



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 367/2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97 and amending Regulation (EC) No 1676/2001 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, inter alia, in India

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL	
	<ul style="list-style-type: none">• Grounds for and objectives of the proposal <p>This proposal concerns the application of Council Regulation (EC) 2026/97 of 6th October 1997 on protection against subsidised imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 461/2004 of 8th March 2004 (the ‘basic Regulation’) and Council Regulation (EC) No 384/96 of 22nd December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21st December 2005 in the proceeding concerning imports of polyethylene terephthalate (PET) film originating in India..</p>
	<ul style="list-style-type: none">• General context <p>This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.</p>
	<ul style="list-style-type: none">• Existing provisions in the area of the proposal <p>Council Regulation (EC) No 1676/2001 imposing definitive anti-dumping duties on imports of PET film originating, <i>inter alia</i>, in India (OJ L 227, 23.8.2001, p.1), as last amended by Council Regulation (EC) No 366/2006 (OJ L 68, 8.3.2006, p.6).</p> <p>Council Regulation (EC) No 367/2006 imposing definitive countervailing duties on imports of PET film originating in India following an expiry review pursuant to Article 18 of Regulation EC (No) 2026/ 97 (OJ L 68, 8.3.2006, p.15).</p>
	<ul style="list-style-type: none">• Consistency with other policies and objectives of the Union <p>Not applicable.</p>
2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT	
	<ul style="list-style-type: none">• Consultation of interested parties
	<p>Interested parties concerned by the proceeding have already had the opportunity to defend their interests during the investigation, in line with the provisions of the basic Regulation.</p>
	<ul style="list-style-type: none">• Collection and use of expertise
	<p>There was no need for external expertise.</p>
	<ul style="list-style-type: none">• Impact assessment <p>The proposal is the result of the implementation of the basic Regulation. The basic Regulation does not foresee a general impact assessment, but contains an exhaustive</p>

	list of conditions that have to be assessed.
3)	LEGAL ELEMENTS OF THE PROPOSAL
	<ul style="list-style-type: none"> Summary of the proposed action <p>On 12th July 2005, the Commission initiated a partial interim review of the countervailing duties in force in respect of imports of polyethylene terephthalate (PET) film originating in India. The purpose of this review, limited in scope to the examination of the subsidisation of one Indian exporting producer, namely Garware Polyester Limited ('Garware'), was to assess whether the level of countervailing duties in force was sufficient to counteract the subsidisation causing injury.</p> <p>The attached proposal to increase the level of countervailing duties on imports of polyethylene terephthalate (PET) film from India is based on the findings of the investigation which confirmed that Garware received indeed much larger levels of subsidisation than those established in the original investigation. Thus, it is proposed that the level of countervailing duties is increased in accordance with the findings of this investigation, whereas the level of anti-dumping duties imposed on Garware PET film imports by Regulation (EC) No 1676/2006, as amended by Regulation (EC) No 366/2006, be reduced by the percentage of countervailing duties corresponding to the export subsidies found to have been received by the company in question.</p> <p>It is proposed, therefore, that the Council adopts the attached proposal for a Regulation, which should be published in the <i>Official Journal of the European Union</i>.</p>
	<ul style="list-style-type: none"> Legal basis <p>Council Regulation (EC) No 2026/1997 of 6th October 1997 on protection against subsidised imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 461/2004 of 8th March 2004 and Council Regulation (EC) No 384/96 of 22nd December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21st December 2005.</p>
	<ul style="list-style-type: none"> Subsidiary principle <p>The proposal falls under the exclusive competence of the Community. The subsidiarity principle, therefore, does not apply.</p>
	<ul style="list-style-type: none"> Proportionality principle <p>The proposal complies with the proportionality principle for the following reasons:</p> <p>The form of action is described in the basic Regulation and leaves no scope for national discretion.</p> <p>Indications of how the financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimised and proportionate to the objective of the proposal are not applicable.</p>

	<ul style="list-style-type: none"> • Choice of instruments
	Proposed instruments: Regulation.
	Other means would not be adequate because the basic Regulation does not foresee alternative options.
4)	BUDGETARY IMPLICATION
	The proposal has no implication for the Community budget.

Proposal for a

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amending Regulation (EC) No 367/2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97 and amending Regulation (EC) No 1676/2001 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, inter alia, in India

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/1997 of 6th October 1997 on protection against subsidised imports from countries not members of the European Community¹ (the ‘basic Regulation’) and, in particular, Article 19 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 Community² and, in particular, Article 14(1) thereof,

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

Whereas:

A. PROCEDURE

I. Previous investigation and existing measures

- (1) The Council, by Regulation (EC) No 2597/1999 of 6 December 1999³, imposed a definitive countervailing duty on imports of polyethylene terephthalate (‘PET’) film (the ‘product concerned’) falling within CN codes ex 3920 62 19 and ex 3920 62 90, originating in India. The investigation which led to the adoption of that Regulation is hereinafter referred as to the ‘original investigation’. The measures took the form of an ad valorem duty, ranging between 3,8 % and 19,1 % imposed on imports from individually named exporters, with a residual duty rate of 19,1 % imposed on imports of the product concerned from all other companies. The countervailing duty imposed on PET film manufactured and exported by Garware Polyester Limited (‘Garware’ or

¹ OJ L 288, 21.10.1997, p. 1, as last amended by Council Regulation (EC) No 461/2004 of 8 March 2004 (OJ L 77, 13.3.2004, p.12).

² OJ L 56, 6.3.1996, p. 1., as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 (OJ L 340, 23.12.2005, p. 17).

³ OJ L 316, 10.12.1999, p. 1.

‘the company’) was 3,8 %. The original investigation period was 1st October 1997 to 30th September 1998.

- (2) The Council, by Regulation (EC) No 367/2006 of 27 February 2006⁴, maintained the definitive countervailing duty imposed by Regulation (EC) No 2597/1999 on imports of PET film originating in India, following an expiry review pursuant to Article 18 of the basic Regulation.
- (3) The Council, by Regulation (EC), No 366/2006 of 27 February 2006⁵, amended Regulation (EC) No 1676/2001 of 13 August 2001⁶ following a partial interim review of the level of anti-dumping duty in force against five Indian producers and imposed an anti-dumping duty ranging from 0 % to 18 %. The anti-dumping duty imposed on imports of PET film from Garware was 17,4 %. It is noted that the anti-dumping duty rate for Garware was adjusted to take into account the level of subsidisation countervailed by Regulation (EC) No 367/2006 (see also recital (71) below).

II. Request for a partial interim review

- (4) A request for a partial interim review of Council Regulation (EC) No 2597/1999, limited to the level of countervailing duty imposed on Garware was lodged by the following Community producers: DuPont Teijin Films, Mitsubishi Polyester Film GmbH, Nuroll SpA and Toray Plastics Europe (the ‘applicants’). The applicants represent a major proportion of the Community production of PET film.
- (5) The applicants alleged that, in regard to imports of PET film from Garware, the level of existing countervailing measures was no longer sufficient to counteract the injurious subsidisation, as the circumstances regarding the subsidisation of Garware had changed significantly.

III. Investigation

- (6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced on 12th July 2005, by a notice of initiation published in the Official Journal of the European Union⁷, the initiation of a partial interim review, in accordance with Article 19 of the basic Regulation.
- (7) The review is limited in scope to the examination of subsidisation of one exporting producer, Garware, in order to assess the need for continuation, removal or amendment of the level of the existing measures. The investigation period ran from 1st April 2004 to 31st March 2005.
- (8) The Commission officially advised the exporting producer concerned, the Government of India (‘GOI’) and the applicants of the initiation of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

⁴ OJ L 68, 8.3.2006, p. 15.

⁵ OJ L 68, 8.3.2006, p. 6.

⁶ OJ L 227, 23.8.2001, p. 1.

⁷ OJ C 172, 12.7.2005, p. 5.

- (9) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to Garware, which cooperated by replying to the questionnaire. A verification visit was carried out at Garware's premises in India.
- (10) Garware, the GOI and the applicants were informed of the essential results of the investigation and had the opportunity to comment (see recital (73) below).

B. PRODUCT CONCERNED AND LIKE PRODUCT

I. Product concerned

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

II. Like product

- (12) As in the original investigation, it was found that PET film produced and sold by Garware on the domestic market in India and PET film exported to the Community from India have the same basic physical and technical characteristics and uses. Therefore, they are like products within the meaning of Article 1(5) of the basic Regulation.

C. SUBSIDIES

I. Introduction

- (13) 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:

(a) Nationwide Schemes:

- i Advance Licence Scheme/ Advance Release Order;
- ii Duty Entitlement Passbook Scheme;
- iii Special Economic Zones/ Export Oriented Units Scheme;
- iv Export Promotion Capital Goods Scheme;
- v Income Tax Schemes
 - Export Income Tax Exemption Scheme
 - Income Tax Incentive for Research and Development
- vi Export Credit Scheme
- vii Duty-Free Replenishment Certificate

- (14) The schemes (i) to (iv) and (vii) above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on

7th August 1992 (the 'Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding export and import policy. A five-year plan relating to export and import policy for the period 1st April 2002 to 31st March 2007 was published by the GOI ('EXIM policy 2002-07'). In addition, a handbook of procedures governing the EXIM policy 2002-07 ('HOP I 2002-07') was published by the GOI and is updated on a regular basis⁸.

(15) The Income Tax Schemes specified in (v) above are based on the Income Tax Act 1961, which is amended annually by the Finance Act.

(16) The Export Credit Scheme specified in (vi) above is based on sections 21 and 35A of the Banking Regulation Act 1949, which allows the Reserve Bank of India to instruct commercial banks regarding export credits.

(b) Regional Schemes

(17) On the basis of the information contained in the review request and the replies to the Commission's questionnaire, the Commission also investigated the package scheme of incentives (hereinafter, the 'PSI') of the Government of Maharashtra (the 'GOM') 1992. This scheme is based on resolutions of the GOM Industries, Energy and Labour Department.

II. Nationwide Schemes

1. Advance Licence Scheme ('ALS')/ Advance Release Order ('ARO')

(a) Legal Basis

(18) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the EXIM policy 2002-07 and chapters 4.1 to 4.30 of the HOP I 2002-07.

(b) Eligibility

(19) Garware was not found to be using the ALS/ARO during the investigation period, therefore no further analysis of the countervailability of this scheme is necessary.

2. Duty Entitlement Passbook Scheme ('DEPBS')

(a) Legal Basis

(20) A detailed description of DEPBS is contained in paragraph 4.3 of the EXIM policy 2002-07 and in chapter 4 of HOP I 2002-07. At the time of the original investigation, two forms of DEPB existed: pre-export and post-export. In April 2000, the pre-export form of DEPB was discontinued and therefore only the post-export form was investigated in the current review.

⁸ Notification No 1/2002-07 of 31.03.2002 of the Ministry of Commerce and Industry of the Government of India.

(b) Eligibility

- (21) Any manufacturer-exporter or merchant-exporter is eligible for this scheme. Garware was found to benefit from this scheme during the investigation period.

(c) Practical Implementation

- (22) An eligible exporter can apply for DEPB credits, which are calculated as a percentage of the value of products exported under this scheme. Such DEPB rates have been established by the Indian authorities for most products, including the product concerned. They are determined on the basis of standard input-output norms ('SIONs'), taking into account a presumed import content of inputs in the export product and the customs duty incidence on such presumed imports, regardless of whether import duties have actually been paid or not.
- (23) To be eligible for benefits under this scheme, a company must export. At the point in time of the export transaction, a declaration must be made by the exporter to the authorities in India, indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue, during the dispatch procedure, an export shipping bill. This document shows, *inter alia*, the amount of DEPBS credit which is to be granted for that export transaction. At this point in time, the exporter knows the benefit he will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit. The relevant DEPBS rate to calculate the benefit is that which applied at the time the export declaration was made. Therefore, there is no possibility of a retroactive amendment to the level of the benefit.
- (24) It was also found that, in accordance with Indian accounting standards, DEPBS credits can be booked on an accruals basis as income in the commercial accounts, upon fulfilment of the export obligation.
- (25) Such credits may be used for payment of customs duties on subsequent imports of any goods unrestrictedly importable, except capital goods. Goods imported against such credits can be sold on the domestic market, subject to sales tax, or otherwise used.
- (26) DEPBS credits are freely transferable and valid for a period of 12 months from the date of issue.
- (27) An application for DEPBS credits can cover up to 25 export transactions or, if electronically filed, an unlimited amount of export transactions. *De facto*, no strict deadlines to apply for DEPBS exist, because the time periods mentioned in chapter 4.47 HOP I 2002-07 are always counted from the most recent export transaction included in a given DEPBS application.
- (28) The company brought to the Commission's attention that this scheme would soon be discontinued and be replaced by an allegedly "WTO compatible" scheme with effect from 1st April 2006. The DEPB was originally planned to expire on 1st April 2005. However, as the replacement scheme was not ready to be implemented by that date, the DEPBS was prolonged until 1st April 2006. No confirmation was given by the company whether this new scheme has finally entered into force after the latter date. In any event, this alleged change would fall outside the review investigation period.

(d) Conclusions on DEPBS

- (29) The DEPBS provides subsidies within the meaning of Article 2(1)(a)(ii) and Article (2)2 of the basic Regulation. A DEPBS credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would otherwise be due. In addition, the DEPBS credit confers a benefit upon the exporter, because it improves the liquidity of the company.
- (30) Further, the DEPBS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.
- (31) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 2(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex (III) (definition and rules for substitution drawback) of the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i), Annex I and Annexes II and III of the basic Regulation. Lastly, an exporter is eligible for DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from DEPBS.

(e) Calculation of the subsidy amount

- (32) In accordance with Articles 2(2) and 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient, which is found to exist during the review investigation period. In this regard, it was considered that the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. At this moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 2(1)(a)(ii) of the basic Regulation.
- (33) In light of the above, it is considered appropriate to assess the benefit under the DEPBS as being the sum of the credits earned on all export transactions made under this scheme during the investigation period. The company submitted that the rate applicable to the DEPBS has been reduced from 11 % to 8 % with effect from 26th May 2005, i.e., this alleged change falls outside the review investigation period; therefore, the effects and relevance of this change could not be verified and this claim must be rejected in accordance with Article 5 of the basic Regulation.
- (34) Fees necessarily incurred to obtain the subsidy were deducted from the credits received to arrive at the subsidy amount as the numerator, pursuant to Article 7(1)(a) of the basic Regulation.

- (35) In accordance with Article 7(2) of the basic Regulation, the subsidy amount has been allocated over the total export turnover during the review investigation period as the appropriate denominator, as the subsidy is contingent on export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. Garware benefited from this scheme during the investigation period and obtained a subsidy of 10,3 %.

3. *Export Oriented Unit Scheme ('EOUS')/ Special Economic Zones Scheme ('SEZS')*

(a) Legal Basis

- (36) The details of these schemes are contained in chapters 6 (EOUS) and 7 (SEZS) respectively of the EXIM policy 2002-07 and HOP I 2002-07.

(b) Eligibility

- (37) Garware was not found to be set up under either of these schemes during the investigation period, therefore no further analysis of their countervailability is necessary.

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

(a) Legal Basis

- (38) A detailed description of the EPCGS can be found in Chapter 5, EXIM Policy 2002-07 and in Chapter 5, HOP I 2002-07.

(b) Eligibility

- (39) Any manufacturer-exporter and merchant-exporter "tied to" a supporting manufacturer or service provider is eligible for this scheme. Garware was found to benefit from this scheme during the investigation period.

(c) Practical Implementation

- (40) Under the condition of an export obligation, a company is allowed to import capital goods (new and – since April 2003 – second-hand capital goods up to 10 years' old) at a reduced rate of duty. To this end, the GOI issues, upon application and the payment of a fee, an EPCG licence. Since April 2000, the scheme provides for a reduced import duty rate of 5 %, applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period.

(d) Conclusion on the EPCGS

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

- (42) Further, the EPCGS is contingent in law upon export performance, since such licences can not be obtained without a commitment to export. Therefore, it is deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.
- (43) The 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
- (44) The numerator was established as follows: the subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of unpaid customs duty on imported capital goods spread over a period which reflects the normal depreciation period of such capital goods in the PET film industry. Interest was added to this amount in order to reflect the full value of the benefit over time. Fees necessarily incurred to obtain the subsidy were deducted, in accordance with Article 7(1)(a) of the basic Regulation.
- (45) 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 review investigation period as the appropriate denominator, as the subsidy is contingent upon export performance. The subsidy obtained by Garware is 1,8 %.

5. *Income Tax Exemption Scheme ('ITES')*

- (a) Legal basis
- (46) The legal basis for this scheme is contained in the Income Tax Act 1961, amended yearly by the Finance Act. The latter sets out, every year, the basis for the collection of taxes, as well as various exemptions and deductions which can be claimed. Exporting companies may claim income tax exemptions under sections 10A, 10B and 80HHC of the Income Tax Act 1961.
- (b) Practical implementation
- (47) As Garware was not found to have availed of any benefits under the ITES, no further analysis of the countervailability of this scheme is necessary.

6. *Export Credit Scheme ('ECS')*

- (a) Legal basis
- (48) 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

- (49) Manufacturing exporters and merchant exporters are eligible for this scheme. Garware was found to benefit from this scheme during the investigation period.

(c) Practical implementation

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

(d) Conclusion on the ECS

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

(e) Calculation of the subsidy amount

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

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

(a) Legal basis

(54) The legal basis for this scheme is contained in paragraphs 4.2.1 to 4.2.7 of the EXIM Policy 2002-07 and in paragraphs 4.31 to 4.36 of the HOP I 2002-07.

(b) Practical Implementation

(55) As Garware was not found to have availed of any benefits under the DFRC, no further analysis of the countervailability of this scheme is necessary.

III. Regional Schemes

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

(a) Legal basis

(56) In order to encourage the dispersal of industries to less developed areas of the State, the GOM has been granting incentives to new expansion units set up in developing regions of the State, since 1964, under a scheme commonly known as the "Package Scheme of Incentives". The scheme has been amended several times since its introduction and the "1993 scheme" was operative from 1st October 1993 to 31st March 2001, whereas the latest amendment, the "2001 scheme", was introduced on 31st March 2001 and foreseen to be operative up to 31st March 2006. The PSI of the GOM is composed of several sub-schemes, the main being the exemption from local sales tax and the refund of octroi tax.

(b) Eligibility

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

(c) Practical implementation

(58) *Exemption from local sales tax:* Goods are normally subject to central sales tax (for inter-State sales) or State sales tax (for intra-State sales) at varying levels, depending upon the State(s) in which transactions are being made. There is no sales tax on the import or export of goods, while domestic sales are subject to the sales tax at the applicable rates. Under the exemption scheme, designated units are not required to collect any sales tax on their sales transactions. Similarly, designated units are exempted from payment of the local sales tax on their purchases of goods from a supplier itself eligible for the scheme. Whereas the sales transaction does not confer any benefit on the designated selling unit, the purchase transaction does confer a benefit to the designated purchasing unit. Garware was found to have benefited from this exemption during the investigation period.

(59) *Refund of the Octroi Tax*: Octroi is a tax levied by local Governments in India, including the GOM, on goods that enter the territorial limits of a town or district. Industrial enterprises are entitled to a refund of the octroi tax from the GOM, if their facility is located in certain specified towns and districts within the territory of the State. The total amount that may be refunded is restricted to 100 % of the fixed capital investment. Garware was found to have benefited from this refund during the investigation period.

(d) Conclusion on the PSI of the GOM

(60) 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 two sub-schemes examined constitute 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 its liquidity.

(61) The company submitted that the sales tax was abolished on 1st April 2005 and that the GOM has since introduced a "Value Added Tax" regime, under which the company is obliged to pay the full rate. However, this alleged change occurred after the end of the investigation period, therefore the effects and relevance of this change could not be verified. In any event, no relevant evidence was submitted relating to the regime and the company's obligations thereunder. In accordance with Article 5 of the basic Regulation, this claim has to be rejected.

(62) The scheme is only available to companies which have invested within certain designated geographical areas within the jurisdiction of the State of Maharashtra. It is not available to companies located outside these areas. The level of the benefit is different according to the area concerned. The scheme is specific, in accordance with Articles 3(2)(a) and 3(3) of the basic Regulation and therefore countervailable.

(e) Calculation of the subsidy amount

(63) Concerning the tax exemption, the subsidy amount was calculated on the basis of the amount of sales tax normally due during the review investigation period, but which remained unpaid under the scheme. Similarly, as far as octroi is concerned, the benefit to the exporter was calculated as the amount of octroi tax refunded during the investigation period. Pursuant to Article 7(2) of the basic Regulation, these amounts of subsidy (numerator) have then been allocated over the total sales during the review investigation period as the appropriate denominator, as the subsidy is not export contingent and it was not granted by reference to the quantities manufactured, produced, exported or transported. During this period, Garware benefited from these schemes and obtained subsidies of 1,6 %.

IV. Amount of Countervailable Subsidies

(64) The amount of countervailable subsidies determined in accordance with the basic Regulation, expressed *ad valorem*, for the investigated exporting producer is 14,9 %. This amount of subsidisation exceeds the *de minimis* threshold mentioned under Article 14(5) of the basic Regulation.

SCHEME	DEPB	EPCG	ECS	PSI of GOM	TOTAL
	%	%	%	%	%
Garware	10,3	1,8	1,2	1,6	14,9

(65) It is therefore considered that, pursuant to Article 19 of the basic Regulation, the measures currently in force are no longer sufficient to counteract the countervailable subsidies which are causing the injury to the Community industry.

V. Lasting nature of changed circumstances with regard to subsidisation

(66) In accordance with Article 19(2) of the basic Regulation, it was examined whether the continuation of the existing measure would not be sufficient to counteract the countervailable subsidy which is causing injury.

(67) It was established that, during the investigation period, Garware continued to benefit from countervailable subsidisation by the Indian authorities. Further, the subsidy rate found during this review is considerably higher than that established during the original investigation. The subsidy schemes analysed above give recurring benefits. With the exception of the DEPBS and the Sales Tax refund, there is no allegation that these programmes will be phased out in the foreseeable future. According to Garware, a replacement scheme to the DEPBS was planned to enter into force on 1st April 2006. No confirmation was given by the company whether this in fact took place. The situation arising from the replacement of the DEBPS by an allegedly “WTO compatible” scheme, on which the Commission has no information, will have to be assessed in due time. In the absence of any substantiated evidence of the replacement of the DEBPS, it is considered that, for the need of the present review, the DEPBS is still in place. Similarly, the company did not provide any details of the “VAT-like” scheme which allegedly replaced the Sales Tax in the GOM after the end of the investigation period and therefore it was considered that, for the need of the present review, the Sales Tax scheme is still in place.

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

VI. Conclusion

(69) In view of the conclusions reached with regard to the level of subsidisation of Garware and the insufficiency of the current measures to counteract the countervailable subsidies found, the countervailing duty on Garware imports of the product concerned should be amended in order to reflect the new subsidisation levels found.

(70) The amended countervailing duty set out in recital (72) below was established at the new rate of subsidisation found during the present review, as the injury margin calculated in the original investigation remains higher.

(71) Since, pursuant to Article 24(1) of the basic Regulation and Article 14(1) of Regulation (EC) No 384/96, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation, the countervailing duty found as a result of this review investigation to correspond to export subsidies (13,3 %) shall be deducted from the anti-dumping duty imposed on Garware by Regulation (EC) No 1676/2001. Following the amendment to the latter, introduced by Regulation (EC) No 366/2006, a dumping margin of 20,1 % was established for Garware. Of that, 2,7 % was deducted to reflect the countervailing duty then in force corresponding to export subsidies and thus an anti-dumping duty of 17,4 % was imposed on that company. As a result of the current review, a further 10,6 % shall be deducted from its individual anti-dumping duty, reflecting the countervailing duty corresponding to export subsidies found; the anti-dumping duty imposed on Garware should thus be reduced by that amount to 6,8 %.

(72) On the basis of the above, the proposed duty amounts concerning Garware, expressed on the CIF Community border price, customs duty unpaid, are as follows:

	Export Subsidy Margin	Total Subsidy Margin	Dumping Margin	CVD Duty	AD Duty	Total Duty Rate
	%	%	%	%	%	%
Garware	13,3	14,9	20,1	14,9	6,8	21,7

(73) Garware, the GOI and the applicants were informed of the essential facts and considerations on the basis of which it was intended to recommend the amendment of the measures in force and had the opportunity to comment. No comments were received by Garware or the GOI; the applicant's comments reflect their agreement with the conclusions reached by the Commission.

(74) The individual company countervailing and anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the investigations which led to the adoption of Regulation (EC) No 367/2006 and Regulation (EC) No 366/2006, as well as of the findings of the present review. They reflect the situation found during this review with respect to Garware. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products 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'.

(75) Any claim requesting the application of these individual company countervailing and anti-dumping 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

Commission⁹ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Country	Company	Definitive duty (%)	TARIC Additional Code
India	Ester Industries Limited, 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi 110 003, India	12,0	A026
India	Flex Industries Limited, A-1, Sector 60, Noida 201 301 (U.P.), India	12,5	A027
India	Garware Polyester Limited, Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	14,9	A028
India	India Polyfilms Limited, 112 Indra Prakash Building, 21 Barakhamba Road, New Delhi 110 001, India	7,0	A029
India	Jindal Poly Films Limited, 56 Hanuman Road, New Delhi 110 001, India	7,0	A030
India	MTZ Polyfilms Limited, New India Centre, 5th Floor, 17 Co-operage Road, Mumbai 400 039, India	8,7	A031

⁹ European Commission, Directorate General for Trade, Directorate B, J-79 5/17, Rue de la Loi/Wetstraat 200, B-1049 Brussels.

India	Polyplex Corporation Limited, B-37, Sector-1, Noida 201 301, Dist. Gautam Budh Nagar, Uttar Pradesh, India	19,1	A032
India	All other companies	19,1	A999'

Article 2

In Article 1 of Council Regulation (EC) No 1676/2001, paragraph 2 shall be replaced by the following:

‘2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows for products originating in:

Country	Company	Definitive Duty (%)	TARIC Additional Code
India	Ester Industries Limited, 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi-110 003, India	17,3	A026
India	Flex Industries Limited, A-1, Sector 60, Noida 201 301 (U.P.), India	0,0	A027
India	Garware Polyester Limited, Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	6,8	A028
India	Jindal Poly Films Limited, 56 Hanuman Road, New Delhi 110 001, India	0,0	A030
India	MTZ Polyfilms Limited, New India Centre, 5th Floor, 17 Co-operage Road, Mumbai 400 039, India	18,0	A031
India	Polyplex Corporation Limited, B-37, Sector-1, Noida 201 301, Dist. Gautam Budh Nagar, Uttar Pradesh, India	0,0	A032
India	All other companies	17,3	A999

Korea	Kolon Industries Inc., Kolon Tower, 1-23, Byulyang-dong, Kwacheon-city, Kyunggi-do, Korea	0,0	A244
Korea	SKC Co. Ltd, Kyobo Gangnam Tower, 1303-22, Seocho 4 Dong, Seocho Gu, Seoul 137-074, Korea	7,5	A224
Korea	Toray Saehan Inc. 17F, LG Mapo B/D, 275 Kongdug-Dong, Mapo-Gu, Seoul 121-721, Korea	0,0	A222
Korea	HS Industries Co. Ltd, Kangnam Building 5 th Floor, 1321, Seocho-Dong, Seocho-Ku, Seoul, Korea	7,5	A226
Korea	Hyosung Corporation, 450, Kongduk-Dong, Mapo-Ku, Seoul, Korea	7,5	A225
Korea	KP Chemical Corporation, No. 89-4, Kyungun-Dong, Chongro-Ku, Seoul, Korea	7,5	A223
Korea	All other companies	13,4	A999'

Article 3

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

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

Done at Brussels, xx xxxxx 2006

*For the Council
The President
[...]*