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COUNCIL REGULATION (EC) No 978/2000

of 8 May 2000

imposing a definitive countervailing duty on imports of synthetic fibres of polyester originating in Australia, Indonesia and Taiwan and collecting definitively the provisional duty imposed

(OJ L 113, 12.5.2000, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EC) No 902/2001 of 7 May 2001	L 127	20	9.5.2001

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imposing a definitive countervailing duty on imports of synthetic fibres of polyester originating in Australia, Indonesia and Taiwan and collecting definitively the provisional duty imposed

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 Article 15 thereof,

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

Whereas:

A. **PROCEDURE**

1. PROVISIONAL MEASURES AND TERMINATION

(1) By Commission Regulation (EC) No 123/2000 [2] (hereinafter referred to as 'the provisional duty Regulation') provisional countervailing duties were imposed on imports into the Community of polyester staple fibres (hereinafter 'PSF') falling within CN code 5503 20 00 and originating in Australia and Taiwan and the proceeding covering the same product originating in the Republic of Korea and Thailand was terminated.

In the absence of conclusive evidence of subsidisation no provisional countervailing measures were imposed on imports of PSF originating in Indonesia. Nevertheless it was decided to continue the investigation into the imports from that country concerning notably the treatment of non-cooperating companies and the establishment of the countrywide margin of subsidisation.

(2) As a result of a parallel anti-dumping investigation, provisional anti-dumping duties were imposed under Commission Regulation (EC) No 124/2000 [3] on imports into the Community of PSF originating in Australia, Indonesia and Thailand.

2. SUBSEQUENT PROCEDURE

(3) Subsequent to the imposition of provisional countervailing duty, several parties submitted comments in writing. In accordance with the provisions of Article 11(5) of Regulation (EC) No 2026/97 (hereinafter referred to as the 'basic Regulation'), all interested parties who requested a hearing were granted such a hearing.

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

(5) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive countervailing duties on imports of PSF originating in Australia, Taiwan and Indonesia.

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

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[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ L 16, 21.1.2000, p. 3.
[3] OJ L 16, 21.1.2000, p. 30.

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

B. PRODUCT CONCERNED AND LIKE PRODUCT

(7) The product concerned is synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, which is currently classifiable under CN code 5503 20 00. It is commonly referred to as polyester staple fibres (PSF).

(8) As no comments were received following disclosure of provisional findings regarding the definition of the product concerned and the like product, the conclusions of recitals 10 to 12 of the provisional duty Regulation are hereby confirmed.

C. SUBSIDIES

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

I. AUSTRALIA

1. INTRODUCTION

(10) Following the publication of the provisional duty Regulation, the Government of Australia (hereinafter referred to as 'GOA') submitted on 17 January 2000, in writing, its comments on the disclosure document containing the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Comments from the sole cooperating exporter were received on 14 January 2000. The GOA requested and was granted a hearing before the Commission services on 4 February 2000.

2. ISSUES CONCERNING SUBSIDISATION

2.1. **General submissions**

(11) The GOA claimed that the disclosure documents did not set out 'the details underlying the essential facts and considerations on which provisional measures have been imposed' as set forth in Article 30 of the basic Regulation. Since the GOA did not receive the calculation methodology or the method of imposition of provisional measures, the disclosure documentation was deficient. In particular, the methodology in relation to non-recurring grants for capital expenditure/fixed assets was not provided.

(12) In response to this claim, it is considered that the disclosure document sent to the GOA despite the fact that no request for such provisional disclosure had been received from the GOA, contained a detailed analysis concerning subsidisation, injury, causation and Community interest. Therefore, the said disclosure document in fact did set out the details underlying the essential facts and considerations on which provisional measures have been imposed. An explanation of the methodology used for the calculation of the subsidy amount was provided in the disclosure document concerning all subsidy programmes for which benefits have been countervailed, for non-recuring grants the explanation was repeated in the provisional duty Regulation in recitals 30 to 32.

(13) It is not considered to be required by Article 30 of the basic Regulation to provide to a government the actual company-specific calculations for the amount of subsidy, in particular in the light of Article 29 of the basic Regulation and the rules on treatment of confidential information contained therein. Such information was provided to the cooperating exporter in the provisional disclosure document. In addition, pursuant to Article 2

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of the provisional duty Regulation, the parties concerned were able to make known their views in writing on the contents of that Regulation, including the level of the countervailing duties.

2.2. **Individual schemes**

2.2.1. *Export market development grants (EMDG) scheme*

(14) The GOA argued that the 'grants entry test' performed under the EMDG scheme, which is described in recitals 14 to 17 of the provisional duty Regulation, does not tie the grant to anticipated export earnings since the intent of the test is to ensure that the enterprise must have a prospect of success by ensuring that the applicant undertakes adequate financial and management planning.

(15) It was established that under this test, the applicant must show that he has planned export earnings which are not on the face of it unachievable. Since this was not disputed by the GOA, it was thus established that unless it is anticipated that earnings will accrue from exports, grants under the EMDG scheme will not be made. Hence, the subsidy is considered to be contingent in fact upon export performance since the facts verified in the investigation demonstrated that the granting of the subsidy is in fact tied to anticipated export earnings in the meaning of Article 3(4)(a) of the basic Regulation, irrespective of the 'intent' of the test.

(16) Furthermore, it should be noted that the GOA and the exporting producer refused to provide copies of the documents pertaining to the actual grant received by the company, citing 'business confidentiality' requirements. Therefore, it could not be verified whether the company in fact provided figures on planned export earnings to the granting authorities. Both the company and the GOA have been made aware during the verification visit that this refusal might lead to the final findings being made on the basis of the facts available in accordance with Article 28 of the basic Regulation. Therefore, since it was not disputed that the 'grant entry test' requires the provision of information on planned export earnings, it is considered that the grant was given on the basis of such anticipated earnings accruing from exports.

(17) The GOA claimed that the EMDG scheme is not contingent upon export performance since the grant is calculated as a reimbursement of a percentage of promotional expenditure which is not tied to the sale of the product. Additionally, the scheme is not specific since it is not limited to exporters and eligibility is automatic based on objective criteria.

(18) Since the eligibility for grants under the scheme is in fact tied to anticipated export earnings, the subsidy is considered contingent in fact upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, irrespective of the actual calculation of the amount of the subsidy. Such export subsidies are deemed to be specific in accordance with Article 3(4) of the basic Regulation as a matter of law.

(19) The GOA argues that the EMDG scheme does not favour domestic over imported goods since the legislation allows the promotion of goods made in Australia or overseas.

(20) In response to this argument, reference is made to Section 24 of Part 4 of the EMDG Act 1997 which states that 'goods made in Australia are eligible goods if they meet the 50 % Australian content rule' and 'goods made outside Australia are eligible goods if they meet the 75 % Australian content rule'. According to subsections 3 and 4 of this Section, these Australian content rules can be deviated from depending on the determination by the Australian Trade Commission (Austrade) of whether or not 'the Australian input in those goods is [...] sufficient to ensure that Australia will derive a significant net benefit from their export.' This clearly shows that, regardless of whether goods are made in

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Australia or outside, they must meet the Australian content requirement, thus making the subsidy contingent upon the use of domestic over imported goods as set forth in 3(4)(b) of the basic Regulation. In addition, a determination by Austrade on whether the Australian input is sufficient to ensure that significant net benefits from their exports will be derived, would make this scheme in fact tied to anticipated export earnings in the meaning of Article 3(4)(a) of the basic Regulation.

(21) The GOA and the exporting producer claimed that no further payments have been received because the company is not eligible anymore for further grants. Furthermore, the exporting producer argued that since the grant received in the investigation period related to expenses incurred before the beginning of the investigation period, it should not be countervailed.

(22) It is considered that even though the company did not receive any recurring subsidies after the grant in question due to the fact that it did not meet the eligibility criteria after that date by exceeding the income threshold, the company was not permanently ineligible for the grant. Whether or not the company's income will reach a level which is below the respective level set under the EMDG scheme, is determined by purely commercial developments. This does not justify a deviation from the general principle that the amount of countervailable subsidies are to be calculated in terms of the benefit conferred on the recipient which is found to exist during the investigation period as prescribed in Article 5 of the basic Regulation.

(23) As a general rule, the appropriation of a subsidy to the investigation period is determined by the point in time when the benefit is received by the company. In this case, since the grant was paid out to the company during the investigation period, the benefit was conferred on the company by that date.

(24) Therefore, the claims made by the GOA and the exporting producer concerning the EMDG scheme are rejected and the provisional findings are confirmed.

(25) The cooperating exporting producer benefited from this scheme during the investigation period and obtained subsidies of 0,03 %.

2.2.2. *Import credit scheme (ICS)*

(26) The GOA and the exporting producer claim that PSF is not an eligible product under the scheme, which is described in recitals 33 to 35 of the provisional duty Regulation, and no payments or benefits were received by the company in relation to PSF. Benefits under the ICS related to other products and were expended on these products. There was no evidence of cross-subsidisation between the different products. The Commission concluded erroneously that the funds obtained from the sale of the import credits benefited all export products as the use of cash was not linked to a particular product. It was also incorrect to conclude that PSF exports have benefited from the sale of the import credits as most of the PSF is sold on the export market. This is not substantiated by the facts, in particular in the light of the company's substantial domestic sales.

(27) It is considered that the issue of cross-subsidisation does not arise in this case. The benefits under the ICS are not limited to a particular product. The company receives credits which it can convert into cash with no strings attached. There is no requirement that the cash must be used to benefit only the export, sale or production of the product for which the credit amount was calculated. Therefore, since the benefits of the subsidy are not linked to a particular product not subject to the investigation, they are considered to benefit all export sales, including export sales of PSF. Additionally, the statement that the import credits were 'expended on these [other] products' is not supported by evidence. In fact, it was verified that all import credits obtained during the

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investigation period were converted into cash by the company. It should also be noted that the European Commission never concluded that since most of the PSF is exported, PSF exports benefited from the subsidy. The question whether or not most of the PSF is sold on the export market is not relevant for the issue of whether all exports, including exports of PSF, benefited from the payments under the ICS.

(28) The GOA also argued that since the ICS will be terminated on 30 June 2000, the continuation of the subsidy in the calculation of the countervailing duty is not justified in the light of Article 19(4) of the WTO Agreement on Subsidies and Countervailing Measures.

(29) Article 5 of the basic Regulation states that the amount of countervailable subsidies is calculated in terms of the benefit conferred on the recipient which is found to exist during the investigation period for subsidisation. Since the benefits under the ICS were obtained in the investigation period, they were taken account in the calculation of the amount of countervailable subsidies. Information on possible changes relating to subsidy programmes which might occur after the investigation period are normally not taken into account for investigating subsidisation in accordance with Article 11 of the basic Regulation. In this context, it should be noted that Article 19 of the basic Regulation provides for the right to request an interim review in which the Commission may consider, *inter alia*, whether the circumstances with regard to subsidisation have changed significantly. The GOA's claim is therefore rejected.

Calculation of the amount of the subsidy

(30) The GOA argued, that the amount of the subsidy was not properly calculated since it is incorrect that only exports are 'cross-subsidised'. Therefore, the correct denominator should be total sales and not export sales.

(31) In response to this argument, reference is made to the reasons for the rejection of a similar claim concerning the denominator for non-recurring grants for capital expenditure/fixed assets as set out below for the Incentives for International Competitiveness programme (IICP) and the Investment Attraction Programme (IAP). Since, as shown above, the subsidy is an export subsidy, it is considered to benefit export sales. Thus, the subsidy must be calculated by allocating the amount over export sales.

(32) The cooperating exporting producer benefited from this scheme during the investigation period and obtained subsidies of 3,48 %.

2.2.3. *Investment Attraction programme (IAP) and Incentives for International Competitiveness programme (IICP)*

(33) The GOA argued that there was no failure to cooperate during the investigation. Even though the grant contracts pertaining to the IICP and IAP, which are described in recitals 24 to 27 and 38 to 41, respectively, of the provisional duty Regulation, could not be provided, the information contained therein and an explanation on the intent, parameters and operation of the programmes was provided to the Commission services. Additionally, Article 28(3) of the basic Regulation provides that information is not to be disregarded provided that, *inter alia*, the party has acted to the best of its ability, which was the case here. Finally, the reasons for rejection of such evidence or information was not disclosed and given in published findings as required by Article 28 of the basic Regulation.

(34) During the verification visit the GOA and the cooperating exporter were made aware several times of the provision contained in Article 28(1) of the basic Regulation that the refusal to provide access to the grant contract and related supporting documents may lead to findings being made on the basis of the facts available

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concerning subsidies granted under the IICP and IAP. The actual conditions of the grants in question were never disclosed in full to the Commission services by the GOA and the cooperating exporting producer, not even orally. In this respect, it should be noted that information given by the GOA and the exporting producer on the intent, parameters and operation of the two programmes and the conditions and amount of the grants in question was not disregarded to the extent that this information was verifiable in accordance with Article 28(3) of the basic Regulation. The reasons for rejecting the unverifiable statement made by the GOA that neither the grants under the IICP nor under the IAP were contingent upon export performance are clearly set forth in the provisional disclosure document and in recitals 28, 29, 40 and 42 of the provisional duty Regulation.

(35) The GOA argued furthermore that information provided by the Victorian Government in relation to the grant payment under the IAP had been disregarded, and that the statements by the European Commission that the Victorian Government grant payment is contingent on export and that exports are one of the objectives of the Economic Development Act 1981, are not correct and not supported by the facts.

(36) Findings concerning conditions of the actual grant under the IAP had to be made on the basis of the facts available as explained above. These facts included Section 3(1)(c) of the Economic Development Act 1981 which states that the functions of the Ministry for Economic Development shall be to facilitate, encourage, promote and carry out, *inter alia*, 'the development of export capacity of industry throughout the State', and the report of the Victorian auditor's offices cited by the complainant which contains a reference to expected export growth of the cooperating exporting producer.

(37) The pertinent provision for the grant in question, i.e. Section 13(3) of the Economic Development Act 1981 setting forth the objectives of the IAP does not specifically mention the development in export capacity, but rather more general conditions such as 'the balanced economic development of the State'. However, the Victorian industry statement of 1 September 1993, 'Doing Business in Victoria' made by the Minister for Industry and Employment outlined the IAP by stating, *inter alia*, that 'projects identified for assistance must offer significant net economic benefits to Victoria, particularly in terms of exports' and 'investments should be in trade-exposed, key industry sectors, with priority being accorded to export or import competing companies'.

(38) Therefore, it is considered, that the arguments made by the GOA concerning the IAP and the IICP should be rejected and it is confirmed that these subsidies are contingent upon export performance in the meaning of Article 3(4)(a) of the basic Regulation.

Calculation of the amount of the subsidy

(39) The GOA argued that with regard to grants made under the IICP and the IAP the denominator for allocation of the subsidy amount should be total sales and not only export sales since the grants were linked to the acquisition of fixed assets and therefore benefited the entire operation.

(40) It is normal practice that subsidies which are contingent upon export performance, are allocated over export sales regardless of whether they are granted for the purchase of fixed assets or not. It is a reasonable assumption that benefits under subsidy programmes which are intended to benefit exports, are also linked to such exports and that they should therefore be calculated on the basis of export sales. This approach is also in line with the

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Community's guidelines for the calculation of the amount of subsidy in countervailing duty investigations.

(41) The cooperating exporting producer benefited from the IICP and the IAP during the investigation period and obtained subsidies of 1,92 % and 0,64 %, respectively.

3. AMOUNT OF COUNTERVAILABLE SUBSIDIES

(42) The amount of countervailable export subsidies in accordance with the provisions of the basic regulation, expressed *ad valorem*, for the investigated exporter is as follows.

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

(43) Since the investigated exporting producer accounted for virtually all of the imports of the product concerned into the Community originating in Australia, the weighted average countrywide subsidy margin is above the applicable *de minimis* margin for subsidisation of 1 %.

II. **INDONESIA**

1. INTRODUCTION

(44) Following the detailed disclosure of findings and the publication of the provisional duty Regulation, no submissions or comments were received within the applicable time limits.

(45) In accordance with established practice and policy concerning countries falling under Annex VII to the WTO Subsidies Agreement, it is considered that no benefit is conferred by subsidies below 0,3 %. This rule only applies to cooperating exporting producers who receive individual treatment.

2. SAMPLING

(46) In order to enable the Commission services to select a sample, pursuant to Article 27 of the basic Regulation, exporting producers were requested to make themselves known within 15 days of the initiation of the proceeding and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies in the PSF sector. The Indonesian authorities and the Indonesian association of exporting producers were also informed in this regard by the Commission.

(a) **Pre-selection of cooperating companies**

(47) Seven companies in Indonesia came forward and provided the requested information within the time limit. These companies were initially considered as cooperating and were taken into account in the selection of the sample.

The companies, which made themselves known within the time limit represented virtually the totality of imports of the product originating in Indonesia into the Community.

(48) The cooperating companies which were not finally retained in the sample, were informed that any countervailing duty on their exports would be calculated in accordance with the provisions of Article 15(3) of the basic Regulation.

(49) Companies, if any, which did not make themselves known within the time limit, were considered as non-cooperating companies.

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(b) **Selection of the sample**

(50) Initially, three Indonesian companies were chosen to constitute the sample in consultation with the Indonesian association of exporting producers. The Indonesian association of exporting producers proposed the replacement of two initially chosen companies by two others which, however, could not be considered more representative than those initially chosen. All parties concerned were informed accordingly.

(51) Questionnaires were sent for completion to all three companies initially selected for the sampling. Subsequently, one of these companies provided an incomplete response, which was moreover in contradiction to the basic information it had previously provided for the sampling exercise. A second company did not provide a complete and meaningful response and failed to inform the Commission services properly about its relationship with another Indonesian company. It should be noted that both companies had received several requests specifying precisely the nature of the information needed and were granted extended deadlines to submit this information. In consequence, these two companies were informed in detail of the reasons why they were no longer considered to be cooperating with the investigation and that the result of the investigation may be less favourable to them than if they had cooperated.

(52) Given the degree of non-cooperation by companies initially selected in the sample, the Commission services decided to select a new sample in accordance with Article 27(4) of the basic Regulation. For this purpose, two other Indonesian cooperating companies, which had provided complete and meaningful questionnaire responses, with a view to being granted individual examination, were added to the sample. The Indonesian association of exporting producers, the companies concerned and the Indonesian authorities were informed accordingly and raised no objection.

(53) The three companies which finally constituted the sample and which fully cooperated with the investigation were attributed their own subsidy margin and individual duty rate.

3. SUBSIDY PROGRAMMES USED BY COOPERATING EXPORTERS

BKPM schemes

(54) The Investment Coordinating Board (Badan Koordinasi Penanaman Modal — BKPM) is a Government agency serving directly under the President of the Republic of Indonesia. The function of the BKPM is to assist the President in formulating Government policies in respect of investment, and is responsible for the planning and promotion of investment, as well as the processing of investment approvals and licences and the supervision of the investment implementation. The BKPM plays a central role in coordinating investment activities with other Government agencies. The BKPM is equally involved in regional development as well as the compilation and management of the negative list of investment (Daftar Negative Investasi — DNI), which contains the sectors that are closed for investments as well as those that are regulated.

(55) The BKPM approves both foreign (Penanaman Modal Asing — PMA) and domestic (PMDN) investments. Companies that are approved by BKPM as PMA or PMDN companies will be granted exemption or relief from import duty and levies on the importation of capital goods, namely machinery, equipment, spare parts and auxiliary equipment, as well as on the importation of raw materials for the purpose of two years' full production.

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(56) Foreign investment (PMA) is governed primarily by the Foreign Capital Investment Law No 1 of 1967, as amended by Law No 11 of 1970.

(57) Domestic investment (PMDN) is governed by Law No 6/1968 on domestic capital investment as amended by Law No 12/1971.

(58) In addition, PMA companies as well as other companies are subject to sectoral policies applied by the corresponding Government authorities such as those stipulated in Law No 5/1984 on industry, Law No 5/1967 on forestry, and Law No 12/1992 on agriculture.

(59) The legal basis for the import duty exemption or relief instruments themselves is contained in a number of Minister of Finance Decrees (No 297/KMK.01/1997, No 545/KMK.01/1997, No 546/KMK.01/1997 and No 252/KMK.04/1998).

(a) **Eligibility**

(60) Investment projects that are approved by BKPM, PMA as well as PMDN projects, including existing PMA and PMDN companies expanding their projects to produce similar products by more than 30 % of installed capacity or diversifying their products, will be granted these facilities.

(61) The criteria for eligibility are set by BKPM and appear to be updated frequently. These criteria include certain restrictions for foreign investment, most notably an obligation to enter into a joint venture with an Indonesian company when investing in certain sectors.

(62) Investments in the sectors indicated in the negative list of investment are as such not eligible and include certain chemical industries such as the cyclamate and saccharine industries. Investments in 12 other sectors are only eligible if they fulfil certain additional criteria. These sectors are enumerated in the 'Technical manual — implementation of capital investment 1998' published by BKPM and contain, *inter alia*, the iodised consumer salt, ethyl alcohol and the fertiliser industries.

(63) With regard to the way the programme is administered, it was stated that the companies are subject to the sectoral/industrial policies applied by the corresponding ministries.

(b) **Practical implementation**

(64) As a first step, applications are submitted to BKPM where they will be evaluated in terms of their suitability to various aspects such as sectoral policies, technology, market and finance. In the case of approval, BKPM then also assists the companies in obtaining other necessary permits, such as building, land title and working permits.

(65) The import duty facilities themselves are obtained at a later stage. For this purpose, a so-called master list denominating capital goods and raw materials to be imported must be submitted through PT. Sucofindo, a technical inspection agency, which evaluates the list and then forwards it to BKPM after approval. The BKPM will then issue an approval letter and an import licence.

(c) **Conclusion on countervailability**

(66) The BKPM schemes constitute a subsidy as the financial contribution by the Government of Indonesia (GOI) in the form of unpaid duties confers a direct benefit upon the recipient.

(67) The schemes do not qualify as drawback schemes in accordance with the provisions of Annexes I to III to the basic Regulation,

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since capital goods are not consumed in the production process, and there is no obligation to export the finished product containing the raw materials.

(68) The BKPM schemes are not contingent in law upon export performance or the use of domestic goods over imported goods.

(69) While these schemes appear to be available for a wide range of investments, they explicitly limit access to the subsidy to certain enterprises which are not operating in certain sectors. Additionally, the number and quality of the restrictions applicable to certain sectors, most notably those restricting eligibility to either certain types of enterprises, or to geographical area, or completely exclude certain sectors, are not in line with the conditions of Article 3(2)(b) of the basic Regulation, which stipulates that the granting authority must establish objective criteria which are neutral, do not favour certain enterprises over others, and which are economic in nature and horizontal in application. Hence, these programmes are considered to be specific in the meaning of Article 3(2)(a) of the basic Regulation since they explicitly limit access to the subsidy to certain enterprises.

(70) Even if there were no specificity in law under Article 3(2)(a) of the basic Regulation, the scheme would be de facto specific under Article 3(2)(c) of the basic Regulation, since it has not been shown that eligibility is automatic, but rather based on a case-by-case decision in which a certain number of government authorities are involved which follow sectoral/industrial policies applied by the corresponding Ministries. No information was provided on the actual use of the subsidy programme and the manner in which discretion was exercised by the granting authorities. Hence, it is concluded that the BKPM schemes are, alternatively, also considered specific under Article 3(2)(c) of the basic Regulation and therefore countervailable.

(d) **Calculation of the subsidy amount**

(71) The determination of the obtained benefit was based on the amount of duties unpaid during the investigation period as far as raw materials and spare parts are concerned, and over the period from 1 January 1988 up to the end of the period of investigation for capital goods, for which the normal depreciation period of 17 years in that industry has been applied. Since the schemes are not contingent upon export performance, total benefits were allocated to total turnover. The obtained amount was then adjusted by the average commercial interest rate for bank loans during the period of investigation, which was determined to be 24,61 %.

(72) Two exporting producers availed themselves of these schemes, but obtained no benefit under these schemes in accordance with the policy explained above.

Bapeksta schemes

(73) The Centre for administration of import duty, exemption and drawback (Bapeksta) can grant, upon application, the exemption or restitution of import duty as well as the non-imposition of value added tax (PPN) and sales tax on luxury goods (PPnBM) on the import of goods for further processing for export.

(74) The exemption scheme covers duty on imports that will take place in the future, whereas the restitution scheme applies to imported inputs that have already been used in an exported product.

(75) The legal basis is the Decree of the Minister of Finance No 615/KMK.01/1997 of 1 December 1997.

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(a) **Eligibility**

(76) The Bapeksta schemes are available to exporting producers in Indonesia upon application to Bapeksta.

(77) In order to obtain the exemption facilities, a company is required to re-export 100 % of the imported materials in the form of finished goods, within a period of 12 months starting at the date of import, unless the production period is longer than 12 months. In this case, an exception can be granted. A company must also submit a security in the form of a bank guarantee covering the amount of duty exemption and PPN and PPnBM normally payable.

(78) In order to obtain the restitution facilities, a company must already have exported the finished goods. The import must have taken place no earlier than 12 months before the shipment of the exported goods.

(79) For both facilities, exports may also take place to bonded zones within Indonesia.

(b) **Practical implementation**

(80) For the exemption facility, companies must submit a form containing the expected export performance in the future, the projected need for imported goods, and an estimate of duty and taxes normally payable. Afterwards, they are under obligation to submit a report on export to Bapeksta every six months.

(81) Bapeksta may later proceed with a verification by auditing the reports of the company concerned.

(82) For the restitution facility, a company must submit a form providing a link between the goods of imported origin, on which duty and taxes have been paid, and the goods exported, accompanied by import and export documents.

(83) Bapeksta is entitled to verify these documents by carrying out controls at the premises of the company concerned.

(c) **Conclusion on countervailability**

(84) The GOI claimed that the Bapeksta schemes are normal duty-drawback schemes in line with international obligations. Companies that were found to misuse these schemes and obtain excess exemption or restitution amounts would face penalties. It was also claimed that computer systems were in place to match import and export transactions and to confirm which inputs are consumed in the production of the exported products and in what amounts.

(85) However, the GOI was not able to produce sufficient evidence for the existence of an effective verification system.

(86) Annex II(II)(5) and Annex III(II)(3) to the basic Regulation provide that, where it is determined that the Government of the exporting country does not have such a 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. The GOI did not carry out such an examination. The Commission did not, therefore, examine whether there was in fact an excess drawback of import charges on inputs consumed in the production of the exported product.

(87) The Bapeksta schemes constitute a subsidy as the financial contribution by the GOI in the form of duty exemption or restitution confers a direct benefit upon the recipient. It is a subsidy contingent in law upon export performance (it is an export

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subsidy according to the provisions of Annex I(I) to the basic Regulation) and is therefore deemed to be specific under Article 3(4)(a) of the basic Regulation.

(d) **Calculation of the subsidy amount**

(88) The benefit to the exporters has been calculated on the basis of the amount of customs-duty exemption granted during the investigation period, allocated over total export turnover during the investigation period. This amount was then adjusted by adding half of 24,61 %, the average interest rate for commercial bank loans during the period of investigation.

(89) PT. Indorama Synthetics TbK availed itself of these schemes, and obtained a benefit of 1,4 %.

4. SUBSIDY PROGRAMMES NOT USED BY COOPERATING EXPORTING PRODUCERS

(90) It was found that the cooperating exporting producers did not benefit from any countervailable subsidies under the following programmes:

— income tax facility based on Government Regulation No 45 of 8 July 1996 and Presidential Decree No 7 of 14 January 1999,

— bonded zones under Government Regulation No 33/1996 of 4 June 1996 and Decisions of the Minister of Finance of the Republic of Indonesia (No 291/KMK.05/1997, No 547/KMK.01/1997, and No 292/KMK.01/1998).

5. AMOUNT OF COUNTERVAILABLE SUBSIDIES

(91) The Commission limited its examination by applying sampling in accordance with Article 27 of the basic Regulation. It was decided, under Article 27(4) of the basic Regulation, that there was a degree of non-cooperation by two companies selected in the sample which was likely to materially affect the outcome of the investigation, and thus a new sample had to be selected. The amount of countervailable subsidies for cooperating exporting producers included in the sample is established as follows.

	BKPM schemes	BAPEKSTA schemes	Total
PT. Indorama Synthetics TbK	0,0 %	1,41 %	1,41 %
PT. Panasia Indosyntec TbK	0,0 %	0,0 %	0,0 %
PT. Susila Indah Synthetic Fiber Industries	0,0 %	0,0 %	0,0 %3

(92) In accordance with Article 15(3) of the basic Regulation, any countervailing duty applied to imports from exporters or producers which have made themselves known in accordance with Article 27 but were not included in the examination shall not exceed the weighted average amount of countervailable subsidies established for the parties in the sample. Thus, the amount of countervailable subsidies for cooperating exporting producers not included in the sample is established as follows.

	BKPM schemes	BAPEKSTA schemes	Total
PT. GT Petrochem Industries TbK	0,0 %	0,45 %	0,45 %
PT. Teijin Indonesia Fiber Corporation	0,0 %	0,45 %	0,45 %3

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(93) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the cooperating exporting producers varies from 0 % to 1,0 % and are therefore below the *de minimis* threshold of subsidisation for Indonesia, i.e. under 3 %.

(94) The two companies which were excluded from the sample, namely PT. Global Fiberindo and PT. Polysindo Eka Perkasa, represented a substantial share (i.e. over 30 %) of imports of the product concerned into the Community. Therefore, definitive findings as regards these two companies and any other company that did not cooperate in the present proceeding are made on the basis of the facts available in accordance with Article 28 of the basic Regulation.

(95) On such a basis, the investigation has evidenced the existence of countervailable subsidies which are available to the non-cooperating exporting producers. It is considered that the absence of cooperation is the result of the use and benefit by those producers of the countervailable subsidies at a level above the *de minimis* level for Indonesia. In accordance with the provisions of Article 28 of the basic Regulation and based on the information found in the complaint and the findings of the investigation, and in order to avoid granting a bonus for non-cooperation, the amount of countervailable subsidies for these two companies is established as follows.

	BKPM schemes (domestic subsidy)	BAPEKSTA schemes (export subsidy)	Total
PT. Global Fiberindo	5 %	5 %	10 %
PT. Polysindo Eka Perkassa	5 %	5 %	10 %
Any other company	5 %	5 %	10 %3

(96) The weighted average countrywide subsidy margin for all exporting producers investigated (including the two non-cooperating companies), which represent virtually the totality of exports of the product concerned to the Community originating in Indonesia is above the applicable *de minimis* margin for this country of 3 %.

III. **TAIWAN**

1. INTRODUCTION

(97) Following publication of the provisional duty Regulation, the Government of Taiwan (hereinafter referred to as 'GOT') submitted in letters dated 17 and 19 January 2000 its views on the disclosure document containing the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Numerous written submissions were received from the exporting producers, all of whom requested and were granted a hearing on 15 February 2000.

2. GENERAL SUBMISSIONS

2.1. **Specificity of the schemes concerned**

(98) The exporting producers submitted some general comments concerning the interpretation of the concept of specificity. The determination of whether an investigated subsidy is specific has been made in accordance with the provisions of the basic Regulation, notably Article 3 thereof. The comments from the exporting producers have been taken into account when determining whether or not each investigated scheme involves specific subsidies, pursuant to Article 3 of the basic Regulation, which are

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countervailable. Thus, the manner in which the determination of specificity has been made for individual schemes is explained, under the section relating to each scheme where relevant, and in supplement to the findings contained in the provisional Regulation.

2.2. **Calculation of prevailing commercial interest rate**

(99) It had been provisionally decided to apply a general interest rate of 9,03 % for the purpose of this investigation. This rate was determined on the basis of the information obtained during the investigation which was considered appropriate for this purpose. GOT and the exporting producers challenged the reliability of this rate.

(100) In view of this claim, the generally applicable interest rate has been recalculated by the Commission services. The relevant benchmark interest rate is set at 8,52 % and was obtained by taking the monthly commercial interest rates charged during the investigation period by 37 domestic banks in Taiwan. These interest rates are publicly available and are part of the monthly financial statistics published by the Economic Research Department of the Central Bank of the Republic of China.

(101) It was also claimed that the interest rate used for the provisional findings should have been the one which is used for comparable loans and that anyway, the interest rate applied by the Commission is not commensurate with the interest rate which the companies are capable of obtaining on the market and that commercial loans were in fact made to the companies during the investigation period. A comparable loan should be a loan of a similar amount, purpose and with a similar repayment period. No such comparable loan was identified for the exporting producers concerned. Therefore, the methodology of the calculation of the benchmark interest rate as explained above is confirmed.

2.3. **Application of the interest rate in the calculation of the amount of the subsidy**

(102) The exporting producers claimed that the Commission is wrong in adding interest, at the average commercial interest rate in Taiwan during the investigation period, to the programmes which are found to be subsidies.

(103) The legal bases for the addition of interest to the face value of the subsidy are Articles 5, 6 and 7 of the basic Regulation, which contain provisions on the calculation of the amount of subsidy, as developed by the Commission's Guidelines for the calculation of the amount of subsidy in countervailing duty investigations.

(104) Pursuant to Article 5 of the basic Regulation, the calculation of the benefit shall reflect the amount of subsidy found to exist during the investigation period and not simply the face value of the amount at the time it is transferred to the recipient or foregone by the Government. Such an approach is specifically provided for in the Commission's guidelines for the calculation of the amount of subsidy in countervailing-duty investigations, where it is stated that the face value of the amount of subsidy has to be transformed into the value prevailing during the investigation period through the application of the normal commercial interest rate.

(105) It was also argued that this methodology cannot be applied to the alleged subsidisation amounts on tax credits since the tax credits, which the companies have claimed, are only utilised in the annual tax return which is made by 31 March of the following year. The exporting producers claim therefore that no benefit is conferred on them until this date.

(106) In response to this argument, it is considered that since the benefit consists of a reduction of direct tax which is payable every year, the benefit itself will recur annually as well. Therefore, the benefit

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should also include the interest element of not having to borrow an amount equal to such tax savings on the open market.

2.4. **Assessment of the subsidies in relation to the product concerned**

(107) The GOT and the exporting companies submitted that the Commission should have linked the alleged subsidy schemes to the product concerned in order to calculate any subsidisation rate by attributing benefits which can be specifically linked to product lines to the extent that they are directly linked to the product concerned.

(108) The Commission's guidelines explicitly mention that if the benefit of a subsidy is limited to a particular product, the denominator for allocation of subsidy amount should reflect only sales (or export sales) of that product. If this is not the case, the denominator should be the recipient's total sales (or export sales).

(109) The Commission, in its calculations, has followed this approach, as was correctly stated by the exporting producers, for the import duty exemption on raw materials. In this particular case, benefits were only identified for the fibre division and consequently the corresponding sales denominator was used. For all other described schemes, it was found that the benefits were not limited to a particular product and therefore the total sales were used as denominator.

3. INDIVIDUAL SCHEMES

3.1. **Tax credit for the purchase of automation and pollution control equipment**

(110) The GOT and the exporting producers claimed that this scheme, which is described in recitals 49 to 58 of the provisional duty Regulation was wrongly assessed by the Commission in terms of the specificity of the subsidy. In particular, it was claimed that the alleged subsidy of tax credits for automation and pollution control equipment is not contingent upon the use of domestic over imported goods and cannot therefore be regarded as specific within the terms of Article 3(4)(b) of the basic Regulation.

(111) Although the programme provides for a tax credit for imported as well as for domestically produced equipment, the subsidy is doubled for the purchase of domestic equipment. These two tax credit rates are considered separate programmes concerning domestically purchased equipment and imported equipment respectively. In the absence of the 20 % tax credit for domestically produced equipment, a company would have received no tax credit. The 10 % credit rate cannot be considered the standard rate of tax, because it is only available for imported equipment. Since the 20 % credit rate is only available for domestically produced equipment but not for imported equipment, it is contingent upon the use of domestic over imported goods. This tax credit is therefore a specific import substitution subsidy in the meaning of Article 3(4)(b) of the basic Regulation.

(112) By the same token, the 10 % credit rate is only available for imported machinery and is therefore limited to enterprises which purchase such imported machinery. Such a limitation is not considered to be neutral within the meaning of Article 3(2)(b) of the basic Regulation since it favours certain enterprises over others. Additionally, the criteria are not economic in nature or horizontal in application. Hence, the subsidy is specific in the meaning of Article 3(2)(a) of the basic Regulation.

Calculation of the subsidy amount

(113) As regards the calculation of the amount of countervailable subsidies, the exporting producers argued that 15 % of the 20 %

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tax credit for the purchase of domestically produced goods cannot be countervailable, because such a tax credit would be obtained irrespective of the origin of the goods. This claim is not considered justified. The amount of countervailable subsidies consists of the full amount of tax credits, since the tax credit of 20 % for domestically purchased equipment cannot be considered as a deviation from a standard tax credit rate of 10 %. As explained above, the two tax credit rates are considered separate programmes concerning domestically purchased equipment and imported equipment respectively. In the absence of the 20 % tax credit for domestically produced equipment, a company would not have received a tax credit. The 10 % credit rate only applies to imported machinery; it is not a general credit rate. Therefore, the Commission concluded that the amount of the subsidy is the total revenue foregone by the GOT.

(114) The benefit to the exporting producers has been calculated as explained in recital 57 of the provisional duty Regulation, correcting however the average commercial interest rate which was added to the amount of taxes unpaid during the investigation period as explained above.

(115) The GOT claimed furthermore, that since the subsidy is linked to the purchase of fixed assets, it should be calculated by spreading the subsidy over the normal depreciation period of the assets in the industry concerned.

(116) It is considered that benefits in the form of savings of direct taxes are generally not considered to be linked to the purchase of fixed assets. Benefits related to direct taxes are linked rather to the reduction in direct tax liability than to the purchase of fixed assets, since such a direct tax liability normally exists whether or not fixed assets are purchased. This approach is also in line with the Commission's guidelines for the calculation of the amount of subsidy in countervailing duty investigations as set forth in particular in Table 2 which is attached to the said guidelines. Therefore, the benefits under the scheme were calculated on the basis of income tax saved in the investigation period in accordance with Article 7(4) of the basic Regulation.

(117) Two companies benefited from this scheme during the investigation period and obtained subsidies of 0,42 % and 0,40 % respectively.

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

(118) The GOT claimed that this scheme does not constitute a subsidy since there is no financial contribution to invested companies. Tax deductions are only given to investing stockholders, not stock-issuing companies.

(119) It is considered that there is a financial contribution by the GOT to the companies claiming the tax credit, i.e. the companies investing in important enterprises. This financial contribution in the form of foregone government revenue results in a benefit for the investing stockholders in the form of a reduced tax liability. It is this benefit to the investing company which is countervailed, not benefits to the companies in which the investment is made.

(120) The GOT and the exporting producers claimed that this scheme, which was described in recitals 59 to 66 of the provisional duty Regulation, concerns a tax credit which is generally available and therefore not specific, as this programme is open to any legal or moral person investing in certain enterprises. In particular, it is alleged that the eligibility of the scheme is not limited to certain enterprises; that it is objective, automatic and neutral and that the benefit of the tax credit does not accrue to a company as a result of its production of the product concerned.

(121) As regards these claims, the Commission found that the access to this programme is explicitly limited to companies which invest in

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certain enterprises, since not all investments in stocks are eligible for tax credits. Only investments in a limited number of enterprises, i.e. important technology-based or important investment enterprises, will qualify for a tax credit.

(122) In addition, although the Commission agrees that the definition of the eligible enterprises is clear and objective, eligibility is not neutral, as required by Article 3(2)(b) of the basic Regulation, since it limits the number of investments which may result in a tax credit, on the basis of the activity of the firms concerned. If an investing enterprise wishes to obtain the subsidy, its freedom of choice is restricted on a sector-specific basis. Article 2 of the criteria for determining the scope of major technology enterprises with respect to manufacturing industry and technical-service industry limits the tax credit to 11 specific types of investments. Consequently, the access to this programme is dependent upon making investments in certain enterprises and it is not generally available. Thus, the claims of the exporting producers in this respect have to be rejected.

(123) It is also argued that that the benefit of the tax credit does not accrue to a company as a result of its production of the product concerned. Benefits under this scheme are not limited to the production of a particular product. There is no requirement that the credit be used to benefit only the export, sale or production of another product. The company receives a tax credit which benefits the production and exports of PSF. Therefore, since the benefits of the subsidy are not linked to a particular product not subject to the investigation, they are considered to benefit all sales, including sales of PSF. Hence, the above claim made by the exporting producers must be rejected.

(124) In conclusion, the finding that this scheme is considered specific in accordance with Article 3(2)(a) of the basic Regulation and involves countervailable subsidies is confirmed.

Calculation of the amount of the subsidy

(125) The benefit to the only exporting producer concerned has been calculated as explained in recital 57 of the provisional duty Regulation, correcting the average commercial interest rate from 9,03 % to 8,52 % as explained above which was added to the amount of taxes unpaid during the investigation period.

(126) This company obtained a benefit of 0,71 %.

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

(127) As already established in the provisional duty Regulation (recitals 67 to 72), these tax credits have been considered not to be specific. No written comments were received from the parties concerned disputing this finding. Thus, this scheme is found not to be specific in the meaning of Article 3 of the basic Regulation, and thus not countervailable.

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

(128) The GOT made a green-light claim under Article 4(3) of the basic Regulation for this scheme arguing that it fulfils the criteria for non-countervailable subsides to disadvantaged regions. However, this claim was not substantiated with verifiable evidence. Since it could not be established that the requirements in the said provision are in fact fulfilled, this claim must be rejected.

(129) The GOT also argued that no benefits linked to PSF were received by the exporting companies. This argument has to be rejected in accordance with the reply above in the section on the ‘Assessment of the subsidies in relation to the product concerned’.

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Calculation of the subsidy amount

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

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

(131) As was described in recital 81 of the provisional duty Regulation, one exporting producer availed itself of this scheme but obtained no benefit. No comments were received from the parties concerned.

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

(132) These schemes, which were described in recitals 82 to 91 of the provisional duty Regulation, are based on Article 21(1) of the Statute for upgrading industries (hereinafter referred to as 'SUI').

(133) The GOT and the exporting producers claimed that these loans are available to almost all Taiwanese companies and therefore they are not specific and are accordingly not countervailable. Concretely, it is claimed that eligibility is not limited to certain enterprises; that eligibility for the programme is objective and that, even if eligibility is not objective, it does not automatically follow that the programme is specific.

(134) As regards these claims, it is a fact that the provisions of Article 21(1) of the abovementioned SUI explicitly limit the benefits thereunder to certain enterprises which comply with a number of criteria or conditions. Those criteria or conditions, such as investments in specific equipment under specific conditions set by the Executive Yuan of the Development Fund, are not considered to be objective within the meaning of Article 3(2)(b) of the basic Regulation. The provisions of Article 21(1) of the SUI cannot be considered objective since the criteria are not neutral or economic in nature or horizontal in application because it is known in advance that certain enterprises are more likely than others to be in a position to benefit from these loans just by reason of the type of business sector they are in. Therefore, benefits from this scheme will inevitably be more relevant to some sectors than to others.

(135) A basic principle of specificity is that a subsidy that distorts the allocation of resources within an economy, by favouring certain enterprises over others, should be subject to countervailing measures if it causes injury. Where eligibility for subsidies is limited within an economy, on the basis of non-neutral criteria such a distortion in the allocation of resources is presumed to occur. This principle is at the basis of Article 3(2)(a) of the basic Regulation, which provides that a subsidy is specific if the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises. Thus, the above claims are rejected.

(136) It was claimed that, even if eligibility is not objective, it does not automatically follow that the programme is specific. This claim should also be rejected because no automatic finding of specificity has been made. This scheme is considered specific because it is limited to certain enterprises within the meaning of Article 3(2)(a) of the basic Regulation, as explained above. The Commission therefore confirms its provisional findings as described in recital 87 of the provisional duty Regulation.

(137) It was also argued that with respect to loans at preferential interest rates, the countervailable subsidy only would represent the difference in interest rates between the government's practice and commercial practice.

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(138) The Commission guidelines for the calculation of the amount of subsidy in countervailing duty investigations, however, specify that in the case of loans from the government the subsidy represents the difference between the amount of interest paid on the government loan and the interest normally payable on a comparable commercial loan during the investigation period.

(139) The GOT also claimed that only two companies had benefited under this programme for the development of PSF. This claim has to be rejected in accordance with the reply above in the section on the 'Assessment of the subsidies in relation to the product concerned'.

Calculation of the subsidy amount

(140) The exporting producers claimed that the interest rate used for the provisional findings should have been the one which is used for comparable loans and that anyway, the interest rate applied by the Commission is not commensurate with the interest rate which the companies are capable of obtaining on the market and that commercial loans were in fact made to the companies during the investigation period.

(141) A comparable loan should be a loan of a similar amount, purpose and with a similar repayment period. As was mentioned in recital 89 of the provisional Regulation no such comparable loan was identified for the exporting producers concerned. Therefore, the Commission confirms the application of the benchmark interest rate as calculated for Taiwan and explained above.

(142) In addition, one exporting producer first claimed that the Commission included in its calculation benefits which allegedly arose even where the company concerned did not pay interest during the whole investigation period since the loan was only taken up in tranches over the investigation period. In subsequent letters, the same exporting producer claimed, on the contrary, that interest payments had been made during the investigation period.

(143) The company specifically refers to three loans for which the information provided in the reply to the questionnaire, and verified during the on-the-spot visit, in the sense that no interest payments had been made during the investigation period for these loans, was not contested until after the first submission of this company in response to the disclosure of the provisional findings.

(144) These loans were reported as loans without any interest payments by the company during the investigation period and where the principal amounts of the loans were granted in one-off grants. The Commission calculated the alleged subsidy amounts as explained in the provisional Regulation.

(145) After disclosure of the provisional findings, the company claimed that for those loans several interest payments occurred during the investigation period and that the principal loan amount was granted to them in a series of grants.

(146) It is found that the information provided in this respect contradicts the statements explicitly made by the company in its response to the questionnaire and during the verification visit. In addition, the new allegations do not correspond to earlier verified data. Furthermore, such allegations have not been sufficiently substantiated by objective and/or verifiable evidence. The Commission therefore confirms its original calculation methodology with regard to those loans.

(147) It was also argued that in calculating the amount of the subsidy, the Commission should take into account the fact that no repayments of principal were made during the investigation period due to a two-year period of grace. This claim does not change the calculation of the benefit made by the Commission, on the basis of the difference between the amount of the interest paid and that

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normally payable. The Commission therefore confirms its original calculation methodology with regard to these loans.

(148) The benefits to the exporting producers have been calculated as explained in recitals 88 to 90 of the provisional duty Regulation.

(149) The benefits obtained by these four companies range from 0,04 % to 0,31 %.

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

(150) The legal bases for this alleged countervailable subsidy scheme are: additional notes 3 and 9 of Chapter 84, additional notes 4 and 5 of Chapter 85 and additional notes 1 and 2 of Chapter 90 of the Customs import tariff and classification of import and export commodities of the Republic of China (hereinafter referred to as 'Customs Code').

(151) The GOT claimed that this programme does not meet any of the definitions of a subsidy as set forth in Article 2 of the basic Regulation, notably because there is no direct transfer of funds, there are no goods or services provided and there is no price or income support. This claim has to be rejected because this scheme involves a financial contribution by the GOT in the form of import duties foregone, in accordance with Article 2(1)(a)(ii) of the basic Regulation, and a benefit is conferred thereby.

(152) The GOT and the exporting producers claimed that this scheme, which is described in recitals 92 to 99 of the provisional duty Regulation, was wrongly assessed by the Commission in terms of the specificity of the subsidy and consequently of the countervailability of the alleged subsidy.

(153) In particular, it was claimed that the access to this import duty exemption scheme is available to all Taiwanese companies who wish to purchase equipment which is not produced locally and it can therefore not be considered specific because the range of companies who wish to take advantage of such an exemption is not limited and is administered on the basis of objective and neutral criteria.

(154) It is considered that this criterion is not objective within the sense of Article 3(2)(b) of the basic Regulation. This Article requires that objective criteria or conditions must be neutral and also economic in nature and horizontal in application. The provisions of the additional notes of the Customs Code mentioned above, are considered not to be economic in nature and horizontal in application since the use of this scheme is limited only to certain enterprises. The enterprises that may benefit from this scheme must be incorporated and qualified manufacturers or technical service industries who will use this scheme to import machinery, equipment and instruments for prevention of air pollution, water contamination, noise or vibration, or for environmental inspection and test or wastage disposal, research and experiment or for examination and analysis under the headings of the specific Chapters of the Customs Code. In addition it should also be stressed that the specified equipment, after fulfilling these requirements, can only be exempted from import duty if it has been verified by the Taiwanese authorities that this equipment has not yet been manufactured in Taiwan. Therefore, only companies which are active in an industry where the machinery is not made in Taiwan will benefit from this scheme.

(155) The above claims are rejected and the provisional findings, as described in recital 97 of the provisional duty Regulation, confirmed.

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Calculation of the subsidy amount

(156) The benefits to the exporting producers have been calculated as explained in recital 98 of the provisional duty Regulation.

(157) The benefits obtained by the four exporting companies concerned range from 0,12 % to 0,20 %.

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

(158) The legal basis for this alleged countervailable subsidy scheme, which is described in recitals 100 to 106 of the provisional duty Regulation, is additional note 6 of Chapter 29 of the Customs import tariff and classification of import and export commodities of the Republic of China (hereinafter referred to as 'Customs Code').

(159) The exporting producers argued that this scheme should not have been included in the investigation since there was no reference to this scheme in the complaint and because no information was requested by the Commission with regard to this programme until the verification visits.

(160) Both the complaint and the notice of initiation referred to 'import duty exemptions' as alleged subsidy programmes benefiting the product concerned. Therefore, it is considered that the complaint contained sufficient prima facie evidence to initiate an investigation and that both the notice of initiation and the questionnaires and related documents sent by the Commission were sufficiently clear in requesting information on exemption of import duty, including on raw materials. Additionally, when lodging a complaint, complainants cannot be expected to have knowledge of every last detail of alleged subsidy programmes in a third country. Indeed, Article 10(2) of the basic Regulation specifies that the complaint shall contain such information as is reasonably available to the complainant. The complainant also made allegations concerning import duty exemptions for purchases of new equipment and anti-pollution equipment. In view of the nature of the subsidies and in particular the fact that import duty exemptions for such equipment and raw materials were granted under the same umbrella of 'additional notes' to the Customs Code, it is concluded that the Commission is entitled to investigate them and to recommend countervailing action if appropriate.

(161) The GOT claimed that this programme does not meet any of the definitions of a subsidy as set forth in Article 2 of the basic Regulation, notably because there is no direct transfer of funds, there are no goods or services provided and there is no price or income support. This claim has to be rejected because this scheme involves a financial contribution by the GOT in the form of import duties foregone, in accordance with Article 2(1)(a)(ii) of the basic Regulation, and a benefit is conferred thereby.

(162) The GOT and the exporting producers claimed that this scheme was wrongly assessed by the Commission in terms of the specificity of the subsidy and consequently of the countervailability of the alleged subsidy.

(163) It was claimed that such import duty exemptions are not in fact limited to certain enterprises, because the criteria for allowing such exemptions are objective and neutral.

(164) This scheme is explicitly limited to given manufacturers, which are subject to the factory administration rules, for the importation of specifically listed raw materials, in this case chemicals, which are exclusively used in the manufacturing of plastics, artificial fibre, rubber and petrochemical intermediates by chemical reaction, and provided that, in addition, such chemicals are not yet produced or sufficiently supplied in Taiwan. As a result, the Commission finds that this scheme is explicitly limited to certain enterprises which comply with the conditions contained in the

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provisions of the specific additional note of the Customs Code. Such conditions are not considered to be neutral or economic in nature or horizontal in application.

(165) It was also argued by the exporting producers that this scheme cannot be considered a subsidy because it does not involve the granting of benefits in excess of the import charges levied, for imports which are fully incorporated in the product concerned. Given that, according to Annex I to the basic Regulation, such an exemption would not be regarded as a countervailable subsidy when it is contingent upon export, it is claimed that a similar exemption, which is not contingent upon export performance, must a fortiori be regarded as a non-countervailable subsidy.

(166) Annex I to the basic Regulation contains an illustrative list of export subsidies, including item (i) which pertains to duty drawback schemes to which the argument probably refers. However, under the scheme in question, there is no remission or drawback of import charges since it was not claimed that there is a requirement to use the imported goods as input for the production of the final exported product. It considered, therefore, that Annex I as an illustrative list of export subsidies, does not apply to the issue whether this programme constitutes a subsidy, in particular since the scheme is not considered to be an export subsidy. Article 2(1)(a)(ii) of the basic Regulation requires explicitly that only exemptions granted in accordance with Annexes I to III are not to deemed to be subsidies. Therefore, the regular definition of a subsidy contained in Article 2 of the basic Regulation applies. This scheme constitutes a subsidy since there is a financial contribution of the GOT in the form of import duty foregone, which confers a benefit on the recipient by not having to pay the import duty otherwise due.

(167) The Commission therefore confirms its provisional findings as described in recital 104 of the provisional duty Regulation.

Calculation of the amount of the subsidy

(168) The benefits to the exporting producers have been calculated as explained in recital 105 of the provisional duty Regulation.

(169) The benefits obtained by the four exporting companies concerned range from 0,16 % to 0,51 %.

3.9. **Matching funds and assistance funds**

(170) The GOT made a green-light claim under Article 4(2) of the basic Regulation for this scheme arguing that it fulfils the criteria for non-countervailable subsidies for research activities. However, this claim was not substantiated with verifiable evidence. Since it could not be established that the requirements in the said provision are in fact fulfilled, this claim must be rejected.

(171) The GOT also claimed that this programme is not related to the production of PSF. This claim has to be rejected in accordance with the reply above in the section on the 'Assessment of the subsidies in relation to the product concerned'.

Calculation of the amount of the subsidy

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

4. AMOUNT OF COUNTERVAILABLE SUBSIDIES

(173) The following domestic subsidy rates for the cooperating companies were established:

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	Tax credits	Loans	Import duty exemptions	Matching funds	Total subsidy
Nan Ya Plastics Corp.	1,14	0,06	0,32	0,00	1,52
Far Eastern Textile Ltd	0,40	0,31	0,36	0	1,08
Shinkong Synthetic Fibres Corp.	0	0,04	0,68	0,01	0,73
Tuntex Distinct Corp.	0	0,20	0,34	0	0,543

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

D. **INJURY**

1. DEFINITION OF THE COMMUNITY INDUSTRY

(175) Since no comments were received regarding the definition of the Community industry, the conclusions of recital 133 of the provisional duty Regulation are hereby confirmed.

2. CONSUMPTION IN THE COMMUNITY

(176) Since no comments were received on consumption in the Community, its assessment as indicated in recital 134 of the provisional duty Regulation is hereby confirmed.

3. IMPORTS OF PSF INTO THE COMMUNITY FROM THE COUNTRIES CONCERNED

(a) **Cumulative assessment of imports**

(177) It was provisionally considered that there were sufficient grounds for cumulating the imports from Australia and Taiwan and to exclude from the analysis the imports from the Republic of Korea, Thailand and Indonesia.

(178) Since, at the present stage of the investigation countervailable subsidies above the *de minimis* threshold were found to exist with respect to Indonesia, the question had to be examined whether, in accordance with Article 8(4) of the basic Regulation, imports of PSF originating in Indonesia should be assessed cumulatively with imports from Australia and Taiwan.

(179) The results of the subsequent examination showed that:

(a) the countrywide margins of subsidy relating to Australia, Taiwan and Indonesia were above the *de minimis* level;

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

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

— imported PSF from all exporting countries and Community-produced PSF are like products,

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

— imported PSF from all countries was sold at similar prices.

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It was found that sales prices of the imports from the countries concerned were undercutting those of the Community industry.

(180) Based on the above considerations, it was concluded that there were sufficient grounds for cumulating the imports from Australia, Taiwan and Indonesia.

(b) **Volume of imports and market share**

(181) With the cumulation of Indonesia, between 1996 and the IP the imports of PSF from the counties concerned developed as follows:

(in tonnes)

Imports	1996	1997	1998	IP
Australia	62	1 248	11 254	11 799
Index	*100*	*2 007*	*18 093*	*18 969*
Taiwan	20 213	26 811	35 524	34 878
Index	*100*	*133*	*176*	*173*
Indonesia	4 696	12 238	25 276	22 871
Index	*100*	*260*	*538*	*487*
Total countries	**24 971**	**40 297**	**72 054**	**69 548**
Index	**100**	**161**	**288**	**278**3

Source: Eurostat

(182) The above table shows that the volume of imports from the countries concerned increased significantly, particularly between 1997 and 1998 when it almost doubled. The slight decline between 1998 and the IP is due to a low level of imports in the first quarter of 1999 as compared to the first quarter of 1998.

Market share	1996	1997	1998	IP
All countries concerned	5,5 %	7,8 %	12,3 %	12,0 %
Index	100	142	224	2183

(183) The above figures include imports from Indonesia. The trend confirms the increase of imports from the countries concerned on the Community market, both in absolute terms and in terms of market share.

(c) **Evolution of average import price**

(184)

Average import price	1996	1997	1998	IP
All countries concerned Index: 1996 = 100	100	94	82	773

The above table shows a significant decrease in average import price, particularly between 1997 and 1998 (–12 %). Import prices further decreased by 6 % between 1998 and the IP. This negative evolution coincides with the surge of imports from the countries concerned during the period 1997 to the IP.

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(d) **Price undercutting**

(185) It is recalled that price undercutting was provisionally established on the basis of a comparison between the export price (cif Community frontier, duties paid) and prices charged by the Community industry (ex-works). The sales prices considered for similar product types of PSF were those to independent customers after deduction of discounts and rebates. Where necessary the export prices were adjusted to reflect the same level of trade as those of the Community industry.

(186) The results of the comparison (on a weighted-average to weighted-average basis) showed that price-undercutting margins, expressed as a percentage of the Community industry's average selling prices, were on average 21 % for Australia and 6,1 % for Taiwan. As no comments were received regarding these undercutting calculations, the undercutting margins are hereby confirmed.

(187) The same methodology was applied with regard to Indonesia. Based on the information provided by the cooperating exporting producers and on the best facts available for the non-cooperating exporting producers in Indonesia, the result of the comparison showed a weighted-average undercutting margin of 33,9 % for that country.

4. ECONOMIC SITUATION OF THE COMMUNITY INDUSTRY

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

(188) The GOA contested the method used by the Commission to assess the production capacity of the Community industry for the product concerned. In its opinion, the decrease in production capacity by 7 % for PSF was determined with regard to capacity used for the production of other products and was thus incorrect. The GOA considered that production capacity for PSF should have been assessed exclusively on the actual production of the PSF covered by the investigation.

(189) In any event, the GOA considered that the reduction in the Community industry's production capacity was not compatible with a finding of material injury: firstly because this reduction did not allow the Community industry to participate in the considerable growth of the market (+27 %) during the period considered; and secondly, because the reduction in capacity was motivated by the fact that other products were more profitable than PSF.

(190) In respect of the assessment of production capacity, it should be underlined that the product concerned is produced on the same production lines as other products of the same family. It is therefore impossible to identify the actual capacity exclusively installed for one product as compared to all the products produced on one and the same production line. In these circumstances, the assessment of production capacity for PSF was based on a ratio comparing the actual production of PSF to the total actual production of all products produced on the same production lines. Consequently, contrary to the claim made by the GOA, the assessment of production capacity for PSF takes into account the actual production of PSF.

(191) It also follows that the decrease in production capacity of the Community industry was not determined by the inclusion of other products. This statement is strengthened by the subsequent findings of the investigation, which confirmed that the Community industry converted several production lines formerly attributed to the production of PSF to other types of fibres not covered by the present investigation. The investigation also

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showed that several PSF production sites were closed down during the period considered.

(192) It should also be noted that the switch from the production of PSF to the production of other products was motivated mainly by the long-term losses incurred by the Community industry on production and sales of PSF facing continued unfair competition from dumped and subsidised imports from third countries. The reduction in capacity, which indeed did not allow the Community industry to participate in the market growth, is therefore particularly relevant for the determination of injury but more specifically for the analysis of the causal link between the subsidised import and the injury suffered by the Community industry discussed below.

(193) On this basis, the GOA's claims are considered to be unfounded. Accordingly, the data provided, the method described for assessing production capacity for PSF and the conclusions contained in recitals 141 and 142 of the provisional duty Regulation are hereby confirmed.

(b) **Profitability of the Community industry**

(194) The GOA pointed out that the Community industry's profitability significantly improved over the period considered, namely from a loss of around 4 % to a profit of over 6 %. It was also claimed that while it was mentioned in the provisional duty Regulation that the level of profitability was still inadequate, no figures were provided as to what the profitability of the industry was prior to the appearance of subsidised imports. Consequently, the GOA claimed that no proper assessment could be made as to whether the injury suffered by the Community industry was material.

(195) The above statement rightly suggests that an improvement in profitability during the period considered does not automatically lead to the conclusion that the Community industry did not suffer material injury. In addition, the assessment as to whether the injury suffered by the Community industry was material cannot only be based on profitability nor can it be based on a comparison of profitability between 1996 up to the IP.

Indeed, the provisions of the basic Regulation enumerate a number of factors among which are the volume of dumped imports and the effect of dumped imports on prices on the Community market for like products and specifies no one or more of these factors can necessarily give decisive guidance for a negative finding on injury.

(196) As indicated below in the conclusions on the economic situation of the Community industry, the conclusion of material injury was not only justified by the inadequate profitability achieved by the Community industry but also based on the negative developments observed for most of the economic indicators pertaining to that industry: market share, production capacity, sales volume, sales prices, stocks, investments, employment and significant price undercutting by subsidised imports from the countries concerned.

(197) As far as profitability is concerned, the present investigation showed that its improvement was mainly the result of both the restructuring process undertaken by the Community industry and the resulting reduction in sales, general and administrative costs and the decrease of the raw materials purchase prices. Production costs were reduced faster than sales prices decreased, thus allowing the Community industry to return to profit from 1998 onwards. Nevertheless, it was emphasised that this improvement in profitability may only be temporary and any adverse factors such as unfavourable development in raw material prices could, have serious implications for the current situation.

(198) Notwithstanding this, it should be noted that the Commission indicated in recital 179 of the provisional duty Regulation that a

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margin of 10 % should be added to the full cost of production in order to obtain the non-injurious price of the Community industry. Consequently, it is considered that this margin represents the minimum profit the Community industry could expect in the absence of subsidised imports from the countries concerned.

(199) Based on the foregoing, since no further comments were received regarding the profitability of the Community industry, the conclusion that profitability during the IP is inadequate is hereby confirmed.

(c) **Market share**

(200) The GOT argued that one of the consequences of the restructuring of the Community industry was the elimination of a number of inefficient Community producers of PSF on the Community market. It further claimed that the remaining producers thus not only became more competitive due to international competition but did not face a loss in market share which can be considered as material.

(201) Regarding this claim, it should be pointed out that the development of the market share during the period considered was consistently assessed on the basis of the same companies that constitute the Community industry in the present case. Therefore, contrary to the GOT's claim, the loss in market share (–17 %) experienced by the Community industry from 1996 to the IP is exclusively based on the data pertaining to the companies constituting the Community industry. The suggestion that the market share of the Community industry includes information of companies which disappeared or withdrew from the market is therefore unfounded.

(d) **Conclusion**

(202) In the light of the above and in view of the fact that the cumulation of imports from Indonesia did not give grounds such as to change the provisional findings and the conclusion that the Community industry suffered material injury during the IP, the contents of recitals 151 and 152 of the provisional duty Regulation regarding the conclusion on the situation of the Community industry are hereby confirmed.

E. **CAUSATION**

1. EFFECT OF SUBSIDISED IMPORTS

(203) Both the GOA and the GOT stated that there is no evidence that the injury suffered by the Community industry was caused by the limited volumes imported from Taiwan and Australia.

(204) The GOA claimed that the market share of Australian imports was too limited (2 % of consumption) to have any influence on prices on the Community market. Rather, they had to follow the price trends imposed by the large operators on the Community market. Accordingly, the GOA suggested that injury, if any, was caused by large imports from other third countries.

(205) The GOT similarly argued that the market share of approximately 6 % held by Taiwanese exports, in conjunction with the low price-undercutting level established for these imports, could not objectively have had an impact on the situation of the Community industry which has a market share of over 50 % in the Community.

(206) Regarding the arguments raised by the GOA and the GOT on their respective market share, it is recalled that imports from Australia and Taiwan were found to be clearly above the *de minimis* level during the IP. In addition, it was found that all conditions required for a cumulated analysis were met. In these circumstances,

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comments concerning individual market shares held by individual countries are irrelevant.

(207) In addition, the prices at which the PSF imported from these countries was sold on the Community market were undercutting the Community industry's prices. Accordingly, subsidised PSF imported from Australia and Taiwan, together with low-priced subsidised PSF imported from Indonesia had a significant negative impact on the economic situation of the still vulnerable Community industry. This finding is reinforced by the fact that the PSF market is transparent and that, therefore, price differentials or low-priced offers can have a price-depressing effect.

(208) Consequently, it is considered that the GOA and the GOT did not provide any evidence which would contradict the provisional finding that the Community industry suffered material injury as a result of low-priced subsidised imports. Accordingly, the conclusion that subsidised imports, taken in isolation, had caused material injury to the Community industry is hereby confirmed.

2. CURRENCY FLUCTUATIONS

(209) The GOA argued that the Commission failed to look at the effect that exchange-rate fluctuations have had on import price from Australia, specifying that during the investigation period PSF imported from Australia had benefited from a favourable exchange rate appreciation.

(210) In this respect it should be noted that imports from this country were invoiced in USD, DEM and GBP and not in AUD on the Community market. The parity of the Australian currency was therefore not relevant in the relevant determinations.

(211) In any event, it should be pointed out that the Australian currency depreciated during the first seven months of the IP and subsequently appreciated during the next five months, as compared to its parity to the ECU/EUR of the first month of the IP. Consequently, there was no constant decreasing trend of the Australian currency during the investigation period.

3. CONCLUSION

(212) Given that no new other arguments were received regarding the cause of the injury suffered by the Community industry, the conclusion that subsidised imports, taken in isolation, had caused injury to the Community industry, as stated in recital 168 of the provisional duty Regulation, is hereby confirmed.

F. **COMMUNITY INTEREST**

1. INTEREST OF THE COMMUNITY INDUSTRY

(213) Since no comments were received regarding the above issues, the findings on the interest of the Community industry cited in recital 170 of the provisional duty Regulation are hereby confirmed.

2. IMPACT ON USERS

(214) Following the publication of the provisional Regulation, a number of users and importers submitted their comments in writing. Furthermore, one users' association reacted to the provisional duty Regulation and asked for and was granted a hearing before the Commission.

(215) It should be pointed out that most of the above users and importers either did not make themselves known within the time limit set out in the notice of initiation of the proceeding, or did not reply to the questionnaire sent to them by the Commission. Consequently, most of them cannot be considered as interested parties under Article 31(2) of the basic Regulation and their views should not normally be taken into account at this stage of the proceeding.

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(216) In addition, as stated in recital 171 of the provisional Regulation, the overall low level of cooperation in the Community interest investigation meant that the assessment of the impact of the measures on the activities of users and importers was determined according to the information available.

(217) The submissions made by the interested parties were examined and it was concluded that their main argument was that the imposition of countervailing duties would have negative effects on their competitiveness on downstream products and would ultimately threaten their survival on Community PSF market. Indeed, the imposition of duties would, as a first step, trigger increases in PSF prices from the countries concerned, forcing Community PSF users in turn to increase the prices of downstream products. In their opinion this development would be the cause of the increase in imports of low-priced downstream products from other third countries and from the countries concerned in this investigation.

(218) In the light of the contents of recitals 171 and 172 of the provisional Regulation, the investigation showed that certain users completely shifted from purchasing PSF from the Community industry to exclusively purchasing PSF from the countries concerned. It is therefore considered that, if no measures are taken to correct the distorting effects caused by the presence of low-priced subsidised imported PSF, this situation will amplify and the overall market will suffer in the long term: firstly, because a number of Community producers will disappear leading to reduced competition on the Community market; secondly, because it will encourage more low-priced subsidised PSF to enter the Community market putting the users of such imports in a more favourable competitive situation compared to those using other sources of supply. Consequently, it is considered that the interest of all the operators on the Community market requires the existence of effective trade competition and therefore the imposition of countervailing measures against subsidised imported PSF.

(219) In any event, the information available on the cost structure of the user industry, the level of the proposed measures and the share between subsidised imports and the other sources of supply indicate that:

— PSF may represent between 25 % and 45 % of the users' total cost of production of downstream products,

— the average countervailing duty is about 3 % for the countries concerned,

— the share of subsidised imports is 12 % of total consumption of PSF.

The proposed measures may have the impact of increasing the cost of production of users by between 0,1 % to a maximum of 0,16 %. This likely maximum increase is considered to be negligible when compared to the positive impact of the proposed measures in restoring effective competition on the Community market.

(220) Consequently, the conclusion of recital 172 of the provisional duty Regulation that the impact of the proposed measures on the users' profitability and survival on the market will be limited is hereby confirmed.

3. CONCLUSION

(221) The new arguments received regarding the determination of the Community interest, are not considered to be such as to reverse the conclusion that no compelling reasons exist against the imposition of countervailing measures. The provisional findings are therefore confirmed.

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G. **DEFINITIVE DUTIES**

(222) In view of the conclusions reached regarding subsidies, 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 industry by subsidised imports from Australia, Indonesia and Taiwan.

1. INJURY ELIMINATION LEVEL

(223) As explained in recital 179 of the provisional duty Regulation, a non-injurious level of prices was determined which would cover the Community industry's cost of production and a reasonable profit which would be obtained in the absence of subsidised imports from the countries concerned.

2. FORM AND LEVEL OF THE DUTY

(224) In accordance with Article 15(1) of the basic Regulation the countervailing duty rates correspond to the subsidy margins, as the injury margins are found to be higher for all exporters in the countries concerned.

(a) **Australia**

(225) This led to the following countervailing duty rates for the cooperating exporting producer in Australia:

Company	Export subsidy margin	Total subsidy margin	Proposed countervailing duty rate
Leading Synthetics	6,0 %	6,0 %	6,0 %
Other companies	6,0 %	6,0 %	6,0 %3

(226) Given the high level of cooperation, which covered virtually all imports of the product concerned originating in Australia, it was considered appropriate to establish the residual duty rate at the same rate as the highest rate that has been established for the cooperating company i.e. 6,0 %.

(b) **Indonesia**

(227) Given the high level of non-cooperation in Indonesia, which was determined to be above 30 %, it was considered appropriate to apply a method which avoided granting a bonus for non-cooperation. Accordingly, the duty rate for non-cooperating companies was established on the basis of the facts available in accordance with Article 28 of the basic Regulation, i.e. at 10 %.

Company	Export subsidy margin	Total subsidy margin	Proposed countervailing duty rate
PT. Indorama Synthetics TbK	1,4 %	1,4 %	0 %
PT. Panasia Indosyntec TbK	0 %	0 %	0 %
PT. Susila Indah Synthetic Fiber Industries	0 %	0 %	0 %
PT. GT Petrochem Industries TbK	0,4 %	0,4 %	0 %
PT. Teijin Indonesia Fiber Corporation	0,4 %	0,4 %	0 %
Other companies	5 %	10 %	10 %3

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(c) **Taiwan**

(228) It is recalled that anti-dumping measures are already in place with regard to imports of PSF originating in Taiwan. However, the subsidies found in this investigation are not export subsidies and are therefore considered not to have affected the export price and the corresponding dumping margin. Consequently, countervailing duties can be imposed in cumulation with the existing anti-dumping measures. Accordingly, this would lead to the following countervailing duty rates for the cooperating exporting producers in Taiwan:

Company	Export subsidy margin	Total subsidy margin	Proposed countervailing duty rate
Nan Ya Plastics Corp.	0 %	1,5 %	1,5 %
Far Eastern Textile Ltd	0 %	1,0 %	1,0 %
Shinkong Synthetic Fibres Corp.	0 %	0 %	0 %
Tuntex Distinct Corp.	0 %	0 %	0 %
Other companies	0 %	1,5 %	1,5 %3

(229) Given the high level of cooperation, which has covered virtually all imports into the Community of the product concerned originating in Taiwan, it was considered appropriate to establish the residual duty rate at the same rate as the highest rate that has been established for the cooperating companies i.e. 1,5 %.

(230) 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'.

(231) 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 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.

H. COLLECTION OF THE PROVISIONAL DUTY

(232) In view of the magnitude of the countervailing 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 123/2000 be definitively collected to the extent of the amount of definitive duties imposed,

[1] European Commission, Directorate-General for Trade, Directorate C, DM 24 — 8/38, Rue de la Loi/Wetstraat 200, B-1049 Brussels.

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HAS ADOPTED THIS REGULATION:

Article 1

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

2. The duty rate applicable to the net, free-at-Community-frontier, before duty, for products produced by the companies indicated shall be as follows for products originating in:

1. **Australia**

Company	Rate of duty (%)	TARIC additional code
Leading Synthetics Pty Ltd, Melbourne, Victoria	6,0	A059
All other Australian companies	6,0	A9993

2. **Indonesia**

Company	Rate of duty (%)	TARIC additional code
PT. Indorama Synthetics TbK Graha Irama, 17th floor Jl. H. R. Rasuna Said Blok X-1 Kav. 1-2 PO Box 3375 Jakarta 12950	0	A051
PT. Panasia Indosyntec TbK Jl. Garuda 153/74 Bandung 40184	0	A052
PT. Susilia Indah Synthetic Fiber Industries Jl. Kh. Zainul Arifin Kompleks Ketapang Indah Blok B 1 n. 23 Jakarta 11140	0	A054
PT. GT Petrochem Industries TbK Exim Melati Building, 9th floor Jl. M.H. Thamrin Kav. 8-9 Jakarta 10230	0	A053
PT. Teijin Indonesia Fiber Corporation TbK 5th floor Mid Plaza 1 Jl. Jend. Sudiman Kav. 10-11 Jakarta 10220	0	A055
All other companies	10	A9993

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

Article 2

1. ►M1 The amounts secured by way of the provisional countervailing duty on imports originating in Australia under Regulation (EC) No 123/2000 shall be collected at the rate of the duty definitively imposed by this Regulation. Amounts secured in excess of the rate of definitive countervailing duty shall be released. ◄

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2. The provisions referred to in Article 1(3) shall also apply to the definitive collection of the amounts secured by way of the provisional countervailing duties.

Article 3

This Regulation shall enter into force on the day following 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.