Council Implementing Regulation (EU) No 806/2010 of 13 September 2010 amending Regulations (EC) No 1292/2007 and (EC) No 367/2006 as regards the granting of an exemption from the measures imposed under those Regulations to one Israeli exporter of polyethylene terephthalate (PET) film originating in India and terminating the registration of imports from that exporter

COUNCIL IMPLEMENTING REGULATION (EU) No 806/2010

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European 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 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.

(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)], 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 or not declared as originating in Brazil or Israel, 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] 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 or not declared as originating in Brazil or Israel, 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.

(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 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 in 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.