COMMISSION IMPLEMENTING REGULATION (EU) 2018/1468

of 1 October 2018

amending Council Implementing Regulation (EU) No 461/2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (1) ('the basic Regulation') prior to its amendment by Regulation (EU) 2017/2321 of the European Parliament and of the Council (2), and in particular Article 19 thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By Regulation (EC) No 2603/2000 (3), the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate ('PET') originating, inter alia, in India ('the original investigation').

(2) By Regulation (EC) No 1645/2005 (4), the Council amended the level of countervailing measures in force against imports of PET from India, following an accelerated review pursuant to Article 20 of the basic Regulation.

(3) By Regulation (EC) No 193/2007 (5), the Council imposed a definitive countervailing duty for a further period of five years, following an expiry review pursuant to Article 18 of the basic Regulation.

(4) By Regulation (EC) No 1286/2008 (6) and Implementing Regulation (EU) No 906/2011 (7), the Council subsequently amended the countervailing measures, following partial interim reviews pursuant to Article 19 of the basic Regulation.

(5) In 2012, another partial interim review was terminated without amending the measures in force by Council Implementing Regulation (EU) No 559/2012 (8).

(6) By Implementing Regulation (EU) No 461/2013 (9), the Council imposed a definitive countervailing duty for a further period of five years, following a second expiry review pursuant to Article 18 of the basic Regulation.

(1) OJ L 176, 30.6.2016, p. 55.
(2) Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union (OJ L 338, 19.12.2017, p. 1).
(3) Council Regulation (EC) No 2603/2000 of 27 November 2000 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in India, Malaysia and Thailand and terminating the anti-subsidy proceeding concerning imports of certain polyethylene terephthalate originating in Indonesia, the Republic of Korea and Taiwan (OJ L 301, 30.11.2000, p. 1).
(4) Council Regulation (EC) No 1645/2005 of 6 October 2005 amending Regulation (EC) No 2603/2000 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate originating, inter alia, in India (OJ L 266, 11.10.2005, p. 1).
(5) Council Regulation (EC) No 193/2007 of 22 February 2007 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97 (OJ L 59, 27.2.2007, p. 34).
(6) Council Regulation (EC) No 1286/2008 of 16 December 2008 amending Regulation (EC) No 193/2007, imposing a definitive countervailing duty on imports of certain polyethylene terephthalate, originating in India and amending Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate, originating in, inter alia, India (OJ L 340, 19.12.2008, p. 1).
(7) Council Implementing Regulation (EU) No 906/2011 of 2 September 2011 amending Regulation (EC) No 193/2007 imposing a definitive countervailing duty on imports of polyethylene terephthalate originating in India, and amending Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in, inter alia, India (OJ L 232, 9.9.2011, p. 19).
(8) Council Implementing Regulation (EU) No 559/2012 of 26 June 2012 terminating the partial interim review concerning the countervailing measures on imports of certain polyethylene terephthalate (PET) originating in, inter alia, India (OJ L 168, 28.6.2012, p. 6).
(9) Council Implementing Regulation (EU) No 461/2013 of 21 May 2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 597/2009 (OJ L 137, 23.5.2013, p. 1).

(7) By Implementing Regulation (EU) 2015/1350 [1], the Commission amended the countervailing measures, following two partial interim reviews pursuant to Article 19 of the basic Regulation.

(8) By Decision 2000/745/EC [2], the Commission accepted a minimum import price offered by three exporting producers in India. By Implementing Decision 2014/109/EU [3], the Commission withdrew the acceptance of the undertakings, due to a change in the circumstances under which the undertakings were accepted.

(9) The measures currently in force are a definitive countervailing duty imposed by Regulation (EU) No 461/2013, as amended by Implementing Regulation (EU) 2015/1350 ('measures in force'). They consist of a specific countervailing duty, ranging between 0 and EUR 74,6 per tonne for individually named Indian producers, with a residual rate of EUR 69,4 per tonne imposed on imports from all other producers.

1.2. **Initiation of two partial interim reviews**

(10) In September 2016, an Indian exporting producer, Dhunseri Petrochem Limited ('DPL') requested the Commission to amend the Regulation imposing the measures in force based on a change of the name of the company. The request however showed that DPL had entered into a joint venture partnership with Indorama Ventures Public Company Limited ('IVL'), resulting in the following structure:

(a) Indorama Ventures Global Services Limited, a subsidiary of IVL, acquired a 50 % stake in the PET resin business of DPL, through the establishment of a new company called IVL Dhunseri Petrochem Industries Limited ('IVDPIL');

(b) DPL acquired a 50 % stake in Micro Polypet Pvt. Ltd ('MPPL'), an Indian manufacturer of PET which had never exported to the EU and did not have an individual countervailing duty.

(11) In light of the above, the Commission considered that there was sufficient evidence that the circumstances with regard to subsidisation of DPL and its related companies had changed significantly and were of a lasting nature and that the measures should therefore be reviewed.

(12) On that basis, the Commission announced, by notice on 6 July 2017 [4] the decision to initiate on its own initiative a partial interim review investigation pursuant to Article 19 of the basic Regulation limited in scope to the examination of subsidisation for DPL and its related companies in India. The purpose of the review is to establish the rate of subsidisation for the company's new structure.

(13) Another Indian exporting producer, Reliance Industries Limited ('Reliance') lodged a request for a partial interim review pursuant Article 19 of the basic Regulation. The request was limited to the examination of the subsidisation of Reliance.

(14) Reliance provided sufficient evidence that the continued application of the measures at their current level was no longer necessary to offset the countervailable subsidisation. The company alleged in particular that the overall subsidy level was reduced due to the termination of applicability of the Focus Product Scheme and the Focus Market Scheme and the reduction of amounts availed by the applicant with regard to other schemes, like the Advanced Authorisation Scheme and the Duty Drawback Scheme.

(15) Having determined that the request contained sufficient evidence, the Commission announced, on 6 July 2017 [5], the initiation of a partial interim review pursuant to Article 19 of the basic Regulation limited in scope to the examination of subsidisation for Reliance.

(16) In both Notices of initiation, the Commission announced that the investigations would also assess the appropriateness to amend the rate of duty imposed on imports of certain polyethylene terephthalate (PET) originating in India by 'all other companies' in India.

[1] Commission Implementing Regulation (EU) 2015/1350 of 3 August 2015 amending Council Implementing Regulation (EU) No 461/2013 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India (OJ L 208, 5.8.2015, p. 10).
[2] Commission Decision 2000/745/EC of 29 November 2000 accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand (OJ L 301, 30.11.2000, p. 88).
[3] Commission Implementing Decision 2014/109/EU of 4 February 2014 repealing Decision 2000/745/EC accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of certain polyethylene terephthalate (PET) originating, inter alia, in India (OJ L 59, 28.2.2014, p. 35).
[4] Notice of initiation of a partial interim review of the countervailing measures applicable to imports of certain polyethylene terephthalate (PET) originating in India (2017/C 216/05) (OJ C 216, 6.7.2017, p. 30).
[5] Notice of initiation of a partial interim review of the countervailing measures applicable to imports of certain polyethylene terephthalate (PET) originating in India (2017/C 216/04) (OJ C 216, 6.7.2017, p. 26).

(17) Given that both interim reviews cover the same product under review, the same country of origin and the same investigation period, and as both measures are subject to the same proceeding, it was considered appropriate to conclude both reviews in the same legal act.

1.3. **Parties concerned by the investigation**

(18) The Commission officially informed Dhunseri, its related companies and Reliance ('the concerned exporting producers'), the association of Union producers, importers and users in the Union known to be concerned and the representatives of the exporting country of the initiation of the partial interim reviews. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notices of initiation.

(19) In order to obtain the information deemed necessary for its investigation, the Commission sent questionnaires to the concerned exporting producers and the Government of India ('GOI') and received replies within the deadlines set for that purpose.

(20) The Commission sought and verified all information deemed necessary for the determination of subsidisation. The Commission carried out verification visits at the premises of IVDPIL in Kolkata, at MPPL's headquarters in Delhi, at MPPL's factory in Karnal, at Reliance in Mumbai as well as at the premises of the GOI in New Delhi (Directorate-General of Foreign Trade and Ministry of Commerce).

1.4. **Review investigation period**

(21) The investigation of subsidisation covered the period from 1 April 2016 to 31 March 2017 ('the review investigation period').

1.5. **Disclosure**

(22) On 25 July 2018 the GOI and the other interested parties were informed of the essential facts and considerations upon which the Commission intended to propose to amend the duty rates applicable to the Dhunseri and Reliance. They were also given reasonable time to comment. All submissions and comments were taken duly into consideration as set out below.

(23) Reliance noted that the disclosure was made more than 12 months after initiation of the investigation and referred to Article 11.11 of the WTO Agreement on Subsidies and Countervailing Measures ('the ASCM') which provides that investigations 'shall' be concluded within one year 'except in special circumstances' and to Article 22(1) of the basic Regulation which provides that reviews shall be carried out 'expeditiously' and 'shall normally' be concluded within 12 months of the date of initiation. On this basis Reliance claimed that in the absence of special circumstances or justification from the Commission the investigation should be 'terminated without protective measures'.

(24) However, as far as deadlines are concerned, the Commission observes that the present review investigation is subject to Article 21.4 of the ASCM which provides that reviews of countervailing duties 'shall normally be concluded within 12 months of the date of initiation of the review' and does not refer to any special circumstances needed to justify an investigation duration longer than 12 months. Likewise, Article 22(1) of the basic Regulation does not refer to special circumstances needed to justify an investigation duration longer than 12 months. The current reviews are conducted within the 15-month deadline set out in Article 22(1) of the basic Regulation. Therefore, the claim was rejected.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. **Product under review**

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

2.2. **Like product**

(26) The investigation revealed that the product under review is identical in terms of physical and chemical characteristics and uses to the product produced and sold on the domestic market in India. It is therefore concluded that products sold on the domestic and export markets are like products within the meaning of Article 2(c) of the basic Regulation.

3. RESULTS OF THE INVESTIGATION

3.1. Re-organisation of DPL and its related companies

(27) The investigation confirmed that DPL entered into a joint venture partnership with IVL. Under this partnership, DPL transferred its entire PET production facility to a new company, IVDPIL on 1 April 2016 and acquired 50 % share of that company, while the remaining 50 % were acquired by Indorama Ventures Global Services Limited, a subsidiary of IVL. DPL thus ceased to be an exporting producer of the product under review with effect from that date.

(28) The investigation also confirmed that DPL acquired 50 % of stake in MPPL, an Indian manufacturer of PET which previously did not export the product under review to the Union and has thus not been attributed an individual countervailing duty in previous investigations concerning PET originating in India. The remaining 50 % stake in MPPL belongs to Indorama Ventures Global Services Limited.

(29) Subsequently, on 12 May 2017, IVDPIL changed its name to IVL Dhunseri Petrochem Industries Private Limited ('IDIPL'), and MPPL transferred all its assets, debts, liabilities, and staff to IDIPL. On 4 December 2017, the High Court of Kolkata sanctioned this transfer.

(30) DPL, IDIPL (formerly IVDPIL), and MPPL are hereafter referred to as the 'Dhunseri group'. The purpose of the partial interim review was therefore to establish the rate of subsidisation applicable to the Dhunseri group. To that end the data regarding IDIPL and MPPL (which was still operating as a distinct exporting producer of the product under review during the review investigation period) were aggregated to calculate the subsidisation rate for the Dhunseri group as a whole since this rate is applicable to the final structure of the group where MPPL's plant is incorporated in IDIPL.

3.2. Subsidisation

(31) On the basis of the subsidies investigated in the previous reviews, the information submitted by the GOI and the concerned exporting producers, as well as the replies to the Commission's questionnaire, the following measures were investigated:

Nationwide subsidy programmes:

(a) Advance Authorisation Scheme (AAS)

(b) 'Duty Drawback Scheme' under Rule 3(2) (DDS)

(c) Duty Entitlement Passbook Scheme (DEPBS)

(d) Duty Free Import Authorisation Scheme (DFIA)

(e) Export Credit Scheme (ECS)

(f) Export Oriented Units (EOU) and Special Economic Zones (SEZ) Scheme

(g) Export Promotion Capital Goods Scheme (EPCGS)

(h) Focus Market Scheme (FMS)

(i) Focus Product Scheme (FPS)

(j) Incremental Exports Incentivisation Scheme (IEIS)

(k) Interest Equalisation Scheme (IES)

(l) Income Tax Incentive for Research and Development (ITIRAD)

(m) Merchandise Exports from India Scheme (MEIS)

(n) Status Holders Incentive Scrip (SHIS).

Regional subsidy programmes:

(o) Capital Investment Incentive Scheme of the Government of Gujarat (CIIS)

(p) Enterprise Promotion Policy of the Government of Haryana (EPP/GOH)

(q) Gujarat Electricity Duty Exemption Scheme (GEDES)

(r) Package Scheme of Incentives of the Government of Maharashtra (PSI/GOM)

(s) West Bengal Incentive Scheme (WBIS).

(32) The subsidies specified in the recital above are based on the following policy documents and legislation.

(33) The AAS, DEPBS, DFIA, EOU/SEZ, EPCGS, FMS, FPS, IEIS, MEIS, and SHIS schemes are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Foreign Trade Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly.

(34) AAS, DFIA, EOU/SEZ, EPCGS, and MEIS are based on the Foreign Trade Policy 2015-2020 ('FTP 2015-20') which is relevant to the review investigation period. In addition, the GOI also sets out the procedures governing FTP 2015-20 in a 'Handbook of Procedures, Volume I' ('HOP I 2015-20'). The Handbook of Procedures is updated on a regular basis.

(35) DEPBS, FMS, FPS, IEIS, and SHIS, which were based on the previous Foreign Trade Policy document relevant to the period 2009-2014 ('FTP 2009-14'), have not been renewed under the FTP 2015-20 mentioned in recital (34).

(36) The DDS scheme is based on section 75 of the Customs Act of 1962, on section 37 of the Central Excise Act of 1944, on sections 93A and 94 of the Financial Act of 1994, and on the Customs, Central Excise Duties and Service Tax Drawback Rules of 1995. Drawback rates are published on a regular basis.

(37) The ECS 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.

(38) The ITIRAD scheme is based on the Income Tax Act of 1961 ('ITA'), which is amended by the yearly Finance Act.

(39) The IES scheme is based on Master Circular DBR.Dir.BC.No 62/04.02.001/2015-16 dated 4 December 2015 regarding 'Interest Equalisation Scheme on Pre- and Post-Shipment Rupee Export Credit'.

(40) The CIIS scheme is administered by the Government of Gujarat and is based on Gujarat's industrial policy 2015.

(41) The EPP/GOH is administered by the Government of Haryana and set out in the Enterprises Promotion Policy — 2015 notified by the Industry & Commerce Department of the Government of Haryana.

(42) The GEDES scheme is based on Gujarat Electricity Duty Act, 1958 ('Electricity Act') under Section 3(2) (vii) and (viii) as amended from time to time in Gujarat Government Gazette.

(43) The PSI/GOM scheme is based on Resolution No. PSI-2013/(CR-54)/IND-8 of the Government of Maharashtra.

(44) The WBIS scheme is administered by the Government of West Bengal and set out in Government of West Bengal Commerce & Industries Department notification No 309 — CI/O/ADN/GEN-INC/512 of 12 September 2014.

(45) The investigation revealed that the following schemes have been either terminated or were not availed of by the two exporting producers concerned: DEPBS, DFIA, ECS, EOU/SEZ, FMS, FPS, ITIRAD, IEIS, IES, SHIS, CIIS, EPP/GOH, PSI/GOM and WBIS.

3.3. **Advance Authorisation Scheme (AAS)**

(46) The Commission found that only one of the exporting producers subject to the current reviews availed itself of this measure during the review investigation period for a very small number of export transactions. Indeed, the same company used the 'Duty Drawback Scheme' (DDS), covered below in section 3.4, for the vast majority of its export transactions. Since AAS and DDS cannot be used concurrently for the same export transactions, the Commission found that AAS was barely used during the review investigation period and decided not to quantify the benefit obtained under AAS in the reviews at hand.

3.4. **'Duty Drawback Scheme' under Rule 3(2) (DDS)**

(47) The Commission established that the concerned exporting producers used DDS during the review investigation period.

3.4.1. *Legal Basis*

(48) The legal basis applicable during the RIP was the Custom & Central Excise Duties Drawback Rules 1995 ('the 1995 DDS Rules'), as last amended in 2006 [1]. After the RIP this legal basis was replaced by Customs and Central Excise Duties Drawback Rules, 2017 [2] ('the 2017 Rules') which entered into force on 1 October 2017. Rule 3(2) of the 1995 DDS Rules governs the method of calculation of this duty drawback scheme. Rule 12(1)(a)(ii) of the said DDS Rules governs the Declaration that needs to be filed by exporters in order to benefit from the scheme. These Rules have remained identical in the 2017 DDS Rules and correspond to Rule 3(2) and Rule 13(1)(a)(ii) respectively.

(49) In addition, Circular No 24/2001 [3] contains specific instructions how to implement Rule 3(2) and the Declaration that exporters need to produce under Rule 12(1)(a)(ii).

(50) Rule 4 of the 1995 DDS Rules stipulates that the Central Government may revise amount or rates determined under rule 3. The Government has made a number of modifications, the last ones which revised the rates are Notifications No 110/2015 — CUSTOMS (N.T.) of 16 November 2015 [4] and Notifications No 131/2016 — CUSTOMS (N.T.) of 31 October 2016 [5]. As a result, for the product under review during the review investigation period the rate was 1,9 % of the FOB value until 14 November 2016 and 1,5 % thereafter.

3.4.2. *Eligibility*

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

3.4.3. *Practical implementation*

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

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

(a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India;

(b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;

(c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods;

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[1] http://www.cbic.gov.in/htdocs-cbec/customs/cs-act/formatted-htmls/cs-rulee (accessed on 13 July 2018).

[2] [To be published in the Gazette of India, extraordinary, part ii, section 3, sub-section (i)] Government of India Ministry of Finance (Department of Revenue) Notification No 88/2017-CUSTOMS (N.T.) New Delhi, 21 September 2017. See http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2017/cs-nt2017/csnt88-2017.pdf (access on 13 July 2018).

[3] Circular No 24/2001-Cus. 20 April 2001 F.NO.605/47/2001-DBK, Government of India, Ministry of Finance, Department of Revenue, Declaration under Rule 12(1)(a)(ii) of Drawback Rule for availing AIR of Drawback. See in particular Sections 2 and 3 of the Declaration under Rule 12(1)(a)(ii) of Drawback Rule for availing AIR of Drawback; available at: http://www.cbic.gov.in/htdocs-cbec/customs/cs-circulars/cs-circulars-2001/24-2001-cus, accessed on 7 June 2018.

[4] GOI's Notification No 110/2015 — CUSTOMS (N.T.) of 16 November 2015 determines that the DDS rate applicable on the FOB value of exports of PET (classified under tariff item 390701) is 1,9 % with effect from 23 November 2015. See http://www.cbic.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-nt2015/csnt110-2015 and Annex with schedule http://www.cbic.gov.in/resources//htdocs-cbec/customs/dbk-schdule/dbk-sch2015.pdf (accessed on 13 July 2018).

[5] GOI's Notification No 131/2016 — CUSTOMS (N.T.) of 31 October 2016 determines that the DDS rate applicable on the FOB value of exports of PET (classified under tariff item 3907) is 1,5 % with effect from 15 November 2016. See http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-nt2016/csnt131-u-2016.pdf and Annex with schedule http://www.cbic.gov.in/resources//htdocs-cbec/customs/dbk-schdule/dbk-sch2016.pdf (accessed on 13 July 2018).

(d) *the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents:*

Provided that if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted;

(e) *the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;*

(f) *any other information which the Central Government may consider relevant or useful for the purpose.*'

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

(54) The GOI uses this percentage to calculate the amount of cash to which all eligible exporters are entitled. The rate for this scheme is determined by the GOI on a product by product basis. For the product under review during the review investigation period the rate was 1,9 % of the FOB value until 14 November 2016 and 1,5 % thereafter as explained in recital (50).

(55) To be eligible to benefit from this scheme, a company must export. At the moment when shipment details are entered in the Customs server, it is indicated that the export is taking place under the DDS and the DDS amount is fixed irrevocably. After the shipping company has filed the Export General Manifest and the customs office has satisfactorily compared that document with the shipping bill data, all conditions are fulfilled to authorise the payment of the drawback amount by either direct payment on the exporter's bank account or by draft.

(56) The exporter also has to produce evidence of realisation of export proceeds by means of a Bank Realisation Certificate ('BRC'). This document can be provided after the drawback amount has been paid but the GOI will recover the paid amount if the exporter fails to submit the BRC within a given delay.

(57) The drawback amount can be used for any purpose and, in accordance with Indian accounting standards, the amount can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation.

(58) Relevant legislation and administrative instructions stipulates that the Indian customs administration should require no evidence that the exporter requesting the duty drawback must have incurred or will incur a customs duty liability for imports of the raw materials needed for the manufacture of the exported product ([1]). In addition, during the verification visit at the GOI, the GOI confirmed that companies that would source domestically all the raw materials incorporated in the exported PET would still benefit from the full rate calculated under Rule 3(2) mentioned above. This investigation has also shown that in practice this has been the case for one cooperating exporter, which did avail itself of the benefits under the DDS despite not having imported one single unit of the main raw materials (PTA and MEG) used for the production of the product under review.

3.4.4. *Conclusion on DDS*

(59) The DDS provides a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The so-called duty drawback amount is a financial contribution by the GOI as it takes form of revenue foregone (i.e. the alleged import duties collected by the GOI which are refunded or remitted). There are no restrictions as to the use of these funds. In addition, the duty drawback amount confers a benefit upon the exporter, because it improves its liquidity by the excess amounts of import duties refunded or remitted by the GOI.

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

(60) The rate of duty drawback for exports is determined by the GOI on a product by product basis. However, although the subsidy is referred to as a duty drawback, the scheme does not have all the characteristics of a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation; nor does the scheme conform to the rules laid down in Annex I item (I), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The cash payment to the exporter is not necessarily linked to actual payments of import duties on raw materials, and is not a duty credit to offset import duties on past or future imports of raw materials. In addition, there is no system or procedure in place to confirm which inputs are consumed in the production of the exported products and in what amounts.

(61) The payment by the GOI subsequent to exports made by exporters is contingent upon export performance and is therefore deemed to be specific and countervailable under Article 4(4)(a) of the basic Regulation.

(62) In view of the above, it is concluded that DDS is countervailable.

3.4.5. *Calculation of the subsidy amount*

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

(64) The Dhunseri group noted that the benefit under DDS was reduced from 1,9 % to 1,5 % during the review investigation period and argued that this reduction was of lasting nature by referring to the decreasing trend of the DDS rate, which was reduced from 5,5 % in 2011 to 1,5 % during the review investigation period. For that reason, the company claimed that DDS, if countervailed, should be countervailed only on the basis of the rate of 1,5 %.

(65) The Commission however noted that according to Article 5 of the basic Regulation 'the amount of countervailable subsidies shall be calculated in terms of the benefit conferred on the recipient which is found to exist during the investigation period for subsidisation'. As mentioned before, during the review investigation period the rate was 1,9 % of the FOB value until 14 November 2016 and 1,5 % thereafter. The Commission therefore considers that the actual rates during the review investigation period should be used. Therefore, this argument was rejected.

(66) Reliance argued that the benefit calculated on the basis of DDS should be restricted to the excess benefits as DDS should be considered as a duty drawback scheme permissible under Article 3(1)(a)(ii) of the basic Regulation but did not provide further elements to substantiate the claim. As explained in recital (60), the Commission concluded that the DDS does not amount to a permissible duty drawback. Moreover, with respect to Reliance, the Commission concluded during the on-the-spot verification that Reliance had benefited from the DDS even if it had not imported any of the two relevant raw materials (MEG and PTA) during the review investigation period. Therefore, the claim was rejected since, on the basis of the information available, the total amount granted to Reliance represents the excess.

(67) MPPL explained that it used purified terephthalic acid (PTA) and monoethylene glycol (MEG) to manufacture PET and that both raw materials were sourced from a single domestic supplier who, pursuant to the purchase contract, was charging MPPL a so-called 'deemed content of customs duty element'. On that basis MPPL claimed that it was paying import duties on raw material incorporated in the exported product and that the calculation of DDS should hence be restricted to excess benefits. The Commission noted in this respect that MPPL failed to provide any evidence that the 'deemed content of customs duty' corresponded to any actual payment of import duties. Therefore, the claim was rejected.

(68) IDIPL submitted that MEG, one of the two main raw materials used by the company to manufacture PET, was entirely imported and that import duties were paid on these imports. On the basis of the amount of duties paid on MEG incorporated in PET exported during the review investigation period, IDIPL further provided a calculation of an alleged excess remission and claimed that the level of subsidisation should be established on that excess remission alone. Despite the absence of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, the Commission carried out a verification of the claim in accordance with Annex II (5) of the basic Regulation. The verification confirmed that all MEG consumed in the production of PET was imported and that the amount of import duties reported in the claim was actually paid on MEG incorporated in PET exported during the review investigation period. On that basis the Commission accepted the claim and calculated the level of subsidisation on the excess remission alone.

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

(70) The Commission thus established that the subsidy rates in respect of this scheme during the review investigation period amounted to 0,38 % for the Dhunseri group and 1,67 % for Reliance.

3.4.6. *Comments on disclosure*

Reliance

(71) Reliance submitted that the Commission made an error by identifying DDS as a subsidy and as scheme falling under Articles 3(1)(a)(i) and submitted that, in addition the Commission has acted in contradiction with this determination by verifying the excess remission of another exporter. Reliance claimed that the Commission treated the different parties differently when calculating the amount of excess remission and, in the particular case of Reliance, countervailed the full DDS benefit instead of restricting countervailing to excess remission only.

(72) This claim is unfounded. Indeed, as explained above although the subsidy is referred to as a duty drawback, the scheme does not have all the characteristics of a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation; nor does the scheme conform to the rules laid down in Annex I item (i), Annex II and Annex III of the basic Regulation as the cash payment to the exporter is not linked to actual payments of import duties on raw materials, and is not a duty credit to offset import duties on past or future imports of raw materials. Moreover, the same approach and rules were applied to all companies (Reliance and Dhunseri group) as the Commission sought to understand whether the companies actually imported or not any of the relevant raw materials during the review investigation period and paid import duties on such imports. Then, on the basis of the information available, the Commission calculated the excess remission for the two companies. The respective situation of both companies is as follows. IDIPL (part of Dhunseri group) claimed and provided evidence that one of the two main raw materials used to manufacture PET was entirely imported and import duties were paid. The Commission carried out a verification and it showed the correctness of the claim. On this factual basis the Commission calculated the level of subsidisation on the excess remission. Reliance was invited to bring the same evidence as IDIPL, but failed to do so. For Reliance, the excess remission consisted therefore in the full amount received from the GOI. Therefore, since the difference between the two exporting producers is justified on the basis of the difference in the facts available, the claim was rejected.

(73) Reliance further claimed that the burden of proof was wrongly applied by allegedly imposing upon the exporting producer the burden of determining the quantity of an excess remission.

(74) The Commission disagrees. It is reminded that the process of investigation is based on questionnaires replies and verification visits. The information related to the level of import duties actually paid (or not) by a given company is a factual point and is to be reported by the company. Reliance did not submit this information in its reply to the questionnaire referred to in recital (19) where interested parties are invited to provide all relevant information as regard the calculation of the subsidisation rate. Faced with this absence of information, the Commission proactively gathered information enabling to determine the potential excess remission during the on-spot verification of Reliance in December 2017. It was first established that Reliance did not pay import duties on the two main raw materials incorporated in exported PET, namely PTA and MEG. The Commission further examined whether import duties were paid on raw materials used to produce PTA, MEG or any upstream raw material used to produce PTA or MEG. It however appeared that Reliance, being an integrated petrochemical company,

was importing crude oil and manufactured internally all intermediate products leading to the production of PET. The Commission then obtained the import duty rate applicable to crude oil which turned out to be 0 % as demonstrated by an exhibit provided by Reliance during the verification visit. Based on this information it appeared that the entire DDS amount was an excess remission. Reliance did not provide any verifiable quantified submission that would have pointed otherwise during the rest of the investigation. Reliance did not provide any information that would allow the calculation of an excess remission despite being invited to do so at several occasions. In short the Commission proactively collected information necessary to calculate the level of DDS subsidisation and despite numerous invitations Reliance failed to provide factual information that the company has in its possession and that would have justified the calculation of an excess remission lower than the total DDS amount. Therefore the claim was rejected.

(75) Reliance claimed that the only invitation by the Commission to provide information enabling to determine the level of the excess remission was made at the time of disclosure. However, the Commission observes that Reliance was invited to reply to a questionnaire and to provide information regarding excess remission during the verification visit, as explained in recital (74). Thus, this claim was also rejected.

(76) Reliance noted that the Commission has not made available a verification report and claimed that the absence of this report prevented it to defend its interests properly regarding DDS considering that the Commission reversed the burden of proof in the quantification of the DDS benefit amount.

(77) As explained before, the Commission considers that the burden of showing that import duties were paid on raw materials incorporated into exported products upon which the GOI refunded those import duties allegedly paid lies upon the exporting producer. The Commission has the burden of calculating the amount of subsidisation on the basis of the information available. In this respect, the Commission notes that relevant elements used to establish the DDS subsidisation rate according to the method explained in recital (69) were verified on the basis of Reliance's questionnaire reply. The verification of DDS was carried out in parallel with the verification of MEIS as the two schemes are very similar. Several export invoices and their related documents were verified. This information is also available to Reliance in the form of mission exhibits. During the verification visit, the Commission found that there was a discrepancy between the value of the export goods submitted by Reliance under the DDS as compared to the value of export goods under MEIS. This discrepancy was explained by Reliance in one of the mission exhibits. Nevertheless, this discrepancy did not affect the calculation of the amount of subsidisation. No other discrepancy was spotted during the verification related to the documents submitted by Reliance in relation with DDS. Accordingly, all information necessary to exercise interested parties' rights of defence was communicated to interested parties, including to Reliance, at an early stage of the investigation. Therefore, the Commission considers that Reliance's rights of defence were properly respected during the underlying investigation. Recital (74) also demonstrates that the Commission did not reverse the burden of proof and on the contrary proactively gathered the information needed to calculate the DDS benefit amount. Therefore, the claim is rejected.

Dhunseri group

(78) As explained above, all involved economic operators have been treated according to the same rules after a careful assessment of their concrete factual situation was performed. IDIPL reiterated the claim that MPPL was charged and paid, during the RIP, a 'deemed customs duty' to their domestic supplier of PTA and MEG in accordance with their contractual arrangements. IDIPL claimed that the amount of 'deemed customs duty' should be deducted from the total DDS benefit. IDIPL further submitted that the 'deemed customs duty' mechanism is 'enacting a policy decision to pass downstream an import duty levied on the supplier of raw materials'.

(79) Regarding this claim, the Commission can confirm that the commercial contract between MPPL and its supplier mentions a 'deemed customs duty' component in the formula used to calculate the price of the raw materials. This however does not constitute in itself a proof that a customs duty was actually paid by the domestic supplier since this formula is the result of a commercial negotiation that does not necessarily take into account whether customs duties are actually paid. In this respect IDIPL did not provide any evidence that the raw materials they purchased were imported by their supplier and, in case they were imported, that customs duty was paid. For that reason the claim was rejected.

Government of India

(80) The GOI submitted that a DDS as contemplated in the ASCM need not necessarily provide remission/exemption/deferral on import charges paid on import inputs but may also provide remission on indirect taxes. On that basis the GOI claimed that the Commission had committed a fundamental error by characterising DDS as an impermissible duty drawback system based on the fact that it can be availed of even in the absence of payment of import duties.

(81) In this respect, the Commission noted that while the GOI makes a legal reasoning regarding remission of indirect taxes it does not provide any evidence that such indirect taxes were actually paid or payable on raw materials used in the production of exported PET by any interested party and that, in case they were paid, they were not refunded by another tax mechanism unrelated to DDS. In the course of the investigation, no interested party provided information involving indirect taxes in connection with DDS that would affect the level of excess remission although they were prompted to provide information enabling the calculation excess DDS remission on multiple occasions. Therefore the claim was rejected.

(82) The GOI further claims that DDS provides for a verification mechanism to monitor the consumption of inputs in the production of the exported product.

(83) In support of its claim the GOI refers to some provisions of the Drawback Rules and the Customs Manual according to which audits and verifications are conducted but it fails to demonstrate that the DDS scheme imposes a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts within the meaning of Annex II(4). Therefore the claim was rejected.

(84) It is also added that the absence of a verification system or procedure within the meaning of Annex II(4) had no bearing on the determination of the subsidy amounts as set out in recital (70) since the Commission calculated the excess remission on the basis of the information available from the investigated companies. The GOI claimed that the Commission had an obligation to be proactive for the calculation of the excess remission.

(85) Recital (74) demonstrates that the Commission was proactive in seeking information allowing determining whether part of the DDS amount was not excess remission. Moreover, even if invited to do so, the GOI failed to conduct a further examination on the basis of the actual transactions of the exporting producers concerned. Therefore the claim is irrelevant.

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

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

3.5.1. *Legal basis*

(87) The detailed description of EPCGS is contained in chapter 5 of FTP 2015-20 as well as in chapter 5 HOP I 2015-20.

3.5.2. *Eligibility*

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

3.5.3. *Practical implementation*

(89) Under the condition of an export obligation, a company is allowed to import capital goods (new and second-hand capital goods up to 10 years old) at a reduced duty rate. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. The scheme provides for a reduced import duty rate applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of goods deemed for export during a certain period. Under the FTP 2015-20 the capital goods can be imported with a 0 % duty rate under the EPCGS. The export obligation which amounts to six times the duty saved must be fulfilled within a period of maximum six years.

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

3.5.4. *Conclusion on EPCGS*

(91) The EPCGS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI since this concession decreases the GOI's duty revenue which would be otherwise due. In addition, it confers a benefit upon the exporter equal to the amount of the duty reduction.

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

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

3.5.5. *Calculation of the subsidy amount*

(94) The Commission calculated the subsidy amount in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the industry concerned. The subsidy amount for the review investigation period was then calculated by dividing the total amount of the unpaid customs duty with the depreciation period. The amount so calculated, which is attributable to the review investigation period, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the investigation period in India was considered appropriate for this purpose.

(95) None of the Indian exporting producers claimed deduction of fees incurred to obtain the subsidy from the total subsidy amount as they are entitled to in accordance with Article 7(1)(a).

(96) In accordance with Article 7(2) and 7(3) of the basic Regulation, the Commission allocated this subsidy amount over the export turnover of the product under review during the review investigation period as the denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported, or transported.

(97) Based on the above, the Commission established that the subsidy rates in respect of this scheme during the review investigation period amounted to 0,11 % for the Dhunseri group and 0,45 % for Reliance.

3.5.6. *Comments on disclosure*

(98) IDIPL argued that the plant and machines imported under EPCGS were used for production of both domestic and export sales of PET and therefore claimed that the denominator in recital (96) should be the total sales of the company instead of the export turnover of PET.

(99) In this respect, the Commission observes that, even if this unsupported assertion were to be correct, since EPCGS is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported, or transported, Article 7(2) is applicable and the denominator selected in recital (96) is justified. Therefore the claim was rejected.

3.6. **Merchandise Export from India Scheme (MEIS)**

(100) It was found that both concerned exporting producers received benefits under MEIS during the review investigation period.

3.6.1. *Legal basis*

(101) The detailed description of MEIS is contained in chapter 3 of FTP 2015-20 and in chapter 3 of HOP I 2015-20.

(102) MEIS came into force on 1 April 2015.

3.6.2. *Eligibility*

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

3.6.3. *Practical implementation*

(104) Eligible companies can benefit from MEIS by exporting specific products to specific countries which are categorised into Group A ('Traditional Markets' including all EU Member States), Group B ('Emerging and Focus Markets') and Group C ('Other Markets'). The countries falling under each group and the list of products with corresponding reward rates are specified in Table 1 and Table 2 respectively of Appendix 3B of FTP 2015-20.

(105) The benefit takes the form of a duty credit equivalent to a percentage of the FOB value of the export.

(106) At the time MEIS came into force in April 2015 the product under review was not included in Appendix 3B and was thus not eligible to MEIS benefits. On 29 October 2015 however, by Public Notice No 44/2015-2020, PET exports to Group A and B countries became eligible to a MEIS benefit amounting to 2 % of the FOB value of exports. By Public Notice No 06/2015-2020, exports to Group C countries became eligible to the same 2 % benefit on 4 May 2016.

(107) Certain types of exports are excluded from the scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units.

(108) The duty credits under MEIS are freely transferable and valid for a period of 18 months from the date of issue. They can be used for: (i) payment of custom duties on imports of inputs or goods including capital goods; (ii) payment of excise duties on domestic procurement of inputs or goods including capital goods and payment; (iii) payment of service tax on procurement of services.

(109) An application for claiming benefits under MEIS must be filed online on the Directorate-General of Foreign Trade website. Relevant documentation (shipping bills, bank realisation certificate and proof of landing) must be linked with the online application. The relevant Regional Authority ('RA') of the GOI issues the duty credit after scrutiny of the documents. As long as the exporter provides the relevant documentation, the RA has no discretion over the granting of the duty credits.

3.6.4. *Conclusion on MEIS*

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

(111) Furthermore, MEIS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

3.6.5. *Calculation of the subsidy amount*

(112) In accordance with Article 3(2) and Article 5 of the basic Regulation, the Commission calculated the amount of countervailable subsidies in terms of the benefit conferred on the recipient, which was found to exist during the review investigation period. In this regard, the Commission established that the benefit is conferred on the recipient at the time when an export transaction is made under this scheme. At this moment, the GOI issues a duty credit which is booked by the exporting producer as an account receivable which can be offset by the exporting producer at any moment. This constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill, the GOI has

no discretion as to whether or not to grant the subsidy. In the light of the above, the Commission considered appropriate to assess the benefit under the MEIS as being the sum of the amounts earned on export transactions made under this scheme during the review investigation period.

(113) In accordance with Article 7(2) and (3) of the basic Regulation, the Commission allocated this subsidy amount (numerator) over the export turnover of the product under review during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance, and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(114) Based on the above, the Commission established that the subsidy rates in respect of this scheme during the review investigation period amounted to respectively 1,90 % for the Dhunseri group and 1,93 % for Reliance.

3.6.6. *Comments on disclosure*

(115) The GOI claimed that MEIS is not countervailable for the following two reasons: (1) the scheme is in line with provisions of paragraph (g) and (h) of Annex I read with provisions of Annex II of the ASCM and (2) duty scrips are 'credit notes' that provide a benefit to the holder only at the time the scrip is used to offset import duties.

(116) As far as the first reason is concerned, the GOI did not put forward any evidence. the mere allegation that the basic objective of the MEIS is to provide assistance to exporters to offset infrastructural inefficiencies and associated costs/taxes involved and to provide level playing field is not sufficient to show that the MEIS is in line with provisions of paragraph (g) and (h) of Annex I read with provisions of Annex II of the ASCM. In respect of the second reason it is recalled that, as explained in recital (108), from the moment the GOI delivers a duty scrip to the MEIS beneficiary this duty scrip can be used at any moment to offset certain duties or taxes or resold to another operator since duty scrips are freely transferable. It is therefore considered that the GOI provides a benefit to the MEIS beneficiary at the moment the duty scrip is delivered. This also appears to be the interpretation adopted by the Indian accounting standards since the financial value of the scrips is booked as account receivable as soon as the scrips are delivered by the GOI, as explained in recital (112), and not at the time it is actually used to offset a duty or tax. Therefore the claim was rejected.

3.7. **Gujarat Electricity Duty Exemption Scheme (GEDES)**

(117) The Commission found that one company availed itself of this measure during the review investigation period. However, the investigation established that the benefit obtained was negligible, and this measure was thus not analysed further.

4. **AMOUNT OF COUNTERVAILABLE SUBSIDIES**

(118) The Commission recalls that the amount of subsidisation established for DPL and Reliance by Implementing Regulation (EU) 2015/1350 were respectively 3,2 % and 6,2 %, which translated into countervailing duties of respectively 35,69 EUR/tonne and 69,39 EUR/tonne.

(119) During the current partial interim reviews the Commission found the amount of countervailing subsidies, expressed *ad valorem*, to be 2,3 % for the Dhunseri group and 4 % for Reliance. As explained in recitals (27) to (30), the subsidy rates of the Dhunseri group reported in the table below were established by aggregating the data of IDIPL and MPPL, the two exporting producers of PET of the group during the review investigation period.

Table

Rates for the individual countervailed subsidies

	DDS	EPCGS	MEIS	Total
Dhunseri group: — Dhunseri Petrochem Limited — IVL Dhunseri Petrochem Industries Private Limited — Micro Polypet Pvt. Ltd	0,38 %	0,11 %	1,90 %	2,3 %
Reliance	1,67 %	0,45 %	1,93 %	4,0 %

(120) The countervailing measures currently in force take the form of a specific duty. Consequently, on the basis of the subsidy rates described in the table above, the Commission established the following specific countervailing duties: 18,73 EUR/tonne for Dhunseri group and 29,21 EUR/tonne for Reliance.

(121) In line with recital (16) above the Commission assessed the need to amend the rate of duty applicable to 'all other companies' in India which is 69,40 EUR/tonne. In this respect it is recalled that the highest duty in force against Indian exporting producers, amounting to 74,60 EUR/tonne, is imposed against Pearl Engineering Polymers Ltd, a producer which was not subject to the present reviews. As the highest duty is not amended in the present reviews, no amendment of the rate of duty applicable to 'all other companies' in India was warranted.

5. LASTING NATURE OF CHANGED CIRCUMSTANCES WITH REGARD TO SUBSIDISATION

(122) In accordance with Article 19(4) of the basic Regulation, it was examined whether circumstances with regard to subsidisation changed significantly during the review investigation period and whether the changed circumstances were of a lasting nature.

(123) The Commission established that, during the review investigation period, the exporting producers concerned continued to benefit from countervailable subsidisation by the GOI, albeit at different rates.

(124) As far as Reliance is concerned, the most important subsidies in terms of subsidisation rates during the review investigation period were DDS and MEIS. There is no indication that these subsidies will cease to exist in the foreseeable future. Both subsidies provide a benefit calculated as a fixed percentage of the FOB value of exports and there is no indication that the respective subsidy rates will be modified in the near future either.

(125) As far as DDS is concerned the subsidisation rate was reduced several times by the GOI over the last seven years: from 5,5 % of the FOB value in 2011 it went down to 3,9 % in 2012, 3,0 % in 2013, 2,4 % 2014, 1,9 % in 2015 and finally 1,5 % during the review investigation period. According to the website of the Central Board of Excise and Customs ([1]) the rate was not modified since then.

(126) As far as MEIS is concerned the rate of 2 % of the FOB value that became applicable to PET in October 2015 as explained in recital (106) has remained unchanged since then according to the website of the Directorate-General of Foreign Trade ([2]).

(127) Regarding EPCGS no significant change of subsidisation rate is expected after the review investigation period either because (a) there were no indications of important planned imports of capital goods; and (b) any benefit conferred under this subsidy is spread over a large number of years corresponding to the depreciation period of the capital goods (between 18 to 25 years in India).

(128) The AAS was Reliance's largest contributor of subsidisation during the last interim review mentioned in recital (7), as was concluded by Implementing Regulation (EU) 2015/1350. As described in recital (46) above, during the review investigation period of the current review the AAS was barely used as most exports benefitted from DDS, which is mutually exclusive with AAS. The AAS scheme remains available and it cannot be excluded that Reliance starts using AAS again in the future but this would automatically reduce the benefits obtained through DDS since any given export transaction can benefit from only one of the two subsidies.

(129) As set out in recitals (125) to (128) no evidence was found that the countervailed schemes will be discontinued or that their subsidisation levels will be either increased or decreased in the future. On this basis, is the Commission concluded that the circumstances that led to Reliance's new subsidisation rate are of a lasting nature.

(130) During the review investigation period of the current interim review Reliance benefitted from less subsidisation than during the last interim review mentioned in recital (7), as was concluded by Implementing Regulation (EU) 2015/1350, as the subsidy rates found decreased from 6,2 % to 4 %. On the basis of recital (129), it is also likely

([1]) The DDS rates are available at http://www.cbic.gov.in/htdocs-cbec/customs/dbk-schdule/dbk-idx (consulted on 4 June 2018).
([2]) The MEIS rates are available at http://dgftcom.nic.in/licasp/MEIS/meisitemdetail2016.asp under ITC code 3907 (consulted on 4 June 2018).

that Reliance will continue to receive subsidies of an amount less than determined in Implementing Regulation (EU) 2015/1350. The Commission therefore concluded that the continuation of the existing measures would result in a level of duty higher than the countervailable subsidy causing injury. Consequently, the level of the measures in force should be amended to reflect the new situation.

(131) As far as the Dhunseri group is concerned, the investigation established in recitals (27) to (30) that the structure of the group changed significantly. Most importantly the group owned two PET plants during the review investigation period as compared to a single one during the previous interim review. The re-organisation which was conducted in the context of an alliance with partner IVL involved several legal steps over a period of almost two years and, in all likelihood, reached its completion when it was sanctioned by the High Court of Kolkata in December 2017. The Commission hence considered that the change of structure was of a lasting nature. It was therefore concluded that the measures in force should be amended to reflect the new situation also in view of the previous conclusions on the current (and lower) level of subsidisation found in these reviews.

6. **FORM OF THE MEASURES**

(132) As explained in recital (120) the amended measures take the form of specific duties. The specific duty rates are calculated on the basis of data pertaining to the review investigation period and remain therefore at the same level regardless of the development of the export price.

(133) However, by contrast to the subsidies conferring the biggest amounts of subsidisation during the original investigation, the two main subsidy schemes (DDS and MEIS) during the review investigation period confer financial benefits that are directly proportional to the export price. Those two subsidies represented respectively 97 % and 89 % of the total subsidisation of the Dhunseri group and Reliance during the review investigation period. This implies that the amount of countervailable subsidies increases automatically in line with an increase in the export price. Therefore, specific duties do not seem to adequately offset the actual level of subsidisation that the two exporting producers benefited from.

(134) On this basis, the Commission considered that, in contrast to the original investigation, specific duties may no longer be the most appropriate form of measures considering these circumstances. A change in the form of the measures can however not be envisaged in the context of the current interim reviews because such a change would have to apply to all Indian exporting producers while the current interim reviews are limited in scope to the determination of the level of subsidisation of only two exporting producers. Therefore, the Commission decided to maintain the current form of the measures.

7. **PRICE UNDERTAKING OFFERS**

(135) Following the disclosure IDIPL submitted a price undertaking offer. The offer was rejected as the nature of subsidisation creates a situation where application of minimum import price undertaking would have led to increased subsidisation. This is because the level of subsidisation under DDS and MEIS, which jointly represent 95 % of the subsidisation, depends on the FOB value of products exported under these schemes. Furthermore the structure of the group to which IDIPL belongs would have made the effective monitoring of an undertaking impracticable.

(136) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

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

Country	Company	Countervailing duty (EUR/tonne)	TARIC additional code
‘India	Dhunseri Petrochem Limited	18,73	A585
India	IVL Dhunseri Petrochem Industries Private Limited	18,73	C380
India	Micro Polypet Pvt. Ltd	18,73	C381’

Article 2

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

Country	Company	Countervailing duty (EUR/tonne)	TARIC additional code
'India	Reliance Industries Limited	29,21	A181'

Article 3

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

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

Done at Brussels, 1 October 2018.

For the Commission

The President

Jean-Claude JUNCKER