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EUROPEAN COMMISSION

Brussels, 4.2.2011
COM(2011) 39 final

2011/0018 (NLE)

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

EXPLANATORY MEMORANDUM

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 anti-subsidy proceeding concerning imports of polyethylene terephthalate (PET) film originating 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 measures in the area of the proposal

Council Regulation (EC) No 367/2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India as last amended by Council Implementing Regulation (EU) No 806/2010.

Consistency with the other policies and objectives of the Union

Not applicable.

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 provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

On 14 January 2010, the Commission initiated a partial interim review limited to subsidy aspects of the countervailing measures applicable to imports of polyethylene terephthalate

(PET) film originating in India. The review was initiated because the applicant, an exporting producer in India, provided sufficient *prima facie* evidence that the circumstances with regard to subsidisation on the basis of which measures were established have changed and that these changes are of a lasting nature.

The partial interim review investigation confirmed that (i) the level of subsidisation with regard to the concerned Indian producer has decreased; (ii) the actual modalities of the investigated schemes and their countervailability have not changed. Since it was demonstrated that the applicant will continue to receive subsidies in the future of an amount which is well below the duty rate currently applicable to it, the level of the measures should be amended to reflect the new findings. The changed circumstances were found to be of a lasting nature.

Therefore, it is proposed that the Council adopts the attached proposal for a Regulation so as to amend the duty rate applicable to the Indian producer concerned to 11%. This Regulation should be published in the *Official Journal of the European Union* not later than 14 April 2011.

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 and in particular Articles 19 and Article 22 thereof.

Subsidiarity principle

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

Proportionality principle

The proposal complies with the proportionality principle because the form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

An 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 instruments: Council Regulation.

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

BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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

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 Community¹ ('the basic Regulation'), and in particular Article 19 and Article 22 thereof,

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

Whereas:

A. PROCEDURE

1. Previous investigation and existing countervailing measures

- (1) In December 1999, by Regulation (EC) No 2597/1999², the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) film ('the product concerned') currently falling within CN codes ex 3920 62 19 and ex 3920 62 90, originating in India. The measures took the form of an *ad valorem* countervailing 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 investigation period of the original investigation was 1 October 1997 to 30 September 1998.
- (2) In March 2006, by Regulation (EC) No 367/2006³ ('Regulation (EC) No 367/2006'), the Council, following an expiry review pursuant to Article 18 of the basic Regulation, maintained the definitive countervailing duty imposed by Regulation (EC) No 2597/1999 on imports of PET film originating in India. The review investigation period was 1 October 2003 to 30 September 2004.
- (3) In August 2006, by Regulation (EC) No 1288/2006⁴, the Council, following an interim review concerning the subsidisation of an Indian PET film producer, amended the

¹ OJ L 188, 18.7.2009, p. 93.

² OJ L 316, 10.12.1999, p. 1.

³ OJ L 68, 8.3.2006, p. 15.

⁴ OJ L 236, 31.8.2006, p. 1.

definitive countervailing duty imposed on this company by Regulation (EC) No 367/2006.

- (4) In September 2007, by Regulation (EC) No 1124/2007⁵, the Council, following a partial interim review concerning the subsidisation of another Indian PET film producer, amended the definitive countervailing duty imposed on this company by Regulation (EC) No 367/2006.
- (5) In January 2009, by Regulation (EC) No 15/2009⁶, the Council, following a partial interim review initiated by the Commission on its own initiative concerning the subsidisation of five Indian PET film producers, amended the definitive countervailing duty imposed on these companies by Regulation (EC) No 367/2006 and the definitive anti-dumping duties imposed by Regulation (EC) No 1292/2007⁷.
- (6) In June 2010, by Regulation (EU) No 579/2010⁸, the Council, following a partial interim review concerning the subsidisation of an Indian PET film producer, amended the definitive countervailing duty imposed on this company by Regulation (EC) 367/2006.
- (7) It should be noted that Vacmet India Limited is currently subject to a countervailing duty of 19.1% on the basis of Regulation (EC) 367/2006, as amended.

2. Existing anti-dumping measures

- (8) It should be noted that Vacmet India Limited is subject to a residual anti-dumping duty of 17.3% on the basis of Regulation (EC) 1292/2007, as amended.

3. Initiation of a partial interim review

- (9) On 7 August 2009, the Commission received a request for a partial interim review pursuant to Article 19 of the basic Regulation. The request, limited in scope to the examination of subsidisation, was lodged by Vacmet India Limited, an exporting producer from India ('the applicant'). In its request, the applicant claimed that the circumstances on the basis of which measures were imposed have changed and that these changes are of a lasting nature. The applicant provided *prima facie* evidence that the continued imposition of the measure at its current level is no longer necessary to offset subsidisation.
- (10) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced on 14 January 2010, by a notice published in the *Official Journal of the European Union*⁹ ('Notice of Initiation'), the initiation of a partial interim review, in accordance with Article 19 of the basic Regulation, limited in scope to the examination of subsidisation in respect of the applicant.

⁵ OJ L 255, 29.9.2007, p. 1.

⁶ OJ L 6, 10.1.2009, p. 1.

⁷ OJ L 288, 6.11.2007, p. 1.

⁸ OJ L 168, 2.7.2010, p. 1.

⁹ OJ C 8, 14.1.2010, p. 29.

- (11) The partial interim review investigation was also to assess the need, depending on the review findings, to amend the rate of duty currently applicable to imports of the product concerned from exporting producers in the country concerned not individually mentioned in Article 1(2) of Regulation (EC) No 367/2006, i.e. the duty rate as applying to 'all other companies' in India.
- (12) The Commission also announced on 14 January 2010, by a notice of initiation published in the *Official Journal of the European Union*¹⁰, the initiation of a partial interim review of the anti-dumping measures limited in scope to the examination of dumping as far as the applicant is concerned.

4. Investigation

- (13) The investigation of the level of subsidisation covered the period from 1 January 2009 to 31 December 2009 ('review investigation period' or 'RIP').
- (14) The Commission officially informed the applicant, the Government of India ('GOI') and the Union industry of the initiation of the partial interim investigation. Interested parties were given the opportunity to make their views known in writing and to be heard.
- (15) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the applicant. In addition, a questionnaire was sent to the GOI.
- (16) While the applicant fully cooperated in the investigation, the relevant authorities of the Government of India did not submit a questionnaire reply within the deadline. The Commission sought and verified all information it deemed necessary for the determination of subsidisation. A verification visit was carried out at the premises of the applicant.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (17) The product confirmed by this review is the same as that defined in the Regulation imposing the measures in force (Regulation (EC) No 367/2006 as last amended), namely polyethylene terephthalate (PET) film, originating in India, currently falling within CN codes ex 3920 62 19 and ex 3920 62 90.

2. Like product

- (18) As in previous investigations, this investigation has shown that PET film produced in India and exported to the Union and the PET film produced and sold domestically on the Indian market, as well as the PET film produced and sold in the EU by the Union producers have the same basic physical and chemical characteristics and the same basic uses.
- (19) These products are therefore considered to be alike within the meaning of Article 2(c) of the basic Regulation.

¹⁰ OJ C 8, 14.11.2010, p. 27.

C. SUBSIDISATION

1. Introduction

Nationwide Schemes

- (20) On the basis of the information submitted by the applicant and the Union industry, the following schemes, which allegedly involve the granting of subsidies, were investigated:
- (a) Duty Entitlement Passbook Scheme;
 - (b) Export Promotion Capital Goods Scheme;
 - (c) Advance Authorisation Scheme (formerly known as Advance Licence Scheme);
 - (d) Capital Subsidies
- (21) The schemes (a) to (c) 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' documents, which are issued by the Ministry of Commerce every five years and updated regularly. Two Foreign Trade Policy documents are relevant to the RIP of this case, i.e. FT-policy 04-09 and FT-policy 09-14. In addition, the GOI also sets out the procedures governing the FT-policy 04-09 and FT-policy 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
- (22) The scheme specified above under (d) is managed by the authorities of the State of Uttar Pradesh.

2. Duty Entitlement Passbook Scheme ('DEPBS')

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

- (26) To be eligible for benefits under this scheme, a company must export. At the time of the export transaction, a declaration must be made by the exporter to the Indian authorities indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue an export shipping bill during the dispatch procedure. 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.
- (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 - except capital goods and goods where there are import restrictions. 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 12 months from the date of issue.
- (28) Application for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. *De facto* no strict deadlines apply to DEPBS credits. The electronic system used to manage DEPBS does not automatically exclude export transactions exceeding the submission deadline mentioned in chapter 4.47 of the HOP I 04-09 and 09-14. Furthermore, as clearly provided in chapter 9.3 of the HOP I 04-09 and 09-14, applications received after the expiry of submission deadlines can always be considered subject to 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 the 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 otherwise be 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 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 a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the 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. In particular, 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) Calculation of the subsidy amount

(33) In accordance with Articles 3(2) and 5 of the basic Regulation and the calculation methodology used for this scheme in Council Regulation (EC) No 367/2006, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient found to exist during the RIP. 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 that 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. Once the customs authorities issue an export shipping bill which shows, *inter alia*, the amount of DEPBS credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, it is considered appropriate to assess the benefit under the DEPBS as being the sums of the credits earned on export transactions made under this scheme during the RIP.

(34) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amount as numerator, pursuant to Article 7(1)(a) of the basic Regulation. In accordance with Article 7(2) of the basic Regulation this subsidy amount has 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.

(35) The subsidy rate established in respect of this scheme for the applicant during the RIP amounts to 7.9 %.

3. Export Promotion Capital Goods Scheme ('EPCGS')

(a) Legal basis

(36) The detailed description of the EPCGS is contained in chapter 5 of the FT-policy 04-09 and of the FT-policy 09-14 as well as in chapter 5 of the HOP I 04-09 and of the HOP I 09-14.

(b) Eligibility

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

(c) Practical implementation

(38) 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 customs duty. To this end, the GOI issues an EPCGS licence upon application and payment of a fee. Since April 2000, the scheme provides for a reduced import duty rate of 5 % applicable to all capital goods imported under the scheme.

(39) 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.

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

(d) Conclusion on EPCG Scheme

(41) 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 otherwise be due. In addition, the duty reduction confers a benefit upon the exporter because the duties saved upon importation improve its liquidity.

(42) Furthermore, the EPCGS is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore, it is deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(43) This scheme 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

(44) 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. In accordance with the established practice, the amount so calculated, which is attributable to the RIP, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the review investigation period in India was considered appropriate for this purpose. Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation.

(45) 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 the appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(46) As regards imports made under this scheme, the investigation revealed that there were a number of items which could be used for both production of the product concerned

as well as for the production of other products. However, it was noted that some items were used in a factory unit which is solely used for the production of PET film. Therefore, in terms of calculation of the benefit to the applicant, the denominator to be used for these items would be the export turnover of the product concerned and not the total export turnover.

- (47) The subsidy rate established in respect of this scheme for the applicant for the RIP amounts to 2,4 %.

4. Advance Authorisation Scheme ('AAS')

(a) Legal basis

- (48) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the FT-policy 04-09 and FT-policy 09-14 and chapters 4.1 to 4.30 of the HOP I 04-09 and of the HOP I 09-14. This scheme was called Advance Licence Scheme during the previous investigation that led to the imposition by Council Regulation (EC) No 367/2006 of the definitive countervailing duty currently in force.

(b) Eligibility

- (49) The AAS consists of six sub-schemes, as described in more detail in recital (50) below. Those sub-schemes differ *inter alia* in the scope of eligibility. Manufacturer-exporters and merchant-exporters "tied to" supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement sub-schemes. Manufacturer-exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the "deemed export" categories mentioned in paragraph 8.2 of the FT-policy 04-09, such as suppliers of an export oriented unit ('EOU'), are eligible for the AAS deemed export sub-scheme. Eventually, intermediate suppliers to manufacturer-exporters are eligible for "deemed export" benefits under the sub-schemes Advance Release Order ('ARO') and back to back inland letter of credit.

(c) Practical implementation

- (50) Advance authorisations can be issued for:

- (i) *Physical exports*: This is the main sub-scheme. It allows for duty-free import of input materials for the production of a specific resulting export product. "Physical" in this context means that the export product has to leave Indian territory. An import allowance and export obligation including the type of export product are specified in the licence;
- (ii) *Annual requirement*: Such an authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The licence holder can – up to a certain value threshold set by its past export performance – import duty-free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resulting product falling under the product group using such duty-exempt material;
- (iii) *Intermediate supplies*: This sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process.

The manufacturer-exporter who produces the intermediate product can import duty-free input materials and can obtain for this purpose an AAS for intermediate supplies. The ultimate exporter finalises the production and is obliged to export the finished product;

- (iv) *Deemed exports*: This sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as “deemed exports” to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of the FT-policy 04-09. Deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an export-oriented unit ('EOU') or to a company situated in a special economic zone ('SEZ');
 - (v) *Advance Release Order ('ARO')*: The AAS holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases the Advance Authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of the FT-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs;
 - (vi) *Back to back inland letter of credit*: This sub-scheme again covers indigenous supplies to an Advance Authorisation holder. The holder of an Advance Authorisation can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The authorisation will be validated by the bank for direct import only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to deemed export benefits as set out in paragraph 8.3 of the FT-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).
- (51) The applicant received concessions under the AAS linked to the product concerned during the RIP. The applicant made use of one of the sub-schemes, i.e. AAS physical exports. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.
- (52) For verification purposes by the Indian authorities, an Advance Authorisation holder is legally obliged to maintain "a true and proper account of consumption and utilisation of duty-free imported/domestically procured goods" in a specified format (chapters 4.26, 4.30 and Appendix 23 HOP I 04-09 and HOP I 09-14), i.e. an actual consumption register. This register has to be verified by an external chartered accountant/cost and works accountant who issues a certificate stating that the prescribed registers and relevant records have been examined and the information furnished under Appendix 23 is true and correct in all respects.

- (53) With regard to the sub-scheme used during the RIP by the applicant, i.e. physical exports, the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the Authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the Authorisation. The volume of imports allowed under the AAS is determined by the GOI on the basis of Standard Input Output Norms ('SIONs') which exist for most products including the product concerned. Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (24 months with two possible extensions of 6 months each).
- (54) The current interim review investigation established that the verification requirements stipulated by the Indian authorities were not honoured and not yet tested in practice. The applicant did not maintain a system whereby it could be verified which inputs were consumed in the production of the exported product and in what amounts, as stipulated by the FT-policy (Appendix 23) and in accordance with Annex II(II)(4) of the basic Regulation. In fact, there were no records of actual consumption.
- (55) Changes in the administration of the FT-policy 2004 to 2009, which became effective in autumn of 2005 (mandatory sending of the consumption register to the Indian authorities in the context of the redemption procedure) has not yet been applied in the case of the applicant. Thus, the de facto implementation of this provision could not be verified at this stage.
- (d) Conclusion on the AAS
- (56) The exemption from import duties is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, i.e. a financial contribution of the GOI which conferred a benefit upon the investigated exporter.
- (57) In addition, AAS physical exports is clearly 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. Without an export commitment a company cannot obtain benefits under this scheme.
- (58) The sub-scheme used in the present case cannot be considered permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the 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. The GOI did not effectively apply either its new or its old verification system or procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). The SIONs for the product concerned were not sufficiently precise. The SIONs themselves cannot be considered a verification system of actual consumption because the design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation).

- (59) The sub-scheme is therefore countervailable.
- (e) Calculation of the subsidy amount
- (60) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of total import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an "excess" remission of duties. According to Article 3(1)(a)(ii) and Annex I(i) of the basic Regulation only when the conditions of Annexes II and III of the basic Regulation are met that the excess remission of duties can be countervailed. However, these conditions were not fulfilled in the present case. Thus, if an adequate monitoring process is not demonstrated, the above exception for drawback schemes is not applicable and the normal rule of the countervailing of the amount of unpaid duties (revenue forgone), applies, rather than of any purported excess remission. As set out in Annexes II(II) and III(II) of the basic Regulation the burden is not upon the investigating authority to calculate such excess remission. To the contrary, according to Article 3(1)(a)(ii) of the basic Regulation, the investigating authority only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.
- (61) The subsidy amount for the applicant which used the AAS was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the sub-scheme during the RIP (numerator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amount where justified claims were made. In accordance with Article 7(2) of the basic Regulation, this subsidy amount was allocated over the export turnover of the product concerned during the RIP as appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.
- (62) The subsidy rate established in respect of this scheme for the applicant for the RIP amounts to 0,2%.

5. Capital Subsidies (CS)

(a) Legal basis

- (63) In previous investigations regarding PET film, including the investigation that led to the imposition by Regulation (EC) No 367/2006 of the definitive countervailing duty currently in force, several Indian State schemes involving incentives granted to local companies were investigated. The State schemes fall under the heading 'Package Scheme of Incentives' as there can be different kinds of incentives involved. The previous investigation established that a company's entitlement to benefits could be stipulated in the 'Eligibility Certificate' or 'Entitlement Certificate'. However, as in the present investigation, there could also be ad-hoc subsidies such as capital subsidies.

(b) Eligibility

- (64) In order to be eligible, companies must as a general rule invest in less developed areas of a state either by setting up a new industrial establishment or by making a large scale capital investment or diversification of an existing industrial establishment.

(c) Practical implementation

- (65) According to the response to the questionnaire, the applicant received in 2009 a significant amount as capital subsidy for setting up new production facilities by the Government of Uttar Pradesh ('GUP'). It was explained that this capital subsidy received is linked to the setting up of new production facilities, i.e. to cover expenses for investments made by the applicant. According to the applicant, it was a pure subsidy in the form of a grant to improve equity.
- (66) The investigation also revealed that the applicant is eligible for refunds of VAT and Central Sales Tax (CST) from the Commercial Tax Department of Uttar Pradesh because of investments earlier made. In the 'Eligibility Certificate' there is a cap which the company is able to claim. The scheme was used by the company over four years. On a monthly basis, refunds of paid VAT and CST charged on intra-State and inter-State sales respectively were requested, including during the RIP.

(d) Conclusion

- (67) The capital subsidy is a direct transfer of funds i.e. grant to the applicant. It is a subsidy within the meaning Article 3(1)(a)(i) and Article 3(2) of the basic Regulation. It is financial contribution by the State Government of Uttar Pradesh which confers a direct benefit upon the applicant.
- (68) The refund of VAT and CST provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The refund constitutes a financial contribution by the State Government of Uttar Pradesh since this concession decreases the State Government's tax revenue which would be otherwise due. In addition, the tax refund confers a benefit upon the applicant because the tax saved improves its liquidity.
- (69) The subsidies are not contingent in law upon export performance. However, due to the lack of cooperation of the authorities of the State Government of Uttar Pradesh, the Commission was unable to make a firm conclusion on this scheme as regards the specificity and practical application of this law and the level of discretion the granting authority enjoys when deciding on the applications. Indeed, it cannot be determined with certainty whether Article 4(2), first subparagraph, point (b) is fulfilled, given that it could not be established that the State Government of Uttar Pradesh applied objective criteria or conditions for granting the subsidy. Therefore, even if the scheme was shown not to be specific in law, it is still not clear that it is not specific *de facto*. As a result it is deemed to be specific and countervailable under Article 4(2), first subparagraph, point (c) and Article 4(2), fourth subparagraph of the basic Regulation.

(e) Calculation of the subsidy amount

- (70) As regards the capital subsidy received for setting up new production facilities, the subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the capital subsidy spread across a period which reflects the normal depreciation period/useful life of capital goods in this industry because the subsidy can be linked to the acquisition of fixed assets. Interests were added to this amount in order to reflect the full value of the benefit over time. The commercial interest rate during the review investigation period in India was considered appropriate for this purpose. Pursuant to Article 7(2) of the basic Regulation, the amount of

subsidy has then been allocated over the total turnover of export and domestic sales during the RIP as the appropriate denominator because the subsidy is not export-contingent and was not granted by reference to the quantities manufactured, produced, exported or transported.

- (71) Regarding the refunds of VAT and Central Sales Tax, the subsidy amount was calculated on the basis of the amount of refunds during the RIP. Pursuant to Article 7(2) of the basic Regulation, the amount of subsidy (numerator) has then been allocated over the total turnover of export and domestic sales during the RIP as the appropriate denominator because the subsidy is not export-contingent and it was not granted by reference to the quantities manufactured, produced, exported or transported.
- (72) Based on the above, the subsidy rate established for applicant in respect of these capital subsidies during the RIP amounts to 0,5%.

6. AMOUNT OF COUNTERAVAILABLE SUBSIDIES

- (73) The applicant is currently subject to a countervailing duty of 19,1%
- (74) During the present partial interim review, the amount of countervailable subsidies for the applicant, expressed *ad valorem*, was found to be 11,0%, as listed hereunder:

SCHEME→	DEPBS(*)	EPCGS(*)	AAS(*)	CS	Total
COMPANY↓	%	%	%	%	%
Vacmet India Limited	7,9	2,4	0,2	0,5	11,0

(*) Subsidies marked with an asterisk are export subsidies

- (75) Account taken of the above it is concluded that the level of subsidisation with regard to the exporting producer concerned has decreased.

7. COUNTERVAILING MEASURES

- (76) It was also examined whether the changed circumstances with regard to the examined schemes could be considered to be of a lasting nature.
- (77) The investigation confirmed that the subsidy amount for the applicant has decreased well below the duty rate currently applicable to it. This reduction in the overall subsidy level is mainly due to a significant drop of benefits which are available under the DEPBS. On the basis of the above there seems to be indications that the applicant will continue to receive subsidies in the future of an amount which is less than the one it is currently subject to.
- (78) Since it has been demonstrated that the applicant is in receipt of much lesser subsidisation than before and that it is likely to continue to receive subsidies of an amount which is less than determined in the original investigation, the level of the measure should therefore be amended to reflect the new findings.

- (79) In view of the above, the amended countervailing duty rate should be established at the new rate of subsidisation found during the present partial interim review, as the injury margin calculated in the original anti-subsidy investigation remains higher.
- (80) Pursuant to Article 24(1), second subparagraph of the of Regulation (EC) No 597/2009¹¹, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation. However, since the anti-dumping duty established for the applicant as a result of the parallel anti-dumping interim review is 0% with regard to the product concerned, this situation does not arise in the present case.
- (81) With regard to the rate of duty currently applicable to imports of the product concerned from exporting producers not individually mentioned in Article 1(2) of Regulation (EC) No 367/2006, i.e. the duty specified as applying to 'all other companies' in India, it is noted that the actual modalities of the investigated schemes and their countervailability have not changed with respect to the previous investigation. Thus there is no reason to re-calculate the subsidy and duty rates of these companies. Consequently, the rates of the duty applicable to all companies other than the applicant remain unchanged.
- (82) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to propose to amend the duty rate applicable to the applicant and were given an opportunity to comment.
- (83) The oral and written comments submitted by the parties were considered and, where appropriate, the definitive findings have been modified accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 1(2) of Council Regulation (EC) No 367/2006 is hereby amended by inserting the following:

Vacmet India Limited, Anant Plaza, IInd Floor, 4/117-2A, Civil Lines, Church Road, Agra-282002, Uttar Pradesh, India	11,0	"A992"
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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.

¹¹ OJ L 188, 18.07.2009 p. 93.

Done at Brussels, [...]

*For the Council
The President*