

Official Journal

of the European Union

L 59

Volume 50

27 February 2007

English edition

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I

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

REGULATIONS

COUNCIL REGULATION (EC) No 192/2007

of 22 February 2007

imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, the Republic of Korea, Thailand and Taiwan following an expiry review and a partial interim review pursuant to Article 11(2) and Article 11(3) of Regulation (EC) No 384/96

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾ (the basic Regulation), and in particular Articles 11(2) and 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) On 27 November 2000, the Council imposed, by Regulation (EC) No 2604/2000⁽²⁾, definitive anti-dumping duties on imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand (the countries concerned). The measures imposed had been based on an anti-dumping investigation (the original investigation) initiated pursuant to Article 5 of the basic Regulation.
- (2) On 13 August 2004, the Council imposed, by Regulation (EC) No 1467/2004⁽³⁾, definitive anti-dumping duties on imports of certain PET originating in Australia and the People's Republic of China (PRC) and terminated the proceeding on imports of PET originating in Pakistan.

- (3) The amendments made to Regulation (EC) No 2604/2000 were the results of either review investigations initiated pursuant to Article 11(3) and (4) of the basic Regulation or of price undertakings being accepted under Article 8(1) thereof.

2. Request for reviews

- (4) Following the publication of a notice of impending expiry⁽⁴⁾, the Commission, on 30 August 2005, received a request to review the measures in force pursuant to Article 11(2) of the basic Regulation (expiry review), and to partially review the measures imposed on imports from Taiwan and on imports from three exporting producers in the Republic of Korea pursuant to Article 11(3) of the basic Regulation (partial interim review).
- (5) The request was lodged by the Polyethylene Terephthalate Committee of Plastics Europe (the applicant) on behalf of producers representing a major proportion, in this case more than 90 %, of total Community production of PET.
- (6) The request for the expiry review was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.
- (7) The request for the partial interim review of the measures on imports from Taiwan and imports originating from three exporting producers in the Republic of Korea (Daehan Synthetic Fiber Co. Ltd, SK Chemicals Co. Ltd and KP Chemical Corp.) was based on the grounds that the level of the measures was not sufficient to counteract the injurious dumping.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

⁽²⁾ OJ L 301, 30.11.2000, p. 21. Regulation as last amended by Regulation (EC) No 1646/2005 (OJ L 266, 11.10.2005, p. 10).

⁽³⁾ OJ L 271, 19.8.2004, p. 1. Regulation as amended by Regulation (EC) No 2167/2005 (OJ L 345, 28.12.2005, p. 11).

⁽⁴⁾ OJ C 52, 2.3.2005, p. 2.

- (8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of the two reviews, pursuant to Articles 11(2) and 11(3) of the basic Regulation respectively, the Commission initiated these reviews on 1 December 2005 ⁽¹⁾.
- (9) A Notice regarding the scope of the interim review was published in the Official Journal on 2 June 2006 ⁽²⁾ making clear that the scope of the partial interim review also included all related companies.

3. Parallel investigation

- (10) On 1 December 2005, the Commission also initiated a review pursuant to Article 18 of Council Regulation (EC) No 2026/97 ⁽³⁾ on the countervailing measures in force on imports of PET originating in India.
- (13) After examination of the information submitted, given the low number of exporting producers in India, Indonesia, the Republic of Korea and Taiwan indicating their willingness to cooperate, it was decided that sampling was not necessary as regards exporting producers in these four countries.
- (14) Having examined the information submitted by Community producers and importers, and considering that their number was not excessive, it was decided to include all of them and that sampling was not necessary.

4. Parties concerned by the investigation

- (11) The Commission officially advised the exporting producers, the representatives of the exporting countries, importers, Community producers, users and the applicant of the initiation of the expiry review and 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 out in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (12) In view of the apparent large number of Indian, Indonesian, Korean and Taiwanese exporting producers as well as Community producers and importers listed in the request for the expiry review and the number of Taiwanese exporting producers listed in the request for the interim review, it was considered appropriate, in conformity with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the parties were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the reviews and to provide the Commission with the information requested in the notice of initiation.
- (15) Questionnaires were therefore sent to all known exporting producers in the countries concerned, importers, suppliers, Community producers and users.
- (16) Replies to the questionnaires were received from:
- three exporting producers in India,
 - three exporting producers in Indonesia (although only two of these decided to accept a verification visit),
 - two exporting producers in Malaysia,
 - four exporting producers in the Republic of Korea,
 - three exporting producers in Taiwan (although only two of these decided to accept a verification visit),
 - one exporting producer in Thailand,
 - two suppliers in the Community,
 - 12 Community producers,
 - 10 converters/users.

It was also found that one non-cooperating Indonesian exporting producer had changed its name since the publication of the measures in force. This concerned P.T. Bakrie Kasei Corp. to P.T. Mitsubishi Chemical Indonesia.

⁽¹⁾ OJ C 304, 1.12.2005, p. 9.

⁽²⁾ OJ C 129, 2.6.2006, p. 23.

⁽³⁾ 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).

(17) The Commission sought and verified all the information it deemed necessary for its analysis and carried out verification visits at the premises of the following companies:

(a) India

Exporting producers

- Pearl Engineering Polymers Ltd, Delhi,
- SENPET, formerly Elque Polyesters Ltd, Calcutta,
- Futura Polyesters Ltd, Chennai;

Related exporter

- Plastosen Ltd, Calcutta, (related to SENPET, formerly Elque Polyesters Ltd);

(b) Indonesia

Exporting producers

- P.T. Polypet Karyapersada, Jakarta,
- P.T. Petnesia Resindo, Tangerang;

(c) Malaysia

Exporting producers

- MPI Polyester Industries Sdn. Bhd., Selangor,
- Hualon Corporation (M) Sdn. Bhd. Kuala Lumpur;

(d) Republic of Korea

Exporting producers

- SK Chemicals Co. Ltd, Seoul,
- Huvis Corp., Seoul (related to SK Chemicals Co Ltd),
- KP Chemicals Corp., Seoul,
- Honam Petrochemicals Corp., Seoul (related to KP Chemicals Co Ltd);

Related traders/importers located in the Republic of Korea

- SK Networks Ltd, Seoul (related to SK Chemicals Co Ltd),
- Lotte Trading Ltd, Seoul, Republic of Korea (related to KP Chemicals Co Ltd),

- Lotte Daesan Ltd, Seoul, Republic of Korea (related to KP Chemicals Co Ltd);

Related traders/importers located in the Community

- SK Networks Deutschland GmbH, Frankfurt/Main, Germany (related to SK Chemicals Co Ltd),
- SK Eurochem, Warsaw, Poland (related to SK Chemicals Co Ltd);

(e) Taiwan

Exporting producers

- Shinkong Synthetic Fibers Corporation, Taipei,
- Far Eastern Textile Ltd, Taipei;

(f) Thailand

Exporting producer

- Bangkok Polyester Public company Ltd, Bangkok, Thailand;

(g) Community producers

- Voridian BV (The Netherlands),
- M & G Polimeri Italia Spa (Italy),
- Equipolymers Srl (Italy),
- La Seda de Barcelona SA (Spain),
- Novapet SA (Spain),
- Selenis Industria de Polímeros SA (Portugal),
- Selenis Itália Spa (Italy);

(h) Community Suppliers

- Interquisa SA (Spain);

(i) Unrelated importers in the Community

- Global Service International SRL (Italy);

(j) Community users

- Coca Cola Enterprises Europe Ltd (Belgium).

- (18) The investigation of the likelihood of continuation and/or recurrence of dumping and injury for the expiry review covered the period from 1 October 2004 to 30 September 2005 (RIP). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2002 up to the end of the RIP (period considered). The investigation period for the partial interim review pursuant to Article 11(3) of the basic Regulation concerning imports from Taiwan and from three exporting producers in the Republic of Korea is the same as that of the expiry review.

B. PRODUCT CONCERNED

1. Product concerned

- (19) The product concerned is the same as in the original investigation i.e. PET with a coefficient of viscosity of 78 ml/g or higher, according to the ISO Standard 1628-5 originating in the countries concerned. It is currently classifiable within CN code 3907 60 20.

2. Like product

- (20) As in the original investigation and the review investigation, it was found that the product concerned, PET produced and sold on the domestic markets in the countries concerned and PET produced and sold by the Community producers have the same basic physical and chemical characteristics and uses. Therefore, these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION AND/OR RECURRENCE OF DUMPING

1. Dumping of imports during the investigation period — General principles

- (21) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and whether or not the expiry of the measures would be likely to lead to a continuation of dumping.

General methodology

- (22) The general methodology set out below has been applied to all exporting producers in the countries concerned and is the same as in the original investigation. The presentation of the findings of dumping for each of the countries concerned therefore only describes what is specific for each exporting country.

Normal value

- (23) For the determination of normal value, it was first established, for each exporting producer, whether its total domestic sales of the product concerned were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.

- (24) Subsequently, those types of the product concerned sold domestically by the exporting producers having overall representative domestic sales, and that were identical or directly comparable to the types sold for export to the Community, were identified.

- (25) For each type sold by the exporting producers on their domestic markets and found to be directly comparable with the types of PET sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of PET were considered sufficiently representative when the total domestic sales volume of that type during the RIP represented 5 % or more of the total sales volume of the comparable PET type exported to the Community.

- (26) An examination was also made whether the domestic sales of each type of PET could be regarded as having been made in the ordinary course of trade, pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each exporting producer in the countries concerned, the proportion of profitable sales to independent customers on the domestic market, of each exported type of the product concerned on the domestic market during the investigation period.

- (a) For those product types where more than 80 %, by volume, of sales on the domestic market were not below unit costs, i.e. where the average sales price of the product type concerned was equal to or higher than the average production cost for the product type concerned, normal value was calculated as the average price of all domestic sales of the product type in question irrespective of whether these sales were profitable or not.

(b) For those product types where at least 10 % but no more than 80 %, by volume, of sales on the domestic market were not below unit costs, normal value was calculated as the weighted average sales price of those transactions which were made at or above unit costs of the type in question.

(c) For those product types where less than 10 %, by volume, was sold on the domestic market at a price not below unit cost, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore, normal value had to be constructed in accordance with Article 2(3) of the basic Regulation.

(27) In the cases where normal values had to be constructed, they were constructed in accordance with Article 2(6) of the basic Regulation, i.e. on the basis of the manufacturing cost of the type concerned, to which was added an amount of selling, general and administrative (SG&A) expenses and a margin of profit. The amount of SG&A was that incurred by the exporting producer for the like product and the amount of profit equated to the average profit realised by the exporting producer on sales of the like product in the ordinary course of trade.

Export price

(28) In all cases where the product concerned was exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

(29) In cases where sales were made via a related importer or trader, the export price was constructed on the basis of the resale prices of that related importer to independent customers. Adjustments were made for all costs incurred between importation and resale including sales, general and administrative expenses, and a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation. The appropriate profit margin was established on the basis of information provided by unrelated cooperating traders/importers operating on the Community market.

Comparison

(30) The normal value and export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting the price and price comparability in accordance with Article 2(10) of the

basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by evidence.

Dumping margin

(31) In accordance with Article 2(11) and (12) of the basic Regulation, a dumping margin was calculated for each cooperating exporting producer, by comparing the weighted average normal value with the weighted average export price.

(32) For those countries where the level of cooperation was found to be high (above 80 % of all volumes imported to the Community during the RIP), and where there was no reason to believe that any exporting producer abstained from cooperating, the residual dumping margin was set at the level of the cooperating exporting producer with the highest dumping margin in order to ensure the effectiveness of the measures.

(33) For those countries where the level of cooperation was found to be low (less than 80 % of all volumes imported to the Community during the RIP), the residual dumping margin was determined in accordance with Article 18 of the basic Regulation, i.e. on the basis of facts available.

2. Dumping of imports during the investigation period — Country specific findings

India

Preliminary remarks

(34) Three out of five known exporting producers cooperated with the investigation. The two non-cooperating companies account for more than 80 % of India's total PET production and around 25 % of India's exports to the Community. The share of Indian exports to the Community in relation to Community consumption amounted to 0,3 % in the RIP. Two of the three cooperating exporters hold price undertakings with respect to their PET exports to the Community, which were concluded pursuant to the original investigation.

(35) With regards to two cooperating companies it was found that their Community export prices were in compliance with the minimum prices set by the undertakings. These prices clearly exceeded the ones charged for sales to third countries' markets. The latter sales were made in much larger quantities than Community exports. This indicates that the prices charged to Community customers do not reflect the normal pricing behaviour of the Indian price undertaking holders.

Dumping margin

- (36) With respect to exports to the Community, the dumping margins of the three cooperating exporting producers were found to be in a range between no dumping and 17 %. It should be noted that the exporting producer with no dumping holds a price undertaking and that the quantity of its Community exports was very small (less than 10 %) in proportion to its third country exports. In the original investigation including subsequent reviews dumping margins were in a range between 14,7 % and 51,5 % ⁽¹⁾. However, as the imported quantities were indeed very small, the main focus of the analysis is on the likelihood of recurrence of dumping.

Indonesia

Preliminary remarks

- (37) The investigation established that there were five producers of PET in Indonesia during the RIP. As mentioned in recital 16, three companies submitted completed questionnaire responses but only two companies accepted verification visits at their premises. As it was thus impossible to verify whether the data submitted by the third company in the questionnaire reply was correct, this company did not cooperate properly in the investigation within the meaning of Article 18 of the basic Regulation. The company was informed accordingly and was given the opportunity to comment on this finding.
- (38) One of the cooperating companies had a very small quantity of sales to the EU market but these were made to one specialist user in the medical sector. Therefore, neither the volume nor the unit price of these sales was considered to be representative. Apart from this very small volume, no other sales were recorded in Eurostat on the EU market originating from Indonesia.

Normal value, export price and dumping margin

- (39) As the two cooperating companies made no representative sales on the EU market in the RIP, and the Eurostat import statistics showed that there were no further

imports from Indonesia, no dumping margin could be established.

Malaysia

Preliminary remarks

- (40) Two Malaysian PET producers cooperated in the investigation. Only one of them had exports to the Community, representing 100 % of the total Malaysian exports of PET to the Community. Total imports of the product concerned from Malaysia were small, i.e. in the range of 2 000 to 4 000 tonnes when compared to the Community market as a whole.

Normal value

- (41) For the exporting producer with exports to the Community in the RIP, domestic sales of the like product were representative. Normal value was based on prices paid or payable, in the ordinary course of trade, by independent customers in Malaysia, in accordance with Article 2(1) of the basic Regulation.
- (42) The investigation revealed that the company's reported cost of manufacturing was underestimated as factory overhead costs (including depreciation, rent expenses, salaries and maintenance) actually incurred during the RIP were reclassified to SG&A expenses. The company argued that this practise was made in order to reflect the low capacity utilisation rate of its production facilities. However, actual costs incurred do also include the reclassified factory overhead costs. The fact that the company operated at a fraction of its full capacity of production does not mean that costs arising from such facilities are not incurred. Indeed, such costs were listed in the company's accounting records and since they were directly linked to production of the like product, a correction of the reported cost of manufacturing had to be completed.

Export price

- (43) For the same exporting producer, export prices were established on the basis of the prices actually paid by unrelated customers in the Community in accordance with Article 2(8) of the basic Regulation.

⁽¹⁾ Regulation (EC) No 2604/2000, recital 125, and Regulation (EC) No 496/2002 (OJ L 78, 21.3.2002, p. 4), recital 19.

Comparison

- (44) To ensure a fair comparison, allowances were made for differences in transport, insurance, handling, loading and ancillary cost and credit costs where applicable and justified.

Dumping margin

- (45) To calculate the dumping margin, the weighted average normal values were compared to the weighted average export price to the Community of the product concerned.

- (46) This comparison showed the existence of dumping of around 5 % for the one exporting producer that exported to the Community in the RIP. However, as the imported quantities were indeed very small, the main focus of the analysis is on the likelihood of recurrence of dumping.

The Republic of Korea

Preliminary remarks

- (47) It is recalled that the interim review was limited to dumping as concerns Daehan Synthetic Fiber Co. Ltd, SK Chemicals Co. Ltd and KP Chemicals Corp. Full questionnaire replies were received from these three companies.

- (48) Moreover, companies related to one of the aforementioned exporting producers also made themselves known. Thus, questionnaire replies were also received from the exporting producers Honam Petrochemicals and Huvis Corp.

- (49) Prior to the on-the-spot investigation, Daehan Synthetic Fiber Co Ltd. informed the Commission of its decision to cease the production of PET in the Republic of Korea. Consequently, the company decided to cancel the planned verification visit. Since this company thus failed to cooperate within the meaning of Article 18 of the basic Regulation, it should be subject to the residual dumping margin.

- (50) According to the request, there are ten producers in the Republic of Korea which have the capacity to produce PET. Out of these ten producers, five (including Daehan Synthetic Fiber Co. Ltd) made themselves known to the Commission and submitted questionnaire replies to the Commission. Out of the other five non-cooperating producers, one had cooperated with the Commission in the original investigation.

- (51) The export volumes of the four cooperating exporting producers plus the unverified quantities exported by Daehan Synthetic Fiber Co. Ltd. represented close to 100 % of all Korean exports during the RIP from the Republic of Korea to the Community as recorded by Eurostat.

- (52) As seen from recitals 16 and 17, the four cooperating exporting producers that fully cooperated in the investigation were the following:

— SK Chemicals Co. Ltd, Seoul,

— Huvis Corp., Seoul (related to SK Chemicals Co. Ltd),

— KP Chemicals Corp., Seoul,

— Honam Petrochemicals Corp., Seoul (related to KP Chemicals Co. Ltd).

- (53) In order to avoid any circumvention in the future, dumping margins have been calculated on a group-wide basis.

Normal value

- (54) For all types of PET exported by the Korean exporting producers, it was possible to establish normal value on the basis of the prices paid or payable in the ordinary course of trade by independent customers on the domestic market, in accordance with Article 2(1) of the basic Regulation.

Export price

- (55) Two of the Korean exporting producers made export sales to the Community directly to independent customers, via related companies located in the Republic of Korea and related importers located in the Community. Consequently, in the latter situation, a constructed export price has been established pursuant to Article 2(9) of the basic Regulation.

Comparison

- (56) Allowances for differences in transport, insurance, handling charges, commissions, credit, packing, customs duties (duty drawback) and bank charges have been granted where justified and duly supported by evidence.

Allowance for duty draw back and credit cost

- (57) Two of the Korean exporting producers made a claim for duty drawback on the grounds that import charges were borne by the like product when intended for consumption in the exporting country but were refunded when the product was sold for export to the Community. In each case, the amount claimed was found to be higher than the amount of duty borne by the like product in the domestic market and therefore, the allowances were adjusted accordingly. The methodology used in the present investigation was compatible with the conditions set out in Article 2(10)(b) of the basic Regulation in so far as it accurately reflected the actual import level of duties borne by the like product.

- (58) In addition, both exporting producers claimed credit costs on the basis of the actual credit period taken by customers under the 'open account' payment system used on the Korean domestic market. It was found that under such a system, generally, the exporting producers did not actually grant specific credit periods and furthermore, the credit periods taken could not be accurately determined, as receipts could not be linked to specific invoices. In these circumstances, these allowances could not be granted.

Dumping margin

- (59) As provided by Article 2(11) and (12) of the basic Regulation, the weighted average normal values of each type of the product concerned exported to the Community were compared to the weighted average export price of each corresponding type of the product concerned.

- (60) This comparison showed the existence of *de minimis* dumping for the exporting producers that exported to the Community in the RIP.

Taiwan

Preliminary remarks

- (61) Two out of four known exporting producers cooperated with the investigation. The two cooperating companies account for more than 80 % of Taiwan's total PET

production and 99 % of Taiwan's total exports to the Community. The share of Taiwan's exports to the Community in relation to Community consumption amounted to 1,2 % as regards the RIP.

- (62) A third Taiwanese exporting producer initially filed a questionnaire response but ceased further cooperation prior to the on-the-spot verification. The company's failure to allow Commission officials to verify its questionnaire response on-spot is tantamount to not cooperating with the investigation. By virtue of Article 18 of the basic Regulation this company should be subject to the residual dumping margin.

Normal value

- (63) For all types of PET exported by the Taiwanese exporting producers, it was possible to establish normal values on the basis of the prices paid or payable in the ordinary course of trade by independent customers on the domestic market, in accordance with Article 2(1) of the basic Regulation.

Export price

- (64) Both cooperating Taiwanese exporting producers made direct export sales to independent Community customers. Export prices could be assessed on the basis of the prices paid or payable by these customers according to Article 2(8) of the basic Regulation.

Comparison

- (65) Allowances for differences in transport, insurance, handling charges, credit, packing and bank charges were applied.

Dumping margin

- (66) As provided by Article 2(11) and (12) of the basic Regulation, the weighted average normal values of each type of the product concerned exported to the Community were compared to the weighted average export price of each corresponding type of the product concerned.

(67) On the basis of such comparison, the dumping margin found was below the *de minimis* margin in the case of Far Eastern Textile. In case of Shinkong, the dumping margin amounted to 6,5 %. However, for Far Eastern Textile, the investigation showed that the comparison of the weighted average normal value with the weighted average export prices did not reflect the full degree of dumping being practised. Indeed, the investigation showed that significant volumes (around 25 % of all exports to the Community) were made at significantly low prices and were concentrated on one customer. In addition, exports to all Community destinations were made at significantly decreased prices during the last four months of the RIP in comparison with the first eight months of the RIP. Therefore, another comparison methodology had to be applied. An important difference was found between the dumping margins resulting from a comparison average-to-average against the comparison transaction-to-average. With regard to the transaction-to-transaction comparison, it was not found to be an appropriate alternative comparison method because the process of selecting individual transactions in order to make such a comparison was considered arbitrary in this case. Thus, a comparison on the basis of the transaction-to-average was made in accordance with Article 2(11) of the basic Regulation. Thus a clear pattern of exports differing by customer and by time existed.

(68) On that basis, the dumping margin resulting from the transaction-to-average comparison is considered for the sake of the further analysis on the continuation of dumping. In case of Shinkong, the difference between the dumping margins calculated according to the two methodologies was not significant and no patterns were found. Therefore, the dumping margin resulting from the average-to-average comparison should be considered for that company.

(69) Subsequently, the dumping margins established for the two cooperating exporting producers are as follows:

Far Eastern Textile Ltd	3,5 %
Shinkong Synthetic Fibers Corp.	6,5 %

When expressed on a specific basis, these percentage margins correspond to the following specific duties:

Far Eastern Textile Ltd	EUR 36,3/t
Shinkong Synthetic Fibers Corp.	EUR 67/t

The residual duty should be based on the presently applicable residual duty for Taiwan given that no change in circumstances was found in that respect. It amounts to EUR 143,4/t.

(70) As regards the two companies that failed to cooperate with the investigation, it is considered that information available should be applied in accordance with Article 18 of the basic Regulation. In fact, these companies should be allocated the residual duty.

Thailand

Preliminary remarks

(71) Only one Thai producer of PET cooperated in the investigation and had no exports to the Community during the RIP. According to Eurostat, import volumes originating in Thailand were negligible during the RIP. However, it is known that there were at least three other PET producers in Thailand during the RIP which did not cooperate in the investigation.

(72) In the absence of exports of PET to the Community by the only cooperating producer, no dumping calculation could be made for the cooperating producer.

3. Developments of imports should measures be repealed

Preliminary remarks

(73) In order to establish whether dumping would be likely to recur should the measures be repealed, the pricing behaviour of the cooperating exporting producers to other export markets and their production, capacity and stocks were examined. The analysis was based on the information available, i.e. the information provided and verified in the questionnaire replies by the cooperating producers mentioned in section A.4. An analysis was also made as to the pricing behaviour, production and production capacity of other exporting producers in the countries concerned by the proceedings. This analysis was based on market intelligence data supplied by the Community industry and exporting producers, Eurostat imports statistics and when available, export statistics from the countries concerned.

India

Preliminary remarks

- (74) The likely scenario of what would happen if measures were repealed has been based on:
- the verified questionnaire replies by the three cooperating exporting producers that fully cooperated with the investigation, and
 - a market intelligence report produced by an independent consultancy and submitted by the applicant.

Relationship between prices in the Community and prices within India

- (75) Prices in the Community were generally lower than Indian domestic prices. Exports are likely to be made at prices that are at least slightly lower than the current Community prices. Should measures be repealed, it is likely that exports to the Community would be made at dumped prices assuming that the same price levels would be maintained.

Relationship between export prices to third countries and prices within India

- (76) Indian export prices to third countries were generally lower than its domestic prices. This price difference amounted to up to 24 % of the export price level. This indicates that exports to the Community may be made at equally dumped prices should measures be repealed. The margins found are indeed higher than the current level of dumping to the EC found as described above. It is noted that, 1. this current level of dumping found to the EC was established on the basis of small export volumes and 2. that some of these exports were made under the terms of a price undertaking which has had a correcting effect on the level of export prices. Should measures be repealed, it is thus probable that the margin of dumping would even be higher.

Relationship between Indian export prices to third countries and the price level in the Community

- (77) Indian export prices to third countries were generally below the price level in the Community. Therefore if measures were repealed, Indian exporters are likely to export PET in larger quantities to the Community and at prices approaching those charged to third countries during the RIP. As a consequence, it appears likely that the dumping established with regard to exports to the Community for the RIP may even increase should measures be repealed.

Unused capacities and stocks

- (78) Considering spare capacities, it is reiterated that the two largest Indian producers did not cooperate with the investigation. It was found though that their overall capacities amounted to around 23 % of the Community consumption during the RIP. On the basis of information available the unused part of their capacities is substantial, reaching between 80 000 and 130 000 tonnes. In addition, the three cooperating producers also dispose of some unused capacities. To conclude, there are substantial spare capacities available in India. The Indian market is also characterised by an excess of supply. In this context, producers may choose to redirect excess quantities to the Community at continuously and increasingly dumped prices if measures are repealed.

Conclusion on India

- (79) Should measures be repealed, it appears that unused capacities are likely to be directed to the Community. Given the price relationships found, particularly the price relationship between prices in the Community and prices within India, such Community exports are likely to be made at dumped prices.

Indonesia

Relationship between prices in the Community and prices within Indonesia

- (80) Prices in the Community were generally higher than those achieved by the two cooperating Indonesian exporting producers on their domestic market. This would suggest that it would be an attractive alternative for the Indonesian exporting producers to shift sales to the Community should the anti-dumping measures be repealed.

Relationship between export prices to third countries and prices within Indonesia

- (81) For Polypet, which was operating at a loss on all markets, domestic prices were not seen as reliable and hence a normal value had to be constructed based on its cost of production plus a normal profit. A profit margin of 7 %, equivalent to the margin used in the original investigation was used for the calculations. A 25,0 % price difference was identified between this constructed normal value and the export prices to third countries. The fact that export prices were lower than normal value by this amount suggests a likelihood of recurrence of dumping on the Community market should measures be repealed.

(82) Petnesia was operating at around breakeven during the RIP and normal value was therefore calculated using both domestic sales and a constructed normal value using the same method as described above for Polypet. The difference between the normal values and the export price to third countries was between 5 and 10 % (for these methods). The fact that export prices were lower than normal value by this amount suggests a likelihood of recurrence of dumping on the Community market should measures be repealed.

Relationship between Indonesian export prices to third countries and the price level in the Community

(83) The sales prices of the Community producers for sales in the EU were established at EUR 1 058 in the RIP. In the same period, the sales prices of the Indonesian exporters were EUR 911 to third country markets. Therefore sales on the EU market were 16 % higher than on other markets. This would suggest that it would be an attractive alternative for the Indonesian exporting producers to shift sales to the Community should the anti-dumping measures be repealed.

Unused capacities and stocks

(84) As mentioned above, five producers were operating in Indonesia during the RIP. The market intelligence report shows 324 000 tonnes of production in Indonesia and the cooperating producers represented around 47 % of this. Information from the cooperating producers and market intelligence suggest that unused capacities were around 10 % of total capacity or around 37 000 tonnes. This represents around 1,5 % of Community consumption.

(85) Information from the cooperating producers showed that stocking of PET was low.

(86) In respect to unused capacities and stocks, the investigation showed that a significant volume of PET could be made available for sale on the Community market.

Conclusion on Indonesia

(87) The assessment of the abovementioned factors showed that there was a substantial difference in price between those realised by the Indonesian producers in third country markets and their normal value.

(88) Furthermore, the export prices of the cooperating exporting producers on third country markets and the Indonesian domestic market are considerably lower than Community industry sales prices in the Community. Taken together with the availability of spare capacity, there is therefore an incentive for the Indonesian exporting producers to increase sales to the Community market should measures be repealed and that these sales are likely to be dumped.

Malaysia

Preliminary remarks

(89) While the total estimated production and sales of the product concerned by Malaysian producers is estimated at around 120 000 tonnes, the total consumption of PET in Malaysia is only around 60 000 tonnes. With a domestic market that is capable of consuming only about half of the total production and sales, it is clear that Malaysian producers of the product concerned are in general dependent on export markets for the continuation of operations at current capacities.

Relationship between the domestic prices level and the price level in the Community

(90) The investigation revealed that domestic prices were about 10 to 20 % lower than average prices charged on the Community market. There is no reason to conclude that this would change should the measures be repealed.

Relationship between the domestic prices level and export prices to third countries

(91) The information provided by both the cooperating exporters mentioned above in recital 17, showed that exports to third countries were made in large volumes accounting for 67 % of total sales in the RIP.

(92) For one Malaysian exporter, which had exported to the Community, the weighted average export prices to third countries were below the weighted average normal values, which were established for its dumping calculation, and also appeared to be lower than the sales prices to the Community. This indicates that this Malaysian exporter also sells its PET at probably dumped prices to third country markets, and that the price difference is even higher than the one found on the European market.

(93) For the other exporter, which had no exports to the Community in the RIP, the investigation revealed that average export prices to third countries were below the cost of production, which also indicates that the like product is also dumped on third markets.

(94) The above indicates a strong likelihood of a recurrence of dumping on exports to the Community should the measures be repealed.

Relationship between export prices to third countries and the price level in the Community

(95) The information provided by the cooperating exporters mentioned above in recital 17, showed that exports to third countries were made at a weighted average export price significantly below the Community industry sales prices in the Community.

(96) With the prevailing price level, it can therefore be concluded that the Community would be considered as an attractive market for producing exporters in Malaysia. On this basis it is considered that there would be an economic incentive for a shift from exports to third countries to the more profitable Community market should the measures be repealed. Should sales shift to the Community these are also likely to be at dumped prices.

Unused capacities and stocks

(97) The investigation revealed that the capacity utilisation of the two sole cooperating producers was very low during the RIP, i.e. in the range of between 30 and 80 %. On this basis, it can be concluded that there are significant spare capacities in Malaysia. Should measures be repealed, there would be an incentive for the Malaysian exporting producers to use this spare capacity and increase export sales, notably to the Community.

(98) The two cooperating exporting producers were found to have a normal level of stock. It is however noted that stocks cannot be considered a meaningful indicator because the production of PET in Malaysia is mostly based on orders from customers. Therefore, stocks are mainly made up of PET that is waiting to be shipped to already known customers.

Conclusion on Malaysia

(99) The investigation has shown that one of the cooperating producers continued its dumping practices despite the measures in force.

(100) Furthermore, the weighted average export prices of the cooperating exporting producers on third country markets and the prices of sales on the domestic market are also considerably lower than the prevailing price level in the Community. Taken together with the low capacity utilisation, there is therefore an incentive for the Malaysian exporting producers to shift to the Community market at likely dumped prices should measures be repealed.

The Republic of Korea

Relationship between prices in the Community and prices within the Republic of Korea

(101) In recital 60, it has been explained that the dumping margins found for all four of the cooperating exporting producers were below *de minimis*. It is recalled that these exports took place during the period when two of the cooperating exporters were able to export at zero-duty to the Community. As the exports from these four exporting producers represented close to 100 % of all imports of PET during the RIP (as reported by Eurostat), there seems to be a low risk of recurrence of dumping by any of the exporting producers which cooperated in the investigation.

(102) The investigation has shown that prices on the Korean domestic market charged by the cooperating companies are higher than those charged by the Community industry on the Community market. There is no reason to believe that those domestic prices found for the cooperating companies were not representative or that non-cooperating exporting producers sell at significantly lower prices on the domestic market than the cooperating companies. Moreover, it is likely that the non-cooperating companies which did not sell to the EC would sell at low prices to regain lost market share on the EC market. This suggests a likelihood of recurrence of dumping from the non-cooperating companies, should measures be repealed. It is also noted that these non-cooperating companies exported to the community in the original investigation in quantities that were not insignificant.

Relationship between export prices to third countries and prices within the Republic of Korea

- (103) For the cooperating exporting producers, a price difference between the prevailing price level on the Korean domestic market and their exports to third countries of around 5 % was found. Still, given that they have had the possibility to export unlimited quantities of PET to the Community at zero duty, the risk for trade diversion to the Community appears to be rather low.
- (104) Export prices to third countries were also available on a general basis, including such prices that were charged by not cooperating producers. The latter prices were lower than the domestic prices charged by cooperating producers. This price difference again shows that exports to the Community may be made at dumped prices should measures be repealed.

Relationship between Korean export prices to third countries and the price level in the Community

- (105) The investigation showed that the cooperating exporting producers in the Republic of Korea have sold significant quantities to third countries. Still, for SK Chemicals and KP Chemicals, given that they have had the possibility to export unlimited quantities of PET to the Community at zero duty, the risk of trade diversion by the cooperating exporting producers appears to be rather low.
- (106) For non-cooperating exporting producers, information from a market intelligence report and information from the Korean statistical office had been used.
- (107) When summarising the overall exports to third countries by Korean exporting producers in the RIP (727 000 tonnes) as reported by Korean statistical office and deducting the exports by the cooperating exporting producers (320 000 tonnes), the total exports by non-cooperating exporting producers have been calculated to 407 000 tonnes.
- (108) The quantities exported to each destination by the non-cooperating exporting producers were established by taking the overall exports by destination and deducting exports by the cooperating exporting producers by desti-

nation. The five destinations to which the non-cooperating exporting producers are assumed to have exported the largest quantities are the PRC followed by Ukraine, Japan, Tunisia and the Islamic Republic of Iran.

- (109) On the basis of export values provided by the Korean statistical office, the weighted average price to the five destinations with the largest exports has been calculated as EUR 759/tonne. Whereas this price is based on rough unverified statistical data (partially containing statistical values by the cooperating exporting producers, and possibly containing exports prices to related companies as well as prices excluding ocean freight), the average price remains significantly lower than the average import prices (at cif level) to the Community (about 25 %).
- (110) On this basis, i.e. given the apparent significant volumes of exports to third countries by non-cooperating exporting producers and the fact that prices to the five largest destinations of the non-cooperating exporting producers are significantly lower than the average import price into the Community, there appears to be a significant risk of trade diversion by non-cooperating exporting producers should measures be allowed to lapse. Given the significant dumping margin found (55 %) for the biggest of the non-cooperating exporting producers in the original investigation, it is highly likely that the non-cooperating exporting producers would resume their dumping practises, should measures be repealed.

Unused capacities and stocks

- (111) For the cooperating exporting producers, they were all found to have a normal level of stock and were operating at almost full capacity. Thus, the risk of recurrence of dumping on this basis appears to be very limited.
- (112) For the non-cooperating exporting producers, the capacity was established on the basis of the overall capacity of Korean exporting producers given by market intelligence. No information is available on the level of stock. When subtracting the capacity of the cooperating exporting producer from the overall Korean capacity, an estimated capacity for the non-cooperating exporting producers has been calculated. This capacity has been estimated to be at around 550 000 tonnes which would correspond to a market share of 23 % of the total Community consumption.

- (113) Based on the market intelligence report, unused capacity for the Republic of Korea as a whole is estimated at around 200 000 tonnes. Thus, it cannot be excluded that there is a risk of recurrence of dumping by non-cooperating exporting producers with unused capacity should measures be repealed.

Conclusion on the Republic of Korea

- (114) Although for the four cooperating companies there seems to be no apparent risk of recurrence of dumping, the investigation has shown that for the non-cooperating companies a real risk of recurrence of dumping exists. This was shown by a comparison of the prevailing price level on the Korean domestic market and the price level on the Community market as well as by a comparison of that domestic price level with the average export price level to third country markets.
- (115) Moreover, a significant threat of trade diversion can indeed be found when comparing the significant volumes of PET that they sell to third countries, at prices which are significantly lower than the prices at which PET is imported to the Community. Given the history of dumping of those non-cooperating companies (at 55 % in the original investigation), there is no reason to believe that those companies would not resume their dumping practices should measures be allowed to lapse.

Taiwan

Relationship between prices in the Community and prices within Taiwan

- (116) Taiwanese domestic prices of cooperating and non-cooperating exporting producers were generally lower than prices in the Community. The former prices were indeed profitable. This means that the Community price level would also be very attractive from a Taiwanese exporting producer's point of view. Given the price relationship found, Taiwanese export prices are also likely to be significantly lower than the averages prices charged by the Community industry.

Relationship between export prices to third countries and prices within Taiwan

- (117) In case of one cooperating producer, prices to third countries were significantly lower than Taiwanese domestic prices. In the case of the other cooperating producer that mainly sold to Japan, export prices to third countries exceeded domestic sales prices. On that

basis, it cannot be ruled out that export prices to the Community will follow the trend of Taiwanese prices to other countries (except Japan) once measures are repealed. Therefore, dumping is likely to recur under such a scenario. This assessment is based on the data supplied by cooperating producers as no other data could be retrieved in this regard.

Relationship between Taiwanese export prices to third countries and the price level in the Community

- (118) Taiwanese export prices to third countries were significantly below the price level in the Community. Taiwanese exports to other countries were not subject to anti-dumping duties during the RIP. Should measures be repealed it cannot be excluded that export prices to the Community would follow the trend of prices to other markets. Under such circumstances, future exports to the Community would be made at dumped prices. Again, this assessment is based on data provided by cooperating producers. However, as there is no information available indicating that the export prices to third countries or domestic prices found for the cooperating companies would not be representative for all Taiwanese exporting producers, it can also be concluded that future exports to the EC from the non-cooperating companies would be likely to be made at dumped prices.

Unused capacities and stocks

- (119) While one cooperating company made full use of its capacity during the RIP, the other one did not use a significant quantity of its total capacity. The companies not cooperating with the investigation seem to have unused capacities in a range between 400 000 and 500 000 tonnes. This amounts to around 20 % of the Community consumption during the RIP. Indeed, given the attractive price level on the Community market, such unused capacities are likely to be redirected to the Community should measures be repealed.

Conclusion on Taiwan

- (120) With a view to the unused capacities, it appears that such capacities are likely to be redirected to the Community should measures be repealed. Moreover, such Community exports are likely to be made at dumped prices given the low price level for exports to third country markets, with the exception of Japan. Community prices are likely to be put under pressure once larger quantities are imported into the Community market. Such a downwards price trend is likely to exacerbate the dumping established for the RIP.

Thailand

Preliminary remarks

- (121) As outlined in recital 71 it is known that there were at least three other PET producers in Thailand during the RIP which did not cooperate in the investigation. For those non-cooperating producers, the information available from Eurostat and other sources were analysed.
- (122) The information on stocks and sales to third markets refers only to the cooperating exporting producer. It was possible to obtain data on the overall production capacity in Thailand and to make an estimate of the production volume of all exporting producers in Thailand based on market intelligence. In this respect, it was considered that findings for non-cooperating companies could not be more favourable than those established for cooperating companies.

Relationship between the domestic prices level and price level in the Community

- (123) The investigation revealed that domestic prices were 10 to 20 % lower than average prices charged on the Community market. There is no reason to conclude that this would change should the measures be repealed.

Relationship between the domestic prices level and export prices to third countries

- (124) The information provided by the cooperating producing exporter mentioned above in recital 17 which did not export to the Community, showed that exports to third countries were made in large volumes accounting for over 80 % of total sales in the RIP. It was also found that the average export prices to third countries were below cost, which indicates that the product is sold at dumped prices on third country markets. Moreover, concerning the non-cooperating companies, there is no information available to indicate that their pricing behaviour is different regarding the Thai domestic or third country markets and it can therefore be assumed that they also sell at lower prices to third countries than on their domestic market.

Relationship between export prices to third countries and the price level in the Community

- (125) The information provided by the cooperating exporter which did not export to the Community, showed that

exports to third countries were made at a weighted average export price significantly below the Community industry sales prices in the Community.

- (126) Assuming that the prevailing price level in the Community would remain the same, it can therefore be concluded that the Community would be a considered an attractive market for producing exporters in Thailand. On this basis it is considered that there would be an economic incentive for a shift from exports to third countries to the more profitable Community market should the measures be repealed.

Unused capacities and stocks

- (127) There are significant spare capacities in Thailand. The investigation revealed that the capacity utilisation of the cooperating exporting producer was found to be low during the RIP.
- (128) According to the market intelligence report, the capacity level of the non-cooperating producing exporters is estimated at around 500 000 tonnes with a total production of around 430 000. Based on these figures the spare capacity would amount to approximately 70 000 tonnes. This spare capacity would amount to around 2,9 % of the total Community consumption, should it be directed towards sales on the Community market.
- (129) Overall, market intelligence data suggests that the domestic market in Thailand can absorb less than 94 000 tonnes or 25 % of the domestic production of PET. Under these circumstances, Thai producers of the product concerned are heavily dependent on export sales for the continuation of operation at current capacity. Under these circumstances, there is a strong likelihood that exports to the EC would increase should the measures be repealed. Therefore, it cannot be excluded that the Thai exporting producers would lower their export prices to the Community to a level of export prices for other third country markets, in an effort to regain lost market, should measures be repealed. Thus, it cannot be excluded that there is a threat of recurrence of dumping by non-cooperating exporting producers should measures be repealed.

- (130) The cooperating exporting producer was found to have a normal level of stock. It is however noted that stocks cannot be considered a meaningful indicator because the production of PET in Thailand is mostly based on orders from customers. Therefore, stocks are mainly made up of PET that is waiting to be shipped to already known customers.

Conclusion on Thailand

- (131) As the sole cooperating exporting producer did not export to the Community, the investigation could not conclude as to whether dumping continues despite the measures in force.

- (132) However the weighted average export prices of the cooperating exporting producer on third country markets and the prices of sales on the domestic market were considerably lower than Community industry sales prices in the Community. The sales prices were below the cost of production. This is considered as an indicator that sales would probably be made at dumped prices should measures be repealed. Moreover, given the attractive price level in the Community, there is an incentive for the Thai exporting producers to sell to the Community market should the measures be repealed.

- (133) For the non-cooperating exporting producers, a significant threat of trade diversion can be found when comparing the domestic demand and the significant volumes of PET that are sold to third countries. It is recalled, as stated in recital 131 and onwards, that Thai producers are heavily dependent on exports and that there is a large overall spare capacity that could be diverted towards the Community. Given their history of dumping (at 32,5 % in the original investigation), it appears that there is a risk for recurrence of dumping should measures be repealed.

4. Conclusion on the likelihood of a continuation and/or recurrence of dumping

India, Indonesia, Malaysia, Taiwan and Thailand

- (134) On the basis of the above, it is concluded that dumping is likely to continue and/or recur should measures be repealed. Accordingly, it is proposed that measures applicable to imports of PET originating in India,

Indonesia, Malaysia, Taiwan and Thailand should be maintained.

The Republic of Korea

- (135) On the basis of information collected for non-cooperating exporting producers, there seems to be a significant risk of recurrence of dumping. This risk is based primarily on data suggesting a significant production and export capacity by the non-cooperating exporting producers and, as demonstrated by dumping practises in the original investigation, would in all likelihood materialise as exports at dumped prices to the Community should measures be repealed.

- (136) Accordingly, it is proposed that measures applicable to imports of PET originating in the Republic of Korea should be maintained.

D. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (137) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances with respect to the original investigation regarding dumping could reasonably be considered to be of a lasting nature.

The Republic of Korea

- (138) It is recalled that the scope of the interim review in respect of the Republic of Korea is limited to the dumping margins for the three companies SK Chemicals Co. Ltd, KP Chemicals Corp. and Daehan Synthetic Fibres Co. Ltd and their related companies.

Cooperating exporting producers (SK Chemicals Co. Ltd and KP Chemicals Corp.)

- (139) For the cooperating exporting producers which exported PET to the Community during the RIP, the interim review showed that their dumping margin remained at a *de minimis* level. The main reason for this was that whilst the normal values and domestic sales prices for these companies had risen as compared to the data in the original investigation, sales prices on the Community market had increased correspondingly.

(140) No indications were found suggesting that these changes leading to a *de minimis* dumping margin would not be of lasting nature, as all of the cooperating exporting producers had been found to operate at a high capacity utilisation rate (above 90 %). Moreover, none of them had any plans to increase their production capacity in the Republic of Korea. Indeed one of them, SK Chemicals, had set up a production plant within the Community and is more likely to decrease its exports from the Republic of Korea.

Other exporting producers (Daehan Synthetic Fibres Co. Ltd)

(141) For the exporting producer Daehan, which, as stated in recital 49, eventually chose not to cooperate in the investigation, none of the facts related to this company could be verified.

(142) Thus, the conclusion for this company had to be based on facts available in accordance with Article 18 of the basic Regulation, i.e. on the basis of information in the complaint and information in the unverified questionnaire.

Conclusion on the Republic of Korea

(143) For the two cooperating exporting producer groups, SK Chemicals and KP Chemicals, the circumstances under which the dumping margins have been calculated in this investigation can be considered to be of lasting nature.

(144) For the third exporting producer Daehan Synthetic Fibres, it should be recalled that this company did not cooperate and that the analysis therefore has to be based on facts available, suggesting that dumping continue. Under these circumstances this company should be subject to the residual duty as established in the original investigation and confirmed in the most recent review.

Taiwan

(145) In the present proceeding, only two Taiwanese exporting producers cooperated. The analysis on the lasting nature of changed circumstances is therefore limited to these two companies.

(146) Far Eastern Textiles has been subject to a zero duty since Council Regulation (EC) No 83/2005 was adopted⁽¹⁾. The other cooperating exporting producer, Shinkong Synthetic Fibres, was allocated a dumping margin of 3,1 % by the same Regulation.

(147) On the basis of the analysis on dumping carried out for the RIP, changed dumping margins of 3,5 % for Far Eastern and 6,5 % for Shinkong have been established.

(148) For the two cooperating producers which exported to the Community during the RIP, there is no reason to believe that the nature of the changes between the current and the previous investigations, particularly the changes in export prices to the Community and normal values that both led to the revised dumping margins, are not of a lasting nature. With regard to the company for which a pattern of dumping was found, the investigation showed that the company had sold significant quantities to a new customer at a price that was considerably below its general export price level. As the company did not state that it will cease selling to this customer or that it will adapt its export prices, it can be concluded that the pattern will subsist. Moreover, this company made almost full use of its capacity during the RIP. Thus, major changes in the company's sales pattern which would have an impact on their price levels with according effects on normal values and export prices are unlikely to happen.

(149) Regarding the second cooperating company, the changes observed were not huge, i.e. change in dumping margins from 3,1 % to 6,5 % due to slightly more pronounced changes in the normal values than in the export prices. This circumstance is not likely to change in the future because oil prices which are a major cost factor to produce PET are stabilising at a high level.

(150) Accordingly, it is considered that the dumping margins for both companies, calculated on the basis of the data provided in this investigation are reliable and that the changes found are deemed to be of a lasting nature.

⁽¹⁾ OJ L 19, 21.1.2005, p. 6, recital 58.

E. DEFINITION OF THE COMMUNITY INDUSTRY

1. Community production

(151) PET is manufactured in the Community by the following companies:

— producers which requested the expiry review, supported it and cooperated in the investigation (see recital 154),

— two producers which have requested the expiry review but have not cooperated in the current investigation,

— one subsidiary of a Korean producer located in the Community who has cooperated in the investigation and has supported the request.

(152) PET produced by all these companies constitutes the total Community production within the meaning of Article 4(1) of the basic Regulation.

2. Community industry

(153) The Commission examined whether the cooperating Community producers requesting or supporting the request for the expiry reviews represented a major proportion of the total Community production of PET. Those Community producers accounted for 88 % of the total Community production of PET. Those Community producers who did not fully cooperate were excluded from the definition of the Community industry. The Commission therefore considered that these fully coop-

erating Community producers represent the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation. In the original investigations, the Community industry represented more than 85 % of the total PET production in the Community at that time.

(154) The following twelve Community producers partly mentioned in recital 16 constitute the Community industry:

Voridian BV (The Netherlands), M & G Polimeri Italia Spa (Italy), Equipolymers Srl (Italy), La Seda de Barcelona SA (Spain), Novapet SA (Spain), Selenis Industria de Polimeros SA (Portugal), Aussapol Spa (Italy), Advansa Ltd (UK), Wellman BV (The Netherlands), Boryszew subsidiary Elana Wse (Poland), V.P.I. SA (Greece), SK Eurochem (Poland).

F. SITUATION ON THE COMMUNITY MARKET

1. Consumption in the Community market

(155) Community consumption was established on the basis of the sales volumes of the Community industry, of estimates of the sales of the other Community producers on the Community market based on data provided at the complaint stage, and Eurostat data for all Community imports from third countries.

(156) Between 2002 and the RIP, Community consumption of the product concerned in the Community continuously increased to reach a total of 2 400 000 tonnes in the RIP. The overall increase over the period was 18 %. The increase was partly due to new applications (beer, wine, *inter alia*) and partly due to the increase of consumption in the countries acceding to the EU in 2004.

Table 1

	2002	2003	2004	RIP
Community consumption (tonnes)	2 041 836	2 213 157	2 226 751	2 407 387
Index	100	108	109	118

2. Imports from the countries concerned

2.1. Cumulation

- (157) In the original investigation, imports of the product concerned originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand were assessed cumulatively in accordance with Article 3(4) of the basic Regulation. It was examined whether a cumulative assessment was also appropriate in the current investigation.
- (158) With regard to imports of the two cooperating Korean companies, the investigation has shown either *de minimis* or no dumping. Therefore, in accordance with Article 3(4) of the basic Regulation, those imports concerned could not be cumulatively assessed. However, it was found that the margin of dumping established in relation to the imports from India, Malaysia and Taiwan was above the *de minimis* level. Concerning imports from Indonesia and Thailand, the investigation has shown that the imports were not representative and therefore no dumping margin could be established. However, it was also concluded that should measures be allowed to lapse, there is a likelihood of recurrence of dumping. As regards the quantities exported by each of the six countries concerned it was considered that if the measures were repealed, imports from each of the countries concerned would be likely to increase to levels significantly above those reached in the RIP and would certainly exceed the negligibility threshold. As regards the condition of competition, the investigation has confirmed that PET chips imported from the countries concerned were alike in all their essential physical and technical characteristics. Moreover, these chips were interchangeable with those produced in the Community and they were marketed in the Community during the same period, through similar sales channels under similar commercial conditions. The imported PET chips were therefore considered to compete with each other and with the PET chips produced in the Community.
- (159) In the light of the above, it was considered that all the criteria set out in Article 3(4) of the basic Regulation were met regarding imports from India, Malaysia, Thailand, Indonesia, Taiwan and the dumped imports from the Republic of Korea. The imports from the six countries concerned were therefore examined cumulatively with the exception of those non-dumped imports produced by the two cooperating Korean exporting producers.

2.2. Volume, market share and prices of imports

- (160) With respect to the six countries concerned, the import volumes, market shares and average prices developed as indicated below. The data are based on Eurostat statistics. In these figures, non-dumped Korean imports should in principle be taken out. For reasons of confidentiality, however, they have been deliberately included. The development of the trend would be however substantially the same if the data concerning the non-dumped Korean imports would be taken out.
- (161) Between 2002 and the RIP, imports from the countries concerned decreased by 13 %, i.e. from 192 000 tonnes in 2002 to 167 000 tonnes in the RIP. Compared to the year 2002, they remained unchanged in 2003 and decreased by 3 % in 2004, and by another 10 % in the RIP.

Table 2

	2002	2003	2004	RIP
Volume	192 192	191 455	186 892	166 982
Index	100	100	97	87
Market share	9,4 %	8,6 %	8,4 %	7,0 %
Prices (EUR/tonne)	850	803	854	1 030
Index	100	94	100	121

G. ECONOMIC SITUATION OF THE COMMUNITY INDUSTRY

1. Preliminary remarks

- (162) At the beginning of the review, sampling of the Community producers was foreseen but considering that their number was not excessive, it was decided to include all of them and consequently, injury factors have been assessed on the basis of information collected at the level of the entire Community industry.
- (163) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

2. Analysis of economic indicators

2.1. Production

- (164) The Community industry's production increased by 20 % between 2002 and the RIP, i.e. from a level of 1 465 000 tonnes in 2002 to 1 760 000 tonnes in the RIP. The yearly increase was 4,8 % in 2003 and 4,6 % in 2004. A further increase occurred in the RIP, when production soared by 150 000 tonnes, i.e. by 10,8 %. This was due to the restructuring process undertaken by the industry with the aim to better control the production costs and thereby take advantage of the growing consumption in the Community market which, as stated above, increased by 19 % between 2002 and the RIP (from 2 million tonnes in 2002 to 2,4 million tonnes in the RIP).

Table 3

	2002	2003	2004	RIP
Production (tonnes)	1 464 522	1 534 480	1 602 086	1 760 828
Index	100	105	109	120

2.2. Capacity and capacity utilisation

- (165) Production capacity increased by 22 % between 2002 and the RIP, i.e. from a level of 1 760 000 tonnes in 2002 to 2 156 000 tonnes in the RIP. The increase occurred mainly in the RIP, when production capacity, compared to the year 2004, increased by 300 000 tonnes, i.e. 16,7 %. This significant increase of production capacity was parallel to the increase of production over the same period (see recital 164). The increase in production capacity resulted from additional investments in production lines designed to take advantage of the growing market. The capacity utilisation increased by four percentage points in 2003, remained on this level in 2004 and then decreased in the RIP by five percentage points to the level of 82 %. The decrease between 2004 and the RIP results from the significant increase of production capacity in that period. Consequently, a higher production volume in the RIP, when compared with 2004, coincided with a lower capacity utilisation rate.

Table 4

	2002	2003	2004	RIP
Production capacity (tonnes)	1 760 332	1 762 378	1 848 315	2 156 294
Index	100	100	105	122
Capacity utilisation	83 %	87 %	87 %	82 %
Index	100	105	104	98

2.3. Sales and market share

- (166) The volume sold by the Community industry on the Community market increased by 21 % between 2002 and the RIP. A growth of 2 % in 2003 was followed by an increase in both 2004 and the RIP, by 8 and 11 percentage points respectively. Notwithstanding the increase of sales due to the higher consumption, the Community industry's market share fell by four percentage points in 2003 to then gradually rise by five percentage points in 2004 and one percentage point in the RIP.

Table 5

	2002	2003	2004	RIP
Sales in the EC (tonnes)	1 306 768	1 333 976	1 438 883	1 586 902
Index	100	102	110	121
Market share	64 %	60 %	65 %	66 %

2.4. Growth

- (167) Overall, it has to be noted that the Community industry's market share increased by 2 % in the period considered, which shows that its growth lagged behind the growth of consumption of the overall market.

2.5. Employment

- (168) The level of employment of the Community industry increased by 18 % in the period considered. The main increase occurred in 2003 (11 percentage points) and 2004 (further six percentage points). Although this rising tendency continued in the RIP, the increase amounted to only two percentage points. This increase of 18 % during the whole period is linked to the production level which increased by 20 %.

Table 6

	2002	2003	2004	RIP
Employees	1 010	1 124	1 170	1 190
Index	100	111	116	118

2.6. Productivity

- (169) The Community industry's productivity, measured as the output in tonnes per person employed per year, had an overall increase during the period considered. Productivity initially fell by 6 % in 2003 compared to the year 2002 and remained at this level in 2004 but productivity in the RIP then increased significantly by more than 8 % compared to 2004.

Table 7

	2002	2003	2004	RIP
Productivity (tonne/employee)	1 450	1 365	1 369	1 480
Index	100	94	94	102

2.7. Wages

- (170) It has to be noted that PET chips production is a capital intensive industry and that therefore labour costs have a limited impact on the overall cost of the product. During the period, wages increased by 12 %, compared to a 20 % increase of the overall production cost. Another significant indicator is the cost of wages spent per tonne produced. During the period, this cost decreased by 6 %.

Table 8

	2002	2003	2004	RIP
Wages (EUR million)	62,3	63,0	66,3	69,5
Index	100	101	106	112
Wages per tonne produced (EUR)	44,4	42,9	43,6	41,9
Index	100	96	98	94

2.8. Magnitude of the actual margin of dumping and recovery from the effects of past dumping

- (171) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

2.9. Sales prices and factors affecting Community prices

- (172) The unit sales prices increased from EUR 924/tonne in 2002 to EUR 1 058/tonne in the RIP. Overall, the tendency was rising (by 15 % in the whole period). This increase is to a large extent a consequence of the increase in the price of raw materials, which is due to the increase in the oil price. Although the Community industry had increased prices it was not in the position to pass the increase on to the downstream sector and fully reflect the increase of raw materials prices in its sales prices. This was principally due to the fact that the increase in the price of raw materials was higher than the increase of PET prices. In addition, the Community industry had to face the pressure from imports. With the aim to maintain its market share, the Community industry could only moderately increase its prices and thus experienced price suppression.

Table 9

	2002	2003	2004	RIP
Weighted average price (EUR/tonne)	924	902	1 006	1 058
Index	100	98	109	115

2.10. *Cost of production of the main raw materials*

- (173) Bearing in mind that around 850 kg of purified terephthalic acid (PTA) and 350 kg of mono ethylene glycol (MEG) (the main raw materials) are needed to produce 1 tonne of PET, the costs of raw materials (PTA and MEG) increased significantly respectively by 67 % and by 31 % between 2002 and the RIP to reach the level of EUR 770/tonne (PTA) and EUR 721/tonne (MEG) (average of the RIP). Although a small decline in prices of PTA has been noted in the third quarter of 2005 when the prices dropped to the level of EUR 700/tonne, and a substantially stable price was observed for MEG, it has to be pointed out that the raw materials are purchased in advance based on long term contracts. As a result, for the period considered, despite the small decline in prices of PTA at the end of the RIP, the Community industry still bears the consequences of the heavily increased costs. In addition, due to the situation on the world oil market the prices of raw materials for the production of PET are susceptible of unpredictable changes but they are most likely to remain at a high level. All these factors contribute to an increased level of vulnerability of the Community PET producers.

Table 10

	Average cost (EUR/tonne)			
	2002	2003	2004	RIP
— PTA	460	566	718	770
Index	100	123	156	167
— MEG	551	550	650	721
Index	100	100	118	131

- (174) By comparison, the average unit cost per tonne of PET chips produced by the Community industry was the following:

Table 11

	2002	2003	2004	RIP
Weighted average cost (EUR/tonne)	899	918	1 013	1 092
Index	100	102	113	121

- (175) During the period considered, as indicated in tables 10 and 11, the main raw materials have continuously increased (PTA by 67 %, MEG by 31 %), while the overall cost of production raised only by 21 %. However, as shown in table 9 prices have only increased by 15 % due to the fact that the Community industry was not in a position to pass the increase on to the downstream sector and fully reflect the rise in the price of raw materials in its sales prices.

2.11. *Stocks*

- (176) The evolution of stocks over the whole period considered, i.e. between 2002 and the RIP is down by 10 %. However as in the original investigations, stocks should not be considered as a meaningful indicator as regards PET produced by the Community industry, given the seasonal nature of the PET market throughout the year. When compared to the production, stocks represent around 5/6 % of the output.

Table 12

	2002	2003	2004	RIP
Stocks (tonnes)	101 554	110 695	90 422	91 123
Index	100	109	89	90

2.12. Profitability, return on investments and cash flow

- (177) Profitability on sales represents the profit generated by sales of the product concerned in the Community. Return on total assets and cash flow could only be measured at the level of the narrowest group of products which included the like product, pursuant to Article 3(8) of the basic Regulation. Moreover, return on investments has been calculated on the basis of return on total assets, as return on total assets is considered more relevant for the analysis of the trend.

Table 13

	2002	2003	2004	RIP
Pre-tax profit margin on sales in the Community	2,7 %	- 1,8 %	- 0,7 %	- 3,2 %
Return on total assets	2,0 %	- 1,4 %	- 0,6 %	- 2,4 %
Cash flow (% of total sales)	18,1 %	5,5 %	10,1 %	- 2,6 %

- (178) Further to the price suppression starting in 2002 and coinciding with a strong increase of dumped imports from the countries concerned, the financial situation of the Community industry deteriorated and turned into losses in 2003. After a small recovery in 2004 due to the measures imposed on PRC and Australia, losses increased to - 3,2 % in the RIP. It is therefore noted that there is a clear downward trend.
- (179) The trends for return on total assets and for cash flow developed similarly i.e. showed a relatively good situation in 2002, a deterioration in 2003, a small recovery in 2004 and a further deterioration in the RIP.

2.13. Investments and ability to raise capital

Table 14

	2002	2003	2004	RIP
Investments (EUR 1 000)	31 779	42 302	63 986	50 397
Index	100	133	201	159

- (180) The investments were partly dedicated to an increase of capacity and partly to the improvement of the production process. The bulk of the expenditure was made in 2004 and during the RIP, coinciding with the increase of the capacity and with the aim to maintain market share in view of the increased consumption. Nevertheless, the current situation of the Community industry and the evolution of the Community and world markets for PET marked out by lack of profitability were not an incentive to make excessive investments. Although in some circumstances Community producers have been able to raise capital (in particular from related companies), the lack of profitability of PET did not encourage investment and in some cases the decision was postponed.

3. Conclusion on the situation of the Community industry

- (181) The constant increase of consumption partly due to new applications (beer, wine *inter alia*) and partly due to the increase of consumption in the countries acceding to the EU in 2004, obliged the Community industry to increase capacity and production in order not to lose market share. To do so, an important restructuring process accompanied by a frequent change of the ownership of the different producers, took place in 2004 and during the RIP. In parallel, the number of production lines was generally increased in order to follow the increase of the consumption and to concurrently achieve economies of scale. Thus, some economic indicators, i.e. consumption, capacity production, production, EU sales, employment indeed followed a positive trend.
- (182) However, all those restructuring efforts described above could not counterbalance the impact of the constant and massive increase of raw material prices in the period considered. The higher raw material costs could not be passed on to the downstream sector to the extent it would have been necessary to maintain a certain level of profitability. This coincided with the low price level of the imports from the countries concerned which clearly exerted a significant downward pressure on the price of the Community industry. Thus, despite the apparent positive developments concerning production, sales and sales price, the overall financial situation of the Community industry deteriorated and is reflected in the negative developments of profitability (from 2,7 % profit in 2002 to 3,2 % losses in the RIP), of export sales, production cost, return on investments and cash flow.
- (183) Consequently, despite some apparent positive trends showed by the injury indicators, the situation of the Community industry is still far from the levels that could be expected had it fully recovered from the injury found in the original investigations.
- (184) It is therefore concluded that the situation of the Community industry has slightly improved, as compared to the period preceding the imposition of measures, but is still very fragile and vulnerable. Furthermore, the price pressure from imports did not allow the Community industry to fully reflect the increase of raw materials prices in its sales prices.

4. Imports from other countries

4.1. Other countries concerned by anti-dumping measures

- (185) As mentioned in recital 2, it is recalled that, since August 2004, there have also been definitive anti-dumping measures in force on imports of PET originating in Australia and the PRC.
- (186) During the period considered, the total volume of imports from these countries increased by 12 % (from 65 000 tonnes to 73 000 tonnes). Although there was a significant increase in the market share (by four percentage points) in the year 2003, this rising tendency was reversed in 2004 when the market share of imports decreased to the level of 2,4 %. In the RIP a slight increase of 0,6 % stemming from Chinese imports has been noted. The effect of the definitive anti-dumping duties is reflected as from 2004. Whereas imports from Australia ceased completely, the volume of imports from China increased steadily by 130 % in 2003, decreased in 2004 in coincidence with the measures and increased again by 47 % during the RIP. Australian prices decreased by 7 % in 2003 and by another 6 % in 2004. Chinese prices increased slowly in 2003 and 2004 and by 24 % in the RIP, i.e. from EUR 827 to EUR 1 022 per tonne. As a conclusion it is noted that significant imports from these two countries were made at prices constantly lower than the Community prices, thus contributing to the injury suffered by the Community industry.

Table 15

	2002	2003	2004	RIP
Australia				
Volume (tonnes)	17 179	18 727	2 842	—
Price (EUR/tonne)	851	789	741	—
Market share	0,8 %	0,8 %	0,1 %	—
People's Republic of China				
Volume (tonnes)	47 875	131 343	49 678	72 814
Price (EUR/tonne)	804	806	827	1 022
Market share	2,3 %	5,9 %	2,2 %	3 %
Total tonnes	65 054	150 070	52 520	72 814
Total market share	3,1 %	6,8 %	2,4 %	3 %

4.2. Other third countries not mentioned above

- (187) In these figures, non-dumped Korean imports should in principle be included. For reasons of confidentiality they have been deliberately taken out. However the development of the trend would be substantially the same if the Korean non-dumped imports were to be included.
- (188) Between 2002 and the RIP, total imports of PET originating in other countries have increased by 136 %, to reach 174 000 tonnes. Their market share in the EU increased from 3,6 to 7,1 % in the period considered. The table below illustrates these trends.

Table 16

	2002	2003	2004	RIP
Total volume (tonnes) of which:	73 549	119 973	182 687	173 597
Pakistan	28 558	83 208	55 125	73 426
USA	20 570	16 105	49 763	50 393
Mexico	1 476	20	32 112	20 501
Turkey	7 208	17 001	24 032	15 374
Others	15 737	3 639	21 655	13 903
Market share	3,6 %	5,4 %	8,2 %	7,1 %

- (189) Imports from Pakistan rose by 157 % over the period considered, and in particular after the termination of the proceeding against them in 2004. Imports from the United States increased considerably, i.e. by 144 % to reach 50 000 tonnes in the RIP. Imports from Mexico passed from 1 500 tonnes in 2002 to 20 000 tonnes in the RIP, an increase of 1 390 %. As far as Turkey is concerned, its imports were rising significantly between 2002 and 2004 (by 244 %), to then decrease in the RIP by 36 %. Regarding the prices it is important to note, however, that the prices of the imports from the United States, Mexico and Turkey increased and were higher than prices of other imports and of those of the Community industry. Moreover, most likely, imports from USA are Pet G, a special variety of PET having higher viscosity requirements and sold on average at 50 % more than normal PET. Imports prices for Pakistan were lower than the average prices of the Community industry from 2002 to 2004. During the RIP, import prices from Pakistan increased at the level of the Community industry. Therefore, it is considered that these imports could not affect the situation of the Community market.

5. Export Activity of the Community Industry

- (190) The export activity of the Community industry showed a downward trend during the period considered, i.e. decreasing from 7,9 % to 4,9 % of the Community industry's total sales. Only in 2003, the Community industry's export performance increased considerably, probably due to low EU sales prices. However, during the RIP, they represent less than 5 % of the total sales. It should be noted that export prices were constantly above EC sales price.

Table 17

	2002	2003	2004	RIP
Export sales (tonnes)	111 381	141 627	97 686	82 388
Index	100	127	87	74
% of total sales	7,9 %	9,6 %	6,3 %	4,9 %
Price per tonne	959	942	1 026	1 096
Index	100	98	107	114

H. CONCLUSION ON THE LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

- (191) As concluded previously, the exporting producers in India, Indonesia, Thailand, the Republic of Korea, Taiwan and Malaysia have the potential to increase their export volumes to the Community market.

- (192) The cif export prices of PET originating in India, Thailand and Malaysia were higher than the prices of the Community industry. The difference, however, was not significant which leads to the conclusion that in the absence of anti-dumping duties these countries could exercise an even stronger price pressure on the Community industry. Moreover, the prices of Korean, Taiwanese and Indonesian imports into the Community were lower than the Community price. The difference was small for the Republic of Korea and Taiwan (3 to 4 %) and significant in the case of Indonesia (amounting to 27 %). Therefore there is a clear indication for a likelihood of continuation or recurrence of injury.

- (193) As indicated above, the situation of the Community industry has also been considerably affected by the imports from the PRC. The prices of those imports were below the Community price (EUR 1 022/tonne as compared to 1 058 in the Community). In addition, in terms of volume, the imports from the PRC amounted to 73 000 tonnes, representing a market share of 3 % in the RIP.

- (194) Furthermore, in terms of volumes of imports from the countries concerned, it can be concluded that there is likelihood that those quantities will significantly

increase due to the overall production capacity and spare capacity available in the countries concerned as further detailed in recital 199.

- (195) On the basis of the foregoing, it is concluded that the import prices would most likely be lower on the Community market in the absence of anti-dumping measures, as the producers in these countries would possibly try to regain lost market shares or to increase their current market shares. Such price behaviour, coupled with the ability of the exporting producers in these countries to sell significant quantities of PET on the Community market, would in all likelihood have the effect of reinforcing the price pressure, with an expected further negative impact on the situation of the Community industry.

- (196) In this context, it should be recalled that in all the six countries concerned a significant spare production capacity was established, ranging from 37 000 tonnes in Malaysia to 400 000 tonnes in Taiwan, and totalling around 1 million tonnes, i.e. 45 % of the Community industry production capacity. In addition the import prices oscillated in the period concerned slightly above or below Community prices. The prices of imports originating in Taiwan, for example, a country with by far the highest spare production capacity, fell during the period when anti-dumping measures were in force below the level of Community prices. Furthermore, the prevailing price level in the Community makes the EU an attractive market. Thus, it can be concluded that should the measures be allowed to lapse, there exists a strong incentive for producers in the countries concerned to redirect their sales to the EU market at low prices.

- (197) Moreover, recent publicly available information indicates that unusual quantities of PET chips have been purchased by operators in Bulgaria and Romania from the Asian countries under review. The shipments were due to take place in November and December 2006. This information is an indication of the likelihood of recurrence of injury to the Community industry, as it clearly demonstrates that significantly more imports from the countries concerned would be present on the Community market in the absence of anti-dumping measures.
- (198) As shown above, although the situation of the Community industry has slightly improved when compared to the one before the imposition of anti-dumping measures, it remains vulnerable and fragile. It is likely that if the Community industry was exposed to increased volumes of imports from the countries concerned at dumped prices, this would result in a deterioration of its financial situation and most probably in the further loss of profitability. On this basis, it is therefore concluded that the repeal of the measures against India, Indonesia, Thailand, the Republic of Korea, Taiwan and Malaysia would in all likelihood result in the recurrence of injury to the Community industry.

I. COMMUNITY INTEREST

1. Introduction

- (199) According to Article 21 of the basic Regulation, it was examined whether the maintenance of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the various interests involved. The present investigation analyses a situation in which anti-dumping measures have already been in place and allows for assessment of any undue negative impact on the parties concerned due to the current anti-dumping measures.
- (200) On this basis, it was examined whether, despite the conclusions on the likelihood of a continuation or recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

2. Interest of the Community industry

- (201) As outlined above, there is a clear likelihood of recurrence of injurious dumping if measures were to be repealed. All Community producers but two fully cooperated and indicated their support for the ongoing

measures. One Community producer linked to one of the Korean exporters has also expressed support for the measures. It has to be considered, however, that its mother company is exporting at 0 % duty.

- (202) The continuation of anti-dumping measures on imports from countries concerned would enhance the possibility for the Community industry to reach a reasonable level of profitability. More importantly, it will avoid that the Community industry is pushed out of the market. Indeed, there is a clear likelihood of injurious dumping in substantial volumes which the Community industry could not withstand. The Community industry would therefore continue to benefit from the maintenance of the current anti-dumping measures, in particular as there are now also measures against imports originating in Australia and the PRC.

3. Interest of importers

- (203) The Commission sent questionnaires to 18 importers/traders of the product concerned. However, cooperation from the importers/traders that are purchasing mainly from the countries concerned and representing around 5 % of the EU consumption was very low. Only one importer/trader supplied data and the bulk of its purchases were made from the Community industry. Only marginal quantities were from the countries concerned or from other exporting countries. This importer/trader would prefer a market with zero duties although they are currently enjoying healthy financial results. Bearing in mind that the measures in force did not considerably affect importers, it is concluded that maintaining the existing anti-dumping measures against imports originating in India, Indonesia, Thailand, Malaysia, the Republic of Korea and Taiwan would not have a significant negative effect on the situation of the importers in the Community.

4. Interest of converters/users

- (204) The Commission sent questionnaires to 47 known converters/users. Only 10 converters/users with an overall low representativity replied to the questionnaire.
- (205) According to the information on purchases supplied in their responses to the questionnaire, cooperating converters/users during the RIP represent about 20 % of total Community consumption of PET. They purchased during the RIP 95 % of their PET from Community producers and the remainder from imports originating in countries other than those subject to these reviews. A number of arguments against the imposition of duties were presented.

(206) Five converters (transforming PET chips in pre-forms and bottle grade and representing 10 % of the consumption) replied to the questionnaire. The cost of PET chips accounts for 55 % of their final product (mostly pre-forms). It has been established that they import negligible quantities from the countries concerned and other third countries. Nevertheless they oppose the imposition of duties claiming that the prolongation of the measures could have the effect of artificially raising the prices in Europe.

(207) Five users accounting for about 10 % of the consumption supplied rather incomplete data. The low level of cooperation from the big users is likely to be due to the fact that the last investigation concerning imports from PRC, Australia and Pakistan took place only two years ago. PET costs account for around 6/7 % of the overall cost and are therefore rather limited. Although they have declared no imports from the countries concerned, similarly as the converters, they oppose the imposition of duties claiming that the measures could have the effect of artificially raising the prices in Europe.

(208) Considering the rather good financial situation of the downstream industry, in contrast to the one of the Community industry, no converter/user put forward the argument that maintaining the current duties could lead to a loss of jobs or to moving manufacturing facilities overseas.

(209) Furthermore, in terms of output, the Community industry adapted its size to match the increased consumption and therefore it is very likely that the unused capacity of the Community industry could fully cover the amount of the imports.

(210) Bearing in mind that there are still alternative sources of supply with no anti-dumping measures, i.e. Mexico, Turkey, USA, Brazil, Pakistan, Iran, Saudi Arabia the Community users would moreover be able to rely on (or to switch to) diversified suppliers of the product concerned.

(211) As concerns the performance of the user industry, the investigation has shown that during the period considered, the cooperating users increased their turnover, maintained employment stable and rather improved their overall profitability. Therefore it was found that they were not negatively affected by the anti-dumping measures.

(212) On the basis of the above, it is concluded that maintaining the existing anti-dumping measures against imports originating in India, Indonesia, Thailand, Malaysia, the Republic of Korea and Taiwan would not have a significant negative effect on the situation of the users in the Community.

5. Interest of suppliers

(213) The suppliers of raw material (mono ethylene glycol (MEG)) and purified terephthalic acid (PTA), DMT and isophthalic acid (IPA), all petrochemical products derivatives of naphtha, clearly indicated their support for the measures. They would benefit from the fact that the Community industry would very likely be able to recover from the effects of dumping and thus improve their performance.

6. Conclusion on Community interest

(214) Taking into account all of the factors outlined above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

J. RELATION BETWEEN ANTI-DUMPING AND COUNTERVAILING MEASURES

(215) For one export country, namely India, a parallel investigation on the expiry of countervailing measures has been carried out (see recital 10). This investigation confirmed the necessity to continue the application of such measures at unchanged levels. The present investigation also concluded that anti-dumping measures on exports from India should be kept in force at unchanged levels. In that respect, reference is made to recital 125 of Regulation (EC) No 2604/2000. As the measures currently proposed for exports of PET from India remain unchanged, it follows that Article 14(1) of the basic anti-dumping Regulation and Article 24(1) of Council Regulation (EC) No 2026/97 are complied with.

K. FINAL PROVISIONS

(216) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained respectively their levels be amended where warranted. They were also granted a period to submit comments and claims subsequent to disclosure. In particular one Indian exporter alleged that in the absence of measures it is not likely that India will re-direct sales to the

Community. This exporter claimed that emerging markets are more attractive than the Community, that Indian demand is growing fast and that, therefore, no spare capacity is available. It is however to be considered that, notwithstanding an increase of the demand in the Indian market, the investigation at company level indicated spare capacities, in excess of the increase in demand on the Indian market, as also confirmed by the market intelligence report mentioned at recital 74. It is therefore concluded that none of the disclosure comments received were such as to alter the conclusions as contained in this regulation.

- (217) It follows from the above that the anti-dumping duties are maintained respectively, their levels are amended where warranted,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, falling within CN code 3907 60 20 and originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand.

2. Except as provided for in Article 2, the rate of the anti-dumping duty applicable to the net, free-at-Community frontier price, before duty for products manufactured by the companies listed below shall be as follows:

Country	Company	Anti-dumping duty (EUR/tonne)	TARIC additional code
India	Pearl Engineering Polymers Ltd	130,8	A182
India	Reliance Industries Ltd	181,7	A181
India	SENPET Ltd	200,9	A183
India	Futura Polyesters Ltd	161,2	A184
India	South Asian Petrochem Ltd	88,9	A585
India	All other companies	181,7	A999
Indonesia	P.T. Mitsubishi Chemical Indonesia	187,7	A191
Indonesia	P.T. Indorama Synthetics Tbk	92,1	A192
Indonesia	P.T. Polypet Karyapersada	178,9	A193
Indonesia	All other companies	187,7	A999
Malaysia	Hualon Corp. (M) Sdn. Bhd.	36,0	A186
Malaysia	MpI Polyester Industries Sdn. Bhd.	160,1	A185
Malaysia	All other companies	160,1	A999
Republic of Korea	SK Chemicals Group: SK Chemicals Co. Ltd	0	A196
	Huvis Corp.	0	A196
Republic of Korea	KP Chemicals Group: Honam Petrochemicals Corp.	0	A195
	KP Chemicals Corp.	0	A195
Republic of Korea	All other companies	148,3	A999
Taiwan	Far Eastern Textile Ltd	36,3	A808
Taiwan	Shinkong Synthetic Fibers Corp.	67,0	A809
Taiwan	All other companies	143,4	A999
Thailand	Thai Shinkong Industry Corp. Ltd	83,2	A190
Thailand	Indo Pet (Thailand) Ltd	83,2	A468
Thailand	All other companies	83,2	A999

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽¹⁾, the amount of anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

4. Notwithstanding paragraphs 1 and 2, the definitive anti-dumping duty shall not apply to imports released for free circulation in accordance with Article 2.

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

Article 2

1. Imports shall be exempt from the anti-dumping duties imposed by Article 1 provided that they are produced and directly exported (i.e. invoiced and shipped) to a company acting as an importer in the Community by the companies mentioned in paragraph 3, declared under the appropriate TARIC additional code and that the conditions set out in paragraph 2 are met.

2. When the request for release for free circulation is presented, exemption from the duties shall be conditional upon presentation to the customs service of the Member State concerned of a valid 'Undertaking Invoice' issued by the exporting companies mentioned in paragraph 3, containing the essential elements listed in the Annex. Exemption from the duty shall further be conditional on the goods declared and presented to customs corresponding precisely to the description on the Undertaking Invoice.

3. Imports accompanied by an Undertaking Invoice shall be declared under the following TARIC additional codes:

Country	Company	TARIC additional code
India	Pearl Engineering Polymers Ltd	A182
India	Reliance Industries Ltd	A181
India	Futura Polyesters Ltd	A184
India	South Asian Petrochem Ltd	A585
Indonesia	P.T. Polypet Karyapersada	A193

Article 3

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

⁽¹⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 1875/2006 (OJ L 360, 19.12.2006, p. 64).

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

Done at Brussels, 22 February 2007.

For the Council
The President
F. MÜNTEFERING

ANNEX

Elements to be indicated in the Undertaking Invoice referred to in Article 2(2):

1. The Undertaking Invoice number.
2. The TARIC additional code under which the goods on the invoice may be customs-cleared at Community borders (as specified in the Regulation).
3. The exact description of the goods, including:
 - the product reporting code number (PRC) (as established in the undertaking offered by the producing exporter in question),
 - CN code,
 - quantity (to be given in units).
4. The description of the terms of the sale, including:
 - price per unit,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
5. Name of the company acting as an importer to which the invoice is issued directly by the company.
6. The name of the official of the company that has issued the undertaking invoice and the following signed declaration:

'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by ... (name of company), and accepted by the European Commission through Decision 2000/745/EC. I declare that the information provided in this invoice is complete and correct.'

COUNCIL REGULATION (EC) No 193/2007

of 22 February 2007

imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community⁽¹⁾ (the basic Regulation), and in particular Article 18 thereof,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽²⁾, and in particular, Article 14(1) thereof,

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

Whereas:

A. PROCEDURE

1. MEASURES IN FORCE

- (1) On 30 November 2000, by Regulation (EC) No 2603/2000⁽³⁾, the Council imposed definitive countervailing duties on imports of certain polyethylene terephthalate (PET) originating in India, Malaysia, and Thailand (the countries concerned) (the original investigation). The measures imposed had been based on a countervailing measures investigation initiated pursuant to Article 10 of the basic Regulation. At the same time, by Regulation (EC) No 2604/2000⁽⁴⁾, the Council imposed definitive anti-dumping duties on imports of the same product originating in the same countries. The measures imposed had been based on an anti-dumping investigation initiated pursuant to Article 5 of Regulation (EC) No 384/96.

- (2) The amendments made to Regulation (EC) No 2604/2000 were the results of either review investigations initiated pursuant to Article 11(3) and (4) of Regulation (EC) No 384/96 or of price undertakings being accepted under Article 8(1) thereof.

- (3) Moreover, by Regulation (EC) No 1467/2004⁽⁵⁾, the Council imposed definitive anti-dumping duties on imports of certain PET originating in Australia and the People's Republic of China (PRC) and terminated the proceeding on imports of PET originating in Pakistan.

- (4) On 11 October 2005, the Council amended the level of countervailing measures in force against imports of PET from India⁽⁶⁾. The amendments were a result of an accelerated review initiated pursuant to Article 20 of the basic Regulation.

2. REQUEST FOR A REVIEW

- (5) Following the publication of a notice of impending expiry, the Commission, on 30 August 2005, received a request to review the measures in force pursuant to Article 18 of the basic Regulation (expiry review).

- (6) The request was lodged on 30 August 2005 by the Polyethylene Terephthalate Committee of Plastics Europe (the applicant) on behalf of producers representing a major proportion, in this case more than 90 %, of total Community production of PET.

- (7) The request for the expiry review was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of subsidisation and injury to the Community industry.

- (8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of the review, pursuant to Article 18 of the basic Regulation respectively, the Commission initiated these reviews on 1 December 2005⁽⁷⁾.

⁽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 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

⁽³⁾ OJ L 301, 30.11.2000, p. 1.

⁽⁴⁾ OJ L 301, 30.11.2000, p. 21. Regulation as last amended by Regulation (EC) No 1646/2005 (OJ L 266, 11.10.2005, p. 10).

⁽⁵⁾ OJ L 271, 19.8.2004, p. 1.

⁽⁶⁾ OJ L 266, 11.10.2005, p. 1.

⁽⁷⁾ OJ C 304, 1.12.2005, p. 4.

(9) It should be noted that prior to the initiation of the expiry review, and in accordance with Articles 22(1) and 10(9) of the basic Regulation, the Commission notified the Government of India (GOI) that it had received a properly documented review request and invited the GOI for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. However, the Commission did not receive any answer from the GOI regarding its offer for consultation.

3. PARALLEL INVESTIGATIONS

(10) On 1 December 2005, the Commission also opened a review pursuant to Article 11(2) of Regulation (EC) No 384/96 on the anti-dumping measures in force on imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Thailand and Taiwan⁽⁸⁾. A partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 limited to dumping was initiated at the same time concerning imports of the same product originating in the Republic of Korea and Taiwan⁽⁸⁾.

4. REVIEW INVESTIGATION PERIOD

(11) The review investigation period (RIP) covered the period from 1 October 2004 to 30 September 2005. The examination of trends in the context of injury covered the period from 1 January 2002 up to the end of the RIP (hereinafter referred to as the period considered).

5. PARTIES CONCERNED BY THE INVESTIGATION

(12) The Commission officially advised the exporting producers, the representatives of the exporting country, importers, Community producers, users and the applicant of the initiation of the expiry review. 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. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

(13) In view of the apparent large number of Indian exporting producers as well as Community producers and importers listed in the request for the expiry reviews, it was considered appropriate, in accordance with Article 27 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 27 of the basic Regulation, to make themselves known within 15 days of the initiation of the reviews and to provide the Commission with the information requested in the notice of initiation.

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

(15) Having examined the information submitted by Community producers and importers, and given the relative small number of replies, it was considered that sampling for none of these categories would be warranted.

(16) Questionnaires were therefore sent to all known exporting producers in the country concerned, importers, suppliers, Community producers and users.

(17) Replies to the questionnaires were received from three Indian producers, from 12 Community producers, from one importer, one supplier and from 10 converters/users.

(18) The Commission sought and verified all the information it deemed necessary for its analysis and carried out verification visits at the premises of the following companies:

1. Community producers

Voridian BV (the Netherlands)

M & G Polimeri Italia Spa (Italy)

Equipolymers Srl (Italia)

La Seda de Barcelona SA (Spain)

Novapet SA (Spain)

Selenis Industria de Polímeros SA (Portugal)

Selenis Italia Spa (Italy)

Community Suppliers

Interquisa SA (Spain)

Unrelated importers in the Community

Global Service International SRL (Italy)

Community users

Coca Cola Enterprises Europe Ltd (Belgium)

2. Government of India

Ministry of Commerce, New Delhi

Government of Maharashtra — Directorate of Industries, Mumbai

⁽⁸⁾ OJ C 304, 1.12.2005, p. 9.

3. Exporting producers in India

SENPET Ltd, Kolkata (formerly Elque Polyesters Limited)

Futura Polyesters Limited, Chennai (formerly Futura Polymer Limited)

Pearl Engineering Polymers Limited, New Delhi

B. PRODUCT CONCERNED AND LIKE PRODUCT1. *PRODUCT CONCERNED*

- (19) The product concerned is the same as in the original investigation, i.e. PET with a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, originating in the country concerned. It is currently classifiable within CN code 3907 60 20.

2. *LIKE PRODUCT*

- (20) As in the original investigation, it was found that the product concerned, PET produced and sold on the domestic markets in the country concerned and PET produced and sold by the Community producers have the same basic physical and chemical characteristics and uses. It is therefore concluded that all types of PET with a viscosity of 78 ml/g or higher are alike within the meaning of Article 1(5) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATIONI. *CONTINUATION OF SUBSIDISATION — INTRODUCTION*

- (21) On the basis of the information contained in the review request and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated.

1. *SUBSIDY SCHEMES ORIGINALLY INVESTIGATED***Nationwide schemes**

(a) Duty Entitlement Passbook Scheme (DEPBS)

(b) Income Tax Exemption Scheme (ITES)

(c) Export Promotion Capital Goods Scheme (EPCGS)

(d) Export Processing Zones (EPZ)/Special Economic Zones (SEZ)/Export Oriented Units (EOU)

2. *SUBSIDY SCHEMES NOT ORIGINALLY INVESTIGATED***Nationwide schemes**

(e) Advance Licence Scheme (ALS)

(f) Export Credit Scheme (pre-shipment and post-shipment) (ECS)

Regional schemes

(g) Gujarat Sales Tax Incentive Scheme (GSTIS)

(h) Gujarat Electricity Duty Exemption Scheme (GEDES)

(i) West Bengal Incentive Schemes (WBIS)

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

- (22) Schemes (a) and (c) to (e) 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, since 1 September 2004 named Foreign Trade Policy, and 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 2004-2009). In addition, the GOI also sets out the procedures governing the EXIM-policy 2004-2009 in a Handbook of Procedures — 1 September 2004 to 31 March 2009, Volume I (HOP I 2004-2009). The Handbook of Procedure (HOP) is also updated on a regular basis.

(23) Scheme (b) is based on the Income Tax Act of 1961, which is amended yearly by the Finance Act.

(24) Scheme (f) is based on sections 21 and 35A of the Banking Regulation Act 1949, which allows the Reserve Bank of India (RBI) to direct commercial banks in the field of export credits.

(25) Scheme (g) is administered by the Government of Gujarat and based on its industrial incentive policy; scheme (h) is based on the Bombay Electricity Duty Act of 1958.

(26) Scheme (j) is managed by the state of Maharashtra and is based on resolutions of the Government of Maharashtra Industries, Energy and Labour Department.

(27) Scheme (i) is set up by the Government of West Bengal through the Commerce and Industries Department notification No 588-CI/H of 22 June 1999 (WBIS 1999) which was last replaced by notification No 134-CI/O/Incentive/17/03/I of 24 March 2004 (WBIS 2004).

(28) Following the disclosure of the findings concerning the alleged subsidisation, the GOI reiterates a number of concerns regarding the countervailability of the schemes and the calculation of the subsidy amounts. It also reiterates arguments that there was no likely continuation of subsidisation in the present case. To this end, it should be noted that this submission does not contain any new arguments which would alter the conclusions as set out in this Regulation.

II. NATIONWIDE SCHEMES

1. DUTY ENTITLEMENT PASSBOOK SCHEME ('DEPB')

(a) *Legal basis*

(29) The detailed description of the DEPBS is contained in section 4.3 of EXIM-policy 2004-2009 and in section 4.3-4.4 of HOP I 2004-2009.

(30) It was found that none of the cooperating exporting producers obtained any countervailable benefits under the (DEPBS). It was therefore not found necessary to further analyse this scheme in the scope of this investigation.

2. INCOME TAX SCHEMES

(31) It was found that none of the cooperating exporting producers obtained any countervailable benefits under the ITES. It was therefore not found necessary to further analyse this scheme in the scope of this investigation.

3. EXPORT PROMOTION CAPITAL GOODS SCHEME ('EPCGS')

(a) *Legal basis*

(32) The detailed description of the EPCGS is contained in chapter 5 of EXIM-policy 2004-2009 and in Chapter 5 of HOP I 2004-2009.

(b) *Eligibility*

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

(c) *Practical implementation*

(34) 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 or zero rate of duty. To this end the GOI issues upon application and payment of a fee an EPCG license. 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.

(35) 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 to the supply of capital goods to an EPCGS licence holder.

(d) *Conclusion on EPCG Scheme*

(36) The EPCGS provides subsidies within the meaning of Articles 2(1)(a)(ii) and 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.

(37) Furthermore, 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.

(38) Consequently, 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. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I, item (i), of the basic Regulation, because they are not consumed in the production of the exported products.

(e) Calculation of the subsidy amount

- (39) None of the cooperating exporters had purchased any capital goods in the IP. One company continued however to benefit from duty exemptions for capital goods purchased before the IP at the amount established in the original investigation. The subsidy amount obtained during the RIP 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 actual depreciation period of such capital goods of the exporting producer. 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. Fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation from this sum to arrive at the subsidy amount as numerator. In accordance with Article 7(2) and 7(3) of the basic Regulation this subsidy amount has been allocated over the export turnover 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. The subsidy obtained for the company that continued to benefit from the scheme was 0,38 %.

4. EXPORT CREDIT SCHEME (ECS)**(a) Legal basis**

- (40) 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

- (41) Manufacturing exporters and merchant exporters are eligible for this scheme. It was found that one of the companies cooperating in the proceeding availed of benefits under the ECS.

(c) Practical implementation

- (42) Under this scheme, the RBI sets compulsory maximum ceiling interest rates applicable to export credits, both in Indian rupees or in foreign currency, which commercial banks can charge an exporter with a view to making credit available to exporters at internationally competitive rates. The ECS consists of two sub-schemes, the Pre-Shipment Export Credit Scheme (packing credit), which covers credits provided to an exporter for financing the purchase, processing, manufacturing, packing and/or

shipping of goods prior to export, and the Post-Shipment Export Credit Scheme, which provides for working capital loans with the purpose of financing export receivables. The RBI also directs the banks to provide a certain amount of their net bank credit towards export finance.

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

(d) Conclusion on the ECS

- (44) Firstly, the preferential interest rates of an ECS credit set by the RBI Master Circulars can decrease interest costs of an exporter as compared with credit costs purely set by market conditions and confer in this case a benefit within the meaning of Article 2(2) of the basic Regulation on such an exporter. Only in the case of those cooperating exporters, where such interest rate differences were found to exist, it was concluded that a benefit was conferred. The differences in rates between the credits given further to the RBI Master Circulars and commercial cash credit rates cannot be explained by pure market behaviour of the commercial bank.

- (45) Secondly, and 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 and falls therefore under the definition of a government as set out in Article 1(3) of the basic Regulation. It is 100 % government-owned, pursues public policy objectives, e.g. monetary policy, and its management is appointed by the GOI. The RBI directs private bodies, since the commercial banks are bound by the conditions, inter alia, 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 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, in no real sense, differs from practices normally followed by governments, 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

- (46) 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 if the same interest rates were applicable as for ordinary commercial credits used by the particular company. This subsidy amount (numerator) has been allocated over the total export turnover during the RIP as appropriate denominator in accordance with Article 7(2) basic Regulation, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. The company that availed of benefits under the ECS obtained a subsidy of 0,1 %.

5. EXPORT ORIENTED UNITS SCHEME (EOUS)/SPECIAL ECONOMIC ZONES SCHEME (SEZS)

- (47) It was found that none of the cooperating exporting producers obtained countervailable benefits under the SEZS. However, two Indian companies had the status of an EOU and received countervailable subsidies in the RIP. The description and assessment below is therefore limited to the EOUS.

(a) Legal basis

- (48) The details of the EOU scheme are contained in Chapter 6 of EXIM-policy 2004-2009 and HOP I 2004-2009.

(b) Eligibility

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

(c) Practical implementation

- (50) As found in the original investigation, EOUs can be located and established anywhere in India.
- (51) An application for EOU status must include details for a period of the next five years on, inter alia, planned production quantities, projected value of exports, import requirements and indigenous requirements.

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 EOU is valid for a five-year period. The agreement may be renewed for further periods.

- (52) A crucial obligation of an EOU as set out in EXIM-policy 2004-2009 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.

- (53) EOU units are entitled to the following concessions:

(i) exemption from import duties on all types of goods (including capital goods, raw materials and consumables) required for the manufacture, production, processing, or in connection therewith;

(ii) exemption from excise duty on goods procured from indigenous sources;

(iii) reimbursement of central sales tax paid on goods procured locally;

(iv) the facility to sell part of production on the domestic market of up to 50 % of fob value of exports, subject to fulfilment of positive NFE earnings upon payment of concessional duties, i.e. excise duties on finished products;

(v) partial reimbursement of duty paid on fuel procured from domestic oil companies;

(vi) exemption from income tax normally due on profits realised on export sales in accordance with Section 10B of the Income Tax Act, for a 10-year period after starting its operations, but no longer than up to the end of the financial year 2010;

(vii) possibility of 100 % foreign equity ownership.

- (54) Units operating under these schemes are bonded under the surveillance of customs officials in accordance with Section 65 of the Customs Act.
- (55) They are legally obliged to maintain a proper account of all imports, of the consumption and utilisation of all imported materials and of the exports made in accordance with 6.11.1 HOP 2004-2009. These documents should be submitted periodically, to the competent authorities through quarterly and annual progress reports.
- (56) However, 'at no point in time shall an EOU be required to co-relate every import consignment with its exports, transfers to other units, sales in DTA or stocks', as section 6.11.2 of HOP I 2004-2009 states.
- (57) 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.
- (58) In the present case, the EOUS was used by two of the cooperating exporters. These cooperating exporters utilised the scheme to import raw materials and capital goods free of import duties, to procure goods domestically free of excise duty and to obtain sales tax reimbursement and to sell part of its production on the domestic market. One of the exporting companies also utilised the scheme to obtain partial reimbursement of duty paid on fuel procured from domestic oil companies. They thereby availed of all benefits as described in recital 53(i) to (v). The investigation showed that the exporters concerned did not avail of benefits under the income tax exemption provisions of the EOUS.
- (d) Conclusions on the EOUS**
- (59) The exemptions of an EOU from two types of import duties (basic customs duty and special additional customs duty) and the reimbursement of sales tax are financial contributions of the GOI within the meaning of Article 2(1)(a)(ii) of the basic Regulation. Government revenue which would be due in the absence of this scheme is forgone, thus, in addition, conferring a benefit upon the EOU in the meaning of Article 2(2) of the basic Regulation, because it saved liquidity by not having to pay duties normally due and by obtaining a sales tax reimbursement.
- (60) The exemption from excise duty and its import duty equivalent (additional customs duty), however, do not lead to revenue forgone which is otherwise due. Excise and additional customs duty, if paid, could be used as a credit for its own future duty liabilities (the so-called CENVAT mechanism). Therefore, these duties are not definitive. By the means of CENVAT-credit only an added value bears a definitive duty, not the input materials.
- (61) Thus, only the exemption from basic customs duty, special additional customs duty, the partial reimbursement of duty paid on fuel procured from domestic oil companies 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 EXIM-policy 02-07 is a *conditio sine qua non* to obtain the incentives.
- (62) One of the cooperating exporters asserted that the Commission has departed from the reasoning used in the original investigation in terms of the assessment of the duty exemption of raw materials and that only excess remission if any should be countervailed. However, in reply to this it should be noted that at the time of the original investigation, in the assessment of the countervailable amount, the question on whether the EOU was a permissible duty drawback system or not was made 'without prejudice to the question of whether the scheme constitutes a drawback system in conformity the provisions of the basic Regulation'⁽⁹⁾. Within the framework of this review, the scheme as a whole, along with the monitoring system was carefully investigated.
- (63) The investigation revealed that these subsidies cannot be considered as permissible duty drawback systems or substitution drawback systems within the meaning of Article 2(1)(a)(ii) of the basic Regulation. They do not conform to the strict rules laid down in Annex I (items (h) and (i)), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation. In the circumstance that the sales tax reimbursement and import duty exemption provisions are used for purchasing capital goods, they are already not in conformity with the rules for permitted drawback systems since capital goods are not consumed in the production process, as required by Annex I item (h) (sales tax reimbursement) and (i) (import duties remission).

⁽⁹⁾ Recital 26, Regulation (EC) No 2603/2000 (OJ L 301, 30.11.2000, p. 1).

- (64) In addition, it has not been established that that the GOI has a 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) to the basic Regulation). The verification system in place aims at monitoring the Net foreign exchange earning obligation and not the consumption of imports in relation to the production of exported goods.
- (65) An EOU is allowed to sell a significant amount of its production, up to 50 % of its annual turnover, on the domestic market. Therefore, no legal obligation exists to export the total amount of manufactured resultant products. In addition, these domestic transactions take place without the supervision and control of a government official and are only subject to a self-certification procedure. Consequently, the bonded premises of an EOU are at least in part not subject to a physical control by the Indian authorities. These circumstances increase the importance of further verification elements, notably control of the nexus between duty-free inputs and resultant export products in order to qualify as a duty drawback verification system.
- (66) Concerning further verification steps installed it should be recalled, that an EOU is already de jure and at no point in time is required to co-relate every import consignment with 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. Monthly tax returns for domestic sales on a self-assessment basis, which are periodically assessed by the Indian authorities, do not suffice. In addition, the purpose of the monthly tax returns is to monitor excise duties and not to control the destination of inputs. Company internal systems, which are kept without legal obligation, would not as such suffice since a duty drawback verification system would need to be designed and enforced by a government and should not left to the discretion of the management of each individual company concerned. Consequently, the investigation has established that the EOU is explicitly not required by the Indian EXIM policy to record the nexus between input 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.
- (67) 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.
- (68) In light of the above, the company's claim that the Commission has departed from the reasoning used in the original investigation in terms of the assessment of the duty exemption of raw materials and that only excess remission, if any, should be countervailed has to be rejected.
- (e) **Calculation of the subsidy amount**
- (69) Accordingly, in the absence of a permitted duty drawback system or substitution drawback system, the countervailable benefit is the remission of total import duties (basic customs duty and special additional customs duty) normally due upon importation as well as the reimbursement of duty paid on fuel procured from domestic oil companies and the sales tax reimbursement, during the RIP.
- (i) **Exemption from import duties (basic customs duty and special additional customs duty), sales tax reimbursement on raw materials and reimbursement of duty paid on fuel procured from domestic oil companies**
- (70) The subsidy amount for the exporters that are EOUs was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the materials imported for the EOU as a whole, the sales tax reimbursed, and the reimbursement of duties paid on domestically purchased fuel all 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 numerator. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the appropriate export turnover generated 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. The subsidy margins thus obtained were 0,9 % and 5,8 % respectively for the two companies.

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

- (71) Capital goods are not physically incorporated into the finished goods. In accordance with Article 7(3) of the basic Regulation, the benefit to the investigated companies has been calculated on the basis of the amount of unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the investigated companies. In order to determine such normal depreciation period the actual depreciation periods used by the two cooperating exporters concerned have been used as a reference, i.e. 18 years. The amount so calculated is then attributable to the RIP and has been adjusted by adding interest during this period in order to reflect the value of the benefit over time and thereby establish the full benefit of this scheme to the recipient. In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount has been allocated over the appropriate export turnover generated 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. The subsidy margins thus obtained for the two companies were 1,8 % and 0,4 % respectively.
- (72) Thus, the total subsidy margin under the EOUS for the companies concerned amounts to 2,7 % and 6,2 % respectively.

6. ADVANCE LICENCE SCHEME (ALS)

(a) **Legal basis**

- (73) The detailed description of the scheme is contained in sections 4.1 to 4.1.14 of EXIM-policy 2004-2009 and Chapters 4.1 to 4.30 of HOP I 2004-2009.

(b) **Eligibility**

- (74) The ALS consists of six sub-schemes, as described in more detail below. Those sub-schemes, inter alia, differ in the scope of eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the ALS physical exports and for the ALS annual requirement. Manufacturer-exporters supplying the ultimate exporter are eligible for ALS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of EXIM-policy 2004-2009, such as suppliers of an export oriented unit (EOU), are eligible for ALS 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**

- (75) Advance licences 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 resultant export product. The export must be 'physical' in the sense that the export product has to leave Indian Territory. The terms of the import allowance and 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 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 resultant 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 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 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-g) and (i-j) of EXIM policy 2004-2009. The finished goods will, in other words, not have to leave the country but are by virtue of the status of the customer to be considered deemed exports. This would include supply to an EOU or to a licence holder under the Export Promotion Capital Goods scheme.

- (v) ARO: The ALS holder intending to source the inputs from indigenous sources, instead of direct import, has the option to source them against AROs. In such cases the Advance Licences 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 EXIM-policy 02-07 (i.e. ALS 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 ALS holder. The holder of an ALS can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The licence 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 EXIM-policy 02-07 (i.e. ALS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).
- (76) It was established that during the RIP, one cooperating exporter only obtained concessions under three sub-schemes linked to the product concerned, i.e. (i) ALS physical exports, (v) ARO and (iv) ALS deemed export. It is therefore not necessary to establish the countervailability of (ii) annual requirement, (iii) Intermediate supplies, and (vi) the back-to-back inland letter of credit scheme.
- (77) 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 and Appendix 23 HOP I 2004-2009), i.e. an actual consumption register (Appendix 23 register). As of May 2005 Appendix 23 must not only be preserved with the company but it must also be countersigned by a chartered accountant and sent to the Indian authorities. The obligation to submit the Appendix 23 applies to licences issued after the entry into force of the new rules in May 2005. The practical implementation of this new system could therefore not be verified as no report relating to these licences was due at the time of the investigation.
- (78) In regard to the sub-schemes (i), (iv) and (v) listed above, both the import allowance and the export (including deemed export) obligation 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 HOP II 2004-2009.
- (79) 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).
- (80) The advance licence holder intending to source the inputs from domestic sources, instead of direct imports has the option to source them against Advance Release Orders (ARO). In such cases the advance licences are validated as ARO's and are endorsed to the supplier upon delivery of the items specified therein.
- (81) In the course of the review investigation, it was established that the input materials imported according to the SIONs import allowance duty free under the various sub-schemes by the cooperating exporter exceeded the material needed to produce the reference quantity of the resultant export product. Thus, the SIONs for the product concerned were not accurate.
- (d) **Conclusion**
- (82) 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.

- (83) In addition, ALS 'physical exports' is 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.
- (84) ALS 'deemed export' is de facto contingent upon export performance. It was only used by one company to a minor extent and only when supplying EOUs or units in a SEZ, both categories mentioned in paragraph 8.2(b) of EXIM-policy 02-07. This company stated that its customers eventually exported the product concerned. The objective of an EOU/SEZ is exportation as set out in paragraph 6.1 of EXIM-policy 02-07. Thus, a domestic supplier obtains benefits under the ALS deemed export, because the GOI anticipates export earnings subsequently received by an exporter located in an EOU/SEZ. According to Article 3(4)(a) of the basic Regulation, a subsidy shall be considered as export contingent when the facts demonstrate that the granting of a subsidy, though not legally contingent upon export performance, is in fact tied to actual or anticipated export earnings.
- (85) In this case the cooperating company made no use of advance licence for the purpose of importing duty free imports. Instead the company obtained a benefit by sourcing raw materials from domestic suppliers through the conversion of the licences into ARO. Under this scheme the right of exemption of taxes and duties falls on the supplier instead of to the ultimate exporter in the form of drawback/refund of duties. The exemption of taxes/duties is available both for indigenous inputs as well as imported inputs. The investigation revealed there was a significant difference in price between raw material sourced through the indigenous unrelated supplier by use of the ARO scheme as opposed to raw materials sourced through an indigenous supplier when no licence was used. The benefit of the exemption from duties and taxes was passed on through lower prices from the supplier to the company using the raw material and concerned by this proceeding. The company could make a clear distinction between the purchase prices of raw material under the use of the licence and the price paid for the same raw material when no licence was used. The company defined the benefit thus obtained as the difference in price between supplies sourced under the ARO and the price of supplies sourced without such licence.
- (86) 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 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) to the basic Regulation. Although the GOI mentioned that the system had undergone a change as from May 2005, it should be clear that these changes had no impact on the schemes during the RIP, since the new verification system was not yet fully implemented. Notwithstanding the possible change of the verification system by the GOI, the investigation revealed that during the RIP the GOI did not effectively apply its verification system. Nor did it apply procedures to confirm whether and in what amounts 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) thereto). The SIONs for the product concerned were not sufficiently precise and overestimated the raw material consumption. The investigation revealed that the SIONs are being amended in view of better reflecting the consumption of inputs but these new SIONs were not in place during the RIP. Thus, it is confirmed that the SIONs themselves cannot be considered a verification system of actual consumption, since these generous standard norms do not enable the GOI to verify with sufficient precision what amount of inputs were actually consumed in the export production. Furthermore, an effective control done by the GOI based on a correctly kept actual consumption register (Appendix 23 register, formerly Appendix 18), did not take place for the licences used in the RIP. 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), nor did it prove that no excess remission took place.
- (87) These three sub-schemes are therefore countervailable.
- (e) *Calculation of the subsidy amount*
- (88) In the absence of permitted duty drawback systems or substitution drawback systems, the subsidy amount has been established, as demonstrated by the company, on the basis of the difference in price between the same raw material purchased with and without the licence.
- (89) In accordance with Article 7(2) of the basic Regulation, the subsidy amount has been allocated over the total export turnover generated 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.

- (90) One company benefited from this scheme during the RIP and obtained subsidies of 20,9 %.

III. REGIONAL SCHEMES

1. GUJARAT SALES TAX INCENTIVE SCHEME (GSTIS) AND GUJARAT ELECTRICITY DUTY EXEMPTION SCHEME (GEDES)

- (91) It was found that none of the cooperating exporting producers obtained any countervailable benefits under the Gujarat Sales Tax Incentive Scheme (GSTIS) or the Gujarat Electricity Duty Exemption Scheme (GEDES). It was therefore not found necessary to further analyse this scheme within the scope of this investigation.

2. WEST BENGAL INCENTIVE SCHEMES (WBIS)

- (92) The detailed description of the WBIS is set out in Government of West Bengal (GOWB) Commerce & Industries Department notification No 588-CI/H of 22 June 1999 (WBIS 1999) which was last replaced by notification No 134-CI/O/Incentive/17/03/I of 24 March 2004 (WBIS 2004). The scheme conferred a number of benefits on the recipient such as deferred payment of sales tax, subsidy for installation of capital goods, and development subsidies. The investigation established that one company had benefited from these schemes in the past. However, the impact of these benefits during the RIP was negligible. For this reason it was not found necessary to further analyse these schemes within the scope of this investigation.

3. PACKAGE SCHEME OF INCENTIVES (PSI) OF THE GOVERNMENT OF MAHARASHTRA (GOM)

(a) *Legal basis*

- (93) In order to encourage the dispersal of industries in the Maharashtra to the 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. The scheme has been amended many times since its introduction and the 2001 Scheme was operative from 1 April 2001 until 31 March 2006 after which it was extended for one year until 31 March 2007. The PSI of the GOM is composed of several sub-schemes amongst which the main ones are: (i) the refund of octroi tax /entry tax, (ii) the exemption from electricity duty and (iii) the exemption from local sales tax which expired on 24 October 2004. The inves-

tigation revealed that the only sub-scheme used by one of the cooperating exporting producers was the local sales tax exemption.

(b) *Eligibility*

- (94) In order to be eligible, companies must as a rule 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 areas, lesser developed areas and least developed areas). 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*

- (95) Under the local sales tax exemption scheme which expired in October 2004, designated units were not required to collect any sales tax on their sales transactions. Similarly, designated units were exempted from the payment of the local sales tax on their purchases of goods from a supplier itself eligible for the scheme. Whereas the exemption in relation to sales transactions does not confer any benefit on the designated sales unit, the exemption in relation to purchase transactions, however, does confer a benefit on the designated purchasing unit. The investigation established that the company concerned enjoyed sales tax exemption until 24 October 2006.

(d) *Conclusion*

- (96) The PSI of the GOM provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation. The sub-scheme examined constitutes a financial contribution by the GOM, since this concession decreases the GOM's revenue which would be otherwise due. In addition, this exemption/refund confers a benefit upon the company as it improves the company's liquidity.
- (97) The sub-scheme is only available to companies having invested within certain designated geographical areas within the jurisdiction of the State of Maharashtra. 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.

(e) *Calculation of the subsidy amount*

- (98) 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 under the scheme. Since the sales tax exemption scheme expired on 24 October 2004, only the sales unpaid during the period 1 to 24 October 2004 were taken into consideration because only this period fell in the RIP. Pursuant to Article 7(2) of the basic Regulation, the amount of subsidy (numerator) has then been allocated over the total company turnover during the RIP 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. During the RIP one company benefited from the sub-scheme; however the subsidy amount obtained was less than 0,1 %, i.e. negligible.

SCHEME	DEPBS	ITES	EPGS	EOU	ALS	ECS	GSTIS	GEDES	WBIS	PSI	Total
COMPANY	%	%	%	%	%	%	%	%	%	%	%
Senpet (Former Elque)	nil	nil	nil	2,7	nil	nil	nil	nil	nil	nil	2,7
Futura	nil	nil	nil	6,2	nil	0,1	nil	nil	nil	nil	6,3
Pearl	nil	nil	0,3	nil	20,6	nil	nil	nil	nil	neg	20,9

V. CONCLUSIONS

- (101) In accordance with Article 18(2) of the basic Regulation, it was examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of subsidisation.
- (102) As set out under recitals 21 to 100, it was established that during the RIP Indian exporters of the product concerned continued to benefit from countervailable subsidisation by the Indian authorities. In fact, the subsidy margins found during the review are higher than those established during the original investigation, except for one exporting producer. The subsidy schemes concerned give recurring benefits and there is no indication that these programmes will be phased out in the foreseeable future. In the absence of information on how the amendment to the ALS verification system will be implemented in practice, no conclusions can be drawn as to the possible effect of these changes. Under these conditions, the exporters of the product in question will continue to receive countervailable subsidies. Each exporter is eligible for several of the subsidy programmes. Under these circumstances, it was considered reasonable to conclude that subsidisation would be likely to continue in the future.

IV. AMOUNT OF COUNTERVAILABLE SUBSIDIES

- (99) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers ranges between 2,7 % and 20,9 %.
- (100) Although there was a high level of cooperation in terms of proportion of exports to the Community it should be noted that several exporting producers did not cooperate in the proceedings, including the exporting producer with the highest subsidy margin in the original investigation. The capacity and production of the non-cooperating producers in India is significant and it is also likely that these exporting producers will continue to avail of benefits under the investigated subsidisation schemes at least the same rate as that established in the original investigation.

- (103) Since it has been demonstrated that subsidisation continued at the time of the review and is likely to continue in the future, the issue of likelihood of recurrence of subsidisation is irrelevant.

D. DEFINITION OF THE COMMUNITY INDUSTRY

1. COMMUNITY PRODUCTION

- (104) PET is manufactured in the Community by the following companies:

Twelve producers which requested the expiry review, supported them and cooperated in the investigation (see recital 107).

Two producers which have requested the expiry review but have not cooperated in the current investigation;

One subsidiary of a Korean producer located in the Community who has cooperated in the investigation and has supported the request;

- (105) PET produced by all these companies constitutes the total Community production within the meaning of Article 9(1) of the basic Regulation.

2. COMMUNITY INDUSTRY

- (106) The Commission examined whether the cooperating Community producers requesting or supporting the request for the expiry reviews represented a major proportion of the total Community production of PET. Those Community producers accounted for 88 % of the total Community production of PET. Those Community producers who did not fully cooperate were excluded from the definition of the Community industry. The Commission therefore considered that the 12 fully cooperating Community producers represent the Community industry within the meaning of Articles 9(1) and 10(8) of the basic Regulation. In the original investigations the Community industry represented more than 85 % of the total PET production in the Community at that time.

- (107) The following 12 Community producers constitute the Community industry.

Voridian BV (The Netherlands)

M & G Polimeri Italia Spa (Italy)

Equipolymers Srl (Italia)

La Seda de Barcelona SA (Spain)

Novapet SA (Spain)

Selenis Industria de Polimeros SA (Portugal)

Aussapol Spa (Italy)

Advansa Ltd (UK)

Wellman BV (the Netherlands)

Boryszew subsidiary Elana Wse (Poland)

V.P.I. SA (Greece)

SK Eurochem Sp.Z. o.o. (Poland)

E. SITUATION ON THE COMMUNITY MARKET

1. CONSUMPTION IN THE COMMUNITY MARKET

- (108) Community consumption was established on the basis of the sales volumes of the Community industry, of estimates of the sales of the other Community producers on the Community market based on data provided at the complaint stage, and Eurostat data for all Community imports from third countries.

- (109) Between 2002 and the RIP, Community consumption of the product concerned in the Community continuously increased to reach a total of 2 400 000 tonnes in the RIP. The overall increase over the period was 18 %. The increase was partly due to new applications (beer and wine bottles, inter alia) and partly due to the increase of consumption in the accession countries.

Table 1

	2002	2003	2004	RIP
Community consumption (tonnes)	2 041 836	2 213 157	2 226 751	2 407 387
Index	100	108	109	118

2. IMPORTS FROM INDIA

2.1. VOLUME, MARKET SHARE AND PRICES OF IMPORTS

- (110) Between 2002 and the RIP, total imports from India increased by 13 %. Whereas imports decreased by 17 % from 2002 to 2003, they increased by 100 percentage points in 2004 and decreased again during the RIP to around 6 800 tonnes, i.e. by around 70 percentage points. Import prices rose by five percentage points in 2003 and by further three and seven percentage points respectively in 2004 and during the RIP. This price trend only partially reflects the strong increase of the raw material costs. Market share of Indian imports remained relatively small throughout the period considered, i.e. 0,3 % in 2002, 0,2 % in 2003, 0,5 % in 2004 and 0,3 % in the RIP.

Table 2

	2002	2003	2004	RIP
India				
Volume (tonnes)	6 046	4 999	11 079	6 831
Index	100	83	183	113
Price (EUR per tonne)	883	930	955	1 018
Index	100	105	108	115
Market share	0,3 %	0,2 %	0,5 %	0,3 %

3. IMPORTS FROM OTHER COUNTRIES

- (111) The volume of imports from other third countries increased by 25 percentage points during the period considered. The biggest increase was observed in 2003, when imports rose by 41 percentage points. After the imposition of anti-dumping measures on Chinese exports in 2004, imports declined by 14 percentage points in 2004 and by two further percentage points in the RIP. Market shares followed a similar trend passing from 15,9 % in 2002 to 20,6 % in 2003, to 18,5 % in 2004 and to 16,9 % during the RIP. The increase of the market share of imports was lower than the increase of the imports in absolute terms, due to the stronger consumption. Import prices were on average constantly lower than the EU prices between 2002 and 2004. Only during the RIP, were they slightly above Community industry prices.

Table 3

	2002	2003	2004	RIP
Volume (tonnes)	324 749	456 499	411 020	406 562
Index	100	141	127	125
Average price (EURpert)	869	821	907	1 061
Index	100	94	104	122
Market share	15,9 %	20,6 %	18,5 %	16,9 %
Main exporters				
Korea	113 685	129 188	139 296	127 734
Pakistan	28 558	83 208	55 125	73 426
China	47 875	131 343	49 678	72 814
USA	20 570	16 105	49 763	50 393
Taiwan	42 136	36 986	16 796	29 382

F. ECONOMIC SITUATION OF THE COMMUNITY INDUSTRY

1. PRELIMINARY REMARKS

- (112) At the beginning of the review, sampling of the Community producers was foreseen but considering that their number was not excessive, it was decided to include all of them and the injury factors have been assessed on the basis of information collected at the level of the entire Community industry.

- (113) Pursuant to Article 8(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

2. ANALYSIS OF ECONOMIC INDICATORS

2.1. PRODUCTION

- (114) The Community industry's production increased by 20 % between 2002 and the RIP, i.e. from a level of 1 465 000 tonnes in 2002 to 1 760 000 tonnes in the RIP. The yearly increase was 4,8 % in 2003 and 4,6 % in 2004. A further increase occurred in the RIP, when production soared by 150 000 tonnes, i.e. by 10,8 %. This was due to the restructuring process undertaken by the industry with the aim to better control the production costs and thereby take advantage of the growing consumption in the Community market which, as stated, increased by 19 % between 2002 and the RIP (from 2 million tonnes in 2002 to 2,4 million tonnes in the RIP).

Table 4

	2002	2003	2004	RIP
Production (tonnes)	1 464 522	1 534 480	1 602 086	1 760 828
Index	100	105	109	120

2.2. CAPACITY AND CAPACITY UTILISATION

- (115) Production capacity increased by 22 % between 2002 and the RIP, i.e. from a level of 1 760 000 tonnes in 2002 to 2 156 000 tonnes in the IP. The increase occurred mainly in the RIP, when production capacity, compared to the year 2004, increased by 300 000 tonnes, i.e. 16,7 %. This significant increase of production capacity was parallel to the increase of production over the same period (see recital 114). The increase in production capacity resulted from additional investments in production lines designed to take advantage of the growing market. The capacity utilisation increased by four percentage points in 2003, remained on this level in 2004 and then decreased in the RIP by five percentage points to the level of 82 %. The decrease between 2004 and the RIP results from the significant increase of production capacity in that period. Consequently, a higher production volume in the RIP, when compared with 2004, coincided with a lower capacity utilisation rate.

Table 5

	2002	2003	2004	RIP
Production capacity (tonnes)	1 760 332	1 762 378	1 848 315	2 156 294
Index	100	100	105	122
Capacity utilisation	83 %	87 %	87 %	82 %
Index	100	105	104	98

2.3. SALES AND MARKET SHARE

- (116) The volume sold by the Community industry on the Community market increased by 21 % between 2002 and the RIP. A growth of 2 % in 2003 was followed by an increase in both 2004 and RIP, by eight and 11 percentage points respectively. Notwithstanding the increase of sales, due to the higher consumption the Community industry's market share fell by four percentage points in 2003 and then gradually rose by five percentage points in 2004 and one percentage point in the RIP.

Table 6

	2002	2003	2004	RIP
Sales in the EC (tonnes)	1 306 768	1 333 976	1 438 883	1 586 902
Index	100	102	110	121
Market share	64 %	60 %	65 %	66 %

2.4. GROWTH

- (117) Overall, it has to be noted that the Community industry's market share increased by 2 % in the period considered, which shows that its growth lagged behind the growth of consumption of the overall market.

2.5. EMPLOYMENT

- (118) The level of employment of the Community industry increased by 18 % in the period considered. The main increase occurred in 2003 (11 percentage points) and 2004 (further six percentage points). Although this rising tendency continued in the RIP, the increase amounted to only two percentage points. This increase of 18 % during the whole period is linked to the production level which increased by 20 %.

Table 7

	2002	2003	2004	RIP
Employees	1 010	1 124	1 170	1 190
Index	100	111	116	118

2.6. PRODUCTIVITY

- (119) The Community industry's productivity, measured as the output in tonnes per person employed per year, increased overall over the period considered. After initially falling by 6 % in 2003 compared to the year 2002 and remaining at this level in 2004, when productivity in the RIP increased significantly by more than 8 % compared to 2004, a period when production increased significantly.

Table 8

	2002	2003	2004	RIP
Productivity (tonnes/employee)	1 450	1 365	1 369	1 480
Index	100	94	94	102

2.7. WAGES

- (120) It has to be noted that PET chips production is a capital-intensive industry and that therefore labour costs have a limited impact on the overall cost of the product. During the period, wages increased by 12 %, compared to a 20 % increase of the overall production cost. Another significant indicator is the cost of wages spent per tonne produced. During the period, this cost decreased by 6 %.

Table 9

	2002	2003	2004	RIP
Wages (EUR million)	62,3	63,0	66,3	69,5
Index	100	101	106	112
Wages per tonne produced (in EUR)	44,4	42,9	43,6	41,9
Index	100	96	98	94

2.8. SALES PRICES AND FACTORS AFFECTING COMMUNITY PRICES

- (121) The unit sales prices increased from EUR 924/tonne in 2002 to 1 058 EUR/tonne in the RIP. Overall, the tendency was rising (by 15 % in the whole period). This increase is to a large extent a consequence of the increase in the price of raw materials, which is due to the increase in the oil price. Although the Community industry had increased prices it was not in the position to pass the increase on to the downstream sector and fully reflect the increase of raw materials prices in its sales prices. This was principally due to the fact that the increase in the price of raw materials was higher than the increase of PET prices. With the aim to maintain its market share, the Community industry could only moderately increase its prices and thus experienced price suppression.

Table 10

	2002	2003	2004	RIP
Weighted average price (EUR/tonne)	924	902	1 006	1 058
Index	100	98	109	115

2.9. COST OF PRODUCTION OF THE MAIN RAW MATERIALS

- (122) Bearing in mind that around 850 kg of purified terephthalic acid (PTA) and 350 kg of monoethylene glycol (MEG) (the main raw materials) are needed to produce one tonne of PET, the costs of raw materials (PTA and MEG) increased significantly respectively by 67 % and by 31 % between 2002 and the RIP to reach the level of EUR 770/tonne (PTA) and EUR 721/tonne (MEG) (average of the RIP). Although a small decline in prices of PTA has been noted in the third quarter of 2005 when the prices dropped to the level of EUR 700/tonne, and a substantially stable price was observed for MEG, it has to be pointed out that the raw materials are purchased in advance based on long-term contracts. As a result, for the period considered, despite the small decline in prices of PTA at the end of the RIP, the Community industry still bears the consequences of the heavily increased costs. In addition, due to the situation on the world oil market the prices of raw materials for the production of PET are susceptible to unpredictable changes but they are most likely to remain at a high level. All these factors contribute to an increased level of vulnerability of the Community PET producers. It should be noted, however, that the main raw materials are products traded on a global level, and should therefore also affect the Indian exporting producers to the same extent.

Table 11

	average cost (EUR/tonne)			
	2002	2003	2004	RIP
— PTA	460	566	718	770
Index	100	123	156	167
— MEG	551	550	650	721
Index	100	100	118	131

- (123) By comparison the average unit cost per tonne of PET chips produced by the Community industry was the following:

Table 12

	2002	2003	2004	RIP
Weighted average cost (EUR/tonne)	899	918	1 013	1 092
Index	100	102	113	121

- (124) During the period considered, as indicated in Tables 11 and 12, the main raw materials have continuously increased (PTA by 67 %, MEG by 31 %), while the overall cost of production raised only by 21 %. However, as shown in Table 10, prices have only increased by 15 % due to the fact that the Community industry was not in a position to pass the increase on to the downstream sector and fully reflect the rise of raw materials prices in its sales prices.

2.10. STOCKS

- (125) The evolution of stocks over the whole period considered, i.e. between 2002 and the RIP, is down by 10 %. However, as in the original investigations, stocks should not be considered as a meaningful indicator as regards PET produced by the Community industry, given the seasonal nature of the PET market throughout the year. When compared to the production, stocks represent around 5 or 6 % of the output.

Table 13

	2002	2003	2004	RIP
Stocks (tonnes)	101 554	110 695	90 422	91 123
Index	100	109	89	90

2.11. PROFITABILITY, RETURN ON INVESTMENTS AND CASH FLOW

- (126) Profitability on sales represents the profit generated by sales of the product concerned in the Community. Return on total assets and cash flow could only be measured at the level of the narrowest group of products which included the like product, pursuant to Article 8(8) of the basic Regulation. Moreover, return on investments has been calculated on the basis of return on total assets, as return on total assets is considered more relevant for the analysis of the trend.

Table 14

	2002	2003	2004	RIP
Pre-tax profit margin on sales in the Community	2,7 %	- 1,8 %	- 0,7 %	- 3,2 %
Return on total assets	2,0 %	- 1,4 %	- 0,6 %	- 2,4 %
Cash flow (% of total sales)	18,1 %	5,5 %	10,1 %	- 2,6 %

- (127) Further to the price suppression starting in 2002 and coinciding with a strong increase of dumped imports from the PRC, Taiwan, Malaysia, Korea and Australia (until 2004), and of subsidised imports from India the financial situation of the Community industry deteriorated and turned into losses in 2003. After a small recovery in 2004 due to the anti-dumping measures imposed on PRC and Australia, losses increased to - 3,2 % in the RIP. It is therefore noted that there is a clear downward trend.
- (128) The trends for return on total assets and for cash flow developed similarly i.e. showed a relatively good situation in 2002, a sharp deterioration in 2003, a small recovery in 2004 and a further deterioration in the RIP.

2.12. INVESTMENTS AND ABILITY TO RAISE CAPITAL

Table 15

	2002	2003	2004	RIP
Investments (EUR '000)	31 779	42 302	63 986	50 397
Index	100	133	201	159

- (129) The investments were partly dedicated to an increase of capacity and partly to the improvement of the production process. The bulk of the expenditure was made in 2004 and during the RIP, coinciding with the increase of the capacity and with the aim to keep the market share in view of the increased consumption. Nevertheless, the current situation of the Community industry and the evolution of the Community and world markets for PET marked out by lack of profitability were not an incentive to make excessive investments. Although in some circumstances Community producers have been able to raise capital (in particular from related companies), the lack of profitability of PET did not encourage investment and in some cases the decision was postponed.

2.13. MAGNITUDE OF THE ACTUAL MARGIN OF SUBSIDY

- (130) As concerns the impact on the Community industry of the magnitude of the actual margin of subsidy of Indian imports, given the price sensitivity of the market for this product, this impact cannot be considered to be negligible. It should be noted that this indicator is more relevant in the context of the likelihood of recurrence of injury analysis. Should measures lapse, it is likely that subsidised imports would come back at such volumes and prices that the impact of the magnitude of the subsidy margin would be significant.

2.14. RECOVERY FROM THE EFFECTS OF PAST SUBSIDISATION

- (131) While the indicators examined above show some improvement in some economic indicators of the

Community industry, further to the imposition of definitive countervailing measures in 2001, they also provide evidence that the Community industry is still fragile and vulnerable.

3. CONCLUSION ON THE SITUATION OF THE COMMUNITY INDUSTRY

- (132) The constant increase of consumption partly due to new applications (inter alia beer and wine bottles) and partly due to the increase of consumption in the accession countries, obliged the Community industry to increase capacity and production in order not to lose market share. To do so, an important restructuring process accompanied by a frequent change of the ownership of the different producers, took place in 2004 and during the RIP. In parallel, the number of production lines was generally increased in order to follow the increase of the consumption and to concurrently achieve economies of scale. Thus, some economic indicators, i.e. consumption, capacity production, production, EU sales and employment indeed followed a positive trend. In addition, the sales price also increased during the period considered. However, all those restructuring efforts described above could not counterbalance the impact of the constant and massive increase of raw material prices in the period considered. The higher raw material costs could not be passed on to the downstream sector to the extent it would have been necessary to maintain a certain level of profitability. This caused a serious deterioration of the profitability which decreased from + 2,7 % in 2002 to - 3,2 % during the RIP. Similar negative trends were observed for the return on investments and for the cash flow.

(133) This coincided with the low price level of the imports from the country concerned which clearly contributed to the downward pressure on the price of the Community industry. However, given the small volumes of subsidised imports in the framework of this expiry review, the focus is on the likelihood of recurrence of injury analysis. Thus, despite the apparent positive developments concerning production, sales and sales price, the overall financial situation of the Community deteriorated and is reflected in the negative developments of profitability (from 2,7 % profit in 2002 to 3,2 % losses in the RIP), of export sales, production cost, return on investments and cash flow.

(134) If one compares the above trends with the ones described in the Regulations imposing provisional and definitive countervailing measures, again the assessment is mixed. As concerns market share, the Community industry lost one percentage point between 2002 and the RIP, whilst it had earned five percentage points in the four years preceding the adoption of the definitive countervailing measures. On the other hand, the profitability of the Community industry during the RIP is less negative than before the imposition of definitive countervailing measures. Consequently, despite some apparent positive trends showed by the injury indicators, the situation of the Community industry is still far from the levels that could be expected had it fully recovered from the injury found in the original investigations.

(135) It is therefore concluded that the situation of the Community industry has slightly improved, as compared to the period preceding the imposition of measures, but is still very fragile and vulnerable. Furthermore, the price pressure from imports of the country concerned did not allow the Community industry to fully reflect the increase in the price of raw materials in its sales prices.

G. LIKELIHOOD OF RECURRENCE OF INJURY

RELATIONSHIP BETWEEN EXPORT VOLUMES AND PRICES TO THIRD COUNTRIES AND EXPORT VOLUMES AND PRICES TO THE COMMUNITY

(136) It was found that the average export price of Indian sales to non-EU countries was significantly below the average export price to the Community and also below the prices on the domestic market. The Indian exporter's sales to non-EU countries were made in significant quantities, accounting for over 95 % of total export sales. Therefore, it was considered that, should measures lapse, Indian exporters would have an incentive to shift significant quantities of exports from other third countries to the more attractive Community market, at

price levels, which, even if they increased, were likely to still be below the current price levels of export to the Community.

PRODUCTION CAPACITY, UNUSED CAPACITY AND STOCKS

(137) As indicated further under recital 140, the exporting producers in India have the potential to increase their export volumes to the Community market. India had a significant growth in its production capacity from the level of 330 000 tonnes in 2003 to 600 000 tonnes in 2005. According to market forecasts, it is expected to increase by a further 220 000 tonnes in 2008. In 2005, the domestic sales amounted to 220 000 tonnes and exports to 290 000 tonnes (including 6 831 tonnes to the EU). On the basis of the data available, on average, the current spare capacity should amount to around 90 000 tonnes and has to be considered as significant as it represents around 4 % of the current Community consumption. This estimate is confirmed by the results of the cooperating Indian producers, who had significant spare capacities.

(138) Concerning the stock level, the investigation has shown that the level of stocks held by the cooperating Indian producers was not significant. However, it should be noted that the level of stocks is not a meaningful factor as the market for PET is cyclical.

(139) To conclude, although the imports to the EU were low, there exists a risk that significant exports could be diverted to the EU.

CONCLUSIONS

(140) The producers in the country concerned therefore have the potential to raise and/or redirect their export volumes to the Community market. The investigation showed that the cooperating exporting producers sold the product concerned at a lower price than the Community industry. These low prices would most likely continue to be charged or even decrease in line with the lower prices charged to the rest of the world, as mentioned in recital 137, also in order to regain the level of market shares held in the period before the imposition of measures. Such price behaviour, coupled with the ability of the exporters in the country concerned to deliver significant quantities of the product concerned to the Community market, would in all likelihood have the effect of reinforcing the price-depressive trend on the market, with an expected negative impact on the economic situation of the Community industry.

(141) As shown above, the situation of the Community industry remains vulnerable and fragile. It is likely that if the Community industry were exposed to increased volumes of imports from the country concerned at subsidised prices, this would result in a deterioration of its sales, market shares, sales prices as well as the consequent deterioration of the financial situation, to the levels found in the original investigation. On this basis, it is therefore concluded that the repeal of the measures would in all likelihood result in a worsening of the already fragile situation and a recurrence of an even more injurious state of the Community industry.

(142) On the basis of the foregoing it is concluded that the import prices would most likely be lower on the Community market in the absence of anti-subsidy measures, as the producers in India would possibly try to increase their market shares. Such price behaviour, coupled with the ability of the exporting producers in India to sell significant quantities of PET on the Community market, would in all likelihood have the effect of reinforcing the price pressure, with an expected negative impact on the situation of the Community industry.

H. COMMUNITY INTEREST

1. INTRODUCTION

(143) According to Article 31 of the basic Regulation, it was examined whether the maintenance of the existing anti-subsidy measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the various interests involved. The present investigation analyses a situation in which anti-subsidy measures have already been in place and allows for assessment of any undue negative impact on the parties concerned due to the current anti-subsidy measures.

(144) On this basis, it was examined whether, despite the conclusions on the likelihood of a continuation or recurrence of injurious subsidisation, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

2. INTEREST OF THE COMMUNITY INDUSTRY

(145) As outlined above, there is a clear likelihood of recurrence of injurious subsidisation if measures were to be repealed. All the Community producers but two fully cooperated and indicated their support for the ongoing measures.

(146) The continuation of anti-subsidy measures on imports from India would enhance the possibility for the Community industry to reach a reasonable level of profitability because it is likely that in the short medium-term, it would be able to increase sales quantities and thereby benefit from economies of scale and at the same time is likely to be able to moderately increase their sales price and thereby reach a satisfactory profit level. Even if subsidised imports in the RIP originating in the India were low and, therefore, could not have caused severe injury, they would be likely to negatively affect the situation of the Community industry if the anti-subsidy measures were repealed. These measures are thus essential to guarantee the viability of the Community industry's PET chips business, which has been facing competition from subsidised imports from India for several years.

3. INTEREST OF IMPORTERS

(147) Low cooperation was obtained from the importers/traders, and amongst those cooperating importers none were purchasing from India. However, the cooperating importers/traders could be regarded as representative as their sales volume represented around 5% of the EU consumption. They would prefer a market with zero duties also if they are constantly enjoying good financial results.

(148) The investigation showed that there are still alternative sources of supply with no anti-subsidy or anti-dumping measures, i.e. from Mexico, Brazil, USA, Turkey, Pakistan, Iran, Saudi Arabia, available. The importers/traders would thus be able to rely on (or to switch to) considerable alternative sources of supply.

(149) Bearing in mind that the measures in force did not considerably affect the importers, it is concluded that maintaining the existing countervailing measures against imports originating in India would continue not have a significant negative effect on the situation of the importers in the Community.

4. INTEREST OF CONVERTERS/USERS

(150) The Commission sent questionnaires to 47 known converters/users. Only 10 converters/users with an overall low representativity replied to the questionnaire. According to the information on purchases supplied in their responses to the questionnaire, cooperating converters/users during the IP represent about 20% of total Community consumption of PET. They purchased during the IP 95% of their PET from Community producers and the remainder from imports originating in countries other than the country subject to this review. A number of arguments against the imposition of duties were presented.

- (151) Five converters (transforming PET chips in preforms and bottle grade and representing 10 % of the consumption) replied to the questionnaire. The cost of PET chips accounts for 55 % of their final product (mostly preforms). It has been established that they import negligible quantities from India and other third countries. Nevertheless they oppose the continuation of duties claiming that the measures could have the effect of artificially raising the prices in Europe.
- (152) Five users accounting for about 10 % of the consumption supplied rather incomplete data. The low level of cooperation from the big users is likely to be due to the fact that the last investigation concerning imports of PET from the PRC, Australia and Pakistan took place only two years ago. PET costs account for around 6 or 7 % of the overall cost and are therefore rather limited. Although they have declared no imports from India, similarly as the converters, they oppose the imposition of duties claiming that the measures could have the effect of artificially raising the prices in Europe.
- (153) Considering the rather good financial situation of the downstream industry, in contrast to that of the Community industry, no converter/user put forward the argument that maintaining the current duties could lead to a loss of jobs or to moving manufacturing facilities overseas.
- (154) Furthermore, in terms of output, the Community industry adapted its size to match the increased consumption and therefore it is very likely that the unused capacity of the Community industry could fully cover the amount of the imports.
- (155) Bearing in mind that there are still alternative sources of supply with no anti-subsidy or anti-dumping measures, i.e. from Mexico, Brazil, USA, Turkey, Pakistan, Iran, Saudi Arabia, the Community users would moreover be able to rely on (or to switch to) diversified suppliers of the product concerned.
- (156) As concerns the performance of the user industry, the investigation has shown that during the period considered the cooperating users increased their turnover, maintained employment stable and rather improved overall their profitability. Therefore it was found that they were not negatively affected by the anti-subsidy measures.
- (157) On the basis of the above, it is concluded that maintaining the existing anti-subsidy measures against imports

originating in India would not have a significant negative effect on the situation of the users in the Community.

5. INTEREST OF SUPPLIERS

- (158) The suppliers of raw material (monoethylene glycol (MEG) and purified terephthalic acid (PTA), DMT and IPA, all petrochemical products derivatives of naphtha, clearly indicated their support for the measures and provided good cooperation. They would benefit if measures are maintained as the Community industry would be likely to be able to recover allowing them to improve their performance.

6. CONCLUSION ON COMMUNITY INTEREST

- (159) Taking into account all of the above factors, it is concluded that there are no compelling reasons against the maintenance of the current anti-subsidy measures against India.

I. COUNTERVAILING MEASURES

- (160) All interested parties were informed of the essential facts and considerations on the basis of which it is intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure. The Government of India made comments on injury aspects alleging that it was not demonstrated that the Community industry suffered continued injury and that import pressure from India was not the reason that the European producers did not fully reflect the increase of the raw materials cost in their sale price. It is to be recalled that, as indicated in the analysis of the situation of the Community industry, its financial situation deteriorated and, as explained in recital 127, the low price level of the imports from the country concerned clearly contributed to the downward pressure on the price of the Community industry. However, given the small volumes of subsidised imports in the framework of this expiry review, the likelihood of recurrence of injury had to be examined. In this regard it was concluded, as stated in recital 127, that in absence of measures, increased volume of imports from India at low prices would have a negative impact on the situation of the Community industry. Furthermore, one Indian exporter alleged that in the absence of measures it is not likely that India will re-direct sales to the Community. This exporter claimed that emerging markets are more attractive than the Community, that Indian demand is growing fast and that, therefore, no spare capacity is available. It is however to be considered that, notwithstanding an increase of the demand in the Indian market, the investigation at company level indicated spare capacities, as also confirmed by the market intelligence. It is therefore concluded that none of the disclosure comments received were such as to alter the conclusions as contained in this regulation.

(161) It follows from the above that, as provided for by Article 21(2) of the basic Regulation, the countervailing measures applicable to imports of PET chips, originating in India should be maintained. It is recalled that these measures consist of specific duties.

(162) The individual company countervailing duty rates specified in this Regulation reflect the situation found during the review with respect to the cooperating exporters. Thus, they are solely applicable to imports of the product concerned manufactured by these companies and thus by the specific legal entities mentioned. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, 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'.

(163) 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 ⁽¹⁰⁾ forthwith with all relevant information, in particular any modification in the company's activity 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.

(164) In order to ensure proper enforcement of the countervailing duty, the residual duty level should not only apply to non-cooperating exporters but also apply to those companies which did not have any exports during the RIP. However, the latter companies are invited, when they fulfil the requirements of Article 20 of the basic Regulation, to present a request for a review pursuant to that Article in order to have their situation examined individually,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of polyethylene terephthalate having a viscosity of

78 ml/g or higher, according to ISO Standard 1628-5, falling within CN code 3907 60 20 and originating in India.

2. Except as provided for in Article 2, the rate of the countervailing duty applicable to the net, free-at-Community frontier price, before duty for products manufactured by the companies listed below shall be as follows:

Country	Company	Counter-vailing duty (EUR/tonne)	TARIC additional code
India	Reliance Industries Limited	41,3	A181
India	Pearl Engineering Polymers Ltd	31,3	A182
India	Senpet Ltd	22,2	A183
India	Futura Polyesters Ltd	0	A184
India	South Asian Petrochem Ltd	106,5	A585
India	All other companies	41,3	A999

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 ⁽¹¹⁾, the amount of countervailing duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

4. Notwithstanding paragraphs 1 and 2, the definitive countervailing duty shall not apply to imports released for free circulation in accordance with Article 2.

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

Article 2

1. Imports shall be exempt from the countervailing duties imposed by Article 1 provided that they are produced and directly exported (i.e. invoiced and shipped) to a company acting as an importer in the Community by the companies mentioned in paragraph 3, declared under the appropriate TARIC additional code and that the conditions set out in paragraph 2 are met.

⁽¹⁰⁾ European Commission, Directorate-General for Trade, Directorate H, J-79 5/17, B-1049 Brussels.

⁽¹¹⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1875/2006 (OJ L 360, 19.12.2006, p. 64).

2. When the request for release for free circulation is presented, exemption from the duties shall be conditional upon presentation to the customs service of the Member State concerned of a valid Undertaking Invoice issued by the exporting companies mentioned in paragraph 3, containing the essential elements listed in the Annex. Exemption from the duty shall further be conditional on the goods declared and presented to customs corresponding precisely to the description on the Undertaking Invoice.

Country	Company	TARIC additional code
India	Pearl Engineering Polymers Ltd	A182
India	Reliance Industries Ltd	A181
India	South Asian Petrochem Ltd	A585

Article 3

3. Imports accompanied by an Undertaking Invoice shall be declared under the following TARIC additional codes:

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, 22 February 2007.

For the Council
The President
F. MÜNTEFERING

ANNEX

Elements to be indicated in the Undertaking Invoice referred to in Article 2(2):

1. The Undertaking Invoice number.
2. The TARIC additional code under which the goods on the invoice may be customs-cleared at Community borders (as specified in the Regulation).
3. The exact description of the goods, including:
 - the product reporting code number (PRC) (as established in the undertaking offered by the producing exporter in question),
 - CN code,
 - quantity (to be given in units).
4. The description of the terms of the sale, including:
 - price per unit,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
5. Name of the company acting as an importer to which the invoice is issued directly by the company.
6. The name of the official of the company that has issued the undertaking invoice and the following signed declaration:

'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by ... (company), and accepted by the European Commission through Decision 2000/745/EC. I declare that the information provided in this invoice is complete and correct.'

COMMISSION REGULATION (EC) No 194/2007
of 26 February 2007
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the

standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 27 February 2007.

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

Done at Brussels, 26 February 2007.

For the Commission
Jean-Luc DEMARTY
Director-General for Agriculture and
Rural Development

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 26 February 2007 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	IL	103,4
	JO	96,5
	MA	65,9
	TN	148,3
	TR	140,0
	ZZ	110,8
0707 00 05	JO	178,3
	MA	206,0
	MK	57,6
	TR	133,0
	ZZ	143,7
0709 90 70	MA	46,5
	TR	75,8
	ZZ	61,2
0805 10 20	CU	37,4
	EG	49,7
	IL	57,6
	MA	42,8
	TN	49,6
	TR	65,8
	ZZ	50,5
0805 20 10	IL	108,8
	MA	95,1
	ZZ	102,0
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	AR	112,1
	IL	71,9
	MA	80,4
	PK	58,0
	TR	54,0
	ZZ	75,3
0805 50 10	EG	63,4
	IL	65,7
	TR	49,9
	ZZ	59,7
0808 10 80	AR	101,4
	CA	91,7
	CN	95,7
	US	118,6
	ZZ	101,9
0808 20 50	AR	81,7
	CL	76,9
	CN	66,5
	US	96,9
	ZA	82,8
	ZZ	81,0

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 195/2007**of 26 February 2007****opening the buying-in of butter in certain Member States for the period 1 March to 31 August 2007**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾,

Having regard to Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream ⁽²⁾, and in particular Article 2 thereof,

Whereas:

(1) Article 6(1) of Regulation (EC) No 1255/1999 provides that if market prices for butter in one or more Member States, over a representative period, are less than 92 % of the intervention price, intervention agencies have to buy in butter.

(2) On the basis of the market prices communicated by the Member States, the Commission has observed, in

accordance with Article 8(4) of Regulation (EC) No 2771/1999, that the prices in Spain, Ireland and Portugal have been below 92 % of the intervention price for two consecutive weeks. Intervention buying-in should therefore be opened in those Member States,

HAS ADOPTED THIS REGULATION:

Article 1

Buying-in of butter as provided for in Article 6(1) of Regulation (EC) No 1255/1999 is hereby open in the following Member States:

- Spain
- Ireland
- Portugal.

Article 2

This Regulation shall enter into force on 1 March 2007.

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

Done at Brussels, 26 February 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 333, 24.12.1999, p. 11. Regulation as last amended by Regulation (EC) No 1919/2006 (OJ L 380, 28.12.2006, p. 1).

COMMISSION REGULATION (EC) No 196/2007**of 26 February 2007****fixing the export refunds on cereals and on wheat or rye flour, groats and meal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals⁽¹⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) Article 13 of Regulation (EC) No 1784/2003 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund.
- (2) The refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals⁽²⁾.
- (3) As far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture. These quantities were fixed in Regulation (EC) No 1501/95.
- (4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.
- (5) The refund must be fixed once a month. It may be altered in the intervening period.
- (6) It follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(a), (b) and (c) of Regulation (EC) No 1784/2003, excluding malt, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 March 2007.

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

Done at Brussels, 26 February 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50).

ANNEX

to the Commission Regulation of 26 February 2007 fixing the export refunds on cereals and on wheat or rye flour, groats and meal

Product code	Destination	Unit of measurement	Amount of refunds	Product code	Destination	Unit of measurement	Amount of refunds
1001 10 00 9200	—	EUR/t	—	1101 00 15 9130	C01	EUR/t	0
1001 10 00 9400	A00	EUR/t	0	1101 00 15 9150	C01	EUR/t	0
1001 90 91 9000	—	EUR/t	—	1101 00 15 9170	C01	EUR/t	0
1001 90 99 9000	A00	EUR/t	—	1101 00 15 9180	C01	EUR/t	0
1002 00 00 9000	A00	EUR/t	0	1101 00 15 9190	—	EUR/t	—
1003 00 10 9000	—	EUR/t	—	1101 00 90 9000	—	EUR/t	—
1003 00 90 9000	A00	EUR/t	—	1102 10 00 9500	A00	EUR/t	0
1004 00 00 9200	—	EUR/t	—	1102 10 00 9700	A00	EUR/t	0
1004 00 00 9400	A00	EUR/t	0	1102 10 00 9900	—	EUR/t	—
1005 10 90 9000	—	EUR/t	—	1103 11 10 9200	A00	EUR/t	0
1005 90 00 9000	A00	EUR/t	0	1103 11 10 9400	A00	EUR/t	0
1007 00 90 9000	—	EUR/t	—	1103 11 10 9900	—	EUR/t	—
1008 20 00 9000	—	EUR/t	—	1103 11 90 9200	A00	EUR/t	0
1101 00 11 9000	—	EUR/t	—	1103 11 90 9800	—	EUR/t	—
1101 00 15 9100	C01	EUR/t	0				

NB: The product codes and the 'A' series destination codes are set out in the Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), as amended.

C01: All third countries with the exception of Albania, Croatia, Bosnia and Herzegovina, Montenegro, Serbia, the former Yugoslav Republic of Macedonia, Lichtenstein and Switzerland.

COMMISSION REGULATION (EC) No 197/2007
of 26 February 2007
fixing the corrective amount applicable to the refund on cereals

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals⁽¹⁾, and in particular Article 15(2) thereof,

Whereas:

- (1) Article 14(2) of Regulation (EC) No 1784/2003 provides that the export refund applicable to cereals on the day on which an application for an export licence is made must be applied on request to exports to be effected during the period of validity of the export licence. In this case, a corrective amount may be applied to the refund.
- (2) Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the cereals and the measures to be taken in the event of disturbance on the market for cereals⁽²⁾, allows for the fixing of a corrective amount for the products listed in Article 1(a), (b) and (c) of Regulation (EC) No 1784/2003. That corrective amount must be calculated taking account of the factors referred to in Article 1 of Regulation (EC) No 1501/95.

- (3) The world market situation or the specific requirements of certain markets may make it necessary to vary the corrective amount according to destination.
- (4) The corrective amount must be fixed according to the same procedure as the refund; it may be altered in the period between fixings.
- (5) It follows from applying the provisions set out above that the corrective amount must be as set out in the Annex hereto.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 1(a), (b) and (c) of Regulation (EC) No 1784/2003 which is applicable to export refunds fixed in advance except for malt shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 March 2007.

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

Done at Brussels, 26 February 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50).

ANNEX

to the Commission Regulation of 26 February 2007 fixing the corrective amount applicable to the refund on cereals

Product code	Destination	(EUR/t)						
		Current 3	1st period 4	2nd period 5	3rd period 6	4th period 7	5th period 8	6th period 9
1001 10 00 9200	—	—	—	—	—	—	—	—
1001 10 00 9400	A00	0	0	0	0	0	—	—
1001 90 91 9000	—	—	—	—	—	—	—	—
1001 90 99 9000	C01	0	0	0	0	0	—	—
1002 00 00 9000	A00	0	0	0	0	0	—	—
1003 00 10 9000	—	—	—	—	—	—	—	—
1003 00 90 9000	C02	0	0	0	0	0	—	—
1004 00 00 9200	—	—	—	—	—	—	—	—
1004 00 00 9400	C03	0	0	0	0	0	—	—
1005 10 90 9000	—	—	—	—	—	—	—	—
1005 90 00 9000	A00	0	0	0	0	0	—	—
1007 00 90 9000	—	—	—	—	—	—	—	—
1008 20 00 9000	—	—	—	—	—	—	—	—
1101 00 11 9000	—	—	—	—	—	—	—	—
1101 00 15 9100	C01	0	0	0	0	0	—	—
1101 00 15 9130	C01	0	0	0	0	0	—	—
1101 00 15 9150	C01	0	0	0	0	0	—	—
1101 00 15 9170	C01	0	0	0	0	0	—	—
1101 00 15 9180	C01	0	0	0	0	0	—	—
1101 00 15 9190	—	—	—	—	—	—	—	—
1101 00 90 9000	—	—	—	—	—	—	—	—
1102 10 00 9500	A00	0	0	0	0	0	—	—
1102 10 00 9700	A00	0	0	0	0	0	—	—
1102 10 00 9900	—	—	—	—	—	—	—	—
1103 11 10 9200	A00	0	0	0	0	0	—	—
1103 11 10 9400	A00	0	0	0	0	0	—	—
1103 11 10 9900	—	—	—	—	—	—	—	—
1103 11 90 9200	A00	0	0	0	0	0	—	—
1103 11 90 9800	—	—	—	—	—	—	—	—

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended. The numeric destination codes are set out in Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

C01: All third countries with the exception of Albania, Croatia, Bosnia and Herzegovina, Montenegro, Serbia, the former Yugoslav Republic of Macedonia, Liechtenstein and Switzerland.

C02: Algeria, Saudi Arabia, Bahrain, Egypt, United Arab Emirates, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Lybia, Morocco, Mauritania, Oman, Qatar, Syria, Tunisia and Yemen.

C03: All countries with the exception of Norway, Switzerland and Liechtenstein.

COMMISSION REGULATION (EC) No 198/2007
of 26 February 2007
fixing the export refunds on malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals⁽¹⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) Article 13 of Regulation (EC) No 1784/2003 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) The refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals⁽²⁾.
- (3) The refund applicable in the case of malts must be calculated with amount taken of the quantity of cereals required to manufacture the products in question. The said quantities are laid down in Regulation (EC) No 1501/95.
- (4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.
- (5) The refund must be fixed once a month. It may be altered in the intervening period.
- (6) It follows from applying these rules to the present situation on markets in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on malt listed in Article 1(c) of Regulation (EC) No 1784/2003 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 March 2007.

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

Done at Brussels, 26 February 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50).

ANNEX

to the Commission Regulation of 26 February 2007 fixing the export refunds on malt

Product code	Destination	Unit of measurement	Amount of refunds
1107 10 19 9000	A00	EUR/t	0,00
1107 10 99 9000	A00	EUR/t	0,00
1107 20 00 9000	A00	EUR/t	0,00

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

COMMISSION REGULATION (EC) No 199/2007
of 26 February 2007
fixing the corrective amount applicable to the refund on malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organization of the market in cereals ⁽¹⁾, and in particular Article 15(2),

Whereas:

- (1) Article 14(2) of Regulation (EC) No 1784/2003 provides that the export refund applicable to cereals on the day on which application for an export licence is made must be applied on request to exports to be effected during the period of validity of the export licence. In this case, a corrective amount may be applied to the refund.
- (2) Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽²⁾ allows for the fixing of a corrective amount for the malt referred

to in Article 1(1)(c) of Regulation (EC) No 1784/2003. That corrective amount must be calculated taking account of the factors referred to in Article 1 of Regulation (EC) No 1501/95.

- (3) It follows from applying the provisions set out above that the corrective amount must be as set out in the Annex hereto.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 15(3) of Regulation (EC) No 1784/2003 which is applicable to export refunds fixed in advance in respect of malt shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 March 2007.

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

Done at Brussels, 26 February 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50).

ANNEX

to the Commission Regulation of 26 February 2007 fixing the corrective amount applicable to the refund on malt

(EUR/t)

Product code	Destination	Current 3	1st period 4	2nd period 5	3rd period 6	4th period 7	5th period 8
1107 10 11 9000	A00	0	0	0	0	0	0
1107 10 19 9000	A00	0	0	0	0	0	0
1107 10 91 9000	A00	0	0	0	0	0	0
1107 10 99 9000	A00	0	0	0	0	0	0
1107 20 00 9000	A00	0	0	0	0	0	0

(EUR/t)

Product code	Destination	6th period 9	7th period 10	8th period 11	9th period 12	10th period 1	11th period 2
1107 10 11 9000	A00	0	0	0	0	0	0
1107 10 19 9000	A00	0	0	0	0	0	0
1107 10 91 9000	A00	0	0	0	0	0	0
1107 10 99 9000	A00	0	0	0	0	0	0
1107 20 00 9000	A00	0	0	0	0	0	0

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

COMMISSION REGULATION (EC) No 200/2007**of 26 February 2007****fixing the refunds applicable to cereal and rice sector products supplied as Community and national food aid**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾ and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 1785/2003 of 29 September 2003 on the common organisation of the market in rice ⁽²⁾ and in particular Article 14(3) thereof,

Whereas:

- (1) Article 2 of Council Regulation (EEC) No 2681/74 of 21 October 1974 on Community financing of expenditure incurred in respect of the supply of agricultural products as food aid ⁽³⁾ lays down that the portion of the expenditure corresponding to the export refunds on the products in question fixed under Community rules is to be charged to the European Agricultural Guidance and Guarantee Fund, Guarantee Section.
- (2) In order to make it easier to draw up and manage the budget for Community food aid actions and to enable the Member States to know the extent of Community participation in the financing of national food aid actions, the level of the refunds granted for these actions should be determined.
- (3) The general and implementing rules provided for in Article 13 of Regulation (EC) No 1784/2003 and in Article 13 of Regulation (EC) No 1785/2003 on export refunds are applicable *mutatis mutandis* to the abovementioned operations.
- (4) The specific criteria to be used for calculating the export refund on rice are set out in Article 14 of Regulation (EC) No 1785/2003.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For Community and national food aid operations under international agreements or other supplementary programmes, and other Community free supply measures, the refunds applicable to cereals and rice sector products shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 1 March 2007.

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

Done at Brussels, 26 February 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 270, 21.10.2003, p. 96. Regulation as last amended by Commission Regulation (EC) No 797/2006 (OJ L 144, 31.5.2006, p. 1).

⁽³⁾ OJ L 288, 25.10.1974, p. 1.

ANNEX

to the Commission Regulation of 26 February 2007 fixing the refunds applicable to cereal and rice sector products supplied as Community and national food aid

(EUR/t)

Product code	Refund
1001 10 00 9400	0,00
1001 90 99 9000	0,00
1002 00 00 9000	0,00
1003 00 90 9000	0,00
1005 90 00 9000	0,00
1006 30 92 9100	0,00
1006 30 92 9900	0,00
1006 30 94 9100	0,00
1006 30 94 9900	0,00
1006 30 96 9100	0,00
1006 30 96 9900	0,00
1006 30 98 9100	0,00
1006 30 98 9900	0,00
1006 30 65 9900	0,00
1007 00 90 9000	0,00
1101 00 15 9100	0,00
1101 00 15 9130	0,00
1102 10 00 9500	0,00
1102 20 10 9200	0,00
1102 20 10 9400	0,00
1103 11 10 9200	0,00
1103 13 10 9100	0,00
1104 12 90 9100	0,00

NB: The product codes are defined in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), amended.

COMMISSION REGULATION (EC) No 201/2007**of 23 February 2007****amending Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo ⁽¹⁾, and in particular Article 9(1)(a) thereof,

Whereas:

- (1) Annex I to Regulation (EC) No 1183/2005 lists the natural and legal persons, entities and bodies covered by the freezing of funds and economic resources under that Regulation.

- (2) On 6 February 2007, the Sanctions Committee of the United Nations Security Council amended the list of natural and legal persons, entities and bodies to whom the freezing of funds and economic resources should apply. Annex I should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1183/2005 is hereby amended as set out in the Annex to this Regulation.

*Article 2*This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 23 February 2007.

For the Commission

Eneko LANDÁBURU

Director-General for External Relations

⁽¹⁾ OJ L 193, 23.7.2005, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

ANNEX

Annex I to Regulation (EC) No 1183/2005 is amended as follows:

- (1) The entry 'Khawa Panga **Mandro** (*alias* (a) Kawa Panga, (b) Kawa Panga Mandro, (c) Kawa Mandro, (d) Yves Andoul Karim, (e) Chief Kahwa, (f) Kawa). Date of birth: 20.8.1973. Place of birth: Bunia, Democratic Republic of Congo. Nationality: Congolese. Other information: Ex-President of PUSIC. In prison in Bunia since April 2005.' shall be replaced by the following:

'Khawa Panga **Mandro** (*alias* (a) Kawa Panga, (b) Kawa Panga Mandro, (c) Kawa Mandro, (d) Yves Andoul Karim, (e) Chief Kahwa, (f) Kawa, (g) Mandro Panga Kahwa, (h) Yves Khawa Panga Mandro). Date of birth: 20.8.1973. Place of birth: Bunia, Democratic Republic of Congo. Nationality: Congolese. Other information: Ex-President of PUSIC. In prison in Bunia since April 2005.'

- (2) The entry 'Douglas **Mpano**. Nationality: Congolese. Other information: Based in Goma. Manager of the Compagnie Aérienne des Grands Lacs and of Great Lakes Business Company.' shall be replaced by the following:

'Iruta Douglas **Mpamo** (*alias* (a) Mpano (b) Douglas Iruta Mpamo). Address: Bld Kanyamuhanga 52, Goma, DRC. Date of birth: (a) 28.12.1965, (b) 29.12.1965. Place of birth: (a) Bashali, Masisi (refers to date of birth (a)), (b) Goma, Democratic Republic of Congo (formerly Zaire) (refers to date of birth (b)). Nationality: Congolese. Other information: Owner/Manager of the Compagnie Aérienne des Grands Lacs and of Great Lakes Business Company.'

- (3) The entry 'Dr Ignace **Murwanashyaka** (*alias* Ignace). Date of birth: 14.5.1963. Place of birth: Butera, Rwanda. Nationality: Rwandan. Other information: President of FDLR. Resident in Germany.' shall be replaced by the following:

'Dr Ignace **Murwanashyaka** (*alias* Ignace). Date of birth: 14.5.1963. Place of birth: (a) Butera, Rwanda, (b) Ngoma, Butare, Rwanda. Nationality: Rwandan. Other information: President of FDLR. Resident in Germany.'

- (4) The entry 'Laurent **Nkunda** (*alias* (a) Laurent Nkunda Bwatare, (b) Laurent Nkundabatware, (c) Laurent Nkunda Mahoro Batware, (d) General Nkunda). Date of birth: 6.2.1967. Place of birth: North Kivu/Rutshuru, democratic Republic of Congo. Nationality: Congolese. Other information: Former RCD-G General. Currently unlocated. Sightings in Rwanda and Goma.' shall be replaced by the following:

'Laurent **Nkunda** (*alias* (a) Laurent Nkunda Bwatare, (b) Laurent Nkundabatware, (c) Laurent Nkunda Mahoro Batware, (d) Laurent Nkunda Batware, (e) General Nkunda). Date of birth: (a) 6.2.1967, (b) 2.2.1967. Place of birth: North Kivu/Rutshuru, Democratic Republic of Congo (refers to date of birth (a)). Nationality: Congolese. Other information: Former RCD-G General. Founder, National Congress for the People's Defense, 2006; Senior Officer, Rally for Congolese Democracy-Goma (RCD-G), 1998-2006; Officer Rwandan Patriotic Front (RPF), 1992-1998. Currently unlocated. Sightings in Rwanda and Goma.'

DIRECTIVES

COMMISSION DIRECTIVE 2007/12/EC

of 26 February 2007

amending certain Annexes to Council Directive 90/642/EEC as regards the maximum residue levels of penconazole, benomyl and carbendazim

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables ⁽¹⁾, and in particular Article 7 thereof,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽²⁾, and in particular Article 4(1)(f) thereof,

Whereas:

(1) In accordance with Directive 91/414/EEC, authorisations of plant protection products for use on specific crops are the responsibility of the Member States. Such authorisations have to be based on the evaluation of effects on human and animal health and influence on the environment. Elements to be taken into account in such evaluations include operator and bystander exposure and impact on the terrestrial, aquatic and aerial environments, as well as impact on humans and animals through consumption of residues on treated crops.

(2) Maximum residue levels (MRLs) reflect the use of minimum quantities of pesticides to achieve effective protection of plants, applied in such a manner that the amount of residue is the smallest practicable and is toxicologically acceptable, in particular in terms of estimated dietary intake.

(3) MRLs for pesticides covered by Directive 90/642/EEC are to be kept under review and may be modified to take

account of new or changed uses. Information about new or changed uses has been communicated to the Commission which will lead to changes in the residue levels of penconazole, benomyl and carbendazim.

(4) The lifetime exposure of consumers to those pesticides via food products that may contain residues of those pesticides, has been assessed and evaluated in accordance with the procedures and practices used within the Community, taking account of guidelines published by the World Health Organisation ⁽³⁾.

(5) In the case of benomyl and carbendazim for which an acute reference dose (ARfD) exists, the acute exposure of consumers via each of the food products that may contain residues of these pesticides has been assessed and evaluated in accordance with the procedures and practices currently used within the Community, taking account of guidelines published by the World Health Organisation. The opinions of the Scientific Committee on Plants, in particular advice and recommendations concerning the protection of consumers of food products treated with pesticides ⁽⁴⁾, have been taken into account. Based on the dietary intake assessment, the MRLs for those pesticides should be fixed so as to ensure that the ARfD will not be exceeded. In the case of the other substances, an assessment of the available information has shown that no ARfD is required and that therefore a short term assessment is not needed.

(6) In the case of the new MRL on citrus for benomyl and carbendazim the applicant has undertaken to supply additional data required by December 2007. The data already available show that the proposed MRL is safe for the consumers.

⁽¹⁾ OJ L 350, 14.12.1990, p. 71. Directive as last amended by Commission Directive 2006/92/EC (OJ L 311, 10.11.2006, p. 31).

⁽²⁾ OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2007/6/EC (OJ L 43, 15.2.2007, p. 13).

⁽³⁾ Guidelines for predicting dietary intake of pesticide residues (revised), prepared by the GEMS/Food Programme in collaboration with the Codex Committee on Pesticide Residues, published by the World Health Organisation 1997 (WHO/FSF/FOS/97.7).

⁽⁴⁾ Opinion regarding questions relating to amending the Annexes to Council Directives 86/362/EEC, 86/363/EEC and 90/642/EEC (Opinion expressed by the SCP, 14 July 1998); Opinion regarding variable pesticide residues in fruit and vegetables (Opinion expressed by SCP on 14 July 1998) http://europa.eu.int/comm/food/fs/sc/scp/outcome_ppp_en.html

- (7) Where authorised uses of plant protection products do not result in detectable levels of pesticide residues in or on the food product, or where there are no authorised uses, or where uses which have been authorised by Member States have not been supported by the necessary data, or where uses in third countries resulting in residues in or on food products which may enter into circulation in the Community market have not been supported with such necessary data, MRLs should be fixed at the lower limit of analytical determination.
- (8) Therefore it is appropriate to fix new MRLs for those pesticides.
- (9) Directive 90/642/EEC should therefore be amended accordingly.
- (10) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex II to Directive 90/642/EEC is amended in accordance with the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, by 27 August 2007 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall

forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 28 August 2007.

2. When Member States adopt the provisions referred to in paragraph 1, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 26 February 2007.

For the Commission
Markos KYPRIANOU
Member of the Commission

ANNEX

In part A of Annex II to Directive 90/642/EEC, the columns for penconazole, benomyl, and carbendazim are replaced by the following:

Groups and examples of individual products to which the MRLs would apply	Pesticide residue and maximum residue level (mg/kg)	
	Penconazole	Sum of benomyl and carbendazim, expressed as carbendazim
1. Fruit, fresh, dried or uncooked, preserved by freezing, not containing added sugar; nuts		
(i) CITRUS FRUIT	0,05 (*)	0,5 (†)
Grapefruit		
Lemons		
Limes		
Mandarins (including clementines and other hybrids)		
Oranges		
Pomelos		
Others		
(ii) TREE NUTS (shelled or unshelled)	0,05 (*)	0,1 (*)
Almonds		
Brazil nuts		
Cashew nuts		
Chestnuts		
Coconuts		
Hazelnuts		
Macadamia		
Pecans		
Pine nuts		
Pistachios		
Walnuts		
Others		
(iii) POME FRUIT	0,2	0,2
Apples		
Pears		
Quinces		
Others		

Groups and examples of individual products to which the MRLs would apply	Pesticide residue and maximum residue level (mg/kg)	
	Penconazole	Sum of benomyl and carbendazim, expressed as carbendazim
(iv) STONE FRUIT		
Apricots	0,1	0,2
Cherries		0,5
Peaches (including nectarines and similar hybrids)	0,1	0,2
Plums		0,5
Others	0,05 (*)	0,1 (*)
(v) BERRIES AND SMALL FRUIT		
(a) Table and wine grapes	0,2	
Table grapes		0,3
Wine grapes		0,5
(b) Strawberries (other than wild)	0,5	0,1 (*)
(c) Cane fruit (other than wild)	0,05 (*)	0,1 (*)
Blackberries		
Dewberries		
Loganberries		
Raspberries		
Others		
(d) Other small fruit and berries (other than wild)		0,1 (*)
Bilberries		
Cranberries		
Currants (red, black and white)	0,5	
Gooseberries		
Others	0,05 (*)	
(e) Wild berries and wild fruit	0,05 (*)	0,1 (*)
(vi) MISCELLANEOUS	0,05 (*)	
Avocados		
Bananas		
Dates		
Figs		

Groups and examples of individual products to which the MRLs would apply	Pesticide residue and maximum residue level (mg/kg)	
	Penconazole	Sum of benomyl and carbendazim, expressed as carbendazim
Kiwi		
Kumquats		
Litchis		
Mangoes		
Olives (table consumption)		
Olives (oil extraction)		
Papaya		0,2
Passion fruit		
Pineapples		
Pomegranate		
Others		0,1 (*)
2. Vegetables, fresh or uncooked, frozen or dry		
(i) ROOT AND TUBER VEGETABLES	0,05 (*)	0,1 (*)
Beetroot		
Carrots		
Cassava		
Celeriac		
Horseradish		
Jerusalem artichokes		
Parsnips		
Parsley root		
Radishes		
Salsify		
Sweet potatoes		
Swedes		
Turnips		
Yam		
Others		
(ii) BULB VEGETABLES	0,05 (*)	0,1 (*)
Garlic		
Onions		

Groups and examples of individual products to which the MRLs would apply	Pesticide residue and maximum residue level (mg/kg)	
	Penconazole	Sum of benomyl and carbendazim, expressed as carbendazim
Shallots		
Spring onions		
Others		
(iii) FRUITING VEGETABLES		
(a) Solanacea		
Tomatoes	0,1	0,5
Peppers	0,2	
Aubergines	0,1	0,5
Okra		2
Others	0,05 (*)	0,1 (*)
(b) Cucurbits — edible peel	0,1	0,1 (*)
Cucumbers		
Gherkins		
Courgettes		
Others		
(c) Cucurbits — inedible peel	0,1	0,1 (*)
Melons		
Squashes		
Watermelons		
Others		
(d) Sweet corn	0,05 (*)	0,1 (*)
(iv) BRASSICA VEGETABLES	0,05 (*)	
(a) Flowering brassica		0,1 (*)
Broccoli (including Calabrese)		
Cauliflower		
Others		
(b) Head brassica		
Brussels sprouts		0,5
Head cabbage		

Groups and examples of individual products to which the MRLs would apply	Pesticide residue and maximum residue level (mg/kg)	
	Penconazole	Sum of benomyl and carbendazim, expressed as carbendazim
Others		0,1 (*)
(c) Leafy brassica		0,1 (*)
Chinese cabbage		
Kale		
Others		
(d) Kohlrabi		0,1 (*)
(v) LEAF VEGETABLES AND FRESH HERBS	0,05 (*)	0,1 (*)
(a) Lettuce and similar		
Cress		
Lamb's lettuce		
Lettuce		
Scarole (broadleaf endive)		
Rucola		
Leaves and stems of brassica		
Others		
(b) Spinach and similar		
Spinach		
Beet leaves (chard)		
Others		
(c) Water cress		
(d) Witloof		
(e) Herbs		
Chervil		
Chives		
Parsley		
Celery leaves		
Others		
(vi) LEGUME VEGETABLES (fresh)	0,05 (*)	
Beans (with pods)		0,2
Beans (without pods)		
Peas (with pods)		0,2
Peas (without pods)		

Groups and examples of individual products to which the MRLs would apply	Pesticide residue and maximum residue level (mg/kg)	
	Penconazole	Sum of benomyl and carbendazim, expressed as carbendazim
Others		0,1 (*)
(vii) STEM VEGETABLES (fresh)		0,1 (*)
Asparagus		
Cardoons		
Celery		
Fennel		
Globe artichokes	0,2	
Leek		
Rhubarb		
Others	0,05 (*)	
(viii) FUNGI	0,05 (*)	0,1 (*)
(a) Cultivated mushrooms		
(b) Wild mushrooms		
3. Pulses	0,05 (*)	0,1 (*)
Beans		
Lentils		
Peas		
Lupines		
Others		
4. Oilseeds	0,05 (*)	
Linseed		
Peanuts		
Poppy seed		
Sesame seed		
Sunflower seed		
Rape seed		
Soya bean		0,2
Mustard seed		
Cotton seed		
Hemp seed		
Others		0,1 (*)

Groups and examples of individual products to which the MRLs would apply	Pesticide residue and maximum residue level (mg/kg)	
	Penconazole	Sum of benomyl and carbendazim, expressed as carbendazim
5. Potatoes	0,05 (*)	0,1 (*)
Early potatoes		
Ware potatoes		
6. Tea (dried leaves and stalks, fermented or otherwise, <i>Camellia sinensis</i>)	0,1 (*)	0,1 (*)
7. Hops (dried), including hop pellets and unconcentrated powder	0,5	0,1 (*)

(*) Indicates lower limit of analytical determination.

(†) Indicates that the maximum residue level has been established temporarily until 31 December 2007 pending data to be submitted by the applicant. If no data have been received by that date, the MRL will be withdrawn by a Directive or a Regulation.'

CORRIGENDA**Corrigendum to Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies**

(Official Journal of the European Communities L 225 of 12 August 1998)

On page 17, Article 2(3)(b)(ii):

for: '(ii) the number of categories of workers to be made redundant';

read: '(ii) the number and categories of workers to be made redundant';
