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COUNCIL REGULATION (EC) No 1467/2004

of 13 August 2004

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed

(OJ L 271, 19.8.2004, p. 1)

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Communities [1] (the basic Regulation), and in particular Article 9 thereof,

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

Whereas:

A. **PROCEDURE**

1. PROVISIONAL MEASURES

(1) On 19 February 2004, the Commission imposed, by Regulation (EC) No 306/2004 [2] (the provisional Regulation), a provisional anti-dumping duty on the imports into the Community of polyethylene terephthalate (PET) originating in Australia, the People's Republic of China and Pakistan (the countries concerned).

(2) It is recalled that the investigation period of dumping and injury (IP) covered the period from 1 April 2002 to 31 March 2003. The examination of trends relevant for the injury analysis covered the period from 1 January 1999 to the end of the IP (period considered).

2. PARALLEL INVESTIGATION PROCEDURE

(3) It is recalled that an interim review concerning imports of PET originating in the Republic of Korea and Taiwan was initiated by a notice published in the *Official Journal of the European Union* on 22 May 2003 [3].

3. SUBSEQUENT PROCEDURE

(4) Following the imposition of a provisional anti-dumping duty on imports of PET from the countries concerned, all parties received a disclosure of the facts and considerations on which the provisional Regulation was based. All parties were granted a period within which they could make representations in relation to these disclosures.

(5) Some interested parties submitted comments in writing. Those parties who so requested were also granted an opportunity to be heard orally. The Commission sought and verified all information it deemed necessary. The oral and written comments submitted by the parties were examined, and, where considered appropriate, the provisional findings were modified accordingly.

(6) The Commission services further disclosed all the essential facts and considerations on the basis of which it intended to

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[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
[2] OJ L 52, 21.2.2004, p. 5.
[3] OJ C 120, 22.5.2003, p. 13.

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recommend the imposition of a definitive anti-dumping duty and the definitive collection of amounts secured by way of the provisional duty. The interested parties were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, the proposal for a definitive anti-dumping duty has been modified accordingly.

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

(7) It is recalled that, in recital 14 of the provisional Regulation, the product concerned was defined as polyethylene terephthalate with a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, currently classifiable within CN Code 3907 60 20, and originating in the countries concerned.

(8) Moreover, in recital 18 of the provisional Regulation, it was stated that the Commission had found that PET produced by the Community industry and sold on the Community market as well as PET produced in the countries concerned and exported to the Community were like products, since no differences in the basic physical and chemical characteristics and Uses of the existing different types of PET had been found.

(9) In the absence of any comments regarding the definition of the product concerned and the like product, the contents and provisional conclusions of recitals 14 to 18 of the provisional Regulation are hereby confirmed.

C. **DUMPING**

1. GENERAL METHODOLOGY

(10) The general methodology used to establish whether the imports into the Community of the product concerned have been dumped was described in recitals 19 to 34 of the provisional Regulation.

1.1. **Normal value**

(11) In the absence of any comments, the provisional findings concerning normal value as set out in recitals 20 to 27 of the provisional Regulation are confirmed.

1.2. **Export price**

(12) Several companies argued that the exchange rates used by the Commission in making its provisional findings were incorrect, were not from a reliable public source and claimed that such exchange rates should rather come from an official verifiable source.

(13) These claims have been thoroughly investigated and after verification, it was found that there were some errors in the exchange rates applied by the Commission in making its provisional findings. Therefore, calculations have been revised on the basis of the monthly average exchange rates published by (i) the Commission for all conversions involving the euro (EUR); (ii) the Federal Reserve of the United States of America for all conversions between the USA dollar, the Chinese Yuan (CNY) and the Hong Kong dollar (HKD); and (iii) the Bank of China for conversions between HKD and CNY. All these exchange rates have been applied, as was the case for the provisional calculations, on the basis of the monthly average exchange rate applicable to the month in which the sales invoice was issued.

1.3. **Comparison**

(14) In the absence of any comments concerning the basis on which normal value and export prices were compared, recital 30 of the provisional Regulation is confirmed.

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1.4. **Dumping margin**

(15) In the absence of any comments, recitals 31 to 34 of the provisional Regulation concerning the methodology applied for the calculation of the dumping margin are confirmed.

2. AUSTRALIA

(16) Only one of the two cooperating exporting producers made submissions following the imposition of the provisional measures.

2.1. **Normal value**

(17) In the absence of any comments, the provisional findings concerning normal value, as set out in recital 36 of the provisional Regulation are confirmed.

2.2. **Export price**

(18) In the absence of any comments other than those already mentioned in the above recitals 12 and 13, the methodology explained in recital 37 of the provisional Regulation is confirmed.

2.3. **Comparison**

(19) One exporting producer claimed that different allowances regarding after-sales technical assistance and marketing expenses had not been taken account of by the Commission in making its provisional findings. The claim in regard to technical assistance was accepted after verification in accordance with Article 2(10)(h) of the basic Regulation. The claim regarding marketing expenses was accepted after verification in accordance with Article 2(10)(k) of the basic Regulation.

2.4. **Dumping margin**

(20) In the absence of any comments, the findings in recitals 39 to 41 of the provisional Regulation concerning the methodology applied for the calculation of the dumping margin, are hereby confirmed.

(21) The definitive dumping margins, expressed as a percentage of the cif import price at the Community border, are:

— Leading Synthetics Pty Ltd: 7,8 %

— Novapex Australia Pty Ltd: 15,9 %

— Residual dumping margin: 15,9 %

3. PAKISTAN

(22) The two cooperating exporting producers made submissions following the imposition of provisional measures in which they claimed that they should not have been regarded as two separate albeit related parties but rather, in view of their relationship as a unique exporting producer and that consequently, only one dumping calculation should be made.

(23) This request was thoroughly analysed on the basis of the arguments developed by these exporting producers subsequent to the provisional findings.

(24) It was found that the particular characteristics of the relationship between the companies concerned and the very close interlinks in their operation was such as to distinguish their position from the typical situation of two related companies. In particular, account was taken of the very significant financial and other links between the two exporting producers, the fact that they sell the product concerned under the same brand name, the fact that they share the same administrative premises and organisation as well as marketing division. Moreover, they share largely the same staff members and Directors and have a common production

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plan. The combination of all these elements is deemed sufficient to consider that under these particular circumstances the situation of the two exporting producers warrants that they be treated as a unique exporting producer in the Pakistani PET business rather than as two separate companies. Therefore, in view of all these elements, it was considered that the claim should be accepted.

3.1. **Normal value**

(25) In view of the above, the general methodology explained in recitals 20 to 34 of the provisional Regulation was applied for the unique exporting producer and the methodology explained in recitals 43 and 44 of the provisional Regulation has been revised.

(26) The Commission first established, for the unique exporting producer, whether its total domestic sales of the product concerned were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.

(27) The Commission subsequently identified those types of PET, sold domestically by the unique exporting producer that had overall representative domestic sales and that were identical or directly comparable to the types sold for export to the Community.

(28) For each type sold by the unique exporting producer on its domestic market and found to be directly comparable to the type of PET sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of PET were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable PET type exported to the Community.

(29) An examination was also made as to whether the domestic sales of each type of PET could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the PET type in question, in accordance with recitals 23 and 24 of the provisional Regulation.

(30) Wherever domestic prices of a particular type sold by the unique exporting producer could not be used, constructed normal value had to be used.

(31) Consequently, in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the weighted average manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit. To this end, the Commission examined whether the SG&A incurred and the profit realised by the unique exporting producer on the domestic market constituted reliable data.

(32) Actual domestic SG&A expenses were considered reliable when the total domestic sales volume of the unique exporting producer could be regarded as representative when compared to the volume of export sales to the Community. The domestic profit margin was determined on the basis of domestic sales of those types which were sold in the ordinary course of trade. For this purpose, the methodology set out in recital 23 of the provisional Regulation was applied.

(33) For two types of PET exported by the unique exporting producer, the Commission could establish normal value on the basis of the prices paid or payable in the ordinary course of trade by independent customers on the domestic market, in accordance with Article 2(1) of the basic Regulation. For the three PET

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types whose domestic sales were found to be not representative, constructed normal value was used, in accordance with Article 2 (3) of the basic Regulation.

3.2. **Export price**

(34) All sales of the product concerned made by the unique exporting producer on the Community market were made to independent customers in the Community. Consequently, the export price was established according to Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable.

3.3. **Comparison**

(35) In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. On this basis, allowances for differences in transport, insurance, handling charges, commissions, credit and other factors have been granted.

3.4. **Dumping margin**

(36) As provided by Article 2(11) of the basic Regulation, the weighted average normal value of each type of the product concerned exported to the Community by the unique exporting producer was compared to the weighted average export price of each corresponding type of the product concerned.

(37) The dumping margin, expressed as a percentage of the cif import price at the Community border, was reviewed in the light of the issues outlined above, and was found to be 1,6 % i.e. below the *de minimis* threshold as defined in Article 9(3) of the basic Regulation.

4. PEOPLE'S REPUBLIC OF CHINA (PRC)

4.1. **Market economy treatment (MET)**

(38) The four companies which were granted neither MET nor individual treatment (IT) made submissions where they reiterated the claims mentioned in recitals 57 to 73 of the provisional Regulation. However, none of them provided evidences which would lead to contradict the conclusions drawn in the provisional Regulation. Therefore, the decision not to grant MET to these four cooperating exporting producers and the findings set out in the abovementioned recitals of the provisional Regulation are confirmed.

(39) Following comments received, it was not possible to calculate an individual margin for one of the companies which was granted only IT, as its exports of the product concerned to the EU during the IP could not be considered to have been in commercially significant quantities. The other company which was granted only IT and whose claim for MET was rejected on the basis of non-compliance with criterion 2 specified in Article 2(7) (c) of the basic Regulation, also made submissions in which it repeated its claim for MET. However, no further evidence was submitted that was of a nature to contradict the conclusions drawn in the provisional Regulation. Consequently, the conclusion drawn in recital 68 of the provisional Regulation is confirmed for this company.

4.2. **Individual treatment**

(40) One of the four companies which were neither granted MET nor IT claimed that nevertheless, all conditions for the granting of IT were met. However, given that no new evidence was provided, the conclusions drawn in recital 76 of the provisional Regulation are confirmed and the claim is rejected.

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4.3. **Normal Value**

4.3.1. *Determination of normal value for all exporting producers not granted MET*

a) Analogue country

(41) The exporting producers have repeated their objection to the choice of the United States of America (USA) as the analogue country. The main reasons given were the difference in cultural and economic development, the difference in costs and the fact that countries such as Pakistan or the Republic of South Korea (Korea) would be much more appropriate than the USA.

(42) First of all, differences in terms of cultural development are considered irrelevant for the choice of an analogue country, because an analogue country is taken to reflect market economy conditions and not comparable cultural development levels.

(43) As regards the use of a country with different economic development, it should be mentioned that, by definition, a non-market-economy country or an economy in transition does not have the same economic characteristics as a market-economy country. It is not unusual that such difference in economic development exists between an analogue country and a non-market-economy country or an economy in transition. This, however, does not prevent the USA to be chosen as analogue country as long as it is deemed more appropriate.

(44) Regarding the difference in costs, it is recalled that no significant difference was found in the prices paid by producers in the USA and the PRC for the main raw material (PTA) which represents the most significant part of the cost of production of PET.

(45) Some exporting producers stressed the fact that while labour costs are higher in the USA than in the PRC, labour costs in Pakistan and Korea are more comparable to Chinese labour costs. In these circumstances, these producers considered that Pakistan or Korea would be a more appropriate analogue country than the USA.

(46) As mentioned in recital 43, a country with a different level of economic development may be chosen as analogue country for a non-market-economy country or an economy in transition. Similarly, labour costs which reflect the state of economic development of a country are not in isolation considered as a relevant criterion. In the present case, in view of the very small part that labour cost accounts for in the total cost of production (i.e. less than 3 % of the total cost of production) compared to the cost of PTA (more than 60 % of the total cost of production), this criterion was not considered sufficiently significant to choose Pakistan or Korea as analogue country instead of the USA. Moreover, in the light of the level of competition in the chosen analogue country and of the representativity of domestic sales to independent customers in the analogue country as compared to the Chinese exports of PET, Pakistan and Korea were deemed less appropriate than the USA, as explained in recitals 78 to 86 of the provisional Regulation. Therefore, the claim was rejected.

(47) In the absence of any other comments concerning the analogue country, the choice of the USA is confirmed.

b) Determination of normal value

(48) In the absence of any comments concerning the determination of normal value, the methodology described in recitals 87 and 88 of the provisional Regulation is confirmed.

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4.3.2. *Determination of normal value for exporting producers granted MET*

(49) Two exporting producers claimed that the Commission had double counted the amount of the duty drawback in the cost of production and substantiated their claim with supporting documents. On the basis of this new evidence, the claims were accepted for the two companies concerned and the calculation of the cost of production was corrected accordingly. One of these exporting producers also argued that some adjustments have been either omitted or not correctly applied. After verification, the claim was accepted with one exception relating to credit cost. For this latter, the methodology applied by the Commission at the provisional stage and explained in recitals 89 to 91 of the provisional Regulation is confirmed.

4.4. **Export prices**

(50) Two exporting producers contested the exchange rates used by the Commission. As already explained in recitals 12 and 13, this claim has been accepted.

4.5. **Comparison**

(51) In the absence of any comments concerning the basis on which normal value and export prices were compared and the adjustments made to ensure a fair comparison between the export prices and normal value, the provisional conclusion as contained in recital 93 of the provisional Regulation is confirmed.

4.6. **Dumping margin**

4.6.1. *For the cooperating exporting producers granted MET/IT*

(52) The dumping margins expressed as a percentage on the cif import price at the Community border, which were reviewed in the light of the issues outlined above, are now as follows:

Changzhou Worldbest Radici Co. Ltd	0 %
Far Eastern Industries Shanghai Ltd	2,6 %
Jiangyin Xingye Plastic Co. Ltd	18,4 %
Hubei Changfeng Chemical Fibres Industry Co. Ltd	18,5 %

4.6.2. *For all other exporting producers*

(53) One exporting producer claimed that the calculation of the anti-dumping duty for all cooperating exporting producers neither granted MET nor IT resulted in an individual duty for each of these companies. More particularly, this exporting producer argued that all cooperating exporting producers neither granted MET nor IT should pay the same amount of duty.

(54) At the provisional stage, these companies had the same dumping margin in percentage of the cif value. However, the calculation of the specific duty per tonne on the basis of the cif value of the imports of each of these companies led to different amounts of duty. In particular, specific duties of EUR 188 per tonne and EUR 191 per tonne have been established for two exporting producers respectively. The amount of the specific duty per tonne had been corrected for the calculation of the definitive duty as follows: the individual dumping margin for the cooperating exporting producers was calculated by comparing the weighted average normal value established for the analogue country and the weighted average export price reported by the exporting producers concerned. The average dumping margin

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was then calculated as a weighted average of the individual dumping margins established for the cooperating exporting producers which were neither granted MET nor IT. The specific duty per tonne has been calculated by applying this single dumping margin to the weighted average cif value per tonne established for these companies. If the methodology explained above had been applied at the provisional stage, the provisional specific duty per tonne for all exporting producers neither granted MET nor IT would have been EUR 183. Therefore, to the extent that the duties imposed by the provisional Regulation were higher than this amount, the difference should not be definitively collected.

(55) On this basis, the countrywide definitive level of dumping was established at 22,9 % of the cif Community frontier price.

D. **INJURY**

1. COMMUNITY PRODUCTION

(56) In the absence of any new information submitted, the basis for the calculation of the total Community production as set out in recitals 100 to 101 of the provisional Regulation is hereby confirmed.

2. DEFINITION OF THE COMMUNITY INDUSTRY

(57) In the absence of any new information submitted, the definition of the Community industry as set out in recital 102 of the provisional Regulation is hereby confirmed.

3. COMMUNITY CONSUMPTION

(58) In the absence of any new information submitted, the calculation of Community consumption as set out in recitals 103 to 106 of the provisional Regulation is hereby confirmed.

4. IMPORTS INTO THE COMMUNITY FROM THE COUNTRIES CONCERNED

4.1. **Cumulative assessment of the effects of the dumped imports concerned — market shares of dumped imports**

(59) As mentioned in recital 52, one of the exporting producers in the PRC was found not to have sold at dumped prices during the IP. Furthermore, and as mentioned in recital 37, the dumping margin found for the cooperating exporting producers in Pakistan was below the *de minimis* threshold. Consequently, the export volumes from these exporting producers should be decumulated from the total import volumes from the countries concerned. The evolution of dumped imports from the countries concerned, as given in recital 108 in the provisional Regulation, should therefore be the following:

	1999	2000	2001	2002	IP
PRC	144	20	9 000	86 788	117 953
Market share (%)	0 %	0 %	0,6 %	4,8 %	6,4 %
Australia	0	0	5 157	17 031	27 538
Market share (%)	0 %	0 %	0,5 %	0,9 %	1,5 %

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	1999	2000	2001	2002	IP
Total countries concerned	144	20	14 157	103 819	145 491
Market share (%)	0 %	0 %	1,1 %	5,7 %	7,9 %

(60) In the absence of any new information submitted, it follows from the data above that, even taking into account the decumulation of non-dumped imports, as explained in recital 59, the criteria of Article 3(4) of the basic Regulation are still met with regard to the cumulation of imports originating in the PRC and Australia. Therefore, the decumulation of the non-dumped imports does not affect the findings relating to the appropriateness of the cumulative assessment of the effects of the dumped imports concerned, as set out in the provisional Regulation, especially in the light of the fact that the level of undercutting found in the provisional Regulation corresponds to the level of undercutting found for those exporting producers that remain after decumulation of the non-dumped imports. Finally, the market share as regards dumped imports from Australia, as set out in recitals 107 to 111 of the provisional Regulation, is hereby confirmed.

(61) In the absence of any new information submitted in addition to the above, the findings relating to the cumulative assessment of the effects of the dumped imports concerned and the market share of these imports, as set out in recitals 107 to 111 of the provisional Regulation, are hereby confirmed.

4.2. **Prices of imports and undercutting**

(62) It is recalled that, in making its provisional findings, the Commission had, as set out in recitals 112 to 114 of the provisional Regulation, compared the ex-works prices of the Community industry with those of the exporting producers in the countries concerned at cif Community frontier level, taking into account customs duties, and with adjustments for handling costs and different levels of trade.

(63) On the basis of new cif Community frontier prices calculated for the exporting producers in Australia (see recital 21) and the PRC (see recital 52), and due to new exchange rates used (see recitals 12 to 13), new undercutting margins were calculated.

(64) The new margins by which imports of the products concerned originating in the countries concerned undercut the Community industry's average prices, expressed as a percentage of the latter, are the following:

— Australia: 9,5 % to 13,8 %,

— PRC: 10,49 % to 14,09 %.

(65) The differences in comparison with the level of undercutting for the exporting producers in Australia and the PRC, as presented in recital 113 of the provisional Regulation, are not considered to be significant. The conclusion drawn on the level of undercutting in the provisional Regulation is therefore confirmed.

(66) Some exporting producers argued that the adjustments made for handling costs and different levels for trade (1 %) were insufficient. According to these exporting producers, the adjustments made were not sufficient to cover the real costs incurred on importation of the goods.

(67) However, the adjustments were based on actual information collected during the investigation. In the absence of any new evidence that the level of adjustments made was incorrect, i.e. not based on facts collected, the arguments of these exporting producers are rejected. The level of adjustment made in the provisional Regulation is hereby confirmed.

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(68) In the absence of any information submitted in addition to the above, the findings in respect of prices of imports and undercutting as set out in recitals 112 to 114 of the provisional Regulation are confirmed.

5. SITUATION OF THE COMMUNITY INDUSTRY

(69) It is recalled that in recital 147 of the provisional Regulation, the Commission provisionally concluded that the Community industry had suffered material injury within the meaning of Article 3 of the basic Regulation.

(70) Many exporting producers questioned the interpretation of the figures relating to the situation of the Community industry as presented in recitals 117 to 144 of the provisional Regulation. They stated that the figures did not show any material injury. These exporting producers claimed that the figures instead showed a massive increase of production volumes, production capacity, sales volumes and average prices since the start of the period considered (1999), which should lead to the conclusion that the Community industry has not suffered material injury.

(71) The exporting producers also referred to the fact that consumption had increased by 37 % during the period considered (recital 106 of the provisional Regulation). They claimed that, if the Community industry under these advantageous circumstances could not obtain a level of efficiency, which could ensure a sustainable profit margin, even though being confronted with imports from third countries, the poor performance had to be attributed to factors within the Community industry itself rather that to competition from imports.

(72) It is noted that none of the exporting producers has questioned the figures relating to the situation of the Community industry as such, but rather their interpretation.

(73) When analysing the development of the Community industry's economic indicators between 1999 and the IP, one must bear in mind that the Community industry was in a seriously depressed state in 1999 with losses of 16,4 % due to dumped imports of the product concerned from India, Indonesia, Malaysia, Republic of Korea, Taiwan and Thailand.

(74) As stated in recital 129 of the provisional Regulation, anti-dumping duties were imposed on imports of the product concerned from India, Indonesia, Malaysia, Republic of Korea, Taiwan and Thailand in 2000 ([1]).

(75) Subsequent to the imposition of the anti-dumping measures in 2000, the Community market stabilised and the economic indicators for the Community industry improved as a result of the measures imposed. The Commission emphasised this particular development when, in recital 143 of the provisional Regulation, it concluded that by 2001 the Community industry had recovered from past dumping.

(76) In these circumstances, in order to measure the effects of dumped imports from the countries concerned, it is considered that the relevant economic indicators have to be particularly examined from the time when the Community industry had fully recovered from past dumping, which in this case was 2001. When examining the relevant economic factors from 2001, it emerges that, contrary to the above submissions, but as found already by the Commission in its provisional findings (recitals 135 and 146 of the provisional Regulation), the Community industry did show a significant decrease in profit, price depression and a significant loss in market share, especially from 2002 and during the IP.

([1]) Commission Regulation (EC) No 1742/2000 (OJ L 199, 5.8.2000, p. 48) and Council Regulation (EC) No 2604/2000 (OJ L 301, 30.11.2000, p. 21).

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(77) In the absence of any other information submitted in addition to the above, the findings in respect of the situation for the Community industry, as set out in recitals 117 to 144 of the provisional Regulation, are hereby confirmed.

6. CONCLUSION

(78) In view of the above, it is concluded that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

E. **CAUSATION**

1. EFFECT OF THE DUMPED IMPORTS

(79) It is recalled that in recitals 150 to 153 of the provisional Regulation, the Commission concluded that there was a causal link between dumped imports from the countries concerned and the material injury suffered by the Community industry.

(80) Since one of the exporting producers in the PRC was found not to have sold at dumped prices during the IP, and the dumping margin for the cooperating exporting producers in Pakistan was found to be below the *de minimis* threshold, the export volumes from these exporting producers should be decumulated from the effects of dumped imports.

(81) The exports to the Community by the Chinese exporting producer concerned represented less than 5 % of the imports volumes originating in the PRC during the IP (less than 1 % in terms of market share of Community consumption). The decumulation of the exports from this exporter is therefore considered to have a marginal effect on the causal link established in the investigation leading up to the provisional Regulation.

(82) The exports to the Community by the cooperating exporting producers in Pakistan represented 4 % in terms of market share of Community consumption in the IP, and were therefore considered to have been significant. Still, as compared to total imports from the countries concerned, the exports originating in Pakistan only represented 33,4 % of the total imports from the countries concerned, i.e. 66,7 % of the imports from the countries concerned were still found to have been sold at prices with a dumping margin above the *de minimis* threshold. It is therefore considered that a causal link still exists between dumped imports from Australia and the PRC and the material injury suffered by the Community industry.

(83) Some exporting producers claimed that there was a positive correlation between the Community industry's and the exporting producers' prices, in that increases and decreases occurred simultaneously. According to these exporting producers, this showed that the price decreases suffered during the last two years by the Community industry were not due to competition from dumped imports but rather adjustments to changes in the costs for raw materials.

(84) It is recalled that approximately two thirds of the cost of production consists of raw materials (see recital 162 in the provisional Regulation). In this context, as both the exporting producers and the Community industry rely on the same raw material, it is considered that the question whether or not prices react simultaneously to changes in the underlying cost structure is not considered relevant in isolation. In any event, as will be shown below, an analysis of the actual prices does not confirm that there was a positive correlation.

(85) Recitals 162 to 172 of the provisional Regulation set out in detail an analysis of the possible contribution of the cost of raw materials to the injury suffered by the Community industry. It should furthermore be noted that, an analysis of the prices of dumped imports from the countries concerned after 2001 when

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the Community industry had recovered from past dumping shows the following:

— prices of imports of the product concerned originating in Australia decreased from EUR 868/tonne in 2002 to EUR 838/tonne during the IP, or by – 3,4 %,

— prices of imports of the product concerned originating in the PRC increased from EUR 788/tonne in 2002 to EUR 825/tonne during the IP, or by + 4,5 %.

(86) Whereas the increase in the price of imports from the PRC (+ 4,5 %) coincides with the price development over the same period for the main raw material, PTA (+ 5,1 % (see recital 168 in the provisional Regulation)), the prices of imports originating in Australia decreased over the same period. The Community industry's prices increased by less than 1 % during this period. Therefore, it cannot be concluded that there was a positive correlation between the Community industry's and the exporting producers' prices, as the price development from the three countries is not coherent. In this context, it should also be recalled that the Commission had found a significant undercutting of the Community industry's sales prices by all exporting producers in the course of the investigation.

(87) In the absence of any information submitted in addition to the above, the conclusion drawn in respect of the effects of dumped imports in recitals 150 to 153 of the provisional Regulation is hereby confirmed. However, it is to be noted that the exports by one exporting producer in the PRC whose exports were found to be dumped in the provisional Regulation, have been found not to sell at dumped prices. Furthermore, the dumping margin of the cooperating exporting producers in Pakistan whose exports were found to be dumped in the provisional Regulation was found to be below the *de minimis* threshold. The effect of these exports should therefore no longer be assessed under the effect of dumped imports but under the effect of other factors.

2. EFFECT OF OTHER FACTORS

(88) Since one of the exporting producers in the PRC was found not to have sold at dumped prices during the IP, and the dumping margin for the cooperating exporting producers in Pakistan was found to be below the *de minimis* threshold, the export volumes from these exporting producers should be decumulated from the total volume of dumped imports. However, the prices of these exporting producers were found to significantly undercut the Community industry's average sales prices. As mentioned in recitals 81 and 82, the non-dumped volumes of imports from the countries concerned represented between 4 % and 5 % of Community consumption. It can therefore not be excluded that the exports to the Community by this exporting producer in the PRC and the cooperating exporting producers in Pakistan also have significantly contributed to the material injury suffered by the Community industry.

(89) Some exporters claimed that the Commission had not sufficiently investigated the effect of the depreciation of the USD and RMB against the EUR. These exporters claimed that, due to the depreciation of the USD and the RMB against the EUR during the IP, the exporters had gained market shares in the Community by keeping their prices in USD, which effectively entailed a reduction in the price expressed in EUR. Based on the foregoing, the exporting producers expressed doubts whether the material injury suffered by the Community industry had been caused by dumped imports or by imports at prices which were lower due to the currency effect.

(90) Currency fluctuations in isolation are normally not taken into account in an anti-dumping investigation as they can not be considered to be of a lasting nature. Nevertheless, the effects of currency fluctuations are, in effect, included in the analysis

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insofar they had an effect on the cost of raw materials consumed by the Community industry (recitals 162 to 173 in the provisional Regulation) and on the price of dumped imports (recitals 150 to 153 in the provisional Regulation).

(91) It is recalled that significant levels of dumping have been found from exporters in Australia and the PRC during the investigation (see recitals 21 and 52). Moreover, it is also recalled that exporting producers from Australia and the PRC have been found to undercut the prices of the Community industry by significant amounts (see recital 64).

(92) It cannot be excluded that non-dumped imports originating in the PRC and imports originating from the cooperating exporting producers in Pakistan, whose dumping margin was found to be below the *de minimis* threshold, could contribute to the injury suffered by the Community industry. This effect, however, is not such as to break the causal link established in the provisional Regulation between dumped imports in the countries concerned and the material injury suffered by the Community industry. Therefore, in the absence of any new information submitted, the conclusions drawn in respect of the effect of dumped imports in recitals 150 to 153 and in respect of the effect of other factors in recitals 154 to 178 of the provisional Regulation are hereby confirmed.

F. **COMMUNITY INTEREST**

1. INTEREST OF THE COMMUNITY INDUSTRY

(93) In the absence of any information submitted with respect of the interest of the Community industry, the findings as set out in recitals 183 to 184 of the provisional Regulation are hereby confirmed.

2. INTEREST OF UNRELATED IMPORTERS

(94) One submission from an unrelated importer was received. In addition, a hearing with another importer (agent) was also held. The arguments of the first importer coincided with those of the exporting producers and have been discussed in recital 70. The arguments of the second importer (agent) are discussed under recital 102, as they coincide with the arguments of two mineral water producers.

(95) In the absence of any further information submitted with respect of the interest of the unrelated importers, the findings as set out in recitals 185 to 187 of the provisional Regulation are hereby confirmed.

3. INTEREST OF SUPPLIERS

(96) In the absence of any information submitted with respect of the interest of the Community suppliers, the findings as set out in recitals 188 to 189 of the provisional Regulation are hereby confirmed.

4. INTEREST OF USERS

4.1. **Preliminary remarks**

(97) The manner in which Community consumption of the product concerned was distributed between various types of users was explained under the heading ‘Preliminary remarks’ in recitals 190 to 192 of the provisional Regulation. In the absence of any new information, this description is hereby confirmed.

4.2. **Preform/bottle converters**

(98) It is recalled that the Commission in its provisional findings (recital 196 of the provisional Regulation) could not establish

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whether it would be in the interest of the preform/bottle converters to impose anti-dumping duties. This conclusion was based on the fact that, whereas two cooperating preform/bottle converters supported the introduction of anti-dumping measures, the Association of Plastic Converters opposed it.

(99) Subsequent to the imposition of provisional anti-dumping measures, no new submissions, nor a request for a hearing, were made by the Association of Plastic Converters. On this basis, it cannot be concluded that the interests of the preform/bottle converters would constitute a compelling reason against the imposition of anti-dumping measures. The findings as set out in recitals 193 to 195 of the provisional Regulation are therefore confirmed.

4.3. **The mineral and spring water producers**

(100) After disclosure of the basis upon which provisional measures were imposed, a clerical error has been rectified by including *L'Européenne d'embouteillage* on the list of cooperating users. This user opposed the introduction of provisional measures. Consequently, there were two rather than one mineral and spring water producers opposing the imposition of anti-dumping duties, while two others remained in favour.

(101) It is recalled that in the investigation leading up to provisional duties, the Commission had concluded the following as regards filled mineral water bottles:

— the cost of PET for mineral and spring water producers represented approximately 30 % of their manufacturing costs (see recital 198 in the provisional Regulation),

— the cost of PET at the level of the end-consumer only represented 3 cents, or 6-10 % of the retail price (see recital 199 in the provisional Regulation),

— a 10 % increase in the price of PET would entail a possible maximum price increase of 0,6 % to 1 % at the level of end-consumer if all the costs are passed on. This increase was not considered significant in the provisional Regulation because it could either be absorbed by the downstream industry or passed on to retailers or end-consumers (see recital 202 of the provisional Regulation).

(102) Subsequent to the disclosure of the provisional findings, two mineral and spring water producers and one importer (the group) made a joint submission. The group claimed that:

— the interest of the small and medium-sized preform/ bottle converters had not been duly taken into account. They claimed that the price increases resulting from the imposition of measures could not be passed on to soft drink producers but had to be absorbed by preform/bottle converters, which would negatively affect the financial stability for small and medium-sized preform/bottle converters,

— the Commission had overstated the retail price for a bottle of mineral water in the provisional Regulation, thereby underestimating how significant the cost of PET is for a bottle of mineral water. Rather than 6-10 % of the retail price, as the Commission indicated, the group claimed that the cost of PET was around 20 % of the retail price. Hence, the group claimed that the Commission had underestimated the impact that increases of the costs for PET had on the downstream industry,

— the risk for outsourcing from the European Community had not sufficiently been considered.

(103) Concerning the group's claim that price increases on PET could not be passed on to the next level of users (i.e. to retailers, end-consumers and, in the case of preform/ bottle converters, to soft drink producers), this claim was not substantiated. In addition, no

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retailers nor any consumer organisations have made themselves known during the investigation. This argument is therefore rejected.

(104) Concerning the alleged overstatement of the retail price by the Commission in the provisional Regulation (which would entail an underestimation of the effects that increases of PET had on the downstream industry), the retail prices have been re-investigated. However, they were found to be in the range presented in the provisional Regulation. This argument is therefore rejected.

(105) As concerns the risk of outsourcing, it is recalled that health regulations in respect of the bottling of mineral water require that preform bottles should be in principle produced at the place at which they are filled. Accordingly, preforms used by water producers are self-produced close to the blowing and filling lines. Hence, the risk for any outsourcing of preform/bottling capacity would be limited to the case of preforms for soft drinks producers, which account for only about 40 % of the total consumption of the product concerned. Furthermore, as noted in recital 99, it cannot be concluded that the interests of the preform/bottle converters would constitute a compelling reason against the imposition of anti-dumping measures. In these circumstances, the group's argument concerning the alleged risk for outsourcing of bottling/converting capacity is rejected.

(106) In the absence of any new information submitted in addition to the above, the findings as set out in recitals 197 to 202 of the provisional Regulation are hereby confirmed.

4.4. **The soft drink producers**

(107) In the absence of any new information submitted with respect of the interest of the soft drink producers, the findings as set out in recitals 203 to 206 of the provisional Regulation are hereby confirmed.

4.5. **Shortages of PET in the Community market**

(108) In the absence of any new information submitted with respect of the claimed shortages of PET in the Community market, the findings as set out in recitals 207 to 209 of the provisional Regulation are hereby confirmed.

5. CONCLUSION ON COMMUNITY INTEREST

(109) In view of the conclusions drawn in the provisional Regulation and taking into account the submissions made by the various parties, it is concluded that there are no compelling reasons not to impose definitive anti-dumping measures against dumped imports of PET originating in the countries concerned.

G. **DEFINITIVE ANTI-DUMPING MEASURES**

(110) Based on the methodology explained in recitals 212 to 215 of the provisional Regulation, an injury elimination level was calculated for the purposes of establishing the level of measures to be imposed.

(111) When calculating the injury margin in the provisional Regulation, the target profit for the Community industry was set at 7 %, a level which originated from the investigation leading to the imposition of anti-dumping measures on imports of the product concerned originating in, *inter alia*, India in 2000. It was, at that time, based on an estimate on the level of profit that the Community industry could expect in the absence of dumping and a level which was considered necessary to ensure the viability of the industry.

(112) However, in the present investigation, it was found, based on evidence, that a profit level of 7,6 % could be achieved in the absence of dumping. Hence, it is considered that a target profit

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of 7,6 % is more appropriate when calculating the injury margin rather than 7 % used in the provisional Regulation.

(113) In the absence of any new comments on this subject, other than to the amendment above, the methodology set out in recitals 212 to 215 of the provisional Regulation is hereby confirmed.

1. DEFINITIVE MEASURES

(114) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margin calculated, since they were in all cases lower than the injury margins.

(115) On the basis of the above, the definitive duties should be as follows:

Country	Company	Injury elimination margin	Dumping margin	Anti-dumping duty rate	Proposed anti-dumping duty
Australia	Leading Synthetics Pty Ltd	19,8 %	7,8 %	7,8 %	EUR 66/t
	Novapex Australia Pty Ltd	26,3 %	15,9 %	15,9 %	EUR 128/t
	All other companies	26,3 %	15,9 %	15,9 %	EUR 128/t
PRC	Sinopec Yizheng Chemical Fibre Company Ltd	27,3 %	22,9 %	22,9 %	EUR 184/t
	Changzhou Worldbest Radici Co. Ltd	27,1 %	0 %	0 %	EUR 0/t
	Jiangyin Xingye Plastic Co. Ltd	20,9 %	18,4 %	18,4 %	EUR 157/t
	Far Eastern Industries Shanghai Ltd	21,2 %	2,6 %	2,6 %	EUR 22/t
	Yuhua Polyester Co. Ltd. of Zhuhai	27,3 %	22,9 %	22,9 %	EUR 184/t
	Guangdong Kaiping Polyester Enterprises Group Co. and Guangdong Kaiping Chunhui Co. Ltd	27,3 %	22,9 %	22,9 %	EUR 184/t
	Yibin Wuliangye Group Push Co. Ltd. (Sichuan) and Yibin Wuliangye Group Import & Export Co. Ltd (Sichuan)	27,3 %	22,9 %	22,9 %	EUR 184/t
	Hubei Changfeng Chemical Fibres Industry Co. Ltd	26,2 %	18,5 %	18,5 %	EUR 151/t
	All other companies	27,3 %	22,9 %	22,9 %	EUR 184/t
Pakistan	Gatron (Industries) Ltd	22,1 %	0 %	0 %	EUR 0/t
	Novatex Ltd	22,1 %	0 %	0 %	EUR 0/t
	All other companies	22,1 %	0 %	0 %	EUR 0/t

(116) The individual anti-dumping 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

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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 specifically mentioned. Imported products produced by any other company not specifically mentioned by its name and address in the operative part of this Regulation, 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'.

(117) Any claim requesting the application of these individual anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.

(118) As mentioned in recital 162 in the provisional Regulation, PET prices can and do fluctuate in line with fluctuations in crude oil prices, but this should not of itself entail a higher duty. It was therefore considered appropriate to impose duties in the form of a specific amount per tonne. These amounts result from the application of the anti-dumping duty rate to the cif export prices Used for the calculation of the injury elimination level.

2. UNDERTAKINGS

(119) Subsequent to the adoption of provisional anti-dumping measures, one cooperating exporting producer in Australia offered a price undertaking in accordance with Article 8(1) of the basic Regulation. In this undertaking, the exporting producer in question has offered to sell the product concerned at or above price levels that eliminate the injurious effect of dumping.

(120) The Commission, by Decision 2004/600/EC [2] accepted the undertaking offered by the exporting producer concerned. The reasons for accepting this undertaking are set out in that Decision.

3. COLLECTION OF PROVISIONAL DUTIES

(121) In view of the magnitude of the dumping margins found and in the light of the level of the material injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by Regulation (EC) No 306/2004, should be collected at the rate of the duty definitely imposed. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, classified under CN code 3907 60 20 and originating in Australia, the People's Republic of China and Pakistan.

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[1] European Commission
Directorate-General for Trade
Direction B
Office J-79 5/16
B-1049 Brussels.

[2] See page 38 of this Official Journal.

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2. The rate of the definitive anti-dumping duty applicable to the net free-at-Community-frontier price for products manufactured by the companies listed below shall be as follows:

Country	Company	Anti-dumping duty (EUR/t)	TARIC additional code
Australia	Leading Synthetics Pty Ltd	66	A503
	Novapex Australia Pty Ltd	128	A504
	All other companies	128	A999
PRC	Sinopec Yizheng Chemical Fibre Company Ltd	184	A505
	Changzhou Worldbest Radici Co. Ltd	0	A506
	Jiangyin Xingye Plastic Co. Ltd	157	A507
	Far Eastern Industries Shanghai Ltd	22	A508
	Yuhua Polyester Co. Ltd. of Zhuhai	184	A509
▼M1 Jiangyin Chengsheng New Packing Material Co., Ltd		45	A510
▼B Guangdong Kaiping Polyester Enterprises Group Co. and Guangdong Kaiping Chunhui Co. Ltd		184	A511
Yibin Wuliangye Group Push Co. Ltd (Sichuan) and Yibin Wuliangye Group Import & Export Co. Ltd (Sichuan)		184	A512
Hubei Changfeng Chemical Fibres Industry Co. Ltd		151	A513
All other companies		184	A999
Pakistan	Gatron (Industries) Ltd	0	A514
	Novatex Ltd	0	A515
	All other companies	0	A999

3. The application of the individual duty rates specified for the 16 companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex 1. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

4. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Common Customs Code ([1]) the amount of anti-dumping duty, calculated on the basis of

([1]) OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2286/2003 (OJ L 343, 31.12.2003, p. 1).

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paragraph 2, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

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

Article 2

Imports declared for release into free circulation by companies which offered undertakings accepted by and named in Commission Decision 2004/600/EC shall be exempt from the anti-dumping duties imposed by Article 1, provided that they are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Community; and provided that such imports are accompanied by a commercial invoice containing at least the elements listed in Annex 2. Exemption from the duty shall further be conditional on the goods declared and presented to customs corresponding precisely to the description on the commercial invoice.

Article 3

Amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EC) No 306/2004 on imports of polyethylene terephthalate falling within CN Code 3907 60 20 originating in Australia, the People's Republic of China and Pakistan shall be definitively collected at the rate definitively imposed by the present Regulation. The amounts secured in excess of the definitive rate of anti-dumping duties shall be released.

A correction of the provisional anti-dumping duty imposed on imports of polyethylene terephthalate falling within CN Code 3907 60 20 originating in the People's Republic of China shall apply for the following companies, since the corrected duty would have been lower than the provisional duty imposed:

Country	Company	Provisional anti-dumping duty as imposed by Regulation (EC) No 306/2004 (EUR/t)	Corrected provisional anti-dumping duty	TARIC additional code
PRC	Yuhua Polyester Co. Ltd of Zhuhai	188	183	A509
	Guangdong Kaiping Polyester Enterprises Group Co. and Guangdong Kaiping Chunhui Co. Ltd	191	183	A511

The provisional anti-dumping duty imposed on these companies shall only be definitively collected at the rate of the corrected provisional anti-dumping duty.

Article 4

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

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

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ANNEX I

The valid commercial invoice referred to in Article 1(3) of this Regulation must include a declaration signed by an officer of the company, in the following format:

1. the name and function of the official of the company which has issued the commercial invoice;

2. the following declaration:

   'I, the undersigned, certify that the [volume] of polyethylene terephthalate sold for export to the European Community covered by this invoice was manufactured by [company name and address] [TARIC additional code] in [country]; I declare that the information provided in this invoice is complete and correct.';

3. Date and signature.

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ANNEX 2

Elements to be indicated on the commercial invoice referred to in Article 2

The following elements shall be indicated in the commercial invoice accompanying sales of the product concerned, which are subject to an undertaking and for which an exemption to the anti-dumping duty is claimed:

1. the heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING';
2. the name of the company referred to in Article 2, issuing the commercial invoice;
3. the commercial invoice number;
4. the date of issue of the commercial invoice;
5. the TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier;
6. the exact description of the goods, including:
   - — the product code number (PCN),
   - — CN code,
   - — quantity (in tonnes);
7. the description of the terms of the sale, including:
   - — price per tonne,
   - — the applicable payment terms,
   - — the applicable delivery terms,
   - — total discounts and rebates;
8. the name of the company acting as an importer to which the invoice is issued directly by the company;
9. the name of the official of the company that has issued the commercial invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company name and address], [TARIC additional code], and accepted by the European Commission through Decision 2004/600/EC. I declare that the information provided in this invoice is complete and correct.'