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COUNCIL REGULATION (EC) No 2603/2000

of 27 November 2000

imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in India, Malaysia and Thailand and terminating the anti-subsidy proceeding concerning imports of certain polyethylene terephthalate originating in Indonesia, the Republic of Korea and Taiwan

(OJ L 301, 30.11.2000, p. 1)

Amended by:

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THE COUNCIL OF THE EUROPEAN UNION,

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 Articles 14 and 15 thereof,

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

Whereas:

A. **PROVISIONAL MEASURES**

(1) By Commission Regulation (EC) No 1741/2000 ([2]), ('provisional Regulation'), provisional countervailing duties were imposed on imports into the Community of certain polyethylene terephthalate originating in India, Malaysia, Taiwan and Thailand.

(2) As a result of a parallel anti-dumping investigation, provisional anti-dumping duties were imposed under Commission Regulation (EC) No 1742/2000 ([3]) on imports into the Community of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand.

(3) It is recalled that the investigation of subsidisation and injury covered the period from 1 October 1998 to 30 September 1999 ('IP'). The examination of trends relevant for the injury analysis covered the period from 1 January 1996 up to the end of the IP ('analysis period').

B. **SUBSEQUENT PROCEDURE**

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional measures, several interested parties submitted comments in writing. In accordance with the provisions of Article 11(5) of Regulation (EC) No 2026/97 ('basic Regulation'), all interested parties who requested a hearing were granted an opportunity to be heard by the Commission.

(5) The Commission continued to seek and verify all information deemed necessary for the definitive findings.

(6) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive countervailing duties and the definitive collection of amounts secured by way of provisional duties.

([1]) OJ L 288, 21.10.1997, p. 1.
([2]) OJ L 199, 5.8.2000, p. 6.
([3]) OJ L 199, 5.8.2000, p. 48.

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They were also granted a period within which they could make representations subsequent to this disclosure.

(7) The oral and written arguments submitted by the parties were considered, and, where deemed appropriate, taken into account for the definitive findings.

(8) Having reviewed the provisional findings on the basis of the information gathered since then, it is concluded that the main findings as set out in the provisional Regulation should be hereby confirmed.

C. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(9) The provisional Regulation described the product concerned as polyethylene terephthalate ('PET') with a coefficient of viscosity of 78ml/g or higher, according to DIN (Deutsche Industrienorm) 53728, falling within CN code 3907 60 20 and CN code ex 3907 60 80 (TARIC code 3907 60 80 10). Since no new observations were received concerning this definition, the provisional findings as regards the product concerned are hereby confirmed.

2. **Like product**

(10) In recital 16 of the provisional Regulation, it was 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 were like products, since there were no differences in the basic physical and technical characteristics and uses of the existing different types of PET. Since no new evidence was submitted on this, the provisional findings as regards the like product are confirmed.

D. **SUBSIDIES**

(11) The findings made in the provisional Regulation concerning the countervailable subsidies obtained by the exporting producers are hereby definitively confirmed, unless it is expressly found otherwise in this document.

I. INDIA

General issues

1. **Initiation**

(12) The Government of India (GOI) alleges that the Commission initiated this investigation in violation of Article 10 of the basic Regulation and Article 11(2) of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). The GOI claims that the information in the complaint regarding subsidisation and injury was inaccurate and incomplete and did not constitute sufficient evidence in order to initiate this proceeding.

(13) In reply to this argument, it was found that the complaint contained sufficient evidence of subsidisation and injury within the meaning of Article 10(2) of the basic Regulation and Article 11(2) of the SCM Agreement. The complaint contained information regarding subsidisation, injury and causality which was reasonably available to the complainant. As regards subsidisation, it should also be recalled that most of the programmes available in India had already been examined and countervailed in previous investigations involving imports from India e.g. PET

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film, flat rolled steel products etc. The evidence in the complaint was examined by the Commission for its accuracy and adequacy in accordance with Article 10(3) of the basic Regulation, and was found to be sufficient to warrant initiation. Therefore, this claim cannot be accepted.

2. **Notice of initiation**

(14) The GOI alleges that the notice of initiation ([1]) does not meet the criteria of Article 22(2) of the SCM Agreement since it did not contain information on the basis on which subsidisation is alleged in the application, and a summary of the factors on which the allegation of injury is based.

(15) Article 22(2) of the SCM Agreement states that a public notice of an investigation shall contain adequate information on, *inter alia*, a description of the subsidy practices and a summary of the factors on which the allegation of injury is based. As regards the allegation of subsidisation, it was stated in the notice of initiation that 'It is alleged that the producers of the product concerned from India have benefited from a number of subsidies granted by the Government of India. These subsidies are income tax exemption, import of raw materials and capital goods without payment of import duties and benefits for export-oriented companies and companies located in export-processing zones', and that 'It is alleged that the above schemes are subsidies since they involve a financial contribution from the Government of India and confer a benefit on the recipients, i.e. on exporters of polyethylene terephthalate. They are alleged to be contingent upon export performance and therefore specific and countervailable'. As regards the allegation of injury, it was stated in the notice of initiation that 'The complainant has provided evidence that imports of the product concerned from India, Indonesia, the Republic of Korea, Malaysia, Taiwan and Thailand have increased overall in absolute terms and in terms of market share' and furthermore that 'It is alleged that the volumes and the prices of the imported product concerned have, among other consequences, had a negative impact on the market share and the level of prices charged by the Community producers, resulting in substantial adverse effect on the overall performance and the financial situation of the Community industry'.

The above text constituted an adequate summary of the allegations relating to subsidy and injury.

Subsidies

1. **Duty Entitlement Passbook Schemes (DEPB)**

(a) *DEPB on pre-export basis*

(16) The GOI states that the DEBP on pre-export basis was abolished on 1 April 2000. Therefore, no countervailing duties should be imposed under this programme since the imposition of duties would be contrary to Article 15 of the basic Regulation.

(17) After disclosure, the GOI submitted evidence that this programme effectively expired and will no longer confer benefits to exporting producers in India. Therefore, this claim is accepted and the benefit is excluded from the calculation of the subsidy rates. Since this programme is no longer countervailed, it is not

([1]) OJ C 319, 6.11.1999, p. 2.

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necessary to deal with other claims made by interested parties regarding this programme.

(b) *DEPB on post-export basis*

(18) The GOI states that the Commission made a manifest error in the assessment of the countervailability of this scheme. In particular, the Commission wrongly concluded that the GOI has no verification system in place which verifies which inputs are consumed in the production process and that this system is applied effectively. Furthermore, they claim that the Commission's assessment of the benefits under these schemes was incorrect since only the excess duty drawback could be considered a subsidy in accordance with Article 2 of the basic Regulation.

(19) The Commission used the following method in order to establish whether the DEPB on post export-basis constitutes a countervailable subsidy and if so, to calculate the amount of benefit. Pursuant to Article 2(1)(a)(ii) of the basic Regulation, it is concluded that this scheme involves a financial contribution by the GOI since government revenue (i.e. import duties on imports) otherwise due is not collected. There is also a benefit to the recipient since the exporting producers did not have to pay normal import duties.

(20) However, Article 2(1)(a)(ii) of the basic Regulation provides for an exception to this general rule for, *inter alia*, drawback and substitution drawback schemes which conform to the strict rules laid down in Annex I(i) and Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) thereof.

(21) The analysis revealed that DEPB on post-export basis is not a drawback or a substitution drawback scheme. The scheme investigated lacks a built-in obligation to import only goods that are consumed in production of the exported goods (Annex II of the basic Regulation). Additionally, there is no verification system in place to check whether the imports are actually consumed in the production process. It is also not a substitution drawback scheme because the imported goods do not need to be of the same quantity and characteristics as the domestically sourced inputs that were used for export production (Annex III of the basic Regulation). Lastly, exporting producers are eligible for the DEPB benefits regardless of whether they import any inputs at all. An exporter obtains the benefit by simply exporting goods without the need to show that any input material was indeed imported; thus, exporting producers which procure all of their inputs locally and do not import goods which can be used as inputs are still entitled to the DEPB benefits. Hence, the DEPB on post-export basis does not conform to any of the provisions of Annex I to III. Since this exception to the subsidy definition of Article 2 therefore does not apply, the countervailable benefit is the remission of total import duties normally due on all imports.

(22) From the above, it clearly follows that 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 is established that the DEPB on post-export basis does not fall in one of these two categories, the benefit is the total remission of import duties, not any supposed excess remission.

(23) As regards the verification system, this argument relates to the issue whether the DEPB on post-export basis can be considered as a drawback scheme or a substitution drawback scheme. Since it was established that the DEPB on post-export basis is not a

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drawback or a substitution drawback scheme as defined in Annex II and III of the basic Regulation no further examination needs to be carried out. Even if the DEPB were to meet the criteria of Annex II and III, it would be concluded that no reasonable verification system exists. The input/output norms are a list of possible items that can be consumed in the production process and in what amounts. However, the input/output norms are not a verification system within the meaning of paragraph 5 of Annex II of the basic Regulation. These norms do not provide for a verification of the inputs that are actually consumed in the production process and do not provide for a verification system whether these inputs were effectively imported.

(24) For the above reasons, this claim cannot be accepted and the provisional findings as regards the countervailability of this scheme and the calculation of the benefit are confirmed.

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

(25) One exporting producer and the GOI claimed that benefits obtained under the EOU scheme should not be deemed to constitute a subsidy, since the excise tax and duty exemption under this scheme is only granted for the quantity of inputs consumed in the production of the final product which is exported. The scheme, it is alleged, constitutes a drawback system in conformity with the conditions laid down in Annex I(i) and Annex II of the basic Regulation.

(26) Two Indian exporters are located in an EOU. Without prejudice to the question of whether the scheme constitutes a drawback system in conformity with the provisions of the basic Regulation, the Commission, following further examination, accepts that there is in fact no excess remission of duty in the case of either company concerned. Consequently, in the present investigation the duty exemption on raw material will for these companies not be countervailed.

(27) The subsidy amounts for the two companies located in EPZ/EOU have therefore been limited to the customs duties exempted on capital goods, and respectively have been reduced to 0,37 % and 4,43 %.

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

(28) The GOI noted that under the EPCG scheme no obligation is imposed on the beneficiary to export all products manufactured with the capital good, and that the license holder is free to sell part of the production on the domestic market. The GOI therefore argued that any benefit conferred under this scheme should be allocated over total production.

(29) In reply to this argument, it should be stressed that, as explained in recital 52 of the provisional Regulation, 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 at a reduced rate. The scheme is therefore contingent in law upon export performance since no benefit can be obtained without a commitment to export goods. As such, it is deemed to be specific under the provisions of Article 3(4)(a) of the basic Regulation. Since the subsidy is an export subsidy, it is considered to benefit only export sales. In conclusion, the correct denominator is total export sales.

(30) Since no other comments were received regarding this scheme subsequent to the disclosure of the provisional findings, the findings of recitals 50 to 57 of the provisional Regulation are hereby confirmed.

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4. **Amount of countervailable subsidies**

(31) All subsidies found were identified as being export subsidies. The amount of countervailable export subsidies, expressed *ad valorem*, for the investigated exporting producers is as follows:

Type of subsidy	DEPB	EPCGS	EPZ/EOU	Total
	Post-export			
Reliance Industries Limited	6,52 %	1,71 %		8,23 %
Futura Polymer Limited			0,37 %	0,37 %
Pearl Engineering Polymers Limited	5,01 %	0,79 %		5,8 %
Elque Polyesters Limited			4,43 %	4,43 %
All Others				8,23 %

(32) The weighted average countrywide subsidy margin for all exporting producers investigated, which represents above 90 % of exports of the product concerned to the Community originating in India is above the applicable *de minimis* margin for this country of 3 %.

(33) 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. 8,23 %.

II. INDONESIA

(34) Since no substantial comments were received subsequent to the disclosure of the provisional findings, the conclusion that the subsidy margin for Indonesia has to be considered negligible and the findings of recital 78 of the provisional Regulation is hereby confirmed. Therefore, the proceeding concerning Indonesia should be terminated.

III. KOREA

(35) Since no comments were received subsequent to the disclosure of the provisional findings, the conclusion that the subsidy margin for Korea has to be considered negligible and the findings of recital 79 of the provisional Regulation is hereby confirmed. Therefore, the proceeding concerning Korea should be terminated.

IV. MALAYSIA

1. **Introduction**

(36) In the provisional Regulation, the benefit derived from Pioneer Status was in recital 132 wrongly classified as an export subsidy. However, the findings of countervailability of the scheme in recitals 93 to 95 as a specific domestic subsidy are hereby confirmed. This would imply that the amount of subsidy found should no longer be offset against the anti-dumping duty.

(37) Since no other comments were received subsequent to the disclosure of the provisional findings, the findings of recitals 80 to 133 of the provisional Regulation are hereby confirmed, subject to the correction of certain calculation errors.

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2. **Amount of countervailable subsidies**

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

Type of subsidy	Export	Domestic	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	3,3 %	0	0,27 %	3,57 %
MPI Polyester Industries Sdn. Bhd.	0	0	0,91 %	0	0,91 %
All others					3,57 %

(39) The weighted average countrywide subsidy margin for all exporting producers investigated, which represents above 90 % of exports of the product concerned to the Community originating in Malaysia is above the applicable *de minimis* margin for this country of 2 %.

V. TAIWAN

(40) One company claimed that the Commission made a calculation error for its benefit obtained under the scheme for import duty exemption for machinery. The benefit obtained under this scheme has been recalculated and it was found that a calculation error occurred. The error was rectified and the benefit under this programme is reduced from 1,92 % to 0,27 %.

(41) The Commission hereafter undertook a thorough investigation of the whole dossier of Taiwan, including checking the calculations for all four exporting producers in order to investigate the impact of this revision for the determination of the countrywide subsidy margin.

(42) It was established that, as a result of the decrease in the subsidy rate for the above company, the countrywide margin has decreased to 0,94 %, which is below the *de minimis* threshold for this country of 1 %. Therefore, the investigation concerning imports originating in Taiwan should be terminated.

VI. THAILAND

1. **General**

(43) At the provisional stage, it was found that although one zone in Thailand (zone 3) is a clearly designated geographical area which meets the definition of a disadvantaged region according to Article 4(3) of the basic Regulation, the benefits of the different subsidy schemes are sectorally specific since the access to the programmes is limited to certain industries. The Government of Thailand (GOT) claims that the schemes are available to a wide variety of industries and are consequently, generally available.

(44) It was found that the GOT has established a limited list of activities which are eligible for investment promotion, which by definition limits the access to the subsidy since companies which manufacture products which are not promoted are not eligible for benefits under the Investment Promotion Act. Furthermore, this list should be considered as a positive list, which clearly defines the specific products, the producers of which are favoured over others. The fact that the benefits under the Investment Promotion Act are available to 200 different products is

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irrelevant since companies, which do not produce these products are excluded from any benefit. Therefore, the provisional findings as regards specificity are confirmed.

(45) In recitals 193 and 196 of the provisional Regulation, it was found that projects which apply for Board of Investment (BOI) incentives need to meet a 20 % value added standard. It was provisionally found that this condition encourages enterprises to use domestic over imported goods and is consequently, specific under Article 3(4)(b) of the basic Regulation.

(46) After disclosure, the GOT has submitted evidence that the value-added criterion does not mandate PET producers to use domestic inputs over imported inputs. The GOT provided evidence that shows that the value-added criterion can be met even if only imported raw materials are used for the production of the finished product. Therefore, for the product under investigation, this programme is not contingent upon the use of domestic over imported goods within the meaning of Article 3(4)(b) of the basic Regulation.

2. **Corporate income tax exemption**

(47) The exporting producer claims that it opted to use its accumulated net losses from the previous years, instead of the corporate income tax exemption, to offset current taxable profit, and consequently no benefit was obtained during the period of investigation.

(48) It was established that a company which benefits from income tax exemption and at the same time can offset its profits against losses carried forward under normal tax provisions has a choice to use either option. The Ministry of Taxation and the Thai Board of Investment confirmed this. In the present case, it was established that the exporting producer used the corporate income tax exemption since the amount of taxes payable was not offset against the accumulated net losses. In fact, the accumulated net losses increased during the last financial year (from 1 655 089 790 Baht to 1 704 894 309 Baht). If the exporting producer had opted to offset its profit against the accumulated net losses, it would not have completed the section on non-taxable income which is only for income benefiting from BOI exemption. Furthermore, the WTO Appellate Body has established, in the Canada civil aircraft case [1], that in order to determine whether a financial contribution in the sense of Article 1(1)(a)(i) of the SCM Agreement confers a 'benefit', i.e., an advantage, it is necessary to determine whether the financial contribution places the recipient in a more advantageous position than would have been the case but for the financial contribution. As mentioned above, the exporting producer is in a more advantageous situation through the use of the corporate income tax exemption, because it was able to carry forward for future use a greater amount of accumulated losses than would otherwise have been the case. Therefore, the exporting producer used the income tax exemption and obtained a benefit and this claim cannot be accepted.

3. **Import duty exemption on machinery**

(49) Since no comments were received regarding this scheme, the conclusions of recitals 202 to 208 of the provisional Regulation are hereby confirmed.

[1] Canada — Measures affecting the export of civilian aircraft, Report of the Appellate Body, Doc. WT/DS70/AB/R, 2 August 1999 (recitals 149 and sub.)

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4. **Amount of countervailable subsidies**

(50) On the basis of the comments received after the provisional findings, the amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producer is determined at the following rate:

	Income tax exemption	Import duty exemption on machinery	Total
Thai Shingkong, Industry Corporation Limited	8,13 %	0,35 %	8,4 %

(51) Since the investigated exporting producer accounted for virtually all of the imports of the product concerned into the Community originating in Thailand, the weighted average countrywide subsidy margin is well above the applicable 2 % *de minimis* margin for subsidisation.

E. **DEFINITION OF THE COMMUNITY INDUSTRY**

(52) In the absence of any new information submitted with respect to the definition of the Community industry, the findings as set out in recitals 226 to 231 of the provisional Regulation are confirmed.

F. **INJURY**

1. **Preliminary remarks**

(53) Certain interested parties questioned why data submitted by the Community industry was only used for the period 1996 onwards whilst developments in the market prior to this period were based on independent market research information.

(54) The Commission had considered that the data submitted by the Community industry for the year 1995 could not be used due to the split of Kodak and Eastman in 1995 and to the restructuring of the activities of Shell. Neither Shell nor Eastman was able to provide complete figures for this year.

(55) However, the Commission had considered it essential to give an overview of the shortage crisis that occurred in the Community market in 1995 in view of the impact of this event on both the prices and profitability of the Community industry. As such the use of independent market research information was considered appropriate in establishing the necessary background data for the evaluation of the situation of the Community industry during the analysis period, as explained in recital 236.

2. **Consumption**

(56) In the absence of any new information submitted to the contrary, the findings concerning the consumption of the product concerned in the Community as detailed in recitals 239 and 240 of the provisional Regulation are confirmed.

3. **Imports from the countries concerned**

Imports originating in Korea, Indonesia and Taiwan

(57) The findings as described in recital 242 of the provisional Regulation concerning the *de minimis* subsidy margins for imports originating in Korea and Indonesia are confirmed. Both countries are thereby excluded from the injury assessment.

(58) In the light of new findings described above, subsidy margins found for imports originating in Taiwan are now *de minimis*,

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therefore, those imports are not taken into consideration for the injury assessment.

Imports originating in India, Malaysia and Thailand

(a) *Cumulation*

(59) The GOT claimed that imports originating in its country should not be assessed cumulatively with the other imports concerned because imports originating in Thailand had the smallest market share of the three countries considered and they did not undercut Community industry prices, thus showing that the Thai exporter did not exhibit the same behaviour as the exporters from the other countries. It was considered that these elements were not new, this claim was therefore rejected and it is confirmed that imports originating in Thailand should be assessed cumulatively with imports originating in India and Malaysia.

(60) The governments of India and Malaysia claimed that only subsidised imports originating in their respective countries should be cumulated. As it was established that the countrywide weighted average subsidy margins for all investigated imports originating in India and Malaysia were above the applicable *de minimis* margins for subsidisation, all their exports to the Community have to be taken into account. This claim has thus been rejected and it is concluded that all imports originating in India, Malaysia and Thailand should be cumulated in order to assess the injury suffered by the Community industry.

(b) *Volume of imports*

(61) As the following table indicates, the volume of imports originating in India, Malaysia and Thailand increased sharply between 1996 and the IP (an increase of nearly seven times) to reach a level of 123 563 tonnes.

Imports	1996	1997	1998	IP
Total: India, Malaysia, Thailand	17 831 t	44 708 t	118 113 t	123 563 t
Index (1996-100)	100	251	662	693

(62) After dramatic growth between 1996 and 1998 when imports more than doubled each year, the growth in imports levelled off from 1998 to the IP. It should be noted however that imports continued to increase, albeit at a slower rate, despite the effort made by the Community industry to match the price competition of the subsidised imports and regain market share.

(c) *Market shares*

(63) The market share of imports concerned developed as follows:

Market shares of imports	1996	1997	1998	PI
Total: India, Malaysia, Thailand	2,2 %	4,1 %	9,0 %	9,2 %
Index (1996-100)	100	190	417	424

(64) The market share of imports originating in India, Malaysia and Thailand reached 9,2 % during the IP. This figure was more than four times the level achieved in 1996, the start of the analysis period. Between 1998 and the IP, the market share of these imports levelled off, as result of the slowdown in import volumes described above.

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(d) *Prices of imports*

(65) The prices of imports concerned originating in India, Malaysia and Thailand decreased by 34 % over the period 1996 to the IP. On an annual basis they fell by 16 % between 1996 and 1997, by 5 % between 1997 and 1998 and by 13 % between 1998 and the IP. On average, the cif duty unpaid price for the product concerned originating in these countries was 516 EUR/t during the IP. It was confirmed, during the investigation, 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*

(66) The price undercutting by the subsidised imports, calculated as detailed in recital 254 of the provisional Regulation, is confirmed as follows:

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

(67) In the absence of any representations and new information from interested parties to suggest the contrary, the findings concerning price undercutting as noted in recital 254 of the provisional Regulation are confirmed. In particular it is noted that the low average rates of undercutting were due to the price suppression brought about by the behaviour of the exporting producers in the countries concerned which sold the product concerned on the Community market at prices which were not only subsidised but also loss-making.

4. **Impact of the change in imports concerned for the assessment of injury and causation**

(68) It is to be noted that the exclusion of the imports originating in Taiwan from the injury analysis does not change the trends established for the imports concerned in the provisional Regulation. It is thus concluded that the findings established in the provisional Regulation regarding the impact of the imports concerned on the situation of the Community industry and the causal link are not changed by the revised information shown above.

5. **Situation of the Community industry**

(69) In accordance with Article 8(5) of the basic Regulation, the examination of the impact of the subsidised imports on the Community industry included an evaluation of all relevant factors and indices having a bearing on the state of the Community industry.

The examination included all factors specifically listed in Article 8(5) of the basic Regulation. However, certain factors are not dealt with in detail as they were found not to be relevant for the assessment of the situation of the Community industry in the course of the investigation (wages and stocks see below). As concerns the impact on the Community industry of the magnitude of the amount of countervailing subsidies, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

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Factors examined in the provisional Regulation

— Investments:

(70) It was found that some investments made by a cooperating Community producer had not been taken into account at the provisional stage. After the inclusion of these figures, the investment situation does not change the trend previously established.

Some interested parties argued that the extent of the investments made in 1998 by the Community industry indicated that it was in good financial health. Others remarked that if the level of investments was low during the IP, this was a consequence of the previous years in which the Community industry had registered losses and that this could not be attributed to the effect of the subsidised imports during the IP.

In this respect, the investigation has clearly shown that investment expenditure made in 1997, 1998 and in the IP was mostly a consequence of decisions taken in 1995 when prospects in the PET sector were good (although losses were incurred in 1996 this situation was considered to be temporary). In such an industry, it is more relevant to examine plans to invest than the timing of actual expenditure. As stated in recital 264 of the provisional Regulation, it is confirmed that, as a consequence of the further deterioration of its financial situation due to injurious subsidisation during the IP, the Community industry has not planned any significant expansion in capacity to meet increases in future demand.

— Wages and stocks:

Wages and stocks were also examined, however wages were not considered to be a relevant factor given that their share in the overall costs is small and remained stable over the analysis period. As concerns stocks, given the seasonal nature of the PET market stock levels were found to vary significantly throughout the year and were therefore not considered to be meaningful for the injury analysis.

— Growth:

Although it was not explicitly mentioned in the provisional Regulation, the Commission also examined growth in its analysis of market share which revealed a slight loss for the Community industry over the analysis period.

Other factors examined

(71) The situation of the Community industry regarding the following indicators was further examined.

— Ability to raise capital:

As already mentioned in the provisional Regulation, the level of losses experienced during the IP was such that no new investment plan could be agreed during the IP. This clearly did not improve the Community industry's ability to raise capital during this period despite the anticipated increase in demand.

— Productivity:

The productivity in terms of tonnes produced per employee increased by 67 % from 1996 to the IP and by 21 % from 1998 to the IP. Such a considerable increase in productivity shows that the Community industry made all possible efforts to remain competitive.

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— Return on investments (ROI):

	1996	1997	1998	IP
Return on capital employed (1)	– 6 %	– 7 %	1 %	– 8 %

(1) Return on capital employed is defined as pre-tax profit after proper adjustment for any preference share dividends, debenture and long-term loan interest paid/received in arriving at that figure as divided by total share capital and reserves together with debentures and other long-term loans.

The above indicator reflects the overall situation of the Community industry (including mostly PET business lines). The verification showed that a large part of the negative trend in the IP could be attributed to the PET sector. This indicator is in line with the deterioration of the profitability of the Community industry.

— Cash flow:

(EUR)

1996	Net cash in(out)flow from operating activities	– 79 002 884
1997	Net cash in(out)flow from operating activities	84 901 988
1998	Net cash in(out)flow from operating activities	132 915 718
IP	Net cash in(out)flow from operating activities	51 115 757

The above indicator reflects the overall situation of the Community industry (including mostly PET business lines). It represents the gross operational result of these companies, before financial charges, depreciation and provisions. The verification showed that a large part of the deterioration in the IP is attributable to the PET sector.

6. **Further arguments raised**

(a) *General arguments raised as to the Commission's conclusions*

(72) Some interested parties questioned the Commission's conclusions on injury since some of the injury indicators showed either increasing or stable trends. In this respect, a number of interested parties pointed to the low level of price undercutting, the increase in sales volume and the overall stability of market share. They considered these indicators showed that the Community industry was in good health and that although prices were very low, they were at normal levels taking into account prevailing market conditions.

(73) This argument could not be accepted. As established in the provisional Regulation, the increase in sales and the recovery of market share in the IP, after a loss of 5 percentage points between 1997 and 1998, occurred when the Community industry considerably decreased its prices to match those of subsidised imports. As explained in the provisional Regulation, it was established that imports were made at subsidised prices. In this respect, the low level of price undercutting resulted from the fact that the Community industry's prices were depressed during the IP. This price depression was the result of the subsidised imports which were substantial in terms of volume and market

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share and which forced the Community industry to react by decreasing its prices.

(b) *Developments occurring after the IP*

(74) Many interested parties and delegates from the Member States requested the Commission to analyse and take into account certain developments that occurred after the IP. In particular these parties underlined the rapid and substantial rise in Community industry PET prices in relation to the increase in the cost of raw materials. According to these parties, the Community industry's situation had improved dramatically since the IP and it was likely that the Community industry was no longer suffering material injury.

(75) It should be recalled that Article 11(1) of the basic Regulation provides that information relating to a period after the IP should, normally, not be taken into account. On the basis of the case law of the Court, developments after the IP can only be taken into consideration if they make the imposition of countervailing measures manifestly unsuitable.

(76) The Commission analysed developments in the PET market during the nine-month period following the IP, i.e. 1 October 1999 to 30 June 2000. It was found that the prices for PET sales made by the Community industry on the Community market showed a continued increase. The average selling price for the nine-month period was around 40 % higher than the average found for the IP. This increase was more rapid than the increase in costs (around 20 %) leading to an improvement of the Community industry's financial situation. Nonetheless, on average, during this nine-month period, the return on sales for the Community industry was still negative at – 2 % indicating that its financial performance remained unsatisfactory and far from the level that can ensure the viability of this industry.

(77) This dramatic change in prices is, to a large degree, due to the increase in crude oil prices that has occurred since the middle of 1999 and which noticeably affected all polymer prices a few months later. It should also be noted that there has been a steady increase in sales and market share of the Community industry at the expense of subsidised imports. However, the decrease in the volume of subsidised imports may be a consequence of the opening of an anti-subsidy investigation. In the present case, the development in the dollar/euro exchange rate also rendered the imports concerned less attractive.

(78) It is to be noted that exchange rates, as well as the crude oil price, are extremely volatile and changes may be temporary. Furthermore, should the on-going anti-subsidy investigation be terminated without imposing measures, subsidised imports could rapidly regain market share.

(79) On the basis of the above, it was concluded that developments occurring after the IP do not show that the injury caused by subsidised imports has disappeared. As a result, the imposition of countervailing measures is not manifestly unsuitable.

7. **Conclusion on injury**

(80) Given that no other arguments were received regarding the injury suffered by the Community industry, the conclusion that the Community industry has suffered material injury within the meaning of Article 8 of the basic Regulation as set out in recitals 265 to 268 of the provisional Regulation, is hereby confirmed.

G. **CAUSATION**

(81) Several interested parties continued to argue that the Commission wrongly concluded that imports originating in the countries concerned were the cause of the injury suffered by the Community industry whereas, in their opinion, the situation of this

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industry and the level of prices on the Community market were due to a combination of other factors. In this context, they reiterated the points already raised at the provisional stage (including the price of raw materials, the situation of overcapacity, the competition between PET producers).

(82) Given that no other arguments were received regarding the cause of the injury suffered by the Community industry, the conclusion that imports of PET from the countries concerned had caused injury to the Community industry as stated in recital 290 of the provisional Regulation is hereby confirmed.

H. COMMUNITY INTEREST

1. Likely effect of the imposition of measures on downstream industries

(a) *Further investigation*

(83) In view of the low level of cooperation from the users during the first stage of the investigation, the Commission decided to investigate further the likely effect of the imposition of measures on the downstream industries. Therefore, the Commission sent out 90 new, simplified questionnaires to users of PET, some of which had already been contacted but had not replied. 19 previously non cooperating companies submitted meaningful responses within the time limits set.

The new cooperating companies are:

— three preform/bottle converters:

Lux PET GmbH & Co. (Luxembourg)

Puccetti SpA (Italy)

EBP SA (Spain)

— four producers of PET films and sheets using the product concerned:

RPC Cobelplast Montonate Srl (Italy)

Moplast SpA (Italy)

Alusuisse Thermoplastic (UK)

Klöckner Pentaplast BV (The Netherlands)

— four producers of soft drinks:

L'Abeille (France)

Pepsico Food Beverages Intl. Ltd (Italy)

Pepsico France (France)

Europe Embouteillage Snc (France)

— eight producers of mineral and spring water:

Aguas Minerales Pasqual SL (Spain)

Eycam Perrier SA (Spain)

Font Vella SA & Aguas de Lanjarón SA (Spain)

Italaquae SpA (Italy)

Neptune SA (France)

Roxane SA (France)

San Benedetto (Italy)

Società generale delle acque minerali arl (Italy)

In total, the data submitted by the companies that completed either the first or the second questionnaire covered 26 % of the Community PET consumption during the IP. The cost figures established by aggregating this information have been considered representative of the various user sub-sectors, as individual company information showed a large level of consistency among companies belonging to the same sub-sectors.

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(84) After the imposition of provisional measures, several submissions by users or their representative associations were received. These mostly comprised comments on the past developments in the PET market and discussions on the possible impact of measures on the user sectors. These submissions originated from:

— Schmalbach-Lubeca, the biggest converter in Europe (18 % of Community PET consumption);

— the 'European Plastic Converters' association (EUPC);

— UNESDA, an association representing soft drink producers;

— the Nestlé group, reiterating that the figures given for the French market are representative of their overall European market. (The total European purchases of PET by the group represent some 9 % of the Community consumption of PET of which 3 % is for the French market only).

These submissions, as well as those made by associations representing the water producers (that had made themselves known during the first stage of the investigation) have been taken into account, and in total all submissions represent at least half of the market.

(b) *Description of the user sectors*

(85) After having analysed all the information provided, it was found that the user sector, previously considered as three groups (preform makers, water producers and integrated soft drink producers), is more accurately described as two groups:

— The converters, including manufacturers of preforms and bottles as well as producers of sheets. These users are performing a simple transformation activity; therefore the cost of PET is by far their main cost element. The manufacturers of bottles and preforms sell the vast majority of their production to bottlers of non-alcoholic drinks. The sheet producers, that represent only a small proportion of the converters sector, sell to many different types of industries that use sheets mainly to package their goods.

— The bottlers of non-alcoholic drinks, including water carbonated and non-carbonated soft drinks, milk, fruit juices etc. The division of this group of users between producers of water and soft drinks is not relevant since in many cases the same manufacturer bottles both water and soft drinks. It is more relevant to distinguish between the different drinks they manufacture since, in relative terms, the share of PET in their cost of production depends on the intrinsic cost of those drinks (sodas or fruit juices require more expensive inputs than water). In any case, PET remains a fairly important cost element and problems faced by bottlers regarding their supply of PET are similar whatever the product they bottle.

(86) It is to be noted that there is a very close operational link between the converters (with the exception of sheet manufacturers) and bottlers.

— Bottlers buy almost all the production of the converters.

— Every converter has a very limited number of clients (often only one).

— Converters operate on a contractual basis with their clients, and these contracts very often either include provisions that automatically take into account changes in the price of PET or are renegotiated on a regular basis.

Consequently, the impact of measures as described below should not be cumulated as most of the impact of the measures will be directly passed on to the converters' main clients i.e. the bottlers of non-alcoholic beverages.

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(c) *Foreseeable impact of measures on the users*

(87) After taking into account the new figures provided, the situation of the users, which supplied fully quantified information, was as follows:

		Consumption of PET as % of Community consumption	PET as % of the cost of production	Employees involved in products using PET
Converters	Preform and bottle producers	7	66	770
	Sheet producers	1	55	186
Bottlers of non-alcoholic drinks	Mineral and spring water	18	24	6 766
	Soft drinks	1	9	298
TOTAL		26		8 020

(d) *Impact on converters*

(88) It was estimated that the imposition of the countervailing measures proposed, taking into account their volumes of PET purchases originating in the countries concerned during the IP, would result in an increase of 0,75 % in the cost of production of converters making preforms and bottles. In the same terms, the impact of measures on the sheet producers would be around 0,4 %. Due to their contractual link with their customers, it is likely that converters will be able to pass most of this increase in cost on to their clients. The impact of countervailing measures on the profitability of these companies is therefore estimated to be very limited.

(e) *Impact on bottlers of non-alcoholic drinks*

(89) It was estimated that the imposition of countervailing measures proposed, taking into account their volumes of PET purchases originating in the countries concerned during the IP, would result in an average increase of less than 0,2 % in the cost of production of bottlers of non-alcoholic drinks. It can thus be considered that the increase in costs would be negligible.

2. **The retail price of drinks**

(90) It was found that the prices of bottled water and soft drinks have increased at a relatively constant rate of 1-2 % per year over the past decade (Eurostat retail price index statistics). During the same period the prices of PET have been extremely volatile, without, however, influencing the retail prices of bottled water and soft drinks. Therefore, the claim about the potential inflationary impact of measures on retail prices of bottled water and soft drinks is rejected.

3. **Likely effect of the imposition of measures on the Community industry and the upstream industries**

(91) The measures proposed would, in all likelihood, benefit the Community industry, which, by its restructuring efforts and impressive increase in productivity, has demonstrated its determination to maintain its presence in the rapidly growing Community market. The imposition of measures will allow this industry to improve profitability and to have the possibility of making the new investments, which are crucial, in such a capital-intensive activity, to insure its long-term viable presence in the Community.

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(92) Since the situation of the Community upstream industry is dependent on the financial health of Community PET producers, the improvement of the situation of the latter due to the imposition of measures will also benefit the upstream industry. This has been confirmed by cooperating companies in the upstream industries.

4. **Conclusions on Community interest**

(93) On the basis of the additional information obtained from users, it is concluded that the impact of the measures on users would be limited. Indeed, as converters are able to pass most of the increase in costs on to their clients, the consolidated impact of measures on the producers of drinks is estimated to be marginal on the overall profitability of this sector.

(94) In addition, it is confirmed that the delocalisation of the production of preforms outside the Community is not likely, that retail prices of non alcoholic drinks are not usually much affected by fluctuations in PET prices and that the imposition of measures is clearly in the interest of the Community industry and of the upstream industries.

(95) Given that no other arguments were received regarding Community interest, the conclusion of the provisional Regulation that there are no compelling reasons not to impose measures, as set out in recital 344 thereof, is hereby confirmed.

I. NON-IMPOSITION OF DUTIES

(96) In the light of the above findings that the countrywide weighted average subsidy margin for imports originating in Indonesia, Korea and Taiwan are *de minimis*, it is definitively decided not to impose countervailing measures as regards imports originating in these countries. Consequently, the proceeding in respect of imports from these countries should be terminated.

J. DEFINITIVE COURSE OF ACTION

(97) In view of the conclusions reached regarding subsidisation, injury, causation and Community interest, it is considered that definitive countervailing measures should be taken in order to prevent further injury being caused to the Community by subsidised imports originating in India, Malaysia and Thailand.

(98) In the absence of any new information, the methodology used for establishing the injury elimination level as described in recitals 349 and 350 of the provisional Regulation is hereby confirmed.

(99) In order to avoid that fluctuations in PET prices caused by fluctuations in crude oil prices should result in higher duties being collected, it is considered appropriate that duties in the form of a specific amount per tonne should be imposed. 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.

(100) This led to the following countervailing duty rates (EUR per tonne) for the cooperating exporting producers:

(a) INDIA

Reliance Industries Limited	41,3 EUR/t
Pearl Engineering Polymers Limited	31,3 EUR/t
Elque Polyesters Limited	22,0 EUR/t
Futura Polymer Limited	0

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(b) MALAYSIA

MPI Polyester Industries Sdn. Bhd.	0
Hualon Corporation (M) Sdn. Bhd.	16,6 EUR/t

(c) THAILAND

Thai Shinkong Industry Corporation Limited	49,1 EUR/t

(101) 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. 41,3 EUR/t for Indian producers, 16,6 EUR/t for Malaysian producers and 49,1 EUR/t for Thai producers.

(102) The individual company specific countervailing duties specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during the investigation with respect to these companies. These duties (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to 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, included entities related to those specifically mentioned, cannot benefit from these duties and shall be subject to the duties applicable to 'all other companies'.

(103) 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 e.g. 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.

K. **COLLECTION OF THE PROVISIONAL DUTY**

(104) In view of the amount of the countervailable subsidies found for the exporting producers and in light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional countervailing duty under Regulation (EC) No 1741/2000 be definitively collected to the extent of the amount of definitive duties imposed. In those cases, where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected. The amounts secured by way of provisional countervailing duties on imports of certain polyethylene terephthalate originating in Taiwan shall be released.

L. **UNDERTAKINGS**

(105) Subsequent to the imposition of provisional countervailing duties, two exporting producers in India offered a price undertaking in accordance with Article 13(1) of the basic Regulation.

([1]) European Commission
Directorate-General Trade
Directorate C
TERV 0/13
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

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(106) The Commission considers that the undertakings offered by Reliance Industries Limited and Pearl Engineering Polymers Limited can be accepted [1] since they eliminate the injurious effect of subsidisation. Moreover, the regular and detailed reports which the companies undertook to provide to the Commission will allow an effective monitoring. Furthermore, the sales structure of these companies is such that the Commission considers that the risk of circumvention of the undertakings is minimised.

(107) In order to ensure the effective respect and monitoring of the undertakings, when the request for release for free circulation pursuant to the undertakings is presented, exemption from the duty is conditional upon presentation to the customs service of the Member State concerned of a valid 'Undertaking Invoice' issued by the exporting producers from whom the undertakings are accepted and containing the information listed in the Annex. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of countervailing duty should be payable in order to ensure the effective application of the undertakings.

(108) In the event of a breach or withdrawal of the undertakings a countervailing duty may be imposed, pursuant to Article 13(9) and (10) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of polyethylene terephthalate with a coefficient of viscosity of 78ml/g or higher, according to DIN (Deutsche Industrienorm) 53728, falling within CN code 3907 60 20 and CN code ex 3907 60 80 (TARIC code 3907 60 80 10).

2. Except as provided for in paragraph 3, the rate of the definitive countervailing duty applicable to the net, free-at-Community-frontier price, before duty, for products originating in the following countries, shall be as follows:

Country	Definitive duty EUR per tonne	TARIC additional code
India	41,3	A999
Malaysia	16,6	A999
Thailand	49,1	A999

3. The above rates shall not apply to the products manufactured by the companies listed below, which shall be subject to the following countervailing duty rates:

Country	Company	Definitive duty (EUR per tonne)	TARIC additional code
India	Reliance Industries Limited	41,3	A181
India	Pearl Engineering Polymers Limited	31,3	A182
India	Elque Polyesters Limited	22,2	A183
India	Futura Polymer Limited	0	A184

[1] See page 88 of this Official Journal.

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Country	Company	Definitive duty (EUR per tonne)	TARIC additional code
Malaysia	MPI Polyester Industries Sdn. Bhd.	0	A185
Malaysia	Hualon Corporation (M) Sdn. Bhd.	16,6	A186
Thailand	Thai Shingkong Industry Corporation Limited	49,1	A190
Thailand	Indo Pet (Thailand) Ltd	23,9	A468

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4. 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 countervailing duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

5. Notwithstanding paragraph 1, the definitive duty shall not apply to imports realised for free circulation in accordance with the provisions of Article 2.

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

Article 2

1. Imports shall be exempt from the countervailing duties imposed by Article 1 provided that they are produced and directly exported (i.e. invoiced and shipped) to a company acting as an importer in the Community by the companies mentioned in paragraph 3, declared under the appropriate TARIC additional code and provided that the conditions set in paragraph 2 are met.

2. When the request for release for free circulation is presented, exemption from the duties shall be conditional upon presentation to the customs service of the Member State concerned of a valid 'Undertaking Invoice' issued by the exporting companies mentioned in paragraph 3, containing the essential elements listed in the Annex to this Regulation. Exemption from the duty shall further be conditional on the goods declared and presented to customs corresponding precisely to the description on the 'Undertaking Invoice'.

3. Imports accompanied by an 'Undertaking Invoice' shall be declared under the following TARIC additional codes:

Company	Country	TARIC additional code
Reliance Industries Limited	India	A181
Pearl Engineering Polymers Limited	India	A182

Article 3

The amounts secured by way of provisional countervailing duties pursuant to Regulation (EC) No 1741/2000 on imports of certain poly-

([1]) OJ L 253, 11.10.1993, p.1. Regulation as last amended by Regulation (EC) No 502/1999 (OJ L 65, 12.3.1999, p. 1).

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ethylene terephthalate originating in India, Malaysia and Thailand shall be collected at the rate of the duty definitively imposed. Amounts secured in excess of the definitive rate of countervailing duties shall be released.

Article 4

The anti-subsidy proceeding concerning imports of certain polyethylene terephthalate originating in Indonesia, the Republic of Korea and Taiwan is hereby terminated.

Article 5

The amounts secured by way of provisional countervailing duties pursuant to Regulation (EC) No 1741/2000 on imports of certain polyethylene terephthalate originating in Taiwan shall be released.

Article 6

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

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

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ANNEX

Elements to be indicated in the Undertaking Invoice referred to in Article 2(2):

1. The Undertaking Invoice number.
2. The TARIC additional code under which the goods on the invoice may be customs-cleared at Community borders (as specified in the Regulation).
3. The exact description of the goods, including:
   — the product reporting code number (PRC) (as established in the undertaking offered by the producing exporter in question),
   — CN code,
   — quantity (to be given in units).
4. The description of the terms of the sale, including:
   — price per unit,
   — the applicable payment terms,
   — the applicable delivery terms,
   — total discounts and rebates.
5. Name of the company acting as an importer to which the invoice is issued directly by the company.
6. The name of the official of the company that has issued the undertaking invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by … [company], and accepted by the European Commission through Decision 2000/745/EC. I declare that the information provided in this invoice is complete and correct.'