COUNCIL IMPLEMENTING REGULATION (EU) No 906/2011

of 2 September 2011

amending Regulation (EC) No 193/2007 imposing a definitive countervailing duty on imports of polyethylene terephthalate originating in India, and amending Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate 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). Following an expiry review, the Council, by Regulation (EC) No 193/2007 [3], imposed a definitive countervailing duty for a further period of 5 years. The countervailing measures were amended by Council Regulation (EC) No 1286/2008 [4] 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 other producers.

1.2. Existing anti-dumping measures

(2) By Regulation (EC) No 2604/2000 [5], the Council imposed a definitive anti-dumping duty on imports of PET originating, inter alia, in India (the original anti-dumping investigation). Following an expiry review, the Council, by Regulation (EC) No 192/2007 [6], imposed a definitive anti-dumping duty for a further period of 5 years. The anti-dumping measures were amended by Council Regulation (EC) No 1286/2008 following the last 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 ranged 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 other producers (the current anti-dumping measures).

(3) By Decision 2000/745/EC [7] the Commission accepted undertakings offered by several exporting producers setting a minimum import price (the undertaking).

1.3. Initiation of a partial interim review

(4) A request for a partial interim review pursuant to Article 19 of the basic Regulation was lodged by Reliance Industries 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 governed by the undertaking.

(5) 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 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 a significant drop in the benefits availed of under the Duty Entitlement Passbook Scheme (DEPBS).

(6) Having determined, after consulting the Advisory Committee, that the request contained sufficient prima facie evidence, the Commission announced on 10 June 2010 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* [8]. The review was limited in scope to the examination of subsidisation in respect of the applicant.

1.4. Parties concerned by the investigation

(7) 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.

[1] OJ L 188, 18.7.2009, p. 93.
[2] OJ L 301, 30.11.2000, p. 1.
[3] OJ L 59, 27.2.2007, p. 34.
[4] OJ L 340, 19.12.2008, p. 1.
[5] OJ L 301, 30.11.2000, p. 21.
[6] OJ L 59, 27.2.2007, p. 1.
[7] OJ L 301, 30.11.2000, p. 88.
[8] OJ C 151, 10.6.2010, p. 17.

(8) All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(9) 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.

(10) 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 Mumbai, India and at the premises of the GOI in New Delhi (Directorate General of Foreign Trade and Ministry of Commerce) and Mumbai (Regional Office of the Directorate General of Foreign Trade).

1.5. **Review investigation period**

(11) The investigation of subsidisation covered the period from 1 April 2009 to 31 March 2010 ('the review investigation period' or 'RIP').

1.6. **Parallel anti-dumping investigation**

(12) On 10 June 2010 ([1]) the Commission announced the initiation of a partial interim review of the current anti-dumping measures pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009 ([2]) (the basic anti-dumping Regulation), limited in scope to the examination of dumping in respect of the applicant.

(13) In the parallel anti-dumping investigation it was found that the circumstances with regard to dumping did not change significantly and lastingly, therefore the investigation was terminated without changing the current anti-dumping measures applicable to the applicant.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(14) 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**

(15) 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 1(4) of the basic Regulation. Since the present review was limited to the determination of subsidisation as far as the applicant is concerned, no conclusions were reached with regard to the product produced and sold by the Union industry on the Union market.

3. **RESULTS OF THE INVESTIGATION**

3.1. **Subsidisation**

(16) 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) Advance Authorisation Scheme (AAS);

(b) Duty Entitlement Passbook Scheme (DEPBS);

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

(d) Focus Market Scheme (FMS);

(e) Focus Product Scheme (FPS);

(f) Income Tax Exemption Scheme (ITES).

Regional schemes:

(g) Capital Investment Incentive Scheme of the Government of Gujarat.

(17) The schemes (a) to (e) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in Foreign Trade Policy (FTP) documents, which are issued by the Ministry of Commerce every 5 years and updated regularly. Two FTP documents are relevant to the RIP of this case, namely 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.

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

(19) Scheme (g) is administered by the Government of Gujarat and is based on Gujarat's industrial incentive policy.

([1]) OJ C 151, 10.6.2010, p. 15.
([2]) OJ L 343, 22.12.2009, p. 51.

3.1.1. *Advance Authorisation Scheme (AAS)*

(a) Legal basis

(20) The detailed description of this scheme is contained in paragraphs 4.1.1 to 4.1.14 of FTP 04-09 and FTP 09-14 and paragraphs 4.1 to 4,30 A of HOP I 04-09 and HOP I 09-14.

(b) Eligibility

(21) The AAS consists of six sub-schemes, as described in more detail in recital 22. 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 for physical exports and for the AAS for annual requirement. 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 FTP 04-09 and FTP 09-14, such as suppliers of an export oriented unit (EOU), are eligible for AAS for deemed exports. 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

(22) Advance Authorisations can be issued for:

(i) physical exports: this is the main sub-scheme. It allows for the duty-free import of input materials for the production of a specific resultant 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 authorisation;

(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 authorisation holder can — up to a certain value threshold set by its past export performance — import free of duty any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resultant product falling under the product group using such duty-exempt material;

(iii) intermediate supplies: this sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter 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 FTP 04-09 and FTP 09-14. According to the GOI, 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 EOU or to a company situated in a special economic zone;

(v) 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 FTP 04-09 and FTP 09-14 (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 invalidated by the bank for direct import only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to the forecast export benefits as set out in paragraph 8.3 of FTP 04-09 and FTP 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).

(23) It was established that during the RIP the applicant obtained concessions only under one sub-scheme linked to the product concerned, namely the AAS for deemed exports. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.

(24) With regard to the use of AAS for deemed exports during the RIP, both 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 this scheme is determined by the GOI on the basis of standard input-output norms (SIONs). SIONs exist for most products including the product concerned and are issued by the GOI.

(25) For verification purposes by the Indian authorities, an Advance Authorisation holder is legally obliged to maintain an actual consumption register of duty-free imported/domestically procured goods against each authorisation, as per prescribed format (paragraphs 4.26, 4.30 and Appendix 23 HOP I 04-09 and HOP I 09-14). 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.

(26) The export obligation must be fulfilled within a prescribed time-frame (24 months with two possible extensions of 6 months each) after issuance of the authorisation.

(27) It was established that there were no links between the imported inputs and the exported finished products. The eligible input materials can be also raw materials used in the production of upstream products. Furthermore, it was found that, although mandatory, the applicant did not keep for all licences the consumption register referred to in recital 25, verifiable by an external accountant. In spite of the breach of this requirement, the applicant did avail the benefits under AAS which were moreover, in view of the found overestimation of the SIONs, in excess of the legal provisions therefore.

(d) Conclusion

(28) The exemption from import duties is a subsidy within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation, i.e. a financial contribution of the GOI which conferred a benefit upon the investigated exporter.

(29) In addition, AAS for deemed exports is clearly contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4)(a) of the basic Regulation. Without an export commitment a company cannot obtain benefits under this scheme.

(30) The present review has, therefore, confirmed that the main sub-scheme used in the present case 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. It does not conform to the rules laid down in Annexes I (item (i)), II (definition and rules for drawback) and III (definition and rules for substitution drawback) to the basic Regulation. The GOI did not effectively apply its 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) to the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) to the basic Regulation). The SIONs themselves cannot be considered a verification system of actual consumption, since they have been found to be overgenerous and it was established that benefits received in excess are not reclaimed by the GOI. Indeed, an effective control done by the GOI based on a correctly kept actual consumption register did not take place. 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). Finally, it has been confirmed that, although mandatory by law, the involvement of chartered accountants in the verification process is, in practice, not guaranteed.

(31) AAS for deemed exports is therefore countervailable.

(e) Calculation of the subsidy amount

(32) In the absence of permitted duty drawback system or substitution drawback system, 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) of the basic Regulation and Annex I(i) thereto only an excess remission of duties can be countervailed, provided the conditions of Annexes II and III to the basic Regulation are met. However, these conditions were not fulfilled in the present case. Thus, if an absence of an adequate monitoring process is established, the above exception for drawback schemes is not applicable and the normal rule for countervailing the amount of (revenue forgone) unpaid duties, rather than any purported excess remission, applies. As set out in Annexes II(II) and III(II) to 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.

(33) The subsidy amount for the applicant was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the deemed exports sub-scheme during the RIP (nominator). 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 has been allocated over the total export turnover 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.

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

3.1.2. *Duty Entitlement Passbook Scheme (DEPBS)*

(a) Legal Basis

(35) The detailed description of the DEPBS is contained in paragraph 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

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

(c) Practical implementation

(37) 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 on the basis of SIONs (see recital 24) and the customs duty incidence on the presumed import content, regardless of whether import duties have actually been paid or not. The DEPBS rate for the product concerned during the RIP of the current investigation was 8 % with a value cap of 58 Rs/kg.

(38) 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 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.

(39) 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.

(40) Applications for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. The deadline to submit applications is 3 months after exportation, but 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).

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

(d) Conclusion

(42) The DEPBS provides subsidies within the meaning of Articles 3(1)(a)(ii) and 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.

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

(44) 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) to 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 to 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

(45) 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 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.

(46) It was found that the benefits derived from DEPBS were concentrated on the product concerned. Therefore it is considered appropriate to assess the benefit under the DEPBS as being the sum of the credits earned on all export transactions of the product concerned made under this scheme during the RIP.

(47) 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.

(48) In accordance with Article 7(2) of the basic Regulation these subsidy amounts have been allocated over the total export turnover of the product concerned 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.

(49) Based on the above, the subsidy rate established in respect of this scheme for the applicant during the RIP amounts to 7,52 %.

3.1.3. *Export Promotion Capital Goods Scheme (EPCGS)*

(a) Legal basis

(50) 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

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

(c) Practical implementation

(52) 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 EPCGS provides for a reduced import duty rate of 3 % applicable to all capital goods imported under this scheme. In order to meet the export obligation, the imported capital goods must be used to produce a given 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.

(53) 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.

(d) Conclusion

(54) The EPCGS provides subsidies within the meaning of Articles 3(1)(a)(ii) and 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.

(55) 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)(a) of the basic Regulation.

(56) 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 item (i) of Annex I to the basic Regulation, because they are not consumed in the production of the exported products.

(e) Calculation of the subsidy amount

(57) 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 used in the petrochemical segment and other sectors for which such benefits were received by the applicant, spread across a period which reflects the normal depreciation period of such capital goods in the industry concerned. Interests were added to this amount in order to reflect the full value of the benefit over time. The commercial credit interest rate applied by the applicant for its sales during the review investigation period was considered appropriate for this purpose.

(58) In accordance with Article 7(2) and (3) of the basic Regulation this subsidy amount has been allocated over the export turnover of the petrochemical sector and other sectors for which such benefits were received during the RIP as appropriate denominator, because the subsidy is contingent upon export performance.

(59) The subsidy rate established in respect of this scheme during the RIP amounts to 1,49 %.

3.1.4. *Focus Market Scheme (FMS)*

(a) Legal basis

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

(b) Eligibility

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

(c) Practical implementation

(62) 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 % to 3 % of the FOB value of products exported under this scheme. Certain type of export activities are excluded from this 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 this scheme are certain types of products, e.g. diamonds, precious metals, ores, cereals, sugar and petroleum products.

(63) 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.

(64) 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 an 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.

(d) Conclusion

(65) The FMS provides subsidies within the meaning of Articles 3(1)(a)(ii) and 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.

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

(67) 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 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) to 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 to 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 point (i) of Annex I to the basic Regulation, because they are not consumed in the production of the exported products.

(e) Calculation of the subsidy amount

(68) The amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient for export of the product concerned, which is found to exist during the RIP as booked by the applicant using the scheme on an accrual basis as income at the stage of export transaction. In accordance with Article 7(2) and (3) of the basic Regulation, this subsidy amount (nominator) has been allocated over the export turnover of the product concerned 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.

(69) 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.

(70) The subsidy rate established with regard to this scheme during the RIP for the applicant amounts to 0,87 %.

3.1.5. *Focus Product Scheme (FPS)*

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

3.1.6. *Income Tax Exemption Scheme (ITES)*

(72) 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.

3.1.7. *Capital Investment Incentive Scheme (CIIS) of the Government of Gujarat*

(73) The State of Gujarat grants to eligible industrial enterprises incentives in the form of exemption and/or deferment of sales and purchase tax in order to encourage the industrial development of economically backward areas within this State.

(a) Legal basis

(74) The detailed description of this scheme as applied by the Government of Gujarat (GOG) is set out in GOG Resolution No INC-1095/2000(3)/I of 11 September 1995, the Government Notification, Finance Department No (GHN-43) VAT-2006/S.5(2)(2)-TH dated 1 April 2006 and Rule 18A of the Gujarat Value Added Tax Rules (2006).

(b) Eligibility

(75) 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 of benefits under this scheme. Nevertheless, exhaustive lists of ineligible industries exist that prevent companies in certain fields of operations from benefiting from the incentives.

(c) Practical implementation

(76) Under this scheme, companies must invest in backward areas. These areas, which represent certain territorial units in Gujarat are classified according to their economic development into different categories while at the same time there are areas excluded or 'banned' 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.

(77) Incentives can be granted at any point in time since there are no time limits either in the filing of an application for the incentives or in the fulfilment of the quantitative criteria.

(d) Conclusion

(78) 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 GOG, since the incentives granted, in the present case sales and purchase tax exemptions, 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.

(79) 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.

(80) The CIIS of the GOG is therefore countervailable.

(e) Calculation of the subsidy amount

(81) The applicant claimed that it is no longer eligible for benefits under the CIIS for one of its plants. The investigation confirmed this claim. In case of another plant, the eligibility of the company expired during the current investigation. The subsidies received for the activities of these plants therefore were not taken into account in the calculation of the subsidy amount.

(82) The subsidy amount was calculated on the basis of the amount of the sales and purchase tax 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 0,31 %.

3.1.8. *Amount of countervailable subsidies*

(83) The amount of total countervailable subsidies determined in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the applicant is 10,73 %. This amount of subsidisation exceeds the *de minimis* threshold mentioned under Article 14(5) of the basic Regulation.

(84) It is therefore considered that, pursuant to Article 18 of the basic Regulation, subsidisation continued during the RIP.

3.2. **Lasting nature of changed circumstances with regard to subsidisation**

(85) In accordance with Article 19(2) of the basic Regulation, it was examined whether circumstances with regard to subsidisation changed significantly during the RIP.

(86) 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. No evidence is available that the schemes will be discontinued or new schemes will be introduced in the near future.

(87) Since it has been demonstrated that the applicant is in receipt of less subsidisation than before and that it is likely to continue to receive subsidies of an amount less than determined in the last review investigation, it is concluded that the continuation of the existing measure is higher than the countervailable subsidy causing injury and that the level of the measures should therefore be amended to reflect the new findings.

4. **COUNTERVAILING MEASURES AND ANTI-DUMPING MEASURES**

4.1. **Countervailing measures**

(88) In line with Article 19 of the basic Regulation and the grounds of the present review stated in the notice of initiation, it is established that the margin of subsidisation with regard to the applicant has decreased from 13,8 % to 10,7 % and, therefore, the rate of countervailing duty, imposed to this exporting producer by Regulation (EC) No 1286/2008 has to be amended accordingly.

(89) The amended countervailing duty rate should be established at the level of the new rate of subsidisation found during the present review, as the injury margins calculated in the original anti-subsidy investigation remain higher.

(90) In the original anti-subsidy investigation, in order to avoid that fluctuations in the PET prices caused by variations in the crude oil prices result in higher duties being collected, was decided that measures should take the form of a specific duty. It is considered that this approach should also be followed in the present review for the same reason. The revised amount of specific duty is therefore EUR 90,4 per tonne.

4.2. **Anti-dumping measures**

(91) The amendment of the countervailing duty rate will have an impact on the definitive anti-dumping duty imposed on imports of PET produced by the applicant, by Regulation (EC) No 192/2007.

(92) In all previous investigations the anti-dumping duty was adjusted in order to avoid any double-counting of the effects of benefits from export subsidies. In this regard, Article 14(1) of the basic anti-dumping Regulation and Article 24(1) of the basic Regulation provide that no product shall be subject to both anti-dumping and countervailing measures for the purpose of dealing with one and the same situation arising from dumping or export subsidisation. It was found in the previous investigations as well as in the present review that certain of the subsidy schemes investigated, which were found to be countervailable, constituted export subsidies within the meaning of Article 4(4)(a) of the basic Regulation. With respect to other subsidy schemes, and in particular the CIIS of the GOG, there was no evidence and no argument was made showing whether and to what degree the same subsidies are being offset twice when anti-dumping and countervailing duties are simultaneously imposed on the same imported product. More specifically, there was no evidence that the CIIS lowered the export price of a product in a different manner than the price of products sold domestically. Thus, the CIIS affects the prices at which the producer sells its goods in the domestic market and in export markets in the same way and to the same extent.

(93) As such, these subsidies affected the export price of the applicant, thus leading to an increased margin of dumping. In other words, the definitive dumping margins established in the original anti-dumping investigation were partly due to the existence of export subsidies.

(94) Consequently, the definitive anti-dumping duty rates for the applicant must now be adjusted to take account of the revised level of benefit received from export subsidies in the RIP in the present review to reflect the actual dumping margin remaining after the imposition of the adjusted definitive countervailing duty offsetting the effect of the export subsidies.

(95) In other words, the new subsidy levels will have to be taken into account for the purpose of adjusting the dumping margins, previously established.

(96) The anti-dumping duty rate of the applicant should thus be EUR 132,6 per tonne.

(97) 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

Part of the table concerning Reliance Industries Limited in Article 1(2) of Regulation (EC) No 193/2007 shall be replaced by the following:

Country	Company	Countervailing duty (EUR/tonne)	TARIC additional code
'India	Reliance Industries Ltd	90,4	A181'

Article 2

Part of the table concerning Reliance Industries Ltd in Article 1(2) of Regulation (EC) No 192/2007 shall be replaced by the following:

Country	Company	Anti-dumping duty (EUR/tonne)	TARIC additional code
'India	Reliance Industries Ltd	132,6	A181'

Article 3

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, 2 September 2011.

For the Council
The President
M. DOWGIELEWICZ