

**COMMISSION REGULATION (EC) No 1810/1999**

**of 17 August 1999**

**imposing a provisional countervailing duty on imports of polyethylene terephthalate (PET) film originating in India**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 <sup>(1)</sup>, and in particular Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

**A. PROCEDURE**

- (1) In November 1998 the Commission announced by a notice (hereinafter referred to as 'notice of initiation') published in the *Official Journal of the European Communities* <sup>(2)</sup> the initiation of an anti-subsidy proceeding with regard to imports into the Community of polyethylene terephthalate film (hereinafter referred to as 'PET film') originating in India and commenced an investigation.
- (2) The proceeding was initiated as a result of a complaint lodged by Du Pont de Nemours International SA, Mitsubishi Polyester Film GmbH (formerly Hoechst Diafoil GmbH), Toray Plastics Europe SA and Nuroll SpA, representing a major proportion of the Community production of PET film. The complaint contained evidence of subsidisation of the said product, and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

Prior to the initiation of the proceeding and in accordance with Article 10(9) of Council Regulation (EC) No 2026/97 (hereinafter referred to as the 'Basic Regulation'), the Commission notified the Government of India (hereinafter 'GOI') that it had received a properly documented complaint alleging that subsidised imports of PET film originating in India are causing material injury to the Community industry. The GOI was invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. The GOI accepted the offer of consultations which were held with the Commission on 9 November 1998 in Brussels. Due note was taken of the comments made by the GOI in regard to the allegations contained in the complaint regarding subsidised imports and material injury being suffered by the Community industry.

- (3) The Commission officially advised the Community producers, exporting producers, importers and users known to be concerned, the representatives of the

exporting country and the complainant of the initiation of the proceeding. The parties concerned had the opportunity to make their views known in writing and to request a hearing.

The GOI, a number of exporting producers as well as some Community producers, importers and users made their views known in writing. All parties who so requested within the time limits set in the notice of initiation were granted a hearing.

- (4) The Commission sent questionnaires to all parties known to be concerned and received replies from the GOI and a number of Community producers, importers, users and exporting producers in India.
- (5) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination of subsidisation and injury, and carried out investigations at the premises of the following companies:
  - (a) *Community producers*
    - DuPont Polyester Films, Contern, Luxembourg and Wilton, United Kingdom
    - Mitsubishi Polyester Film GmbH, Wiesbaden, Germany
    - Nuroll Spa, Caserta, Italy
    - Toray Plastics Europe SA, St-Maurice de Beynost, France
  - (b) *Government of India*
    - Ministry of Commerce
    - Department of Revenue
    - Government of Gujarat
    - Government of Maharashtra
    - Government of Uttar Pradesh
  - (c) *Exporting producers in India*
    - Ester Industries Ltd, New Delhi
    - Flex Industries Ltd, Noida
    - Garware Plastics & Polyesters Ltd, Mumbai
    - India Polyfilms Ltd/Jindal Polyester Ltd, New Delhi (related companies)
    - MTZ Polyesters Ltd, Mumbai
    - Polyplex Corp. Ltd, New Delhi
  - (d) *Importers in the Community related to Indian exporting producers*
    - Garware Polyester International Ltd, Harrow, United Kingdom

<sup>(1)</sup> OJ L 288, 21.10.1997, p. 1.

<sup>(2)</sup> OJ C 357, 21.11.1998, p. 12.

(e) *Importers in the Community not related to Indian exporting producers*

- Coveme SpA, San Lazzaro di Savena, Italy
- Isolcavi Sas, Monteveglio, Italy.

(6) The investigation of subsidisation covered the period from 1 October 1997 to 30 September 1998 (hereinafter referred to as the 'investigation period' or 'IP'). The examination of injury covered the period from 1995 to the end of the investigation period (hereinafter referred to as the 'period considered').

## B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

### 1. Product under consideration

(7) The product under consideration is polyethylene terephthalate ('PET') film, and is currently classifiable within CN codes 3920 62 19 and 3920 62 90.

(8) This product range can be split into a variety of segments typically identified within the industry as magnetic, packaging, electrical, imaging and other industrial segments. Depending on the segment PET film can be further processed to be used in video cassettes, photographic films, as packaging material for foodstuffs, as insulation for electrical motors, cables etc. For the purposes of the investigation, the products were grouped in types according to market segment, thickness, coating properties, surface treatment, mechanical properties and clarity/opacity.

### 2. Like product

(9) The investigation established that PET film produced in India and sold domestically or exported to the Community and PET film produced and sold by the Community industry on the Community market were found to have the same physical and technical characteristics and uses and were thus like products within the meaning of Article 1(5) of the Basic Regulation.

## C. SUBSIDIES

### 1. Introduction

(a) *Nationwide schemes*

(10) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission services investigated the following five schemes that are available on a nationwide basis, and which allegedly involve the granting of export subsidies:

- passbook scheme
- duty entitlement passbook scheme
- export promotion capital goods scheme
- export processing zones/export oriented units
- income tax scheme.

The first four schemes are based on the Foreign Trade (Development and Regulation) Act 1992 (effective from 7 August 1992) which repealed the Imports and Exports Control Act of 1947. The Foreign Trade Act authorises the GOI to issue notifications regarding export and import policy. These are summarised in export and import policy documents which are issued every five years and updated every year. The document relevant to the investigation period of this case covers the policies for the years 1997 to 2002.

The last scheme, the income tax scheme, is based on the Income Tax Act of 1961 which is amended yearly by the Finance Act.

(b) *Regional schemes*

(11) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission services also investigated a number of schemes which allegedly involve the granting of subsidies by regional governments or authorities in certain Indian States.

(i) *State of Gujarat*

- sales tax incentive scheme
- refund of electricity duty.

The first scheme is based on Gujarat's new industrial incentive policy, 1995 to 2000. The second scheme is based on Section 3(2)(vii)(a) and (b) of the Bombay Electricity Duty Act 1958, as adapted by the Gujarat Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

(ii) *State of Maharashtra*

- sales tax incentive scheme
- octroi refund
- special capital incentive scheme
- exemption from electricity duty.

The first, second and third schemes are all based on the Government of Maharashtra's dispersal of industries package scheme of incentives. The fourth scheme is based on a notification by the Government of Maharashtra relating to exemption of electricity duty.

(iii) *State of Uttar Pradesh*

- trade tax incentive scheme.

This scheme is based on the Government of Uttar Pradesh's trade tax incentive (notifications No 311 and No 312 of 31 March 1995).

## 2. Passbook Scheme (PBS)

(12) One instrument under the export and import policy involving export-related assistance is the Passbook scheme (hereinafter 'PBS') which entered into force on 30 May 1995 and remained in force until 31 March 1997.

### (a) Eligibility

(13) The PBS is available to certain categories of exporters, i.e. those which manufacture in India and subsequently export (exporting producers) and exporters, whether manufacturers or only traders, granted an 'export house/trading house/star trading house/superstar trading house' certificate. The latter category of exporters, which is defined in the export and import policy document, has to provide proof of prior export performance.

### (b) Practical implementation

(14) Any eligible exporter could apply for a passbook, which takes the form of a book in which credit and debit amounts of duty are entered. It was issued automatically if the company is a recognised exporting producer or an approved export/trading house.

(15) On the export of finished goods, the exporter was eligible to claim credit which can be used to pay customs duties on subsequent imports. Various elements were taken into consideration in calculating the amount of credit to be granted in accordance with 'standard input/output norms' which were issued by the GOI for exported products. Standard input/output norms set out quantities of normally imported raw materials required to produce one unit of the finished product. The norms were established by the Special Advance Licensing Committee on the basis of a technical analysis of the production process and global statistical information. By applying the standard input/output norms, the credit was granted up to an amount corresponding to the basic customs duty payable on the normally imported inputs used by the Indian industry producing the exported product in question. One other element was the 'minimum value addition' (hereinafter 'MVA'). The MVA is the minimum value which the Indian exporting producer had to add (i.e. through indigenously sourced inputs/labour costs) to the value of imported inputs in producing the finished goods.

(16) The credit granted was entered in the passbook and was available to be offset against customs duties due on future imports of any goods (e.g. raw materials, capital goods, etc.) except those contained in the 'negative list of imports' as laid out in the export and import policy. This list sets out goods which either may not be imported or which may only be imported after the GOI has issued a special licence to the importer. The imported goods did not need to have any relation to the

actual production of the exporter and could be sold on the domestic market.

(17) Passbook credits were not transferable. The passbook was valid for a period of two years from the date of issue. Any credit at the end of the two-year period was allowed to be utilised within a period of 12 months thereafter. At the end of the third year, any unutilised credit lapsed. Within this general timetable there was no time limit for claims for credit to be made for a particular export transaction.

(18) When all credits in the passbook had been used, the passbook was closed and the passbook holder had to pay a fee to the relevant authority.

(19) The GOI argued that the PBS is not countervailable because it was a permitted duty drawback scheme. Article 2(1)(ii) of the Basic Regulation provides that the exemption of an exported product from duties/charges shall not be deemed to be a subsidy provided that it is granted in accordance with the provisions of Annexes I to III of the Basic Regulation. Item (i) of Annex I (the Illustrative list of export subsidies) to that Regulation specifies that the remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product constitutes an export subsidy. Furthermore, Annex II to the Basic Regulation requires investigating authorities, in determining whether inputs are consumed in the production process, to establish whether the government of the exporting country has in place a system or procedure to confirm which inputs are consumed in the production process of the exported product. In this case, no such system exists. In fact, the benefit granted in India to exporters of the product concerned in the form of passbook credits was automatically calculated on the basis of the standard input/output norms independently of whether inputs were imported, duty was paid on them or whether the inputs were actually used for export production.

Furthermore, the exporter was under no obligation to either import actual inputs or consume the imported goods in the production process under the PBS. What happened under the PBS in effect, was that on export of a finished product, an exporter was granted an amount of credit based on the amount of customs duty which was deemed to have been paid on normally imported inputs used in producing the finished product. This credit amount could be used to offset customs duty due on future imports of any product. A benefit accrued to the exporter in the form of unpaid customs duty on imports of any product (whether raw materials or capital goods). This scheme therefore allowed an exporter to import goods without paying customs duty once it had already exported some goods.

(c) *Conclusion on PBS*

- (20) The PBS was not a permitted remission/drawback scheme within the provisions of the Basic Regulation since the passbook credit was not calculated in relation to inputs actually to be consumed in the production process. Furthermore, the exporter was under no obligation to import goods free of duty which had to be consumed in the production process.

In any case, even if it were assumed that the scheme in question constituted a remission/drawback or substitution scheme, there was no system or procedure in place to confirm which inputs were consumed in the production process of the exported product within the meaning of item (i) of Annex I and Annexes II and III to the Basic Regulation. Annex II(ii)(5) and Annex III(ii)(3) of that Regulation provide that where it is determined that the government of the exporting country does not have such a system in place, a further examination by the exporting country based on actual inputs involved, or actual transactions, respectively, will normally need to be carried out in the context of determining whether an excess payment occurred. The GOI did not carry out such an examination. Hence, the Commission did not examine whether there was in fact an excess drawback of import charges on inputs consumed in the production of the exported product.

- (21) The scheme constitutes a subsidy as the financial contribution by the GOI in the form of duties foregone on imports conferred a benefit on the passbook holder who could import goods duty free using credits earned on exports. It was a subsidy contingent in law upon export performance and is therefore deemed to be specific under Article 3(4)(a) of the Basic Regulation. In addition, the MVA requirement is considered to require the use of domestic over imported goods. In this regard, the PBS was also a specific subsidy within the meaning of Article 3(4)(b) of the Basic Regulation.
- (22) In early 1997, the GOI announced that the PBS was effectively terminated and credit claims could no longer be made for export transactions taking place after 31 March 1997. An exporter may, however, continue to use a passbook which has already been issued, for a period of three years after the date of issue. Additionally, there is no time limit within which claims for credit must be made for export transactions made before 31 March 1997. While the scheme in that form has technically been terminated, exporters can continue to benefit from this scheme by importing goods, free of customs duties, until all credits have been exhausted or until 31 March 2000 at the latest. In these circumstances, it is considered that the scheme can be counter-vailed.

It should be stressed that the PBS was substituted by the duty entitlement passbook scheme (hereinafter DEPB (see recital 25)). The DEPB came into effect when the

PBS was terminated. Although the DEPB is a revised version of the PBS, it was possible to obtain benefits under both programmes during the investigation period.

(d) *Calculation of the subsidy amount*

- (23) The benefit to the exporting producers has been calculated on the basis of the amount of customs duty normally due on imports made during the investigation period but which remained unpaid under the PBS. In order to establish the full benefit to the recipient under this scheme, this amount has been adjusted by adding interest during the investigation period. Since the benefits from import duty exemptions are obtained regularly during the investigation period, they are equivalent to a series of grants. It is normal practice to reflect the benefit to the recipient of one-time grants by adding the annual commercial interest to the nominal amount of the grant, on the assumption that the grant is considered to have been made on the first day of the investigation period. However, in the present case, it is clear that individual grants can be made at any time between the first and the last day of the investigation period. Consequently, instead of adding annual interest to the whole amount, it is considered appropriate to assume that an average grant would have been received at the mid-point of the investigation period, and therefore the interest should cover a period of six months, equivalent to half of the annual commercial rate during the investigation period in India, i.e. 7%. This amount (i.e. unpaid customs duty plus interest) has been allocated over total exports during the investigation period.
- (24) Two companies benefited from this scheme during the investigation period and obtained subsidies of 0,02% and 0,09%. Given that India is a developing country falling under Annex VII of the WTO Subsidies Agreement, and given that it is considered appropriate to grant a favourable approach vis-à-vis such countries, while not substantially reducing the legitimate protection against subsidised imports to which the Community industry is entitled, the benefits obtained under this scheme will not be included in the computation of the total amount of subsidies obtained by the two companies.

### 3. Duty entitlement passbook scheme (DEPB)

- (25) Another instrument under the export import policy involving export related assistance is the DEPB which became effective on 7 April 1997. The DEPB constitutes the successor to the PBS which was terminated on 31 March 1997. The DEPB is of two types:

- DEPB on pre-export basis
- DEPB on post-export basis.

(a) *Eligibility for DEPB on pre-export basis*

- (26) The DEPB on pre-export basis is available to exporting producers (i.e. every manufacturer in India who exports) or merchant-exporters (i.e. traders) linked with manufacturers. To be eligible under this scheme, the company must have exported during a three-year period prior to submitting a claim for credit.

(b) *Practical implementation*

- (27) Any eligible exporter can apply for a licence. The licence, which is issued automatically, grants a credit amount that may be used to offset customs duties due on future imports of goods. The value of the licence is calculated on the basis of 5 % of the average yearly value of all exports, made by the applicant, during the previous three years.
- (28) The licence, which is not transferable, is valid for a period of 12 months from the date of issue. Once the credit on the licence has been exhausted, a fee is payable to the relevant authority. The company may then apply for a further credit amount, again calculated on the basis of 5 % of the average value of exports during the previous three years.
- (29) The DEPB on pre-export basis allows duty-free imports of inputs required for the production of goods. The products that may be imported depend on the product to be manufactured and are determined by a standard input/output norm. The duty-free inputs may not be used for any other purpose than the manufacture of the product.
- (30) The use of the schemes also carries with it an export obligation. When the licence is used, the holder undertakes to use the goods as inputs for finished products destined for export. Once the licence-holder has made exports of such a value which will entitle him to a credit equivalent to the credit already given under DEPB on pre-export basis, his obligation is fulfilled.

(c) *Conclusion on DEPB pre-export basis*

- (31) The DEPB on pre-export basis is not a permitted remission/drawback or substitution drawback scheme within the meaning of the provisions of the Basic Regulation despite the existence of an 'actual user condition'. This is owing to the fact that, most notably, the DEPB credit is calculated as a percentage of the value of prior export performance. The DEPB credit is not calculated in rela-

tion to inputs actually consumed in the production process.

- (32) Furthermore, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product and in what amounts. Annex II(II)(5) and Annex III(II)(3) provide that where it is determined that the government of the exporting country does not have such a system in place, a further examination by the exporting country based on actual inputs involved, or actual transactions, respectively, will normally need to be carried out in the context of determining whether an excess payment occurred. The GOI did not carry out such an examination. Hence, the Commission did not examine whether there was in fact an excess drawback of import charges on inputs consumed in the production of the exported product.
- (33) To benefit from the scheme a company must give a commitment to export. This is clearly an export subsidy. It is therefore provisionally concluded that this scheme is countervailable under Article 3(4)(a) of the Basic Regulation. However, if the GOI is able to provide evidence of an effective verification system or offer other relevant information, the Commission may, at the definitive stage, alter its conclusions on this scheme.

(d) *Calculation of the subsidy amount*

- (34) The benefit to the exporting producers has been calculated as explained in recital 23.
- (35) Two companies benefited from this scheme during the investigation period and obtained subsidies of 1,31 % and 6,84 %.

(e) *Eligibility for DEPB on post-export basis*

- (36) The DEPB on post-export basis is in effect very similar to the PBS described above. As explained, it has replaced the PBS and is effectively a substitute programme. It is available to exporting producers (i.e. every manufacturer in India who exports) or merchant-exporters (i.e. traders).

(f) *Practical implementation of DEPB post-export basis*

- (37) Under this scheme, any eligible exporter can apply for credits which are calculated as a percentage of the value of the exported finished products. Such DEPB rates have been established by the Indian authorities for most products, including the product concerned, on the basis of the standard input/output norms. A licence stating the amount of credit granted is issued automatically.

- (38) DEPB on post-export basis allows for the use of such credits for any subsequent imports (e.g. raw materials or capital goods) not on the negative list of imports. Such imported goods can be sold on the domestic market (subject to sales tax) or used otherwise.
- (39) DEPB licences are freely transferable. The DEPB licence is valid for a period of 12 months from the date of granting of the licence. When all credits have been used, the company has to pay a fee to the relevant authority.

(g) *Conclusion on DEPB on post-export basis*

- (40) This scheme is clearly contingent on export performance. When a company exports goods, it is granted a credit which can be used to offset amounts of customs duties due on future imports of any goods. Like the PBS, it is not a permitted drawback or substitution drawback scheme for the same reasons as stated in recital 20. The scheme constitutes a subsidy as the financial contribution by the GOI in the form of duties forgone on imports confers a benefit on a company which can import goods free of customs duty. It is a subsidy contingent in law on export performance and is therefore deemed to be specific under Article 3(4)(a) of the Basic Regulation.

(h) *Calculation of the subsidy amount for DEPB post-export basis*

- (41) The benefit to exporters has been calculated in two separate ways according to the use the company has made of the DEPB licences.
- (42) In the event that the company used the licences to make duty-free imports, the benefit was calculated on the basis of the amount of customs duty normally due on imports made during the investigation period but which remained unpaid under the DEPB.
- (43) In the event the company sold its licences, the benefit was calculated on the basis of the amount of credit granted in the licence regardless of the sales price of the licence. Some companies claimed that the benefit should be limited to the effective sales price of the licence which is sometimes less than the face value of the credits in the licence. However, this claim cannot be granted since the sale of a licence at a price less than the face value is a purely commercial decision which does not alter the amount of benefit received from the scheme.
- (44) In order to establish the full benefit to the recipient under this scheme, this amount has been adjusted by adding interest of 7 % during the investigation period; the rate of interest is calculated as described in recital

23. The amount of subsidy has been allocated over total exports during the investigation period.

- (45) Four companies benefited from this scheme during the investigation period and obtained subsidies of between 2,85 % and 17,81 %.

**4. Export promotion capital goods scheme (EPCGS)**

- (46) Another instrument under the export import policy involving export related assistance is the export promotion capital goods scheme (hereinafter 'EPCGS') introduced on 1 April 1990 and amended on 5 June 1995.

(a) *Eligibility*

- (47) The EPCGS is available to exporting producers (i.e. every manufacturer in India who exports) or merchant/exporters (i.e. traders). Since 1 April 1997, manufacturers linked with merchant/exporters can also benefit from the scheme.

(b) *Practical implementation*

- (48) To benefit from the scheme, a company must provide to the relevant authorities details of the type and value of the capital goods to be imported. Depending on the level of export commitment which the company is prepared to undertake, the company will be allowed to import capital goods at either a zero rate of duty or a reduced rate. A licence authorising the import at preferential rates is issued automatically.
- (49) In order to meet the export obligation, goods exported must have been produced with the imported capital goods.
- (50) An application fee is payable to obtain a licence.

(c) *Conclusion on EPCGS*

- (51) The EPCGS is a countervailable subsidy as the payment by an exporter of a reduced or zero rate of duty constitutes a financial contribution by the GOI, since revenue otherwise due is foregone and a benefit is conferred on the recipient by lowering the duties payable or fully exempting him from paying the import duties.
- (52) The subsidy is contingent in law on export performance within the meaning of Article 3(4)(a) of the Basic Regulation, since it cannot be obtained without a commitment to export goods, and is therefore deemed to be specific.

*(d) Calculation of the subsidy amount*

- (53) The benefit to the exporters has been calculated on the basis of the amount of unpaid customs duty due on imported capital goods by spreading this amount across a period of 18 years, which reflects the depreciation for capital goods actually imported under the EPCGS by each company. The amount so calculated which is attributable to the investigation period has been adjusted by adding interest during the investigation period in order to establish the full benefit to the recipient under this scheme. Given the nature of this scheme which is equivalent to a one-time grant, the commercial interest rate during the investigation period in India, i.e. 14 % was considered appropriate. This amount has then been allocated over total exports during the investigation period.
- (54) Six companies availed themselves of this scheme during the investigation period and obtained subsidies of between 1,44 % and 27,66 %.

**5. Export processing zones (EPZ)/export oriented units (EOU)**

- (55) Another instrument under the export import policy involving export related assistance is the export processing zones (hereinafter 'EPZ')/export oriented units (hereinafter 'EOU') scheme which was introduced on 22 June 1994.

*(a) Eligibility*

- (56) Companies located in any of seven geographically identified EPZ which undertake to export at least 75 % of their production can avail themselves of certain benefits. The same benefits are available to EOU which can be located anywhere in India (referred to as 'stand-alone EPZ'). EOU are bonded units under the surveillance of Customs officials.

*(b) Practical implementation*

- (57) Companies located in EPZ and EOU can obtain the following benefits:
- suspension of collection of duties due on purchases of capital goods during the period of bonding,
  - exemption from customs duties due on purchases of raw materials and consumables,
  - exemption from excise duty on goods procured from indigenous sources,
  - reimbursement of central sales tax paid on goods procured locally.
- (58) Companies located in EPZ and companies requesting treatment as EOU must apply to the relevant authorities. Such application must include details for a period of the next five years, on, *inter alia*, planned production quantities, projected value of exports, import requirements

and indigenous requirements. If the authorities accept the company's application, the terms and conditions attached to the acceptance will be communicated to the company. Companies in EPZ and EOU can be involved in the production of any product. The agreement to be recognised as a company in an EPZ/EOU is valid for a five-year period. The agreement may be renewed for further periods.

*(c) Conclusion on EPZ/EOU*

- (59) Since the EOU/EPZ scheme was used by the companies exclusively for the import of capital goods, the Commission services only assessed the countervailability of the suspension of collection of duties due on capital goods during the period of bonding.
- (60) In this regard, the EOU/EPZ scheme involves the granting of subsidies as the concessions granted under the scheme constitute financial contributions by the GOI, since revenues otherwise due are foregone and a benefit is conferred on the recipient.
- (61) The suspension of the collection of duties on capital goods has the same effect as an exemption since, as long as the export requirements are fulfilled, it is solely within the discretion of the company if and when to de-bond the capital goods.
- (62) This subsidy is contingent in law on export performance within the meaning of Article 3(4)(a) of the Basic Regulation, since it cannot be obtained without the company accepting an export obligation, and is therefore deemed to be specific and countervailable.

*(d) Calculation of the subsidy amount*

- (63) One company operated as a recognised EOU, and used this scheme for the import of capital goods. The benefit to this exporter has therefore been calculated on the same basis as explained for the EPCGS in recital 53.
- (64) On this basis, the company received benefits under this scheme at a rate of 0,7 %.
- (65) The Commission established that another exporting producer of the product concerned, a related company to the one established as an EOU, was also established as an EOU, and equally imported capital goods under this scheme during the first half of the investigation period. Subsequently, this company renounced its EOU status and converted the capital goods imported under the EOU scheme into capital goods imported under the EPCGS. Consequently, the capital goods imported by this company have been examined fully under the EPCGS.

## 6. Income tax exemption scheme (ITES)

- (66) The Income Tax Act 1961 is the legal basis under which the ITES operates. The Act, which is amended yearly by the Finance Act, sets out the basis for the collection of taxes as well as various exemptions/deductions which can be claimed. Among the exemptions which can be claimed by firms are those covered by Sections 10A, 10B and 80HHC of the Act, which provide an income tax exemption on profits from export sales. Exemption under Section 10A can be claimed by firms located in free trade zones, exemption under Section 10B can be claimed by export oriented units and exemption under Section 80HHC can be claimed by any firm which exports goods.
- (67) However, no exporter of the product concerned made use of these exemptions. There is therefore no need for the Commission to assess this scheme in the context of the investigation.

## 7. Regional schemes — sales tax/trade tax incentive schemes

- (68) The States of Gujarat, Maharashtra and Uttar Pradesh grant to eligible industrial enterprises incentives in the form of exemption and/or deferment of sales or trade tax in order to encourage the industrial development of economically backward areas within these States. Since these schemes are virtually identical, they are assessed jointly.

### (a) Eligibility

- (69) In order to be eligible, companies must invest in backward areas either by setting up a new industrial establishment or by making a large-scale capital investment in expansion or diversification of an existing industrial establishment. These areas, which represent certain territorial units in the three States are classified according to their economic development into different categories (e.g. most backward area, backward area, other eligible area, but also excluded or 'banned' areas). The main criteria to establish the amount of the incentives are the size of the investment and the area in which the enterprise is or will be located.

### (b) Specificity

- (70) These schemes are only available to companies having invested within certain designated geographical areas within the jurisdiction of the State concerned. They are not available to companies located outside these areas. The level of benefit is different according to the area concerned.
- (71) The schemes do not fall within the exceptions under Article 3(2)(b) of the Basic Regulation, whereby aid limited to certain enterprises may nevertheless be non-specific if its eligibility is based on objective criteria or conditions, since these should, *inter alia*, be horizontal in

application and not favour certain enterprises over others. The schemes are not horizontal in application, since some regions of the country or regional entity concerned are ineligible. Consequently, an enterprise in an eligible region will be eligible to receive aid, while an identical enterprise in a non-eligible region will not. In addition, two identical enterprises both situated in eligible regions or areas may receive different amounts of aid, if the aid ceilings of the regions or areas concerned are different.

- (72) The schemes are therefore specific in accordance with Article 3(2)(a) of the Basic Regulation.

### (c) Green-light test

- (73) The GOI claimed that these schemes are non-counter-vailable subsidies since they met the criteria of Article 4(3) of the Basic Regulation, and thus qualified as 'green-light' regional subsidies granted within each of the States concerned.

- (74) Under this Article, in order not to be subject to counter-vailing measures, subsidies to disadvantaged regions within the territory of the country of origin and/or export would have to comply with certain criteria; most notably, they would have to be: (1) pursuant to a general framework of regional development, (2) the regions concerned would have to be clearly designated contiguous geographical areas with a definable economic and administrative identity, and (3) be regarded as disadvantaged on the basis of neutral and objective criteria which must be clearly spelled out by law or other official document. These criteria shall include a measurement of economic development which shall be based on at least one of the following factors: income per capita, or household income per capita, or GDP per capita (in each case, not above 85 % of the average for the territory of the country concerned), or unemployment rate as measured over a three-year period (at least 110 % of the average for the country concerned).

- (75) It should be noted that the information supplied by the GOI, in so far as regional schemes are concerned, was incomplete. During the verification visit and on subsequent occasions, the Commission services requested from the GOI the information which would be required in order to examine whether these programmes meet the green-light criteria as outlined in recital 74. The GOI has so far not submitted any information in this respect.

- (76) Moreover, when questioned by the Commission during the verification visit about the neutral and objective criteria used to determine a disadvantaged area, the Indian authorities were not able to produce any statistics allowing to establish such criteria.



(77) In the absence of more precise information, the Commission services were obliged to make use of facts available and conclude that the green-light claim made by the GOI in respect to these regional schemes is not sufficiently supported. It is therefore provisionally concluded that these schemes are countervailable.

(d) *Calculation of the subsidy amount*

(78) The benefit to the exporting producers has been calculated on the basis of the amount of sales tax or trade tax normally due during the investigation period but which remained unpaid under these schemes. In order to establish the full benefit to the recipient under this scheme, this amount has been adjusted by adding interest during the investigation period. Given the nature of these subsidies, which is equivalent to a series of grants, a rate of 7 %, i.e. half the commercial interest rate during the investigation period in India, was considered appropriate. The amount of benefit has been allocated over total sales during the investigation period.

(79) Six companies benefited from these schemes during the investigation period and obtained subsidies of 0,15 % and 5,47 %. It should be noted that the subsidy of 0,15 % received by one company has been excluded from the calculation of the total subsidy amount of this company for the reasons stated in recital 24.

## 8. Regional schemes — electricity duty exemption

(80) The States of Gujarat and Maharashtra grant to eligible industrial enterprises incentives in the form of exemption from the payment of electricity duty in order to encourage the industrial development of economically backward areas within these States, and in particular the Marathwada Region as far as Maharashtra is concerned. Since these schemes are virtually identical, they are appraised jointly.

(a) *Eligibility*

(81) In order to be eligible, companies must invest in backward areas either by setting up a new industrial establishment or by making a large-scale capital investment in expansion or diversification of an existing industrial establishment.

(b) *Specificity*

(82) These schemes are only available to companies having invested within certain designated geographical areas within the jurisdiction of the States of Gujarat and Maharashtra. The schemes are specific in accordance

with Article 3(2)(a) of the Basic Regulation for the same reasons as explained in recitals 70 and 71.

(c) *Green-light test*

(83) The GOI claimed that these schemes are non-countervailable subsidies since they met the criteria of Article 4(3) of the Basic Regulation.

(84) The criteria of Article 4(3) of the Basic Regulation have been described in recital 74.

(85) It is recalled that the information submitted by the GOI, in so far as regional schemes are concerned, was incomplete. In the absence of more precise information, the Commission services were obliged to make use of facts available and conclude that the green-light claim made by the GOI with respect to electricity duty exemption schemes is not sufficiently supported. It is therefore provisionally concluded that these schemes are countervailable.

(d) *Calculation of the subsidy amount*

(86) The benefit to the exporting producers has been calculated on the basis of the amount of electricity duty normally due during the investigation period but which remained unpaid under these schemes. In order to establish the full benefit to the recipient under this scheme, this amount has been adjusted by adding interest during the investigation period. Given the nature of these subsidies, which is equivalent to a series of grants, a rate of 7 %, i.e. half the commercial interest rate during the investigation period in India, was considered appropriate. The amount of benefit has been allocated over total sales during the investigation period.

(87) Two companies benefited from these schemes during the investigation period and obtained subsidies of 0,25 % and 4,13 % respectively. It should be noted that the subsidy of 0,25 % received by one company has been excluded from the calculation of the total subsidy amount of this company for the reasons stated in recital 24.

## 9. Regional schemes — octroi refund

(88) The State of Maharashtra grants to eligible industrial enterprises incentives in the form of a refund of octroi. Octroi is a tax levied by local authorities in India on goods that enter the territorial limits of a town or district. The total amount that may be refunded is restricted to 100 % of the fixed capital investment. The period during which this refund can be availed of differs according to the area in which a company is located.

(a) *Eligibility*

- (89) In order to be eligible, companies must invest in backward areas either by setting up a new industrial establishment or by making a large-scale capital investment in expansion or diversification of an existing industrial establishment.

(b) *Specificity*

- (90) This scheme is only available to companies having invested within certain designated geographical areas within the jurisdiction of the State of Maharashtra. The scheme is specific in accordance with Article 3(2)(a) of the Basic Regulation for the same reasons as explained in recitals 70 and 71.

(c) *Green-light test*

- (91) The GOI claimed that this scheme is a non-counter-ventable subsidy since it met the criteria of Article 4(3) of the Basic Regulation.
- (92) The criteria of Article 4(3) of the Basic Regulation have been described in recital 74.
- (93) It is recalled that the information submitted by the GOI, in so far as regional schemes are concerned, was incomplete. In the absence of more precise information, the Commission services were obliged to make use of facts available and provisionally conclude that the green-light claim made by the GOI in respect to the octroi refund scheme is not sufficiently supported. It is therefore provisionally concluded that this scheme is counter-ventable.

(d) *Calculation of the subsidy amount*

- (94) The benefit to the exporting producers has been calculated on the basis of the amount of octroi tax normally due during the investigation period but which remained unpaid under this scheme. In order to establish the full benefit to the recipient under this scheme, this amount has been adjusted by adding interest during the investigation period. Given the nature of these subsidies, which is equivalent to a series of grants, a rate of 7 %, i.e. half the commercial interest rate during the investigation period in India, was considered appropriate. The amount of benefit has been allocated over total sales during the investigation period.
- (95) One company benefited from this scheme during the investigation period and obtained subsidies of 1,46 %.

**10. Regional schemes — special capital incentive scheme**

- (96) Another scheme that is made available by the State of Maharashtra is the special capital incentive scheme,

which can take the form of either a cash grant or a sales tax incentive. The total amount granted depends on the area and the scale of the enterprise.

(a) *Eligibility*

- (97) Any new unit or 'pioneer units' set up after 1 October 1988 in certain areas, but not units having expanded or diversified their operations, are eligible for this scheme.

(b) *Specificity*

- (98) This scheme is only available to companies having invested within certain designated geographical areas within the jurisdiction of the State of Maharashtra. The scheme is specific in accordance with Article 3(2)(a) of the Basic Regulation for the same reasons as explained in recitals 70 and 71.

(c) *Green-light test*

- (99) The GOI claimed that this scheme is a non-counter-ventable subsidy since it met the criteria of Article 4(3) of the Basic Regulation.
- (100) The criteria of Article 4(3) of the Basic Regulation have been described in recital 74.
- (101) It is again recalled that the information submitted by the GOI, in so far as regional schemes are concerned, was incomplete. In the absence of more precise information, the Commission services were obliged to make use of facts available and conclude that the green-light claim made by the GOI with respect to the special capital incentive scheme is not sufficiently supported. It is therefore provisionally concluded that the scheme is counter-ventable.

(d) *Calculation of the subsidy amount*

- (102) The benefit to the exporting producers has been calculated as explained for EPCGS in recital 53 on the basis of a one-time grant during the investigation period, linked to the acquisition of fixed assets. The amount of benefit has been allocated over total sales during the investigation period.
- (103) One company benefited from this scheme during the investigation period and obtained subsidies of 0,01 %, which has been excluded from the calculation of the total subsidy amount for the reasons stated in recital 24.

**11. Amount of counter-ventable subsidies**

- (104) The amount of counter-ventable subsidies in accordance with the provisions of the Basic Regulation, expressed *ad valorem*, for each investigated exporter is as follows.

(en %)

	PBS	DEPB		EPCGS	EPZ/EOU	State schemes				Total
		Pre-export	Post-export			Sales-tax	Capital-incentive	Octroi refund	Electricity-refund	
Ester Industries Ltd		6,84	2,85	2,92						12,6
Flex Industries Ltd			10,48	2,24		1,12				13,8
Garware Plastics & Polyester Ltd		1,31		1,48		2,48		1,46		6,7
India Polyfilms Ltd & Jindal Polyester Ltd			4,31	1,58	0,70	0,51				7,1
MTZ Polyester Ltd				27,66		5,47			4,13	37,2
Polyplex Corporation Ltd			17,81	1,44		1,09				20,3

#### D. INJURY

##### 1. Definition of the Community industry

###### (a) Community producers

(105) Within the Community, the product concerned is manufactured by:

- producers who lodged the complaint and cooperated in the investigation, (listed in recital 5), and
- other Community producers who were not complainants but were not opposed to the proceeding.

All these companies therefore constitute the Community production within the meaning of Article 9(1) of the Basic Regulation.

###### (b) Community industry

(106) The four complainant producers fulfil the requirements of Article 10(8) of the Basic Regulation, since they account for more than 80 % of total Community production of the product concerned and are therefore deemed to constitute the Community industry within the meaning of Article 9(1) of the said regulation and are hereinafter referred to as 'the Community industry'.

##### 2. Community consumption

(107) The consumption of PET film on the Community market during the period considered was established on the basis of the combined volume of sales of the own-produced PET film of the Community industry and of the non-complainant Community producers plus the

total imports onto the Community market of PET film. For this latter information the Commission relied on Eurostat statistics and, in the case of India, on the export sales data provided by the Indian exporting producers.

(108) In assessing consumption in the Community, captive production, which amounts to around 60 000 tonnes (1998), was not taken into consideration as this production is not sold as PET film. A captive producer further processes the film into a final product of which PET film is only one of the components. The investigation showed that there were no sales from the Indian exporting producers to the captive market. Furthermore, it was established that on the one hand there were only modest sales by one captive producer to the non-captive market and on the other hand from the Community industry to the captive market. Therefore sales of PET film produced for and used in the captive market did not come into competition with PET film produced for and sold in the non-captive market and were thus not likely to be subject to the effects of subsidised imports. However, the modest non-captive sales made by one captive producer were taken into account in establishing the total consumption.

(109) On this basis, the Community consumption of PET film was found to have increased by 15,1 % during the period considered. Expressed in tonnes the consumption amounted to 183 241 in 1995, 178 734 in 1996, 206 772 in 1997 and 210 914 in the IP.

### 3. Market shares and import volumes from India

- (110) The market share of the Indian exporting producers was calculated as a percentage of total Indian exports into the EC (as declared by the exporting producers) of the consumption in the Community. Hence, it was established that the Indian market share amounted to 3,6 % in 1995, 3,1 % in 1996, 8,2 % in 1997 and 9,6 % in the IP. This corresponds to an increase of 167 % during the period considered.

In absolute figures, it was found that the import volume in tonnes developed as follows: 6 534 in 1995, 5 574 in 1996, 17 011 in 1997 and 20 250 tonnes in the IP. This corresponds to an increase of 210 %.

### 4. Prices of subsidised imports

#### (a) Price evolution

- (111) Prices of the Indian exporting producers have steadily decreased since 1995. In 1995 the average price amounted to ECU 3 219/t the price dropped to 2 425 in 1996, 1 865 in 1997 and 1 674 during the IP, which corresponds to an overall decrease of 48 %.

#### (b) Price undercutting

- (112) In order to establish whether the Indian exporting producers undercut the sales prices of the Community industry, a detailed analysis was carried out. Weighted average export prices per PET film type within each market segment listed in recital 8 were compared with the weighted average sales prices of the Community industry types, sold in both cases to unrelated parties. When imports were made through related companies, resale prices to first independent customers were used.

- (113) Adjustments to the Indian exporting producers' prices were made, where appropriate, for transport costs, handling and import charges in order to arrive at a free Community-frontier level, duty paid. The Community industry's sales prices were similarly adjusted, where appropriate, to arrive at ex-factory level.

- (114) The comparison of the weighted average Indian export prices, duly adjusted, with the weighted average sales prices of the Community industry showed that the Indian exporting producers have undercut the Community producers on weighted average by 40.1 % (ranging between 28,2 % and 50,5 %).

### 5. Situation of the Community industry

#### (a) Capacity

- (115) The capacity of the Community industry showed a steady growth during the period considered with an increase of 20 % (from 145 756 tonnes in 1995 to 148 726 tonnes in 1996, 157 683 tonnes in 1997 and 175 075 tonnes in the IP). The Community industry decided to install new production lines in 1995 in line with the increased demand for PET film. The investments became operational with a delay of two to three years.

#### (b) Production volume

- (116) Total production of the Community industry fluctuated slightly during the period considered with an increase of 2 %. Whereas 1995 (132 948 tonnes) can be described as a positive year for the Community industry owing to very high demand, 1996 (122 977 tonnes) showed a significant drop in the level of production. In 1997 the production of the Community industry increased again to 128 741 tonnes, consistent with higher demand. The production of the IP amounted to 135 287 tonnes.

#### (c) Capacity utilisation

- (117) The capacity utilisation of the Community industry declined from 91 % in 1995 to 83 % in 1996, 82 % in 1997 and 77 % in the IP, i.e. a decrease of 15 %.

#### (d) Sales volume (own produced PET film)

- (118) Between 1995 and 1996 the volume of sales to unrelated parties in the Community showed a 7,8 % drop (from 104 750 to 96 572 tonnes). The following year sales almost recovered their 1995 level (103 629 tonnes). During the period considered sales increased by 1 % amounting to 106 138 tonnes in the IP.

#### (e) Sales volumes of traded products

- (119) During the period considered PET film purchases by the Community industry from non-member countries increased significantly: whereas in 1995 the share of such traded products of total EC-sales volume of PET film was only 7,6 %, in the IP it was 16,0 %. Sales volumes of traded products, in tonnes, amounted to 8 595 in 1995, 7 011 in 1996, 17 029 in 1997 and 20 197 in the IP, which corresponds to an increase of 135 %.

(f) *Market share*

- (120) The Community's industry market share, calculated on the basis of sales of own produced PET film in the Community market, showed a negative development during the period considered. The Commission found that whereas the Community industry accounted for 57,2 % of the market in 1995, its share decreased to 54,1 % in 1996 and 50,6 % in 1997, reaching its lowest level in the IP with 50,4 %. This corresponds to an overall decrease of 12 %.

(g) *Sales prices*

- (121) The investigation showed that the Community industry has to lower its prices by 23 % since 1995. Sales prices (ECU/t) decreased from 4 429 in 1995 to 4 286 in 1996, 3 631 in 1997 and 3 393 in the IP.

(h) *Profitability*

- (122) As regards profitability, it was established that the Community industry was in a better financial situation in 1995 compared with the IP. Profitability for all companies dropped sharply during the period considered and in particular two companies faced significant losses in the IP. It should be noted that all the costs of the investments in new production lines mentioned in recital 115 were excluded by the Commission in the calculation of profitability for PET film. The profit margin decreased from 16,1 % in 1995 to 10,6 % in 1996, 4,0 % in 1997 and became a loss of - 0,7 % in the IP.

(i) *Employment*

- (123) As regards employment, the Community industry did not substantially reduce its workforce as the sales volume was kept at a steady level by continuous price reductions. In fact the workforce was increased owing to new investments up to 1997 after which the number of employees declined. The workforce grew from 2 445 in 1995 to 2 519 in 1996 and 2 588 in 1997. In the IP the workforce was cut to 2 514. The overall increase in the number of employees amounted to 3 %.

(j) *Investment*

- (124) As regards investment there was a continuous upward trend. The Community industry made its investment decision in 1995, when there was insufficient supply in the market owing to increasing demand. Investments in new production lines took a long time to be operational and required the Community industry to spend money

on its projects years after the market took a downward trend. The value of investments increased from ECU 24 702 million in 1995 to ECU 96 450 million in 1996, ECU 170 007 million in 1997 and ECU 203 699 million in the IP; i.e. a increase of 725 %.

(k) *Stocks*

- (125) It was established that stocks increased by 23 % during the period considered reaching 21 783 tonnes at the end of the IP compared with the 17 664 tonnes of 1995, 19 121 tonnes of 1996 and 18 434 tonnes of 1997. At the same time the share of stocks, expressed as a percentage of production, increased from 13 % to 16 %.

## 6. Conclusion on injury

- (126) Community industry sales remained, by and large, stable between 1995 and the IP. After a decrease in 1996, they did not follow the expansion of Community consumption which increased substantially, i.e. by more than 15 %, from 183 000 tonnes to 211 000 tonnes during the period considered. This resulted in a continuous drop in the Community industry's market share, which would have decreased more significantly had the Community industry not cut its sales prices by 23 %. Lack of sales volume also led to an increase of 23 % in stocks.
- (127) Despite a small increase in production and its relatively stable sales volumes, profitability of the Community industry fell between 1995 and the IP.
- (128) Consequently, the above injury factors show that between 1995 and the IP the situation of the Community industry deteriorated.
- (129) The Commission has therefore provisionally concluded that the Community industry has suffered material injury within the meaning of Article 8(1) of the Basic Regulation.

## E. CAUSATION

### 1. Preliminary remark

- (130) According to Article 8(6) and (7) of the Basic Regulation, the Commission has examined whether the imports concerned have caused material injury. Known factors other than the subsidised imports, which could at the same time have injured the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the subsidised imports.

## 2. Effect of the subsidised imports

- (131) The significant increase in the Indian market share from 3,6 % in 1995 to 9,6 % during the IP and the substantial price undercutting found (up to 50,5 %) coincided with the deterioration in the situation of the Community industry, in particular in terms of loss of market shares and price depression, as well as deterioration of profitability.
- (132) When faced with low-priced imports originating in India, the Community industry had the choice of either maintaining its prices with a negative development of sales and market share or of following the trend of low prices of the subsidised imports, with negative consequences for profitability. Most complainant Community producers decided to cut their prices already in 1996. During the following years and especially during the IP, all of them lowered their sales prices further with negative impact on their profitability. This shows the price sensitivity of the market and the important impact of price undercutting as practised by the Indian exporting producers.
- (133) The Indian exporting producers have argued that the Community industry is active primarily in the upper segment of the PET film market, while they are only active in the lower segment. They have also claimed that their channels of sales are different from those of the Community industry. These arguments are contradicted by the information the Indian exporting producers and the importers of Indian PET film themselves have provided to the Commission in their questionnaire replies.

Firstly, it should be recalled that the Community market for PET film is divided into five segments as mentioned in recital 8 and that the Indian exporting producers are present in all of them except the magnetic segment, the Community industry being present in all segments. The investigation has shown that within the four segments common to all operators higher quality speciality films are offered by both the Community industry and the Indian exporting producers.

Secondly, the Indian exporting producers and the Community industry are using the same sale channels, namely traders and converters.

Thus, the arguments put forward by the Indian exporting producers must be rejected.

## 3. Effect of other factors

### (a) Imports from other third countries

- (134) Imports from countries not concerned by this proceeding increased by 31 % during the period considered, i.e. at a rate higher than the increase of 15,1 % of Community consumption, but lower than the increase of 210 % of imports from India. Among these non-

member third countries South Korea, the major supplier to the Community market, increased its market share from 8,3 % in 1995 to 12,9 % in the IP. Two other important suppliers to the Community market during the period considered were Japan, whose share of the Community market declined from 5,8 % to 3,6 %, and the USA, whose share increased by one percentage point from 9,1 % to 10,1 % (imported mainly by Community industry). As regards prices, the average price of these imports, as provided by Eurostat, was considerably higher than the prices of the Indian imports.

### (b) Development of consumption on the Community market

- (135) It should be recalled that consumption of the product under investigation in the Community increased by 15,1 % during the period considered. Therefore, the injury suffered by the Community industry cannot be attributed to a contraction of demand on the Community market.

### (c) Overcapacity of the Community industry

- (136) The Indian exporting producers have claimed that the Community industry has developed an overcapacity for PET film and that this is one of the main causes of its difficulties. In this respect, the investigation has shown that an increase of 20,1 % in production capacity by the Community producers occurred between 1995 and the IP. This increase was based upon a sound analysis of future market trends, which turned out to be roughly in line with the actual increase in Community consumption. It should also be noted that capacity is not only destined for sales in the Community but also for exports. Finally the investment decision has to be seen in the light of the very significant capital costs and long periods of time necessary for commissioning new plants. In any event, if there is an overcapacity in the world market for PET film it has probably been caused more by the building up of new production capacities in India than in the Community. It was established that the capacity of the Indian exporting producers increased by 97 % during the period considered (from 62 100 to 122 600 tonnes).

- (137) The investigation has shown that the capacity utilisation rate of the Community industry went down from 91,2 % in 1995 to 77,3 % in the IP, whilst capacity was increased only slightly more than the increase in Community consumption.

(d) *Competitiveness of the Community industry*

(138) The Indian exporting producers have claimed that the Community industry has lost its *de facto* monopoly because the Indian imports have entered into the Community market. As a result, it is alleged, the Community industry has not been able to compete successfully. The investigation has clearly established that the producers in the Community, as a whole, have never dominated the market. As early as 1995, when the Indian market share was still small, the Community market covered by imports was more than 30 %. Besides imports, six Community producers were present on the market in competition with each other. The entry of the Indian exporting producers in the European market created unfair competition with subsidised imports.

(e) *Fluctuation in the price of raw materials*

(139) The Indian exporting producers have argued that the decrease in prices of PET film in the Community market is mainly due to the declining prices of the raw material on the world market.

(140) The investigation showed that raw material prices had indeed declined: the raw material cost per tonne of PET film sold by the Community industry decreased by 17 % during the period considered. However during the same period the average sales price per tonne of finished PET film decreased by more than 23 %. Given that the share of raw materials in the total production cost varied between 33 % and 38 % depending on the year, the decrease in total production cost of PET film attributable to lower raw material prices amounts to around 6 %. This shows that a decrease in raw material prices may have led to a reduction in the total cost of production and therefore also justified a decrease in sales prices to a limited extent. This, however, neither explains the actual sales price decrease of 23 % overall nor the negative development of the Community industry's profitability.

(f) *General difficulties in the polyester sector*

(141) The Indian exporting producers submitted that the injury the Community industry claimed to have suffered might have been partly caused by difficulties in polyester sectors other than PET film. It should be noted that three out of the four complainant Community producers operate exclusively in the PET film sector <sup>(1)</sup>. Concerning the company also involved in other sectors, it was established that these were more profitable than PET film,

especially during the last two years of the period considered.

(g) *Situation of the non-complainant Community producers*

(142) During the course of the investigation it was also considered whether the situation of the non-complainant Community producers operating on the non-captive market in the Community was different from that of the Community industry. In this respect it was established that the non-complainant Community producers had also lost market share, from 12,4 % in 1995 to 9,4 % in the IP. Their average sales price per tonne of PET film had declined by 24 %, i.e. one percentage point more than the Community industry's. Therefore it is concluded that the non-complainant Community producers have followed the negative trend of the Community industry.

(h) *Traded PET film by complainant Community producers*

(143) As mentioned in recital 119 the Community industry has been purchasing more and more PET film from sources outside the Community. The increased trading is explained by the fact that three complainant Community producers have been acquired by United States or Japan based companies between 1996 and 1998. These large multinationals are organised in such a way that the production of their overall PET film product range is increasingly specialised and takes place in different production sites worldwide, including in the Community. Therefore, the Community based companies have concentrated on certain PET film product types, thus complementing the overall product range offered in the Community with products produced by companies belonging to the same group but located outside the Community. At the same time, companies outside the Community buy those product types for which production is concentrated in the Community in order to sell it on their respective geographical markets. This two-way trading within a group can be seen both in the increased purchases and in the increased export sales of the Community producers. Owing to this, increased trading is considered to be a normal phenomenon resulting from the globalisation of the industry.

(144) The trading activity represented 14,0 % of the total sales volume of the Community industry during the IP. Export sales of own-produced PET film, which increased by 7,4 % during the period considered, represented 16,7 % of total sales volume during the IP.

<sup>(1)</sup> Except for by-products, which are sold in small quantities.

#### 4. Conclusion on causation

- (145) It cannot be ignored that factors other than subsidised imports from India, in particular imports originating in South Korea, may have contributed to the difficult state of the Community industry. However, the substantial increase in import volume from India, the increase in market share of the Indian imports, the considerable price decreases and price undercutting by these imports had material negative consequences on the situation of the Community industry. The Commission has therefore concluded that these imports, taken in isolation, have caused material injury to the Community industry and possible injury caused by other factors was not such as to break this causal link.

### F. COMMUNITY INTEREST

#### 1. Preliminary remark

- (146) The Commission provisionally examined, on the basis of all the evidence submitted, whether, despite the injurious effects of the subsidised imports, compelling reasons existed which would lead to the conclusion that it would not be in the Community interest to impose measures in this particular case. For this purpose, and pursuant to Article 31(1) of the Basic Regulation, the Commission considered, on the basis of the information available, the impact of possible measures for all parties involved in the proceeding, and also the consequences of not taking measures. In this context, particular consideration was given to the effect that anti-subsidy measures, if any, would have on the Community industry, on the non-complainant Community producers, on importers and on users of the product concerned.

#### 2. Interest of the Community industry

- (147) As has been shown above, the Community industry has been facing difficulties linked to the presence of subsidised Indian imports.

It is considered that, without measures to correct the effects of the subsidised imports, the Community industry will continue to face price undercutting and the consequent price depression which led to the deterioration of its profitability. In the event that such a situation were allowed to continue, the Community producers would be left with no other alternative but to close down certain production lines or even entire plants devoted exclusively to the production of PET film.

- (148) In the long run even the survival of three complainant Community producers could be endangered by the absence of measures in view of the fact that those companies do not produce other products. The jobs of approximately 2 500 people employed by the Community industry would be endangered if the

Community industry were to start closing down its plants.

#### 3. Interest of other Community producers

- (149) As mentioned above the Commission received three responses from non-complainant Community producers. However, only one non-captive producer took a position on the effects of the PET film imported from India. The company submitted that, although the Indian companies are not exporting into the segments where they are operating, the indirect effect on their prices is considerable. The investigation has confirmed that this is owing to the transparency of the PET film market. Any change of price in one segment has an immediate effect in all the others.

It is therefore to be provisionally concluded that the imposition of countervailing measures will have a positive effect on the profitability of other non-captive Community producers through increased prices, and on the basis of the evidence available, it is not likely to affect the captive producers in the Community.

#### 4. Interest of importers

- (150) As mentioned above, the Commission sent questionnaires to all known importers of the product under investigation, i.e. to 12 companies, but only four substantiated replies were received. On the basis of the information obtained it appears that importers in the Community purchase the product under investigation from a variety of sources, which include India and the Community industry. It can be thus concluded that, apart from importing PET film originating in India, they also trade in PET film purchased from the Community industry. For three companies that replied to the questionnaires PET film sales represented less than 50 % of their total turnovers.
- (151) When asked to comment on the effects that a likely imposition of countervailing measures could have on their business, only two importers claimed that the imposition of such measures was likely to affect them in a negative manner.
- (152) As there are no fundamental quality differences between the product imported from India and of other origins considered that the importers in the Community would have no difficulty in obtaining the product from other sources as well as from India, especially since there is no shortage of supply on the world market.

On this basis, the Commission has provisionally concluded that the imposition of countervailing measures is not likely to have a serious effect on importers in the Community.



### 5. Interest of users of the product concerned

(153) The Commission also sent questionnaires to 29 Community users of PET film and received two substantiated responses. In general, and on the basis of the responses received and the low response rate, it was concluded that the outcome of the investigation will most likely not have an important impact on the user industry, either because PET film as a raw material is not a significant cost factor for them or because their production of downstream products based on PET film only accounts for a small proportion of their total production. It can be added that users buying PET film from India often buy it from other sources as well, including both Community producers and other third countries.

### 6. Conclusion on Community interest

(154) In examining the various interests involved and all the above aspects, the Commission has provisionally established that there are no compelling reasons not to take action against the imports in question.

### G. PROVISIONAL DUTY

(155) On the basis of the conclusions on subsidisation, injury, causal link and Community interest, the Commission considers it necessary to adopt provisional countervailing measures.

(156) For the purpose of determining the level of these measures, the Commission took account of the fact that the weighted average Community industry's price on the Community market declined significantly over the period considered and was at a non-profitable level. In order to remove the effects of injurious subsidisation in this situation, the Commission considered that the prices of the subsidised imports should be increased to a non-injurious level. This level was determined on the basis of the Community industry's weighted average cost of production plus a 6 % profit margin. The investigation established that such a profit margin should be regarded as representing an appropriate minimum, taking into account the need for long-term investment in what is a capital-intensive industry, and the amount which the Community industry could reasonably be expected to make in the absence of injurious subsidisation. By comparing, on a type-by-type basis the non-injurious import prices thus established with the actual import prices used for the price undercutting calculation, the amount necessary to remove the injury or injury margin was determined. This amount was then expressed as a percentage of the actual cif import price at the Community frontier, customs duty unpaid level, resulting in the injury margin.

(157) In accordance with Article 12(1) of the Basic Regulation, the countervailing duty rate should correspond to the subsidy margin, unless the injury margin is lower. The following rates of duty therefore apply for the cooperating producers:

— Ester Industries Ltd	12,6 %
— Flex Industries Ltd	13,8 %
— Garware Plastics & Polyesters Ltd	6,7 %
— India Polyfilms Ltd	7,1 %
— Jindal Polyester Ltd	7,1 %
— MTZ Polyesters Ltd	37,2 %
— Polyplex Corporation Ltd	20,3 %

(158) Given the high level of cooperation, which covered more than 80 % of imports into the Community of the product concerned originating in India, it was considered appropriate to establish the duty rate for non-cooperating companies at the same rate as the highest rate that has been established for the cooperating companies, i.e. 37,2 %. This level will ensure that no bonus is granted for non cooperation and that duty evasion will be minimised.

(159) The individual duty rates specified in this Regulation were established on the basis of the findings of the present anti-subsidy investigation. Therefore, they reflect the situation found during that investigation. These duty rates are thus exclusively applicable to imports of products originating in the country concerned and produced by the specific legal entities mentioned. Products produced by any other company not specifically mentioned in the operative part of this Regulation, including related entities, cannot benefit from these rates and shall be subject to the residual duty rate.

(160) Any claim requesting the application of these individual duty rates (e.g. following a change in the name of the entity) should be addressed to the Commission forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with that name change.

### H. FINAL PROVISION

(161) In the interests of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A provisional countervailing duty is hereby imposed on imports of polyethylene terephthalate (PET) film falling within CN codes 3920 62 19 (TARIC codes 3920 62 19 10, 3920 62 19 15, 3920 62 19 25, 3920 62 19 30, 3920 62 19 35, 3920 62 19 40, 3920 62 19 45, 3920 62 19 50, 3920 62 19 55, 3920 62 19 60,

3920 62 19 65, 3920 62 19 70, 3920 62 19 75, 3920 62 19 80, 3920 62 19 81, 3920 62 19 85, 3920 62 19 87, 3920 62 19 89, 3920 62 19 91) and 3920 62 90 (TARIC codes 3920 62 90 30, 3920 62 90 91) and originating in India.

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows:

Producer	Rate of duty (%)	Taric additional code
Ester Industries Ltd 75-76, Amrit Nagar, Gehind NDSE-I, New Delhi, 10 003, India	12,6	A026
Flex Industries Ltd A-1, Sector-60 Noida, 201 301 (UP), India	13,8	A027
Garware Plastics & Polyesters Ltd Western Express Highway, Bombay, 400 057, India	6,7	A028
India Polyfilms Ltd 112, Indra Prakash Building 21, Barakhamba Road New Delhi, 110 001, India	7,1	A029
Jindal Polyester Ltd 115-117, Indra Prakash Building, 21, Barakhamba Road New Delhi, 110 001, India	7,1	A030
MTZ Polyesters Ltd Sarnath Center, Upvan Area, Upper Govind Nagar, Malad (E), Numbai, 400 097, India	37,2	A031
Polyplex Corporation Ltd 75, Amrit Nagar, Nueva Delhi, 110 003, India	20,3	A032
All other Indian companies	37,2	A999

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

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

*Article 2*

Without prejudice to Article 30 of Regulation (EC) No 2026/97, the parties concerned may make known their views in

writing and apply to be heard orally by the Commission within 15 days of the date of entry into force of this Regulation.

Pursuant to Article 31(4) of Regulation (EC) No 2026/97, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

*Article 3*

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

Article 1 of this Regulation shall apply for a period of four months.

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

Done at Brussels, 17 August 1999.

*For the Commission*  
Karel VAN MIERT  
*Member of the Commission*

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