COMMISSION REGULATION (EC) No 1741/2000

of 3 August 2000

imposing a provisional countervailing duty on imports of polyethylene terephthalate (PET) originating in India, Malaysia, Taiwan 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 November 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 polyethylene terephthalate (hereinafter referred to as 'PET') originating in India, Indonesia, the Republic of Korea (hereinafter referred to as 'Korea') Malaysia, Taiwan and Thailand, and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint by the Association of Plastic Manufacturers in Europe on behalf of Community producers representing a major proportion of Community production of PET. 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) The complaint which was lodged also covered imports originating in Saudi Arabia. However, following the pre-initiation consultations with the government of Saudi Arabia, evidence was submitted that the volume of imports of PET from Saudi Arabia accounts for less than 4 % of total imports. In accordance with Article 14(4) of Regulation (EC) No 2026/97 (hereinafter referred to as the 'Basic Regulation'), the Commission has excluded imports originating in Saudi Arabia from the scope of the present investigation.

(4) Prior to the initiation of the proceeding and in accordance with Article 10(9) of the Basic Regulation, the Commission notified to the Governments of India, Indonesia, Korea, Malaysia, Taiwan and Thailand that it had received a properly documented complaint alleging that subsidised imports of PET originating in India, Indonesia, Korea, Malaysia, 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 Government of Korea accepted the offer of consultation which was held with the Commission on 24 October 1999. 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.

(5) 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 India, Indonesia, Korea, Malaysia 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.

(6) The Commission sent questionnaires to all parties known to be concerned and received replies from the Governments of India, Indonesia, Korea, Malaysia Taiwan and Thailand from nine complaining Community producers, twenty exporting producers in the countries concerned, as well as from their related importers in the Community. The Commission also received replies from three unrelated importers/traders in the Community as well as from nine users, five suppliers and five professional associations.

(7) 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*

— Du Pont Polyesters Ltd (UK),

— Eastman Chemicals BV (NL),

— INCA International SpA (I).

— Italpet Preforme SpA (I),

— KOSA GmbH (D),

— Shell Chemicals Ltd (UK),

— Wellman PET Resins Europe (NL),

— Aussapol SpA (I),

— CEP (F);

[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ C 319, 6.11.1999, p. 2.

(b) *Government of India*
- — Ministry of Commerce, New Delhi,
- — Ministry of Chemicals and Petrochemicals, New Delhi,
- — Ministry of Finance, New Delhi,
- — Central Board of Excise and Customs, New Delhi,

(c) *Exporting producers in India*
- — Pearl Engineering Polymers Ltd., New Delhi,
- — Futura Polymers Ltd, Chennai,
- — Elque Polyesters Ltd, Calcutta,
- — Reliance Industries Ltd, Mumbai,

(d) *Government of Indonesia*
- — Ministry of Industry and Trade, Jakarta,
- — Ministry of Finance, Jakarta,
- — Investment Coordinating Board (BKPM), Jakarta,
- — Agency for Export Facility Services (Bapeksta), Jakarta,
- — Sucofindo, Jakarta;

(e) *Producers/exporters in Indonesia*
- — PT. Bakrie Kasei Corporation, Jakarta,
- — PT. Indorama Synthetics TbK., Jakarta,
- — PT. Polypet Karyapersada, Jakarta;

(f) *Government of Korea*
- — Ministry of Commerce, Industry and Energy (MOCIE),
- — Ministry of Finance and Economy (MOF),
- — Ministry of Foreign Affairs and Trade (MOFAT),
- — Korea Asset Management Corporation (KAMCO),

(g) *Exporting producers in Korea*
- — Honam Petrochemical Corporation,
- — Samyang Corporation,
- — SK Chemicals Co., Ltd,
- — SK Global Co., Ltd (related company of SK Chemicals),
- — Tongkook Corporation,
- — Daehan Synthetic Fiber Co., Ltd;

(h) *Government of Malaysia*
- — Ministry of International Trade and Industry (MITI),
- — Malaysian Industrial Development Authority (MIDA),
- — Bank Negara Malaysia,
- — Malaysian Institute of Accountants,
- — Malaysia External Trade Development Corporation,
- — Ministry of Taxation (Customs and Excise Department, Inland Revenue Board);

(i) *Exporting producers in Malaysia*
- — Hualon Corporation (M) Sdn. Bhd., Kuala Lumpur,
- — MPI Polyester Industries Sdn. Bhd., Shah Alam (Selangor D.E.);

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

(k) *Producers/exporters in Thailand*
- — Thai Shingkong Ltd;

(l) *Government of Taiwan*
- — Ministry of Economic Affairs,
- — Ministry of Finance,
- — Chiao Tung Bank;

(m) *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

(8) The investigation of subsidisation covered the period 1 October 1998 to 30 September 1999 (hereinafter referred to as the 'investigation period' or 'IP'). The examination of injury covered the period from 1 January 1996 to 30 September 1999 (hereinafter referred to as the 'analysis period').

(9) In November 1999 the Commission initiated an anti-dumping investigation concerning imports of the same product originating in India, Indonesia, Korea, Malaysia, Taiwan and Thailand [1].

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(10) The product under consideration is polyethylene terephthalate, normally used in the plastics industry, for the production of bottles and sheet.

(11) Another kind of polyethylene terephthalate, for use in polyester fibre production, is not covered by the present investigation.

(12) The production process of the two qualities of polyethylene terephthalate is identical up to a certain stage since they are both produced by the polycondensation of purified terephtalic acid (PTA) or dimethyl terephtalate with mono ethylene glycol (MEG). Polyethylene terephthalate for use in the plastics industry is polymerised in a similar way to that for fibre production, in some cases in common facilities.

[1] OJ C 319, 6.11.1999, p. 1.

(13) The difference between the two types of polyethylene terephthalate is primarily determined by the fact that the product concerned undergoes a further process called 'solid state processing' which increases its 'intrinsic viscosity' value (IV value or ItV value). It is thus the level of IV that differentiates the product concerned from the polyethylene terephthalate used in the polyester fibre industry. Polyethylene terephthalate used for the production of plastic bottles and sheet requires an IV value of 0,7 or above. Polyethylene terephthalate with an IV value below 0,7 is used for the production of polyester fibre and is thus not concerned by this anti-subsidy investigation.

(14) The viscosity of polyethylene terephthalate may also be expressed in a different form, namely in terms of the 'coefficient of viscosity' or 'viscosity number'. During the investigation it was found that the equivalent of an IV value of 0,7 is a coefficient of viscosity of 78 ml/g as measured by tests performed according to DIN 53728 and not, as indicated by the complainant, a coefficient of 173. This value resulted from the incorrect use of the test standard DIN 53728 in a report issued by Hoechst in 1991. Consequently the Commission has decided to use the corresponding value of 78 ml/g, or higher, that according to the correctly applied DIN 53728 test is the coefficient of viscosity for the type of polyethylene terephthalate used in the production of plastic bottles and sheets.

(15) In view of the above, the product under consideration is hereby defined as polyethylene terephthalate with a coefficient of viscosity of 78 ml/g or higher, corresponding to an intrinsic viscosity value of 0,7 or higher ('PET' or 'polyethylene terephthalate'), imported under CN code 3907 60 20 and CN code ex 3907 60 80.

2. **Like product**

(16) The Commission services found that PET produced by the Community industry and sold on the Community market as well as PET produced in the countries concerned and exported to the Community are like products, since there are no differences in the basic characteristics and uses of the different types of PET. The same is true with regard to the PET sold on the domestic market of the exporting countries and the types exported to the Community. It was therefore concluded that all are like products within the meaning of Article 1 (5) of the basic Regulation.

C. **SUBSIDIES**

I. India

1. **Introduction**

(17) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire the following four schemes, which allegedly involve the granting of export subsidies were investigated:

— Duty Entitlement Passbook Scheme (DEPB),

— Export Promotion Capital Goods Scheme (EPCG),

— Export Processing Zones/Export Oriented Units (EPZ/EOU),

— Income Tax Exemption Scheme.

(18) The first three schemes are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992. The Foreign Trade Act (Section 5) authorises the Government of India (GOI) to lay down India's export and import policy. These notifications are summarised in the 'Export and Import Policy' documents which are issued by the Ministry of Commerce every five years and updated every year. One Export and Import Policy document is relevant to the investigation period of this case, i.e. the five-year plan relating to the period 1 April to 31 March 2002. In addition, the GOI also specified the procedures governing India's foreign trade in the 'Handbook of procedures for exports and imports — 1 April 1997 to 31 March 2002' (Volume 1).

(19) The last scheme, the Income Tax Exemption Scheme, is based on the Income Tax Act of 1961 which is amended yearly by the Finance Act.

(20) It is to be noted that four companies producing and exporting the product concerned were investigated. Only two of those companies exported this product to the EC during the investigation period i.e. Reliance Industries and Pearl Polymers. The two other co-operating exporters requested to be included in the investigation. Their exports to third countries allowed for their level of subsidisation to be properly established. It was therefore considered appropriate to include those two companies in the investigation i.e. Futura Polymers and Elque Polyester.

2. **Duty Entitlement Passbook Scheme (DEPB)**

Legal Basis

(21) The DEPB entered into force on 1 April 1997 by means of Customs Notification 34/97. Paragraphs 7.25 to 7.41 of the Exim Policy and paragraphs 7.32 to 7.50 of the Handbook of procedures contain a detailed description of the scheme. DEPB constitutes the successor scheme to the Passbook Scheme (PBS) which was terminated on 31 March 1997 and is of two types:

— DEPB on pre-export basis,

— DEPB on post-export basis.

DEPB on pre-export Basis

(a) *Eligibility*

(22) The DEPB on pre-export basis is available to manufacturers-exporters (i.e. every manufacturer in India who exports) or merchant-exporters (i.e. traders) linked with manufacturers. To be eligible under this scheme, the company must have exported during a three-year period prior to submitting a claim for credit.

(b) *Practical implementation*

(23) Any eligible exporter can apply for a licence which grants a credit amount to be used to offset customs duties due on future imports of goods. The licence granting the credit, which is equivalent to (i) 10 % of the average fob value of all exports during the previous three years, or (ii) the rate of credit actually permitted in the case of the exported product, is issued automatically. The granting of the licence carries with it an export obligation.

(24) The DEPB on pre-export basis allows duty-free imports of subsequent inputs (which are not on the 'Negative list of imports') Required for production of goods in the factory of the company concerned ('Actual user condition'). Determination of what products may be imported duty free is made by reference to the inputs listed in the 'Standard Input-Output Norm (SION)' and varies depending upon the product to be manufactured. Such duty-free imported inputs may not be transferred, loaned, sold, parted with, or disposed of in any manner whatsoever by the company, other than as a constituent part of the finished product.

(25) DEPB credits are not transferable. The DEPB licence is valid for a period of 12 months from the date of granting of the licence. Upon importation, the exporter undertakes to use the imported goods as inputs for the export of the finished product. Export will attract a benefit based on the type and quantity of finished product. The benefit is calculated by reference to the SION. Once the licence holder has made exports of such a value which will entitle him to a benefit equivalent to the credit already given under DEPB on pre-export basis, his obligation is fulfilled. When all credits have been used, the company has to pay a fee to the relevant authority. In that case, the company may apply for a further credit amount which will be calculated in the same manner as explained above.

(c) *Conclusions on DEPB pre-export basis*

(26) The DEPB on pre-export basis is not a permitted remission/drawback or substitution drawback scheme within the meaning of the provisions of the Basic Regulation despite the existence of an 'Actual User Condition'. The DEPB pre-export is a value and not a quantity based scheme where the credit granted is a percentage of the value of prior export performance. The DEPB is not calculated in relation to specific physical quantities of inputs actually consumed or to be consumed in the production process of the exported product. Concretely, inputs are determined on the basis of SIGN which set notional costings based on what are considered to be the value of inputs that have to be imported to manufacture a particular product.

(27) Once the DEPB rate has been set for a particular finished product, inputs can be imported duty-free under a DEPB pre-export licence. There is no mechanism in place which would prevent an exporting producer from shifting the ratios of his inputs actually imported, since he is only required to remain within the overall credit ceiling granted. In addition, there is no obligation to actually import all different inputs on the SION list for which credit has been granted. The only limit to the quantity of any particular product that may be imported under the scheme, is the value of the licence granted and the corresponding commitment to export a finished product manufactured by the company. Therefore, there is no requirement that the imported inputs being substituted must be equal in quantity to, and have the same quality and characteristics as the home market inputs.

(28) A company which can obtain its inputs at a lower price than that set in the SIGN programme, or which can obtain some of the inputs on the domestic market, would be able to import duty-free inputs that could be used in its domestic production or domestic sale since the actual imported quantities will have no relation to those set in the SION. There would appear to be no provision within the SION programme to prevent such a situation arising.

(29) No evidence was found of any other system or procedure in place to confirm either which duty-free inputs are actually consumed in the production process of the exported finished product or in what quantities. It is to be noted that the offset that may take place when goods are exported is not carried out on the basis of actual quantities of duty-free imported inputs used in the manufacturing process of the exported products, but rather on the basis of standard value assumptions concerning inputs of the exported product.

(30) The GOI believes that this scheme only permits remission of import charges on imported inputs used for export production in accordance with the provisions of Annexes II and III of the basic Regulation, and, as such, it cannot be considered as being a countervailable subsidy. Article 2(1)(ii) of the basic Regulation provides that the exemption of an exported product from duties/charges shall not be deemed a subsidy provided it is granted in accordance with the provisions of Annexes I to III of the basic Regulation. Item (i) of Annex I (the illustrative list of export subsidies) specifies that the remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product constitutes an export subsidy.

(31) This provision is to be interpreted in accordance with Annex II to the basic Regulation. This Annex requires the Commission, in determining whether inputs are consumed in the production process, to determine whether the government of the exporting country has in place a system or procedure to confirm which inputs are consumed and in what amounts in the production of the exported product. In this case, no such verification system exists.

(32) Annex II(II)(5) and Annex III(II)(3) of the basic Regulation provide furthermore that, where it is determined that the government of the exporting country does not have a proper verification system in place, a further examination by the exporting country based on actual inputs involved, or actual transactions, respectively, will normally need to be carried out in the context of determining whether an excess payment occurred.

(33) The GOI did not carry out such an examination. Therefore, the Commission did not examine whether there was in fact an excess drawback of import charges on inputs consumed in the production of the exported product.

(34) In any event, the excess remission of import duties is the basis for calculating the amount of the benefit only in the case of bona fide drawback and substitution drawback schemes. Since it has been established that the DEPB pre-export scheme is not a drawback or substitution drawback scheme within the meaning of Annex I(i) and Annexes II and III to the basic Regulation, the benefit is the total remission of import duties, not any supposed excess remission. Therefore, it is considered that this scheme constitutes a countervailable export subsidy under Article 3(4)(a) of the basic Regulation. It involves a financial contribution by the GOI since government revenue (i.e. import duties on imports) otherwise due are not collected; there is also a benefit to the recipient since the exporting producers do not have to pay normal import duties; and the scheme is clearly contingent upon export performance since it cannot be obtained without an export commitment.

(d) *Calculation of the benefit*

(35) The benefit to the exporting producers has been calculated on the basis of the amount of customs duty normally due on imports made during the investigation period but which remained unpaid under the DEPB pre-export scheme.

(36) One company benefited from this scheme and obtained subsidies of 4,27 %.

DEPB on post-export basis

(a) *Eligibility*

(37) The DEPB on post-export is available to manufacturer-exporters (i.e. every manufacturer in India who exports) or merchant-exporters (i.e. traders).

(b) *Practical implementation of DEPB post-export basis*

(38) Under this scheme, any eligible exporter can apply for credits which are calculated as a percentage of the value of exported finished products. Such DEPB rates have been established by the Indian authorities for most products, including the products concerned, on the basis of the SION. A licence stating the amount of credit granted is issued automatically.

(39) DEPB on post-export basis allows for the use of such credits for any subsequent imports (e.g. raw materials or capital goods) except for goods the importation of which is restricted or prohibited. Such imported goods can be sold on the domestic market (subject to sales tax) or used otherwise.

(40) DEPB licences are freely transferable and, as a consequence, are frequently being sold. The DEPB licence is valid for a period of 12 months from the date of granting of the licence. When all credits have been used, the company has to pay a fee to the relevant authority.

(c) *Conclusions on DEPB on post-export basis*

(41) This scheme is clearly contingent upon export performance. When a company exports goods, it is granted a credit which can be used to offset amounts of customs duties due on future imports of any goods (whether raw materials or capital goods) or which can just be sold.

(42) The credit is automatically calculated on the basis of a formula, using SION rates, independently of whether inputs have been imported, duty has been paid on them or whether the inputs were actually used for export production and in what quantities. Indeed a company can claim a licence irrespective of whether it makes any imports or purchases imported goods from other sources.

(43) DEPB on post-export basis is not a permitted remission/drawback scheme within the meaning of the basic Regulation. In particular, the exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used.

(44) Furthermore, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I and Annexes II and III of the basic Regulation.

(45) In the absence of a requirement that imported inputs be consumed in the production process and of a system of verification as required under Annex II of the basic Regulation, the DEPB on post-export basis cannot be considered as a permitted drawback or substitution drawback scheme. In fact, the remission of import duties is not limited to that payable on goods consumed in the production process of the exported product and therefore an excess remission is involved, in accordance with Article 2(1)(a)(ii) of the basic Regulation.

(46) The scheme constitutes a subsidy as the financial contribution by the GOI in the form of duties foregone on imports confers a benefit upon the DEPB holder who can import goods duty-free using credits earned on exports. It is a subsidy contingent in law upon export performance and is therefore deemed to be specific under Article 3(4)(a) of the basic Regulation.

(d) *Calculation of the subsidy amount for DEPB post-export basis*

(47) The benefit to the exporters can be calculated in two separate ways according to the use the company has made of the DEPB licences: sales of the licences or use of the licences to make duty-free imports.

(48) In this case, the companies concerned did not sell the licences, therefore the benefit was calculated, for the use of the licences to import duty-free goods, on the basis of the amount of customs duty normally payable due on imports made during the investigation period but which remained unpaid under the DEPB.

(49) Two companies benefited from this scheme during the IP and obtained subsidies of 5,01 % and 6,52 % respectively. These companies had claimed deductions for licence fees paid. The Commission services verified those claims and considered that they were justified. Consequently, in calculating the benefits, the fees necessarily incurred to obtain the subsidies have been deducted.

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

(a) *Legal Basis*

(50) The EPCG scheme originally entered into force on 1 April 1990. During the period of investigation the scheme was regulated by Customs Notification No 28/97 and 29/97 which entered into force on 1 April 1997. Details of the schemes are contained in chapter 6 of the 1997/2002 Export and import policies as well as the relevant Handbook of procedures.

(b) *Eligibility*

(51) The EPCGS is available to manufacturers/exporters (i.e. every manufacturer in India who exports) or merchants/exporters (i.e. traders). Since 1 April 1997, manufacturers linked with merchants/exporters can also avail themselves of the scheme.

(c) *Practical implementation*

(52) To benefit from the scheme, a company must provide to the relevant authorities details of the type and value of the capital goods to be imported. Depending on the level of export commitment which the company is prepared to undertake, the company will be allowed to import capital goods at either a zero rate of duty or a reduced rate. A licence authorising the import of capital goods at preferential rates is issued automatically. An application fee is payable to obtain the licence. In order to meet the export obligation, goods exported must have been produced using the imported capital goods.

(d) *Conclusion on EPCGS*

(53) The EPCGS is a subsidy as the payment by an exporter of a reduced or zero rate of duty constitutes a financial contribution by the GOI, since revenue otherwise due is foregone. It confers a benefit to the recipient by lowering the duties payable or by fully exempting him from paying the import duties.

(54) This subsidy is countervailable since it is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation. The licence cannot be obtained without a commitment to export goods, and is therefore deemed to be specific.

(e) *Calculation of the subsidy amount*

(55) The benefit to the exporting producers should be calculated on the basis of the amount of unpaid customs duty due on imported capital goods by spreading this amount across a period which reflects the normal depreciation of such capital goods in the industry of the product concerned. This period has been established by using the average of the depreciation periods for capital goods actually imported by each company, resulting in a normal depreciation period of 18 years.

(56) The amount so calculated which is attributable to the investigation period has been adjusted by adding interest during the investigation period in order to establish the full benefit to the recipient under this scheme, the commercial interest rate during the investigation period in India, i.e. 14 % being considered appropriate.

(57) For one company, this amount has then been allocated over total exports during the investigation period. Since the other exporter only provided verifiable information for capital goods allocated to the polyester sector, the benefit for this company has been allocated over the related sector export turnover during the investigation period. Two companies benefited from this scheme during the IP and obtained subsidies of between 0,79 % and 1,71 %.

4. **Export Processing Zones (EPZ)/Export Oriented Units (EOU)**

(a) *Legal Basis*

(58) Another instrument under the Export import policy involving export-related incentives is the EPZ/EOU scheme. This scheme was introduced in 1965. During the period of investigation the scheme was regulated by Customs Notification No 53/97, 133/94 and 126/94. Details of the schemes are contained in Chapter 9 of the 1997/2002 Export and Import Policies as well as the relevant Handbook of Procedures.

(b) *Eligibility*

(59) Companies undertaking to export their entire production of goods and services may be set up under EPZ/EOU scheme. Once the status is granted, those companies can avail themselves of certain benefits. There are seven identified EPZs in India; one of the companies under investigation is located in an EPZ (Falta EPZ). EOUs can be located anywhere in India. They are bonded units under the surveillance of Customs officials in accordance with Section 65 of the Customs Act. One manufacturer/exporter investigated has been granted the status of EOU. Although EOU/EPZ are to export their entire production, the GOI allows those units to sell also a part of their production on the domestic market under certain conditions.

(c) *Practical implementation*

(60) Companies requesting treatment as EOUs or located in an EPZ must apply to the relevant authorities. Such application must include details for a period of the next five years, on, *inter alia*, planned production quantities, projected value of exports, import requirements and indigenous requirements. If the authorities accept the company's application, the terms and conditions attached to the acceptance will be communicated to the company. Companies in EPZs and EOUs can be involved in the production of any product. The agreement to be recognised as a company in an EPZ/EOU is valid for a five-year period. The agreement may be renewed for further periods.

(61) EPZ/EOU units are entitled to the following benefits:

(i) exemption from import duties on all types of goods (including capital goods, raw materials and consumables) required for the manufacture, production, processing, or in Connection therewith, provided they are not prohibited items in the Negative list of imports;

(ii) exemption from excise duty on goods procured from indigenous sources;

(iii) exemption of income, on which income tax is normally due in accordance with section 10B of the Income Tax Act, for a period of 10 years;

(iv) reimbursement of central sales tax paid on goods procured locally;

(v) 100 % foreign equity ownership;

(vi) facility to sell a part of production in the domestic market.

(62) The importer should maintain in the specified format, a proper account of all imports concerned and of the consumption and utilisation of all imported materials and of the exports made. These should be submitted periodically, as may be required, to the Development Commissioner.

(63) The importer must also ensure minimum net foreign exchange earnings as a percentage of exports and export performance as stipulated in the policy. The entire operations of an EOU/EPZ are to be done in Customs bonded premises.

(d) *Conclusions on EPZ/EOU*

(64) In the present proceeding, the EPZ/EOU scheme was used for the import of capital goods, raw materials and consumables as well as for the procurement of goods on the domestic market. The Commission services found that only concessions related to the suspension of import duties and excise duties on capital goods, raw materials and consumables during the period of bonding were used by the exporting producers. Therefore, the Commission only examined the countervailability of these concessions. In this regard, the EPZ/EOU scheme involves the granting of subsidies as the concessions granted under the scheme constitute financial contributions by the GOI, since revenues otherwise due are foregone and a benefit is conferred on the recipient. In the case of suspension of the collection of duties, this suspension has the same effect as an exemption since, as long as the export requirements are fulfilled, it is solely within the discretion of the company if and when to de-bond the goods in question.

(65) This subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, since it cannot be obtained without the company accepting an export obligation, and it is therefore deemed to be specific and thus countervailable.

(e) *Calculation of the subsidy amount*

(66) One company operated as a recognised EOU; the other company was located in an EPZ. Both companies used this scheme for the import of capital goods, raw materials and consumables.

(67) The benefit to these exporters has been calculated on the basis of the amount of duty or taxes normally due on imported or indigenously sourced goods (i.e. raw materials, consumables and capital goods) during the investigation period.

Capital goods

(68) With regard to the import of capital goods this has been done on the same basis as explained above for the EPCGS: the benefit to the exporting producers should be calculated on the basis of the amount of unpaid customs duty due on imported capital goods by spreading this amount across a period which reflects the normal depreciation of such capital goods in the industry of the product concerned. This period has been established by using the average of the depreciation periods for capital goods actually imported by each company, resulting in a normal depreciation period of 18 years.

(69) The amount so calculated which is attributable to the investigation period has been adjusted by adding interest during the investigation period in order to establish the full benefit to the recipient under this scheme, the commercial interest rate during the investigation period in India, i.e. 14 % being considered appropriate. The benefit has then been allocated over total exports during the investigation period for one of the cooperating companies. Due to unforeseen events, the commercial production of the other exporter ceased in early 1998. This led to unrealistic sales figures during the investigation period. It was therefore decided not to take the sales turnover during the investigation period for the calculation of the subsidy margin.

(70) The Commission services accordingly made an adaptation of the export sales figures for the calculation of the subsidy margin based on verified data from this company in a normal commercial production situation which was reflected in the turnover given for 1997.

Raw materials, spares and consumables

(71) For the import of raw materials and consumables the benefit was calculated on the same basis as explained above for the DEPB pre-export scheme: the benefit to the exporting producers has been calculated on the basis of the amount of customs duty normally due on imports made during the investigation period but which remained unpaid.

(72) Two companies benefited from this scheme during the IP and obtained subsidies of 16,81 % and 11,15 % respectively.

5. **Income Tax Exemption Scheme (ITES)**

(a) *Legal Basis*

(73) The Income Tax Act 1961 is the legal basis under which ITES operates. The Act, which is amended yearly by the Finance Act, sets out the basis for the collection of taxes as well as various exemptions/deductions which can be claimed. Among the exemptions which can be claimed by firms are those covered by sections 10A, 10B and 80HHC of the Act, which provide an income tax exemption on profits from export sales.

(b) *Eligibility*

(74) Exemption under section 10A can be claimed by firms located in Free Trade Zones. Exemption under section 10B can be claimed by Export Oriented Units. Exemption under section 80HHC can be claimed by any firm which exports goods.

(75) Since no exporting producer of the product concerned availed itself of section 10A, section 10B or section 80HHC exemptions, there is no need for the Commission to assess these exemptions in the context of this investigation.

6. **Amount of countervailable subsidies**

(76) All subsidies found were identified as being export subsidies. The level of cooperation for India appeared to be high (above 90 %). The countrywide weighted average subsidy margin is 12.97 % which is above the applicable *de minimis* margin of subsidisation of 3 %.

Type of Subsidy	DEPB	DEPB	EPCGS	EPZ/EOU	Total
	Pre-export	Post-export			
Reliance Industries Limited	4,27 %	6,52 %	1,71 %		12,5 %
Futura Polymers Limited				16,81 %	16,81 %
Pearl Engineering Polymers Limited		5,01 %	0,79 %		5,8 %
Elque Polyester Limited				11,15 %	11,15 %
All Others					16,81 %

(77) In view of the high level of cooperation, the residual rate for non-cooperating companies was determined as the rate of the cooperating company with the highest subsidy margin i.e. 16,81 %.

II. INDONESIA

(78) The amounts of subsidies found for the individual exporters vary from 0,07 % to 1,46 % and are therefore below the *de minimis* threshold for subsidisation for Indonesia, pursuant to Article 14(5)(b) of the basic Regulation, i.e. under 3 %. Therefore, the Commission does not need to consider whether the subsidies in question are countervailable.

III. KOREA

(79) The amount of subsidies granted to the individual Korean exporters did not exceed 0,46 %. This is below the *de minimis* threshold of 1 % and therefore the Commission does not need to consider whether the subsidies in question are countervailable.

IV. MALAYSIA

1. **Introduction**

(80) On the basis of the information contained in the complaint and in the replies to the Commission's questionnaire, the Commission services investigated the following alleged subsidy schemes:

— pioneer status

— investment tax allowance

— reinvestment allowance

— double deduction for the promotion of exports

— double deduction of export credit insurance premiums

— deduction granted for promoted activities

— double deduction for expenses on approved training

— double deduction of insurance premiums for exporters

— double deduction of insurance premiums for importers

— double deduction for Research and Development

— export credit refinancing

— import duty exemptions

— sales tax exemptions

— capital expenditure allowance

— incentives for strategic projects

— incentive for promoting Malaysian brand names

— infrastructure allowance

2. **Pioneer status**

(a) *Legal basis*

(81) The legal basis for a company to obtain pioneer status is the Promotion of Investments Act of 1986. This Act also contains the list of promoted activities and promoted products. The list of promoted areas is listed in the Promotion of Investments (promoted areas) Order of 1994. The Promotion of Investments Order of 1995 contains special rules for promoted products for high technology companies.

(b) *Eligibility*

(82) Pioneer status may be granted to all companies intending to produce a 'promoted' product (manufacturing sector) or a 'promoted' activity (service sector) including a product/activity which is of national and strategic importance to Malaysia. Promoted products are products which are listed in the schedule to the Promotion of Investments Act.

(83) Pursuant to section 4 of the Act, the Minister of International Trade and Industry 'shall from time to time determine such activities or products as he may deem fit to be promoted activities or promoted products'. According to the Act, in order to promote a certain product, the Minister may take into consideration the following criteria:

— activity to be carried out or the product to be produced in Malaysia on a commercial scale which is suitable to the economic requirements or development of Malaysia,

— favourable prospects for further development of the activity or product,

— national and strategic requirements of Malaysia.

(84) The promoted areas are the eastern corridor of the Malaysian peninsular, Sabah, Sarawak and the federal territory of Labuan. An additional list of promoted products was drafted for companies located in promoted areas. These areas are considered to be lesser-developed areas of Malaysia. Neither company concerned is located in the promoted areas.

(85) Pioneer status can only be granted if the promoted activity or promoted product is new for the company and it cannot be cumulated for the same tax year with investment tax allowance or reinvestment allowance.

(c) *Amount of benefit*

(86) Any company which is granted pioneer status enjoys a tax exemption on 70 % of its statutory income (= gross income less allowable expenses and incentives for double deductions on certain expenses) from the 'production day'.

(87) Companies with pioneer status and which are located in a promoted area obtain a tax exemption on 85 % of their income. The 'production day' is fixed by the Minister of International Trade and Industry by means of the pioneer certificate; it determines the commencement of the pioneer period for implementation of the tax benefit with the Inland Revenue Board. The tax exemptions granted are limited to a five-year period. In principle, no extensions for the benefits are given except where the Minister decides that the activity is of national and strategic importance to Malaysia. Finally, companies which produce promoted products for high technology will obtain a 100 % tax exemption for a period of 10 years.

(d) *Practical implementation*

(88) In order to obtain the pioneer status, a company makes an application to the Malaysian Industrial Development Authority (MIDA), a statutory body reporting directly to the Minister of International Trade and Industry.

(89) It is verified whether the future production falls within the list of promoted products and whether at least two out of the four following conditions are met by the company:

— value added,

— local content,

— industrial linkage, and

— technology measures by way of an increase in the number of managerial, supervising and technical employees in the company.

(90) If the above requirements are fulfilled, the Action Committee on Industries, a committee composed of representatives of MITI and the Department of Treasury will recommend the Ministers of International Trade and of Finance to approve the granting of pioneer status to that company.

(91) If a company is granted pioneer status, it submits a claim to the Inland Revenue Board together with the annual tax return containing the calculation of the claim for the tax incentive.

(92) The company can claim the first tax exemption in the tax year following the year of first production.

(e) *Countervailability*

(93) The tax exemptions under the Promotion of Investments Act constitute countervailable subsidies in the sense of Article 3(2)(a) of the basic Regulation. The GOM has limited the access to the subsidy to enterprises that manufacture a promoted product. Since the GOM has made the incentive available for the production of a limited number of products, it automatically limits the access to these enterprises producing the products as defined in the Act. The product under investigation in this proceeding is listed as a promoted product.

(94) Furthermore, the GOM has wide discretion in the designation of promoted products. The criteria, i.e. the suitability to the economic development of Malaysia, favourable prospects for further development and the national and strategic requirements of Malaysia, under which a product can be classified as a promoted product are vague and cannot be considered as objective criteria. It was established that there is no further definition of these criteria. Furthermore, the GOM has provided for differentiated rates of tax exemption depending on the type of promoted product and the location in a promoted area. As a consequence, the GOM favours certain enterprises over other enterprises whether it is because of the production of a 'more' promoted product or the location in a certain geographical area. Finally, since local content is one of the criteria which in practice is taken into account, this programme aims to promote the use of domestic over imported goods.

(95) The scheme constitutes a subsidy, as the financial contribution by the GOM in the form of tax exemption confers a benefit. It is a subsidy that is specific to certain enterprises in Malaysia pursuant to Article 3(2)(a) of the basic Regulation.

(f) *Calculation of the benefit*

(96) The benefit to the exporting producers should be calculated on the basis of the corporate income tax exemption and the resulting tax saving that was effectively granted to the exporting producers during the investigation period. The amount of benefit should be allocated over the total turnover during the investigation period.

(97) One company benefited from this scheme and obtained a subsidy of 4 %

3. **Investment Tax Allowance and Double deduction of insurance premiums for exporters**

(98) Although one company was eligible under these programmes, it did not obtain a benefit since the company was loss making. Therefore, it is not necessary to further evaluate these schemes.

4. **Double deduction of insurance premiums for importers**

(a) *Legal Basis*

(99) This programme is regulated by subsection 154 of the Income Tax Act of 1967 and the Income Tax Rules of 1982.

(b) *Eligibility*

(100) The double deduction is available for manufacturing or agricultural companies in respect of premiums payable for insurance of cargo imported by that person or company, provided that the insurer is a company incorporated in Malaysia. All importers are eligible to apply for this double deduction regardless of whether the imported products are to be consumed domestically or subsequently re-exported.

(c) *Countervailability*

(101) The double deduction of insurance premiums for importers constitutes a subsidy as there is a financial contribution by the GOM in the form of double deduction of expenses (i.e. a reduced tax liability) which confers a benefit.

(102) However, this double deduction of insurance premium for importers does not constitute a countervailable subsidy in the sense of the basic Regulation because it is not specific. The GOM has not limited the access to the subsidy to certain enterprises and applies objective criteria in the granting of the subsidy.

5. **Double deduction for research and development**

(a) *Legal basis*

(103) This programme is regulated by sections 34A and 34B of the Income Tax Act of 1967.

(b) *Eligibility*

(104) The double deduction is available for manufacturing or agricultural companies in respect of expenses incurred directly for R & D purposes except with regard to capital expenditures in R & D.

(105) However, the double deduction of this type of expenses does not constitute a countervailable subsidy in the sense of the basic Regulation because it is not specific. The GOM has not limited the access to the subsidy to certain enterprises and applies objective criteria in the granting of the subsidy.

6. **Import duty exemption and sales tax exemption**

'Licensed manufacturing warehouse' (LMW)

(a) *Legal basis*

(106) Pursuant to Item 88 of the Customs Duties (Exemption) Order 1988, which is part of the Customs Act 1967, imported raw materials, machinery and equipment of a 'Licensed manufacturing warehouse' (LMW) are exempted from import duties. The sales tax exemption for LMW companies is regulated by Item 83 Schedule B of the Sales Tax (Exemption) Order 1980.

(107) One co-operating producer/exporter is identified as a LMW.

(b) *Eligibility*

(108) LMW companies are manufacturing companies which are export oriented, i.e. companies having in 1998 an obligation to export a minimum 80 % of their production; this rate has become 50 % since 1 January 1999.

(109) In order to qualify for the import duty exemption and the sales tax exemption on raw materials, machinery and equipment (including accessories and spare parts), an LMW company has to use those directly in the manufacturing process of an approved finished product which is, at least for a major part, exported to a third market and the equipment is to be used for environmental control, recycling, maintenance and quality control. The manufacturing process starts from the initial stage of manufacturing until the finished product is finally packed ready for export; this includes packaging materials and casings.

(c) *Practical implementation*

(110) As regards the imported raw materials, it was found that the main raw materials for the manufacturing of the product concerned, imported by the cooperating company, were subject to 'nil' import duty rate and sales tax rate.

(111) For the imported machinery and equipment (including accessories and spare parts), the procedure is as follows:

(112) The company, prior to importation, files an application to the State Director of Customs which verifies whether the input can be directly used in the manufacturing process of the finished product

(113) After approval, the imports made under this scheme are declared through import declaration form 1 to the customs authorities. The imports are registered and examined by customs to verify if they are in compliance with the declaration approved by the State Director of Customs.

(114) Exemptions (import duty and sales tax) are consequently granted by the customs authorities by means of a 'stamp' on the import declaration form.

(d) *Countervailability*

(115) This scheme constitutes a subsidy under Article 2 of the basic Regulation since it consists of a financial contribution by the GOM in the form of import duties and sales taxes foregone that are otherwise due and it confers a benefit to the recipient.

(116) Since, for LMW, it is limited to companies located in certain areas and furthermore it is contingent upon export performance, it is deemed to be specific within the meaning of Article 3(2)(a) and 3(4)(a) of the basic Regulation.

(e) *Calculation of the benefit*

(117) The amount of subsidy is the difference between the amount of import duties and sales tax actually paid on machinery/equipment and the amount of import duties and sales tax which would normally be payable without the benefit of the exemption.

(118) The benefit should be allocated over the normal lifetime of the machinery which is on average 10 years in Malaysia. The amount pertaining to the investigation period should be allocated over the total export turnover during the period of investigation for LMW companies. One company benefited from this scheme and obtained subsidies of 0,21

'Principal customs area' (PCA)

(a) *Legal basis*

(119) Section 14(2) of the Customs Act 1967 provides for customs duties exemption on imported raw materials, machinery and equipment for all companies not considered as LMW companies nor as 'free zone' companies which can then only be companies located in a 'Principal customs area' (PCA). The legal basis for the sales tax exemption on imported raw materials, machinery and equipment is section 10 of the sales Tax Act. One co-operating producer/exporter is located in a 'principal customs area'.

(b) *Eligibility*

(120) With regard to PCA companies, the import duty exemption and sales tax exemption on raw materials, machinery and equipment (also including accessories and spare parts) is granted by the Minister for Finance only to manufacturing companies fulfilling 'the conditions he may deem fit to impose'.

(121) These conditions include, amongst others, the requirement that the machinery and equipment concerned should be used directly in the manufacturing process of the finished goods.

(c) *Practical implementation*

(122) As regards the imported raw materials, it was found that the main raw materials used in the manufacturing process of the product concerned, imported by the cooperating company, were subject to 'nil' import duty rate and sales tax rate.

(123) The raw materials concerned are consequently not subject to an import duty and sales tax exemption.

(124) For the imported machinery and equipment (including accessories and spare parts) the practical procedure is as follows:

(125) The company, prior to importation, files an application (form PC 1 (97)) to the Malaysian Industrial Development Authority (MIDA), a government body, which verifies whether the equipment can be directly used in the manufacturing process of the finished product. After approval, MIDA proposes to the Minister for Finance to grant import duty and sales tax exemptions to the applicant company for the specified machinery/equipment. The Minister for Finance issues an exemption letter listing all machinery/equipment approved to be imported without paying the normal duties (import and sales tax). The approval to import the listed equipment is valid for one year. When the machinery is imported, the company completes and files the Import declaration form 1 with the customs authorities. The imports are registered and examined by customs to verify if they are in compliance with the authorisation granted by the Minister for Finance. Exemptions (import duty and sales tax) are consequently granted by the customs authorities by means of a 'stamp' on the import declaration form.

(d) *Countervailability*

(126) This scheme constitutes a subsidy under Article 2 of the basic Regulation since it consists of a financial contribution by the GOM in the form of import duties and sales taxes foregone that are otherwise due and it confers a benefit to the recipient.

(127) For PCA companies, the import duty exemptions and sales tax exemptions are only available to manufacturing companies which import specific equipment under conditions set by the GOM 'which it may deem fit to impose'. These conditions are not considered to be objective since they are not neutral and economic in nature and horizontal in application. These criteria are furthermore not clearly set out by law. 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.

(e) *Calculation of the benefit*

(128) The amount of subsidy is the difference between the amount of import duties and sales tax actually paid on machinery and the amount of import duties and sales tax which would normally be payable without the benefit of the exemption.

(129) The benefit should be allocated over the normal lifetime of the machinery which is on average 10 years in Malaysia. The amount pertaining to the investigation period should be allocated over the total turnover during the period of investigation for PCA companies.

(130) One company benefited from this scheme and obtained subsidies of 0,91 %

7. **Programmes found not to be used**

(131) The complainant alleged that the exporting producers of the product concerned benefited from a number of other subsidy programmes. The questionnaire response and the verification revealed that the exporting producers did not use the programmes listed below:

— reinvestment allowance

— double deduction for the promotion of exports

— double deduction of export credit insurance premiums

— deduction granted for promoted activities

— double deduction for expenses on approved training

— export credit refinancing

— capital expenditure allowance

— incentives for strategic projects

— incentive for promoting Malaysian brand names

— infrastructure allowance

Therefore, the Commission has not made an assessment as regards these programmes.

8. **Amount of countervailable subsidies**

(132) The level of cooperation for Malaysia was very high (above 90 %). The two companies producing PET in Malaysia did cooperate. The countrywide weighted average subsidy margin is 4,2 % which is above the applicable *de minimis* level of 2 %.

Type of Subsidy	Export	Export	Domestic	Export	Total
	Double Deductions	Pioneer Status	Import duty exemption and Sales Tax Exemption	Import duty exemption and Sales Tax Exemption	
Hualon Corporation (M) Sdn. Bhd.	0	4 %	0	0,21 %	4,27 %
MPI Polyester Industries	0	0	0,91 %	0	0,91 %
All others					4,2 %

(133) In view of the high level of cooperation, the residual rate for non-cooperating companies was determined as the rate of the cooperating company with the highest subsidy margin i.e. 4,2 %

V. TAIWAN

1. **Introduction**

(134) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission services investigated the following alleged subsidy schemes:

1. tax credits and exemptions,
2. import duty exemption,
3. loans at preferential interest rates,
4. matching funds.

(135) The tax credits, loans and matching funds are based on the Statute for Upgrading Industries as last amended on January 27, 1995. The implementation of these programmes is regulated by the Enforcement Rules of the Statute for Upgrading Industries as last amended on 22 January 1997. Finally, the practical implementation of these programmes is regulated by Measures enacted by the Executive Yuan of Taiwan. The import duty exemptions are based on the Customs Code.

2. **Tax credits and exemptions**

2.1. ***Tax credits for the purchase of automation and pollution control equipment***

(a) *Legal basis*

(136) The basic instrument involving economic development of the Taiwanese industry is the Statute for Upgrading Industries (SUI) which entered into force on 1 January 1991 and was last amended on 27 January 1995. The Statute is supplemented by the Enforcement Rules of the Statute for Upgrading Industries as last amended on 27 January 1995. The tax credits are covered by Article 6 of the SUI. Furthermore, the practical implementation of the scheme is regulated by the Measures Governing the Application of Tax Deductions promulgated on 15 April 1991 by the Executive Yuan which was last amended on 27 February 1995.

(b) *Eligibility*

(137) The tax credits are available to all manufacturing companies. There is no specific export requirement nor is availability dependent on certain product types or minimum production quantity or turnover.

(138) However, pursuant to Article 6 of the SUI, tax exemptions are only granted for the following limited number of investments:

— investment in equipment for automation of production,

— investment in equipment for pollution control.

(139) The SUI states that the investment in the equipment should exceed 600 000 new Taiwanese dollars (NTS). The tax credits for the different types of investment can be cumulated. The amount of tax credit is limited to 50 % of the total amount of tax payable in any current year.

(c) *Amount of tax credit*

(140) Any eligible company which invests in the abovementioned equipment types 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 benefit may be carried over during the next four years.

(141) 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 %.

(d) *Practical Implementation*

(142) 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 (IDB) of the Ministry of Economic Affairs within six months of the date of delivery of the equipment or the date of completion of the project. Prior to issuing the tax deduction certificate, the local tax authorities will verify whether the equipment falls within the criteria of Article 6 of the SUI and has been installed effectively. Once the certificate is issued, the tax credit can be deducted in the tax declaration for the current year (item 95 on the tax declaration).

(e) *Countervailability*

(143) The tax credits under Article 6 of the SUI constitute countervailable subsidies in the sense of Article 3(4)(b) of the basic Regulation. The tax credits constitute subsidies which are contingent upon the use of domestic over imported goods. Although the programme provides for a tax credit for imported as well as domestically produced equipment, the subsidy is doubled for the purchase of domestic equipment and therefore, directly provides an incentive for the purchase of Taiwanese made equipment. The verification revealed that the Taiwanese authorities intend to favour the purchase of domestically manufactured equipment over imported machinery by providing for a differentiated level of benefit (20 % for domestic versus 10 % for imported equipment).

(144) The scheme constitutes a subsidy as the financial contribution by the Government of Taiwan (GOT) in the form of tax credits confers a benefit upon exporters. It is a subsidy contingent in law upon the use of domestic over imported goods and is therefore deemed to be specific under Article 3(4)(b) of the basic Regulation.

(145) For the abovementioned reasons, it is considered that the tax credits constitute countervailable subsidies.

(f) *Calculation of the benefit*

(146) The benefit to the exporters was calculated on the basis of the difference between the tax credit for imported machinery and domestically purchased machinery i.e. 10 % that was granted to the exporters during the investigation period. The amount of benefit should be allocated over the total turnover of the product concerned during the investigation period.

(147) Two companies benefited from this scheme and obtained benefits of 0,41 % and 0,43 %.

2.2. ***Tax credits for investment in certain enterprises***

(a) *Legal basis*

(148) The tax credits are regulated by Article 8 of the SUI.

(b) *Eligibility*

(149) The tax credit is available to any investor which buys registered stocks issued by an important technology-based enterprise or an important invested enterprise designated by the government (invested company). The investing company should hold the registered stocks for a period of at least two years. There is no precise definition of important technology-based enterprise. An important invested enterprise may be any enterprise with a capital of NTS2 billion providing it has been designated as such by the GOT.

(c) *Amount of tax credit*

(150) Any eligible company which invested in the abovementioned enterprises may credit 20 % of the price paid for the acquisition of such stocks against the corporate income tax payable.

(d) *Practical implementation*

(151) In order to obtain the tax credits, the invested company makes an application for the issuance of a tax deduction certificate to IDB. Prior to issuing the tax certificate, IDB will verify whether the company qualifies as a technology-based enterprise or whether the invested enterprise was designated as an important invested company by the government authorities. Once the certificate is issued to the invested company, the investor may claim the tax credit which can be deducted in the tax declaration for the current year (item 95 on the tax declaration).

(e) *Countervailability*

(152) The tax credits under Article 8 of the SUI constitute countervailable subsidies in the sense of Article 3(2)(a) of the basic Regulation. The GOT has limited the access to the subsidy to enterprises which make a specific investment. 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. The verification revealed that the Taiwanese authorities intend to favour certain types of investment without establishing clear criteria.

(153) The scheme constitutes a subsidy as the financial contribution by the GOT in the form of tax credits confers a benefit to the exporters. It is a subsidy which is specific to certain enterprises in Taiwan pursuant to Article 3(2)(a) of the basic Regulation.

(154) One company alleged that this scheme is not specific since a large number of private persons and companies have benefited from this scheme. The Commission is of the view that the number of beneficiaries is not a criterion for determining specificity in accordance with Article 3 of the basic Regulation. A large number of companies may benefit from an export subsidy and this does not render a programme not countervailable. Therefore, this claim cannot be accepted.

(f) *Calculation of the benefit*

(155) The benefit to the exporters should be calculated on the basis of the tax credit that was effectively granted to the exporters during the investigation period. The amount of benefit should be allocated over the total turnover of the company during the investigation period.

(156) One company benefited from this scheme and obtained a benefit of 0,69 %.

2.3. ***Tax credits for r & d and personnel training***

(157) The tax credits for R&D and personnel training under Article 6 of the SUI do not constitute countervailable subsidies. The tax credits are generally available for all manufacturing, agricultural and service industries investing in R&D and personnel training.

2.4. ***Tax credit for establishing international brands***

(158) Only one company availed itself of this scheme and obtained a negligible benefit. Therefore, the countervailability of this scheme does not need to be addressed.

3. **Import duty exemption**

3.1. ***Import duty exemption for machinery***

(a) *Legal basis*

(159) Chapters 84, 85 and 90 of the Customs import tariff and classification of import and export commodities of the Republic of China (hereinafter 'the Customs Code').

(b) *Eligibility*

(160) Pursuant to the abovementioned provisions of the Customs Code, a manufacturing company which imports machinery for the development of new products, quality upgrading, increase of production, achievement of energy conservation, promotion of recycling or improvement of production techniques, which is not yet being manufactured locally, is exempt from import duties.

(c) *Practical implementation*

(161) A company which intends to import machinery or equipment makes an application to IDB prior to the importation of the machinery. If IDB is satisfied that the machinery is not produced in Taiwan, it will issue a certificate which is sent to the applicant and the customs department. The customs services will verify whether the imported machinery is identical to the machinery described in the IDB certificate. This verification is undertaken on a random basis.

(d) *Amount of duty exemption*

(162) The amount of subsidy is the amount of import duties which would normally be payable without the benefit of the exemption. The normal duty rate for machinery lies between 2 % and 20 %.

(e) *Countervailability*

(163) The import duty exemption pursuant to the Customs Code constitutes a countervailable subsidy. Due to the nature of the subsidy, the programme will automatically be disproportionately used by certain industry sectors. The industry sectors whose machinery is produced in Taiwan will not be eligible to use this programme. Consequently, eligibility for the import duty exemption is limited to industries who are obliged to import machinery since the machinery is not available on the local market. Industries which import machinery which is also produced in Taiwan cannot obtain the benefit.

(164) Therefore, it is considered that the import duty exemption on machinery constitutes a countervailable subsidy in the sense of Article 3(2)(a) of the basic Regulation.

(f) *Calculation of the benefit*

(165) The benefit to the exporters should be calculated as the amount of import duties payable without the benefit of the exemption under this scheme. This amount should be allocated over the normal service life of the machinery in this industry, i.e. seven years.

(166) All companies made use of this programme and obtained benefits of 0,07 % to 1,92 %.

3.2. ***Imports of raw material***

(167) The Customs import tariff offers tax exemptions for imports of main raw materials of chemicals and submaterial, and that access to the tax exemption is explicitly limited to certain enterprises, including the producers of PET chips.

(a) *Eligibility*

(168) Manufacturing companies which import certain specific raw materials exhaustively described in the Customs Code and 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*

(169) 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 enabling the company to import the raw material without payment of import duties. The customs services randomly check that the imported raw material is as described on the certificate.

(c) *Countervailability*

(170) 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. The import duty exemption pursuant to the Customs Code 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. The scheme is not a general duty suspension scheme. Utilisation of the scheme is dependent upon individual applications from each company, for each product manufactured, and for each raw material to be imported duty free. The GOT has discretion in the granting of certificates. Further, it is considered that access to this scheme is limited to certain companies. Therefore, this scheme is specific within the meaning of Article 3(2)(a) of the basic Regulation and the subsidy is countervailable.

(d) *Calculation of the subsidy amount*

(171) The benefit to the companies was calculated as the amount of import duties normally payable without the benefit of the exemption for the production of the product concerned. The total amount of subsidy so attributed to the investigation period was allocated over the total sales turnover for the product concerned since this subsidy benefits both domestic and export sales. All companies benefited from this programme and obtained benefits from 0,12 % to 0,73 %

4. **Loans at preferential interest rates**

(172) It was alleged that there are several programmes regarding preferential loans available to the companies under investigation. The Commission established that only loans for automation and loans for anti-pollution incentives were used by the producers of the product concerned.

(a) *Eligibility*

(173) These schemes are covered by Article 21, paragraph 1, item 3 of the SUI. The GOT has established a development fund and makes use of such a development fund for providing loans in line with the government industrial policy for assisting the sound development of industries.

(b) *Practical implementation*

(174) A company has to file an application to the Chiao Tung Bank (which is partly State owned), or to certain other designated banks. The bank will verify whether the application falls within the criteria. Based on the financial situation of the applicant, the Chiao Tung Bank will decide on the amount of the loan.

(c) *Countervailability*

(175) The Commission established that there is a financial contribution by the GOT since the executive Yuan of the Development Fund, which is responsible for drafting and amending the rules relating to these types of loans is State controlled. Furthermore, the Chiao Tung Bank, which is also State-controlled, channels the loans to the companies. In addition, a benefit is conferred on the recipient of the loan since the interest rates of these loans are generally lower than comparable commercial loans. Low-interest loans are only available to companies which purchase specific equipment under specific conditions set by the executive Yuan of the Development Fund. 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 anti-subsidy Regulation, the scheme is considered specific in accordance with Article 3(2)(a) of the basic Regulation.

(d) *Calculation of the subsidy amount*

(176) 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. The comparable loan should be a loan of a similar amount with a similar repayment period actually obtained by the recipient from a representative private bank operating on the domestic market. In this investigation there were no such comparable commercial loans granted to the respective companies. Therefore the Commission considered that the appropriate benchmark would be the average commercial interest rate during the investigation period (9 %). All companies availed themselves of this scheme and obtained a benefit of 0,02 % to 0,09 %.

5. **Matching funds and assistance funds**

(177) Only one company availed itself from this scheme and obtained a negligible benefit. Therefore, the issue of countervailability does not need to be addressed.

6. **Other subsidies**

(178) The Commission determined that there were no other subsidy programmes used by the exporting producers.

7. **Amount of countervailable subsidies**

(179) The amount of subsidy was calculated according to the methodology set out above. In this respect, the following subsidy rates for the co-operating companies were established:

	Nan Ya Plastics	Far Eastern	Shingkong	Tuntex
Tax credit — automation & pollution control equipment (Domestic only)	0,12	0,26	0	0
Tax credit — investment in certain enterprises	0,64	0	0	0
Import duty exemption on raw materials	0,70	0,26	0,11	0,18
Import duty exemption on machinery	0,07	0,23	1,92	0,62
Loans	0,02	0,05	0,02	0,08
Matching Funds	0	0	0	0
	1,56	0,80	2,06	0,88

(180) For information, it should be noted that the weighted average country-wide subsidy margin for the exporting producers investigated, which represent the totality of the exports to the Community originating in Taiwan, expressed as a percentage of the cif price at Community frontier level is 1,08 % which is above the *de minimis* threshold for Taiwan (i.e. 1 %). In view of the high level of cooperation (above 90 %), the residual rate for non-cooperating companies was determined as the rate of the cooperating company with the highest subsidy margin i.e. 2 %.

VI. THAILAND

1. **Introduction**

(181) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission services investigated the following schemes:

— exemption or reduction on duties on imports of machinery,

— exemption from corporate income tax,

— additional incentives for enterprises in special investment promotion zones,

— exemption of import duties on raw and essential materials,

— incentives for enterprises in special investment production zones,

— other subsidies such as packing credits, pre-shipment finance facilities and investment inducements.

(182) It was established that, during the investigation period, the cooperating exporting producer availed itself only of schemes under the Investment Promotion Act.

2. **General**

(183) The Investment Promotion Act (IPA) B.E. 2520 of 1977 and its amendment B.E. 2534 of 1991 provides incentives to promote development of the Thai economy. The IPA, which is administered by the Board of Investment (BOI), grants the exemption of import duties and other taxes with respect to qualifying projects. According to the BOI, the Investment Promotion Scheme is used as a tool to encourage companies to relocate to less developed areas in Thailand.

(184) In order to receive IPA benefits, each company makes an application to the BOI for a 'certificate of promotion' (licence), which specifies the goods to be produced and the benefits granted.

(185) The BOI stressed that its major political aim was decentralisation and counteracting the danger of the development of a dual economy, with the Bangkok area absorbing most investment due to its competitive advantage in infrastructure. This policy is spelled out in the five-year national development plan (as regards the period of investigation the eighth version is relevant, running from 1997 to 2001).

(186) In response to the general framework of regional development set out in the seventh national social and economic development plan, the BOI divided the entire country into three zones since April 1993. The classification into zones is based on the level of economic development, with zone 1 being the most developed and zone 3 being the least developed one.

(187) Zone 1 covers Bangkok and vicinities (Samut Prakan, Samut Sakhon, Pathum Thani, Nontha Buri, and Nakhon Pathom); zone 2 covers Samut Songkram, Ratchaburi, Kanchanaburi, Suphanburi, Ang Thong, Ayuthaya, Sara Buri, Nakhon Nayok, Chachengsao and Chonburi; zone 3 covers the rest of the country.

(188) The production facility of Thai Shingkong Ltd, the only cooperating exporter, is located in zone 3.

(189) Approved projects located in zone 1 are eligible for a 50 % reduction of import duties on machinery that is not included in the tariff reduction notification of the Ministry of Finance (notification No C.3/2533) and is subject to a tariff greater than or equal to 10 % if they export at least 80 % of total sales or are located in industrial estates or promoted industrial zones; a three-year exemption of corporate income tax if they export at least 80 % of total sales or are located in industrial estates or promoted industrial zones; and exemption of import duties on raw materials and essential materials used in the manufacture of exports.

(190) Approved projects located in zone 2 will receive 50 % reduction of import duties on machinery that is not included in the tariff reduction notification of the Ministry of Finance (notification No C.3/2533) and is subject to a tariff greater than or equal to 10 %; three-year exemption of corporate income tax or seven-year exemption of corporate income tax if they are located in industrial estates or promoted industrial zones; and exemption of import duties on raw materials and essential materials used in the manufacture of exports.

(191) Approved projects located in zone 3 will receive exemption on the import duty on machinery, eight-year exemption of corporate income tax, exemption of import duties on raw materials and essential materials used in the manufacture of exports, and special privilege for investment promotion zone (i.e. double deduction of transportation, electricity and water supply cost; deduction of 25 % of infrastructure, installation or construction costs).

Regional specificity

(192) Since firms located in zones 2 and 3 are entitled to more generous incentives than those located in zone 1, all subsidies granted in zones 2 and 3 by the BOI are by definition regionally specific, in accordance with Articles 3(2)(a) of the basic Regulation.

Sector specificity

(193) As regards sector specificity, the BOI claimed that it has established objective criteria in granting incentives, and that these criteria are clearly set out in BOI announcements and publications and consistently adhered to. The list of activities eligible for investment promotion is contained in chapter 5 of the Guide to the Board of Investment. The GOT claims that it does not promote particular sectors, and that these incentives are therefore not specific. The BOI argued that any projects undertaking activities eligible for promotion announced by the BOI can apply for incentives, and that the BOI applies objective criteria governing the eligibility for incentives. Projects applying for incentives are required to meet the objective project approval criteria which are based on economic and technological factors, namely 'value-added' (minimum 20 %), debt-equity ratio not exceeding 4 to 1, technological level of production process and machinery involved, and environmental protection systems.

(194) The sectors eligible for promotion are enumerated in a list of activities. It was claimed that this list of activities was open-ended and updated on a relatively regular basis if the market shows demand for promotion for new sectors. The list has been updated about 30 times since 1987. It is clear that although a wide range of activities are eligible, the Thai Government has used its discretion to determine which sector can obtain benefits, including in which zones the companies had to be located.

(195) The BOI is empowered to decide which activities should be promoted. The BOI may temporarily or permanently suspend activities on the Investment Promotion List if it considers that promotion is no longer needed; or the BOI may add new activities to the list if it considers that such activities should be promoted. This was the case when the BOI decided to exempt machinery in 61 categories of activities from import duty, for projects located in zones 1 and 2 (BOI announcement No 12/2540 effective from 27 October 1997). Furthermore, sectors or industries, which are not listed in the activities list are excluded from investment promotion. As already mentioned, it is the discretion of the BOI to decide which industries are eligible for promotion. In excluding certain industries, the GOT has limited the access to the subsidy to certain enterprises.

Import substitution condition

(196) Any subsidy to an enterprise or industry would therefore by definition be specific. The 20 % value-added criterion effectively encourages enterprises to use domestic over imported goods and will effectively mandate the use of domestic goods in cases where the value added is less than 20 %. Therefore, any subsidy linked to this requirement is specific according to Article 3(4)(b) of the basic Regulation.

Conclusion on specificity

(197) BOI incentives are therefore specific in accordance with Articles 3(2)(a) and 3(4)(b). Therefore, in addition to regional specificity for zones 2 and 3, all BOI subsidies in the whole of Thailand including zone 1 are specific.

Green-light claim

(198) It was claimed that zone 3 qualifies as a disadvantaged region within the meaning of the provisions of the ASCM and the basic Regulation. Most notably, it was claimed that per capita income of zone 3 was less than 85 % of the country's average, and that this per capita income has always been well below the national average.

(199) In order to assess the merits of this claim, it is necessary to evaluate the implementation of the criteria set out in Article 4(3) of the basic Regulation in Thailand.

(200) It is acknowledged that zone 3 is a clearly designated contiguous geographical area. It is not disputed that zone 3 meets the definition of disadvantaged region in accordance with Article 4(3) of the basic Regulation. Indeed, evidence was provided that the per capita income in zone 3 between 1994 and 1996 were in the region of 50 % of the national average.

(201) However, it has already been established that the BOI incentive system limits the access and is therefore specific. As a result, none of the regions qualify for green light treatment. As regards zone 3, the fact that only sectors listed are eligible for promotion, plus the value-added requirement makes incentives within the zone specific. Consequently, the green-light claim has to be rejected.

3. **Exemption or reduction on duties on imports of machinery**

(a) *General*

(202) Section 28 of the IPA is the legal basis to grant the exemption of import duties on machinery provided that such machinery is not being produced or assembled in Thailand and will be used in the promoted activity. Section 29 of the IPA provides the legal basis for the 50 % reduction on import duties on imported machinery.

(b) *Eligibility*

(203) The company under investigation was subject to the criteria effective from April 1993, based on current zoning. Different criteria in granting exemption and reduction of import duties on imported machinery are applied to different zones. Investments in zone 1 will be granted a 50 % reduction of import duties in case of import duties greater or equal to 10 % if they export at least 80 % of total sales. Investments in zone 2 will be granted a 50 % reduction of import duties in case of import duties greater or equal to 10 %. Investments in zone 3 will be granted exemption of import duties on machinery.

(204) Thai Shingkong Co. Ltd was granted an exemption of import duties on machinery issued in 1994 due to its location in zone 3 (Investment Promotion Certificate No 1823/2537).

(c) *Practical implementation*

(205) In order to avail itself of this scheme, the company must possess a Certificate of promotion which specifies that it is entitled to an exemption or reduction on taxes on imports of machinery pursuant to Article 28 or 29 of the IPA. The Customs Department will receive a copy of the licence, and will, on importation of the machinery declared to be BOI exempted, check that it is for the promoted activity.

(d) *Countervailability*

(206) The import duty exemption is a subsidy because government revenue which is otherwise due is foregone by the government. As explained in the general part, the programme is limited to firms located in certain zones and to certain sectors and requires companies to have 20 % value added. Therefore, the import duty exemption is specific and countervailable under Article 3(2)(a) and 3(4)(b) of the basic Regulation.

(e) *Calculation of the subsidy amount*

(207) The benefit to the exporters should be calculated on the basis of the amount of unpaid customs duty due on imported capital goods, by spreading this amount across a period which reflects the normal depreciation of such capital goods in the industry of the product concerned. This period has been established by using the average of the depreciation periods for capital goods actually imported under this scheme by the company, resulting in a normal depreciation period of 11 years. The amount so calculated which is attributable to the investigation period has been adjusted by adding interest during the investigation period in order to establish the full benefit to the recipient under this scheme, the commercial interest rate during the investigation period in Thailand, i.e. 12,04 % being considered appropriate. This amount has then been allocated over total sales during the investigation period.

(208) Thai Shingkong Ltd received a benefit of 0,35 %.

4. **Exemption from corporate income tax**

(a) *General*

(209) Sections 31 and 34 of the IPA provides the legal basis for corporate income tax exemption and exclusion, from taxable income, of dividends derived from promoted activity during the corporate income tax exemption period respectively.

(b) *Eligibility*

(210) By virtue of Section 31 of the IPA, the BOI is authorised to provide three to eight year exemptions from the corporate income tax depending on the location of investments. Different eligibility criteria are applied to different zones.

(211) Investments located in zone 1 exporting at least 80 % of total sales and located in industrial estates or promoted industrial zones will be granted three-year corporate income tax exemption. Projects in zone 2 will receive three-year seven-year corporate income tax exemption respectively depending on whether they are located in industrial estates or promoted industrial zones. Investments in zone 3 will be granted eight-year corporate income tax exemptions.

(212) Thai Shingkong Ltd located in zone 3, has been granted an eight year tax exemption from corporate income tax pursuant to Section 31 of the IPA.

(c) *Practical implementation*

(213) In order to avail itself of the exemption of corporate income tax, the company must fill out all costs and income derived from the promoted activity in a special column (non-taxable). The claim must be made on line 46 of the tax return and accompanied by supporting documents.

(d) *Countervailability*

(214) The income tax exemption is a subsidy since government revenue which is otherwise due is foregone by the government. As stated above, this scheme is countervailable pursuant to Article 3(2)(a) and 3(4)(b) of the basic Regulation.

(e) *Calculation of the benefit*

(215) Thai Shingkong Ltd claimed on the tax return, income tax exemption under the licence for the financial year ending 31 December 1998, which ended within the period of investigation. The company claims that it was not liable to pay corporate income tax in 1998 since net losses were carried forward from previous tax years. However, the BOI and the Revenue Department confirmed that a company which can carry forward losses and benefits from income tax exemption can choose either to claim the benefit under the BOI certificate or offset its profits against previous year's losses. In the present case, Thai Shingkong opted to use the income tax exemption and not to offset profits with accumulated net losses. Therefore, it is concluded that an effective benefit was granted to the company under this scheme.

(216) The benefit should be calculated as the taxes which were not paid on profits realised on BOI activity.

(217) Thai Shingkong obtained a benefit of 8,13 %.

5. **Additional incentives for enterprises in special investment promotion zones**

(218) Section 35(3) of the IPA provides the legal basis for double deduction of transportation, electricity and water supply costs while Section 35(4) provides the legal basis for deduction of up to 25 % of infrastructure, installation and construction costs.

(219) It was established that the exporting producer did not benefit from these additional incentives. Therefore, it is not necessary to make an assessment of these schemes.

6. **Exemption of import duties on raw and essential materials**

(a) *General*

(220) Section 36(1) of the IPA provides the legal basis for exemption of import duties on the raw and essential materials imported for use specifically in producing, mixing, or assembling products or commodities for export.

(b) *Eligibility*

(221) Under Section 36(1) of the IPA, the BOI is authorised to grant the exemption of import duties on raw materials and essential materials used in the manufacture for exports. Companies in every zone are eligible for this scheme provided that they are promoted.

(c) *Countervailability*

(222) As mentioned above, the schemes in zone 3 are specific. However, it was established in the present case that the import duty exemption did not result in an excess remission of import duties for the exporter concerned. Therefore, there is no subsidy according to Article 2 of the basic Regulation and it is not necessary to further evaluate this scheme since no benefit was conferred on the exporting producer.

7. **Other subsidies**

(223) It was established that the exporting producer in Thailand did not benefit from any other subsidy schemes. Therefore it is not necessary to make an analysis as regards the countervailability of these schemes.

8. **Amount of countervailable subsidies**

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

Company	Income tax exemption	Import duty exemption on machinery	Total
Thai Shingkong, Ltd	8,13 %	0,35 %	8,4 %

(225) It was established that the level of cooperation in this proceeding has been very high. The cooperating exporting producer covers virtually all exports from Thailand to the EC during the investigation period, as shown by the comparison of import figures provided by Eurostat with export figures supplied by the cooperating exporting producers. In view of the large cooperation, the residual rate for non-cooperating companies was determined as the rate of the cooperating company with the highest subsidy margin i.e. 8,4 %.

D. **COMMUNITY INDUSTRY**

(226) The following nine Community producers cooperated in the investigation, i.e. replied to the Comission's questionnaires, allowed on the spot verifications and provided the Commission with additional information when requested:

— Du Pont Polyesters Ltd (UK),
— Eastman Chemicals BV (NL),
— INCA International SpA (I),
— Italpet Preforme SpA (I),
— KOSA GmbH (D),
— Shell Chemicals Ltd (UK),
— Wellman PET Resins Europe (NL),
— Aussapol SpA (I).
— CEP-Tergal Fibre (F).

(227) It should be noted that, although Aussapol SpA and CEP-Tergal Fibre were not among the companies on whose behalf the complaint was lodged, these companies supported the complaint and cooperated in the investigation.

(228) It should also be noted that, although it operates a plant in Malaysia, Eastman has been considered part of the Community industry because its affiliated company has exported only insignificant quantities of PET to Eastman itself. No other cooperating companies imported PET from the countries concerned during the IP.

(229) None of the three other European producers replied to the Commission's questionnaires or expressed opposition to the proceeding.

(230) The cumulated production of the nine cooperating producers during the investigation period was 1 042 350 tonnes out of an estimated total Community production of 1 220 000 tonnes, i.e. 85 % of the Community production.

(231) The Commission, therefore, considers that the nine cooperating producers constitute the Community industry within the meaning of Article 4(1) of the basic Regulation.

E. **INJURY**

1. **Preliminary remarks**

(a) *Information used*

Import data

(232) Eurostat information, together with data submitted by exporting producers, was used as the source of the import data. The Combined Nomeclature heading used, CN 3907 60 00, includes polyethylene terephthalate under primary forms i.e. not only the product concerned but also polyethylene terephthalate chips used to produce polyester fibres. As the Community production of the polyester fibres in which they are used was stable between 1996 and the beginning of the IP [1], the Commission estimated that imports of PET chips used for the production of polyester fibres remained stable too.

[1] See inter alia Commission Regulation (EC) No 124/2000 (OJ L 16, 21.1.2000 p.30).

(233) According to the complaint, the product concerned represented, in terms of quantity, 90 % of all imports in 1998, the remaining 10 % (approximately 47 000 tonnes) being used to produce polyester fibres. This information was confirmed during the investigation on the basis of estimates established by various Community producers and market research publications. For all the years under review, the same estimated amount of imports of PET chips used for the production of polyester fibres (47 000 tonnes) was deducted from imports shown in Eurostat to establish the total quantities imported into the Community of the product concerned.

(234) On a country basis, imported quantities were established by the same methodology but also taking into account data submitted by cooperating exporting producers.

Community industry data

(235) Community industry data were obtained from the verified questionnaire responses of the nine cooperating Community producers. Data were requested for the period 1995 to the IP; however, during this period, the Community industry was considerably restructured with several mergers and demergers. As a consequence, it was not possible for all the companies to provide data as far back as requested. As a result, 1996 is the earliest year for which data are sufficiently complete for the Community industry in the structure it had in the IP.

(236) However to have a full understanding of the situation of the Community industry, especially concerning prices and profitability, it is necessary to have a view on the development of the Community PET market over a longer period. Data submitted by the Community industry and obtained from external professional sources were thus used wherever necessary.

2. **Development of the Community PET market since the beginning of the 1990s**

(237) PET is a product which started to be widely used in the Community to bottle soft drinks in the late 1980s and mineral and spring water progressively thereafter. As a consequence, Community demand for PET has been growing very quickly since the beginning of the 1990s (by more than 10 % per year). The growth potential of this market is still considerable, with the water market not yet mature in many Community countries and demand for other applications (beer, milk, prepared food) starting to develop.

(238) At the beginning of the 1990s, the Community PET industry started to develop through the conversion of existing polyester fibres or yarn plants. Rapidly, however, growing demand required completely new production lines to be built specifically for PET and for its major raw materials. Despite the rapid expansion of investments in new facilities, supply did not meet demand, and this was also the case in other parts of the world. As a result, during the first half of 1995, there was a worldwide shortage of PET. This resulted in huge increases in the prices of PET and of its major raw materials. These increases proved temporary because sufficient capacities for PET and its raw materials came into production in the Community a few months later. Users of PET, anticipating that prices would drop, stopped purchasing as soon as the summer 1995 peak was over (the consumption of PET follows the same seasonality as the consumption of soft drinks and water). Prices started then to decrease dramatically. This drop came earlier and was more significant than the drop in prices of raw materials. As a result of this gap, the Community industry registered losses at the beginning of 1996. These losses were expected to be temporary, but as a result of the arrival of subsidised imports on the Community market, as will be shown below, the situation in fact deteriorated further.

3. **Consumption**

(239) Apparent consumption of PET in the Community was established on the basis of the total imports of the product concerned into the Community, plus the total verified sales of the Community industry on the Community market, and estimates of sales of the non-cooperating Community producers (based on their known production capacities and the average sales to capacity rates calculated for the Community industry).

(240) Community consumption of PET reached approximately 1 350 000 tonnes during the IP. As shown in the table below, it increased by 63 % from 1996 to the IP. Compared with 1998, consumption in the IP remained almost stable, due mainly to the building of stocks by users in 1998, taking advantage of the very low level of prices at that time.

Company	1996	1997	1998	IP
	825 608 t	1 090 915 t	1 311 008 t	1 349 169 t
Index (1996 = 100)	100	132	159	163

4. **Imports into the Community from the countries concerned**

(a) *Cumulative assessment of the effects of the imports concerned*

(241) It was first examined whether imports from all countries concerned should be assessed cumulatively, taking into account the findings on subsidy as established above.

Imports originating in Korea and Indonesia

(242) The subsidy margins found for Korea and Indonesia are below *de minimis*, therefore, both countries should be provisionally excluded from the injury assessment.

Imports originating in India, Malaysia and Thailand

(243) It was found that:

— the subsidy margins found were more than *de minimis* for all three countries,

— the volumes of imports were not negligible during the IP, as is illustrated by the market shares of these countries that ranged from 2,6 to 3,3 % (more than 9 % in terms of import shares),

— the cumulative assessment appeared appropriate in view of the conditions of competition both between the imports originating in these countries, and between these imports and the like Community product. This is evidenced by the fact that volumes and market shares of these imports have been multiplied by at least a factor of 3 between 1996 and the IP. Their price behaviour was similar, with a decrease ranging from 42 % to 66 % between 1996 and the IP. In the IP, their prices were at levels close to each other and they undercut the Community industry's average prices up to 15,4 %. Furthermore, they used the same or similar channels of trade.

(244) For these reasons, it was provisionally concluded that imports originating in India, Malaysia and Thailand should be assessed cumulatively.

Imports originating in Taiwan

(245) Similar to imports originating in the above countries,

— the subsidy margins found were more than *de minimis* for imports originating in Taiwan,

— the volumes of these imports were not negligible during the IP, as is illustrated by a market share of 2,8 %,

— their price behaviour was similar, with a decrease of 42 % between 1996 and the IP. In the IP, the prices of these imports were at levels close to the prices of the countries above, though not undercutting the Community industry's average prices. Furthermore, the same or similar channels of trade were used.

(246) However, the development of volume imported differed from that of the countries above. Volumes of imports originating in Taiwan decreased by 42 % between 1996 and the IP, but this was the result of a decrease of 51 % between 1996 and 1997, an increase of 92 % between 1997 and 1998 and a decrease of 18 % between 1998 and the IP.

(247) In view of the above, it is provisionally concluded that imports originating in Taiwan were mostly made under the same conditions of competition, used the same channels of trade, grew steadily between 1997 and 1998 (like imports of the countries above), had substantial market shares during the IP and were made at the same level of prices that were found to be subsidised. It was therefore appropriate to assess imports originating in India, Malaysia, Taiwan and Thailand cumulatively.

(b) *Volume of imports concerned*

(248) Volume of imports concerned developed as follows:

Imports	1996	1997	1998	IP
Total India, Malaysia, Taiwan, Thailand	67 748 t	68 669 t	164 833 t	161 897 t
Index (1996-100)	100	102	243	239

(249) The volume of imports originating in India, Malaysia, Taiwan and Thailand grew by 139 %, between 1996 and the IP, to reach a level of 161 897 tonnes. After a steady rise that took place from the beginning of 1998 to the end of that year, imports started to slightly decrease at the beginning of 1999, at a time when the Community industry had decreased its prices, and users' and importers' stocks were high; imports, however, remained substantial.

(c) *Market shares of imports concerned*

(250) Market share of imports concerned developed as follows:

Market shares of imports	1996	1997	1998	PI
Total India, Malaysia, Taiwan, Thailand	8,2 %	6,3 %	12,6 %	12,0 %
Index (1996-100)	100	77	153	146

(251) The market share of the imports originating in India, Malaysia, Taiwan and Thailand reached 12 % during the IP, an increase of 46 % on its 1996 level. Between 1998 and the IP, the market share of these imports decreased slightly, as result of the reduction in import volumes described above.

(d) *Prices of imports concerned*

(252) Prices of imports concerned originating in India, Malaysia, Taiwan and Thailand decreased by 49 % from 1996 to the IP, by 28 % between 1996 and 1997, by 12,5 % between 1997 and 1998 and by 19 % between 1998 and the IP. On average, the cif duty unpaid price for the product concerned originating in these countries was EUR 532/t during the IP. The investigation showed that a large number of exporters were selling at a loss to the Community, indicating an aggressive pricing policy regarding the Community market.

(e) *Price undercutting*

(253) A comparison of selling prices on the Community market during the IP was made between the prices of the Community industry and those of the exporting producers in the countries concerned. This comparison was made after deduction of rebates and discounts. The prices of the Community industry were adjusted to ex-works prices. The prices of the subsidised imports were cif Community frontier, plus duties, and with an adjustment for level of trade and handling costs. The adjustments have been based on information collected during the investigation, notably from cooperating unrelated importers.

(254) On this basis, the price undercutting by the subsidised imports was:

Undercutting margins: ranges			
India	Malaysia	Taiwan	Thailand
1,2 - 7,9 %	11,8 - 12,9 %	0 %	0 %

These low average rates of undercutting are due to the price suppression caused by the behaviour of the exporting producers in the countries concerned which sold not only at subsidised prices, but also at loss-making prices. The Community industry was in fact forced to match the prices of these subsidised imports to try and keep its market share. It should be borne in mind that, given the market power of several large buyers of products made of PET, the market is driven almost entirely by price considerations.

5. **Situation of the Community industry**

(a) *Production, production capacity and capacity utilisation*

(255) As shown in the table below, production over the period 1996 to the end of the IP increased by 89 %. During the same period, capacity increased by 83 % reflecting the investment efforts made by the Community industry to be in a position to supply the fast growing Community market. The capacity utilisation rate of the Community industry remained fairly stable over the period. The plant and equipment used by the Community industry are almost totally dedicated to production of the product concerned.

	1996	1997	1998	IP
Production	543 318 t	750 254 t	920 988 t	1 030 781 t
Index (1996-100)	100	138	169	189
Capacity	721 252 t	1 031 086 t	1 276 569 t	1 325 745 t
Index (1996-100)	100	142	176	183
Capacity utilisation	75 %	73 %	72 %	78 %

(b) *Sales volume, value and unit prices*

(256) As shown in the table below, sales made by the Community industry to unrelated customers on the Community market during the period 1996 to the investigation period increased in volume by 62 % (in this context, selling prices of Italpet have not been considered reliable and have been disregarded). Average selling prices fell by 36 % over the same time period, and between 1998 and the IP alone, prices decreased by 18 % to reach a level of EUR 670/t delivered to the final customer.

	1996	1997	1998	IP
Sales volume	522 925 t	708 272 t	783 415 t	847 376 t
Index (1999-100)	100	135	150	162
Av. Selling price (delivered)	1 055 EUR/t	861 EUR/t	827 EUR/t	670 EUR/t
Index (1999-100)	100	82	78	64

(c) *Market share*

(257) The Community industry's market share was 63 % in 1996, 65 % in 1997, 60 % in 1998 and 62 % during the IP. Between 1997 and 1998, market share fell by 5 percentage points, it partially recovered in the IP, at a time when the Community industry considerably decreased its prices as shown above.

(d) *Profitability*

(258) Before 1995, the Community industry was profitable at a time when, as explained earlier, it was operating in a fairly new and fast growing market. In 1995, when supply was very tight, the Community industry was earning a profit around 20 % return on sales. As the fall in PET prices from the last quarter of 1995 was not immediately matched by corresponding reductions in costs, losses started to be registered in 1996: on annual averages, raw material costs, especially those of PTA, increased by 8 % between 1995 and 1996, whereas prices for PET fell by 35 %. As a result, losses of 19 % were registered in 1996. The price decrease, however, was seen as an overreaction of the market after a shortage. The Community industry had been expecting to see prices and profit margins slowly recover, but at a time of low priced imports from the countries concerned, margins did not rise and, in 1997, losses remained at 19 %.

(259) In 1998, losses started to be reduced, but towards the end of the year, at the beginning of the IP, the Community industry had to match prices of subsidised imports in order to regain lost market share. As a result, financial losses deteriorated by a further 15 percentage points to reach 32 % of net turnover during the IP.

(260) Several interested parties have claimed that the PET market is cyclical, with regular undercapacity crises that lead to price increases and thus profits at high levels, followed by overcapacities that depress prices and may result in losses. They requested that this cyclical element be taken into consideration in the analysis and claimed that the IP corresponded to the low phase of the cycle. Furthermore, they claimed that it was already clear that the Community industry was recovering and that a new peak in the cycle would be reached sometime between 2002 and 2003. They therefore asked that profits should be looked at over a longer period and not viewed at a given moment of time.

(261) The Commission has rejected this claim, considering that PET is a product in which large consumption developed fairly recently and that it was too early to judge whether the market was cyclical or not. Furthermore, the bottom of the cycle, if it can be seen as such, lasted from the mid 1996 to mid 1999; this is too long to be attributed to the cycle.

(e) *Employment*

(262) At the end of the IP, approximately 1 450 people were employed by the Community industry, an increase of 20 % compared to 1996. Between 1998 and the IP, this trend ended as approximately 30 people were made redundant in order to reduce costs.

(f) *Investment*

(263) From 1996 to 1998 the Community industry invested a total of EUR 516 million in new or extended capacities, an average of EUR 172 million per year. During the IP, only 31 millions were invested.

(264) To meet future demand, which is expected to continue to grow steadily in the coming years, new investment will be needed. Most of the Community producers had plans to invest, but losses during the IP were so significant that shareholders refused to agree to these plans. As a result, no significant increase in the capacity of the Community industry will take place between 2000 and the beginning of 2002, since it takes approximately two years to bring a new PET plant into production.

6. **Conclusion on injury**

(265) From 1996 to the IP, imports concerned increased by 139 %, gaining nearly 4 percentage points in market share to reach a share of nearly 12 %. This share reached 12,6 % in 1998, before the Community industry decided to defend its market position (that had declined by 5 percentage points between 1997 and 1998) by decreasing its prices significantly.

(266) From 1996 to the IP, average prices of the imports concerned decreased by 49 %, with a decrease of 19 % between 1998 and the IP alone. Between 1996 and the IP, prices of the Community industry decreased by 36 %, with a similar decrease of 18 % between 1998 and the IP.

(267) The Community industry, which had been suffering from depressed profit margins and financial losses since 1996 was not able to return to a healthier situation. On the contrary, during the IP, the Community industry experienced worsening financial losses because it had to decrease its prices to defend its market position. Furthermore, despite a rapidly expanding market, the Community industry was not able to invest owing to its precarious situation.

(268) The Commission therefore considers that the Community industry has suffered material injury within the meaning of Article 8 of the basic Regulation.

F. **CAUSATION OF INJURY**

1. **Introduction**

(269) In accordance with Article 8(6) of the basic Regulation, the Commission examined whether the material injury suffered by the Community industry had been caused by the subsidised imports from the countries concerned. In accordance with Article 8(7) of the basic Regulation, the Commission also examined other factors in order to ensure that injury caused by other factors was not attributed to the subsidised imports.

2. **Effect of the subsidised imports**

(270) In 1997, low-priced imports from the countries concerned started to depress prices and suppress price increases that would have been necessary to take into account the development in raw material costs. The structure of the market, with a limited number of large buyers and, in comparison, many suppliers, was such that the effect of the subsidised imports spread rapidly across the market.

(271) Between 1997 and the IP, imports from these countries developed as follows:

— volumes more than doubled (in the second half of 1998, imports were growing even faster than in the first half of the year, a pattern totally contradicting the seasonal pattern of consumption and confirming that some customers or traders were taking advantage of the low price level, of the imports concerned),

— their market share reached 12 % whereas it had been 6,3 % in 1997,

— their prices fell by 29 %.

(272) During the same period, the Community industry:

— was forced to match price decreases because some major customers were halting purchases and demanding prices as low as those of subsidised imports,

— saw its profitability further deteriorate,

— completely halted all its investment plans.

(273) In view of this clear coincidence in time between the development of import volumes and prices, on one hand, and, the deterioration of the situation of the Community industry on the other, it was concluded that the low priced subsidised imports from the countries concerned had a significant negative impact on the situation of the Community industry.

3. **Effect of other factors**

(a) *Dumped imports from Indonesia and Korea*

(274) In the parallel anti-dumping investigation, it was provisionally established that dumped imports from Korea and Indonesia, cumulated with dumped imports from India, Malaysia, Taiwan and Thailand, considered in isolation, caused material injury to the Community industry.

(275) Imports originating in Korea and Indonesia should, therefore, be provisionally considered as having contributed to the injury suffered by the Community industry.

(b) *Imports from other countries*

(276) During the investigation period, other imports into the Community of the product concerned originated mainly in Saudi Arabia, Turkey and the United States. During the IP, these imports had market shares of 1,3 %, 1 % and 1,6 % respectively. The volume of imports originating in the United States nearly halved between 1996 and the IP, while imports originating in Saudi Arabia doubled and those originating in Turkey increased by 7 %, as shown in the table below.

	1996	1997	1998	IP
Countries other than the 6 concerned				
Quantities	83 054 t	88 994 t	79 376 t	71 186 t
Market share	10 %	8 %	6 %	5 %
cif prices	1 358 EUR/t	1 674 EUR/t	1 869 EUR/t	1 431 EUR/t
Of which United States				
Quantities	40 978 t	37 109 t	30 479 t	21 983 t
Market share	5,0 %	3,4 %	2,3 %	1,6 %
cif prices	1 242 EUR/t	1 023 EUR/t	1 181 EUR/t	1 250 EUR/t
Of which Turkey				
Quantities	12 013 t	19 430 t	11 939 t	12 811 t
Market share	1,5 %	1,8 %	0,9 %	0,9 %
cif prices	995 EUR/t	848 EUR/t	903 EUR/t	740 EUR/t

	1996	1997	1998	IP
Of which Saudi Arabia				
Quantities	8 373 t	22 212 t	17 512 t	16 952 t
Market share	1 %	2,0 %	1,3 %	1,3 %
cif Prices	605 EUR/t	711 EUR/t	691 EUR/t	512 EUR/t

(277) The prices of imports originating in the United States and Turkey were well above those of imports originating in the countries concerned and also above the Community industry's average selling prices.

(278) Prices of imports originating in Saudi Arabia reached a very low level during the IP. Although their market share was only 1,3 %, it cannot be excluded that they contributed to the injury suffered by the Community industry.

(c) *Development of Community consumption*

(279) Community consumption of PET has grown quickly and is estimated to continue do so for the next 10 years at least. A contraction of the market, therefore, is not a cause of injury.

(d) *Overcapacity and exacerbated price competition on the Community market*

(280) Several interested parties contended that the Community industry had misjudged the cyclical nature of the market, thus creating an overcapacity that had depressed prices and exacerbated price competition between Community producers. Certain parties also claimed that the Community industry's injury was self inflicted because of an attempt by the industry to exclude Asian exporting producers from the Community market by substantially decreasing selling prices.

(281) In addition, certain users claimed that the Community industry had overreacted to pricing pressures and should have known that considerations of security of supply on the part of major users in the Community would have afforded it a substantial degree of protection.

(282) The Commission has examined these claims:

— regarding overcapacity of PET producers located in the Community market, the investigation did not support this contention. It was found that, over the analysis period, the capacity of the Community industry and of the other Community PET producers was approximately of the same size as the Community consumption, furthermore increases in capacity were in the same proportion as increases in consumption on a medium term basis. On the other hand, a large excess capacity existed in Asia, which was worsened by a collapse of demand in China at the beginning of 1998 for the closely allied PET product used for the production of polyester fibres produced in identical facilities. This meant that exporting producers in the countries concerned had spare capacity available for the production of PET, and that they used this to sell products in the Community at subsidised prices,

— regarding an exacerbation of price competition between Community producers, the investigation has shown that since 1996, competition on the Community market was indeed intense between all suppliers, including exporting producers in the countries concerned. None the less, the pricing pressure exercised by the imports concerned increased in mid-1998 because import volumes were growing rapidly (volumes nearly doubled in a few months) and very low price offers were being made. Attempts made by the Community industry to resist the price decreases demanded by users led to falling sales. The Community industry's reaction to these developments was to follow the prices of the subsidised imports down in an effort not to lose customers,

— as to the security of supply considerations, the Commission found that the fact that some customers halted their purchases was a clear indication to the Community industry that users could very well find other suppliers, provided they were offering cheaper prices,

— the contention that price decreases had been made only to try and exclude competitors from the countries concerned from the Community market cannot be accepted since the Community industry decreased its prices mainly in reaction to market share losses.

(283) The claim that injury was self inflicted and/or due to an overcapacity situation on the Community market was, therefore, not retained.

(e) *Prices of raw materials*

(284) Several interested parties claimed that price decreases were driven by decreases in the prices of the main raw materials.

(285) Raw material costs represent approximately 60 % of the total costs of production of PET. Purified terephthalic acid (PTA) is the major raw material used in PET. PTA is mostly made with paraxylene (PX), itself a distillate of oil. PX, PTA and PET, therefore, roughly follow oil price and US dollar fluctuations, with mark up effects that depend on the supply/demand situation at a given time for these three different products.

(286) There is a strong link between PTA prices and PET prices, and PET producers, therefore, do not have much room to set their prices. Indeed, the investigation has shown that PET users carefully followed PTA prices in order to be in a good position to negotiate PET prices.

(287) The Commission noted that from the second quarter 1998 to the fourth quarter 1998, there was a severe erosion in margins vis-a-vis PTA prices. This deterioration corresponds to the time when subsidised imports concerned doubled their already significant market share, and the Community industry had to react by decreasing its prices to a greater extent than the decreases in PTA prices. The contention that prices decreased only because raw material prices were decreasing has therefore not been confirmed by the investigation.

4. **Conclusion on causation**

(288) The Commission found that there was strong evidence of the causal link between the subsidised imports and the material injury. This conclusion is based, in particular, on the fact that prices on the Community market were depressed and suppressed since the beginning of 1997, when prices of imports originating in the countries concerned started to decrease more rapidly than prices of the Community industry. During the third quarter of 1998, a new phase started as the subsidised imports grew very rapidly and doubled their market share (from 6,3 % in 1997 it went to 12,3 % in 1998) while the Community industry had lost 5 percentage points in market share. With the prices of these subsidised imports still decreasing, the Community industry was forced to further decrease its prices to stop its market share falling; this resulted in deteriorating financial losses and a complete halt in investment plans, despite a clearly foreseeable rapid growth in demand.

(289) The investigation has further shown that it cannot be excluded, that imports originating in Saudi Arabia may have contributed to the injury suffered by the Community industry as well as dumped imports originating in Indonesia and Korea. However, the investigation has shown that neither these factors nor the other factors examined above had an impact on the situation of the Community industry such as to break the causal link between the subsidised imports originating in India, Malaysia, Taiwan and Thailand and the injury suffered by the Community industry.

(290) It is therefore provisionally concluded that the subsidised imports of India, Malaysia, Taiwan and Thailand have caused material injury to the Community industry within the meaning of Article 8(6) of the basic Regulation.

G. COMMUNITY INTEREST

1. General remarks

(291) The Commission examined whether, despite the conclusion on injurious subsidisation, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose and in accordance with Article 31 of the basic Regulation, the impact of possible measures on all parties involved in this proceeding, and the consequences of taking or not taking measures, were considered on the basis of all evidence submitted.

2. The investigation

(292) The Commission sent questionnaires to importers, suppliers of raw materials, industrial users of the product concerned, and to associations representing mineral water and soft drinks producers. In total, 93 questionnaires were sent out, but only 17 replies were received within the time limits set.

(293) Questionnaire responses were received within the time limits set from:

Three importers

— Polytrade Gmbh (Germany),

— Global Services International (Italy),

— Helm AG (Germany).

These importers represent 35 % of the imports concerned.

Five direct suppliers of raw materials:

— BASF AG (Germany),

— BP Amoco Chemicals Ltd (UK),

— Exxon Mobil Chemical Europe Inc. (Belgium),

— INEOS plc (UK),

— Interquisa (Spain).

These suppliers represent more than 75 % of raw materials purchased by the Community industry.

Nine users of PET in three sectors (for the description of these sectors, see below):

Preforms/bottle converters:

— Crown Cork and Seals — European division (France),

— Guala Closures, Polybox Group (Italy),

— IFAP SpA (Italy),

— Sodripack NV (Belgium).

Mineral and spring water producers:

— Evian — Volvic, Danone Group (France),

— Perrier Vittel M.T, Nestlé Group (France).

Soft drinks integrated bottlers:

— Cott Beverages Ltd (UK),

— Schweppes Belgium (Belgium),

— Silver Spring Mineral Water Ltd (UK).

These users represent 16 % of the imports concerned and 17 % of the Community consumption of PET.

(294) The Commission was also contacted by five professional associations that gave some aggregated information, and made comments on behalf of their members:

— The Union of EU Soft Drinks Associations,

— Unesem (The European Association of Mineral and Spring Water Producers),

— Aneabe (The Spanish Association of Mineral Water Producers),

— Mineracqa (The Italian Association of Mineral Water Producers),

— Chambre syndicale des eaux minerales (The French Association of Mineral Water Producers).

3. **Likely effects of imposition of measures on the Community industry**

(295) As mentioned above, the Community industry consists of nine producers which suffered material injury caused by subsidised imports originating in the countries concerned. This injury consists mainly of increased and substantial financial losses due to price depression and suppression. Moreover, because of these losses, the Community industry has postponed investments in new plants (the average cost of a PET plant is more than EUR 100 million) despite foreseeable growth in demand. Since 1996, this industry has been heavily restructured and during the last two years, because of prolonged financial losses, two of the multinationals engaged (ICI and Shell) have sold their PET activities.

(296) It is clear that the measures proposed would benefit the Community industry which, by its restructuring efforts, has demonstrated its ambition to maintain a presence in a sector in full expansion, and which is totally viable, as is demonstrated by its export performance: its sales outside the Community represented 18 % of its total sales during the IP and they developed more rapidly than sales in the Community.

(297) If, on the other hand, measures are not imposed, losses at the level observed in the IP are not sustainable and the future of the Community industry, which employs 1 450 people, would be seriously jeopardised.

(298) Although certain volatile factors, evoked by several interested parties, such as exchange rate fluctuations and oil prices, can have temporary positive effects on the industry's performance (in this industry it seems that periods of increasing prices of raw materials are favourable for increased profit margins of PET producers), without anti-subsidy measures to remove the effects of unfair trade, the industry has little prospect of a lasting recovery from its present poor financial situation. Furthermore, to allow the new investments necessary for the long-term viability, it is essential that the industry is given the opportunity to improve its profits.

4. **Likely effects of imposition of measures on importers**

(299) For one of the cooperating importers, the product concerned represented the majority of its turnover. If duties were imposed on imports of PET, the importer argued that the whole company would be endangered.

(300) For the second cooperating importer, the product concerned represented around a quarter of its turnover. Therefore it is likely that this importer would be less affected by measures.

(301) For the third cooperating importer, the product concerned represented a very minor percentage of its turnover. Therefore it is likely that this importer would not be seriously affected by measures.

(302) Total staff directly employed in selling the product concerned is only some 10 people for the three cooperating companies in the Community.

(303) As the purpose of anti-subsidy measures is only to restore fair trade and not to prohibit imports, the Commission considers it likely that a number of clients of importers will continue to purchase PET originating in the countries concerned. Therefore the existence of these importers seems not to be at stake.

5. **Likely effects of the imposition of measures on upstream industries**

The PTA and PX producers

(304) The three cooperating producers (BP AMOCO, Interquisa, Exxon) are part of petrochemical groups which have made huge investments in the last five years in order to respond to the growing Community demand for these products.

(305) Total staff employed in their PTA/PX production facilities was around 700 people during the IP.

(306) The only purchaser of PTA is the polyester industry (of which the PET industry represents 60 % of Community purchases of PTA). Community PTA producers sell more than 75 % of their production in the Community. Therefore the situation of the Community PTA producers is very much dependent on the health of Community PET producers. In a situation of very low prices of PET, the producers of PTA are also obliged to lower their prices. Indeed, during the IP, the cooperating suppliers lowered their profit margins, because their clients were in such a difficult situation they were afraid they would stop producing and thus consuming PTA.

(307) The cooperating PX Community producer situation is even worse because it operates in a very competitive market and, in recent years, its profit margin was very low or negative. In 1999, Community PX production was reduced because the level of prices was considered unacceptable.

(308) The imposition of measures, therefore, will benefit both these industries and allow new investments to be made to match the growing demand.

The MEG producers

(309) The two cooperating producers (BASF, INEOS) are part of chemical groups and produce a large range of chemical products. The staff employed in MEG production numbered about 100 people.

(310) PET production is not the only possible outlet for this product, which is widely used for other purposes and notably in the car industry. Hence, these companies are less directly affected by the price and demand trends of PET. The investigation has shown, however, that the market for this product is very competitive and that profitability has deteriorated in the last two years because of the difficulties of the Community PET industry.

Conclusion

(311) The imposition of anti-subsidy measures clearly appears to be in the interest of the upstream industries. They would not only improve their situation but also be in a position to invest in the coming years.

6. **Likely effects of imposition of measures on downstream industries**

Description of the user sectors

(312) PET is at present mostly used to produce bottles for soft drinks and mineral and spring water. Its use to produce packages other than for drinks (solid foodstuffs or detergents) is still marginal. Bottles in PET are produced in two steps in order to obtain enough strength: 'preforms' are obtained by mould injection of PET, these preforms are then blown and transformed into bottles. Preforms can be fairly easily transported because they are small and dense, while empty bottles are fragile and very expensive to transport.

(313) The water and soft drinks markets are organised differently in terms of bottling:

— mineral and spring water producers have more constraints in terms of health regulations. They are generally obliged to have a bottling plant close to their springs, their raw materials have to follow strict norms and, in certain countries, to be authorised by health authorities. The large majority of preforms used by water producers are self produced, usually in workshops close to the blowing and filling lines,

— soft drinks producers tend to locate in places convenient to minimise distribution costs,

— producers with well-known trade marks tend to buy preforms and/or blown bottles. They have a network of certified suppliers called preforms/bottle converters. None of these producers replied to the questionnaire or made themselves known. Hence, the Commission has not been able to take them into account,

— smaller soft drink producers or producers of products branded by customers (especially the mass retailing trade sector), tend to produce their own preforms and to blow their own bottles.

(314) On this basis three major groups of users of PET can be identified:

— preforms/bottle converters, that account for approximately 40 % of PET consumption in the Community,

— mineral and spring water producers, whose share in PET consumption is around 35 %,

— soft drinks integrated bottlers, that account for around 7 % of PET consumption.

The remaining consumption of PET is used by different food and pharmaceutical packaging sectors and by plastic sheet producers.

Preforms/bottle converters

(315) The preforms converters are the main users of PET, but the four cooperating companies represented only some 7 % of Community consumption of PET. The imports of these companies were some 10 % of imports from the countries concerned. These imports represented more than 30 % of their consumption of PET.

(316) Some of the major converters (Schmalbach Lubeca, Alpla and Resilux) did not cooperate in the investigation.

(317) Total staff employed by the cooperating companies amounted to more than 400.

(318) On the basis of information available to the Commission, the amount of PET used to produce preforms represents some 75 % of the manufacturing costs of a preform and some 70 % of the total cost of production. It is therefore a critical element for these companies. The investigation found that, in most cases, the negotiation of the selling price of preforms includes a mechanism for reflecting the variation of PET prices.

(319) However, since competition in the industry is very strong and purchases of soft drinks preforms/bottles are concentrated in the hands of a few big buyers (the well known branded soft drink producers), it is not clear to what extent the converters will be able to transfer the increase of PET prices on to the prices of preforms.

(320) Users, as well as importers, argued that duties would push some multinational preform converters and/or soft drink bottlers to move their highly standardised preforms production plants to countries in eastern Europe in order to avoid the anti-subsidy duties. Most of the big companies in this industry already have some plants in these countries and would seem, therefore, able to quite easily move part of their production outside the Community. The import of preforms is free of custom duties.

(321) According to the information made available to the Commission, the cost of transport is not a sufficient barrier to avoid such a relocation, for example a lorry of 0,5 preforms contains some 17 tonnes instead of 24 tonnes of PET chips; the transport cost of preforms is therefore some 30 % higher than the transport cost of PET but the overall impact on such increases in transport prices on costs of production is only some 2,5 %. However, competitive advantages already existed in the Community's neighbouring countries at the time when no anti-subsidy duties were applicable without causing relocation. This is owing to the fact that these advantages were more than compensated by considerations of proximity, flexibility and reliability of supplies essential to the users.

(322) On the basis of the information provided by the cooperating companies, it was concluded that the imposition of anti-subsidy measures would have a major impact on the manufacturing cost of converters. However, the impact on profitability of converters cannot be clearly stated. Moreover, as mentioned above, the cooperating companies represent only a very small proportion of the converter industry. It is therefore difficult to assess the likely effect on this industry as a whole.

The mineral and spring water producers

(323) The two cooperating companies in this industry represented approximately 10 % of Community consumption of the product concerned. The imports of these companies were some 1 % of imports from the countries concerned. These imports represented less than 4 % of their consumption of PET.

(324) Total staff employed in production using the product concerned amounted to more than 4 000 in the two companies considered together.

(325) The two cooperating companies are the two biggest players in the French mineral water market. The Danone and Nestle groups also own mineral water springs in other Member States but replied only for their French branches. Therefore the cooperating companies represent a rather small part of the Community mineral water sector, which is itself only a part of the bottled water sector. Moreover, the cooperating companies are only involved in the production of branded mineral water and have thus a specific cost structure.

(326) The cost of PET is the biggest component in these companies' manufacturing costs (less than a quarter) and some 10 % of the total cost of production.

(327) Concerning low range mineral water and spring water, the associations representing these companies pointed out that, since their general and administrative costs are very low compared to those of branded mineral water producers, the cost of PET has a bigger impact on their total cost of production and on profitability. Therefore, the increases in price consequent to the imposition of anti-subsidy measures would severely affect those producers, that already operate with low margins and would not be able to increase their selling prices because their main customers, the supermarket chains, would refuse price increases.

(328) With regard to the low range mineral water and spring water sectors, no producers cooperated on an individual basis. The only information provided to the Commission, by associations of water producers, was submitted very late and has not been verified, therefore it did not allow conclusions to be reached on the impact of measures on companies in these sectors.

(329) On the basis of the verified information provided by the cooperating companies, the Commission concludes that the impact of the measures proposed on the mineral water producers will not be significant, because they are very profitable and because they import only small volumes of PET. Moreover, given their position on the market, the top range mineral water producers can probably increase their selling prices.

The soft drink integrated bottlers

(330) The three cooperating companies in this industry represented approximately 2 % of Community consumption of the product concerned. The imports of these companies were some 5 % of imports from the countries concerned. These imports represented more than 65 % of their consumption of PET.

(331) Total staff employed in production using the product concerned amounted to some 200 people in the three companies considered together.

(332) The cooperating companies are vertically integrated backwards and forwards i.e. they produce preforms, convert them into bottles and fill them with soft drinks. These companies represent only a small percentage of the total soft drinks industry and are mainly producing for distributors and low range brands.

(333) On the basis of information available to the Commission, the PET used to produce soft drink containers represented more than 10 % of manufacturing costs and some 8 % of the total cost of production. It was therefore an important cost element for these companies.

(334) The soft drink integrated bottlers sold mainly to supermarket chains. Since the retail prices of low range soft drinks have decreased in recent years, and since the large retailers involved have very strong market power, the producers of soft drinks will face resistance to any attempt at increasing their selling prices.

(335) The Commission considers that the imposition of measures may reduce margins in this industry as the increase in costs resulting from the measures is unlikely to be matched by a corresponding increase in revenue.

7. **Likely effects of imposition of measures on supply of PET on the Community market**

(336) Several users and importers of PET have expressed their concern about a possible shortage of PET on the Community market in the next two years and the fact that imports will be necessary and should not be discouraged by high duties.

(337) The Commission considered that, if there is a shortage of supply on the Community market, this will be because the Community industry suffered injury from subsidised imports and was not in a position to invest, despite the foreseeable growth in demand. It is therefore urgent that the Community industry be assured of the fair competitive conditions to allow it to make the investments that have been postponed as a result of injurious subsidisation.

(338) Imports at fair non-subsidised prices will, in any case, be possible, since existing overcapacities in Asia will not be exhausted before the necessary new investments by the Community industry enter into production.

8. **Conclusion on Community interest**

(339) It is clear that the imposition of anti-subsidy measures is in the interest of both the Community industry and its suppliers of raw materials.

(340) The imposition of measures will allow these sectors to improve profitability and to have the possibility of making the new investments which are crucial for the long-term viability of these capital-intensive sectors.

(341) The assessment of the effects on the other sectors concerned is much less clear, principally because conclusions are being drawn on the basis of information provided by the cooperating companies, the representativeness of which was estimated to be low. Although there are indications that measures could have an impact in certain sectors, it is difficult, at this stage, to draw firm conclusions on the effect of measures on a wider basis due to a lack of information. As such, this lack of cooperation suggests that any negative effect for the sectors concerned is not significant.

(342) What is clear, however is that the Community industry has suffered from injurious subsidisation which has suppressed its prices and prevented the restoration of a healthier financial situation. If this situation remains unchanged, losses at the levels reached during the IP will be unsustainable and the Community industry will cease producing PET in the Community.

(343) If the Community industry were forced to cease, or dramatically reduce, the production of PET, the Community would become dependent on external supplies and would face stronger price fluctuations in case of shortages. Such a situation would indeed be detrimental to the interest of users who have said that they do not want to rely only on imported PET.

(344) In view of the above, the Commission concluded that, at the provisional stage, no compelling reasons exist not to impose provisional anti-subsidy measures in the present case.

H. **NON-IMPOSITION OF DUTIES**

(345) In the light of the above findings that the country-wide weighted average subsidy margins for imports originating in Indonesia and Korea are *de minimis*, it is provisionally decided not to impose countervailing duties as regards imports originating in these countries.

I. **PROVISIONAL DUTY**

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

(347) 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.

(348) As the injury consists principally of price depression and the suppression of price increases necessary to restore profitability, the removal of such injury requires that the industry should be able to increase selling prices. To achieve this, prices of imports of the product concerned originating in India, Malaysia, Taiwan and Thailand should be increased to a non-injurious level.

(349) To this end, the Commission determined a non injurious price based on production costs of the Community industry (not taking into account costs of some companies of the Community industry considered as exceptional or unduly high), together with a reasonable profit margin of 7 %, this being considered necessary to ensure the viability of the industry and being a profit which this industry could expect in the absence of subsidised imports. In view of the financial losses incurred by the Community industry in the years prior to the IP, the Commission will examine, at the definitive stage, whether this non-injurious price accurately reflects the situation in the present case, in the light, in particular, of developments in exchange rates and in the prices of raw materials.

(350) The non injurious price was compared with the prices of the subsidised imports used to establish undercutting, as outlined at recital 253. Differences resulting from this comparison were then expressed as a percentage of the total cif import value.

(351) That PET prices can fluctuate in line with fluctuations in crude oil prices, should not entail a higher duty. It was therefore considered appropriate to impose duties in the form of a specific amount per tonne. These amounts result from the application of the countervailing duty rate to the cif export prices used for the calculation of the injury elimination level during the IP.

(352) In accordance with Article 12(1) of the basic Regulation the duty rate (EUR per tonne) 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) *India*

Reliance Industries Ltd	EUR 63/t
Pearl Engineering Polymers Ltd	EUR 31,3/t
Elque Polyester Ltd	EUR 55,9/t
Futura Polymers Ltd	EUR 84,6/t

(b) *Malaysia*

MPI Polyester Industries	EUR 0
Hualon Corporation	EUR 19,9/t

(c) *Taiwan*

Nan Ya Plastics Corp.	EUR 8,4/t
Far Eastern Textile Ltd	EUR 0
Shinkong Synthetic Fibres Corp.	EUR 12/t
Tuntex Distinct Corp.	EUR 0

(d) *Thailand*

Thai Shingkong Ltd	EUR 49,6/t

(353) 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 highest rate established for any cooperating exporting producers, i.e. EUR 84,6/t for Indian producers, EUR 19,7/t for Malaysian producers, EUR 11,2/t for Taiwanese producers and EUR 49,9/t for Thai producers.

(354) 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 countrywide 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'.

(355) 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.

J. **FINAL PROVISION**

(356) 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,

[1] European Commission
Directorate-General for Trade
Directorate E
DM 24 — 5/77
Rue de la Loi/Wetstraat 200
B-1049 Bruxelles/Brussel

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional countervailing duty is hereby imposed on imports of polyethylene terephthalate with a coefficient of viscosity of 78 ml/g or higher, according to DIN (Deutsche Industrienorm) 53728, classified under CN code 3907 60 20 and CN code ex 3907 60 80 (TARIC code 3907 60 80 10) and originating in India, Malaysia, Taiwan and Thailand.

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

Producers in India	Duty (EUR per tonne)	TARIC additional code
Reliance Industries Ltd.	6,3	A181
Pearl Engineering Polymers Ltd.	31,3	A182
Elque Polyester Ltd.	55,9	A183
Futura Polymers Ltd.	84,6	A184
All other Indian companies	84,6	A999

Producers in Malaysia	Duty (EUR per tonne)	TARIC additional code
MPI Polyester Industries	0	A185
Hualon Corporation	19,9	A186
All other Malaysian companies	19,9	A999

Producers in Taiwan	Duty (EUR per tonne)	TARIC additional code
Nan Ya Plastics Corp., Taipei	8,4	A187
Far Eastern Textile Ltd., Taipei	0	A188
Shinkong Synthetics Fibres Corp., Taipei	12	A189
Tuntex Distinct Corp., Hsichih, Taipei County	0	A198
All other Taiwanese companies	11,2	A999

Producers in Thailand	Duty (EUR per tonne)	TARIC additional code
Thai Shingkong Ltd.	49,6	A190
All other Thai companies	49,6	A999

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 [1], the amount of anti-dumping duty, calculated on the basis of the fixed amounts set out above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

5. 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 10 days of 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

This Regulation shall enter into force on the day following 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, 3 August 2000.

For the Commission

Pascal LAMY

Member of the Commission

[1] OJ L 253, 11.10.1993, p. 1.