

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1350**of 3 August 2015****amending Council Implementing Regulation (EU) No 461/2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India**

THE EUROPEAN COMMISSION,

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 Article 19 thereof,

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (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. By Regulation (EC) No 1645/2005 ⁽³⁾, the Council amended the level of countervailing measures in force against imports of PET from India. The amendments were a result of an accelerated review initiated pursuant to Article 20 of the Regulation (EC) No 597/2009. Following an expiry review, the Council by Regulation (EC) No 193/2007 ⁽⁴⁾ imposed a definitive countervailing duty for a further period of five years. The countervailing measures were subsequently amended by Council Regulation (EC) No 1286/2008 ⁽⁵⁾ and Council Implementing Regulation (EU) No 906/2011 ⁽⁶⁾, following partial interim reviews. A later partial interim review was terminated without amending the measures in force by Council Implementing Regulation (EU) No 559/2012 ⁽⁷⁾. Following another expiry review, the Council by Implementing Regulation (EU) No 461/2013 ⁽⁸⁾ imposed a definitive countervailing duty for a further period of five years. By Decision 2000/745/EC ⁽⁹⁾ the Commission accepted undertakings setting a minimum import price offered by three exporting producers in India. By Implementing Decision 2014/109/EU ⁽¹⁰⁾, the Commission withdrew the acceptance of the undertakings, due to a change in the circumstances under which the undertakings were accepted.

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ Council Regulation (EC) No 2603/2000 of 27 November 2000 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in India, Malaysia and Thailand and terminating the anti-subsidy proceeding concerning imports of certain polyethylene terephthalate originating in Indonesia, the Republic of Korea and Taiwan (OJ L 301, 30.11.2000, p. 1).

⁽³⁾ Council Regulation (EC) No 1645/2005 of 6 October 2005 amending Regulation (EC) No 2603/2000 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate originating, inter alia, in India (OJ L 266, 11.10.2005, p. 1).

⁽⁴⁾ Council Regulation (EC) No 193/2007 of 22 February 2007 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97 (OJ L 59, 27.2.2007, p. 34).

⁽⁵⁾ Council Regulation (EC) No 1286/2008 of 16 December 2008 amending Regulation (EC) No 193/2007, imposing a definitive countervailing duty on imports of certain 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 (OJ L 340, 19.12.2008, p. 1).

⁽⁶⁾ 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 (OJ L 232, 9.9.2011, p. 19).

⁽⁷⁾ Council Implementing Regulation (EU) No 559/2012 of 26 June 2012 terminating the partial interim review concerning the countervailing measures on imports of certain polyethylene terephthalate (PET) originating in, inter alia, India (OJ L 168, 28.6.2012, p. 6).

⁽⁸⁾ Council Implementing Regulation (EU) No 461/2013 of 21 May 2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 597/2009 (OJ L 137, 23.5.2013, p. 1).

⁽⁹⁾ Commission Decision 2000/745/EC of 29 November 2000 accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand (OJ L 301, 30.11.2000, p. 88).

⁽¹⁰⁾ Commission Implementing Decision 2014/109/EU of 4 February 2014 repealing Decision 2000/745/EC accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of certain polyethylene terephthalate (PET) originating, inter alia, in India (OJ L 59, 28.2.2014, p. 35).

- (2) The measures in force consist of a specific countervailing duty, ranging between 0 and 106,5 EUR per tonne for individually named Indian producers, with a residual rate of 69,4 EUR per tonne imposed on imports from all other producers.

1.2. Initiation of two partial interim reviews

- (3) Two requests for a partial interim review pursuant to Article 19 of the basic Regulation were lodged respectively by Dhunseri Petrochem & Tea Limited ('Dhunseri') and Reliance Industries Limited ('Reliance'), Indian exporting producers of PET ('the applicants'). The requests were limited in scope to the examination of the respective subsidisation as far as the applicants were concerned.
- (4) The applicants provided prima facie evidence that the continued application of the measures at their current level was no longer necessary to offset the countervailable subsidisation. In particular, the applicants provided prima facie evidence showing that their respective subsidy amount has decreased well below the duty rates currently applicable to them.
- (5) In the case of Dhunseri, this reduction in the overall subsidy level would be due to the termination of its Export Oriented Unit Status and to the decrease in import duties applicable to the raw materials used to manufacture the product concerned since the investigation that led to the current level of measures.
- (6) In the case of Reliance, this reduction in the overall subsidy level would be due to the termination of applicability of the Duty Entitlement Passbook Scheme and the Status Holder Incentive Scrip Scheme and the reduction of amounts availed by the applicant with regard to other schemes, like the Focus Market Scheme, the Focus Product Scheme, the Advance Authorisation Scheme and the Export Promotion Capital Goods Scheme.
- (7) Having determined that each request contained sufficient prima facie evidence, the Commission announced by two notices, on 6 June 2014 ⁽¹⁾ and on 1 August 2014 ⁽²⁾ respectively, the initiation of partial interim reviews pursuant to Article 19 of the basic Regulation. The reviews were limited in their scope to the examination of subsidisation in respect of the individual applicants.

1.3. Parties concerned by the investigation

- (8) The Commission officially informed the applicants, the representatives of the exporting country and the association of Union producers about the initiation of the reviews. 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 notices of initiation.
- (9) Reliance requested and was granted a hearing.
- (10) In order to obtain the information deemed necessary for its investigation, the Commission sent questionnaires to the applicants and the Government of India ('GOI') and received replies within the deadlines set for that purpose.
- (11) The Commission sought and verified all information deemed necessary for the determination of subsidisation. The Commission carried out verification visits at the premises of Dhunseri in Kolkata and of Reliance in Mumbai and at the premises of the GOI in New Delhi (Directorate-General of Foreign Trade and Ministry of Commerce) and Kolkata (Commerce & Industries Department, Government of West Bengal).

1.4. Review investigation period

- (12) The investigation of subsidisation covered the period from 1 April 2013 to 31 March 2014 ('the review investigation period').

⁽¹⁾ Notice of initiation of a partial interim review of the countervailing measures applicable to imports of certain polyethylene terephthalate (PET) originating in India (OJ C 171, 6.6.2014, p. 11).

⁽²⁾ Notice of initiation of a partial interim review of the countervailing measures applicable to imports of certain polyethylene terephthalate (PET) originating in India (OJ C 250, 1.8.2014, p. 11).

1.5. Disclosure

- (13) On 16 June and 1 July 2015 the GOI and the other interested parties were informed of the essential facts and considerations upon which the Commission intended to propose to amend the duty rates applicable to Dhunseri and Reliance. They were also given reasonable time to comment. All submissions and comments were taken duly into consideration as set out below.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (14) The product covered by this 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, is identical in terms of physical and chemical characteristics and uses to the product produced and sold on the domestic market in India. It is therefore concluded that products sold on the domestic and export markets are like products within the meaning of Article 2(c) of the basic Regulation.

3. RESULTS OF THE INVESTIGATION

3.1. Subsidisation

- (16) On the basis of the information submitted by the GOI and the applicants, as well as 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 Drawback Scheme (DDS)
- (c) Export Promotion Capital Goods Scheme (EPCGS)
- (d) Focus Market Scheme (FMS)
- (e) Focus Product Scheme (FPS)
- (f) Incremental Exports Incentivisation Scheme (IEIS)
- (g) Income Tax Incentive for Research and Development (ITIRAD)

Regional schemes:

- (h) West Bengal Subsidy Schemes/Incentive Schemes of the Government of West Bengal (WBIS)

Allegedly terminated/non-applicable nationwide schemes, previously used by the applicants:

- (i) Export oriented Units (EOU) and Special Economic Zones (SEZ) Scheme
- (j) Duty Entitlement Passbook Scheme (DEPBS)
- (k) Status Holders Incentive Scrip (SHIS)

Allegedly terminated/non-applicable regional schemes, previously availed by the applicants:

- (l) Capital Investment Incentive Scheme of the Government of Gujarat

- (17) The schemes specified above under recital (16) (a), (c) to (f) and (i) to (k) are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Foreign Trade Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. The Foreign Trade Policy document relevant to the review investigation period is 'Foreign Trade Policy 2009-2014' ('FTP 09-14'). In addition, the GOI also sets out the procedures governing FTP 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 09-14'). The Handbook of Procedures is updated on a regular basis. On 1 April 2015, the Government of India published the new FTP for 2015-2020, terminating FMS and FPS.
- (18) The scheme specified above under recital (16) (b) is based on section 75 of the Customs Act of 1962, on section 37 of the Central Excise Act of 1944, on sections 93A and 94 of the Financial Act of 1994 and on the Customs, Central Excise Duties and Service Tax Drawback Rules of 1995. Drawback rates are published on a regular basis.
- (19) The scheme specified above under recital (16) (g) is based on the Income Tax Act of 1961 ('ITA'), which is amended by the yearly Finance Act.
- (20) The scheme specified above under recital (16) (h) is administered by the Government of West Bengal and set out in Government of West Bengal Commerce & Industries Department notification No 580-CI/H of 22 June 1999.
- (21) The scheme specified above under recital (16) (l) above is administered by the Government of Gujarat and is based on Gujarat's industrial incentive policy.
- (22) The investigation revealed that the schemes specified above under recital (16) (i) to (l) have been either terminated or can no longer be availed by the applicants.

3.2. Advance Authorisation Scheme (AAS)

- (23) The Commission established that Reliance used AAS during the review investigation period.

3.2.1. Legal basis

- (24) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the FTP 09-14 and chapters 4.1 to 4.30 of the HOP I 09-14.

3.2.2. Eligibility

- (25) The AAS consists of six sub-schemes, as described in more detail in recital (26). Those sub-schemes differ, inter alia, in the scope of eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement sub-schemes. Manufacturer-exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the FTP 09-14, such as suppliers of an export oriented unit, are eligible for the AAS deemed export sub-scheme. Eventually, intermediate suppliers to manufacturer-exporters are eligible for 'deemed export' benefits under the sub-schemes Advance Release Order ('ARO') and back to back inland letter of credit.

3.2.3. Practical implementation

- (26) The AAS can be issued for:
- (a) Physical exports: This is the main sub-scheme. It allows for duty-free import of input materials for the production of a specific resulting export product. 'Physical' in this context means that the export product has to leave the Indian territory. An import allowance and export obligation including the type of export product are specified in the licence;

- (b) Annual requirement: Such an authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The licence holder can — up to a certain value threshold set by its past export performance — import duty-free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resulting product falling under the product group using such duty-exempt material;
 - (c) 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;
 - (d) Deemed exports: This sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of the 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 export-oriented unit or to a company situated in a special economic zone;
 - (e) ARO: The AAS holder intending to source the inputs from indigenous sources, instead of direct import, has the option to source them against AROs. In such cases the advance authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of the 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;
 - (f) Back to back inland letter of credit: This sub-scheme again covers indigenous supplies to an advance authorisation holder. The holder of an advance authorisation can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The authorisation will be validated by the bank for direct import only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to deemed export benefits as set out in paragraph 8.3 of the FTP 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).
- (27) The Commission established that throughout the review investigation period Reliance continued using only one of these sub-schemes for the product concerned, namely the AAS for physical exports. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.
- (28) With regard to the use of AAS for physical exports referred to in recital (26) (a) the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the Advanced Authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the advanced authorisation. The volume of imports allowed under the AAS is determined by the GOI on the basis of Standard Input Output Norms ('SIONs') which exist for most products including the product concerned.
- (29) 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 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.
- (30) Imported input materials are not transferable and have to be used to produce the specific 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).

- (31) The Commission established that there is no close nexus between the imported inputs and the exported finished products. The eligible input materials are also imported and used for products other than the product concerned. Moreover, licences for various products can and are being clubbed. This means that exports under AAS licence of one product may give right to duty-free imports of inputs under an AAS licence for another product. During the verification visit conducted by the Commission, Reliance confirmed that because of this lack of a clear nexus, the consumption of inputs is being reported on the basis of SIONs. Regarding the verification requirements referred to in recital (29) of this Regulation, there were no records kept by the company which would prove that the external audit took place. In sum, the Commission concluded that Reliance was unable to demonstrate that the relevant FTP provisions were met.

3.2.4. Conclusion on the AAS

- (32) The exemption from import duties is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, namely it constitutes a financial contribution of the GOI since it decreases duty revenue which would otherwise be due and it confers a benefit upon the investigated exporters since it improves their liquidity.
- (33) Without an export commitment a company cannot obtain benefits under this scheme. The sub-scheme concerned in the present case is thus clearly contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (34) The sub-scheme concerned in the present case cannot be considered permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The GOI did not effectively apply a verification system or a 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). It is also considered that the SIONs for the product concerned were not sufficiently precise and that themselves cannot constitute a verification system of actual consumption because the design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation).
- (35) The sub-scheme referred to in recital (26) (a), is therefore countervailable.

3.2.5. Calculation of the subsidy amount

- (36) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of total import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an 'excess' remission of duties. According to Article 3(1)(a)(ii) and Annex I(i) of the basic Regulation only the excess remission of duties can be countervailed, when 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 adequate monitoring process is not demonstrated, the above exception for drawback schemes is not applicable and the normal rule of the countervailing of the amount of unpaid duties (revenue forgone), applies, rather than of any purported excess remission. As set out in Annexes II(II) and III(II) of the basic Regulation the burden is not upon the investigating authority to calculate such excess remission. To the contrary, according to Article 3(1)(a)(ii) of the basic Regulation, the investigating authority only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.
- (37) As explained in recital (31), the benefit entitlement (i.e. the export under the licence) and the benefit conferral (i.e. duty free import of the input) are only loosely linked to one another. They do not have to occur in any

particular order or time proximity. It is thus possible that whilst the entitlement occurs during the review investigation period, the related conferral may occur before as well as after the review investigation period. Furthermore, through clubbing, benefit entitlement under a licence for one product may be transferred so that it ultimately confers a benefit on another product.

- (38) In the investigation that led to the current level of duty for Reliance, i.e. Regulation (EU) No 906/2011 ('the previous Regulation'), the subsidy amount derived from AAS was calculated for Reliance on the basis of import duties forgone on all material imported for all products under the scheme during the review investigation period. This subsidy amount was then allocated over the total export turnover during the review investigation period.
- (39) In the present review, the Commission did not have at its disposal the data for all imports under AAS licences which occurred during the review investigation period. These data were used during the previous investigation when the subsidy rate under AAS was first established for Reliance. Instead, Reliance provided data related to AAS licences opened only during the review investigation period and only for the product concerned. The Commission informed Reliance that for the reasons discussed in Recitals (31) and (37) of this Regulation, this data was deemed to be insufficient and asked Reliance to provide the relevant information, as requested in the questionnaire. Reliance did not provide the requested information, explaining that the input material imported under AAS for the production of PET was also imported under AAS opened for many other products including those produced by other business sectors of the company.
- (40) Due to the lack of the appropriate data, the Commission was unable to calculate the subsidy amount on the basis of import duties forgone on all material imported for all products under the scheme during the review investigation period as in the previous investigation. In these circumstances, as proposed by Reliance, the calculation was then done on the basis of the total export transactions cleared during the review investigation period under the AAS licences related to the product concerned. The GOI confirmed that it is unlikely that a company would not claim a benefit that it is entitled to under an AAS licence. On this basis, by using the SION, the amount of duty saved on imported inputs could be reliably calculated.
- (41) The subsidy rate established in respect of this scheme during the review investigation period for Reliance amounts to 4,67 %.

3.2.6. *Comments on the final disclosure*

- (42) Reliance disagreed with the use of SION to calculate the benefit under AAS. The company pointed out that the Commission used this method because, hypothetically, Reliance could use AAS licences granted for other products to import raw materials used for production of PET. Reliance argued that the Commission did not support this statement. The company further argued that by using the SION-based method the Commission calculated the highest possible amount of benefit that Reliance could hypothetically have received. Reliance also argued that in previous investigations the Commission only took into account the actual benefit received for the product concerned and not hypothetical benefits that could have been received for other products. Reliance argued that in calculating the benefit under AAS the Commission should have considered only the duty foregone on all imports during the review investigation period made under active AAS licences opened for PET.
- (43) The Commission first notes that the methodology used in the current investigation was developed by Reliance. The Commission also notes that it is not a mere hypothesis that raw materials imported under AAS licences opened for products other than PET are used in the production of PET, and that raw materials imported under PET licences are not. Due to its structure, the input materials imported by Reliance duty-free under AAS licences for PET are not the immediate inputs but basic raw materials such as naphtha. As confirmed by Reliance during the investigation and noted in recital (31) above, those basic raw materials are imported under AAS licences for (and used in the production of) other products in and outside of the petrochemical sector. There are no individual closed systems for the production of each of these products and therefore inputs imported under AAS licences for PET are mixed with, *inter alia*, other inputs imported under AAS licences for other products. Out of

this mix a variety of products for export under AAS licences or other schemes and for domestic market are being produced. Contrary to what Reliance argues, this situation together with the considerations mentioned in recital (37) above confirms that the determination of the actual benefit conferred upon exports of PET during the review investigation period cannot be limited to the examination of the imports of inputs under AAS licences for PET during that period.

- (44) Regarding the practice in previous investigations recalled by Reliance, what is pertinent is the investigation that led to the current level of duty. As mentioned in recitals (38) to (40) above, the Commission was not provided with sufficient data to apply this methodology. Thus, in light of this fact, the Commission established that the methodology used in the current investigation nonetheless accurately reflects the actual benefit conferred by AAS upon exports of PET during the review investigation period.
- (45) The Commission does not agree that the selected methodology calculates the highest possible amount of benefit that Reliance could receive for the exports of PET. The calculations are based on prices and duties applicable during the review investigation period whereas, as explained in recital (37) above, the relevant exports could have taken place before, during and after that period. Regarding the benefit calculated by the Commission being hypothetical, as explained in recital (40) above, the GOI confirmed that it is unlikely that a company would not claim a benefit that it is entitled to under an AAS licence. A company would export under AAS only if it has already imported the relevant inputs or intends to do so in a near future. Otherwise a company would have opted for DDS, described below, which does not require inputs to be imported. After final disclosure Reliance did not put forward any arguments as to why it would be unable to claim the benefit which exports under AAS give it right to.
- (46) Reliance and the GOI argued that the benefit calculated on the basis of AAS should be restricted to the excess benefit received by Reliance. Reliance and the GOI argued that AAS should be considered as a duty drawback scheme permissible under Article 3(1)(a)(ii) of the basic Regulation because of the existence of Appendix 23-based system in which the actual values consumed are reported. According to Reliance and the GOI this, together with the certification of the Appendix 23 by independent auditors and the possibility of an audit by the GOI, constitutes an adequate monitoring process. Finally, Reliance argued that, due to its efficiency, as long as SION is respected, the GOI can be certain that no excess duty remittance is granted.
- (47) As noted in recital (31) above, because of Reliance's circumstances further described in recital (43) above, the consumption of inputs is being reported on the basis of SIONs. During the on-spot verification by the Commission, Reliance did not provide to the Commission an Appendix 23 for the product concerned. Such Appendix 23 was only provided to the Commission via the GOI after the on-spot verifications conducted at Reliance's and GOI's premises. As evidenced by the Appendix 23, the certification by an independent auditor contains a disclaimer that the 'audited quantity actually consumed is based on the cost records of the company'. The Commission found no evidence of any audit by the GOI of the information submitted in Appendix 23, neither for PET, nor for any other product produced by Reliance. In those circumstances the Commission disagrees that there is an adequate monitoring process in place. Finally, as mentioned in recital (34) above, SIONs themselves cannot constitute a verification system of actual consumption because the design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. Therefore, for the reasons set out in this recital, the Commission disagrees that AAS should be considered as a duty drawback scheme permissible under Article 3(1)(a)(ii) of the basic Regulation.
- (48) Reliance also noted that from July 2014 the import duty of reformates dropped from 10 % to 2,5 %. Since the benefit under AAS was calculated on the basis of the import duty foregone, Reliance argued that this change, being of lasting nature, should be reflected in the calculation of the benefit conferred under the scheme.
- (49) The Commission notes that according to Article 5 of the basic Regulation 'the amount of countervailable subsidies shall be calculated in terms of the benefit conferred on the recipient which is found to exist during the investigation period for subsidisation'. In line with Article 15(1) of the basic Regulation changes which occurred

after the review investigation period can be taken into consideration only if the subsidy or subsidies are withdrawn or it has been demonstrated that the subsidies no longer confer any benefit on the exporters involved. This is not the case here.

- (50) The GOI argued that the Commission considered the benefit of both AAS and DDS against the same export transactions. The GOI noted that a company may use AAS for import of PET inputs but later export some of the produced PET under DDS. In that situation the company would be required to undertake some other exports for the duty unpaid on inputs. The GOI argued that if in this situation the Commission was to calculate the benefit on the basis of the total import duty unpaid under AAS for the inputs and the total duty drawback for the exports under DDS this would have led to double counting of benefit.
- (51) The Commission notes that the argument of GOI presupposes that the benefit under AAS was calculated only on the basis of the imports during the review investigation period and the benefit under DDS on the basis of the exports. However, as explained in recital (40) above, the benefit under AAS was calculated on the basis of the exports of PET during the review investigation period, and the duty foregone on the imports those exports give right to. In this situation double counting is impossible. The Commission also notes that due to the possibility available under this scheme, to import inputs under one system and to export the resulting outputs under another, it is further demonstrated that the method used by the Commission is suitable to accurately calculate the benefit under AAS. It also demonstrates the lack of traceability of the actual input utilisation further proving that AAS should not be considered as a duty drawback scheme permissible under Article 3(1)(a)(ii) of the basic Regulation.
- (52) Finally, Reliance argued that since AAS and DDS are mutually exclusive the benefit under these schemes should be calculated only for their respective volumes, using the average benefit that can be obtained by the AAS and DDS.
- (53) As noted by Reliance in their comments on the final disclosure, the Commission calculated the benefit under these two schemes on the basis of the total volume of the product concerned exported from India. This methodology is in accordance with Article 7(2) of the basic Regulation. Furthermore, as explained in recital (51) above, the methods used by the Commission to calculate the benefits under AAS and DDS takes account of the mutual exclusivity of these two schemes. The argument of Reliance is therefore rejected.

3.3. Duty Drawback Scheme (DDS)

- (54) The Commission established that the applicants used DDS during the review investigation period.

3.3.1. Legal Basis

- (55) The detailed description of the DDS is contained in the Custom & Central Excise Duties Drawback Rules 1995, as amended by successive notifications.

3.3.2. Eligibility

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

3.3.3. Practical implementation

- (57) An eligible exporter can apply for drawback amount which is calculated as a percentage of the FOB value of products exported under this scheme. The drawback rates have been established by the GOI for a number of

products, including the product concerned. They are determined on the basis of the average quantity or value of materials used as inputs in the manufacturing of a product and the average amount of duties paid on inputs. They are applicable regardless of whether import duties have actually been paid or not. The DDS rate for the product concerned during the RIP was 3,9 % of the FOB value until 21 September 2013, and 3 % thereafter.

- (58) To be eligible to benefits under this scheme, a company must export. At the moment when shipment details are entered in the Customs server, it is indicated that the export is taking place under the DDS and the DDS amount is fixed irrevocably. After the shipping company has filed the Export General Manifest and the Customs office has satisfactorily compared that document with the shipping bill data, all conditions are fulfilled to authorise the payment of the drawback amount by either direct payment on the exporter's bank account or by draft.
- (59) The exporter also has to produce evidence of realisation of export proceeds by means of a Bank Realisation Certificate ('BRC'). This document can be provided after the drawback amount has been paid but the GOI will recover the paid amount if the exporter fails to submit the BRC within a given delay.
- (60) The drawback amount can be used for any purpose.
- (61) It was found that in accordance with Indian accounting standards, the duty drawback amount can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation.

3.3.4. *Conclusion on DDS*

- (62) The DDS provides subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation. The so-called duty drawback amount is a financial contribution by the GOI as it takes form of a direct transfer of funds by the GOI. There are no restrictions as to the use of these funds. In addition, the duty drawback amount confers a benefit upon the exporter, because it improves its liquidity.
- (63) The rate of duty drawback for exports is determined by the GOI on a product by product basis. However, although the subsidy is referred to as a duty drawback, the scheme does not have the characteristics of a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. The cash payment to the exporter is not linked to actual payments of import duties on raw materials, and is not a duty credit to offset import duties on past or future imports of raw materials.
- (64) The payment which takes form of a direct transfer of funds by the GOI subsequent to exports made by exporters has to be considered as a direct grant from the GOI contingent on export performance and is therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (65) In view of the above, it is concluded that DDS is countervailable.

3.3.5. *Calculation of the subsidy amount*

- (66) In accordance with Article 3(2) and Article 5 of the basic Regulation, the Commission calculated the amount of countervailable subsidies in terms of the benefit conferred on the recipient, which was found to exist during the review investigation period. In this regard, the Commission established 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 the payment of the drawback amount, which constitutes a financial contribution within the meaning of Article 3(1)(a)(i) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of drawback which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, the Commission considers appropriate to assess the benefit under the DDS as being the sum of the drawback amounts earned on export transactions made under this scheme during the review investigation period.

- (67) In accordance with Article 7(2) of the basic Regulation, the Commission allocated these subsidy amounts 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.
- (68) The Commission thus established that the subsidy rates in respect of this scheme during the review investigation period amounted to 3,27 % for Dhunseri and 1,09 % for Reliance.

3.3.6. Comments on the final disclosure

- (69) Reliance noted that the benefit under DDS has been reduced from 3 % to 2,4 % after the review investigation period. Reliance argued that, since this change is of lasting nature, this should be taken into consideration when calculating the benefit under DDS. Reliance also argues that the benefit calculated on the basis of DDS should be restricted to the excess benefits received by Reliance, as DDS should be considered as a duty drawback scheme permissible under Article 3(1)(a)(ii) of the basic Regulation.
- (70) Regarding the decrease of the benefit under DDS, the Commission notes that according to Article 5 of the basic Regulation 'the amount of countervailable subsidies shall be calculated in terms of the benefit conferred on the recipient which is found to exist during the investigation period for subsidisation'. In line with Article 15(1) of the basic Regulation changes which occurred after the review investigation period can be taken into consideration only if the subsidy or subsidies are withdrawn or it has been demonstrated that the subsidies no longer confer any benefit on the exporters involved. This is not the case in the current investigation and therefore this argument should be rejected.
- (71) Regarding the claim that DDS should be considered as a duty drawback scheme permissible under Article 3(1)(a)(ii) of the basic Regulation, no further arguments to support this claim were put forward. This claim is therefore rejected.

3.4. Export Promotion Capital Goods Scheme (EPCGS)

- (72) The Commission established that Reliance received concessions under the EPCGS, which could be allocated to the product concerned in the review investigation period.

3.4.1. Legal basis

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

3.4.2. Eligibility

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

3.4.3. Practical implementation

- (75) Under the condition of an export obligation, a company is allowed to import capital goods (new and second-hand capital goods up to 10 years old) at a reduced rate of duty. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. The scheme provides for a reduced import duty rate of 3 % applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period. Under FTP 09-14 the capital goods can be imported with a 0 % duty rate under the EPCGS but in such case the time period for fulfilment of the export obligation is shorter.

- (76) 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.

3.4.4. *Conclusion on EPCGS*

- (77) The EPCGS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI, since this concession decreases the GOI's duty revenue which would be otherwise due. In addition, the duty reduction confers a benefit upon the exporter, because the duties saved upon importation improve the company's liquidity.
- (78) Furthermore, EPCGS is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore, it is deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (79) EPCGS cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I point (i), of the basic Regulation, because they are not consumed in the production of the exported products.

3.4.5. *Calculation of the subsidy amount*

- (80) The Commission calculated the subsidy amount in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the industry concerned. The subsidy amount for the review investigation period was then calculated by dividing the total amount of the unpaid customs duty with the depreciation period. The amount so calculated, which is attributable to the review investigation period, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the investigation period in India was considered appropriate for this purpose. Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation to arrive at the subsidy amount as numerator.
- (81) In accordance with Article 7(2) and (3) of the basic Regulation, the Commission allocated this subsidy amount over the export turnover of the product concerned during the review investigation period as the denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.
- (82) Based on the above, the Commission established that the subsidy rate in respect of this scheme during the review investigation period amounted to 0,43 % for Reliance.

3.5. **Focus Market Scheme (FMS)**

- (83) The Commission established that the applicants used FMS during the review investigation period.

3.5.1. *Legal basis*

- (84) The detailed description of FMS is contained in paragraph 3.14 of FTP 09-14 and in paragraph 3.8 of HOP I 09-14.

3.5.2. *Eligibility*

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

3.5.3. Practical implementation

- (86) Under this scheme exports of all products which include exports of PET to countries notified under Tables 1 and 2 of Appendix 37(C) of HOP I 09-14 are entitled to duty credit equivalent to 3 % of the FOB value. As of 1 April 2011, exports of all products to countries notified under Table 3 of Appendix 37(C) ('Special Focus Markets') are entitled to a duty credit equivalent to 4 % of the FOB value. Certain types of export activities are excluded from the scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units.
- (87) 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.
- (88) The credit entitlement certificate is issued from the port from which the exports have been made and after realisation of exports or shipment of goods. As long as the complainant 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.

3.5.4. Conclusion on FMS

- (89) The FMS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A FMS duty credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, the FMS duty credit confers a benefit upon the exporter, because it improves its liquidity.
- (90) Furthermore, FMS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.
- (91) 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) of the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. There is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of point (i) of Annex I and Annexes II and III of the basic Regulation. An exporter is eligible for FMS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without having to demonstrate that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from FMS. Moreover, an exporter can use FMS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in Annex I point (i) of the basic Regulation, because they are not consumed in the production of the exported products.

3.5.5. Calculation of the subsidy amount

- (92) The amount of countervailable subsidies was calculated on the basis of the benefit conferred on the recipient, which is found to exist during the review investigation period as booked by the applicants 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 (numerator) has been allocated over the 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.
- (93) Based on the above, the Commission established that the subsidy rates in respect of this scheme during the review investigation period amounted to 0,41 % for Dhunseri and 1,16 % for Reliance.

3.5.6. *Withdrawal and replacement of FMS*

- (94) On 1 April 2015, the Government of India published the new FTP for 2015 – 2020. In the new FTP, FMS, together with four other schemes, is replaced by Merchandise Export Incentive Scheme (MEIS). MEIS is not applicable to exports of the product concerned, as PET is not listed on the list of notified products. In accordance with Article 15(1) of the basic Regulation no measure should be imposed with regards to this subsidy scheme.

3.6. **Focus Product Scheme (FPS)**

- (95) The Commission established that the applicants used FPS during the review investigation period.

3.6.1. *Legal basis*

- (96) The detailed description of the scheme is contained in paragraphs 3.15 to 3.17 of the FTP 09-14 and chapters 3.9 to 3.11 of the HOP I 09-14.

3.6.2. *Eligibility*

- (97) According to paragraph 3.15.2 of the FTP 09-14, exporters of notified products in Appendix 37D of HOP I 09-14 are eligible for this scheme.

3.6.3. *Practical implementation*

- (98) An exporter of products included in the list of Appendix 37D of HOP I 09-14 can apply for FPS Duty Credit scrip equivalent to 2 % or 5 % of FOB value of exports. The product concerned is listed under Table 1 of Appendix 37D and is entitled to a 2 % duty credit.
- (99) FPS is a post export scheme, i.e. a company must export to be eligible for benefits under this scheme. As a result, the company proceeds to file an online application to the relevant authority along with copies of the export order and invoice, the bank receipt showing payment of application fees, copy of the shipping bills and bank realisation certificate for the receipt of payment or foreign inward remittance certificate in the case of direct negotiation of documents. In cases where the original copy of the shipping bills and/or bank realisation certificates have been submitted for claiming benefits under any other scheme, the company can submit self-attested copies quoting the relevant authority where the original documents have been submitted. The online application for FPS credits can cover a maximum of up to 50 shipping bills.
- (100) The Commission found that, in accordance with the Indian accounting standards, FPS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods — except capital goods and goods where there are import restrictions. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. FPS credits are freely transferable and valid for a period of 24 months from the date of issue.

3.6.4. *Conclusion on FPS*

- (101) The FPS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. An FPS credit is a financial contribution by the GOI since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would otherwise be due. In addition, the FPS credit confers a benefit upon the exporter because it improves its liquidity.
- (102) Furthermore, the FPS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

- (103) 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 since it does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. In particular, an exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I, and Annexes II and III of the basic Regulation. Lastly, an exporter is eligible for the FPS 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 having to demonstrate 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 FPS.

3.6.5. Calculation of the subsidy amount

- (104) In accordance with Article 3(2) and Article 5 of the basic Regulation, The Commission calculated the amount of countervailable subsidies in terms of the benefit conferred on the recipient found to exist during the review investigation period. In this regard, the Commission established that the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. At that moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of FPS credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, the Commission considers appropriate to assess the benefit under the FPS as being the sum of the credits earned on export transactions made under this scheme during the review investigation period.
- (105) Based on the above, the Commission established that the subsidy rates in respect of this scheme during the review investigation period amounted to 1,66 % for Dhunseri and 1,27 % for Reliance.

3.6.6. Withdrawal and replacement of FPS

- (106) On 1 April 2015, the Government of India published the new FTP for 2015 – 2020. In the new FTP, FPS, together with four other schemes is replaced by Merchandise Export Incentive Scheme (MEIS). MEIS is not applicable to exports of the product concerned, as PET is not listed on the list of notified products. In accordance with Article 15(1) of the basic Regulation no measure should be imposed with regards to this subsidy scheme.

3.7. Incremental Exports Incentivisation Scheme (IEIS)

- (107) The Commission established that Dhunseri used IEIS during the review investigation period.

3.7.1. Legal basis

- (108) The detailed description of the IEIS is set out in Chapter 3 para 3.14.4 of FTP and Chapter 3 para 3.8.3 of HOP I 09-14.

3.7.2. Eligibility

- (109) The scheme is available to exporters who exported during fiscal year 2011-12 and fiscal year 2012-13.

3.7.3. Practical implementation

- (110) The objective of the Scheme is to incentivise incremental exports. The scheme is region specific and covers exports to USA, Europe and Asian, as well as 53 countries in Latin America and Africa.

- (111) An exporter would be entitled for duty credit scrip of 2 % on the incremental growth during a financial year compared to the previous financial year on the FOB value of exports. The exporter should submit its application claiming the benefit at the end of the relevant financial year. The quantum of benefit is calculated on the basis of the total export turnovers achieved by the exporter. The duty credit script calculated and granted on that basis is freely transferable. Such scrip is also eligible for domestic sourcing and for payment of Service Tax.

3.7.4. Conclusion on IEIS

- (112) The IEIS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. An IEIS credit is a financial contribution by the GOI since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would otherwise be due. In addition, the IEIS credit confers a benefit upon the exporter because it improves its liquidity.
- (113) Furthermore, the IEIS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4)(a) of the basic Regulation.
- (114) 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 since it does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. In particular, an exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I, and Annexes II and III of the basic Regulation. Lastly, an exporter is eligible for the IEIS 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 IEIS.

3.7.5. Calculation of the subsidy amount

- (115) The Commission calculated the amount of countervailable subsidies on the basis of the benefit conferred on the recipient, which is found to exist during the review investigation period. In accordance with Article 7(2) and (3) of the basic Regulation, the Commission allocated this subsidy amount (numerator) over the 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.
- (116) Based on the above, the Commission established that the subsidy rate in respect of this scheme during the review investigation period amounted to 0,74 % for Dhunseri.

3.7.6. Comments on the final disclosure

- (117) In their comments on the final disclosure, Dhunseri argued that the scheme had expired and has not been re-introduced in the new FTP for 2015 – 2020.
- (118) The Commission confirmed that the scheme has not been re-introduced with the new FTP and that, in accordance with Article 15(1) of the basic Regulation, no measure should thus be imposed with regard to IEIS. The Commission amended the overall subsidy rate applicable to Dhunseri accordingly.

3.8. Income Tax Incentive for Research and Development (ITIRAD)

- (119) The Commission established that Reliance used ITIRAD during the review investigation period.

3.8.1. Legal basis

- (120) The detailed description of the ITIRAD is set out in section 35(2AB) of the ITA.

3.8.2. Eligibility

- (121) Companies engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule, are eligible for benefits under this scheme. The scheme covers companies engaged in the production of PET.

3.8.3. Practical implementation

- (122) For any expenditure (other than cost of land or building) on in-house research and development facilities as approved by the Department of Scientific and Industrial Research of the GOI, a deduction of a sum equal to 200 % of the costs actually incurred is permitted for income tax purposes.

3.8.4. Conclusion on ITIRAD

- (123) The ITIRAD provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 2(2) of the basic Regulation. The tax deduction under section 35(2AB) of the ITA constitutes a financial contribution by the GOI, since it decreases the GOI's income tax revenue which would be otherwise due. In addition, the income tax deduction confers a benefit upon the company, because it improves its liquidity.
- (124) The wording of section 35(2AB) ITA proves that ITIRAD is *de jure* specific in the meaning of Article 4(2)(a) of the basic Regulation and therefore countervailable. Eligibility for this scheme is not governed by objective criteria, which are neutral within the meaning of Article 4(2)(b) of the basic Regulation. Benefits under this scheme are only available to certain industries since the GOI has not made this scheme available to all sectors. Such limitation constitutes specificity, since the category 'group of industries' in Article 4(2) of the basic Regulation synonymously describes sector restrictions. This restriction is not economic in nature and horizontal in application such as a restriction on the number of employees or size of enterprise.

3.8.5. Calculation of the subsidy amount

- (125) The Commission calculated the subsidy amount on the basis of the difference between the income tax due for the review investigation period with and without the application of the provision of section 35(2AB) of the ITA. This subsidy relates to all sales, domestic and export, of the product concerned. Therefore, the subsidy amount (numerator) has been allocated over the company turnover related to the product concerned during the review investigation period as appropriate denominator in accordance with Article 7(2) of the basic Regulation.
- (126) Based on the above, the Commission established that the subsidy rate in respect of this scheme during the review investigation period amounted to 0,04 % for Reliance.

3.8.6. Comments on the final disclosure

- (127) In its comments on the final disclosure, Reliance argued that, despite noting above that ITIRAD relates to all sales of the product concerned, the Commission used only the export sales of the product concerned as the denominator in calculating the subsidy rate for the scheme.
- (128) After analysing this comment, the Commission re-calculated the subsidy rate accordingly. The Commission thus established that the subsidy rate in respect of this scheme during the review investigation period amounted to 0,01 % for Reliance.

3.9. West Bengal Incentive Scheme 1999 (WBIS 1999)

- (129) The Commission established that Dhunseri used WBIS 1999 during the review investigation period.

3.9.1. Legal basis

- (130) The detailed description of this scheme as applied by the Government of West Bengal ('GOWB') is set out in Notification No 580-CI/H of 22 June 1999 of the GOWB Commerce & Industries Department.

3.9.2. Eligibility

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

3.9.3. Practical implementation

- (132) The State of West Bengal grants to eligible industrial enterprises incentives in the form of a number of benefits, including an exemption of central sales tax ('CST') and a remission of central value added tax ('CENVAT') on sales of finished goods, in order to encourage the industrial development of economically backward areas within this State.
- (133) Under this scheme, companies must invest in backward areas. These areas, which represent certain territorial units in West Bengal are classified according to their economic development into different categories while at the same time there are developed areas excluded from the application of the incentive schemes. The main criteria to establish the amount of the incentives are the size of the investment and the area in which the enterprise is or will be located.

3.9.4. Conclusion on WBIS 1999

- (134) This scheme provides subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation. It constitutes a financial contribution by the GOWB, since the incentives granted, in the present CST exemption and CENVAT remission on sales of finished goods, decrease tax revenue which would be otherwise due. In addition, these incentives confer a benefit upon a company, because they improve its financial situation since taxes otherwise due are not paid.
- (135) 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.
- (136) The WBIS 1999 is therefore countervailable.

3.9.5. Calculation of the subsidy amount

- (137) The Commission calculated the subsidy amount on the basis of the amount of the sales tax and CENVAT on sales of finished goods normally due during the review investigation period but which remained unpaid under this scheme. In accordance with Article 7(2) of the basic Regulation, the amount of subsidy (numerator) have then been allocated over total sales during the review investigation period as appropriate denominator, because the subsidy is not export contingent and it was not granted by reference to the quantities manufactured, produced, exported or transported.
- (138) Based on the above, the Commission established that the subsidy rate in respect of this scheme during the review investigation period amounted to 0,09 % for Dhunseri.

3.9.6. Expiry of the benefit entitlement under WBIS 1999

- (139) Dhunseri was eligible to benefit from the scheme for eleven years following the eligible large-scale capacity expansion. This entitlement expired and was not renewed in May 2014. As of that date, the scheme no longer confers any benefit on Dhunseri.
- (140) In accordance with Article 15(1) of the basic Regulation no measure should be imposed with regards to this subsidy scheme.

4. AMOUNT OF COUNTERAVAILABLE SUBSIDIES

- (141) The Commission recalls that the subsidy margin established for Dhunseri by Council Regulation (EC) No 1645/2005 was 13,9 % and that the subsidy margin established for Reliance by Council Regulation (EC) No 906/2011 was 10,7 %.
- (142) During the present partial interim review the Commission found the amount of countervailing subsidies, expressed *ad valorem*, to be 3,2 % for Dhunseri and 6,2 % for Reliance.

Table 1

Subsidy rates for the individual countervailed schemes

	AAS	DDS	EPCGS	ITIRAD	TOTAL
Dhunseri	—	3,27 %	—	—	3,2 %
Reliance	4,67 %	1,09 %	0,43 %	0,01 %	6,2 %

- (143) The Commission recalls that the countervailing measures imposed on imports of PET from India, which are currently in force, consist of specific duties. The Commission found the specific countervailing duties to be 35,69 EUR/tonne for Dhunseri and 69,39 EUR/tonne for Reliance.

5. LASTING NATURE OF CHANGED CIRCUMSTANCES WITH REGARD TO SUBSIDISATION

- (144) In accordance with Article 19(2) of the basic Regulation, it was examined whether circumstances with regard to subsidisation changed significantly during the review investigation period.
- (145) The Commission established that, during the review investigation period, the applicants continued to benefit from countervailable subsidisation by the GOI. Further, the subsidy rates found during the present review are lower than those established by Regulation (EC) No 1645/2005 and by Regulation (EC) No 906/2011 respectively. No evidence is available that the countervailed schemes will be discontinued or new schemes will be introduced in the near future.
- (146) Since it has been demonstrated that the applicants are in receipt of less subsidisation than before and that they are 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 measures is higher than the countervailable subsidy causing injury and that the level of the measures should therefore be amended to reflect the new findings.

6. CHANGE OF THE NAME OF ONE OF THE APPLICANTS

- (147) Dhunseri has informed the Commission that on 1 April 2014, as a result of a re-organisation, its name changed to Dhunseri Petrochem Limited.
- (148) The company has argued that the re-organisation and change of name has no material impact on the present review, as the company was already operating the tea and petrochemical divisions as two separate units within the company, with two separate sets of accounts.
- (149) The Commission has examined the information provided and has concluded that the change of name in no way affects the present findings.

7. PRICE UNDERTAKING OFFERS

- (150) Following the final disclosure both Dhunseri and Reliance submitted price undertaking offers. Both offers were rejected as the nature of subsidisation creates a situation where application of minimum import price undertaking would have led to increased subsidisation. This is because the level of subsidisation under DDS, which is used by both companies, depends on the FOB value of products exported under this scheme. Furthermore the structure of both companies and their groups would have made the effective monitoring of an undertaking impracticable.
- (151) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of the Council Regulation (EC) No 1225/2009 ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The relevant row in the table concerning Dhunseri Petrochem & Tea Limited in Article 1(2) of Implementing Regulation (EC) No 461/2013 shall be replaced by the following:

Country	Company	Countervailing duty (EUR/tonne)	TARIC additional code
India	Dhunseri Petrochem Limited	35,69	A585'

The relevant row in the table concerning Reliance Industries Limited in Article 1(2) of Implementing Regulation (EC) No 461/2013 shall be replaced by the following:

Country	Company	Countervailing duty (EUR/tonne)	TARIC additional code
India	Reliance Industries Ltd	69,39	A181'

Article 2

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, 3 August 2015.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).