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2012/0121 (NLE)

Proposal for a

# COUNCIL REGULATION

**terminating the partial interim review concerning the countervailing measures on imports of certain polyethylene terephthalate (PET) originating in, inter alia, India**

# EXPLANATORY MEMORANDUM

## 1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ('the basic Regulation') in the proceeding concerning imports of certain polyethylene terephthalate (PET) originating, inter alia, in India.

- **General context**

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.

- **Existing provisions in the area of the proposal**

Definitive measures are in force and were imposed by Council Regulation (EC) No 1645/2005 of 6 October 2005 amending Regulation (EC) No 2603/2000 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating, *inter alia*, in India.

- **Consistency with other policies and objectives of the Union**

Not applicable.

## 2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not contain provisions for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

## 3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 2 April 2011 the Commission initiated a partial interim review concerning imports of certain polyethylene terephthalate (PET) originating, *inter alia*, in India.

The attached proposal for a Council Regulation is based on the findings of the investigation carried out which is limited in scope to the examination of subsidisation and as far as the applicant is concerned.

The investigation found that the level of subsidisation was lower than in the last investigation, but that the changed circumstances leading to the reduced subsidy margin are not of a lasting nature

It is therefore proposed that the Council adopt the attached proposal for a termination Regulation which should be published no later than 1 July 2012.

- **Legal basis**

Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instrument: regulation.

Other means would not be adequate because the basic Regulation does not provide for alternative options.

## 4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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## terminating the partial interim review concerning the countervailing measures on imports of certain polyethylene terephthalate (PET) originating in, inter alia, India

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community[1] ('the basic Regulation'), and in particular Articles 19 and 24 thereof,

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

Whereas:

1. PROCEDURE

1.1. Previous investigation and existing countervailing measures

(1) By Regulation (EC) No 2603/2000[2], the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) originating, *inter alia*, in India ('the original anti-subsidy investigation'). The definitive findings and conclusions of an accelerated review pursuant to Article 20 of the basic Regulation are set out in Council Regulation (EC) No 1645/2005[3]. Following an expiry review, the Council, by Regulation (EC) No 193/2007[4], imposed a definitive countervailing duty for a further period of 5 years. The countervailing measures were amended by Council Regulation (EC) No 1286/2008[5] following a partial interim review ('the last review investigation'). The countervailing measures consist of a specific duty. The rate of the duty ranges between EUR 0 and EUR 106,5 per tonne for individually named Indian producers with a residual duty rate of EUR 69,4 per tonne imposed on imports from all other producers.

(2) Following a name change of one Indian company, South Asian Petrochem Ltd, by Notice (EC) No 2010/C 335/07[6], the Commission concluded that the anti-subsidy

1 OJ L 188, 18.7.2009, p. 93.
2 OJ L 301, 30.11.2000, p. 1.
3 OJ L 266, 11.10.2005, p. 1.
4 OJ L 59, 27.2.2007, p. 34.
5 OJ L 340, 19.12.2008, p. 1.
6 OJ C 335, 11.12.2010, p. 7.

findings in respect of South Asian Petrochem Ltd should apply to Dhunseri Petrochem & Tea Limited.

1.2. Existing anti-dumping measures

(3) By Regulation (EC) No 2604/2000[7], the Council imposed a definitive anti-dumping duty on imports of PET originating, *inter alia*, in India ('the original anti-dumping investigation'). A review pursuant to Article 11(4) ('the new exporter review') of Council Regulation (EC) No 1225/2009[8] ('the basic anti-dumping Regulation') concerning South Asian Petrochem Ltd was subsequently conducted and its definitive findings and conclusions are set out in Council Regulation (EC) No 1646/2005[9]. Following an expiry review, the Council, by Regulation (EC) No 192/2007[10], imposed a definitive anti-dumping duty for a further period of five years. The anti-dumping measures were amended by Council Regulation (EC) No 1286/2008 following a partial interim review investigation ('the last anti-dumping review investigation'). The measures were set at the level of the injury elimination and consisted of specific anti-dumping duties. The rate of the duty ranges between EUR 87,5 and EUR 200,9 per tonne for individually named Indian producers with a residual duty rate of EUR 153,6 per tonne imposed on imports from all other producers ('the current anit-dumping duties').

(4) Following a name change of one Indian company, South Asian Petrochem Ltd, by Notice (EC) No 2010/C 335/06[11], the Commission concluded that the anti-dumping findings in respect of South Asian Petrochem Ltd should apply to Dhunseri Petrochem & Tea Limited.

(5) By Decision 2005/697/EC[12] the Commission accepted undertakings offered by South Asian Petrochem Ltd setting a minimum import price ('MIP') ('the undertaking'). Following a name change, the Commission concluded by Notice (EC) No 2010/C 335/05 that the undertaking offered by South Asian Petrochem Ltd should apply to Dhunseri Petrochem & Tea Limited.

1.3. Initiation of a partial interim review

(6) A request for a partial interim review pursuant to Article 19 of the basic Regulation was lodged by Dhunseri Petrochem & Tea Limited, an Indian exporting producer of PET ('the applicant'). The request was limited in scope to subsidisation and to the applicant. The applicant at the same time also requested the review of the current anti-dumping measures. The residual anti-dumping and countervailing duties are applicable to imports of products produced by the applicant and sales of the applicant to the Union are covered by the undertaking.

(7) The applicant provided *prima facie* evidence that the continued application of the measure at its current level was no longer necessary to offset the countervailable subsidisation. In particular, the applicant provided prima facie evidence showing that

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7 OJ L 301, 30.11.2000, p. 21.
8 OJ L 343, 22.12.2009, p. 51.
9 OJ L 266, 11.10.2005, p. 10.
10 OJ L 59, 27.2.2007, p. 1.
11 OJ C 335, 11.12.2010, p. 6.
12 OJ L 266, 11.10.2005, p. 62.

its subsidy amount has decreased well below the duty rate currently applicable to it. This reduction in the overall subsidy level would mainly be due to the termination of its Export Oriented Unit ('EOU') status. With a magnitude of 13,5%, the EOU scheme accounted for the vast majority of the 13,9% subsidies established during the accelerated review.

(8) Having determined, after consulting the Advisory Committee, that the request contained sufficient *prima facie* evidence, the Commission announced on 2 April 2011 the initiation of a partial interim review ('the present review') pursuant to Article 19 of the basic Regulation by a notice of initiation published in the *Official Journal of the European Union*[13]. The review was limited in scope to the examination of subsidisation in respect of the applicant.

1.4. Parties concerned by the investigation

(9) The Commission officially informed the applicant, the representatives of the exporting country and the association of Union producers about the initiation of the 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.

(10) One interested party requested and was granted a hearing.

(11) In order to obtain the information deemed necessary for its investigation, the Commission sent a questionnaire to the applicant and the government of India ('GOI') and received replies within the deadline set for that purpose.

(12) The Commission sought and verified all information deemed necessary for the determination of subsidisation. The Commission carried out verification visits at the premises of the applicant in Kolkata, India and at the premises of the GOI in New Delhi (Directorate General of Foreign Trade and Ministry of Commerce) and Kolkata (Commerce & Industries Department, Government of West Bengal).

1.5. Review investigation period

(13) The investigation of subsidisation covered the period from 1 April 2010 to 31 March 2011 (‘the review investigation period’ or ‘RIP’).

1.6. Parallel anti-dumping investigation

(14) On 2 April 2011[14] the Commission announced the initiation of a partial interim review of the current anti-dumping measures pursuant to Article 11(3) of the basic anti-dumping Regulation, limited in scope to the examination of dumping in respect of the applicant.

(15) In the parallel anti-dumping investigation it was found that the circumstances with regard to dumping have changed significantly and lastingly, therefore the current anti-dumping measures applicable to the applicant have been changed.

2. PRODUCT CONCERNED AND LIKE PRODUCT

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[13] OJ C 102, 2.4.2011, p.15.
[14] OJ C 102, 2.4.2011, p.18.

2.1. Product concerned

(16) The product under review is PET having a viscosity of 78 ml/g or higher, according to the ISO Standard 1628- 5, currently falling within CN code 3907 60 20 and originating in India ('the product concerned').

2.2. Like product

(17) The investigation revealed that the product concerned produced in India and sold to the Union is identical in terms of physical and chemical characteristics and uses to the product produced and sold on the domestic market in India. It is therefore concluded that products sold on the domestic and export markets are like products within the meaning of Article 2(c) of the basic Regulation.

3. RESULTS OF THE INVESTIGATION

3.1. Subsidisation

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

*Nationwide schemes:*

(a) Duty Entitlement Passbook Scheme ('DEPBS');

(b) Export Oriented Units ('EOU') / Export Processing Zones ('EPZ') / Special Economic Zones ('SEZ');

(c) Export Promotion Capital Goods Scheme ('EPCGS');

(d) Focus Market Scheme ('FMS');

(e) Export Credit Scheme ('ECS');

(f) Income Tax Exemption Scheme ('ITES').

*Regional schemes:*

(g) West Bengal Incentive Scheme.

(19) The schemes (a) to (d) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in Foreign Trade Policy ('FTP') documents, which are issued by the Ministry of Commerce every five years and updated regularly. Two FTP documents are relevant to the RIP of this case, i.e. FTP 04-09 and FTP 09-14. The latter entered into force in August 2009. In addition, the GOI also sets out the procedures governing FTP 04-09 and FTP 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 04-09' and 'HOP I 09-14' respectively). The Handbook of Procedures is also updated on a regular basis.

(20) Scheme (e) 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.

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

(22) Scheme (g) is administered by the Government of West Bengal and set out in Government of West Bengal Commerce & Industries Department notification No 580-CI/H of 22 June 1999 (WBIS 1999), replaced by notification No 134-CI/O/Incentive/17/03/I of 24 March 2004 (WBIS 2004).

3.2. Duty Entitlement Passbook Scheme ('DEPBS')

(a) *Legal Basis*

(23) The detailed description of the DEPBS is contained in paragraphs 4.3 of FTP 04-09 and FTP 09-14 as well as in chapter 4 of HOP I 04-09 and HOP I 09-14.

(b) *Eligibility*

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

(c) *Practical implementation of the DEPBS*

(25) An eligible exporter can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS rates have been established by the Indian authorities for most products, including the product concerned. They are determined regardless of whether import duties have actually been paid or not. The DEPB rate for the product concerned during the RIP of the current investigation was 8% of FOB value, subject to a value cap of INR 58/kg. As a result, the maximum benefit is INR 4,64/kg.

(26) 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 it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit. The relevant DEPBS rate to calculate the benefit is that which applied at the time the export declaration was made. Therefore, there is no possibility for a retroactive amendment to the level of the benefit.

(27) It was found that in accordance with Indian accounting standards, DEPBS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods unrestrictedly importable, except capital goods. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. DEPBS credits are freely transferable and valid for a period of 24 months from the date of issue.

(28) Applications for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. *De facto,* no strict deadlines to apply for DEPBS credits exist. The electronic system used to manage DEPBS does not automatically exclude export transactions exceeding the deadline submission periods mentioned in paragraph 4.47 of HOP I 04-09 and HOP I 09-14. Furthermore, as clearly provided in paragraph 9.3 of the HOP I 04-09 and HOP I 09-14, applications received after the expiry of submission deadlines can always be considered with the imposition of a minor penalty fee (i.e. 10% of the entitlement).

(29) It was found that the applicant used this scheme during the RIP.

(d) *Conclusions on DEPBS*

(30) The DEPBS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A DEPBS credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, the DEPBS credit confers a benefit upon the exporter, because it improves its liquidity.

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

(32) This scheme cannot be considered as permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation as claimed by the applicant. It does not conform to the strict rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I and Annexes II and III of the basic Regulation. Lastly, an exporter is eligible for the DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DEPBS.

(e) *Abolishment of the DEPB scheme*

(33) With Public Notice No. 54 (RE-2010) /2009-2014 of 17 June 2011, the DEPB scheme got a final extension of 3 months until 30 September 2011. As no further extension was published subsequently, the DEPB scheme has effectively been withdrawn from 30 September 2011 onwards. Consequently, this scheme will not confer any benefits on the applicant after 30 September 2011. It has therefore be verfied whether, in accordance with Article 15(1) of the basic Regulation, measures should be imposed on this scheme.

(34) In this respect, it was established that the applicant received similar benefits pursuant to the parallel "duty drawback" scheme. The duty drawback rate for PET was 5,5% of

FOB value, subject to a maximum amount of INR 5,50/kg. However, since the "duty drawback" scheme was not used during the RIP, it is not possible to calculate a subsidy amount for this scheme.

(35) The applicant claimed that the Duty Drawback scheme conforms with the "*guidelines on consumption of inputs in the production process*" in Annex II of the basic Regulation, specifically paragraph I of said Annex. However, similar to the DEPB scheme, it was established that the duty drawback rate is determined regardless of whether import duties have actually been paid or not.

(f) *Calculation of the subsidy amount*

(36) In accordance with Articles 3(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 3(1)(a)(ii) of the basic Regulation.

(37) 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 RIP.

(38) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amounts as numerator, pursuant to Article 7(1)(a) of the basic Regulation.

(39) In accordance with Article 7(2) of the basic Regulation these subsidy amounts have been allocated over the total export turnover during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(40) Based on the above, the subsidy rate established in respect of this scheme for the applicant during the RIP amounts to 6,7%.

3.3. Export Oriented Units ('EOU') / Export Processing Zones ('EPZ') / Special Economic Zones ('SEZ')

(41) In the course of the investigation it was found that the applicant did not obtain any benefits under EOU/EPZ/SEZ during the RIP. It was therefore not necessary to further analyse these schemes in this investigation.

3.4. Export Promotion Capital Goods scheme (‘EPCGS’)

(a) *Legal basis*

(42) The detailed description of EPCGS is contained in chapter 5 of FTP 04-09 and FTP 09-14 as well as in chapter 5 of HOP I 04-09 and HOP I 09-14.

(b) *Eligibility*

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

(c) *Practical implementation*

(44) Under the condition of an export obligation, a company is allowed to import capital goods (new and second-hand capital goods up to 10 years old) at a reduced rate of duty. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. 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. Under FTP 09-14 the capital goods can be imported with 0% duty rate under the EPCGS but in such case the time period for fulfilment of the export obligation is shorter.

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

(46) It was found that the applicant used this scheme during the RIP.

(d) *Conclusion on EPCGS*

(47) The EPCGS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(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 the company’s liquidity.

(48) Furthermore, 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 4(4), first subparagraph, point (a) of the basic Regulation. It has been claimed by the applicant that EPCGS subsidies with regard to the purchase of capital goods where the export obligation was already fulfilled before the RIP, should not anymore be treated as contingent upon export performance. Therefore they should not be treated as specific subsidies and should not be countervailed. However, this claim has to be rejected. It has to be underlined that the subsidy itself was contingent upon export performance i.e. it would not have been granted had the company not accepted a certain export obligation.

(49) EPCGS cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(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*

(50) The subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread

across a period which reflects the normal depreciation period of such capital goods in the industry concerned, i.e. 18,93 years. Interests were added to this amount in order to reflect the full value of the benefit over time. The commercial interest rate for local currency loans during the review investigation period in India was considered appropriate for this purpose.

(51) In accordance with Articles 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.

(52) The subsidy rate established in respect of this scheme for the applicant during the RIP amounts to 0,6%.

3.5. Focus Market Scheme ('FMS')

(a) *Legal basis*

(53) The detailed description of FMS is contained in paragraph 3.9.1 to 3.9.2.2 of FTP 04-09 and paragraph 3.14.1 to 3.14.3 of FTP 09-14 and in paragraph 3.20 to 3.20.3 of HOP I 04-09 and paragraph 3.8 to 3.8.2 of HOP I 09-14.

(b) *Eligibility*

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

(c) *Practical implementation*

(55) Under this scheme exports of all products to countries notified under Appendix 37(C) of HOP I 04-09 and HOP I 09-14 are entitled to duty credit equivalent to 2,5% of the FOB value of products exported under this scheme. Certain type of export activities are excluded from the scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units. Also excluded from the scheme are certain types of products, e.g. diamonds, precious metals, ores, cereals, sugar and petroleum products.

(56) The duty credits under FMS are freely transferable and valid for a period of 24 months from the date of issue of the relevant credit entitlement certificate. They can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods.

(57) The credit entitlement certificate is issued from the port from which the exports have been made and after realisation of exports or shipment of goods. As long as the applicant provides to the authorities copies of all relevant export documentation (e.g. export order, invoices, shipping bills, bank realisation certificates), the GOI has no discretion over the granting of the duty credits.

(58) It was found that the applicant used this scheme during the RIP.

(d) *Conclusion on FMS*

(59) The FMS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A FMS duty credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, the FMS duty credit confers a benefit upon the exporter, because it improves its liquidity.

(60) Furthermore, FMS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(61) 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 point (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. 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 point (i) of Annex I and Annexes II and III of the basic Regulation. An exporter is eligible for FMS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from FMS. Moreover, an exporter can use FMS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in Annex I point (i) of the basic Regulation, because they are not consumed in the production of the exported products.

(e) *Calculation of the subsidy amount*

(62) The amount of countervailable subsidies was calculated on the basis of the benefit conferred on the recipient, which is found to exist during the RIP as booked by the applicant on an accrual basis as income at the stage of export transaction. In accordance with Article 7(2) and 7(3) of the basic Regulation this subsidy amount (nominator) 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.

(63) The subsidy rate established with regard to this scheme during the RIP for the applicant amounts to less than 0,1%.

3.6. Export Credit Scheme ('ECS')

(64) It was established that the applicant received the benefit of preferential interest rates for its export financing during the RIP until 30 June 2011. The legal basis for this preferential interest rate is set out in Master Circular on Rupee / Foreign Currency Export Credit & Customer Services to Exporters DBOD No DIR.(Exp). BC

07/04.02.02/2009-10 of the Reserve Bank of India (RBI), which is addressed to all commercial banks in India.

(65) On 1 July 2011, the terms and conditions of the ECS were revised by Master Circular on Rupee / Foreign Currency Export Credit & Customer Services to Exporters DBOD No.DIR. (Exp).BC.04/04.02.002/2011-12. The revised conditions did not confer any benefits on the applicant. In accordance with Article 15(1) of the basic Regulation, this scheme shall therefore not be countervailed.

3.7. Income Tax Exemption Scheme ('ITES')

(66) In the course of the investigation it was found that the applicant did not obtain any benefits under ITES during the RIP. It was therefore not necessary to further analyse this scheme in this investigation.

3.8. West Bengal Incentive Scheme 1999 ('WBIS 1999')

(67) The State of West Bengal grants to eligible industrial enterprises incentives in the form of a number of benefits, including a remission of sales tax and central sales tax on sales of finished goods, in order to encourage the industrial development of economically backward areas within this State.

(a) *Legal basis*

(68) The detailed description of this scheme as applied by the Government of West Bengal ('GOWB') is set out in Notification No 580-CI/H of 22 June1999 of the GOWB Commerce & Industries Department.

(b) *Eligibility*

(69) Companies setting up a new industrial establishment or making a large-scale expansion of an existing industrial establishment in backward areas are eligible to avail benefits under this scheme. Nevertheless, an exhaustive list of ineligible industries (negative list of industries) exists preventing companies in certain fields of operations from benefiting from the incentives.

(c) *Practical implementation*

(70) Under this scheme, companies must invest in backward areas. These areas, which represent certain territorial units in West Bengal are classified according to their economic development into different categories while at the same time there are developed areas excluded from the application of the incentive schemes. The main criteria to establish the amount of the incentives are the size of the investment and the area in which the enterprise is or will be located.

(d) *Conclusion*

(71) This scheme provides subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation. It constitutes a financial contribution by the GOWB, since the incentives granted, in the present case sales tax and central sales tax remissions on sales of finished goods, decrease tax revenue which would be otherwise due. In

addition, these incentives confer a benefit upon a company, because they improve its financial situation since taxes otherwise due are not paid.

(72) Furthermore, this scheme is regionally specific in the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation since it is only available to certain companies having invested within certain designated geographical areas within the jurisdiction of the State concerned. It is not available to companies located outside these areas and, in addition, the level of benefit is differentiated according to the area concerned.

(73) The WBIS 1999 is therefore countervailable.

(e) *Calculation of the subsidy amount*

(74) The subsidy amount was calculated on the basis of the amount of the sales tax and central sales tax on sales of finished goods normally due during the review investigation period but which remained unpaid under this scheme. In accordance with Article 7(2) of the basic Regulation, the amount of subsidy (numerator) have then been allocated over total sales during the review investigation period as appropriate denominator, because the subsidy is not export contingent and it was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy rate obtained amounted to 1,4%.

3.9. Amount of countervailable subsidies

(75) The amount of countervailable subsidies determined in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the applicant amounts to 8,7%. These amounts of subsidisation exceed the *de minimis* threshold mentioned under Article 14(5) of the basic Regulation.

(76) The levels of subsidisation established in the current procedure for the applicant is as follows:

| **SCHEMES** | DEPBS | EPCGS | FMS | WBIS | **Total** |
|---|---|---|---|---|---|
| Dhunseri Tea & Petrochem | 6,7% | 0,6% | < 0,1% | 1,4% | **8,7%** |

(77) It is therefore considered that, pursuant to Article 19 of the basic Regulation, subsidisation continued during the RIP.

3.10. Lasting nature of changed circumstances with regard to subsidisation

(78) In accordance with Article 19(4) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be considered to be of a lasting nature.

(79) It was established that, during the RIP, the applicant continued to benefit from countervailable subsidisation by the GOI. Further, the subsidy rate found during the present review is lower than that established during the last review investigation. It was equally established that the changes claimed by the applicant in recital (7) above

did indeed take place. Indeed, the applicant did no longer benefit from the EOU scheme during the RIP as indicated in recital (41) above.

(80) However, it was also established that the most important scheme used by the applicant during the RIP (i.e. DEBPS) was discontinued on 30 September 2011, and another scheme not used during the RIP (i.e. duty drawback) is currently used by the applicant. It is therefore evident that the situation prevailing during the RIP is not of a lasting nature, as it has already significantly changed in the meantime.

(81) It is therefore concluded that the partial interim review investigation should be terminated without amending the countervailing measures in force. The applicant as well as the other parties concerned were informed of the facts and considerations on the basis of which it was intended to propose the termination of the investigation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The partial interim review of the countervailing measures applicable to imports of polyethylene terephthalate currently falling within CN code 3907 60 20 and originating, *inter alia*, in India, is hereby terminated without amending the measures in force.

*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,

*For the Council*
*The President*