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EUROPEAN COMMISSION

Brussels, 8.6.2010  
COM(2010)295 final

2010/0159 (NLE)

Proposal for a

**COUNCIL REGULATION**

**amending Regulation (EC) No 367/2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India**

## **EXPLANATORY MEMORANDUM**

### **CONTEXT OF THE PROPOSAL**

#### **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ('the basic Regulation') in the anti-subsidy proceeding concerning imports of polyethylene terephthalate (PET) film originating in India.

#### **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

#### **Existing measures in the area of the proposal**

Council Regulation (EC) No 367/2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India as amended by Council Regulation (EC) No 1124/2007 in relation to the Jindal Poly Films Limited (the applicant in the present partial interim review) and as last amended by Council Regulation (EC) No 15/2009.

#### **Consistency with the other policies and objectives of the Union**

Not applicable.

### **CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

#### **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

#### **Collection and use of expertise**

There was no need for external expertise.

#### **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

### **LEGAL ELEMENTS OF THE PROPOSAL**

#### **Summary of the proposed action**

On 9 September 2009, the Commission initiated a partial interim review limited to the level of subsidisation of the countervailing duty in force in respect of imports of polyethylene terephthalate (PET) film originating in India. The review was initiated because the applicant, an exporting producer in India, provided sufficient *prima facie* evidence - that the circumstances with regard to subsidisation on the basis of which measures were established have changed and that these changes are of a lasting nature.

The partial interim review investigation confirmed that (i) the level of subsidisation with regard to the concerned co-operating Indian producer has decreased; (ii) the actual modalities of the investigated schemes and their countervailability have not changed with respect to the previous investigation. Since it was demonstrated that the applicant will continue to receive subsidies in the future of an amount which is less than the one determined in the previous interim review investigation, the level of the measures should be amended to reflect the new findings. The changed circumstances were found to be of a lasting nature.

Therefore, it is proposed that the Council adopts the attached proposal for a Regulation so as to amend the duty rate applicable to the concerned co-operating Indian producer.

### **Legal basis**

Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community.

### **Subsidiarity principle**

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

### **Proportionality principle**

The proposal complies with the proportionality principle because the form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

An indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

### **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate because the basic Regulation does not provide for alternative options.

## **BUDGETARY IMPLICATION**

The proposal has no implication for the Union budget.

Proposal for a

## COUNCIL REGULATION

### **amending Regulation (EC) No 367/2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community<sup>1</sup> ('the basic Regulation'), and in particular Article 19 thereof,

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

Whereas:

#### A. PROCEDURE

##### I. Previous investigation and existing countervailing measures

- (1) In December 1999, by Regulation (EC) No 2597/1999<sup>2</sup>, the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) film ('the product concerned') currently falling within CN codes ex 3920 62 19 and ex 3920 62 90, originating in India. The investigation which led to the adoption of that Regulation is hereinafter referred to as the 'original investigation'. The measures took the form of an *ad valorem* countervailing 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 of the product concerned from all other companies. The investigation period of the original investigation was 1 October 1997 to 30 September 1998.
- (2) In March 2006, by Regulation (EC) No 367/2006<sup>3</sup> ('Regulation (EC) No 367/2006'), the Council, following an expiry review pursuant to Article 18 of the basic Regulation, maintained the definitive countervailing duty imposed by Regulation (EC) No 2597/1999 on imports of PET film originating in India. The review investigation period was 1 October 2003 to 30 September 2004.

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<sup>1</sup> OJ L 188, 18.7.2009, p. 93.

<sup>2</sup> OJ L 316, 10.12.1999, p. 1.

<sup>3</sup> OJ L 68, 8.3.2006, p. 15.

- (3) In August 2006, by Regulation (EC) No 1288/2006<sup>4</sup>, the Council, following an interim review concerning the subsidisation of an Indian PET film producer, Garware Polyester Limited ('Garware'), amended the definitive countervailing duty imposed on Garware by Regulation (EC) No 367/2006.
- (4) In September 2007, by Regulation (EC) No 1124/2007<sup>5</sup>, the Council, following a partial interim review concerning the subsidisation of another Indian PET film producer, Jindal Poly Films Limited ('Jindal'), formerly known as Jindal Polyester Ltd, amended the definitive countervailing duty imposed on Jindal by Regulation (EC) No 367/2006.
- (5) In January 2009, by Regulation (EC) No 15/2009<sup>6</sup>, the Council, following a partial interim review initiated by the Commission on its own initiative concerning the subsidisation of five Indian PET film producers, amended the definitive countervailing duty imposed on these companies by Regulation (EC) No 367/2006.

## **II. Existing anti-dumping measures**

- (6) It should be noted that Jindal Poly Films Limited is subject to an anti-dumping duty of 0 %.<sup>7</sup>

## **III. Initiation of a partial interim review**

- (7) The request for a partial interim review was lodged by Jindal Poly Films Limited, an exporting producer from India ('the applicant'). The request is limited in scope to the examination of subsidisation as far as the applicant is concerned. The applicant has provided *prima facie* evidence that the circumstances with regard to subsidisation on the basis of which measures were established have changed significantly and that these changes are of a lasting nature.
- (8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced on 9 September 2009, by a notice of initiation published in the *Official Journal of the European Union*<sup>8</sup> ('Notice of Initiation'), the initiation of a partial interim review, in accordance with Article 19 of the basic Regulation, limited to the level of subsidisation to the applicant, with a view to determining whether the measures should be removed or amended for the applicant.,
- (9) The partial interim review investigation would also assess the need, depending on the review findings, to amend the rate of duty currently applicable to imports of the product concerned from exporting producers in the country concerned not individually mentioned in Article 1(2) of Regulation (EC) No 367/2006, i.e. the duty rate as applying to 'all other companies' in India.

## **IV. Investigation period**

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<sup>4</sup> OJ L 236, 31.8.2006, p. 1.

<sup>5</sup> OJ L 255, 29.9.2007, p. 1.

<sup>6</sup> OJ L 6, 10.1.2009, p. 1.

<sup>7</sup> OJ L288, 6.11.2007, p. 1.

<sup>8</sup> OJ c 215, 9.9.2009, P. 17.

- (10) The investigation of the level of subsidisation covered the period from 1 April 2008 to 31 March 2009 ('review investigation period' or 'RIP').

#### **V. Parties concerned by the investigation**

- (11) The Commission officially informed the applicant, the Government of India (GOI), Du Pont Tejin Films, Luxembourg, Mitsubishi Polyester Film, Germany, Toray Plastics Europe, France and Nurell, Italy, which represent a major proportion of Union PET film production (hereinafter 'the Union industry'), of the initiation of the partial interim review investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of Initiation.
- (12) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (13) The written and oral comments submitted by the parties were considered and, where appropriate, taken into account.
- (14) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the applicant. In addition, a questionnaire was sent to the GOI.
- (15) Replies from the questionnaire were received from the applicant and from the GOI.
- (16) The Commission sought and verified all information it deemed necessary for the determination of subsidisation. Verification visits were carried out at the premises of the applicant and at the premises of the GOI in Delhi.

#### **VI. Disclosure and comments on procedure**

- (17) The GOI and the other interested parties were informed of the essential facts and considerations upon which it was intended to propose to amend the duty rate applicable to the applicant. They were given a reasonable time to comment. All submissions and comments were taken duly into consideration as set out below.

### **B. PRODUCT CONCERNED**

- (18) The product covered by this review is the same product as the one concerned by Council Regulation (EC) No 367/2006, namely polyethylene terephthalate (PET) film falling within CN codes ex 3920 62 19 and ex 3920 62 90 originating in India.

### **C. SUBSIDISATION**

#### **1. Introduction**

##### *Nationwide Schemes*

- (19) On the basis of the information submitted by the GOI and the other interested parties and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:
- (a) Advance Authorization Scheme (formerly known as Advance Licence Scheme);

- (b) Duty Entitlement Passbook Scheme;
- (c) Export Promotion Capital Goods Scheme;
- (d) Export Credit Scheme.

*Regional Schemes*

- (e) Package Scheme of Incentives (PSI)
- (20) The schemes (a) to (c) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Export and Import Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. One Export and Import Policy document is relevant to the RIP of this case, i.e. the five-year plan relating to the period 1 September 2004 to 31 March 2009 ('EXIM-policy 04-09'). In addition, the GOI also sets out the procedures governing the EXIM-policy 04-09 in a 'Handbook of Procedures - 1 September 2004 to 31 March 2009, Volume I' ('HOP I 04-09'). The Handbook of Procedure is also updated on a regular basis.
- (21) The Export Credit Scheme specified above under (d) is based on sections 21 and 35A of the Banking Regulation Act 1949, which allow the Reserve Bank of India ('RBI') to direct commercial banks in the field of export credits.
- (22) The scheme specified above under (e) is managed by State authorities in India.

**2. Advance Authorisation Scheme ('AAS')**

*(a) Legal basis*

- (23) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the EXIM-policy 04-09 and chapters 4.1 to 4.30 of the HOP I 04-09. This scheme was called Advance Licence Scheme during the previous review investigation that led to the imposition by Council Regulation (EC) No 367/2006 of the definitive countervailing duty currently in force.

*(b) Eligibility*

- (24) The AAS consists of six sub-schemes, as described in more detail in recital (25) below. Those sub-schemes differ *inter alia* in the scope of eligibility. Manufacturer-exporters and merchant-exporters "tied to" supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement. Manufacturer-exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the "deemed export" categories mentioned in paragraph 8.2 of the EXIM-policy 04-09, such as suppliers of an export oriented unit ('EOU'), are eligible for AAS deemed export. Eventually, intermediate suppliers to manufacturer-exporters are eligible for "deemed export" benefits under the sub-schemes Advance Release Order ('ARO') and back to back inland letter of credit.

*(c) Practical implementation*

(25) Advance authorisations 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 resulting export product. "Physical" in this context means that the export product has to leave Indian territory. An import allowance and export obligation including the type of export product are specified in the licence;
- (ii) *Annual requirement*: Such an authorisation 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 resulting 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 who produces the intermediate product can import duty free input materials and can obtain for this purpose an AAS 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 04-09. 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 ('SEZ');
- (v) *ARO*: The AAS 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 Authorisations 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 04-09 (i.e. AAS 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 Advance Authorisation holder. The holder of an Advance Authorisation can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The authorisation 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 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).

- (26) The applicant received concessions under the AAS linked to the product concerned during the RIP. The applicant made use of two of the sub-schemes, i.e. (i) AAS physical exports and (ii) AAS for deemed exports. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.
- (27) For verification purposes by the Indian authorities, an Advance Authorisation holder is legally obliged to maintain "a true and proper account of consumption and utilisation of duty free imported/domestically procured goods" in a specified format (chapters 4.26, 4.30 and Appendix 23 HOP I 04-09), i.e. an actual consumption register. This register has to be verified by an external chartered accountant/cost and works accountant who issues a certificate stating that the prescribed registers and relevant records have been examined and the information furnished under Appendix 23 is true and correct in all respects. Nevertheless, the aforesaid provisions apply only to Advance Authorisations issued on or after 13 May 2005. For all Advance Authorisations or Advance Licences issued before that date, holders are requested to follow the previously applicable verification provisions, i.e. to keep a true and proper account of licence-wise consumption and utilisation of imported goods in the specified format of Appendix 18 (chapter 4.30 and Appendix 18 HOP I 02-07).
- (28) With regard to the sub-schemes used during the RIP by the applicant, i.e. physical exports and deemed exports, both the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the Authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the Authorisation. The volume of imports allowed under the AAS is determined by the GOI on the basis of standard input-output norms ('SIONs'). SIONs exist for most products including the product concerned and are published in the HOP II 04-09. The most recent changes in the SIONs for PET film and PET chips, an intermediate product, were revised in September 2005.
- (29) 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 (24 months with two possible extensions of 6 months each).
- (30) The scheme as described above has not changed since the last partial interim review concerning subsidisation for the applicant which was concluded in January 2009. However, the benefit under this scheme has substantially decreased as shown in recital (39) below.
- (31) The current interim review investigation established that the verification requirements stipulated by the Indian authorities were not honoured and not yet tested in practice. The applicant did not maintain a system whereby it could be verified which inputs were consumed in the production of the exported product and in what amounts, as stipulated by the Foreign Trade Policy (FTP) 2004 to 2009 (Appendix 23) and in accordance with Annex II(II)(4) of the basic Regulation. The consumption register was never inspected by the GOI.

(32) Changes in the administration of the FTP 2004 to 2009, which became effective in autumn of 2005 (mandatory sending of the consumption register to the India authorities in the context of the redemption procedure) has not yet been applied in the case of the applicant. Thus, the de facto implementation of this provision could not be verified at this stage.

*(d) Conclusion*

(33) The exemption from import duties is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, i.e. a financial contribution of the GOI which conferred a benefit upon the investigated exporters.

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

(35) The two sub-schemes used in the present case cannot be considered permissible duty drawback systems or substitution drawback systems within the meaning of Article 3(1)(a)(ii) of the basic Regulation. They do not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The GOI did not effectively apply either its new or its old 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) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). The SIONs for the product concerned were not sufficiently precise. The SION's themselves cannot be considered a verification system of actual consumption because the design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation).

(36) These two sub-schemes are therefore countervailable.

*(e) Calculation of the subsidy amount*

(37) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of total import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an "excess" remission of duties. According to Article 3(1)(a)(ii) and Annex I(i) of the basic Regulation only when the conditions of Annexes II and III of the basic Regulation are met that the excess remission of duties can be countervailed. However, these conditions were not fulfilled in the present case. Thus, if an adequate monitoring process is not demonstrated, the above exception for drawback schemes is not applicable and the normal rule of the countervailing of the amount of unpaid duties (revenue forgone), applies, rather than of any purported excess remission. As set out in Annexes II(II) and III(II) of the basic Regulation the burden is not upon the investigating authority to calculate such excess remission. To

the contrary, according to Article 3(1)(a)(ii) of the basic Regulation, the investigating authority only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.

- (38) The subsidy amount for the applicant, which used the AAS, was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the two sub-schemes during the RIP (numerator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amount where justified claims were made. In accordance with Article 7(2) of the basic Regulation, this subsidy amount was allocated over the export turnover of the product concerned during the RIP as appropriate denominator, because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.
- (39) The subsidy rate established in respect of this scheme for the applicant for the RIP amounts to 0,7 %.

### **3. Duty Entitlement Passbook Scheme ('DEPBS')**

#### *(a) Legal Basis*

- (40) The detailed description of the DEPBS is contained in paragraph 4.3 of the EXIM-policy 04-09 and in chapter 4 of the HOP I 04-09.

#### *(b) Eligibility*

- (41) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

#### *(c) Practical implementation of the DEPBS*

- (42) An eligible exporter can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS 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.
- (43) To be eligible for benefits under this scheme, a company must export. At the [] 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 DEPBS. In order for the goods to be exported, the Indian customs authorities issue an export shipping bill, during the dispatch procedure. This document shows, *inter alia*, the amount of DEPBS 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 DEPBS credit. The relevant DEPBS rate to calculate the benefit is that which applied at the time the export declaration is made.
- (44) DEPBS credits are freely transferable and valid for a period of 12 months from the date of issue. They 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.

- (45) Application for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. *De facto* no strict deadlines apply to DEPBS credits. The electronic system used to manage DEPBS does not automatically exclude export transactions exceeding the deadline submission periods mentioned in chapter 4.47 of the HOP I 04-09. Furthermore, as clearly provided in chapter 9.3 of the HOP I 04-09, applications received after the expiry of submission deadlines can always be considered with the imposition of a minor penalty fee (i.e. 10 % of the entitlement).
- (46) It was found that the applicant used this scheme during the RIP.

*(d) Conclusions on the DEPBS*

- (47) The DEPBS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A DEPBS 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 otherwise be due. In addition, the DEPBS credit confers a benefit upon the exporter, because it improves its liquidity.
- (48) Furthermore, the DEPBS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (49) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of 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) of 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, of the basic Regulation. Lastly, an exporter is eligible for the DEPBS 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 DEPBS.

*(e) Calculation of the subsidy amount*

- (50) In accordance with Articles 3(2) and 5 of the basic Regulation and the calculation methodology used for this scheme in Council Regulation (EC) No 367/2006, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient found to exist during the RIP. 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 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export

shipping bill which shows, *inter alia*, the amount of DEPBS credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. Furthermore, the co-operating exporting producer booked the DEPBS credits on an accrual basis as income.

- (51) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amount as numerator, pursuant to Article 7(1)(a) of the basic Regulation. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the export turnover of the product concerned 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.
- (52) The subsidy rate established in respect of this scheme for the applicant for the RIP amounts to 5,1 %.

#### **4. Export Promotion Capital Goods Scheme ('EPCGS')**

##### *(a) Legal basis*

- (53) The detailed description of the EPCGS is contained in chapter 5 of the EXIM-policy 04-09 and in chapter 5 of the HOP I 04-09.

##### *(b) Eligibility*

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

##### *(c) Practical implementation*

- (55) 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 EPCGS 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, was 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.
- (56) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail himself of the benefit for duty free import of components required to manufacture such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect of supply of capital goods to an EPCGS licence holder.
- (57) It was found that the applicant used this scheme during the RIP.

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

- (58) The EPCGS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(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 otherwise be due. In addition, the duty reduction confers a benefit upon the exporter, because the duties saved upon importation improve its liquidity.
- (59) Furthermore, the EPCGS is contingent in law upon export performance, since such licences can not be obtained without a commitment to export. Therefore, it is deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (60) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I, item (i), of the basic Regulation, because they are not consumed in the production of the exported products.

*(e) Calculation of the subsidy amount*

- (61) 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 industry concerned. In accordance with the established practice, the amount so calculated, which is attributable to the RIP, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the review investigation period in India was considered appropriate for this purpose. Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation.
- (62) The applicant claimed that capital goods imported duty-free under the EPCG scheme used in the unit located in Khanvel were no longer in use and that the benefit relating to such goods should not be included in the numerator. In reply to this, it is noted that the applicant has already received the benefit relating to these capital goods. In addition, as there is no evidence that the applicant no longer possesses such goods or that it will not use them again, the claim has to be rejected.
- (63) In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount has been allocated over the export turnover of the product concerned during the RIP as the 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.
- (64) The subsidy rate established in respect of this scheme for the applicant for the RIP amounts to 2,3 %.

**5. Export Credit Scheme ('ECS')**

*(a) Legal basis*

- (65) The details of the scheme are set out in the Master Circular DBOD No. DIR.(Exp).BC 01/04.02.02/2007-08 (Rupee/Foreign Currency Export Credit) and Master Circular

DBOD No. DIR.(Exp).BC 09/04.02.02/2008-09 (Rupee/Foreign Currency Export Credit) of the Reserve Bank of India ('RBI'), which is addressed to all commercial banks in India.

*(b) Eligibility*

- (66) Manufacturing exporters and merchant exporters are eligible for this scheme.

*(c) Practical implementation*

- (67) Under this scheme, the RBI mandatorily sets maximum ceiling interest rates applicable to export credits, both in Indian rupees and in foreign currency, which commercial banks can charge an exporter. 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.
- (68) As a result of the RBI Master Circulars exporters can obtain export credits at preferential interest rates as compared with the interest rates for ordinary commercial credits ("cash credits"), which are solely set under market conditions. The difference in rates might decrease for companies with good credit ratings. In fact, high rating companies might be in a position to obtain export credits and cash credits at the same conditions.
- (69) It was found that the applicant used this scheme during the RIP.

*(d) Conclusion on the ECS*

- (70) The preferential interest rates of an ECS credit set by the RBI Master Circulars mentioned in recital (65) can decrease the interest costs of an exporter as compared with credit costs purely set by market conditions and confer in this case a benefit in the meaning of Article 3(2) of the basic Regulation on such an exporter. Export financing is not *per se* more secure than domestic financing. In fact, it is usually perceived as being more risky and the extent of security required for a certain credit, regardless of the finance object, is a purely commercial decision of a given commercial bank. Rate differences with regard to different banks are the result of the methodology of the RBI to set maximum lending rates for each commercial bank individually.
- (71) Despite the fact that the preferential credits under the ECS are granted by commercial banks, this benefit is a financial contribution by a government within the meaning of Article 3(1)(a)(iv) of the Regulation. In this context, it should be noted that neither Article 3(1)(a)(iv) of the basic Regulation nor the Agreement on Subsidies and Countervailing Measures require a charge on the public accounts, e.g. reimbursement of the commercial banks by the GOI, to establish a subsidy, but only government direction to carry out functions illustrated in points (i), (ii) or (iii) of Article 3(1)(a) of the basic Regulation. The RBI is a public body and falls therefore under the definition of "government" as set out in Article 2(b) of the basic Regulation. It is 100 % government-owned, pursues public policy objectives, e.g. monetary policy, and its management is appointed by the GOI. The RBI directs private bodies, within the

meaning of the second indent of Article 3(1)(a)(iv) of the basic Regulation, since the commercial banks are bound by the conditions it imposes, *inter alia*, with regard to the maximum ceilings for interest rates on export credits mandated in the RBI Master Circulars and the RBI provisions that commercial banks have to provide a certain amount of their net bank credit towards export finance. This direction obliges commercial banks to carry out functions mentioned in Article 3(1)(a)(i) of the basic Regulation, in this case provide loans in the form of preferential export financing. Such direct transfer of funds in the form of loans under certain conditions would normally be vested in the government, and the practice differs, in no real sense, from practices normally followed by governments, within the meaning of Article 3(1)(a)(iv) of the basic Regulation. This subsidy is deemed to be specific and countervailable since the preferential interest rates are only available in relation to the financing of export transactions and are therefore contingent upon export performance, pursuant to Article 4(4), first subparagraph, point (a) of the basic Regulation.

*(e) Calculation of the subsidy amount*

- (72) The subsidy amount has been calculated on the basis of the difference between the interest paid for export credits used during the RIP and the amount that would have been payable for ordinary commercial credits used by the applicant. This subsidy amount (numerator) has been allocated over the total export turnover during the RIP 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.
- (73) The subsidy rate established in respect of this scheme for the applicant for the RIP amounts to 0,2%.

**8. PACKAGE SCHEME OF INCENTIVES (PSI)**

*(a) Legal basis*

- (74) In previous investigations regarding PET film, including the review investigation that led to the imposition by Council Regulation (EC) No 367/2006 of the definitive countervailing duty currently in force, several Indian State schemes involving incentives granted to local companies were investigated. The State schemes fall under the heading 'Package Scheme of Incentives' (PSI), as there can be different kinds of incentives involved. The investigation established that a company's entitlement to benefits under the scheme is stipulated in the 'Eligibility Certificate'.
- (75) The Package Scheme of Incentives (PSI) of the Government of Maharashtra (GOM) has been amended several times since its introduction. The applicant continues to avail itself of benefits under the PSI '1993 Scheme' and not under successor schemes. Consequently, only the PSI 1993 was assessed in the context of the case at hand.
- (76) The Sales Tax Remission Scheme of the Government of West Bengal provides for the remission of Central Sales Tax. The investigation revealed that the applicant enjoyed trade tax (Central Sales Tax) exemption under the PSI of the Government of West Bengal in respect of its purchases. This tax provision excuses home-market sales by a company from payment of sales tax (both local sales tax and central sales tax).

*(b) Eligibility*

(77) In order to be eligible, companies must as a general rule invest in less developed areas of a state 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. The main criterion to establish the amount of incentives is the classification of the area in which the enterprise is or will be located and the size of the investment.

*(c) Practical implementation*

(78) Under the sales tax exemption schemes, designated units were not required to collect any sales tax on their sales transactions. Similarly, designated units were exempted from the payment of sales tax on their purchases of goods from suppliers eligible for the schemes. Whereas the exemption in relation to sales transaction is not considered to confer any benefit on the designated sales units, the exemption in relation to purchase transactions, however, does confer a benefit on the designated purchasing units.

(79) Exemption of sales tax on purchases within the State of Maharashtra (which was earlier exempted under the Maharashtra Sales Tax Exemption Scheme of Incentives) is no longer available. In April 2005 the sales tax legislation for intra-State sales in Maharashtra was replaced by a value added tax (VAT) system. With effect from April 2005, the applicant, as a non-exempt unit, has to purchase materials by paying VAT.

*(d) Conclusion*

(80) As regards the PSI 1993 of the GOM, the applicant only accrued remission rights of sales tax on sales of finished goods during the RIP, which in the past has been found not to confer a benefit on the recipient (recital 114 of Council Regulation (EC) No 367/2006). Therefore, no countervailable benefit was found under the PSI 1993 of the GOM.

(81) However, as regards the applicant's purchases from companies not located in the State of Maharashtra of raw materials without the payment of Central Sales Tax, the PSI provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The exemption from payment of sales taxes on purchases constitutes a financial contribution, since this concession decreases the Government's revenue which would otherwise be due. In addition, this exemption confers a benefit upon the companies as it improves their liquidity.

(82) The PSI is only available to companies having invested within certain designated geographical areas within the jurisdiction of a State in India. It is not available for companies located outside these areas. The level of benefit is different according to the area concerned. The scheme is therefore specific in accordance with Article 4(2), first subparagraph, point (a) and Article 4(3) of the basic Regulation and therefore countervailable.

*(e) Calculation of the subsidy amount*

(83) Concerning the sales tax exemption, the subsidy amount was calculated on the basis of the amount of the sales tax normally due during the RIP but which remained unpaid.

- (84) Pursuant to Article 7(2) of the basic Regulation, the amount of subsidy (numerator) has then been allocated over the total turnover of export and domestic 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.
- (85) The subsidy rate established in respect of this scheme for the applicant for the RIP amounts to 0,1 %.

## 9. AMOUNT OF COUNTERAVAILABLE SUBSIDIES

- (86) It is recalled that Council Regulation (EC) No 1124/2007, amending Council Regulation (EC) No 367/2006, established the amount of countervailable subsidies for the applicant, expressed *ad valorem*, at 17,1%.
- (87) During the present partial interim review, the amount of countervailable subsidies for the applicant, expressed *ad valorem*, was found to be 8,4%, as listed hereunder:

SCHEME→	AAS(*)	DEPBS(*)	EPCGS(*)	ECS(*)	PSI	Total
COMPANY↓	%	%	%	%	%	%
Jindal Poly Films Limited	0,7	5,1	2,3	0,2	0,1	8,4

(\*) Subsidies marked with an asterisk are export subsidies

- (88) Account taken of the above it is concluded that the level of subsidisation with regard to the exporting producer concerned has decreased.

## 10. COUNTERVAILING MEASURES

- (89) It was also examined whether the changed circumstances with regard to the examined schemes could be considered to be of a lasting nature. In this respect, several elements would suggest that this is the case.
- (90) Firstly, it should be noted that the findings in this partial interim review are in line with the subsidy amounts established for five Indian PET film producers in the partial interim review published in January 2009, where the amount of countervailable subsidies, expressed *ad valorem*, were found to be ranging from 5,4% to 8,6%. This is an indication of certain constancy in the level of subsidisation existing in India for this product.
- (91) Secondly, while in the previous investigation the main benefit was conferred under the AAS, the benefit under this scheme has dropped significantly during the RIP and evidence has been obtained that this continued to be the case also after the RIP
- (92) On the basis of the above there seems to be indications that the applicant will continue to receive subsidies in the future of an amount which is less than the one determined in the previous partial interim review investigation.

- (93) Since it has been demonstrated that the applicant is in receipt of much lesser subsidisation than before and that it is likely to continue to receive subsidies of an amount which is less than determined in the previous partial interim review investigation, the level of the measure should therefore be amended to reflect the new findings.
- (94) In view of the above, the amended countervailing duty rate should be established at the new rate of subsidisation found during the present partial interim review, as the injury margin calculated in the original anti-subsidy investigation remains higher.
- (95) Pursuant to Article 24(1), second subparagraph of the basic Regulation and Article 14(1) of Regulation (EC) No 1225/2009<sup>9</sup>, 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. However, as mentioned in recital (6) above, since the applicant is subject to an anti-dumping duty of 0 % with regard to the product concerned, these provisions do not apply in the present case.
- (96) With regard to the rate of duty currently applicable to imports of the product concerned from exporting producers not individually mentioned in Article 1(2) of Regulation (EC) No 367/2006, i.e. the duty specified as applying to 'all other companies' in India, it is noted that the actual modalities of the investigated schemes and their countervailability have not changed with respect to the previous investigation. Thus there is no reason to re-calculate the subsidy and duty rates of these companies. Consequently, the rates of the duty applicable to all companies other than the applicant remain unchanged.

HAS ADOPTED THIS REGULATION:

*Article 1*

Article 1(2) of Council Regulation (EC) No 367/2006 shall be replaced by the following:

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

Company	Definitive duty (%)	TARIC additional code
Ester Industries Limited, 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi 110 003, India	7,2	A026
Garware Polyester Limited, Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	5,4	A028
Jindal Poly Films Limited, 56 Hanuman Road, New Delhi 110 001, India	8,4	A030

<sup>9</sup> OJ L 343, 22.12.2009 p. 51.

MTZ Polyfilms Limited, New India Centre, 5th Floor, 17 Co-operage Road, Mumbai 400 039, India	8,7	A031
Polyplex Corporation Limited, B-37, Sector-1, Noida 201 301, Dist. Gautam Budh Nagar, Uttar Pradesh, India	8,6	A032
SRF Limited, Block C, Sector 45, Greenwood City, Gurgaon 122003, Haryana, India	5,4	A753
Uflex Limited, A-1, Sector 60, Noida 201 301 (U.P.), India	6,4	A027
All other companies	19,1	A999'

"

#### *Article 2*

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

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

Done at Brussels, [...]

*For the Council  
The President*