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

COUNCIL IMPLEMENTING REGULATION (EU) No 906/2011

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THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Whereas:

1. **PROCEDURE**

1.1. **Previous investigation and existing countervailing measures**

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

1.2. **Existing anti-dumping measures**

(2) By Regulation (EC) No 2604/2000[(5)], the Council imposed a definitive anti-dumping duty on imports of PET originating, inter alia, in India (the original anti-dumping investigation). Following an expiry review, the Council, by Regulation (EC) No 192/2007[(6)], imposed a definitive anti-dumping duty for a further period of 5 years. The anti-dumping measures were amended by Council Regulation (EC) No 1286/2008

following the last review investigation. The measures were set at the level of the injury elimination and consisted of specific anti-dumping duties. The rate of the duty ranged between EUR 87,5 and EUR 200,9 per tonne for individually named Indian producers with a residual duty rate of EUR 153,6 per tonne imposed on imports from other producers (the current anti-dumping measures).

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

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

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

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

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

1.4. **Parties concerned by the investigation**

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

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

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

(10) The Commission sought and verified all information deemed necessary for the determination of subsidisation. The Commission carried out verification visits at

the premises of the applicant in Mumbai, India and at the premises of the GOI in New Delhi (Directorate General of Foreign Trade and Ministry of Commerce) and Mumbai (Regional Office of the Directorate General of Foreign Trade).

1.5. **Review investigation period**

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

1.6. **Parallel anti-dumping investigation**

(12) On 10 June 2010[9] the Commission announced the initiation of a partial interim review of the current anti-dumping measures pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009[10] (the basic anti-dumping Regulation), limited in scope to the examination of dumping in respect of the applicant.

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

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. **Product concerned**

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

2.2. **Like product**

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

3. RESULTS OF THE INVESTIGATION

3.1. **Subsidisation**

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

Nationwide schemes:

(a) Advance Authorisation Scheme (AAS);

(b) Duty Entitlement Passbook Scheme (DEPBS);

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 906/2011. (See end of Document for details)*

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

(d) Focus Market Scheme (FMS);

(e) Focus Product Scheme (FPS);

(f) Income Tax Exemption Scheme (ITES).

Regional schemes:

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

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

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

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

3.1.1. *Advance Authorisation Scheme (AAS)*

(a) Legal basis

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

(b) Eligibility

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

(c) Practical implementation

(22) Advance Authorisations can be issued for:

(i) physical exports	:	this is the main sub-scheme. It allows for the duty-free import of input materials for the production of a specific resultant export product. 'Physical' in this context means that the export product has to leave Indian territory. An import allowance and export obligation including the type of export product are specified in the authorisation;
(ii) annual requirement	:	such an authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The authorisation holder can — up to a certain value threshold set by its past export performance — import free of duty any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resultant product falling under the product group using such duty-exempt material;
(iii) intermediate supplies	:	this sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter who produces the intermediate product can import duty-free input materials and can obtain for this purpose an AAS for intermediate supplies. The ultimate exporter finalises the production and is obliged to export the finished product;
(iv) deemed exports	:	this sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of FTP 04-09 and FTP 09-14. According to the GOI, deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an EOU or to a company situated in a special economic zone;
(v) ARO	:	the AAS holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases, the Advance Authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of FTP 04-09 and FTP 09-14 (i.e. AAS for intermediate supplies/deemed export,