Council Implementing Regulation (EU) No 13/2012 of 6 January 2012 amending Regulation (EC) No 1292/2007 imposing a definitive anti-dumping 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 on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Article 9(4) and Article 11(3), (5) and (6) thereof,

Having regard to the proposal submitted by the European Commission ('Commission') after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. **Previous investigations and existing anti-dumping measures**

(1) In August 2001, by Regulation (EC) No 1676/2001[(2)], the Council imposed a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, inter alia, in India. The measures consisted of an *ad valorem* anti-dumping duty ranging between 0 % and 62,6 % imposed on imports from individually named exporting producers, with a residual duty rate of 53,3 % on imports from all other companies.

(2) In August 2001, the Commission, by Decision 2001/645/EC[(3)], accepted price undertakings offered by five Indian producers. The acceptance of the undertakings was subsequently withdrawn[(4)] in March 2006.

(3) In March 2006, by Regulation (EC) No 366/2006[(5)], the Council amended the measures imposed by Regulation (EC) No 1676/2001. The anti-dumping duty imposed ranged between 0 % and 18 %, taking into account the findings of the expiry review of the definitive countervailing duties which are detailed in Council Regulation (EC) No 367/2006[(6)].

(4) In September 2006, by Regulation (EC) No 1424/2006[(7)], the Council, following a new exporting producer request, amended Regulation (EC) No 1676/2001 in respect of one Indian exporter. The amended Regulation established a dumping margin of 15,5 % for cooperating companies not included in the sample and an anti-dumping duty rate of 3,5 % for the company concerned taking into account the

company's export subsidy margin as ascertained in the anti-subsidy investigation which led to the adoption of Regulation (EC) No 367/2006. Since the company did not have an individual countervailing duty, the rate established for all other companies was applied.

(5) In November 2007, by Regulation (EC) No 1292/2007[8], the Council imposed a definitive anti-dumping duty on imports of PET film originating in India following an expiry review pursuant to Article 11(2) of the basic Regulation. By the same Regulation a partial interim review pursuant to Article 11(3) of the basic Regulation, limited in scope to the examination of dumping in respect of one Indian exporting producer was terminated.

(6) Regulation (EC) No 1292/2007 also maintained the extension of the measures to Brazil and Israel with certain companies being exempted. The last amendment to Regulation (EC) No 1292/2007 in this regard was made by Council Implementing Regulation (EU) No 806/2010[9].

(7) In January 2009, by Regulation (EC) No 15/2009[10], the Council, following a partial interim review initiated by the Commission on its own initiative concerning the subsidisation of five Indian PET film producers, amended the definitive anti-dumping duties imposed on these companies by Regulation (EC) No 1292/2007 and the definitive countervailing duties imposed on these companies by Regulation (EC) No 367/2006.

(8) In May 2011, by Implementing Regulation (EU) No 469/2011[11], the Council amended Regulation (EC) No 1292/2007 and thus adjusted the anti-dumping duty rates in view of the expiry on 9 March 2011[12] of the countervailing duty imposed by Regulation (EC) No 367/2006.

(9) The applicant of this interim review — Ester Industries Limited — is currently subject to a definitive anti-dumping duty of 29,3 %.

2. Request for a partial interim review

(10) In July 2010, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation. The request, limited in scope to the examination of dumping, was lodged by Ester Industries Limited, an exporting producer from India ('Ester' or 'the applicant'). In its request, the applicant claimed that the circumstances on the basis of which measures were imposed have changed and that these changes are of a lasting nature. The applicant provided *prima facie* evidence that the continued imposition of the measure at its current level was no longer necessary to offset injurious dumping.

3. Initiation of a review

(11) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced by a notice published on 29 October 2010 in the *Official Journal of the European Union*[13] ('the Notice of Initiation') the initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping in respect of the applicant.

(12) The Notice of Initiation mentioned that the partial interim review would also assess the need, depending on the review findings, to amend the rate of duty applicable to imports of the product concerned from exporting producers in the country concerned not individually mentioned in Article 2(2) of Regulation (EC) No 1292/2007, i.e. the anti-dumping duty rate as applying to 'all other companies' in India.

4. **Investigation**

(13) The investigation of the level of dumping covered the period from 1 October 2009 to 30 September 2010 ('the review investigation period' or 'the RIP').

(14) The Commission officially informed the applicant, the authorities of the exporting country and the Union industry of the initiation of the partial interim review investigation. Interested parties were given the opportunity to make their views known in writing and to be heard.

(15) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the applicant and received a reply within the deadline set for that purpose.

(16) The Commission sought and verified all information it deemed necessary for the determination of dumping. A verification visit was carried out at the premises of the applicant.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(17) The product concerned by this review is the same as that defined in Regulation (EC) No 1292/2007, as last amended, imposing the measures in force, namely polyethylene terephthalate (PET) film, originating in India, currently falling within CN codes ex 3920 62 19 and ex 3920 62 90.

2. **Like product**

(18) As in previous investigations, this investigation has shown that PET film produced in India and exported to the Union and the PET film produced and sold domestically on the Indian market, as well as the PET film produced and sold in the EU by the Union producers, have the same basic physical and chemical characteristics and the same basic uses.

(19) These products are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. **DUMPING**

(a) *Normal value*

(20) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the applicant's domestic sales of the like product to independent

customers were representative, i.e. whether the total volume of such sales was equal to at least 5 % of the total volume of the corresponding export sales to the Union.

(21) The Commission subsequently identified those types of the like product sold domestically by the company that were identical or directly comparable to the types sold for export to the Union.

(22) It was further examined whether the domestic sales of the applicant were representative for each product type, i.e. whether domestic sales of each product type constituted at least 5 % of the sales volume of the same product type to the Union. For the product types sold in representative quantities it was then examined whether such sales were made in the ordinary course of trade, in accordance with Article 2(4) of the basic Regulation.

(23) The examination as to whether the domestic sales of each product type, sold domestically in representative quantities, could be regarded as having been made in the ordinary course of trade was made by establishing the proportion of the profitable sales to independent customers of the type in question. In all cases where the domestic sales of the particular product type were made in sufficient quantities and in the ordinary course of trade, normal value was based on the actual domestic price, calculated as a weighted average of all the domestic sales of that type made during the RIP.

(24) For the remaining product types where domestic sales were not representative or not sold in the ordinary course of trade, normal value was constructed in accordance with Article 2(3) of the basic Regulation. Normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses and a reasonable margin for profit, on the basis of actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation in accordance with the first sentence of Article 2(6) of the basic Regulation.

(b) *Export price*

(25) In the previous interim review leading to the adoption of Regulation (EC) No 366/2006, it was determined that price undertakings influenced the past export prices and made them unreliable for the determination of future export behaviour. In that interim review, given that Ester was selling the product concerned in substantial quantities on the world market, it was decided to establish the export price on the basis of prices actually paid or payable to all third countries.

(26) It is recalled that the acceptance of price undertakings was withdrawn in March 2006, i.e. more than three years before the current RIP. Therefore, Ester's export prices to the Union in the current RIP were not influenced by any price undertakings. It can be thus concluded that they can be considered reliable for the determination of future export behaviour.

(27) Since all export sales of the applicant to the Union were made directly to independent customers, the export price was established on the basis of the prices

actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

(c) *Comparison*

(28) The comparison between the weighted average normal value and the weighted average export price was made on an ex-works basis and at the same level of trade. In order to ensure a fair comparison between normal value and the export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which affected prices and price comparability. For this purpose, due allowance in the form of adjustments was made, where applicable and justified, for differences in transport, insurance, handling, loading and ancillary costs, commissions, financial costs and packing costs paid by the applicant.

(29) The applicant claimed that, compared to the previous interim review investigation, it is offering its customers a wider variation of chemical coatings and this aspect should be taken into account when classifying the product concerned into different product types. However, the company did not demonstrate that the different types of chemical coatings affected price comparability and, in particular, that the customers consistently paid different prices on the domestic market and on the EU export market depending on the type of chemical coating. Therefore, the product classification applied in the previous investigations should be maintained and the claim must be rejected.

(30) The applicant also claimed an adjustment on the export price, based on the benefits received upon exportation under the Duty Entitlement Passbook Scheme (DEPB) on a post-export basis. In this respect, it was found that under this scheme, the credits received when exporting the product concerned could be used to offset customs duties due on imports of any goods or could be freely sold to other companies. In addition, there is no constraint that the imported goods should only be used in the production of the exported product concerned. Ester did not demonstrate that the benefit under the DEPB scheme affected price comparability and, in particular, that the customers consistently paid different prices on the domestic market because of the DEPB scheme benefits. Therefore, the claim was rejected.

(31) The applicant further claimed an adjustment on the export price, based on the benefits received under the Export Promotion Capital Goods Scheme (EPCG) and under 'Export Credits' Scheme. In this regard it has to be noted that, similarly as with the other schemes mentioned above, there is no constraint that the imported goods under the EPCG Scheme should only be used in the production of the exported product concerned. Secondly, the applicant did not submit any evidence of an explicit link between pricing of the exported goods and the benefits received under the EPCG and 'Export Credits' Schemes. Finally, the applicant did not demonstrate that the benefits under these two schemes affected price comparability and, in particular, that the customers consistently paid different prices on the domestic market because of the EPCG and 'Export Credits' Schemes benefits. Therefore, the claim has to be rejected.

(d) *Dumping margin*