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Contents

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

Corrigenda

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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 365/2006

of 27 February 2006

amending Regulation (EC) No 1676/2001 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate film originating, *inter alia*, in India and terminating the partial interim review of the anti-subsidy measures applicable to imports of polyethylene terephthalate (PET) film originating, *inter alia*, in India

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] ('the basic anti-dumping Regulation'), in particular Article 11(3) thereof, and Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [2] ('the basic anti-subsidy Regulation'), in particular Article 19 thereof,

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

Whereas:

A. PROCEDURE

1. Existing measures and terminated investigations concerning the same product

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

(2) The Council, by Regulation (EC) No 1676/2001 [4], imposed definitive anti-dumping duties on imports of PET film originating, *inter alia*, in India. The measures took the form of an *ad valorem* duty ranging between 0 % and 62,6 % on imports of PET film originating in India ('the definitive anti-dumping measures'), with the exception of imports from five Indian companies (Ester Industries Limited (Ester), Flex Industries Limited (Flex), Garware Polyester Limited (Garware), MTZ Polyfilms Limited (MTZ), and Polyplex Corporation Limited (Polyplex)) from whom undertakings had been accepted by Commission Decision 2001/645/EC [5] accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of polyethylene terephthalate film originating inter alia in India.

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

(4) On 4 January 2005 [6], the Commission initiated a partial interim review of Regulation (EC) No 1676/2001 limited to the level of the definitive anti-dumping measures. This investigation has been concluded by Council Regulation (EC) No 366/2006 [7] which amended the level of the definitive anti-dumping measures.

(5) On 10 December 2004 [8], the Commission initiated an expiry review of the definitive countervailing measures. This investigation has been concluded by Council Regulation (EC) No 367/2006 [9] which maintained the definitive countervailing measures.

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(1) 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).

(2) 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).

(3) OJ L 316, 10.12.1999, p. 1. Regulation as amended by Regulation (EC) No 1976/2004 (OJ L 342, 18.11.2004, p. 8).

(4) OJ L 227, 23.8.2001, p. 1. Regulation as amended by Regulation (EC) No 1975/2004 (OJ L 342, 18.11.2004, p. 1).

(5) OJ L 227, 23.8.2001, p. 56.

(6) OJ C 1, 4.1.2005, p. 5.

(7) See page 6 of this Official Journal.

(8) OJ C 306, 10.12.2004, p. 2.

(9) See page 15 of this Official Journal.

2. **Requests for reviews**

Request for a review as regards countervailing measures

(6) In 2002, a request for a partial interim review, limited in scope to the form of the countervailing measures in respect of one company, was lodged by (Polyplex), an Indian exporting producer from whom an undertaking had already been accepted by Decision 2001/645/EC in connection with the anti-dumping measures in force. Polyplex provided information that an undertaking of the same nature would remove the injurious effects of subsidisation and could be monitored. Therefore, it was warranted to review the form of the countervailing measure.

Request for a review as regards countervailing measures

(7) In October 2003, a request for a partial interim review limited to the form of the anti-dumping measures was lodged by the following Community producers: Du Pont Teijin Films, Mitsubishi Polyester Film GmbH and Nuroll SpA (the applicants). The applicants represent a major proportion of the Community production of PET film. Toray Plastics Europe indicated its support for the request, although it was not a formal applicant.

(8) The applicants alleged that the form of the measures (i.e. the existing undertakings as accepted by Decision 2001/645/EC) was no longer effective in removing the injurious dumping. The applicants alleged that, since the acceptance of the existing undertakings, which are based on minimum import prices, the range of products sold by the exporters concerned had developed, notably to include more technically sophisticated film, so that the minimum prices under which some products may be categorised no longer reflected their true value, and thus the mechanism of the measures was no longer adequate in view of the new technological developments. Consequently, the undertakings were said to be no longer adequate to eliminate the injurious effects of dumping.

3. **Investigations**

Review regarding countervailing measures

(9) On 28 June 2002, the Commission announced by a notice of initiation published in the *Official Journal of the European Union* ([1]), the initiation of a partial interim review of the anti-subsidy measures limited in scope to the examination of the acceptability of an undertaking offered by the Indian exporting producer Polyplex, pursuant to Article 19 of the basic anti-subsidy Regulation.

(10) Given that a partial interim review of the form of the anti-dumping measures (i.e. the existing undertakings) was initiated in November 2003, as mentioned in recitals (12) and (13) below, the question of the acceptability of Polyplex's offer of an undertaking was kept open in order to complete both reviews at the same time. The Commission officially informed Polyplex of its intentions in this regard. No comments were made by the applicant in this respect.

Review of the form of the anti-dumping measures

(11) On 22 November 2003, the Commission announced by a notice of initiation published in the *Official Journal of the European Union* ([2]), the initiation of a partial interim review in accordance with Article 11(3) of the basic anti-dumping Regulation.

(12) The review was limited in scope to the form of the measures applicable to the five Indian exporting producers from whom undertakings had been accepted. The investigation period was from 1 October 2002 to 30 September 2003 (the current IP).

(13) The Commission officially informed the exporting producers, the representatives of the exporting country and the Community producers about the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit indicated in the notice of initiation.

(14) In order to obtain the information deemed necessary for its investigation, the Commission sent questionnaires to the exporting producers concerned, which all cooperated by replying to the questionnaire. Verification visits were carried out at the premises of the following exporting producers in India:

— Ester Industries Limited, New Delhi,

— Flex Industries Limited, New Delhi,

— Garware Polyester Limited, Aurangabad,

— MTZ Polyfilms Limited, Mumbai,

— Polyplex Corporation Limited, New Delhi.

B. **PRODUCT CONCERNED**

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

([1]) OJ C 154, 28.6.2002, p. 2.

([2]) OJ C 281, 22.11.2003, p. 4.

C. FINDINGS

Review of the form of the anti-dumping measures

(16) PET film has specific physical, chemical and technical characteristics, which include thickness, coating properties, surface treatment and mechanical properties among others, which determine various types of PET film through different treatments of base film during or after the production process, including corona treatment, metallisation or chemical coating. It therefore exists in many different forms or types. Given the existence of the large number of different product presentations (product types), and for the purpose of facilitating the monitoring of the undertakings, the products were grouped under different categories (groupings) based on technical characteristics. These groupings served as the basis for establishing the minimum import prices (MIPs) set out in the undertakings. In the original investigation, the number of MIPs established on the basis of those groupings ranged from 10 to 32 per exporter.

(17) In the framework of the current review, a comparison was made, within groupings, of the mix of model types and of price variations between the investigation period used in the original investigation (original IP) and the current IP.

(18) The analysis showed that the mix of model types sold under certain product groupings have changed since the acceptance of the undertakings. For several companies under investigation these changes have been very significant, to the extent that for some groupings most of the product presentations exported to the Community during the IP no longer correspond to the products exported during the original IP. Examples of changes which were noted within groupings were the dropping of lower value products, the addition of new apparently higher value products, and sometimes a combination of both of these.

(19) The analysis also showed that for certain product groupings the price variance (the range of product values) within the grouping has changed significantly since the acceptance of the undertakings. In this context it should also be noted that there has been a significant change in the pattern of sales between the different product groupings following the acceptance of undertakings. In particular, there appears to have been a tendency to concentrate sales on those groupings with a lower minimum price.

(20) Since the MIPs and the undertakings were established on the basis of the mix of product types and their corresponding values within the product groupings during the original IP, it is clear that the changes found in relation to the actual mix of products and values within those product groupings have rendered those specific MIPs, and therefore the undertakings, inappropriate to counteract the injurious effect of dumping.

Request regarding countervailing measures

(21) As regards the review limited in scope to the examination of the acceptability of an undertaking offered by Polyplex, the analysis showed that the corporate structure of that company would render monitoring of an undertaking complex, thus making an undertaking inappropriate as a form of effective countervailing measure. The complexity arises from the fact that the product concerned is also manufactured by a related company of Polyplex in a third country (Thailand), which creates a risk of cross-compensation of prices should the company in Thailand also export the product concerned to the Community. Monitoring and therefore enforcement would be too difficult to guarantee a proper functioning of the undertaking.

D. CONCLUSIONS

Review of the form of the anti-dumping measures

(22) The undertakings as they are, with MIPs based on groups of products, permit a large degree of flexibility for the exporters to change the technical characteristics of the products within the group. The product concerned comprises numerous and evolving differentiating features, which largely determine sales prices. Changes in those features consequently have a significant impact on prices. The only viable way to make the groupings more homogeneous in terms of physical characteristics and prices would be to subdivide the groupings. However, the consequence would be a multiplication of groupings that would render monitoring unworkable, in particular, by making it difficult for customs authorities to discern the difference between product types and the classification of products by grouping upon importation. Moreover, the number of groupings per company might increase by a factor of 5 to 11 compared to those in the undertakings if more characteristics of the different product types were considered in order to arrive at a more accurate classification. Currently, product types already fall into more than several hundred detailed groupings, thus rendering undertakings unworkable. This number might increase with further developments of the product characteristics.

(23) For certain companies subject to the review, the model types sold under a particular product grouping did not change significantly since the acceptance of the undertakings. However, the likely increase in the number of product groupings due to further developments in the product groupings, as mentioned in recital (22), could arise at any future stage and in the case of any exporting producer.

(24) It can therefore be concluded that, in order to enable effective monitoring of the undertakings, the groupings of products should be considerably more homogeneous in terms of physical characteristics and prices. These characteristics should be stable throughout the duration of the undertaking. The investigation has confirmed that this has not been the case as regards PET-film.

(25) On the basis of the above facts and considerations, it is considered that the undertakings are not appropriate to counteract the injurious effect of dumping, since they present both considerable monitoring and enforcement difficulties and unacceptable risks. In these circumstances, the undertakings accepted from the five Indian producers subject to the review of the form of the anti-dumping measures should be withdrawn.

(26) All parties concerned were informed of the essential facts and considerations on the basis of which the decision to withdraw the existing undertakings was made, and were given the opportunity to comment.

(27) Further to disclosure, some parties indicated that they considered that there were no monitoring or enforcement difficulties related to the undertakings and therefore there were no risks associated with the form of the measures. Furthermore many of the exporting producers indicated that they had not violated their undertaking agreements. One of the exporting producers concerned indicated that whereas the Notice of Initiation referred to the significance of the development of new product types, they had not introduced any new product types into the EU between the time of the offer of the existing undertaking and the current IP.

(28) As regards the technical aspects, the sheer number of variations of this product, coupled with product development possibilities, makes this product unsuited to undertakings as product developments would require a constant update of the MIPs which is not feasible (see recital 22). In this respect, it should be recalled that Article 8(3) of the basic Regulation indicates that undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons. In regard to the claim by exporters that they have not violated the terms of the undertakings, there is no suggestion that violation took place. The decision to withdraw the undertakings is based on evidence assembled during the investigation that changes in the mix of products make the undertaking inappropriate and that monitoring of sales of this product are unsuited to undertaking agreements (see recitals 18 to 20 and 22). Finally, the investigation showed that films different from the mix of products on which the MIPs were based were now widely sold in the Community under the undertaking agreements and that potentially that number and variety of products could grow. Thus, the market situation on which the undertakings had been established, as regards the products sold, is no longer representative in the current review and therefore the undertakings MIPs have become inappropriate.

(29) In this context, the fact that one exporting producer had not yet introduced any new product types, does not change the fact that the undertakings for the product concerned have been found to be inappropriate and their monitoring not feasible, as explained in recital 28 above.

(30) In addition, some exporting producers made reference to Article 15 of the Agreement on the implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994, hereinafter referred to as 'WTO Anti-dumping Agreement' and the requirement therein for developed countries to assist developing countries, indicating that the exporting producers should be given the opportunity to offer new undertaking agreements. It was suggested that the withdrawal of the undertakings was being made on speculative, non-material grounds which was devaluing the spirit of Article 15 of the WTO Anti-dumping Agreement and that withdrawal of the undertakings was a violation of the principle of proportionality.

(31) Article 15 of the WTO Anti-Dumping Agreement refers to the need to explore constructive remedies before applying anti-dumping duties. The existing undertakings were accepted in the spirit of seeking a constructive remedy to the injurious dumping. However, it should be recalled that Article 8.3 of the WTO Anti-dumping Agreement indicates that undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual of potential exporters is too great, or for other reasons. Far from withdrawing the undertakings on speculative grounds, the investigation has revealed that the products on which the Indian producers agreed to fix undertaking prices (i.e. the MIPs) are largely different from the products currently being sold into the Community. The withdrawal of the undertakings is therefore not disproportionate but a considered response to developments in the market place brought about by the exporting producers themselves.

Request for an undertaking as regards countervailing measures

(32) The conclusions of the review of the form of the anti-dumping measures that undertakings are not appropriate to counteract the injurious effect of dumping since they present both considerable monitoring and enforcement difficulties and unacceptable risks are equally valid as concerns countervailing measures. It was also found that the corporate structure of the Polyplex Group would lead to monitoring and enforcement difficulties vis-à-vis an undertaking. For this reason the acceptance of the undertaking is considered impractical within the meaning of Article 8(3) of the basic anti-subsidy Regulation.

(33) In the light of the above, it was concluded that the review investigation on the form of the anti-subsidy measures, limited to the acceptability of the undertaking offered by Polyplex, should be terminated and the undertaking in question not be accepted, since the conditions set out in Article 13(1) of the basic anti-subsidy Regulation regarding the acceptance of an undertaking are not met.

(34) The reasons why the undertaking offered could not be accepted were disclosed to the applicant concerned,

HAS ADOPTED THIS REGULATION:

Article 1

1. Article 1(3) of Regulation (EC) No 1676/2001 as in force on the day of publication of this Regulation shall be deleted.

2. Article 1(4) of Regulation (EC) No 1676/2001 as in force on the day of publication of this Regulation shall be renumbered Article 1(3).

3. Article 2 of Regulation (EC) No 1676/2001 as in force on the day of publication of this Regulation shall be deleted.

4. Articles 3 and 4 of Regulation (EC) No 1676/2001 as in force on the day of publication of this Regulation shall be renumbered Articles 2 and 3.

Article 2

The partial interim review of Regulation (EC) No 2597/1999 is hereby terminated with the non acceptance of the undertaking.

Article 3

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

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

Done at Brussels, 27 February 2006.

For the Council
The President
U. PLASSNIK

COUNCIL REGULATION (EC) No 366/2006

of 27 February 2006

amending Regulation (EC) No 1676/2001 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, *inter alia*, in India

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] ('the basic Regulation'), and in particular Article 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Existing measures and terminated investigations concerning the same product

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

(2) The Council, by Regulation (EC) No 1676/2001 [3], imposed definitive anti-dumping duties on imports of PET film originating, *inter alia*, in India ('the definitive anti-dumping measures'). Sampling was applied to the Indian exporting producers, and individual duties ranging from 0 % to 62,6 % were imposed on the companies in the sample, while other cooperating companies not included in the sample received a duty based on the weighted average dumping margin of 57,7 % reduced by their individual export subsidy margin. A duty of 53,3 % was imposed on all other companies. The original investigation period was 1 April 1999 to 31 March 2000 ('the original IP').

(3) On 22 August 2001, the Commission, by Decision 2001/645/EC [4], accepted undertakings offered by five Indian producers: Ester Industries Limited (Ester), Flex Industries Limited (Flex), Garware Polyester Limited (Garware), MTZ Polyfilms Limited (MTZ), and Polyplex Corporation Limited (Polyplex). The Commission announced on 17 February 2005 the change of name of MTZ by a notice published in the *Official Journal of the European Union* [5].

(4) The Council, by Regulations (EC) Nos 1975/2004 and 1976/2004, extended the definitive countervailing and anti-dumping measures on imports of PET film originating in India, to imports of the same product consigned from Brazil and Israel, whether declared as originating in Brazil or Israel or not.

(5) On 28 June 2002 [6], the Commission initiated a partial interim review of Regulation (EC) No 2597/1999 limited to the form of the definitive countervailing measures and, in particular, to the examination of the acceptability of an undertaking offered by one Indian exporting producer, pursuant to Article 19 of the basic Regulation. This investigation has been terminated by Regulation (EC) No 365/2006 [7].

(6) On 22 November 2003 [8], the Commission initiated a partial interim review of Regulation (EC) No 1676/2001 limited to the form of the definitive anti-dumping measures. This investigation has been concluded by Regulation (EC) No 365/2006, which amended Regulation (EC) No 1676/2001.

(7) On 10 December 2004 [9], the Commission initiated an expiry review of the definitive countervailing measures. This investigation has been concluded by Council Regulation (EC) No 367/2006 [10] which maintained the definitive countervailing measures.

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[1] 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).

[2] OJ L 316, 10.12.1999, p. 1. Regulation as amended by Regulation (EC) No 1976/2004 (OJ L 342, 18.11.2004, p. 8).

[3] OJ L 227, 23.8.2001, p. 1. Regulation as amended by Regulation (EC) No 1975/2004 (OJ L 342, 18.11.2004, p. 1).

[4] OJ L 227, 23.8.2001, p. 56.

[5] OJ C 40, 17.2.2005, p. 8.

[6] OJ C 154, 28.6.2002, p. 2.

[7] See page 1 of this Official Journal.

[8] OJ C 281, 22.11.2003, p. 4.

[9] OJ C 306, 10.12.2004, p. 2.

[10] See page 15 of this Official Journal.

(8) On 23 August 2005 [1], the Commission initiated a review of Regulations (EC) Nos 1975/2004 and 1976/2004 with respect to the application of an Israeli producer for an exemption from the extended measures. This investigation has been concluded by Council Regulation (EC) No 101/2006 [2].

2. Request for a review

(9) On 5 November 2004, a request for a partial interim review of Regulation (EC) No 1676/2001, limited to the level of dumping was lodged by the following Community producers: Du Pont Teijin Films, Mitsubishi Polyester Film GmbH and Nuroll SpA (the applicants). The applicants represent a major proportion of the Community production of PET film. Toray Plastics Europe indicated its support for the request, although it was not a formal applicant.

(10) The applicants alleged that in regard to imports of PET film from the five Indian producers from whom undertakings were accepted by Decision 2001/645/EC, the level of the existing measures is no longer sufficient to counteract the injurious dumping.

3. Investigation

(11) Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of a partial interim review, the Commission announced on 4 January 2005, by a Notice of initiation published in the *Official Journal of the European Union* [3], the initiation of a partial interim review, in accordance with Article 11(3) of the basic Regulation.

(12) The review was limited in scope to the examination of dumping by the five Indian exporting producers from which undertakings were accepted and to the level of the residual duty, in order to assess the need for the continuation, removal or amendment of the level of the existing measures. The investigation period was from 1 October 2003 to 30 September 2004.

(13) The Commission officially advised the exporting producers, the representatives of the exporting country and the Community producers of the initiation of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(14) In order to obtain the information deemed necessary for its investigation, the Commission sent questionnaires to the exporting producers concerned, which all cooperated by replying to the questionnaire. Verification visits were carried out at the premises of the following exporting producers in India:

— Ester Industries Limited, New Delhi,

— Flex Industries Limited, New Delhi,

— Garware Polyester Limited, Aurangabad,

— MTZ Polyfilms Limited, Mumbai,

— Polyplex Corporation Limited, New Delhi.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

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

2. Like product

(16) As in the original investigation, it was found that PET film produced and sold on the domestic market in India and PET film exported to the Community from India have the same basic physical and technical characteristics and uses. Therefore, they are like products within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Normal value

(17) In order to establish normal value, it was first verified that the total domestic sales of each of the exporting producers were representative in accordance with Article 2(2) of the basic Regulation, i.e. that they accounted for 5 % or more of the total sales volume of the product concerned exported to the Community. For all companies, overall sales were found to be representative.

(18) It was then ascertained whether total domestic sales of each product type constituted 5 % or more of the sales volume of the same type exported to the Community. For two companies it was found that they sold second grade film on the domestic market but not to the Community. Since second grade film is not directly comparable to first grade film, sales of second grade film were excluded from the calculation of normal value. Another company sold three different grades of film on the domestic market but only the best quality film to the Community. In selling the three grades of film, the company often sold the first and second grade films *en masse* with third grade film but all at the price of the third grade film. This was explained as being a form of stock clearance. Again, these sales were excluded from the calculation.

(19) One company sold to traders on the domestic market goods which were destined for export. The goods were readily identifiable as being destined for export, as they were subject to a different tax regime from normal sales on the domestic market. The company could not indicate whether the final destination of the goods would be the Community or a third country. These sales were therefore excluded from the calculation.

(1) OJ L 218, 23.8.2005, p. 3.
(2) OJ L 17, 21.1.2006, p. 1.
(3) OJ C 1, 4.1.2005, p. 5.

(20) For those product types where domestic sales constituted 5 % or more of the sales volume of the same type exported to the Community, it was then examined whether sufficient sales had been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. For each product type where the volume of domestic sales made at a net sales price equal to or above the cost of production represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was established on the basis of the weighted average price actually paid for all domestic sales of that type, irrespective of whether these sales were profitable or not. For those product types where the volume of profitable sales was equal to or lower than 80 %, but not lower than 10 % of sales, or where the weighted average price of that type was below the cost of production, normal value was based on the weighted average price actually paid for the profitable domestic sales of that type only.

(21) For the product types where domestic prices of the exporting producers could not be used to establish normal value owing to insufficient representativity or to a lack of sufficient sales in the ordinary course of trade, normal value was constructed on the basis of the manufacturing costs of the product types exported to the Community incurred by the exporting producers concerned plus a reasonable amount for selling, general and administrative costs (SG&A costs) and for profits, in accordance with Article 2(3) and (6) of the basic Regulation.

(22) In accordance with Article 2(6) of the basic Regulation the SG&A costs were based on such costs incurred by the exporting producers with regard to their domestic sales of the product concerned, which were found to be representative. The profit margin was calculated on the basis of the weighted average profit margin of each company for those product types sold on the domestic market in sufficient quantities in the ordinary course of trade.

(23) Following disclosure, one exporting producer contested the adjustment made to the price paid in respect of one specific raw material. The contested adjustment was re-examined, following which the level of adjustment was revised and the dumping margin recalculated accordingly.

(24) Another company argued that film which was not of top-quality should be included in the calculation and that 'adjustments' should be made in order to make that film comparable at the level of first grade film. It was also argued that further to the inclusion of these transactions a re-calculation of the profit margin would be necessary.

(25) The volume of second and third grade film excluded from the calculation represented less than 3 % of all domestic sales. As such, it is considered that the remaining domestic transactions are sufficiently representative for an accurate calculation of normal value. No re-calculation of the profit margin is therefore required.

(26) The exporting producers received disclosure of the calculations and submitted certain comments. The Commission took into account those comments and, to the extent that they were found to be justified, adjusted the calculations accordingly.

2. **Export price**

(27) As regards the determination of export prices, it should be recalled that the present investigation seeks to establish whether the levels of dumping have changed and whether these changes can be considered to be of a lasting nature. In that context, the determination of export prices cannot be limited to an examination of exporters' past behaviour, but has to examine also the likely development of export prices in the future. In other words, it has to be determined whether past export prices are reliable as an indication of likely future export prices. In this case, and in view of the fact that undertakings were accepted, it was examined in particular whether the existence of such undertakings has influenced the past export prices, so as to make them unreliable for the establishment of future export behaviour.

(28) In order to examine whether export prices to the Community were reliable and given the existence of undertakings, export prices to the Community were analysed in relation to the minimum import prices (MIPs) of the undertakings. It was in fact necessary to ascertain whether export prices to the Community were set at a certain level mainly as the effect of the existence of the MIPs established by the undertakings and therefore whether they were sustainable or not. It was therefore considered, on a weighted average basis at the level of each company, whether the prices practised for sales to the Community market were substantially above the MIPs or not, taking into consideration the particularities of the product concerned and the markets on which it was being sold during the IP, and how these prices related to prices for exports to third countries. When export prices to the Community were on average well above the MIPs at company level, it was considered that these export prices were set sufficiently independently from the undertakings, and therefore reliable as an indication of the price-setting behaviour which exporters would be likely to show in the future. On the contrary, when export prices to the Community were on average not sufficiently above the MIPs and in addition significantly above export prices to third countries, the former were considered to be influenced by the undertakings and therefore not reliable enough to be used for the dumping calculation, pursuant to Article 2(8) of the basic Regulation, in the context of an interim review.

(29) For two Indian exporters, Flex and Polyplex, it was found that their export prices to the Community were substantially above the MIPs. Therefore, these export prices to the Community were considered as reliable and were used in the dumping calculations.

(30) For the other three exporting producers, Ester, Garware and MTZ, it was found that the export prices to the Community were very close to the MIPs. Moreover, it was also found that the export prices of these three companies to other third countries were, when considered on a type by type basis, considerably below the prices to the Community, thus making it likely that, in the absence of undertakings such prices to the Community would be aligned to the prices made for the same types to other third countries. It was therefore concluded that the export prices of these three companies to the Community could not be used to establish reliable export prices in the meaning of Article 2(8) of the basic Regulation, in the context of the present interim review.

(31) It was considered, however, that the absence of a reliable price for these three Indian exporters, due to the existence of the undertakings in this case, should not lead to the termination of the review for these exporters, if a lasting change in circumstances regarding their dumping behaviour, in particular regarding export prices, could nevertheless be otherwise established. To this end and, given that the exporting producers were selling the product concerned on the world market, it was decided to establish the export price on the basis of prices actually paid or payable to all third countries for those models sold to the Community.

(32) Following disclosure of the essential facts and considerations on the basis of which it was intended to propose an amendment to Regulation (EC) No 1676/2001, a number of parties came forward with comments.

(33) A number of Indian exporting producers and the Indian Government maintained that no legal basis existed under Articles 2(8) or 2(9) of the basic Regulation for basing export prices on those to third countries. They argued that export prices to the Community existed and that it was not satisfactorily demonstrated that there was a sufficient basis to reject the use of those export prices. They maintained that the export prices to the Community were reliable and that they should be used instead of prices to third countries.

(34) In respect of the use of export prices to third countries, it must be stated that the purpose of this review under Article 11(3) of the basic Regulation is to determine whether the continued imposition of the measures is still necessary to offset dumping. In examining the level of dumping of the exporters concerned, it is necessary to examine the change in the level of dumping compared to the original findings on dumping. It should be noted that the use of the prices to third countries rather than those to the Community in the case of three Indian exporting producers is not based on the application of Articles 2(8) and 2(9) of the basic Regulation. As explained in recitals (27) and (28), this is justified by the need to assess the likelihood of those prices to the Community being maintained in the future and, consequently, the likelihood of recurrence of dumping.

(35) The conclusion drawn from this assessment was that, in the case of three Indian exporting producers, their prices to the Community had been influenced by the existence of the MIPs, since they were set very close to the MIPs. Thus, they were not a result of only market forces and were unlikely to be maintained at the same level into the future. Consequently, it was considered that there were no prices to the Community which could be used for the calculation of dumping. In the absence of an export price to the Community, it was considered that prices to third countries formed an accurate and reasonable alternative basis for the establishment of export prices during the investigation period and for the calculation of dumping.

(36) One Indian exporting producer argued that the rejection of its sales prices to the Community and the use of its prices to third countries constituted discrimination in that it was treated differently from those exporters for which their actual sales prices to the Community were used.

(37) In this respect, it should be noted that no discrimination occurred in establishing export prices since the same approach was taken in respect of all Indian exporters. In respect of each exporting producer, the existence of suitable export prices to the Community for the purpose of the calculation of dumping was assessed. This was carried out by comparing each exporting producer's export prices to the Community with the MIPs in order to establish whether or not they could be considered as having been set independently of those MIPs. As explained in recital (28), in cases where those prices were sufficiently above the MIPs it was concluded that they had not been influenced by the MIPs and that the prices could be used for the dumping calculation as they were reliable as an indication of the price-setting behaviour which the exporting producer would be likely to show in the future.

(38) Where it was considered that the prices to the Community had been influenced by the existence of the MIPs, then those prices were not considered reliable as an indication of the price-setting behaviour which the exporter would be likely to show in the future and were not used for the dumping calculation, prices to third countries being used as an alternative. The fact therefore that actual export prices of some exporters were used, while for other exporters their export prices to third countries were used, is not a discrimination of treatment between exporters.

(39) A number of Indian exporting producers disagreed with the conclusion that their export prices to the Community were very close to the MIPs and therefore could not be used for the calculation of dumping. They considered that their prices were sufficiently above the MIPs and pointed out that under the price undertaking they were merely required not to sell below the MIPs. One exporter argued that comparison against the MIPs was not a satisfactory basis to determine whether or not prices to the Community were reasonable and reliable, but that a comparison with the prices of other Indian exporting producers or of the Community industry would be more suitable.

(40) In this respect, as explained in recital (30), the Community institutions found that the prices of three exporting producers were not sufficiently above the level of the MIPs so as to demonstrate that they had been set independently of the MIPs. Therefore, such prices did not form a suitable basis for the dumping calculation. The fact that, under the price undertakings, the exporting producers were merely required not to sell below the MIPs was therefore not only not contested but irrelevant for this type of analysis.

(41) In the context of considering whether or not the prices to the Community had been influenced by the existence of the MIPs, it should be noted that when undertakings are present it is necessary to consider whether or not export prices are reliable and form a proper basis for the calculation of dumping margins. When prices to the Community are influenced by factors other than market forces, such as the undertaking MIPs, then these prices are considered as not reasonable or reliable. In this case, it must be pointed out that a comparison with the prices of each exporting producer to other third countries, as mentioned in recital (28), was considered more appropriate to determine the price-setting behaviour of a particular exporting producer, than a comparison with the prices of other Indian exporting producers or the Community industry, since it provided a better insight into the individual exporting producer's business behaviour.

(42) The Community industry argued that in view of the distorting effect of the undertaking MIPs, actual sales prices to the Community should have been rejected and use made instead of prices to third countries in the case of all the Indian exporting producers. They also expressed concern that those Indian exporting producers with low dumping margins calculated using export prices to the Community, would not continue to maintain their prices at the same level in the future.

(43) As concerns this argument, and as explained at recital (32), the same approach was adopted in respect of all Indian exporting producers. The use or non-use of each exporter's prices to the Community was based on the result of the assessment of whether or not those prices were influenced by the existence of the MIPs and on the difference between their price to the Community and export prices to third countries, as explained in recital (28).

(44) The Community industry also maintained that the comparison on a weighted average basis of export prices with the MIPs, in order to determine whether prices to the Community were representative of future behaviour and reliable for the assessment of dumping, was contradictory to the findings of the review of the form of the measures that the MIPs were no longer appropriate.

(45) In this regard it is to be noted that the question under the review of the form of the anti-dumping measures was whether or not the price undertakings were still appropriate or relevant (in the sense that they would have the same effect as the imposition of an anti-dumping duty) to the products being exported under them (see recital (8) of Council Regulation (EC) No 365/2006). In that review it was found that for some product groupings the range of actual prices to the Community had changed (either widened or narrowed) significantly from the original investigation and it was concluded that the specific MIPs based on the original prices were inappropriate to counteract the injurious effect of dumping in respect of current sales. Under the present review, the question was whether or not the prices to the Community were influenced by the existence of the undertaking MIPs, i.e. whether or not they are lasting. It is maintained that where prices are substantially above the MIPs, those prices are not influenced by the MIPs. This applies irrespective of whether price undertakings are appropriate for the product. In this case, the prices are therefore set by market forces and form a suitable basis for the assessment of dumping behaviour. This argument is therefore rejected.

3. **Comparison**

(46) The normal value and export price were compared on an ex-works basis. Due allowance in the form of adjustments was made for differences affecting price and price comparability in accordance with Article 2(10) of the basic Regulation. Accordingly, adjustments were made for differences in discounts, rebates, transport, insurance, handling, loading and ancillary costs, packing, credit and commissions, where applicable and supported by verified evidence. Adjustments to the export price were also made for some models of Ester, Garware and MTZ, as regards differences for physical characteristics of the product sold to third markets vis-à-vis the product sold to the Community, pursuant to Article 2(10)(a) of the basic Regulation.

(47) Two exporting producers claimed also, for a limited number of exports, an adjustment on the export price pursuant to Article 2(10)(k) of the basic Regulation, based on the amount of the benefits received on exportation under the Duty Entitlement Passbook Scheme (DEPB) on a post-export basis. In this respect, it was found that under this scheme, the credits received when exporting the product concerned could be used to offset customs duties due on imports of any goods or could be freely sold to other companies. In addition, there is no constraint that the imported goods should only be used in the production of the exported product. The producers did therefore not demonstrate that the benefit under the DEPB scheme on a post-export basis affected price comparability and, in particular, that the customers consistently paid different prices on the domestic market because of the DEPB benefits. Therefore, the claim was rejected.

4. **Dumping margin**

(48) The dumping margin was established on the basis of a comparison of a weighted average normal value with a weighted average export price, in accordance with Article 2(11) of the basic Regulation. Where export prices were based on prices to third countries, appropriate CIF values were calculated by increasing the ex-works price to third countries by the weighted average difference, by product type, between the ex-works and CIF level prices to the Community.

(49) Given the considerable reduction of the individual dumping margins compared to the initial measures, it was also considered appropriate to modify the residual duty. The latter was established, pursuant to Article 11(9) of the basic Regulation, on the basis of the highest dumping margin established for the five Indian exporting producers subject to the current review, since the five companies concerned were considered to be representative of the sampled cooperating producers in terms of export volumes on which basis the initial residual duty was calculated.

(50) The dumping margins, expressed as a percentage of the CIF Community frontier price, duty unpaid, are as follows:

Ester Industries Ltd	29,3 %
Flex Industries Ltd	3,2 %
Garware Polyester Ltd	20,1 %
MTZ Polyfilms Ltd	26,7 %
Polyplex Corporation Ltd	3,7 %
All other companies	29,3 %

D. **LASTING NATURE OF THE CHANGED CIRCUMSTANCES**

(51) In accordance with Article 11(3) of the basic Regulation, an analysis was made as to whether the change in circumstances with regard to dumping could reasonably be said to be of a lasting nature.

(52) In this regard, it should be noted that normal value was established on the basis of the applicants' costs and prices. The exporters have a substantial domestic market for the product concerned, and domestic prices have increased in comparison with the original investigation. No indications could be found that the normal value established during the present review could not be considered to be of a lasting nature.

(53) It could be argued that the evolution of the prices of the raw materials, highly correlated to the oil prices, could have a significant influence on the normal value. It was however considered that since the raw materials are commodities for which the price is internationally determined, the effect of the price increase would affect all actors on the market and therefore have an impact on both the normal value and the export price.

(54) As already mentioned in recitals (22) and (23), given the existence of undertakings, in order to examine whether export prices to the Community could be considered to be of a lasting nature or not, the latter needed to be analysed in relation to the MIPs set in the undertakings. In addition, a price comparison was made between the prices of the product concerned sold for export to the Community and for export to third countries during the investigation period. As explained in recital (23), it was considered that when export prices to the Community were not sufficiently above the MIPs and were significantly above export prices to third countries, the former were not considered to be a reliable indication of the price-setting behaviour which exporters would be likely to show in the future. Instead, export prices to third countries were used in order to determine future export prices that could be considered as lasting.

(55) On that basis, it is concluded that the changed circumstances with respect to the original investigation regarding dumping could reasonably be considered to be of a lasting nature, with the particularity that for three Indian exporters, as concluded in recital (26), the lasting change in circumstances regarding their dumping behaviour, in particular regarding export prices, had to be established on the basis of prices actually paid or payable to other third countries for those models sold to the Community rather than on the basis of their export price to the Community.

(56) The considerable reduction of the individual dumping margins of the companies in the sample, as compared to the initial measures, and the lasting nature thereof, can be considered to be representative for all other companies as well. Therefore, the residual duty had to be modified accordingly, as explained in recital (30).

E. **CONCLUSION**

(57) In view of the conclusions reached with regard to dumping and the lasting nature of the changed circumstances, and having regard to the conclusions of Regulation (EC) No 365/2006 as regards the form of the anti-dumping measures (withdrawal of the undertakings in force), the anti-dumping measures on imports of the product concerned originating in India, should be amended in order to reflect the new dumping margins found.

(58) Since, pursuant to Article 14(1) of the basic Regulation, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation, the countervailing duty in force that corresponds to export subsidies was deducted from the anti-dumping duty to be applied. For the residual duty, the deduction corresponds to the export subsidy margin of the company on the basis of which the residual dumping margin was established.

(59) On the basis of the above, and taking into account the findings of the expiry review of the definitive countervailing duties (Regulation (EC) No 367/2006), the proposed duty amounts, expressed on the CIF Community border price, customs duty unpaid, are as follows:

Company	Export Subsidy Margin	Total Subsidy Margin	Dumping Margin	CVD duty	AD duty	Total duty rate
Ester Industries Ltd	12,0 %	12,0 %	29,3 %	12,0 %	17,3 %	29,3 %
Flex Industries Ltd	12,5 %	12,5 %	3,2 %	12,5 %	0, %	12,5 %
Garware Polyester Ltd	2,7 %	3,8 %	20,1 %	3,8 %	17,4 %	21,2 %
MTZ Polyfilms Ltd	8,7 %	8,7 %	26,7 %	8,7 %	18,0 %	26,7 %
Polyplex Corporation Ltd	19,1 %	19,1 %	3,7 %	19,1 %	0 %	19,1 %
All other companies	12,0 % [1]	19,1 %	29,3 %	19,1 %	17,3 %	36,4 %

[1] For the purpose of calculating the final anti-dumping duty for 'all other companies', the export subsidy margin of the company on the basis of which the dumping margin for 'all other companies' is based was taken into consideration.

(60) As outlined under recital (4), the anti-dumping measures in force were extended to cover, in addition, imports of PET film consigned from Brazil and Israel, whether declared as originating in Brazil or Israel or not. The amended anti-dumping measures, as set out in recital (59), should continue to be extended to imports of PET film consigned from Brazil and Israel, whether declared as originating in Brazil or Israel or not. The Brazilian and Israeli exporting producers who were exempted from the measures as extended by Regulation (EC) No 1975/2004 and amended by Regulation (EC) No 101/2006 should also be exempted from the measures as amended by this Regulation.

(61) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to propose an amendment to Regulation (EC) No 1676/2001 and were given the opportunity to comment.

(62) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products 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'.

(63) Any claim requesting the application of these individual company anti-dumping duty rates, for instance 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 forthwith with all relevant information, in particular, any modification in the company's activities linked to production, domestic sales and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, Regulation (EC) No 1676/2001 will accordingly be amended by updating the list of companies benefiting from individual duties.

(64) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporters, but also to those companies which did not have any exports during the IP.

(65) It should be noted that the Indian exporter MTZ changed its address with effect from July 2005, with no other changes to the company's ownership, structure or operations. The address of the company should therefore be amended.

(66) For the purpose of transparency and having regard to Regulation (EC) No 365/2006, adopted on the same day as this Regulation and also concerning a review of the definitive anti-dumping measures, a new consolidated version of Article 1 of Regulation (EC) No 1676/2001 should be included in the operative part of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EC) No 1676/2001 as last amended by Regulation (EC) No 365/2006 shall be replaced by the following:

'*Article 1*

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

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows for products originating in:

Country	Company	Definitive Duty (%)	TARIC Additional Code
India	Ester Industries Limited 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi — 110 003, India	17,3 %	A026
India	Flex Industries Limited A-1, Sector 60, Noida 201 301, (U.P.), India	0,0 %	A027
India	Garware Polyester Limited Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	17,4 %	A028
India	Jindal Poly Films Limited 56 Hanuman Road, New Delhi 110 001, India	0,0 %	A030
India	MTZ Polyfilms Limited New India Centre, 5th floor, 17 Co-operage Road, Mumbai 400 039, India	18,0 %	A031
India	Polyplex Corporation Limited B-37, Sector-1, Noida 201 301, Dist. Gautam Budh Nagar, Uttar Pradesh, India	0,0 %	A032
India	All other companies	17,3 %	A999
Korea	Kolon Industries Inc. Kolon Tower, 1-23, Byulyang-dong, Kwacheon-city, Kyunggi-do, Korea	0,0 %	A244
Korea	SKC Co. Ltd. Kyobo Gangnam Tower, 1303-22, Seocho 4 Dong, Seocho Gu, Seoul 137-074, Korea	7,5 %	A224
Korea	Toray Saehan Inc. 17F, LG Mapo B/D 275 Kongdug-Dong Mapo-Gu Seoul 121-721 Korea	0,0 %	A222
Korea	HS Industries Co. Ltd. Kangnam Building, 5th floor 1321, Seocho-Dong Seocho-Ku Seoul Korea	7,5 %	A226
Korea	Hyosung Corporation 450, Kongduk-Dong Mapo-Ku Seoul Korea	7,5 %	A225
Korea	KP Chemical Corporation No. 89-4, Kyungun-Dong Chongro-Ku Seoul Korea	7,5 %	A223
Korea	All other companies	13,4 %	A999

3. Where any party provides sufficient evidence to the Commission:

— that it did not export the goods described in Article 1(1) during the original investigation period,

— that it is not related to any exporter or producer subject to the measures imposed by this Regulation,

and

— that it has exported the goods concerned after the investigation period, or that it has entered into an irrevocable contractual obligation to export a significant quantity to the Community,

the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend Article 1(2) by adding that party to the list of companies subject to anti-dumping measures as appears in the table in Article 1(2).

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

Article 2

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

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

Done at Brussels, 27 February 2006.

For the Council
The President
U. PLASSNIK

COUNCIL REGULATION (EC) No 367/2006

of 27 February 2006

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not member of the European Community [1] (hereinafter referred to as the basic Regulation), and in particular Article 18 thereof,

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

Whereas:

A. PROCEDURE

1. EXISTING MEASURES AND TERMINATED INVESTIGATIONS CONCERNING THE SAME PRODUCT

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

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

(3) It is noted that the company formerly known as MTZ Polyesters Limited changed name. Its new name is MTZ Polyfilms Limited. This change of name in no way affected the findings of Regulation (EC) No 2597/1999 and the right of the company to benefit from the individual duty rate applied to it under its previous name. The Commission announced on 17 February 2005 the change of name of MTZ by a notice published in the *Official Journal of the European Union* [5]. It is further noted that MTZ changed its address with effect from July 2005, with no other changes to either the company's ownership, structure or operations. The address of the company should therefore be amended.

(4) The Council, by Regulations (EC) No 1975/2004 [6] and (EC) No 1976/2004 [7], extended the definitive countervailing and anti-dumping measures on imports of PET film originating in India, to imports of the same product consigned from Brazil and Israel, whether declared as originating in Brazil or Israel or not.

(5) On 28 June 2002 [8], the Commission initiated a partial interim review limited to the form of the definitive countervailing measures and, in particular to the examination of the acceptability of an undertaking offered by one Indian exporting producer, pursuant to Article 19 of the basic Regulation. This investigation has been terminated by Council Regulation (EC) No 365/2006 [9].

(6) On 22 November 2003 [10], the Commission initiated a partial interim review limited to the form of the definitive anti-dumping measures. This investigation has been concluded by Council Regulation (EC) No 365/2006.

(7) On 4 January 2005 [11], the Commission initiated a partial interim review limited to the level of the definitive anti-dumping measures. This investigation has been concluded by Council Regulation (EC) No 365/2006, which amended the level of the definitive anti-dumping measures.

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[1] OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation No 461/2004 (OJ L 77, 13.3.2004, p. 12).
[2] OJ L 316, 10.12.1999, p. 1.
[3] OJ L 227, 23.8.2001, p. 1.
[4] OJ L 227, 23.8.2001, p. 56.
[5] OJ C 40, 17.2.2005, p. 8.
[6] OJ L 342, 18.11.2004, p. 1. Regulation as last amended by Regulation (EC) No 101/2006 (OJ L 17, 21.1.2006, p. 1).
[7] OJ L 342, 18.11.2004, p. 8. Regulation as amended by Regulation (EC) No 101/2006.
[8] OJ C 154, 28.6.2002, p. 2.
[9] See page 1 of this Official Journal.
[10] OJ C 281, 22.11.2003, p. 4.
[11] OJ C 1, 4.1.2005, p. 5.

(8) On 23 August 2005 [1], the Commission initiated a review of Regulations (EC) No 1975/2004 and (EC) No 1976/2004 with respect to the application of an Israeli producer for an exemption from the extended measures. This investigation has been terminated by Council Regulation (EC) No 101/2006.

2. REQUEST FOR AN EXPIRY REVIEW

(9) Following the publication of a notice of impending expiry [2] of the definitive countervailing measures in force, the Commission received a request for the initiation of an expiry review of Council Regulation (EC) No 2597/1999 pursuant to Article 18 of the basic Regulation, from Community producers of the like product, i.e. DuPont Teijin Films, Mitsubishi Polyester Film GmbH, Nuroll SpA and Toray Plastics Europe (hereinafter referred to as the applicants). The applicants represent a major proportion, in this case over 50 %, of the total Community production of PET film.

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

(11) Prior to the initiation of the expiry review, and in accordance with Articles 10(9) and 22(1) of the basic Regulation, the Commission notified the Government of India (hereinafter referred to as the GOI) that it had received a properly documented review request and invited the GOI for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. However, the Commission did not receive any answer from the GOI regarding its offer for consultation.

3. INITIATION OF AN EXPIRY REVIEW

(12) The Commission examined the evidence submitted by the applicants and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 18 of the basic Regulation. After consultation of the Advisory Committee, the Commission initiated an expiry review of Council Regulation (EC) No 2597/1999 by means of a notice published in the *Official Journal of the European Union* [3].

4. INVESTIGATION PERIOD

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

5. PARTIES CONCERNED BY THE INVESTIGATION

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

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

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

(17) From the eight Indian exporting producers, four companies (Ester, Flex, Garware and Jindal Poly Films Limited (hereinafter referred to as Jindal)), were selected for the sample. These were found to constitute the largest representative volume of the production, sales and exports to the Community of PET film, which could reasonably be investigated within the time available, pursuant to Article 27(1) of the basic Regulation.

(18) By a notice published in the *Official Journal of the European Union* [4], the Commission announced that the company formerly known as Jindal Polyester Limited changed its address. The address of the company should therefore be amended.

(19) By a notice published in the *Official Journal of the European Union* [5], the Commission announced that the company formerly known as Jindal Polyester Limited changed its name to Jindal Poly Films Limited. The name of the company should therefore be amended.

[1] OJ L 218, 23.8.2005, p. 3.
[2] OJ C 62, 11.3.2004, p. 4.
[3] OJ C 306, 10.12.2004, p. 2.
[4] OJ C 189, 9.8.2002, p. 34.
[5] OJ C 297, 2.12.2004, p. 2.

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

(a) **Community producers**

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

— Mitsubishi Polyester Film GmbH, Wiesbaden, Germany,

— Nuroll SpA, Pignataro Maggiore, Italy,

— Toray Plastics Europe, Miribel, France;

(b) **Government of India**

— Ministry of Commerce, New Delhi;

(c) **Exporting producers in India**

— Ester Industries Limited, New Delhi,

— Flex Industries Limited, New Delhi,

— Garware Polyester Limited, Aurangabad,

— Jindal Poly Films Limited, New Delhi;

(d) **Importer/user**

— Coveme SpA, San Lazzaro di Savena, Italy;

(e) **Up-stream supplier**

— Oxxynova GmbH, Marl, Germany.

6. DISCLOSURE

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

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

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

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

C. **SUBSIDIES**

1. INTRODUCTION

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

1.1. **Nationwide schemes**

(a) Advance licence/Advance release order;

(b) Duty entitlement passbook;

(c) Special economic zones/Export oriented units;

(d) Export promotion capital goods;

(e) Duty free replenishment certificate;

(f) Income tax exemption;

(g) Export credit:

— pre-export,

— post-export,

(h) Capital infusions.

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

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

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

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

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

1.2. **Regional schemes**

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

(a) *State of Uttar Pradesh,*

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

(b) *State of Maharashtra,*

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

2. NATIONWIDE SCHEMES

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

(a) *Legal basis*

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

(b) *Eligibility*

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

(c) *Practical implementation*

(32) Advance licences can be issued for:

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Disclosure comments*

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

(40) It should be noted that the changes to the ALS referred to took effect both after the IP and after the verification visit of the Commission services, and were therefore unverifiable in their practice. In addition, by means of a public notice released on 10 October 2005, paragraph 4.26 HOP I 2002-2007 was complemented as follows: 'the licensing authority shall also take action against the licensee in case of non submission of duly filled in appendix 23 (other name for the consumption register)' However, there is no indication of what that action might be.

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

(e) *Conclusion*

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

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

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

(45) The sub-schemes are therefore countervailable.

(f) *Calculation of the subsidy amount*

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

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

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

(a) *Legal basis*

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

(b) *Eligibility*

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

(c) *Practical implementation of the DEPB*

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

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

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

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

(54) The GOI and one exporter brought to the attention of the Commission services that this scheme would be soon discontinued and be replaced by an allegedly 'WTO compatible' scheme. The DEPB was originally planned to expire on 1 April 2005. However, as the replacement scheme was not ready to be implemented, the existence of the DEPB was prolonged until 1 April 2006. Should the new scheme not be ready for entry into force by that date, the DEPB would remain in force as long as necessary.

(d) *Disclosure comments*

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

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

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

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

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

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

(e) *Conclusions on the DEPB*

(60) The DEPB provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation. A DEPB credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, the DEPB credit confers a benefit upon the exporter, because it improves the liquidity of the company.

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

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

(f) *Calculation of the subsidy amount*

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

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

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

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

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

(a) *Legal basis*

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

(b) *Eligibility*

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

(c) *Practical implementation*

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

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

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

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

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

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

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

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

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

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

(vi) possibility of 100 % foreign equity ownership.

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

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

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

(d) *Disclosure comments*

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

(e) *Conclusions on the EOU*

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

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

(80) In addition, it was confirmed that the GOI has no effective verification system or procedure in place to confirm whether and in what amounts duty and or sales-tax-free procured inputs were consumed in the production of the exported product (Annex II(II)(4) to the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) to the basic Regulation). In addition, exemption from duties on capital goods is clearly not a permissible duty drawback scheme.

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

(f) *Calculation of the subsidy amount*

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

(i) Reimbursement of central sales tax on revenue goods

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

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

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

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

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

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

(a) *Legal basis*

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

(b) *Eligibility*

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

(c) *Practical implementation*

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

(d) *Disclosure comments*

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

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

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

(e) *Conclusion on EPCG*

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

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

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

(f) *Calculation of the subsidy amount*

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

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

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

(a) *Legal basis*

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

(b) *Practical implementation*

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

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

(a) *Legal basis*

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

(b) *Practical implementation*

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

(102) Two of the investigated exporters indicated that they received the benefit of a partial income tax exemption on profits derived from export sales during the IP under Section 80HHC of the ITA. However, given that this provision of the ITA was abolished from the financial year running from the 1 April 2004 to the 31 March 2005 onwards, it will not confer any benefit on the applicant after 31 March 2004. Benefits under Section 80HHC of the ITA shall therefore not be countervailed, in accordance with Article 15(1) of the basic Regulation.

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

(a) *Legal basis*

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

(b) *Eligibility*

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

(c) *Practical implementation*

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

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

(d) *Disclosure comments*

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

(e) *Conclusion on the ECS*

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

(f) *Calculation of the subsidy amount*

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

2.8. **Capital infusions**

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

3. REGIONAL SCHEMES

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

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

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

(a) *Legal basis*

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

(b) *Eligibility*

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

(c) *Practical implementation*

(114) Exemption from the local sales tax – Goods are normally subject to central sales tax (for inter-State sales) or State sales tax (for sales within the State) at varying levels depending upon the State/States in which transactions are being made. There is no sales tax on the import or export of goods, while domestic sales are subject to the sales tax at the applicable rates. Under the exemption scheme, designated units are not required to collect any sales tax on their sales transactions. Similarly, designated units are exempted from the payment of the local sales tax on their purchases of goods from a supplier itself eligible for the scheme. Whereas the sales transaction does not confer any benefit on the designated selling unit, the purchase transaction does confer a benefit to the designated purchasing unit. Two of the four sampled companies had one unit each eligible for the PSI of the GOM during the IP. Under the scheme, these two units were exempted from the sales tax on certain of their domestic purchases made from suppliers eligible for the exemption scheme.

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

(d) *Disclosure comments*

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

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

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

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

(f) *Calculation of the subsidy amount*

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

4. AMOUNT OF COUNTERVAILABLE SUBSIDIES

(120) The amount of countervailable subsidies determined in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers ranges between 11,7 % and 15,2 %. These amounts of subsidisation exceed the *de minimis* threshold mentioned under Article 14(5)(a) and (b) of the basic Regulation.

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

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

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

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

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

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

E. **COMMUNITY INDUSTRY**

1. COMMUNITY PRODUCTION

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

2. COMMUNITY INDUSTRY

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

— DuPont Teijin Films,

— Mitsubishi Polyester Film GmbH,

— Nuroll SpA,

— Toray Plastics Europe.

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

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

F. **SITUATION ON THE COMMUNITY MARKET**

1. PRELIMINARY REMARK

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

2. CONSUMPTION IN THE COMMUNITY MARKET

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

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

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

3. IMPORTS FROM THE COUNTRY CONCERNED

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

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

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

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

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

4. IMPORTS FOUND TO BE CIRCUMVENTING

(136) As mentioned in recital 4, it was further found that circumvention of the original measures concerning imports from India took place respectively via Brazil and Israel. Consequently, the measures imposed on imports originating in India were extended in November 2004 to imports of the same PET film consigned from Brazil and from Israel, whether declared as originating in Brazil or Israel or not, with the exception of those produced by a genuine Brazilian producer and a genuine Israeli producer. As referred to in recital 8, a second Israeli producer was exempted from the extended measures. The two above proceedings evidenced that a very limited volume of imports into the Community from Brazil (around 10 tonnes) and Israel (around 180 tonnes) were attributed in 2003 to genuine Brazilian and Israeli producers. It should be recalled that the date of the above extension of the anti-dumping and countervailing measures is posterior to the trends described under recitals 137 and 138.

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

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

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

5. IMPORTS FROM THE REPUBLIC OF KOREA

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

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

6. IMPORTS FROM OTHER COUNTRIES

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

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

G. ECONOMIC SITUATION OF THE COMMUNITY INDUSTRY

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

1. PRODUCTION

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

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

2. CAPACITY AND CAPACITY UTILISATION RATES

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

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

3. STOCKS

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

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

4. SALES VOLUME

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

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

5. SALES VOLUME

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

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

6. GROWTH

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

7. EMPLOYMENT

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

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

8. PRODUCTIVITY

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

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

9. SALES PRICES AND FACTORS AFFECTING DOMESTIC PRICES

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

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

10. WAGES

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

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

11. INVESTMENTS

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

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

12. PROFITABILITY AND RETURN ON INVESTMENTS

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

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

13. CASH FLOW AND ABILITY TO RAISE CAPITAL

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

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

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

14. MAGNITUDE OF SUBSIDISATION

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

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

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

16. CONCLUSION

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

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

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

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

(162) It is therefore concluded that the situation of the Community industry has not improved to the extent that could have been expected after the imposition of the definitive countervailing and anti-dumping measures. The Community industry is therefore still in a fragile situation.

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

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

H. LIKELIHOOD OF CONTINUATION AND/OR RECURRENCE OF INJURY

1. PRELIMINARY REMARKS

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

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

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

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

3. UNUSED CAPACITY AND STOCKS

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

4. CONCLUSION

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

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

I. COMMUNITY INTEREST

1. INTRODUCTION

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

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

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

2. INTEREST OF THE COMMUNITY INDUSTRY

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

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

3. INTEREST OF IMPORTERS/USERS

(176) As indicated in recital 20, only one importing company, which is also a user of the product concerned, fully cooperated in this investigation. For reasons of confidentiality, exact figures concerning this importer/user can therefore not be disclosed. However, this importer/user is deemed to be representative of the situation of other importers/users in the Community because of its relatively high total turnover. This importer purchases the PET film from a variety of sources, which include India and the Community industry. This company's resales of the product concerned originating in India represented less than 20 % of its turnover during the IP. The profitability of the cooperating importer/user stood between 5 to 10 % over turnover in the IP.

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

4. INTEREST OF UP-STREAM SUPPLIERS

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

5. CONCLUSION

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

J. **COUNTERVAILING MEASURES**

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

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

(182) As outlined in recital 4, the countervailing duties in force were extended to cover, in addition, imports of PET film consigned from Brazil and Israel, whether declared as originating in Brazil or Israel or not. The countervailing measures to be maintained on imports of the product concerned, as set out in recital 181, should be the measures as extended to imports of PET film consigned from Brazil and Israel, whether declared as originating in Brazil or Israel or not. The Brazilian and Israeli exporting producers who were exempted from the measures as extended by Regulation (EC) No 1976/2004 and amended by Council Regulation (EC) No 101/2006 should also be exempted from the measures as imposed by this Regulation.

(183) The individual company countervailing duty rates specified in this Regulation reflect the situation found during the review with respect to the cooperating exporters. Thus, they are solely applicable to imports of the product concerned produced by these companies and thus by the specific legal entities mentioned. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty for imports produced in India by the companies listed below, shall be as follows:

Country	Company	Definitive duty (%)	Taric additional code
India	Ester Industries Limited, 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi-110 003, India	12,0	A026
India	Flex Industries Limited, A-1, Sector 60, Noida 201 301 (U.P.), India	12,5	A027
India	Garware Polyester Limited Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	3,8	A028
India	India Polyfilms Limited, 112 Indra Prakash Building, 21 Barakhamba Road, New Delhi 110 001, India	7,0	A029
India	Jindal Poly Films Limited, 56 Hanuman Road, New Delhi 110 001, India	7,0	A030
India	MTZ Polyfilms Limited, New India Centre, 5th floor, 17 Co-operage Road, Mumbai 400 039, India	8,7	A031
India	Polyplex Corporation Limited, B-37, Sector-1, Noida 201 301, Dist. Gautam Budh Nagar, Uttar Pradesh, India	19,1	A032
India	All other companies	19,1	A999

3. The definitive countervailing duty applicable to imports from India, as set out in paragraph 2, is hereby extended to imports of the same polyethylene terephthalate film consigned from Brazil and consigned from Israel (whether declared as originating in Brazil or Israel or not) (TARIC codes 3920 62 19 01, 3920 62 19 04, 3920 62 19 07, 3920 62 19 11, 3920 62 19 14, 3920 62 19 17, 3920 62 19 21, 3920 62 19 24, 3920 62 19 27, 3920 62 19 31, 3920 62 19 34, 3920 62 19 37, 3920 62 19 41, 3920 62 19 44, 3920 62 19 47, 3920 62 19 51, 3920 62 19 54, 3920 62 19 57, 3920 62 19 61, 3920 62 19 67, 3920 62 19 74, 3920 62 19 92, 3920 62 90 31, 3920 62 90 92) with the exception of those produced by:

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

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

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

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

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

Article 2

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

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

Done at Brussels, 27 February 2006.

For the Council
The President
U. PLASSNIK

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 13 February 2006
repealing Decision 2001/645/EC accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of polyethylene terephthalate film originating, *inter alia*, in India

(2006/173/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (the basic Regulation) [1], and in particular Articles 8 and 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

(1) The Council, by Regulation (EC) No 1676/2001 [2], imposed definitive anti-dumping duties on imports of polyethylene terephthalate (PET) film originating, *inter alia*, in India. The measures took the form of an *ad valorem* duty ranging between 0 and 62,6 % on imports of PET film originating in India.

(2) On 22 August 2001, the Commission, by Decision 2001/645/EC [3], accepted undertakings offered by five Indian producers: Ester Industries Limited (Ester), Flex Industries Limited (Flex), Garware Polyester Limited (Garware), MTZ Polyfilms Limited (MTZ) and Polyplex Corporation Limited (Polyplex).

(3) On 22 November 2003 [4], the Commission initiated a partial interim review of Regulation (EC) No 1676/2001 limited to the form of the definitive anti-dumping measures. This investigation has been concluded by Council Regulation (EC) No 365/2006 [5], which amended Regulation (EC) No 1676/2001.

B. WITHDRAWAL OF THE ACCEPTANCE OF UNDERTAKINGS

(4) As set out in recitals 22 to 25 of Regulation (EC) No 365/2006, and after having consulted all parties concerned, the undertakings in their current form are not appropriate to counteract the injurious effect of dumping, since they present both considerable monitoring and enforcement difficulties and unacceptable risks. On this basis, and also in accordance with the relevant clauses of the undertakings in question, which authorise the Commission to unilaterally withdraw the acceptance of the undertakings, the Commission has decided to withdraw the acceptance of the undertakings.

(5) The Commission informed the Indian authorities and the Indian exporting producers concerned in Regulation (EC) No 365/2006 that it proposed to withdraw the acceptance of the current undertakings. The interested parties were given the opportunity to comment.

(6) These comments are addressed in recitals 27 to 31 of Regulation (EC) No 365/2006.

[1] 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).

[2] OJ L 227, 23.8.2001, p. 1.

[3] OJ L 227, 23.8.2001, p. 56.

[4] OJ C 281, 22.11.2003, p. 4.

[5] See page 1 of this Official Journal.

C. **REPEAL OF DECISION 2001/645/EC**

(7) In the light of the above, Decision 2001/645/EC accepting undertakings from Ester Industries Limited (Ester), Flex Industries Limited (Flex), Garware Polyester Limited (Garware), MTZ Polyfilms Limited (MTZ) and Polyplex Corporation Limited (Polyplex) should be repealed.

(8) In parallel to this Decision, the Council, by Regulation (EC) No 366/2006 [1], has imposed definitive anti-dumping duties on imports into the Community of polyethylene terephthalate (PET) film originating in India,

HAS DECIDED AS FOLLOWS:

Article 1

Decision 2001/645/EC is hereby repealed.

Article 2

This Decision shall take effect on the day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 13 February 2006.

For the Commission
Peter MANDELSON
Member of the Commission

[1] See page 6 of this Official Journal.

ADDENDUM

to the Directive 2005/84/EC of the European Parliament and of the Council of 14 December 2005 amending for the 22nd time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (phthalates in toys and childcare articles)

(Official Journal of the European Union L 344 of 27 December 2005)

The following Statements are added:

1. **Statement by the Commission concerning the guidance document**

As soon as the Directive relating to restrictions on the marketing and use of phthalates in toys and childcare articles (22nd amendment of Council Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous preparations) is adopted, the Commission, in consultation with Member States'experts responsible for the management of Directive 76/769/EEC and stakeholders, will prepare a guidance document in order to facilitate the implementation of the Directive. The document will address in particular the provisions on restrictions of certain substances in toys and childcare articles intended for children insofar as they concern the condition 'which can be placed in the mouth' as specified in the annex to the Directive.

In the context of this work, the aspects related to 'accessible' plasticized material and 'handheld' toys will be examined.

2. **Statement concerning fragrances**

The Commission confirms its intention to address the issue of fragrances in toys in the framework of the revision of Council Directive 88/378/EEC on the safety of toys. This will have the advantage to identify exactly what should be understood as fragrances, consider the appropriate measures to deal with the risks identified and ensure consistency with the other legislative provisions of the said Directive.