8) On 23 August 2005[11], the Commission initiated a review of Regulations (EC) Nos 1975/2004 and 1976/2004 with respect to the application of an Israeli producer for an exemption from the extended measures. This investigation has been concluded by Council Regulation (EC) No 101/2006[12].

2. Request for a review

(9) On 5 November 2004, a request for a partial interim review of Regulation (EC) No 1676/2001, limited to the level of dumping was 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. Toray Plastics Europe indicated its support for the request, although it was not a formal applicant.

(10) The applicants alleged that in regard to imports of PET film from the five Indian producers from whom undertakings were accepted by Decision 2001/645/EC, the level of the existing measures is no longer sufficient to counteract the injurious dumping.

3. Investigation

(11) Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of a partial interim review, the Commission announced on 4 January 2005, by a Notice of initiation published in the *Official Journal*

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of the European Union[13], the initiation of a partial interim review, in accordance with Article 11(3) of the basic Regulation.

(12) The review was limited in scope to the examination of dumping by the five Indian exporting producers from which undertakings were accepted and to the level of the residual duty, in order to assess the need for the continuation, removal or amendment of the level of the existing measures. The investigation period was from 1 October 2003 to 30 September 2004.

(13) The Commission officially advised the exporting producers, the representatives of the exporting country and the Community producers 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.

(14) In order to obtain the information deemed necessary for its investigation, the Commission sent questionnaires to the exporting producers concerned, which all cooperated by replying to the questionnaire. Verification visits were carried out at the premises of the following exporting producers in India:

— Ester Industries Limited, New Delhi,

— Flex Industries Limited, New Delhi,

— Garware Polyester Limited, Aurangabad,

— MTZ Polyfilms Limited, Mumbai,

— Polyplex Corporation Limited, New Delhi.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

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

2. Like product

(16) 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 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. DUMPING

1. Normal value

(17) In order to establish normal value, it was first verified that the total domestic sales of each of the exporting producers 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. For all companies, overall sales were found to be representative.

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(18) 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. For two companies it was found that they sold second grade film on the domestic market but not to the Community. Since second grade film is not directly comparable to first grade film, sales of second grade film were excluded from the calculation of normal value. Another company sold three different grades of film on the domestic market but only the best quality film to the Community. In selling the three grades of film, the company often sold the first and second grade films *en masse* with third grade film but all at the price of the third grade film. This was explained as being a form of stock clearance. Again, these sales were excluded from the calculation.

(19) One company sold to traders on the domestic market goods which were destined for export. The goods were readily identifiable as being destined for export, as they were subject to a different tax regime from normal sales on the domestic market. The company could not indicate whether the final destination of the goods would be the Community or a third country. These sales were therefore excluded from the calculation.

(20) 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 at a net sales price equal to or above the cost of production represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was established on the basis of the weighted average price actually paid for all domestic sales of that type, irrespective of whether these sales were profitable or not. For those product types where the volume of profitable sales was equal to or lower than 80 %, but not lower than 10 % of sales, or where the weighted average price of that type was below the cost of production, normal value was based on the weighted average price actually paid for the profitable domestic sales of that type only.

(21) For the product types where domestic prices of the exporting producers could not be used to establish normal value owing to insufficient representativity or to a lack of sufficient sales in the ordinary course of trade, normal value was constructed on the basis of the manufacturing costs of the product types exported to the Community incurred by the exporting producers 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.

(22) In accordance with Article 2(6) of the basic Regulation the SG&A costs were based on such costs incurred by the exporting producers with regard to their 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 each company for those product types sold on the domestic market in sufficient quantities in the ordinary course of trade.

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(23) Following disclosure, one exporting producer contested the adjustment made to the price paid in respect of one specific raw material. The contested adjustment was re-examined, following which the level of adjustment was revised and the dumping margin recalculated accordingly.

(24) Another company argued that film which was not of top-quality should be included in the calculation and that 'adjustments' should be made in order to make that film comparable at the level of first grade film. It was also argued that further to the inclusion of these transactions a re-calculation of the profit margin would be necessary.

(25) The volume of second and third grade film excluded from the calculation represented less than 3 % of all domestic sales. As such, it is considered that the remaining domestic transactions are sufficiently representative for an accurate calculation of normal value. No re-calculation of the profit margin is therefore required.

(26) The exporting producers received disclosure of the calculations and submitted certain comments. The Commission took into account those comments and, to the extent that they were found to be justified, adjusted the calculations accordingly.

2. Export price

(27) As regards the determination of export prices, it should be recalled that the present investigation seeks to establish whether the levels of dumping have changed and whether these changes can be considered to be of a lasting nature. In that context, the determination of export prices cannot be limited to an examination of exporters' past behaviour, but has to examine also the likely development of export prices in the future. In other words, it has to be determined whether past export prices are reliable as an indication of likely future export prices. In this case, and in view of the fact that undertakings were accepted, it was examined in particular whether the existence of such undertakings has influenced the past export prices, so as to make them unreliable for the establishment of future export behaviour.

(28) In order to examine whether export prices to the Community were reliable and given the existence of undertakings, export prices to the Community were analysed in relation to the minimum import prices (MIPs) of the undertakings. It was in fact necessary to ascertain whether export prices to the Community were set at a certain level mainly as the effect of the existence of the MIPs established by the undertakings and therefore whether they were sustainable or not. It was therefore considered, on a weighted average basis at the level of each company, whether the prices practised for sales to the Community market were substantially above the MIPs or not, taking into consideration the particularities of the product concerned and the markets on which it was being sold during the IP, and how these prices related to prices for exports to third countries. When export prices to the Community were on average well above the MIPs at company level, it was considered that these export prices were set sufficiently independently from the undertakings, and therefore reliable as an indication of the price-setting behaviour which exporters would be likely to show in the future. On the contrary, when export prices to the Community were on average not sufficiently above the MIPs