Council Regulation (EC) No 1976/2004 of 15 November 2004 extending the definitive countervailing duty imposed by Regulation (EC) No 2597/1999 on imports of polyethylene terephthalate (PET) film originating in India to imports of polyethylene terephthalate (PET) film consigned from Brazil and from Israel, whether declared as originating in Brazil or Israel or not

COUNCIL REGULATION (EC) No 1976/2004

of 15 November 2004

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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 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Article 23 thereof,

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

Whereas:

A. PROCEDURE

1. EXISTING MEASURES

(1) By Regulation (EC) No 2597/1999[(2)] (the original Regulation), the Council imposed countervailing duties on imports of polyethylene terephthalate (PET) film (PET film) originating in India. The rates of the countervailing duties ranged between 3,8 and 19,1 %.

(2) Imports of PET film originating in India are also subject to anti-dumping duties, ranging between 0 and 62,6 %, imposed by Regulation (EC) No 1676/2001[(3)].

2. ONGOING INVESTIGATIONS

(3) On 28 June 2002, the Commission announced by a notice of initiation published in the *Official Journal of the European Communities*[(4)], the initiation of a partial interim review pursuant to Article 19 of the basic Regulation. The request is limited in scope to the form of the measure and in particular, to the examination of the acceptability of an undertaking offered by the applicant. This review is still ongoing.

(4) On 22 November 2003, the Commission announced by a notice of initiation published in the *Official Journal of the European Union*[(5)], the initiation of a partial

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interim review pursuant to Article 11(3) of Regulation (EC) No 384/96[6], limited in scope to the form of the anti-dumping measures. This review is still ongoing.

(5) On 19 February 2004, the Commission announced by a notice of initiation published in the *Official Journal of the European Union*[7], the initiation of a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 limited to dumping for the Indian exporting producer Jindal Polyester Limited. This review is still ongoing.

3. REQUEST

(6) On 6 January 2004, the Commission received a request pursuant to Article 23(2) of the basic Regulation (the request) from the Community producers DuPont Teijin Films, Mitsubishi Polyester Film GmbH and Nuroll SpA (the applicants) to investigate the alleged circumvention of the countervailing measures imposed on imports of PET film originating in India. The applicants represent a major proportion of the Community production of PET film.

(7) The applicants alleged and submitted sufficient evidence showing that, following the imposition of measures on imports of PET film originating in India, there had been significant changes in the patterns of trade involving exports of PET film from India, Brazil and Israel to the Community. These changes in the patterns of trade were alleged to stem from the transhipment via Brazil and via Israel of PET film originating in India. It was alleged that there was insufficient due cause or economic justification for the aforementioned changes other than the imposition of duties on imports of PET film from India.

(8) Finally, the applicant alleged and submitted *prima facie* evidence that the remedial effects of this duty were being undermined both in terms of quantities and prices. It was claimed that significant volumes of imports of PET film from Brazil and Israel appear to have replaced imports of PET film originating in India. In addition, the applicant submitted *prima facie* evidence that PET film originating in India continues to benefit from subsidies found to be countervailable in the original investigation.

4. INITIATION

(9) By Regulation (EC) No 283/2004[8] (the initiating Regulation), the Commission initiated an investigation concerning the possible circumvention of countervailing measures on imports of PET film originating in India by imports of PET film consigned from Brazil and from Israel, whether declared as originating in Brazil or Israel or not and, pursuant to Article 23(2) and Article 24(5) of the basic Regulation, directed the customs authorities to register imports of PET film consigned from Brazil and from Israel, whether declared as originating in Brazil or Israel or not, as of 20 February 2004. The Commission advised the authorities of India, Brazil and Israel of the initiation of the investigation. At the same time, by Regulation (EC) No 284/2004[9], the Commission also initiated an investigation concerning the possible circumvention of anti-dumping measures on imports of PET film originating in India by imports of PET film consigned from Brazil and from Israel, whether declared as originating in Brazil

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or Israel or not. The findings of that investigation are presented in Council Regulation (EC) No 1975/2004[(10)].

(10) The Indian authorities indicated that they considered that anti-circumvention investigations were not permissible under either the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or the Agreement on Subsidies and Countervailing Measures. This claim was rejected on the grounds that the anti-circumvention provisions of the basic Regulation are not incompatible with the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures. Indeed, the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations contains a Decision on anti-circumvention[(11)], referring the matter to the Committee on Anti-dumping Practices in the absence of an agreement on a specific text. As this Decision was made knowing that several WTO Members already had their own anti-circumvention legislation, the European Community interprets it as permitting individual Members to adopt or maintain provisions in this respect, pending the adoption of multilaterally agreed rules. The same principles should logically apply to anti-subsidy investigations.

5. INVESTIGATION

(11) Questionnaires were sent to exporters/producers in India, Brazil and Israel which cooperated in the original investigation, were named in the request or subsequently became known to the Commission. Questionnaires were sent to importers in the Community which were named in the request or cooperated in the original investigation that led to the existing measures. All parties were informed that non-cooperation might lead to the application of Article 28 of the basic Regulation and to findings which, being made on the basis of the facts available, can be less favourable than if the party had cooperated.

(12) Replies to the questionnaire were received from six exporters/producers in India from one exporter/producer in Brazil and from one processing company involved in slitting, sheeting and converting PET film in Israel and exporting PET film to the Community. Another company in Israel came forward and explained that it processed PET film but that the resulting products were not exported under the CN codes under which PET film was classified. On that basis, the company did not submit a questionnaire reply.

(13) Five importers in the Community came forward following receipt of questionnaires. Three of these reported that they had never imported PET film from either Brazil or Israel. The other two importers stated that they had not imported Indian PET film from Brazil or from Israel during the investigation period. Therefore, none of these companies submitted questionnaire replies.

(14) The Commission carried out verification visits at the premises of the following companies:

Brazilian exporting producer:

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— 'Terphane Ltda' BR 101, km 101, City of Cabo de Santo Agostinho, State of Pernambuco, Brazil ('Terphane')

Israeli processor:

— 'Jolybar Filmtechnic Converting Ltd (1987)', Hacharutsim str. 7, Ind. Park Siim 2000, Natania South, 42504, POB 8380, Israel ('Jolybar')

Indian exporting producers:

— 'Ester Industries Limited', 75-76, Amrit Nagar, Behind South Extension Part — I, New Delhi — 110 003, India,

— 'Flex Industries Limited', A-1, Sector 60, Noida 201 301 (U.P.), India,

— 'Jindal Polyester Limited', 56 Hanuman Road, New Delhi 110 001, India,

— 'Polyplex Corporation Limited', B-37, Sector-1, Noida 201 301, Dist. Gautam Budh Nagar, Uttar Pradesh, India.

6. INVESTIGATION PERIOD

(15) The investigation period covered the period from 1 January 2003 to 31 December 2003 (the IP). Data was collected from 1998 up to the end of the IP to investigate the alleged changes in the pattern of trade.

B. RESULTS OF THE INVESTIGATION

1. DEGREE OF COOPERATION

(16) As stated in recital 12, six exporters/producers of PET film in India cooperated with the investigation by submitting questionnaire replies. Information was also obtained from one exporting producer of PET film in Brazil and from one processing company slitting, sheeting and converting PET film in Israel. These Brazilian and Israeli companies accounted for a minor part (less than 1 % and around 5 %, respectively) both in volume and in value, of the total imports of PET film from those countries to the Community during the IP as reported by Eurostat.

(17) The Indian authorities made a written submission further to the initiation of the investigation and provided statistical information concerning exports of PET film from India to, *inter alia*, the Community. Statistical data concerning exports of PET film from Brazil to the Community were also obtained from the Brazilian national database. The Indian Government also submitted information identifying the schemes used by the companies subject to measures which were still extant.

2. PRODUCT CONCERNED AND LIKE PRODUCT

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

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(19) It is considered that PET film exported to the Community from India and PET film consigned from Brazil and from Israel to the Community has the same basic characteristics and the same uses. Therefore, they are considered as like products within the meaning of Article 1(5) of the basic Regulation.

3. CHANGE IN THE PATTERN OF TRADE

India

(20) Over the period 1999 to 2003, imports of the product concerned represented 96,5 % of total imports from India under the relevant CN codes. Market analysis was therefore carried out using Eurostat data at CN code level. In 1999 countervailing duties were imposed on imports to the Community of PET film originating in India, prompting a decrease in volumes of such imports from 11 700 tonnes in 1998 to 10 600 tonnes in 1999. In 2000 imports recovered to 11 600 tonnes but this was followed by the imposition of anti-dumping measures in 2001 which led to a decrease of imports to 6 100 tonnes. Since then imports gradually recovered and stood at 11 500 tonnes during the IP.

(21) In respect of the above pattern it is noted that one company had a significantly lower cumulative duty[(12)] rate than the other producers. This company's trading pattern followed a markedly different trend to that of the other producers, increasing its share of all Indian exports of the product concerned to the Community hugely between the imposition of countervailing measures and the IP. Notably, between 2000 and 2001, when anti-dumping measures were introduced, this company massively increased its share of all Indian exports to the Community. Discounting this irregular trend, the total volume of the product concerned imported into the Community remained well below that prior to the imposition of countervailing measures.

(22) The Indian authorities submitted statistical data on exports to, *inter alia*, the Community. They indicated that they considered that the official Indian statistics did not suggest any circumvention of the existing countervailing measures by the Indian PET film producers. However, the data referred to is inconsistent with the export data provided by the cooperating Indian exporters, at least as far as exports to Israel are concerned; these data show increasing volumes of trade from India to Israel from 2000 through to 2003. As far as Brazil is concerned, Indian export data for direct exports to Brazil shows an increase from around 460 tonnes in 1998 to over 1 500 tonnes in 2000 and then relative stability at this level. This shows a very significant increase and the stability of exports thereafter does not prove the non-existence of circumvention as these figures do not include indirect sales via other intermediary countries. Indeed, the only known Brazilian producer of PET film cooperated in the investigation and its exports to the Community only represent a negligible part (0,5 %) of all sales to the Community from Brazil during the IP.

Brazil

(23) Imports into the Community of PET film from Brazil as reported by Eurostat at CN level, less the imports of goods produced by the cooperating company, increased from 115 tonnes in 1998 (0,2 % of all imports), to over 650 tonnes in 2000 (0,6 %)