**This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents**

►**B**

# COUNCIL REGULATION (EC) No 367/2006

**of 27 February 2006**

**imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97**

(OJ L 68, 8.3.2006, p. 15)

Amended by:

| | | Official Journal | | |
|---|---|---|---|---|
| | | No | page | date |
| ►**M1** | Council Regulation (EC) No 1288/2006 of 25 August 2006 | L 236 | 1 | 31.8.2006 |
| ►**M2** | Council Regulation (EC) No 1124/2007 of 28 September 2007 | L 255 | 1 | 29.9.2007 |
| ►**M3** | Council Regulation (EC) No 15/2009 of 8 January 2009 | L 6 | 1 | 10.1.2009 |

▼B

# COUNCIL REGULATION (EC) No 367/2006

## of 27 February 2006

## imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97

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 member of the European Community ([1]) (hereinafter referred to as the basic Regulation), and in particular Article 18 thereof,

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

Whereas:

### A. **PROCEDURE**

#### 1. EXISTING MEASURES AND TERMINATED INVESTIGATIONS CONCERNING THE SAME PRODUCT

(1) The Council, by Regulation (EC) No 2597/1999 ([2]), imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) film falling within CN codes ex 3920 62 19 and ex 3920 62 90 and originating in India (hereinafter referred to as the definitive countervailing measures). The measures took the form of an *ad valorem* duty ranging between 3,8 % and 19,1 % imposed on imports from individually named exporters, with a residual duty rate of 19,1 % imposed on imports from all other companies.

(2) The Council, by Regulation (EC) No 1676/2001 ([3]), imposed definitive anti-dumping duties on imports of PET film originating in India and the Republic of Korea. The measures took the form of an *ad valorem* duty ranging between 0 % and 62,6 % on imports of PET film originating in India (hereinafter referred to as the definitive anti-dumping measures), with the exception of imports from five Indian companies (Ester Industries Limited (hereinafter referred to as Ester), Flex Industries Limited (hereinafter referred to as Flex), Garware Polyester Limited (hereinafter referred to as Garware), MTZ Polyesters Limited (hereinafter referred to as MTZ), and Polyplex Corporation Limited (hereinafter referred to as Polyplex)) from whom undertakings had been accepted by Commission Decision 2001/645/EC ([4]).

(3) It is noted that the company formerly known as MTZ Polyesters Limited changed name. Its new name is MTZ Polyfilms Limited. This change of name in no way affected the findings of Regulation (EC) No 2597/1999 and the right of the company to benefit from the individual duty rate applied to it under its previous name. The Commission announced on 17 February 2005 the change of name of MTZ by a notice published in the *Official*

([1]) OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation No 461/2004 (OJ L 77, 13.3.2004, p. 12).
([2]) OJ L 316, 10.12.1999, p. 1.
([3]) OJ L 227, 23.8.2001, p. 1.
([4]) OJ L 227, 23.8.2001, p. 56.

▼B

*Journal of the European Union* ([1]). It is further noted that MTZ changed its address with effect from July 2005, with no other changes to either the company's ownership, structure or operations. The address of the company should therefore be amended.

(4) The Council, by Regulations (EC) No 1975/2004 ([2]) and (EC) No 1976/2004 ([3]), extended the definitive countervailing and anti-dumping measures on imports of PET film originating in India, to imports of the same product consigned from Brazil and Israel, whether declared as originating in Brazil or Israel or not.

(5) On 28 June 2002 ([4]), the Commission initiated a partial interim review limited to the form of the definitive countervailing measures and, in particular to the examination of the acceptability of an undertaking offered by one Indian exporting producer, pursuant to Article 19 of the basic Regulation. This investigation has been terminated by Council Regulation (EC) No 365/2006 ([5]).

(6) On 22 November 2003 ([6]), the Commission initiated a partial interim review limited to the form of the definitive anti-dumping measures. This investigation has been concluded by Council Regulation (EC) No 365/2006.

(7) On 4 January 2005 ([7]), the Commission initiated a partial interim review limited to the level of the definitive anti-dumping measures. This investigation has been concluded by Council Regulation (EC) No 365/2006, which amended the level of the definitive anti-dumping measures.

(8) On 23 August 2005 ([8]), the Commission initiated a review of Regulations (EC) No 1975/2004 and (EC) No 1976/2004 with respect to the application of an Israeli producer for an exemption from the extended measures. This investigation has been terminated by Council Regulation (EC) No 101/2006.

## 2. REQUEST FOR AN EXPIRY REVIEW

(9) Following the publication of a notice of impending expiry ([9]) of the definitive countervailing measures in force, the Commission received a request for the initiation of an expiry review of Council Regulation (EC) No 2597/1999 pursuant to Article 18 of the basic Regulation, from Community producers of the like product, i.e. DuPont Teijin Films, Mitsubishi Polyester Film GmbH, Nuroll SpA and Toray Plastics Europe (hereinafter referred to as the applicants). The applicants represent a major proportion, in this case over 50 %, of the total Community production of PET film.

(10) The request was based on the grounds that the expiry of the measures would be likely to result in the continuation or recurrence of subsidisation and injury to the Community industry.

(11) Prior to the initiation of the expiry review, and in accordance with Articles 10(9) and 22(1) of the basic Regulation, the

([1]) OJ C 40, 17.2.2005, p. 8.
([2]) OJ L 342, 18.11.2004, p. 1. Regulation as last amended by Regulation (EC) No 101/2006 (OJ L 17, 21.1.2006, p. 1).
([3]) OJ L 342, 18.11.2004, p. 8. Regulation as amended by Regulation (EC) No 101/2006.
([4]) OJ C 154, 28.6.2002, p. 2.
([5]) See page 1 of this Official Journal.
([6]) OJ C 281, 22.11.2003, p. 4.
([7]) OJ C 1, 4.1.2005, p. 5.
([8]) OJ L 218, 23.8.2005, p. 3.
([9]) OJ C 62, 11.3.2004, p. 4.

▼B

Commission notified the Government of India (hereinafter referred to as the GOI) that it had received a properly documented review request and invited the GOI for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. However, the Commission did not receive any answer from the GOI regarding its offer for consultation.

## 3. INITIATION OF AN EXPIRY REVIEW

(12) The Commission examined the evidence submitted by the applicants and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 18 of the basic Regulation. After consultation of the Advisory Committee, the Commission initiated an expiry review of Council Regulation (EC) No 2597/1999 by means of a notice published in the *Official Journal of the European Union* ([1]).

## 4. INVESTIGATION PERIOD

(13) The investigation covered the period from 1 October 2003 to 30 September 2004 (hereinafter referred to as the review investigation period or IP). The examination of trends in the context of injury covered the period from 1 January 2001 up to the end of the review investigation period (hereinafter referred to as the period considered).

## 5. PARTIES CONCERNED BY THE INVESTIGATION

(14) The Commission officially advised the applicants, other known Community producers, exporting producers, importers, upstream suppliers, users and the GOI of the initiation of the investigation. Interested parties had the opportunity to make their views known in writing. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing. The written and oral comments submitted by the parties were considered and, where appropriate, taken into account.

(15) In view of the apparently large number of exporting producers of PET film in India which were named in the request, the use of sampling techniques for the investigation of subsidisation was envisaged in the notice of initiation in accordance with Article 27 of the basic Regulation. In order to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers were asked to make themselves known and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the IP. After examination of the information submitted, and given the high number of exporting producers which indicated their willingness to cooperate, it was decided that sampling was necessary.

(16) The Commission sent questionnaires to all parties known to be concerned or who made themselves known within the deadlines set in the notice of initiation. Replies were received from four Community producers, eight exporting producers, one importer/user, one up-stream supplier and the GOI.

(17) From the eight Indian exporting producers, four companies (Ester, Flex, Garware and Jindal Poly Films Limited (hereinafter referred to as Jindal)), were selected for the sample. These were found to constitute the largest representative volume of the

([1]) OJ C 306, 10.12.2004, p. 2.

▼B

production, sales and exports to the Community of PET film, which could reasonably be investigated within the time available, pursuant to Article 27(1) of the basic Regulation.

(18) By a notice published in the *Official Journal of the European Union* ([1]), the Commission announced that the company formerly known as Jindal Polyester Limited changed its address. The address of the company should therefore be amended.

(19) By a notice published in the *Official Journal of the European Union* ([2]), the Commission announced that the company formerly known as Jindal Polyester Limited changed its name to Jindal Poly Films Limited. The name of the company should therefore be amended.

(20) The Commission sought and verified all information it deemed necessary for the determination of subsidisation and injury as well as to determine whether there is a likelihood of continuation or recurrence of subsidisation and injury and whether maintaining the measures would be in the Community interest. Verification visits were carried out at the premises of the following interested parties:

(a) **Community producers**

— DuPont Teijin Films, Luxemburg and Middlesbrough, United Kingdom,

— Mitsubishi Polyester Film GmbH, Wiesbaden, Germany,

— Nuroll SpA, Pignataro Maggiore, Italy,

— Toray Plastics Europe, Miribel, France;

(b) **Government of India**

— Ministry of Commerce, New Delhi;

(c) **Exporting producers in India**

— Ester Industries Limited, New Delhi,

— Flex Industries Limited, New Delhi,

— Garware Polyester Limited, Aurangabad,

— Jindal Poly Films Limited, New Delhi;

(d) **Importer/user**

— Coveme SpA, San Lazzaro di Savena, Italy;

(e) **Up-stream supplier**

— Oxxynova GmbH, Marl, Germany.

## 6. DISCLOSURE

(21) Pursuant to Article 30 of the basic Regulation, the GOI and the other interested parties were informed of the essential facts and considerations upon which it is intended to propose the continuation of measures. They were also given a reasonable time to comment. Certain parties presented their comments in writing. In addition, the GOI was offered, and accepted, consultation pursuant to Article 10(11) of the basic Regulation. All submissions and comments were taken duly into consideration.

([1]) OJ C 189, 9.8.2002, p. 34.
([2]) OJ C 297, 2.12.2004, p. 2.

▼B

## B. PRODUCT CONCERNED AND LIKE PRODUCT

(22) The product covered by this review is the same product as the one concerned by Council Regulation (EC) No 2597/1999, namely PET film falling within CN codes ex 3920 62 19 and ex 3920 62 90 originating in India (hereinafter referred to as the product concerned).

(23) The investigation confirmed that, as in the original investigation, the product concerned and the PET film produced and sold on the domestic market in India, as well as the PET film produced and sold in the Community by the Community producers had the same basic physical characteristics and uses to the product concerned and were thus a like product within the meaning of Article 1(5) of the basic Regulation.

## C. SUBSIDIES

### 1. INTRODUCTION

(24) On the basis of the information contained in the review request and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

1.1. **Nationwide schemes**

(a) Advance licence/Advance release order;

(b) Duty entitlement passbook;

(c) Special economic zones/Export oriented units;

(d) Export promotion capital goods;

(e) Duty free replenishment certificate;

(f) Income tax exemption;

(g) Export credit:

— pre-export,

— post-export,

(h) Capital infusions.

(25) The schemes (a) to (e) are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (hereinafter referred to as Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in Export and Import Policy documents, which are issued by the Ministry of Commerce every five years and updated regularly. One Export and Import Policy document is relevant to the review investigation period of this case; i.e. the five-year plan relating to the period 1 April 2002 to 31 March 2007 (hereinafter referred to as EXIM-policy 2002-2007). In addition, the GOI also sets out the procedures governing the EXIM-policy 2002-2007 in a 'Handbook of Procedures — 1 April 2002 to 31 March 2007, Volume I' (hereinafter referred to as HOP I 2002-2007) ([1]). The Handbook of Procedure is also updated on a regular basis.

(26) Scheme (f) is based on the Income Tax Act of 1961, which is amended yearly by the Finance Act.

([1]) Notification No 1/2002-2007 of 31 March 2002 of the Ministry of Commerce and Industry of the GOI.

▼B

(27) Scheme (g) is based on Sections 21 and 35A of the Banking Regulation Act 1949, which allows the Reserve Bank of India (hereinafter referred to as RBI) to instruct commercial banks regarding export credits.

(28) Scheme (h) is an ad hoc subsidy for which no legal basis in the Indian Law could be established.

1.2. **Regional schemes**

(29) On the basis of the information contained in the review request and the replies to the Commission's questionnaire, the Commission also investigated a number of schemes which allegedly are granted by regional governments or authorities in certain Indian States.

(a) *State of Uttar Pradesh,*

— The schemes are based on the Trade Tax Act, 1948 of the Government of Uttar Pradesh (hereinafter referred to as the GOUP).

(b) *State of Maharashtra,*

— Package scheme of incentives (hereinafter referred to as PSI) of the Government of Maharashtra (hereinafter referred to as the GOM) 1993. This scheme is based on resolutions of the GOM Industries, Energy and Labour Department.

## 2. NATIONWIDE SCHEMES

2.1. **Advance licence scheme (hereinafter referred to as ALS)/Advance release order (hereinafter referred to as ARO)**

(a) *Legal basis*

(30) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the EXIM-policy 2002-2007 and Chapters 4.1 to 4.30 of the HOP I 2002-2007.

(b) *Eligibility*

(31) The ALS consists of six sub-schemes, as described in more detail in recital 32. Those sub-schemes, *inter alia*, differ in the scope of eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the ALS physical exports and for the ALS for annual requirement. Manufacturer–exporters supplying the ultimate exporter are eligible for ALS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the EXIM-policy 2002-2007, such as suppliers of an export oriented unit (hereinafter referred to as EOU), are eligible for ALS deemed export. Eventually, intermediate suppliers to manufacturer-exporters are eligible for 'deemed export' benefits under the sub-schemes ARO and back to back inland letter of credit.

(c) *Practical implementation*

(32) Advance licences can be issued for:

(i) Physical exports: This is the main sub-scheme. It allows for duty free import of input materials for the production of a specific resultant export product. 'Physical' in this context means that the export product has to leave Indian territory. Import allowance and export obligation

▼B

including the type of export product are specified in the licence.

(ii) Annual requirement: Such a licence is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The licence holder can – up to a certain value threshold set by its past export performance – import duty-free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resultant product falling under the product group using such duty-exempt material.

(iii) Intermediate supplies: This sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter produces the intermediate product. It can import duty free input materials and can obtain for this purpose an ALS for intermediate supplies. The ultimate exporter finalises the production and is obliged to export the finished product.

(iv) Deemed exports: This sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of the EXIM policy 2002-2007. According to the GOI, deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an EOU or to a company situated in a special economic zone (hereinafter referred to as 'SEZ').

(v) ARO: The ALS holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases the Advance Licences are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of the EXIM-policy 2002-2007 (i.e. ALS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs.

(vi) Back-to-back inland letter of credit: This sub-scheme again covers indigenous supplies to an ALS holder. The holder of an ALS can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The licence will be invalidated by the bank for direct import, only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to deemed export benefits as set out in paragraph 8.3 of the EXIM-policy 2002-2007 (i.e. ALS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).

(33) From the four sampled exporting producers, only one used the ALS during the IP. More precisely, this exporting producer made use of two sub-schemes, namely (i) and (ii) above. This cooperating exporter explained that, whilst it made use of the duty entitlement passbook scheme (hereinafter referred to as DEPB) in 1999 at the time of the definitive countervailing measures, it had

▼B

since decided to stop using the DEPB and to make use of the ALS instead.

(34) For verification purposes by the Indian authorities, a licence holder is legally obliged to maintain 'a true and proper account of licence-wise consumption and utilisation of imported goods' in a specified format (Chapter 4.30 HOP I 2002-2007) (hereinafter referred to as the consumption register). The verification evidenced that the company properly maintains a consumption register.

(35) In regard to sub-scheme (i) above, both the import allowance and the export (including deemed export) obligation are fixed in volume and value by the GOI and are documented on the licence. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the licence. The volume of imports allowed under this scheme is determined by the GOI on the basis of standard input-output norms (hereinafter referred to as SIONs). SIONs exist for most products including the product concerned and are published in the HOP I 2002-2007.

(36) In case of the sub-scheme (ii) listed above under recital 32 (ALS for annual requirement), only the import allowance in value is documented on the licence. The licence holder is obliged to 'maintain the nexus between imported inputs and the resultant product' (paragraph 4.24A(c) HOP I 2002-2007).

(37) Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (18 months with two possible extensions of six months each).

(38) The verification evidenced that the company specific consumption rate of the key raw material needed to produce one kilogram of PET film, and as reported in the consumption register, was lower than the corresponding SION. In other words, the cooperating exporter was allowed to import duty-free as per the SION more of the said raw material than actually needed by its manufacturing process. The company claimed that the GOI will adjust the excess benefit when the licences will have expired, i.e. 30 months from the issuance of the licence, see recital 37, as the common practice is to make use of the two possible extensions of six months each. However, given that the first licence was issued to the company on 31 January 2003, the company could not substantiate its allegation during the on spot verification of the Commission services which took place in May 2005. In December 2005, when the company commented upon disclosure, it did not provide either any evidence that excess remission had been adjusted. These SIONs clearly lead to an excess remission of duties. The GOI did not provide any evidence showing that it systematically adjusted excess remission when licences expired, neither that there exists a reasonable system to adjust the excess remission.

(d) *Disclosure comments*

(39) Further to disclosure, the GOI indicated that, on three occasions during 2005, it had modified the ALS in order to, *inter alia*, better control the use of the ALS by exporting producers and that the modifications and the improved control methods would lead to no excess remission. It was therefore claimed that any subsidies generated by the ALS and incorporated into the calculation should not be countervailed.

(40) It should be noted that the changes to the ALS referred to took effect both after the IP and after the verification visit of the Commission services, and were therefore unverifiable in their

▼B

practice. In addition, by means of a public notice released on 10 October 2005, paragraph 4.26 HOP I 2002-2007 was complemented as follows: 'the licensing authority shall also take action against the licensee in case of non submission of duly filled in appendix 23 (other name for the consumption register)' However, there is no indication of what that action might be.

(41) It is therefore considered that the abovementioned modifications introduced by the Indian authorities have not been verified in their practical implementation. In particular, the consequences of a non submission of the consumption register are not provided. The conclusions set out below are therefore based on the findings as established during the IP.

(e) *Conclusion*

(42) The exemption from import duties is a subsidy within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation, i.e. a financial contribution of the GOI which conferred a benefit upon the investigated exporters.

(43) In addition, the ALS for physical exports and the ALS for annual requirement are clearly contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation. Without an export commitment a company cannot obtain benefits under these schemes.

(44) The sub-schemes used in the present case cannot be considered as permissible duty drawback systems or substitution drawback systems within the meaning of Article 2(1)(a)(ii) of the basic Regulation. They do not conform to the strict rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation. The GOI did not effectively apply its verification system or procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) to the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) to the basic Regulation). The SIONs for the product concerned were not sufficiently precise. The SIONs themselves cannot be considered a verification system of actual consumption, because the design of those overly generous standard norms does not enable the GOI to verify with sufficient precision what amount of inputs were consumed in the export production. Furthermore, an effective control done by the GOI based on the consumption register does not take place.

(45) The sub-schemes are therefore countervailable.

(f) *Calculation of the subsidy amount*

(46) The subsidy amount for the exporter which used the ALS was calculated as follows. The numerator is the import duties forgone (basic customs duty and special additional customs duty) on the material imported under the two ALS sub-schemes used for the product concerned during the IP (numerator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amounts where justified claims were made. In accordance with Article 7(2) of the basic Regulation, the denominator is the export turnover generated by the product concerned during the IP.

(47) The company which made use of this scheme during the IP obtained a subsidy of 6,0 %.

▼B

2.2. **Duty entitlement passbook scheme (DEPB)**

(a) *Legal basis*

(48) The detailed description of the DEPB is contained in paragraph 4.3 of the EXIM-policy 2002-2007 and in Chapter 4 of the HOP I 2002-2007. At the time of the original investigation, two forms of DEPB existed – pre-export and post-export. In April 2000 the pre-export form of DEPB was discontinued and therefore the investigation only examined the post-export form of the alleged subsidy.

(b) *Eligibility*

(49) Any manufacturer-exporter or merchant-exporter is eligible for this scheme. Three companies were found to benefit from this scheme during the IP.

(c) *Practical implementation of the DEPB*

(50) An eligible exporter can apply for DEPB credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPB rates have been established by the Indian authorities for most products, including the product concerned. They are determined on the basis of SIONs, taking into account a presumed import content of inputs in the export product and the customs duty incidence on such presumed imports, regardless of whether import duties have actually been paid or not.

(51) To be eligible for benefits under this scheme, a company must export. At the point in time of the export transaction, a declaration must be made by the exporter to the authorities in India indicating that the export is taking place under the DEPB. In order for the goods to be exported, the Indian customs authorities issue, during the dispatch procedure, an export shipping bill. This document shows, *inter alia*, the amount of DEPB credit which is to be granted for that export transaction. At this point in time, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPB credit. The relevant DEPB rate to calculate the benefit is that which applied at the time the export declaration is made. Therefore, there is no possibility for a retroactive amendment to the level of the benefit.

(52) It was also found that in accordance with Indian accounting standards, DEPB credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods unrestrictedly importable, except capital goods. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. DEPB credits are freely transferable and valid for a period of 12 months from the date of issue.

(53) An application for DEPB credits can cover up to 25 export transactions or, if electronically filed, an unlimited amount of export transactions. *De facto*, no strict deadlines to apply for DEPB credits exist, because the time periods mentioned in Chapter 4.47 HOP I 2002-2007 are always counted from the most recent export transaction included in a given DEPB application.

(54) The GOI and one exporter brought to the attention of the Commission services that this scheme would be soon discontinued and be replaced by an allegedly 'WTO compatible' scheme. The DEPB was originally planned to expire on 1 April 2005. However, as the replacement scheme was not ready to be

▼B

implemented, the existence of the DEPB was prolonged until 1 April 2006. Should the new scheme not be ready for entry into force by that date, the DEPB would remain in force as long as necessary.

(d) *Disclosure comments*

(55) Upon disclosure, the GOI and two exporters, which received benefits under this scheme, commented on the DEPB analysis as set out above. They (i) submitted that DEPB credits can allegedly only be obtained if the goods which are exported bear import duties on their input materials, (ii) questioned the calculation methodology of the Commission based on an 'accrual' basis as opposed to the methodology used in the original proceeding of 1999 which led to the definitive countervailing measures and which was based on a 'receipt' basis, (iii) requested immediate termination of the proceeding with respect to the DEPB on the ground that the GOI has announced its termination as of 1 April 2006 and (iv) alleged that not to dismiss it from the calculation would be a violation of the provisions contained in Article 27 ASCM in favour of developing countries.

(56) Claim (i) has not been further substantiated by the GOI nor by the exporters. It is anyhow contradicted by the findings of the investigation as referred to in recitals 50 to 53. This claim is therefore rejected.

(57) As regards claim (ii), the methodology used in this investigation aims at better reflecting the impact of the subsidy over the financial situation of the cooperating exporters during a given investigation period. In this regard, it was considered that the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. This is confirmed, *inter alia*, by the booking of DEPB credits on an accrual basis according to Indian accounting standards. It is further noted that this methodology has already been used several times by the Commission services, notably in the graphite electrode system case [1] and that this methodology does not result in a complete re-evaluation of the scheme, which, indeed, has always been found countervailable. This claim is therefore rejected.

(58) As to claim (iii), it was indeed found that the GOI has in the past announced the abolition of the DEPB. The DEPB was to be terminated on 31 March 2005 but was prolonged by the GOI until 30 September 2005. The GOI then further extended the validity of the scheme until 1 April 2006. In these circumstances, it is still uncertain as to whether the DEPB will in fact be abolished from 1 April 2006 (see recital (123)).

(59) Regarding claim (iv) above, there is no violation of the developing country provisions contained in Article 27 ASCM. That Article does not preclude, in fact, a WTO Member from taking countervailing action against the injurious effects of subsidisation by another Member. As the DEPB has been found to be countervailable, this claim is therefore rejected.

(e) *Conclusions on the DEPB*

(60) The DEPB provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation. A DEPB credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus

[1] Council Regulation (EC) No 1628/2004, OJ L 295, 18.9.2004, p. 4 (recital 13).

▼B

decreasing the GOI's duty revenue which would be otherwise due. In addition, the DEPB credit confers a benefit upon the exporter, because it improves the liquidity of the company.

(61) Furthermore, the DEPB is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.

(62) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 2(1)(a)(ii) to the basic Regulation. It does not conform to the strict rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I and Annexes II and III to the basic Regulation. Lastly, an exporter is eligible for the DEPB benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DEPB.

(f) *Calculation of the subsidy amount*

(63) In accordance with Article 2(2) and Article 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient, which is found to exist during the review investigation period. In this regard, it was considered that the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. At this moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 2(1)(a)(ii) of the basic Regulation.

(64) In light of the above, it is considered appropriate to assess the benefit under the DEPB as being the sum of the credits earned on all export transactions made under this scheme during the investigation period.

(65) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amounts as numerator, pursuant to Article 7(1)(a) of the basic Regulation.

(66) In accordance with Article 7(2) of the basic Regulation these subsidy amounts have been allocated over the total export turnover during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. Three companies benefited from this scheme during the IP and obtained subsidies of between 9,0 % and 11,0 %.

▼B

2.3. **Export oriented units (hereinafter referred to as 'EOU') scheme/special economic zones (hereinafter referred to as SEZ) scheme**

(a) *Legal basis*

(67) The details of these schemes are contained in Chapters 6 (EOU) and 7 (SEZ) respectively of the EXIM-policy 2002-2007 and of the HOP I 2002-2007.

(b) *Eligibility*

(68) With the exception of pure trading companies, all enterprises which, in principle, undertake to export their entire production of goods or services may be set up under the SEZ or the EOU schemes. One company was found to benefit from the EOU scheme during the IP.

(c) *Practical implementation*

(69) SEZ are specifically delineated duty free enclaves and considered by the EXIM-policy 2002-2007 as foreign territory for the purpose of trade operations, duties and taxes.

(70) EOU on the other side, are geographically more flexible and can be established anywhere in India. This scheme is complementary to the SEZ.

(71) An application for EOU or SEZ status must include details for a period of the next five years on, *inter alia*, planned production quantities, projected value of exports, import requirements and indigenous requirements. If the authorities accept the company's application, the terms and conditions attached to the acceptance will be communicated to the company. The agreement to be recognised as a company under SEZ/EOU is valid for a five-year period. The agreement may be renewed for further periods.

(72) A crucial obligation of an EOU or an SEZ as set out in the EXIM-policy 2002-2007 is to achieve net foreign exchange (hereinafter referred to as NFE) earnings, i.e. in a reference period (five years) the total value of exports has to be higher than the total value of imported goods.

(73) EOU/SEZ units are entitled to the following concessions:

(i) exemption from import duties on all types of goods (including capital goods, raw materials and consumables) required for the manufacture, production, processing, or in connection therewith;

(ii) exemption from excise duty on goods procured from indigenous sources;

(iii) reimbursement of central sales tax paid on goods procured locally;

(iv) facility to sell a part of production on the domestic market on payment of applicable duties on the finished product as an exception to the general requirement to export the entire production;

(v) exemption from income tax normally due on profits realised on export sales in accordance with Section 10A or Section 10B of the Income Tax Act, for a 10-year period after starting its operations, but no longer than up to 2010;

(vi) possibility of 100 % foreign equity ownership.

▼B

(74) Units operating under these schemes are bonded under the surveillance of customs officials in accordance with Section 65 of the Customs Act. They are legally obliged to maintain, in a specified format, a proper account of all imports, of the consumption and utilisation of all imported materials and of the exports made. These documents should be submitted periodically, as may be required, to the competent authorities (hereinafter referred to as quarterly and annual progress reports). However, 'at no point in time shall (an EOU or a SEZ unit) be required to co-relate every import consignment with its exports, transfers to other units, sales in DTA or stocks', as per paragraph 10.2 of Appendix 14-I and paragraph 13.2 of Appendix 14-II to the HOP I 2002-2007.

(75) Domestic sales are dispatched and recorded on a self-certification basis. The dispatch process of export consignments of an EOU is supervised by a customs/excise official, who is permanently posted in the EOU.

(76) In the present case, the EOU scheme was only used by one of the cooperating exporters during part of the IP. As the SEZ scheme was not used, it is therefore not necessary to analyse the countervailability of this scheme. The cooperating exporter that used the EOU utilized the scheme to import capital goods free of import duties and to obtain reimbursement of the central sales tax paid on goods procured locally. This exporter did not make use of the exemption from import duties on raw materials, as the EOU facility, in order to produce PET film, uses PET chips as raw materials. These PET chips are produced in another unit of this company from raw materials purchased under the ALS. Thus, the company availed of the benefits described in (i) and (iii) of recital 73.

(d) *Disclosure comments*

(77) One company which availed itself of benefits under the EOU made comments on certain details of the calculation of the corresponding subsidy margins. Where these comments were found justified, calculations have been adjusted as a result.

(e) *Conclusions on the EOU*

(78) The exemption of an EOU from two types of import duties (hereinafter referred to as basic customs duty and special additional customs duty) and the reimbursement of the central sales tax are a financial contribution of the GOI within the meaning of Article 2(1)(a)(ii) of the basic Regulation. Government revenue which would be due in the absence of this scheme is forgone, thus, in addition, conferring a benefit upon the EOU in the meaning of Article 2(2) of the basic Regulation, because it saved liquidity by not having to pay duties normally due.

(79) Thus, the exemption from basic customs duty and special additional customs duty and the sales tax reimbursement constitute subsidies in the meaning of Article 2 of the basic Regulation. They are contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation. The export objective of an EOU as set out in paragraph 6.1 of the EXIM-policy 2002-2007 is a *condition sine qua non* to obtain the incentives.

(80) In addition, it was confirmed that the GOI has no effective verification system or procedure in place to confirm whether and in what amounts duty and or sales-tax-free procured inputs were consumed in the production of the exported product (Annex II(II)(4) to the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) to the basic Regu-

▼B

lation). In addition, exemption from duties on capital goods is clearly not a permissible duty drawback scheme.

(81) The GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be done in the absence of an effective verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation), nor did it prove that no excess remission took place.

(f) *Calculation of the subsidy amount*

(82) Accordingly, the countervailable benefit is the remission of total import duties (basic customs duty and special additional customs duty) normally due upon importation, as well as the sales tax reimbursement, both during the review investigation period.

(i) Reimbursement of central sales tax on revenue goods

(83) The numerator was established as follows. The subsidy amount for the exporter which used this scheme was calculated on the basis of the sales tax reimbursed on the purchases made for the production sector, i.e., *inter alia*, parts and packing materials, during the review investigation period. Fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation.

(84) In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the export turnover generated by all export sales during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy margin thus obtained was 0,02 %.

(ii) Exemption from import duties (basic customs duty and special additional customs duty) and reimbursement of central sales tax on capital goods

(85) In accordance with Article 7(3) of the basic Regulation, the benefit to the company utilising this scheme has been calculated on the basis of the amount of unpaid customs duty on imported capital goods and of the amount of sales tax reimbursed on purchases of capital goods, both spread across a period which reflects the normal depreciation period of such capital goods in the industry of the product concerned. The amount so calculated which is then attributable to the IP has been adjusted by adding interest during this period in order to reflect the value of the benefit over time and thereby establishing the full benefit of this scheme to the recipient. Fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation from this sum to arrive at the subsidy amount as numerator. In accordance with Article 7(2) and (3) of the basic Regulation this subsidy amount has been allocated over the export turnover generated by the sector during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy margin thus obtained was 5,0 %.

(86) Thus, the total subsidy margin under the EOU scheme for the company concerned amounts to 5,0 %.

▼B

2.4. **Export promotion capital goods scheme (hereinafter referred to as EPCG)**

(a) *Legal basis*

(87) The detailed description of the EPCG is contained in Chapter 5 of the EXIM-policy 2002-2007 and in Chapter 5 of the HOP I 2002-2007.

(b) *Eligibility*

(88) Manufacturer-exporters, merchant-exporters 'tied to' supporting manufacturers and service providers are eligible for this scheme. The four sampled companies were found to benefit from this scheme during the IP.

(c) *Practical implementation*

(89) Under the condition of an export obligation, a company is allowed to import capital goods (new and – since April 2003 – second-hand capital goods up to 10 years old) at a reduced rate of duty. To this end the GOI issues upon application and payment of a fee an EPCG licence. Since April 2000 the scheme provides for a reduced import duty rate of 5 % applicable to all capital goods imported under the scheme. Until 31 March 2000, an effective duty rate of 11 % (including a 10 % surcharge) and, in case of high value imports, a zero duty rate were applicable. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period.

(d) *Disclosure comments*

(90) Further to disclosure, the GOI claimed that, when adding interest to determine the full amount of the benefit, there is no basis for the assumption that a company would have financed the entire amount of additional customs duties through loans and that therefore the debt-equity ratio of each company in the investigation period should be taken into consideration and only a *pro-rata* amount should be used for the calculation.

(91) It is considered that regardless of whether a company borrowed the money or used its own funds to finance its duties it would anyway incur a cost. In relation to borrowings, this cost is the interest to be paid thereon. In regard to own funds, the cost to a company is investment interest foregone. The argument was therefore dismissed.

(92) Three companies which availed themselves of benefits under the EPCG made minor comments on certain details of the calculation of the corresponding subsidy margins. Where these comments were found justified, calculations have been adjusted as a result.

(e) *Conclusion on EPCG*

(93) The EPCG provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI, since this concession decreases the GOI's duty revenue which would be otherwise due. In addition, the duty reduction confers a benefit upon the exporter, because the duties saved upon importation improve the company's liquidity.

(94) Furthermore, the EPCG is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore it is deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.

▼B

(95) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 2(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I, item (i), of the basic Regulation, because they are not consumed in the production of the exported products.

(f) *Calculation of the subsidy amount*

(96) The numerator was established as follows. The subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the PET film industry. Interest was added to this amount in order to reflect the full value of the benefit over time. Fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation.

(97) In accordance with Article 7(2) and 7(3) of the basic Regulation this subsidy amount has been allocated over the export turnover during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance. The subsidies obtained by the four sampled companies ranged between 1,3 % and 2,7 %.

2.5. **Duty-free replenishment certificate (hereinafter referred to as DFRC)**

(a) *Legal basis*

(98) The legal basis for this scheme is contained in paragraphs 4.2.1 to 4.2.7 of the EXIM-policy 2002-2007 and in paragraphs 4.31 to 4.36 of the HOP I 2002-2007.

(b) *Practical implementation*

(99) As none of the four sampled companies availed benefits under the DFRC, no further analysis of the countervailability of the DFRC is necessary.

2.6. **Income tax exemption scheme (hereinafter referred to as ITES)**

(a) *Legal basis*

(100) The legal basis for this scheme is contained in the Income Tax Act of 1961 (hereinafter referred to as ITA), which is amended yearly by the Finance Act. The latter sets out every year the basis for the collection of taxes as well as various exemptions and deductions which can be claimed. Exporting companies may claim income tax exemptions under Sections 10A, 10B, and 80HHC of the ITA.

(b) *Practical implementation*

(101) As none of the four sampled companies availed benefits under Sections 10A and 10B of the ITA, no further analysis of the countervailability of Sections 10A and 10B of the ITA is necessary.

(102) Two of the investigated exporters indicated that they received the benefit of a partial income tax exemption on profits derived from export sales during the IP under Section 80HHC of the ITA. However, given that this provision of the ITA was abolished from the financial year running from the 1 April 2004 to the 31 March 2005 onwards, it will not confer any benefit on the applicant after 31 March 2004. Benefits under Section 80HHC of

▼B

the ITA shall therefore not be countervailed, in accordance with Article 15(1) of the basic Regulation.

2.7. **Export credit scheme (hereinafter referred to as ECS)**

(a) *Legal basis*

(103) The details of the scheme are set out in Master Circular IECD No 5/04.02.01/2002-03 (Export Credit in Foreign Currency) and Master Circular IECD No 10/04.02.01/2003-04 (Rupee Export Credit) of the Reserve Bank of India (hereinafter referred to as RBI), which is addressed to all commercial banks in India.

(b) *Eligibility*

(104) Manufacturing exporters and merchant exporters are eligible for this scheme. Three companies were found to benefit from this scheme during the IP.

(c) *Practical implementation*

(105) Under this scheme, the RBI mandatorily sets maximum ceiling interest rates applicable to export credits, both in Indian rupees or in foreign currency, which commercial banks can charge an exporter 'with a view to making credit available to exporters at internationally competitive rates'. The ECS consists of two sub-schemes, the Pre-Shipment Export Credit Scheme (packing credit), which covers credits provided to an exporter for financing the purchase, processing, manufacturing, packing and/or shipping of goods prior to export, and the Post-Shipment Export Credit Scheme, which provides for working capital loans with the purpose of financing export receivables. The RBI also directs the banks to provide a certain amount of their net bank credit towards export finance.

(106) As a result of these RBI Master Circulars exporters can obtain export credits at preferential interest rates compared with the interest rates for ordinary commercial credits (cash credits), which are purely set under market conditions.

(d) *Disclosure comments*

(107) Two companies which were granted benefits under the ECS made minor comments on certain details of the calculation of the corresponding subsidy margins. Where these comments were found justified, calculations have been adjusted as a result.

(e) *Conclusion on the ECS*

(108) Firstly, by lowering financing costs as compared with market interest rates, the above preferential interest rates confer a benefit in the meaning of Article 2(2) of the basic Regulation on such exporter. Despite the fact that the preferential credits under the ECS are granted by commercial banks, this benefit is a financial contribution by a government in the meaning of Article 2(1)(iv) of the basic Regulation. The RBI is a public body, which falls therefore under the definition of a 'government' as set out in Article 1(3) of the basic Regulation and it instructs commercial banks to grant preferential financing to exporting companies. This preferential financing equates to a subsidy, which is deemed to be specific and countervailable since the preferential interest rates are contingent upon export performance, pursuant to Article 3(4)(a) of the basic Regulation.

(f) *Calculation of the subsidy amount*

(109) The subsidy amount has been calculated on the basis of the difference between the interest paid for export credits used

▼B

during the IP and the amount that would have been payable if the same interest rates were applicable as for ordinary commercial credits used by the individual companies. This subsidy amount (numerator) has been allocated over the total export turnover during the review investigation period as the appropriate denominator in accordance with Article 7(2) of the basic Regulation, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. The four sampled companies availed of benefits under the ECS. They obtained subsidies of between 0,01 % and 1,3 %.

2.8. **Capital infusions**

(110) As none of the four sampled companies availed benefits under this ad hoc scheme, no further analysis of its countervailability is necessary.

3. REGIONAL SCHEMES

3.1. **Package scheme of incentives of the Government of Uttar Pradesh**

(111) It was found that none of the exporting producers made use of the package scheme of incentives of the Government of Uttar Pradesh.

3.2. **Package scheme of incentives (PSI) of the Government of Maharashtra ('GOM')**

(a) *Legal basis*

(112) In order to encourage the dispersal of industries to the less developed areas of the State, the GOM has been granting incentives to new-expansion units set up in developing regions of the State, since 1964, under a scheme commonly known as the 'Package scheme of incentives'. The scheme has been amended several times since its introduction and the '1993 Scheme' was operative from 1 October 1993 to 31 March 2001 whereas the latest amendment, the '2001 scheme', was introduced on 31 March 2001 and will be operative up to 31 March 2006. The PSI of the GOM is composed of several sub-schemes amongst which the main ones are: (i) the exemption from the local sales tax and (ii) the refund of the octroi tax.

(b) *Eligibility*

(113) In order to be eligible, companies must invest in less developed areas either by setting up a new industrial establishment or by making a large scale capital investment in expansion or diversification of an existing industrial establishment. These areas are classified according to their economic development into different categories (e.g. less developed area, lesser developed area, least developed area). The main criterion to establish the amount of incentives is the area in which the enterprise is or will be located and the size of investment.

(c) *Practical implementation*

(114) Exemption from the local sales tax – Goods are normally subject to central sales tax (for inter-State sales) or State sales tax (for sales within the State) at varying levels depending upon the State/States in which transactions are being made. There is no sales tax on the import or export of goods, while domestic sales are subject to the sales tax at the applicable rates. Under the exemption scheme, designated units are not required to collect any sales tax on their sales transactions. Similarly, designated units are exempted from the payment of the local sales tax on

▼B

their purchases of goods from a supplier itself eligible for the scheme. Whereas the sales transaction does not confer any benefit on the designated selling unit, the purchase transaction does confer a benefit to the designated purchasing unit. Two of the four sampled companies had one unit each eligible for the PSI of the GOM during the IP. Under the scheme, these two units were exempted from the sales tax on certain of their domestic purchases made from suppliers eligible for the exemption scheme.

(115) Refund of the octroi tax – octroi is a tax levied by local Governments in India, including the GOM, on goods that enter the territorial limits of a town or a district. Industrial enterprises are entitled to a refund of the octroi tax from the GOM, if their facility is located in certain specified towns and districts within the territory of the State. The total amount that may be refunded is restricted to 100 % of the fixed capital investment. From the above two companies with a unit eligible for the PSI of the GOM during the IP, only one was found to benefit from the refund of the octroi tax by the GOM.

(d) *Disclosure comments*

(116) One company which availed itself of benefits under the PSI of the GOM made minor comments on certain details of the calculation of the corresponding subsidy margin. Where these comments were found justified, calculations have been adjusted as a result.

(e) *Conclusion on the PSI of the GOM*

(117) The PSI of the GOM provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation. The two sub-schemes examined constitute a financial contribution by the GOM, since this concession decreases the GOM's revenue which would be otherwise due. In addition, this exemption/refund confers a benefit upon the company as it improves the company's liquidity.

(118) The scheme is only available to companies having invested within certain designated geographical areas within the jurisdiction of the State of Maharashtra. It is not available to companies located outside these areas. The level of the benefit is different according to the area concerned. The scheme is specific in accordance with Article 3(2)(a) and Article 3(3) of the basic Regulation and therefore countervailable.

(f) *Calculation of the subsidy amount*

(119) Concerning the sales tax exemption, the subsidy amount was calculated on the basis of the amount of the sales tax normally due during the review investigation period but which remained unpaid under the scheme. Similarly, as far as octroi is concerned, the benefit to the exporter was calculated as the amount of the octroi tax refunded during the IP. Pursuant to Article 7(2) of the basic Regulation, these amounts of subsidy (numerator) have then been allocated over total sales during the review investigation period as the appropriate denominator, because the subsidy is not export contingent and it was not granted by reference to the quantities manufactured, produced, exported or transported. During this period two companies benefited from these schemes. They both obtained subsidies of 1,6 %.

4. AMOUNT OF COUNTERVAILABLE SUBSIDIES

(120) The amount of countervailable subsidies determined in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers ranges between 11,7 % and 15,2 %. These amounts of subsidi-

▼B

sation exceed the *de minimis* threshold mentioned under Article 14(5)(a) and (b) of the basic Regulation.

(121) It is therefore considered that, pursuant to Article 18 of the basic Regulation, subsidisation continued during the IP.

| **SCHEME** | ALS | DEPB | EOU | EPCG | ECS | PSI of the GOM | **Total** |
|---|---|---|---|---|---|---|---|
| **COMPANY** | % | % | % | % | % | % | % |
| Ester Industries Ltd | 0 | 11,0 | 0 | 1,3 | 0,5 | 0 | **12,8** |
| Flex Industries Ltd | 0 | 9,0 | 0 | 2,7 | negl. | 0 | **11,7** |
| Garware Polyester Ltd | 0 | 10,5 | 0 | 1,5 | 1,3 | 1,6 | **14,9** |
| Jindal Poly Films Ltd | 6,0 | 0 | 5,0 | 2,2 | 0,4 | 1,6 | **15,2** |

## D. **LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATION**

(122) In accordance with Article 18(2) of the basic Regulation, it was examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of subsidisation.

(123) It was established that during the IP, the sampled Indian exporters of the product concerned continued to benefit from countervailable subsidisation by the Indian authorities. With the exception of one company, the subsidy margins found during the review are higher than those established during the original investigation. While certain programmes that were countervailed in 1999 (like the DEPB pre-export) were discontinued, other programs that did not exist in 1999 (like the ALS) have been found to be countervailable in the present review. The subsidy schemes analysed above give recurring benefits. With the exception of the DEPB (see recital (54)), there is no indication that these programmes will be phased out in the foreseeable future. According to the GOI, the replacement scheme to the DEPB is planned to enter into force on the 1 April 2006 at the earliest. The situation arising from the replacement of the DEPB by an allegedly 'WTO compatible' scheme on which the Commission has no information, will need to be assessed in due time. It is also noted that one of the cooperating exporters that previously received benefits under the DEPB no longer did so in the IP of this investigation (see recital 33). This exporter has, however, benefited from the ALS, which is also a type of duty drawback scheme, in the IP of the current investigation. In the event that the DEPB were to be abolished on 1 April 2006 and if no benefits were to be conferred on exporters beyond that date, it is considered that there is, through the existence of an alternative countervailable subsidy scheme (the ALS), a likelihood of continuation of subsidisation close to the levels found for the DEPB. In the meantime, the exporters of the product concerned will continue to receive countervailable subsidies. Furthermore, it is recalled that all exporters of the product concerned are eligible for a number of the programmes investigated. In these circumstances, it was considered reasonable to conclude that subsidisation would be likely to continue in the future.

(124) Since it has been demonstrated that subsidisation continued at the time of the review and will likely continue in the future, the issue of likelihood of recurrence of subsidisation is irrelevant.

▼B

## E. **COMMUNITY INDUSTRY**

### 1. COMMUNITY PRODUCTION

(125) Within the Community, the like product is manufactured by 10 producers which constitute the total Community production within the meaning of Article 9(1) of the basic Regulation.

### 2. COMMUNITY INDUSTRY

(126) It should be noted that in the original investigation the Community industry consisted of eight producers. The two new producers are based in the new Member States. Six of the companies did not support the request and did not cooperate in the review investigation. The following four producers supported the complaint and agreed to cooperate:

— DuPont Teijin Films,

— Mitsubishi Polyester Film GmbH,

— Nuroll SpA,

— Toray Plastics Europe.

(127) These companies fully cooperated in the investigation. They accounted for 86 % of the total Community production during the IP.

(128) It is therefore considered that the above four Community producers account for a major proportion of the total Community production of the like product. The above four Community producers are therefore deemed to constitute the Community industry within the meaning of Article 9(1) and Article 10(8) of the basic Regulation and will hereinafter be referred to as the ‘Community industry’.

## F. **SITUATION ON THE COMMUNITY MARKET**

### 1. PRELIMINARY REMARK

(129) The following price trends are based on Eurostat import prices and include both conventional customs and anti-dumping duties, where applicable, and estimated post-importation costs.

### 2. CONSUMPTION IN THE COMMUNITY MARKET

(130) Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, Eurostat data for all EU imports, and the sales volumes of the other Community producers on the Community market.

(131) Between 2001 and the IP, Community consumption decreased by 7 %. Specifically, it remained broadly stable between 2001 and 2002, dropped by six percentage points between 2002 and 2003, and ultimately declined by one percentage point in the IP.

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Total EC consumption (tonnes) | 271 417 | 271 787 | 253 890 | 251 491 |
| *Index (2001=100)* | *100* | *100* | *94* | *93* |

▼B

3. IMPORTS FROM THE COUNTRY CONCERNED

(132) The volume of imports originating in the country concerned has increased by 107 % over the period considered and reached a level of 12 679 tonnes during the IP, corresponding to a market share of 5,0 %. During the IP of the original investigation, the market share of the country concerned was 9,6 %, but had fallen to 2,3 % in 2001 following the imposition of the measures.

(133) Prices of imports from the country concerned increased slightly, by two percentage points, between 2001 and 2003, i.e. after the imposition of the definitive countervailing measures but thereafter decreased by five percentage points in the IP.

(134) On the basis of a model to model comparison, the investigation showed that imports from the country concerned were undercutting those of the Community industry by 2 to 21 % in the IP, depending on the cooperating exporter. This comparison was carried out on the basis of the actual export prices of the cooperating exporters to the Community. The investigations referred to under recitals 5, 6 and 7 evidenced that a large part of the export prices to the Community were pegged just above the Minimum Import Prices (hereinafter referred to as 'MIPs') established by the undertakings accepted in the context of the definitive anti-dumping measures (see recital 2) and that Indian export prices to other third countries were substantially lower than the prices to the Community. Therefore, if the undercutting calculations had been carried out on the basis of export prices to other third countries, the undercutting margins would have been larger than the ones just mentioned above.

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Volume of imports from the country concerned (tonnes) | 6 129 | 7 738 | 11 520 | 12 679 |
| *Index (2001=100)* | *100* | *126* | *188* | *207* |
| Market share of imports from the country concerned | 2,3 % | 2,8 % | 4,5 % | 5,0 % |
| Price of imports from the country concerned (EUR/tonne) | 2 010 | 2 025 | 2 060 | 1 952 |
| *Index (2001=100)* | *100* | *101* | *102* | *97* |

(135) The investigation referred to under recital 6 came to the conclusion that undertakings were unsuitable for the product concerned and that they should be withdrawn. These elements explain to a large extent the trends observed above as regards imports from India, and also the reason why the Community industry has not fully recovered from the past subsidisation (see recital 161).

4. IMPORTS FOUND TO BE CIRCUMVENTING

(136) As mentioned in recital 4, it was further found that circumvention of the original measures concerning imports from India took place respectively via Brazil and Israel. Consequently, the measures imposed on imports originating in India were extended in November 2004 to imports of the same PET film consigned from Brazil and from Israel, whether declared as originating in Brazil or Israel or not, with the exception of those produced by a genuine Brazilian producer and a genuine Israeli

▼B

producer. As referred to in recital 8, a second Israeli producer was exempted from the extended measures. The two above proceedings evidenced that a very limited volume of imports into the Community from Brazil (around 10 tonnes) and Israel (around 180 tonnes) were attributed in 2003 to genuine Brazilian and Israeli producers. It should be recalled that the date of the above extension of the anti-dumping and countervailing measures is posterior to the trends described under recitals 137 and 138.

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Volume of imports from Brazil (tonnes) | 1 231 | 2 533 | 2 159 | 1 225 |
| Market share of imports from Brazil | *0,5 %* | *0,9 %* | *0,9 %* | *0,5 %* |
| Price of imports from Brazil (EUR/tonne) | 776 | 1 612 | 1 628 | 1 758 |
| *Index (2001=100)* | *100* | *208* | *210* | *226* |
| Volume of imports from Israel (tonnes) | 3 561 | 4 338 | 4 620 | 4 788 |
| Market share of imports from Israel | *1,3 %* | *1,6 %* | *1,8 %* | *1,9 %* |
| Price of imports from Israel (EUR/tonne) | 2 052 | 1 821 | 1 678 | 1 790 |
| *Index (2001=100)* | *100* | *89* | *82* | *87* |

(137) The volume of imports from Brazil doubled between 2001 and 2002, declined slightly in 2003, and finally declined further in the IP to reach a level close to the one of 2001, potentially as a consequence of the initiation of the aforementioned anti-circumvention investigation during the course of 2004. Similarly, the market share held by imports from Brazil increased from 0,5 % in 2001 to 0,9 % in 2002 before declining to 0,5 % during the IP. Imports from Brazil were made at very low prices in 2001. These import prices increased throughout the period considered to reach a level of around EUR 1 800/tonne, that is slightly below import prices from India.

(138) The volume of imports from Israel rose steadily from around 3 600 tonnes in 2001 to around 4 800 tonnes in the IP. The market share held by imports from Israel increased from 1,3 % in 2001 to 1,9 % in the IP. Import prices from Israel declined from around EUR 2 000/tonne in 2001 to around EUR 1 800/tonne in the IP. Again, the Israeli export price during the IP is slightly below import prices from India.

5. IMPORTS FROM THE REPUBLIC OF KOREA

(139) As referred to in recital 2, the Council imposed in 2001 definitive anti-dumping measures on imports of PET film originating in the Republic of Korea, in the form of *ad valorem* duty rates ranging between 0 and 13,4 %. Quantities of PET film imported in the Community from the Republic of Korea declined from around 34 000 tonnes in 2001 to around 23 200 tonnes in the IP, after the imposition of the above measures. The market share held by Korean products declined also by around three percentage points between 2001 and the IP. Prices of Korean products declined by 7 % between 2001 and 2002, increased by three percentage points in 2003, and by a further one percentage point in the IP. Based on Eurostat statistics, Korean export prices were consistently above Indian export prices, but below Community industry's prices.

▼B

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Volume of imports from South Korea (tonnes) | 34 002 | 30 187 | 25 631 | 23 166 |
| Market share of imports from South Korea | *12,5 %* | *11,1 %* | *10,1 %* | *9,2 %* |
| Price of imports from South Korea (EUR/tonne) | 2 514 | 2 339 | 2 422 | 2 434 |
| *Index (2001=100)* | *100* | *93* | *96* | *97* |

### 6. IMPORTS FROM OTHER COUNTRIES

(140) The volume of imports from other third countries not mentioned above decreased from around 41 000 tonnes in 2001, corresponding to a market share of 15 %, to around 40 000 tonnes in the IP, corresponding to a market share of 16 %. The market share increased because consumption (the denominator) declined more than the above imports (the numerator). Average prices of imports from other third countries not mentioned above first increased from around EUR 5 300/tonne in 2001 to around EUR 6 000/tonne in 2002, and then declined to around EUR 4 800/tonne in the IP. Such prices are substantially above both Indian and Community industry's prices. Amongst these third countries, the major individual exporting country to the Community was the USA, with exported volumes of around 17 500 tonnes during the IP. Prices to the Community of imports from the USA (around EUR 6 700/tonne in the IP) were also substantially above those of imports from the country concerned and above Community industry prices during the IP.

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Volume of imports from countries not mentioned above (tonnes) | 41 098 | 31 324 | 35 093 | 39 869 |
| Market share of imports from countries not mentioned above | *15 %* | *12 %* | *14 %* | *16 %* |
| Price of imports from countries not mentioned above (EUR/tonne) | 5 312 | 6 000 | 5 125 | 4 803 |
| *Index (2001=100)* | *100* | *113* | *96* | *90* |

## G. **ECONOMIC SITUATION OF THE COMMUNITY INDUSTRY**

(141) Pursuant to Article 8(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community indusry.

### 1. PRODUCTION

(142) The Community industry's production increased by 10 % in 2002 compared to 2001, before declining and remaining at the level of 2001 in the following years.

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Production (tonnes) | 171 142 | 187 620 | 171 975 | 169 288 |
| *Index (2001=100)* | *100* | *110* | *100* | *99* |

▼B

2. CAPACITY AND CAPACITY UTILISATION RATES

(143) Production capacity decreased marginally (by 3 %) between 2001 and the IP. As production remained stable, while at the same time capacity declined slightly, the resulting capacity utilisation slightly increased.

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Production capacity (tonnes) | 200 037 | 202 542 | 190 393 | 193 888 |
| *Index (2001=100)* | *100* | *101* | *95* | *97* |
| Capacity utilisation | 86 % | 93 % | 90 % | 87 % |
| *Index (2001=100)* | *100* | *108* | *106* | *102* |

3. STOCKS

(144) The level of closing stocks of the Community industry, after a considerable increase in 2002 compared to 2001, has steadily decreased since that year. In the IP, the level of stocks was 28 % lower than in 2001. However, as the like product is generally produced to order, the level of stocks is not very meaningful.

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Closing stock (tonnes) | 22 322 | 31 479 | 23 676 | 16 090 |
| *Index (2001=100)* | *100* | *141* | *106* | *72* |

4. SALES VOLUME

(145) The sales by the Community industry on the Community market to unrelated customers first increased in 2002, after the imposition of measures, but then decreased by 12 percentage points between 2002 and the IP.

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| EC Sales volume to unrelated customers (tonnes) | 142 173 | 156 716 | 141 959 | 139 874 |
| *Index (2001=100)* | *100* | *110* | *100* | *98* |

5. SALES VOLUME

(146) The market share held by the Community industry declined by around two percentage points between 2001 and the IP. Specifically, the Community industry gained around four percentage points in 2002, after the imposition of both countervailing and anti-dumping measures, lost almost five percentage points in 2003 and finally lost a further one1 percentage point in the IP. The trend and the level reached showed certain improvement in relation to the ones observed prior to the imposition of countervailing measures, when the market share held by the Community industry had dropped from around 57 % to around 50 %.

▼B

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Market share of Community industry | 61,6 % | 65,3 % | 60,6 % | 59,5 % |
| *Index (2001=100)* | *100* | *106* | *98* | *97* |

6. GROWTH

(147) Between 2001 and the IP, the Community consumption decreased by 7 %. The Community industry lost around two percentage points of market share, whilst the imports concerned gained 2,7 percentage point of market share.

7. EMPLOYMENT

(148) The level of employment of the Community industry declined by 8 % between 2001 and the IP.

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Employment product concerned | 2 323 | 2 310 | 2 235 | 2 134 |
| *Index (2001=100)* | *100* | *99* | *96* | *92* |

8. PRODUCTIVITY

(149) Productivity of the Community industry's workforce, measured as output per person employed per year, increased by 8 % between 2001 and the IP.

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Productivity (tonnes per employee) | 74 | 81 | 77 | 79 |
| *Index (2001=100)* | *100* | *110* | *104* | *108* |

9. SALES PRICES AND FACTORS AFFECTING DOMESTIC PRICES

(150) Unit sales prices of the Community industry have increased by 4 % between 2001 and the IP. This price development is broadly in line with that of the cost of production and of the principal raw material, which also showed a rise during the period considered.

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Unit price EC market (EUR/tonne) | 3 010 | 3 009 | 3 130 | 3 118 |
| *Index (2001=100)* | *100* | *100* | *104* | *104* |

10. WAGES

(151) Between 2001 and the IP, the average wage per employee increased by 12 %, a figure that exceeds the rate of increase of the average nominal unit labour costs (6 %) observed during the same period in the Community economy at large.

▼B

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Annual labour cost per employee (000 EUR) | 56 | 60 | 62 | 63 |
| *Index (2001=100)* | *100* | *107* | *110* | *112* |

11. INVESTMENTS

(152) The annual flow of investments in the product concerned made by the Community industry has constantly decreased since 2002. The increase in 2002 can be explained by investments in plant and machinery for one producer and investment to facilitate the closure of certain production lines for another producer.

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Net investments (000 EUR) | 334 426 | 38 326 | 34 979 | 29 341 |
| *Index (2001=100)* | *100* | *115* | *105* | *88* |

12. PROFITABILITY AND RETURN ON INVESTMENTS

(153) Profitability of the Community industry, while showing a gradual improvement over the period considered, remained negative between 2001 (–5,2 %) and the IP (–2,5 %). The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the above profitability trend over the whole period considered.

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Profitability of EC sales to unrelated customers (% of net sales) | –5,2 % | –1,9 % | –2,7 % | –2,5 % |
| ROI (profit in % of net book value of investments) | –4,6 % | –1,9 % | –2,9 % | –2,9 % |

13. CASH FLOW AND ABILITY TO RAISE CAPITAL

(154) The cash-flow situation deteriorated between 2001 and the IP, mainly due to other non-cash items such as assets depreciation and inventory movements.

| | 2001 | 2002 | 2003 | IP |
|---|---|---|---|---|
| Cash flow (000 EUR) | 44 503 | 42 047 | 49 486 | 32 150 |
| *Index (2001=100)* | *100* | *94* | *111* | *72* |

(155) The investigation has shown that capital requirements of the Community producers have been adversely affected by their difficult financial situation. Although several of these companies are part of large companies, capital requirements are not always met to the desired level, as financial resources are generally allocated within these groups to the most profitable entities. This relative inability to raise capital can be linked to the declining investment documented under recital 152.

▼B

## 14. MAGNITUDE OF SUBSIDISATION

(156) As concerns the impact on the Community industry of the magnitude of the actual subsidy margins, given the volume and the prices of the imports from the country concerned, this impact cannot be considered to be negligible, especially in transparent and thus highly price sensitive markets like the one of the product concerned.

## 15. RECOVERY FROM THE EFFECTS OF PAST SUBSIDISATION AND OF PAST DUMPING

(157) While the indicators examined above show some improvement in the economic and financial situation of the Community industry, further to the imposition of definitive countervailing measures in 1999, and further to the imposition of anti-dumping measures in 2001, they also evidence that the Community industry is still fragile and vulnerable.

## 16. CONCLUSION

(158) As shown under recitals 132 to 135, the volume of imports from the country concerned has doubled between 2001 and the IP. Given that consumption declined by 7 % over the same period, this resulted in a sharp rise of the market share held by Indian exporters from 2,3 % in 2001 to 5,0 % during the IP. At the same time, Indian export prices to the Community remained relatively stable at a level of around EUR 2 000/tonne thereby undercutting substantially the prices of the Community industry.

(159) Between 2001 and the IP, the following indicators developed positively: capacity utilisation and productivity of the Community industry increased and closing stocks decreased. Unit sales prices increased in line with the cost of the raw material between 2001 and the IP, profitability improved but remained negative in the IP, as well as return on investment. Wages developed positively.

(160) Conversely, the following indicators developed negatively: the market share held by the Community industry declined marginally, production and production capacity declined, sales volumes declined, and employment, total cash flow and investments declined. Therefore, the Community industry show mixed trends since 2001: while some indicators show positive developments, a number of others show a negative trend.

(161) If one compares the above trends with the ones described in the Regulations imposing provisional and definitive countervailing measures, again the assessment is mixed. As concerns market share, the Community industry lost around two percentage points between 2001 and the IP, whilst it had lost almost seven percentage points in the four years preceding the adoption of the definitive countervailing measures. It can therefore be considered that measures have achieved one of their goal, namely to slow the deterioration of market share. On the other hand, the profitability of the Community industry is worse in the IP than before the imposition of definitive countervailing measures. Had the measures not been circumvented by imports from Brazil and Israel, the situation might have been more favourable. It is further reminded that the efficiency of the measures, and thereby their remedial effect on the injurious situation of the Community industry, was severely undermined by the fact that the undertakings did not properly function, as referred to in recital 135.

(162) It is therefore concluded that the situation of the Community industry has not improved to the extent that could have been

▼B

expected after the imposition of the definitive countervailing and anti-dumping measures. The Community industry is therefore still in a fragile situation.

(163) In addition to the circumvention of the original measures and the fact that the undertaking did not achieve the desired effect, it was also analysed whether other factors, like e.g. imports from other countries, or a hypothetical inefficiency of the Community industry, could explain the persistent poor financial situation of the latter. In this respect it was found that it cannot be excluded that imports from the Republic of Korea and the decreasing consumption have to a certain extent impacted on the fragile situation. But these two factors do not explain in isolation the Community industry's current situation. Moreover, what is ultimately relevant is how the Community industry would develop in the absence of countervailing measures and whether there is a likelihood of a recurrence of injury. This issue is examined in the subsequent section.

(164) Subsequent to the disclosure, two exporting producers claimed that the imports from the USA, the increase of wages of the Community industry and the decline in Community consumption are factors having a significant effect for the fragile situation of the Community industry. Regarding the imports from the USA, it is recalled (see recital 140), that prices of imports from this country were on average substantially above those of imports from the country concerned and also above Community industry prices during the IP. Moreover, it was established that the prices of imports from this country were substantially higher than those mentioned above during the whole period considered. Therefore, it can be reasonably concluded that this factor did not have any negative effect on the situation of the Community industry. Regarding the increase in the wage cost per employee during the period considered (12 %), it should be noted that any negative effects of this factor on the situation of the Community industry are to a large extent offset by the parallel drop in the level of employment during the period considered, affecting the wage bill only by 3,3 %. Therefore, the claim that this factor had a significant effect on the situation of the Community industry could not be accepted. Regarding the decline in consumption, it is indeed acknowledged above that this factor may to a certain extent have impacted on the fragile situation of the Community industry. However, this factor cannot be considered significant given that the decline in sales volumes to unrelated customers by the Community industry was merely 2 % in contrast to the 7 % decline in consumption. In the light of the findings set out in Sections F and G, and on the basis of the above, it is concluded that imports from the USA cannot have had a negative effect on the situation of the community industry and that the other two aforementioned factors could at best only have played a minor role.

## H. **LIKELIHOOD OF CONTINUATION AND/OR RECURRENCE OF INJURY**

### 1. PRELIMINARY REMARKS

(165) As already seen, the imposition of countervailing measures has allowed the Community industry to recover only to some extent from the injury suffered. Due to several elements mentioned above, it is still in a fragile and vulnerable situation. Different factors were therefore examined in order to determine if the situation of the Community industry would stay unchanged improve or worsen in case measures would be allowed to lapse.

▼B

(166) The examination of whether it would be likely that injury would continue and/or recur should measures be repealed was based in particular on information provided by the cooperating exporting producers. Information relating to the import prices from exporters other than the cooperating exporter, determined on the basis of Eurostat, was also examined. The pricing behaviour of the cooperating exporting producers to other export markets, export prices to the Community, production capacity and stocks were examined. Finally, the likely effect of a repeal of the measures on prices of other imports was also assessed.

2. RELATIONSHIP BETWEEN EXPORT VOLUMES AND PRICES TO THIRD COUNTRIES AND EXPORT VOLUMES AND PRICES TO THE COMMUNITY

(167) It was found that the average export price of Indian sales to non-EU countries was significantly below the average export price to the Community and also below the prices on the domestic market. The Indian exporter's sales to non-EU countries were made in significant quantities, accounting for 73 % of total export sales. Therefore, it was considered that, should measures lapse, Indian exporters would have an incentive to shift significant quantities of exports from other third countries to the more attractive Community market, at price levels, which, even if they increased, were likely to be still below the current price levels of export to the Community.

3. UNUSED CAPACITY AND STOCKS

(168) On average, the cooperating Indian producers had significant spare capacities representing almost three times the export quantity to the Community during the IP. Likewise, average stocks of finished products are significant and, at the end of the IP, represented 16 % of the volume exported to the Community. Therefore, the capacity to significantly increase export quantities to the EC exists, in particular because there are no indications that third country markets or the domestic market could absorb any additional production. In this regard, it should be noted that it is very unlikely that the domestic market in India, due to the presence of at least four other competing producers, would be able to absorb all of the spare capacity of the four cooperating exporting producers.

4. CONCLUSION

(169) The producers in the country concerned have therefore the potential to raise and/or redirect their export volumes to the Community market. The investigation showed that, on the basis of comparable product types, the cooperating exporting producers sold the product concerned at a lower price than the Community industry's (the undercutting margins range between 2 and 21 %). These low prices would most likely continue to be charged or even decrease in line with the lower prices charged to the rest of the world, as mentioned in recital 134, also in order to regain the level of market shares held in the period before the imposition of measures. Such a price behaviour, coupled with the ability of the exporters in the country concerned to deliver significant quantities of the product concerned to the Community market, would in all likelihood have the effect of reinforcing the price-depressive trend on the market, with an expected negative impact on the economic situation of the Community industry.

(170) As shown above, the situation of the Community industry remains vulnerable and fragile. It is likely that if the

▼B

Community industry was exposed to increased volumes of imports from the country concerned at subsidized prices, this would result in a deterioration of its sales, market shares, sales prices as well as the consequent deterioration of the financial situation, to the levels found in the original investigation. On this basis, it is therefore concluded, that the repeal of the measures would in all likelihood result in a worsening of the already fragile situation and a recurrence of an even more injurious state of the Community industry.

## I. **COMMUNITY INTEREST**

### 1. INTRODUCTION

(171) According to Article 31 of the basic Regulation, it was examined whether maintenance of the existing countervailing measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the various interests involved.

(172) It should be recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Community. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which countervailing measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current countervailing measures.

(173) On this basis it was examined whether, despite the conclusions on the likelihood of a continuation or recurrence of injurious subsidisation, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

### 2. INTEREST OF THE COMMUNITY INDUSTRY

(174) The Community industry has proven to be a structurally viable industry. This was confirmed by its export sales that have remained stable at a high level since 2001 and the positive development of its economic situation observed after the imposition of countervailing measures in 1999. In particular, the fact that the Community industry virtually stopped its loss of market share in the few years before the IP contrasts sharply with the situation preceding the imposition of the measures. Also, the Community industry saw its losses decrease between 2001 and the IP. It is further recalled that circumvention had been found by imports from Brazil and Israel and that the undertaking did not work as desired. Had these developments not occurred, the situation of the Community industry would have been even more favourable.

(175) It can reasonably be expected that the Community industry will continue to benefit from the measures currently imposed and further recover, probably by regaining market share and improving its profitability. Should the measures not be maintained, it is likely that the Community industry would suffer injury to a higher extent from increased imports at subsidized prices from the country concerned and that its currently poor financial situation will deteriorate further.

### 3. INTEREST OF IMPORTERS/USERS

(176) As indicated in recital 20, only one importing company, which is also a user of the product concerned, fully cooperated in this investigation. For reasons of confidentiality, exact figures concerning this importer/user can therefore not be disclosed.

▼B

However, this importer/user is deemed to be representative of the situation of other importers/users in the Community because of its relatively high total turnover. This importer purchases the PET film from a variety of sources, which include India and the Community industry. This company's resales of the product concerned originating in India represented less than 20 % of its turnover during the IP. The profitability of the cooperating importer/user stood between 5 to 10 % over turnover in the IP.

(177) It is further recalled that, in the original investigation, it was found that the impact of the imposition of measures would not be significant for the importers, nor for the users. Despite the existence of measures for five years, importers/users in the Community continued to source their supply, *inter alia*, from India. No indications were brought forward either that there would have been any difficulties in finding other sources. Moreover, it is recalled that, as regards the effect of the imposition of measures on users, it was concluded in the original investigation that, given the negligible incidence of the cost of PET film on user industries, any cost increase was unlikely to have a significant effect on the user industry. No indications of the contrary were found after the imposition of measures. It is therefore concluded that the maintenance of the countervailing measures is not likely to have a serious effect on importers/users in the Community.

4. INTEREST OF UP-STREAM SUPPLIERS

(178) The original investigation concluded that suppliers of the Community industry would benefit from the imposition of measures. As indicated above, only one supplier cooperated to the investigation and confirms this fact, as it almost only supplies the Community producers and would suffer from a deterioration of its financial health. It is therefore considered that the continuation of measures would continue to have a positive impact for suppliers.

5. CONCLUSION

(179) Given the above, it is concluded that there are no compelling reasons on the grounds of Community interest against the maintenance of the current countervailing measures.

## J. **COUNTERVAILING MEASURES**

(180) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure.

(181) It follows from the above that, as provided for by Article 21(2) of the basic Regulation, the countervailing measures applicable to imports of PET film, originating in India should be maintained. It is recalled that these measures consist of *ad valorem* duties.

(182) As outlined in recital 4, the countervailing duties in force were extended to cover, in addition, imports of PET film consigned from Brazil and Israel, whether declared as originating in Brazil or Israel or not. The countervailing measures to be maintained on imports of the product concerned, as set out in recital 181, should be the measures as extended to imports of PET film consigned from Brazil and Israel, whether declared as originating in Brazil or Israel or not. The Brazilian and Israeli exporting producers who were exempted from the measures as extended by Regulation (EC) No 1976/2004 and amended by Council Regulation

▼B

(EC) No 101/2006 should also be exempted from the measures as imposed by this Regulation.

(183) The individual company countervailing duty rates specified in this Regulation reflect the situation found during the review with respect to the cooperating exporters. Thus, they are solely applicable to imports of the product concerned produced by these companies and thus by the specific legal entities mentioned. Imports of the product concerned manufactured 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 these rates and shall be subject to the duty rate applicable to 'all other companies'.

(184) Any claim requesting the application of these individual countervailing duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ([1]) forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, and after consultation of the Advisory Committee, the Regulation will be amended accordingly by updating the list of companies benefiting from individual duty rates.

(185) In order to ensure proper enforcement of the countervailing duty, the residual duty level should not only apply to non-cooperating exporters but also apply to those companies which did not have any exports during the IP. However, the latter companies are invited, when they fulfil the requirements of Article 20 of the basic Regulation, to present a request for a review pursuant to that Article in order to have their situation examined individually,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive countervailing duty is hereby imposed on imports of polyethylene terephthalate (PET) film falling within CN codes ex 3920 62 19 (TARIC codes 3920 62 19 03, 3920 62 19 06, 3920 62 19 09, 3920 62 19 13, 3920 62 19 16, 3920 62 19 19, 3920 62 19 23, 3920 62 19 26, 3920 62 19 29, 3920 62 19 33, 3920 62 19 36, 3920 62 19 39, 3920 62 19 43, 3920 62 19 46, 3920 62 19 49, 3920 62 19 53, 3920 62 19 56, 3920 62 19 59, 3920 62 19 63, 3920 62 19 69, 3920 62 19 76 and 3920 62 19 94) and ex 3920 62 90 (TARIC codes 3920 62 90 33 and 3920 62 90 94), originating in India.

▼M3

2. The rate of the definitive countervailing duty applicable to the net free-at-Community-frontier price, before duty, of the products manufactured by the companies listed below, shall be as follows:

| Company | Definitive duty (%) | TARIC additional code |
|---|---|---|
| Ester Industries Limited, 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi 110 003, India | 7,2 | A026 |

([1]) European Commission, Directorate-General for Trade, Directorate B, J-79 5/17, B-1049 Brussels.

▼M3

| Company | Definitive duty (%) | TARIC additional code |
|---|---|---|
| Garware Polyester Limited, Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India | 5,4 | A028 |
| Jindal Poly Films Limited, 56 Hanuman Road, New Delhi 110 001, India | 17,1 | A030 |
| MTZ Polyfilms Limited, New India Centre, 5th Floor, 17 Co-operage Road, Mumbai 400 039, India | 8,7 | A031 |
| Polyplex Corporation Limited, B-37, Sector-1, Noida 201 301, Dist. Gautam Budh Nagar, Uttar Pradesh, India | 8,6 | A032 |
| SRF Limited, Block C, Sector 45, Greenwood City, Gurgaon 122 003, Haryana, India | 5,4 | A753 |
| Uflex Limited, A-1, Sector 60, Noida 201 301 (U.P.), India | 6,4 | A027 |
| All other companies | 19,1 | A999 |

▼B

3. The definitive countervailing duty applicable to imports from India, as set out in paragraph 2, 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 by:

Terphane Ltda BR 101, km 101, City of Cabo de Santo Agostinho, State of Pernambuco, Brazil (TARIC additional code A569);

Jolybar Filmtechnic Converting Ltd (1987), Hacharutsim str. 7, Ind. Park Siim 2000, Natania South, 42504, POB 8380, Israel (TARIC additional code A570);

Hanita Coatings Rural Cooperative Association Ltd, Kibbutz Hanita, 22885, Israel (TARIC additional code A691).

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

*Article 2*

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.