Council Regulation (EC) No 1353/2008 of 18 December 2008 amending Regulation (EC) No 74/2004 imposing a definitive countervailing duty on imports of cotton-type bedlinen originating in India

COUNCIL REGULATION (EC) No 1353/2008

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community[1] (the 'basic Regulation'), and in particular Articles 15 and 19 thereof,

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

Whereas:

1. PROCEDURE

1.1. Previous investigation and measures in force

(1) The Council, by Regulation (EC) No 74/2004[2], imposed a definitive countervailing duty on imports of cotton-type bedlinen falling within CN codes ex 6302 21 00, ex 6302 22 90, ex 6302 31 00 and ex 6302 32 90 and originating in India. The rate of the duty ranges between 4,4 % and 10,4 % for individual sampled companies, with an average cooperating company rate of 7,6 % and a residual duty of 10,4 %.

1.2. Ex officio initiation of the partial interim review

(2) Following the imposition of the definitive countervailing duty the Government of India (GOI) made submissions that the circumstances with regard to two subsidy schemes (the Duty Entitlement Passbook Scheme and the Income Tax Exemption under Section 80 HHC of the Income Tax Act) had changed and that these changes were of a lasting nature. They argued that the level of subsidisation was therefore likely to have decreased and thus measures that had been established partly on these schemes should be revised.

(3) The Commission examined the evidence submitted by the GOI and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 19 of the basic Regulation. After consultation of the Advisory Committee, the Commission initiated an *ex officio* partial interim

review of the measures in force by a notice published in the *Official Journal of the European Union*[(3)].

(4) The purpose of this partial interim review investigation is to assess the need for the continuation, removal or amendment of the existing measures in respect of those companies which benefited from one or both the allegedly changed subsidy schemes where sufficient evidence was provided in line with the relevant requirements of the notice of initiation. Depending on its findings, the investigation will also assess the need to revise the measures applicable to other companies that cooperated in the original investigation and/or the residual measure applicable for all other companies.

1.3. Review investigation period

(5) The investigation covered the period from 1 October 2006 to 30 September 2007 ('the review investigation period' or 'RIP').

1.4. Parties concerned by the investigation

(6) The Commission officially informed the Government of India (GOI) of the initiation of the partial interim review investigation, along with those Indian exporting producers who cooperated in the previous investigation and that were found to benefit from one or both of the two allegedly changed subsidy schemes and who were listed in the notice of initiation of the partial interim review, as well as the representatives of the Community industry. Interested parties had the opportunity to make their views known in writing and to request a hearing. The written and oral comments submitted by the parties were considered and, where appropriate, taken into account.

(7) In view of the apparent number of parties involved in this review, the use of sampling for the investigation of subsidisation was proposed in accordance with Article 27 of the basic Regulation.

(8) In order to enable the Commission to select a sample, pursuant to Article 27(2) of the basic Regulation, exporters and representatives acting on their behalf were requested to make themselves known within three weeks of the initiation of the proceeding and to provide basic information on their export and domestic turnover, on some particular subsidy schemes, and the names and activities of all related companies. The authorities of India were also informed.

(9) More than 80 companies made themselves known and provided the information requested for the sampling. These companies represented 95 % of the total exports of India to the Community during the sampling period.

(10) Given the large number of companies, a sample of 11 exporting companies and groups with the largest export volumes to the Community was chosen, in consultation with the Community industry, the Indian textiles association Texprocil and the GOI.

(11) The sample represented 64 % of the total exports to the EU of the product concerned from India in the sampling period (1 April 2006 to 31 March 2007). In accordance with Article 27 of the basic Regulation, the selected sample covered the largest possible representative volume of exports that could reasonably be investigated within the time available.

(12) Requests for the determination of an individual subsidy margin in accordance with Article 27(3) of the basic Regulation were submitted by four companies not selected in the sample. However, in view of the large number of requests and the large number of companies selected in the sample, it was considered that such individual examinations would be unduly burdensome within the meaning of Article 27(3) and would have prevented completion of the investigation in good time. The claims for the determination of individual margins by the four non-sampled companies were therefore rejected.

(13) During the investigation it was identified that two related companies of two sampled exporting companies did not produce, export or sell domestically the product concerned produced during the RIP. They did not express any intention to do so in the future. It has therefore been decided to exclude those related companies from the sample and calculation of individual subsidy margins.

(14) Companies not selected for the sample were informed that any anti-subsidy duty on their exports would be calculated in accordance with Article 15(3) of the basic Regulation, i.e. without exceeding the weighted average amount of countervailable subsidies established for the companies in the sample.

(15) The companies that did not make themselves known within the deadline set in the notice of initiation were not considered as interested parties.

(16) Questionnaire replies were received from all sampled exporting producers in India.

(17) The Commission sought and verified all information it deemed necessary for the determination of subsidisation. Verification visits were carried out at the premises of the following interested parties:

Government of India (GOI)

— Ministry of Commerce, New Delhi

Exporting producers in India

— Anunay Fab. Limited, Ahmedabad
— Brijmohan Purusottamdas, Mumbai and Incotex Impex Pvt Limited, Mumbai
— Divya Global Pvt Ltd, Mumbai
— Intex Exports, Pattex Exports and Sunny Made-ups, Mumbai
— Jindal Worldwide Ltd, Progressive Enterprise and Texcellence Overseas, Ahmedabad and Mumbai

— Madhu Industries Limited and Madhu International, Ahmedabad
— Mahalaxmi Exports and Mahalaxmi Fabric Mills Pvt Ltd, Ahmedabad
— Prakash Cotton Mills Pvt, Ltd, Mumbai
— Prem Textiles, Indore
— The Bombay Dyeing and Manufacturing Co. Ltd, N W Exports Limited and Nowrosjee Wadia & Sons Limited, Mumbai
— Vigneshwara Exports Limited, Mumbai

1.5. Disclosure and comments on procedure

(18) The GOI and the other interested parties were informed of the essential facts and considerations upon which it was intended to propose to amend the duty rates applicable and continue application of existing measures. They were also given a reasonable time to comment. All submissions and comments were taken duly into consideration as set out below.

2. PRODUCT CONCERNED

(19) The product under review is bedlinen of cotton fibres, pure or mixed with man-made fibres or flax (flax not being the dominant fibre), bleached, dyed or printed, originating in India (the product concerned), currently classifiable within CN codes ex 6302 21 00, ex 6302 22 90, ex 6302 31 00 and ex 6302 32 90, and as defined in the original investigation.

3. SUBSIDIES

3.1. Introduction

(20) On the basis of the information available and the replies to the Commission's questionnaire, the following schemes allegedly granting subsidies were investigated:

Subsidy schemes investigated in the original investigation:

1. Duty Entitlement Passbook (DEPB) scheme
2. Duty Free Replenishment Certificate (DFRC) scheme/Duty Free Imports Authorisation (DFIA) scheme
3. Export Promotion Capital Goods (EPCG) scheme
4. Advance Licence Scheme (ALS)/Advance Authorisation Scheme (AAS)
5. Export Processing Zones/Export Oriented Units (EPZs/EOUs)
6. Income Tax Exemptions scheme (ITES)

Subsidy schemes not investigated in the original investigation:

7. Duty Drawback Scheme (DDS)

8. Technology Upgradation Fund Scheme (TUFS)

9. Export Credit Scheme (pre-shipment and post-shipment) (ECS)

(21) The schemes 1 to 5 above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in ‘Export and Import Policy’ documents, which are issued by the Ministry of Commerce every five years and updated regularly. One Export and Import Policy document is relevant to the RIP of this case; i.e. the five-year plan relating to the period 1 September 2004 to 31 March 2009 (EXIM policy 04-09). In addition, the GOI also sets out the procedures governing the EXIM policy 04-09 in a ‘Handbook of Procedures — 1 September 2004 to 31 March 2009, Volume I’ (HOP I 04-09). The Handbook of Procedures is also updated on a regular basis.

(22) The Income Tax Exemptions Scheme is based on the Income Tax Act of 1961, which is amended yearly by the Finance Act.

(23) The Duty Drawback Scheme is based on Section 75 of the Customs Act 1962, Section 37(2)(xvi) of the Excise Act 1944 and Sections 93A and 94 of the Finance Act 1994. This is a new scheme that has not been previously investigated.

(24) The Technology Upgradation Fund Scheme is based on a Resolution of the Ministry of Textiles, Government of India, published in the Official Gazette of India Extraordinary Part I Section I on 31 March 1999. This is a new scheme that has not been previously investigated.

(25) The Export Credit Scheme is based on sections 21 and 35A of the Banking Regulation Act 1949, which allow the Reserve Bank of India (RBI) to direct commercial banks in the field of export credits.

(26) In accordance with Article 11(10) of the basic Regulation, the Commission invited the GOI for additional consultations with respect to changed and unchanged schemes, as well as those not previously investigated, with the aim of clarifying the factual situation as regards the alleged schemes and arriving at a mutually agreed solution. Following these consultations, and in the absence of a mutually agreed solution in relation to these schemes, the Commission included all of them in the investigation of subsidisation.

3.2. Specific schemes

3.2.1. Duty Entitlement Passbook (DEPB) scheme

3.2.1.1. Legal basis

(27) The detailed description of the DEPB scheme is contained in paragraph 4.3 of the EXIM policy 04-09 and in chapter 4 of the HOP I 04-09.

3.2.1.2. Eligibility

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

3.2.1.3. Practical implementation

(29) An eligible exporter can apply for DEPB credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPB rates have been established by the Indian authorities for most products, including the product concerned. They are determined on the basis of standard input-output norms (SIONs), taking into account a presumed import content of inputs in the export product and the customs duty incidence on such presumed imports, regardless of whether import duties have actually been paid or not.

(30) To be eligible for benefits under this scheme, a company must export. The exporter must declare that the export is taking place under DEPB to the Indian authorities at the time of export. In order for the goods to be exported, the Indian customs authorities issue an export shipping bill during the dispatch procedure. This document declares the amount of DEPB credit which is to be granted for that export and therefore the exporter knows the benefit it will receive at that time.

(31) Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPB credit. The relevant DEPB rate to calculate the benefit is that which applied at the time the export declaration is made. An unusual retroactive increase of the DEPB rates took place during the RIP, increasing the DEPB benefit for exports from 1 April 2007 to 12 July 2008. However, it is not possible to assume that a retroactive decrease of DEPB rates could be implemented under the principle of legal certainty as a negative administrative decision. Therefore it can be concluded that the ability of the GOI to retroactively amend the level of the benefit is limited.

(32) DEPB credits are freely transferable and valid for 12 months from the date of issue. They can be used for payment of customs duties on subsequent imports of any goods without import restriction, except capital goods. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or otherwise used.

(33) Applications for DEPB credits are electronically filed and can cover an unlimited amount of export transactions. *De facto* no strict deadlines exist to apply for DEPB credits. The electronic system used to manage the DEPB scheme does not automatically exclude export transactions outside the deadline submission periods mentioned in chapter 4.47 HOP I 04-09. Furthermore, as clearly provided in chapter 9.3 HOP I 04-09, applications

received after the expiry of submission deadlines can always be considered with a minor penalty fee (10 % on the entitlement).

(34) While the DEPB rates for exports of the product concerned during the IP of the original investigation was 8 %, at the beginning of the RIP it was only 3,7 %, which was revised during the RIP to 6,7 % (on 12 July 2007), which was unusually backdated to exports since 1 April 2007.

3.2.1.4. Disclosure comments

(35) GOI and Texprocil alleged that no excess remissions occurred in the application of the DEPB scheme and argued that therefore the scheme was not countervailable. This argument is rejected in the light of the conclusion in recital 38 that this scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 2(1)(a)(ii) and Annexes I(i), II and III to the basic Regulation. Consequently, the whole amount of duties foregone is countervailable.

3.2.1.5. Conclusion

(36) The DEPB scheme provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation. A DEPB 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 DEPB credit confers a benefit upon the exporter, because it improves their liquidity.

(37) The DEPB scheme is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.

(38) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 2(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) 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 DEPB 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 DEPB scheme.

3.2.1.6. Calculation of the subsidy amount

(39) In accordance with Articles 2(2) and 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient which was found to exist during the RIP. In this regard, it was considered that the benefit is conferred on the recipient when an export transaction is made under this scheme. At this moment, the GOI is liable to forgo the customs duties, which constitutes a financial contribution within the meaning of Article 2(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, *inter alia*, the amount of DEPB credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. Furthermore, the cooperating exporting producers booked the DEPB credits on an accrual basis as income at the time of the export transaction.

(40) In order to take account of the impact of the backdated increase in rates, the value of the DEPB credit booked for exports made between 1 April to 12 July 2007 was increased where necessary, as the actual benefit the companies will be entitled to on receipt of the credit from the GOI is higher than formally claimed at the time of exportation.

(41) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amount as numerator, pursuant to Article 7(1)(a) of the basic Regulation. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the total export turnover during the review investigation period as the 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.

(42) Several comments concerning certain details of calculation of benefit under the DEPB were submitted. Where it was found to be justified, the calculations were adjusted as a result.

(43) Contrary to the submission of some exporting producers, even DEPBS credit generated by exporting products other than the product concerned had to be considered when establishing the amount of countervailable DEPBS credit. Under the DEPBS no obligation exists which limits the use of the credits to the importation of duty-free input material linked to a specific product. On the contrary, DEPBS credits are freely transferable, can even be sold and used for imports of any unrestrictedly importable goods (the input materials of the product concerned belong to this category), except capital goods. Consequently, the product concerned can benefit from all DEPBS credits generated.

(44) Five companies in the sample benefited from the DEPB scheme during the RIP with subsidy margins ranging from 0,15 % to 3,96 %.

3.2.2. Duty Free Imports Authorisation (DFIA) scheme/Duty Free Replenishment Certificate (DFRC) scheme

3.2.2.1. Legal basis

(45) The detailed description of the DFIA is contained in chapter 4 of the EXIM policy 04-09 and in chapter 4 of the HOP I 04-09. The scheme was introduced in 1 May 2006 and replaced the DFRC scheme, which was countervailed by the original Regulation.

3.2.2.2. Eligibility

(46) The DFIA is issued to any merchant-exporter or manufacturer-exporter for the imports of inputs used in the manufacture of goods for exports free of basic customs duty, additional customs duty, education cess, anti-dumping duty and safeguard duty, if any.

3.2.2.3. Practical implementation

(47) The DFIA is a post- and pre-export scheme which allows imports of goods determined according to SION norms, but which, in case of transferable DFIA, do not have to be necessarily used in the manufacture of the exported product.

(48) The DFIA only covers the import of inputs as prescribed in the SION. The import entitlement is limited to the quantity and value mentioned in the SION, but can be revised by regional authorities on request.

(49) The export obligation is subject to the minimum value addition requirement of 20 %. The exports may be performed in anticipation of a DFIA authorisation, in which case the import entitlement is set in proportion of the provisional exports.

(50) Once the export obligation is fulfilled, the exporter can request the transferability of the DFIA authorisation, which in practice means a permission to sell the duty-free import licence on the market.

3.2.2.4. Disclosure comments

(51) The GOI and Texprocil alleged that the DFRC is a legitimate substitution drawback scheme, since the scheme provides for replenishment of inputs used in the exported product and was considered reasonable, effective and based on the generally accepted commercial practices in India. Because the quantity, quality and technical characteristics and specifications match with inputs used in the export product, the scheme would be in the view of the GOI and Texprocil permissible under the Agreement on Subsidies and Countervailing Measures (ASCM). The GOI and Texprocil also argued that, when assessing whether it is a legitimate substitution drawback scheme, the relevant condition is to look at what is being imported and not who is importing. It was further

argued that in so far as the Government is concerned, no additional benefit is granted. It was argued that the scheme was therefore not countervailable No new evidence was provided to support these arguments and therefore these arguments are rejected in the light of the findings under recitals 52 to 55 that neither of the sub-schemes be considered as permissible duty drawback systems or substitution drawback systems within the meaning of Article 2(1)(a)(ii) and Annexes I(i), II and III to the basic Regulation. Consequently, the whole amount of benefit is countervailable.

3.2.2.5. Conclusion

(52) Though there are some differences in the application of the new DFIA scheme, as compared with the formerly countervailed DFRC scheme, the new DFIA has to be considered as a continuation of the DFRC scheme, because it takes over the main elements of the DFRC.

(53) Both DFRC and DFIA are subsidies within the meaning of Article 2(1)(a)(i) and (ii) and Article 2(2) of the basic Regulation, i.e. a financial contribution in form of a grant. They involve a direct transfer of funds, as they can be sold and converted into cash, or used to offset the import duties, causing the GOI to forego revenue which is otherwise due. In addition, the DFRC and DFIA confer a benefit upon the exporter, because they improve their liquidity.

(54) Both DFRC and DFIA are contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.

(55) Furthermore, neither of the schemes can be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 2(1)(a)(ii) of the basic Regulation. They do 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. In particular: (i) they allow for *ex post* refund or drawback of import charges on inputs which are consumed in the production process of another product; (ii) there is no verification system or procedure in place to confirm whether and which inputs are consumed in the production of process of the exported product or whether excess benefit occurred within the meaning of point (i) of Annex I and Annexes II and III to the basic Regulation; and (iii) the transferability of certificates/authorisations implies that an exporter granted a DFRC or DFIA is under no obligation actually to use the certificate to import the inputs.

3.2.2.6. Calculation of the subsidy amount

(56) For the establishment of the benefit it has been considered that, unlike in DEPB, the DFRC and DFIA licences have no notional value or credit rates. The licence indicates the total quantity of the permitted inputs to be imported and the maximum total CIF value of such imports. Consequently, the benefit

is not known at the time of exports, and it can be determined and booked into accounts only when the licence is used for importation or sold.

(57) Therefore, in cases where the licences were used for imports, the benefit for the companies was calculated on the basis of the amount of the import duties forgone. In cases where the licences were transferred (sold), the benefit was calculated on the basis of revenue on such sales during the RIP.

(58) The investigation established that five companies exporting under the DFRC and/or DFIA sold their authorisations/certificates to third parties.

(59) One exporting producer argued that it had used one of its DFI authorisations as a substitution drawback and that it did not have excess remissions of duties on imports under the particular licence. The investigation established that the import and export quantities under that particular licence were not exhausted and that the licence was not yet closed and verified according to the rules prescribed by the EXIM policy. Therefore, and taking into account the findings under recital 55, it was concluded that the company could not prove that no excess remission was incurred under that particular licence. The whole amount of duties saved on the imports made under that licence are therefore deemed a subsidy, and the claim was therefore rejected.

(60) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the benefits so established to arrive at the subsidy amount as numerator pursuant to Article 7(1)(a) of the basic Regulation. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the total export turnover during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(61) Several comments concerning certain details of calculation of benefit under the DFRC/DFIA were submitted. Where it was found to be justified, the calculations were adjusted as a result.

(62) Contrary to the submission of some exporting producers, even DFRC/DFIA credit generated by exporting products other than the product concerned had to be considered when establishing the amount of countervailable benefit. No obligation exists under DFRC/DFIA which limits the use of the credits to the importation of duty-free input material linked to a specific product. On the contrary, DFRC/DFIA credits are freely transferable, can even be sold and be used for imports of any unrestrictedly importable goods (the input materials of the product concerned belong to this category), except capital goods. Consequently, the product concerned can benefit from all DFRC/DFIA benefit generated.

(63) Four companies in the sample were found to benefit from these schemes during the RIP with subsidy margins ranging from 0,09 % to 2,03 %.

3.2.3. Export Promotion Capital Goods (EPCG) scheme

3.2.3.1. Legal basis

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

3.2.3.2. Eligibility

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

3.2.3.3. Practical implementation

(66) Under the condition of an export obligation, the GOI will issue upon application and payment of a fee an EPCG licence. This licence allows a company to import capital goods (new and — since April 2003 — second-hand capital goods up to 10 years old) at a reduced rate of duty. Until 31 March 2000, an effective duty rate of 11 % (including a 10 % surcharge) and, in case of high value imports, a zero duty rate was applicable. From April 2000, the scheme provided for a reduced import duty rate of 5 % applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period. On 9 May 2008, i.e. outside the RIP, the GOI announced that the duty payable on import under EPCG was lowered to 3 %.

(67) The EPCG licence holder can also source the capital goods indigenously. In such a case, the EPCG licence holder applies for invalidation of its EPCG licence. The indigenous manufacturer of capital goods specified in the invalidation letter becomes eligible for deemed export benefit and is entitled for the benefit of duty-free import of components required to manufacture such capital goods. However, the excise duty payable on a domestic purchase of the capital good by the EPCG licence holder can be refunded or is exempted. The EPCG licence holder stays liable to fulfil the export obligation, which is set with reference to the notional customs duties saved on FOB value of the import goods.

3.2.3.4. Disclosure comments

(68) The GOI argued that no benefit occurred in cases where EPCG licence holder applies for invalidation of its EPCG licence and purchases the capital goods indigenously, as no corresponding government regulation was issued granting exemption from payment of excise duties for such purchases. However, it was also confirmed by the GOI that under certain circumstances, the EPCG licence holder could purchase capital goods without payment of excise duty, i.e. in cases where this duty would not been set off under the Indian Central Value Added Tax (Cenvat) credit system. Moreover, the domestic supplier of capital goods is eligible in such cases for fiscal benefits which will be reflected in the

price of the capital goods supplied. As this is a benefit that could be obtained on condition of export, as there are no changes in the export obligation of the EPCG licence holder in case of invalidation, it has been considered that the argument has to be rejected and the findings remain unchanged.

3.2.3.5. Conclusion

(69) The EPCG scheme provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation. The duty reduction, or in case of domestic sourcing, the refund of the taxes or exemption therefrom, constitute a financial contribution by the GOI, since this concession decreases the GOI's revenue, which would be otherwise due.

(70) In addition, the duty reduction confers a benefit upon the exporter, because the duties saved upon importation improve its liquidity. In case of excise duty refund/exemption, the refund or exemption from excise duty confers a benefit to the exporter, because the duties saved on purchase of the capital goods improve its liquidity.

(71) Furthermore, the EPCG scheme is contingent in law upon export performance, since such licences can not be obtained without a commitment to export. Therefore, it is deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.

(72) This scheme cannot be considered a permissible system for remission of prior-stage cumulative indirect taxes or a permissible duty drawback or substitution drawback system within the meaning of Article 2(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I, items (h) and (i), to the basic Regulation, because they are not consumed in the production of the exported products. In case of remission of prior-stage cumulative indirect taxes, it should be noted that the exporters would not be entitled to the same remission if they were not bound by the export obligation.

3.2.3.6. Calculation of the subsidy amount

(73) 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 or unpaid/refunded excise duty on domestically purchased goods, as applicable, spread across a period which reflects the normal depreciation period of such capital goods. In accordance with the established practice, the amount so calculated, which is attributable to the RIP, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the review investigation period in India was considered appropriate for this purpose. Fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation from this sum to arrive at the subsidy amount as numerator. In accordance with Article 7(2) and 7(3) of the basic Regulation,

this subsidy amount has been allocated over the export turnover during the 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.

(74) Several comments concerning certain details of calculation of benefit under the EPCG were submitted. Where it was found to be justified, the calculations were adjusted as a result.

(75) Contrary to the submission of some exporting producers, even EPCG benefit generated by exporting products other than the product concerned had to be considered when establishing the amount of countervailable benefit. No obligation exists under EPCGS which limits the use of the benefit to the importation of duty-free input material linked to a specific product. Consequently, the product concerned can benefit from all EPCG benefit generated.

(76) Four companies in the sample benefited from this scheme during the RIP with subsidy margins ranging up to 1,45 %, for one company the benefit was found negligible.

3.2.4. Advance Licence Scheme (ALS)/Advance Authorisation Scheme (AAS)

3.2.4.1. Legal basis

(77) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the EXIM policy 04-09 and chapters 4.1 to 4.30 of the HOP I 04-09. This scheme was called ‘Advance Licence Scheme’ during the previous review investigation that led to the imposition of the definitive countervailing duty currently in force.

3.2.4.2. Eligibility

(78) The AAS consists of six sub-schemes, as described in more detail in recital 79. Those sub-schemes differ, *inter alia*, in the scope of eligibility. Manufacturer-exporters and merchant-exporters ‘tied to’ supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement. Manufacturer-exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the ‘deemed export’ categories mentioned in paragraph 8.2 of the EXIM policy 04-09, such as suppliers of an export oriented unit (EOU), are eligible for AAS deemed export. Finally, intermediate suppliers to manufacturer-exporters are eligible for ‘deemed export’ benefits under the sub-schemes Advance Release Order (ARO) and back-to-back inland letter of credit.

3.2.4.3. Practical implementation

(79) Advance authorisations can be issued for:

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

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

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 produces the intermediate product. It 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;

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

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 the EXIM policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs;

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

(80) It was established that during the RIP two cooperating exporters availed of benefits from two of the sub-schemes above, linked to the product concerned, i.e. (i) ALS/AAS physical exports and (ii) ALS for intermediate supplies. It was therefore not necessary to establish the countervailability of the remaining sub-schemes.

(81) Following the imposition of the definitive countervailing duty currently in force, the GOI modified the verification system applicable to ALS/AAS. For verification purposes by the Indian authorities, an Advance Authorisation holder is legally obliged to maintain 'a true and proper account of consumption and utilisation of duty-free imported/domestically procured goods' in a specified format (chapters 4.26, 4.30 and Appendix 23 HOP I 04-09), i.e. an actual consumption register. This register has to be verified by an external chartered accountant/cost and works accountant who issues a certificate stating that the prescribed registers and relevant records have been examined and the information furnished under Appendix 23 is true and correct in all respects. Nevertheless, the aforesaid provisions apply only to Advance Authorisations issued on or after 13 May 2005. For all Advance Authorisations or Advance Licenses issued before that date, holders are requested to follow the previously applicable verification provisions, i.e. to keep a true and proper account of licence-wise consumption and utilisation of imported goods in the specified format of Appendix 18 (chapter 4.30 and Appendix 18 HOP I 02-07).

(82) In regard to the sub-schemes used during the RIP by the two exporting producers in the sample, i.e. physical exports and intermediate supplies, both the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the licences. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the licence. The volume of imports allowed under this scheme is determined by the GOI on the basis of standard input-output norms (SIONs). SIONs exist for most products, including the product concerned and are published in the HOP II 04-09.

(83) Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (24 months with two possible extensions of 6 months each).

3.2.4.4. Disclosure comments

(84) The GOI alleged that it had a proper verification system for the scheme according to Appendix 23 of the HOP I 04-09, and that no excess remissions occurred in application of ALS/AAS. It was argued that therefore the scheme was not countervailable. No new evidence was provided support these

allegations and therefore this argument is rejected in the light of the findings that neither of the sub-schemes be considered as permissible duty drawback systems or substitution drawback systems within the meaning of Article 2(1)(a)(ii) and Annexes II and III to the basic Regulation, as there was no proper verification system.

(85) Furthermore, according to Annex II(II)(5) and Annex III(II)(3) to the basic Regulation, where it has been found that there is no proper verification system, this may be overcome by carrying out a further examination by the exporting country to prove whether an excess payment occurred. As no such examinations were carried out before the verification visits, as well as it was not proven that no excess payments were received, the arguments are rejected.

3.2.4.5. Conclusion

(86) The exemption from import duties is a subsidy within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation, i.e. a financial contribution of the GOI which conferred a benefit upon the exporters.

(87) In addition, ALS/AAS physical exports and ALS for intermediate supply are clearly contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation. Without an export commitment a company cannot obtain benefits under these schemes.

(88) Neither of the two sub-schemes used in the present case, ALS/AAS physical exports and ALS for intermediate supply, can be considered as permissible duty drawback systems or substitution drawback systems within the meaning of Article 2(1)(a)(ii) of the basic Regulation. They do not conform to the 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.

(89) As regards the exporting producer that used AAS, the investigation established that the new verification requirements stipulated by the Indian authorities had not yet been tested in practice since the licenses had not been closed by the time of verification, and therefore had not been verified according to the rules prescribed by the EXIM policy. Therefore, that company could not prove that no excess remission was incurred under that particular licence. The whole amount of duties saved on imports made under that licence shall therefore be deemed a subsidy.

(90) 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 duty-free input materials imported under

authorisations/licenses with different SION yields are mixed in the same production process for an exporting good. This type of process does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production and under which SION benchmark they should be compared.

(91) Furthermore, an effective control done by the GOI based on a correctly kept actual consumption register either did not take place or has not yet been completed. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation).

(92) These two sub-schemes are therefore countervailable.

3.2.4.6. Calculation of the subsidy amount

(93) In the absence of a permitted duty drawback system or substitution drawback system, the countervailable benefit is the amount of total remitted import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an ‘excess’ remission of duties. According to Article 2(1)(a)(ii) and Annex I(i) to the basic Regulation 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 of the countervailing of the amount of (revenue forgone) unpaid duties, rather than any purported excess remission, applies. As set out in Annexes II(II) and III(II) to the basic Regulation the burden is not upon the investigating authority to calculate such excess remission. To the contrary, according to Article 2(1)(a)(ii) of the basic Regulation it only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.

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

(95) Several comments concerning certain details of calculation of benefit under the ALS/AAS were submitted. Where such comments were found to be justified, the calculations were adjusted accordingly.

(96) Contrary to the submission of some exporting producers, even ALS/AAS benefit generated by exporting products other than the product concerned had to be considered when establishing the amount of countervailable benefit. No obligation exists under ALS/AAS which limits the use of the benefit to the importation of duty-free input material linked to a specific product. Consequently, the product concerned can benefit from all ALS/AAS benefit generated.

(97) Two companies in the sample benefited from ALS or AAS with the benefit ranging from 0,17 % to 1,74 %.

3.2.5. Export Processing Zones/Export Oriented Units (EPZs/EOUs)

(98) It was found that none of the cooperating exporting producers was located in an SEZS or in an EPZS, or had a status of EOU. Therefore, it was found not necessary to further analyse this scheme in this investigation.

3.2.6. Income Tax Exemptions scheme (ITES)

(99) Under this scheme exporters could avail the benefit of a partial income tax exemption on profits derived from export sales. The legal basis for this exemption was set by Section 80HHC of the ITA.

(100) This provision was abolished for the assessment year 2005-2006 (i.e. for the financial year from 1 April 2004 to 31 March 2005) onwards and thus 80HHC of the ITA does not confer any benefits after 31 March 2004. None of the cooperating exporting producers availed benefits under this scheme during the RIP. It was therefore not found necessary to further analyse this scheme in this investigation.

3.2.7. Duty Drawback Scheme (DDS)

3.2.7.1. Legal basis

(101) The scheme is based on Section 75 of the Customs Act 1962, Section 37(2)(xvi) of the Excise Act 1944 and Sections 93A and 94 of the Finance Act 1994.

3.2.7.2. Eligibility

(102) Any exporter is eligible for this scheme.

3.2.7.3. Practical implementation

(103) There are two types of duty drawback rates set by the GOI — 'all-industry' rates applied on a lump-sum basis to all exporters of a specific product, and 'brand' rates applied on a company basis for products not covered by 'all

industry' rates. The first type (all-industry rate) is the one relevant to the product concerned.

(104) The all-industry drawback rates are calculated as a percentage of the value of products exported under this scheme. Such all-industry drawback rates have been established by the Indian authorities for various products, including the product concerned. They are determined on the basis of presumed indirect taxes and import charges charged on goods and services used in the manufacturing process of the export product (import duties, excise duty, service tax etc.), including presumed indirect taxes and import charges charged on goods and services for manufacturing the inputs, and regardless of whether those taxes have actually been paid or not. The amount of DDS is subject to a maximum value cap of the export product per unit. If the company can reclaim some of these duties from the Cenvat system then the drawback rate is lower.

(105) The duty drawback rates on the product concerned have been revised several times during the RIP. Until 1 April 2007 the applicable rates were from 6,4 % to 6,9 % depending on the product type, until 1 September 2007 from 9,1 % to 9,8 %. On 13 December 2007, i.e. after the ed of the RIP, the drawback rates were increased to 10,1 % to 10,3 % and the increase backdated to imports from 1 September 2007, i.e. within the RIP.

(106) To be eligible for benefits under this scheme, a company must export. A declaration must be made by the exporter to the authorities in India indicating that the export is taking place under the DDS at the time of export. 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 DDS which is to be granted for that export transaction. The exporter then knows the benefit it will receive and books it into accounts as an amount receivable. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of DDS. The relevant DDS rate to calculate the benefit is generally that which applied at the time the export declaration is made. A retroactive increase of the drawback rates took place during the RIP, which was taken into account in the calculation of the subsidy amount.

3.2.7.4. Disclosure comments

(107) Several parties argued that the DDS could not be countervailed in this investigation because it was not specifically mentioned in the anti-subsidy questionnaires issued at the beginning of the investigation. This argument is rejected for the following reasons. The purpose of this review according to the notice of initiation is the 'level of subsidisation', which has conferred benefit on the exporting producers of the product concerned, i.e. it includes all subsidy schemes operated by the GOI.

(108) It was argued that the DDS was not contingent on export performance because the benefit under this scheme did not relate to the level of exports performed by the exporters. This argument is rejected, because the benefit of DDS can be claimed only if the goods are exported, which is sufficient to fulfil the criterion of export contingency laid down in Article 3(4)(a) of the basic Regulation. In the light of this conclusion, it is not necessary to analyse the argument that the DDS is not specific in the meaning of Article 3(2) and (3) of the basic Regulation.

(109) The GOI submitted that DDS is a drawback system compatible with the provisions of the basic Regulation, and that the procedure for setting the all-industry drawback rates was reasonable, effective and based on generally accepted commercial practices in the country of export according to Annex II (II)(4) and Annex III (II)(2). As set out also in recital 104 above, this procedure involved an industry-wide estimation of the inputs used in production and import duties and indirect taxes incurred. However, this procedure was not sufficiently precise even according to the GOI submission. Indeed, the GOI confirmed that there was an element of averaging, which would imply that the actual drawback paid was more than the actual duties paid. 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)), nor did it prove that no excess remission took place. The alleged parallel of the verification to the sampling techniques set out in the basic Regulation is considered irrelevant, as they clearly refer to the anti-subsidy investigations and do not form part of the criteria laid down in Annexes II and III. Therefore, these arguments are rejected.

(110) It was also submitted that no existence of excess remissions could be presumed from the fact that in the DDS the GOI did not include all indirect taxes payable in India into the DDS, but only the central indirect taxes. This argument is rejected, because according to Annex II(II)(4) and Annex III(II)(2) excess remissions need to be assessed in the framework of a particular subsidy scheme.

3.2.7.5. Conclusion

(111) The DDS provides subsidies within the meaning of Article 2(1)(a)(ii) and Article 2(2) of the basic Regulation. The duty drawback amount is equivalent to government revenue forgone that would otherwise have been collected and paid to the GOI. In addition, the DDS on exportation confers a benefit upon the exporter.

(112) The DDS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 3(4)(a) of the basic Regulation.

(113) Several parties to the proceeding argued that DDS is a drawback system compatible with the provisions of the basic Regulation and therefore the benefit conferred according to it should not be countervailed.

(114) The investigation has established that this scheme cannot be considered a permissible system for remission of prior-stage cumulative indirect taxes or a permissible duty drawback or substitution drawback system within the meaning of Article 2(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I item (h) and (i), Annex II (guidelines on consumption of inputs) and Annex III (definition and rules for substitution drawback) to the basic Regulation. An exporter is under no obligation either (i) to keep an account of the duties and taxes paid on the imported/domestically purchased goods or incorporated services or (ii) to actually consume those goods and services in the production process, and (iii) the amount of drawback is not calculated in relation to actual inputs used by the exporter and the duties and taxes actually paid.

(115) 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 refund of domestic indirect taxes within the meaning of item (h) of Annex I and Annex II to the basic Regulation or of import duties occurred within the meaning of item (i) of Annex I and Annexes II and III to the basic Regulation.

(116) Finally, an exporter is eligible for the DDS benefits regardless of whether it imports or purchases domestically any inputs at all, and has paid duties or taxes on those purchases. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported or that any input material or service was purchased domestically, and import duties or domestic indirect taxes have been paid. Consequently, there is no difference in the drawback rate whether a company owns all stages of production of the inputs and the product concerned or is a mere exporting trader.

3.2.7.6. Calculation of the subsidy amount

(117) In accordance with Articles 2(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 RIP. In this regard, it was considered that the benefit is conferred on the recipient when an export transaction is made under this scheme. From that moment, the GOI is liable to pay the drawback amount to the respective exporters, which constitutes a financial contribution within the meaning of Article 2(1)(a)(i) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, *inter alia*, the amount of DDS which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy.

Furthermore, the cooperating exporting producers booked DDS on an accrual basis as income at the time of each export transaction.

(118) In order to take account of the impact of backdated increase in rates, the value of the DDS credit booked for exports made between 1 September to 30 September 2007 was increased where necessary as the actual benefit the companies will be entitled to receive from the GOI is higher than formally claimed at the time of exportation.

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

(120) Seven companies in the sample submitted claims that although they benefited from the DDS, they did not incur any excess remissions, as the taxes or import duties they have accrued exceeded the drawback amounts. It has been decided to reject these claims. In recitals 113 and 115 it was concluded that the GOI did not have an adequate verification system as provided in Annexes I, II and III to the basic Regulation. The investigation also showed that companies did not keep any consumption registers or any other internal reporting system to account for possible excess remissions. Such reports were created by the companies during the verification visits and largely include the taxes paid by the companies in general.

(121) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of total amount of drawback accrued under the DDS. Contrary to the disclosure submissions made by the GOI, Texprocil and some exporters, the basic Regulation does not only provide for the countervailing of an 'excess' remission of duties. According to Article 2(1)(a)(ii) and Annex I(i) to the basic Regulation, 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 verification procedure is established, the above exception for drawback schemes is not applicable and the normal rule of the countervailing of the amount of drawback, 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 2(1)(a)(ii) of the basic Regulation it only has to establish sufficient evidence to refute the appropriateness of an alleged verification system. It should further be noted, that an additional examination by the Indian authorities in the absence of an effectively applied verification system needs to be done in a timely manner, i.e. normally before the on-the-spot verification in a countervailing duty investigation.

(122) Contrary to the submission of some exporting producers, even DDS benefit generated by exporting non-product concerned had to be considered when establishing the amount of countervailable benefit. No obligation exists under DDS which limits the use of the benefit to a specific product. Consequently, the product concerned can benefit from all DDS benefit generated.

(123) All companies in the sample benefited from the DDS scheme during the RIP with subsidy margins ranging from 1,45 % to 7,57 %.

3.2.8. Technology Upgradation Fund Scheme (TUFS)

3.2.8.1. Legal basis

(124) TUFS was introduced by a Resolution of the Ministry of Textiles, Government of India, published in the Official Gazette of India Extraordinary Part I Section I on 31 March 1999 (Resolution). The scheme was approved to be in effect from 1 April 1999 to 31 March 2004. It was extended up to 31 March 2007 and subsequently extended again until the end of the RIP.

3.2.8.2. Eligibility

(125) Existing or new producers in the sector of cotton processing, textile and jute industry are eligible for benefits under this scheme.

3.2.8.3. Practical implementation

(126) The aim of the scheme is to provide support for modernisation of technology in the textile and jute industry, including units for processing of fibres, yarns, fabrics, garments and made-ups. The scheme provides for various kinds of benefit in the form of a capital subsidy, interest subsidy or coverage of exchange rate fluctuation in foreign currency loans. The programmes under the scheme differentiate between the textile and jute sectors, and the powerloom and handloom sector. TUFS includes the following programmes:

(a) 5 % reimbursement of the normal interest charged by the lending agency on rupee term loan; or

(b) coverage of 5 % exchange fluctuation (interest and repayment) from the base rate on foreign currency loan; or

(c) 15 % credit linked capital subsidy for the textile and jute sector; or

(d) 20 % credit linked capital subsidy for the powerloom sector; or

(e) 5 % interest reimbursement, plus 10 % capital subsidy, for specified processing machinery; and

(f) 25 % capital subsidy on purchase of the new machinery and equipment for pre-loom and post-loom operations, handlooms/up-gradation of handlooms and testing and quality-control equipments, for handloom production units.

(127) The investigation established that two companies in the sample obtained benefit under the TUFS for purchase of machinery used in production of the product concerned. Those companies used, respectively, the interest reimbursement loans (scheme (a)) and the 10 % capital subsidy for processing machinery combined with 5 % interest reimbursement (scheme (e)).

(128) The Resolution provides a list of the type of machinery the purchase of which is subsidised under the TUFS. To receive benefit from the TUFS, companies apply to commercial banks or other lending agencies, which grant the loans to the companies based upon their own independent assessment of the credit worthiness of the borrowers. If the borrower is eligible for an interest subsidy under the scheme, the commercial banks refer the claim to a 'nodal agency' who subsequently releases the benefit amount to the commercial bank involved. The commercial banks finally credit the funds so received to the account of the borrower. The nodal agencies get reimbursement from the Ministry of Textiles, Government of India. The Government of India places the required funds at the disposal of the nodal agencies on a quarterly basis.

3.2.8.4. Disclosure comments

(129) No comments were received from interested parties regarding this scheme.

3.2.8.5. Conclusion

(130) The TUFS constitutes a subsidy under the provisions of Article 2(1)(a)(i) as it involves a direct transfer of funds by the government in the form of a grant. The subsidy confers a benefit by decreasing the financing and interest costs for the purchase of the machinery.

(131) The subsidy is deemed to be specific and therefore countervailable according to Article 3(2)(a) of the basic Regulation since it is specifically provided to an industry or a group of industries, including the manufacture of the product concerned.

3.2.8.6. Calculation of the subsidy amount

(132) The capital subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the amount saved by the recipient companies on the purchased machinery, spread across a period which reflects the normal depreciation period of such capital goods. In accordance with the established practice, the amount so calculated, which is attributable to the RIP, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the review investigation period in India was considered appropriate for this purpose. In accordance with Article 7(2) of the basic Regulation, this subsidy amount has been allocated over the total turnover of textiles during the RIP as appropriate denominator, because the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported.

(133) The interest subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the amount actually repaid during the RIP to the companies concerned linked to the interest paid on the commercial loans taken out for the purchase of the machinery concerned. In accordance with Article 7(2) of the basic Regulation, this subsidy amount has been allocated over the total turnover of textiles during the RIP as appropriate denominator, because the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported.

(134) Two companies in the sample benefited from this scheme during the RIP with subsidy margins ranging from 0,01 % to 0,31 %.

3.2.9. Export Credit Scheme (pre-shipment and post-shipment) (ECS)

3.2.9.1. Legal basis

(135) The details of the scheme are set out in the Master Circular IECD No 02/04.02.02/2006-07 (Export Credit in Foreign Currency), the Master Circular IECD No 01/04.02.02/2006-07 (Rupee Export Credit) and the Master Circular DBOD.DIR(Exp.)No 01/04.02.02/2007-08 (consolidated for both Rupee and Foreign Currency export credit) of the Reserve Bank of India (RBI), which was addressed to all commercial banks in India during the RIP. The Master Circulars are regularly revised and updated.

3.2.9.2. Eligibility

(136) Manufacturing exporters and merchant exporters are eligible for this scheme.

3.2.9.3. Practical implementation

(137) Under this scheme, the RBI mandatorily sets maximum ceiling interest rates applicable to export credits, both in Indian rupees or in foreign currency, which commercial banks can charge an exporter. The ECS consists of two sub-schemes, the Pre-Shipment Export Credit Scheme (packing credit), which covers credits provided to an exporter for financing the purchase, processing, manufacturing, packing and/or shipping of goods prior to export, and the Post-Shipment Export Credit Scheme, which provides for working capital loans with the purpose of financing export receivables. The RBI also directs the banks to provide a certain amount of their net bank credit towards export finance.

(138) As a result of the RBI Master Circular exporters can obtain export credits at preferential interest rates compared with the interest rates for ordinary commercial credits (cash credits), which are purely set under market conditions.

3.2.9.4. Disclosure comments

(139) The GOI claimed that with regard to the ECS the Commission failed to examine the scheme in the light of the provisions of Annex I point (k) to the Agreement on Subsidies and Countervailing Measures (ASCM) and argued that export credits, both in Indian rupees or in foreign currency, were not countervailable, especially as in foreign currency loans the banks were allowed to borrow funds at 'internationally competitive rates'.

(140) It should be noted that the export credit schemes referred to under recital 135 do not fall within the application of Annex I point (k) to the ASCM, because only export financing with a duration of two years or more can normally be regarded as 'export credits' in the meaning of that provision since this is the definition of the OECD Arrangement on Guidelines for Officially Supported Export Credits. Therefore this argument is rejected.

3.2.9.5. Conclusion

(141) The preferential interest rates of an ECS credit set by the RBI Master Circulars mentioned in recital 135 can decrease interest costs of an exporter as compared with credit costs purely set by market conditions and confer in this case a benefit in the meaning of Article 2(2) of the basic Regulation on such exporter. Export financing is not per se more secure than domestic financing. In fact, it is usually perceived as being more risky and the extent of security required for a certain credit, regardless of the finance object, is a purely commercial decision of a given commercial bank. Rate differences with regard to different banks are the result of the methodology of the RBI to set maximum lending rates for each commercial bank individually. In addition, commercial banks would not be obliged to pass through to borrowers of export financing any more advantageous interest rates for export credits in foreign currency.

(142) Despite the fact that the preferential credits under the ECS are granted by commercial banks, this benefit is a financial contribution by a government within the meaning of Article 2(1)(a)(iv) of the basic Regulation. In this context, it should be noted that neither Article 2(1)(a)(iv) of the basic Regulation nor the WTO Agreement on Subsidies and Countervailing Measures (ASCM) require a charge on the public accounts, e.g. reimbursement of the commercial banks by the GOI, to establish a subsidy, but only government direction to carry out functions illustrated in points (i), (ii) or (iii) of Article 2(1)(a) of the basic Regulation. The RBI is a public body and falls therefore under the definition of a 'government' as set out in Article 1(3) of the basic Regulation. It is 100 % government owned, pursues public policy objectives, e.g. monetary policy, and its management is appointed by the GOI. The RBI directs private bodies, since the commercial banks are bound by the conditions it imposes, *inter alia*, with regard to the maximum ceilings for interest rates on export credits mandated in the RBI Master Circular and the RBI provisions that commercial banks have to provide a certain amount of their net bank credit towards export finance. This direction

obliges commercial banks to carry out functions mentioned in Article 2(1)(a)(i) of the basic Regulation, in this case loans in the form of preferential export financing. Such direct transfer of funds in the form of loans under certain conditions would normally be vested in the government, and the practice, in no real sense, differs from practices normally followed by governments, within the meaning of Article 2(1)(a)(iv) of the basic Regulation.

(143) This subsidy is deemed to be specific and countervailable since the preferential interest rates are only available in relation to the financing of export transactions and are therefore contingent upon export performance, pursuant to Article 3(4)(a) of the basic Regulation.

3.2.9.6. Calculation of the subsidy amount

(144) The subsidy amount has been calculated on the basis of the difference between the interest paid for export credits used during the RIP and the amount that would have been payable if the rates for ordinary commercial credits had been applied. This subsidy amount (numerator) has been allocated over the total export turnover during the RIP as appropriate denominator in accordance with Article 7(2) of the basic Regulation, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(145) Several comments concerning certain details of calculation of benefit under the ECS were submitted. Where it was found to be justified, the calculations were adjusted as a result.

(146) All companies and groups in the sample obtained subsidies from this scheme during the RIP with rates up to 1,05 %, for one company the benefit was found negligible.

3.3. Amount of countervailable subsidies

(147) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers ranged between 5,2 % and 9,7 %.

(148) In accordance with Article 15(3) of the basic Regulation, the subsidy margin for the cooperating companies not included in the sample, calculated on the basis of the weighted average subsidy margin established for the cooperating companies in the sample, is 7,7 %. Given that the level of the overall cooperation for India was high (95 %), the residual subsidy margin for all other companies was set at the level for the company with the highest individual margin, i.e. 9,7 %.

Subsidy scheme →Company/	**DEPBS**	**DFRC/DFIA**	**EPCGS**	**ALS/AAS**	**EPZs/EOUs**	**ITES**	**ECS**	**DDS**	**TUFS**	**Total**

Group ↓										
Anunay Fab. Ltd	0,15 %	2,03 %					1,05 %	4,58 %		7,8 %
The Bombay Dyeing and Manufacturing Co. Ltd N W Exports Limited Nowrosjee Wadia & Sons Limited	1,65 %		1,45 %	1,74 %			0,11 %	4,15 %	0,31 %	9,4 %
Brijmohan Purusottamdas Incotex Impex Pvt Ltd							0,94 %	7,39 %		8,3 %
Divya Global Pvt Ltd		0,94 %					0,04 %	7,26 %		8,2 %
Intex Exports Pattex Exports Sunny Made-Ups							0,08 %	7,57 %		7,6 %
Jindal Worldwide Ltd Texcellence Overseas	1,44 %		1,25 %				0,76 %	4,57 %		8 %

Madhu Industries Ltd	3,96 %						negl,	1,45 %		5,4 %
Mahalaxmi Fabric Mills Pvt Ltd Mahalaxmi Exports							0,07 %	7,41 %	0,01 %	7,5 %
Prakash Cotton Mills Pvt, Ltd		1,41 %	1,17 %				0,34 %	6,78 %		9,7 %
Prem Textiles							0,88 %	7,48 %		8,3 %
Vigneshwara Exports Ltd	0,5 %	0,09 %	negl,	0,17 %			0,61 %	3,84 %		5,2 %

4. COUNTERVAILING MEASURES

(149) In line with the provisions of Article 19 of the basic Regulation and the grounds of this partial interim review stated under point 3 of the notice of initiation, it is established that the level of subsidisation with regard to the cooperating producers has changed and, therefore, the rate of countervailing duty, imposed by Regulation (EC) No 74/2004 has to be amended accordingly.

(150) The definitive duty currently in force was established on the basis of the countervailing margins, as the injury elimination level was higher. As the subsidy margins established in this review also did not exceed the injury elimination level, in accordance with Article 15(1) of the basic Regulation the duties are determined on the basis of the subsidy margins.

(151) The subsidy margin for company Pasupati Fabrics, which did not form part of this review, was maintained at the level established in the original investigation, as they were found to benefit from a subsidy scheme which was not reviewed in this investigation.

(152) The companies that were found to be related have been regarded as a single legal entity (group) for duty collection purposes and hence submitted to the same countervailing duty. The export quantities of the product concerned during the RIP of those groups were used in order to ensure a proper weighting.

(153) The sampled company Prem Textiles submitted information during the review investigation showing that it had changed its name to 'Prem Textiles (International) Pvt Ltd'. After examining this information and concluding that the change of name in no way affects the findings of the present review, it was decided to grant this request and refer to them as 'Prem Textiles (International) Pvt Ltd' in this Regulation.

(154) Given that the level of the overall cooperation for India was high (95 %), the residual countervailing duty for all other companies was set at the level for the company with the highest individual margin, i.e. 9,7 %.

(155) The following duties therefore apply:

Company/group	Rate of duty (%)
Anunay Fab. Limited, Ahmedabad	7,8 %
The Bombay Dyeing and Manufacturing Co. Ltd, Mumbai N W Exports Limited, Mumbai Nowrosjee Wadia & Sons Limited, Mumbai	9,4 %
Brijmohan Purusottamdas, Mumbai Incotex Impex Pvt Limited, Mumbai	8,3 %
Divya Global Pvt Ltd, Mumbai	8,2 %
Intex Exports, Mumbai Pattex Exports, Mumbai Sunny Made-Ups, Mumbai	7,6 %
Jindal Worldwide Ltd, Ahmedabad Texcellence Overseas, Mumbai	8 %
Madhu Industries Limited, Ahmedabad	5,4 %
Mahalaxmi Fabric Mills Pvt Ltd, Ahmedabad Mahalaxmi Exports, Ahmedabad	7,5 %
Prakash Cotton Mills Pvt, Ltd, Mumbai	9,7 %
Prem Textiles, Indore	8,3 %
Vigneshwara Exports Limited, Mumbai	5,2 %
Cooperating companies not in the sample	7,7 %
All other companies	9,7 %

(156) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the average duty applicable to Annex I companies and the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in India and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

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

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EC) No 74/2004 is hereby replaced with the following:

Article 1

1 A definitive countervailing duty is hereby imposed on imports of bedlinen of cotton fibres, pure or mixed with man-made fibres or flax (flax not being the dominant fibre), bleached, dyed or printed, originating in India, currently classifiable within CN codes ex 6302 21 00 (TARIC codes 6302 21 00 81 and 6302 21 00 89), ex 6302 22 90 (TARIC code 6302 22 90 19), ex 6302 31 00 (TARIC code 6302 31 00 90) and ex 6302 32 90 (TARIC code 6302 32 90 19).

2 The rate of duty applicable to the net, free-at-Community-frontier price, before duty, for products produced by the following companies shall be as follows:

Company	Rate of duty (%)	TARIC additional code
Anunay Fab. Limited, Ahmedabad	7,8	A902
The Bombay Dyeing and Manufacturing Co. Ltd, Mumbai	9,4	A488
N.W. Exports Limited, Mumbai	9,4	A489

Nowrosjee Wadia & Sons Limited, Mumbai	9,4	A490
Brijmohan Purusottamdas, Mumbai	8,3	A491
Incotex Impex Pvt Limited, Mumbai	8,3	A903
Divya Global Pvt Ltd, Mumbai	8,2	A492
Intex Exports, Mumbai	7,6	A904
Pattex Exports, Mumbai	7,6	A905
Sunny Made-Ups, Mumbai	7,6	A906
Jindal Worldwide Ltd, Ahmedabad	8	A494
Texcellence Overseas, Mumbai	8	A493
Madhu Industries Limited, Ahmedabad	5,4	A907
Mahalaxmi Fabric Mills Pvt Ltd, Ahmedabad	7,5	A908
Mahalaxmi Exports, Ahmedabad	7,5	A495
Pasupati Fabrics, New Delhi	8,5	A496
Prakash Cotton Mills Pvt, Ltd, Mumbai	9,7	8048
Prem Textiles (International) Pvt Ltd, Indore	8,3	A909
Vigneshwara Exports Limited, Mumbai	5,2	A497

3 The rate of duty applicable to the net, free-at-Community-frontier price, before duty, for products produced by the companies listed in the Annex, shall be 7,7 % (TARIC additional code A498).

4 The rate of duty applicable to the net, free-at-Community-frontier price, before duty, for products produced by the companies not specified in paragraphs 2 and 3, shall be 9,7 % (TARIC additional code A999).

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

Article 2

The Annex to Regulation (EC) No 74/2004 shall be replaced by the Annex to this Regulation.

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, 18 December 2008.

For the Council

The President

M. BARNIER

ANNEX

ANNEX TARIC Additional Code: A498Ajit ImpexMumbaiAlok Industries LimitedMumbaiAlps Industries LtdGhaziabadAmbaji Marketing Pvt LtdAhmedabadAnglo French textilesPondicherryAnjal GarmentsGhaziabadAnjani Synthetics LimitedAhmedabadAravaliJaipurAshok Heryani ExportsNew DelhiAt Home India Pvt LtdNew DelhiAtul Impex Pvt LtdDombivliBalloonsNew DelhiBeepee EnterpriseMumbaiBhairav India InternationalAhmedabadBunts Exports Pvt LtdMumbaiChemi PalaceMumbaiConsultech DynamicsMumbaiCotfab ExportsMumbaiCountry HouseNew DelhiCreative Mobus Fabrics LimitedMumbaiDeepak TradersMumbaiDimple Impex (India) Pvt LtdNew DelhiEleganza Furnishings Pvt LtdMumbaiEmperor Trading CompanyTirupurEstocorp (India) Pvt LtdNew DelhiExemplar InternationalHyderabadFalcon Finstock Pvt LtdAhmedabadG-2 International Export LtdAhmedabadGauranga HomefashionsMumbaiGHCL LtdGujaratGood Shepherd Health Education & DispensaryTamilnaduHarimann International Private LimitedMumbaiHeirloom Collections (P) LtdNew DelhiHemlines Textile Exports Pvt LtdMumbaiHimalaya OverseasNew DelhiHome Fashions InternationalKeralaIbatsNew DelhiIndian Arts and Crafts SyndicateNew DelhiIndian Craft CreationsNew DelhiIndo Euro Textiles Pvt LtdNew DelhiKabra BrothersMumbaiKalam DesignsAhmedabadKanodia Fabrics (International)MumbaiKarthi Krishna ExportsTirupurKaushalya ExportAhmedabadKirti OverseasAhmedabadLa Sorogeeka IncorporatedNew DelhiLalit & CompanyMumbaiManubhai VithaldasMumbaiMarwaha ExportsNew DelhiMilano International (India) Pvt LtdChennaiMohan Overseas (P) LtdNew DelhiM/s. Opera ClothingMumbaiM/S Vijayeswari Textiles LimitedCoimbatoreNandlal & SonsMumbaiNatural CollectionNew DelhiOracle Exports Home Textiles Pvt LtdMumbaiPacific ExportsAhmedabadPetite PointNew DelhiPradip ExportsAhmedabadPradip Overseas Pvt LtdAhmedabadPunch ExportersMumbaiRadiant Expo Global Pvt LtdNew DelhiRadiant ExportsNew DelhiRaghuvir Exim LimitedAhmedabadRamesh Textiles India Pvt LtdIndoreRamlaks Exports Pvt LtdMumbaiRedial Exim Pvt LtdMumbaiS. D. EntreprisesMumbaiSamria FabricsIndoreSanskrut Intertex Pvt LtdAhmedabadSarah ExportsMumbaiShades of India Crafts Pvt LtdNew DelhiShanker Kapda Niryat Pvt LtdBarodaShetty Garments Pvt LtdMumbaiShivani ExportsMumbaiShivani ImpexMumbaiShrijee EnterprisesMumbaiS.P. ImpexIndoreStarline ExportsMumbaiStitchwell GarmentsAhmedabadSumangalam Exports Pvt LtdMumbaiSummer India Textile Mills (P) LtdSalemSurendra TextileIndoreSuresh & Co.MumbaiSynergy Lifestyles Pvt LtdMumbaiSyntex Corporation Pvt LtdMumbaiTexel IndustriesChennaiTexmart Import exportAhmedabadTextrade International Private LimitedMumbaiThe Hindoostan Spinning & Weaving Mills LtdMumbaiTrend SettersMumbaiTrend Setters K.F.T.Z.MumbaiUtkarsh Exim Pvt LtdAhmedabadV & K AssociatesMumbaiValiant Glass Works Private LtdMumbaiVisma InternationalTamilnaduVPMSK A TradersKarurV.S.N.C. Narasimha Chettiar SonsKarurWelspun India LimitedMumbaiYellows Spun and Linens Private LimitedMumbai

(**1**) OJ L 288, 21.10.1997, p. 1.

(**2**) OJ L 12, 17.1.2004, p. 1.

(**3**) OJ C 230, 2.10.2007, p. 5.

Changes to legislation:
There are currently no known outstanding effects for the Council Regulation (EC) No 1353/2008.