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Proposal for a

COUNCIL REGULATION

terminating the partial interim review of the anti-dumping and countervailing measures applicable to 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 anti-dumping Regulation') and Council Regulation (EC) No 597/2009 on protection against subsidised imports from countries not members of the European Community² ('the basic anti-subsidy Regulation') in the proceeding concerning imports of certain polyethylene terephthalate (PET) film originating in India.

- **General context**

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

- **Existing provisions in the area of the proposal**

Council Regulation (EC) No 1292/2007³ which 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 anti-dumping Regulation, as last amended by Council Regulation (EC) No 15/2009⁴, and Council Regulation (EC) No 367/2006⁵ which maintained the definitive countervailing duty imposed by Regulation (EC) No 2597/1999⁶ on imports of PET film originating in India, as last amended by Council Regulation (EU) No 579/2010⁷.

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

Not applicable.

2. Consultation of interested parties and impact assessment

- **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their

¹ OJ L 343, 22.12.2009, p. 51.

² OJ L 188, 18.7.2009, p. 93.

³ OJ L 288, 6.11.2007, p. 1.

⁴ OJ L 6, 10.1.2009, p. 1.

⁵ OJ L 68, 8.3.2006, p. 15.

⁶ OJ L 316, 10.12.1999, p. 1.

⁷ OJ L 168, 2.7.2010, p. 1.

interests during the investigation, in line with the provisions of the basic Regulations.

- **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 Regulations.

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

3. **Legal elements of the proposal**

- **Summary of the proposed action**

On 9 September 2009, the Commission initiated a partial interim review investigation of the anti-dumping and countervailing measures applicable to imports of polyethylene terephthalate (PET) film originating in India, limited to the examination of the product scope.

The applicant claimed that a particular product type, siliconized polyester release liner ('SPRL') should be excluded from the product scope under measures on the grounds that this product type has different characteristics, production process and end-use compared to the other types of PET film.

The investigation showed that despite certain differences, SPRL and other types of PET film share the same basic physical, technical and chemical characteristics. Therefore, it is concluded that the partial interim review of the anti-dumping and countervailing measures applicable to imports of polyethylene terephthalate (PET) film originating in India should be terminated without amending the measures in force.

It is therefore proposed that the Council adopt the attached proposal for a Regulation terminating the partial interim review, which should be published in the *Official Journal of the European Union* by 8 December 2010 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 Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidized imports from countries not members of the European Community.

- **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 Regulations 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: 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.

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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 Community⁸ repealing Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁹ ('the basic anti-dumping Regulation'), and in particular Article 11(3) thereof,

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community¹⁰ repealing Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community¹¹ ('the basic anti-subsidy Regulation'), and in particular Article 19 thereof,

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

Whereas:

1. MEASURES IN FORCE

1.1. Previous investigations and existing countervailing measures

- (1) In December 1999, by Regulation (EC) No 2597/1999¹², the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) film ('the product concerned'), originating in India. The investigation which led to the adoption of that Regulation is hereinafter referred to as the 'original anti-subsidy investigation'. The measures took the form of an *ad valorem* countervailing duty, ranging between 3,8 % and 19,1 % imposed on imports from individually named

⁸ OJ L 343, 22.12.2009, p.51.

⁹ OJ L 56, 6.3.1996, p. 1.

¹⁰ OJ L 188, 18.7.2009, p. 93.

¹¹ OJ L 288, 21.10.1997, p. 1.

¹² OJ L 316, 10.12.1999, p. 1.

exporters, with a residual duty rate of 19,1 % imposed on imports from all other companies. The investigation period of the original investigation was 1 October 1997 to 30 September 1998.

- (2) In March 2006, by Regulation (EC) No 367/2006¹³, the Council, following an expiry review pursuant to Article 18 of the basic anti-subsidy Regulation, maintained the definitive countervailing duty imposed by Regulation (EC) No 2597/1999 on imports of PET film originating in India. The review investigation period was 1 October 2003 to 30 September 2004.
- (3) In August 2006, by Regulation (EC) No 1288/2006¹⁴, the Council, following a partial interim review concerning the subsidisation of an Indian PET film producer, Garware Polyester Limited ('Garware'), amended the definitive countervailing duty imposed on Garware by Regulation (EC) No 367/2006.
- (4) In September 2007, by Regulation (EC) No 1124/2007¹⁵, the Council, following a partial interim review concerning the subsidisation of another Indian PET film producer, Jindal Poly Films Limited, formerly known as Jindal Polyester Ltd. ('Jindal'), amended the definitive countervailing duty imposed on Jindal by Regulation (EC) No 367/2006.
- (5) In January 2009, by Regulation (EC) No 15/2009¹⁶, 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 countervailing duty imposed on these companies by Regulation (EC) No 367/2006.
- (6) In June 2010, by Regulation (EU) No 579/2010¹⁷, the Council, following a partial interim review concerning the subsidisation of Jindal, amended the definitive countervailing duty imposed on Jindal by Regulation (EC) No 367/2006, as amended by Regulation 1124/2007.

1.2. Previous investigations and existing anti-dumping measures

- (7) In August 2001, by Regulation (EC) No 1676/2001¹⁸, the Council imposed a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, *inter alia*, in India. The investigation which led to the adoption of that Regulation is hereinafter referred to as the 'original anti-dumping investigation'. 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.
- (8) In March 2006, by Regulation (EC) No 366/2006¹⁹, 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

¹³ OJ L 68, 8.3.2006, p. 15.

¹⁴ OJ L 236, 31.8.2006, p. 1.

¹⁵ OJ L 255, 29.9.2007, p. 1.

¹⁶ OJ L 6, 10.1.2009, p. 1.

¹⁷ OJ L 168, 2.7.2010, p. 1.

¹⁸ OJ L 277, 23.8.2001, p. 1.

¹⁹ OJ L 68, 8.3.2006, p. 6.

the definitive countervailing duties (Council Regulation (EC) No 367/2006 referred to in recital (2)).

- (9) In August 2006, by Regulation (EC) No 1288/2006, the Council, following an interim review concerning the subsidisation of an Indian PET film producer, Garware, amended the definitive anti-dumping duty imposed on Garware by Regulation (EC) No 1676/2001.
- (10) In September 2006, by Regulation (EC) No 1424/2006²⁰, the Council, following a new exporting producer request amended Regulation (EC) No 1676/2001 in respect of SRF Limited. The amended Regulation established a dumping margin of 15,5 % and a 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.
- (11) In November 2007, by Regulation (EC) No 1292/2007²¹, 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 anti-dumping Regulation. By the same Regulation a partial interim review pursuant to Article 11(3) of the basic anti-dumping Regulation, limited to one Indian exporting producer was terminated.
- (12) In January 2009, by Regulation (EC) No 15/2009, 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 duty imposed on these companies by Regulation (EC) No 1292/2007.

2. PROCEDURE

2.1. Grounds for the review

- (13) The request for a partial interim review pursuant to Article 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation was lodged by Polyplex Corporation Limited, an exporting producer from India ('the applicant'). The request was limited to the examination of the product scope as regards the clarification of whether certain product types fall within the scope of the anti-dumping and countervailing measures applicable to imports of PET film.
- (14) The applicant requested the exclusion of 'siliconized polyester release liner' ('SPRL') in so far as it falls within the definition of the product concerned, from the scope of the current anti-dumping and countervailing measures on imports of PET film originating in India. The applicant provided *prima facie* evidence that the basic physical, technical and chemical characteristics of SPRL significantly differ from those of the product concerned.

²⁰ OJ L 270, 29.9.2006, p.1.

²¹ OJ L 288, 6.11.2007, p. 1.

2.2. Initiation

- (15) 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 9 September 2009 in the *Official Journal of the European Union*²² ('the Notice of Initiation') the initiation of a partial interim review in accordance with the provisions of Article 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation limited to the examination of the product scope. In particular the review had to determine whether or not the siliconized polyester release liner is part of the product concerned as defined in the original investigation.

2.3. Review investigation

- (16) The Commission officially informed the authorities of the Republic of India ('the country concerned') and all other parties known to be concerned, i.e. known exporting producers in the country concerned, users and importers in the Union and producers in the Union, of the initiation of the partial interim review investigation. 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.
- (17) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (18) The Commission sent questionnaires to all parties known to be concerned, and all other parties which made themselves known within the deadlines set out in the Notice of Initiation.
- (19) Questionnaire replies were received from the applicant, two other Indian exporting producers, four Union producers and two Union importers.
- (20) The Commission sought and verified all information deemed necessary for the purpose of the assessment as to whether there was a need for amendment of the scope of the existing anti-dumping and countervailing measures and carried out verification visits at the premises of the following companies:
- Garware Polyester Limited, Mumbai, India,
 - Mitsubishi Polyester Film, Wiesbaden, Germany,
 - Polyplex Corporation Limited, Noida, India.
- (21) The investigation covered the period from 1 April 2008 to 31 March 2009 ('review investigation period' or 'RIP').

3. PRODUCT CONCERNED

- (22) The product concerned is the same product as the one defined by Council Regulation (EC) No 367/2006 and by Council Regulation (EC) No 1292/2007, namely

²² OJ C 215, 9.9.2009, p. 19.

polyethylene terephthalate (PET) film originating in India, currently falling within CN codes ex 3920 62 19 and ex 3920 62 90.

4. FINDINGS OF THE REVIEW INVESTIGATION

4.1. Background

- (23) Polyethylene terephthalate (PET) film is a non-self-adhesive film of polyethylene terephthalate. PET film is always produced from PET polymer and consists of a base film which may be subject to further treatment either during or after the production process. Such treatment of the base film may typically include corona treatment, metallisation or chemical coating.
- (24) PET film has specific physical, chemical and technical characteristics which distinguishes it from other films. Some of these characteristics of PET film are e.g. its high tensile strength, the very good electrical properties, low moisture absorption and humidity resistance, low shrinkage and good barrier properties. Therefore, while these specific characteristics determine various types of PET film, these types retain the same basic physical, technical and chemical characteristics of base PET film. PET film has five broad end-uses which fall within five market segments, i.e. magnetic media, packaging, electrical, imaging and industrial applications.

4.2. Methodology

- (25) In order to assess whether SPRL and other types of PET film should be considered as one single product or two different products, it was examined whether SPRL and other types of PET film shared the same basic physical and chemical characteristics. Moreover, the production process, differences in end-uses and interchangeability as well as differences in costs and prices were examined.

4.3. Main arguments of the parties

- (26) The applicant claimed that the basic physical, technical and chemical characteristics of SPRL differ from those of the product concerned. In particular, the relatively low release force of SPRL and its low surface tension make the film slippery and consequently its surface becomes inactive to inks, coatings, adhesives and metallisation. According to the applicant, due to the migration of uncured silicone within the SPRL, even the reverse side of a single side coated SPRL exhibits marked differences in physical and technical properties compared to other types of PET film. These features allegedly impede the usage of SPRL in base PET film industry segments identified in the original investigation, i.e. packaging, magnetic media, electrical, imaging and industrial applications. On the other hand, the functionally active surface of other types of PET film makes it impossible to use them as release liners, since they would irretrievably stick to adhesive surfaces. Consequently, the applicant argued that SPRL is not interchangeable in its applications with any other kind of PET film.
- (27) The Union industry claimed that the applicant's arguments relied on two successive sets of artificially limited comparisons. First, the applicant compared SPRL against a narrow set of PET films, i.e. base PET film, and not against other types of coated PET film that are more comparable with SPRL. Second, this allegedly limited comparison was carried out only with regard to a highly selective and limited set of physical and

chemical properties. The Union industry claimed that when comparing SPRL with a wide range of other types of PET film, and over a representative number of chemical and physical properties, it is clear that SPRL is the same product as other types of PET film and should remain within the scope of the anti-dumping and countervailing measures. According to the Union industry, SPRL is effectively PET film subsequently coated with a silicone layer. It is not conceptually different from other types of coated film, such as metallised film or film with an anti-static coating or film with barrier coating, and as such is clearly product concerned. In support for its claims, the Union industry provided a comparison of a number of different physical and chemical properties over a number of different types of PET film.

4.4. Findings

4.4.1. Physical and chemical characteristics

- (28) The investigation showed that the two characteristics mentioned in recital (27) above, i.e. the relatively low release force of SPRL and its low surface tension, are additional features compared to the basic physical, technical and chemical characteristics of PET film as defined in the original anti-dumping investigation²³ and mentioned in recital (24) above. In this respect, it should be noted that the basic physical, technical and chemical characteristics are the same for SPRL as for any other types of PET film.
- (29) As regards the two characteristics specific to SPRL, i.e. low release force and low surface tension, it was found that these are not the characteristics of PET film as such but rather the characteristics of its siliconized surface or effectively the characteristics of silicone. Coating with silicone, as well as coating with any other substances, changes some features of the surface of the film but does not change the basic physical, technical and chemical characteristic of the base PET film itself, which under the coating layer remains the same.
- (30) While it is true that covering PET film with silicone results in a low release force of the surface and also in a low surface tension, a similar argument could be made for other types of coating, i.e. when covered with other types of coating the surface of PET film obtains other special characteristics. In some cases coating may result in characteristics which make PET film suitable only for very specific applications. Coating with silicone is by no means unique in this respect. Other special products with other types of coating include for example sealable films, anti-fog coated films, peeling/sealing films and co-polyester coated films. All these types, however, share the same basic physical, technical and chemical characteristics and are part of the product concerned as defined in the original investigation.
- (31) On this basis, it is considered that there are no significant differences in terms of basic physical, technical and chemical characteristics between SPRL and other types of PET film which would justify the exclusion of SPRL from the product scope.

²³ Recital (10) of Commission Regulation (EC) No 367/2001, OJ L 55, 24.2.2001, p. 16.

4.4.2. Comparison of other criteria

- (32) For the sake of completeness, other claims raised by the applicant in its review request allegedly showing that SPRL and PET film are different products, were also examined.

4.4.2.1. Production process

- (33) The applicant claimed that SPRL requires separate manufacturing facilities compared to other types of PET film produced.
- (34) As mentioned in recital (23) above, PET film is always produced from PET polymer and consists of a base film which may be subject to further treatment either during or after the production process. Such treatment of the base film may typically include corona treatment, metallisation or chemical coating.
- (35) SPRL is PET film coated with a silicone layer. The investigation showed that there are two different technologies of manufacturing SPRL. The Union producer investigated is using the in-line coating technology of manufacturing. In this technology the base PET film is coated during the production process before stretching. The coating module is just an additional, removable part of the production line. In contrast, the Indian producers investigated use the off-line coating technology. In this process the PET film is first produced, after which it is coated on a separate production line.
- (36) It was found that the choice between in-line or off-line coating technology is purely economic, the cost of investment in movable modules for the in-line coating being approximately 10 times higher than the investment in an off-line coating line. The advantage of in-line coating is a much higher speed of the line enabling significant volumes of production. In-line coating also leads to per-unit savings on the silicone costs as the layer of silicone surface is thinner than in the case of off-line coating.
- (37) It should be noted that the existence of two different coating methodologies does not alter the basic physical, technical and chemical characteristics of SPRL, which remain the same as compared to those of other types of PET film. Indeed different production processes are not *per se* relevant to determine whether a product type is a distinct product provided that the product types obtained from these processes are alike in terms of the basic physical, technical and chemical characteristics.

4.4.2.2. Differences in end-uses and interchangeability

- (38) The applicant also claimed that there is no interchangeability in the applications between SPRL and other types of PET film. This claim was confirmed by the investigation. However, as concluded in the original investigation, this is also true for other types of PET film with a special treatment.
- (39) The investigation confirmed that the purpose of coating, or of any other special treatment of PET film, is to make it suitable for certain specific applications. The substance chosen as the coating layer in each case has certain characteristics serving the relevant purpose. Silicone for example gives a low release force. The coating substance may have other special features (in case of silicone it is low surface tension) which makes it impossible to use the coated product for other applications. There are a

number of other types of PET film, coated with other substances or otherwise treated, which for the above reasons have specific and limited applications.

- (40) Therefore, whilst SPRL is specifically used for certain applications, its basic physical, technical and chemical characteristics are the same as those of the other types of PET film. As a consequence, interchangeability and end-use are not relevant to determine whether SPRL would constitute a different product.

4.4.2.3. Differences in costs and prices

- (41) Finally, the applicant claimed that the process of siliconizing of base PET film involves additional costs.

- (42) It was indeed found that the additional cost of silicone coating can amount up to 10% of the costs of manufacturing, depending on the choice of coating methodology. As described in recitals (35) and (36) the applicant has opted for a more costly methodology in terms of per-unit silicone costs. It should be stressed, however, that this is an additional cost in comparison to the cost of producing the base PET film. Coating the base PET film with other substances, as well as the metallization process, also increase the costs of manufacturing and thereby prices.

- (43) In this respect, however, it is considered that the additional cost of silicone coating does not constitute in itself a decisive criterion when determining whether SPRL form a distinct product. Indeed differences in costs and prices do not *per se* justify the conclusion that a certain product type should be considered as a different product as long as this type share the same basic physical, technical and chemical characteristics of the product concerned.

5. CONCLUSIONS ON THE PRODUCT SCOPE

- (44) The findings of the investigation confirmed that the process of siliconizing the PET film results in a different surface of the end-product compared to the base PET film. However, this process does not change the basic physical, chemical and technical characteristics of the product. Indeed, the investigation confirmed that there are a number of specially treated types of PET film on the market which fall under the definition of the product concerned as established in the original investigation. In addition, the other criteria analysed, i.e. the production process, interchangeability/end-use and differences in costs and prices, did not alter this conclusion.

- (45) All interested parties were informed of the essential facts and considerations on the basis of which the above conclusions were reached. Parties were granted a period within which they could make representations subsequent to this disclosure.

- (46) The oral and written comments submitted by the parties were duly considered, but did not change the conclusion not to amend the product scope of the anti-dumping and countervailing measures on imports of PET film in force,

HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review of the anti-dumping and countervailing measures applicable to imports of certain PET film originating in India is hereby terminated without amending the anti-dumping and countervailing measures in force.

Article 2

This Regulation shall enter into force on the day following that of 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 Presiden*