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COUNCIL REGULATION (EC) No 1975/2004

of 15 November 2004

extending the definitive anti-dumping duty imposed by Regulation (EC) No 1676/2001 on imports of polyethylene terephthalate (PET) film originating, inter alia, 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

(OJ L 342, 18.11.2004, p. 1)

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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 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ([1]) (the basic Regulation), and in particular Article 13 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 1676/2001 ([2]) (the original Regulation), the Council imposed anti-dumping duties on imports of polyethylene terephthalate (PET) film (PET film) originating, *inter alia*, in India. The rates of the anti-dumping duties ranged between 0 % and 62,6 %. By Decision 2001/645/EC ([3]), the Commission accepted undertakings from five Indian exporting producers.

(2) Imports of PET film originating in India are also subject to countervailing duties, ranging between 3,8 % and 19,1 %, imposed by Council Regulation (EC) No 2597/1999 ([4]).

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* ([5]), the initiation of a partial interim review pursuant to Article 19 of Council Regulation 2026/97 ([6]). 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* ([7]), the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation, 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* ([8]), the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation limited to dumping for the Indian exporting producer Jindal Polyester Limited. This review is still ongoing.

([1]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
([2]) OJ L 227, 23.8.2001, p. 1.
([3]) OJ L 227, 23.8.2001, p. 56.
([4]) OJ L 316, 10.12.1999, p. 1.
([5]) OJ C 154, 28.6.2002, p. 2.
([6]) OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004.
([7]) OJ C 281, 22.11.2003, p. 4.
([8]) OJ C 43, 19.2.2004, p. 14.

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3. REQUEST

(6) On 6 January 2004, the Commission received a request pursuant to Article 13(3) 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 anti-dumping 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, *inter alia*, 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 the duty on imports of PET film from India.

(8) Finally, the applicants 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 the prices of PET film imported from Brazil and Israel were dumped in relation to the normal values previously established for PET film originating in India.

4. INITIATION

(9) By Regulation (EC) No 284/2004 ([1]) (the initiating Regulation), the Commission 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 or Israel or not and, pursuant to Articles 13(3) and 14(5) of the basic Regulation, directed the customs authorities to register imports of PET film consigned from Brazil and from Israel, whether 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 283/2004 ([2]) the Commission also 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. The findings of that investigation are presented in Council Regulation (EC) No 1976/2004 ([3]).

(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 ([4]) referring the

([1]) OJ L 49, 19.2.2004, p. 28.
([2]) OJ L 49, 19.2.2004, p. 25.
([3]) See page 8 of this Official Journal.
([4]) Decision on Anti-circumvention adopted by the Trade Negotiations Committee on 15 December 1993.

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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 18 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 five 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:

— ‘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 — 110003, India,

— ‘Flex Industries Limited’, A-1, Sector 60, Noida 201301 (U. P.), India,

— ‘Polyplex Corporation Limited’, B-37, Sector-1, Noida 201301, Dist. Gautam Budh Nagar, Uttar Pradesh, India.

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6. INVESTIGATION PERIOD

(15) The investigation period covered the period from 1 January 2003 to 31 December 2003 (the IP). Data was collected from 2000 up to the end of the IP to investigate the alleged change in the pattern of trade.

B. RESULTS OF THE INVESTIGATION

1. DEGREE OF COOPERATION

(16) As stated in recital 12, five exporters/producers of PET film in India cooperated in 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.

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).

(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 have the same basic characteristics and the same uses. Therefore, they are considered as like products within the meaning of Article 1(4) 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. It should be noted that in 1999 countervailing duties had been imposed on imports to the Community of PET film originating in India, which had already prompted a decrease in volumes of such imports. This was followed by the imposition of anti-dumping measures in 2001 which led to a further decrease. Anti-dumping measures concerning India consist of price-based undertaking agreements with five individual exporting producers and one company with a 0 % anti-dumping duty rate. As a result, anti-dumping duties are essentially not payable on imports from the larger part of the Indian producers. A residual anti-dumping duty of 53,3 % is applicable to imports from all other exporting producers. In 2000 imports to the Community of PET film originating in India stood at 11 600 tonnes. Those imports initially decreased to 6 100 tonnes in 2001 but then increased to 7 700 tonnes in 2002, and further increased during the IP to 11 500 tonnes. The data submitted by the cooperating Indian exporting producers showed similar trends — an increase of around 1 300 tonnes from 2001 to 2002 and a further increase of around 3 400 tonnes from 2002 to 2003. It should be borne in mind however that not all Indian producers cooperated in the investigation. Furthermore, as regards the changes in volumes from 2000 to 2003, these should

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be viewed in the context of a large increase of imports from those exporters which are subject to the lowest levels of measures.

(21) In respect of the above pattern it is noted that one company had a significantly lower cumulative duty [1] rate than the other producers. This company's trading pattern followed a markedly different trend to that of the other producers, hugely increasing its share of all sales of the product concerned to the Community between 2000 and 2003 (the IP). Conversely, the share of the product concerned exported to the Community by the remaining Indian producers fell massively. Discounting this irregular trend, the total volume of the product concerned imported into the Community remained well below that prior to the imposition of anti-dumping 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 anti-dumping 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 a clear increase in exports to Israel following the imposition of measures (from around 40 tonnes in 2000 to around 800 tonnes in the IP). As far as Brazil is concerned, official Indian export data for direct exports to Brazil show only a marginal increase over the same period, but this does 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.

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 around 650 tonnes in 2000 (0,6 % of total imports), to 1 200 tonnes (1,4 %) in 2001 and just over 2 500 tonnes (3,2 %) in 2002, the year following the imposition of anti-dumping measures, remaining at just over 2 000 tonnes during the IP (2,4 % of total PET film imports).

(24) The sole cooperating company in Brazil, Terphane, is, as noted above (recital 22), the only known producer of PET film in Brazil. This company only exported a single consignment of 10,6 tonnes of PET film to the Community during the IP. Apart from a sample sold in 2002, this was the company's first export of PET film to the Community. The company does not therefore appear to be responsible for the volumes of PET film entering the Community from Brazil in the period 2000 to 2003 (recital 23). 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. Thus, no change in the pattern of trade was found for this company.

Israel

(25) Imports into the Community of PET film from Israel as reported by Eurostat at CN level, less the imports of goods produced by the cooperating company, increased from 3 000 tonnes in 2000 (3,7 % of total PET film imports) to 3 400 tonnes in 2001 (4,1 %). Volumes continued to rise to just over 4 200 tonnes in 2002 (5,1 % of imports) and to over 4 400 tonnes in 2003 (5,3 % of imports). A small number of converters of PET film are located in Israel but the information received within the time-limits indicated that, even cumulatively, it is unlikely that they would have had sufficient capacity to be responsible for the

[1] The company in question was subject to countervailing duty at 7 %.

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volumes of film entering the Community from Israel in the period 2000 to 2003.

(26) Official Indian export data shows steadily rising exports to Israel from India. 81 tonnes were exported in 2000, 395 tonnes in 2001, 1 032 tonnes in 2002 and 2 453 tonnes in the IP.

(27) 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 is generally not of Indian origin and therefore it cannot be considered the product concerned. The company has been supplying PET film to the Community since the 1990's. The quantities of PET film exported by Jolybar to the Community doubled between 1999 and 2003 (the IP). The film supplied to the Community is manufactured by them in facilities established before the entry into force of the measures on Indian PET film. Irrespective as to whether this development of exports indicates a change in the company's pattern of trade this issue was not considered further as there was, in any event, a clear economic justification for this behaviour, as set out in recital 31.

(28) In view of the above, and in particular given the coincidence between the rise of imports from Brazil and Israel and the entry into force in 2001, of the anti-dumping measures on PET film originating in India, a change in the pattern of trade is established in respect of exports of PET film from India, Israel and Brazil.

4. INSUFFICIENT DUE CAUSE OR ECONOMIC JUSTIFICATION

Brazil

(29) In the absence of any other cooperation and given that the abovementioned change in the pattern of trade for Brazil took place immediately following the imposition of anti-dumping duties, it has to be concluded, on the basis of the information available and in the absence of any other explanation, that the change in the pattern of trade stemmed from the imposition of the duty rather than from any other sufficient due cause or economic justification within the meaning of Article 13(1) of the basic Regulation.

Israel

Non-cooperating exporting producers

(30) In the absence of cooperation and given that the abovementioned change in the pattern of trade took place immediately following the imposition of anti-dumping duties, it has to be concluded, on the basis of the information available and in the absence of any other explanation, that the change in the pattern of trade stemmed from the imposition of the duty rather than from any other sufficient due cause or economic justification within the meaning of Article 13(1) of the basic Regulation.

Cooperating exporting producer

(31) The investigation established that Jolybar's export trade to the Community is long established and 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 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 base material for treatment by Jolybar. Exceptionally, during the IP, a quantity of approximately one tonne of Indian film was shipped to one Community customer as part of a larger consignment which the customer required urgently. It is therefore concluded that there is sufficient economic justification for the development of Jolybar's

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exports, which is in line with its activities in the Community market in respect of PET film manufactured by them.

5. UNDERMINING OF THE REMEDIAL EFFECTS OF THE DUTY IN TERMS OF THE PRICES AND/OR THE QUANTITIES OF LIKE PRODUCT

Non-cooperating exporting producers

(32) The figures in recitals 20 to 28 indicate that a clear quantitative change in the pattern of Community imports of the product concerned has occurred since the imposition of measures in 2001. There was a significant decrease of 5 500 tonnes in Indian imports to the Community at the time of the imposition of the measures, with corresponding increases in exports of the product concerned to the Community from Brazil and Israel. Eurostat data indicates that, from 2000 until the end of IP, the increases in imports to the Community amounted to 1 376 tonnes from Brazil and 1 392 tonnes from Israel. The parallel decline of exports from India, disregarding those imports which are subject to the lowest levels of measures, is 5 653 tonnes. It is therefore considered that part of the export trade flows from India has been substituted by export flows through Brazil and Israel thus undermining the remedial effects of the measures in terms of the quantities imported into the Community market.

(33) With regard to prices of the product concerned consigned from Brazil and from Israel, in view of the low cooperation, it was necessary to refer to Eurostat data, which is the best evidence available.

(34) The average price of imports of PET film from Brazil during the IP, adjusted for post-import costs, was around 50 % of the injury elimination level established in the investigation which led to the imposition of existing anti-dumping measures. On this basis, there is evidence that PET films consigned from Brazil also undermined the remedial effects of the duty imposed in terms of prices.

(35) The average price of imports of PET film from Israel during the IP, adjusted for post-import costs, was around 55 % of the injury elimination level established in the original anti-dumping investigation. On this basis, there is evidence that the Israeli imports also undermined the remedial effects of the duty imposed in terms of prices.

(36) It is therefore concluded that the imports of PET film from Brazil and from Israel undermined the remedial effects of the anti-dumping measures both in terms of quantities and prices.

6. EVIDENCE OF DUMPING IN RELATION TO THE NORMAL VALUES PREVIOUSLY ESTABLISHED FOR LIKE OR SIMILAR PRODUCTS

Non-cooperating exporting producers

(37) In accordance with Article 13(1) of the basic Regulation, it was examined whether there was evidence of dumping in relation to the normal value previously established for the like or similar products. As explained (recital 16), given the limited cooperation, in order to determine whether evidence of dumping could be found with respect to the exports of the product concerned to the Community from Brazil and from Israel during the IP, Eurostat data was used pursuant to Article 18 of the basic Regulation as the basis for establishing export prices to the Community. Likewise, for the purpose of comparing the export price and normal value, it was considered appropriate to assume that the product mix of the goods consigned from Brazil and Israel during the IP was the same as that consigned from India in the original investigation.

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(38) For the purpose of a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences in factors affecting price and price comparability. These adjustments were made in accordance with Article 2(10) of the basic Regulation.

(39) In accordance with Article 2(11) and 2(12) of the basic Regulation, the weighted average normal value as established during the original investigation was compared to the average export prices for the IP established as indicated in recitals 34 and 35. These comparisons revealed approximate dumping margins, expressed as a percentage of the cif price at the Community frontier, duty unpaid, of 17,5 % for Brazil and 14,5 % for Israel.

C. **REQUESTS FOR EXEMPTION FROM REGISTRATION OR EXTENSION OF THE DUTY**

(40) The Commission received a request for exemption from the registration and measures from Terphane and Jolybar. As stated in recitals 24 and 27, these companies cooperated in the investigation, by submitting a questionnaire reply and accepting a verification visit. By Regulation (EC) No 1830/2004 [1], the Commission amended the initiating Regulation in order to cease registration of imports of PET film from Terphane and Jolybar which were found not to be circumventing the anti-dumping duties.

(41) In accordance with the above findings that Terphane and Jolybar were found not to have circumvented the anti-dumping measures in force, these companies should also be exempted from the extension of the measures envisaged.

D. **MEASURES**

(42) In view of the findings above, it is found that circumvention has taken place within the meaning of Article 13(1) of the basic Regulation. In accordance with Article 13(1) first sentence of the basic Regulation, the existing anti-dumping measures on imports of the product concerned (i.e. PET film originating in India), should be extended to imports of PET film consigned from Brazil or Israel, whether declared as originating in Brazil or in Israel or not, with the exception of those manufactured by Terphane and Jolybar.

(43) In accordance with Article 14(5) of the basic Regulation, which provides that measures shall be applied against registered imports from the date of registration, the anti-dumping duty should be collected on imports of PET film consigned from Brazil and consigned from Israel which entered the Community under registration imposed by the initiating Regulation with the exception of imports of PET film consigned from Brazil and produced by Terphane and consigned from Israel and produced by Jolybar.

(44) The exemptions from the extended measures granted to PET film produced by Jolybar and by Terphane shall, in accordance with Article 13(4) of the basic Regulation, remain valid under the requirement that it is not established that the exemption was granted on the basis of false or misleading information submitted by the companies concerned. Should *prima facie* evidence indicate otherwise, an investigation may be initiated by the Commission to establish if withdrawal of the exemption is warranted.

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[1] OJ L 321, 22.10.2004, p. 26.

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(45) The non-extension of the duties to the imports of PET film from Terphane and Jolybar was established on the basis of the findings of the present investigation. This non-extension is thus exclusively applicable to imports of PET film consigned from Brazil or Israel, respectively, and produced by these specific legal entities. Imported PET film produced or consigned by any other company not specifically mentioned in the operative part of this Regulation 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 Regulation (EC) No 1676/2001.

E. **PROCEDURE**

(46) Interested parties were informed of the essential facts and considerations on the basis of which the Council intended to extend the definitive anti-dumping duty in force and were given the opportunity to comment and to be heard. The Israeli authorities reiterated those comments made by the Indian Government indicated at recital 10. They also submitted a list of Israeli converters of PET film which had exported to the Community during 2003 and 2004. However, as these companies had not cooperated within the time-limits, it could not be established that they had not circumvented the measures. Therefore, they could not be exempted from the extension of the measures to Israel,

HAS ADOPTED THIS REGULATION:

Article 1

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1. The definitive anti-dumping duty of 53,3 % imposed by Regulation (EC) No 1676/2001 on imports of polyethylene terephthalate film originating in India, falling within CN codes ex 3920 62 19 and ex 3920 62 90, is hereby extended to imports of the same polyethylene terephthalate film consigned from Brazil and consigned from Israel (whether declared as originating in Brazil or Israel or not) (TARIC codes 3920 62 19 01, 3920 62 19 04, 3920 62 19 07, 3920 62 19 11, 3920 62 19 14, 3920 62 19 17, 3920 62 19 21, 3920 62 19 24, 3920 62 19 27, 3920 62 19 31, 3920 62 19 34, 3920 62 19 37, 3920 62 19 41, 3920 62 19 44, 3920 62 19 47, 3920 62 19 51, 3920 62 19 54, 3920 62 19 57, 3920 62 19 61, 3920 62 19 67, 3920 62 19 74, 3920 62 19 92, 3920 62 90 31, 3920 62 90 92) with the exception of those produced byTerphane Ltda, BR 101, km 101, City of Cabo de Santo Agostinho, State of Pernambuco, Brazil (TARIC additional code A569), byJolybar Filmtechnic Converting Ltd (1987), Hacharutsim str. 7, Ind. Park Siim 2000, Natania South, 42504, POB 8380, Israel (TARIC additional code A570) and byHanita Coatings Rural Cooperative Association Ltd, Kibbutz Hanita, 22885, Israel (TARIC additional code A691).

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2. The duty extended by paragraph 1 of this Article shall be collected on imports registered in accordance with Article 2 of Regulation (EC) No 284/2004 and Articles 13(3) and 14(5) of Regulation (EC) No 384/96 with the exception of those produced byTerphane Ltda, BR 101, km 101, City of Cabo de Santo Agostinho, State of Pernambuco, Brazil and byJolybar Filmtechnic Converting Ltd. (1987), Hacharutsim str. 7, Ind. Park Siim 2000, Natania South, 42504, POB 8380, Israel.

3. The provisions in force concerning customs duties shall apply.

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.