II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 38/2011

of 18 January 2011

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 [1] (the basic Regulation), and in particular Article 9(4) and Article 11(3), (5) and (6) thereof,

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

Whereas:

A. PROCEDURE

1. Previous investigations and existing anti-dumping measures

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

(2) In March 2006, by Regulation (EC) No 366/2006 [3], 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 (Council Regulation (EC) No 367/2006 [4]).

(3) In August 2006, by Regulation (EC) No 1288/2006 [5], the Council, following an interim review concerning the subsidisation of an Indian PET film producer, Garware Polyester Limited, amended the definitive anti-dumping duty imposed on that company by Regulation (EC) No 1676/2001.

(4) In September 2006, by Regulation (EC) No 1424/2006 [6], the Council, following a new exporting producer request, amended Regulation (EC) No 1676/2001 in respect of one Indian exporter. The amended Regulation established a dumping margin of 15,5 % 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. 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 [7], the Council imposed a definitive anti-dumping duty on imports of PET film originating in India following an expiry review pursuant to Article 11(2) of the basic Regulation. By the same Regulation a partial interim review pursuant to Article 11(3) of the basic Regulation, limited in scope to the examination of dumping in respect of one Indian exporting producer, was terminated.

(6) In January 2009, by Regulation (EC) No 15/2009 [8], the Council, following a partial interim review initiated by the Commission on its own initiative concerning the subsidisation of five Indian PET film producers, amended the definitive anti-dumping duties imposed on these companies by Regulation (EC) No 1292/2007 and the definitive countervailing duties imposed on these companies by Regulation (EC) No 367/2006.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ L 227, 23.8.2001, p. 1.
[3] OJ L 68, 8.3.2006, p. 6.
[4] OJ L 68, 8.3.2006, p. 15.
[5] OJ L 236, 31.8.2006, p. 1.
[6] OJ L 270, 29.9.2006, p. 1.
[7] OJ L 288, 6.11.2007, p. 1.
[8] OJ L 6, 10.1.2009, p. 1.

(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 (EC) No 1292/2007 in this regard was made by Council Regulation (EC) No 806/2010 [1].

(8) Applicant of this interim review — Garware Polyester Limited is currently subject to a definitive anti-dumping duty of 14,7 %.

2. **Existing countervailing measures**

(9) It should also be noted that Garware Polyester Limited is subject to a countervailing duty of 5,4 % on the basis of Regulation (EC) No 15/2009.

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

(10) In 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 Garware Polyester Limited, an exporting producer from India ('Garware' or 'the applicant'). In its request, the applicant claimed that the circumstances on the basis of which measures were imposed have changed and that these changes are of a lasting nature. The applicant provided prima facie evidence that the continued imposition of the measure at its current level 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 by a 'Notice of Initiation' published on 1 December 2009 in the *Official Journal of the European Union* [2] 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.

5. **Investigation**

(13) The investigation of the level of dumping covered the period from 1 October 2008 to 30 September 2009 ('review investigation period' or 'RIP').

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

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

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

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

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

2. **Like product**

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

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

C. **DUMPING**

(a) *Normal value*

(20) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the applicant's domestic sales of the like product to independent customers were representative, i.e. whether the total volume of such sales was equal to at least 5 % of the total volume of the corresponding export sales to the Union.

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

[1] OJ L 242, 15.9.2010, p. 6.
[2] OJ C 291, 1.12.2009, p. 28.

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

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

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

(b) *Export price*

(25) Since all export sales of the cooperating Indian exporting producer to the Union were made directly to independent customers, the export price was established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

(c) *Comparison*

(26) 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*

(27) 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**

(28) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be considered to be of a lasting nature.

(29) In this regard the investigation showed that after the previous investigation, i.e. the expiry review referred to in recital 5, Garware has made significant changes in its production process and technology. The company has shifted from dimethyl terephthalate (DMT) to purified terephthalic acid (PTA) as the main raw material. During the investigation period of that expiry review Garware was the only Indian exporting producer which was still using the old technology based on DMT. This change of technology as well as the investment in a new plant for manufacturing chips has resulted in a significant reduction of costs of manufacturing between the previous expiry review and the current review. This cost reduction has a direct impact on the dumping margin. This change in circumstances can therefore be considered to be of a lasting nature.

(30) It should be also noted that an indicative dumping margin calculated for export sales of the applicant to third countries in the RIP was negative. In terms of volume these sales were several times higher than the export sales to the Union.

(31) It was therefore considered that the circumstances that led to the initiation of this interim review are unlikely to change in the foreseeable future in a manner that would affect the findings of the interim review. Therefore it was concluded that the changed circumstances are of a lasting nature and that the application of the measure at its current level is no longer justified.

E. **ANTI-DUMPING MEASURES**

(32) 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 Garware to 0 %.

(33) Pursuant to 14(1) of the basic Regulation and Article 24(1), second subparagraph of Council Regulation (EC) No 597/2009 [1], 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 9 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.

(34) 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 opportunity to comment. No comments were received,

HAS ADOPTED THIS REGULATION:

Article 1

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

'Garware Polyester Limited, Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	0,0	A028'

Article 2

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

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

Done at Brussels, 18 January 2011.

For the Council
The President
G. MATOLCSY

[1] OJ L 188, 18.7.2009, p. 93.