



EUROPEAN COMMISSION

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2011/0423 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 1292/2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community¹ ('the basic Regulation') in the proceeding concerning imports of polyethylene terephthalate (PET) film originating in India

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 1292/2007 (OJ L 288, 6.11.2007, p. 1.) on imports of polyethylene terephthalate (PET) film originating in India, as last amended by Council Implementing Regulation (EU) No 469/2011 (OJ L 129, 17.5.2011, p. 1.).

- **Consistency with other policies and objectives of the Union**

Not applicable

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

- **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not provide for a general impact assessment but contain an exhaustive list of conditions that have to be assessed.

¹ OJ L 343, 22.12.2009, p. 51.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 29 October 2010, the Commission initiated a partial interim review investigation of the anti-dumping measures applicable to imports of polyethylene terephthalate (PET) film originating in India, limited in scope to the examination of dumping as far as Ester Industries Ltd. ('the applicant') is concerned. The review was initiated because the applicant, an exporting producer in India, provided sufficient *prima facie* evidence that the circumstances with regard to dumping on the basis of which measures were established, have changed and that these changes are of a lasting nature.

The comparison of the applicant's normal value and its export price to the EU showed a dumping margin of 8,3% in the review investigation period, which is significantly less than the anti-dumping duty currently applicable to the company.

The investigation showed also that the changed circumstances leading to the initiation of the review could reasonably be considered to be of a lasting nature.

It is therefore proposed that the Council adopt the attached proposal for a Regulation so as to amend to 8,3% the duty rate applicable to Ester Industries Ltd., which should be published in the *Official Journal of the European Union* by 28 January 2012 at the latest.

- **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community and in particular Article 11(3) thereof.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision. Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instrument: Council Regulation.

Other means would not be adequate because the basic Regulation does not provide for alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 1292/2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India

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 Community² ('the basic Regulation'), and in particular Articles 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 1676/2001³, 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/EC⁴ accepted price undertakings offered by five Indian producers. The acceptance of the undertakings was subsequently withdrawn⁵ in March 2006.
- (3) In March 2006, by Regulation (EC) No 366/2006⁶, 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 Regulation (EC) No 367/2006⁷.

² OJ L 343, 22.12.2009, p.51.

³ OJ L 227, 23.8.2001, p. 1.

⁴ OJ L 227, 23.8.2001, p. 56.

⁵ OJ L 68, 8.3.2006, p. 37.

⁶ OJ L 68, 8.3.2006, p. 6.

⁷ OJ L 68, 8.3.2006, p. 15.

- (4) In September 2006, by Regulation (EC) No 1424/2006⁸, 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 referred to above. 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 1292/2007⁹, 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 Regulation (EU) No 806/2010¹⁰.
- (7) In January 2009, by Regulation (EC) No 15/2009¹¹, 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 Regulation (EU) No 469/2011¹², the Council amended Regulation (EC) No 1292/2007 and thus adjusted the anti-dumping duty rates in view of the expiry on 9 March 2011¹³ 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

⁸ OJ L 270, 29.9.2006, p. 1.

⁹ OJ L 288, 6.11.2007, p. 1.

¹⁰ OJ L 242, 15.9.2010.

¹¹ OJ L 6, 10.1.2009, p. 1.

¹² OJ L 129, 17.5.2011, p. 1.

¹³ Notice of expiry (OJ C 68, 3.3.2011, p. 6).

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*¹⁴ ('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.

¹⁴ OJ C 294, 29.10.2010, p. 10.

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) 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

- (32) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. Following the comments on disclosure set out in recitals (44) and (45) below, the dumping margin, expressed as a percentage of the CIF Union frontier price, duty unpaid, is 8,3%.

D. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (33) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be considered to be of a lasting nature.
- (34) In this regard the investigation showed that Ester indeed has taken a number of measures for cost reduction and efficiency improvements. Notably, the company modernized and built a new production line. Further, as a result of significant increase in production, the overhead costs substantially declined. The company also started sourcing its raw materials more efficiently (from a closer location) and managed thereby to considerably reduce freight costs. This cost reduction has a direct impact on the dumping margin. This change in circumstances can therefore be considered to be of a lasting nature.
- (35) As regards export price, the investigation showed a certain stability in Ester's pricing policies over a long period, between 2006 (the year when the undertaking was repealed) and 2010 (almost the end of the RIP). Given that change in the methodology for the determination of Ester's export price to the Union as described in recitals (24) and (25) above and the above-mentioned stability in prices, the newly calculated dumping margin is likely to be of a lasting nature.
- (36) It was therefore considered that the circumstances that led to the initiation of this interim review are unlikely to change in the foreseeable future in a manner that would affect the findings of the interim review. Therefore it was concluded that the changed circumstances are of a lasting nature and that the application of the measure at its current level is no longer justified.

E. ANTI-DUMPING MEASURES

- (37) One exporting producer argued that the average dumping margin of the sample should be recalculated, in case the current interim review resulted in a lower dumping margin for Ester (which was one of the companies in the sample) than previously established. It should be recalled that the scope of the current partial interim review pursuant to Article 11(3) of the basic Regulation is explicitly limited to the review of the margin of dumping of the applicant, an individual exporter, namely Ester. Therefore, the investigation was limited to the specific circumstances of the applicant, taking into account all relevant and duly documented evidence¹⁵. The conclusions reached on this basis are not pertinent for the other companies in the sample or any other exporting producer in the country concerned.
- (38) It is considered that the determination of a new sample average margin of dumping pursuant to Article 9(6) of the basic Regulation in such circumstances is neither legally possible nor economically appropriate for the following reasons. Indeed, it should be recalled that the calculation of a sample average margin of dumping will only resorted to when, in the context of one given investigation, it is considered that the number of exporters is so large that individually investigating all cooperating exporters would unduly burden the Institutions and jeopardize the completion of the investigation within the mandatory deadline laid out in the Basic Regulation. It is then assumed that the computation of a weighted average margin on the basis of the margins of dumping of the sampled exporters is representative of the dumping margin of the non-sampled cooperating exporters. This can only be the case if such calculation is made on the basis of margins of dumping relating to the same period of time. None of the above circumstances are present in the context of a partial interim review limited to one company originally in the sample such as the current investigation. As a consequence, it is concluded that the factual circumstances of the current partial interim review are such that the disciplines of Article 9(6) clearly do not apply.
- (39) It is to be recalled that the statement in the Notice of Initiation according to which "if it is determined that measures should be removed or amended for the applicant, it may be necessary to amend the rate of duty currently applicable to imports of the products concerned from other companies in India" means that, as result of the review, the residual duty may go up in order to avoid circumvention¹⁶. Since the applicant's duty is revised downwards, the abovementioned provision of the Notice of Initiation is not relevant.
- (40) In light of the reasons described in recitals (37) to (39) above, the claim that the average dumping margin of the sample should be recalculated has to be rejected.
- (41) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to propose to amend the duty rate applicable to the applicant and were given the opportunity to comment.

¹⁵ Judgment of the General Court of 17 December 2010, EWRIA and Others v Commission, Case T-369/08, point 7 and 79 and the jurisprudence quoted there.

¹⁶ Implementing Regulation of the Council (EU) No 270/2010 of 29 March 2010 (OJ L 84, 31.3.2010, p. 13) amending Regulation (EC) No 452/2007 (OJ L 109, 26.4.2007, p. 12) imposing a definitive anti-dumping duty on imports of ironing boards originating, inter alia, in the People's Republic of China.

- (42) The applicant reiterated its claims concerning the product classification referred to in recital (29) as well as its claims concerning duty drawback adjustment on the export price due to the DEPB, EPCG and "Export Credits" benefits as described in recitals (30) and (31). However, since no new elements have been provided that could alter the Commission's findings, the claims had to be rejected.
- (43) The applicant further contested the method of calculating the CIF value of those transactions which have been made on FOB basis. When establishing the unit CIF value the Commission related the total freight cost paid by the company to all export transactions including the FOB transactions. The company claimed that the total freight cost should have been related to the CIF transactions only. This claim has been accepted.
- (44) The applicant finally claimed that not all sample sales have been excluded from the determination of the dumping margin. This claim has also been accepted.
- (45) Following the review investigation the proposed revised dumping margin and anti-dumping duty rate that would be applicable to imports of the product concerned manufactured by Ester Industries Limited amounts to 8,3%,

HAS ADOPTED THIS REGULATION:

Article 1

The entry concerning Ester Industries Limited, in the table in Article 2(2) of Council Regulation (EC) No 1292/2007, shall be replaced by the following:

Ester Industries Limited, DLF City, Phase II, Sector 25, Gurgaon, Haryana - 122022, India	8,3	A026
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Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council
The President*