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## COMMISSION IMPLEMENTING DECISION

of 29.4.2019

**concerning an application for a refund of countervailing duties paid on imports of certain polyethylene terephthalate originating in India (only the French, German and Dutch texts are authentic)**

*"This is the non-confidential version of the Commission Implementing Decision C(2019)3083 of 29 April 2019. The Decision has been expunged of data pursuant to Article 4(2) of Regulation (EC) 1049/2001. The information withheld under Article 4(2) first indent concerns the identity of the undertaking that is the addressee of the Commission Decision and other commercially sensitive details. The disclosure of this information could confer an undue advantage to its competitors which could exploit this information to the detriment of the undertaking concerned, thereby undermining its commercial interests."*

# COMMISSION IMPLEMENTING DECISION

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**concerning an application for a refund of countervailing duties paid on imports of certain polyethylene terephthalate originating in India (only the French, German and Dutch texts are authentic)**

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<sup>1</sup> ('the basic Regulation'), and in particular Article 21 thereof,

After informing the Member States,

Whereas:

## A. PROCEDURE

### Measures in force

- (1) By Implementing Regulation (EU) No 461/2013<sup>2</sup>, the Council imposed a definitive countervailing duty following an expiry review pursuant to Article 18 of the basic Regulation.
- (2) By Implementing Regulation (EU) 2015/1350<sup>3</sup>, the Commission amended the countervailing measures, following two partial interim reviews pursuant to Article 19 of the basic Regulation.
- (3) By Decision 2000/745/EC<sup>4</sup>, the Commission accepted a minimum import price offered by three exporting producers in India. By Implementing Decision 2014/109/EU<sup>5</sup>, the Commission withdrew the acceptance of the undertakings, due to a change in the circumstances under which the undertakings were accepted.

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<sup>1</sup> OJ L 176, 30.6.2016, p. 55.

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 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).

<sup>5</sup> 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) By Implementing Regulation (EU) 2018/1468<sup>6</sup>, the Commission last amended the countervailing measures, following two partial interim reviews pursuant to Article 19 of the basic Regulation.
- (5) The measures currently in force are a definitive countervailing duty imposed by Regulation (EU) No 461/2013, as amended by Implementing Regulation (EU) 2018/1468 ('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.

### **Refund application**

- (6) Between 30 September 2016 and 29 March 2017, *[omissis]* ('the applicant'), a Swiss importer, submitted via the Belgian authorities an application for refund of countervailing duties pursuant to Article 21 of the basic Regulation. The application related to duties paid on imports of certain polyethylene terephthalate (PET) originating in India and subject to individual duty rate of *[omissis]*.
- (7) The total amount of countervailing duties for which a refund is claimed was *[omissis]*. The countervailing duties were levied by the customs authorities between on 12 April 2016 and 24 November 2016. The transactions for which a refund was claimed were invoiced between 3 August 2015 and 12 September 2016 by *[omissis]*, an Indian exporting producer.

### **Refund investigation period**

- (8) On 24 May 2014, the Commission published Commission Notice (2014/C 164/09) concerning the reimbursement of anti-dumping duties ('the Commission Notice')<sup>7</sup>. This Notice is applied by analogy in this investigation where applicable, such as the treatment of recurring applications, use of review findings and extrapolation.
- (9) Given that the refund application was recurrent and on-going and in compliance with point 3.6 of the Commission Notice, the Commission established separate refund investigation periods within which to calculate new amounts of subsidisation. Therefore, the following two refund investigation periods were used: from 1 October 2015 to 31 March 2016 ('first refund investigation period') and from 1 April 2016 to 31 March 2017 ('second refund investigation period').
- (10) *[omissis]*
- (11) *[omissis]*
- (12) One purchasing invoice which included four transactions for which a refund was claimed, was issued by the exporting producer outside the refund periods investigated, namely in August 2015 and thus shortly before the first refund investigation period. For purpose of administrative efficiency and in accordance with point 4.1(d) of the Commission Notice, the Commission extrapolated the findings of the first refund investigation period and applied them to those transactions since the amount of countervailing duties paid relating to the purchase invoice issued in August 2015 was relatively small in the context of the entire refund application.

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<sup>6</sup> 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 (OJ L 246, 2.10.2018, p. 3).

<sup>7</sup> OJ C 164, 29.5.2014, p. 9.

## **B. ARGUMENTS OF THE APPLICANT**

- (13) The applicant claimed that the amount of countervailable subsidies, on the basis of which duties were paid, had been eliminated or reduced below the level of the duty in force at the time and therefore requested the countervailing duties paid to be reimbursed.

## **C. ADMISSIBILITY**

- (14) The application relating to the request referred to in recitals (6) and (7) is admissible. It was introduced in conformity with Article 21 of the basic Regulation, notably in respect of time limits and evidence provided and contained information on the amount of refund of countervailing duties claimed.
- (15) However, the amount of the countervailing duties sought for refund was recalculated and amended after the correction of a clerical error made by the applicant and therefore the total amount of duties which could potentially be refunded is *[omissis]*. The Commission informed the applicant accordingly and provided it with further details on the amendments of the admissible amount.
- (16) The application was considered to have been duly supported by evidence as of 27 November 2017, the date on which the exporting producer submitted full evidence on subsidisation.

## **D. MERITS OF THE APPLICATION**

- (17) In order to obtain the information deemed necessary for its investigation, the Commission sent questionnaires to *[omissis]* and received a reply within the deadlines set for that purpose.
- (18) *[omissis]* was also given the opportunity to make their views known in writing and to request a hearing within the time limits set.
- (19) The Commission sought and verified all the information deemed necessary to determine the exporting producer's subsidy rate. A verification visit was carried out at the premises of *[omissis]* in India during the period 29 November to 5 December 2017.
- (20) During the first and second refund investigation period the Commission found that the exporting producer used the following schemes: the Advance Authorisation Scheme (AAS), the "Duty Drawback Scheme" under Rule 3(2) (DDS), the Export Promotion Capital Goods Scheme (EPCGS), the Gujarat Electricity Duty Exemption Scheme (GEDES) and the Merchandise Export from India Scheme (MEIS).
- (21) AAS, EPCGS and MEIS 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 Government of India ('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.
- (22) AAS, EPCGS, and MEIS are based on the Foreign Trade Policy 2015-2020 ('FTP 2015-20') which is relevant to the first and second refund investigation periods. In addition, the GOI also sets out the procedures governing FTP 2015-20 in a 'Handbook of Procedures, Volume I' ('HOP I 2015-20'). That handbook is updated on a regular basis.

(23) DDS 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.

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

1. Advance Authorisation Scheme (AAS)

(25) The Commission found that *[omissis]* availed itself of this measure during the first and second refund investigation period respectively for a very small number of export transactions. Indeed, *[omissis]* used DDS, covered in section 2, 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 first and second refund investigation period respectively and decided not to quantify the benefit obtained under AAS in the refund investigation at hand.

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

(26) The Commission established that *[omissis]* used DDS during the first and second refund investigation periods.

2.1. Legal basis

(27) The legal basis applicable during the first and second refund investigation periods was the Custom & Central Excise Duties Drawback Rules 1995 ('the 1995 DDS Rules'), as last amended in 2006<sup>8</sup>. After the second refund investigation period this legal basis was replaced by Customs and Central Excise Duties Drawback Rules, 2017<sup>9</sup> ('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.

(28) In addition, Circular No 24/2001<sup>10</sup> contains specific instructions how to implement Rule 3(2) and the Declaration that exporters need to produce under Rule 12(1)(a)(ii).

(29) Rule 4 of the 1995 DDS Rules stipulates that the Central Government may revise amount or rates determined under rule 3. The Government made a number of modifications, the latest ones relevant during the refund investigation period which revised the rates are Notifications No 110/2015 - CUSTOMS (N.T.) of 16 November 2015<sup>11</sup> and Notifications No 131/2016 - CUSTOMS (N.T.) of 31 October 2016<sup>12</sup>. As a

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<sup>8</sup> <http://www.cbic.gov.in/htdocs-cbec/customs/cs-act/formatted-htmls/cs-rulee> (accessed on 13 July 2018).

<sup>9</sup> [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> (accessed on 13 July 2018).

<sup>10</sup> 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.

<sup>11</sup> 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

result, for PET during the first and second refund investigation periods the rate was 2.4% of the FOB value until 23 November 2015, 1.9% until 14 November 2016 and 1.5% thereafter.

## 2.2. Eligibility

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

## 2.3. Practical implementation

(31) 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;*
- (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.’*

(32) 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.

(33) 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 PET during the first and second refund investigation period the

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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-schedule/dbk-sch2015.pdf>.

<sup>12</sup> 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-schedule/dbk-sch2016.pdf>.

rate was 2.4% of the FOB value until 23 November 2015, 1.9% until 14 November 2016 and 1.5% thereafter as explained in recital (29) above.

- (34) 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 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.
- (35) 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.
- (36) 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.
- (37) 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<sup>13</sup>. 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. The investigation has also shown that in practice this has been the case for the exporting producer which did avail itself of the benefits under DDS despite not having imported one single unit of the main raw materials (PTA and MEG) used for the production of PET.

#### 2.4. Conclusion on DDS

- (38) 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.
- (39) 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

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<sup>13</sup> 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>; in particular Sections 2 and 3 of the Declaration under Rule 12(1)(a)(ii) of Drawback Rule for availing AIR of Drawback.

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.

(40) 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.

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

#### 2.5. Calculation of the subsidy amount

(42) 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 first and second refund investigation periods. 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 case of the exporting producer, as mentioned in recital (37), the Commission concluded during the on-the-spot verification that *[omissis]* had benefited from the DDS even if it had not imported any of the two relevant raw materials (MEG and PTA) during the refund investigation period. 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 first refund investigation period.

(43) In accordance with Article 7(2) of the basic Regulation, the Commission allocated these subsidy amounts over the total export turnover of PET during the first and second refund investigation periods respectively 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.

(44) The investigation established that the subsidy rates for *[omissis]* in respect of DDS during the first and second refund investigation period amounted to 1.95% and 1.67%, respectively.

### 3. Export Promotion Capital Goods Scheme (EPCGS)

(45) The Commission established that *[omissis]* received concessions under EPCGS, which could be allocated to PET in the first and second refund investigation period respectively.

#### 3.1. Legal basis

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

#### 3.2. Eligibility

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

#### 3.3. Practical implementation



- (48) 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 EPCGS. The export obligation which amounts to six times the duty saved must be fulfilled within a period of maximum six years.
- (49) The EPCGS licence holder can also source the capital goods indigenously. In that 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.

#### 3.4. Conclusion on EPCGS

- (50) 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.
- (51) Furthermore, the EPCGS is contingent in law upon export performance, since those 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.
- (52) The 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. Calculation of the subsidy amount

- (53) 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 first and second refund investigation periods 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 first and second refund investigation period respectively, 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 first and second refund investigation period respectively in India was considered appropriate for this purpose.
- (54) *[omissis]* did not claim 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).
- (55) In accordance with Article 7(2) and 7(3) of the basic Regulation, the Commission allocated this subsidy amount over the export turnover of PET during the first and second refund investigation period respectively 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.

(56) Based on the above, the Commission established that the subsidy rates for *[omissis]* in respect of this scheme during the first and second refund investigation period amounted to 0.51% and 0.45%, respectively.

#### 4. Merchandise Export from India Scheme (MEIS)

(57) It was found that *[omissis]* received benefits under MEIS during the first and second refund investigation periods.

##### 4.1. Legal basis

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

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

##### 4.2. Eligibility

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

##### 4.3. Practical implementation

(61) 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.

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

(63) When MEIS came into force in April 2015 PET was not included in Appendix 3B and was thus not eligible for MEIS benefits. On 29 October 2015 however, by Public Notice No 44/2015-2020, PET exports to Group A and B countries became eligible for 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 for the same 2 % benefit on 4 May 2016.

(64) 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.

(65) 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.

(66) 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.

##### 4.4. Conclusion on MEIS

(67) 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.

- (68) 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.

#### 4.5. Calculation of the subsidy amount

- (69) 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 first and second refund investigation period respectively. 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 MEIS as being the sum of the amounts earned on export transactions made under this scheme during the first and second refund investigation period respectively.

- (70) In accordance with Article 7(2) and (3) of the basic Regulation, the Commission allocated this subsidy amount (numerator) over the export turnover of PET during the first and second refund investigation period respectively 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.

- (71) Based on the above, the Commission established that the subsidy rates for *[omissis]* in respect of this scheme during the first and second refund investigation periods amounted to 1.61% and 1.93%, respectively.

#### 5. Gujarat Electricity Duty Exemption Scheme (GEDES)

- (72) The Commission found that *[omissis]* availed itself of this measure during the first and second refund investigation periods. However, the investigation established that the benefit obtained was negligible, and this measure was thus not analysed further.

#### 6. Total Amount of Countervailable Subsidies

- (73) The total countervailable subsidies established for *[omissis]* during both the first and second refund investigation periods amounted to 4.0%.

- (74) The Commission recalls that the countervailing measures imposed on imports of PET from India, which are currently in force, take the form of a specific duty. The specific countervailing duty calculated by the Commission is *[omissis]* during the first refund investigation period and *[omissis]* during the second refund investigation period.

### E. REFUND CALCULATION

- (75) For the transactions invoiced during the first refund investigation period, the amount of countervailable subsidies *[omissis]* was lower than the level of the duty applied for the same period *[omissis]*. Accordingly, the application for refund is accepted for

these transactions and the refundable amount corresponds to the difference *[omissis]*. As indicated in recital (12), the findings of the first refund investigation period are extrapolated and applied to the transactions falling outside the period investigated. Therefore, the amount to be refunded for the first refund investigation period corresponds to *[omissis]*.

- (76) For the transactions invoiced during the second refund investigation period, the amount of countervailable subsidies *[omissis]* was lower than the level of the duty applied for the same period *[omissis]*. Accordingly, the application for refund is accepted for these transactions and the refundable amount corresponds to the difference *[omissis]*. Therefore, the amount to be refunded for the second refund investigation period corresponds to *[omissis]*.
- (77) The total amount to be refunded to the applicant is therefore *[omissis]*.

#### **F. DISCLOSURE**

- (78) On 6 February 2019 a disclosure of the above findings on the basis of which it was intended to propose to adopt a Commission Decision granting a partial refund was sent to the applicant. No comments were received.

#### **G. CONCLUSION**

- (79) On the basis of the findings of the present investigation, it is concluded that a comparison between the countervailing duties established during both refund investigation periods and the countervailing duties in force shows that a refund should be granted for an amount of *[omissis]*, whilst the application should be rejected in respect of the remaining *[omissis]*.
- (80) The applicant is hereby informed that it has the right under Article 263(4) of the Treaty of the Functioning of the European Union to bring an action before the Court of Justice within two months of the notification of this Decision,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The refund application submitted by *[omissis]* in respect of countervailing duties paid on imports of certain polyethylene terephthalate originating in India is partially granted in the amount of *[omissis]*.

#### *Article 2*

This Decision is addressed to *[omissis]*, Switzerland and to the Kingdom of Belgium.

Done at Brussels, 29.4.2019

*For the Commission*  
*Cecilia MALMSTRÖM*  
*Member of the Commission*

