

**COMMISSION IMPLEMENTING REGULATION (EU) No 2019/1286****of 30 July 2019****imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union <sup>(1)</sup> ('basic Regulation'), and in particular Article 18 thereof,

Whereas:

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

- (1) By Regulation (EC) No 2603/2000 <sup>(2)</sup>, the Council imposed definitive countervailing duties on imports of polyethylene terephthalate ('PET') originating, *inter alia*, in India ('original investigation').
- (2) By Regulation (EC) No 1645/2005 <sup>(3)</sup>, 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 basic Regulation.
- (3) Following an expiry review, the Council by Regulation (EC) No 193/2007 <sup>(4)</sup> imposed definitive countervailing duties for a further period of five years.
- (4) The countervailing measures were subsequently amended by Regulation (EC) No 1286/2008 <sup>(5)</sup> and Implementing Regulation (EU) No 906/2011 <sup>(6)</sup>, following partial interim reviews.
- (5) A later partial interim review was terminated without amending the measures in force by Implementing Regulation (EU) No 559/2012 <sup>(7)</sup>.
- (6) Following another expiry review, the Council by Regulation (EC) No 461/2013 <sup>(8)</sup> imposed definitive countervailing duties for a further period of five years.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 55.

<sup>(2)</sup> 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.

<sup>(3)</sup> 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.

<sup>(4)</sup> 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.

<sup>(5)</sup> 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.

<sup>(6)</sup> 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.

<sup>(7)</sup> 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.

<sup>(8)</sup> 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.

- (7) By Decision 2000/745/EC <sup>(9)</sup>, the Commission accepted a minimum import price offered by three exporting producers in India. By Implementing Decision 2014/109/EU <sup>(10)</sup>, the Commission withdrew the acceptance of the undertakings, due to a change in the circumstances under which the undertakings were accepted.
- (8) By Regulation (EC) No 2015/1350 <sup>(11)</sup>, the Council amended the level of countervailing measures in force against imports of PET from India, following two partial interim reviews.
- (9) By Implementing Regulation (EU) No 2018/1468 <sup>(12)</sup>, the Commission amended the level of countervailing measures in force following two partial interim reviews.
- (10) The measures currently in force are definitive countervailing duties imposed by Council Regulation (EU) No 461/2013, as amended by Commission Implementing Regulation (EU) 2018/1468 ('measures in force'). They consist of specific duties between 0 and 74,6 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. Request for an expiry review

- (11) Following the publication of a notice of impending expiry <sup>(13)</sup> of the countervailing measures in force on the imports of PET originating in India ('the country concerned'), the Commission received a request for review pursuant to Article 18 of basic Regulation.
- (12) The request was lodged by the Committee of PET Manufacturers in Europe (C.P.M.E. aisbl) ('the applicant') representing more than 80 % of the total Union production of PET.
- (13) The request was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of subsidisation and injury to the Union industry.
- (14) Prior to the initiation of the expiry review, and in accordance with Articles 22(1) and 10(7) of the basic Regulation, the Commission notified the Government of India ('GOI') that it had received a properly documented review request and invited the GOI for consultations with the aim of clarifying the situation as regards the contents of the review request and arriving at a mutually agreed solution. The GOI requested a deadline extension of one week for holding the consultations. The Commission granted this deadline extension. At the same time, due to the legal deadlines applicable to this investigation, the initiation of the expiry review could, however, not be suspended. The expiry review investigation was, therefore, initiated on 22 May 2018 and the GOI was informed on the same date accordingly. Moreover, the GOI was informed that its comments made at that stage regarding the anti-subsidy request would nevertheless be taken into consideration in the investigation and consultations could still be organised at its earliest convenience. However, the Commission did not receive any confirmation from the GOI regarding its offer for consultations.

### 1.3. Initiation

- (15) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 22 May 2018, by a notice published in the *Official Journal of the European Union* <sup>(14)</sup> ('the Notice of Initiation') the initiation of an expiry review pursuant to Article 18 of basic Regulation. In view of Article 18(2) of the basic Regulation, the Commission prepared a memorandum on sufficiency of evidence containing the Commission's assessment on all the evidence at its disposal and on the basis of which the Commission initiated this investigation.

<sup>(9)</sup> 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.

<sup>(10)</sup> 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.

<sup>(11)</sup> 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, OJ L 208, 5.8.2015, p. 10.

<sup>(12)</sup> Commission Implementing Regulation (EU) 2018/1468 of 1 October 2018 amending Council Implementing Regulation (EU) No 461/2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India, OJ L 246, 2.10.2018, p. 3.

<sup>(13)</sup> Notice of the impending expiry of certain anti-subsidy measures, OJ C 279, 23.8.2017, p. 11.

<sup>(14)</sup> Notice of initiation of an expiry review of the countervailing measures applicable to imports of certain polyethylene terephthalate originating in India (OJ C 173, 22.5.2018, p.9).

- (16) Following the disclosure, one interested party inquired on the applicant's standing. It is noted that the request has been made after the deadline for comments indicated in point 5.5. of the Notice of Initiation. However, the replies to the standing exercise available in the file for inspection by interested parties confirmed that the requirements for standing were fulfilled. The request of the party was therefore dismissed.

#### 1.4. Parallel investigation

- (17) On 25 March 2019, the Commission initiated a review pursuant to Article 19(1) of the basic Regulation <sup>(15)</sup>. This review investigation is limited in scope to the form of the measures. Consequently, the form of the measures, as extended by this regulation, might be affected by the ongoing review.

#### 1.5. Review investigation period and period considered

- (18) The investigation of continuation or recurrence of subsidisation covered the period from 1 April 2017 to 31 March 2018 ('the review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2014 to the end of the review investigation period ('the period considered').

#### 1.6. Interested parties

- (19) In the Notice of Initiation, the Commission invited all interested parties to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, exporting producers, importers and users in the Union known to be concerned and the authorities in India of the initiation of the expiry review and invited them to participate.
- (20) All interested parties were invited to make their views known, submit information and provide supporting evidence within the time-limits set out in the Notice of Initiation. Interested parties were also granted the opportunity to request in writing a hearing by the Commission investigation services and/or the Hearing Officer in trade proceedings.

##### 1.6.1. Sampling

- (21) In the Notice of Initiation, the Commission stated that it might sample interested parties, in accordance with Article 27 of the basic Regulation.

##### 1.6.2. Sampling of Union producers

- (22) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 27 of the basic Regulation the Commission selected the sample on the basis of the largest representative volume of production and sales which could reasonably be investigated within the time available, considering also the geographical location. This sample consisted of three Union producers. The sampled Union producers accounted for around 37 % of the total Union production. The Commission invited interested parties to comment on the provisional sample. No comments were received within the deadline and the sample was thus confirmed. The sample was considered representative of the Union industry.

##### 1.6.3. Sampling of unrelated importers

- (23) In order to enable the Commission to decide whether sampling was necessary and, if so, to select a sample, all unrelated importers/users were invited to participate in this investigation. Those parties were requested to make themselves known by providing the Commission with the information on their companies requested in Annex II of the Notice of Initiation. Two importers came forward. They were invited to cooperate by filling-in the questionnaire. However, neither of the two replied to the questionnaire sent by the Commission.

<sup>(15)</sup> Notice of initiation of a partial interim review of the countervailing measures applicable to imports of certain polyethylene terephthalate originating in India, OJ C 111, 25.3.2019, p.47

#### 1.6.4. *Sampling of exporting producers*

- (24) In order to enable the Commission to decide whether sampling was necessary and, if so, to select a sample, all exporting producers were invited to participate in this investigation. Those parties were requested to make themselves known by providing the Commission with the information on their companies requested in Annex I of the Notice of Initiation. Three exporting producers came forward. They were invited to cooperate by filling-in the questionnaire.

#### 1.6.5. *Questionnaires and verification visits*

- (25) In order to obtain the information deemed necessary for its investigation, the Commission sent questionnaires to the three sampled Union producers, the GOI, three exporting producers and two importers that came forward after initiation.
- (26) Three sampled Union producers, the applicant, one Union raw material producer, the GOI and two exporting producers in India replied to the questionnaire. The importers that came forward did not reply to the questionnaire.
- (27) The Commission sought and verified all the information it deemed necessary for the determination of the likelihood of continuation or recurrence of subsidisation and injury and for the determination of the Union interest. A verification visit took place also at the premises of the GOI in New Delhi.
- (28) Furthermore, verification visits pursuant to Article 26 of the basic Regulation were carried out at the premises of the following companies:

##### (a) ***Union producers***

- Indorama Ventures Europe BV, Netherlands;
- Equipolymers GmbH, Italy, Germany;
- Neo Group, UAB, Lithuania;

##### (b) ***Exporting producers***

- Reliance Industries Limited, Mumbai ('RIL')
- IVL Dhunseri Petrochem Industries Private Limited, Kolkata ('IDIPL')

## 2. **PRODUCT UNDER REVIEW AND LIKE PRODUCT**

### 2.1. **Product under review**

- (29) The product subject to this review is the same as in the original investigation, namely polyethylene terephthalate (PET) having a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, currently falling under CN code 3907 61 00 and originating in India ('the product under review').

### 2.2. **Like product**

- (30) It was considered that the product under review produced in India and exported to the Union and the product produced and sold in the Union by the Union industry have the same basic physical and chemical characteristics, and the same basic uses. They were therefore considered to be like products within the meaning of Article 2(c) of the basic Regulation.

### 3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATION

- (31) On the basis of the subsidies investigated in the previous reviews, the information contained in the review request, the information submitted by the GOI and the concerned exporting producers, as well as the replies to the Commission's questionnaire, the following measures, which allegedly involve the granting of subsidy programmes, were investigated:

Nationwide subsidy programmes:

- (a) Advance Authorisation Scheme (AAS)
  - (b) 'Duty Drawback Scheme' under rule 3(2) (DDS)
  - (c) Export Promotion Capital Goods Scheme (EPCGS)
  - (d) Merchandise Exports from India Scheme (MEIS)
  - (e) Regional subsidy programmes: Gujarat Electricity Duty Exemption Scheme (GEDES)
- (32) Pursuant to Article 18 of the basic Regulation, the Commission should examine whether there is evidence of continued subsidisation, regardless of its amount. In view of the findings of existence of continued subsidisation with respect to most of the main subsidies countervailed in the original investigation, there was no need to investigate all the other subsidies alleged to exist by the complainant.
- (33) The subsidies specified in the recital above, and which were countervailed in the past, are based on the following policy documents and legislation.
- (34) The AAS, EPCGS, and MEIS schemes 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.
- (35) Two Foreign Trade Policy documents are relevant for the review investigation period: Foreign Trade Policy 2015-20 ('FTP 2015-20') and updated Foreign Trade Policy 2015-20 ('updated FTP 2015-20'). The latter entered into force on 5 December 2017. The GOI also sets out the procedures governing FTP 2015-20 and updated FTP 2015-20 in a 'Handbook of Procedures, 2015-20' ('HOP 2015-20') and an updated 'Handbook of Procedures, 2015-20' ('updated HOP 2015-20') respectively. The latter entered into force on 5 December 2017.
- (36) AAS, EPCGS, and MEIS are based on the FTP 2015-20 and updated FTP 2015-20 as well as HOP 2015-20 and updated HOP 2015-20.
- (37) The DDS scheme 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. The drawback rates are published on a regular basis.
- (38) The GEDES scheme is based on Gujarat Electricity Duty Act, 1958 ('Electricity Act') under Section 3(2) (vii) and (viii) as amended from time to time in Gujarat Government Gazette.

#### 3.1. Advance Authorisation Scheme (AAS)

- (39) The Commission established that one cooperating exporting producer used AAS during the review investigation period.

##### 3.1.1. Legal Basis

- (40) The detailed description of the scheme is contained in paragraphs 4.03 to 4.24 of the FTP 2015-20 and updated FTP 2015-20 and chapters 4.04 to 4.52 of the HOP 2015-20 and the updated HOP 2015-20.

### 3.1.2. Eligibility

- (41) The AAS consists of six sub-schemes, as described in more detail in recital (42) below. Those sub-schemes differ, *inter alia*, in the scope of eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement sub-schemes. Manufacturer-exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 7.02 of the FTP 2015-20 and updated FTP 2015-20, such as suppliers of an export oriented unit ('EOU'), are eligible for the AAS deemed export sub-scheme. Eventually, intermediate suppliers to manufacturer-exporters are eligible for 'deemed export' benefits under the sub-schemes Advance Release Order and Back to back inland letter of credit.

### 3.1.3. Practical implementation

- (42) The AAS can be issued for:
- (43) 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;
- (44) 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;
- (45) 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;
- (46) 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'. 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');
- (47) Advance Release Order ('ARO'): The AAS holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases the Advance Authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 7.03 of the FTP 2015-20 and updated FTP 2015-20 (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;
- (48) 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 7.03 of the FTP 2015-20 and updated FTP 2015-20 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).

- (49) The Commission found that one cooperating exporting producer using the scheme obtained concessions under the first sub-scheme i.e. AAS physical exports during the review investigation period. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.
- (50) 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 (chapter 4.51 and Appendix 4H HOP 2015-20 and updated HOP 2015-20), 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 4H is true and correct in all respects.
- (51) With regard to the sub-scheme used during the review investigation period by the company concerned, i.e. physical exports, the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the Authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the Authorisation. The volume of imports allowed under the AAS is determined by the GOI on the basis of Standard Input Output Norms ('SIONs') which exist for most products including the product under review.
- (52) The 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 (18 months with two possible extensions of 6 months each).
- (53) There is no close nexus between the imported inputs and the exported finished products. The eligible input materials can also be imported and used for products other than the product under review. Moreover, licences for various products can be 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.
- (54) The investigation showed that none of the AAS licenses used by the exporting producer had been closed. Moreover, the exporting producer did not have such consumption register verified by an external chartered accountant. Therefore, even if the exporting producer explained that the consumption of inputs was being reported based on its consumption factors, the exporting producer was unable to show any appendixes 4H for their AAS licences.

#### 3.1.4. *Conclusion on the AAS*

- (55) 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 foregoes duty revenue which would otherwise be due and it confers a benefit upon the investigated exporter since it improves its liquidity.
- (56) In addition, AAS physical exports are contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation. Without an export commitment, a company cannot obtain benefits under this scheme.
- (57) The sub-scheme used in the present case cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. 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(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 under review were not sufficiently precise and that, in themselves, those SIONs 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 need to be carried out in the absence of an effectively applied verification system (Annex II(5) and Annex III(II)(3) to the basic Regulation).

- (58) The sub-scheme is therefore countervailable.

### 3.1.5. Calculation of the subsidy amount

- (59) In the absence of permitted duty drawback systems or substitution drawback systems, the Commission verified the actual consumption rate of the relevant inputs. The Commission found that the actual consumption rate was slightly below the SION. Whilst the company argued that it will close the relevant licences based on the actual consumption and thus there will be no excess remission, no licences had been closed at the time of the verification, thus the Commission could not verify this. Since the licences were granted on the basis of SION, in the absence of an effectively applied verification system the company could close them by using SION as the consumption rate. In that case, the difference between the actual consumption rate and a reported consumption rate based on SION would lead to excess remission that would constitute a countervailable subsidy in accordance with Article 3(1)(a)(ii) of the basic Regulation.
- (60) In accordance with Article 7(2) of the basic Regulation the excess remission should be allocated over the total export turnover of the product under review 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.
- (61) Considering how small the difference between the SION and the actual consumption rate was, had the entire licence been closed on the basis of SION, the excess remission and therefore the amount of countervailable subsidy would also have been negligible. The Commission thus established that the subsidy rates in respect of this scheme during the review investigation period was negligible but still positive. Therefore, the Commission concluded that this subsidy continues to be considered countervailable.

### 3.2. 'Duty Drawback Scheme' under Rule 3(2) (DDS)

- (62) The Commission established that the cooperating exporting producers used DDS during the review investigation period.

#### 3.2.1. Legal Basis

- (63) The legal basis applicable during the review investigation period was the Custom & Central Excise Duties Drawback Rules 1995 ('the 1995 DDS Rules'), as amended in 2006<sup>(16)</sup> and then replaced by Customs and Central Excise Duties Drawback Rules, 2017<sup>(17)</sup> ('the 2017 Rules') which entered into force on 1 October 2017. Rule 3(2) of the 1995 DDS Rules governs the method of calculation of this duty drawback scheme. Rule 12(1)(a)(ii) of the said DDS Rules governs the Declaration that the exporting producers need to file in order to benefit from the scheme. These Rules have remained identical in the 2017 DDS Rules and correspond to Rule 3(2) and Rule 13(1)(a)(ii) respectively.
- (64) In addition, Circular No. 24/2001<sup>(18)</sup> contains specific instructions how to implement the Rule 3(2) and the Declaration that exporters need to produce under the Rule 12(1)(a)(ii).

<sup>(16)</sup> <http://www.cbic.gov.in/htdocs-cbec/customs/cs-act/formatted-htmls/cs-rulee>.

<sup>(17)</sup> To be published in the Gazette of India, extraordinary, part ii, section 3, sub-section (i)] Government of India Ministry of Finance (Department of Revenue) Notification No. 88/ 2017-CUSTOMS (N.T.) New Delhi, the 21st September, 2017. See <http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2017/cs-nt2017/csnt88-2017.pdf>.

<sup>(18)</sup> Cus. 20th April, 2001.F.NO.605/47/2001-DBK, Government of India, Ministry of Finance, Department of Revenue, Declaration under Rule 12(1)(a)(ii) of Drawback Rule for availing AIR of Drawback. See in particular Sections 2 and 3 of the Declaration under Rule 12(1)(a)(ii) of Drawback Rule for availing AIR of Drawback; available at: <http://www.cbic.gov.in/htdocs-cbec/customs/cs-circulars/cs-circulars-2001/24-2001-cus>.

- (65) The Rule 4 of the 1995 DDS Rules stipulates that the Central Government may revise amount or rates determined under the rule 3. The Government has made a number of modifications, the last ones revising the rates being Notifications No. 110/2015 – CUSTOMS (N.T.) of 16 November 2015 <sup>(19)</sup> and Notifications No. 131/2016 – CUSTOMS (N.T.) of 31 October 2016 <sup>(20)</sup>. As a result, for the product under review during the review investigation period the rate was 1.5 % of the FOB value of the exported products.

### 3.2.2. Eligibility

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

### 3.2.3. Practical implementation

- (67) Under this scheme, any company exporting eligible products is entitled to receive an amount corresponding to a percentage of the declared FOB value of the exported product. Rule 3(2) of Custom & Central Excise Duties Drawback Rules specifies how the amount of the subsidy is to be calculated:

*'(2) In determining the amount or rate of drawback under this rule, the Central Government shall have regard to, -*

- (a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India;*
- (b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;*
- (c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods;*
- (d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents:  
  
Provided that if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted;*
- (e) the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;*
- (f) any other information which the Central Government may consider relevant or useful for the purpose.'*

- (68) In other words, the GOI based the refundable amount on industry-wide average values of relevant customs duties paid on imported raw materials and an average industry consumption ratio collected from what the GOI considers as being representative manufacturers of the eligible export products. The GOI then expresses the amount to be refunded as a percentage of the average export value of the eligible exported products.

- (69) The GOI uses this percentage to calculate the amount of the duty draw back all eligible exporters are entitled to receive. The rate for this scheme is determined by the GOI on a product-by-product basis. For the product under review during the review investigation period the rate was 1,5 % as explained in recital (65).

- (70) In order to be eligible to benefit from 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.

<sup>(19)</sup> GOF's Notification No. 110/2015 – CUSTOMS (N.T.) of 16 November 2015 determines that the DDS rate applicable on the FOB value of exports of PET (classified under tariff item 390701) is 1,9 % with effect from 23 November 2015. See <http://www.cbic.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-nt2015/csnt110-2015> and Annex with schedule <http://www.cbic.gov.in/resources/htdocs-cbec/customs/dbk-schedule/dbk-sch2015.pdf>.

<sup>(20)</sup> GOF's Notification No. 131/2016 – CUSTOMS (N.T.) of 31 October 2016 determines that the DDS rate applicable on the FOB value of exports of PET (classified under tariff item 3907) is 1,5 % with effect from 15 November 2016. See <http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-nt2016/csnt131-u-2016.pdf> and Annex with schedule <http://www.cbic.gov.in/resources/htdocs-cbec/customs/dbk-schedule/dbk-sch2016.pdf>.

- (71) 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 deadline.
- (72) The drawback amount can be used for any purpose and, in accordance with Indian accounting standards, the amount can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation.
- (73) The relevant legislation and administrative instructions stipulates that the Indian customs administration should require no evidence that the exporter requesting the duty drawback must have incurred or will incur a customs duty liability for imports of the raw materials needed for the manufacture of the exported product <sup>(21)</sup>. In addition, during the verification visit the GOI confirmed that companies that would source domestically all the raw materials incorporated in the exported PET would still benefit from the full rate calculated under Rule 3(2) mentioned above. This investigation has also shown that in practice this has been the case for one cooperating exporter, which did avail itself of the benefits under the DDS despite not having imported one single unit of the main raw materials (Purified Terephthalic Acid ('PTA') and Monoethylene Glycol ('MEG')) used for the production of the product under review.

#### 3.2.4. Conclusion on DDS

- (74) The DDS provides a subsidy within the meaning of Article 3(1)(a)(ii) 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 revenue foregone (i.e. the alleged import duties collected by the GOI which are refunded or remitted in excess). 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 by the excess amounts of import duties refunded or remitted by the GOI.
- (75) 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 all 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; nor does the scheme 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 cash payment to the exporter is not necessarily 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. In addition, there is no system or procedure in place to confirm which inputs are consumed in the production of the exported products and in what amounts. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would need to be carried out in the absence of an effectively applied verification system (Annex II(5) and Annex III(II)(3) to the basic Regulation).
- (76) The payment by the GOI subsequent to exports made by exporters is contingent upon export performance and therefore this scheme is deemed to be specific and countervailable under Article 4(4)(a) of the basic Regulation.
- (77) In view of the above, it is concluded that DDS is countervailable.

#### 3.2.5. Calculation of the subsidy amount

- (78) In accordance with Article 3(2) and Article 5 of the basic Regulation, the Commission calculated the amount of subsidisation 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 amount, which constitutes a financial contribution within the meaning of Article 3(1)(a) of the

<sup>(21)</sup> This feature is highlighted by the relevant body of legislation and rules applicable to the scheme, such as in the Circular No. 24/2001 Cus. 20th April, 2001 F.NO.605/47/2001-DBK, Government of India, Ministry of Finance, Department of Revenue, Declaration under Rule 12(1)(a)(ii) of Drawback Rule for availing AIR of Drawback. C; available at: <http://www.cbic.gov.in/htdocs-cbec/customs/cs-circulars/cs-circulars-2001/24-2001-cus>, accessed on 7 June 2018; in particular Sections 2 and 3 of the Declaration under Rule 12(1)(a)(ii) of Drawback Rule for availing AIR of Drawback.

basic Regulation. Once the customs authorities issue an export shipping bill which shows, *inter alia*, the amount 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 considered appropriate to assess the benefit under the DDS with respect to the sum of the amounts earned on export transactions made under this programme during the review investigation period.

- (79) One of the exporting producers submitted evidence of the custom duties paid on the imports of MEG, one of the two main raw materials used by the company to manufacture PET. Despite the absence of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, the Commission carried out a verification of the custom duties paid for the calculation of the excess remission in accordance with Annex II (5) of the basic Regulation. The verification confirmed that all MEG consumed in the production of PET was imported and that the amount of import duties reported was actually paid on MEG incorporated in PET exported during the review investigation period. On that basis, the Commission calculated the level of subsidisation on the excess remission alone.
- (80) In accordance with Article 7(2) of the basic Regulation, the Commission allocated these subsidy amounts over the total export turnover of the product under review 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.
- (81) The Commission thus established that the subsidy rates in respect of this scheme during the review investigation period amounted to 0,38 % for IDIPL and 1,44 % for RIL. Therefore, the Commission concluded that this subsidy continues to be considered countervailable.

### 3.3. Export Promotion Capital Goods Scheme (EPCGS)

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

#### 3.3.1. Legal basis

- (83) The detailed description of EPCGS is contained in chapter 5 of the FTP 2015-20 and updated FTP 2015-20 as well as in chapter 5 of HOP 2015-20 and the updated HOP 2015-20.

#### 3.3.2. Eligibility

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

#### 3.3.3. Practical implementation

- (85) 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 duty rate. 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 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 goods deemed for export during a certain period. Under the FTP 2015-20 and updated FTP 2015-20 the capital goods can be imported with a 0 % duty rate under the EPCGS. The export obligation which amounts to six times the duty saved must be fulfilled within a period of maximum six years.
- (86) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail itself 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.

#### 3.3.4. Conclusion on EPCGS

- (87) 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, it confers a benefit upon the exporter equal to the amount of the duty reduction.

- (88) 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.
- (89) 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.

#### 3.3.5. Calculation of the subsidy amount

- (90) 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.
- (91) None of the Indian exporting producers claimed deduction of fees incurred to obtain the subsidy from the total subsidy amount as they are entitled to in accordance with Article 7(1)(a).
- (92) In accordance with Article 7(2) and 7(3) of the basic Regulation, the Commission allocated this subsidy amount over the export turnover of the product under review 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.
- (93) Based on the above, the Commission established that the subsidy rates in respect of this scheme during the review investigation period amounted to 0,09 % for IDIPL and 0,30 % for RIL. Therefore, the Commission concluded that this subsidy continues to be considered countervailable.

#### 3.4. Merchandise Export from India Scheme (MEIS)

- (94) It was found that both cooperating exporting producers received benefits under MEIS during the review investigation period.

##### 3.4.1. Legal basis

- (95) The detailed description of MEIS is contained in chapter 3 of FTP 2015-20 and updated FTP 2015-20 and in chapter 3 of HOP 2015-20 and updated HOP 2015-20.
- (96) MEIS came into force on 1 April 2015.

##### 3.4.2. Eligibility

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

##### 3.4.3. Practical implementation

- (98) Eligible companies can benefit from MEIS by exporting specific products to specific countries which are categorised into Group A ('Traditional Markets' including all EU Member States), Group B ('Emerging and Focus Markets') and Group C ('Other Markets'). The countries falling under each group and the list of products with corresponding reward rates are listed in Appendix 3B of the updated HOP.
- (99) The benefit takes the form of a duty credit equivalent to a percentage of the FOB value of the export.

- (100) At the time MEIS came into force in April 2015 the product under review was not included in Appendix 3B and was thus not eligible to MEIS benefits. On 29 October 2015 however, by Public Notice No. 44/2015-2020, PET exports to Group A and B countries became eligible to a MEIS benefit amounting to 2 % of the FOB value of exports. By Public Notice No. 06/2015-2020, the exports to Group C countries became eligible to the same 2 % benefit on 4 May 2016.
- (101) Pursuant to para 3.06 of the FTP 2015-20 and updated FTP 2015-20 certain types of exports 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.
- (102) The duty credits under MEIS are freely transferable and valid for a period of 18 months from the date of issue while the duty credit scrips issued on or after 1 January 2016 shall be valid for a period of 24 months from the date of issue as per paragraph 3.13 of the updated HOP 2015-20. They can be used for: (i) payment of custom duties on imports of inputs or goods including capital goods, (ii) payment of excise duties on domestic procurement of inputs or goods including capital goods and payment, (iii) payment of service tax on procurement of services.
- (103) An application for claiming benefits under MEIS must be filed online on the Directorate-General of Foreign Trade website. Relevant documentation (shipping bills, bank realisation certificate and proof of landing) must be linked with the online application. The relevant Regional Authority ('RA') of the GOI issues the duty credit after scrutiny of the documents. As long as the exporter provides the relevant documentation, the RA has no discretion over the granting of the duty credits.

#### 3.4.4. Conclusion on MEIS

- (104) MEIS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. MEIS duty credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties paid on capital goods, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, MEIS duty credit confers a benefit upon the exporter who is not subject to the payment of those import duties.
- (105) Furthermore, MEIS 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.

#### 3.4.5. Calculation of the subsidy amount

- (106) 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 issues a duty credit which is booked by the exporting producer as an account receivable which can be offset by the exporting producer at any moment. This 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, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, the Commission considered appropriate to assess the benefit under the MEIS as being the sum of the amounts earned on export transactions made under this scheme during the review investigation period.
- (107) 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 under review 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.
- (108) Based on the above, the Commission established that the subsidy rates in respect of this scheme during the review investigation period amounted to respectively 1,92 % for IDIPL and 1,94 % for RIL. Therefore, the Commission concluded that this subsidy continues to be considered countervailable.

### 3.5. Gujarat Electricity Duty Exemption Scheme (GEDES)

- (109) The Commission found that one company availed itself of this measure during the review investigation period. However, since it appeared that the benefit conferred to this company was negligible, the Commission decided not to investigate this measure further, as it in the context of expiry reviews, there is no need to calculate the precise amount of subsidisation (only its continuation).

### 3.6. Amount of countervailable subsidies

- (110) On the basis of the above considerations, the Commission found that the aggregated amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the sampled exporting producers was 2,3 % and 3,6 %, respectively, thereby showing continuation of subsidisation during the period of review.

Table 1

#### Rates for the individual countervailed subsidies

	DDS	EPCGS	MEIS	TOTAL
IDIPL	0,38 %	0,09 %	1,92 %	2,3 %
RIL	1,44 %	0,30 %	1,94 %	3,6 %

### 3.7. Conclusions on the likelihood of a continuation of subsidisation

- (111) In accordance with Article 18(2) of the basic Regulation, it was examined whether the expiry of the measures in force would be likely to lead to a continuation of subsidisation.
- (112) As set out in recitals (30) to (109), it was established that during the review investigation period Indian exporters of the product under review continued to benefit from countervailable subsidisation by the Indian authorities.
- (113) The subsidy programmes give recurring benefits and there is no indication that these benefits will be phased out in the foreseeable future. Moreover, each exporter is eligible to several of the subsidies.
- (114) It was also examined whether exports to the Union would be made in significant volumes should the measures be lifted.
- (115) India is a large producer of the product under review. On the basis of data collected during the investigation, India had a production capacity of about 1 500 000 – 2 300 000 tonnes during the review investigation period. As a result, the excess of capacity over domestic demand was estimated to about 800 - 900 thousand tonnes in the review investigation period, which would represent around 25 % of the total Union consumption during the review investigation period.
- (116) Under these circumstances, there is a strong likelihood that the volumes of subsidized exports of the product under review to the Union, which were already significant during the review investigation period, would increase should the measures be repealed. Therefore, the Commission concluded that there was likelihood of continuation of subsidisation.

## 4. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

### 4.1. Definition of the Union industry and Union production

- (117) During the review investigation period, the like product was manufactured by twenty-one Union producers. Three of those producers are represented by the applicant. Those twenty-one Union producers constitute the 'Union industry' within the meaning of Article 9(1) and 10(6) of the basic Regulation. As described in recital (22), the three Union producers were sampled and the sample accounts for around 37 % of the total Union production.
- (118) Some interested parties claimed that there exist various relations between the Union industry and the exporting producers in India that should be scrutinized carefully. The investigation confirmed that no commercial or administrative links existed between the entities insofar as the Union market is concerned, therefore there were no reasons to exclude any Union producer from the 'Union industry'.

(119) Furthermore, following disclosure, one interested party claimed that the inclusion of one Union producer in the sample and its related exporting producer in India severely impaired the procedural legality of the investigation and possibly distorted the Commission's injury findings. First, as indicated in recital (22), the sample of the Union producers was considered representative of the Union industry and no comments were received in this regard. Second, the relationship between the Union producer and the related exporting producer did not affect the behaviour of the Union producer on the Union market because, as confirmed by the investigation, business decisions regarding the operations on the Union market were made independently by the Union producer and the exporting producer. Indeed, decisions on prices by the Union producer followed raw material price fluctuations, supply and demand developments, exchange rate fluctuations, freight cost and other developments specific to the Union market such as conditions in the textile industry. Therefore, the Commission considered that the behaviour of the Union producer was not affected by its relationship with the exporting producer. The Commission finally noted that neither the claim of this interested party, nor the investigation itself revealed any elements distorting the findings of this investigation as a result of including this Union producer within the definition of Union industry. In this respect, the Commission recalls that Article 9(1) of the basic regulation permits ('may') the exclusion of domestic producers from the definition of Union industry in cases where they are related to exporting producers, but does not require the Commission to do so. This claim had therefore to be rejected.

#### 4.2. Union consumption

(120) The Commission established the Union consumption by adding:

- (i) the sales of the sampled Union producers, obtained after verification of the questionnaire replies,
- (ii) the sales of non-sampled cooperating Union producers, obtained from the applicant,
- (iii) the imports from the country concerned and from all other third countries, based on Eurostat.

(121) On this basis, Union consumption developed as follows:

Table 2

#### Union consumption

	2014	2015	2016	2017	RIP
Union consumption (tonnes)	3 066 080	3 367 935	3 541 644	3 594 779	3 529 250
<i>Index (2014 = 100)</i>	100	110	116	117	115

Source: questionnaire replies of sampled Union producers, review request, information provided by the applicant, Eurostat.

(122) On this basis, Union consumption increased by 15 % over the period considered.

#### 4.3. Imports from India

##### 4.3.1. Volume and market share

(123) The import volumes from India were based on Eurostat statistics. The Commission established the market share of the imports on the basis of the Union consumption as set out in recital (119).

Table 3

#### Import volume and market share

		2014	2015	2016	2017	RIP
India	Import volume (tonnes)	32 220	39 235	134 550	162 913	156 675
	<i>Index (2014 = 100)</i>	100	122	418	506	486
	Market share	1,1 %	1,2 %	3,8 %	4,5 %	4,4 %

Source: Eurostat

- (124) The import volumes from India increased nearly five times during the period considered and reached 156 675 tonnes in the review investigation period, representing 4,4 % of the market share in the Union.

#### 4.3.2. Prices and price undercutting

- (125) The average price of imports into the Union from India developed as follows:

Table 4

#### Import price

		2014	2015	2016	2017	RIP
India	Import prices (EUR/tonne)	1 063	811	776	897	916
	<i>Index (2014 = 100)</i>	100	76	73	84	86

Source: Eurostat

- (126) The average price of imports from India decreased by 14 % over the period considered. More specifically, it decreased by 27 % between 2014 and 2016, before picking up in the review investigation period. The latter increase in prices was caused by a tighter demand for PET due to the closure of some production lines worldwide and PET becoming a preferred packaging material.
- (127) The Commission determined the price undercutting during the review investigation period by comparing:
- (128) the average sales prices of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
- (129) the corresponding average prices of the imports from the cooperating Indian producers to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, including the countervailing duty, with appropriate adjustments for post-importation costs.
- (130) The price comparison was made at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the review investigation period. It showed no undercutting during the review period. However, when deducting the countervailing duty in place, the undercutting margin amounted to 1,7 % and 7,1 % for the imports from the two Indian cooperating producers or 3 % on average.

#### 4.3.3. Imports from other third countries

- (131) The import volume and average import price for all other third countries was based on Eurostat statistics. The Commission established the market share of the imports on the basis of the Union consumption as set out in recital (120).

Table 5

#### Import volume and market share - all other third countries

		2014	2015	2016	2017	RIP
All other third countries	Import volume	726 310	535 848	539 301	617 620	668 050
	<i>Index</i>	100	74	74	85	92
	Market share	23,7 %	15,9 %	15,2 %	17,2 %	18,9 %
	Average price	1 024	939	849	939	949
	<i>Index</i>	100	92	83	92	93

		2014	2015	2016	2017	RIP
Korea	Import volume	255 597	205 421	219 952	190 640	202 442
	<i>Index</i>	100	80	86	75	79
	Market share	8,3 %	6,1 %	6,2 %	5,3 %	5,7 %
	Average price	1 032	934	844	939	960
	<i>Index</i>	100	90	82	91	93
Turkey	Import volume	31 582	108 757	133 464	125 556	120 171
	<i>Index</i>	100	344	423	398	381
	Market share	1,0 %	3,2 %	3,8 %	3,5 %	3,4 %
	Average price	1 090	950	879	975	991
	<i>Index</i>	100	87	81	89	91
China	Import volume	25 017	19 239	7 347	79 652	109 969
	<i>Index</i>	100	77	29	318	440
	Market share	0,8 %	0,6 %	0,2 %	2,2 %	3,1 %
	Average price	996	895	748	869	881
	<i>Index</i>	100	90	75	87	88
Other third countries	Import volume	414 114	202 431	178 538	221 772	235 468
	<i>Index</i>	100	49	43	54	57
	Market share	13,5 %	6,0 %	5,0 %	6,2 %	6,7 %
	Average price	1 015	941	836	944	951
	<i>Index</i>	100	93	82	93	94

- (132) The volume of imports from all other third countries decreased by 8 % between 2014 and the review investigation period, from 726 310 tonnes in 2014 to 668 050 tonnes in the review investigation period. The market share of imports from all other third countries remained within the range 15,2 % – 23,7 % during the period considered.
- (133) The average price of imports from all other third countries decreased by 7 % during the period considered. More specifically, it decreased by 17 % between 2014 and 2016 before picking up in the review investigation period.
- (134) Most imports came from Korea (5,7 % market share in the review investigation period), Turkey (3,4 % market share in the review investigation period) and the People's Republic of China ('China') (3,1 % market share in the review investigation period). Import volumes from Korea were stable and their prices were close to those of the Union industry over the period considered. Import volumes from Turkey and China increased significantly. Import prices from Turkey were above the Union industry prices, while import prices from China were consistently below the Union industry prices.
- (135) Finally, the import volumes of the remaining third countries not mentioned above decreased considerably by 43 % between 2014 and the review investigation period. Their market share decreased by 6,8 percentage points over the period considered, from 13,5 % in 2014 to 6,7 % in the review investigation period. Import prices from these countries were on average higher than import prices from India, except in 2014.

#### 4.4. Economic situation of the Union industry

##### 4.4.1. General remarks

- (136) In accordance with Article 8(4) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Union industry during the period considered.
- (137) As mentioned in recital (22), sampling was applied for the determination of possible injury suffered by the Union industry.
- (138) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission assessed macroeconomic indicators relating to the whole Union industry on the basis of data obtained from the applicant, cross-checked with the information provided by a number of Union producers at pre-initiation stage and the verified questionnaire replies of the sampled Union producers. The Commission assessed the microeconomic indicators on the basis of the data contained in the questionnaire replies from the sampled Union producers, which were verified. Both sets of data were found representative of the economic situation of the Union industry.
- (139) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the subsidy rates, and recovery from past subsidisation.
- (140) The microeconomic indicators are: average unit prices, unit cost, labour costs, closing stocks, profitability, cash flow, investments, return on investments and ability to raise capital.

##### 4.4.2. Macroeconomic indicators

###### (a) **Production, production capacity and capacity utilisation**

- (141) The total Union production, production capacity and capacity utilisation developed as follows over the period considered:

Table 6

#### **Production, production capacity and capacity utilisation of Union producers**

	2014	2015	2016	2017	RIP
Production volume (tonnes)	2 392 313	2 879 296	2 963 309	2 907 255	2 751 726
<i>Index (2014 = 100)</i>	100	120	124	122	115
Production capacity (tonnes)	2 952 163	3 351 713	3 368 849	3 323 079	3 110 887
<i>Index (2014 = 100)</i>	100	114	114	113	105
Capacity utilisation	81 %	86 %	88 %	87 %	88 %

*Source:* information provided by the applicant, verified questionnaire replies of the sampled Union producers.

- (142) The production volume increased by 24 % from 2014 to 2016, then decreased by 7 % from 2016 to the review investigation period. Overall, an increase of 15 % during the period considered.
- (143) The production capacity increased by 14 % from 2014 to 2016, then decreased by 8 % from 2016 to the review investigation period. Overall capacity increased by 5 % over the period considered.
- (144) Since the production volume increased more than the capacity, the capacity utilisation increased by 7 percentage points during the period considered.

**(b) Sales volume and market share**

(145) The Union industry's sales volume and market share developed as follows over the period considered:

Table 7

**Sales volume and market share of Union producers**

	2014	2015	2016	2017	RIP
Sales volume in the Union (tonnes)	2 098 165	2 552 508	2 649 449	2 591 694	2 510 569
<i>Index (2012 = 100)</i>	100	122	126	124	120
Market share	68,4 %	75,8 %	74,8 %	72,1 %	71,1 %

*Source:* information provided by the applicant, verified questionnaire replies of the sampled Union producers.

- (146) The total sales of the Union industry in the Union market increased by 26 % from 2014 to 2016, then decreased by 5 % from 2016 to the review investigation period. Overall, an increase of 20 % during the period considered, at a steeper rate than consumption during the same period (+ 15 %). The Union industry's market share increased by 2,7 percentage points over the period considered. More specifically, it increased by 7,4 percentage points in 2015, then decreased gradually till 71,10 % in the review investigation period.
- (147) During the period considered, the captive sales of the Union producers accounted for between 5 % and 7,5 % of the market share. As regards the price levels, the prices of related and unrelated sales were found to be within the same range. For these reasons it was concluded that the distinctive analysis of the impact of captive sales was not necessary.

**(c) Growth**

- (148) Between 2014 and the review investigation period, the Union consumption increased by 15 %. The sales volume of the Union industry increased by 20 % which translated into a gain in market share of 2,7 percentage points.

**(d) Employment and productivity**

(149) The employment and productivity developed as follows over the period considered:

Table 8

**Employment and productivity of Union producers**

	2014	2015	2016	2017	RIP
Number of employees	1 421	1 340	1 317	1 310	1 319
<i>Index (2014 = 100)</i>	100	94	93	92	93
Productivity (tonnes/employee)	1 684	2 148	2 249	2 219	2 087
<i>Index (2014 = 100)</i>	100	128	134	132	124

*Source:* information provided by the applicant, verified questionnaire replies of the sampled Union producers.

- (150) The employment of the Union industry decreased by 7 % during the period considered.
- (151) Due to the increase in production (increase of 15 %) and the decrease in employment, the productivity increased by 24 % over the same period.

**(e) Magnitude of the subsidy margin and recovery from past subsidisation**

- (152) The subsidy margins established with regard to imports of PET into the Union from India during the review investigation period were above the *de minimis* level. At the same time, the level of imports from India increased nearly five times over the period considered to reach 4,2 % of Union consumption in the review investigation period. Therefore, the impact of the magnitude of the actual subsidy margin from India on the Union industry cannot be considered to be negligible.

**4.4.3. Microeconomic indicators****(a) Prices and factors affecting prices**

- (153) The average sales prices of the Union industry to unrelated customers in the Union developed as follows over the period considered:

Table 9

**Average sales prices in the Union and unit cost**

	2014	2015	2016	2017	RIP
Average unit selling price in the Union (EUR/tonne)	1 037	926	841	964	963
<i>Index</i> (2014 = 100)	100	89	81	93	93
Unit cost of production (EUR/tonne)	1 087	932	839	936	943
<i>Index</i> (2014 = 100)	100	86	77	86	87

Source: verified questionnaire replies of the sampled Union producers.

- (154) The Union industry's average unit sales price to unrelated customers in the Union decreased by 19 % from 2014 to 2016, then increased by 14 % until the end of the review investigation period, reaching 963 EUR/tonne. As of 2017, the increase in prices was influenced by a tighter demand for PET, caused by the closures of some production lines worldwide, as well as PET becoming an alternative and preferred packaging material.
- (155) The average cost of production of the Union industry decreased to a higher extent, by 23 % from 2014 to 2016, and then increased by 12 % by the end of the review investigation period. The major factor having influenced the decrease in the unit cost of production was the decrease in the raw material price <sup>(22)</sup>.

**(b) Labour costs**

- (156) The average labour costs developed as follows over the period considered:

Table 10

**Average labour costs per employee**

	2014	2015	2016	2017	RIP
Average labour costs per employee (EUR/employee)	58 466	57 511	62 935	60 855	59 934
<i>Index</i> (2014 = 100)	100	98	108	104	103

Source: verified questionnaire replies of the sampled Union producers.

- (157) The average labour costs per employee increased by 3 % over the period considered.

<sup>(22)</sup> It is recalled that the price of PET is by 90 % determined by the prices of the raw material, i.e. purified terephthalic acid (PTA), which in turn fluctuates on the basis of prices of crude oil. This causes high volatility of the PET prices.

(c) **Closing stocks**

(158) Stock levels developed as follows over the period considered:

Table 11

**Closing stocks**

	2014	2015	2016	2017	RIP
Closing stocks	45 042	37 339	51 941	48 648	34 139
<i>Index (2014 = 100)</i>	100	83	115	108	76
Closing stocks as a percentage of production	5 %	4 %	5 %	5 %	3 %

Source: verified questionnaire replies of the sampled Union producers.

(159) The level of closing stocks of the sampled Union producers decreased by 24 % during the period considered. In the review investigation period, the level of stocks represented around 3 % of its production.

(d) **Profitability, cash flow, investments, return on investments and ability to raise capital**

(160) The profitability, cash flow, investments and return on investments developed as follows over the period considered:

Table 12

**Profitability, cash flow, investments and return on investments**

	2014	2015	2016	2017	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	- 4,2 %	- 0,3 %	- 0,6 %	3,0 %	3,7 %
Cash flow (EUR)	54 520 838	20 681 479	16 077 625	46 069 828	61 135 843
<i>Index (2014 = 100)</i>	100	38	29	84	112
Investments (EUR)	14 343 485	4 307 874	7 853 405	22 224 623	21 729 502
<i>Index (2012 = 100)</i>	100	30	55	155	151
Return on investments	- 11,8 %	0,3 %	- 0,6 %	9,7 %	12,0 %

Source: verified questionnaire replies of the sampled Union producers.

(161) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability of the Union industry was negative from the start of the period considered until the year 2016, after which it improved and reached 3,7 % in the review investigation period. However, it remained far below the target profit of 7 % established during the original review investigation <sup>(23)</sup>.

(162) The net cash flow is the Union producer's ability to self-finance its activities. The net cash flow was decreasing from the start of the period considered until the year 2016 and started to increase from 2017 onwards. It shows an increase of 12 % over the period considered. The increase was mostly affected by the profit generated.

<sup>(23)</sup> Target profit of 7 % was established in the original investigation, see recital (349), OJ L 199, 5.8.2000, p. 44.

- (163) During the period considered, the annual flow of investments in the the product under review made by the Union industry started to increase only from 2017, after the profitability levels turned to positive. Investments reached 21 million EUR in the review investigation period, which represented 9 % of the total net assets related to the product in question. Investments related to maintenance, increase in the capacity and effectiveness of the production plants.
- (164) The return on investments is the profit in percentage of the net book value of investments. The return on investment from the production and sale of the like product improved only from 2017 onwards and reached 12,0 % during the review investigation period.

#### 4.4.4. *Conclusion on the situation of the Union industry*

- (165) The investigation has shown that the situation of the industry on a macro level improved over the period considered and this positive development is mainly explained by the increase in consumption (+ 15 % over the period considered), from which the Union industry could benefit through an increase in sales volume, production volume and market share.
- (166) The investigation has also shown that the situation of the industry on a micro level improved only during the last fifteen months of the period considered, from 2017 until the end of March 2018. This positive development is mainly explained by a stronger demand on the Union market and a wider gap between PET and the raw material prices.
- (167) Taking the above developments into account, it can be concluded that the Union industry recovered only recently and only to a limited extent. While it did not suffer material injury during the review investigation period, it is still in a fragile situation.
- (168) Some interested parties claimed that the twenty year old measures should no longer be maintained because they were intended to protect an industry that had a different composition from that in the original investigation. Furthermore, following the disclosure, one interested party emphasized that the extension of the measures lead to unjustified protection of new market entrants (mostly with non-EU origin) and distorted fair competition.
- (169) In this regard, it is noted that countervailing measures have as purpose to shield the entire Union industry from the subsidised imports originating from India into the Union, regardless of the origin of the market operators in the Union. In this respect, the composition of the Union industry is not dispositive. The aim is to protect such a domestic industry against unfair subsidisation. In addition, the elements for the injury determination, mentioned in the recitals (138) - (140), derive from Article 18(2) of the basic Regulation, are valid for the whole Union industry and are identical for any anti-subsidy investigation. Since those elements were also found to exist during the review period, the claim of these parties had to be dismissed.

#### 4.4.5. *Conclusion*

- (170) The Commission concluded in recital (167) that the Union industry did not suffer material injury during the review investigation period but remains fragile, as evidenced by the profitability which remained far below the target profit established during the original investigation. The Commission recalled that PET is considered a commodity and that the market is very price sensitive. For that reason, the Union industry cannot raise its prices without risking losing the sales volume necessary to keep fixed costs per tonne at a low and more competitive level.
- (171) Following the disclosure, several interested parties indicated that the Union industry did not suffer material injury from subsidised Indian imports during the review investigation period.
- (172) In this regard, it should be noted that, this claim does not differ from the Commission's conclusion drawn in recital (170), i.e. that the Union industry did not suffer material injury from the subsidised imports originating in India during the review investigation period. However, the Commission concluded that the Union industry was still in a fragile situation.
- (173) Another interested party claimed that the Union industry could not be considered to be in a fragile situation because of a lack of indicators supporting the conclusion that the industry was in a fragile situation and needed protection from the marginal imports from India, in order to avoid material injury.

- (174) As mentioned in recital (150), employment developed negatively over the period considered (– 7 %) and the situation of the Union industry on a micro level improved only during the last fifteen months of the period considered, i.e. from 2017 until the end of March 2018. In parallel, as concluded in recital (161), profitability remained far below the target profit throughout the period considered. Furthermore, as stated in recital (146), while the market share of the Union industry increased in 2015 to 74,8 %, it has been decreasing steadily until the review investigation period down to 71,1 % while the market share of Indian imports was increasing. On this basis, the fragile state of the Union industry could not be ignored. Therefore this claim had to be dismissed.
- (175) In this regard, the Commission further examined the likelihood of recurrence of injury originally caused by subsidised imports from India if measures were repealed.

#### 4.5. Likelihood of recurrence of injury

##### 4.5.1. Preliminary remark

- (176) To establish the likelihood of recurrence of injury should the measures be repealed the following elements were analysed: (a) attractiveness of the Union market, (b) production capacity and spare capacity in India, (c) likely price levels of imports from India in the absence of countervailing measures, and (d) existence of trade restrictive measures in other third countries on exports of PET from India.

##### (a) *Attractiveness of the Union market*

- (177) The Union market is attractive in terms of its size and prices. According to available information, the Union market is the third largest market consuming PET worldwide. It is also the first export destination for PET originating in India. The attractiveness of the Union market is also confirmed by the increase in PET imports from India, which, in spite of the countervailing measures in force, have more than quadrupled after the anti-dumping duties for India were not renewed in 2013 <sup>(24)</sup>. Considering that PET is a commodity product sold on a very competitive market, it should also be noted that the import prices of Indian PET to the Union tend to be slightly higher than the prices to other third countries while still below those of the EU industry's sales <sup>(25)</sup>. This points to the attractiveness of the Union market for Indian exporters of the product under review.
- (178) One Indian exporting producer claimed that there is an overall growth in demand and that the EU market is not the biggest market in demand terms. It also claimed that it was targeting other markets which offer a higher growth trajectory of PET packing and better returns. While the claim that the EU market only ranks third is not disputed, the likelihood analysis of recurrence of injury is not limited to the specific situation of one individual exporting producer and concerns all Indian exporting producers. On this overall basis, it was concluded that the Union market was still very attractive in terms of its size and prices. Consequently, this claim had to be rejected.

##### (b) *Production capacity and spare capacity available in India*

- (179) The investigation established that India had a substantial growth in its production capacity over the period considered, reaching around 1 860 thousand tonnes at the end of 2017, while PET demand in India reached only around 937 thousand tonnes in the same year <sup>(26)</sup>. The Indian industry is expected to increase its capacity further, maintaining a gap between domestic consumption and production capacity available for exports of around 800 – 900 thousand tonnes in the near future. Such excess capacity available for exports has to be considered significant as it represents around 25 % of the current Union consumption in the review investigation period.

<sup>(24)</sup> Council Implementing decision of 21 May 2013 rejecting the proposal for a Council implementing regulation imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in India, Taiwan and Thailand following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 and terminating the expiry review proceeding concerning imports of certain polyethylene terephthalate originating in Indonesia and Malaysia, in so far as the proposal would impose a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in India, Taiwan and Thailand (2013/226/EU), OJ L 136, 23.5.2013, p.12.

<sup>(25)</sup> Source: Global Trade Atlas <https://www.gtis.com/gta>.

<sup>(26)</sup> Market studies and forecast collected at the verified Union producers (Sources: SBA-CCI consultants; Wood Mackenzie Ltd.) and the data of cooperating Indian producers.

(c) **Likely price levels of imports from India in the absence of countervailing measures**

- (180) As stated in recital (130), the Indian import prices without countervailing duties would undercut the Union sales prices by 1,7 % to 7,1 %. This is an indication of what could be the likely price level of imports from India should the measures be repealed. Also, although Indian imports into the Union were relatively low, their penetration rate was quite high over the period considered, since they increased nearly five times, as stated in the recital (124).
- (181) On this basis, the Union industry is likely to be exposed to substantial volumes of imports from India at subsidised prices below the average prices of the Union industry, undermining its economic situation. As a result, the material injury is likely to recur should the measures against India be lifted.
- (182) Following disclosure, one interested party claimed that the assumption that import prices from India would automatically decrease by the amount of the current countervailing duty should the measures against India be lifted was an inadequate simplification of complex market dynamics. The Commission first notes that this party did not develop its claim to explain what these market dynamics are and how they would actually impact the import prices, nor did it suggest an appropriate import price for the undercutting calculation. The Commission further notes that it is standard practice to consider the import price of the product under review in the EU during the review investigation period to establish the likely price level of the product under review should the measures be repealed. Furthermore, PET being a commodity product and taking into account the share of imports and number of market players, it is considered that the PET market in the EU is competitive and that such price levels are likely to be applicable. The claim of the party was therefore dismissed.

(d) **Existence of trade restrictive measures in other third countries on exports of PET from India**

- (183) The existence of trade defence measures in third countries is also an indication that the pricing behaviour of Indian exports is likely to replicate on the Union market.
- (184) For instance, trade defence measures are currently in place against Indian imports in Argentina, Brazil and the United States <sup>(27)</sup>. The limitations in these export markets for India is another indicator that the Union market is likely to be targeted if the measures were allowed to lapse.
- (185) Some interested parties claimed that the Canadian International Trade Tribunal recently struck down trade defence measures on PET from China, India, Oman and Pakistan, finding that *'the dumping and subsidizing of the above-mentioned goods originating in or exported from China and India ... have not caused injury and are not threatening to cause injury to the domestic industry.'* <sup>(28)</sup>.
- (186) The Commission noted that that finding by the Canadian International Trade Tribunal was limited to the facts and circumstances of the investigation carried out by the Canadian authorities. The findings of anti-dumping/anti-subsidy investigations for another market, at a different point in time, carried out by a different authority are specific to the individual market and industry concerned. These findings do not relate to the Union market nor to the present review investigation. On these grounds the argument of the parties had to be dismissed.
- (187) Following disclosure, one interested party claimed that the Commission's approach with regard to third country investigations was not coherent as it was treating the negative finding of the Canadian International Trade Tribunal in a different way from the existing measures in Argentina, Brazil and the United States mentioned in recital (184).

<sup>(27)</sup> Source: WTO, Integrated Trade Intelligence Portal (I-TIP).

<sup>(28)</sup> Canadian International Trade Tribunal, Inquiry into whether the dumping and subsidizing of polyethylene terephthalate resin (PET resin) having an intrinsic viscosity of at least 0,70 deciliters per gram but not more than 0,88 deciliters per gram, including PET resin that contains various additives introduced in the manufacturing process, as well as blends of virgin PET resin and recycled PET containing 50 percent or more virgin PET resin content by weight, originating in or exported from the People's Republic of China (China), the Republic of India (India), the Sultanate of Oman (Oman) and the Islamic Republic of Pakistan (Pakistan), have caused injury or are threatening to cause injury to the domestic industry, No. NQ-2017-003. Source: [http://www.citt.gc.ca/en/node/8285#\\_Toc519504461](http://www.citt.gc.ca/en/node/8285#_Toc519504461).

(188) It should be noted that the existence of trade restrictive measures in other third countries on exports of PET from India cannot be disputed and that they limit the exports of PET from India to these countries. As far as the claims with regard to the findings of the Canadian International Trade Tribunal is concerned, it should be noted that the competence of the Canadian International Trade Tribunal in trade remedy investigations concerns the injury determination for the domestic market, whereas the Canada Border Services Agency is competent for findings on the existence of dumping and subsidisation in Canada. In that proceeding, the Canada Border Services Agency concluded that Indian imports in Canada were indeed made at dumped and subsidized prices, and that they were undercutting Canadian domestic prices. However, the Canadian International Trade Tribunal did not consider that such prices were injurious to the domestic Canadian industry. The conclusions of the Canadian International Trade Tribunal are thus related to the market and industry situation in the Canadian market for that specific period and are therefore of no relevance for the situation in the Union market for the RIP of the current investigation. At the same time, the conclusion by the Canada Border Services Agency that Indian exporters were still exporting at dumped and subsidised prices could be a relevant element in assessing the unfair pricing behaviour of Indian exporters, together with all the other elements taken into account in the investigation on their likely pricing behaviour in the absence of measures. The claim of the party was therefore dismissed.

#### 4.5.2. *Impact on the Union industry*

- (189) The investigation has shown that the imports from India continued to be subsidised and that there are no indications that the subsidisation would be reduced or discontinued in the future.
- (190) It can be reasonably expected that, as a consequence of the attractiveness of the Union market as described in recital (177) should the measures be repealed, at least part of the spare capacity in India will, in all likelihood, be (re-)directed to the Union market.
- (191) In recital (181) it was concluded that it is likely that the exporting producers from India will export significant quantities of product under review to the Union should measures be allowed to lapse and that these exports would be made at subsidised prices.
- (192) In terms of volumes, it is very likely that Indian exporting producers will gain further market share from the Union industry which would face an immediate drop in its sales volumes and an increase in its fixed costs per unit. Indeed, the PET industry is a capital intensive industry which needs to maintain a certain volume of production to keep the fixed costs at reasonable levels. The increase in fixed costs following a decrease in production and sales will negatively affect the profitability. As a consequence, the profitability of the Union industry (which recovered only in 2017 and was still far below the target level in 2017 and the review investigation period) and its overall economic situation would be negatively affected and material injury would recur. In parallel, the Union industry would be precluded from making the necessary investments in recycled PET urged by the European Strategy for Plastics <sup>(29)</sup>.
- (193) Based on the above the Commission concluded that there is a strong likelihood of recurrence of injury from Indian imports should the measures be repealed.
- (194) Cooperating exporting producers from India claimed that the recurrence of injury in this case is unlikely if the measures were to expire, given the structure (concentration and vertical integration) of the Union industry and, in particular, the dominant position of some producing groups in the Union market controlling several producers. In this respect, the Commission noted, firstly, that the Union market is an open market with several producers operating outside groups. It is also a competitive market with imports accounting for over 20 % market share and growing competition from new market entrants such as China and Turkey, which have acquired over 6 % market share over the period considered. Secondly, concentration is typical for this type of business based on commodity product that relies on economies of scale for its competitiveness. Thirdly, no price leader was found to exist on the Union market. Based on the above, this claim was rejected.
- (195) Some interested parties argued that no elements support a conclusion that the Indian export capacity may target the Union market at low prices given that the domestic demand in India is growing and is expected to continue to grow. In addition, the world-wide growth in demand for PET, in particular in the Asia Pacific region, limits the risk of a recurrence of injury.

<sup>(29)</sup> The European strategy for plastics in a circular economy adopted by the Commission in January 2018 aims at curbing plastic pollution and its adverse impacts on health and environment. One of the main target is to reach 100 % recyclable plastic packaging in the EU by 2030. The Union industry is expected to play a key role in this framework by investing in recycled PET. [https://eur-lex.europa.eu/resource.html?uri=cellar:2df5d1d2-fac7-11e7-b8f5-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2df5d1d2-fac7-11e7-b8f5-01aa75ed71a1.0001.02/DOC_1&format=PDF)

- (196) The findings in the present investigation demonstrate that the projected growth of capacity in India shows a growing excess of the production capacity over domestic demand. In addition, based on the findings described in recital (177), (183) and (184), the Union market remains attractive in terms of its size and prices. Therefore, it is likely that the subsidised Indian imports will target the Union market at substantial volumes and below the average price of the Union industry should the countervailing measures be allowed to lapse. On these grounds, the arguments of the parties had to be dismissed.
- (197) Following disclosure, one interested party claimed that Indian imports did not cause injury and are not likely to cause injury to the Union industry should the measures be repealed on the grounds that Indian PET imports in the EU market have been and will continue to be marginal. It also argued that PET imports from India increased at a much lower pace than the Union consumption during the period considered and decreased in 2018. In addition, it claimed that the import price from India was comparatively high and higher than the import price from China.
- (198) Regarding the import volumes and prices of PET imports from India, as stated in recital (124), import volumes from India increased nearly five times during the period considered, gained significant market share and reached 156 675 tonnes in the review investigation period. These volumes were the highest since the imposition of the original measures. Consequently, they have increased at a much higher pace than the Union consumption. Furthermore, as the period considered covered only one quarter of 2018 and in the absence of consumption data for 2018, no conclusion could be drawn from the import volume after the period considered. The investigation also showed that the imports from India continued to be subsidised during the review investigation period and, that the prices of imports from India, when deducting the countervailing duty in place, would undercut the prices of the Union industry by 3 % on average (see recital (130)). On this basis, the claim had to be dismissed.

## 5. UNION INTEREST

- (199) In accordance with Article 31 of the basic Regulation, the Commission examined whether maintaining the existing countervailing measures against India would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, suppliers of the raw materials in the Union, importers and users.
- (200) It is recalled that, in the original investigations, the adoption of measures was considered not to be against the interest of the Union.
- (201) All interested parties were given the opportunity to make their views known pursuant to Article 31(2) of the basic Regulation.
- (202) On this basis, the Commission examined whether, despite the conclusions on the likelihood of recurrence of subsidisation and injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

### 5.1. Interest of the Union industry

- (203) The continuation of the countervailing measures on imports from India would help the Union industry to continue the on-going investments, in particular those related to European strategy for plastics and in particular recycled PET. The continuation of the measures would also enhance the recently improved economic situation of the Union industry as it would help avoiding that the Union industry be exposed to the substantial volumes of Indian subsidized imports undercutting the Union industry sales prices.
- (204) Accordingly, it is concluded that the maintenance of countervailing measures against India would be in the interest of the Union industry.

### 5.2. Interest of the suppliers of the raw materials in the Union

- (205) The main raw material for the manufacturing of the product under review is purified terephthalic acid - PTA. One supplier of raw material cooperated with the investigation by submitting the questionnaire reply. It expressed support for the continuation of the measures.

- (206) Given that PTA has no other use in the Union than the production of PET, it is reasonable to assume that PTA producers are largely dependent on the PET industry.

### 5.3. Interest of importers, traders and users

- (207) None of the unrelated importers, traders or/and users replied to the questionnaire in the present review. Seventeen unrelated importers/users and one user association expressed their opposition to the continuation of the measures on the grounds that these would limit supply of PET at normal market prices and harm competitiveness of the downstream industry, which employs far more people than the PET industry in the Union. They claimed that the production of PET in the EU was not sufficient and that imports of PET from other third countries were limited, namely, imports from Korea and Indonesia which are partly diverted towards Japan, following the imposition of anti-dumping measures on PET from China in December 2017.
- (208) Following disclosure, several interested parties reiterated their claim that downstream users needed flexibility in sourcing their materials from various sources, that the production of PET in the EU was not sufficient and, as also concluded in recital (132), that the volume of imports into the Union from all other third countries decreased by 8 % between 2014 and the review investigation period. These parties added that the recent increases in imports of PET from India were driven by a redistribution of the PET trade flows worldwide, e.g. with Korean material sold more profitably in Japan.
- (209) In this regard, it should be noted that the Union industry operated at 88 % of its production capacity in the review investigation period and that it increased its production capacity over the period considered. On this basis, it has sufficient spare capacity to cover more than 85 % of total current domestic consumption of PET in the EU. Also, the imports from India continued during the period considered and followed an increasing trend (see recital (124)). The imports from other countries without measures were also available and had a significant market share of 18,9 % during the review investigation period (see recital (132)). In addition, the PET recycling industry, enhanced by the European Strategy for Plastics, will constitute a further source of PET to cover the PET demand in the Union. Lastly, even if exports of PET from Korea and Indonesia to Japan indeed increased after 2017, Korean and Indonesian exports to the EU still represented more than 50 % and 20 %, respectively, of their total PET exports in 2018 and there were no signs that any decrease could not be compensated by imports from other third countries<sup>(30)</sup> or India itself, since, as already noted in recital (124), import volumes from India increased nearly five times during the period considered, which translated into 3,3 percentage points increase of its market share in the Union during the same period. The investigation also found that production and export volume from Korea should remain stable (around 1 100 thousand tonnes and 800 thousand tonnes respectively); production volume in Indonesia should also remain stable (around 400 thousand tonnes), while export volume from Indonesia could decrease, but only due to the increase in the local demand<sup>(31)</sup>.
- (210) Therefore, even with the measures for India in place, supply of PET in the Union is not limited and competitive market prices exist.
- (211) Furthermore, several interested parties claimed that the downstream industry had trouble transmitting increases in raw material prices and, as they reiterated, the interests of downstream industry outweighed the interest of the Union producers of PET in terms of employment and economic significance. As noted in recital (206), unrelated importers, traders or/and users did not reply to the questionnaire in the present review to substantiate the claim regarding the material effect on their cost. Therefore, in the absence of any proof regarding the claims made they had to be rejected.
- (212) On this basis, and in line with the conclusions drawn in previous investigations, it is expected that the continuation of the measures would not have a significant negative impact on users and that there are therefore no compelling reasons to conclude that it is not in the Union interest to extend the existing measures for India.

### 5.4. Conclusion on Union interest

- (213) In view of the above, the Commission concluded that there are no compelling reasons of Union interest against the extension of the current countervailing measures on imports from India.

<sup>(30)</sup> Source: Global Trade Atlas <https://www.gtis.com/gta>.

<sup>(31)</sup> Market studies and forecast collected at the verified Union producers. Sources: SBA-CCI consultants; Wood Mackenzie Ltd.

## 6. COUNTERVAILING MEASURES

- (214) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to maintain the countervailing measures in force for India. They were also granted a period within which they could submit comments subsequent to this disclosure. The submissions and comments were duly taken into consideration.
- (215) It follows from the above considerations that, under Article 18(1) of the basic Regulation, the countervailing measures applicable to imports of PET originating in India imposed by Council Regulation (EU) No 461/2013, as amended by Commission Implementing Regulation (EU) 2018/1468 should be maintained.
- (216) The individual company countervailing duty rates specified in this Regulation are solely applicable to imports of the product under review produced by these companies and thus by the specific legal entities mentioned. The imports of the product under review manufactured by any other company not specifically mentioned in the operative part of this Regulation with its name and address, 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'.
- (217) 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 Commission <sup>(32)</sup> 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, the Regulation will be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (218) In view of Article 109 of Regulation 2018/1046 <sup>(33)</sup>, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union on the first calendar day of each month.
- (219) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036 of the European Parliament and the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union <sup>(34)</sup>.

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive countervailing duty is hereby imposed on imports of polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, currently falling under CN code 3907 61 00 and originating in India.
2. The rate of the definitive countervailing duty applicable to the net, free-at-Union- frontier price, before duty, of the product described in paragraph 1 and manufactured by the companies listed below, shall be as follows:

Country	Company	Duty rate (EUR/tonne)	TARIC additional code
India	Futura Polyesters Ltd	0	A184
India	IVL Dhunseri Petrochem Industries Private Limited	18,73	C380
India	Pearl Engineering Polymers Ltd	74,6	A182
India	Reliance Industries Limited	29,21	A181
India	Senpet Ltd	22,0	A183
India	All other companies	69,4	A999

<sup>(32)</sup> European Commission, Directorate-General for Trade, Directorate H, B-1049 Brussels, Belgium.

<sup>(33)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1.

<sup>(34)</sup> OJ L 176, 30.6.2016, p. 21.

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

*Article 2*

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

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

Done at Brussels, 30 July 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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