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

COUNCIL REGULATION (EC) No 1286/2008

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

I. PREVIOUS INVESTIGATION AND EXISTING MEASURES

(1) On 30 November 2000, by Regulation (EC) No 2603/2000[(2)], the Council imposed definitive countervailing duties on imports of certain polyethylene terephthalate (PET) originating in, *inter alia*, India (the country concerned) (the original investigation).

(2) Following an expiry review, the Council, by Regulation (EC) No 193/2007[(3)], imposed a definitive countervailing duty on imports of certain polyethylene terephthalate, originating in India (the anti-subsidy Regulation) for a further period of five years. The product concerned falls within the CN code 3907 60 20. The rate of the fixed duty ranges between 0 and 106,5 EUR/tonne for individually named exporters with a residual duty rate of 41,3 EUR/tonne imposed on imports from other exporters.

(3) Furthermore, by Regulation (EC) 192/2007[(4)], the Council imposed a definitive anti-dumping duty on the same product originating in India (the anti-dumping Regulation). Under this Regulation the rate of the fixed duty ranges between 88,9 and 200,9 EUR/tonne for individually named exporters with a residual duty rate of 181,7 EUR/tonne imposed on imports from other exporters.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1286/2008. (See end of Document for details)*

(4) In line with the principle that no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation, the level of anti-dumping duties in the anti-dumping Regulation takes into account the amount of countervailing duty imposed by the anti-subsidy Regulation, in accordance with Article 14(1) of the basic Regulation.

II. INITIATION OF A PARTIAL INTERIM REVIEW

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

(6) The Commission examined the evidence submitted by the GOI and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 19 of the basic Regulation, limited to the level subsidisation imports of certain polyethylene terephthalate, originating in India. After consultation of the Advisory Committee, the Commission initiated, by a notice published in the *Official Journal of the European Union*[5] ('the Notice of Initiation'), an *ex officio* partial interim review of Regulation (EC) No 193/2007.

(7) The purpose of the partial interim review investigation is to assess the need for the continuation, removal or amendment of the existing measures in respect of those companies which benefited from one or both the changed subsidy schemes, where sufficient evidence was provided in line with the relevant provisions of the Notice of Initiation. The partial interim review investigation would also assess the need, depending on the review findings, to revise the measures applicable to other companies that cooperated in the investigation that set the level of the existing measures and/or the residual measure applicable for all other companies.

III. INVESTIGATION PERIOD

(8) The investigation covered the period from 1 April 2006 to 31 March 2007 (the review investigation period or RIP).

IV. PARTIES CONCERNED BY THE INVESTIGATION

(9) The Commission officially informed the GOI and those Indian exporting producers who cooperated in the previous investigation, were mentioned under Regulation (EC) No 193/2007 as benefiting from any of the two allegedly changed subsidy schemes and that were listed in the Annex to the Notice of Initiation, as well as the Community producers, of the initiation of the partial interim review investigation. Interested parties had the opportunity to make their views known in writing and

to request a hearing. The written and oral comments submitted by the parties were considered and, where appropriate, taken into account.

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

(11) Two exporting producers made themselves known and provided the information requested for sampling. Therefore, the use of sampling techniques was not considered necessary. One of the two exporting producers that had submitted a sampling form did however later notify the Commission that it did not intend to complete a full questionnaire and provide the data necessary for the purpose of the investigation.

(12) The Commission therefore sent and obtained a reply to the questionnaire from only one producer which was eligible for this review, namely Pearl Engineering Polymers Ltd (the company). A questionnaire was also addressed to the GOI. Replies were received from both the company and the GOI.

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

1. Government of India

   Ministry of Commerce, New Delhi.

2. Exporting producers in India

   Pearl Engineering Polymers Ltd, New Delhi.

V. DISCLOSURE AND COMMENTS ON PROCEDURE

(14) The GOI and the other interested parties were informed of the essential facts and considerations upon which it was intended to propose to amend the duty rate applicable to the sole cooperating Indian producer and to the non-cooperating exporting producer also mentioned in the Annex to the Notice of Initiation as well as the intention to maintain existing measures for all other companies which did not cooperate with this partial interim review. They were also given a reasonable time to comment. All submissions and comments were taken duly into consideration as set out below.

B. PRODUCT CONCERNED

(15) The product covered by this review is the same product as the one concerned by Regulation (EC) No 193/2007, i.e. PET with a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, originating in the country concerned. It is currently classifiable within CN code 3907 60 20.

C. SUBSIDIES

I. INTRODUCTION

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1286/2008. (See end of Document for details)*

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

(a) Advance Authorisation Scheme (formerly known as Advance Licence Scheme) (AAS);

(b) Duty Entitlement Passbook Scheme (DEPS);

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

(d) Income Tax Exemption Scheme (ITES);

(e) Focus Market Scheme (FMS);

(f) Target Plus Scheme (TPS).

(17) The schemes (a) (b) (c) (e) and (f) 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 'Export and Import Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. One Export and Import Policy document is relevant to the RIP of this case, i.e. the five-year plan relating to the period 1 September 2004 to 31 March 2009 (EXIM-policy 04-09). In addition, the GOI also sets out the procedures governing the EXIM-policy 04-09 in a 'Handbook of Procedures – 1 September 2004 to 31 March 2009, Volume I' (HOP I 04-09). The Handbook of Procedure is also updated on a regular basis.

(18) The Income Tax Schemes specified above under (d) are based on the Income Tax Act of 1961, which is amended yearly by the Finance Act.

(19) In accordance with Article 11(10) of the basic Regulation, the Commission invited the GOI for additional consultations with respect to both changed and unchanged schemes with the aim of clarifying the factual situation as regards the alleged schemes and arriving at a mutually agreed solution. Following these consultations, and in the absence of a mutually agreed solution in relation to these schemes, the Commission included all these schemes in the investigation of subsidisation.

(20) One interested party, representing Community industry alleged that a number of other schemes and subsidies continued to be available to Indian exporters. However, no definite evidence has emerged from the information showing that these schemes were used by the cooperating exporting producer. Therefore these matters have not been pursued further for the purpose of this specific proceeding.

II. SPECIFIC SCHEMES

1. Advance Authorisation Scheme (AAS)

(a) Legal basis

(21) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the EXIM-policy 04-09 and chapters 4.1 to 4.30 of the HOP I 04-09. This scheme was called Advance Licence Scheme during the previous review investigation that led to the imposition by Regulation (EC) No 193/2007 of the definitive countervailing duty currently in force.

(b) Eligibility

(22) The AAS consists of six sub-schemes, as described in more detail in recital 23. Those sub-schemes differ, *inter alia*, in the scope of eligibility. Manufacturer-exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement. Manufacturer-exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the EXIM-policy 04-09, such as suppliers of an export oriented unit (EOU), are eligible for AAS deemed export. 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

(23) Advance authorisations can be issued for:

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

(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 licence holder can — up to a certain value threshold set by its past export performance — import duty free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resultant product falling under the product group using such duty-exempt material;

(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 free of duty inputs which are required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of the EXIM-policy 04-09. According to the GOI, deemed