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2011/0017 (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**

### **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 Community ('the basic Regulation') in the anti-dumping 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.

#### **Existing measures in the area of the proposal**

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 amended by Council Regulation (EC) No 15/2009 (OJ L 6, 10.1.2009, p. 1.) and by Council Implementing Regulation (EU) No 806/2010 (OJ L 242, 15.9.2010, p. 6.).

#### **Existing countervailing measures**

It should be noted that Vacmet India Limited is currently subject to a countervailing duty of 19.1%.

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

Not applicable.

### **CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

#### **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 contains an exhaustive list of conditions that have to be assessed.

## LEGAL ELEMENTS OF THE PROPOSAL

### Summary of the proposed action

On 14 January 2010, the Commission initiated a partial interim review limited to dumping aspects of the anti-dumping measures applicable to imports of polyethylene terephthalate (PET) film originating in India. 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 Union showed that the company did not dump in the review investigation period.

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 as the applicant has made significant changes in its production process and technology. The applicant refers in particular to a significant reduction of its cost of production since he now produces the basic raw material used in his production process instead of purchasing it.

It is therefore proposed that the Council adopts the attached proposal for a Regulation so as to amend the anti-dumping duty rate applicable to the Indian producer concerned to 0%. The Regulation should be published in the *Official Journal of the European Union* no later than 14 April 2011.

### 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 because the form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

An 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 instruments: Council Regulation.

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

## **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 Community<sup>(1)</sup> ('the basic anti-dumping 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 ('the Commission') after consulting the Advisory Committee,

Whereas:

### A. PROCEDURE

#### 1. Previous investigation and existing anti-dumping measures

- (1) In August 2001, by Regulation (EC) No 1676/2001<sup>(2)</sup>, 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 March 2006, by Regulation (EC) No 366/2006<sup>(3)</sup>, 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<sup>(4)</sup>.

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<sup>1</sup> OJ L 343, 22.12.2009, p. 51.

<sup>2</sup> OJ L 227, 23.8.2001, p. 1.

<sup>3</sup> OJ L 68, 8.3.2006, p. 6.

<sup>4</sup> OJ L 68, 8.3.2006, p. 15

- (3) In August 2006, by Regulation (EC) No 1288/2006<sup>5</sup>, the Council, following an interim review concerning the subsidisation of an Indian PET film producer, amended the definitive anti-dumping duty imposed on that producer by Regulation (EC) No 1676/2001.
- (4) In September 2006, by Regulation (EC) No 1424/2006<sup>6</sup>, the Council, following a new exporting producer request, amended Regulation (EC) No 1676/2001 in respect of an Indian PET film producer. 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.
- (5) In November 2007, by Regulation (EC) No 1292/2007<sup>7</sup>, 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.
- (6) In January 2009, by Regulation (EC) No 15/2009<sup>8</sup> 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 and the definitive countervailing duties imposed by Regulation (EC) No 367/2006.
- (7) 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 1292/2007 in this regard was made by Regulation 806/2010<sup>9</sup>
- (8) It should be noted that Vacmet India Limited is subject to a residual anti-dumping duty of 17,3% on the basis of Regulation (EC) 1292/2007, as amended.

## **2. Existing countervailing measures**

- (9) It should also be noted that Vacmet India Limited is subject to a countervailing duty of 19,1% on the basis of Regulation (EC) No 367/2006, as amended.

## **3. Request for a partial interim review**

- (10) On 7 August 2009, 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 Vacmet India Limited, an exporting producer from India ('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

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<sup>5</sup> OJ L.236, 31.8.2006, p. 1.

<sup>6</sup> OJ L 270, 29.9.2006, p. 1.

<sup>7</sup> OJ L 288, 6.11.2007, p. 1.

<sup>8</sup> OJ L 6, 10.1.2009, p.1

<sup>9</sup> OJ L 242,15.9.2010, p.6

of a lasting nature. The applicant provided *prima facie* evidence that the continued imposition of the measure at its current level is no longer necessary to offset dumping.

#### **4. 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 on 14 January 2010, by a notice published in the *Official Journal of the European Union*<sup>(10)</sup> ('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 partial interim review investigation was also to assess the need, depending on the review findings, to amend the rate of duty currently 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.
- (13) On 14 January 2010, the Commission also announced, by a notice of initiation published in the *Official Journal of the European Union*<sup>(11)</sup>, the initiation of a partial interim review of the countervailing measures limited in scope to the examination of subsidisation as far as the applicant is concerned.

#### **5. Investigation**

- (14) The investigation of the level of dumping covered the period from 1 January 2009 to 31 December 2009 ('review investigation period' or 'RIP').
- (15) The Commission officially informed the applicant, and 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.
- (16) 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.
- (17) 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**

- (18) The product concerned by this review is the same as that defined in the Regulation imposing the measures in force (Regulation (EC) No 1292/2007 as last amended),

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<sup>10</sup> OJ C 8, 14.1.2010, p. 27

<sup>11</sup> OJ C 8, 14.1. 2010, p. 29

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**

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

## **C. DUMPING**

### **(a) Normal Value**

- (21) In order to establish normal value, it was first determined whether the total volume of domestic sales of the like product was representative in accordance of Article 2(2) of the basic Regulation, namely whether these sales represented 5% of the sales volume of the product concerned exported to the European Union. The Commission established that the like product was sold domestically by the applicant in overall representative volumes. This representativity test was then carried out on a type-by-type basis. It was found that two types were not sold domestically at all.
- (22) The Commission subsequently examined whether the domestic sales of the like product could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for the like product sold on the Indian market, the proportion of profitable domestic sales to independent customers during the IP. It was found that more than 90% of the domestic sales were profitable.
- (23) For the product types sold domestically and which passed the representativity test mentioned in recital (21) above, it was established that for one product type, all domestic transactions were not profitable and thus were not made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation.
- (24) For the product types which were sold in sufficient quantities and sold in the ordinary course of trade in India, normal value was established on the basis of prices paid or payable by unrelated customers pursuant to Article 2(1) of the basic Regulation. For the other types, namely the type mentioned in recital (23) above and the types not sold domestically, normal value was constructed on the basis of the costs of manufacturing incurred by the applicant for the exported model in question plus a reasonable amount for sales, general and administrative (SG&A) costs and for profit in accordance with Article 2(3) of the basic Regulation.
- (25) Given the high level of profitable domestic sales made in the ordinary course of trade, the SG&A costs and the profit were based on all domestic sales of the like product on the domestic market.

(b) Export price

- (26) In all cases where PET film was directly exported to independent customers in the European Union, the export prices were established in accordance with Article 2(8) of the basic Regulation, namely on the basis of prices actually paid or payable.
- (27) For the export sales to the Union made through a related company, the export price was established on the basis of prices at which the imported products were first resold to an independent buyer in accordance with Article 2(9) of the basic Regulation.
- (28) For this purpose, adjustments were made for all costs incurred between importation and resale to the first independent customer in the Union market. A reasonable margin for selling, general and administrative costs and profit was also deducted for these sales. The percentages used to calculate the profit and the selling, general and administrative costs were in line with those reported in the Profit and Loss account of the related company.

(c) Comparison

- (29) 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 were demonstrated to affect prices and price comparability. For this purpose, due allowance in the form of adjustments was made for differences in transport, insurance, handling, loading and ancillary costs, commissions, financial costs and packing costs paid by the applicant where applicable and justified.

(d) Dumping margin

- (30) 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. This comparison did not show the existence of dumping.

**D. LASTING NATURE OF CHANGED CIRCUMSTANCES**

- (31) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances alleged by the applicant could reasonably be considered to be of a lasting nature.
- (32) The investigation showed that the indicative dumping margin calculated for the export sales of the applicant to third countries in the RIP was also negative. In terms of volume, these sales were several times higher than the export sales to the Union.
- (33) It was also found that the applicant made significant investments as from 2007 to improve its production process and to produce the basic raw material which is necessary for the production of the product concerned. These changes have resulted in particular to a reduction of costs and have thus explained the direct impact on the Company dumping margin. This change in circumstances can be considered to be of a lasting nature.

- (34) 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 present interim review. Hence, it was concluded that the changed circumstances are of a lasting nature and that the application of the anti-dumping measure at its current level is no longer justified.

#### **E. ANTI-DUMPING MEASURES**

- (35) In the light of the results of this review investigation, it is considered appropriate to amend the anti-dumping duty applicable to imports of the product concerned from the applicant to 0 %.
- (36) Pursuant to Article 14(1) of the basic Regulation and Article 24(1), second subparagraph of the of Regulation (EC) No 597/2009<sup>12</sup>, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation. As mentioned in recital (8) above, the applicant is subject to a countervailing duty. Since the anti-dumping duty established for the applicant is 0% with regard to the product concerned, this situation does not arise in the present case.
- (37) 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 an opportunity to comment.
- (38) The oral and written comments submitted by the parties were considered and, where appropriate, the definitive findings have been modified accordingly.

HAS ADOPTED THIS REGULATION:

#### *Article 1*

The table in Article 2(2) of Council Regulation (EC) No 1292/2007 is hereby amended by inserting the following:

Vacmet India Limited, Anant Plaza, IInd Floor, 4/117-2A, Civil Lines, Church Road, Agra-282002, Uttar Pradesh, India	0,0	"A992"
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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*.

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<sup>12</sup> OJ L 188, 18.07.2009 p. 93.

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

Done at Brussels, [...]

*For the Council  
The President*