EUROPEAN COMMISSION

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2010/0233 (NLE)

Proposal for a

COUNCIL REGULATION (EU) No …/…

amending Regulations (EC) No 1292/2007 and (EC) No 367/2006 (imposing definitive anti-dumping and countervailing duties on imports of polyethylene terephthalate (PET) film originating in India, and maintaining the extension of those duties to imports of polyethylene terephthalate (PET) film consigned from, inter alia, Israel), granting an exemption from those measures to one Israeli exporter and terminating the registration of imports from that exporter

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

This proposal concerns the application of Council Regulations (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (‘the basic anti-dumping Regulation’) and No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ('the basic anti-subsidy Regulation') in the proceeding concerning imports of polyethylene terephthalate (PET) film originating in India, extended to imports of PET film consigned from, inter alia, Israel, following a 'new exporter' review.

- **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 Regulations (EC) No 1292/2007 imposing definitive anti-dumping duties on imports of PET film originating in India, extended to imports of PET film consigned from, inter alia, Israel and No 367/2006 imposing definitive countervailing duties on imports of PET film originating in India, extended to imports of PET film from, inter alia, Israel.

- **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 already had the possibility to defend their 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 6 January 2010, the Commission initiated, following a request of an Israeli exporter, a 'new exporter' review of Regulations (EC) No 1292/2007 imposing definitive anti-dumping duties on imports of PET film originating in India, extended to imports of PET film consigned from, inter alia, Israel and No 367/2006 imposing definitive countervailing duties on imports of PET film originating in India, extended to imports of PET film from, inter alia, Israel.

The attached proposal for a Council Regulation is based on the definitive findings which showed that the Israeli exporter did not export PET film to the EU during the original investigation period (2003). A full manufacturing operation was found for the production of PET film and then transformation of this film into food packaging and other items. No evidence of any links of companies in India manufacturing PET film was found.

It is therefore proposed that the Council adopts the attached proposal for a Regulation in order to grant an exemption to the Israeli exporter from the anti-dumping and countervailing duties applicable to imports of PET film consigned from Israel.

- **Legal basis**

Council Regulations (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community and No 597/2009 of 11 June 2009 on protection against subsidised 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 reasons:

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 for the following reason:

Other means would not be adequate because the basic Regulations do not provide for alternative options.

4. BUDGETARY IMPLICATION

The proposal has no significant implication for the Union budget.

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amending Regulations (EC) No 1292/2007 and (EC) No 367/2006 (imposing definitive anti-dumping and countervailing duties on imports of polyethylene terephthalate (PET) film originating in India, and maintaining the extension of those duties to imports of polyethylene terephthalate (PET) film consigned from, inter alia, Israel), granting an exemption from those measures to one Israeli exporter and terminating the registration of imports from that exporter

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 anti-dumping Regulation') and in particular Articles 11(4) and 13(4) 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 Community[2] ('the basic anti-subsidy Regulation') and in particular Articles 20, 23(5) and (6) thereof,

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

Whereas:

A. MEASURES IN FORCE

(1) The Council, by Regulations (EC) No 1676/2001[3] and (EC) No 2597/1999[4] imposed anti-dumping and countervailing measures respectively on PET film originating, *inter alia*, in India ('the original measures'). By Regulations (EC) No 1975/2004[5] and (EC) No 1976/2004[6], the Council extended these measures to PET film consigned from Israel and from Brazil ('the extended measures') with the exception of imports produced by one Brazilian company, Terphane Ltd, and one Israeli company, Jolybar Ltd, specifically mentioned in each of those regulations.

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1 OJ L 343, 22.12.2009, p. 51.
2 OJ L 188, 18.7.2009, p. 93.
3 OJ L 227, 23.8.2001, p. 1.
4 OJ L 316, 10.12.1999, p. 1.
5 OJ L 342, 18.11.2004, p. 1.
6 OJ L 342, 18.11.2004, p. 8.

(2) By Regulation (EC) No 101/2006[7] the Council amended Regulations (EC) No 1975/2004 and (EC) No 1976/2004 in order to exempt one other Israeli company, Hanita Coatings Rural Cooperative Association Ltd, from the extended measures.

(3) Following an expiry review of the anti-dumping measures, the Council, by Regulation (EC) No 1292/2007[8] ('Regulation (EC) No 1292/2007') imposed an anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India and maintained the extension of that duty to imports of the same product consigned from Brazil and from Israel, whether declared as originating in Brazil or Israel or not, with the exception of certain producers specified in Articles 2(4) of that Regulation ('the anti-dumping measures in force').

(4) Following an expiry review of the countervailing measures, the Council, by Regulation (EC) No 367/2006[9] ('Regulation (EC) No 367/2006') imposed a countervailing duty on imports of polyethylene terephthalate (PET) film originating in India and maintained the extension of that duty to imports of the same product consigned from Brazil and from Israel, whether declared as originating in Brazil or Israel or not, with the exception of certain producers specified in Article 1(3) of that Regulation ('the countervailing measures in force'). The anti-dumping measures in force and the countervailing measures in force shall hereinafter together be referred to as 'the anti-dumping and countervailing measures in force'.

(5) Regulations (EC) No 1292/2007 and (EC) No 367/2006 were last amended by Council Regulation (EC) No 15/2009[10].

B. CURRENT INVESTIGATION

1. Request for a review

(6) The Commission subsequently received a request for an exemption from the extended measures pursuant to Articles 11(4) and 13(4) of the basic anti-dumping Regulation and Articles 20, 23(5) and 23(6) of the basic anti-subsidy Regulation. The application was lodged by S.Z.P. Plastic Packaging Products Ltd. (‘SZP’), a producer in Israel (‘the country concerned’).

2. Initiation of a review

(7) The Commission examined the evidence submitted by SZP and considered it sufficient to justify the initiation of an investigation pursuant to Articles 11(4) and 13(4) of the basic anti-dumping Regulation and Articles 20, 23(5) and 23(6) of the basic anti-subsidy Regulation for the purposes of determining the possibility of granting SZP an exemption from the extended measures. After consultation of the Advisory Committee, and after the Union industry concerned had been given the opportunity to comment, the Commission initiated, by Regulation (EU) No 6/2010[11] ('the initiating Regulation'), a review of Regulations (EC) No 1292/2007 and (EC) No 367/2006 with regard to SZP.

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7 OJ L 17, 21.1.2006, p. 1.
8 OJ L 288, 6.11.2007, p. 1.
9 OJ L 68, 8.3.2006, p. 15.
10 OJ L 6, 10.1. 2009, p.1.
11 OJ L 2, 6.1.2010, p. 5.

(8) The Regulation initiating the review repealed the anti-dumping duty imposed by Regulation (EC) No 1292/2007 with regard to imports of the product under investigation consigned from Israel by SZP. Simultaneously, pursuant to Article 14(5) of the basic anti-dumping Regulation, customs authorities were directed to take appropriate steps to register such imports.

3. Product concerned

(9) The product concerned is the same as that defined in the regulations imposing the original measures, being polyethylene terephthalate (PET) film originating in India, currently falling within CN codes ex 3920 62 19 and ex 3920 62 90 ('the product concerned').

(10) It is considered that the PET film consigned from Israel to the Union under CN codes ex 3920 62 19 and ex 3920 62 90 ('the product under review') has the same basic technical, physical and chemical characteristics and the same uses as the product concerned. Therefore, it is considered to be a like product within the meaning of Article 1(4) of the basic anti-dumping Regulation and Article 2(c) of the basic anti-subsidy Regulation.

4. Investigation

(11) The Commission officially advised SZP and the representatives of the country concerned of the initiation of the review. Interested parties were invited to make their views known and informed of the possibility to request a hearing. No such request was, however, received.

(12) The Commission also sent a questionnaire to SZP and received a reply within the relevant deadline. The Commission sought and verified all the information deemed necessary for the purposes of the review. A verification visit was carried out at the premises of SZP.

5. Investigation period

(13) The investigation covered the period from 1 January 2009 to 31 December 2009 ('the IP'). Data was collected from 2006 up to the end of the IP to investigate any change in the pattern of trade.

C. RESULTS OF THE INVESTIGATION

(14) The investigation confirmed that SZP did not export the product under review to the European Union during the investigation period of the investigation that led to the extended measures, i.e. 1 January to 31 December 2003. SZP's first exports of the product under review occurred subsequent to the extension of measures to, *inter alia*, Israel.

(15) Furthermore, according to documentary evidence submitted, SZP was able to satisfactorily demonstrate that it did not have any direct or indirect links with any of the Indian exporting producers or Israeli companies subject to the anti-dumping and countervailing measures in force.

(16) As already mentioned at recital (14), SZP did not export the product concerned to the Union until after the period of investigation that led to the extended measures. SZP manufactures PET film and either sells this film or uses it itself to produce a range of packaging products.

(17) Raw material of Indian origin, amongst others, is used by SZP to manufacture PET film exported to the Union but this was not considered to be a process involving circumvention. The Indian raw material constituted only a small proportion of the raw material bought at arms-length by SZP and was mixed with other raw materials which were mainly purchased domestically. The Indian producer of the raw material is a long-standing supplier to SZP.

(18) In addition no evidence was found that SZP was purchasing finished PET film from India to resell or tranship to the European Union.

D. AMENDMENT OF THE MEASURES BEING REVIEWED

(19) In accordance with the above findings that SZP has not engaged in circumvention practices, the company should be exempted from the anti-dumping and countervailing measures in force.

(20) The registration of imports of PET film consigned from Israel by SZP, as imposed by the initiating Regulation, should cease. In accordance with Article 14(5) of the basic anti-dumping Regulation, which provides that measures shall be applied against registered imports from the date of registration, and in view of the exemption of the company from measures, no anti-dumping duty should be collected on imports of PET film consigned from Israel by SZP which entered the Union under registration imposed by the initiating Regulation.

(21) In regard to the countervailing measures, as the company has been found not to be circumventing the measures in force, the exemption should take effect from the date of entry into force of Commission Regulation (EU) N° 6/2010 in accordance with Article 23(6) of the basic anti-subsidy Regulation. Repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation.

(22) The exemption from the extended measures granted to PET film produced by SZP shall, in accordance with Article 13(4) of the basic anti-dumping Regulation and Article 23(6) of the basic anti-subsidy Regulation, remain valid on condition that the facts as finally ascertained justify the exemption and that it is for instance not established that the exemption was granted on the basis of false or misleading information submitted by the company concerned. Should *prima facie* evidence indicate otherwise, an investigation may be initiated by the Commission to establish if withdrawal of the exemption is warranted.

(23) The exemption from the extended measures of imports of PET film from SZP was established on the basis of the findings of the present review. This exemption is thus exclusively applicable to imports of PET film consigned from Israel and produced by that specific legal entity. Imported PET film produced or consigned by any company not specifically mentioned in Article 2(4) of Regulation (EC) No 1292/2007 and Article 1(3) of Regulation (EC) No 367/2006 with its name and address, including entities related to those specifically mentioned, cannot benefit from the exemption and should be subject to the residual duty rate as imposed by these Regulations.

E. PROCEDURE

(24) SZP and all other interested parties were informed of the facts and considerations on the basis of which it was intended to grant an exemption to SZP from the extended measures. No comments were received,

HAS ADOPTED THIS REGULATION:

Article 1

1. Article 2(4) of Regulation (EC) No 1292/2007 shall be modified by adding the following company to the list of companies that produce polyethylene terephthalate film in Brazil and Israel and whose imports of polyethylene terephthalate film are exempted from the application of the extended definitive residual anti-dumping duty:

S.Z.P. Plastic Packaging Products Ltd, PO Box 53, Shavei Zion, 22086 Israel (TARIC additional code A964).

2. Article 1(3) of Regulation (EC) No 367/2006 shall be modified by adding the following company to the list of companies that produce polyethylene terephthalate film in Brazil and Israel and whose imports of polyethylene terephthalate film are exempted from the application of the extended definitive countervailing duty:

S.Z.P. Plastic Packaging Products Ltd, PO Box 53, Shavei Zion, 22086 Israel (TARIC additional code A964).

This exemption shall be applicable from the date of entry into force of Commission Regulation (EU) N° 6/2010, namely 7 January 2010. Countervailing duties which have been levied from that date shall be reimbursed to the importer or importers concerned. Repayment or remission shall be requested from national customs authorities in accordance with applicable customs legislation.

Article 2

The customs authorities are hereby directed to cease the registration of imports carried out pursuant to Article 3 of Commission Regulation (EU) No 6/2010. No anti-dumping duty shall be collected on the imports thus registered.

Article 3

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 President
[…]