# Council Regulation (EC) No 1288/2006 of 25 August 2006 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

## COUNCIL REGULATION (EC) No 1288/2006

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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 6 October 1997 on protection against subsidised imports from countries not members of the European Community[(1)] (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 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

I. Previous investigation and existing measures

(1) The Council, by Regulation (EC) No 2597/1999[(3)], 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 the company) was 3,8 %. The original investigation period was 1 October 1997 to 30 September 1998.

**Changes to legislation:** *There are currently no known outstanding effects for the Council Regulation (EC) No 1288/2006. (See end of Document for details)*

(2) The Council, by Regulation (EC) No 367/2006[4], 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[5], amended Regulation (EC) No 1676/2001[6] 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 12 July 2005, by a notice of initiation published in the *Official Journal of the European Union*[7], 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 1 April 2004 to 31 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.

(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 7 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 1 April 2002 to 31 March 2007 was published by the GOI (EXIM policy 2002-07). In addition, a handbook of procedures governing

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the EXIM policy 2002-07 (HOP I 2002-07) was published by the GOI and is updated on a regular basis[8].

(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.

(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 1 April 2006. The DEPB was originally planned to expire on 1 April 2005. However, as the replacement scheme was not ready to be implemented by that date, the DEPBS was prolonged until 1 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