Commission Regulation (EC) No 1830/2004 of 21 October 2004 amending Regulation (EC) No 283/2004 and Regulation (EC) No 284/2004 as regards registration of certain imports of polyethylene terephthalate (PET) film produced by one Brazilian exporting producer and produced by one Israeli exporting producer

COMMISSION REGULATION (EC) No 1830/2004

of 21 October 2004

amending Regulation (EC) No 283/2004 and Regulation (EC) No 284/2004 as regards registration of certain imports of polyethylene terephthalate (PET) film produced by one Brazilian exporting producer and produced by one Israeli exporting producer

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 anti-dumping Regulation) and in particular Articles 13 and 14(5) thereof and to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community[(2)] (the basic anti-subsidy Regulation), and in particular Articles 23 and 24(5) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) By Regulation (EC) No 2597/1999[(3)] (the definitive anti-subsidy Regulation), the Council imposed countervailing duties ranging between 3,8 % and 19,1 % on imports of polyethylene terephthalate film (PET film) originating in India.

(2) By Regulation (EC) No 1676/2001[(4)] (the definitive anti-dumping Regulation), the Council imposed anti-dumping duties ranging between 0 % and 62,6 % on imports of PET film originating in India.

(3) On 6 January 2004, the Commission received a request, pursuant to Article 13(3) of the basic anti-dumping Regulation and to Article 23(2) of the basic anti-subsidy Regulation, from DuPont Teijin Films, Mitsubishi Polyester Film GmbH and Nuroll SpA to investigate the alleged circumvention of the anti-dumping and countervailing measures imposed on imports of PET film originating in India. According to the request, the circumvention practice consisted of transhipment of PET film originating in India via Brazil and via Israel to the Community. The request contained sufficient *prima facie* evidence regarding the factors set out in Article 13(1) of the basic anti-dumping Regulation and Article 23(1) of the basic anti-subsidy Regulation.

(4) The Commission initiated investigations into the alleged circumvention of countervailing measures by Regulation (EC) No 283/2004[(5)] and of anti-dumping

measures by Regulation (EC) No 284/2004[6] (the initiating Regulations). Pursuant to Articles 13(3) and 14(5) of the basic anti-dumping Regulation and Articles 23(2) and 24(5) of the basic anti-subsidy Regulation, Article 2 of the initiating Regulations instructed 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.

(5) Article 2(3) of the initiating Regulations provided that the Commission, by Regulation, may direct customs authorities to cease registration in respect of imports into the Community of products manufactured by producers having applied for an exemption of registration and having been found not to be circumventing the anti-dumping duties and the countervailing duties respectively.

B. REQUESTS FOR EXEMPTION

(6) Within the deadline laid down in Article 3 of the initiating Regulations, the Commission received requests for exemption from the registration and measures from one exporting producer in Brazil, Terphane Ltda, BR 101, km 101, City of Cabo de Santo Agostinho, State of Pernambuco, Brazil (Terphane) and from one exporting producer in Israel, Jolybar Filmtechnic Converting Ltd (1987), Hacharutsim str. 7, Ind. Park Siim 2000, Natania South, 42504. POB 8380, Israel (Jolybar).

C. INVESTIGATION PERIOD

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

D. FINDINGS IN RESPECT OF TERPHANE

(8) Terphane replied to the questionnaires sent by the Commission in the course of the investigation. The Commission carried out a verification visit at the premises of Terphane.

(9) Terphane only exported 10,6 tonnes of PET film to the Community during the IP. The only export by the company prior to the one during the IP was for a small sample quantity which took place in 2002. No other exports to the Community were made by the company during the IP or in the period for which data were collected. Moreover, it has also been established that Terphane is a manufacturer and exporter of PET film, operating its own production facilities for the complete production process of the product concerned. The film supplied to the Community is manufactured by the company in facilities established before the entry into force of the measures on Indian PET film. The company has never purchased any PET film from India either during or prior to the IP. It is therefore considered that Terphane demonstrated that it did not circumvent the measures imposed on PET film originating in India.

E. FINDINGS IN RESPECT OF JOLYBAR

(10) Jolybar replied to the questionnaire sent by the Commission in the course of the investigation. The Commission carried out a verification visit at the premises of Jolybar.

(11) The sole cooperating company in Israel, Jolybar slits, sheets and converts purchased PET film and sells it as products which fall under the same CN codes as the product concerned but are generally not of Indian origin and therefore cannot be considered to be the product concerned. The company has been supplying PET film to the Community since the 1990s. The film supplied to the Community is manufactured by Jolybar in facilities established before the entry into force of the measures on Indian PET film. The quantities of PET film exported by Jolybar to the Community doubled from 1999 to 2003 (the IP). The company explained that as a general rule it does not supply Indian film to Community customers since the latter prefer the qualities of European film as a base material for treatment by Jolybar. Exceptionally, during the IP, a quantity of approximately 1 tonne of Indian film was shipped to one Community customer as part of a larger consignment which the customer urgently required. It is therefore concluded that there is sufficient economic justification for the change in the pattern of trade established for Jolybar, which is in line with its activities in the Community market in respect of PET film manufactured by them.

F. CONCLUSIONS

(12) In the light of the above findings, registration of imports of PET film consigned from Brazil and produced by Terphane and consigned from Israel and produced by Jolybar should cease.

(13) Any decision at this stage concerning exporters should be limited to exemption from registration. If the Council subsequently adopts Regulations extending the anti-dumping measures pursuant to Article 13 of the basic anti-dumping Regulation and Article 23 of the basic anti-subsidy Regulation, it may also decide to exempt certain exporters from such extended measures.

(14) The Commission therefore considers it appropriate to amend its initiating Regulations insofar as they provided for the registration of imports of PET film consigned from Brazil (whether declared as originating in Brazil or not) and for the registration of imports of PET film consigned from Israel (whether declared as originating in Israel or not).

(15) This Regulation is based on findings specific to Terphane and Jolybar and does not prejudge any decision which the Council may take to extend the existing anti-dumping and countervailing measures on PET film originating in India to the same product consigned from Brazil (whether declared as originating in Brazil or not) and consigned from Israel (whether declared as originating in Israel or not),

HAS ADOPTED THIS REGULATION: