II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2020/738

of 2 June 2020

amending Implementing Regulation (EU) 2019/1286 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India

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 [1] ('basic Regulation'), and in particular Article 19 thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By Regulation (EC) No 2603/2000 [2], the Council imposed definitive countervailing duties on imports of polyethylene terephthalate ('PET') originating, inter alia, in India ('original investigation').

(2) By Decision 2000/745/EC [3], the European Commission ('the Commission') accepted a minimum import price offered by three exporting producers in India.

(3) By Regulation (EC) No 1645/2005 [4], the Council amended the level of countervailing measures in force against imports of PET from India. The amendments were a result of an accelerated review initiated pursuant to Article 20 of the basic Regulation.

(4) By Regulation (EC) No 193/2007 [5], following an expiry review, the Council imposed definitive countervailing duties for a further period of five years.

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[1] OJ L 176, 30.6.2016, p. 55.

[2] Council Regulation (EC) No 2603/2000 of 27 November 2000 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in India, Malaysia and Thailand and terminating the anti-subsidy proceeding concerning imports of certain polyethylene terephthalate originating in Indonesia, the Republic of Korea and Taiwan (OJ L 301, 30.11.2000, p. 1).

[3] 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).

[4] Council Regulation (EC) No 1645/2005 of 6 October 2005 amending Regulation (EC) No 2603/2000 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate originating, inter alia, in India (OJ L 266, 11.10.2005, p. 1).

[5] Council Regulation (EC) No 193/2007 of 22 February 2007 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 2026/97 (OJ L 59, 27.2.2007, p. 34).

(5) The countervailing measures were subsequently amended by Council Regulation (EC) No 1286/2008 ([6]) and Council Implementing Regulation (EU) No 906/2011 ([7]), following partial interim reviews.

(6) A later partial interim review was terminated without amending the measures in force by Council Implementing Regulation (EU) No 559/2012 ([8]).

(7) By Regulation (EC) No 461/2013 ([9]), following another expiry review, the Council imposed definitive countervailing duties for a further period of five years.

(8) By Implementing Decision 2014/109/EU ([10]), the Commission withdrew the acceptance of the undertakings, due to a change in the circumstances under which the undertakings were accepted.

(9) By Implementing Regulation (EU) 2015/1350 ([11]), the Commission amended the level of countervailing measures in force against imports of PET from India, following two partial interim reviews.

(10) By Implementing Regulation (EU) 2018/1468 ([12]), the Commission amended the level of countervailing measures in force following two partial interim reviews ('the 2018 Regulation').

(11) By Implementing Regulation (EU) 2019/1286 ([13]), following the latest expiry review, the Commission imposed definitive countervailing duties for a further period of five years ('the 2019 expiry review'). These measures, which are currently in force ('measures in force'), consist of specific duties between EUR 0 and 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.

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

(12) By means of the 2018 Regulation, the Commission amended the level of countervailing measures in force for the two exporting producers subject to the reviews and concluded that, in contrast to the original investigation, specific duties may no longer be the most appropriate form of measures.

(13) However, the Commission also noted that it could not change the form of the measures in those reviews, as it was concluding two partial interim reviews limited to subsidisation of only two exporting producers.

([6]) Council Regulation (EC) No 1286/2008 of 16 December 2008 amending Regulation (EC) No 193/2007, imposing a definitive countervailing duty on imports of certain polyethylene terephthalate, originating in India and amending Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate, originating in, inter alia, India (OJ L 340, 19.12.2008, p. 1).

([7]) Council Implementing Regulation (EU) No 906/2011 of 2 September 2011 amending Regulation (EC) No 193/2007 imposing a definitive countervailing duty on imports of polyethylene terephthalate originating in India, and amending Regulation (EC) No 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in, inter alia, India (OJ L 232, 9.9.2011, p. 19).

([8]) Council Implementing Regulation (EU) No 559/2012 of 26 June 2012 terminating the partial interim review concerning the countervailing measures on imports of certain polyethylene terephthalate (PET) originating in, inter alia, India (OJ L 168, 28.6.2012, p. 6)

([9]) 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).

([10]) 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).

([11]) 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).

([12]) 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).

([13]) Commission Implementing Regulation (EU) 2019/1286 of 30 July 2019 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and the Council (OJ L 202, 31.7.2019, p. 81).

(14) As a result, on 25 March 2019, the Commission initiated an *ex officio* partial interim review investigation pursuant to Article 19(1) of the basic Regulation, limited to the form of the measures on imports of PET originating in India ([14]) ('Notice of Initiation'). The initiation was supported by the Committee of PET Manufacturers in Europe ('CPME'), European trade association that represents all of the European PET resin producers.

(15) In the Notice of Initiation, the Commission noted that there is sufficient evidence that the circumstances on the basis of which the existing measures were imposed have changed and that these changes are of a lasting nature. This evidence was related to the specific context of prices evolution and of the anti-dumping and countervailing measures in the original investigation as well as the increased importance of subsidies providing financial benefits that are mostly proportional to the value of exports.

1.3. **Interested parties**

(16) In the Notice of Initiation, the Commission invited interested parties to come forward in order to participate in the investigation. In addition, the Commission specifically informed known Union producers, the known exporting producers and the Indian authorities, known importers and users about the initiation of the investigation and invited them to participate.

(17) Interested parties had the opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

(18) European trade association representing PET producers, one Indian exporting producer and six users provided comments on initiation of the investigation. Two other exporting producers came forward but provided no comments on initiation.

(19) On 11 June 2019, the Commission held a hearing with three of the users that came forward.

1.4. **Disclosure**

(20) On 6 April 2020, the Government of India ('GOI') and the other interested parties were informed of the essential facts and considerations upon which the Commission intended to propose a change of the form of the measures applicable to imports of PET from India. They were also given reasonable time to comment.

(21) The GOI and one exporting producer submitted comments on this disclosure, which were taken duly into consideration as set out below.

2. **PRODUCT UNDER REVIEW AND LIKE PRODUCT**

2.1. **Product under review**

(22) The product subject to this review is the same as in the original investigation, namely polyethylene terephthalate ('PET') having a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, currently falling under CN code 3907 61 00 and originating in India ('the product under review').

2.2. **Like product**

(23) The Commission considered that the product under review produced in India and exported to the Union and the product produced and sold in the Union by the Union industry have the same basic physical and chemical characteristics, and the same basic uses. They were therefore considered to be like products within the meaning of Article 2(c) of the basic Regulation.

([14]) Notice of initiation of a partial interim review of the countervailing measures applicable to imports of certain polyethylene terephthalate originating in India (OJ C 111, 25.3.2019, p. 47).

3. THE INVESTIGATION

3.1. Background

(24) The original investigation imposed specific countervailing duties (as opposed to *ad valorem* rates). These measures were coupled with specific anti-dumping duties ([15]), which were imposed on the same day. At that time, it was considered more appropriate to impose specific duties, instead of the *ad valorem* duties (based on the actual level of export prices). This choice was made in order to avoid that fluctuations in PET prices caused by fluctuations in crude oil prices should result in higher duties being collected ([16]).

(25) The anti-dumping measures were terminated by the Council in 2013 ([17]), whereas the countervailing duties were partially reviewed several times and currently are ranging from EUR 0 to 74,6 per tonne.

(26) In the 2018 Regulation, the Commission noted that, in contrast to the original investigation, specific duties might no longer be the most appropriate form of the measures to offset the subsidies granted. This is because the two main subsidy schemes (Duty Drawback Scheme ('DDS') and Merchandise Exports from India Scheme ('MEIS')) available to the exporting producers of PET during the review investigation period conferred financial benefits that were mostly linked to the export price.

(27) The Commission's analysis was based on the findings of the 2018 Regulation. These findings were considered to be of lasting nature and indeed confirmed by the 2019 expiry review. These findings were based on verified data provided by the Government of India and two exporting producers, namely, IVL Dhunseri Petrochem Industries Private Limited ('Dhunseri') and Reliance Industries Limited ('Reliance'). These exporting producers represented the quasi totality of all exports of PET from India to EU during the review investigation period of the 2019 expiry review (1 April 2017 to 31 March 2018). They are subject to countervailing duties of EUR 18,73 per tonne and EUR 29,21 per tonne (based on an *ad valorem* subsidy rate of 2,3 % and 4 %), respectively.

(28) In their comments on definitive disclosure, the exporting producer reiterated their comments made upon initiation with regard to *ex officio* initiation, which are summarised in recital (50). In their comments on definitive disclosure, the GOI made similar comments. The Commission already addressed these comments in recital (51). These claims were therefore rejected.

3.2. Purpose and effect of the current duties

(29) In accordance with Article 1(1) of the basic Regulation a countervailing duty may be imposed to offset any subsidy granted, directly or indirectly, for the manufacture, production, export or transport of any product whose release for free circulation in the Union causes injury.

(30) According to Article 19(2) of the basic Regulation, the Commission may review the continued imposition of measures, if there is sufficient evidence that the existing measure is not, or is no longer, sufficient to counteract the countervailable subsidy which is causing injury. If the investigation proves the allegations is correct, the countervailing duties may be increased to achieve the price increase required to counteract the subsidy.

(31) It is therefore clear from these two provisions that the very objective of a countervailing duty is to offset or counteract a subsidy.

([15]) Imposed by Council Regulation (EC) No 2604/2000 of 27 November 2000 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand (OJ L 301, 30.11.2000, p. 21).

([16]) Recital 99 thereof.

([17]) Council Implementing Decision 2013/226/EU of 21 May 2013 rejecting the proposal for a Council implementing regulation imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in India, Taiwan and Thailand following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 and terminating the expiry review proceeding concerning imports of certain polyethylene terephthalate originating in Indonesia and Malaysia, in so far as the proposal would impose a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in India, Taiwan and Thailand (OJ L 136, 23.5.2013, p. 12).

(32) The current subsidisation amounts established in the 2018 Regulation are predominantly based on two subsidy schemes, namely DDS and MEIS. These schemes are responsible for 97 % and 89 % of the subsidy amounts that were established at that time for Dhunseri and Reliance, respectively. By these two schemes, the GOI excessively refunds a percentage of the average export value of the eligible exported products to the exporting producers. Therefore, the higher the value per tonne of exports, the higher the excessive amount of refund that is being received by the exporting producers and thus the amount of subsidisation. This means that the amount of countervailable subsidies increases in line with an increase in the export price.

(33) When these duties were imposed in 2018, the subsidy amounts were recalculated into specific duties based on the PET prices of the cooperating exporting producers during the review investigation period of that investigation, namely from 1 April 2016 to 31 March 2017. These prices were relatively low during that period, ranging between around EUR 730 and 815 per tonne, depending on the exporting producer. Indeed, according to the 2019 expiry review, the average import price of PET of India in 2016 was particularly low at EUR 776 per tonne ([18]). These were the lowest average yearly prices throughout the entire period considered in that Regulation (1 January 2014 to 31 March 2018). The average import price of PET from India during the review investigation period of the 2019 expiry review (1 April 2017 to 31 March 2018), which is the most recent period investigated by the Commission in the context of PET imports from India, was EUR 916 per tonne ([19]). Considering that, as mentioned in recital (32), the subsidisation of exports of PET from India is proportionally linked to export price, specific duties calculated on prices from 1 April 2016 to 31 March 2017, would be insufficient to offset subsidisation based on prices from 1 April 2017 to 31 March 2018.

(34) The Commission, therefore, considered that, due to the nature of this particular subsidisation, specific duties may be inadequate in offsetting it as required by Article 1(1) of the basic Regulation. *Ad valorem* duties are be better suited for this purpose.

3.3. **Change of circumstances and their lasting nature**

(35) As specified above, based on the Union interest, the specific duties were considered more appropriate in the original investigation in order to avoid that fluctuations in PET prices, caused by fluctuations in crude oil prices, would result in higher duties being collected. Whilst the crude oil prices and thus PET prices continue to fluctuate, the decision to impose fixed duties has to be read in the context in which it had been taken.

(36) The current circumstances, described in recitals (32) to (34) are very different from the situation back in 2000, when the countervailing duties were first imposed. The original subsidy amounts were based on three subsidy schemes: (i) Duty Entitlement Passbook Scheme ('DEPS'); (ii) Export Promotion Capital Goods Scheme ('EPCGS'); and (iii) Export Processing Zones ('EPZ')/Export Oriented Unit ('EOU'). The most beneficial of these were DEPS and EOU/EPZ. Unlike the schemes that are currently in force, they did not automatically give right to a refund based on the exported value.

(37) Under DEPS an exporter was granted a licence for credit for import of goods (like raw materials or capital goods). The benefit and therefore the subsidisation occurred upon importation of these goods and not the exportation of PET. Whilst the export value prescribed the ceiling of subsidisation an exporting producer could receive, the subsidisation itself was determined by the level of imports. EPZ/EOU, which accounted for almost the entire subsidy amount (13,5 out of 13,9 %) attributed to what is now Dhunseri ([20]), were composed of various mechanisms ([21]). None of them was a simple payment linked to exported value, which is the case under the currently applicable DDS and MEIS schemes.

([18]) Recital 125.
([19]) *Ibid.*
([20]) Regulation (EC) No 1645/2005.
([21]) (i) exemption from import duties on all types of goods (including capital goods, raw materials and consumables) required for the manufacture, production or processing, or in connection therewith; (ii) exemption from excise duty on goods procured from indigenous sources; (iii) reimbursement of central sales tax paid on goods procured locally; (iv) 'duty drawback on all industry rates' with regard to furnace oil procured from domestic oil companies; (v) facility to sell a part of the production on the domestic market on payment of applicable duties on the finished product as an exception to the general requirement to export the entire production; (vi) exemption from income tax normally due on profits realised on export sales.

(38) In their comments on definitive disclosure, the exporting producer reiterated their comment on initiation with regard to the lack of shift in subsidy schemes, discussed in recitals (59) and (60). The exporting producer recalled that in the Note to the file on initiation, the Commission stated that 79 % of the subsidisation found in the original investigation stemmed from a scheme that was proportional to the export price. The exporting producer argued that this is only slightly less than the proportion of subsidisation stemming from DDS and MEIS found in the 2018 Regulation and in the 2019 expiry review. The exporting producer also argued that in absolute terms, those subsidies that are bestowed in relation to the export price are in fact less predominant than they were during the original investigation. Finally, the exporting producer argued that MEIS will be discontinued and replaced with WTO compliant scheme.

(39) The Commission pointed out that the Note to the file on initiation states that 79 % of the subsidisation found in the original investigation stemmed from a scheme – DEPB Post-export – that was '*conferring financial benefits that were found to be linked to the export price*'. The nature of that link and its distinction from DDS and MEIS was further explained by the Commission in recitals (36) and (37) and was not contested by the exporting producer in their comments on the definitive disclosure.

(40) Concerning the comment on MEIS, the Commission noted that its future and compatibility with WTO rules of the alleged replacement scheme was outside of the scope of this partial interim review.

(41) These claims were therefore rejected.

(42) The fluctuation of PET prices was the reason to impose specific duties in 2000, in the context of an absence of a specific link at the time between the amount of subsidisation received and the export prices of the exporting producers. By contrast, in 2020 the vast majority of subsidisation of PET exported from India to the Union is tied mostly to the value of these exports. The only adequate response is to tie the amount of duties to the same value via *ad valorem* duties.

(43) Even though the present review does not entail the conduct of a new Union interest test, it is noted that the expected fluctuation of duty to be paid per tonne would be far less problematic to users in 2020 than it would have been in 2000. Indeed, the countervailing duty rates established in 2000 were not only higher (going up to 8,2 % and 13,9 % in 2005 when Dhunseri started exporting), but were imposed together with anti-dumping duties the combination of which would result in duty rates ranging from 30 % to 44,3 %. Consequently, a sudden increase of PET prices per tonne would have been much more problematic for users. By contrast, the highest *ad valorem* duty that would be currently applicable to the majority of today's imports would be only up to 4 %.

(44) In their comments on the definitive disclosure, the exporting producer argued that the oil prices continue to be volatile after 2014 and were more so in 2020. According to the exporting producer, the Commission in the disclosure found the oil prices to be stable since 2014 and this stability to warrant the change of the measure into *ad valorem* rates. According to the exporting producer, the change of the measure into *ad valorem* rates based on the Commission's argument of stable crude oil prices was unwarranted.

(45) The Commission notes that this comment misrepresented the Commission's position on the fluctuation of oil prices and its impact on the conclusions reached in this review. As stated in recital (35) the Commission clearly acknowledged that PET prices and crude oil prices continued to fluctuate after the last expiry review in 2014. As further noted in recital (58), the Commission considered that an *ad valorem* duty was more appropriate to accurately offsetting a subsidy that fluctuates with the price of PET and crude oil. This claim was therefore rejected.

(46) This change of circumstances is of a lasting nature. This was confirmed by the 2018 Regulation, which found the nature and the prevalence of the two main schemes (DDS and MEIS) to be of a lasting nature ([22]).

(47) In their comments on the definitive disclosure, the GOI argued that the Commission's assertion that certain changes were of lasting nature was incorrect. The GOI mentioned that this was especially so with respect to crude oil prices, which were below the prices of crude in 2000.

([22]) Implementing Regulation (EU) 2018/1468, recitals 122 to 131.

(48) With respect to fluctuation of crude oil prices, the only example for incorrect assessment of lasting nature of the change of circumstances mentioned by the GOI, the Commission reiterated its arguments in recital (45). This claim was therefore rejected.

3.4. **Submissions of interested parties upon initiation**

(49) The association of European PET producers supported the initiation of the review.

(50) The exporting producer claimed that the *ex officio* initiation is illegal, adding that the Commission followed CPME's request to initiate this review, despite the fact that no evidence or information was provided. The exporting producer further maintained that the Commission could not reject a request for review while simultaneously initiating a review on its own initiative. According to the exporting producer, procedural requirements of Article 19(2) of the basic Regulation and Article 21.2 of the WTO Agreement on Subsidies and Countervailing Measures ('SCM Agreement') have been violated.

(51) The email from CPME follows the statements made by the Commission in the 2018 Regulation that are summarised in recital (27) above. In its email, CPME indicates that it supports the reasoning of the Commission and asks the Commission to take the necessary action. The email from CPME does not include the term 'request for review'. It merely supports an eventual initiation of such a review, should the Commission consider this appropriate. The Commission could not have rejected a request for review that was not submitted. As indicated in the Notice of initiation, the review was initiated by the Commission on its own initiative pursuant to Article 19(1) of the basic Regulation, which is line with Article 21.2 of the SCM Agreement. This allegation was therefore rejected.

(52) The exporting producer further claimed that the duties have been in place for 20 years and that the Commission should finally let them expire, observe the reaction of the markets and then, if at all needed, initiate a new, stand-alone investigation.

(53) The Commission noted that the scope of this partial interim review investigation is limited only to the form of the measures. The continuation or expiry of the measures was recently investigated in the 2019 expiry review, in which the exporting producer cooperated. That review found that the countervailing measures applicable to imports of PET originating in India should be maintained. This claim was therefore rejected.

(54) The exporting producer also claimed that there are no grounds for partial interim review nor for a change in the form of the measures. The expiry of the anti-dumping measures and the withdrawal of undertakings almost six years ago allegedly do not affect the effectiveness of the current countervailing measures. Furthermore, the exporting producer argued that there is allegedly no shift in subsidy schemes and that the crude oil price has been fluctuating and rising prior to initiation of the interim review and continues to be volatile.

(55) As noted by the Commission in recitals (32) and (34), unlike the situation when the countervailing duties were originally imposed, the specific countervailing duty rates are no longer appropriate to fully offset the actual level of subsidisation, which fluctuates with the prices of PET. By tying the duty amount to the price of PET through *ad valorem* duties, the Commission will better ensure to counteract the level of subsidisation. With regards to the nexus between discontinuation of the anti-dumping duties and the change of circumstances, the Commission recalled what is stated in recital (43). The overall level of the duties was part of the context in which the decision to apply specific duties in 2000 was reached, which no longer prevails. These claims were therefore rejected.

(56) As to the claim that the circumstances have changed already some time ago, the Commission points out that there is no time limit for initiating a review of the form of the measures. Since those changes have occurred there was no review that could have addressed the situation, as the only proceedings that had been initiated since the changes took place were partial interim reviews limited to subsidisation received by two exporting producers and expiry reviews. The present review is the first investigation since these circumstances have changed that looks specifically at the effectiveness of specific duties for all exporting producers. This claim was therefore also rejected.

(57) The exporting producer also argued that the fixed duty remains adequate form to avoid that fluctuations in PET prices caused by fluctuations in crude oil prices would result in inflated, unjustified duties being collected.

(58) As noted in recitals (32) and (34), the Commission considers that an *ad valorem* duty is more appropriate to accurately offsetting a subsidy that fluctuates with the price of PET and crude oil. It is unclear why such duty would be unjustified. This claim was therefore rejected.

(59) Finally the exporting producer asserted that there was no shift in subsidy schemes as DEPB countervailed in 2000 was similar to DDS and MEIS.

(60) The Commission already pointed out in recital (37) that DEPB was different from DDS or MEIS in that the benefit and therefore subsidisation was based on imports of raw materials or capital goods rather than exports of the finished product concerned. Consequently, this claim was factually incorrect and was therefore rejected.

(61) Six users claimed that changing the form of the measures from specific duties to *ad valorem* duties would increase price volatility and result in an increase of the actual duty (and therefore of the overall price of the product), which would be detrimental to the business sustainability of all the downstream users. They also argued that cost increases would erode their profit margins and reduce their competitiveness.

(62) The Commission already pointed out in recital (34) that the level of subsidisation due to the nature of the main schemes are mostly linked to the level of prices of PET. The only way to offset this adequately is to set up a measure that also is tied to the level of export prices. This would be *ad valorem* duties. A change to *ad valorem* duties does not mean that prices of PET would automatically go up. If the export prices decrease, as it was noticed in 2019, the applicable duties will decrease as well. Furthermore, as specified in recital (43) above the *ad valorem* duties on imports of the two main exporting producers in India would be low (2,3 % and 4 %) and cannot be considered as detrimental for the business sustainability of the downstream users. These claims were therefore rejected.

(63) The users argued that the installed capacity of European PET Manufacturers is not sufficient to cover the internal demand of PET.

(64) As noted in the 2019 expiry review, the Union industry has sufficient capacity to cover 85 % of total current domestic consumption. In addition, imports from other countries without measures are also available, whilst PET recycling constitutes a further source. Furthermore, the current review investigation does not seek to increase the duty applicable to imports of PET from India but to properly offset the actual subsidisation in view of the current circumstances through *ad valorem* duties. Considering the crude oil prices at the end of first quarter of 2020, this change is likely to result in the lowering of PET prices. These claims were therefore rejected.

(65) The users also asserted that European PET manufacturers are suffering no injury from imports of polyethylene terephthalate originating in India. On the contrary, they come from a long period of extraordinary marginality.

(66) The scope of this partial interim review investigation is limited to the form of the measures on imports of PET originating in India. The Commission nevertheless noted that an injury analysis has been carried out in the framework of the most recent expiry review concluded in July 2019. That review found that the Union Industry did not suffer material injury during the review investigation period but still remained in a fragile situation, as evidenced by the low profitability. These claims were therefore rejected.

4. **CONCLUSION**

(67) The investigation established that the countervailing measures in force should take the form of *ad valorem* duties at the corresponding levels already established in several previous investigations ([23]).

(68) In their comments on definitive disclosure, the GOI and the exporting producer argued that, if the Commission decided to go ahead with the change of the form of the measures to *ad valorem* duties, it should apply the subsidy rate established in the 2019 expiry review, namely 3,6 %.

(69) The Commission noted that this partial interim review was limited to the form of the measures and did not concern their level. The Commission notes that, whilst the current level of duty was established in the 2018 Regulation, the measures currently in force have been imposed by the 2019 expiry review. In case of Reliance these measures are 29,21 EUR/tonne based on 4 % subsidy rate. No other *ad valorem* duty can be imposed pursuant to this partial interim review since such a change would fall outside the scope of this review, as indicated in the Notice of Initiation. This claim was therefore rejected.

([23]) The corresponding levels were established in the following regulations: for Futura Polyesters Ltd – by means of Regulation (EC) No 2603/2000; for all other companies as well as for Pearl Engineering Polymers Ltd and Senpet Ltd – by means of Regulation (EC) No 1286/2008; for IVL Dhunseri Petrochem Industries Private Limited and Reliance Industries Limited – by means of Implementing Regulation (EU) 2018/1468.

(70) Considering the above analysis, the Commission concluded that the circumstances have changed and the use of specific duties is no longer appropriate to countervail the actual level of subsidisation. As the likelihood of continuation of subsidisation has been already concluded in the 2019 expiry review, the measures will change from specific to *ad valorem* form of countervailing duties.

(71) In their comments on the final disclosure, the GOI and the exporting producer argued that the duties on imports on PET from India have been in place for two decades and should expire as expiry of measures is the rule and the continuation of measures is the exception. Furthermore, the GOI and the exporting producer argued that the original complainants have disappeared and that the Commission was now protecting producers outside the scope of the domestic industry.

(72) The exporting producer also argued that Indorama Ventures Europe B.V. should be removed from the current interpretation of the EU industry. The exporting producer further argued that the measures were not in the Union interest since they were detrimental to the business sustainability of all downstream users and consumers. Finally, the exporting producer argued that allowing the measures to continue was a discrimination against India and notably against them.

(73) The Commission noted that none of these considerations were within of the scope of this partial interim review, which was limited to the form of the measures. The Commission also noted that the 2019 expiry review, in which both the GOI and the exporting producer cooperated, recently decided that the extension of the measures was warranted within the applicable legal framework. The Commission recalled that, pursuant to Article 19(2) of the basic Regulation, exporting producers may request the Commission to initiate a review on the level of subsidisation in case they consider that there are grounds of a lasting nature which merit such a review.

(74) These claims were therefore rejected.

(75) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036 of the European Parliament and the Council ([24]),

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 1(2) of Implementing Regulation (EU) 2019/1286 shall be replaced by the following:

Company	Countervailing duty (%)	TARIC additional code
Futura Polyesters Ltd	0	A184
IVL Dhunseri Petrochem Industries Private Limited	2,3	C380
Pearl Engineering Polymers Ltd	13,8	A182
Reliance Industries Limited	4,0	A181
Senpet Ltd	4,43	A183
All other companies	13,8	A999

Article 2

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

([24]) Regulation (EU) 2016/1036 of the European Parliament and the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21).

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

Done at Brussels, 2 June 2020.

For the Commission
The President
Ursula VON DER LEYEN