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

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THE EUROPEAN COMMISSION,

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

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

Whereas:

1. **PROCEDURE**

1.1. **Measures in force**

(1) By Regulation (EC) No 2603/2000[(2)], the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate ('PET') originating, inter alia, in India. By Regulation (EC) No 1645/2005[(3)], the Council amended the level of countervailing measures in force against imports of PET from India. The amendments were a result of an accelerated review initiated pursuant to Article 20 of the Regulation (EC) No 597/2009. Following an expiry review, the Council by Regulation (EC) No 193/2007[(4)] imposed a definitive countervailing duty for a further period of five years. The countervailing measures were subsequently amended by Council Regulation (EC) No 1286/2008[(5)] and Council Implementing Regulation (EU) No 906/2011[(6)], following partial interim reviews. A later partial interim review was terminated without amending the measures in force by Council Implementing Regulation (EU) No 559/2012[(7)]. Following another expiry review, the Council by Implementing Regulation (EU) No 461/2013[(8)] imposed a definitive countervailing duty for a further period of five years. By Decision 2000/745/EC[(9)] the Commission accepted undertakings setting a minimum import price offered by three exporting producers in India. By Implementing Decision 2014/109/EU[(10)], the Commission withdrew the acceptance of the undertakings, due to a change in the circumstances under which the undertakings were accepted.

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

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2015/1350. (See end of Document for details)*

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

(3) Two requests for a partial interim review pursuant to Article 19 of the basic Regulation were lodged respectively by Dhunseri Petrochem & Tea Limited ('Dhunseri') and Reliance Industries Limited ('Reliance'), Indian exporting producers of PET ('the applicants'). The requests were limited in scope to the examination of the respective subsidisation as far as the applicants were concerned.

(4) The applicants provided prima facie evidence that the continued application of the measures at their current level was no longer necessary to offset the countervailable subsidisation. In particular, the applicants provided prima facie evidence showing that their respective subsidy amount has decreased well below the duty rates currently applicable to them.

(5) In the case of Dhunseri, this reduction in the overall subsidy level would be due to the termination of its Export Oriented Unit Status and to the decrease in import duties applicable to the raw materials used to manufacture the product concerned since the investigation that led to the current level of measures.

(6) In the case of Reliance, this reduction in the overall subsidy level would be due to the termination of applicability of the Duty Entitlement Passbook Scheme and the Status Holder Incentive Scrip Scheme and the reduction of amounts availed by the applicant with regard to other schemes, like the Focus Market Scheme, the Focus Product Scheme, the Advance Authorisation Scheme and the Export Promotion Capital Goods Scheme.

(7) Having determined that each request contained sufficient prima facie evidence, the Commission announced by two notices, on 6 June 2014[(11)] and on 1 August 2014[(12)] respectively, the initiation of partial interim reviews pursuant to Article 19 of the basic Regulation. The reviews were limited in their scope to the examination of subsidisation in respect of the individual applicants.

1.3. **Parties concerned by the investigation**

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

(9) Reliance requested and was granted a hearing.

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

(11) The Commission sought and verified all information deemed necessary for the determination of subsidisation. The Commission carried out verification visits at the premises of Dhunseri in Kolkata and of Reliance in Mumbai and at the premises of the

GOI in New Delhi (Directorate-General of Foreign Trade and Ministry of Commerce) and Kolkata (Commerce & Industries Department, Government of West Bengal).

1.4. **Review investigation period**

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

1.5. **Disclosure**

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

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. **Product concerned**

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

2.2. **Like product**

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

3. RESULTS OF THE INVESTIGATION

3.1. **Subsidisation**

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

Nationwide schemes:

(a) Advance Authorisation Scheme (AAS)

(b) Duty Drawback Scheme (DDS)

(c) Export Promotion Capital Goods Scheme (EPCGS)

(d) Focus Market Scheme (FMS)

(e) Focus Product Scheme (FPS)

(f) Incremental Exports Incentivisation Scheme (IEIS)

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2015/1350. (See end of Document for details)*

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

Regional schemes:

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

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

(i) Export oriented Units (EOU) and Special Economic Zones (SEZ) Scheme

(j) Duty Entitlement Passbook Scheme (DEPBS)

(k) Status Holders Incentive Scrip (SHIS)

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

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

(17) The schemes specified above under recital (16) (a), (c) to (f) and (i) to (k) are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Foreign Trade Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. The Foreign Trade Policy document relevant to the review investigation period is 'Foreign Trade Policy 2009-2014' ('FTP 09-14'). In addition, the GOI also sets out the procedures governing FTP 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 09-14'). The Handbook of Procedures is updated on a regular basis. On 1 April 2015, the Government of India published the new FTP for 2015-2020, terminating FMS and FPS.

(18) The scheme specified above under recital (16) (b) is based on section 75 of the Customs Act of 1962, on section 37 of the Central Excise Act of 1944, on sections 93A and 94 of the Financial Act of 1994 and on the Customs, Central Excise Duties and Service Tax Drawback Rules of 1995. Drawback rates are published on a regular basis.

(19) The scheme specified above under recital (16) (g) is based on the Income Tax Act of 1961 ('ITA'), which is amended by the yearly Finance Act.

(20) The scheme specified above under recital (16) (h) is administered by the Government of West Bengal and set out in Government of West Bengal Commerce & Industries Department notification No 580-CI/H of 22 June 1999.

(21) The scheme specified above under recital (16) (l) above is administered by the Government of Gujarat and is based on Gujarat's industrial incentive policy.

(22) The investigation revealed that the schemes specified above under recital (16) (i) to (l) have been either terminated or can no longer be availed by the applicants.

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

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

3.2.1. *Legal basis*

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

3.2.2. *Eligibility*

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

3.2.3. *Practical implementation*

(26) The AAS can be issued for:

(a) Physical exports	:	This is the main sub-scheme. It allows for duty-free import of input materials for the production of a specific resulting export product. 'Physical' in this context means that the export product has to leave the Indian territory. An import allowance and export obligation including the type of export product are specified in the licence;
(b) Annual requirement	:	Such an authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The licence holder can — up to a certain value threshold set by its past export performance — import duty-free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resulting product falling under the product group using such duty-exempt material;
(c) Intermediate supplies	:	This sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter who produces the intermediate product can import duty-free input materials and can obtain for this purpose an AAS for intermediate supplies. The ultimate exporter finalises