COMMISSION REGULATION (EC) No 123/2000

of 20 January 2000

imposing a provisional countervailing duty on imports of polyester staple fibres (PSF) originating in Australia and Taiwan and terminating the anti-subsidy proceeding concerning imports of PSF originating in the Republic of Korea and Thailand

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1], and in particular Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

(1) In April 1999 the Commission announced by a notice (hereinafter referred to as a 'notice of initiation') published in the *Official Journal of the Communities* [2], the initiation of an anti-subsidy proceeding with regard to imports in to the Community of polyester staple fibres (hereinafter referred to as 'PSF') originating in Australia, Indonesia, the Republic of Korea (hereinafter referred to as 'Korea'), Taiwan and Thailand and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged by the International Rayon and Synthetic Fibres Committee on behalf of Community producers representing a major proportion of Community production of PSF. The complaint contained evidence of subsidisation of the said product, and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) Prior to the initiation of the proceeding and in accordance with Article 10(9) of Regulation (EC) No 2026/97 (hereinafter referred to as the 'basic Regulation'), the Commission notified to the Governments of Australia, Indonesia, Korea, Taiwan and Thailand that it had received a properly documented complaint alleging that subsidised imports of PSF originating in Australia, Indonesia, Korea, Taiwan and Thailand are causing material injury to the Community industry. These Governments were invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. The Governments of Australia, Indonesia, Korea, Taiwan and Thailand accepted the offers of consultation which were held with the Commission on 7 April, 29 March, 7 April, 25 March and 9 April 1999, respectively. Due note was taken of the comments made in regard to the allegations contained in the complaint regarding subsidised imports and material injury being suffered by the Community industry.

(4) The Commission officially advised the Community producers, exporting producers, importers and users known to be concerned, the representatives of the exporting country and the complainant of the initiation of the proceeding. The parties concerned had the opportunity to make their views known in writing and to request a hearing.

The Governments of Australia, Indonesia, Korea, Taiwan and Thailand, a number of exporting producers as well as complainant Community producers, Community users and importers made their views known in writing. All parties so requested within the time limits set in the notice of initiation were granted a hearing.

(5) The Commission sent questionnaires to all parties known to be concerned and received replies from the Governments of Australia, Indonesia, Korea, Taiwan and Thailand from seven complaining Community producers, three users in the Community and exporting producers in all countries concerned.

(6) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination of subsidisation and injury, and carried out, as appropriate, investigations at the premises of the following companies:

(a) *Community producers*

— Dupont De Nemours GmbH, Frankfurt, Germany

— Trevira GmbH & Co KG, Frankfurt, Germany

— Wellman International Ltd, Mullagh, Kells, Co. Meath, Ireland

— Catalana de Polimers, Barcelona, Spain

— Montefibre SpA, Milano, Italy

(b) *Government of Australia*

— Department for Foreign Affairs and Trade

— Australian Taxation Office

— Department of Industry, Science and Resources

— Australian Trade Commission

— Department of State Development (State Government of Victoria)

(c) *Exporting producer in Australia*

— Leading Synthetics Pty Ltd, Melbourne, Victoria

[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ C 111, 22.4.1999, p. 3.

(d) *Government of Indonesia*
- — Ministry of Industry and Trade
- — Ministry of Finance
- — Anti-Dumping Committee of Indonesia (KADI)
- — Office of Coordinating Minister for Economy, Finance, and Industry
- — Investment Coordinating Board (BKPM)
- — Agency for Export Facility Services (BAPEKSTA)
- — Sucofindo Masterlist Verification Division
- — Bank Indonesia

(e) *Producers/exporters in Indonesia*
- — PT. Indorama Synthetics TbK, Jakarta
- — PT. Panasia Indosyntec TbK, Bandung
- — PT. Susila Indah Synthetic Fiber Industries, Jakarta

(f) *Government of Korea*
- — Ministry of Commerce, Industry and Energy
- — Ministry of Finance and Economy
- — Supply Administration of the Republic of Korea
- — Korea Federation of Textile Industries
- — The Korea Development Bank
- — The Industrial Bank of Korea
- — The Bank of Korea

(g) *Exporting producers in Korea*
- — Daehan Synthetic Fiber Co. Ltd, Seoul
- — Dobest Co. Ltd, Seoul
- — Ein Textile Co. Ltd, Seoul
- — Sung Lim Co. Ltd, Seoul
- — Samyang Corporation, Seoul
- — SK Chemicals Co. Ltd, Seoul
- — SK Global Co. Ltd, Seoul
- — Saehan Industries Inc, Seoul
- — Estal Ind. Co, Yangsan City

(h) *Government of Taiwan*
- — Ministry of Economic Affairs
- — Ministry of Finance
- — Development Fund of the Executive Yuan
- — Chiao Tung Bank
- — Business Bank of Taiwan

(i) *Exporting producers in Taiwan*
- — Shinkong Synthetic Fibers Corporation, Taipei
- — Tuntex Distinct Corp, Hsichih, Taipei County
- — Far Eastern Textile Ltd, Taipei
- — Nan Ya Plastics Corporation, Taipei

(j) *Government of Thailand*
- — Department of Foreign Trade
- — Board of Investment
- — Customs Department
- — Revenue Department

(k) *Exporting producers in Thailand*
- — Indo-Poly (Thailand) Ltd, Nakornpathom
- — Teijin Polyester (Thailand) Ltd, Bangkok
- — Tuntex (Thailand) Public Company Ltd, Bangkok

(7) The investigation of subsidisation covered the period from 1 April 1998 to 31 March 1999 (hereinafter referred to as the investigation period' or 'IP'). The examination of injury covered the period from 1 January 1996 to 31 March 1999 (hereinafter referred to as 'the period considered').

(8) For the purposes of this investigation, and in accordance with established policy and practice in this area, in case a company received a benefit under a given scheme below 0,01 %, it is considered that such company did not benefit from such scheme. Furthermore, the benefit received by the exporting companies is expressed as a percentage of the denominator applicable to the subsidy scheme in question, in accordance with Article 7 of the basic Regulation.

(9) In April 1999 the Commission initiated an anti-dumping investigation concerning imports of the same product originating in Australia, Indonesia and Thailand [1]. With regard to imports of PSF originating in Korea, an anti-dumping proceeding was initiated in October 1999 [2]. Definitive anti-dumping measures are currently in force concerning imports of PSF originating in Taiwan by means of Council Regulation (EC) No 1728/1999 [3].

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(10) The product under consideration is synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, which is currently classifiable under CN code 5503 20 00.

(11) This product is a basic material used at various stages of the manufacturing process of textile products, depending on the nature of textiles concerned. Around 60 % of the Community consumption of PSF is used for spinning, that is to say manufacturing filaments for the production of textiles, after mixing or not with other fibres such as cotton or wool. Approximately 25 % is used for filling, that is to say the stuffing or padding of certain textile goods (for example cushions, car seats, jackets) while the remaining 15 % is used for other non-woven applications, in particular the production of carpets. The product in question is sold with different specifications (e.g. Denier or decitex, lustre, silicon treatment). It is also sold as either first quality or as substandard qualities. Although the potential specific uses and the quality of the various types of PSF sold may differ, this does not entail any significant differences in the basic physical characteristics of the different types. They are therefore considered as one product for the purpose of this Regulation.

[1] OJ C 111, 22.4.1999, p. 7.
[2] OJ C 285, 7.10.1999, p. 3.
[3] OJ L 204, 4.8.1999, p. 3.

2. **Like product**

(12) The Commission services found that there were no differences in the basic characteristics and uses of the PSF, originating in Australia, Indonesia, Korea, Thailand and Taiwan, imported into the Community and the PSF produced by the Community industry and sold on the Community market. It was also found that there was no difference between the PSF produced in Australia, Indonesia, Korea, Thailand and Taiwan and exported to the European Community and that sold on the domestic markets of those countries. It was therefore concluded that both the PSF produced and sold by the Community industry on the Community market and the PSF produced and sold on the domestic markets of Australia, Indonesia, Korea, Thailand and Taiwan were, within the meaning of Article 1(5) of the basic Regulation, alike to the PSF imported into the Community from the five countries subject to investigation.

C. **SUBSIDIES**

I. AUSTRALIA

1. **Introduction**

(13) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission services investigated the following four schemes, which allegedly involved the granting of subsidies:

— Export Market Development Grant Scheme

— Textiles, Clothing and Footwear Plan

  — Incentives for International Competitiveness Programme

  — Infrastructure Support Programme

  — National Industry Extension Programme

  — Capitalisation Grants Programme

  — Labour Adjustment Programme

  — Import Credit Scheme

  — Overseas Assembly Programme

  — Quick Response Programme

— Regional Scheme (Government of Victoria): Investment Attraction Programme (IAP)

— Regional Scheme (Government of Victoria): Industry, Regional and Trade Support Programme (IRTSP).

2. **Export Market Development Grant Scheme (EMDGS)**

(14) The legal basis of this scheme as it was in operation during the period of investigation, is the Export Market Development Grants Act 1997 (hereinafter referred to as EMDG Act 1997').

(a) *Eligibility*

(15) According to Parts 3 and 4 of the EMDG Act 1997, a company is entitled to a grant in respect of a grant year if:

— it is conducting a business in Australia with an income not exceeding AUD 50 million and export earnings not exceeding AUD 25 million and

— has incurred certain eligible expenses related to marketing and promotional activities such as the cost of maintaining an overseas representation, market research, free samples and marketing visits.

— in relation to eligible products, i.e. certain services, intellectual property rights, know-how and goods which are substantially of Australian origin (at least 50 % Australian content for goods made in Australia) or for which the Australian Trade Commission (Austrade) is satisfied that Australia will derive a significant net benefit from their export.

(16) A company is eligible for eight grants only.

(b) *Practical implementation*

(17) In order to avail itself of the scheme, a company applies to Austrade which assesses the application. In this assessment a so-called 'grants entry test' is applied. According to Austrade's Determination 1/1997, this test requires, *inter alia*, that a first-time applicant must have planned export earnings which are not on their face unachievable. According to Section 65 of the EMDG Act 1997, if grants have already been given during a period of three grant years, the amount of the grant is calculated taking into account the actual export earnings for the subsequent grant years.

(c) *Conclusion on countervailability*

(18) This scheme involves a financial contribution by the Government of Australia (hereinafter referred to as 'GOA') in the form of a grant which confers a benefit on the recipient. This subsidy is an export subsidy in the meaning of Article 3(4)(a) of the basic Regulation since the subsidy is in fact tied to anticipated export earnings because the grant is not given unless the company has planned export earnings. Additionally, for grants given during the fourth grant year, the subsidy is in law contingent upon export performance since the grant amount is calculated on the basis of actual export earnings. Finally, the subsidy is contingent upon the use of

domestic over imported goods within the meaning of Article 3(4)(b) of the Basic Regulation, since it can only be obtained for goods which are substantially of Australian origin unless it is determined that Australia will derive a significant net benefit from their export (which would make the subsidy specific since in fact tied to anticipated export earnings according to Article 3(4)(a) of the basic Regulation).

(d) *Calculation of the subsidy amount*

(19) The amount of subsidy should be the equivalent of the amount of the grant paid during the investigation period. Given the nature of this subsidy, which is equivalent to a one-time grant, and in order to encompass the full benefit to the recipient of not having to borrow this amount on the open market, the face value of the amount of the subsidy has to be transformed into the value prevailing during the investigation period through the application of the commercial interest rate on comparable loans obtained by the company during the investigation period.

(20) The total amount of subsidy so attributed to the investigation period should be allocated over export sales since this subsidy benefits only export sales. The exporting producer availed itself of this scheme and obtained a benefit of 0,03 %.

3. **Textiles, Clothing and Footwear Plan (TCFP)**

(21) The TCFP is a policy statement made by the GOA which constitutes the basis for a series of programmes providing assistance to the textile, clothing and footwear (TCF) industry. These programmes are either based on legislative acts, administrative arrangements or are made on an ad hoc basis.

(22) The TCF Development Authority (hereinafter 'TCFDA') was created by the TCFDA Act of 1988 which is a key element of the TCFP. Its purpose was, *inter alia*, to implement the TCFP. The TCFDA was abolished in February 1996 and all remaining activities were transferred to the Department of Industry, Science and Resources.

(23) The following two individual schemes, which are based on the TCFP, were used by the exporting producer and found to be countervailable.

3.1. ***Incentives for International Competitiveness Programme (IICP)***

(24) The scheme is based on Section 7(d)(i) and Sections 36 through 40 of the TCFDA Act.

(a) *Eligibility*

(25) The eligibility criteria were, *inter alia*:

— the project must involve investment or development costs,

— the project must involve a specific financial commitment by the company (normally at least 70 % of total project costs),

— the project must result in improvements to the firm's international competitiveness.

(26) According to the guidelines issued by the TCFDA, the last criterion means that companies will be asked to demonstrate how the project will lead to improved international competitiveness through export growth, import replacement, quality improvement, cost reduction or similar measures. Additionally, the TCFDA places high priority on export development projects, raw materials processing projects, greenfield development projects and investment projects. Only producers of TCF products were eligible. The Government had discretion in selecting beneficiaries under the scheme.

(b) *Practical implementation*

(27) The company must apply to the TCFDA with a standard application form. This form requests, *inter alia*, information on targets on export growth and import replacement.

(c) *Conclusion on countervailability*

(28) The grant constitutes a subsidy since it involves a financial contribution by the government which confers a benefit on the recipient. The GOA stated during the verification visit that the subsidy was specific to the textiles, clothing and footwear industry but not contingent upon export performance. However, the GOA refused to provide access to the contract between the Government and the company which is the basis for the grant, citing 'business in confidence' requirements. The company was denied approval to release the contract to the Commission services for verification. Hence, a determination on the issue whether this subsidy is contingent upon export performance had to be made on the basis of the facts available in accordance with Article 28 of the basic Regulation. It was verified that the company had to provide information on target figures for export growth. Additionally, it was established that the granting authority gives priority to export development programmes.

(29) In the absence of verified information on conditions for the actual grant given to the exporting producer, it is therefore considered that at least one of the criteria for paying out the grant was the achievement of targets on export earnings which makes the grant contingent upon export performance. In this respect, Article 3(4)(a) basic Regulation states that the existence of one of several factors for eligibility can constitute contingency upon export performance. Therefore, the subsidy is a specific export subsidy and countervailable in accordance with Article 3(4)(a) of the basic Regulation and a countervailable subsidy specific to certain enterprises, i.e. the textiles, clothing and footwear sector, in accordance with Article 3(2)(a) of the basic Regulation.

(d) *Calculation of the subsidy amount*

(30) The subsidy at issue is a non-recurring subsidy, which can be linked to the acquisition of fixed assets. Therefore the amount of subsidy from a grant has to be allocated over the normal period used in the industry involved for the depreciation of assets in accordance with Article 7(3) of the basic Regulation. Since the exporting producer is the sole producer of the product concerned in Australia, the depreciation period used in that company was considered to be the appropriate allocation period.

(31) In order to reflect the full benefit to the recipient of having a lump sum of money at its disposal from the beginning of the allocation period, the amount of subsidy should be increased by the average amount of interest which the recipient would expect to pay on the non-depreciated amount of the total grant over the whole period of allocation if he had to borrow the money on the open market.

(32) The total amount of subsidy so attributed to the investigation period should be allocated over export sales since this subsidy benefits only export sales. The exporting producer availed itself of this scheme in the form of a grant and obtained a benefit of 1,92 %.

3.2. ***Import Credit Scheme (ICS)***

(33) The scheme commenced on 1 July 1991. Its legal basis is an administrative arrangement.

(a) *Eligibility*

(34) Companies exporting certain eligible products can obtain an import credit for certain other eligible products. PSF is not one of the eligible products for export but polyester textured yarn, which is also produced by the exporting producer.

(b) *Practical implementation*

(35) The Australian Customs Service (ACS) administers this scheme. After conducting the export of an eligible product and payment is made, a company applies for a credit note to ACS. This credit note contains a code and the import credit amount which is calculated on the basis of a fixed percentage of fob value of the exported product. This information is normally transferred to the company's customs broker. Upon import of an eligible product, the customs broker uses the code to pay import duty with the credit amount. Alternatively, the company can advise the customs broker to transfer the import credit to another company in exchange for a cash payment.

(c) *Conclusion on countervailability*

(36) This scheme is a subsidy since it involves a financial contribution in the form of import duty foregone which confers a benefit on the recipient. This scheme is a specific export subsidy in the meaning of Article 3(4)(a) of the basic Regulation since it is calculated on the basis of export sales and therefore contingent in law upon export performance. The GOA and the exporting producer argued that the subsidy did not benefit the product concerned since PSF was not an eligible product under the scheme. It was established, however, that the company did not use the credits to offset import duties for imports of inputs of its own products but sold the credits on the open market. In effect, the subsidy benefited all exports of the company since the benefits were finally received in cash, the use of which is not linked to a particular product. Hence, it is considered, that since the company obtained benefits under the scheme which have also benefited exports of the products concerned, the benefits should be countervailed.

(d) *Calculation of the subsidy amount*

(37) The amount of subsidies, which have to be allocated over export sales, should be calculated on the basis of the grants obtained during the investigation period. In order to encompass the full benefit to the company, the annual commercial interest rate was added to the face amount of the grants. In this case, since the company

obtained subsidies equivalent to a series of grants during the investigation period, it is considered appropriate to assume that an average grant would have been received at the mid-point of the investigation period, and therefore the interest should cover a period of six months. The company obtained a benefit of 3,48 %.

4. **Regional Scheme (Government of Victoria): Investment Attraction Programme (IAP)**

(38) The scheme is based on Section 13(3) of the Victorian Economic Development Act 1981. It commenced in 1981 and ceased in 1994 through the repeal of the Act. Guidelines were issued by the Government of Victoria.

(a) *Eligibility*

(39) Assistance under this programme is determined on a case-by-case basis. Primarily, the programme provides facilitation services for key investment programmes and regional headquarters, and seeks to attract additional investment for Victoria. Investment facilitation and assistance includes sight identification, selection, industrial relations and employment advice and information on cost in different locations. Where financial assistance is provided, companies must demonstrate a certain level of capital expenditure.

(40) The Government of Victoria argued that the programme is not contingent upon export performance or the use of domestic over imported goods. It was explained that there were no express eligibility criteria set down but that the Government of Victoria had discretion in granting financial support. In exercising this discretion, certain factors were considered such as the balanced economic development of the state and capital investment, creation of employment and development of the export capacity throughout Victoria. It was not possible to verify the actual conditions for this scheme since the Government of Victoria denied access to the grant contract which sets forth the conditions of the grant, the application material submitted and the letter of offer sent by the Government of Victoria citing 'commercial in confidence' requirements.

(b) *Practical implementation*

(41) The Victorian Department of Business and Employment (as of March 1996, the Victorian Department of State Development) was in charge of administering this scheme. Companies intending to obtain assistance provided information to the case officers in the Department who recommend to the Cabinet Committee an assistance package. Upon approval by this Committee, a letter of offer is sent to the company which in case of an agreement by the company, will form the basis for the contract between the Government of Victoria and the company. This contract sets out the conditions for obtaining the incentive.

(c) *Conclusion on countervailability*

(42) The grant is a subsidy since it involves a financial contribution by the Government which confers a benefit on the recipient. Since it was not possible to verify the actual conditions of the grant, the facts available had to be used in order to determine its countervailability in accordance with Article 28 of the basic Regulation. The Economic Development Act 1981 establishes as one of the objectives of the programme 'the development of the export capacity'. It is considered, therefore, that the grant was either made contingent upon export performance or in fact tied to anticipated exportation or export earnings the meaning of Article 3(4)(a) of the basic Regulation as alleged by the complainant. In this respect, the complainant cites the Report of the Victorian Auditor's Offices concerning the IAP which contains a reference to expected export growth of the company under investigation.

(43) In any event, the programme is considered to be specific in accordance with Article 3(2)(a) of the basic Regulation since it does not establish objective criteria for eligibility under the IAP but allows the government of Victoria to exercise full discretion in providing financial assistance. Even though requested by Commission services, no information was provided by the Government on how this discretion was exercised, i.e. which sectors benefited from the programme.

(d) *Calculation of the subsidy amount*

(44) The company received a grant to assist in the construction of new plant and equipment. The amount of the subsidy was calculated as explained above for the IICP Scheme. The company obtained a benefit of 0,64 %.

5. **Subsidy programmes not used by the exporting producer**

(45) It was found that the exporting producer did not obtain any countervailable benefits under the following programmes:

— Infrastructure Support Programme
— National Industry Extension Programme
— Quick Response Programme
— Capitalisation Grants Programme
— Labour Adjustment Programme
— Overseas Assembly Programme
— Regional Scheme (Government of Victoria): Industry, Regional and Trade Support Programme.

6. **Amount of countervailable subsidies**

(46) The amount of countervailable export subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producer, who is the sole exporting producer in Australia, is as follows.

(%)

	EMDGS	IICP	ICS	IAP	Total
Leading Synthetics Pty Ltd	0,03	1,92	3,48	0,64	6,07

II. TAIWAN

1. **Introduction**

(47) On the basis of the information contained in the complaint and the replies to the Commission's questionnaires, the Commission services investigated the following schemes, which allegedly involve the granting of subsidies:

— Tax credits and tax exemptions
— Loans at preferential interest rates
— Accelerated depreciation
— Import duty exemption
— Matching funds and/or assistance funds
— Fund for the Development and Management of Industrial Zones

Further details of these schemes are set out below.

(48) All schemes are based on the Statute for Upgrading Industries (hereinafter referred to as 'SUI') which entered into force on 1 January 1991 and was last amended on 27 January 1995. These programmes are designed to promote a general upgrading of the industry by creating an advantageous tax environment backed by appropriate financial measures. The implementation of these programmes is regulated by the Enforcement Rules of the Statute for Upgrading Industries as last amended on 15 November 1995.

2. **Tax credits for automation equipment and pollution control equipment**

(49) These tax credits are covered by Article 6(1) of the SUI and supplemented by Articles 13(1) and 14(1) of the Enforcement Rules of the SUI.

(a) *Eligibility*

(50) Tax exemptions are granted to companies only for a limited number of investments:

— investment in equipment for automation of production,
— investment in equipment for pollution control,
— investment in technology for automation of production or for pollution control.

(51) The SUI states that the investment should exceed TWD 600 000 new Taiwan dollars) in the same tax year. The tax credits for the different types of investment can be cumulated.

(b) *Practical implementation*

(52) Any eligible company which invested in the above mentioned equipment types or technology may credit 10 % to 20 % of the purchase amount against the corporate income tax payable for the current year. In case the amount of income tax payable is less than the deductible amount, the credit may be carried over during the next four years.

(53) The amount of tax credit is determined as follows:

— for the purchase of domestically manufactured automated equipment or pollution control equipment, the credit rate is 20 %,
— for the purchase of foreign made automated or pollution control equipment, the credit rate is 10 %,
— for the purchase of technology for automation production, the permissible credit is at the rate of 10 %.

(54) In order to obtain the tax credits, a company makes an application for the issuance of a tax deduction certificate to the Industrial Development Bureau of the Ministry of Economic Affairs (IDB) within six months of the date of delivery of the equipment or the date of completion of the project. Once the certificate is issued, the tax credit can be deducted in the tax declaration for the current year.

(c) *Conclusions on countervailability*

(55) The tax credits for automation equipment and pollution control equipment constitute a financial contribution by the Government of Taiwan (hereinafter referred to as 'GOT') in the form of taxes foregone and a benefit accrues to the recipient by not having to pay a certain amount of taxes.

(56) Tax credits for automation equipment and pollution control equipment made in Taiwan constitute subsidies which are contingent in law upon the use of domestic over imported goods since domestically manufactured equipment benefits from a higher tax credit rate than imported equipment. In the light of the above, the subsidies obtained under this scheme are considered to be specific and therefore countervailable in accordance With Article 3(4)(b) of the basic Regulation.

(d) *Calculation of the subsidy amount*

(57) The amount of subsidy should be calculated on the basis of the amount of taxes unpaid during the investigation period. Given the nature of this subsidy, which is equivalent to a one-time grant, and in order to encompass the full benefit to the recipient, this amount has been adjusted by adding the average commercial interest during the investigation period, i.e. 9,03 %. The total amount of subsidy so attributed to the investigation period should be allocated over total sales since this subsidy benefits both domestic and export sales.

(58) Two companies availed themselves of this scheme and obtained a benefit of 0,42 % and 0,41 %, respectively.

3. **Tax credit for investment in important enterprises**

(59) This tax credit is covered by Article 8 of the SUI and Articles 15, 16, 17 and 18 of the Enforcement Rules of the SUI.

(a) *Eligibility*

(60) This tax credit is available to investors who buy registered stocks either issued by an 'important technology-based enterprise' or an 'important invested enterprise' designated by the government or issued by a venture capital investment enterprise. There is no clear definition of 'important technology-based enterprise'. An 'important invested enterprise' may be any enterprise with a capital of at least TWD 2 billion providing it has been designated as such by the GOT.

(b) *Practical implementation*

(61) Any eligible company which invested in the above mentioned enterprises may credit 20 % of the price paid for the acquisition of such stocks against the corporate income tax payable. In case the amount of income tax payable is less than the deductible amount, the benefit may be carried over during the next four years.

(62) In order to obtain the tax credits, the invested company makes an application for the issuance of a tax deduction certificate to the IDB. Once the certificate is issued to the invested company, the investor may deduct the amount of the tax credit in the tax declaration of the current tax year.

(c) *Conclusions on countervailability*

(63) Under this scheme there is a financial contribution by the GOT in the form of taxes foregone and a benefit accrues to the recipient by not having to pay a certain amount of taxes.

(64) The GOT has limited the access to the subsidy to enterprises which make a specific investment in a technology-based or important invested enterprise. In addition, the GOT has large discretion in the designation of eligible investments. There are no objective criteria to determine what constitutes a technology-based or important invested enterprise. By the nature of these eligibility criteria, only a limited number of companies will benefit from this tax credit. Since the eligibility is expressly limited to certain enterprises and not based on neutral criteria within the meaning of Article 3(2)(b) of the basic Regulation, the scheme is considered specific in accordance with Article 3(2)(a) of the basic Regulation.

(d) *Calculation of the subsidy amount*

(65) The amount of subsidy should be calculated as explained above in recital 57.

(66) One company availed itself of this scheme and obtained a benefit of 0,71 %.

4. **Tax credits for R & D and personnel training**

(67) The tax credits for research and development ('R & D') and personnel training are covered by Article 6(1) of the SUI and Articles 13(2) and 14(2) of the Enforcement Rules. Furthermore, the practical implementation of the scheme is regulated by the Measures Governing the Application of Tax Deduction for Company Investment in R&D, Personnel Training and Establishing Image of World-wide Brand (hereinafter referred to as the 'Measures') promulgated by the Executive Yuan, i.e. a board of government officials established by the GOT.

(a) *Eligibility and practical implementation*

(68) The tax credits mentioned above are available to manufacturing industries as well as agriculture and services.

(69) A tax credit for R & D can be claimed at a rate of 15 % or, if total expenditure for R & D exceeds a certain threshold, of 20 %, may be deducted from the corporate income tax.

(70) Additionally, a company can claim a tax credit for expenditure for personnel training at a rate of 15 %.

(b) *Conclusions on countervailability*

(71) These tax credits constitute a financial contribution by the Government of Taiwan in the form of taxes foregone and a benefit accrues to the recipient by not having to pay a certain amount of taxes.

(72) However, the tax credits are generally available for all companies investing in R & D and personnel training. Furthermore, objective criteria were established governing the eligibility and are described in detail in Article 2 (R & D) and Article 3 (personnel training) of the Measures whereby the eligibility to benefit from this subsidy is automatic and the GOT has no discretion to determine which enterprise is eligible or not. These tax credits are therefore considered not to be specific in the meaning of Article 3(2)(a) of the basic Regulation, and thus not to be countervailable.

5. **Tax credit for investments in scanty natural resources areas**

(73) This tax credit is governed by Article 7 of the SUI and Articles 2 and 3 of the Measures Governing Application of Tax Deduction for Company's Investment in Areas with Scanty Natural Resources or Slow Development (hereinafter referred to as the 'Guidelines').

(a) *Eligibility*

(74) Any company that makes investments or employs a certain number of employees in certain industries in a designated area with scanty natural resources or with slow development is eligible for this tax credit.

(b) *Practical implementation*

(75) An eligible company may credit up to 20 % of the total amount of its investment in purchasing machinery, equipment and plant buildings against the amount of corporate income tax payable for the year in which the investment is completed.

(c) *Conclusions on countervailability*

(76) This scheme constitutes a subsidy since there is a financial contribution in the form of taxes foregone by the GOT. This confers a benefit to companies availing themselves of this tax credit since they are exempted from paying a certain amount of taxes.

(77) The GOT has limited the use of this scheme to certain enterprises which make certain investments in designated geographical areas. In addition, the GOT has a large discretion in pronouncing the eligible investments.

(78) The subsidies obtained under this scheme are therefore considered to be specific and countervailable in accordance with the provisions of Articles 3(2)(a) and 3(3) of the basic Regulation.

(d) *Calculation of the subsidy amount*

(79) The amount of subsidy should be calculated as explained above in recital 57.

(80) One company availed itself of this scheme and obtained a benefit of 0,01 %.

6. **Tax credits for establishing international brands**

(81) The legal basis ors programme is Article 6(1) of the SUI and Articles 13(2) and 14(2) of the Enforcement Rules. It was established that one exporting producer availed itself of this scheme but obtained no benefit. Therefore, it is considered not to be necessary to make a finding on the countervailability of this scheme.

7. **Loans at preferential rates: incentives for automation, anti-pollution incentives and energy conservation incentives**

(82) These schemes are based on Article 21(1) of the SUI.

(a) *Eligibility*

(83) The following eligibility criteria for loans under this programmes have to be met:

— for automation: any public and/or private company that intend to purchase automated machinery and/or equipment,

— for anti-pollution: all private companies, environmental protection businesses, medical institutions which are authorised by responsible government agencies to purchase anti-pollution equipment,

— for energy conservation: all Taiwanese companies purchasing certain energy conservation equipment.

(b) *Practical implementation*

(84) Companies concerned have to file an application to the Chiao Tung Bank. Based on the financial situation of the applicant, this bank will decide on the amount of the loan. 25 % of the Fund is financed through the Development Fund; the remaining 75 % through commercial banks.

(c) *Conclusions on countervailability*

(85) It has been established that there is a financial contribution by the GOT since the loans are in part funded by the public Development Fund and the Executive Yuan of the Development Fund, a government body, is responsible for establishing the rules relating to this programme.

(86) In addition, a benefit is conferred to the recipient of the loan since the interest rates of these loans are generally lower than for comparable commercial loans.

(87) Low-interest loans are only available to companies which purchase specific equipment under specific conditions set by the Executive Yuan of the Development Fund. These criteria are not considered to be objective since only companies investing in certain equipment will benefit from this programme. Since the eligibility is expressly limited to certain enterprises and not based on neutral criteria within the meaning of Article 3(2)(b) of the basic Regulation, the scheme is considered specific in accordance with Article 3(2)(a) of the basic Regulation.

(d) *Calculation of the subsidy amount*

(88) The subsidy is the difference between the amount of interest paid on the loan during the investigation period and the interest normally payable on a comparable commercial loan during the investigation period.

(89) The comparable loan should be a loan of a similar amount with a similar repayment period actually obtained by the recipient from a private bank operating on the domestic market. In this investigation there were no such comparable commercial loans granted to the respective companies. Therefore it was considered that the appropriate benchmark would be the average commercial interest rate during the investigation period representing the interest rate on comparable loans made to companies in a similar financial situation. The resulting difference is the benefit to the company derived from the loan with preferential interest rates which is countervailed.

(90) Given the nature of this subsidy, which is equivalent to a one-time grant, and in order to encompass the full benefit to the company, for any amount as calculated above, interest was added at a rate which corresponds to the above described average commercial interest rate. The full subsidy amount so obtained should be allocated over the total turnover of the company during the investigation period.

(91) Four companies availed themselves of this scheme and obtained benefits from 0,03 % to 0,36 %.

8. **Import duty exemption: purchases of new equipment and anti-pollution equipment**

(92) This scheme is governed by the provisions of the Customs Import Tariff and Classification of Import and Export Commodities of the Republic of China (hereinafter referred to as 'the Customs Code').

(a) *Eligibility*

(93) A manufacturing company is exempted from paying import duties on those imports if it imports equipment and machinery solely for research and development or for examination and analysis for the development of new products, quality upgrading, increase of production, achievement of energy conservation, promotion of recycling or improvement of production techniques, which have not yet been manufactured locally.

(b) *Practical implementation*

(94) A company which intends to import the abovementioned machinery or equipment files an application with IDB prior to the importation of the machinery. If IDB has established that the machinery to be purchased is not produced in Taiwan and that the machinery will be used for one or more of the abovementioned purposes, it will issue a certificate which is sent to the applicant and the customs department. This certificate enables the company to import the specified machinery without paying the import duties.

(c) *Conclusions on countervailability*

(95) The scheme constitutes a subsidy since there is a financial contribution by the GOT in the form of import duties foregone. Consequently this scheme confers a direct benefit to the recipient in the form of unpaid import duty.

(96) Due to its nature, the programme can only be used by limited sectors of the Taiwanese industry investing in specific equipment. The industry sectors whose machinery and/or equipment are produced in Taiwan will not be able to use this programme. Consequently, eligibility for the import duty exemption on purchases of new equipment and anti-pollution equipment is limited to those companies who import the specific machinery not available on the local market.

(97) It is considered that the access to this programme is limited to certain companies and that this scheme therefore is specific within the meaning of Article 3(2)(a) of the basic Regulation. Consequently this subsidy is countervailable.

(d) *Calculation of the subsidy amount*

(98) The benefit to the companies represents the amount of import duties normally payable without the benefit of the exemption. For the purchase of imported machinery, this amount should be allocated over the normal service life of the machinery in this industry, i.e. eight years. In order to encompass the full benefit to the recipient, this amount has been adjusted by adding the average commercial interest during the investigation period. The total amount of subsidy so attributed to the investigation period should be allocated over total sales since this subsidy benefits both domestic and export sales.

(99) Four companies availed themselves of this scheme and obtained benefits from 0,12 % to 0,21 %.

9. **Import duty exemption: imports of raw material**

(100) This programme is governed by Article 6 of Chapter 29 of the Customs Code.

(a) *Eligibility*

(101) Pursuant to the abovementioned provisions of the Customs Code, manufacturing companies which import certain raw materials exhaustively described in the Customs Code which are not yet produced or sufficiently available on the local market, are exempted from paying import duties on the purchases of those raw materials.

(b) *Practical implementation*

(102) A company which intends to import the specified raw material files an application to IDB prior to the importation of the raw material. If IDB has established that the raw material to be purchased is not produced in Taiwan or is not supplied sufficiently in Taiwan, it will issue a certificate which is sent to the applicant and the customs department. This certificate enables the company to import the raw material without paying the import duties.

(c) *Conclusions on countervailability*

(103) There is a financial contribution by the GOT in the form of import duties foregone. Consequently this scheme confers a direct benefit to the recipient in the form of unpaid import duties and constitutes a subsidy. Due to its nature, the programme can only be used by limited sectors of the Taiwanese industry importing specific raw materials. The industry sectors whose raw material is produced in Taiwan will not be able to use this programme. Consequently, eligibility for the import duty exemption on purchases of raw material is limited to those companies who import the specific raw materials not available on the local market.

(104) It is considered that the access to this scheme is limited to certain companies and that therefore this scheme is specific within the meaning of Article 3(2)(a) of the basic Regulation. Consequently this subsidy is countervailable.

(d) *Calculation of the subsidy amount*

(105) The benefit to the companies represents the amount of import duties normally payable without the benefit of the exemption. In order to encompass the full benefit to the recipient, this amount has been adjusted by adding the average commercial interest during the investigation period. In this case, since the companies obtained subsidies equivalent to a series of grants during the investigation period, it is considered appropriate to assume that an average grant would have been received at the mid-point of the investigation period, and therefore the interest should cover a period of six months. The total amount of subsidy so attributed to the investigation period should be allocated over the total sales turnover since this subsidy benefits both domestic and export sales.

(106) Four companies availed themselves of this scheme and obtained benefits from 0,17 % to 0,53 %.

10. **Matching funds and assistance funds**

(107) This scheme is governed by Article 21(1) of the SUI.

(a) *Eligibility*

(108) Eligible are companies incorporated under the Company Law with sound financial standing, possessing a research and development department with sufficient R & D specialists in Taiwan and which have actually made R & D achievements. The R & D achievements should relate to the development of products within the scope of ten newly emerging industries. Those industries are selected by the IDB based on specific selection criteria. Regularly the IDB issues a notification of which industries will be considered to be 'newly emerging'.

(b) *Practical implementation*

(109) The programme provides for the assistance fund (grants) and the matching fund (interestfree loans). The total amount of assistance and matching funds to be allocated to a leading product development plan is limited to maximum 50 % of the total amount of the budgeted R & D costs.

(110) Companies have to file an application relating to the development of a product within the scope of one of the 10 newly emerging industries. This application is first reviewed by the Technical Screening Board and then submitted to the New Product Development Review Committee.

(c) *Conclusions on countervailability*

(111) The exporting producers availed themselves of matching funds only. Hence, the findings relate to this aspect of the scheme and not to assistance funds. It has been established that there is a financial contribution by the GOT since the competent authority governing the above programmes is the Ministry of Economic Affairs, while the Industrial Development Bureau, a government organisation, acts as the implementing agency. This scheme confers a direct benefit to the recipient in the form of a grant and/or a interest-free loan and therefore constitutes a subsidy.

(112) Due to its nature, the scheme can only be used by companies which possess a research and development department with sufficient R & D specialists in Taiwan and which have actually made R & D achievements relating to the development of products within the scope of one of the 10 newly emerging industries. It is considered that the GOT has limited the access to this programme to certain companies and therefore this scheme is specific within the meaning of Article 3(2)(a) of the basic Regulation. Consequently this subsidy is to be considered countervailable.

(d) *Calculation of the subsidy amount*

(113) The subsidy amount was calculated as above in recitals 88 to 90.

(114) Two companies availed themselves from this scheme. One company did not obtain benefits, the other received a benefit of 0,01 %.

11. **Subsidy programmes not used by exporting producers**

(115) It was found that the exporting producers did not obtain any countervailable benefits under the following programmes:

— Tax credit: energy conservation incentives

— Tax credit: recycling incentives

— Accelerated depreciation

— Fund for the Development and Management of Industrial Zones.

12. **Amount of countervailable subsidies**

(116) The amount of countervailable subsidies in accordance with the provisions of the Basic Regulation, expressed *ad valorem*, for the investigated exporting producers is as follows.

(in %)

Company	Tax credits	Loans	Import duty exemptions	Matching funds	Total
Nan Ya Plastics Corp.	1,14	0,06	0,32	0	1,52
Far Eastern Textile Ltd	0,41	0,36	0,37	0	1,14
Shinkong Synthetic Fibres Corp.	0	0,03	0,68	0,01	0,73
Tuntex Distinct Corp.	0	0,29	0,34	0	0,63

(117) The weighted average country-wide subsidy margin for all the exporting producers investigated which represent the totality of exports of the product concerned to the Community originating in Taiwan is above the applicable *de minimis* threshold for subsidisation of 1 %.

III. INDONESIA

(118) On the basis of the information contained in the complaint and the replies to the questionnaires, the Commission services investigated the following schemes that allegedly involved the granting of subsidies:

(119) BKPM Schemes: under these programmes, exporters received benefits in the form of exemptions on import duty on capital goods and raw materials. Since the subsidy is limited to certain enterprises operating in certain sectors and certain geographical areas, it provisionally is considered specific and countervailable.

(120) BAPEKSTA Schemes: companies were granted subsidies in the form of exemption or restitution of import duties. This scheme is not a proper duty drawback scheme since it was found that there is not sufficient evidence for the existence of an effective verification system in accordance with point (i) of Annex I to the basic anti-subsidy Regulation. Hence, the system is provisionally considered contingent apon export performance and therefore a countervailable export subsidy.

(121) The amounts of subsidies for the individual exporters in the sample vary from 0,2 % to 1 % and are therefore below the *de minimis* threshold for subsidisation for Indonesia, i.e. under 3 %. However, it should be noted that two companies representing a substantial share of imports of the product concerned into the Community did not cooperate in this proceeding. The treatment of these companies and the effect on the establishment of the country-wide margin of subsidisation will be further investigated and determined at the definitive stage of the proceeding.

IV. KOREA

1. **Summary of subsidy programmes used by exporting producers**

(122) It was determined that the exporters in Korea received benefits in the shape of tax credits and tax reserves which reduce their income tax liability. These tax incentives involve subsidies in the form of government revenue foregone and are either contingent upon export performance, contingent upon the use of domestic over imported goods or otherwise specific to certain enterprises.

(123) In addition, the exporters benefited from cheap loans funded by the Korean Government. They constitute countervailable subsidies since interest rates for these loans were below market rates and eligibility is either contingent upon export performance or limited to certain enterprises.

(124) Under the Fixed Amount Duty Drawback Scheme, certain Korea exporters received refunds on import duties which were not calculated on the basis of actual inputs for the exported product. This scheme does therefore not constitute a proper duty drawback scheme in the meaning of point (i) of Annex I to the Regulation and is thus considered to be a countervailable export subsidy. Most of the abovementioned schemes were already found to be countervailable in Council Regulations (EC) No 1599/1999 and (EC) No 1601/1999 [1].

(125) Under the Localisation Scheme for the Capital Goods Industry, exporters received Subsides in the form of government loans at preferential and grants which are found to be available only to certain sectors and therefore specific and are countervailable.

2. **Subsidy programmes not used by exporting producers**

(126) It was found that the exporting producers did not obtain any countervailable benefits under the following programmes:

— Tax incentives under Article 18-2 Corporation Tax Act (Entertainment Expenses)

— Tax incentives under Articles 10, 14, 15, 19, 20, 26, 88 of the Tax Exemption and Reduction Control Law

— Modernisation Funds (Industrial Development Act)

— Export Industry Facility Loans

— Government purchases of PSF.

3. **Amount of countervailable subsidies**

(127) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers is as follows:

(in %)

Company	Loans (export)	Loans (other)	Grants	Tax (export)	Tax (other)	Duty drawback (export)	Total subsidy
Dae Han Synthetic Fiber Inc.	0	0	0	0,28	0,04	0	0,32
Sung Lim Corporation	0,07	0,12	0	0,06	0,78	0	1,03
Ein Textile Co. Ltd/Dobest Co., Ltd	0	0	0	0,12	0	0,08	0,20
SK Chemicals Co, Ltd/SK Global Co., Ltd	0,01	0,03	0,02	0,01	0	0	0,07
Estal Ind. Co.	0,21	0	0	0	0,05	1,01	1,27
Saehan Industries Inc.	0,01	0,01	0,01	0	0,25	0	0,28
Sam Yang Corporation	0	0,01	0,04	0,11	0,15	0	0,31

(128) The weighted average country-wide subsidy margin for all the exporting producers investigated which represent the totality of exports to the Community originating in Korea is *de minimis*, i.e. under 1 %. Under these circumstances, the subsidy margin for Korea has to be considered negligible.

[1] OJ L 189, 22.7.1999, p. 1 and p. 26.

V. THAILAND

1. **Summary of subsidy programmes used by cooperating exporters**

(129) It was found that under Section 28 of the Investment Promotion Act (IPA), the exporters availed themselves of exemptions or reduction of import duties on machinery which are granted only to companies either located in certain geographical areas or operating in certain sectors. This was found to be a countervailable subsidy since it involves a financial contribution by the government in the form of import duties forgone which is specific to certain enterprises in the meaning of Article 3(2)(a) of the basic Regulation.

2. **Subsidy programmes not used by cooperating exporters**

(130) It was found that the exporting producers did not obtain any countervailable benefits under the following programmes:

— Income tax exemptions under Section 31 of the IPA

— Incentives pursuant to Sections 35(3) and (4) of the IPA

— Exemptions from import duties under Section 36(1) of the IPA.

3. **Amount of countervailable subsidies**

(131) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers is as follows.

(%)

Company	Section 28	Section 31	Sections 35(3) and (4)	Section 36(1)	Total
Indo-Poly (Thailand) Ltd	2,6	0	0	0	2,6
Teijin Polyester (Thailand) Ltd	0,3	0	0	0	0,3
Tuntex (Thailand) Public Company Ltd	1,3	0	0	0	1,3

(132) The weighted average country-wide subsidy margin for all exporting producers investigated which represent the totality of exports to the Community originating in Thailand is *de minimis*, i.e. under 2 %. Under these circumstances, the subsidy margin for Thailand has to be considered negligible.

D. **INJURY**

1. **Definition of the Community industry**

(133) Fourteen producers are known to produce PSF in the Community market. Nine of them are complainants in the present case, but only eight initially replied to the questionnaire. In addition, one producer of these eight did not reply to the deficiency letters sent by the Commission services. Consequently it was considered that two complainant Community producers did not cooperate in the investigation. On this basis, the investigation showed that the share of the total Community production held by the seven cooperating complainant Community producers, during the IP represented around 85 % of total Community production of PSF.

Therefore, seven producers constitute the Community industry within the meaning of Article 9 of the basic Regulation. Hereinafter, the cooperating Community producers are referred to as 'the Community industry'.

2. **Consumption in the Community**

(134) Given that no cooperation could be obtained with respect to information on the sales volume of the non-complaining Community producers, the Community consumption indicated in the table below, was based on the combined volume of sales made by the Community industry, the import volume from the countries concerned by the present investigation, the Eurostat information on imports from other third countries and estimates of the volume of sales of the non cooperating Community producers.

Consumption	1996	1997	1998	IP
	454 470 t	518 328 t	585 164 t	578 967 t
Index (1996 — 100)	100	114	129	127

3. **Imports of PSF on the Community from the countries concerned**

(a) *Cumulative assessment of imports*

(135) The Commission considered whether imports of PSF originating in the countries concerned should be assessed cumulatively in accordance with Article 8(4) of the basic Regulation. The examination showed that:

(a) as it has been mentioned above, the margins of subsidy relating to Indonesia, the Republic of Korea and Thailand were below the *de minimis* levels, whereas those for Australia and Taiwan, were above *de minimis*;

(b) the volume of imports from each country was not negligible when compared to Community consumption;

(c) the analysis of the conditions of competition between imported PSF and the Community product and the conditions of competition between imported PSF indicated that,

— as indicated in recital 11, imported PSF from all exporting countries and Community produced PSF are like products,

— imported PSF from all exporting countries was sold through similar sales channels to the same customers,

— imported PSF from all exporting countries was sold at similar prices;

(d) the investigation showed that the exporting countries concerned sold PSF directly to unrelated customers, such as textile manufacturers, cushion and quilt manufacturers and to PSF merchants. The investigation showed that the Community industry was selling the like product through the same sales channels and to the same categories of customers, although most of their sales were made to end-users.

Based on the above considerations, the Commission concluded that there were sufficient grounds for cumulating the imports from Australia and Taiwan and exclude those from Indonesia, the Republic of Korea and Thailand.

(b) *Volume of imports*

(136) Between 1996 and the IP imports originating from the countries concerned developed as set out below.

Imports	1996	1997	1998	IP
Australia	62 t	1 248 t	11 254 t	11 799 t
Index (1996 — 100)	100	2 007	18 093	18 969
Taiwan	20 213 t	26 811 t	35 524 t	34 878 t
Index (1996 — 100)	100	133	176	173
Total	20 275 t	28 059 t	46 778 t	46 677 t
Index (1996 — 100)	100	138	231	230

Source: Comext 2.

(c) *Market share of imports concerned*

(137) The market share by volume held by imports from Australia and Taiwan increased and developed as shown below:

Market share	1996	1997	1998	IP
Australia	0,01 %	0,24 %	1,92 %	2,04 %
Index (1996 — 100)	100	1 760	14 052	14 903
Taiwan	4,45 %	5,17 %	6,07 %	6,03 %
Index (1996 — 100)	100	116	136	136
Total	4,46 %	5,41 %	7,99 %	8,07 %
Index (1996 — 100)	100	121	179	181

The trend showed in the tables above confirms the increase of the imports from the countries concerned in the Community market, both in absolute terms and in terms of market share.

(d) *Average price of imports*

(138) From 1996 to the IP, sales prices in the Community market of PSF imported from Australia and Taiwan followed a continuously decreasing tendency throughout the period considered as indicated in the table below.

Average import price evolution Index (1996 — 100)	1996	1997	1998	IP
Australia	100	56	52	50
Taiwan	100	98	87	81
Total	100	97	85	79

(e) *Price undercutting*

(139) For the determination of price undercutting, the Commission analysed data referring to the IP. Price undercutting was established on the basis of a comparison of the export price with prices charged by the Community industry.

The sales prices of the Community industry considered were those to independent customers, adjusted where necessary to an ex-works level, i.e. excluding transport costs. As the Community industry was selling mainly to endusers whereas the exporting producers were selling to both endusers as well as distributors/wholesalers, adjustments were made to the exporting producers' selling prices (cif Community frontier) to take account these differences in the level of trade as well as of customs and eventual anti-dumping duties paid. All prices were compared after excluding discounts and rebates.

Weighted average prices were compared for similar product types of PSF, as defined in the Commission's questionnaires. The weighted average price undercutting margins, expressed as a percentage of the Community industry's average selling prices were 21 % for Australia and 6,1 % for Taiwan.

4. **Economic situation of the Community industry**

(a) *Preliminary remarks*

(140) The examination of the injury trends covered the period from 1996 up to the end of the IP. It should be noted that during this period anti-dumping measures were in force against the Republic of Korea, Taiwan and Belarus with a resulting effect on the Community industry.

(b) *Production, capacity and capacity utilisation*

(141)

	1996	1997	1998	IP
Production	312 917 t	330 577 t	322 403 t	315 917 t
Index (1996 - 100)	100	106	103	101
Capacity	384 500 t	376 800 t	358 300 t	359 400 t
Index (1996 - 100)	100	98	93	93
Capacity utilisation	81,38 %	87,73 %	89,98 %	87,90 %
Index (1996 - 100)	100	108	111	108

As illustrated in the table above, production of the Community industry was by and large stable.

(142) As regards capacity, it should be noted that the production facilities for PSF are also used in the production of other products not concerned by the present proceedings, e.g. tow and tops. As a consequence, the capacity attributed to the production of PSF was determined on the basis of the actual production of the various products including PSF. On this basis, capacity decreased by 7 %.

The decrease in the capacity of production can be attributed to the fact that the Community industry closed certain production lines and factories or converted them to the production of other products not covered by this investigation with the aim of obtaining a more efficient capacity utilisation.

(143) The rate of utilisation of the production capacity, as shown in the above table, increased by 8 % during the period considered. This increase however is the direct result of the reduction of the capacity of production.

(c) *Sales volume of the Community industry*

(144) The volume of PSF sold by the Community industry on the Community market decreased by 6 % during the period considered, as shown in the table below.

Sales	1996	1997	1998	IP
	308 851 t	319 235 t	294 718 t	291 013 t
Index (1996 — 100)	100	103	95	94

This trend indicates that the sales made by the Community industry did not follow the trend in consumption, which increased by 27 % during that period, as mentioned in recital 134. In fact, sales volume only roughly followed the trend of consumption between 1996 and 1997 when it increased by 3 % whereas consumption rose by 14 %. Since then, the trend in sales volume fell continuously up to the IP.

(d) *Average sales price and price evolution*

(145) The weighted average prices of the product concerned sold by the Community industry on the Community market showed a considerable decrease over the period considered. As reported in the table below, the average price fell by 11 % during that period.

Average Community industry price evolution	1996	1997	1998	IP
Index (1996 — 100)	100	93	93	89

The investigation has shown that PSF prices are also influenced by the evolution of the prices of the basic raw materials, e.g. pure terephthalic acid (PTA), dimethylterephthalate (DMT) and glycol which represent between 60 % and 70 % of the cost of production of the finished PSF.

(e) *Market share*

(146) The development of sales volume compared to that of Community consumption shows that the market share held by the Community industry decreased significantly during the period considered. The table below indicates this development:

Market share	1996	1997	1998	IP
	67,96 %	61,59 %	50,37 %	50,31 %
Index (1996 — 100)	100	91	74	74

The above table indicates that the decreasing trend was continuous during the period examined. However, the loss in market share was relatively limited between 1996 and 1997, where 6.4 percentage points were lost. In contrast, the decline between 1997 and the IP was more spectacular with 11.3 percentage points.

(f) *Stocks*

(147)

Stocks	1996	1997	1998	IP
	30 084 t	28 033 t	36 801 t	36 780 t
Index (1996 — 100)	100	93	122	122

As shown in the table above, stocks significantly increased by 22 % between 1996 and the IP.

(g) *Profitability*

(148) In 1996, the Community industry incurred a weighted average loss of 4 %, expressed as a percentage of net sales.

Profitability	1996	1997	1998	IP
	– 4,04 %	– 0,41 %	6,34 %	6,73 %

Subsequently, as shown in the table above, its financial situation improved, especially during 1998 (profit of 6,34 %). This improvement was in fact the result of the restructuring processes undertaken by the Community industry, aiming at more efficient production processes and using certain product lines for more specialised products with higher profit margin.

Indeed, the profit achieved during the IP was mainly influenced by the performance of the specialities sector (18,85 %). In the non-woven regular and hollow fibres the profit only reached 0,86 % and 1,37 % respectively.

Furthermore, the investigation showed that the restructuring of the Community industry resulted in a decrease in SG & A costs by 15,3 % from 1996 to the IP. It is also important to note that the prices of the raw materials decreased significantly: according to information made available during the verification, PTA prices decreased by 35,6 % and glycol prices by 14,3 % over the period considered. The combined effect of the price reductions of these raw materials was estimated to have lead to a 31 % decrease of the cost of manufacturing of PSF.

Both of the above mentioned factors, i.e. the SG & A reduction and the decrease of the raw materials prices, suggest that the cost of production was reduced faster than the decrease of the sales prices, allowing thus the Community industry to return to profits from 1998 onwards. In fact, it is considered that the current profit is the maximum that can be achieved given the price pressure from imports. The improved efficiency of the industry cannot be improved upon in the short term.

(h) *Investments*

(149)

Investments	1996	1997	1998	IP
(Thousand ECU)	17 652	10 177	19 508	15 980
Index (1996 — 100)	100	58	111	91

Yearly investments made by the Community industry were important during the period considered, as indicated in the table above. It should be noted that this significant effort represents, for the most part, investments in replacement machinery as part of an overall restructuring program.

(i) *Employment*

(150) Due to a certain degree of reduction in production capacity and restructuring, employment of the sector of the product concerned decreased by 20 %, as shown in the table below.

Employment	1996	1997	1998	IP
	3 111	2 817	2 475	2 474
Index (1996 — 100)	100	91	80	80

(j) *Conclusion on the situation of the Community industry*

(151) The above analysis has revealed that during the period considered some economic indicators such as capacity (-7 %), sales volume (-6 %), sales prices (-11 %), market share (-26 %), stocks (+22 %), investments (-9 %) and employment (-20 %) showed negative trends, in particular between 1997 and the IP.

(152) In the meantime, production increased marginally by 1 %. Following a reduction in the capacity of production, capacity utilisation increased by 8 %. Profitability which was negative in 1996 and 1997 became positive in 1998 and in the IP without reaching a level that was considered satisfactory.

(153) The investigation has shown that the Community industry has also suffered significant price pressure. Indeed, substantial price undercutting (10,1 % on average) has been established for imports originating in the countries concerned.

(154) In the light of the foregoing analysis, in particular the high loss in market share, the decrease in sales price, the Commission has concluded that the Community industry has suffered injury which is classified as material.

E. **CAUSATION**

1. **Introduction**

(155) The Commission examined whether the material injury suffered by the Community industry had been caused by the subsidised imports from Australia and Taiwan. The Commission also examined other factors in order to ensure that injury caused by other factors was not wrongly attributed to the subsidised imports subject to investigation.

2. **General**

(156) In the recent past, the Community Institutions have found that the Community industry suffered injury and that this injury was caused by dumped imports from a number of countries among which Taiwan and Belarus. This industry has therefore been weakened since the beginning of the present investigation and was seen to be still vulnerable during the period under examination.

3. **Effect of the subsidised imports**

(157) The present investigation has shown that imports from the countries concerned onto the Community market more than doubled during the period considered. In 1996, 20 275 tonnes of PSF were imported from the countries concerned whereas the volume imported during the IP was 46 677 tonnes. As a consequence of the above import development the market share held by the countries concerned increased from 4,46 % in 1996 up to 8,07 % during the IP. During the same period, the average sales prices of these imports decreased by 21 %. They undercut those of the Community industry by 10,1 %.

(158) These developments took place at a moment when the Community industry was particularly vulnerable recovering after a long period of dumped imports from other third countries.

(159) This resulted in a situation in which the Community industry, instead of benefiting from the re-establishment of fair trading conditions following the imposition of anti-dumping measures with respect to imports from other third countries, faced further deterioration. The injury investigation concluded, as indicated above, that an overall worsening of the situation in that industry existed with major decreases in market share (-26 %), sales volume (-6 %) and sales prices (-11 %).

(160) It should also be mentioned that the major losses suffered by the Community industry occurred for those product types of PSF mainly imported from the said countries. Indeed, imports of non-woven regular types represent about 18,5 % and imports of non-woven hollow types represent 29 % respectively of all imports of PSF from the countries concerned. For these particular product types, the profits realised by the Community industry were 0,86 % and 1,37 % respectively, whereas the average profits for more specialised products, which are imported to a lesser degree, was about 18.85 %.

(161) The above appears to be particularly relevant as imported PSF and PSF produced in the Community are like products, offered through similar sales channels in the Community market. Therefore the increasing presence of high volumes of subsidised PSF imported from the countries concerned has had a significant impact on that market overall. Furthermore, the market being transparent, the effect of the low prices offered for PSF imported from the countries concerned and well known to all potential customers in the Community market, had a major impact on the level of prices of the Community industry.

(162) Based on the above, it was concluded that the low-priced subsidised imports had a significant negative impact on the situation of the Community industry.

4. **Impact of other factors**

(a) *Development of consumption*

(163) As mentioned in recital 134, from 1996 up to the IP, consumption in the Community market increased by 27 % indicating a fast growing PSF market. Therefore, consumption cannot be held responsible for the injurious situation suffered by the Community industry.

(b) *Imports of PSF from other third countries*

(164) Total imports of PSF onto the Community from countries other than Taiwan [1] and Australia developed as follows.

Imports	1996	1997	1998	IP
Indonesia, Thailand, South Korea [1]	25 814 t	46 718 t	105 747 t	108 675 t
Index (1996-100)	100	181	410	421
Belarus [2]	4 463 t	243 t	35 t	19 t
Index (1996-100)	100	5	1	0
Other countries	64 547 t	78 344 t	81 144 t	76 174 t
Index (1996-100)	100	121	126	118
Total (other imports)	90 361 t	125 062 t	186 890 t	184 848 t
Index (1996-100)	100	138	207	205
y/y difference		+ 32 %	+ 49 %	– 1 %

[1] PSF imported from Korea is subject to a 4,8 % definitive anti-dumping duty until August 1999.

[2] PSF imported from Belarus is subject to a 43,5 % definitive anti-dumping duty since July 1996.

[1] PSF imported from Taiwan is subject to a 13 % definitive anti-dumping duty since September 1993.

Average import price evolution Index (1996 — 100)	1995	1997	1998	IP
Indonesia, Thailand, South Korea	100	90	79	73
Belarus	100	84	75	75
Other countries	100	90	89	87
Total (other imports)	100	89	79	75

It should be underlined that the two major exporting countries, namely Indonesia and Thailand, are subject to an anti-dumping investigation which was initiated in parallel to the present investigation.

(165) An analysis of the development of the indicative import prices of Indonesia, Thailand and South Korea reveals that they also contributed to the pressure exerted on prices in the Community. The information available shows that the average prices of imports from these countries fluctuated below those practised by the countries concerned by this proceeding and those of the Community industry.

As far as the imports from other third countries, their limited volume and their prices which were at the level of those of the Community industry, indicate that such imports did not contribute to the price deterioration noticed in the market.

On the basis of the above, it cannot be excluded that imports from Indonesia, Thailand and South Korea onto the Community market did have an impact on the economic situation of the Community industry. However, taking into account the level and prices of these imports, these cannot break the causal link between the imports from the countries concerned and the injurious situation suffered by the Community industry.

(c) *Export activity and other activities of the Community industry*

(166) Exports to third countries have always represented a minor activity for the Community industry. From a level of around 9 % of total sales in 1996, exports decreased to a level of 5 % during the IP. The table below shows the volumes exported.

Exports	1996	1997	1998	IP
	27 649 t	29 200 t	16 300 t	14 854 t
Index (1996 — 100)	100	106	59	54

Export sales made by the Community producers nearly halved during the period considered. However, it is considered that these sales are limited as compared to total production of the Community industry. Consequently, any injury in terms of reduced production caused by a reduced export sales volume is thus very limited.

(167) It has been argued that imports have increased at a time when the Community industry has reduced its production capacity by 7 %, which corresponds to a significant share of the import volume, making an increase in imports inevitable in order to satisfy demand. In this respect, it should be noted that the Community industry has still spare capacity. In addition, the decrease in capacity only reflects roughly half of the increase of imports from the countries concerned.

Furthermore, the investigation has shown that the capacity reduction was the result of the closure or conversion to other products of certain production sites, which could not operate economically in view of the low priced imports. Should measures in the present case not be imposed, furhter production site closures could occur. On the contrary, if fair trading conditions are restored, the Community industry would be able in the future to supply a bigger share of the Community market, considering its past record and the fact that certain production lines can be converted back to PSF products.

5. **Conclusion on causation**

(168) It cannot be excluded that factors other than subsidised imports from the countries concerned, in particular the imports from other third countries which are subject to a parallel anti-dumping investigation, contributed to the difficult state of the Community industry. However, the substantial increase in import volume from the countries concerned, the considerable degree of price decreases and price undercutting had material negative consequences on the situation of the Community industry. It was therefore concluded that these imports, taken in isolation, have caused material injury to the Community industry.

F. **COMMUNITY INTEREST**

1. **Introduction**

(169) In order to reach its final conclusions the Commission examined, whether, despite the conclusions on subsidisation and injury, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and pursuant to Article 31 of the basic Regulation, the Commission considered the impact of measures for all parties involved in the proceedings.

2. **Interest of the Community industry**

(170) The Community industry has for almost a decade been suffering from lowpriced imports of PSF. The objective of the eventual adoption of anti-subsidy measures is to re-establish fair competition in the Community market between the Community producers and their exporting counterparts in third countries.

The Community industry has been making considerable efforts to improve its productivity in recent years, in an attempt to lower its cost of production and to enhance its competitiveness in this pricesensitive market. It deployed particular efforts of rationalisation during the period considered. By way of example, one Community producer shut down two of its production facilities in an effort to reduce costs and to improve its productivity.

In view of the nature of the injury suffered by the Community industry, in particular the fact that it was prevented from recovering from the injurious situation caused by other dumped imports, the Commission consider that, in the absence of the imposition of anti-subsidy measures, the further deterioration of the situation of the Community industry is quite probable. This could entail a further reduction in numbers employed and may ultimately lead to a reduction of the number of producers in the Community.

Furthermore, the ongoing restructuring efforts made by the Community industry show that it is not ready to abandon this segment of production, particularly as the market is rapidly growing. The adoption of anti-subsidy measures would therefore be in the interest of the Community industry.

3. **Impact on users**

(171) The Commission services sent questionnaires to 11 known importers unrelated to the exporting producers in the countries concerned, as well as to 14 users of PSF in the Community. None of the importers answered to the questionnaire sent by the Commission services during the current investigation, whereas three users submitted their replies. Furthermore, two users' associations made submissions concerning this proceeding.

(172) The analysis of the data submitted by the three user companies revealed that two among them imported PSF from the countries concerned by this proceeding. The main argument put forward by these users was that an eventual adoption of measures would affect negatively their profitability and threaten their survival in the market. We should note however that one user was served until the end of 1997 almost exclusively by the Community industry and since 1998 turned exclusively to imports from the countries concerned, only because of the lower prices. The activity related to PSF products represented about 12 % in terms of turnover for this user. Regarding the other user, its imports form the countries concerned traditionally covered about 30 % of its needs and PSF costs represent about 24 % of its cost of production. The turnover of the finished product that incorporates PSF represent 46 % of its total turnover.

An evaluation of the situation described above, points out that the above users can be served by alternative sources of supply and that the adoption of any anti-subsidy measure would thus have limited impact on their overall profitability and survival in the market.

(173) One Community user's association requested the exclusion of certain types of PSF allegedly not produced by the Community industry. This allegation was however not further substantiated by sufficient technical information. It was therefore not possible for the Commission services to conclude on the validity of this argument.

(174) On the basis of the above it can be concluded that the eventual imposition of anti-subsidy measures against imports of PSF from the countries concerned would not imply a significant deterioration, if any, to the situation of the users.

4. **Conclusion**

(175) On the basis of the above facts and considerations in particular, and having examined the arguments submitted by the Community industry and Community users of the product concerned, it was concluded, that there were no compelling reasons not to impose measures concerning imports from Australia and Taiwan, in order to ensure competitive conditions of fair pricing and to revert the continuation of injury in the Community industry.

G. **TERMINATION**

(176) In the light of the above findings that the country-wide weighted average subsidy margins for imports originating in Korea and Thailand are *de minimis*, the proceeding with regard to imports from Korea and Thailand should be terminated in accordance with Article 14(3) of the basic Regulation.

H. **PROVISIONAL DUTY**

(177) On the basis of the conclusions on subsidisation, injury, causal link and Community interest, the Commission considers it necessary to adopt provisional countervailing measures.

(178) For the purpose of determining the level of these measures, the Commission took account of the subsidy margins found and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

(179) To that effect, the Commission considered that the prices of subsidised imports should be increased to a non-injurious level. The necessary price increase was determined on the basis of a comparison of the weighted average import price used to establish price undercutting, as outlined in recital 139, et seq. with the non-injurious price of different references or models by the Community industry. The non-injurious price has been obtained by adding to the sales price of the Community industry its average actual loss and by further adding a profit margin of 10 %. This profit margin corresponds to what has been found as a minimum necessary in earlier cases for this type of industry. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.

(180) In accordance with Article 12(1) of the basic Regulation the duty rate should correspond to the amount of subsidy, unless the injury margin is lower. The following rates of duty therefore apply for the cooperating producers:

(a) Australia

— Leading Synthetics Pty Ltd.	6 %

(b) Taiwan

— Nan Ya Plastics Corp.	1,5 %
— Far Eastern Textile Ltd.	1,1 %
— Shinkong Synthetic Fibres Corp.	0 %
— Tuntex Distinct Corp.	0 %.

(181) In order to avoid granting a bonus for non-cooperation, it was considered appropriate to establish the duty rate for the non-cooperating companies as the sum of the highest rate established for any cooperating exporting producers, i.e. 6 % for Australian producers and 1,5 % for Taiwanese producers.

(182) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(183) Any claim requesting the application of these individual company countervailing duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

I. **FINAL PROVISION**

(184) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional countervailing duty is hereby imposed on imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, falling within CN code 5503 20 00 and originating in Australia and Taiwan.

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows.

[1] European Commission
Trade Directorate-General
Directorate EDM 24 — 5/77
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

Australian producers	Rate of duty (%)	TARIC additional code
Leading Synthetics Pty Ltd, Melbourne, Victoria	6	A059
All other Australian companies	6	A999

Taiwanese producers	Rate of duty (%)	TARIC additional code
Nan Ya Plastics Corp., Taipei	1,5	A060
Far Eastern Textile Ltd, Taipei	1,1	A061
Shinkong Synthetics Fibres Corp., Taipei	0	A062
Tuntex Distinct Corp., Hsichih, Taipei County	0	A063
All other Taiwanese companies	1,5	A999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 30 of Regulation (EC) No 2026/97, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within 15 days from the date of entry into force of this Regulation.

Pursuant to Article 31(4) of Regulation (EC) No 2026/97, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

The anti-subsidy proceeding concerning imports of polyester staple fibres originating in the Republic of Korea and Thailand is hereby terminated.

Article 4

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

Article 1 of this Regulation shall apply for a period of four months.

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

Done at Brussels, 20 January 2000.

For the Commission

Pascal LAMY

Member of the Commission