

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.11.2008
COM(2008) 757 final

Proposal for a

COUNCIL REGULATION

amending Council Regulation (EC) No193/2007, imposing a definitive countervailing duty on imports of certain polyethylene terephthalate, originating in India and amending Council Regulation (EC) No192/2007 imposing a definitive anti dumping duty on imports of certain polyethylene terephthalate, originating in, inter alia, India

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

This proposal concerns the application of Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community as last amended by Council Regulation (EC) No 461/2004 of 8 March 2004 ("the basic Regulation") in the proceeding concerning imports of certain polyethylene terephthalate, 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 provisions in the area of the proposal**

- Council, Regulation (EC) No193/2007 of 22 February 2007, imposing a definitive countervailing duty on imports of certain polyethylene terephthalate, originating in India and Council Regulation (EC) 192/2007 of 22 February 2007, imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate, originating in, inter alia, India.

- **Consistency with the 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 already 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 foresee 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 27 September 2007, the Commission initiated on its own initiative a partial interim review of the countervailing duty in force in respect of imports of polyethylene terephthalate in India. The review was initiated because there was sufficient *prima facie* evidence suggesting that the circumstances with regard to subsidisation on the basis of which measures had been established have changed and that these changes were of a lasting nature.

The partial interim review investigation confirmed that while the schemes in question indeed were not used the overall level of subsidisation with regard to the sole co-operating Indian producer has nevertheless increased. As the other exporting producer identified in annex to the notice of initiation failed to cooperate, it must be considered to benefit from subsidisation at least at the level found for the cooperating exporter.

There was no indication of a need to recalculate the subsidy rates of companies having an individual margin that were not concerned with this partial interim review.

Therefore, it is suggested that the Council adopts the attached proposal for a Regulation so as to amend the duty rate applicable to the sole co-operating Indian producer as well as for the non co-operator that was also concerned by the review. While the individual margin for the other companies not concerned by the investigation would not change, it is proposed that the residual margin applicable to all other companies be changed accordingly.

In line with the principle that no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation, the level of anti-dumping duties in the anti dumping regulation applicable to the same product should be adjusted to take into account the increased countervailing duties.

- **Legal basis**

Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community as last amended by Council Regulation (EC) No 461/2004 of 8 March 2004

- **Subsidiarity principle**

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

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

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 Community, 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: regulation.

Other means would not be adequate for the following reason(s).

The above-mentioned basic regulation does not foresee alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

Proposal for a

COUNCIL REGULATION

amending Council Regulation (EC) No193/2007, imposing a definitive countervailing duty on imports of certain polyethylene terephthalate, originating in India and amending Council Regulation (EC) No192/2007 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 establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community¹ ('the basic Regulation'), and in particular Articles 15 and 19 thereof,

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

Whereas:

A. PROCEDURE

I. Previous investigation and existing measures

- (1) On 30 November 2000, by Regulation (EC) No 2603/2000², the Council imposed definitive countervailing duties on imports of certain polyethylene terephthalate (PET) originating in, inter alia India, (the country concerned) (the original investigation).
- (2) Following an expiry review, the Council, by Regulation (EC) No193/2007³, imposed a definitive countervailing duty on imports of certain polyethylene terephthalate, originating in India (the "anti-subsidy Regulation") for a further period of five years. The product concerned falls within the CN code 3907 60 20. The rate of the fixed duty ranges between 0 and 106.5 EUR/tonne for individually named exporters with a residual duty rate of 41.3 EUR/tonne imposed on imports from other exporters.

¹ OJ L 288, 21.10.97, p.1

² OJ L 301, 30.11.2000, p. 1.

³ OJ L 59, 27.2.2007, p 34-

- (3) Furthermore, by Regulation (EC) 192/2007⁴, the Council imposed a definitive anti-dumping duty on the same product originating in India (the "anti-dumping Regulation"). Under this Regulation the rate of the fixed duty ranges between 88.9 and 200.9 EUR/tonne for individually named exporters with a residual duty rate of 181.7 EUR/tonne imposed on imports from other exporters.
- (4) In line with the principle that no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation, the level of anti-dumping duties in the anti dumping Regulation takes into account the amount of countervailing duty imposed by the anti-subsidy Regulation, in accordance with Article 14(1) of the basic Regulation.

II. Initiation of a partial interim review

- (5) Following the imposition of the definitive countervailing duty the Government of India ('GOI') submitted that the circumstances with regard to two subsidy schemes (the Duty Entitlement Passbook Scheme and the Income Tax Exemption under Section 80 HHC of the Income Tax Act) have changed and that these changes are of a lasting nature. Consequently, it was argued that the level of subsidisation was likely to have decreased and thus measures that had been established partly on these schemes should be revised.
- (6) The Commission examined the evidence submitted by the GOI and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 19 of the basic Regulation, limited to the level subsidisation imports of certain polyethylene terephthalate, originating in India. After consultation of the Advisory Committee, the Commission initiated, by a notice published in the Official Journal of the European Union⁵ (the "Notice of Initiation"), an *ex officio* partial interim review of Council Regulation (EC) No193/2007.
- (7) The purpose of the partial interim review investigation is to assess the need for the continuation, removal or amendment of the existing measures in respect of those companies which benefited from one or both the changed subsidy schemes, where sufficient evidence was provided in line with the relevant provisions of the notice of initiation. The partial interim review investigation would also assess the need, depending on the review findings, to revise the measures applicable to other companies that cooperated in the investigation that set the level of the existing measures and/or the residual measure applicable for all other companies.

III. Investigation period

- (8) The investigation covered the period from 1 April 2006 to 31 March 2007 ('the review investigation period' or 'RIP')

⁴ OJ L 59, 27.2.2007, p 1

⁵ OJ C 227, 27.9.2007, p. 16.

IV. Parties concerned by the investigation

- (9) The Commission officially informed the GOI and those Indian exporting producers who co-operated in the previous investigation, were mentioned under Council Regulation (EC) No 193/2007 as benefiting from any of the two allegedly changed subsidy schemes and that were listed in the annex to the Notice of Initiation, as well as the Community producers, of the initiation of the partial interim review investigation. Interested parties had the opportunity to make their views known in writing and to request a hearing. The written and oral comments submitted by the parties were considered and, where appropriate, taken into account.
- (10) In view of the number of parties involved in this review, the use of sampling techniques for the investigation of subsidisation was envisaged in accordance with Article 27 of the basic Regulation.
- (11) Two exporting producers made themselves known and provided the information requested for sampling. Therefore, the use of sampling techniques was not considered necessary. One of the two exporting producers that had submitted a sampling form did however later notify the Commission that it did not intend to complete a full questionnaire and provide the data necessary for the purpose of the investigation.
- (12) The Commission therefore sent and obtained a reply to the questionnaire from only one producer which was eligible for this review, namely Pearl Engineering Polymers Ltd (the "company"). A questionnaire was also addressed to the GOI. Replies were received from both the company and the GOI.
- (13) The Commission sought and verified all information it deemed necessary for the determination of subsidisation. Verification visits were carried out at the premises of the following interested parties:
1. Government of India
Ministry of Commerce, New Delhi.
 2. Exporting producers in India
Pearl Engineering Polymers Ltd, New Delhi.

VI. Disclosure and comments on procedure

- (14) The GOI and the other interested parties were informed of the essential facts and considerations upon which it was intended to propose to amend the duty rate applicable to the sole co-operating Indian producer and to the non cooperating exporting producer also mentioned in annex to the Notice of Initiation as well as the intention maintain existing measures for all other companies which did not co-operate with this partial interim review. They were also given a reasonable time to comment. All submissions and comments were taken duly into consideration as set out below.

B. PRODUCT CONCERNED

- (15) The product covered by this review is the same product as the one concerned by Council Regulation (EC) No 193/2007, i.e. PET with a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, originating in the country concerned. It is currently classifiable within CN code 3907 60 20.

C. SUBSIDIES

I. Introduction

- (16) On the basis of the information submitted by the GOI and the sole co-operating exporting producer and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:
- (a) Advance Authorisation Scheme (formerly known as Advance Licence Scheme) ('AAS'),
 - (b) Duty Entitlement Passbook Scheme ('DEPS'),
 - (c) Export Promotion Capital Goods Scheme ('EPCGS'),
 - (d) Income Tax Exemption Scheme ('ITES')
 - (e) Focus Market Scheme ('FMS')
 - (f) Target Plus Scheme ('TPS')
- (17) The schemes (a) (b) (c) (e) and (f) 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 'Export and Import Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. One Export and Import Policy document is relevant to the RIP of this case, i.e., the five-year plan relating to the period 1 September 2004 to 31 March 2009 ('EXIM-policy 04-09'). In addition, the GOI also sets out the procedures governing the EXIM-policy 04-09 in a 'Handbook of Procedures - 1 September 2004 to 31 March 2009, Volume I' ('HOP I 04-09'). The Handbook of Procedure is also updated on a regular basis.
- (18) The Income Tax Schemes specified above under (d) are based on the Income Tax Act of 1961, which is amended yearly by the Finance Act.
- (19) In accordance with Article 11(10) of the basic Regulation, the Commission invited the GOI for additional consultations with respect to both changed and unchanged schemes with the aim of clarifying the factual situation as regards the alleged schemes and arriving at a mutually agreed solution. Following these consultations, and in the absence of a mutually agreed solution in relation to these schemes, the Commission included all these schemes in the investigation of subsidisation.

- (20) One Interested party, representing Community industry alleged that a number of other schemes and subsidies continued to be available to Indian exporters. However, no definite evidence has emerged from the information showing that these schemes were used by cooperating exporting producer. Therefore these matters have not been pursued further for the purpose of this specific proceeding.

II. Specific Schemes

I Advance Authorisation Scheme ('AAS')

(a) Legal basis

- (21) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the EXIM-policy 04-09 and chapters 4.1 to 4.30 of the HOP I 04-09. This scheme was called Advance Licence Scheme during the previous review investigation that led to the imposition by Council Regulation (EC) No 193/2007 of the definitive countervailing duty currently in force.

(b) Eligibility

- (22) The AAS consists of six sub-schemes, as described in more detail in recital (23). 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. 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 EXIM-policy 04-09, such as suppliers of an export oriented unit ('EOU'), are eligible for AAS deemed export. 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

- (23) 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 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 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 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 free of duty inputs 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 EXIM policy 04-09. 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 ('SEZ').
 - (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 ARO's. In such cases the Advance Authorisations are validated as ARO's 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 EXIM-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 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 deemed export benefits as set out in paragraph 8.3 of the EXIM-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).
- (24) It was established that during the RIP, the co-operating exporter only obtained concessions under two sub-schemes linked to the product concerned, i.e. (i) AAS physical exports and (iv) AAS for deemed exports. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.
- (25) Following the imposition by Council Regulation (EC) No 193/2007 of the definitive countervailing duty currently in force, the GOI has modified the verification system

applicable to AAS. In concrete terms, 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), 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. Nevertheless, the aforesaid provisions apply only to Advance Authorisations issued on or after 13 May 2005. For all Advance Authorisations or Advance Licenses issued before that date, holders are requested to follow the previously applicable verification provisions, i.e. to keep a true and proper account of licence-wise consumption and utilisation of imported goods in the specified format of Appendix 18 (chapter 4.30 and Appendix 18 HOP I 02-07).

- (26) With regard to the sub-schemes used during the RIP by the sole co-operating exporting producer, i.e. physical exports and deemed exports, 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 published in the HOP II 04-09.
- (27) In this respect it should be noted that the SION's are regularly revised. Since the one cooperating exporter used licences issued at different times, this also meant that different SIONs were applied by this company under the RIP.
- (28) Imported input materials are not transferable and have to be used to produce the resulting 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).
- (29) The review investigation established that while the cooperating exporting producer could establish the total consumption of raw materials there was no actual consumption register for the product concerned. Consumption was only presumed to be in line with the SIONs. It was therefore not possible to establish whether SION requirements, stipulated under specific authorisations/licenses, with respect to duty free input materials exceed the material needed to produce the reference quantity of the resulting export product.
- (30) Moreover, the review investigation established that raw materials were imported under three different authorisations/licenses and different SION norms and then were mixed and physically incorporated in the production process of the same exported good. The fact that there are three different SION's with different consumption norms for each of the raw materials further underlines the problem in establishing the actual consumption of the cooperating exporter. In this respect, it is clear that an actual consumption register is a basic requirement in order to allow for verification as to whether the duty-free input materials exceed the material needed to produce the reference quantity of the resulting export product.

- (31) The review investigation also established that the verification requirements stipulated by the Indian authorities were either not honoured or not yet tested in practice. For Advance Licenses issued before 13 May 2005 the necessary actual consumption and stock registers (i.e. Appendix 18) were not sent to the relevant authorities and hence not controlled by GOI. For Advance Authorisations issued after 13 May 2005 the necessary actual consumption and stock registers are required but GOI had not yet verified the compliance of these registers with EXIM policy requirements. In particular, the registers were verified by external chartered accountants as required by the relevant Indian legislation mentioned under recital (25) but there were no records kept either by the company or by the chartered accountant on how this certification process took place. There was no audit plan or any other supporting material of the audit performed, no recorded information on the methodology used and the specific requirements needed for such scrupulous work that requires detailed technical knowledge on production processes, EXIM policy requirements and accounting procedures. Account taken of this situation, it is considered that the investigated exporter was not able to demonstrate that the relevant EXIM provisions were met.

(d) Disclosure comments

- (32) The cooperating exporter challenged the findings above, in particular with respect of the conclusions as concerns the chartered accountant as detailed in recital 31. To this end it was claimed that there is no national or international legal provision that requires an audited company to maintain a record of how an audit was carried out. On the contrary, Indian law stipulates that the working papers are the property of the auditor. Under such circumstances and considering that no prior request to meet the chartered accountant had been made before the verification visit, the fact that the audited company was not in the possession of such supporting documents at the time of the visit should not be held against it. Furthermore, it was also claimed that the Basic regulation in any event would not authorise the Commission services to verify documents held outside the investigated company such as would be the case with an independent accountant. It was also argued that the actual consumption of the sole co-operating producer had been higher than the SION norms for every input and that there was no excess remission of duties.
- (33) In this respect it is recalled that the verification process performed by the chartered accountant and the issuing of the relevant certificate form part of the verification system introduced by the GOI in its EXIM policy. To this end the EXIM policy has introduced the chartered accountant as an actor in the implementation of the system and the Commission had to examine whether the aforesaid verification system was effectively applied. The fact that the company could not show that either itself nor the assigned chartered accountant held any record on the checks performed in order to issue the EXIM policy stipulated certificate demonstrates that the company was not in a position to prove that the relevant EXIM policy provisions were met. As to the company's claim that there in any event was no excess remission of duties it is recalled that the actual situation found on the spot (i.e. mixture of inputs and produced products, use of different SION norms, lack of the by EXIM policy stipulated actual consumption registers) and pending the fulfilment of the necessary final verification steps by the GOI, showed that any

calculation with respect to actual consumption and consequent excess remission of duties per authorisation/license and SION norm was not feasible.

(e) Conclusion

- (34) The exemption from import duties is a subsidy within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation, i.e. a financial contribution of the GOI which conferred a benefit upon the investigated exporter.
- (35) In addition, AAS physical exports and AAS for deemed exports are clearly contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation. Without an export commitment a company cannot obtain benefits under these schemes.
- (36) None of the two sub-schemes used in the present case can be considered as permissible duty drawback systems or substitution drawback systems within the meaning of Article 2(1)(a)(ii) of the basic Regulation. They do 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 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) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). The SIONs themselves cannot be considered a verification system of actual consumption, since duty free input materials imported under authorisations/licenses with different SION yields are mixed in the same production process for an exporting good. This type of process does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production and under which SION benchmark they should be compared. Furthermore, an effective control done by the GOI based on a correctly kept actual consumption register either did not take place or has not yet been completed. 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). Moreover, it is recalled that the company in question did not have a consumption register that allowed for a verification of real consumption of raw material per product type. Therefore, even if an efficient control system had been put in place it would not have been possible for the GOI to ascertain what amounts inputs were consumed in the production of the exported product. Finally, the involvement of chartered accountants in the verification process has not led to the improvement of the verification system as no detailed rules exist on how chartered accountants should perform the entrusted tasks and the information presented during the investigation could not warrant the fulfilment of the aforesaid rules laid down under the basic Regulation.
- (37) These two sub-schemes are therefore countervailable.

(f) Calculation of the subsidy amount

- (38) 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 2(1)(a)(ii) and Annex I(i) of the basic Regulation only an excess remission of duties can be countervailed, provided the conditions of Annexes II and III of 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 of the countervailing of the amount of (revenue forgone) unpaid duties, rather than any purported excess remission, applies. 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 2(1)(a)(ii) of the basic Regulation it only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.
- (39) The subsidy amount for the exporter 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 two sub-schemes used for the product concerned 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 export turnover generated by 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.
- (40) The subsidy rate established in respect of this scheme during the RIP for the sole co-operating producer amounts to 12.8 %.

2. *Duty Entitlement Passbook Scheme ('DEPBS')*

(a) Legal Basis

- (41) The detailed description of the DEPBS is contained in paragraph 4.3 of the EXIM-policy 04-09 and in chapter 4 of the HOP I 04-09.
- (42) It was found that the cooperating exporting producer obtained no countervailable benefits under the DEPBS. It was therefore not found necessary to further analyse this scheme in the scope of this investigation.

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

(a) Legal basis

- (43) The detailed description of the EPCGS is contained in chapter 5 of the EXIM-policy 04-09 and in chapter 5 of the HOP I 04-09.

(b) Eligibility

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

(c) Practical implementation

- (45) Under the condition of an export obligation, a company is allowed to import capital goods (new and -since April 2003- second-hand capital goods up to 10 years old) at a reduced rate of duty. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. Since April 2000, the scheme provides for a reduced import duty rate of 5 % applicable to all capital goods imported under the scheme. Until 31 March 2000, an effective duty rate of 11 % (including a 10 % surcharge) and, in case of high value imports, a zero duty rate was applicable. 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.
- (46) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail 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) Disclosure comments.

- (47) No comments with respect to EPCG were submitted upon disclosure.

(e) Conclusion on EPCG Scheme

- (48) The EPCGS provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI, since this concession decreases the GOI's duty revenue, which would be otherwise due. In addition, the duty reduction confers a benefit upon the exporter, because the duties saved upon importation improve its liquidity.
- (49) 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 3(4)(a) of the basic Regulation.
- (50) Finally, this scheme can not be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 2(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I, item (i), of the basic Regulation, because they are not consumed in the production of the exported products.

- (f) Calculation of the subsidy amount*

- (51) The one cooperating exporter had not purchased any capital goods in the IP. The company continued however to benefit from duty exemptions for capital goods purchased before the IP at the amount established in the original investigation. As established in the original investigation the subsidy amount obtained during the RIP 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 actual depreciation period of such capital goods of the exporting producer. 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. Fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation from this sum to arrive at the subsidy amount as numerator. In accordance with Article 7(2) and 7(3) of the basic Regulation this subsidy amount has been allocated over the export turnover during the review investigation period as 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. The subsidy rate established with respect to the benefit obtained by the company during the RIP was 0.3%

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

(a) *Legal basis*

Section 80HHC of the Income Tax Act 1961 ('ITA')

- (52) Under this scheme exporters could avail the benefit of a partial income tax exemption on profits derived from export sales. The legal basis for this exemption was set by Section 80HHC of the ITA.
- (53) This provision was abolished for the assessment year 2005-2006 (i.e. for the financial year from 1 April 2004 to 31 March 2005) onwards and thus 80HHC of the ITA does not confer any benefits after 31 March 2004. The sole co-operating exporting producer did not avail of any benefits under this scheme during the RIP. Consequently, since the scheme has been withdrawn, it shall therefore not be countervailed, in accordance with Article 15(1) of the basic Regulation.

5. *Focus Market Scheme ('FMS')*

(a) *Legal basis*

- (54) The detailed description of the FMS is contained in chapter 3.9 of the EXIM-policy 04-09 and in chapter 3.20 of the HOP I 04-09. While the company reported this scheme, the investigation revealed that no benefit was received in the RIP. Since it was found that the cooperating exporting producer did not obtain any countervailable benefits under this scheme, it was not found necessary to further analyse it in the scope of this investigation.

6. *Target Plus Scheme ('TPS')*

(a) *Legal basis*

- (55) The detailed description of the TPS is contained in chapter 3.7 of the EXIM-policy 04-09 and in chapter 3.2 of the HOP I 04-09.

(b) Eligibility

- (56) Any manufacturing exporter is eligible to apply for this scheme

(c) Practical implementation

- (57) This scheme aims at giving a premium to companies that increase their export turnover growth. To this end the scheme allows eligible companies to avail of duty credit ranging between 5 % to 15 % of an amount based on the difference between the FOB values of exports made in 2 consecutive financial years.
- (58) Companies wishing to benefit from the scheme have to file an application to the Ministry of Commerce and industry. Once authorised, a licence indicating the amount of the duty credit is issued by the relevant authorities.
- (59) This scheme was discontinued in March 2006 and replaced over time by two new schemes, the Focus Market Scheme and the Focus Product Scheme. The right to apply for TPS license did however continue until March 2007 and companies availing of the scheme may make use of the relevant duty credit entitlements until March 2009.

(d) Disclosure comments

- (60) The cooperating producer considered that there was no benefit accrued to the company in the RIP of this scheme and considering that the scheme was withdrawn in 2006 it should not be countervailed. However, as detailed above, the investigation revealed that a benefit was conferred on the company in the RIP and furthermore, while the scheme indeed has been abandoned, companies may continue to benefit from it until 2009.

(e) Conclusion on Target Plus Scheme

- (61) The TPS provides subsidies within the meaning of Article 2(1) (a) (ii) and Article 2(2) of the basic Regulation. A TPS 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 TPS duty credit confers a benefit upon the exporter, because it improves its liquidity.
- (62) Furthermore, the TPS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.
- (63) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 2(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. 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. An exporter is eligible for the TPS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply increase its export turnover 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 TPS.

(f) *Calculation of the subsidy amount*

- (64) The amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient, which is found to exist during the RIP as booked by the co-operating exporting producer 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.
- (65) The subsidy rate established with regard to this scheme during the RIP for the sole co-operating exporting producer amounts to 0.7%

III. Amount of countervailable subsidies

- (66) It is recalled that of the subsidy margin, established in the original investigation was found to be 5.8% for the sole exporting producer co-operating with the present partial interim review.
- (67) During the present partial interim review the amount of countervailing subsidies, expressed *ad valorem*, was found to be 13.8 %, as listed hereunder:

SCHEME→	ALS	DEPBS	EPCGS	ITIRAD	FMS	TPS	Total
COMPANY ↓	%	%	%	%	%	%	%
Pearl Engineering Polymers Ltd	12,8	0	0,3	0	0	0,7	13.8

- (68) Account taken of the above it is concluded that the level of subsidisation with regard to the sole co-operating exporting producer has increased.

D. COUNTERVAILING MEASURES AND ANTIDUMPING MEASURES

I. Countervailing measures

- (69) In line with the provisions of Article 19 of the basic Regulation and the grounds of this partial interim review stated under point 3 of the notice of initiation, it is established that the margin of subsidisation with regard to the sole co-operating producer has increased from 5.8 % to 13.8% and, therefore, the rate of countervailing duty, imposed to this exporting producer by Council Regulation (EC) No 193/2007 has to be amended accordingly.

- (70) The second company that was concerned with the present partial interim review Reliance Industries Ltd, had the highest subsidy margin in the original investigation but did not cooperate in this review. Since this company did not cooperate an assessment had to be based on best facts available in accordance with Article 28 of the basic Regulation. In this respect and in view of the findings as concern the one co-operating exporter, it is also likely that this non-cooperating exporting producer will continue to avail of benefits under the investigated subsidisation schemes at least the same rate as that established for the co-operator. It must thus be concluded that the level of subsidisation with regard to the one non co-operating exporting producer concerned by the review has also increased to 13.8% and, therefore, the rate of countervailing duty, imposed on this exporting producer by Council Regulation (EC) No 193/2007, has to be amended accordingly.
- (71) With regard to companies that cooperated in the original investigation but that were not identified as concerned by the investigation in the annex to the Notice of initiation, there was no indication that the countervailing and dumping duty rates applicable to such companies need to be recalculated. Consequently, the individual rates of the duty applicable to all other parties except Pearl Engineering and Reliance Industries mentioned under Article 1(2) of Council Regulation (EC) No 193/2007 remain unchanged.
- (72) Conversely, as concerns the companies that cooperated neither in this review nor in the original investigation, these must be considered to continue to avail of benefits under the investigated subsidisation schemes at least the same rate as that established for the sole co-operator. In order to avoid granting a bonus for non cooperation it is considered appropriate to establish level of subsidisation applicable to “all other companies” as the highest rate set for any company cooperating in the original investigation i.e. 13.8%
- (73) The amended countervailing duty rates should be established at the level of the new rates of subsidisation found during the present review, as the injury margins calculated in the original anti-subsidy investigation remain higher.
- (74) The individual company countervailing duty rates specified in this Regulation reflect the situation found during the partial interim review. Thus, they are solely applicable to imports of the product concerned produced by these companies. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to “all other companies”.
- (75) In order to avoid that fluctuations in the PET prices caused by variations in the crude oil prices result in higher duties being collected it is recalled that the measures in place have been set in the form of a specific duty per tonne. The amount set results from the application of the countervailing duty rate to the CIF export prices that were used for the calculation of the injury elimination level in the original investigation. The same method has been used for the purpose of establishing the amended specific duty levels in the context of this review.
- (76) The margins and duty rates applicable should therefore be calculated as indicated in the table below.

	Countervailing duty rate	Proposed countervailing duty rate	
Reliance Industries Ltd	13.8%	69,4	Eur/t
Pearl Engineering Polymers Ltd	13.8%	74,6	Eur/t
Senpet Ltd	4.43%	22,0	Eur/t
Futura Polyeters Ltd	0%	0,0	Eur/t
South Asian Petrochem Ltd	13.9%	106,5	Eur/t
All other companies	13.8%	69,4	Eur/t

- (77) Any claim requesting the application of these individual countervailing duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission⁶ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, and after consultation of the Advisory Committee, the Regulation will be amended accordingly by updating the list of companies benefiting from individual duty rates.

II. Antidumping measures

- (78) The amendment of the countervailing duty rate will have an impact on the definitive anti-dumping duty imposed on producers in India, by Regulation (EC) No 192/2007.
- (79) In the original anti-dumping investigation, 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 Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Communities and Article 24(1) of the basic anti-subsidy 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 original anti-subsidy investigation as well as in the present partial interim review that certain of the subsidy schemes investigated, which were found to be countervailable, constituted export subsidies within the meaning of Article 3(4)(a) of the basic anti-subsidy Regulation. As such, these subsidies affected the export price of the Indian exporting producers, thus leading to an increased margin of dumping. In other words, the definitive dumping margins established in the original anti-dumping investigation was partly due to the existence of export subsidies.
- (80) Consequently, the definitive anti-dumping duty rates for the exporting producers concerned must now be adjusted to take account of the revised level of benefit received from export subsidies in the RIP in the present partial interim review to

⁶ European Commission –Directorate General for Trade- Directorate H –N-105 [] B-1049 Brussels.

reflect the actual dumping margin remaining after the imposition of the adjusted definitive countervailing duty offsetting the effect of the export subsidies.

- (81) In other words, the new subsidy levels will have to be taken into account for the purpose of adjusting the dumping margins, previously established.
- (82) The margins and duty rates applicable to the companies concerned should therefore be calculated as indicated in the table below.

	Countervailing duty rate (resulting from export subsidies)	Injury elimination level	Anti dumping duty rate	Proposed anti-dumping duty	
Reliance Industries Ltd	13.8%	44,3%	30,5%	153,6	Eur/t
Pearl Engineering Polymers Ltd	13.8%	33,6%	16,2%	87,5	Eur/t
Senpet Ltd	4.43%	44,3%	39,9%	200,9	Eur/t
Futura Polyesters Ltd	0%	44,3%	14.7%	161,2	Eur/t
South Asian Petrochem Ltd	13.9%	44,3%	11,6%	88,9	Eur/t
All other companies	13.8%	44,3%	30,5%	153,6	Eur/t

- (83) In order to ensure proper enforcement of the countervailing and anti dumping duties, the residual duty level should not only apply to non-cooperating exporters but also apply to those companies which did not have any exports during the RIP. However, the latter companies are invited, if they fulfil the requirements of Article 20 of the basic Regulation, to present a request for a review pursuant to that Article in order to have their situation examined individually,

HAS ADOPTED THIS REGULATION:

Article 1

Paragraph 2 of Article 1 of Regulation (EC) No 193/2007 shall be replaced by the following:
"Except as provided for in article 2, the rate of the countervailing duty applicable to the net, free-at-Community-frontier price, before duty for products manufactured by the companies listed below shall be as follows:

Country	Company	Countervailing duty (EUR/tonne)	TARIC additional code
India	Reliance Industries Ltd	69,4	A181
India	Pearl Engineering Polymers Ltd	74,6	A182

India	Senpet Ltd	22,0	A183
India	Futura Polyesters Ltd	0,0	A184
India	South Asian Petrochem Ltd	106,5	A585
India	All other companies	69,4	A999

Article 2

Paragraph 2 of Article 1 of Regulation (EC) No 192/2007 shall be replaced by the following:
 "Except as provided for in article 2, the rate of the anti dumping duty applicable to the net free-at-Community-frontier price, before duty for products manufactured by the companies listed below shall be as follows:

Country	Company	Anti-dumping duty (EUR/tonne)	TARIC additional code
India	Reliance Industries Ltd	153,6	A181
India	Pearl Engineering Polymers Ltd	87,5	A182
India	Senpet Ltd	200,9	A183
India	Futura Polyesters Ltd	161,2	A184
India	South Asian Petrochem Ltd	88,9	A585
India	All other companies	153,6	A999
Indonesia	P.T. Mitsubishi Chemical Indonesia	187,7	A191
Indonesia	P.T. Indorama Synthetics Tbk	92,1	A192
Indonesia	P.T. Polypet Karyapersada	178,9	A193
Indonesia	All other companies	187,7	A999
Malaysia	Hualon Corp. (M) Sdn. Bhd.	36,0	A186
Malaysia	MpI Polyester Industries Sdn. Bhd.	160,1	A185
Malaysia	All other companies	160,1	A999
Republic of Korea	SK Chemicals Group: SK Chemicals Co. Ltd	0	A196
	Huvis Corp.	0	A196
Republic of Korea	KP Chemical Group: Honam Petrochemicals Corp.	0	A195
	KP Chemical Corp.	0	A195
Republic of Korea	All other companies	148,3	A999

Taiwan	Far Eastern Textile Ltd	36,3	A808
Taiwan	Shinkong Synthetic Fibers Corp.	67,0	A809
Taiwan	All other companies	143,4	A999
Thailand	Thai Shingkong Industry Corp. Ltd	83,2	A190
Thailand	Indo Pet (Thailand) Ltd	83,2	A468
Thailand	All other companies	83,2	A999

Article 3

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

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

Done at Brussels, [...]

For the Council
The President