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II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 579/2010

of 29 June 2010

amending Regulation (EC) No 367/2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India

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 Article 19 thereof,

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

Whereas:

A. PROCEDURE

I. Previous investigation and existing countervailing measures

- (1) In December 1999, by Regulation (EC) No 2597/1999 ⁽²⁾, the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) film ('the product concerned') currently falling within CN codes ex 3920 62 19 and ex 3920 62 90, originating in India. The investigation which led to the adoption of that Regulation is hereinafter referred to as the 'original investigation'. The measures took the form of an *ad valorem* countervailing duty, ranging between 3,8 % and 19,1 % imposed on imports from individually named exporters, with a residual duty rate of 19,1 % imposed on imports of the product concerned from all other companies. The investigation period of the original investigation was 1 October 1997 to 30 September 1998.
- (2) In March 2006, by Regulation (EC) No 367/2006 ⁽³⁾, the Council, following an expiry review pursuant to Article 18 of the basic Regulation, maintained the

definitive countervailing duty imposed by Regulation (EC) No 2597/1999 on imports of PET film originating in India. The review investigation period was 1 October 2003 to 30 September 2004.

- (3) In August 2006, by Regulation (EC) No 1288/2006 ⁽⁴⁾, the Council, following an interim review concerning the subsidisation of an Indian PET film producer, Garware Polyester Limited ('Garware'), amended the definitive countervailing duty imposed on Garware by Regulation (EC) No 367/2006.

- (4) In September 2007, by Regulation (EC) No 1124/2007 ⁽⁵⁾, the Council, following a partial interim review concerning the subsidisation of another Indian PET film producer, Jindal Poly Films Limited ('Jindal'), formerly known as Jindal Polyester Ltd, amended the definitive countervailing duty imposed on Jindal by Regulation (EC) No 367/2006.

- (5) In January 2009, by Regulation (EC) No 15/2009 ⁽⁶⁾, the Council, following a partial interim review initiated by the Commission on its own initiative concerning the subsidisation of five Indian PET film producers, amended the definitive countervailing duty imposed on these companies by Regulation (EC) No 367/2006.

II. Existing anti-dumping measures

- (6) It should be noted that Jindal Poly Films Limited is subject to an anti-dumping duty of 0 % ⁽⁷⁾.

III. Initiation of a partial interim review

- (7) The request for a partial interim review was lodged by Jindal Poly Films Limited, an exporting producer from India ('the applicant'). The request is limited in scope

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ OJ L 316, 10.12.1999, p. 1.

⁽³⁾ OJ L 68, 8.3.2006, p. 15.

⁽⁴⁾ OJ L 236, 31.8.2006, p. 1.

⁽⁵⁾ OJ L 255, 29.9.2007, p. 1.

⁽⁶⁾ OJ L 6, 10.1.2009, p. 1.

⁽⁷⁾ OJ L 288, 6.11.2007, p. 1.

to the examination of subsidisation as far as the applicant is concerned. The applicant has provided *prima facie* evidence that the circumstances with regard to subsidisation on the basis of which measures were established have changed significantly and that these changes are of a lasting nature.

- (8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced on 9 September 2009, by a notice of initiation published in the *Official Journal of the European Union* ⁽¹⁾ ('Notice of Initiation'), the initiation of a partial interim review, in accordance with Article 19 of the basic Regulation, limited to the level of subsidisation to the applicant, with a view to determining whether the measures should be removed or amended for the applicant,
- (9) The partial interim review investigation would also assess the need, depending on the review findings, to amend the rate of duty currently applicable to imports of the product concerned from exporting producers in the country concerned not individually mentioned in Article 1(2) of Regulation (EC) No 367/2006, i.e. the duty rate as applying to 'all other companies' in India.

IV. Investigation period

- (10) The investigation of the level of subsidisation covered the period from 1 April 2008 to 31 March 2009 ('review investigation period' or 'RIP').

V. Parties concerned by the investigation

- (11) The Commission officially informed the applicant, the Government of India (GOI), Du Pont Tejin Films, Luxembourg, Mitsubishi Polyester Film, Germany, Toray Plastics Europe, France and Nurell, Italy, which represent a major proportion of Union PET film production (hereinafter 'the Union industry'), of the initiation of the partial interim review investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of Initiation.
- (12) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (13) The written and oral comments submitted by the parties were considered and, where appropriate, taken into account.
- (14) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the applicant. In addition, a questionnaire was sent to the GOI.

- (15) Replies from the questionnaire were received from the applicant and from the GOI.
- (16) 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 applicant and at the premises of the GOI in Delhi.

VI. Disclosure and comments on procedure

- (17) 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 applicant. They were given a reasonable time to comment. All submissions and comments were taken duly into consideration as set out below.

B. PRODUCT CONCERNED

- (18) The product covered by this review is the same product as the one concerned by Regulation (EC) No 367/2006, namely polyethylene terephthalate (PET) film falling within CN codes ex 3920 62 19 and ex 3920 62 90 originating in India.

C. SUBSIDISATION

1. Introduction

Nationwide Schemes

- (19) On the basis of the information submitted by the GOI and the other interested parties and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:
- (a) Advance Authorization Scheme (formerly known as Advance Licence Scheme);
- (b) Duty Entitlement Passbook Scheme;
- (c) Export Promotion Capital Goods Scheme;
- (d) Export Credit Scheme.

Regional Schemes

- (e) Package Scheme of Incentives (PSI)
- (20) The schemes (a) to (c) 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

⁽¹⁾ OJ C 215, 9.9.2009, p. 17.

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.

- (21) The Export Credit Scheme specified above under (d) 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.
- (22) The scheme specified above under (e) is managed by State authorities in India.

2. Advance Authorisation Scheme ('AAS')

(a) Legal basis

- (23) 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 367/2006 of the definitive countervailing duty currently in force.

(b) Eligibility

- (24) The AAS consists of six sub-schemes, as described in more detail in recital (25) below. 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

- (25) 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 resulting 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 resulting 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 the EXIM policy 04-09. 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 ('SEZ');
- (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 the EXIM-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs;

- (vi) *Back to back inland letter of credit*: This sub-scheme again covers indigenous supplies to an Advance Authorisation holder. The holder of an Advance Authorisation can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The authorisation will be invalidated by the bank for direct import only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to deemed export benefits as set out in paragraph 8.3 of the EXIM-policy 04-09 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).
- (26) The applicant received concessions under the AAS linked to the product concerned during the RIP. The applicant made use of two of the sub-schemes, i.e. (i) AAS physical exports and (ii) AAS for deemed exports. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.
- (27) For verification purposes by the Indian authorities, an Advance Authorisation holder is legally obliged to maintain 'a true and proper account of consumption and utilisation of duty free imported/domestically procured goods' in a specified format (chapters 4.26, 4.30 and Appendix 23 HOP I 04-09), i.e. an actual consumption register. This register has to be verified by an external chartered accountant/cost and works accountant who issues a certificate stating that the prescribed registers and relevant records have been examined and the information furnished under Appendix 23 is true and correct in all respects. Nevertheless, the aforesaid provisions apply only to Advance Authorisations issued on or after 13 May 2005. For all Advance Authorisations or Advance Licences issued before that date, holders are requested to follow the previously applicable verification provisions, i.e. to keep a true and proper account of licence-wise consumption and utilisation of imported goods in the specified format of Appendix 18 (chapter 4.30 and Appendix 18 HOP I 02-07).
- (28) With regard to the sub-schemes used during the RIP by the applicant, i.e. physical exports and deemed exports, both the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the Authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the Authorisation. The volume of imports allowed under the AAS is determined by the GOI on the basis of standard input-output norms ('SIONs'). SIONs exist for most products including the product concerned and are published in the HOP II 04-09. The most recent changes in the SIONs for PET film and PET chips, an intermediate product, were revised in September 2005.
- (29) Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (24 months with two possible extensions of 6 months each).
- (30) The scheme as described above has not changed since the last partial interim review concerning subsidisation for the applicant which was concluded in January 2009. However, the benefit under this scheme has substantially decreased as shown in recital (39) below.
- (31) The current interim review investigation established that the verification requirements stipulated by the Indian authorities were not honoured and not yet tested in practice. The applicant did not maintain a system whereby it could be verified which inputs were consumed in the production of the exported product and in what amounts, as stipulated by the Foreign Trade Policy (FTP) 2004 to 2009 (Appendix 23) and in accordance with Annex II(II)(4) of the basic Regulation. The consumption register was never inspected by the GOI.
- (32) Changes in the administration of the FTP 2004 to 2009, which became effective in autumn of 2005 (mandatory sending of the consumption register to the India authorities in the context of the redemption procedure) has not yet been applied in the case of the applicant. Thus, the de facto implementation of this provision could not be verified at this stage.
- (d) *Conclusion*
- (33) The exemption from import duties is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, i.e. a financial contribution of the GOI which conferred a benefit upon the investigated exporters.
- (34) In addition, AAS physical exports and AAS for deemed exports are clearly 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. Without an export commitment a company cannot obtain benefits under these schemes.

(35) The two sub-schemes used in the present case cannot be considered permissible duty drawback systems or substitution drawback systems within the meaning of Article 3(1)(a)(ii) of the basic Regulation. They do not 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 GOI did not effectively apply either its new or its old verification system or procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). The SIONs for the product concerned were not sufficiently precise. The SIONs themselves cannot be considered a verification system of actual consumption because the design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation).

(36) These two sub-schemes are therefore countervailable.

(e) Calculation of the subsidy amount

(37) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of total import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an 'excess' remission of duties. According to Article 3(1)(a)(ii) and Annex I(i) of the basic Regulation only when the conditions of Annexes II and III of the basic Regulation are met that the excess remission of duties can be countervailed. However, these conditions were not fulfilled in the present case. Thus, if an adequate monitoring process is not demonstrated, the above exception for drawback schemes is not applicable and the normal rule of the countervailing of the amount of unpaid duties (revenue forgone), applies, rather than of any purported excess remission. As set out in Annexes II(II) and III(II) of the basic Regulation the burden is not upon the investigating authority to calculate such excess remission. To the contrary, according to Article 3(1)(a)(ii) of the basic Regulation, the investigating authority only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.

(38) The subsidy amount for the applicant, which used the AAS, was calculated on the basis of import duties forgone (basic customs duty and special additional

customs duty) on the material imported under the two sub-schemes during the RIP (numerator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amount where justified claims were made. In accordance with Article 7(2) of the basic Regulation, this subsidy amount was allocated over the export turnover of the product concerned during the RIP as appropriate denominator, because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(39) The subsidy rate established in respect of this scheme for the applicant for the RIP amounts to 0,7 %.

3. Duty Entitlement Passbook Scheme ('DEPBS')

(a) Legal Basis

(40) The detailed description of the DEPBS is contained in paragraph 4.3 of the EXIM-policy 04-09 and in chapter 4 of the HOP I 04-09.

(b) Eligibility

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

(c) Practical implementation of the DEPBS

(42) An eligible exporter can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS rates have been established by the Indian authorities for most products, including the product concerned. They are determined on the basis of SIONs, taking into account a presumed import content of inputs in the export product and the customs duty incidence on such presumed imports, regardless of whether import duties have actually been paid or not.

(43) To be eligible for benefits under this scheme, a company must export. At the time of the export transaction, a declaration must be made by the exporter to the authorities in India indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue an export shipping bill, during the dispatch procedure. This document shows, inter alia, the amount of DEPBS credit which is to be granted for that export transaction. At this point in time, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit. The relevant DEPBS rate to calculate the benefit is that which applied at the time the export declaration is made.

(44) DEPBS credits are freely transferable and valid for a period of 12 months from the date of issue. They can be used for payment of customs duties on subsequent imports of any goods unrestrictedly importable, except capital goods. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise.

(45) Application for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. *De facto* no strict deadlines apply to DEPBS credits. The electronic system used to manage DEPBS does not automatically exclude export transactions exceeding the deadline submission periods mentioned in chapter 4.47 of the HOP I 04-09. Furthermore, as clearly provided in chapter 9.3 of the HOP I 04-09, applications received after the expiry of submission deadlines can always be considered with the imposition of a minor penalty fee (i.e. 10 % of the entitlement).

(46) It was found that the applicant used this scheme during the RIP.

(d) *Conclusions on the DEPBS*

(47) The DEPBS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A DEPBS credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would otherwise be due. In addition, the DEPBS credit confers a benefit upon the exporter, because it improves its liquidity.

(48) Furthermore, the DEPBS 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.

(49) This scheme 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. It does not conform to the strict 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. An exporter is under no obligation to actually consume the goods imported free of duty in the production

process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I, and Annexes II and III, of the basic Regulation. Lastly, an exporter is eligible for the DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DEPBS.

(e) *Calculation of the subsidy amount*

(50) In accordance with Articles 3(2) and 5 of the basic Regulation and the calculation methodology used for this scheme in Regulation (EC) No 367/2006, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient found to exist during the RIP. In this regard, it was considered that the benefit is conferred on the recipient at the point in time when an export transaction is made under this scheme. At this moment, the GOI is liable to forego the customs duties, which 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 which shows, *inter alia*, the amount of DEPBS credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. Furthermore, the cooperating exporting producer booked the DEPBS credits on an accrual basis as income.

(51) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amount as numerator, pursuant to Article 7(1)(a) of the basic Regulation. In accordance with Article 7(2) of the basic Regulation this subsidy amount has been allocated over the export turnover of the product concerned 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.

(52) The subsidy rate established in respect of this scheme for the applicant for the RIP amounts to 5,1 %.

4. Export Promotion Capital Goods Scheme ('EPCGS')

(a) Legal basis

- (53) The detailed description of the EPCGS is contained in chapter 5 of the EXIM-policy 04-09 and in chapter 5 of the HOP I 04-09.

(b) Eligibility

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

(c) Practical implementation

- (55) Under the condition of an export obligation, a company is allowed to import capital goods (new and -since April 2003- second-hand capital goods up to 10 years old) at a reduced rate of duty. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. Since April 2000, the scheme provides for a reduced import duty rate of 5 % applicable to all capital goods imported under the scheme. Until 31 March 2000, an effective duty rate of 11 % (including a 10 % surcharge) and, in case of high value imports, a zero duty rate, was applicable. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period.

- (56) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail himself 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.

- (57) It was found that the applicant used this scheme during the RIP.

(d) Conclusion on EPCG Scheme

- (58) 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 otherwise be due. In addition, the duty reduction confers a benefit upon the exporter, because the duties saved upon importation improve its liquidity.

- (59) Furthermore, the EPCGS is contingent in law upon export performance, since such licences can not 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.

- (60) This scheme 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, item (i), of the basic Regulation, because they are not consumed in the production of the exported products.

(e) Calculation of the subsidy amount

- (61) The subsidy amount was calculated, 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. In accordance with the established practice, the amount so calculated, which is attributable to the RIP, 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 review investigation period in India was considered appropriate for this purpose. Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation.

- (62) The applicant claimed that capital goods imported duty-free under the EPCG scheme used in the unit located in Khanvel were no longer in use and that the benefit relating to such goods should not be included in the numerator. In reply to this, it is noted that the applicant has already received the benefit relating to these capital goods. In addition, as there is no evidence that the applicant no longer possesses such goods or that it will not use them again, the claim has to be rejected.

- (63) In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount has been allocated over the export turnover of the product concerned during the RIP as the 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.

- (64) The subsidy rate established in respect of this scheme for the applicant for the RIP amounts to 2,3 %.

5. Export Credit Scheme ('ECS')

(a) Legal basis

- (65) The details of the scheme are set out in the Master Circular DBOD No DIR.(Exp).BC 01/04.02.02/2007-08 (Rupee/Foreign Currency Export Credit) and Master Circular DBOD No DIR.(Exp).BC 09/04.02.02/2008-09 (Rupee/Foreign Currency Export Credit) of the Reserve Bank of India ('RBI'), which is addressed to all commercial banks in India.

(b) Eligibility

- (66) Manufacturing exporters and merchant exporters are eligible for this scheme.

(c) Practical implementation

- (67) Under this scheme, the RBI mandatorily sets maximum ceiling interest rates applicable to export credits, both in Indian rupees and in foreign currency, which commercial banks can charge an exporter. The ECS consists of two sub-schemes, the Pre-Shipment Export Credit Scheme ('packing credit'), which covers credits provided to an exporter for financing the purchase, processing, manufacturing, packing and/or shipping of goods prior to export, and the Post-Shipment Export Credit Scheme, which provides for working capital loans with the purpose of financing export receivables. The RBI also directs the banks to provide a certain amount of their net bank credit towards export finance.
- (68) As a result of the RBI Master Circulars exporters can obtain export credits at preferential interest rates as compared with the interest rates for ordinary commercial credits ('cash credits'), which are solely set under market conditions. The difference in rates might decrease for companies with good credit ratings. In fact, high rating companies might be in a position to obtain export credits and cash credits at the same conditions.
- (69) It was found that the applicant used this scheme during the RIP.

(d) Conclusion on the ECS

- (70) The preferential interest rates of an ECS credit set by the RBI Master Circulars mentioned in recital (65) can decrease the interest costs of an exporter as compared with credit costs purely set by market conditions and confer in this case a benefit in the meaning of Article 3(2) of the basic Regulation on such an exporter. Export financing is not *per se* more secure than domestic financing. In fact, it is usually perceived

as being more risky and the extent of security required for a certain credit, regardless of the finance object, is a purely commercial decision of a given commercial bank. Rate differences with regard to different banks are the result of the methodology of the RBI to set maximum lending rates for each commercial bank individually.

- (71) Despite the fact that the preferential credits under the ECS are granted by commercial banks, this benefit is a financial contribution by a government within the meaning of Article 3(1)(a)(iv) of the Regulation. In this context, it should be noted that neither Article 3(1)(a)(iv) of the basic Regulation nor the Agreement on Subsidies and Countervailing Measures require a charge on the public accounts, e.g. reimbursement of the commercial banks by the GOI, to establish a subsidy, but only government direction to carry out functions illustrated in points (i), (ii) or (iii) of Article 3(1)(a) of the basic Regulation. The RBI is a public body and falls therefore under the definition of 'government' as set out in Article 2(b) of the basic Regulation. It is 100 % government-owned, pursues public policy objectives, e.g. monetary policy, and its management is appointed by the GOI. The RBI directs private bodies, within the meaning of the second indent of Article 3(1)(a)(iv) of the basic Regulation, since the commercial banks are bound by the conditions it imposes, *inter alia*, with regard to the maximum ceilings for interest rates on export credits mandated in the RBI Master Circulars and the RBI provisions that commercial banks have to provide a certain amount of their net bank credit towards export finance. This direction obliges commercial banks to carry out functions mentioned in Article 3(1)(a)(i) of the basic Regulation, in this case provide loans in the form of preferential export financing. Such direct transfer of funds in the form of loans under certain conditions would normally be vested in the government, and the practice differs, in no real sense, from practices normally followed by governments, within the meaning of Article 3(1)(a)(iv) of the basic Regulation. This subsidy is deemed to be specific and countervailable since the preferential interest rates are only available in relation to the financing of export transactions and are therefore contingent upon export performance, pursuant to Article 4(4), first subparagraph, point (a) of the basic Regulation.

(e) Calculation of the subsidy amount

- (72) The subsidy amount has been calculated on the basis of the difference between the interest paid for export credits used during the RIP and the amount that would have been payable for ordinary commercial credits used by the applicant. This subsidy amount (numerator) has been allocated over the total export turnover during the RIP as the appropriate denominator in accordance with Article 7(2) of the basic Regulation, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

- (73) The subsidy rate established in respect of this scheme for the applicant for the RIP amounts to 0,2 %.

6. Package Scheme of Incentives (PSI)

(a) Legal basis

- (74) In previous investigations regarding PET film, including the review investigation that led to the imposition by Regulation (EC) No 367/2006 of the definitive countervailing duty currently in force, several Indian State schemes involving incentives granted to local companies were investigated. The State schemes fall under the heading 'Package Scheme of Incentives' (PSI), as there can be different kinds of incentives involved. The investigation established that a company's entitlement to benefits under the scheme is stipulated in the 'Eligibility Certificate'.

- (75) The Package Scheme of Incentives (PSI) of the Government of Maharashtra (GOM) has been amended several times since its introduction. The applicant continues to avail itself of benefits under the PSI '1993 Scheme' and not under successor schemes. Consequently, only the PSI 1993 was assessed in the context of the case at hand.

- (76) The Sales Tax Remission Scheme of the Government of West Bengal provides for the remission of Central Sales Tax. The investigation revealed that the applicant enjoyed trade tax (Central Sales Tax) exemption under the PSI of the Government of West Bengal in respect of its purchases. This tax provision excuses home-market sales by a company from payment of sales tax (both local sales tax and central sales tax).

(b) Eligibility

- (77) In order to be eligible, companies must as a general rule invest in less developed areas of a state either by setting up a new industrial establishment or by making a large scale capital investment in expansion or diversification of an existing industrial establishment. The main criterion to establish the amount of incentives is the classification of the area in which the enterprise is or will be located and the size of the investment.

(c) Practical implementation

- (78) Under the sales tax exemption schemes, designated units were not required to collect any sales tax on their sales transactions. Similarly, designated units were exempted from the payment of sales tax on their purchases of

goods from suppliers eligible for the schemes. Whereas the exemption in relation to sales transaction is not considered to confer any benefit on the designated sales units, the exemption in relation to purchase transactions, however, does confer a benefit on the designated purchasing units.

- (79) Exemption of sales tax on purchases within the State of Maharashtra (which was earlier exempted under the Maharashtra Sales Tax Exemption Scheme of Incentives) is no longer available. In April 2005 the sales tax legislation for intra-State sales in Maharashtra was replaced by a value added tax (VAT) system. With effect from April 2005, the applicant, as a non-exempt unit, has to purchase materials by paying VAT.

(d) Conclusion

- (80) As regards the PSI 1993 of the GOM, the applicant only accrued remission rights of sales tax on sales of finished goods during the RIP, which in the past has been found not to confer a benefit on the recipient (recital 114 of Regulation (EC) No 367/2006). Therefore, no countervailable benefit was found under the PSI 1993 of the GOM.

- (81) However, as regards the applicant's purchases from companies not located in the State of Maharashtra of raw materials without the payment of Central Sales Tax, the PSI provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The exemption from payment of sales taxes on purchases constitutes a financial contribution, since this concession decreases the Government's revenue which would otherwise be due. In addition, this exemption confers a benefit upon the companies as it improves their liquidity.

- (82) The PSI is only available to companies having invested within certain designated geographical areas within the jurisdiction of a State in India. It is not available for companies located outside these areas. The level of benefit is different according to the area concerned. The scheme is therefore specific in accordance with Article 4(2), first subparagraph, point (a) and Article 4(3) of the basic Regulation and therefore countervailable.

(e) Calculation of the subsidy amount

- (83) Concerning the sales tax exemption, the subsidy amount was calculated on the basis of the amount of the sales tax normally due during the RIP but which remained unpaid.

- (84) Pursuant to Article 7(2) of the basic Regulation, the amount of subsidy (numerator) has then been allocated over the total turnover of export and domestic sales during the review investigation period as the appropriate denominator, because the subsidy is not export-contingent and it was not granted by reference to the quantities manufactured, produced, exported or transported.
- (85) The subsidy rate established in respect of this scheme for the applicant for the RIP amounts to 0,1 %.

7. Amount of countervailable subsidies

- (86) It is recalled that Regulation (EC) No 1124/2007, amending Council Regulation (EC) No 367/2006, established the amount of countervailable subsidies for the applicant, expressed *ad valorem*, at 17,1 %.
- (87) During the present partial interim review, the amount of countervailable subsidies for the applicant, expressed *ad valorem*, was found to be 8,4 %, as listed hereunder:

SCHEME→	AAS (*)	DEPBS (*)	EPCGS (*)	ECS (*)	PSI	Total
COMPANY↓	%	%	%	%	%	%
Jindal Poly Films Limited	0,7	5,1	2,3	0,2	0,1	8,4

(*) Subsidies marked with an asterisk are export subsidies.

- (88) Account taken of the above it is concluded that the level of subsidisation with regard to the exporting producer concerned has decreased.

8. Countervailing measures

- (89) It was also examined whether the changed circumstances with regard to the examined schemes could be considered to be of a lasting nature. In this respect, several elements would suggest that this is the case.
- (90) Firstly, it should be noted that the findings in this partial interim review are in line with the subsidy amounts established for five Indian PET film producers in the partial interim review published in January 2009, where the amount of countervailable subsidies, expressed *ad valorem*, were found to be ranging from 5,4 % to 8,6 %. This is an indication of certain constancy in the level of subsidisation existing in India for this product.

- (91) Secondly, while in the previous investigation the main benefit was conferred under the AAS, the benefit under this scheme has dropped significantly during the RIP and evidence has been obtained that this continued to be the case also after the RIP

- (92) On the basis of the above there seems to be indications that the applicant will continue to receive subsidies in the future of an amount which is less than the one determined in the previous partial interim review investigation.

- (93) Since it has been demonstrated that the applicant is in receipt of much lesser subsidisation than before and that it is likely to continue to receive subsidies of an amount which is less than determined in the previous partial interim review investigation, the level of the measure should therefore be amended to reflect the new findings.

- (94) In view of the above, the amended countervailing duty rate should be established at the new rate of subsidisation found during the present partial interim review, as the injury margin calculated in the original anti-subsidy investigation remains higher.

- (95) Pursuant to Article 24(1), second subparagraph of the basic Regulation and Article 14(1) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community⁽¹⁾, 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. However, as mentioned in recital (6) above, since the applicant is subject to an anti-dumping duty of 0 % with regard to the product concerned, these provisions do not apply in the present case.

- (96) With regard to the rate of duty currently applicable to imports of the product concerned from exporting producers not individually mentioned in Article 1(2) of Regulation (EC) No 367/2006, i.e. the duty specified as applying to 'all other companies' in India, it is noted that the actual modalities of the investigated schemes and their countervailability have not changed with respect to the previous investigation. Thus there is no reason to re-calculate the subsidy and duty rates of these companies. Consequently, the rates of the duty applicable to all companies other than the applicant remain unchanged,

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Council Regulation (EC) No 367/2006 shall be replaced by the following:

‘2. The rate of the definitive countervailing duty applicable to the net free-at-Union-frontier price, before duty, of the products manufactured by the companies listed below, shall be as follows:

Company	Definitive duty (%)	TARIC additional code
Ester Industries Limited, 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi 110003, India	7,2	A026
Garware Polyester Limited, Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400057, India	5,4	A028
Jindal Poly Films Limited, 56 Hanuman Road, New Delhi 110001, India	8,4	A030
MTZ Polyfilms Limited, New India Centre, 5th Floor, 17 Co-operage Road, Mumbai 400039, India	8,7	A031
Polyplex Corporation Limited, B-37, Sector-1, Noida 201301, Dist. Gautam Budh Nagar, Uttar Pradesh, India	8,6	A032
SRF Limited, Block C, Sector 45, Greenwood City, Gurgaon 122003, Haryana, India	5,4	A753
Uflex Limited, A-1, Sector 60, Noida 201301 (U.P.), India	6,4	A027
All other companies	19,1	A999'

Article 2

This Regulation shall enter into force on the day following 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 Luxembourg, 29 June 2010.

For the Council
The President
E. ESPINOSA

COUNCIL IMPLEMENTING REGULATION (EU) No 580/2010**of 29 June 2010****amending Regulation (EC) No 452/2007 imposing a definitive anti-dumping duty on imports of ironing boards originating, inter alia, in Ukraine**

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 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the basic Regulation), and in particular Article 11(3) thereof,

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

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (1) The Council, by Regulation (EC) No 452/2007 ⁽²⁾ (the original Regulation), imposed a definitive anti-dumping duty on imports of ironing boards originating, inter alia, in Ukraine. The measures consist of an *ad valorem* duty at a rate of 9,9 %.

1.2. Request for a review

- (2) In August 2008, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation (the interim review). The request was completed in December 2008. The request, limited in scope to the examination of dumping, was lodged by an exporting producer from Ukraine, Eurogold Industries Ltd ('the applicant' or 'EGI'). The applicant had cooperated in the investigation which led to the findings and conclusions laid down in the original Regulation (the original investigation). The anti-dumping duty applicable to the applicant, which is the only known exporting producer of the product concerned in Ukraine, is 9,9 %.
- (3) In its request, the applicant claimed that the circumstances on the basis of which measures were imposed have changed and that these changes are of a lasting nature. The applicant provided *prima facie* evidence that the continued imposition of the measure at its current level is no longer necessary to offset dumping.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 109, 26.4.2007, p. 12.

1.3. Initiation of a review

- (4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission decided to initiate a partial interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping as far as EGI is concerned. The Commission published a notice of initiation on 9 April 2009 in the *Official Journal of the European Union* ⁽³⁾ (Notice of initiation) and commenced an investigation.

1.4. Product concerned and like product

- (5) The product concerned by the interim review is the same as that in the original investigation, i.e. ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and essential parts thereof, i.e. the legs, the top and the iron rest, originating in Ukraine, currently falling within CN codes ex 3924 90 00, ex 4421 90 98, ex 7323 93 90, ex 7323 99 91, ex 7323 99 99, ex 8516 79 70 and ex 8516 90 00.
- (6) The product produced and sold in Ukraine and that exported to the Union have the same basic physical and technical characteristics and uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

1.5. Parties concerned

- (7) The Commission officially advised the Union industry, the applicant and the authorities of the exporting country of the initiation of the interim review. Interested parties were given the opportunity to make their views known in writing and to be heard.
- (8) The Commission sent a questionnaire to the applicant and received a reply within the deadline set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping, and a verification visit was carried out at the premises of the applicant:

— Eurogold Industries Ltd, Zhitomir, Ukraine,

— and its related company Eurogold Service Zumbühl & Co., Zug in Switzerland (EGS).

⁽³⁾ OJ C 85, 9.4.2009, p. 28.

1.6. Investigation period

- (9) The investigation covered the period from 1 January 2008 to 31 December 2008 ('the investigation period' or 'IP').

2. RESULTS OF THE INVESTIGATION

2.1. Normal value

- (10) For the determination of normal value, it was first established whether EGI's total volume of domestic sales of the like product to independent customers was representative in comparison with its total volume of export sales to the Union. In accordance with Article 2(2) of the basic Regulation domestic sales are considered to be representative when the total domestic sales volume is at least 5 % of the total volume of sales of the product concerned to the Union. It was found that the overall sales by EGI of the like product on the domestic market were representative.
- (11) For each product type sold by EGI on its domestic market and found to be directly comparable with the product type sold for export to the Union, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the total volume of that product type sold on the domestic market to independent customers during the IP represented at least 5 % of the total sales volume of the comparable product type exported to the Union.
- (12) It was also examined whether the domestic sales of each product type could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of domestic sales to independent customers on the domestic market which were profitable for each exported type of the product concerned during the IP.
- (13) For those product types where more than 80 % by volume of sales on the domestic market of the product type were above cost and the weighted average sales price of that type was equal to or above the unit cost of production, normal value, by product type, was calculated as the weighted average of the actual domestic prices of all sales of the type in question, irrespective of whether those sales were profitable or not.
- (14) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the unit cost of production, normal value was based on the actual domestic price, which was calculated as a weighted average price of only the profitable domestic sales of that type made during the IP.

- (15) Wherever domestic prices of a particular product type sold by EGI could not be used in order to establish normal value, the normal value was constructed in accordance with Article 2(3) of the basic Regulation.
- (16) When constructing normal value pursuant to Article 2(3) of the basic Regulation, the amounts for selling, general and administrative costs and for profits have been based, pursuant to Article 2(6), *chapeau*, of the basic Regulation, on the actual data pertaining to the production and sales, in the ordinary course of trade, of the like product, by EGI.
- (17) Following disclosure of the findings, EGI claimed that the percentage rate for selling, general and administrative costs, which was used when constructing normal value, did not correspond to that in respect of domestic sales made in the ordinary course of trade and that, consequently, certain constructed normal values were overstated in this respect.
- (18) The claim was examined, but it was found to have no basis since the percentage rate for selling, general and administrative costs used is that reported for domestic sales and is the same irrespective of whether or not sales are made in the ordinary course of trade, since it is expressed as a percentage on turnover. The claim is therefore rejected.

2.2. Export price

- (19) EGI made export sales to the Union either directly to independent customers or through its related company EGS, located in Switzerland.
- (20) Where export sales to the Union were made directly to independent customers in the Union, export prices were established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.
- (21) Where export sales to the Union were made through the related company, EGS, which performed all import functions in relation to the goods entering into free circulation in the Union, i.e. that of a related importer, the export price was established in accordance with Article 2(9) of the basic Regulation, on the basis of prices at which the imported products were first resold to an independent buyer. For this purpose, adjustments were made to take account of all costs, incurred between importation and resale, and for profits accruing, so that a reliable export price could be established. For this purpose, in the absence of new information from independent importers concerning profits accruing, use was made of the same percentage profit as that used in the original investigation.

- (22) EGI claimed, under Article 11(10) of the basic Regulation, that, if the export price is established in accordance with Article 2(9) of the basic Regulation, the anti-dumping duty paid should not be deducted as a cost, since, they argued, it is duly reflected in resale prices.
- (23) In this regard, the evidence in support of the claim, which consisted of a number of selling price calculations, was examined. However, the calculations provided only concerned some of the models sold during the IP and showed that the selling price did not fully reflect the anti-dumping duty in all cases. Consequently, the evidence provided was not found to be conclusive on whether the anti-dumping duty was reflected in the resale prices. The claim was therefore rejected and, when establishing the export price for sales to the Union made through EGS in accordance with Article 2(9) of the basic Regulation, the anti-dumping duty was deducted as a cost.
- (24) Following disclosure of the findings, EGI repeated their claim. However, no new evidence or arguments in support of that claim were submitted. The claim is therefore rejected.

2.3. Comparison

- (25) The normal value and the export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and export price, due allowance in the form of adjustments was made for transport costs, packing costs, credit costs, and commissions, where applicable and justified, in accordance with Article 2(10) of the basic Regulation.
- (26) Following disclosure of the findings, a calculation error involving the incorrect currency conversion of certain allowances for packing costs was brought to light. This was corrected and the dumping margin calculation was revised accordingly.
- (27) Also, following the disclosure of findings, EGI claimed that when constructing normal value, the allowances reported in respect of domestic sales which are not in the ordinary course of trade, should be disregarded and, in the absence of other sales of the product type in question, use should be made of the average allowances for sales of other product types made in the ordinary course of trade, because only the latter would reflect the costs which had been included in the selling, general and administrative costs used to construct the normal value.
- (28) This claim was examined, but was not accepted since, as allowances are used for comparison purposes only and normally reflect the actual costs specific to each transaction, they are an objective element and are therefore independent of whether or not sales are finally made in the ordinary course of trade.
- (29) Moreover, while examining this claim, it was found that incorrect allowances had been used when constructing normal values in the case of those product types for which there were no domestic sales. This was corrected by using the overall average allowances of all domestic sales, and the calculation was amended accordingly. EGI claimed that allowances for credit costs should be granted for these product types, since credit costs were included in the selling, general and administrative costs used in constructing the normal value. This claim was rejected because the product types in question were never actually sold on the domestic market and there was therefore no evidence that their payment would be deferred. In this respect, it is noted that a credit cost allowance is not based on actual payment terms and costs, but on an opportunity cost based on the payment terms agreed at the time of sale.

2.4. Dumping margin

- (30) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. This comparison showed the existence of dumping.
- (31) The dumping margin for EGI, expressed as a percentage of the net, free-at-Union-frontier price, duty unpaid, is 7 %.
- (32) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the findings could reasonably be considered to be of a lasting nature.
- (33) The structural reorganisation of the sales channels of the applicant and its related company is now well established for the majority of its sales and can be considered long-lasting. Thus, the circumstances that led to the initiation of this interim review are unlikely to change in the foreseeable future in a manner that would affect the findings of the interim review. Furthermore, no element emerged in the course of the investigation that would suggest that the new circumstances are not lasting. Therefore, it is concluded that the changed circumstances are of a lasting nature.

3. ANTI-DUMPING MEASURES

- (34) In the original investigation EGI was found to be the sole Ukrainian exporting producer of ironing boards. The methodology used to determine the dumping margin for EGI was therefore used to establish the dumping margin for any other Ukrainian exporting producers of the product concerned.

(35) Consequently in the light of the results of the review investigation, it is considered appropriate to amend the anti-dumping duty applicable to imports of the product concerned originating in Ukraine to 7 %.

(36) Interested parties were informed of the essential facts and considerations on the basis of which it would be proposed to amend Council Regulation (EC) No 452/2007 imposing an anti-dumping duty on imports of the product concerned originating, inter alia, in Ukraine and were given an opportunity to comment. Their comments have been taken into account where appropriate and are duly reflected in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The entry concerning all companies in Ukraine in the table in Article 1(2) of Regulation (EC) No 452/2007 shall be replaced by the following:

'Ukraine	All companies	7	—'
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Article 2

This Regulation shall enter into force on the day following 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 Luxembourg, 29 June 2010.

For the Council

The President

E. ESPINOSA

COMMISSION REGULATION (EU) No 581/2010**of 1 July 2010****on the maximum periods for the downloading of relevant data from vehicle units and from driver cards****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 ⁽¹⁾, and in particular Article 10(5)(c) thereof,

Whereas:

- (1) Regular downloads of data recorded by the vehicle unit and on the driver card are necessary in order to render possible an effective control of the driver's and the undertaking's compliance with the provisions on driving times and rest periods as laid down by Regulation (EC) No 561/2006.
- (2) By determining the maximum period within which the relevant data shall be downloaded from the vehicle unit and the driver card, conditions for road transport undertakings will be further harmonised throughout the Union.
- (3) For the determination of the maximum periods within which data are to be downloaded, only days with a recorded activity should be counted.
- (4) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽²⁾ applies to the processing of personal data pursuant to this Regulation.

(5) In order to reduce administrative burden on undertakings, it is appropriate to define the relevant data to be downloaded.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Committee set up by Article 18(1) of Council Regulation (EEC) No 3821/85 ⁽³⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down the maximum periods within which the relevant data shall be downloaded from the vehicle unit and driver card for the purposes of Article 10(5)(a)(i) of Regulation (EC) No 561/2006.

2. For the purposes of this Regulation, 'relevant data' means any data recorded by the digital tachograph other than detailed speed data.

3. The maximum period within which the relevant data are downloaded shall not exceed:

(a) 90 days for data from the vehicle unit;

(b) 28 days for data from the driver card.

4. Relevant data has to be downloaded in such a way that no data is lost.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from the 90th day following the publication.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 1 July 2010.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 102, 11.4.2006, p. 1.

⁽²⁾ OJ L 281, 23.11.1995, p. 31.

⁽³⁾ OJ L 370, 31.12.1985, p. 8.

COMMISSION REGULATION (EU) No 582/2010**of 1 July 2010****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 2 July 2010.

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

Done at Brussels, 1 July 2010.

*For the Commission,
On behalf of the President,*

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	56,2
	MK	36,4
	TR	50,2
	ZZ	47,6
0707 00 05	MK	45,6
	TR	121,6
	ZZ	83,6
0709 90 70	TR	103,7
	ZZ	103,7
0805 50 10	AR	79,8
	TR	97,3
	UY	91,0
	ZA	98,0
	ZZ	91,5
0808 10 80	AR	102,2
	BR	70,8
	CA	118,4
	CL	113,8
	CN	84,3
	NZ	122,9
	US	162,8
	ZA	98,8
	ZZ	109,3
0809 10 00	TR	234,1
	ZZ	234,1
0809 20 95	TR	307,6
	ZZ	307,6
0809 30	AR	133,5
	TR	158,2
	ZZ	145,9
0809 40 05	AU	258,9
	IL	210,4
	US	110,3
	ZZ	193,2

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COMMISSION DECISION

of 18 June 2010

on the Union financial contribution to national programmes of certain Member States in 2010 for the collection, management and use of data in the fisheries sector*(notified under document C(2010) 3797)*

(2010/369/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 861/2006 of 22 May 2006 establishing Community financial measures for the implementation of the common fisheries policy and in the area of the Law of the Sea ⁽¹⁾, and in particular Article 24(1) thereof,

Whereas:

- (1) Regulation (EC) No 861/2006 lays down the conditions whereby Member States may receive a contribution from the European Union for expenditure incurred in their national programmes of collection and management of data.
- (2) Those programmes are to be drawn up in accordance with Council Regulation (EC) No 199/2008 of 25 February 2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy ⁽²⁾ and Commission Regulation (EC) No 665/2008 of 14 July 2008 laying down detailed rules for the application of Council Regulation (EC) No 199/2008 ⁽³⁾.
- (3) Belgium, Bulgaria, Denmark, Germany, Estonia, Ireland, Greece, Spain, Italy, Cyprus, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovenia and Finland have submitted national programmes for 2009-2010 as provided for in Article 4(4) and (5) of Regulation (EC) No 199/2008. These programmes were approved in 2009 in accordance with Article 6(3) of Regulation (EC) No 199/2008.

- (4) Those Member States have submitted annual budget forecasts covering the period 2009-2010 according to

Article 2 of Commission Regulation (EC) No 1078/2008 of 3 November 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 861/2006 ⁽⁴⁾. The Commission has evaluated Member States' annual budget forecasts, as laid down in Article 4 of Regulation (EC) No 1078/2008, by taking into account the national programmes approved in accordance with Article 6(3) of Regulation (EC) No 199/2008.

- (5) Article 5 of Regulation (EC) No 1078/2008 establishes that the Commission is to approve the annual budget forecast and is to decide on the annual Union financial contribution to each national programme in accordance with the procedure laid down in Article 24 of Regulation (EC) No 861/2006 and on the basis of the outcome of the evaluation of the annual budget forecasts as referred to in Article 4 of Regulation (EC) No 1078/2008.
- (6) Article 24(3)(b) of Regulation (EC) No 861/2006 establishes that a Commission Decision is to fix the rate of the financial contribution. Article 16 of that Regulation provides that Union financial measures in the area of basic data collection are not to exceed 50 % of the costs incurred by Member States in carrying out the programme of collection, management and use of data in the fisheries sector. Article 24(2) provides that priority shall be given to the actions which are most appropriate in order to improve the collection of data necessary for the Common Fisheries Policy.
- (7) This Decision is to constitute the financing decision within the meaning of Article 75(2) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽⁵⁾.
- (8) The measures provided for in this Decision are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

⁽¹⁾ OJ L 160, 14.6.2006, p. 1.

⁽²⁾ OJ L 60, 5.3.2008, p. 1.

⁽³⁾ OJ L 186, 15.7.2008, p. 3.

⁽⁴⁾ OJ L 295, 4.11.2008, p. 24.

⁽⁵⁾ OJ L 248, 16.9.2002, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

The maximum global amounts of the Union financial contribution to be granted to each Member State for the collection, management and use of data in the fisheries sector for 2010, and the rate of the Union financial contribution, are established in the Annex.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 18 June 2010.

For the Commission

Maria DAMANAKI

Member of the Commission

ANNEX

NATIONAL PROGRAMMES 2009-2010

ELIGIBLE EXPENDITURE AND MAXIMUM COMMUNITY CONTRIBUTION FOR 2010

(in EUR)

Member State	Eligible expenditure	Maximum Community contribution (Rate of 50 %)
Belgium	1 649 816,00	824 908,00
Bulgaria	404 210,00	202 105,00
Denmark	6 001 601,00	3 000 800,50
Germany	6 470 425,00	3 235 212,50
Estonia	618 043,00	309 021,50
Ireland	6 954 948,00	3 477 474,00
Greece	4 307 365,00	2 153 682,50
Spain	15 144 263,00	7 572 131,50
Italy	6 956 797,00	3 478 398,50
Cyprus	575 033,00	287 516,50
Latvia	318 109,00	159 054,50
Lithuania	219 792,00	109 896,00
Malta	600 263,00	300 131,50
Poland	1 141 259,00	570 629,50
Portugal	3 476 673,00	1 738 336,50
Romania	584 788,00	292 394,00
Slovenia	211 015,00	105 507,50
Finland	1 595 842,00	797 921,00
TOTAL	57 230 242,00	28 615 121,00

COMMISSION DECISION**of 1 July 2010****on the allocation to Spain of additional days at sea within ICES Divisions VIIIc and IXa excluding the Gulf of Cadiz***(notified under document C(2010) 4330)***(Only the Spanish text is authentic)***(2010/370/EU)*

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 43/2009 of 16 January 2009 fixing for 2009 the fishing opportunities and associated conditions for certain fish stocks and groups of stocks, applicable in Community waters and for Community vessels, in waters where catch limitations are required ⁽¹⁾, and in particular point 9 of Annex IIB thereto,

Whereas:

- (1) Point 7 of Annex IIB to Regulation (EC) No 43/2009 specifies the maximum number of days on which Union vessels of an overall length equal to or greater than 10 meters carrying on board trawls, Danish seines and similar gears of mesh size equal to or larger than 32 mm and gill-nets of mesh size equal to or larger than 60 mm and bottom long-lines may be present within ICES Divisions VIIIc and IXa excluding the Gulf of Cadiz from 1 February 2009 to 31 January 2010.
- (2) Point 9 of Annex IIB enables the Commission to allocate an additional number of days at sea on which a vessel may be present within the geographical area when carrying on board such fishing gears, on the basis of permanent cessations of fishing activities that have taken place since 1 January 2004.
- (3) On 11 November 2009, Spain submitted data demonstrating that twelve fishing vessels have ceased activities since 1 January 2004. In view of the data submitted and

having regard to the method of calculation laid down in point 9.1 of Annex IIB, nine additional days at sea for vessels carrying on board the fishing gears specified in point 3 of the same Annex should be allocated to Spain for the period from 1 February 2009 to 31 January 2010.

- (4) The measures provided for in this Decision are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS DECISION

Article 1

The maximum number of days on which a fishing vessel flying the flag of Spain and carrying on board fishing gear, mentioned in point 3 of Annex IIB to Regulation (EC) No 43/2009 and not subject to any of the special conditions listed in point 7.2 of that Annex may be present in ICES Divisions VIIIc and IXa excluding the Gulf of Cadiz, as laid down in Table I of that Annex, shall be amended to 184 days per year.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 1 July 2010.

For the Commission

Maria DAMANAKI

Member of the Commission

⁽¹⁾ OJ L 22, 26.1.2009, p. 1.

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