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COUNCIL REGULATION (EC) No 1292/2007

of 30 October 2007

imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and terminating a partial interim review of such imports pursuant to Article 11(3) of Regulation (EC) No 384/96

(OJ L 288, 6.11.2007, p. 1)

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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 Articles 11(2) and 11(3) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. **Measures in force**

(1) The Council, by Regulation (EC) No 1676/2001 ([2]) as last amended by Council Regulation (EC) No 1424/2006 ([3]) imposed a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, *inter alia*, in India. The measures, subject to the present reviews, consisted of an *ad valorem* anti-dumping duty ranging between 0 % and 18 % imposed on imports from individually named exporters, with a residual duty rate of 17,3 % imposed on imports from all other companies. The investigation that led to Regulation (EC) No 1676/2001 as modified will be referred to as 'the original investigation'.

(2) The measures imposed on imports from India in the original investigation were extended by Council Regulation (EC) No 1975/2004 ([4]) to imports of PET film consigned from Brazil and from Israel, whether declared as originating in Brazil or Israel.

(3) The Commission, by Decision 2001/645/EC ([5]) accepted undertakings offered by five Indian producers in connection with the original investigation. These undertakings were repealed by Decision 2006/173/EC ([6]).

(4) The Council, by Regulation (EC) No 367/2006 as last amended by Council Regulation (EC) No 1124/2007 ([7]) imposed a definitive countervailing duty on imports of PET film originating in India. The measures took the form of *ad valorem* duties ranging between 7 % 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. The investigation that led to Regulation (EC) No 367/2006 as amended will be referred to as 'the previous anti-subsidy investigation'.

([1]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
([2]) OJ L 227, 23.8.2001, p. 1.
([3]) OJ L 270, 29.9.2006, p. 1.
([4]) OJ L 342, 18.11.2004, p. 1.
([5]) OJ L 227, 23.8.2001, p. 56.
([6]) OJ L 68, 8.3.2006, p. 37.
([7]) OJ L 255, 29.9.2007, p. 1.

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2. **Request for a review**

(5) On 23 May 2006 and 3 July 2006 respectively, a request for an expiry review pursuant to Article 11(2) of the basic Regulation and a request for a partial interim review pursuant to Article 11(3) of the basic Regulation, limited to the examination of dumping by Jindal Poly Films Limited (Jindal), were 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.

(6) The applicants alleged and provided sufficient prima facie evidence that: (a) there is a likelihood of continuation or recurrence of dumping and injury to the Community industry, and (b) the circumstances with regard to dumping on the basis of which measures were established for Jindal have changed and these changes are of a lasting nature.

3. **Investigation**

(7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation and a partial interim review pursuant to Article 11(3) of the basic Regulation, the Commission announced on 22 August 2006 ([1]) and 25 August 2006 ([2]) respectively, by notices of initiation published in the *Official Journal of the European Union*, the initiation of such reviews.

(8) The partial interim review was limited in scope to the examination of dumping in respect of Jindal. The review investigation period (RIP) was set for both reviews from 1 July 2005 to 30 June 2006. The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 2003 to the end of the RIP (period considered).

4. **Parties concerned**

(9) The Commission officially advised the exporting producers, the representatives of the exporting country, the Community producers, the importers and users known to be concerned of the initiation of the expiry review. For both reviews, 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 notices of initiation.

(10) All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(11) With respect to the expiry review, in view of the apparently large number of exporting producers of PET film in India which were named in the request, the use of sampling techniques was envisaged in the notice of initiation in accordance with Article 17 of the basic Regulation. In order to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers were asked to make themselves known and to provide, as specified in the notice of initiation, basic information on their activities related to PET film during the RIP. Six exporting producers in India indicated their willingness to cooperate. From these six exporting producers, three companies (Ester Industries Limited, Garware Polyester Limited and Jindal), were selected for the sample and received a questionnaire. These companies were found to constitute the largest representative

([1]) OJ C 197, 22.8.2006, p. 2.
([2]) OJ C 202, 25.8.2006, p. 16.

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volume of exports to the Community of PET film which could reasonably be investigated within the time available, pursuant to Article 17(1) of the basic Regulation.

(12) In addition, the Commission sent questionnaires to all other parties known to be concerned or who made themselves known within the deadlines set in the notice of initiation. Complete replies were received from four Community producers, the three sampled exporting producers, one importer/user and four users.

(13) The Commission sought and verified all information it deemed necessary for the determination of dumping and injury as well as to determine whether there is a likelihood of continuation or recurrence of dumping and injury and whether maintaining the measures would be in the Community interest. Verification visits were carried out at the premises of the following interested parties:

(a) *Community producers*

— Dupont Teijin Films (Luxemburg),

— Mitsubishi Polyester Film GmbH (Germany),

— Nuroll SpA (Italy),

— Toray Plastics Europe (France),

(b) *Exporting producers in India*

— Ester Industries Limited, New Delhi,

— Garware Polyester Limited, Aurangabad,

— Jindal Poly Films Limited, New Delhi,

(c) *Related importer/user in the Community*

— Rexor SAS (France),

(d) *Importer/user*

— Coverne SpA (Italy),

(e) *users*

— Safta SpA (Italy),

— Metalvuoto SpA (Italy).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

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

2. Like product

(15) 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 and PET film produced and sold by the Community producers 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.

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C. **PARTIAL INTERIM REVIEW: DUMPING**

1. **Normal value**

(16) In order to establish normal value, it was first verified that the total domestic sales of Jindal 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.

(17) 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.

(18) 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 above the cost of production represented more than 80 % of sales, normal value was established on the basis of the weighted average price actually paid for all domestic sales. For those product types where the volume of profitable transactions was equal to or lower than 80 %, but not lower than 10 % of sales, normal value was based on the weighted average price actually paid for the profitable domestic sales only. For those product types where less than 10 %, by volume, was sold on the domestic market at a price not below unit cost, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore, normal value had to be constructed in accordance with Article 2(3) of the basic Regulation.

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

(20) The SG&A costs were based on such costs incurred by the exporting producer with regard to its 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 the company for those product types sold on the domestic market in sufficient quantities in the ordinary course of trade.

2. **Export price**

(21) The vast majority of export sales of the product concerned to the Community during the RIP have been made to independent customers. Therefore, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of export price actually paid or payable.

(22) Some of the export sales have been made to a related company in the Community. The related company did not resell the goods directly but substantially transformed them, to the extent that constructing the export price of the exported product on the basis of the resale price of the transformed product pursuant to Article 2(9) of the basic Regulation was found to be unworkable. The prices charged by Jindal to this related company were compared to the prices made by Jindal to its unrelated customers in the Community for the same product types during

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the RIP. Since it was found that these two sets of prices were in line for each product type, it was concluded that the prices charged by Jindal to its related party in the Community were reliable and could be used for calculating the export price.

3. **Comparison**

(23) The normal value and export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Accordingly, adjustments were made for differences in discounts, rebates, transport, insurance, handling, loading and ancillary costs, packing, credit and commissions, where applicable and supported by verified evidence.

(24) Jindal claimed an adjustment to the normal value for the import duty not collected under the Advance Licence Scheme (ALS) on imports of raw material used in the manufacture of goods for export. The ALS permits the importation of raw materials free of duty, provided that the company exports a corresponding quantity and value of finished product determined in accordance with officially set standard input-output norms. Imports under the ALS can either be used for the production of export goods or for the replenishment of domestic inputs used to produce such goods. The company claimed that exports of the product concerned to the EC were used to satisfy the requirements under the ALS in respect of raw materials imported. No conclusion was made as to whether or not an adjustment was warranted for this claim, given that the company was, in any event, found not to be dumping in the RIP it would have no impact on the final outcome of the review investigation.

4. **Dumping margin**

(25) The dumping margin was established on the basis of a comparison of a weighted average normal value with a weighted average export price, in accordance with Article 2(11) of the basic Regulation.

(26) This comparison showed a negative dumping margin.

5. **Lasting nature of changed circumstances**

(27) In accordance with Article 11(3) of the basic Regulation it was also examined whether the findings established in the course of this investigation could reasonably be said to be of a lasting nature.

(28) In this respect, it is recalled that Jindal was found not to be dumping in two consecutive investigations concluded by Council Regulation (EC) No 1676/2001 and Council Regulation (EC) No 390/2005 ([1]). These findings of no dumping have been confirmed by the current investigation, and there are no elements indicating that this situation of no dumping would not be of a lasting nature.

(29) It is therefore considered that the current measures in respect of Jindal are achieving the intended results and should remain unchanged.

([1]) OJ L 63, 10.3.2005, p. 1.

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D. EXPIRY REVIEW

D.1. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

(30) According to Eurostat, the volume of the product concerned imported in the Community from India amounted to 23 472 tonnes during the RIP. From this quantity, the three sampled exporting producers accounted for around 97 % during the RIP and Jindal alone accounted for around 90 % of the total export volume from India to the EC during the RIP.

(31) During the investigation period (IP) of the original investigation (1 April 1999 to 31 March 2000), the volume of imports from India was 50 590 tonnes. During the IP of the previous anti-subsidy investigation (1 October 2003 to 30 September 2004), the volume of imports from India was 12 679 tonnes.

2. Dumping of imports during the RIP

2.1. *Preliminary remark*

(32) As mentioned in recital (11) above, three exporting producers were sampled. For Jindal, the findings presented in recitals (16) to (26) apply.

2.2. *Normal value*

(33) In order to establish normal value for Garware and Ester, it was first verified that the reported domestic sales of each exporting producer were representative in accordance with Article 2(2) of the basic Regulation, i.e. that they accounted for 5 % or more of the reported sales volume of the product concerned exported to the Community.

(34) 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.

(35) 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 above the cost of production represented more than 80 % of sales, normal value was established on the basis of the weighted average price actually paid for all domestic sales. For those product types where the volume of profitable transactions was equal to or lower than 80 %, but not lower than 10 % of sales, normal value was based on the weighted average price actually paid for the profitable domestic sales only. For those product types where less than 10 %, by volume, was sold on the domestic market at a price not below unit cost, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore, normal value had to be constructed in accordance with Article 2(3) of the basic Regulation.

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

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(37) The SG&A costs were based on such costs incurred by the exporting producer with regard to its 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 the company for those product types sold on the domestic market in sufficient quantities in the ordinary course of trade.

2.3. *Export price*

(38) As regards the determination of export prices, it should be recalled that the present investigation seeks to establish whether, should protective measures be repealed, dumping would continue or recur. In that context, the determination of the export prices used in the dumping calculation 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 future likely export prices.

(39) Given the existence of price undertakings during part of the RIP, 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. It is further noted that the price undertakings of Garware and Ester have been withdrawn on 9 March 2006, whilst the RIP covers the period from 1 July 2005 to 30 June 2006. For both Garware and Ester, it was found that export transactions that took place during the RIP when the price undertaking was in place were made at prices sufficiently close to the MIP to cast a doubt as to whether these prices could be regarded as of a lasting nature and set independently from the MIP. A similar reasoning has already been described under recital (28) of Council Regulation (EC) No 366/2006 ([1]).

(40) As far as Garware is concerned, transactions made during the RIP after the withdrawal of the undertakings cover around 20 % of the total volume of exports and have been made with continuity after the withdrawal of the undertaking. In view of the volumes exported after the undertaking expired on 8 March 2006, the prices made for these transactions are considered as a meaningful representation of what the pricing policy of Garware would have been in the absence of the undertakings. Accordingly, the prices made for these transactions were used in calculating the export price for all quantities exported by Garware during the whole RIP.

(41) As far as Ester is concerned, transactions made during the period after the withdrawal of the undertakings only cover 5 % of the total volumes and were limited to a very short period immediately following the withdrawal of the undertaking. Therefore, the prices of these transactions cannot be considered as representative of the export prices that the company would have practiced in the absence of the undertaking. As already indicated under recital 39, the export prices to the Community practiced by Ester before the withdrawal of the undertaking were very close to the MIPs. Moreover, it was also found that the export prices of Ester to other third countries were, both when considered on a weighted average basis and on a type by type basis, considerably below the prices to the Community, thus making it likely that, in the absence of undertakings such prices to the Community would be aligned to the prices made for the same types to other third countries. It was therefore concluded that the export prices of Ester to the Community when the undertaking was in force could not be used to establish reliable export prices in the

([1]) OJ L 68, 8.3.2006, p. 6.

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meaning of Article 2(8) of the basic Regulation, in the context of the present expiry review. Given that Ester was selling the product concerned in substantial quantities during the RIP 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 for those models sold to the Community during the part of the RIP when the undertaking was in force. For the part of the RIP after the withdrawal of the undertaking, the export price was established on the basis of prices actually paid or payable to the Community.

2.4. *Comparison*

(42) The normal value and export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Accordingly, adjustments were made for differences in transport, insurance, handling, loading and ancillary costs, commissions, packing and credit, where applicable and supported by verified evidence.

(43) The exporting producers claimed, for a limited number of exports, an adjustment on the export price pursuant to Article 2(10)(k) of the basic Regulation, based on the amount of the benefits received on exportation under the Duty Entitlement Passbook Scheme (DEPB) on a post-export basis. 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. The producers did not demonstrate that the benefit under the DEPB scheme on a post-export basis affected price comparability and, in particular, that the customers consistently paid different prices on the domestic market because of the DEPB benefits. Therefore, the claim was rejected.

2.5. *Dumping margin*

(44) The dumping margin was established on the basis of a comparison of a weighted average normal value with a weighted average export price, in accordance with Article 2(11) of the basic Regulation. Where export prices were based on prices to third countries, appropriate cif values were calculated by increasing the ex-works price to third countries by the weighted average difference, by product type, between the ex-works and CIF level prices to the Community.

(45) This comparison showed a dumping margin in the range of 15 % to 25 %. It is reminded that a negative dumping margin had been found for Jindal (see recital 26).

3. **Development of imports should measures be repealed**

Effect of the removal of the existing measures on the dumped imports

3.1. *Unused capacities*

(46) During the RIP, the spare capacity of all known Indian exporters was estimated at 32 000 tonnes. However, it should be noted that from this total, about 25 000 tonnes are attributed to Indian exporters with a 0 % anti-dumping duty. The eventual repeal of anti-dumping measures is likely to have little impact on the export policy of these companies. Therefore, only around 7 000 tonnes are attributed to Indian exporters with an anti-dumping duty different from 0 %. The latter spare capacity, which repre-

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sented during the RIP approximately 30 % of the total import volume of the product concerned from India into the Community and 3 % of Community consumption, could be directed to the Community should measures be repealed.

3.2. *Incentives to redirect sales volumes to the Community*

(47) Based on a model to model comparison, the export prices to third countries of sampled Indian exporters with a dumping margin different from 0 % were, during the RIP, 20 % to 30 % lower than the export prices to the Community of the same exporting producers. The sales of these two exporters to third countries were made in significant quantities, accounting for 80 to 90 % of their total export sales. Therefore, it was considered that the export price level to other third countries can be seen as an indicator as to the likely price level for export sales to the Community should measures be repealed.

(48) Some of the largest export markets for PET film in the world are protected by high tariffs. In particular, imports of PET film from India into the USA are subject to anti-dumping duties ranging between 2,32 and 24,11 % and countervailing duties ranging between 9 and 25,27 % depending on the Indian exporter concerned.

3.3. *Conclusion*

(49) It is therefore concluded that, given the relative levels of prices, the spare capacities and the incentives observed above, there is a likelihood: (i) of a continuation of dumping, (ii) of an increase of the quantities exported to the Community, should anti-dumping measures in force be lifted.

D.2. DEFINITION OF THE COMMUNITY INDUSTRY

(50) Four community producers (Dupont Teijin Films, Mitsubishi Polyester Film GmbH, Nuroll SpA and Toray Plastics Europe) fully cooperated in the investigation. During the RIP they represented around 95 % of the Community production. Thereby they constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

(51) It is noted that the situation regarding Community production of PET film has changed since the original investigation. Indeed, Kodak Industrie (France) no longer produces PET film in the Community and 3M has transferred its activity to I.T.P. SpA, (Italy) which is reconverting its site into new and different productions. It also has to be pointed out that, since the Czech Republic is, as from 1 May 2004 a member of the European Union, company Fatra a.s. (established in the Czech Republic) is part of the Community production.

D.3. SITUATION ON THE COMMUNITY MARKET

1. **Consumption in the Community market**

(52) The determination of total Community consumption was based on the import statistics from Eurostat, the sales to the Community by the Community industry and the sales of other Community producers.

Table 1

Community consumption	2003	2004	2005	RIP (1.7.2005-30.6.2006)
Volume (tonnes)	253 890	250 231	251 612	257 177

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Community consumption	2003	2004	2005	RIP (1.7.2005-30.6.2006)
Index (2003 = 100)	100	99	99	101

(53) Compared to the year 2003, consumption during the RIP increased by 1 % (more than 3 000 tonnes).

2. **Imports from India, Brazil and Israel: volume, market share and import prices**

(54) The volume of imports into the Community from India, increased by 86 % between 2003 and the RIP and the market share rose from 5 % to 9 % whereas prices decreased by 12 %. The data are based on Eurostat statistics.

Table 2

Imports from India	2003	2004	2005	RIP (1.7.2005-30.6.2006)
Volume (tonnes)	12 597	15 972	23 912	23 472
Index (2003 = 100)	100	127	190	186
Market share	5 %	6 %	10 %	9 %
Prices EUR/tonne	2 005	1 890	1 866	1 755
Index (2003 = 100)	100	94	93	88

(55) Imports from Brazil and Israel which were found to be circumventing as mentioned in recital (2) above sharply decreased following the extension to these imports of the anti-dumping measures imposed on imports from India. Prices of PET film originating in these countries increased by 219 % after the anti-circumvention measures were imposed.

Table 3

Imports from Brazil and Israel	2003	2004	2005	RIP (1.7.2005-30.6.2006)
Volume (tonnes)	6 855	5 527	271	419
Index (2003 = 100)	100	91	5	6
Market share	2 %	2 %	0 %	0 %
Prices EUR/tonne Eurostat figures	1 581	1 741	4 170	3 461
Index (2003 = 100)	100	110	264	219

(56) However, account should be taken of the fact that it was found that Jindal was not dumping in the present investigation, and that other companies (notably Flex Industries Limited and Polyplex Corporation Limited) had not been found to be dumping in earlier investigations. Accordingly, for the present investigation only dumped imports from India and imports which were found to be circumventing will be taken into consideration. Dumped imports from India and imports subject to anti-circumvention duties have decreased by 70 % between 2003 and the RIP — see Table 4 below. The sharp decline of these imports is, to a

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large extent, due to the imposition of anti-circumvention measures on imports from Brazil and Israel.

Table 4

Imports from India + Brazil + Israel	2003	2004	2005	RIP (1.7.2005-30.6.2006)
Volume (tonnes)	10 383	8 881	3 618	2 766
Index (2003 = 100)	100	86	35	27
Market share	4 %	4 %	1 %	1 %
Prices EUR/tonne	1 855	1 852	1 891	1 785

Source: Eurostat and companies' data.

3. **Imports from other third countries**

(57) Imports from other third countries rose by 24 % during the period considered (from around 62 000 tonnes in 2003 to around 77 000 tonnes during the RIP) and the market share in the Community corresponding to these imports increased by five percentage points (from 25 % to 30 %). The main imports were made from South Korea, the USA, Thailand and the UA Emirates. The average price per tonne decreased by 11 % between 2003 and the RIP. The figures are based on Eurostat data.

Table 5

Country		2003	2004	2005	RIP (1.7.2005-30.6.2006)
South Korea	Import volume (tonnes)	25 895	23 983	22 225	23 878
	Index (2003 = 100)	100	93	86	92
	Market share	10 %	10 %	9 %	9 %
	Prices EUR/tonne	2 137	2 146	2 239	2 098
USA	Import volume	14 611	18 636	20 544	13 432
	Index (2003 = 100)	100	128	141	92
	Market share	6 %	7 %	8 %	5 %
	Prices EUR/tonne	7 575	6 067	4 974	6 690
Thailand	Import volume	2 858	6 511	8 647	8 647
	Index (2003 = 100)	100	228	303	303
	Market share	1 %	3 %	3 %	3 %
	Prices EUR/tonne	1 742	1 764	1 811	1 758
UA Emirates	Import volume (tonnes)	1	26	2 478	5 898
	Index (2004 = 100)		100	9 422	22 427
	Market share		0 %	1 %	2 %
	Prices EUR/tonne		2 872	1 854	1 790

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Country		2003	2004	2005	RIP (1.7.2005-30.6.2006)
Total South Korea, USA, Thailand and UA Emirates	Import volume (Tonnes)	43 366	49 157	53 894	51 855
	Index (2003 = 100)	100	80	100	110
	Market share	17 %	20 %	21 %	20 %
Total countries other than India, Brazil and Israel.	Import volume (tonnes)	62 300	65 683	74 191	77 054
	Index (2003 = 100)	100	105	119	124
	Market share	25 %	26 %	30 %	30 %
Price	Weighted average price EUR/tonne	3 848	3 756	3 431	3 428
	Index	100	98	90	89

4. **Economic situation of the Community industry**

(58) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

4.1. *Production, production capacity and capacity utilisation*

(59) Over the period considered capacity remained stable (around 190 000 tonnes) and production and capacity utilisation decreased by 4 %.

Table 6

	2003	2004	2005	RIP (1.7.2005-30.6.2006)
Production in tonnes	176 682	175 465	165 348	168 875
Index (2003 = 100)	100	99	94	96
Capacity in tonnes	190 694	185 863	186 721	189 832
Index (2003 = 100)	100	97	98	100
Capacity utilisation	93 %	94 %	89 %	89 %
Index (2003 = 100)	100	101	96	96

4.2. *Stocks*

(60) Stocks of the product concerned decreased between 2003 and 2004 from 23 929 tonnes to 22 241 tonnes, slightly increased in 2005 and decreased to 21 272 tonnes during the RIP. The decrease was mainly due to a reduction in production.

Table 7

Inventories	2003	2004	2005	RIP (1.7.2005-30.6.2006)
Tonnes	23 929	22 241	23 209	21 272
Index (2003 = 100)	100	93	97	89

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4.3. *Sales volume to unrelated customers in the Community and market share*

(61) The volume sold by the Community industry to unrelated customers in the Community market decreased by 5 % between 2003 and 2005 from 142 755 tonnes to 135 956 tonnes, it increased slightly between 2005 and the RIP but just reached 98 % of the level of sales in 2003. Sales to related companies were negligible (they ranged between 200 and 300 tonnes each year of the period considered). Moreover, the market share of the Community industry decreased by 2 percentage points between 2003 and the RIP.

Table 8

	2003	2004	2005	RIP (1.7.2005-30.6.2006)
Sales volume tonnes	142 755	144 282	135 956	139 212
Index (2003 = 100)	100	101	95	98
Market share in total consumption	56 %	58 %	54 %	54 %

4.4. *Sales prices and costs*

(62) The unit sales prices decreased by 2 % during the period considered (from 2 891 EUR/tonne in 2003 to 2 819 EUR/tonne during the RIP) as well as the average cost per Tonne which went from 3 216 EUR/tonne in 2003 to 3 137 EUR/tonne during the RIP. This decrease in costs took place in spite of the fact that the average cost of most of the raw materials (due to the surge of oil prices) increased substantially. These figures show that, in order to avoid losing too much market share, the Community industry was not in a position to fully cover its cost of production with its sales prices.

Table 9

	2003	2004	2005	RIP (1.7.2005-30.6.2006)
Weighted average price (EUR/tonne)	2 891	2 865	2 929	2 819
Index	100	99	101	98
Weighted average cost (EUR/tonne)	3 216	3 112	3 152	3 137
Index (2003 = 100)	100	97	98	98

4.5. *Growth*

(63) The Community industry lost market share in a slightly growing market over the period considered.

4.6. *Employment, productivity and wages*

(64) The level of employment by the Community industry decreased by 13 % between 2003 and the RIP. Although the average wage per employee increased by 5 %, a rationalisation effort was carried out and productivity per employee increased by 9 %. Thus the level of the labour costs per Tonne produced decreased by 4 %.

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Table 10

	2003	2004	2005	RIP (1.7.2005-30.6.2006)
Employment	2 263	2 112	2 027	1 978
Index (2003 = 100)	100	93	90	87
Productivity tonnes per employee	78	83	82	85
Index (2003 = 100)	100	106	104	109
Wages in 000 EUR	138 876	132 916	129 098	127 375
Index (2003 = 100)	100	96	93	92
Average wage per employee	61 362	62 922	63 669	64 407
Index (2003 = 100)	100	103	104	105
Wages per tonne produced	786	758	781	754
Index (2003 = 100)	100	96	99	96

4.7. *Profitability and return on investments*

(65) Profitability on sales represents the profit generated by the sales of the product concerned in the Community. Return on investment has been calculated on the basis of return on total assets.

(66) The profitability and return on investment on sales of the product concerned to unrelated customers in the Community has, despite small improvements in 2004 and 2005, remained negative during the whole period considered. During the RIP, both profitability and return on investment were particularly low (profitability – 11 % and return on investment – 3,1 %) having again fallen after 2005.

Table 11

	2003	2004	2005	RIP (1.7.2005-30.6.2006)
Profitability	–11,2 %	–8,6 %	–7,6 %	–11,3 %
Index (2003 = 100)	–100	–77	–68	–101
Return on investment	–2,6 %	–2,1 %	–1,9 %	–3,1 %
Index (2003 = 100)	–100	–81	–75	–118

4.8. *Cash flow*

(67) The trend for cash flow deteriorated in particular during the RIP.

Table 12

	2003	2004	2005	RIP (1.7.2005-30.6.2006)
Cash flow in EUR thousand	35 305	34 690	21 980	15 128
Index (2003 = 100)	100	98	62	43

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4.9. *Investments and ability to raise capital*

Table 13

	2003	2004	2005	RIP (1.7.2005-30.6.2006)
Investments in 000 EUR	21 745	18 131	16 772	17 724
Index (2003 = 100)	100	83	77	82

(68) Between 2003 and the RIP, investments for the production of PET film diminished by 18 %. During the RIP, the value of the investments increased by 6 % compared to the situation in 2005 but in comparison to 2003, they remained at a lower level. During the investigation it was found that investments were mainly made to improve the quality of the product and to maintain the production capacity.

(69) The low level of investments is explained to a large extent by the fact that the parent companies of the Community industry did not seem interested in investing or providing guarantees for investments in non profitable activities such as the production of PET film in Europe.

4.10. *Magnitude of dumping margin and recovery from the effects of past dumping*

(70) The analysis with regard to the magnitude of dumping takes into account the fact that there are measures in force in order to eliminate injurious dumping. As indicated above, the information available indicates that one of the sampled exporting producers continues to sell to the Community at dumped prices. Although the margin of dumping found is significant, its impact on the situation of the Community industry during the RIP has not been significant given that the market share of dumped imports from India and imports which were found to be circumventing constituted 1 % of total Community consumption. Jindal certainly contributed to the aggravation of the situation of the Community industry. However, it should also be taken into account that, even if imports from Jindal are excluded from the analysis, the Community industry would not have been able to recover from past dumping after the imposition of anti-dumping measures in 2001 because of circumvention (against which measures were adopted only by the end of 2004) and inappropriateness of the undertakings which were only repealed last year. It must not be forgotten that before the imposition of anti-circumvention duties and the repeal of the undertakings the level of imports from Indian companies found to be dumping was more than three times higher than during the RIP.

5. **Conclusion on the situation on the Community market**

(71) The volume of PET film consumed in the Community market expanded by 1 %, while the volume of sales by the Community industry decreased by 2 %.

(72) The economic situation in the Community industry worsened with respect of most injury factors: production, production capacity and capacity utilisation (– 4 %), sales volume (– 2 %) and value (– 5 %), market share (– 2 percentage points), cash flow and profitability, investment activity and return on investment.

(73) The restructuring efforts made by the Community industry in terms of employment, cost cutting and the increase of productivity per employee could not counterbalance the impact of the

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increase of raw material prices over the period considered. The cost of production was higher than the sales price. This coincided with the low price level of dumped imports from India and other countries found to be circumventing. However, it is noted that the price pressure on the Community industry was partly caused by imports from Jindal, which was found not to be dumping in the RIP, which accounted for around 90 % of total imports of PET film from India.

(74) Having regard to the above, the situation of the Community industry is still precarious and any increase of dumped imports would in all likelihood aggravate this situation.

D.4. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

(75) As stated before, the situation of the Community industry is still precarious. There will be a significant increase of dumped imports if anti-dumping measures were to be removed. As previously indicated in recital 46, Indian exporters subject to an anti-dumping duty have the potential to increase their export volumes to a significant extent and, as indicated in recital (48) some of the largest export markets for PET film in the world are protected by high tariffs, in particular, the market for PET film in the USA.

(76) In the absence of anti-dumping duties, Indian dumped imports could exercise a significant price pressure on the Community market. Therefore, there is a clear indication for a likelihood of a recurrence of injury.

(77) Having regard to the above, if the Community industry was exposed to increased volumes of imports from India at dumped prices, this would cause a further deterioration of its financial situation. On this basis, it is therefore concluded that the repeal of the measures against India would, in all likelihood, result in a recurrence of injury to the Community industry.

D.5. COMMUNITY INTEREST

(78) In accordance with Article 21 of the basic Regulation, it was considered whether the maintenance of the existing anti-dumping measures would be against the interest of the Community as a whole.

(79) According to Article 21 of the basic Regulation, it was examined whether the determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers and the users of the product concerned.

(80) It should be recalled that, in the original investigation, the adoption of measures was considered not to be contrary to the interest of the Community. Furthermore, the fact that the present investigation is a review, thus an analysis of a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

(81) On this basis, it was examined whether, despite the conclusions on the likelihood of recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

(82) In order to assess the likely impact of the imposition or non-imposition of measures information was requested from all interested parties which were either known to be concerned or which made themselves known. On this basis, the Commission

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sent questionnaires to the Community industry, nine unrelated importers and 23 users. In addition, the Commission contacted also all other known Community producers which did not provide the information requested to cooperate in the investigation in order to obtain basic information on their production and sales.

1. **Impact on Community industry**

(83) It is recalled that the Community industry is still in a vulnerable situation as set out in recitals 58 to 74.

(84) The continuation of measures is expected to alleviate a distortion of the market and suppression of prices. Measures would enable the Community industry to at least maintain its sales and benefit from economies of scale.

(85) Otherwise, should anti-dumping measures be terminated, it is likely that the negative trend of the financial situation of the Community industry will continue if not worsen. The Community industry is particularly marked by a loss of revenue due to depressed prices and falling market share.

(86) Accordingly, the continuation of anti-dumping measures would be in the interest of the Community industry.

2. **Impact on importers and users**

(87) Only one importer/user and four users have cooperated in the investigation and supplied complete answers. They represent 16,3 % of total Community consumption of PET film and they have indicated that, the prolongation of anti-dumping duties would have no major impact on their companies.

3. **Conclusion on Community interest**

(88) Taking into account all of the above factors, it is concluded that the imposition of measures would not have a significantly negative effect, if any at all, on the situation of the users and importers of the product concerned.

(89) On this basis, it is concluded that there are no compelling reasons not to continue the anti-dumping measures on grounds of Community interest.

E. **ANTI DUMPING MEASURES**

(90) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure.

(91) On the basis of the above facts and considerations, it is concluded that, in accordance with Article 11(3) of the basic Regulation, the partial interim review limited to Jindal should be terminated and the anti-dumping duty of 0 % imposed in the original investigation on imports of PET film produced and exported to the European Community by Jindal should be maintained.

(92) With respect to the expiry review, as provided for by Article 11(2) of the basic Regulation and on the basis of the above findings, the anti-dumping measures applicable to imports of PET film from India should be maintained,

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HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review of the anti-dumping measures applicable to imports of polyethylene terephthalate (PET) film originating, *inter alia*, in India, normally declared under CN codes ex 3920 62 19 and ex 3920 62 90, in so far as these measures concern the Indian exporting producer Jindal Poly Films Limited, is hereby terminated.

Article 2

1. A definitive anti-dumping duty is hereby imposed on imports of polyethylene terephthalate (PET) film falling within CN codes ex 3920 62 19 (TARIC codes 3920 62 19 03, 3920 62 19 06, 3920 62 19 09, 3920 62 19 13, 3920 62 19 16, 3920 62 19 19, 3920 62 19 23, 3920 62 19 26, 3920 62 19 29, 3920 62 19 33, 3920 62 19 36, 3920 62 19 39, 3920 62 19 43, 3920 62 19 46, 3920 62 19 49, 3920 62 19 53, 3920 62 19 56, 3920 62 19 59, 3920 62 19 63, 3920 62 19 69, 3920 62 19 76, 3920 62 19 78 and 3920 62 19 94) and ex 3920 62 90 (TARIC codes 3920 62 90 33 and 3920 62 90 94), originating in India.

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2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products manufactured by the companies listed below, shall be as follows:

Company	Definitive duty (%)	TARIC additional code
Ester Industries Limited, 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi 110 003, India	22,1	A026
Garware Polyester Limited, Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	14,7	A028
Jindal Poly Films Limited, 56 Hanuman Road, New Delhi 110 001, India	0,0	A030
MTZ Polyfilms Limited, New India Centre, 5th Floor, 17 Co-operage Road, Mumbai 400 039, India	18,0	A031
Polyplex Corporation Limited, B-37, Sector-1, Noida 201 301, Dist. Gautam Budh Nagar, Uttar Pradesh, India	0,0	A032
SRF Limited, Block C, Sector 45, Greenwood City, Gurgaon 122 003, Haryana, India	10,1	A753
Uflex Limited, A-1, Sector 60, Noida 201 301 (U.P.), India	0,0	A027
All other companies	17,3	A999

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3. Where any party provides sufficient evidence to the Commission:

— that it did not export the goods described in Paragraph 1 during the periods from 1 April 1999 to 31 March 2000 and from 1 July 2005 to 30 June 2006,

— that it is not related to any exporter or producer subject to the measures imposed by Regulation (EC) No 366/2006, and,

— that it has exported the goods concerned after the period from 1 July 2005 to 30 June 2006, or that it has entered into an irrevocable

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contractual obligation to export a significant quantity to the Community,

then the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend paragraph 2 by adding that party to the list of companies subject to anti-dumping measures as appears in the table in paragraph 2, the definitive duty being the weighted average duty rate of 3,5 %.

4. The definitive residual anti-dumping duty applicable to imports from India, as set out in paragraph 2, is hereby extended to imports of the same polyethylene terephthalate film consigned from Brazil and consigned from Israel (whether declared as originating in Brazil or Israel or not) (TARIC codes 3920 62 19 01, 3920 62 19 04, 3920 62 19 07, 3920 62 19 11, 3920 62 19 14, 3920 62 19 17, 3920 62 19 21, 3920 62 19 24, 3920 62 19 27, 3920 62 19 31, 3920 62 19 34, 3920 62 19 37, 3920 62 19 41, 3920 62 19 44, 3920 62 19 47, 3920 62 19 51, 3920 62 19 54, 3920 62 19 57, 3920 62 19 61, 3920 62 19 67, 3920 62 19 74, 3920 62 19 77, 3920 62 19 92, 3920 62 90 31, 3920 62 90 92) with the exception of those produced by:

Terphane Ltda BR 101, km 101, City of Cabo de Santo Agostinho, State of Pernambuco, Brazil (TARIC additional code A569);

Jolybar Filmtechnic Converting Ltd (1987), Hacharutsim str. 7, Ind. Park Siim 2000, Natania South, 42504, POB 8380, Israel (TARIC additional code A570);

Hanita Coatings Rural Cooperative Association Ltd., Kibbutz Hanita, 22885, Israel (TARIC additional code A691).

5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 3

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.