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COUNCIL REGULATION (EC) No 193/2007

of 22 February 2007

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

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imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) 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 members of the European Community ([1]) (the basic Regulation), and in particular Article 18 thereof,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ([2]), and in particular, Article 14(1) thereof,

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

Whereas:

A. **PROCEDURE**

1. *MEASURES IN FORCE*

(1) On 30 November 2000, by Regulation (EC) No 2603/2000 ([3]), the Council imposed definitive countervailing duties on imports of certain polyethylene terephthalate (PET) originating in India, Malaysia, and Thailand (the countries concerned) (the original investigation). The measures imposed had been based on a countervailing measures investigation initiated pursuant to Article 10 of the basic Regulation. At the same time, by Regulation (EC) No 2604/2000 ([4]), the Council imposed definitive anti-dumping duties on imports of the same product originating in the same countries. The measures imposed had been based on an anti-dumping investigation initiated pursuant to Article 5 of Regulation (EC) No 384/96.

(2) The amendments made to Regulation (EC) No 2604/2000 were the results of either review investigations initiated pursuant to Article 11(3) and (4) of Regulation (EC) No 384/96 or of price undertakings being accepted under Article 8(1) thereof.

(3) Moreover, by Regulation (EC) No 1467/2004 ([5]), the Council imposed definitive anti-dumping duties on imports of certain PET originating in Australia and the People's Republic of China (PRC) and terminated the proceeding on imports of PET originating in Pakistan.

(4) On 11 October 2005, the Council amended the level of countervailing measures in force against imports of PET from India ([6]). The amendments were a result of an accelerated review initiated pursuant to Article 20 of the basic Regulation.

([1]) OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
([2]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
([3]) OJ L 301, 30.11.2000, p. 1.
([4]) OJ L 301, 30.11.2000, p. 21. Regulation as last amended by Regulation (EC) No 1646/2005 (OJ L 266, 11.10.2005, p. 10).
([5]) OJ L 271, 19.8.2004, p. 1.
([6]) OJ L 266, 11.10.2005, p. 1.

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2. *REQUEST FOR A REVIEW*

(5) Following the publication of a notice of impending expiry, the Commission, on 30 August 2005, received a request to review the measures in force pursuant to Article 18 of the basic Regulation (expiry review).

(6) The request was lodged on 30 August 2005 by the Polyethylene Terephthalate Committee of Plastics Europe (the applicant) on behalf of producers representing a major proportion, in this case more than 90 %, of total Community production of PET.

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

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of the review, pursuant to Article 18 of the basic Regulation respectively, the Commission initiated these reviews on 1 December 2005 ([1]).

(9) It should be noted that prior to the initiation of the expiry review, and in accordance with Articles 22(1) and 10(9) of the basic Regulation, the Commission notified the Government of India (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. *PARALLEL INVESTIGATIONS*

(10) On 1 December 2005, the Commission also opened a review pursuant to Article 11(2) of Regulation (EC) No 384/96 on the anti-dumping measures in force on imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Thailand and Taiwan ([2]). A partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 limited to dumping was initiated at the same time concerning imports of the same product originating in the Republic of Korea and Taiwan ([2]).

4. *REVIEW INVESTIGATION PERIOD*

(11) The review investigation period (RIP) covered the period from 1 October 2004 to 30 September 2005. The examination of trends in the context of injury covered the period from 1 January 2002 up to the end of the RIP (hereinafter referred to as the period considered).

5. *PARTIES CONCERNED BY THE INVESTIGATION*

(12) The Commission officially advised the exporting producers, the representatives of the exporting country, importers, Community producers, users and the applicant of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

(13) In view of the apparent large number of Indian exporting producers as well as Community producers and importers listed in the request

([1]) OJ C 304, 1.12.2005, p. 4.
([2]) OJ C 304, 1.12.2005, p. 9.

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for the expiry reviews, it was considered appropriate, in accordance with Article 27 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 27 of the basic Regulation, to make themselves known within 15 days of the initiation of the reviews and to provide the Commission with the information requested in the notice of initiation.

(14) After examination of the information submitted, given the low number of exporting producers in India indicating their willingness to cooperate, it was decided that sampling was not necessary as regards exporting producers in India.

(15) Having examined the information submitted by Community producers and importers, and given the relative small number of replies, it was considered that sampling for none of these categories would be warranted.

(16) Questionnaires were therefore sent to all known exporting producers in the country concerned, importers, suppliers, Community producers and users.

(17) Replies to the questionnaires were received from three Indian producers, from 12 Community producers, from one importer, one supplier and from 10 converters/users.

(18) The Commission sought and verified all the information it deemed necessary for its analysis and carried out verification visits at the premises of the following companies:

1. Community producers

   Voridian BV (the Netherlands)

   M & G Polimeri Italia Spa (Italy)

   Equipolymers Srl (Italia)

   La Seda de Barcelona SA (Spain)

   Novapet SA (Spain)

   Selenis Industria de Polímeros SA (Portugal)

   Selenis Italia Spa (Italy)

   Community Suppliers

   Interquisa SA (Spain)

   Unrelated importers in the Community

   Global Service International SRL (Italy)

   Community users

   Coca Cola Enterprises Europe Ltd (Belgium)

2. Government of India

   Ministry of Commerce, New Delhi

   Government of Maharashtra — Directorate of Industries, Mumbai

3. Exporting producers in India

   SENPET Ltd, Kolkata (formerly Elque Polyesters Limited)

   Futura Polyesters Limited, Chennai (formerly Futura Polymer Limited)

   Pearl Engineering Polymers Limited, New Delhi

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B. PRODUCT CONCERNED AND LIKE PRODUCT

1. *PRODUCT CONCERNED*

(19) The product concerned is the same as in the original investigation, i.e. PET with a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, originating in the country concerned. It is currently classifiable within CN code 3907 60 20.

2. *LIKE PRODUCT*

(20) As in the original investigation, it was found that the product concerned, PET produced and sold on the domestic markets in the country concerned and PET produced and sold by the Community producers have the same basic physical and chemical characteristics and uses. It is therefore concluded that all types of PET with a viscosity of 78 ml/g or higher are alike within the meaning of Article 1(5) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATION

I. *CONTINUATION OF SUBSIDISATION — INTRODUCTION*

(21) 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. SUBSIDY SCHEMES ORIGINALLY INVESTIGATED

Nationwide schemes

(a) Duty Entitlement Passbook Scheme (DEPBS)

(b) Income Tax Exemption Scheme (ITES)

(c) Export Promotion Capital Goods Scheme (EPCGS)

(d) Export Processing Zones (EPZ)/Special Economic Zones (SEZ)/Export Oriented Units (EOU)

2. SUBSIDY SCHEMES NOT ORIGINALLY INVESTIGATED

Nationwide schemes

(e) Advance Licence Scheme (ALS)

(f) Export Credit Scheme (pre-shipment and post-shipment) (ECS)

Regional schemes

(g) Gujarat Sales Tax Incentive Scheme (GSTIS)

(h) Gujarat Electricity Duty Exemption Scheme (GEDES)

(i) West Bengal Incentive Schemes (WBIS)

(j) Package Scheme of Incentives (PSI) of the Government of Maharashtra

(22) Schemes (a) and (c) to (e) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (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, since 1 September 2004 named Foreign Trade Policy, and are issued by the Ministry of Commerce every five years and updated

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regularly. One Export and Import Policy document is relevant to the RIP of this case; i.e. the five-year plan relating to the period 1 September 2004 to 31 March 2009 (EXIM-policy 2004-2009). In addition, the GOI also sets out the procedures governing the EXIM-policy 2004-2009 in a Handbook of Procedures — 1 September 2004 to 31 March 2009, Volume I (HOP I 2004-2009). The Handbook of Procedure (HOP) is also updated on a regular basis.

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

(24) Scheme (f) is based on sections 21 and 35A of the Banking Regulation Act 1949, which allows the Reserve Bank of India (RBI) to direct commercial banks in the field of export credits.

(25) Scheme (g) is administered by the Government of Gujarat and based on its industrial incentive policy; scheme (h) is based on the Bombay Electricity Duty Act of 1958.

(26) Scheme (j) is managed by the state of Maharashtra and is based on resolutions of the Government of Maharashtra Industries, Energy and Labour Department.

(27) Scheme (i) is set up by the Government of West Bengal through the Commerce and Industries Department notification No 588-CI/H of 22 June 1999 (WBIS 1999) which was last replaced by notification No 134-CI/O/Incentive/17/03/I of 24 March 2004 (WBIS 2004).

(28) Following the disclosure of the findings concerning the alleged subsidisation, the GOI reiterates a number of concerns regarding the countervailability of the schemes and the calculation of the subsidy amounts. It also reiterates arguments that there was no likely continuation of subsidisation in the present case. To this end, it should be noted that this submission does not contain any new arguments which would alter the conclusions as set out in this Regulation.

II. *NATIONWIDE SCHEMES*

1. DUTY ENTITLEMENT PASSBOOK SCHEME ('DEPB')

(a) ***Legal basis***

(29) The detailed description of the DEPBS is contained in section 4.3 of EXIM-policy 2004-2009 and in section 4.3-4.4 of HOP I 2004-2009.

(30) It was found that none of the cooperating exporting producers obtained any countervailable benefits under the (DEPBS). It was therefore not found necessary to further analyse this scheme in the scope of this investigation.

2. INCOME TAX SCHEMES

(31) It was found that none of the cooperating exporting producers obtained any countervailable benefits under the ITES. It was therefore not found necessary to further analyse this scheme in the scope of this investigation.

3. EXPORT PROMOTION CAPITAL GOODS SCHEME ('EPCGS')

(a) ***Legal basis***

(32) The detailed description of the EPCGS is contained in chapter 5 of EXIM-policy 2004-2009 and in Chapter 5 of HOP I 2004-2009.

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(b) ***Eligibility***

(33) Manufacturer-exporters, merchant-exporters 'tied to' supporting manufacturers and service providers are eligible for this scheme.

(c) ***Practical implementation***

(34) 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 or zero rate of duty. To this end the GOI issues upon application and payment of a fee an EPCG license. 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.

(35) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail of the benefit for duty-free import of components required to manufacture such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect to the supply of capital goods to an EPCGS licence holder.

(d) ***Conclusion on EPCG Scheme***

(36) The EPCGS provides subsidies within the meaning of Articles 2 (1)(a)(ii) and 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 its liquidity.

(37) Furthermore, the EPCGS 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.

(38) Consequently, 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.

(e) ***Calculation of the subsidy amount***

(39) None of the cooperating exporters had purchased any capital goods in the IP. One company continued however to benefit from duty exemptions for capital goods purchased before the IP at the amount established in the original investigation. The subsidy amount obtained during the RIP 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 actual depreciation period of such capital goods of the exporting producer. In accordance with the established practice, the amount so calculated which is attributable to the RIP has been adjusted by adding interest during this period 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 from this sum to arrive at the subsidy amount as numerator. 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 RIP as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured,

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produced, exported or transported. The subsidy obtained for the company that continued to benefit from the scheme was 0,38 %.

4. EXPORT CREDIT SCHEME (ECS)

(a) ***Legal basis***

(40) 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 (RBI), which is addressed to all commercial banks in India.

(b) ***Eligibility***

(41) Manufacturing exporters and merchant exporters are eligible for this scheme. It was found that one of the companies cooperating in the proceeding availed of benefits under the ECS.

(c) ***Practical implementation***

(42) Under this scheme, the RBI sets compulsory 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.

(43) 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) ***Conclusion on the ECS***

(44) Firstly, the preferential interest rates of an ECS credit set by the RBI Master Circulars can decrease interest costs of an exporter as compared with credit costs purely set by market conditions and confer in this case a benefit within the meaning of Article 2(2) of the basic Regulation on such an exporter. Only in the case of those cooperating exporters, where such interest rate differences were found to exist, it was concluded that a benefit was conferred. The differences in rates between the credits given further to the RBI Master Circulars and commercial cash credit rates cannot be explained by pure market behaviour of the commercial bank.

(45) Secondly, and despite the fact that the preferential credits under the ECS are granted by commercial banks, this benefit is a financial contribution by a government within the meaning of Article 2(1)(iv) of the basic Regulation. The RBI is a public body and falls therefore under the definition of a government as set out in Article 1(3) of the basic Regulation. It is 100 % government-owned, pursues public policy objectives, e.g. monetary policy, and its management is appointed by the GOI. The RBI directs private bodies, since the commercial banks are bound by the conditions, inter alia, the maximum ceilings for interest rates on export credits mandated in the RBI Master Circulars and the RBI provisions that commercial banks have to provide a certain amount of their net bank credit towards

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export finance. This direction obliges commercial banks to carry out functions mentioned in Article 2(1)(a)(i) of the basic Regulation, in this case loans in the form of preferential export financing. Such direct transfer of funds in the form of loans under certain conditions would normally be vested in the government, and the practice, in no real sense, differs from practices normally followed by governments, Article 2(1)(a)(iv) of the basic Regulation. This subsidy is deemed to be specific and countervailable since the preferential interest rates are only available in relation to the financing of export transactions and are therefore contingent upon export performance, pursuant to Article 3(4)(a) of the basic Regulation.

(e) ***Calculation of the subsidy amount***

(46) The subsidy amount has been calculated on the basis of the difference between the interest paid for export credits used during the RIP and the amount that would have been payable if the same interest rates were applicable as for ordinary commercial credits used by the particular company. This subsidy amount (numerator) has been allocated over the total export turnover during the RIP as appropriate denominator in accordance with Article 7(2) 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 company that availed of benefits under the ECS obtained a subsidy of 0,1 %.

5. EXPORT ORIENTED UNITS SCHEME (EOUS)/SPECIAL ECONOMIC ZONES SCHEME (SEZS)

(47) It was found that none of the cooperating exporting producers obtained countervailable benefits under the *SEZS*. However, two Indian companies had the status of an EOU and received countervailable subsidies in the RIP. The description and assessment below is therefore limited to the *EOUS*.

(a) ***Legal basis***

(48) The details of the EOU scheme are contained in Chapter 6 of EXIM-policy 2004-2009 and HOP I 2004-2009.

(b) ***Eligibility***

(49) 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 EOUS. Undertakings in the industrial sectors have to fulfil a minimum investment threshold in fixed assets (10 million Indian rupees) to be eligible for the EOUS.

(c) ***Practical implementation***

(50) As found in the original investigation, EOUs can be located and established anywhere in India.

(51) An application for EOU 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. Upon acceptance by the authorities of the company's application, the terms and conditions attached to this acceptance will be communicated to the company. The agreement to be recognised as a company under EOU is valid for a five-year period. The agreement may be renewed for further periods.

(52) A crucial obligation of an EOU as set out in EXIM-policy 2004-2009 is to achieve net foreign exchange (NFE) earnings,

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i.e. in a reference period (five years) the total value of exports has to be higher than the total value of imported goods.

(53) EOU 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) the facility to sell part of production on the domestic market of up to 50 % of fob value of exports, subject to fulfilment of positive NFE earnings upon payment of concessional duties, i.e. excise duties on finished products;

(v) partial reimbursement of duty paid on fuel procured from domestic oil companies;

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

(vii) possibility of 100 % foreign equity ownership.

(54) Units operating under these schemes are bonded under the surveillance of customs officials in accordance with Section 65 of the Customs Act.

(55) They are legally obliged to maintain a proper account of all imports, of the consumption and utilisation of all imported materials and of the exports made in accordance with 6.11.1 HOP 2004-2009. These documents should be submitted periodically, to the competent authorities through quarterly and annual progress reports.

(56) However, 'at no point in time shall an EOU be required to co-relate every import consignment with its exports, transfers to other units, sales in DTA or stocks', as section 6.11.2 of HOP I 2004-2009 states.

(57) 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.

(58) In the present case, the EOUS was used by two of the cooperating exporters. These cooperating exporters utilised the scheme to import raw materials and capital goods free of import duties, to procure goods domestically free of excise duty and to obtain sales tax reimbursement and to sell part of its production on the domestic market. One of the exporting companies also utilised the scheme to obtain partial reimbursement of duty paid on fuel procured from domestic oil companies. They thereby availed of all benefits as described in recital 53(i) to (v). The investigation showed that the exporters concerned did not avail of benefits under the income tax exemption provisions of the EOUS.

(d) ***Conclusions on the EOUS***

(59) The exemptions of an EOU from two types of import duties (basic customs duty and special additional customs duty) and the reimbursement of sales tax are financial contributions of the GOI within the meaning of Article 2(1)(a)(ii) of the basic

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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 and by obtaining a sales tax reimbursement.

(60) The exemption from excise duty and its import duty equivalent (additional customs duty), however, do not lead to revenue forgone which is otherwise due. Excise and additional customs duty, if paid, could be used as a credit for its own future duty liabilities (the so-called CENVAT mechanism). Therefore, these duties are not definitive. By the means of CENVAT-credit only an added value bears a definitive duty, not the input materials.

(61) Thus, only the exemption from basic customs duty, special additional customs duty, the partial reimbursement of duty paid on fuel procured from domestic oil companies and the sales tax reimbursement, constitute subsidies within 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 EXIM-policy 02-07 is a conditio sine qua non to obtain the incentives.

(62) One of the cooperating exporters asserted that the Commission has departed from the reasoning used in the original investigation in terms of the assessment of the duty exemption of raw materials and that only excess remission if any should be countervailed. However, in reply to this it should be noted that at the time of the original investigation, in the assessment of the countervailable amount, the question on whether the EOU was a permissible duty drawback system or not was made 'without prejudice to the question of whether the scheme constitutes a drawback system in conformity the provisions of the basic Regulation' ([1]). Within the framework of this review, the scheme as a whole, along with the monitoring system was carefully investigated.

(63) The investigation revealed that these subsidies 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 (items (h) and (i)), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation. In the circumstance that the sales tax reimbursement and import duty exemption provisions are used for purchasing capital goods, they are already not in conformity with the rules for permitted drawback systems since capital goods are not consumed in the production process, as required by Annex I item (h) (sales tax reimbursement) and (i) (import duties remission).

(64) In addition, it has not been established that that the GOI has a 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 Regulation). The verification system in place aims at monitoring the Net foreign exchange earning obligation and not the consumption of imports in relation to the production of exported goods.

(65) An EOU is allowed to sell a significant amount of its production, up to 50 % of its annual turnover, on the domestic market. Therefore, no legal obligation exists to export the total amount

([1]) Recital 26, Regulation (EC) No 2603/2000 (OJ L 301, 30.11.2000, p. 1).

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of manufactured resultant products. In addition, these domestic transactions take place without the supervision and control of a government official and are only subject to a self-certification procedure. Consequently, the bonded premises of an EOU are at least in part not subject to a physical control by the Indian authorities. These circumstances increase the importance of further verification elements, notably control of the nexus between duty-free inputs and resultant export products in order to qualify as a duty drawback verification system.

(66) Concerning further verification steps installed it should be recalled, that an EOU is already de jure and at no point in time is required to co-relate every import consignment with the corresponding resultant product. Only if such controls were in place would the Indian authorities be able to obtain sufficient information about the final destination of inputs so as to allow for an efficient check that the duty/sales tax exemptions do not exceed inputs for export production. Monthly tax returns for domestic sales on a self-assessment basis, which are periodically assessed by the Indian authorities, do not suffice. In addition, the purpose of the monthly tax returns is to monitor excise duties and not to control the destination of inputs. Company internal systems, which are kept without legal obligation, would not as such suffice since a duty drawback verification system would need to be designed and enforced by a government and should not left to the discretion of the management of each individual company concerned. Consequently, the investigation has established that the EOU is explicitly not required by the Indian EXIM policy to record the nexus between input materials and the finished product and no effective control mechanism was set up by the GOI to determine which inputs were consumed in export production and in what amounts.

(67) Also, the GOI neither carried out a further examination based on actual inputs involved, although this would normally be required in the absence of an effective verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation). Furthermore, no evidence was provided by the GOI demonstrating that no excess remission took place.

(68) In light of the above, the company's claim that the Commission has departed from the reasoning used in the original investigation in terms of the assessment of the duty exemption of raw materials and that only excess remission, if any, should be countervailed has to be rejected.

(e) ***Calculation of the subsidy amount***

(69) Accordingly, in the absence of a permitted duty drawback system or substitution drawback system, 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 reimbursement of duty paid on fuel procured from domestic oil companies and the sales tax reimbursement, during the RIP.

(i) **Exemption from import duties (basic customs duty and special additional customs duty), sales tax reimbursement on raw materials and reimbursement of duty paid on fuel procured from domestic oil companies**

(70) The subsidy amount for the exporters that are EOUs was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the materials imported for the EOU as a whole, the sales tax reimbursed, and the reimbursement of duties paid on domestically purchased fuel all during the RIP. Fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)

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(a) of the basic Regulation from this sum to arrive at the subsidy amount as numerator. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the appropriate export turnover generated during the RIP 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 margins thus obtained were 0,9 % and 5,8 % respectively for the two companies.

(ii) **Exemption from import duties (basic customs duty and special additional customs duty) on capital goods**

(71) Capital goods are not physically incorporated into the finished goods. In accordance with Article 7(3) of the basic Regulation, the benefit to the investigated companies has been calculated on the basis of the amount of unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the investigated companies. In order to determine such normal depreciation period the actual depreciation periods used by the two cooperating exporters concerned have been used as a reference, i.e. 18 years. The amount so calculated is then attributable to the RIP and has been adjusted by adding interest during this period in order to reflect the value of the benefit over time and thereby establish the full benefit of this scheme to the recipient. In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount has been allocated over the appropriate export turnover generated during the RIP 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 margins thus obtained for the two companies were 1,8 % and 0,4 % respectively.

(72) Thus, the total subsidy margin under the EOUS for the companies concerned amounts to 2,7 % and 6,2 % respectively.

6. ADVANCE LICENCE SCHEME (ALS)

(a) ***Legal basis***

(73) The detailed description of the scheme is contained in sections 4.1 to 4.1.14 of EXIM-policy 2004-2009 and Chapters 4.1 to 4.30 of HOP I 2004-2009.

(b) ***Eligibility***

(74) The ALS consists of six sub-schemes, as described in more detail below. 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 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 EXIM-policy 2004-2009, such as suppliers of an export oriented unit (EOU), are eligible for ALS deemed export. Eventually, intermediate suppliers to manufacturer-exporters are eligible for deemed export benefits under the sub-schemes Advance Release Order (ARO) and back-to-back inland letter of credit.

(c) ***Practical implementation***

(75) 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

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specific resultant export product. The export must be 'physical' in the sense that the export product has to leave Indian Territory. The terms of the import allowance and export obligation 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-g) and (i-j) of EXIM policy 2004-2009. The finished goods will, in other words, not have to leave the country but are by virtue of the status of the customer to be considered deemed exports. This would include supply to an EOU or to a licence holder under the Export Promotion Capital Goods scheme.

(v) ARO: The ALS holder intending to source the inputs from indigenous sources, instead 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 EXIM-policy 02-07 (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 EXIM-policy 02-07 (i.e. ALS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).

(76) It was established that during the RIP, one cooperating exporter only obtained concessions under three sub-schemes linked to the product concerned, i.e. (i) ALS physical exports, (v) ARO and (iv) ALS deemed export. It is therefore not necessary to establish the countervailability of (ii) annual requirement, (iii) Intermediate supplies, and (vi) the back-to-back inland letter of credit scheme.

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(77) 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 and Appendix 23 HOP I 2004-2009), i.e. an actual consumption register (Appendix 23 register). As of May 2005 Appendix 23 must not only be preserved with the company but it must also be countersigned by a chartered accountant and sent to the Indian authorities. The obligation to submit the Appendix 23 applies to licences issued after the entry into force of the new rules in May 2005. The practical implementation of this new system could therefore not be verified as no report relating to these licences was due at the time of the investigation.

(78) In regard to the sub-schemes (i), (iv) and (v) listed 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 (SIONs). SIONs exist for most products including the product concerned and are published in HOP II 2004-2009.

(79) 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).

(80) The advance licence holder intending to source the inputs from domestic sources, instead of direct imports has the option to source them against Advance Release Orders (ARO). In such cases the advance licences are validated as ARO's and are endorsed to the supplier upon delivery of the items specified therein.

(81) In the course of the review investigation, it was established that the input materials imported according to the SIONs import allowance duty free under the various sub-schemes by the cooperating exporter exceeded the material needed to produce the reference quantity of the resultant export product. Thus, the SIONs for the product concerned were not accurate.

(d) ***Conclusion***

(82) 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.

(83) In addition, ALS 'physical exports' is 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.

(84) ALS 'deemed export' is de facto contingent upon export performance. It was only used by one company to a minor extent and only when supplying EOUs or units in a SEZ, both categories mentioned in paragraph 8.2(b) of EXIM-policy 02-07. This company stated that its customers eventually exported the product concerned. The objective of an EOU/SEZ is exportation as set out in paragraph 6.1 of EXIM-policy 02-07. Thus, a domestic supplier obtains benefits under the ALS deemed export, because the GOI anticipates export earnings subsequently received by an exporter located in an EOU/SEZ. According to

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Article 3(4)(a) of the basic Regulation, a subsidy shall be considered as export contingent when the facts demonstrate that the granting of a subsidy, though not legally contingent upon export performance, is in fact tied to actual or anticipated export earnings.

(85) In this case the cooperating company made no use of advance licence for the purpose of importing duty free imports. Instead the company obtained a benefit by sourcing raw materials from domestic suppliers through the conversion of the licences into ARO. Under this scheme the right of exemption of taxes and duties falls on the supplier instead of to the ultimate exporter in the form of drawback/refund of duties. The exemption of taxes/duties is available both for indigenous inputs as well as imported inputs. The investigation revealed there was a significant difference in price between raw material sourced through the indigenous unrelated supplier by use of the ARO scheme as opposed to raw materials sourced through an indigenous supplier when no licence was used. The benefit of the exemption from duties and taxes was passed on through lower prices from the supplier to the company using the raw material and concerned by this proceeding. The company could make a clear distinction between the purchase prices of raw material under the use of the licence and the price paid for the same raw material when no licence was used. The company defined the benefit thus obtained as the difference in price between supplies sourced under the ARO and the price of supplies sourced without such licence.

(86) None of the three sub-schemes used in the present case can 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. Although the GOI mentioned that the system had undergone a change as from May 2005, it should be clear that these changes had no impact on the schemes during the RIP, since the new verification system was not yet fully implemented. Notwithstanding the possible change of the verification system by the GOI, the investigation revealed that during the RIP the GOI did not effectively apply its verification system. Nor did it apply procedures 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) thereto). The SIONs for the product concerned were not sufficiently precise and overestimated the raw material consumption. The investigation revealed that the SIONs are being amended in view of better reflecting the consumption of inputs but these new SIONs were not in place during the RIP. Thus, it is confirmed that the SIONs themselves cannot be considered a verification system of actual consumption, since these generous standard norms do not enable the GOI to verify with sufficient precision what amount of inputs were actually consumed in the export production. Furthermore, an effective control done by the GOI based on a correctly kept actual consumption register (Appendix 23 register, formerly Appendix 18), did not take place for the licences used in the RIP. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied 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.

(87) These three sub-schemes are therefore countervailable.

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(e) ***Calculation of the subsidy amount***

(88) In the absence of permitted duty drawback systems or substitution drawback systems, the subsidy amount has been established, as demonstrated by the company, on the basis of the difference in price between the same raw material purchased with and without the licence.

(89) In accordance with Article 7(2) of the basic Regulation, the subsidy amount has been allocated over the total export turnover generated as appropriate denominator, because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(90) One company benefited from this scheme during the RIP and obtained subsidies of 20,9 %.

III. *REGIONAL SCHEMES*

1. GUJARAT SALES TAX INCENTIVE SCHEME (GSTIS) AND GUJARAT ELECTRICITY DUTY EXEMPTION SCHEME (GEDES)

(91) It was found that none of the cooperating exporting producers obtained any countervailable benefits under the Gujarat Sales Tax Incentive Scheme (GSTIS) or the Gujarat Electricity Duty Exemption Scheme (GEDES). It was therefore not found necessary to further analyse this scheme within the scope of this investigation.

2. WEST BENGAL INCENTIVE SCHEMES (WBIS)

(92) The detailed description of the WBIS is set out in Government of West Bengal (GOWB) Commerce & Industries Department notification No 588-CI/H of 22 June 1999 (WBIS 1999) which was last replaced by notification No 134-CI/O/Incentive/17/03/I of 24 March 2004 (WBIS 2004). The scheme conferred a number of benefits on the recipient such as deferred payment of sales tax, subsidy for installation of capital goods, and development subsidies. The investigation established that one company had benefited from these schemes in the past. However, the impact of these benefits during the RIP was negligible. For this reason it was not found necessary to further analyse these schemes within the scope of this investigation.

3. PACKAGE SCHEME OF INCENTIVES (PSI) OF THE GOVERNMENT OF MAHARASHTRA (GOM)

(a) ***Legal basis***

(93) In order to encourage the dispersal of industries in the Maharashtra 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. The scheme has been amended many times since its introduction and the 2001 Scheme was operative from 1 April 2001 until 31 March 2006 after which it was extended for one year until 31 March 2007. The PSI of the GOM is composed of several sub-schemes amongst which the main ones are: (i) the refund of octroi tax /entry tax, (ii) the exemption from electricity duty and (iii) the exemption from local sales tax which expired on 24 October 2004. The investigation revealed that the only sub-scheme used by one of the cooperating exporting producers was the local sales tax exemption.

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(b) ***Eligibility***

(94) In order to be eligible, companies must as a rule 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 areas, lesser developed areas and least developed areas). 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 the investment.

(c) ***Practical implementation***

(95) Under the local sales tax exemption scheme which expired in October 2004, designated units were not required to collect any sales tax on their sales transactions. Similarly, designated units were exempted from the payment of the local sales tax on their purchases of goods from a supplier itself eligible for the scheme. Whereas the exemption in relation to sales transactions does not confer any benefit on the designated sales unit, the exemption in relation to purchase transactions, however, does confer a benefit on the designated purchasing unit. The investigation established that the company concerned enjoyed sales tax exemption until 24 October 2006.

(d) ***Conclusion***

(96) 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 sub-scheme examined constitutes 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.

(97) The sub-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 for companies located outside these areas. The level of 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.

(e) ***Calculation of the subsidy amount***

(98) Concerning the sales tax exemption, the subsidy amount was calculated on the basis of the amount of the sales tax normally due during the RIP but which remained unpaid under the scheme. Since the sales tax exemption scheme expired on 24 October 2004, only the sales unpaid during the period 1 to 24 October 2004 were taken into consideration because only this period fell in the RIP. Pursuant to Article 7(2) of the basic Regulation, the amount of subsidy (numerator) has then been allocated over the total company turnover during the RIP 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 the RIP one company benefited from the sub-scheme; however the subsidy amount obtained was less than 0,1 %, i.e. negligible.

IV. *AMOUNT OF COUNTERVAILABLE SUBSIDIES*

(99) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers ranges between 2,7 % and 20,9 %.

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(100) Although there was a high level of cooperation in terms of proportion of exports to the Community it should be noted that several exporting producers did not cooperate in the proceedings, including the exporting producer with the highest subsidy margin in the original investigation. The capacity and production of the non-cooperating producers in India is significant and it is also likely that these exporting producers will continue to avail of benefits under the investigated subsidisation schemes at least the same rate as that established in the original investigation.

SCHEME	DEPBS	ITES	EPGS	EOU	ALS	ECS	GSTIS	GEDES	WBIS	PSI	Total
COMPANY	%	%	%	%	%	%	%	%	%	%	%
Senpet (Former Elque)	nil	nil	nil	2,7	nil	nil	nil	nil	nil	nil	2,7
Futura	nil	nil	nil	6,2	nil	0,1	nil	nil	nil	nil	6,3
Pearl	nil	nil	0,3	nil	20,6	nil	nil	nil	nil	neg	20,9

V. *CONCLUSIONS*

(101) 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.

(102) As set out under recitals 21 to 100, it was established that during the RIP Indian exporters of the product concerned continued to benefit from countervailable subsidisation by the Indian authorities. In fact, the subsidy margins found during the review are higher than those established during the original investigation, except for one exporting producer. The subsidy schemes concerned give recurring benefits and there is no indication that these programmes will be phased out in the foreseeable future. In the absence of information on how the amendment to the ALS verification system will be implemented in practice, no conclusions can be drawn as to the possible effect of these changes. Under these conditions, the exporters of the product in question will continue to receive countervailable subsidies. Each exporter is eligible for several of the subsidy programmes. Under these circumstances, it was considered reasonable to conclude that subsidisation would be likely to continue in the future.

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

D. **DEFINITION OF THE COMMUNITY INDUSTRY**

1. *COMMUNITY PRODUCTION*

(104) PET is manufactured in the Community by the following companies:

Twelve producers which requested the expiry review, supported them and cooperated in the investigation (see recital 107).

Two producers which have requested the expiry review but have not cooperated in the current investigation;

One subsidiary of a Korean producer located in the Community who has cooperated in the investigation and has supported the request;

(105) PET produced by all these companies constitutes the total Community production within the meaning of Article 9(1) of the basic Regulation.

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2. *COMMUNITY INDUSTRY*

(106) The Commission examined whether the cooperating Community producers requesting or supporting the request for the expiry reviews represented a major proportion of the total Community production of PET. Those Community producers accounted for 88 % of the total Community production of PET. Those Community producers who did not fully cooperate were excluded from the definition of the Community industry. The Commission therefore considered that the 12 fully cooperating Community producers represent the Community industry within the meaning of Articles 9(1) and 10(8) of the basic Regulation. In the original investigations the Community industry represented more than 85 % of the total PET production in the Community at that time.

(107) The following 12 Community producers constitute the Community industry.

Voridian BV (The Netherlands)

M & G Polimeri Italia Spa (Italy)

Equipolymers Srl (Italia)

La Seda de Barcelona SA (Spain)

Novapet SA (Spain)

Selenis Industria de Polimeros SA (Portugal)

Aussapol Spa (Italy)

Advansa Ltd (UK)

Wellman BV (the Netherlands)

Boryszew subsidiary Elana Wse (Poland)

V.P.I. SA (Greece)

SK Eurochem Sp.Z. o.o. (Poland)

E. **SITUATION ON THE COMMUNITY MARKET**

1. *CONSUMPTION IN THE COMMUNITY MARKET*

(108) Community consumption was established on the basis of the sales volumes of the Community industry, of estimates of the sales of the other Community producers on the Community market based on data provided at the complaint stage, and Eurostat data for all Community imports from third countries.

(109) Between 2002 and the RIP, Community consumption of the product concerned in the Community continuously increased to reach a total of 2 400 000 tonnes in the RIP. The overall increase over the period was 18 %. The increase was partly due to new applications (beer and wine bottles, inter alia) and partly due to the increase of consumption in the accession countries.

Table 1

	2002	2003	2004	RIP
Community consumption (tonnes)	2 041 836	2 213 157	2 226 751	2 407 387
Index	100	108	109	118

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2. *IMPORTS FROM INDIA*

2.1. VOLUME, MARKET SHARE AND PRICES OF IMPORTS

(110) Between 2002 and the RIP, total imports from India increased by 13 %. Whereas imports decreased by 17 % from 2002 to 2003, they increased by 100 percentage points in 2004 and decreased again during the RIP to around 6 800 tonnes, i.e. by around 70 percentage points. Import prices rose by five percentage points in 2003 and by further three and seven percentage points respectively in 2004 and during the RIP. This price trend only partially reflects the strong increase of the raw material costs. Market share of Indian imports remained relatively small throughout the period considered, i.e. 0,3 % in 2002, 0,2 % in 2003, 0,5 % in 2004 and 0,3 % in the RIP.

Table 2

	2002	2003	2004	RIP
India				
Volume (tonnes)	6 046	4 999	11 079	6 831
Index	100	83	183	113
Price (EUR per tonne)	883	930	955	1 018
Index	100	105	108	115
Market share	0,3 %	0,2 %	0,5 %	0,3 %

3. *IMPORTS FROM OTHER COUNTRIES*

(111) The volume of imports from other third countries increased by 25 percentage points during the period considered. The biggest increase was observed in 2003, when imports rose by 41 percentage points. After the imposition of anti-dumping measures on Chinese exports in 2004, imports declined by 14 percentage points in 2004 and by two further percentage points in the RIP. Market shares followed a similar trend passing from 15,9 % in 2002 to 20,6 % in 2003, to 18,5 % in 2004 and to 16,9 % during the RIP. The increase of the market share of imports was lower than the increase of the imports in absolute terms, due to the stronger consumption. Import prices were on average constantly lower than the EU prices between 2002 and 2004. Only during the RIP, were they slightly above Community industry prices.

Table 3

	2002	2003	2004	RIP
Volume (tonnes)	324 749	456 499	411 020	406 562
Index	100	141	127	125
Average price (EURpert)	869	821	907	1 061
Index	100	94	104	122
Market share	15,9 %	20,6 %	18,5 %	16,9 %
Main exporters				
Korea	113 685	129 188	139 296	127 734
Pakistan	28 558	83 208	55 125	73 426
China	47 875	131 343	49 678	72 814
USA	20 570	16 105	49 763	50 393
Taiwan	42 136	36 986	16 796	29 382

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F. **ECONOMIC SITUATION OF THE COMMUNITY INDUSTRY**

1. *PRELIMINARY REMARKS*

(112) At the beginning of the review, sampling of the Community producers was foreseen but considering that their number was not excessive, it was decided to include all of them and the injury factors have been assessed on the basis of information collected at the level of the entire Community industry.

(113) 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 industry.

2. *ANALYSIS OF ECONOMIC INDICATORS*

2.1. PRODUCTION

(114) The Community industry's production increased by 20 % between 2002 and the RIP, i.e. from a level of 1 465 000 tonnes in 2002 to 1 760 000 tonnes in the RIP. The yearly increase was 4,8 % in 2003 and 4,6 % in 2004. A further increase occurred in the RIP, when production soared by 150 000 tonnes, i.e. by 10,8 %. This was due to the restructuring process undertaken by the industry with the aim to better control the production costs and thereby take advantage of the growing consumption in the Community market which, as stated, increased by 19 % between 2002 and the RIP (from 2 million tonnes in 2002 to 2,4 million tonnes in the RIP).

Table 4

	2002	2003	2004	RIP
Production (tonnes)	1 464 522	1 534 480	1 602 086	1 760 828
Index	100	105	109	120

2.2. CAPACITY AND CAPACITY UTILISATION

(115) Production capacity increased by 22 % between 2002 and the RIP, i.e. from a level of 1 760 000 tonnes in 2002 to 2 156 000 tonnes in the IP. The increase occurred mainly in the RIP, when production capacity, compared to the year 2004, increased by 300 000 tonnes, i.e. 16,7 %. This significant increase of production capacity was parallel to the increase of production over the same period (see recital 114). The increase in production capacity resulted from additional investments in production lines designed to take advantage of the growing market. The capacity utilisation increased by four percentage points in 2003, remained on this level in 2004 and then decreased in the RIP by five percentage points to the level of 82 %. The decrease between 2004 and the RIP results from the significant increase of production capacity in that period. Consequently, a higher production volume in the RIP, when compared with 2004, coincided with a lower capacity utilisation rate.

Table 5

	2002	2003	2004	RIP
Production capacity (tonnes)	1 760 332	1 762 378	1 848 315	2 156 294
Index	100	100	105	122
Capacity utilisation	83 %	87 %	87 %	82 %
Index	100	105	104	98

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2.3. SALES AND MARKET SHARE

(116) The volume sold by the Community industry on the Community market increased by 21 % between 2002 and the RIP. A growth of 2 % in 2003 was followed by an increase in both 2004 and RIP, by eight and 11 percentage points respectively. Notwithstanding the increase of sales, due to the higher consumption the Community industry's market share fell by four percentage points in 2003 and then gradually rose by five percentage points in 2004 and one percentage point in the RIP.

Table 6

	2002	2003	2004	RIP
Sales in the EC (tonnes)	1 306 768	1 333 976	1 438 883	1 586 902
Index	100	102	110	121
Market share	64 %	60 %	65 %	66 %

2.4. GROWTH

(117) Overall, it has to be noted that the Community industry's market share increased by 2 % in the period considered, which shows that its growth lagged behind the growth of consumption of the overall market.

2.5. EMPLOYMENT

(118) The level of employment of the Community industry increased by 18 % in the period considered. The main increase occurred in 2003 (11 percentage points) and 2004 (further six percentage points). Although this rising tendency continued in the RIP, the increase amounted to only two percentage points. This increase of 18 % during the whole period is linked to the production level which increased by 20 %.

Table 7

	2002	2003	2004	RIP
Employees	1 010	1 124	1 170	1 190
Index	100	111	116	118

2.6. PRODUCTIVITY

(119) The Community industry's productivity, measured as the output in tonnes per person employed per year, increased overall over the period considered. After initially falling by 6 % in 2003 compared to the year 2002 and remaining at this level in 2004, when productivity in the RIP increased significantly by more than 8 % compared to 2004, a period when production increased significantly.

Table 8

	2002	2003	2004	RIP
Productivity (tonnes/employee)	1 450	1 365	1 369	1 480
Index	100	94	94	102

2.7. WAGES

(120) It has to be noted that PET chips production is a capital-intensive industry and that therefore labour costs have a limited impact on the overall cost of the product. During the period, wages increased by 12 %, compared to a 20 % increase of the overall

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production cost. Another significant indicator is the cost of wages spent per tonne produced. During the period, this cost decreased by 6 %.

Table 9

	2002	2003	2004	RIP
Wages (EUR million)	62,3	63,0	66,3	69,5
Index	100	101	106	112
Wages per tonne produced (in EUR)	44,4	42,9	43,6	41,9
Index	100	96	98	94

2.8. SALES PRICES AND FACTORS AFFECTING COMMUNITY PRICES

(121) The unit sales prices increased from EUR 924/tonne in 2002 to 1 058 EUR/tonne in the RIP. Overall, the tendency was rising (by 15 % in the whole period). This increase is to a large extent a consequence of the increase in the price of raw materials, which is due to the increase in the oil price. Although the Community industry had increased prices it was not in the position to pass the increase on to the downstream sector and fully reflect the increase of raw materials prices in its sales prices. This was principally due to the fact that the increase in the price of raw materials was higher than the increase of PET prices. With the aim to maintain its market share, the Community industry could only moderately increase its prices and thus experienced price suppression.

Table 10

	2002	2003	2004	RIP
Weighted average price (EUR/tonne)	924	902	1 006	1 058
Index	100	98	109	115

2.9. COST OF PRODUCTION OF THE MAIN RAW MATERIALS

(122) Bearing in mind that around 850 kg of purified terephthalic acid (PTA) and 350 kg of monoethylene glycol (MEG) (the main raw materials) are needed to produce one tonne of PET, the costs of raw materials (PTA and MEG) increased significantly respectively by 67 % and by 31 % between 2002 and the RIP to reach the level of EUR 770/tonne (PTA) and EUR 721/tonne (MEG) (average of the RIP). Although a small decline in prices of PTA has been noted in the third quarter of 2005 when the prices dropped to the level of EUR 700/tonne, and a substantially stable price was observed for MEG, it has to be pointed out that the raw materials are purchased in advance based on long-term contracts. As a result, for the period considered, despite the small decline in prices of PTA at the end of the RIP, the Community industry still bears the consequences of the heavily increased costs. In addition, due to the situation on the world oil market the prices of raw materials for the production of PET are susceptible to unpredictable changes but they are most likely to remain at a high level. All these factors contribute to an increased level of vulnerability of the Community PET producers. It should be noted, however, that the main raw materials are products traded on a global level, and should therefore also affect the Indian exporting producers to the same extent.

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Table 11

average cost (EUR/tonne)

	2002	2003	2004	RIP
— PTA	460	566	718	770
Index	100	123	156	167
— MEG	551	550	650	721
Index	100	100	118	131

(123) By comparison the average unit cost per tonne of PET chips produced by the Community industry was the following:

Table 12

	2002	2003	2004	RIP
Weighted average cost (EUR/tonne)	899	918	1 013	1 092
Index	100	102	113	121

(124) During the period considered, as indicated in Tables 11 and 12, the main raw materials have continuously increased (PTA by 67 %, MEG by 31 %), while the overall cost of production raised only by 21 %. However, as shown in Table 10, prices have only increased by 15 % due to the fact that the Community industry was not in a position to pass the increase on to the downstream sector and fully reflect the rise of raw materials prices in its sales prices.

2.10. STOCKS

(125) The evolution of stocks over the whole period considered, i.e. between 2002 and the RIP, is down by 10 %. However, as in the original investigations, stocks should not be considered as a meaningful indicator as regards PET produced by the Community industry, given the seasonal nature of the PET market throughout the year. When compared to the production, stocks represent around 5 or 6 % of the output.

Table 13

	2002	2003	2004	RIP
Stocks (tonnes)	101 554	110 695	90 422	91 123
Index	100	109	89	90

2.11. PROFITABILITY, RETURN ON INVESTMENTS AND CASH FLOW

(126) Profitability on sales represents the profit generated by sales of the product concerned in the Community. Return on total assets and cash flow could only be measured at the level of the narrowest group of products which included the like product, pursuant to Article 8(8) of the basic Regulation. Moreover, return on investments has been calculated on the basis of return on total assets, as return on total assets is considered more relevant for the analysis of the trend.

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Table 14

	2002	2003	2004	RIP
Pre-tax profit margin on sales in the Community	2,7 %	–1,8 %	–0,7 %	–3,2 %
Return on total assets	2,0 %	–1,4 %	–0,6 %	–2,4 %
Cash flow (% of total sales)	18,1 %	5,5 %	10,1 %	–2,6 %

(127) Further to the price suppression starting in 2002 and coinciding with a strong increase of dumped imports from the PRC, Taiwan, Malaysia, Korea and Australia (until 2004), and of subsidised imports from India the financial situation of the Community industry deteriorated and turned into losses in 2003. After a small recovery in 2004 due to the anti-dumping measures imposed on PRC and Australia, losses increased to – 3,2 % in the RIP. It is therefore noted that there is a clear downward trend.

(128) The trends for return on total assets and for cash flow developed similarly i.e. showed a relatively good situation in 2002, a sharp deterioration in 2003, a small recovery in 2004 and a further deterioration in the RIP.

2.12. INVESTMENTS AND ABILITY TO RAISE CAPITAL

Table 15

	2002	2003	2004	RIP
Investments (EUR '000)	31 779	42 302	63 986	50 397
Index	100	133	201	159

(129) The investments were partly dedicated to an increase of capacity and partly to the improvement of the production process. The bulk of the expenditure was made in 2004 and during the RIP, coinciding with the increase of the capacity and with the aim to keep the market share in view of the increased consumption. Nevertheless, the current situation of the Community industry and the evolution of the Community and world markets for PET marked out by lack of profitability were not an incentive to make excessive investments. Although in some circumstances Community producers have been able to raise capital (in particular from related companies), the lack of profitability of PET did not encourage investment and in some cases the decision was postponed.

2.13. MAGNITUDE OF THE ACTUAL MARGIN OF SUBSIDY

(130) As concerns the impact on the Community industry of the magnitude of the actual margin of subsidy of Indian imports, given the price sensitivity of the market for this product, this impact cannot be considered to be negligible. It should be noted that this indicator is more relevant in the context of the likelihood of recurrence of injury analysis. Should measures lapse, it is likely that subsidised imports would come back at such volumes and prices that the impact of the magnitude of the subsidy margin would be significant.

2.14. RECOVERY FROM THE EFFECTS OF PAST SUBSIDISATION

(131) While the indicators examined above show some improvement in some economic indicators of the Community industry, further to

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the imposition of definitive countervailing measures in 2001, they also provide evidence that the Community industry is still fragile and vulnerable.

3. *CONCLUSION ON THE SITUATION OF THE COMMUNITY INDUSTRY*

(132) The constant increase of consumption partly due to new applications (inter alia beer and wine bottles) and partly due to the increase of consumption in the accession countries, obliged the Community industry to increase capacity and production in order not to lose market share. To do so, an important restructuring process accompanied by a frequent change of the ownership of the different producers, took place in 2004 and during the RIP. In parallel, the number of production lines was generally increased in order to follow the increase of the consumption and to concurrently achieve economies of scale. Thus, some economic indicators, i.e. consumption, capacity production, production, EU sales and employment indeed followed a positive trend. In addition, the sales price also increased during the period considered. However, all those restructuring efforts described above could not counterbalance the impact of the constant and massive increase of raw material prices in the period considered. The higher raw material costs could not be passed on to the downstream sector to the extent it would have been necessary to maintain a certain level of profitability. This caused a serious deterioration of the profitability which decreased from + 2,7 % in 2002 to – 3,2 % during the RIP. Similar negative trends were observed for the return on investments and for the cash flow.

(133) This coincided with the low price level of the imports from the country concerned which clearly contributed to the downward pressure on the price of the Community industry. However, given the small volumes of subsidised imports in the framework of this expiry review, the focus is on the likelihood of recurrence of injury analysis. Thus, despite the apparent positive developments concerning production, sales and sales price, the overall financial situation of the Community deteriorated and is reflected in the negative developments of profitability (from 2,7 % profit in 2002 to 3,2 % losses in the RIP), of export sales, production cost, return on investments and cash flow.

(134) 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 one percentage point between 2002 and the RIP, whilst it had earned five percentage points in the four years preceding the adoption of the definitive countervailing measures. On the other hand, the profitability of the Community industry during the RIP is less negative than before the imposition of definitive countervailing measures. Consequently, despite some apparent positive trends showed by the injury indicators, the situation of the Community industry is still far from the levels that could be expected had it fully recovered from the injury found in the original investigations.

(135) It is therefore concluded that the situation of the Community industry has slightly improved, as compared to the period preceding the imposition of measures, but is still very fragile and vulnerable. Furthermore, the price pressure from imports of the country concerned did not allow the Community industry to fully reflect the increase in the price of raw materials in its sales prices.

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G. LIKELIHOOD OF RECURRENCE OF INJURY

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

(136) 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 over 95 % 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 still be below the current price levels of export to the Community.

PRODUCTION CAPACITY, UNUSED CAPACITY AND STOCKS

(137) As indicated further under recital 140, the exporting producers in India have the potential to increase their export volumes to the Community market. India had a significant growth in its production capacity from the level of 330 000 tonnes in 2003 to 600 000 tonnes in 2005. According to market forecasts, it is expected to increase by a further 220 000 tonnes in 2008. In 2005, the domestic sales amounted to 220 000 tonnes and exports to 290 000 tonnes (including 6 831 tonnes to the EU). On the basis of the data available, on average, the current spare capacity should amount to around 90 000 tonnes and has to be considered as significant as it represents around 4 % of the current Community consumption. This estimate is confirmed by the results of the cooperating Indian producers, who had significant spare capacities.

(138) Concerning the stock level, the investigation has shown that the level of stocks held by the cooperating Indian producers was not significant. However, it should be noted that the level of stocks is not a meaningful factor as the market for PET is cyclical.

(139) To conclude, although the imports to the EU were low, there exists a risk that significant exports could be diverted to the EU.

CONCLUSIONS

(140) The producers in the country concerned therefore have the potential to raise and/or redirect their export volumes to the Community market. The investigation showed that the cooperating exporting producers sold the product concerned at a lower price than the Community industry. 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 137, also in order to regain the level of market shares held in the period before the imposition of measures. Such 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.

(141) As shown above, the situation of the Community industry remains vulnerable and fragile. It is likely that if the Community industry were exposed to increased volumes of imports from the country concerned at subsidised prices, this would result in a deterioration of its sales, market shares, sales prices as well as the consequent deterioration of the financial

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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.

(142) On the basis of the foregoing it is concluded that the import prices would most likely be lower on the Community market in the absence of anti-subsidy measures, as the producers in India would possibly try to increase their market shares. Such price behaviour, coupled with the ability of the exporting producers in India to sell significant quantities of PET on the Community market, would in all likelihood have the effect of reinforcing the price pressure, with an expected negative impact on the situation of the Community industry.

H. **COMMUNITY INTEREST**

1. *INTRODUCTION*

(143) According to Article 31 of the basic Regulation, it was examined whether the maintenance of the existing anti-subsidy 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. The present investigation analyses a situation in which anti-subsidy measures have already been in place and allows for assessment of any undue negative impact on the parties concerned due to the current anti-subsidy measures.

(144) 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*

(145) As outlined above, there is a clear likelihood of recurrence of injurious subsidisation if measures were to be repealed. All the Community producers but two fully cooperated and indicated their support for the ongoing measures.

(146) The continuation of anti-subsidy measures on imports from India would enhance the possibility for the Community industry to reach a reasonable level of profitability because it is likely that in the short medium-term, it would be able to increase sales quantities and thereby benefit from economies of scale and at the same time is likely to be able to moderately increase their sales price and thereby reach a satisfactory profit level. Even if subsidised imports in the RIP originating in the India were low and, therefore, could not have caused severe injury, they would be likely to negatively affect the situation of the Community industry if the anti-subsidy measures were repealed. These measures are thus essential to guarantee the viability of the Community industry's PET chips business, which has been facing competition from subsidised imports from India for several years.

3. *INTEREST OF IMPORTERS*

(147) Low cooperation was obtained from the importers/traders, and amongst those cooperating importers none were purchasing from India. However, the cooperating importers/traders could be regarded as representative as their sales volume represented around 5 % of the EU consumption. They would prefer a

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market with zero duties also if they are constantly enjoying good financial results.

(148) The investigation showed that there are still alternative sources of supply with no anti-subsidy or anti-dumping measures, i.e. from Mexico, Brazil, USA, Turkey, Pakistan, Iran, Saudi Arabia, available. The importers/traders would thus be able to rely on (or to switch to) considerable alternative sources of supply.

(149) Bearing in mind that the measures in force did not considerably affect the importers, it is concluded that maintaining the existing countervailing measures against imports originating in India would continue not have a significant negative effect on the situation of the importers in the Community.

4. *INTEREST OF CONVERTERS/USERS*

(150) The Commission sent questionnaires to 47 known converters/-users. Only 10 converters/users with an overall low representativity replied to the questionnaire. According to the information on purchases supplied in their responses to the questionnaire, cooperating converters/users during the IP represent about 20 % of total Community consumption of PET. They purchased during the IP 95 % of their PET from Community producers and the remainder from imports originating in countries other than the country subject to this review. A number of arguments against the imposition of duties were presented.

(151) Five converters (transforming PET chips in preforms and bottle grade and representing 10 % of the consumption) replied to the questionnaire. The cost of PET chips accounts for 55 % of their final product (mostly preforms). It has been established that they import negligible quantities from India and other third countries. Nevertheless they oppose the continuation of duties claiming that the measures could have the effect of artificially raising the prices in Europe.

(152) Five users accounting for about 10 % of the consumption supplied rather incomplete data. The low level of cooperation from the big users is likely to be due to the fact that the last investigation concerning imports of PET from the PRC, Australia and Pakistan took place only two years ago. PET costs account for around 6 or 7 % of the overall cost and are therefore rather limited. Although they have declared no imports from India, similarly as the converters, they oppose the imposition of duties claiming that the measures could have the effect of artificially raising the prices in Europe.

(153) Considering the rather good financial situation of the downstream industry, in contrast to that of the Community industry, no converter/user put forward the argument that maintaining the current duties could lead to a loss of jobs or to moving manufacturing facilities overseas.

(154) Furthermore, in terms of output, the Community industry adapted its size to match the increased consumption and therefore it is very likely that the unused capacity of the Community industry could fully cover the amount of the imports.

(155) Bearing in mind that there are still alternative sources of supply with no anti-subsidy or anti-dumping measures, i.e. from Mexico, Brazil, USA, Turkey, Pakistan, Iran, Saudi Arabia, the Community users would moreover be able to rely on (or to switch to) diversified suppliers of the product concerned.

(156) As concerns the performance of the user industry, the investigation has shown that during the period considered the cooperating users increased their turnover, maintained employment stable and rather improved overall their profitability. Therefore

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it was found that they were not negatively affected by the anti-subsidy measures.

(157) On the basis of the above, it is concluded that maintaining the existing anti-subsidy measures against imports originating in India would not have a significant negative effect on the situation of the users in the Community.

5. *INTEREST OF SUPPLIERS*

(158) The suppliers of raw material (monoethylene glycol (MEG) and purified terephthalic acid (PTA), DMT and IPA, all petrochemical products derivatives of naphtha, clearly indicated their support for the measures and provided good cooperation. They would benefit if measures are maintained as the Community industry would be likely to be able to recover allowing them to improve their performance.

6. *CONCLUSION ON COMMUNITY INTEREST*

(159) Taking into account all of the above factors, it is concluded that there are no compelling reasons against the maintenance of the current anti-subsidy measures against India.

I. **COUNTERVAILING MEASURES**

(160) All interested 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. The Government of India made comments on injury aspects alleging that it was not demonstrated that the Community industry suffered continued injury and that import pressure from India was not the reason that the European producers did not fully reflect the increase of the raw materials cost in their sale price. It is to be recalled that, as indicated in the analysis of the situation of the Community industry, its financial situation deteriorated and, as explained in recital 127, the low price level of the imports from the country concerned clearly contributed to the downward pressure on the price of the Community industry. However, given the small volumes of subsidised imports in the framework of this expiry review, the likelihood of recurrence of injury had to be examined. In this regard it was concluded, as stated in recital 127, that in absence of measures, increased volume of imports from India at low prices would have a negative impact on the situation of the Community industry. Furthermore, one Indian exporter alleged that in the absence of measures it is not likely that India will re-direct sales to the Community. This exporter claimed that emerging markets are more attractive than the Community, that Indian demand is growing fast and that, therefore, no spare capacity is available. It is however to be considered that, notwithstanding an increase of the demand in the Indian market, the investigation at company level indicated spare capacities, as also confirmed by the market intelligence. It is therefore concluded that none of the disclosure comments received were such as to alter the conclusions as contained in this regulation.

(161) 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 chips, originating in India should be maintained. It is recalled that these measures consist of specific duties.

(162) 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

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applicable to imports of the product concerned manufactured by these companies and thus by the specific legal entities mentioned. Imports of the product concerned produced 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'.

(163) 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 activity 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.

(164) 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 RIP. 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 having a viscosity of 78 ml/g or higher, according to ISO Standard 1628-5, falling within CN code 3907 60 20 and originating in India.

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

Country	Company	Countervailing duty (EUR/tonne)	TARIC additional code
India	Reliance Industries Ltd	69,4	A181
India	Pearl Engineering Polymers Ltd	74,6	A182
India	Senpet Ltd	22,0	A183
India	Futura Polyesters Ltd	0,0	A184
India	South Asian Petrochem Ltd	106,5	A585
India	All other companies	69,4	A999

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3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to

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

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Article 145 of Commission Regulation (EEC) No 2454/93 ([1]), the amount of countervailing duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

4. Notwithstanding paragraphs 1 and 2, the definitive countervailing duty shall not apply to imports released for free circulation in accordance with Article 2.

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

Article 2

1. Imports shall be exempt from the countervailing duties imposed by Article 1 provided that they are produced and directly exported (i.e. invoiced and shipped) to a company acting as an importer in the Community by the companies mentioned in paragraph 3, declared under the appropriate TARIC additional code and that the conditions set out in paragraph 2 are met.

2. When the request for release for free circulation is presented, exemption from the duties shall be conditional upon presentation to the customs service of the Member State concerned of a valid Undertaking Invoice issued by the exporting companies mentioned in paragraph 3, containing the essential elements listed in the Annex. Exemption from the duty shall further be conditional on the goods declared and presented to customs corresponding precisely to the description on the Undertaking Invoice.

3. Imports accompanied by an Undertaking Invoice shall be declared under the following TARIC additional codes:

Country	Company	TARIC additional code
India	Pearl Engineering Polymers Ltd	A182
India	Reliance Industries Ltd	A181
India	South Asian Petrochem Ltd	A585

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

([1]) OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1875/2006 (OJ L 360, 19.12.2006, p. 64).

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ANNEX

Elements to be indicated in the Undertaking Invoice referred to in Article 2(2):

1. The Undertaking Invoice number.
2. The TARIC additional code under which the goods on the invoice may be customs-cleared at Community borders (as specified in the Regulation).
3. The exact description of the goods, including:
   - the product reporting code number (PRC) (as established in the undertaking offered by the producing exporter in question),
   - CN code,
   - quantity (to be given in units).
4. The description of the terms of the sale, including:
   - price per unit,
   - the applicable payment terms,
   - the applicable delivery terms,
   - total discounts and rebates.
5. Name of the company acting as an importer to which the invoice is issued directly by the company.
6. The name of the official of the company that has issued the undertaking invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by … (company), and accepted by the European Commission through Decision 2000/745/EC. I declare that the information provided in this invoice is complete and correct.'