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

REGULATIONS

COUNCIL REGULATION (EC) No 1124/2007

of 28 September 2007

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

THE COUNCIL OF THE EUROPEAN UNION,

original investigation period was 1 October 1997 to 30 September 1998.

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⁾ (basic Regulation) and in particular Article 19 thereof,

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

Whereas:

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

A. PROCEDURE

I. Previous investigation and existing measures

(1) The Council, by Regulation (EC) No 2597/1999 ⁽²⁾, imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) film falling within CN codes ex 3920 62 19 and ex 3920 62 90, originating in India (the product concerned). 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 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 countervailing duty imposed on imports of PET film manufactured and exported by Jindal Poly Films Limited, formerly known as Jindal Polyester Ltd ⁽³⁾, (Jindal or the company) was 7 %. The

II. Ex officio initiation of a partial interim review

(4) Prima facie evidence was available to the Commission indicating that Jindal benefited from increased levels of subsidisation, compared to the original investigation, and that the changes to such levels were of a lasting nature.

III. Investigation

(5) As a result, the Commission decided, after consulting the Advisory Committee, to initiate ex officio a partial interim review in accordance with Article 19 of the basic Regulation, limited to the level of subsidisation to Jindal, in order to assess the need for the continuation, removal or amendment of the existing countervailing measures. On 2 August 2006 the Commission announced, by a notice of initiation published in the *Official Journal of the European Union* ⁽⁵⁾, the initiation of this review.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

⁽²⁾ OJ L 316, 10.12.1999, p. 1.

⁽³⁾ OJ C 297, 2.12.2004, p. 2.

⁽⁴⁾ OJ L 68, 8.3.2006, p. 15. Regulation as amended by Regulation (EC) No 1288/2006 (OJ L 236, 31.8.2006, p. 1).

⁽⁵⁾ OJ C 180, 2.8.2006, p. 20.

- (6) The review investigation period (review IP) ran from 1 April 2005 to 31 March 2006.
- (7) The Commission officially advised Jindal, the Government of India (GOI) and Du Pont Tejin Films, Luxembourg, Mitsubishi Polyester Film, Germany, Toray Plastics Europe, France and Nuroll, Italy, which represent the overwhelming majority of Community PET film production (hereinafter the Community industry), of the initiation of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (8) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to Jindal, which cooperated by replying to the questionnaire. A verification visit was carried out at Jindal's premises in India.
- (9) Jindal, the GOI and the Community industry were informed of the essential results of the investigation and had the opportunity to comment. Comments were received by Jindal and are discussed below. The GOI did not submit any comments.

B. PRODUCT CONCERNED

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

C. SUBSIDIES

I. Introduction

- (11) On the basis of the information available and the reply to the Commission's questionnaire, the following schemes, allegedly involving the granting of subsidies, were investigated:

(a) Nationwide schemes

- (i) Advance Licence Scheme;
- (ii) Duty Entitlement Passbook Scheme;
- (iii) Export Oriented Units Scheme/Special Economic Zones Scheme;

- (iv) Export Promotion Capital Goods Scheme;

- (v) Export Income Tax Exemption Scheme;

- (vi) Export Credit Scheme;

- (vii) Duty-Free Replenishment Certificate.

- (12) The schemes (i) to (iv) and (vii) above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (the Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding export and import policy. A multi-annual plan relating to the Indian foreign trade policy for the period 1 September 2004 to 31 March 2009, which succeeded the former export and import (EXIM) policy, was published by the GOI (FTP 2004 to 2009). In addition, a handbook of procedures governing the FTP 2004 to 2009 (HOP I 2004 to 2009) was published by the GOI and is updated on a regular basis ⁽¹⁾.
- (13) The Export Income Tax Exemption Scheme specified in (v) above is based on the Income Tax Act 1961, which is amended annually by the Finance Act.
- (14) The Export Credit Scheme specified in (vi) above is based on Sections 21 and 35A of the Banking Regulation Act 1949, which allows the Reserve Bank of India to instruct commercial banks regarding export credits.

(b) Regional Schemes

- (15) On the basis of the information available and the reply to the Commission's questionnaire, the Commission also investigated the Package Scheme of Incentives (hereinafter, the 'PSI') of the Government of Maharashtra (the GOM) 1993. This scheme is based on resolutions of the GOM Industries, Energy and Labour Department.

II. Nationwide Schemes

1. Advance Licence Scheme (ALS)

(a) Legal basis

- (16) The detailed description of the scheme is contained in paragraphs 4.1.3 to 4.1.14 of the FTP 2004 to 2009 and Chapters 4.1 to 4.30 of the HOP I 2004 to 2009. The scheme was replaced in April 2006, i.e. after the end of the review IP, by the 'Advance Authorisation Scheme'. However, this appears to be essentially a name change. The following analysis focuses on the ALS in place during the review IP.

⁽¹⁾ Notification No 1 (RE-2006)/2004 to 2009 of 7.4.2006 of the Ministry of Commerce and Industry of the Government of India.

(b) *Eligibility*

- (17) The ALS consists of six sub-schemes. Those sub-schemes differ, inter alia, in the criteria for eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the ALS for physical exports and for the ALS for annual requirement. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the FTP 2004 to 2009, such as suppliers of an export oriented unit (EOU), are eligible for ALS deemed export. Manufacturer-exporters supplying the ultimate exporter are eligible for ALS for intermediate supplies. Finally, 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. Since only the first four of the six sub-schemes were used by Jindal during the review IP, only those will be described in more detail below.

(c) *Practical implementation*

- (18) An Advance Licence can be issued for:

- (i) *Physical exports*: This is the main sub-scheme. It allows the duty-free import of input materials for the production of a specific resultant export product. 'Physical' in this context means that the export product has to leave Indian territory. An import allowance and an export obligation, including the type of export product, are specified in the licence.
- (ii) *Annual requirement*: Such a licence is not linked to a specific export product, but to a wider product group (e.g. chemical and related products). The licence holder can — up to a certain value threshold set by its past export performance — import duty free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resultant product falling under the product group using such duty-exempt material.
- (iii) *Deemed exports*: This sub-scheme allows a main contractor the duty-free import of inputs 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 FTP 2004 to 2009. 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 are 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).

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

- (19) As stated above, Jindal used the ALS during the review IP. More precisely, it made use of the four sub-schemes indicated under (i) to (iv) above.

- (20) For verification purposes by the Indian authorities, a licence holder is legally obliged to maintain 'a true and proper account of licence-wise consumption and utilisation of imported goods' in a specified format (Chapter 4.30 HOP I 2004 to 2009) (hereinafter the consumption register). The verification showed that the company did not properly maintain its consumption register, i.e. that it did not record the link between input material and the final destination of the resultant product, as required by the format required by the GOI, despite the fact that it not only exports the resultant product but sells it on the domestic market as well.

- (21) With regard to sub-schemes (i) and (iii) above, both the import allowance and the export obligation (including deemed export) are fixed in volume and value by the GOI and are documented on the licence. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the licence. The volume of imports allowed under this scheme is determined by the GOI on the basis of standard input-output norms (SIONs). SIONs exist for most products including the product concerned and are published in Volume II of the HOP I 2004 to 2009. The SIONs for PET film and PET chips, an intermediate product, were revised downwards in October 2005.

- (22) With regard to sub-scheme (iii) it was noted that the deemed exports fulfilling the respective obligation under the ALS were essentially intra-company sales, i.e. a PET chip manufacturing unit of Jindal (which is not a separate legal entity) sold the PET chips for further downstream production of PET film to Jindal's EOU. The import of raw materials took place in the context of the manufacture of the intermediate product (PET chips). In other words, under sub-scheme (iii) domestic sales are considered to be exports.

- (23) With regard to sub-scheme (iv) input materials domestically procured by Jindal are written off from Jindal's Advance Licence and an intermediate Advance Licence is issued to the domestic supplier. The holder of such intermediate Advance Licence can import, duty-free, the goods needed to produce the product that will subsequently be supplied to Jindal as raw material for the production of the product concerned.
- (24) In the case of sub-scheme (ii) listed above (Advance Licence for annual requirement), only the import allowance in value is documented on the licence. The licence holder is obliged to 'maintain the nexus between imported inputs and the resultant product' (paragraph 4.24A(c) HOP I 2004 to 2009).
- (25) Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (18 months with two possible extensions of six months each, i.e. a total of 30 months).
- (26) The verification showed that the company's specific consumption rate of key raw materials needed to produce one kilogram of PET film, in various degrees depending on the quality of the PET film and as reported in the consumption register, was lower than the corresponding SION. This was clearly the case with regard to the old SION for PET film and PET chips, and, to a lesser extent, to the revised SION which came into force in September 2005, i.e. during the review IP. In other words, Jindal was allowed to import duty-free, as per the SION, more raw materials than actually needed for its manufacturing process. This made the consumption register, in line with the FTP 2004 to 2009, the crucial verification element. However, this register was neither properly kept nor ever inspected by the GOI. The company claimed that the GOI would adjust the excess benefit when the licences expired, i.e. 30 months from the issuance of a licence, as the common practice is to make use of the two possible extensions of six months each. However, this claim could not be verified as no licence used by Jindal had yet been redeemed.
- (27) Changes in the administration of the FTP 2004 to 2009, which became effective in autumn of 2005 (mandatory sending of the consumption register to the Indian authorities in the context of the redemption procedure) had not yet been applied in the case of Jindal. Thus, the de facto implementation of this provision could not be verified at this stage.
- (d) *Conclusion*
- (28) 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, in that the non-collection of import duties otherwise due is a financial contribution of the GOI, which conferred a benefit upon Jindal by improving its liquidity.
- (29) In addition, the four sub-schemes used by Jindal (i.e. the ones listed above under (i) to (iv)) are 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. Obviously, this is the case with regard to schemes (i), (ii) and (iv), but even the ALS deemed exports fulfils this criterion in the present case because the supply to an EOU ultimately aims at real exports.
- (30) The sub-schemes used in the present case cannot be considered as permissible duty drawback systems or substitution drawback systems within the meaning of Article 2(1)(a)(ii) of the basic Regulation. They do not conform to the strict rules laid down in Annex I point (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 its verification system or procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) 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 SIONs themselves cannot be considered a verification system of actual consumption because the design of those overly generous standard norms does not enable the GOI to verify with sufficient precision what amount of inputs were consumed in the export production. Furthermore, no effective control by the GOI based on the consumption register took place.

- (31) The company, in its post-disclosure comments, maintained that it keeps a proper consumption register and, as such, that a proper verification system is in place in accordance with Annex II to the basic Regulation. It further claimed that the ALS works as a substitution scheme, so that duty-free inputs may be used to produce products sold domestically, as long as the duty-free inputs are, either directly or through substitution, consumed in the production of goods subsequently exported within a reasonable period of time. However, even though the company might keep a register of the consumption of raw material to produce a quantity of the product concerned, it failed to maintain a system whereby it could be verified which inputs were consumed in the production of the exported product and in what amounts, as stipulated by the FTP 2004 to 2009 (Appendix 23) and in accordance with Annex II(II)(4) to the basic Regulation. Further, it does not maintain a system whereby it can be verified that the quantity of the input for which drawback is claimed does not exceed the quantity of similar product exported, in accordance with Annex III(II)(2). In the present case, it is, after careful consideration, maintained that there is no link between the duty-free input consumed and the exported product, and that there is therefore no proper verification system in place.
- (32) The sub-schemes are therefore countervailable.
- (e) *Calculation of the subsidy amount*
- (33) The subsidy amount was calculated as follows. The numerator is the sum of the import duties foregone (basic customs duty and special additional customs duty) on the material imported under sub-schemes (i) to (iii) respectively applicable to imports via the intermediate manufacturer; in the case of sub-scheme (iv), the numerator is the sum of the import duties foregone on inputs used in producing the product concerned during the review IP.
- (34) The company claimed, in its post-disclosure comments, that the customs duties for the raw materials needed for the production of PET film decreased from 15 % to 7,5 % from March 2006, i.e. after the end of the IP, and requested that the Commission take this change into account in the calculation of the subsidy rate for ALS. However, although there have been instances where events occurring after the IP have been taken into account, this is restricted to extraordinary circumstances which do not appear to apply in this case. Therefore, in accordance with Articles 5 and 11(1) of the basic Regulation, this request has to be rejected.
- (35) The company further claimed, in its post-disclosure comments, that the benefit under sub-scheme (iv) was, in fact, the price difference between regular domestic purchases of inputs and purchases of inputs against invalidation of ALS and produced some calculations to that effect without supporting evidence. However, the benefit is calculated on the basis of the duty foregone in the licence, since the sale/purchase price of the material is a purely commercial decision and does not alter the amount of duty unpaid. In any event, this claim was made post-disclosure for the first time and, as there was no opportunity for the Commission to verify it, it was rejected.
- (36) In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amounts where justified claims were made. The entire amount of import duties foregone is taken as the numerator and not the excess remission/exemption, as the company requested, because the ALS does not fulfil the conditions laid down in Annex II to the basic Regulation. In accordance with Article 7(2) of the basic Regulation, the denominator is the export turnover during the review IP. The company claimed that deemed exports should be included in the total export turnover of the company during the review IP. However, as these transactions are not, in fact, exports but rather sales to the domestic market, they cannot be properly classified as exports and were thus not included in the total export turnover amount.
- (37) The subsidy rate established for the ALS amounts to 14,68 %.
- 2. Duty Entitlement Passbook Scheme (DEPBS)**
- (a) *Legal Basis*
- (38) A description of the DEPBS is contained in paragraph 4.3 of the FTP 2004 to 2009.
- (b) *Eligibility*
- (39) Jindal was not found to be using the DEPBS during the review IP, therefore no further analysis of the countervailability of this scheme is necessary.
- 3. Export Oriented Units Scheme (EOUS)/Special Economic Zones Scheme (SEZS)**
- (a) *Legal basis*
- (40) The details of these schemes are contained in Chapter 6 of the FTP 2004 to 2009, the HOP I 2004 to 2009 (EOUS), the SEZ Act 2005 and the rules framed thereunder (SEZS).

(b) *Eligibility*

- (41) With the exception of pure trading companies, all enterprises which undertake to export a certain amount of their production of goods or services may be set up under the EOUS or SEZS. Jindal was found to benefit from the EOUS but not the SEZS during the review IP. Consequently, the analysis focuses on the EOUS only.

(c) *Practical implementation*

- (42) An EOU can be established anywhere in India. This scheme is complementary to the SEZS.
- (43) An application for EOU status must include details of, inter alia, planned production quantities, projected value of exports, import requirements and indigenous requirements for a period of five years. If the authorities accept the company's application, the terms and conditions attached to the acceptance will be communicated to the company. The agreement to be recognised as a company under the EOUS is valid for a five-year period and can be renewed further.
- (44) A crucial obligation of an EOU, as set out in the FTP 2004 to 2009, is to achieve net foreign exchange (NFE) earnings, i.e. in a reference period (five years), the total value of exports has to be higher than the total value of imported goods.
- (45) An EOU is 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 or processing or in connection therewith;
 - (ii) exemption from excise duty on goods procured from indigenous sources;
 - (iii) reimbursement of central sales tax paid on goods procured locally;
 - (iv) facility to sell up to 50 % of the fob value of exports on the domestic market's so called domestic tariff area (DTA) on payment of concessional duties;
 - (v) exemption from income tax normally due on profits realised on export sales in accordance with Section 10B of the Income Tax Act, for a period of 10 years after the beginning of its operations, but only up to 2010;

(vi) possibility of 100 % foreign equity ownership.

- (46) Units operating under these schemes are bonded under the surveillance of customs officials in accordance with Section 65 of the Customs Act. EOUs are legally obliged to maintain, in a specified format, a proper account of all imports, of the consumption and utilisation of all imported materials and of the exports made. These documents are required to be submitted periodically to the competent authorities (quarterly and annual progress reports). However, 'at no point in time shall [an EOU] be required to correlate every import consignment with its exports, transfers to other units, sales in the DTA and balance in stock', as per paragraph 6.11.2 of the FTP 2004 to 2009.
- (47) Domestic sales are dispatched and recorded on a self-certification basis. The dispatch process of export consignments of an EOU is supervised by a customs/excise official, who is permanently posted in the EOU.
- (48) Jindal utilised the EOU to import capital goods free of import duties and to obtain a reimbursement of the central sales tax paid on goods procured locally. It did not make use of the exemption from import duties on raw materials, since the EOU facility, in order to produce PET film, uses PET chips as raw materials. These PET chips are produced in another unit of the company from raw materials purchased under the ALS.

(d) *Conclusions on the EOU*

- (49) The exemption of an EOU from two types of import duties (basic customs duty and special additional customs duty) and the reimbursement of the central sales tax are financial contributions by the GOI within the meaning of Article 2(1)(a)(ii) of the basic Regulation. Government revenue which would be due in the absence of this scheme is foregone, thus conferring a benefit upon the EOU within the meaning of Article 2(2) of the basic Regulation by improving its liquidity.
- (50) Thus, the exemption from basic customs duty and special additional customs duty and the sales tax reimbursement constitute subsidies within the meaning of Article 2 of the basic Regulation. They are contingent in law upon export performance and, therefore, deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation. The export objective of an EOU as set out in paragraph 6.1 of the FTP 2004 to 2009 is a necessary condition to obtain the incentives.

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

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

(e) Calculation of the subsidy amount

(53) Accordingly, the countervailable benefit is the exemption from total duties (basic customs duty and special additional customs duty) normally due upon importation, as well as the sales tax reimbursement, both during the review IP.

(i) Reimbursement of central sales tax on domestically procured goods

(54) The numerator was established as follows: the subsidy amount was calculated on the basis of the sales tax reimbursable on the purchases made for the production sector, e.g. parts and packing materials, during the review IP. Fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation.

(55) In accordance with Article 7(2) of the basic Regulation, this subsidy amount was allocated over the export turnover generated by all export sales of the product concerned during the review IP (the denominator), because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy margin thus obtained was 0,04 %.

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

(56) In accordance with Article 7(3) of the basic Regulation, the benefit was calculated on the basis of the amount of unpaid customs duty on imported capital goods and of the amount of sales tax reimbursed on purchases of capital goods, both spread across a period which reflected the normal depreciation period of such capital goods in the industry of the product concerned. The

company claimed that this should have been the depreciation rate actually used by the company in its financial statements; however, the requirement in Article 7(3) is interpreted to refer to the depreciation rate specified in the legislation applicable to the company, in this case the rate specified in the Companies Act 1956. The amount so calculated which is then attributable to the review IP was adjusted by adding interest during this period in order to reflect the value of the benefit over time and thereby establishing the full benefit of this scheme to the recipient. Fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation from this sum to arrive at the subsidy amount as the numerator. In accordance with Article 7(2) and 7(3) of the basic Regulation this subsidy amount was allocated over the export turnover of sales of the product concerned during the review IP as the appropriate denominator, because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported. The company claimed that deemed exports should be included in the total export turnover, but this claim was rejected for the reasons set out in recital 36 above. The subsidy margin thus obtained was 1,26 %.

(57) Thus, the total subsidy margin under the EOU scheme for Jindal amounts to 1,3 %.

4. Export Promotion Capital Goods Scheme (EPCGS)

(a) Legal Basis

(58) A detailed description of the EPCGS can be found in Chapter 5 of the FTP 2004 to 2009 and in Chapter 5 of the HOP I 2004 to 2009.

(b) Eligibility

(59) Any manufacturer-exporter and merchant-exporter 'tied to' a supporting manufacturer or service provider is eligible for this scheme. Jindal was found to benefit from this scheme during the review IP.

(c) Practical Implementation

(60) 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 the payment of a fee, an EPCG licence. Since April 2000, the scheme provides for a reduced import duty rate of 5 %, applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period.

(d) *Conclusion on the EPCGS*

- (61) The EPCGS provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation, as the GOI foregoes revenue otherwise due. In addition, the duty reduction confers a benefit upon the exporter because the non-payment of duties saved upon importation improves its liquidity.
- (62) Further, the EPCGS is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore, it is deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.
- (63) The scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 2(1)(a)(ii) to the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I, item (i) to the basic Regulation, because they are not consumed in the production of the exported products.

(e) *Calculation of the subsidy amount*

- (64) The numerator was established as follows: the subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of unpaid customs duty on imported capital goods spread over a period which reflects the normal depreciation period of such capital goods in the PET film industry, which, for the reasons set out in recital 56 above, was deemed to be the rate specified in the Companies Act 1956 and not the one actually used by the company. Interest was added to this amount in order to reflect the full value of the benefit over time. Fees necessarily incurred to obtain the subsidy were deducted, in accordance with Article 7(1)(a) of the basic Regulation.
- (65) The company claimed that capital goods imported duty-free under the ECPG scheme for use in the Khanvel unit were no longer in use and that the benefit relating to such goods should not be included in the numerator. However, as there is no evidence that the company no longer possesses such goods or that it will not use them again, the Commission must reject this claim.
- (66) In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount was allocated over the export turnover of the product concerned generated during the review IP (the denominator), as the subsidy is contingent upon export performance. The company claimed that deemed exports should be included in the total export turnover, but this claim was rejected for the

reasons set out in recital 36 above. The subsidy obtained by Jindal is 1,11 %.

5. *Export Income Tax Exemption Scheme (EITES)*

(a) *Legal basis*

- (67) The legal basis for this scheme is contained in the Income Tax Act 1961, amended yearly by the Finance Act. The latter sets out, every year, the basis for the collection of taxes, as well as various exemptions and deductions which can be claimed. Export Oriented Units e.g. may claim income tax exemptions under section 10B of the Income Tax Act 1961.

(b) *Practical implementation*

- (68) As Jindal was not found to have availed itself of any benefits under the EITES no further analysis of the countervailability of this scheme is necessary.

6. *Export Credit Scheme (ECS)*

(a) *Legal basis*

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

(b) *Eligibility*

- (70) Manufacturing exporters and merchant exporters are eligible for this scheme. Jindal was found to benefit from this scheme during the review IP.

(c) *Practical implementation*

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

- (72) As a result of these RBI Master Circulars, exporters can obtain export credit at preferential interest rates compared to the interest rates on ordinary commercial credit (cash credits), which are set under market conditions.

(d) *Conclusion on the ECS*

- (73) Firstly, by lowering financing costs as compared with market interest rates, the above preferential interest rates confer a benefit within the meaning of Article 2(2) of the basic Regulation on such exporters. 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)(iv) of the basic Regulation. The RBI is a public body, falling, therefore, within the definition of a 'government' set out in Article 1(3) of the basic Regulation and it instructs commercial banks to grant preferential financing to exporting companies. This preferential financing amounts to a subsidy, which is deemed to be specific and countervailable, since the preferential interest rates are contingent upon export performance pursuant to Article 3(4)(a) of the basic Regulation.

(e) *Calculation of the subsidy amount*

- (74) The subsidy amount was calculated on the basis of the difference between the interest paid for export credits used during the review IP and the amount that would have been payable if market interest rates had been charged, as for ordinary commercial loans made by the company. The subsidy amount (numerator) was allocated over the total export turnover during the review investigation period (denominator) in accordance with Article 7(2) of the basic Regulation, as the subsidy is contingent upon export performance and is not granted by reference to quantities manufactured, produced, exported or transported. Jindal availed itself of benefits under the ECS and obtained a subsidy of 0,1 %.

7. *Duty-Free Replenishment Certificate (DFRC)*

(a) *Legal basis*

- (75) The legal basis for this scheme is contained in paragraph 4.2 of the FTP 2004 to 2009.

(b) *Practical Implementation*

- (76) As Jindal was not found to have availed itself of any benefits under the DFRC during the review IP, no further analysis of the countervailability of this scheme is necessary.

III. *Regional Scheme*

Package Scheme of Incentives (PSI) of the Government of Maharashtra (GOM)

(a) *Legal basis*

- (77) In order to encourage the establishment of industries in less developed areas of the State, the GOM has been granting incentives to new expansion units set up in developing regions of the State, since 1964, under a scheme commonly known as the 'Package Scheme of Incentives'. The scheme has been amended several times since its introduction and the '1993 scheme' was eligible for application from 1 October 1993 to 31 March 2001, whereas the latest amendment, the PSI 2006, was introduced in the margins of the 'Industrial, Investment & Infrastructure Policy of Maharashtra 2006' in spring 2006 and is foreseen to be eligible for application up to 31 March 2011. The PSI of the GOM is composed of several sub-schemes, the main one being direct grants via a so-called industrial promotion subsidy, the exemption from local sales tax and electricity duty and the refund of octroi tax.
- (78) Jindal continues to avail itself of incentives under the PSI 1993 until May 2011 and not under successor schemes. Consequently, only the PSI 1993 was assessed in the context of the case at hand.

(b) *Eligibility*

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

(c) *Practical implementation*

- (80) Remission of local sales tax on sales of finished goods: goods are normally subject to central sales tax (for inter-State sales) or, in the past, State sales tax (for intra-State sales) at varying levels, depending upon the State(s) in which transactions are made. In April 2005 the sales tax legislation for intra-State sales in Maharashtra was replaced by a value added tax (VAT) system. Under the exemption scheme, designated units are not required to collect any sales tax on their sales transactions. Similarly, designated units are exempted from payment of the local sales tax on their purchases of goods from a supplier itself eligible for the scheme. Jindal was found to have benefited from this exemption in relation to sales transactions during the review IP.

(81) Reimbursement of electricity duty: eligible units are eligible for refund of electricity duty on the electricity consumed for production purposes for a period of seven years from the date of commercial production. In the case of Jindal this seven-year period lapsed on 31 March 2003. Consequently, Jindal was no longer eligible for the reimbursement of electricity duty.

(82) Refund of the octroi tax: octroi is a tax levied by local Governments in India, including the GOM, on goods that enter the territorial limits of a town. Industrial enterprises are entitled to a refund of the octroi tax from the GOM if their facility is located in certain specified towns within the territory of the State. The total amount that may be refunded is restricted to 100 % of the fixed capital investment. Jindal's plant is located outside city limits and is therefore per se exempt from octroi tax, with the result that this sub-scheme is not applicable in the present case.

(d) *Conclusion on the PSI 1993 of the GOM*

(83) Jindal only accrued remission rights of sales tax on sales of finished goods during the review IP, which in the past has been found not to confer a benefit on the recipient (recital 114 of Regulation (EC) No 367/2006). Consequently, the PSI is not countervailable in the present case.

IV. Amount of countervailable subsidies

(84) The amount of countervailable subsidies determined in accordance with the basic Regulation, expressed ad valorem, for the investigated exporting producer is 17,1 %. This amount of subsidisation exceeds the *de minimis* threshold mentioned under Article 14(5) of the basic Regulation.

SCHEME	ALS	EOUS	EPCGS	ECS	Total
	%	%	%	%	%
Jindal	14,68	1,30	1,11	0,1	17,1

V. Lasting nature of changed circumstances with regard to subsidisation

(85) In accordance with Article 19(2) of the basic Regulation, it was examined whether the continuation of the existing measure was insufficient to counteract the countervailable subsidy which is causing injury.

(86) It was established that, during the review IP, Jindal continued to benefit from countervailable subsidisation by the Indian authorities. Further, the subsidy rate found during this review is considerably higher than that established during the original investigation. No evidence is available that the schemes will be discontinued or phased out in the near future.

(87) Since it has been demonstrated that the company is in receipt of much higher subsidisation than before and that it is likely to continue to receive subsidies of an amount higher than determined in the original investigation, it is concluded that the continuation of the existing measure is not sufficient to counteract the countervailable subsidy causing injury and that the level of the measure should therefore be amended to reflect the new findings.

VI. Conclusion

(88) In view of the conclusions reached with regard to the level of subsidisation of Jindal and the insufficiency of the existing measure to counteract the countervailable subsidies found, the countervailing duty with regard to Jindal should be amended in order to reflect the new subsidisation levels found.

(89) The amended countervailing duty should be established at the new rate of subsidisation found during the present review, as the injury margin calculated in the original investigation remains higher.

(90) Pursuant to Article 24(1) of the basic Regulation and Article 14(1) of Regulation (EC) No 384/96, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation. However, since Jindal is subject to an anti-dumping duty of 0 % with regard to the product concerned, these provisions do not apply in the present case.

(91) Jindal, the GOI and the Community industry were informed of the essential facts and considerations on the basis of which it was intended to recommend the amendment of the measures in force and had the opportunity to comment. The GOI did not submit any comments, and Jindal's comments have been discussed in the recitals relevant to each specific comment above.

(92) The company, in its post-disclosure comments, requested the Commission to accept a price undertaking in order to offset the countervailable subsidies found herein. The Commission has examined the company's proposal and considers that a price undertaking cannot be accepted. Price undertakings based on groups of products, as suggested by the company, permit a large degree of flexibility to change the technical characteristics of the products within the group. PET film comprises numerous and evolving differentiating features, which largely determine sales price. Consequently, changes in those features have a significant impact on prices. An attempt to subdivide the groupings to make them more homogeneous in terms of physical characteristics would lead to a multiplication of groupings which would render monitoring unworkable, in particular, by making

it difficult for customs authorities to discern the difference between product types and the classification of products by grouping upon importation. For these reasons, the acceptance of the undertaking is considered impractical within the meaning of Article 13(3) of the basic Regulation. Jindal was informed and given the opportunity to comment. However, its comments have not altered the above conclusion.

(93) As India Polyfilms Limited, a company previously related to Jindal, merged with Jindal on 1 April 1999 and no longer forms a separate entity, it was removed from the list set out in Article 1(2),

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Company	Definitive duty (%)	TARIC Additional Code
Ester Industries Limited, 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi 110 003, India	12,0	A026
Flex Industries Limited, A-1, Sector 60, Noida 201 301 (U.P.), India	12,5	A027
Garware Polyester Limited, Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	14,9	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	19,1	A032
All other companies	19,1	A999'

Article 2

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

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

Done at Brussels, 28 September 2007.

For the Council
The President
M. PINHO