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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 31 March 2011

on the signing, on behalf of the Union, and provisional application of a Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation

(2011/530/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) and Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Commission has negotiated a Memorandum of Cooperation with the International Civil Aviation Organization providing a framework for enhanced cooperation (Memorandum of Cooperation) in accordance with the mandate adopted by the Council on 17 December 2009 authorising the Commission to open negotiations.

(2) The Memorandum of Cooperation was initialled by both parties on 27 September 2010 during the course of the 37th Assembly of the International Civil Aviation Organization in Montréal.

(3) The Memorandum of Cooperation should be signed and applied on a provisional basis, pending the completion of the procedures for its conclusion,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation (Memorandum of Cooperation) is hereby approved on behalf of the Union, subject to the conclusion of the said Memorandum of Cooperation.

The text of the Memorandum of Cooperation is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Memorandum of Cooperation on behalf of the Union.

Article 3

The Memorandum of Cooperation shall be applied on a provisional basis as from the date of signature thereof pending the completion of the procedures for its conclusion [1].

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 31 March 2011.

For the Council
The President
VÖLNER P.

[1] The date of signature of the Memorandum of Cooperation will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

MEMORANDUM OF COOPERATION

between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation

THE EUROPEAN UNION (EU),

and

THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO),

hereafter referred to as 'the Parties',

RECALLING the Convention on International Civil Aviation signed at Chicago on 7 December 1944 (hereinafter referred to as the 'Chicago Convention') and in particular Articles 55(a) and 65 thereof,

RECALLING the Treaty on the Functioning of the European Union and in particular Articles 218 and 220 thereof,

BEARING IN MIND ICAO Assembly Resolution A1-10, which authorised the ICAO Council to make appropriate arrangements with public international organisations whose activities affect international civil aviation, particularly with regard to technical collaboration, exchange of information and documents, attendance at meetings, and such other matters as may promote effective cooperation,

RECALLING the ICAO Policy and Framework for Cooperation with respect to Regional Civil Aviation Bodies and Regional Organizations aimed at, inter alia, concluding cooperation agreements with such bodies and organisations, as recommended by an EC/ICAO Symposium on regional organisations, which took place on 10-11 April 2008 in Montréal,

TAKING INTO ACCOUNT that most ICAO Standards in the fields of aviation safety, aviation security, air traffic management and environmental protection are addressed in relevant EU law,

TAKING INTO ACCOUNT the Memorandum of Cooperation (MOC) between the European Aviation Safety Agency (EASA) and the International Civil Aviation Organization (ICAO) Regarding Safety Oversight Audit and Related Matters, signed in Montréal on 21 March 2006,

TAKING INTO ACCOUNT the Memorandum of Cooperation between the European Community and the International Civil Aviation Organization Regarding Security Audits/Inspections and Related Matters, signed in Montréal on 17 September 2008,

WHEREAS the European Community and the United Nations signed on 29 April 2003 a new Financial and Administrative Framework Agreement (FAFA) to which ICAO adhered through an Agreement with the European Community signed on 7 December 2004,

WHEREAS this Memorandum of Cooperation does not supersede or prejudge existing forms of cooperation between the Parties as long as they remain in force,

HAVING REGARD to ICAO Assembly Resolution A36-2 which, inter alia, recognises that the establishment of regional and sub-regional safety oversight systems, including regional safety oversight organisations, has great potential to assist States in complying with their obligations under the Chicago Convention through economies of scale and harmonisation on a larger scale, and which also requests the Secretary General to continue to foster coordination and cooperation between ICAO Universal Safety Oversight Audit Programmes (USOAP) and audit programmes of other organizations related to aviation safety, and furthermore directs the Council to promote the concept of regional and sub-regional safety oversight systems, including regional safety oversight organisations,

WHEREAS the Parties share the vision of achieving the highest degree of uniformity of European operational regulations, requirements and procedures with a view to achieving compliance with ICAO standards contained in the Annexes to the Chicago Convention for the sake of aviation safety, aviation security, air traffic management and environmental protection,

WHEREAS each Party plays an important role in achieving this goal,

WHEREAS the Parties wish to engage and communicate with each other on regional cooperation,

WHEREAS the EU has adopted common rules in the fields of aviation safety and aviation security and the European Aviation Safety Agency (EASA) and the European Commission conduct inspections in Member States of the EU to monitor the application of those rules,

CONSIDERING that in the EU, the European Commission has enforcement powers to ensure the implementation of EU legislation in the fields of aviation safety, aviation security, air traffic management and environmental protection,

CONSIDERING that the primary objectives of the ICAO audit programmes and the EU's inspection programmes are to enhance aviation safety and security by evaluating the implementation of respective standards, identifying deficiencies, if any, and ensuring the rectification of deficiencies in the EU, where necessary,

WHEREAS the EU has established an office in Montréal with a view to facilitating the strengthening of relations and cooperation between the EU and ICAO and enabling increased participation and contributions by the EU in ICAO's activities at ICAO Headquarters,

CONSIDERING that, without prejudice to the rights or obligations of EU Member States under the Chicago Convention or to the relationship between EU Member States and ICAO resulting from their membership of ICAO, it is desirable to establish mutual cooperation between the EU and ICAO in the areas of aviation safety, aviation security, air traffic management and environmental protection in a manner ensuring greater harmonisation of standards and closer co-ordination of respective activities and with a view to achieving better use of limited resources and avoiding duplication of efforts while preserving the integrity of both Parties,

WHEREAS the Parties recognise the necessity to protect, to the extent required under their respective rules, classified information received from the other Party,

HAVE AGREED AS FOLLOWS:

1. General provisions

The Parties agree to strengthen their relationship and establish closer cooperation in the fields of aviation safety, aviation security, air traffic management and environmental protection and facilitate, in accordance with established rules of procedure, their participation in activities and attendance at meetings as observer through the signing of this Memorandum of Cooperation (MOC) for the benefit of international civil aviation.

This MOC is without prejudice to the rights or obligations of EU Member States under the Chicago Convention or to the relationship between ICAO and the EU Member States resulting from Member States' membership of ICAO.

This MOC shall not cover or extend to any ICAO or EU decision-making, including on standardisation or rule-making matters, but shall establish regulatory cooperation in the preparation stages of such activities.

The Office of the European Union in Montréal, which represents the EU at ICAO's Headquarters, shall facilitate EU-ICAO relations and serve as the main EU contact point for ICAO in all matters relating to the implementation of this MOC.

2. Objectives

2.1. This MOC shall:

(a) establish a framework for enhanced relations between the Parties;

(b) strengthen cooperation between the Parties;

(c) identify areas of mutual cooperation between the Parties; and

(d) establish the terms, conditions and mechanisms for implementing cooperation between the Parties.

3. Scope

3.1. This MOC shall establish cooperation between the Parties in the following areas:

(a) aviation safety;

(b) aviation security;

(c) air traffic management; and

(d) environmental protection.

3.2. Each of the areas referred to in paragraph 3.1 of this Article shall be the subject of separate Annexes to the MOC.

3.3. The Parties may establish working arrangements specifying the mutually agreed mechanisms and procedures necessary to effectively implement cooperation activities established in the Annexes to this MOC.

3.4. The Annexes adopted pursuant to this MOC shall form an integral part of this MOC.

4. Forms of cooperation

4.1. The Parties shall:

(a) establish mechanisms for consultation, coordination and cooperation and exchange of information;

(b) facilitate the harmonisation of performance requirements and interoperability of new technologies and systems;

(c) coordinate respective audit and inspection programmes and results and technical assistance activities with a view to making better use of limited resources and avoiding duplication of efforts;

(d) exchange information on compliance with ICAO Standards;

(e) establish arrangements for the EU to offer expertise and resources to ICAO, including in the form of secondments under the exclusive authority of the Secretary General, technical assistance and specialised training, where practicable;

(f) allow participation by one Party in the activities of the other Party relating to audit and inspection programmes and training programmes, as appropriate, while EU observers may participate in ICAO audit missions of EU States only with the consent of the latter, EU experts participating in ICAO audits under secondment as ICAO auditors shall keep any information related to the audit mission as strictly confidential in accordance with applicable ICAO rules; and

(g) without prejudice to non-disclosure obligations of either party and subject to the application of respective confidentiality rules as laid down in Article 6, share electronic information, data and official publications and provide mutual access to databases and strengthen links between them in order to complement each other's existing databases.

5. Cooperation activities

5.1. The Parties agree, as specified in the Annexes to this MOC, to jointly execute the following cooperation activities. The Parties shall:

5.1.1. Establish mechanisms for consultation, cooperation and information sharing, including the following:

(a) establish and implement joint mechanisms for regular dialogue, consultation and information sharing;

(b) ensure that each Party is kept informed, in a timely manner, about decisions, activities, initiatives, meetings and events of relevance to this MOC in the areas of aviation safety, aviation security, air traffic management and environmental protection, and receives relevant documentation. Where appropriate, briefings may be conducted;

(c) provide access free of charge to all official documents and publications;

(d) make databases and information on websites available to the other Party; and

(e) ensure that the EU receives and has electronic access to all ICAO State letters whose subject matter is relevant to the scope of this MOC and its Annexes.

5.1.2. Establish cooperative frameworks to better coordinate audit and inspection programmes with a view to making better use of limited resources and avoiding duplication of efforts.

5.1.3. Establish joint mechanisms for close coordination of programme planning and technical assistance.

5.1.4. Cooperate in promoting global interoperability of new technologies and systems and establish joint mechanisms to strengthen cooperation with regard to the use of new technologies.

5.1.5. Ensure timely mutual consultation with a view to achieving improved coordination and coherence between regulations, policies, approaches and ICAO Standards and Recommended Practices (SARPs).

5.1.6. Establish working arrangements to facilitate the exchange of expertise and resources as follows:

(a) ICAO shall provide the EU with expertise and advice on best practices to implement SARPs;

(b) the EU shall provide expertise to ICAO, including in the form of secondments to the ICAO Secretariat;

(c) the EU shall endeavour to provide ICAO with a financial contribution to cover costs incurred pursuant to the implementation of this MOC, including administrative costs, supply of documentation and publications and related services, use of room facilities at ICAO Headquarters and information technology costs;

(d) the EU shall endeavour to provide ICAO with financial contributions for supporting ICAO technical cooperation programmes and for other ICAO activities to be agreed within the Joint Committee, consistent with the Financial and Administrative Framework Agreement (FAFA); and

(e) any new framework and terms and conditions for secondments and financial contributions to ICAO in the framework of this MOC shall be established in working arrangements for that purpose agreed in the Joint Committee. These working arrangements shall include the possibility for the EU to request ICAO for financial information in the framework of those contributions.

5.1.7. Inform each other about any relevant training programmes and facilitate participation by the other Party, as appropriate.

5.1.8. Organise relevant events jointly and coordinate events, where appropriate.

6. Confidentiality

6.1. Each Party shall take all reasonable precautions necessary to protect information received under this MOC and its Annexes from unauthorised disclosure. A Party may, upon providing information to the other Party, designate the portions of the information that it considers to be exempt from disclosure.

6.2. The Parties agree to safeguard, to the extent required under their respective rules, regulations and legislation, the protection of classified information received from the other Party in application of this MOC and its Annexes.

6.3. In particular, subject to their respective rules, regulations and legislation, the Parties shall not disclose information received from each other under this MOC and its Annexes that is considered proprietary. Such information shall be appropriately marked as such in accordance with their respective rules.

6.4. The Parties shall agree on working arrangements on further procedures for the protection of classified information provided pursuant to this MOC and its Annexes, as required. Such procedures shall include the possibility for each Party to verify which protection measures have been put in place by the other Party.

7. Joint Committee of the Parties

7.1. A Joint Committee is established, composed of representatives of each Party. The Joint Committee shall be co-chaired by one representative of each Party. The Joint Committee shall be responsible for the effective functioning of the Annexes to this MOC, including the adoption of the Annexes.

7.2. A meeting of the Joint Committee shall be convened at least once a year to review the implementation of the Annexes to this MOC and shall be organised cost-effectively. Either Party may request a meeting of the Joint Committee at any time.

7.3. The Joint Committee may consider any matter related to the functioning and implementation of the Annexes to this MOC. In particular, it shall be responsible for:

(a) resolving any question relating to the application and implementation of the Annexes to this MOC;

(b) considering ways to enhance the operation of the Annexes to this MOC and make, as appropriate, recommendations to the Parties for their amendment;

(c) adopting Annexes to this MOC and working arrangements within the scope of the Annexes or amendments thereto;

(d) considering financial and resource-related issues related to the implementation of the MOC and its Annexes; and

(e) resolving any difference or dispute concerning the interpretation or application of this MOC and its Annexes.

7.4. The Joint Committee shall operate on the basis of agreement between the chairpersons of each Party.

8. Dispute resolution

8.1. Either Party may request consultations with the other Party on any matter related to this MOC. The other Party shall reply promptly to such a request and shall enter into consultations at a time agreed by the Parties within 45 days.

8.2. The Parties shall make every effort to resolve any differences between them arising from their cooperation under this MOC at the lowest possible technical level by consultation.

8.3. In the event that any difference is not resolved as provided for in paragraph 8.2 of this Article, either Party may refer the dispute to the Joint Committee, which shall consult on the matter, in accordance with Article 7 of this MOC, with a view to resolving it by negotiation.

8.4. Notwithstanding paragraphs 8.1 to 8.3 of this Article, the dispute resolution provisions of the FAFA shall be applied when addressing any dispute arising from an issue of financial management.

8.5. Nothing in this MOC shall be deemed as a waiver of any privilege or immunity of the Parties.

9. Entry into force, amendments and termination

9.1. Pending its entry into force, this MOC shall be applied provisionally from the date of signature.

9.2. This MOC shall enter into force when the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed and shall remain in force until terminated.

9.3. This MOC may be terminated at any time by either Party. Such termination shall be effected by 6 months' written notice to the other Party unless the said notice of termination has been withdrawn by mutual consent of the Parties before the expiry of this period.

За Европейския съюз
Por la Unión Europea
Za Evropskou unii
For Den Europæiske Union
Für die Europäische Union
Euroopa Liidu nimel
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Per l'Unione europea
Eiropas Savienības vārdā –
Europos Sąjungos vardu
Az Európai Unió részéről
Għall-Unjoni Ewropea
Voor de Europese Unie
W imieniu Unii Europejskiej
Pela União Europeia
Pentru Uniunea Europeană
Za Európsku úniu
Za Evropsko unijo
Euroopan unionin puolesta
För Europeiska unionen
Per la Unió Europea

За Международната организация за гражданско въздухоплаване
Por la Organización Internacional de Aviación Civil
Za Mezinárodní organizaci pro civilní letectví
For Organisationen for International Civil Luftfart
Für die Internationale Zivilluftfahrt-Organisation
Rahvusvahelise Tsiviillennunduse Organisatsiooni nimel
Για τη Διεθνή Οργάνωση Πολιτικής Αεροπορίας
For The International Civil Aviation Organisation
Pour l'Organisation de l'aviation civile internationale
Per l'Organizzazione internazionale dell'aviazione civile
Starptautiskās Civilās aviācijas organizācijas vārdā
Tarptautinės Civilinės aviacijos organizacijos vardu
A Nemzetközi Polgári Repülési Szervezet részéről
Għall-Organizzazzjoni tal-Avjazzjoni Ċivili Internazzjonali
Voor de Internationale Burgerluchtvaartorganisatie
W imieniu Organizacji Międzynarodowego Lotnictwa Cywilnego
Pela Organização da Aviação Civil Internacional
Pentru Organizația Aviației Civile Internaționale
Za Medzinárodnú organizáciu civilného letectva
Za Mednarodno organizacijo civilnega letalstva
Kansainvälisen siviili-ilmailujärjestön puolesta
För internationella civila luftfartsorganisationen

COUNCIL DECISION

of 16 June 2011

on the position to be taken by the European Union within the EU-ICAO Joint Committee, concerning the Decision on the adoption of an Annex on aviation safety to the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation

(2011/531/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 100(2) and 218(9) thereof,

Having regard to the Council Decision 2011/530/EU of 31 March 2011 on the signing, on behalf of the Union, and provisional application, of a Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation [1] (Memorandum of Cooperation),

Having regard to the proposal from the European Commission,

Whereas:

It is appropriate to establish the position to be adopted on the Union's behalf within the EU-ICAO Joint Committee, set up under the Memorandum of Cooperation with regard to the adoption of an Annex on aviation safety to be added to that Memorandum of Cooperation,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Union within the EU-ICAO Joint Committee, as referred to in Article 7.3(c) of the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation (the Memorandum of Cooperation), with regard to the adoption of an Annex on aviation safety to the Memorandum of Cooperation, shall be based on the draft Decision of the EU-ICAO Joint Committee, attached to this Decision.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at Luxembourg, 16 June 2011.

For the Council
The President
VÖLNER P.

[1] See page 1 of this Official Journal.

DRAFT

DECISION OF THE EU-ICAO JOINT COMMITTEE

of …

on the adoption of an Annex on aviation safety to the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation

THE EU-ICAO JOINT COMMITTEE,

Having regard to the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization providing a framework for enhanced cooperation (the ICAO MOC), and in particular Article 7.3(c) thereof,

Whereas:

It is appropriate to include an Annex on aviation safety in the ICAO MOC,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to this Decision is hereby adopted and shall form an integral part of the ICAO MOC.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at, … .

For the EU-ICAO Joint Committee
The Chairpersons

ANNEX

'ANNEX I — AVIATION SAFETY

1. Objectives

1.1. The Parties agree to cooperate in the field of aviation safety within the framework of the Memorandum of Cooperation between the European Union and the International Civil Aviation Organization (ICAO MOC) initialled in Montreal on 27 September 2010.

1.2. Consistent with their commitment to achieving the highest levels of aviation safety worldwide and to the global harmonisation of safety Standards and Recommended Practices (SARPs), the Parties agree to cooperate closely in a spirit of transparency and dialogue to coordinate their safety activities.

2. Scope

2.1. In pursuit of the objectives specified in Article 1.2, the Parties agree to cooperate in the following areas:

— conducting regular dialogue on safety matters of mutual interest,

— achieving transparency through the regular exchange of safety-relevant information and data and by providing mutual access to databases,

— participating in safety activities,

— mutually recognising the results of ICAO Universal Safety Oversight Audit Programme (USOAP) and EU Standardisation Inspections,

— monitoring and analysing States' compliance with ICAO Standards and adherence to Recommended Practices,

— cooperating in regulatory and standard-setting matters,

— developing and providing technical assistance projects and programmes,

— promoting regional cooperation,

— exchanging experts, and

— providing training.

2.2. The cooperation referred to in paragraph 2.1 shall be developed in those areas where EU competence is exercised.

3. Implementation

3.1. The Parties may establish working arrangements specifying mutually agreed mechanisms and procedures to effectively implement cooperation in the areas referred to in Article 2.1. These working arrangements shall be adopted by the EU-ICAO Joint Committee.

4. Dialogue

4.1. The Parties shall convene meetings and teleconferences on a regular basis to discuss safety matters of mutual interest and, where appropriate, coordinate activities.

5. Transparency, Exchange of Information, Access to Databases

5.1. The Parties shall encourage, subject to their applicable rules, transparency in the field of aviation safety in their relations with third parties.

5.2. The Parties shall be transparent in their cooperation and collaborate in safety activities by exchanging relevant and appropriate safety data, safety information and documentation, providing access to relevant databases and facilitating mutual participation in meetings. To this end, the Parties shall establish working arrangements specifying procedures for the exchange of information and for the provision of database access, which guarantee the confidentiality of information received from the other Party in accordance with Article 6 of the ICAO MOC.

6. Participation in safety activities

6.1. For the purpose of implementing this Annex, each Party shall, as appropriate, invite the other Party to participate in safety-related activities and meetings with a view to ensuring close cooperation and coordination. The arrangements for such participation shall be established in working arrangements agreed by the Parties.

7. Coordination of the ICAO USOAP and EU Standardisation Inspections

7.1. The Parties agree to enhance their cooperation in the areas of USOAP and standardisation inspections in order to ensure effective use of limited resources and avoid a duplication of efforts, while preserving the universality and integrity of ICAO's USOAP.

7.2. In order to verify compliance by EU Member States with ICAO safety-related Standards and adherence to ICAO Recommended Practices, and to meet the objectives specified in paragraph 7.1, the Parties shall establish a framework for conducting, as appropriate:

(a) ICAO safety oversight audits of the European Aviation Safety Agency (EASA) regarding safety-related SARPs that are addressed in EU legislation and with regard to certain functions and tasks which EASA performs on behalf of EU Member States; and

(b) ICAO oversight of the EU Standardisation Inspections conducted by EASA of the national competent authorities of EU Member States regarding safety-related SARPs that are addressed by EU legislation.

7.3. The Parties shall establish working arrangements specifying the mechanisms and procedures necessary for the effective implementation of the framework referred to in paragraph 7.2. These working arrangements shall address, inter alia, the following aspects:

(a) the scope of ICAO USOAP intervention activities including audits and validation missions based on a comparative analysis of EU legislation and ICAO safety-related SARPs;

(b) mutual participation in each Party's respective audit, inspection and validation activities;

(c) information to be provided by each Party for the purposes of ICAO USOAP, and EASA Standardisation Inspections;

(d) ensuring confidentiality where necessary, protection of data, and handling of sensitive information; and

(e) on-site visits.

8. Sharing of safety information and analyses

8.1. Without prejudice to their applicable rules, the Parties shall share relevant safety data gathered through USOAP and other sources, such as ICAO continuous monitoring approach activities, EASA Standardisation Inspections and SAFA inspections, as well as analyses made on the basis of this data.

8.2. The Parties shall cooperate closely in any action taken to secure more effective compliance with SARPs in the EU and in other States. Such cooperation shall include the exchange of information, facilitating dialogue between the Parties concerned, in situ visits or inspections, and the coordination of any technical assistance activities.

9. Regulatory matters

9.1. Each Party shall ensure that the other Party is kept informed of all its relevant laws, regulations, standards, requirements and recommended practices, which may affect the implementation of this Annex, as well as any modification thereof.

9.2. The Parties shall notify each other in a timely manner of any proposed modifications to their relevant laws, regulations, standards, requirements and recommended practices, insofar as these modifications may have an impact on this Annex. In the light of any such modifications, the EU-ICAO Joint Committee may adopt amendments to this Annex, as necessary, in accordance with Article 7 of the ICAO MOC.

9.3. With a view to the global harmonisation of safety regulations and standards, the Parties shall consult each other on technical regulatory matters in the field of aviation safety during the different stages of the rule-making or SARP-development processes, and shall be invited to participate in the associated technical bodies, when appropriate.

9.4. ICAO shall provide the EU with timely information on ICAO decisions and recommendations affecting safety-related SARPs, by providing full access to ICAO state letters and electronic bulletins.

9.5. Where appropriate, the EU shall endeavour to ensure that relevant EU legislation is in conformity with ICAO aviation safety-related SARPs.

9.6. Notwithstanding the obligations of EU Member States as Contracting States to the Chicago Convention, the EU shall, where appropriate, engage in dialogue with ICAO to provide technical information in instances where issues related to compliance with ICAO Standards and adherence to ICAO Recommended Practices emerge pursuant to the application of EU legislation.

10. Technical Assistance Projects and Programmes

10.1. The Parties shall coordinate assistance to States in an effort to ensure the effective use of resources and prevent a duplication of effort, and shall exchange information and data on aviation safety-related technical assistance projects and programmes.

10.2. The Parties shall engage in joint activities to initiate and coordinate international efforts to identify donors willing and able to contribute targeted technical assistance to States with significant safety deficiencies.

10.3. The contributions of the EU shall in particular be directed at programmes and projects aimed at assisting States and regional civil aviation bodies to resolve significant safety deficiencies, implement ICAO SARPs, develop regulatory cooperation, and strengthen State safety oversight systems, including through the establishment of regional safety oversight systems.

11. Regional Cooperation

11.1. The Parties shall give priority to activities aimed at accelerating the establishment of Regional Safety Oversight Organisations where the regional approach offers opportunities for improved cost-efficiency, oversight and/or standardisation processes.

12. Expert Assistance

12.1. Without prejudice to expert assistance schemes developed outside the scope of this Annex, the EU shall endeavour to make experts with proven technical expertise in relevant fields of aviation safety available to ICAO, upon request, to perform tasks and participate in activities falling within the scope of this Annex. The conditions of such expert assistance shall be specified in a working arrangement between the Parties.

13. Training

13.1. Where appropriate, each Party shall facilitate the participation of staff of the other Party in any aviation safety-related training programmes which it provides.

13.2. The Parties shall exchange information and materials relating to aviation safety-related training programmes and, where appropriate, coordinate and cooperate in the development of training programmes.

13.3. In the framework of the activities covered in Article 10 of this Annex, the Parties shall cooperate in facilitating and coordinating the participation in training programmes of trainees who come from States or regions to which technical assistance is being provided by either Party.

14. Review

14.1. The Parties shall review the implementation of this Annex on a regular basis and, as necessary, take into account any relevant policy or regulatory developments.

14.2. Any review of this Annex shall be conducted by the EU-ICAO Joint Committee established pursuant to Article 7 of the ICAO MOC.

15. Entry into Force, Amendments and Termination

15.1. This Annex shall enter into force on the date of adoption by the EU-ICAO Joint Committee and shall remain in force until terminated.

15.2. Working arrangements agreed pursuant to this Annex shall enter into force on their date of adoption by the EU-ICAO Joint Committee.

15.3. Any amendments to, or termination of, working arrangements adopted pursuant to this Annex shall be agreed within the EU-ICAO Joint Committee.

15.4. This Annex may be terminated at any time by either Party. Such termination shall be effective 6 months following receipt of written notification of termination by one Party from the other Party, unless the notice of termination has been withdrawn by mutual consent of the Parties before the 6-month period has expired.

15.5. Notwithstanding any other provision of this Article, if the ICAO MOC is terminated, this Annex and any working arrangement adopted pursuant to it shall terminate simultaneously.'

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 905/2011

of 1 September 2011

terminating the partial interim review concerning the anti-dumping measures on imports of certain polyethylene terephthalate (PET) originating in India

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation) and in particular Article 11(3) thereof,

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

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By Regulation (EC) No 2604/2000 [2], the Council imposed a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) originating, inter alia, in India ('the original investigation'). Following an expiry review, the Council, by Regulation (EC) No 192/2007 [3] imposed a definitive anti-dumping duty for a further period of five years. The anti-dumping measures were amended by Council Regulation (EC) No 1286/2008 [4] following a partial interim review ('the last review investigation'). The measures were set at the injury elimination level and consist of specific anti-dumping duties. The rate of the duty ranges between EUR 87,5 and EUR 200,9 per tonne for individually named Indian producers with a residual duty rate of EUR 153,6 per tonne imposed on imports from other producers ('the current duties').

(2) By Regulation (EC) No 2603/2000 [5], the Council imposed a definitive countervailing duty on imports of PET originating, inter alia, in India. Following an expiry review, the Council, by Regulation (EC) No 193/2007 [6] imposed a definitive countervailing duty for a further period of five years. The countervailing measures were amended by Regulation (EC) No 1286/2008 following the last review investigation. The countervailing measures consist of a specific duty. The rate of the duty ranges between EUR 0 and EUR 106,5 per tonne for individually named Indian producers with a residual duty rate of EUR 69,4 per tonne imposed on imports from other producers ('the current countervailing measures').

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

1.2. Request for a review

(4) A request for a partial interim review pursuant to Article 11(3) of the basic Regulation was lodged by Reliance Industries Limited, an Indian exporting producer of PET ('the applicant'). The request was limited in scope to dumping and to the applicant. The applicant at the same time also requested the review of the current countervailing measures. The residual anti-dumping and countervailing duties are applicable to imports of products produced by the applicant and sales of the applicant to the Union are governed by the undertaking.

(5) The applicant provided prima facie evidence that the continued application of the current duty at its current level was no longer necessary to offset dumping. In particular, the applicant claimed that there had been significant changes in the production costs of the company and that these changes led to a substantially lower dumping margin since the imposition of the current duties. A comparison made by the applicant of its domestic prices and its export prices to the Union suggested that the dumping margin was substantially lower than the level of current duties.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ L 301, 30.11.2000, p. 21.
[3] OJ L 59, 27.2.2007, p. 1.
[4] OJ L 340, 19.12.2008, p. 1.
[5] OJ L 301, 30.11.2000, p. 1.
[6] OJ L 59, 27.2.2007, p. 34.
[7] OJ L 301, 30.11.2000, p. 88.

1.3. **Initiation of a partial interim review**

(6) Having determined, after consulting the Advisory Committee, that the request contained sufficient prima facie evidence to justify the initiation of the partial interim review ('this review'), the Commission announced, by a notice of initiation [1] published in the *Official Journal of the European Union* on 10 June 2010, the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation limited to the examination of dumping as far as the applicant is concerned.

1.4. **Product concerned and like product**

(7) The product under review is polyethylene terephthalate (PET) having a viscosity of 78 ml/g or higher, according to the ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in India ('the product concerned').

(8) The investigation revealed that the product concerned produced in India and sold to the Union is identical in terms of physical and chemical characteristics and uses to the product produced and sold on the domestic market in India. It is therefore concluded that products sold on the domestic and export markets are like products within the meaning of Article 1(4) of the basic Regulation. Since this review was limited to the determination of dumping as far as the applicant is concerned, no conclusions were reached with regard to the product produced and sold by the Union industry on the Union market.

1.5. **Parties concerned**

(9) The Commission officially informed the applicant, the representatives of the exporting country and the association of Union producers about the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(10) All interested parties who so requested and showed that there were particular reasons for being heard were granted a hearing.

(11) In order to obtain the information deemed necessary for its investigation, the Commission sent a questionnaire to the applicant and received a reply within the deadline set for that purpose.

(12) The Commission sought and verified all information deemed necessary for the determination of dumping. The Commission carried out a verification visit at the premises of the applicant in Mumbai, India.

1.6. **Review investigation period**

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

2. **RESULTS OF THE INVESTIGATION**

2.1. **Lasting nature of the alleged change of circumstances during the RIP**

(14) In accordance with Article 11(3) of the basic Regulation, it was examined whether the circumstances with regard to dumping have changed significantly and whether such change was of a lasting nature.

(15) The applicant claimed that the changes in its normal value and export prices since the original investigation establishing its dumping margin were the result of a significant change in production costs. The change in its cost of production was claimed to be linked to the reduction of customs duties applicable to imports in India of the basic raw material used in its production process. Furthermore, the applicant also claimed that the reduction of customs duties led to a reduction in export incentives which resulted in changed domestic sales prices used to determine the normal value.

(16) However, it was found that, in spite of the reductions of custom duties and export incentives, the domestic sales prices of the company used to determine the normal value in the RIP were higher than the prices used in the original investigation establishing the applicant's dumping margin. The higher domestic sales prices resulted, inter alia, from the increased cost of certain raw materials and other inputs.

(17) As far as export prices to the Union in the RIP were concerned, they were determined pursuant to Article 2(8) and (9) of the basic Regulation. However, it had to be analysed in particular whether the existence of a price undertaking under which the applicant was obliged to sell its product to the Union market at a price above a MIP set for each month during the RIP has influenced the export prices of the applicant. It was concluded, for the reasons set out below, that the exports to the Union were indeed influenced by the price undertaking. In this regard, given that the applicant had to comply with the undertaking MIP obligations, it chose not to export to the Union during specific months of the RIP when its export prices to other export markets were below the MIP.

[1] OJ C 151, 10.6.2010, p. 15.

(18) It was observed that the applicant sold its product to the Union only during six months of the RIP. On the other hand, it sold products throughout the period to other export markets where it did not have to comply with the obligation set in the price undertaking. It was noted that export prices to third countries in the months during which the applicant did not export to the Union were significantly lower than the established MIP. Therefore, in the light of the above, it can be reasonably assumed that the applicant's sole reason for not selling products to the Union in the remaining months was that it had to comply with its undertaking and could not sell below the MIP set.

(19) The applicant contested the finding that the reason for not selling products to the Union market was linked to the existing undertaking. The applicant argued that in regard to its sales in the RIP to other large export markets there were months during which there were no sales and thus irregular sales were not a specific feature of the Union market. It also claimed that a monthly comparison of the import prices of the product concerned to the Union from all other exporting countries and/or the import prices of the product concerned originating in India with the monthly MIP of the company would show that the applicant would have been able to sell products to the Union in all months of the RIP without breaching its undertaking.

(20) The applicant's arguments cannot be accepted because, on the one hand, the company focussed its activity on selected individual markets which are driven by their own market specificities and do not give indications as to why the company did not sell to the Union. On the other hand, the comparisons made by the applicant were based on overall statistical data whereas the findings of this review are based on company-specific data which is a more relevant and reliable source from which to draw conclusions. The arguments presented by the applicant were also not fully valid, e.g. in some months, overall import prices to the Union were indeed higher than the MIP, while in other periods overall import prices were lower —, no general conclusions could thus be drawn from them. However, it is undisputed that the applicant had sales to the Union only in the months when the overall import prices to the Union were at the level or higher than the MIP.

(21) The applicant's argument that it would have been able, should it have wanted, to sell products on the Union market during the six months period it was selling products on other export markets at a price lower than its MIP is rejected as speculative and non-substantiated. The applicant did not put forward any other argument as to the reasons why it did not sell products to the Union during those six months while at the same time it was selling the same products on other export markets at a price lower than its MIP. Therefore, it was concluded that the applicant did not sell products to the Union during a certain period because of the need to comply with its undertaking. In consequence, the export prices charged on the Union market in the RIP are not reliable.

(22) A comparison was also made between the sales prices of the applicant to the Union market and the prices achieved on other export markets for which no price undertaking existed. It was observed that export prices to those markets without price obligations were consistently lower throughout the RIP.

(23) The applicant questioned the conclusions drawn from the comparison of prices to the Union and other exports markets, claiming that when analysed on a country-by-country basis, there are several other export markets where prices charged are above the prices charged on the Union market. However, in this respect, the comparison of average prices is more relevant than the individual differences on a country-by-country comparison which will be linked to the size as well as to distinctive competitive factors at play on those individual markets.

(24) Consequently, the export prices on third markets better reflect the company's normal pricing behaviour. The price differential between export prices to the Union and export prices to the rest of the world indicates that there are strong economic arguments to induce the applicant to sell at lower prices to the Union if there were no MIP. Under these circumstances it is considered that any newly calculated dumping margin based on the export prices to the Union in the RIP would thus be set on the basis of prices that have not changed significantly and in a lasting manner. The same conclusion applies to the applicant's claim, as mentioned in recital 5, that a comparison of its domestic prices and its export prices to the Union would show a dumping margin lower than the level of current duties.

(25) In light of the above, the condition set in Article 11(3) of the basic Regulation that circumstances with regard to dumping changed significantly is not met. Therefore, the continued imposition of the measures at their current level is necessary to offset dumping.

(26) After disclosure, the applicant insisted that its prices charged on the Union market are fully reliable. Since these export prices increased significantly between the original investigation period and the RIP, the company's export behaviour should be considered also to have changed significantly and lastingly during this period. Therefore the company's dumping margin would allegedly also have decreased significantly and in a lasting manner.

(27) It furthermore argued that the lasting change in circumstances is not necessarily the determining element for the assessment to be made after initiating a review but it is more relevant whether the continued imposition of the duty is necessary to offset dumping. It referred to the fundamental principle set out in Article 11(1) and of the basic Regulation and Article 11.1 of the WTO Anti-dumping Agreement that anti-dumping measures shall remain in force only as long as, and to the extent that, they are necessary to counteract dumping which is causing injury. In this respect, the applicant claimed that the analysis of the necessity should be a prospective assessment that would require at the very least the likely or probable recurrence of dumping at the level previously established.

(28) Article 11(1) of the basic Regulation provides that 'An anti-dumping measure shall remain in force only as long as, and to the extent that, it is necessary to counteract the dumping which is causing injury'. This principle is carried through to treatment of interim reviews, such as in the case at hand, where Article 11(3) of the basic Regulation provides, inter alia, that '[…] An interim review shall be initiated where the request contains sufficient evidence that the continued imposition of the measure is no longer necessary to offset dumping and/or that the injury would be unlikely to continue or recur if the measure were removed or varied […].' The aforementioned provision sets the benchmark to be met where an interested party considers that the level of measures is too low or too high and consequently requests a review of those measures. Once such a review is initiated, Article 11(3) of the basic Regulation goes on to explicitly provide that 'in carrying out investigations pursuant to this paragraph, the Commission may, inter alia, consider whether the circumstances with regard to dumping […] have changed significantly […]. In these respects, account shall be taken in the final determination of all relevant and duly documented evidence'. Therefore Article 11(3) provides for an additional assessment criterion (i.e. a significant change in circumstances) in case of interim reviews that should be looked at during the investigation in addition to the initiation requirement (i.e. assessing whether the measures at the current level still necessary) as claimed by the applicant.

(29) It should also be noted that it is standard practice in interim review investigations to examine the lasting nature of the changed circumstances found during an investigation. Indeed, in this respect, the case law of the General Court of the European Union [1] confirms that 'when assessing the need to continue existing measures the institutions have a wide discretion, which includes the option of carrying out a prospective assessment of the pricing policy of the exporters concerned'. The evidence at hand shows that the export prices charged by the applicant on the Union market do not reflect the applicant's actual pricing policy and therefore, as concluded in recital 21, the export prices charged on the Union market in the RIP are not reliable and consequently any newly calculated dumping margin based on these prices would thus be set on the basis of prices that have not changed significantly and in a lasting manner, as stated in recital 24.

(30) Despite the conclusion that export prices to the Union have not changed significantly and in a lasting manner, consideration was given to the applicant's arguments and to whether the measures at their current level are still necessary to counteract dumping. In this regard, the applicant claimed that sinceits dumping margin would be significantly below that found in the original investigation and its export behaviour in other markets would confirm that the change in the dumping margin reflects the trend that can reasonably be expected in the future, the current level of measures is manifestly excessive. However, these arguments were found not to be supported by the facts. First, concerning the applicant's export behaviour on other markets, it was found that, contrary to the claim in the applicant's request, the prices to these markets were, on average, almost 10 % lower than those to the Union. These third country export markets comprise a number of countries of different market size, with some of them unlikely to have domestic production of PET. These markets are hence defined by their own individual characteristics of competition leading to prices and trends different from those on the Union market. Second, in light of these findings, even if it were found that the current level of measures should be changed on the grounds that it was no longer necessary to counteract dumping, it is not possible to determine with a reasonable degree of accuracy what would be the appropriate level in the absence of reliable export prices which result from and reflect the normal conditions on the Union market.

(31) Finally the applicant considered that an adjustment could be made in accordance with Article 2(10) of the basic Regulation and in particular with its point (k) for 'differences in other factors […] if it is demonstrated that they affect price comparability as required under this paragraph'.

(32) Given the conclusion reached above that export prices did not change in a significant and lasting manner, it is not possible to establish a dumping margin. For this reason, the claim for an adjustment is irrelevant and thereby rejected.

3. TERMINATION OF THE INVESTIGATION

(33) In view of the findings that circumstances with regard to dumping did not change significantly and lastingly, it is considered that this review should be terminated without amending the level of the duty for the applicant. Therefore the anti-dumping measures imposed by Regulation (EC) No 1286/2008 on imports of PET produced by the applicant should remain unchanged.

[1] Case T-143/06 *MTZ Polyfilms* v *Council of the European Union* [2009] ECR II-4133, at paragraph 48.

4. **DISCLOSURE**

(34) The applicant as well as the other parties concerned were informed of the essential facts and considerations on the basis of which it was intended to propose to terminate this review. Comments received were not such as to change the above conclusion.

5. **FINAL PROVISION**

(35) This review should therefore be terminated without any amendment to Regulation (EC) No 192/2007,

HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review of the anti-dumping measures applicable to imports of polyethylene terephthalate currently falling within CN code 3907 60 20 and originating, inter alia, in India, is hereby terminated without amending the measures in force.

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, 1 September 2011.

For the Council
The President
M. DOWGIELEWICZ

COUNCIL IMPLEMENTING REGULATION (EU) No 906/2011

of 2 September 2011

amending Regulation (EC) No 193/2007 imposing a definitive countervailing duty on imports of polyethylene terephthalate originating in India, and amending Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in, inter alia, India

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community [1] (the basic Regulation), and in particular Articles 19 and 24 thereof,

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

Whereas:

1. PROCEDURE

1.1. Previous investigation and existing countervailing measures

(1) By Regulation (EC) No 2603/2000 [2], the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) originating, inter alia, in India (the original anti-subsidy investigation). Following an expiry review, the Council, by Regulation (EC) No 193/2007 [3], imposed a definitive countervailing duty for a further period of 5 years. The countervailing measures were amended by Council Regulation (EC) No 1286/2008 [4] following a partial interim review (the last review investigation). The countervailing measures consist of a specific duty. The rate of the duty ranges between EUR 0 and EUR 106,5 per tonne for individually named Indian producers with a residual duty rate of EUR 69,4 per tonne imposed on imports from other producers.

1.2. Existing anti-dumping measures

(2) By Regulation (EC) No 2604/2000 [5], the Council imposed a definitive anti-dumping duty on imports of PET originating, inter alia, in India (the original anti-dumping investigation). Following an expiry review, the Council, by Regulation (EC) No 192/2007 [6], imposed a definitive anti-dumping duty for a further period of 5 years. The anti-dumping measures were amended by Council Regulation (EC) No 1286/2008 following the last review investigation. The measures were set at the level of the injury elimination and consisted of specific anti-dumping duties. The rate of the duty ranged between EUR 87,5 and EUR 200,9 per tonne for individually named Indian producers with a residual duty rate of EUR 153,6 per tonne imposed on imports from other producers (the current anti-dumping measures).

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

1.3. Initiation of a partial interim review

(4) A request for a partial interim review pursuant to Article 19 of the basic Regulation was lodged by Reliance Industries Limited, an Indian exporting producer of PET (the applicant). The request was limited in scope to subsidisation and to the applicant. The applicant at the same time also requested the review of the current anti-dumping measures. The residual anti-dumping and countervailing duties are applicable to imports of products produced by the applicant and sales of the applicant to the Union are governed by the undertaking.

(5) The applicant provided prima facie evidence that the continued application of the measure at its current level was no longer necessary to offset the countervailable subsidisation. In particular, the applicant provided prima facie evidence showing that its subsidy amount has decreased well below the duty rate currently applicable to it. This reduction in the overall subsidy level would mainly be due to a significant drop in the benefits availed of under the Duty Entitlement Passbook Scheme (DEPBS).

(6) Having determined, after consulting the Advisory Committee, that the request contained sufficient prima facie evidence, the Commission announced on 10 June 2010 the initiation of a partial interim review (the present review) pursuant to Article 19 of the basic Regulation by a notice of initiation published in the *Official Journal of the European Union* [8]. The review was limited in scope to the examination of subsidisation in respect of the applicant.

1.4. Parties concerned by the investigation

(7) The Commission officially informed the applicant, the representatives of the exporting country and the association of Union producers about the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

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

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

(9) In order to obtain the information deemed necessary for its investigation, the Commission sent a questionnaire to the applicant and the government of India (GOI) and received replies within the deadline set for that purpose.

(10) The Commission sought and verified all information deemed necessary for the determination of subsidisation. The Commission carried out verification visits at the premises of the applicant in Mumbai, India and at the premises of the GOI in New Delhi (Directorate General of Foreign Trade and Ministry of Commerce) and Mumbai (Regional Office of the Directorate General of Foreign Trade).

1.5. **Review investigation period**

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

1.6. **Parallel anti-dumping investigation**

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

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

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(14) The product under review is PET having a viscosity of 78 ml/g or higher, according to the ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in India (the product concerned).

2.2. **Like product**

(15) The investigation revealed that the product concerned produced in India and sold to the Union is identical in terms of physical and chemical characteristics and uses to the product produced and sold on the domestic market in India. It is therefore concluded that products sold on the domestic and export markets are like products within the meaning of Article 1(4) of the basic Regulation. Since the present review was limited to the determination of subsidisation as far as the applicant is concerned, no conclusions were reached with regard to the product produced and sold by the Union industry on the Union market.

3. **RESULTS OF THE INVESTIGATION**

3.1. **Subsidisation**

(16) On the basis of the information submitted by the GOI and the applicant and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

Nationwide schemes:

(a) Advance Authorisation Scheme (AAS);

(b) Duty Entitlement Passbook Scheme (DEPBS);

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

(d) Focus Market Scheme (FMS);

(e) Focus Product Scheme (FPS);

(f) Income Tax Exemption Scheme (ITES).

Regional schemes:

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

(17) The schemes (a) to (e) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in Foreign Trade Policy (FTP) documents, which are issued by the Ministry of Commerce every 5 years and updated regularly. Two FTP documents are relevant to the RIP of this case, namely FTP 04-09 and FTP 09-14. The latter entered into force in August 2009. In addition, the GOI also sets out the procedures governing FTP 04-09 and FTP 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 04-09' and 'HOP I 09-14' respectively). The Handbook of Procedures is also updated on a regular basis.

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

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

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

3.1.1. *Advance Authorisation Scheme (AAS)*

(a) Legal basis

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

(b) Eligibility

(21) The AAS consists of six sub-schemes, as described in more detail in recital 22. Those sub-schemes differ, inter alia, in the scope of eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the AAS for physical exports and for the AAS for annual requirement. Manufacturer-exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of FTP 04-09 and FTP 09-14, such as suppliers of an export oriented unit (EOU), are eligible for AAS for deemed exports. Eventually, intermediate suppliers to manufacturer-exporters are eligible for 'deemed export' benefits under the sub-schemes Advance Release Order (ARO) and back-to-back inland letter of credit.

(c) Practical implementation

(22) Advance Authorisations can be issued for:

(i) physical exports: this is the main sub-scheme. It allows for the duty-free import of input materials for the production of a specific resultant export product. 'Physical' in this context means that the export product has to leave Indian territory. An import allowance and export obligation including the type of export product are specified in the authorisation;

(ii) annual requirement: such an authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The authorisation holder can — up to a certain value threshold set by its past export performance — import free of duty any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resultant product falling under the product group using such duty-exempt material;

(iii) intermediate supplies: this sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter who produces the intermediate product can import duty-free input materials and can obtain for this purpose an AAS for intermediate supplies. The ultimate exporter finalises the production and is obliged to export the finished product;

(iv) deemed exports: this sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of FTP 04-09 and FTP 09-14. According to the GOI, deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an EOU or to a company situated in a special economic zone;

(v) ARO: the AAS holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases, the Advance Authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of FTP 04-09 and FTP 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs;

(vi) back-to-back inland letter of credit: this sub-scheme again covers indigenous supplies to an Advance Authorisation holder. The holder of an Advance Authorisation can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The authorisation will be invalidated by the bank for direct import only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to the forecast export benefits as set out in paragraph 8.3 of FTP 04-09 and FTP 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).

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

(24) With regard to the use of AAS for deemed exports during the RIP, both the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by government officials on the authorisation. The volume of imports allowed under this scheme is determined by the GOI on the basis of standard input-output norms (SIONs). SIONs exist for most products including the product concerned and are issued by the GOI.

(25) For verification purposes by the Indian authorities, an Advance Authorisation holder is legally obliged to maintain an actual consumption register of duty-free imported/domestically procured goods against each authorisation, as per prescribed format (paragraphs 4.26, 4.30 and Appendix 23 HOP I 04-09 and HOP I 09-14). This register has to be verified by an external chartered accountant/cost and works accountant who issues a certificate stating that the prescribed registers and relevant records have been examined and the information furnished under Appendix 23 is true and correct in all respects.

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

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

(d) Conclusion

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

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

(30) The present review has, therefore, confirmed that the main sub-scheme used in the present case cannot be considered as permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the rules laid down in Annexes I (item (i)), II (definition and rules for drawback) and III (definition and rules for substitution drawback) to the basic Regulation. The GOI did not effectively apply its verification system or procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) to the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) to the basic Regulation). The SIONs themselves cannot be considered a verification system of actual consumption, since they have been found to be overgenerous and it was established that benefits received in excess are not reclaimed by the GOI. Indeed, an effective control done by the GOI based on a correctly kept actual consumption register did not take place. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation). Finally, it has been confirmed that, although mandatory by law, the involvement of chartered accountants in the verification process is, in practice, not guaranteed.

(31) AAS for deemed exports is therefore countervailable.

(e) Calculation of the subsidy amount

(32) In the absence of permitted duty drawback system or substitution drawback system, the countervailable benefit is the remission of total import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an 'excess' remission of duties. According to Article 3(1)(a)(ii) of the basic Regulation and Annex I(i) thereto only an excess remission of duties can be countervailed, provided the conditions of Annexes II and III to the basic Regulation are met. However, these conditions were not fulfilled in the present case. Thus, if an absence of an adequate monitoring process is established, the above exception for drawback schemes is not applicable and the normal rule for countervailing the amount of (revenue forgone) unpaid duties, rather than any purported excess remission, applies. As set out in Annexes II(II) and III(II) to the basic Regulation the burden is not upon the investigating authority to calculate such excess remission. To the contrary, according to Article 3(1)(a)(ii) of the basic Regulation the investigating authority only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.

(33) The subsidy amount for the applicant was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the deemed exports sub-scheme during the RIP (nominator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amount where justified claims were made. In accordance with Article 7(2) of the basic Regulation, this subsidy amount has been allocated over the total export turnover during the RIP as appropriate denominator, because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

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

3.1.2. *Duty Entitlement Passbook Scheme (DEPBS)*

(a) Legal Basis

(35) The detailed description of the DEPBS is contained in paragraph 4.3 of FTP 04-09 and FTP 09-14 as well as in Chapter 4 of HOP I 04-09 and HOP I 09-14.

(b) Eligibility

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

(c) Practical implementation

(37) An eligible exporter can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS rates have been established by the Indian authorities for most products, including the product concerned. They are determined on the basis of SIONs (see recital 24) and the customs duty incidence on the presumed import content, regardless of whether import duties have actually been paid or not. The DEPBS rate for the product concerned during the RIP of the current investigation was 8 % with a value cap of 58 Rs/kg.

(38) To be eligible for benefits under this scheme, a company must export. At the time of the export transaction, a declaration must be made by the exporter to the authorities in India indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue, during the dispatch procedure, an export shipping bill. This document shows, inter alia, the amount of DEPBS credit which is to be granted for that export transaction. At this point in time, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit. The relevant DEPBS rate to calculate the benefit is that which applied at the time the export declaration was made. Therefore, there is no possibility for a retroactive amendment to the level of the benefit.

(39) It was found that in accordance with Indian accounting standards, DEPBS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods unrestrictedly importable, except capital goods. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. DEPBS credits are freely transferable and valid for a period of 24 months from the date of issue.

(40) Applications for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. The deadline to submit applications is 3 months after exportation, but as clearly provided in paragraph 9.3 of the HOP I 04-09 and HOP I 09-14, applications received after the expiry of submission deadlines can always be considered with the imposition of a minor penalty fee (i.e. 10 % of the entitlement).

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

(d) Conclusion

(42) The DEPBS provides subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation. A DEPBS credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, the DEPBS credit confers a benefit upon the exporter, because it improves its liquidity.

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

(44) This scheme cannot be considered as permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation as claimed by the applicant. It does not conform to the strict rules laid down in Annex I (item (i)), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I and Annexes II and III to the basic Regulation. Lastly, an exporter is eligible for the DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating

that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DEPBS.

(e) Calculation of the subsidy amount

(45) In accordance with Articles 3(2) and 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient, which is found to exist during the review investigation period. In this regard, it was considered that the benefit is conferred on the recipient at the time when an export transaction is made under this scheme. At this moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation.

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

(47) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amounts as numerator, pursuant to Article 7(1)(a) of the basic Regulation.

(48) In accordance with Article 7(2) of the basic Regulation these subsidy amounts have been allocated over the total export turnover of the product concerned during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

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

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

(a) Legal basis

(50) The detailed description of EPCGS is contained in Chapter 5 of FTP 04-09 and FTP 09-14 as well as in Chapter 5 of HOP I 04-09 and HOP I 09-14.

(b) Eligibility

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

(c) Practical implementation

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

(53) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail himself of the benefit for duty-free import of components required to manufacture such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect of supply of capital goods to an EPCGS licence holder.

(d) Conclusion

(54) The EPCGS provides subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI, since this concession decreases the GOI's duty revenue which would be otherwise due. In addition, the duty reduction confers a benefit upon the exporter, because the duties saved upon importation improve the company's liquidity.

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

(56) EPCGS cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in item (i) of Annex I to the basic Regulation, because they are not consumed in the production of the exported products.

(e) Calculation of the subsidy amount

(57) The subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods used in the petrochemical segment and other sectors for which such benefits were received by the applicant, spread across a period which reflects the normal depreciation period of such capital goods in the industry concerned. Interests were added to this amount in order to reflect the full value of the benefit over time. The commercial credit interest rate applied by the applicant for its sales during the review investigation period was considered appropriate for this purpose.

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

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

3.1.4. *Focus Market Scheme (FMS)*

(a) Legal basis

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

(b) Eligibility

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

(c) Practical implementation

(62) Under this scheme exports of all products to countries notified under Appendix 37(C) of HOP I 04-09 and HOP I 09-14 are entitled to duty credit equivalent to 2,5 % to 3 % of the FOB value of products exported under this scheme. Certain type of export activities are excluded from this scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units. Also excluded from this scheme are certain types of products, e.g. diamonds, precious metals, ores, cereals, sugar and petroleum products.

(63) The duty credits under FMS are freely transferable and valid for a period of 24 months from the date of issue of the relevant credit entitlement certificate. They can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods.

(64) The credit entitlement certificate is issued from the port from which the exports have been made and after realisation of exports or shipment of goods. As long as an applicant provides to the authorities copies of all relevant export documentation (e.g. export order, invoices, shipping bills, bank realisation certificates), the GOI has no discretion over the granting of the duty credits.

(d) Conclusion

(65) The FMS provides subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation. A FMS duty credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, the FMS duty credit confers a benefit upon the exporter, because it improves its liquidity.

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

(67) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I (point (i)), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) to the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. There is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of point (i) of Annex I and Annexes II and III to the basic Regulation. An exporter is eligible for FMS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from FMS. Moreover, an exporter can use FMS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in point (i) of Annex I to the basic Regulation, because they are not consumed in the production of the exported products.

(e) Calculation of the subsidy amount

(68) The amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient for export of the product concerned, which is found to exist during the RIP as booked by the applicant using the scheme on an accrual basis as income at the stage of export transaction. In accordance with Article 7(2) and (3) of the basic Regulation, this subsidy amount (nominator) has been allocated over the export turnover of the product concerned during the RIP as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(69) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amounts as numerator, pursuant to Article 7(1)(a) of the basic Regulation.

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

3.1.5. *Focus Product Scheme (FPS)*

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

3.1.6. *Income Tax Exemption Scheme (ITES)*

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

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

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

(a) Legal basis

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

(b) Eligibility

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

(c) Practical implementation

(76) Under this scheme, companies must invest in backward areas. These areas, which represent certain territorial units in Gujarat are classified according to their economic development into different categories while at the same time there are areas excluded or 'banned' from the application of the incentive schemes. The main criteria to establish the amount of the incentives are the size of the investment and the area in which the enterprise is or will be located.

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

(d) Conclusion

(78) This scheme provides subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation. It constitutes a financial contribution by the GOG, since the incentives granted, in the present case sales and purchase tax exemptions, decrease tax revenue which would be otherwise due. In addition, these incentives confer a benefit upon a company, because they improve its financial situation since taxes otherwise due are not paid.

(79) Furthermore, this scheme is regionally specific in the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation since it is only available to certain companies having invested within certain designated geographical areas within the jurisdiction of the State concerned. It is not available to companies located outside these areas and, in addition, the level of benefit is differentiated according to the area concerned.

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

(e) Calculation of the subsidy amount

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

(82) The subsidy amount was calculated on the basis of the amount of the sales and purchase tax normally due during the review investigation period but which remained unpaid under this scheme. In accordance with Article 7(2) of the basic Regulation, the amount of subsidy (numerator) have then been allocated over total sales during the review investigation period as appropriate denominator, because the subsidy is not export contingent and it was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy rate obtained amounted to 0,31 %.

3.1.8. *Amount of countervailable subsidies*

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

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

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

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

(86) It was established that, during the RIP, the applicant continued to benefit from countervailable subsidisation by the GOI. Further, the subsidy rate found during the present review is lower than that established during the last review investigation. No evidence is available that the schemes will be discontinued or new schemes will be introduced in the near future.

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

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

4.1. **Countervailing measures**

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

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

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

4.2. **Anti-dumping measures**

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

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

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

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

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

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

(97) The applicant as well as the other parties concerned were informed of the facts and considerations on the basis of which it was intended to propose the termination of the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Article 2

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

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

Article 3

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

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

Done at Brussels, 2 September 2011.

For the Council
The President
M. DOWGIELEWICZ

COUNCIL IMPLEMENTING REGULATION (EU) No 907/2011

of 6 September 2011

amending Implementing Regulation (EU) No 1105/2010 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of high tenacity yarn of polyesters originating in the People's Republic of China, and terminating the proceeding concerning imports of high tenacity yarn of polyesters originating in the Republic of Korea and Taiwan

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Article 9 thereof,

Having regard to Council Implementing Regulation (EU) No 1105/2010 of 29 November 2010 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of high tenacity yarn of polyesters originating in the People's Republic of China and terminating the proceeding concerning imports of high tenacity yarn of polyesters originating in the Republic of Korea and Taiwan [2], and in particular Article 4 thereof,

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

Whereas:

A. MEASURES IN FORCE

(1) By Implementing Regulation (EU) No 1105/2010, the Council imposed a definitive anti-dumping duty on imports of high tenacity yarn of polyesters (other than sewing thread), not put up for retail sale, including monofilament of less than 67 decitex, originating in the People's Republic of China (PRC), currently falling within CN code 5402 20 00 (the product concerned).

(2) Given the large number of cooperating exporting producers in the investigation that led to the imposition of the anti-dumping duty (the original investigation) in the PRC, a sample of Chinese exporting producers was selected and individual duty rates ranging from 0 % to 5,5 % were imposed on the companies included in the sample, while other cooperating companies not included in the sample were attributed a duty rate of 5,3 %. Two cooperating non-sampled companies were granted individual examination within the meaning of Article 17(3) of the basic Regulation, they received duties of 0 % and 9,8 %. A duty rate of 9,8 % for the PRC was imposed on all other companies.

(3) Article 4 of Implementing Regulation (EU) No 1105/2010 gives the possibility to new Chinese exporting producers which meet the criteria set out in that Article to be granted the duty rate applicable to the cooperating companies not included in the sample, i.e. 5,3 %.

B. NEW EXPORTING PRODUCERS' REQUESTS

(4) Two companies (the applicants) have requested to be granted 'new exporting producer treatment' (NEPT).

(5) An examination has been carried out to determine whether each of the applicants fulfils the criteria for being granted NEPT as set out in Article 4 of Implementing Regulation (EU) No 1105/2010, by verifying that the applicant:

— is a producer of the product concerned in the PRC,

— did not export the product concerned to the Union during the investigation period on which the measures are based (1 July 2008 to 30 June 2009),

— is not related to any of the exporters or producers in the PRC which are subject to the measures imposed by that Regulation,

— has actually exported to the Union the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union.

(6) Questionnaires were sent to the applicants who were asked to supply evidence to demonstrate that they met the criteria mentioned above.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ L 315, 1.12.2010, p. 1.

(7) The Commission sought and verified all information it deemed necessary for the purpose of determining whether the criteria set out in Article 4 of Implementing Regulation (EU) No 1105/2010 had been fulfilled. Verification visits were carried out at the premises of the two applicants:

— Jiangsu Hengli Chemical Fibre Co. Ltd,

— Amann Twisting Yancheng Co. Ltd.

C. **FINDINGS**

(8) Concerning one applicant, Jiangsu Hengli Chemical Fibre Co. Ltd, the examination of the information submitted showed that it had provided sufficient evidence to prove that it meets the criteria set out in Article 4 of Implementing Regulation (EU) No 1105/2010. Therefore, this applicant could be granted the weighted average duty rate for the cooperating companies not included in the sample (i.e. 5,3 %) in accordance with Article 4 of Implementing Regulation (EU) No 1105/2010, and should be added to the list of exporting producers of Article 1(2) of that Regulation.

(9) Concerning the other applicant, Amann Twisting Yancheng Co. Ltd, the examination of the information submitted showed that it had not provided sufficient evidence to prove that it meets the criteria set out in Article 4 of Implementing Regulation (EU) No 1105/2010. In particular, the investigation revealed that the main raw material used in the manufacturing process, high tenacity yarn of polyesters, is not produced by the applicant but purchased from unrelated suppliers. The filament is processed by the applicant through different production steps, including twisting, and finally exported under the definition of the product concerned. As the applicant did not produce the product concerned but actually merely processed it, it was concluded that Amann Twisting Yancheng Co. Ltd cannot be considered to be a producer of the product concerned. It therefore does not fulfil the requirement for NEPT that the company requesting it must be a 'producer' of the product concerned.

(10) Its request for NEPT was therefore rejected.

D. **MODIFICATION OF THE LIST OF COMPANIES BENEFITING FROM INDIVIDUAL DUTY RATES**

(11) In consideration of the findings of the investigation as indicated in recital 8, it is concluded that the company Jiangsu Hengli Chemical Fibre Co. Ltd should be added to the list of individual companies mentioned under Article 1(2) of Implementing Regulation (EU) No 1105/2010 with a duty rate of 5,3 %.

(12) The applicants and the Union industry have been informed of the findings of the investigation and were given the opportunity to submit their comments.

(13) All arguments and submissions made by interested parties were analysed and duly taken into account where warranted,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex referred to in Article 1(2) of Implementing Regulation (EU) No 1105/2010 shall be replaced by the following:

'ANNEX

CHINESE COOPERATING EXPORTING PRODUCERS NOT SAMPLED

TARIC Additional Code A977

Company name	City
Heilongjiang Longdi Co. Ltd	Harbin
Jiangsu Hengli Chemical Fibre Co. Ltd	Wujiang
Hyosung Chemical Fiber (Jiaxing) Co. Ltd	Jiaxing
Shanghai Wenlong Chemical Fiber Co. Ltd	Shanghai
Shaoxing Haifu Chemistry Fibre Co. Ltd	Shaoxing
Sinopec Shanghai Petrochemical Company	Shanghai
Wuxi Taiji Industry Co. Ltd	Wuxi'

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, 6 September 2011.

For the Council
The President
M. DOWGIELEWICZ

COMMISSION IMPLEMENTING REGULATION (EU) No 908/2011

of 8 September 2011

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1],

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors [2], and in particular Article 136(1) thereof,

Whereas:

Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 September 2011.

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

Done at Brussels, 8 September 2011.

For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and Rural Development

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	AR	33,3
	EC	32,6
	MK	49,0
	ZZ	38,3
0707 00 05	AR	24,2
	TR	127,5
	ZZ	75,9
0709 90 70	AR	40,2
	EC	39,5
	TR	125,7
	ZZ	68,5
0805 50 10	AR	76,3
	CL	91,9
	MX	39,8
	PY	33,5
	TR	66,0
	UY	48,4
	ZA	82,6
	ZZ	62,6
0806 10 10	EG	156,9
	MA	175,2
	TR	118,3
	ZA	59,8
	ZZ	127,6
0808 10 80	CL	62,8
	CN	78,7
	NZ	105,6
	US	82,4
	ZA	89,4
	ZZ	83,8
0808 20 50	CN	74,4
	TR	116,3
	ZA	99,6
	ZZ	96,8
0809 30	TR	146,7
	ZZ	146,7
0809 40 05	BA	41,6
	KE	58,0
	ZZ	49,8

(1) Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

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