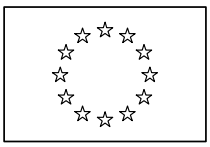

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.9.2005
COM(2005) 416 final

Proposal for a

COUNCIL REGULATION

amending Council Regulation (EC) No 2603/2000 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate originating, inter alia, in India

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

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

This proposal concerns the application of Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 461/2004 of 8 March 2004 ("the basic Regulation") in the proceeding concerning the definitive countervailing duty imposed by Council Regulation (EC) No 2603/2000 on imports of certain polyethylene terephthalate (PET) originating, inter alia, 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 provisions in the area of the proposal**

There are no existing provisions in the area of the proposal.

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

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have already 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 foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

In November 2000, the Council, by Regulation, imposed a definitive countervailing duty of EUR 41,3 per tonne on imports into the Community of PET originating, *inter*

alia, in India.

The Commission received an application for an accelerated review by South Asian Petrochem Limited, a new exporting producer in India.

The Commission initiated on 12 January 2005 this accelerated review with a view to determine if and to what extent the imports of PET produced and exported to the Community by South Asian Petrochem Limited should be subject to the countervailing duty currently in force.

The investigation revealed the existence of countervailable subsidisation. A specific countervailing duty rate of EUR 106,5 per tonne was established for South Asian Petrochem Limited.

Consequently, it is proposed to amend Council Regulation (EC) 2603/2000 imposing a countervailing duty on imports of PET originating, inter alia, in India by including the specific duty rate established for South Asian Petrochem Limited and by accepting the undertaking offered.

It is therefore proposed that the Council adopt the attached proposal for a Regulation which should be published in the *Official* Journal *of the European Union* no later than 11 October 2005.

- **Legal basis**

Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 461/2004 of 8 March 2004.

- **Subsidiarity principle**

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

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, 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 instrument: Regulation.

Other means would not be adequate for the following reason(s).

The above-mentioned basic Regulation does not foresee alternative options.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

Proposal for a

COUNCIL REGULATION

amending Council Regulation (EC) No 2603/2000 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate 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 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community[1] ('the basic Regulation'), and in particular Article 20 thereof,

Having regard to the proposal submitted by the Commission[2] after consulting the Advisory Committee,

Whereas:

A. PREVIOUS PROCEDURE

(1) The Council, by Regulation (EC) No 2603/2000[3], imposed a definitive countervailing duty on imports of certain polyethylene terephthalate ('PET') with a coefficient of viscosity of 78 ml/g or higher, according to DIN ('Deutsche Industrienorm') 53728, normally declared within CN code 3907 60 20 and originating, *inter alia,* in India ('the product concerned'). The measures took the form of a specific duty ranging between EUR 0 and 41,3 per tonne for co-operating individual Indian exporters, with a specific duty of EUR 41,3 per tonne for all other Indian exporters.

B. CURRENT PROCEDURE

1. Request for review

(2) Following the imposition of definitive measures, the Commission received a request for the initiation of an accelerated review of Council Regulation (EC) No 2603/2000 pursuant to Article 20 of the basic Regulation from an Indian producer of the product concerned, South Asian Petrochem Limited ('the applicant'). The applicant claimed not to be related to any other exporter of the product concerned. Furthermore, it asserted that it had not exported the product concerned during the original

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1 OJ L 288, 21.10.97, p.1., Regulation as last amended by Council Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p.12).

2 OJ C […], […], p. […].

3 OJ L 301, 30.11.2000, p.1, Regulation as last amended by Council Regulation (EC) No 822/2004 (OJ L 127, 29.4.2004, p.3).

investigation period (1 October 1998 to 30 September 1999), but had exported the product concerned to the Community subsequently.

2. Initiation of an accelerated review

(3) The Commission examined the evidence submitted by the applicant and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 20 of the basic Regulation. After consultation of the Advisory Committee and after the Community industry concerned had been given the opportunity to comment, the Commission initiated by a notice in the *Official Journal of the European Union*[4] an accelerated review of Council Regulation (EC) No 2603/2000 with regard to the applicant.

3. Product concerned

(4) The product covered by this review is the same product as the one under consideration in Council Regulation (EC) No 2603/2000 (see recital (1) above).

4. Investigation period

(5) The investigation of subsidisation covered the period from 1 October 2003 to 30 September 2004 ('the review investigation period').

5. Parties concerned

(6) The Commission officially advised the applicant and the Government of India ('the GOI') of the initiation of the investigation. Furthermore, it gave other interested parties the opportunity to make their views known in writing and to request a hearing. However, no such views or any request for a hearing were received by the Commission.

(7) The Commission sent a questionnaire to the applicant and received a full reply within the set deadline. The Commission sought and verified all information it deemed necessary for the purpose of the investigation and carried out verification visits at the premises of the applicant in Calcutta and in Haldia.

C. SCOPE OF THE REVIEW

(8) The Commission examined the same subsidy schemes which were analysed in the original investigation. It also examined whether the applicant had used any other subsidy schemes, or had received *ad hoc* subsidies in relation to the product concerned.

[4] OJ C 8, 12.01.2005, p.2.

D. RESULTS OF THE INVESTIGATION

1. New exporter qualification

(9) The applicant was able to satisfactorily demonstrate that it was not related, directly or indirectly, to any of the exporting producers subject to the countervailing measures in force with regard to the product concerned.

(10) The investigation confirmed that the applicant had not exported the product concerned during the original period of investigation, i.e. from 1 October 1998 to 30 September 1999, and that it had begun exporting to the Community after this period. Furthermore, the applicant was not individually investigated during the original investigation for reasons other than a refusal to co-operate with the Commission.

(11) Consequently, it is confirmed that the applicant should be considered as a new exporter. Therefore, in accordance with Article 20 of the basic Regulation, an individual countervailing duty rate should be determined for the applicant.

2. Subsidisation

(12) On the basis of the information contained in the applicant's reply to the Commission's questionnaire and further collected in the course of the investigation, the following schemes were investigated:

- Duty Entitlement Passbook Scheme;
- Export Credit Scheme;
- Export Oriented Unit Scheme/Special Economic Zones Scheme;
- Export Promotion Capital Goods Scheme;
- Income Tax Exemption Scheme;
- West Bengal Incentives Scheme.

2.1 Schemes originally investigated and used by the company

2.1.1 Export Oriented Unit Scheme ('EOUS')/ Special Economic Zones Scheme ('SEZS')

(a) Legal basis

(13) These schemes 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'). This act authorises the GOI to issue notifications regarding trade policy, formerly called 'Export-Import Policy' and since 1 September 2004 named 'Foreign Trade Policy'. The Foreign Trade Policy 2004 to 2009 ('FTP'), which incorporates the Export and Import Policy 2002 to 2007, is relevant to the review investigation period

of this case. In addition, the GOI also sets out the procedures governing the FTP in a 'Handbook of Procedures Volume I' ('HOP I')[5].

(14) The details of these schemes are contained in chapters 6 (EOUS) and 7 (SEZS) respectively of the FTP and of the HOP I.

(b) Eligibility

(15) With the exception of pure trading companies, all enterprises which, in principle, undertake to export their entire production of goods or services may be set up under the EOUS or SEZS. However, unlike services and agriculture, undertakings in the industrial sectors have to fulfil a minimum investment threshold in fixed assets (10 million Indian rupees) to be eligible for the EOUS.

(c) Practical implementation

(16) The SEZS is the successor scheme of the former Export Processing Zones Scheme ('EPZS'). SEZs are specifically delineated duty free enclaves and considered by the FTP as foreign territory for the purpose of trade operations, duties and taxes. 35 SEZs have been approved by the Indian authorities.

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

(18) An application for operation under these schemes 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 is communicated to the company. The agreement recognising the company as an undertaking under the EOUS or SEZS is valid for a five-year period. The agreement may be renewed for further periods.

(19) A crucial obligation of an EOU or an SEZ enterprise as set out in the FTP is to achieve net foreign exchange ('NFE') earnings, i.e. in a reference period (5 years) the total value of exports has to be higher than the total value of imported goods.

(20) EOUS/SEZS 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) 'duty drawback on all industry rates' with regard to furnace oil procured from domestic oil companies;

[5] Notification No 1/2002-07 of 31.03.2002 of the Ministry of Commerce and Industry of the GOI.

(v) facility to sell a part of the 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;

(vi) 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 years period after starting their operations, but no longer than up to 2010;

(vii) possibility of 100 % foreign equity ownership.

(21) Although the concessions under both schemes are largely comparable, some differences exist. For instance, only an EOU can obtain a 50% reduction of duties payable upon domestic sales ('DTA sales'), whereas in an SEZ 100% of the duties are payable on such sales. An EOU unit can sell up to 50% of its turnover domestically at such reduced rate.

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

(23) 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 must be submitted periodically, as may be required, to the competent authorities ('quarterly and annual progress reports').

(24) However, 'at no point in time [an EOU or a SEZ unit] shall be required to co-relate every import consignment with its exports, transfers to other units, sales in DTA or stocks', as paragraphs 6.11.2 and 7.13.2 of the HOP I state.

(25) Domestic sales are dispatched and recorded on a self-certification basis without prior intimation of specific transactions. The dispatch process of export consignments of an EOU is supervised by a customs/excise official, who is permanently posted in the EOU. The company is obliged to reimburse the GOI for the salary of such permanent bond officer.

(26) 'All activities of SEZ units within the zone, unless otherwise specified, including export and re-import of goods shall be through self-certification procedure', as paragraph 7.29 of the HOP I states. Thus, no routine examinations of the export consignments of an SEZ unit by customs authorities take place.

(27) In the present case, the EOUS was used by the applicant. As the SEZS was not used, it is therefore not necessary to analyse the countervailability of this scheme. The applicant utilized the EOUS to import raw materials and capital goods free of import duties, to procure goods domestically free of excise duty, to obtain sales tax reimbursement as well as duty drawback on furnace oil and to sell part of its production on the domestic market. Thus, it availed of all benefits as described in recital (20) above under (i) to (v). The applicant did not avail of benefits under the income tax exemption provisions of the EOUS (see recital (53) below).

(d) Conclusions on the EOUS

(28) The exemptions of an EOU from two types of import duties (the so-called 'basic customs duty' and 'special additional customs duty'), the reimbursement of sales tax

and the duty drawback on furnace oil are financial contributions 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 within the meaning of Article 2(2) of the basic Regulation upon the applicant, because it saved liquidity by not having to pay duties normally due and by obtaining a sales tax reimbursement.

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

(30) Thus, only the exemption from basic customs duty, special additional customs duty, the sales tax reimbursement and the duty drawback on furnace oil constitute subsidies within the meaning of Article 2 of the basic Regulation. They are contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation. The export objective of an EOU as set out in paragraph 6.1 of the FTP is a *conditio sine qua non* to obtain the incentives.

(31) Furthermore, these subsidies cannot be considered as permissible duty drawback systems or substitution drawback systems within the meaning of Article 2(1)(a)(ii) of the basic Regulation. They do not conform to the strict rules laid down in Annex I (items (h) and (i)), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation.

(32) Insofar as the sales tax reimbursement and import duty exemption provisions are used for purchasing capital goods, they are already not in conformity with the rules for permitted drawback systems because those goods are not consumed in the production process, as required by Annex I item (h) (sales tax reimbursement) and (i) (import duties remission).

(33) In addition, and also concerning the other benefits which are available under this scheme, it is found that the GOI has no effective verification system or procedure in place to confirm whether and in what amounts duty free procured inputs or inputs subject to sales tax reimbursement and duty drawback on furnace oil 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).

(34) An EOU is allowed to sell a significant amount of its production, up to 50% of its annual turnover, on the domestic market. Therefore, no obligation in law exists to export the total amount of manufactured resultant products. Moreover, due to the self-certification procedure these domestic transactions take place without the supervision and control of a government official. Consequently, the bonded premises of an EOU are at least in part not subject to a physical control by the Indian authorities. This, however, increases the importance of further verification elements, notably control of the nexus between duty free inputs and resultant export products in order to qualify as a duty drawback verification system.

(35) Concerning further verification steps installed it should be recalled, as mentioned above under recital (24) that an EOU is already *de jure* at no point in time required to co-relate every import consignment with the destination of the corresponding resultant product. Only such consignment controls, however, would provide the Indian authorities with sufficient information about the final destination of inputs to check that the duty exemptions, sales tax reimbursements and duty drawback on furnace oil do not exceed inputs for export production. Monthly tax returns for domestic sales on a self-assessment basis, which are periodically assessed by the Indian authorities, do not suffice. Company internal systems, which are kept without a legal obligation under the FTP, e.g. a batch sheets system, do not suffice to replace such key requirement for a duty drawback verification system either. In addition, a duty drawback verification system needs to be designed and enforced by a government and should not be left to the discretion of the management of each individual company concerned to set up an information system. Consequently, it is found that, since an EOU is explicitly not required by the Indian FTP to record the nexus between input materials and the resultant product, no effective control mechanism was set up by the GOI to determine which inputs were consumed in export production and in what amounts.

(36) Also, the GOI neither carried out a further examination based on actual inputs involved, although this would normally need to be carried out 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.

(37) Upon disclosure, the applicant argued that not the same methodology, within the meaning of Article 22(4) of the basic Regulation, was used in the case at hand as compared with the original investigation when assessing the EOUS. It must be noted that exporters in the original investigation provided evidence that no excess remission occurred and for this reason the duty exemption on raw material procurements under the EOUS was originally not countervailed.

(38) However, the applicant did not provide such evidence in the case at hand. In this context, it is also noted that it sold the product concerned on the domestic market as well, i.e. not all duty free procured input materials were necessarily consumed in export production. Furthermore, in particular the fact that according to the Indian law EOUS exporters are not obliged to co-relate import consignments with the destination of the corresponding resultant product, constitutes a circumstance not established in the original investigation. Therefore, the scheme has been assessed in the present case in accordance with the provisions of Article 22(4) of the basic Regulation, which stipulates that new circumstances need to be considered. Consequently, the present finding, that the EOUS does not constitute a permitted duty drawback or substitution drawback system, is confirmed.

(f) Calculation of the subsidy amount

(39) Accordingly, in the absence of a permitted duty drawback system or substitution drawback system, the countervailable benefit is the remission of total import duties (basic customs duty and special additional customs duty) normally due upon importation, as well as the sales tax reimbursement and duty drawback on furnace oil, all during the review investigation period.

(40) Upon disclosure, the applicant claimed that the subsidy amount, including interest adjustments for non recurring subsidies, should be calculated only on the basis of the 7 months of the review investigation period during which it was in commercial operation. Alternatively, the applicant requested to consider only a 10 months period, which includes its trial production period.

(41) According to Article 5 of the basic Regulation, the amount of countervailable subsidies shall be calculated in terms of the benefit conferred on the recipient, which is found to exist during an investigation period. In conformity with the same provision and standard EC practice, a period of 12 months was chosen as review investigation period and findings are based on this period of time. No provision in the basic Regulation stipulates that start up phases of a company shall be disregarded. The claim of the applicant had therefore been rejected.

(i) Exemption from import duties (basic customs duty and special additional customs duty) and sales tax reimbursement on raw materials

(42) The subsidy amount for the applicant was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the materials imported, as well as sales tax and the duty drawback on furnace oil eligible for reimbursement, all 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 from this sum to arrive at the subsidy amount as numerator. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the export turnover 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 rate thus obtained was 12,6%.

(43) In this context, the applicant claimed that only the proportion of the subsidy amount directly attributable to the product concerned should be used as numerator. The applicant produces a small amount of PET of lower viscosity as the product concerned and the intermediate product amorphous PET-chips, which do not fall under the product scope of this investigation. It suggested apportioning the subsidy amount on the basis of the turnover of the product concerned in relation to the total turnover.

(44) However, it is noted that the various input materials cannot be *per se* linked either to the product concerned or PET of a lower viscosity and the intermediate product because the same input materials could be used for the production of all these types. Moreover, as set out in recitals (32) to (38) above, no proper verification system with regard to the final destination of the input materials was in place. In such case and in line with Article 7(2) of the basic Regulation, both numerator and denominator were determined on the basis of the total product range of the applicant in order to allocate the subsidy amount attributable to the product concerned. The applicant did not substantiate that any alternative methodology would lead to a more precise result. In particular, it is noted that even if the claim was accepted, the denominator would be reduced pro rata, thus leading to the identical overall result.

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

(45) Unlike raw materials, capital goods are not physically incorporated into the finished goods. In accordance with Article 7(3) of the basic Regulation, the benefit to the investigated company has been calculated on the basis of the amount of unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the industry of the product concerned (i.e. 18,465 years), which leads to a depreciation rate of rounded 5,42%. The amount so calculated which is then attributable to the review investigation period 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. The amount of interest added was based on the commercial interest rate during the review investigation period in India. Fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation from this sum to arrive at the subsidy amount as numerator. In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount has been allocated over the export turnover generated 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 rate thus obtained was 0,9%.

(46) Upon disclosure, the applicant argued that its company specific depreciation period of 18,93 years should be used instead of 18,465 years, which is the combined average together with the originally established depreciation period. Further, it claimed that its individual depreciation period reflects the industry standard nowadays in India.

(47) However, as set out above, Article 7(3) of the basic Regulation requires to focus on the normal, i.e. average, depreciation period of the industry and not on a company specific period. Moreover, the applicant did not substantiate that the industry depreciation standard of the industry concerned has generally increased. The argument was therefore rejected.

(48) Furthermore, the applicant claimed that for calculating the subsidy amount the depreciation rate should not have been rounded up.

(49) However, it is noted that the rounding has no impact on the overall result, thus this comment being of no consequence.

(50) Consequently, the total subsidy rate under the EOUS for the applicant amounts to 13,5%.

2.2. Schemes originally investigated but not used by the company

2.2.1 Duty Entitlement Passbook Scheme ('DEPBS')

(51) The applicant had not availed itself of benefits under the DEPBS.

2.2.2 Export Promotion Capital Goods scheme ('EPCGS')

(52) It was established that the applicant had not imported capital goods under the EPCGS and, therefore, had not availed itself of the EPCGS.

2.2.3 Income Tax Exemption Scheme

(53) It was established that the applicant did not, in the absence of taxable profits, receive the benefit of an income tax exemption under Section 10B of the Income Tax Act 1961 during the review investigation period.

2.3. Other schemes used by the company in relation to the product concerned and found countervailable

2.3.1 Export Credit Scheme ('ECS')

(a) Legal basis

(54) The ECS is based on sections 21 and 35A of the Indian Banking Regulation Act 1949, which allow the Reserve Bank of India ('RBI') to direct commercial banks in the field of export credits.

(55) The details of the scheme are set out in Master Circular IECD No. 35/04.02.02/2004-05 (Foreign Currency Export Credit) and Master Circular IECD No. 27/04.02.02/2004-05 (Rupee Export Credit) of the RBI, which are addressed to all commercial banks in India.

(b) Eligibility

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

(c) Practical implementation

(57) Under this scheme, the RBI mandatory 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.

(58) 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. In this respect, the Master Circular on Rupee Export Credit notes that 'ceiling rates of interest on credit extended to exporters as prescribed in this Circular are lower than the maximum lending rates normally charged to other borrowers and are, therefore, indicated as concessive in this sense.'

(59) Due to the RBI Master Circulars, the applicant enjoyed preferential interest rates for ECS credits as compared with its cash credit interest rates.

(d) Conclusion on the ECS

(60) Firstly, the preferential interest rates of an ECS credit set by the RBI Master Circulars mentioned in recital (55) decreased interest costs of the applicant as compared with credit costs purely set by market conditions, thus conferring a benefit within the meaning of Article 2(2) of the basic Regulation on it. Secondly, and despite the fact that the preferential credits under the ECS are granted by commercial banks, this benefit is to be considered as a financial contribution by a government within the meaning of Article 2(1)(iv) of the basic Regulation. In this context, it should be noted that neither Article 2(1)(iv) of the basic Regulation nor the WTO Agreement on Subsidies and Countervailing Measures ('ASCM') 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 2(1) of the basic Regulation. The RBI is a public body and falls therefore under the definition of a 'government' as set out in Article 1(3) of the basic Regulation. It is 100% government-owned, pursues public policy objectives, e.g. monetary policy and its management is appointed by the GOI. The RBI directs private bodies in the sense that the commercial banks are bound by certain conditions, *inter alia,* (i) by the maximum ceilings for interest rates on export credits mandated in the RBI Master Circulars and (ii) by 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 2(1)(a)(i) of the basic Regulation, in this case loans in the form of preferential export financing. Such direct transfer of funds in the form of loans under certain conditions would normally be vested in the government and, within the meaning of Article 2(1)(a)(iv) of the basic Regulation, the practice, in no real sense, differs from practices normally followed by governments. Furthermore, this subsidy is deemed to be specific and countervailable since the preferential interest rates are only available in relation to export financing and are therefore contingent upon export performance within the meaning of Article 3(4)(a) of the basic Regulation.

(e) Calculation of the subsidy amount

(61) The subsidy amount has been calculated on the basis of the difference between the interest accrued for export credits used during the review investigation period and the amount that would have been payable if the same interest rates were applicable as for ordinary commercial credits used by the applicant. This subsidy amount (numerator) has been allocated over the total export turnover during the review investigation period as appropriate denominator in accordance with Article 7(2) basic Regulation, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. The ECS subsidy rate so established is 0,4%.

2.3.2 West Bengal Incentive Scheme ('WBIS')

(62) The detailed description of the WBIS is set out in Government of West Bengal ('GOWB') Commerce & Industries Department notification No 588-CI/H of 22 June 1999 ('WBIS 1999') which was last replaced by notification No 134-

CI/O/Incentive/17/03/I of 24 March 2004 ('WBIS 2004'). The investigation established that the benefit obtained by the applicant was insignificant and, thus, WBIS is not analysed further.

3. Total amount of countervailable subsidies

(63) Taking account of the definitive findings relating to the schemes as set out above, the rate of countervailable subsidies for the applicant is as follows:

	ECS	EOUS	Total
South Asian Petrochem Limited	0,4%	13,5%	13,9%

E. AMENDMENT OF THE MEASURES BEING REVIEWED

(64) In accordance with Article 15(1) of the basic Regulation, the amount of the countervailing duty should be less than the total amount of countervailable subsidies, if such lesser duty were to be adequate to remove the injury to the Community industry. In the original investigation a general injury elimination level of 44,3% was established, which is higher than the subsidy rate established for the applicant.

(65) On the basis of the findings made during the review investigation, it is considered that imports of the product concerned into the Community produced and exported by the applicant should be subject to a level of countervailing duty corresponding to the individual rate of subsidies established for this company, i.e. 13,9%. Since the duty imposed by Council Regulation (EC) No 2603/2000 took the form of a specific amount per tonne, the above-mentioned duty rate for the applicant has also been converted into a specific amount of EUR 106,5 per tonne.

(66) Council Regulation (EC) No 2603/2000 should therefore be amended accordingly.

F. UNDERTAKING

(67) The applicant offered a price undertaking concerning its exports of the product concerned to the Community, in accordance with Article 13(1) of the basic Regulation.

(68) After examination of the offer, the Commission considered the undertaking as acceptable since it would eliminate the injurious effects of subsidisation. Moreover, the regular and detailed reports which the applicant undertook to provide to the Commission will allow effective monitoring. Furthermore, the nature of the product and the sales structure of the applicant is such that the Commission considers that the risk of circumvention of the undertaking is limited.

(69) In order to ensure the effective respect and monitoring of the undertaking, when the request for release for free circulation pursuant to the undertaking is presented, exemption from the duty is conditional upon presentation to the customs authorities of the Member State concerned a valid 'Commercial Invoice' issued by the applicant and containing the information listed in the Annex to Council Regulation (EC) No

2603/2000. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of the countervailing duty should be payable in order to ensure the effective application of the undertaking.

(70) In the event of a breach or withdrawal of the undertaking, a countervailing duty may be imposed pursuant to Article 13(9) and 13(10) of the basic Regulation.

G. DISCLOSURE AND DURATION OF THE MEASURES

(71) The applicant and the GOI were informed of the essential facts and considerations upon which it was intended to propose that Council Regulation (EC) No 2603/2000 be amended and were given the opportunity to comment. Only the applicant made comments, essentially on the EOUS, which have been addressed in the context of the respective conclusions above under section 2.1.1.(d),

HAS ADOPTED THIS REGULATION:

Article 1

The following shall be inserted into the table under producers in India in Article 1(3) of Council Regulation (EC) No 2603/2000:

South Asian Petrochem Limited	106,5	A585

Article 2

The following shall be inserted into the table in Article 2(3) of Council Regulation (EC) No 2603/2000 with regard to imports accompanied by an 'Undertaking Invoice':

South Asian Petrochem Limited	India	A585

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 Brussles,

For the Council
The President