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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 15/2009

of 8 January 2009

amending Regulation (EC) No 367/2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India and amending Regulation (EC) No 1292/2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating 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 Articles 19 and 24 thereof,

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

Whereas:

A. PROCEDURE

I. Previous investigation and existing countervailing measures

(1) In December 1999, by Regulation (EC) No 2597/1999 [2], the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) film (the product concerned) falling within CN codes ex 3920 62 19 and ex 3920 62 90, originating in India. The investigation which led to the adoption of that Regulation is hereinafter referred to as the 'original investigation'. The measures took the form of an *ad valorem* countervailing duty, ranging between 3,8 % and 19,1 % imposed on imports from individually named exporters, with a residual duty rate of 19,1 % imposed on imports of the product concerned from all other companies. The investigation period of the original investigation was 1 October 1997 to 30 September 1998.

(2) In March 2006, by Regulation (EC) No 367/2006 [3], the Council, following an expiry review pursuant to Article 18 of the basic Regulation, maintained the definitive countervailing duty imposed by Regulation (EC) No 2597/1999 on imports of PET film originating in India. The review investigation period was 1 October 2003 to 30 September 2004.

(3) In August 2006, by Regulation (EC) No 1288/2006 [4], the Council, following an interim review concerning the subsidisation of an Indian PET film producer, Garware Polyester Limited (Garware), amended the definitive countervailing duty imposed on Garware by Regulation (EC) No 367/2006.

(4) In September 2007, by Regulation (EC) No 1124/2007 [5], the Council, following a partial interim review concerning the subsidisation of another Indian PET film producer, Jindal Poly Films, Limited, formerly known as Jindal Polyester Ltd, (Jindal), amended the definitive countervailing duty imposed on Jindal by Regulation (EC) No 367/2006.

II. Existing anti-dumping measures

(5) In August 2001, by Regulation (EC) No 1676/2001 [6], the Council imposed a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, inter alia, in India. The measures consisted of an *ad valorem* anti-dumping duty ranging between 0 % and 62,6 % imposed on imports from individually named exporters, with a residual duty rate of 53,3 % on imports from all other companies.

[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ L 316, 10.12.1999, p. 1.
[3] OJ L 68, 8.3.2006, p. 15.
[4] OJ L 236, 31.8.2006, p. 1.
[5] OJ L 255, 29.9.2007, p. 1.
[6] OJ L 227, 23.8.2001, p. 1.

(6) In March 2006, by Regulation (EC) No 366/2006 ([1]), the Council amended the level of dumping margins calculated by Regulation (EC) No 1676/2001. The new dumping margins range between 3,2 % and 29,3 % and the new dumping duty range between 0 % and 18 % taking into account the countervailing duties resulting from export subsidies imposed on the same products originating in India, as modified according to Regulation (EC) No 367/2006, which was adopted following an expiry review of Regulation (EC) No 2579/1999 referred to in recital 1 above. In August 2006, by Regulation (EC) No 1288/2006, the Council, following an interim review concerning the subsidisation of an Indian PET film producer, Garware Polyester Limited (Garware), amended the definitive anti-dumping duty imposed on Garware by Regulation (EC) No 1676/2001.

(7) In September 2006, by Regulation (EC) No 1424/2006 ([2]), the Council, following a new exporting producer request amended Regulation (EC) No 1676/2001 in respect of SRF Limited. The Regulation established a dumping margin of 15,5 % and a dumping duty rate of 3,5 % for the company concerned taking into account the company's export subsidy margin as ascertained in the anti-subsidy investigation which led to the adoption of Regulation (EC) No 367/2006 referred to above. Since the company did not have an individual countervailing duty, the rate established for all other companies was applied.

(8) The Council, by Regulation (EC) No 1292/2007 ([3]) imposed a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ([4]) (the basic anti-dumping Regulation). The same Regulation terminated a partial interim review of such imports limited to one India exporter pursuant to Article 11(3) of the basic anti-dumping Regulation.

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

(9) Following the extension of the validity of the definitive countervailing duty in March 2006, the Government of India (GOI) made submissions that the circumstances with regard to two subsidy schemes (the Duty Entitlement Passbook Scheme and the Income Tax Exemption under Section 80 HHC of the Income Tax Act) had changed and that these changes were of a lasting nature. Consequently, it was argued that the level of subsidisation was likely to have decreased and thus measures that had been established partly on these schemes should be revised.

(10) The Commission examined the evidence submitted by the GOI and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 19 of the basic Regulation. After consultation of the Advisory Committee, the Commission initiated, by a Notice of Initiation published in the *Official Journal of the European Union* on 12 October 2007 ([5]), an *ex officio* partial interim review limited to the level of subsidisation of the countervailing duty in force in respect of imports of polyethylene terephthalate (PET) film originating in India.

(11) The purpose of the partial interim review investigation is to assess the need for the continuation, removal or amendment of the existing measures in respect of those companies which benefited from one or both subsidy schemes that had allegedly changed, where sufficient evidence was provided in line with the relevant provisions of the Notice of Initiation. The partial interim review investigation would also assess the need, depending on the review findings, to revise the measures applicable to other companies that cooperated in the investigation that set the level of the existing measures and/or the residual measure applicable for all other companies.

(12) The review was limited to the level of subsidisation of the companies listed in the Annex to the Notice of Initiation as well as to other exporters that were invited to make themselves known under the conditions and within the time limit set out in the Notice of Initiation.

IV. **Investigation period**

(13) The investigation of the level of subsidisation covered the period from 1 October 2006 to 30 September 2007 ('review investigation period' or 'RIP').

V. **Parties concerned by the investigation**

(14) The Commission officially informed the GOI and those Indian exporting producers who cooperated in the previous investigation, were mentioned under Regulation (EC) No 367/2006 and were listed in the Annex to the Notice of Initiation of the partial interim review, that were found to benefit from any of the two allegedly changed subsidy schemes, as well as Du Pont Tejin Films, Luxembourg, Mitsubishi Polyester Film, Germany, Toray Plastics Europe, France and Nurell, Italy, which represent the overwhelming majority of Community PET film production (hereinafter the Community industry), of the initiation of the partial interim review investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of Initiation.

([1]) OJ L 68, 8.3.2006, p. 6.
([2]) OJ L 270, 29.9.2006, p. 1.
([3]) OJ L 288, 6.11.2007, p. 1.
([4]) OJ L 56, 6.3.1996, p. 1.
([5]) OJ C 240, 12.10.2007, p. 6.

(15) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(16) The written and oral comments submitted by the parties were considered and, where appropriate, taken into account.

(17) In view of the apparent number of parties involved in this review, the use of sampling techniques for the investigation of subsidisation was envisaged in accordance with Article 27 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers were requested, pursuant to Article 27 of the basic Regulation, to make themselves known within 15 days of the initiation of the partial interim review and to provide the Commission with the information requested in the Notice of Initiation.

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

(19) One company, SRF Limited, not listed in the Annex to the Notice of Initiation, made itself known and provided evidence that it fulfilled the eligibility provisions of the scope of the partial interim review investigation as those set out in point 4 of the Notice of Initiation. Consequently this company was included in this review investigation.

(20) One company, Flex Industries Limited, subject to a countervailing duty (Regulation (EC) No 367/2006) and an anti-dumping duty (Regulation (EC) No 1292/2007) has changed its name and is now known as Uflex Limited. This change of name does not affect the findings of previous investigations.

(21) In order to obtain the information necessary for its investigation, the Commission sent questionnaires to the exporting producers which fulfilled the conditions set out in the Notice of Initiation. In addition, a questionnaire was sent to the GOI.

(22) Replies from the questionnaires were received from five Indian exporting producers, and from the GOI.

(23) The Commission sought and verified all information it deemed necessary for the determination of subsidisation. Verification visits were carried out at the premises of GOI in Delhi, the Government of Maharashtra in Mumbai, the Reserve Bank of India in Mumbai, and the following companies:

— Ester Industries Limited, New Delhi,

— Garware Polyester Limited, Mumbai,

— Polyplex Corporation Limited, Noida,

— SRF Limited, Gurgaon,

— Uflex Limited, Noida.

VI. **Disclosure and comments on procedure**

(24) The GOI and the other interested parties were informed of the essential facts and considerations upon which it was intended to propose to amend the duty rates applicable to the concerned cooperating Indian exporting producers and prolong existing measures for all other companies which did not cooperate with this partial interim review. They were also given a reasonable time to comment. All submissions and comments were taken duly into consideration as set out below.

B. **PRODUCT CONCERNED**

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

C. **SUBSIDISATION**

1. **Introduction**

Nationwide schemes

(26) On the basis of the information submitted by the GOI and the cooperating Indian exporting producers and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

(a) Advance Authorisation Scheme (formerly known as Advance Licence Scheme);

(b) Duty Entitlement Passbook Scheme;

(c) Export Promotion Capital Goods Scheme;

(d) Special Economic Zones/Export Processing Zones/Export Oriented Units;

(e) Income Tax Exemption Scheme;

(f) Export Credit Scheme;

Regional schemes

(g) Package Scheme of Incentives (PSI).

(27) The schemes (a) to (d) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Export and Import Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. One Export and Import Policy document is relevant to the RIP of this case, i.e. the five-year plan relating to the period 1 September 2004 to 31 March 2009 (EXIM-policy 04-09). In addition, the GOI also sets out the procedures governing the EXIM-policy 04-09 in a 'Handbook of Procedures — 1 September 2004 to 31 March 2009, Volume I' (HOP I 04-09). The Handbook of Procedure is also updated on a regular basis.

(28) The Income Tax Scheme specified above under (e) is based on the Income Tax Act of 1961, which is amended yearly by the Finance Act.

(29) The Export Credit Scheme specified above under (f) is based on sections 21 and 35A of the Banking Regulation Act 1949, which allow the Reserve Bank of India (RBI) to direct commercial banks in the field of export credits.

(30) The scheme specified above under (g) is managed by State authorities in India.

(31) In accordance with Article 11(10) of the basic Regulation, the Commission invited the GOI for additional consultations with respect to both changed and unchanged schemes with the aim of clarifying the factual situation as regards the alleged schemes and arriving at a mutually agreed solution. Following these consultations, and in the absence of a mutually agreed solution in relation to these schemes, the Commission included all these schemes in the investigation of subsidisation.

General disclosure comments on subsidisation

(32) Following disclosure, the GOI and one exporting producer argued that it has not been determined that the schemes investigated confer a benefit to the recipient. In addressing this claim, it should be noted that for each scheme under investigation, it was established whether any concession is a subsidy within the meaning of Article 2(1)(a) and Article 2(2) of the basic Regulation, i.e. a financial contribution of the GOI which conferred a benefit upon the investigated exporting producers. Moreover, it has been explained why benefits under the various schemes are considered countervailable. In addition, all cooperating exporting producers have received a detailed calculation sheet explaining how the benefits were established under each scheme. Consequently, this claim has to be rejected.

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

(a) *Legal basis*

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

(b) *Eligibility*

(34) The AAS consists of six sub-schemes, as described in more detail in recital 35. Those sub-schemes differ, inter alia, in the scope of eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement. Manufacturer-exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the EXIM-policy 04-09, such as suppliers of an export oriented unit (EOU), are eligible for AAS deemed export. Eventually, intermediate suppliers to manufacturer-exporters are eligible for 'deemed export' benefits under the sub-schemes Advance Release Order (ARO) and back-to-back inland letter of credit.

(c) *Practical implementation*

(35) Advance authorisations can be issued for:

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

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

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

(iv) *Deemed exports:* This sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2.(b) to (f),(g),(i) and (j) of the EXIM policy 04-09. According to the GOI, deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an EOU or to a company situated in a special economic zone (SEZ);

(v) *ARO:* The AAS holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases the Advance Authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of the EXIM-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs;

(vi) *Back-to-back inland letter of credit:* This sub-scheme again covers indigenous supplies to an Advance Authorisation holder. The holder of an Advance Authorisation can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The authorisation will be invalidated by the bank for direct import only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to deemed export benefits as set out in paragraph 8.3 of the EXIM-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).

(36) Three of the cooperating exporting producers received concessions under the AAS linked to the product concerned during the RIP. Two of these companies made use two of the sub-schemes, i.e. (i) AAS physical exports and (iii) AAS for intermediate supplies. The third company used sub-scheme (ii) AAS for annual requirement. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.

(37) For verification purposes by the Indian authorities, an Advance Authorisation holder is legally obliged to maintain 'a true and proper account of consumption and utilisation of duty-free imported/domestically procured goods' in a specified format (chapters 4.26, 4.30 and Appendix 23 HOP I 04-09), i.e. an actual consumption register. This register has to be verified by an external chartered accountant/cost and works accountant who issues a certificate stating that the prescribed registers and relevant records have been examined and the information furnished under Appendix 23 is true and correct in all respects. Nevertheless, the aforesaid provisions apply only to Advance Authorisations issued on or after 13 May 2005. For all Advance Authorisations or Advance Licences issued before that date, holders are requested to follow the previously applicable verification provisions, i.e. to keep a true and proper account of licence-wise consumption and utilisation of imported goods in the specified format of Appendix 18 (chapter 4.30 and Appendix 18 HOP I 02-07).

(38) With regard to the sub-schemes used during the RIP by two cooperating exporting producers, i.e. physical exports and intermediate supplies, both the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by government officials on the authorisation. The volume of imports allowed under the AAS is determined by the GOI on the basis of standard input-output norms (SIONs). SIONs exist for most products including the product concerned and are published in the HOP II 04-09. The most recent changes in the SIONs for PET film and PET chips, an intermediate product, were revised in September 2005.

(39) With regard to sub-scheme (ii) listed above (AAS for annual requirement) that was used by the other exporter, only the import allowance in value is documented on the licence. The licence holder is obliged to 'maintain the nexus between inputs and the resultant product' (paragraph 4.24A(c) HOP I 04-09).

(40) Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time-frame after issuance of the licence (24 months with two possible extensions of six months each).

(41) The verification showed that the actual consumption rate for the companies concerned of key raw materials needed to produce one kilogram of PET film was lower than the corresponding SION. This was clearly the case with regard to the old SION for PET film, and to a lesser extent, to the revised SION which came into force in September 2005.

(42) The verification further established that none of the companies concerned had kept the legally required consumption register referred to in recital 37 above. Consequently, it can only be concluded that the verification requirements stipulated by the Indian authorities were not honoured.

(d) *Conclusion*

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

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

(45) None of the three sub-schemes used in the present case can be considered as permissible duty drawback systems or substitution drawback systems within the meaning of Article 2(1)(a)(ii) of the basic Regulation. They do not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The GOI did not effectively apply neither its new nor its old verification system or procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). The SIONs for the product concerned were not sufficiently precise. The SION's themselves cannot be considered a verification system of actual consumption, because none of the companies concerned kept the required consumption register to enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation).

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

(e) *Calculation of the subsidy amount*

(47) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of total import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an 'excess' remission of duties. According to Article 2(1)(a)(ii) and Annex I(i) of the basic Regulation only when the conditions of Annexes II and III of the basic Regulation are met that the excess remission of duties can be countervailed. However, these conditions were not fulfilled in the present case. Thus, if an adequate monitoring process is not demonstrated, the above exception for drawback schemes is not applicable and the normal rule of the countervailing of the amount of unpaid duties (revenue forgone), applies, rather than of any purported excess remission. As set out in Annexes II(II) and III(II) of the basic Regulation the burden is not upon the investigating authority to calculate such excess remission. To the contrary, according to Article 2(1)(a)(ii) of the basic Regulation, the investigating authority only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.

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

(49) Three cooperating exporting producers obtained benefits from this scheme during the RIP ranging from 0,5 % to 2,1 %.

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

(a) *Legal Basis*

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

(b) *Eligibility*

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

(c) *Practical implementation of the DEPBS*

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

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

(54) DEPBS credits are freely transferable and valid for a period of 12 months from the date of issue. They can be used for payment of customs duties on subsequent imports of any goods unrestrictedly importable, except capital goods. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise.

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

(d) *Conclusions on the DEPBS*

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

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

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

(e) *Calculation of the subsidy amount*

(59) In accordance with Articles 2(2) and 5 of the basic Regulation and the calculation methodology used for this scheme in Regulation (EC) No 367/2006, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient found to exist during the RIP. In this regard, it was considered that the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. At this moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 2(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of DEPBS credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. Furthermore, the cooperating exporting producers booked the DEPBS credits on an accrual basis as income at the stage of the export transactions.

(60) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amount as numerator, pursuant to Article 7(1)(a) of the basic Regulation. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the export turnover concerned during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(61) Four cooperating exporting producers obtained benefits from this scheme during the RIP ranging from 2,7 % to 5,9 %.

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

(a) *Legal basis*

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

(b) *Eligibility*

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

(c) *Practical implementation*

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

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

(d) *Disclosure comments*

(66) Following disclosure, one exporting producer highlighted that the capital goods imported under this scheme were also used for the production of products not concerned with this investigation, and that, when determining the subsidy margin, the subsidy amount established and attributable to the RIP should be divided by exports of not only the product concerned. This claim was found to be warranted and an appropriate adjustment was made in calculating the amount of benefit to this company under this scheme.

(e) *Conclusion on EPCG scheme*

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

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

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

(f) *Calculation of the subsidy amount*

(70) The subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the industry concerned. In accordance with the established practice, the amount so calculated, which is attributable to the RIP, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the review investigation period in India was considered appropriate for this purpose. Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted in accordance with Articles 7(1)(a) of the basic Regulation. In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount has been allocated over the export turnover during the RIP as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(71) Four cooperating exporting producers obtained benefits from this scheme during the RIP ranging from 1,0 % to 1,9 %.

5. **Export Processing Zones (EPZS)/Special Economic Zones Scheme (SEZS)/Export Oriented Units Scheme (EOUS)**

(72) It was found that none of the cooperating exporting producers had the status of an EOU nor were any of them located in an EPZS. However, one of the cooperating exporting producers was located in an SEZS and received countervailable subsidies in the RIP. The description and assessment below is therefore limited to the SEZS.

(a) *Legal basis*

(73) Chapter 7 of the EXIM-policy 04-09 and chapter 7 the HOP I 04-09 makes reference to SEZS. The details of the rules and provisions are no longer in the EXIM policy book and the Handbook of procedures. The relevant policy and implementation provisions are the Special Economic Zones Act of 2005 (No 28 of 2005) and the Special Economic Zones Rules of 2006 (Notification dated 10 February 2006).

(b) *Eligibility*

(74) All enterprises which, in principle, undertake to export their entire production of goods or services may be set up under the SEZS. This also includes pure trading companies. Unlike EOUS, there are no minimum investment thresholds in fixed assets which companies have to fulfil to be eligible for the SEZS.

(c) *Practical implementation*

(75) The SEZS is the successor scheme of the former Export Processing Zones Scheme (EPZS). SEZS are specifically delineated duty-free enclaves and considered as foreign territory for the purpose of trade operations, duties and taxes. SEZS units have to be located within specified zones developed for that purpose. Seventeen SEZS are already in operation following the approval of their establishment by the India authorities.

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

(77) A crucial obligation for SEZS units as set out in Chapter VI of Special Economic Zones Rules of 2006 is to achieve Net Foreign Exchange (NFE) earnings, i.e. in a reference period (five years from the commencement of commercial production), the total value of exports has to be higher than the total value of imported goods.

(78) 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) exemption from central sales tax paid on goods procured locally;

(iv) the facility to sell part of the production on the domestic market, subject to fulfilment of positive NFE earnings upon payment of applicable duties as the SEZS are not considered part of the Indian fiscal/customs territory;

(v) 100 % Income Tax Exemption on 'profits from exports' from SEZ units under Section 10AA of the Income Tax Act for the first five years, 50 % for the next five years thereafter and with the possibility for further benefits for the next five years; and

(vi) exemption from service tax for services consumed in an SEZ.

(79) Units operating under SEZS are bonded under the surveillance of customs officials in accordance with the relevant provisions of the Customs Act.

(80) These units are legally obliged to maintain proper accounts which should indicate in value terms the goods imported or procured from the domestic tariff area, consumption and utilisation of goods, production of goods and disposal of goods by way of exports, sales in the domestic tariff area etc. in accordance with rule 22(2) of the Special Economic Zones Rules of 2006.

(81) However, at no point in time is a SEZ unit required to co-relate every import consignment with its exports or transfers to other units, or with its sales in the domestic tariff area, according to rule 35 of the Special Economic Zones Rules of 2006.

(82) The assessment of imports and domestic procurement of raw materials and capital goods is based on a self-certification basis. The same applies in case of export sales. Thus, no routine examinations of such consignments of an SEZ unit by customs authorities take place.

(83) In the present case, the cooperating exporting producer utilised the scheme to import raw materials and capital goods free of import duties, to procure goods domestically free of excise duty, to procure goods domestically without payment of central sales tax, and to be exempted from service tax. The investigation showed that the exporting producer concerned did not avail of benefits under the income tax exemption provisions of the SEZS.

(d) *Disclosure comments*

(84) Following disclosure, the exporting producer located in an SEZS made a number of comments arguing e.g. that the sub-schemes used by the company are permissible duty exemption schemes (duty drawback) and that the sub-schemes used do not constitute a subsidy since they do not confer a benefit. The arguments of the exporting producer are addressed below.

(e) *Conclusions on the SEZS*

(85) In the case of exemption from excise duty on goods procured from indigenous sources, it was found that the duty paid on purchases by a non-SEZS unit can be used as a credit for its own future duty liabilities, e.g. towards payment of excise duty on domestic sales (the so-called 'CENVAT' mechanism). Therefore, the excise duty paid on purchases is not definitive. By the means of 'CENVAT'-credit, only an added value bears a definitive duty, not the input materials. Thus, by granting an exemption from excise duty on purchases by an SEZS unit, no additional government revenue is forgone and consequently no additional benefit accrues to the SEZS. In these circumstances, as no additional benefit accrues to the SEZS it is not necessary to further analyse this sub-scheme in this investigation.

(86) The exemption of a SEZS unit from two types of import duties (basic customs duty and special additional customs duty normally due on imports of raw materials and capital goods), the exemption from payment of sales tax on goods procured domestically and the exemption from service tax constitute subsidies 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 conferring a benefit upon the SEZS unit within the meaning of Article 2(2) of the basic Regulation, because it improves its liquidity. The subsidies 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 SEZS as set out in rule 2 of the Special Economic Zones Rules of 2006 is a *conditio sine qua non* to obtain the incentives.

(87) The exporting producer argued that the sub-schemes used by the company constitute permissible duty exemption (duty drawback) schemes pursuant to Article 2(1)(a)(ii) and Annex I of the basic Regulation and are therefore not countervailable. The company submitted that Annex (i) to the basic Regulation provide that only the exemption, 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. In other words, as long as there is no excess remission or exemption, the exemption from imported duties on inputs required for the manufacture, production or processing of the exported product cannot be considered as a countervailable subsidy.

(88) In reply to this argument, it should first of all be noted that the benefits an SEZ unit enjoys are all contingent in law upon export performance. Furthermore, the schemes 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. In the circumstance that the sales tax exemption and import duty exemption provisions are used for purchasing capital goods, they are already not in conformity with the rules for permitted drawback systems since capital goods are not consumed in the production process,

as required by Annex I item (h) (sales tax reimbursement) and by Annex I item (i) (import duty remission). In addition, it was confirmed that the GOI has no effective verification system or procedure in place to confirm whether and in what amounts duty and or the tax free procured inputs were consumed in the production of the exported product (Annex II(II)(4) of the basic Regulation, and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). In fact, an SEZ unit is required to achieve Net Foreign Exchange (NFE) earnings, but there is no verification system in place aiming to monitor the consumption of imports in relation to the production of exported goods.

(89) As an alternative argument, the exporting producer submitted that the sub-schemes used by the company do not constitute subsidies as no benefit had been conferred upon the company. With respect to domestic sales, the exporting producers argued that, since a SEZ unit is not considered to be part of the India fiscal/-customs territory, full customs duties need to be paid on the finished products when sold to the domestic market. It was alleged that no benefit has been obtained since duties exempted on the inputs used in the production of goods sold on the domestic market are lower than the duties paid by the company when selling on the domestic market.

(90) In addressing this claim, it should be noted that though the purpose for setting up as a SEZ unit is to achieve Net Foreign Exchange (NFE) earnings, the SEZ unit has the possibility to sell part of its production on the domestic market. Under the SEZ scheme, the goods cleared from the zone to the domestic market will be treated as imported goods. As such, an SEZ is not in a different situation than other companies operating on the domestic market, i.e. applicable duties/taxes would have to be paid on purchased goods. In this context, it should be clear that, a decision of the Government to tax goods for consumption on the domestic market, does not mean, that the exemption of a SEZS unit from import duties and sales taxes is not a benefit in relation to the export sales of the product concerned. Moreover, the sales on the domestic market have no impact on the more general assessment of the adequacy of whether there is an appropriate verification system in place.

(91) In respect of export sales, the exporting producer argued that the exemption from import duties and taxes does not constitute a countervailable subsidy as long as there is no excess remission. The company further argues that the SEZ unit is bonded under surveillance of customs officials, and that it is not possible to sell inputs on the domestic market or to incorporate these inputs in products to be sold on the domestic market without paying the applicable duties. In the view of the exporting producer, there can be thus no excess remission.

(92) In reply to this, it should be recalled that there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product and whether an excess payment of import duties and taxes occurred within the meaning of Annexes I, II and III to the basic Regulation. A SEZ unit is already *de jure* and at no point in time required to co-relate every import consignment with the destination of the corresponding resultant product. Only if such controls were in place would the Indian authorities be able to obtain sufficient information about the final destination of inputs so as to allow for an efficient check that the duty/sales tax exemptions do not exceed inputs for export production. Company internal systems would not as such suffice since a duty drawback verification system would need to be designed and enforced by a government. Consequently, the investigation has established that the SEZ is explicitly not required by the legal rules and provisions for SEZS to record nexus between imported materials and the finished product and no effective control mechanism was set up by the GOI to determine which inputs were consumed in export production and in what amounts.

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

(f) *Calculation of the subsidy amount*

(94) Accordingly, in the absence of a permitted duty drawback system or substitution drawback system, the countervailable benefit is the remission of customs duties (basic customs duty and special additional customs duty) the exemption from payment of sales tax for goods procured domestically and the exemption from service tax, during the investigation period.

(95) As regards the exemption from payment of basic customs duties, the exemption from payment of sales tax for goods procured domestically and the exemption from service tax, the numerator (subsidy amount) was calculated on the basis of the exempted amounts during the RIP. 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 the numerator.

(96) Unlike raw materials, capital goods are not physically incorporated into the finished goods. Accordingly, in regard to exemptions from payment of taxes on purchases of capital goods, the subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the industry concerned. In accordance with the established practice, the amount so calculated, which is attributable to the RIP, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the RIP in India was considered appropriate for this purpose. Where substantiated claims were made, fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation.

(97) In accordance with Article 7(2) of the basic Regulation these subsidy amounts thus established under recital 95 and recital 96 above were allocated over the export turnover generated during the RIP as the appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy margin thus obtained was 5,4 %.

6. **Income Tax Exemption Scheme (ITES)**

(98) Under this scheme exporters could avail the benefit of a partial income tax exemption on profits derived from export sales. The legal basis for this exemption was set by Section 80HHC of the ITA.

(99) This provision was abolished for the assessment year 2005-2006 (i.e. for the financial year from 1 April 2004 to 31 March 2005) onwards and thus 80HHC of the ITA does not confer any benefits after 31 March 2004. The cooperating exporting producers did not avail any benefits under this scheme during the RIP. Consequently, since the scheme has been withdrawn, it shall therefore not be countervailed, in accordance with Article 15(1) of the basic Regulation.

7. **Export Credit Scheme (ECS)**

(a) *Legal basis*

(100) The details of the scheme are set out in the Master Circular DBOD No DIR.(Exp).BC 02/04.02.02/2007-08 (Export Credit in Foreign Currency) and the Master Circular DBOD No DIR.(Exp).BC 01/04.02.02/2007-08 (Rupee Export Credit) of the Reserve Bank of India (RBI), which is addressed to all commercial banks in India.

(b) *Eligibility*

(101) Manufacturing exporters and merchant exporters are eligible for this scheme. It was established that three of the exporting producers availed of benefits under the ECS.

(c) *Practical implementation*

(102) Under this scheme, the RBI mandatorily sets maximum ceiling interest rates applicable to export credits, both in Indian rupees or in foreign currency, which commercial banks can charge an exporter. 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.

(103) As a result of the RBI Master Circulars exporters can obtain export credits at preferential interest rates as compared with the interest rates for ordinary commercial credits (cash credits), which are purely set under market conditions. The difference in rates might decrease for companies with good credit ratings. In fact, high rating companies might be in a position to obtain export credits and cash credits at the same conditions.

(d) *Conclusion on the ECS*

(104) The preferential interest rates of an ECS credit set by the RBI Master Circulars mentioned in recital 100 can decrease the interest costs of an exporter as compared with credit costs purely set by market conditions and confer in this case a benefit in the meaning of Article 2(2) of the basic Regulation on such exporter. Export financing is not *per se* more secure than domestic financing. In fact, it is usually perceived as being more risky and the extent of security required for a certain credit, regardless of the finance object, is a purely commercial decision of a given commercial bank. Rate differences with regard to different banks are the result of the methodology of the RBI to set maximum lending rates for each commercial bank individually. In addition, commercial banks would not be obliged to pass through to borrowers of export financing any more advantageous interest rates for export credits in foreign currency.

(105) Despite the fact that the preferential credits under the ECS are granted by commercial banks, this benefit is a financial contribution by a government within the meaning of Article 2(1)(a)(iv) of the Regulation. In this context, it should be noted that neither Article 2(1)(a)(iv) of the basic Regulation nor the 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)(a) of the basic Regulation. The RBI is a public body and falls therefore under the definition of '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, within the meaning of the second indent of Article 2(1)(a)(iv) of the basic Regulation, since the commercial banks are bound by the conditions it imposes, inter alia, with regard to the maximum ceilings for interest rates on export credits mandated in the RBI Master Circulars and the RBI provisions that commercial banks have to provide a certain amount of their net bank credit towards export finance. This direction obliges commercial banks to carry out functions mentioned in Article 2(1)(a)(i) of the basic Regulation, in this case provide loans in the form of preferential export financing. Such direct transfer of funds in the form of loans under certain conditions would normally be vested in the government, and the practice differs, in no real sense, from practices normally followed by governments, within the meaning of Article 2(1)(a)(iv) of the basic Regulation. This subsidy is deemed to be specific and countervailable since the preferential interest rates are only available in relation to the financing of export transactions and are therefore contingent upon export performance, pursuant to Article 3(4)(a) of the basic Regulation.

(e) *Calculation of the subsidy amount*

(106) The subsidy amount has been calculated on the basis of the difference between the interest paid for export credits used during the RIP and the amount that would have been payable for ordinary commercial credits used by the cooperating exporting producers. This subsidy amount (numerator) has been allocated over the export turnover during the RIP as appropriate denominator in accordance with Article 7(2) of the basic Regulation, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(107) Three cooperating exporting producers obtained benefits from this scheme during the RIP ranging from 0,3 % to 0,4 %.

8. **Package Scheme of Incentives (PSI)**

(a) *Legal basis*

(108) In previous investigations regarding PET film, including the review investigation that led to the imposition by Regulation (EC) No 367/2006 of the definitive countervailing duty currently in force, several Indian State schemes involving incentives granted to local companies were investigated. The State schemes fall under the heading 'Package Scheme of Incentives' (PSI), as there can be different kind of incentives involved. The investigation established that a company's entitlement to benefits under the scheme is stipulated in the 'Eligibility Certificate'. The investigation revealed that two of the cooperating producers enjoyed trade tax (sales tax) exemption under the PSI during the RIP pursuant to Section 4A of the State of Uttar Pradesh Trade Tax Act. This tax provision excuses home-market sales by a company from payment of sales tax (both local sales tax and central sales tax).

(b) *Eligibility*

(109) In order to be eligible, companies must as a general rule invest in less developed areas of a state either by setting up a new industrial establishment or by making a large scale capital investment in expansion or diversification of an existing industrial establishment. The main criterion to establish the amount of incentives is the classification of the area in which the enterprise is or will be located and the size of the investment.

(c) *Practical implementation*

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

(d) *Disclosure comments*

(111) Following disclosure, one exporting producer noted that, when quantifying the benefit received under this scheme, it has been considered that the suppliers of a main raw material used in the production of the product concerned enjoyed exemption from sales tax. The sales invoices, however, revealed that the suppliers in question did, in fact, charge the tax on their sales to the company concerned. Consequently, as the sales tax was paid by the company, no countervailable benefit arose for the exporting producer on these purchases, and the amount of subsidy was revised accordingly.

(e) *Conclusion*

(112) The PSI provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation. The exemption from payment of sales taxes on purchases constitutes a financial contribution, since this concession decreases the government's revenue which would be otherwise due. In addition, this exemption confers a benefit upon the companies as it improves their liquidity.

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

(f) *Calculation of the subsidy amount*

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

(115) Pursuant to Article 7(2) of the basic Regulation, the amount of subsidy (numerator) has then been allocated over the total turnover of export and domestic sales during the review investigation period as the appropriate denominator, because the subsidy is not export-contingent and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(116) The two cooperating exporting producers obtained subsidies from this scheme during the RIP of 0,3 % and 1,4 % respectively.

9. **Amount of countervailable subsidies**

(117) It is recalled that in Regulation (EC) No 367/2006 and subsequent amendments, referred to in recitals 2, 3 and 4 above, the amount of countervailable subsidies, expressed *ad valorem*, was found to be ranging from 12 % to 19,1 % for the concerned cooperating exporting producers that cooperated in the present partial interim review.

(118) During the present partial interim review the amount of countervailable subsidies, expressed *ad valorem*, was found to be ranging from 5,4 % to 8,6 %, as listed hereunder:

Scheme→	AAS (*)	DEPBS (*)	EPCGS (*)	SEZS (*)	ECS (*)	PSI	Total
Company↓	%	%	%	%	%	%	%
Ester Industries Limited		5,8	1,0		0,4		7,2
Garware Polyester Limited	0,5	3,9	1,0		Negligible		5,4
Polyplex Corporation Limited	1,7	3,2	1,9		0,4	1,4	8,6
SRF Limited				5,4			5,4
Uflex Limited	2,1	2,7	1,0		0,3	0,3	6,4

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

10. **Countervailing measures**

(119) In line with the provisions of Article 19 of the basic Regulation and the grounds of this partial interim review stated under point 3 of the Notice of Initiation, it is established that the level of subsidisation with regard to the concerned exporting producers has decreased and, therefore, the rates of countervailing duties imposed to these exporting producers by Regulation (EC) No 367/2006 should be amended accordingly.

(120) The amended countervailing duty rates should be established at the new rates of subsidisation found during the present interim review, as the injury margins calculated in the original anti-subsidy investigation remains higher.

(121) With regard to all other companies that were not concerned by the present partial interim review, it is noted that the actual modalities of the investigated schemes and their countervailability have not changed with respect to the previous investigation. Thus there is no reason to recalculate the subsidy and duty rates of these companies. Consequently, the rates of the duty applicable to all other parties except the five exporting producers that cooperated in the current review remain unchanged.

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

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

11. **Anti-dumping measures**

(124) As provided in the last paragraph under point 3 of the Notice of Initiation, the amendment of the countervailing duty rate will have an impact on the definitive anti-dumping duty imposed by Regulation (EC) No 1292/2007, as the latter in previous anti-dumping investigations was adjusted in order to avoid any double counting of the effects of benefits from export subsidies (it is recalled that the definitive anti-dumping duty was based on the dumping margin since the latter was found to be lower than the injury elimination level). Article 24(1) of the basic Regulation and Article 14(1) of Regulation (EC) No 384/96 provide that no product shall be subject to both anti-dumping and countervailing measures for the purpose of dealing with one and the same situation arising from dumping or export subsidisation. It was found in the original investigation that certain of the subsidy schemes investigated which were countervailable, constituted export subsidies within the meaning of Article 3(4)(a) of the basic Regulation. As such, these subsidies affected the export prices of the Indian exporting producers, thus leading to increased margins of dumping. Therefore, pursuant to Article 24(1) of the basic Regulation, the definitive anti-dumping duty rates were adjusted to reflect the actual dumping margin remaining after the imposition of the definitive countervailing duty offsetting the effect of the export subsidies (see recital 59 of Regulation (EC) No 366/2006 and recital 11 of Regulation (EC) No 1424/2006).

(125) Consequently, the definitive anti-dumping duty rates for the exporting producers concerned must now be adjusted to take account of the revised level of benefit received from export subsidies in the RIP of the current anti-subsidy investigation to reflect the actual dumping margin remaining after the imposition of the adjusted definitive countervailing duty offsetting the effect of the export subsidies.

(126) The dumping margins previously established in respect of Ester Industries Limited, Garware Polyester Limited, Polyplex Corporation Limited and Uflex Limited (at that time known as Flex Industries Limited) [2], were established in Regulation (EC) No 366/2006 (see recital 50) and amounted for the four companies concerned to 29,3 %, 20,1 %, 3,7 % and 3,2 % respectively. The level of the dumping margin for SRF Limited established in Regulation (EC) No 1424/2006 was 15,5 %.

(127) Taking into the account the benefits from exports subsidies found in the RIP and the level of the dumping margin previously established, the margins and duty rates applicable to the companies concerned should therefore be calculated as indicated in the table below:

[1] European Commission, Directorate General for Trade — Directorate B, N105, 04/90, Rue de la Loi/Wetstraat 200, 1049 Brussels, Belgium.

[2] OJ L 68, 8.3.2006, p. 6.

Company	Export subsidy margin	Total subsidy margin	Dumping margin previously established	CVD duty	AD duty	Total duty rate
Ester Industries Limited	7,2 %	7,2 %	29,3 %	7,2 %	22,1 %	29,3 %
Garware Polyester Limited	5,4 %	5,4 %	20,1 %	5,4 %	14,7 %	20,1 %
Polyplex Corporation Limited	7,2 %	8,6 %	3,7 %	8,6 %	0,0 %	8,6 %
SRF Limited	5,4 %	5,4 %	15,5 %	5,4 %	10,1 %	15,5 %
Uflex Limited	6,1 %	6,4 %	3,2 %	6,4 %	0,0 %	6,4 %

(128) In order to take account of the revised level of anti-dumping duty for the five exporting producers concerned, Regulation (EC) No 1292/2007 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Company	Definitive duty (%)	TARIC additional code
Ester Industries Limited, 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi 110 003, India	7,2	A026
Garware Polyester Limited, Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	5,4	A028
Jindal Poly Films Limited, 56 Hanuman Road, New Delhi 110 001, India	17,1	A030
MTZ Polyfilms Limited, New India Centre, 5th Floor, 17 Co-operage Road, Mumbai 400 039, India	8,7	A031
Polyplex Corporation Limited, B-37, Sector-1, Noida 201 301, Dist. Gautam Budh Nagar, Uttar Pradesh, India	8,6	A032
SRF Limited, Block C, Sector 45, Greenwood City, Gurgaon 122 003, Haryana, India	5,4	A753
Uflex Limited, A-1, Sector 60, Noida 201 301 (U.P.), India	6,4	A027
All other companies	19,1	A999'

Article 2

Article 2(2) of Regulation (EC) No 1292/2007 shall be replaced by the following:

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

Company	Definitive duty (%)	TARIC additional code
Ester Industries Limited, 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi 110 003, India	22,1	A026
Garware Polyester Limited, Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	14,7	A028
Jindal Poly Films Limited, 56 Hanuman Road, New Delhi 110 001, India	0,0	A030
MTZ Polyfilms Limited, New India Centre, 5th Floor, 17 Co-operage Road, Mumbai 400 039, India	18,0	A031
Polyplex Corporation Limited, B-37, Sector-1, Noida 201 301, Dist. Gautam Budh Nagar, Uttar Pradesh, India	0,0	A032
SRF Limited, Block C, Sector 45, Greenwood City, Gurgaon 122 003, Haryana, India	10,1	A753
Uflex Limited, A-1, Sector 60, Noida 201 301 (U.P.), India	0,0	A027
All other companies	17,3	A999'

Article 3

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

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

Done at Brussels, 8 January 2009.

For the Council
The President
K. SCHWARZENBERG