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COUNCIL REGULATION (EC) No 192/2007

of 22 February 2007

imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, the Republic of Korea, Thailand and Taiwan following an expiry review and a partial interim review pursuant to Article 11(2) and Article 11(3) of Regulation (EC) No 384/96

(OJ L 59, 27.2.2007, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EC) No 1286/2008 of 16 December 2008	L 340	1	19.12.2008
►**M2**	Council Implementing Regulation (EU) No 906/2011 of 2 September 2011	L 232	19	9.9.2011
►**M3**	Council Implementing Regulation (EU) No 295/2013 of 21 March 2013	L 90	1	28.3.2013
►**M4**	Council Implementing Regulation (EU) No 465/2013 of 16 May 2013	L 135	1	22.5.2013

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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 Community ([1]) ('the basic Regulation'), and in particular Articles 11(2) and 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) On 27 November 2000, the Council imposed, by Regulation (EC) No 2604/2000 ([2]), definitive anti-dumping duties on imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand (the countries concerned). The measures imposed had been based on an anti-dumping investigation (the original investigation) initiated pursuant to Article 5 of the basic Regulation.

(2) On 13 August 2004, the Council imposed, by Regulation (EC) No 1467/2004 ([3]), definitive anti-dumping duties on imports of certain PET originating in Australia and the People's Republic of China (PRC) and terminated the proceeding on imports of PET originating in Pakistan.

(3) The amendments made to Regulation (EC) No 2604/2000 were the results of either review investigations initiated pursuant to Article 11(3) and (4) of the basic Regulation or of price undertakings being accepted under Article 8(1) thereof.

([1]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
([2]) OJ L 301, 30.11.2000, p. 21. Regulation as last amended by Regulation (EC) No 1646/2005 (OJ L 266, 11.10.2005, p. 10).
([3]) OJ L 271, 19.8.2004, p. 1. Regulation as amended by Regulation (EC) No 2167/2005 (OJ L 345, 28.12.2005, p. 11).

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2. **Request for reviews**

(4) Following the publication of a notice of impending expiry ([1]), the Commission, on 30 August 2005, received a request to review the measures in force pursuant to Article 11(2) of the basic Regulation (expiry review), and to partially review the measures imposed on imports from Taiwan and on imports from three exporting producers in the Republic of Korea pursuant to Article 11(3) of the basic Regulation (partial interim review).

(5) The request was lodged by the Polyethylene Terephthalate Committee of Plastics Europe (the applicant) on behalf of producers representing a major proportion, in this case more than 90 %, of total Community production of PET.

(6) The request for the expiry review was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.

(7) The request for the partial interim review of the measures on imports from Taiwan and imports originating from three exporting producers in the Republic of Korea (Daehan Synthetic Fiber Co. Ltd, SK Chemicals Co. Ltd and KP Chemical Corp.) was based on the grounds that the level of the measures was not sufficient to counteract the injurious dumping.

(8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of the two reviews, pursuant to Articles 11(2) and 11(3) of the basic Regulation respectively, the Commission initiated these reviews on 1 December 2005 ([2]).

(9) A Notice regarding the scope of the interim review was published in the Official Journal on 2 June 2006 ([3]) making clear that the scope of the partial interim review also included all related companies.

3. **Parallel investigation**

(10) On 1 December 2005, the Commission also initiated a review pursuant to Article 18 of Council Regulation (EC) No 2026/97 ([4]) on the countervailing measures in force on imports of PET originating in India.

([1]) OJ C 52, 2.3.2005, p. 2.
([2]) OJ C 304, 1.12.2005, p. 9.
([3]) OJ C 129, 2.6.2006, p. 23.
([4]) OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

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4. **Parties concerned by the investigation**

(11) The Commission officially advised the exporting producers, the representatives of the exporting countries, importers, Community producers, users and the applicant of the initiation of the expiry review and the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(12) In view of the apparent large number of Indian, Indonesian, Korean and Taiwanese exporting producers as well as Community producers and importers listed in the request for the expiry review and the number of Taiwanese exporting producers listed in the request for the interim review, it was considered appropriate, in conformity with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the parties were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the reviews and to provide the Commission with the information requested in the notice of initiation.

(13) After examination of the information submitted, given the low number of exporting producers in India, Indonesia, the Republic of Korea and Taiwan indicating their willingness to cooperate, it was decided that sampling was not necessary as regards exporting producers in these four countries.

(14) Having examined the information submitted by Community producers and importers, and considering that their number was not excessive, it was decided to include all of them and that sampling was not necessary.

(15) Questionnaires were therefore sent to all known exporting producers in the countries concerned, importers, suppliers, Community producers and users.

(16) Replies to the questionnaires were received from:

— three exporting producers in India,

— three exporting producers in Indonesia (although only two of these decided to accept a verification visit),

— two exporting producers in Malaysia,

— four exporting producers in the Republic of Korea,

— three exporting producers in Taiwan (although only two of these decided to accept a verification visit),

— one exporting producer in Thailand,

— two suppliers in the Community,

— 12 Community producers,

— 10 converters/users.

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It was also found that one non-cooperating Indonesian exporting producer had changed its name since the publication of the measures in force. This concerned P.T. Bakrie Kasei Corp. to P.T. Mitsubishi Chemical Indonesia.

(17) The Commission sought and verified all the information it deemed necessary for its analysis and carried out verification visits at the premises of the following companies:

(a) India

Exporting producers

— Pearl Engineering Polymers Ltd, Delhi,

— SENPET, formerly Elque Polyesters Ltd, Calcutta,

— Futura Polyesters Ltd, Chennai;

Related exporter

— Plastosen Ltd, Calcutta, (related to SENPET, formerly Elque Polyesters Ltd);

(b) Indonesia

Exporting producers

— P.T. Polypet Karyapersada, Jakarta,

— P.T. Petnesia Resindo, Tangerang;

(c) Malaysia

Exporting producers

— MPI Polyester Industries Sdn. Bhd., Selangor,

— Hualon Corporation (M) Sdn. Bhd. Kuala Lumpur;

(d) Republic of Korea

Exporting producers

— SK Chemicals Co. Ltd, Seoul,

— Huvis Corp., Seoul (related to SK Chemicals Co Ltd),

— KP Chemicals Corp., Seoul,

— Honam Petrochemicals Corp., Seoul (related to KP Chemicals Co Ltd);

Related traders/importers located in the Republic of Korea

— SK Networks Ltd, Seoul (related to SK Chemicals Co Ltd),

— Lotte Trading Ltd, Seoul, Republic of Korea (related to KP Chemicals Co Ltd),

— Lotte Daesan Ltd, Seoul, Republic of Korea (related to KP Chemicals Co Ltd);

Related traders/importers located in the Community

— SK Networks Deutschland GmbH, Frankfurt/Main, Germany (related to SK Chemicals Co Ltd),

— SK Eurochem, Warsaw, Poland (related to SK Chemicals Co Ltd);

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(e) Taiwan

Exporting producers

— Shinkong Synthetic Fibers Corporation, Taipei,

— Far Eastern Textile Ltd, Taipei;

(f) Thailand

Exporting producer

— Bangkok Polyester Public company Ltd, Bangkok, Thailand;

(g) Community producers

— Voridian BV (The Netherlands),

— M & G Polimeri Italia Spa (Italy),

— Equipolymers Srl (Italy),

— La Seda de Barcelona SA (Spain),

— Novapet SA (Spain),

— Selenis Industria de Polímeros SA (Portugal),

— Selenis Itália Spa (Italy);

(h) Community Suppliers

— Interquisa SA (Spain);

(i) Unrelated importers in the Community

— Global Service International SRL (Italy);

(j) Community users

— Coca Cola Enterprises Europe Ltd (Belgium).

(18) The investigation of the likelihood of continuation and/or recurrence of dumping and injury for the expiry review covered the period from 1 October 2004 to 30 September 2005 (RIP). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2002 up to the end of the RIP (period considered). The investigation period for the partial interim review pursuant to Article 11(3) of the basic Regulation concerning imports from Taiwan and from three exporting producers in the Republic of Korea is the same as that of the expiry review.

B. **PRODUCT CONCERNED**

1. **Product concerned**

(19) The product concerned is the same as in the original investigation i.e. PET with a coefficient of viscosity of 78 ml/g or higher, according to the ISO Standard 1628-5 originating in the countries concerned. It is currently classifiable within CN code 3907 60 20.

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2. **Like product**

(20) As in the original investigation and the review investigation, it was found that the product concerned, PET produced and sold on the domestic markets in the countries concerned and PET produced and sold by the Community producers have the same basic physical and chemical characteristics and uses. Therefore, these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. **LIKELIHOOD OF A CONTINUATION AND/OR RECURRENCE OF DUMPING**

1. **Dumping of imports during the investigation period — General principles**

(21) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was currently taking place and whether or not the expiry of the measures would be likely to lead to a continuation of dumping.

General methodology

(22) The general methodology set out below has been applied to all exporting producers in the countries concerned and is the same as in the original investigation. The presentation of the findings of dumping for each of the countries concerned therefore only describes what is specific for each exporting country.

Normal value

(23) For the determination of normal value, it was first established, for each 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.

(24) Subsequently, those types of the product concerned sold domestically by the exporting producers having overall representative domestic sales, and that were identical or directly comparable to the types sold for export to the Community, were identified.

(25) For each type sold by the exporting producers on their domestic markets and found to be directly comparable with the types 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 RIP represented 5 % or more of the total sales volume of the comparable PET type exported to the Community.

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(26) An examination was also made whether the domestic sales of each type of PET could be regarded as having been made in the ordinary course of trade, pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each exporting producer in the countries concerned, the proportion of profitable sales to independent customers on the domestic market, of each exported type of the product concerned on the domestic market during the investigation period.

(a) For those product types where more than 80 %, by volume, of sales on the domestic market were not below unit costs, i.e. where the average sales price of the product type concerned was equal to or higher than the average production cost for the product type concerned, normal value was calculated as the average price of all domestic sales of the product type in question irrespective of whether these sales were profitable or not.

(b) For those product types where at least 10 % but no more than 80 %, by volume, of sales on the domestic market were not below unit costs, normal value was calculated as the weighted average sales price of those transactions which were made at or above unit costs of the type in question.

(c) For those product types where less than 10 %, by volume, was sold on the domestic market at a price not below unit cost, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore, normal value had to be constructed in accordance with Article 2(3) of the basic Regulation.

(27) In the cases where normal values had to be constructed, they were constructed in accordance with Article 2(6) of the basic Regulation, i.e. on the basis of the manufacturing cost of the type concerned, to which was added an amount of selling, general and administrative (SG&A) expenses and a margin of profit. The amount of SG&A was that incurred by the exporting producer for the like product and the amount of profit equated to the average profit realised by the exporting producer on sales of the like product in the ordinary course of trade.

Export price

(28) In all cases where the product concerned was exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

(29) In cases where sales were made via a related importer or trader, the export price was constructed on the basis of the resale prices of that related importer to independent customers. Adjustments were made for all costs incurred between importation and resale including sales, general and administrative expenses, and a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation. The appropriate profit margin was established on the basis of information provided by unrelated cooperating traders/importers operating on the Community market.

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Comparison

(30) The normal value and export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting the price and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by evidence.

Dumping margin

(31) In accordance with Article 2(11) and (12) of the basic Regulation, a dumping margin was calculated for each cooperating exporting producer, by comparing the weighted average normal value with the weighted average export price.

(32) For those countries where the level of cooperation was found to be high (above 80 % of all volumes imported to the Community during the RIP), and where there was no reason to believe that any exporting producer abstained from cooperating, the residual dumping margin was set at the level of the cooperating exporting producer with the highest dumping margin in order to ensure the effectiveness of the measures.

(33) For those countries where the level of cooperation was found to be low (less than 80 % of all volumes imported to the Community during the RIP), the residual dumping margin was determined in accordance with Article 18 of the basic Regulation, i.e. on the basis of facts available.

2. **Dumping of imports during the investigation period — Country specific findings**

India

Preliminary remarks

(34) Three out of five known exporting producers cooperated with the investigation. The two non-cooperating companies account for more than 80 % of India's total PET production and around 25 % of India's exports to the Community. The share of Indian exports to the Community in relation to Community consumption amounted to 0,3 % in the RIP. Two of the three cooperating exporters hold price undertakings with respect to their PET exports to the Community, which were concluded pursuant to the original investigation.

(35) With regards to two cooperating companies it was found that their Community export prices were in compliance with the minimum prices set by the undertakings. These prices clearly exceeded the ones charged for sales to third countries' markets. The latter sales were made in much larger quantities than Community exports. This indicates that the prices charged to Community customers do not reflect the normal pricing behaviour of the Indian price undertaking holders.

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Dumping margin

(36) With respect to exports to the Community, the dumping margins of the three cooperating exporting producers were found to be in a range between no dumping and 17 %. It should be noted that the exporting producer with no dumping holds a price undertaking and that the quantity of its Community exports was very small (less than 10 %) in proportion to its third country exports. In the original investigation including subsequent reviews dumping margins were in a range between 14,7 % and 51,5 % ([1]). However, as the imported quantities were indeed very small, the main focus of the analysis is on the likelihood of recurrence of dumping.

Indonesia

Preliminary remarks

(37) The investigation established that there were five producers of PET in Indonesia during the RIP. As mentioned in recital 16, three companies submitted completed questionnaire responses but only two companies accepted verification visits at their premises. As it was thus impossible to verify whether the data submitted by the third company in the questionnaire reply was correct, this company did not cooperate properly in the investigation within the meaning of Article 18 of the basic Regulation. The company was informed accordingly and was given the opportunity to comment on this finding.

(38) One of the cooperating companies had a very small quantity of sales to the EU market but these were made to one specialist user in the medical sector. Therefore, neither the volume nor the unit price of these sales was considered to be representative. Apart from this very small volume, no other sales were recorded in Eurostat on the EU market originating from Indonesia.

Normal value, export price and dumping margin

(39) As the two cooperating companies made no representative sales on the EU market in the RIP, and the Eurostat import statistics showed that there were no further imports from Indonesia, no dumping margin could be established.

Malaysia

Preliminary remarks

(40) Two Malaysian PET producers cooperated in the investigation. Only one of them had exports to the Community, representing 100 % of the total Malaysian exports of PET to the Community. Total imports of the product concerned from Malaysia were small, i.e. in the range of 2 000 to 4 000 tonnes when compared to the Community market as a whole.

([1]) Regulation (EC) No 2604/2000, recital 125, and Regulation (EC) No 496/2002 (OJ L 78, 21.3.2002, p. 4), recital 19.

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Normal value

(41) For the exporting producer with exports to the Community in the RIP, domestic sales of the like product were representative. Normal value was based on prices paid or payable, in the ordinary course of trade, by independent customers in Malaysia, in accordance with Article 2(1) of the basic Regulation.

(42) The investigation revealed that the company's reported cost of manufacturing was underestimated as factory overhead costs (including depreciation, rent expenses, salaries and maintenance) actually incurred during the RIP were reclassified to SG&A expenses. The company argued that this practise was made in order to reflect the low capacity utilisation rate of its production facilities. However, actual costs incurred do also include the reclassified factory overhead costs. The fact that the company operated at a fraction of its full capacity of production does not mean that costs arising from such facilities are not incurred. Indeed, such costs were listed in the company's accounting records and since they were directly linked to production of the like product, a correction of the reported cost of manufacturing had to be completed.

Export price

(43) For the same exporting producer, export prices were established on the basis of the prices actually paid by unrelated customers in the Community in accordance with Article 2(8) of the basic Regulation.

Comparison

(44) To ensure a fair comparison, allowances were made for differences in transport, insurance, handling, loading and ancillary cost and credit costs where applicable and justified.

Dumping margin

(45) To calculate the dumping margin, the weighted average normal values were compared to the weighted average export price to the Community of the product concerned.

(46) This comparison showed the existence of dumping of around 5 % for the one exporting producer that exported to the Community in the RIP. However, as the imported quantities were indeed very small, the main focus of the analysis is on the likelihood of recurrence of dumping.

The Republic of Korea

Preliminary remarks

(47) It is recalled that the interim review was limited to dumping as concerns Daehan Synthetic Fiber Co. Ltd, SK Chemicals Co. Ltd and KP Chemicals Corp. Full questionnaire replies were received from these three companies.

(48) Moreover, companies related to one of the aforementioned exporting producers also made themselves known. Thus, questionnaire replies were also received from the exporting producers Honam Petrochemicals and Huvis Corp.

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(49) Prior to the on-the-spot investigation, Daehan Synthetic Fiber Co Ltd. informed the Commission of its decision to cease the production of PET in the Republic of Korea. Consequently, the company decided to cancel the planned verification visit. Since this company thus failed to cooperate within the meaning of Article 18 of the basic Regulation, it should be subject to the residual dumping margin.

(50) According to the request, there are ten producers in the Republic of Korea which have the capacity to produce PET. Out of these ten producers, five (including Daehan Synthetic Fiber Co. Ltd) made themselves known to the Commission and submitted questionnaire replies to the Commission. Out of the other five non-cooperating producers, one had cooperated with the Commission in the original investigation.

(51) The export volumes of the four cooperating exporting producers plus the unverified quantities exported by Daehan Synthetic Fiber Co. Ltd. represented close to 100 % of all Korean exports during the RIP from the Republic of Korea to the Community as recorded by Eurostat.

(52) As seen from recitals 16 and 17, the four cooperating exporting producers that fully cooperated in the investigation were the following:

— SK Chemicals Co. Ltd, Seoul,

— Huvis Corp., Seoul (related to SK Chemicals Co. Ltd),

— KP Chemicals Corp., Seoul,

— Honam Petrochemicals Corp., Seoul (related to KP Chemicals Co. Ltd).

(53) In order to avoid any circumvention in the future, dumping margins have been calculated on a group-wide basis.

Normal value

(54) For all types of PET exported by the Korean exporting producers, it was possible to 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.

Export price

(55) Two of the Korean exporting producers made export sales to the Community directly to independent customers, via related companies located in the Republic of Korea and related importers located in the Community. Consequently, in the latter situation, a constructed export price has been established pursuant to Article 2(9) of the basic Regulation.

Comparison

(56) Allowances for differences in transport, insurance, handling charges, commissions, credit, packing, customs duties (duty drawback) and bank charges have been granted where justified and duly supported by evidence.

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Allowance for duty draw back and credit cost

(57) Two of the Korean exporting producers made a claim for duty drawback on the grounds that import charges were borne by the like product when intended for consumption in the exporting country but were refunded when the product was sold for export to the Community. In each case, the amount claimed was found to be higher than the amount of duty borne by the like product in the domestic market and therefore, the allowances were adjusted accordingly. The methodology used in the present investigation was compatible with the conditions set out in Article 2(10)(b) of the basic Regulation in so far as it accurately reflected the actual import level of duties borne by the like product.

(58) In addition, both exporting producers claimed credit costs on the basis of the actual credit period taken by customers under the 'open account' payment system used on the Korean domestic market. It was found that under such a system, generally, the exporting producers did not actually grant specific credit periods and furthermore, the credit periods taken could not be accurately determined, as receipts could not be linked to specific invoices. In these circumstances, these allowances could not be granted.

Dumping margin

(59) As provided by Article 2(11) and (12) of the basic Regulation, the weighted average normal values of each type of the product concerned exported to the Community were compared to the weighted average export price of each corresponding type of the product concerned.

(60) This comparison showed the existence of *de minimis* dumping for the exporting producers that exported to the Community in the RIP.

Taiwan

Preliminary remarks

(61) Two out of four known exporting producers cooperated with the investigation. The two cooperating companies account for more than 80 % of Taiwan's total PET production and 99 % of Taiwan's total exports to the Community. The share of Taiwan's exports to the Community in relation to Community consumption amounted to 1,2 % as regards the RIP.

(62) A third Taiwanese exporting producer initially filed a questionnaire response but ceased further cooperation prior to the on-the-spot verification. The company's failure to allow Commission officials to verify its questionnaire response on-spot is tantamount to not cooperating with the investigation. By virtue of Article 18 of the basic Regulation this company should be subject to the residual dumping margin.

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Normal value

(63) For all types of PET exported by the Taiwanese exporting producers, it was possible to establish normal values 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.

Export price

(64) Both cooperating Taiwanese exporting producers made direct export sales to independent Community customers. Export prices could be assessed on the basis of the prices paid or payable by these customers according to Article 2(8) of the basic Regulation.

Comparison

(65) Allowances for differences in transport, insurance, handling charges, credit, packing and bank charges were applied.

Dumping margin

(66) As provided by Article 2(11) and (12) of the basic Regulation, the weighted average normal values of each type of the product concerned exported to the Community were compared to the weighted average export price of each corresponding type of the product concerned.

(67) On the basis of such comparison, the dumping margin found was below the *de minimis* margin in the case of Far Eastern Textile. In case of Shinkong, the dumping margin amounted to 6,5 %. However, for Far Eastern Textile, the investigation showed that the comparison of the weighted average normal value with the weighted average export prices did not reflect the full degree of dumping being practised. Indeed, the investigation showed that significant volumes (around 25 % of all exports to the Community) were made at significantly low prices and were concentrated on one customer. In addition, exports to all Community destinations were made at significantly decreased prices during the last four months of the RIP in comparison with the first eight months of the RIP. Therefore, another comparison methodology had to be applied. An important difference was found between the dumping margins resulting from a comparison average-to-average against the comparison transaction-to-average. With regard to the transaction-to-transaction comparison, it was not found to be an appropriate alternative comparison method because the process of selecting individual transactions in order to make such a comparison was considered arbitrary in this case. Thus, a comparison on the basis of the transaction-to-average was made in accordance with Article 2(11) of the basic Regulation. Thus a clear pattern of exports differing by customer and by time existed.

(68) On that basis, the dumping margin resulting from the transaction-to-average comparison is considered for the sake of the further analysis on the continuation of dumping. In case of Shinkong, the difference between the dumping margins calculated according to the two methodologies was not significant and no patterns were found. Therefore, the dumping margin resulting from the average-to-average comparison should be considered for that company.

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(69) Subsequently, the dumping margins established for the two cooperating exporting producers are as follows:

Far Eastern Textile Ltd	3,5 %
Shinkong Synthetic Fibers Corp.	6,5 %

When expressed on a specific basis, these percentage margins correspond to the following specific duties:

Far Eastern Textile Ltd	EUR 36,3/t
Shinkong Synthetic Fibers Corp.	EUR 67/t

The residual duty should be based on the presently applicable residual duty for Taiwan given that no change in circumstances was found in that respect. It amounts to EUR 143,4/t.

(70) As regards the two companies that failed to cooperate with the investigation, it is considered that information available should be applied in accordance with Article 18 of the basic Regulation. In fact, these companies should be allocated the residual duty.

Thailand

Preliminary remarks

(71) Only one Thai producer of PET cooperated in the investigation and had no exports to the Community during the RIP. According to Eurostat, import volumes originating in Thailand were negligible during the RIP. However, it is known that there were at least three other PET producers in Thailand during the RIP which did not cooperate in the investigation.

(72) In the absence of exports of PET to the Community by the only cooperating producer, no dumping calculation could be made for the cooperating producer.

3. **Developments of imports should measures be repealed**

Preliminary remarks

(73) In order to establish whether dumping would be likely to recur should the measures be repealed, the pricing behaviour of the cooperating exporting producers to other export markets and their production, capacity and stocks were examined. The analysis was based on the information available, i.e. the information provided and verified in the questionnaire replies by the cooperating producers mentioned in section A.4. An analysis was also made as to the pricing behaviour, production and production capacity of other exporting producers in the countries concerned by the proceedings. This analysis was based on market intelligence data supplied by the Community industry and exporting producers, Eurostat imports statistics and when available, export statistics from the countries concerned.

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India

Preliminary remarks

(74) The likely scenario of what would happen if measures were repealed has been based on:

— the verified questionnaire replies by the three cooperating exporting producers that fully cooperated with the investigation, and

— a market intelligence report produced by an independent consultancy and submitted by the applicant.

Relationship between prices in the Community and prices within India

(75) Prices in the Community were generally lower than Indian domestic prices. Exports are likely to be made at prices that are at least slightly lower than the current Community prices. Should measures be repealed, it is likely that exports to the Community would be made at dumped prices assuming that the same price levels would be maintained.

Relationship between export prices to third countries and prices within India

(76) Indian export prices to third countries were generally lower than its domestic prices. This price difference amounted to up to 24 % of the export price level. This indicates that exports to the Community may be made at equally dumped prices should measures be repealed. The margins found are indeed higher than the current level of dumping to the EC found as described above. It is noted that, 1. this current level of dumping found to the EC was established on the basis of small export volumes and 2. that some of these exports were made under the terms of a price undertaking which has had a correcting effect on the level of export prices. Should measures be repealed, it is thus probable that the margin of dumping would even be higher.

Relationship between Indian export prices to third countries and the price level in the Community

(77) Indian export prices to third countries were generally below the price level in the Community. Therefore if measures were repealed, Indian exporters are likely to export PET in larger quantities to the Community and at prices approaching those charged to third countries during the RIP. As a consequence, it appears likely that the dumping established with regard to exports to the Community for the RIP may even increase should measures be repealed.

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Unused capacities and stocks

(78) Considering spare capacities, it is reiterated that the two largest Indian producers did not cooperate with the investigation. It was found though that their overall capacities amounted to around 23 % of the Community consumption during the RIP. On the basis of information available the unused part of their capacities is substantial, reaching between 80 000 and 130 000 tonnes. In addition, the three cooperating producers also dispose of some unused capacities. To conclude, there are substantial spare capacities available in India. The Indian market is also characterised by an excess of supply. In this context, producers may choose to redirect excess quantities to the Community at continuously and increasingly dumped prices if measures are repealed.

Conclusion on India

(79) Should measures be repealed, it appears that unused capacities are likely to be directed to the Community. Given the price relationships found, particularly the price relationship between prices in the Community and prices within India, such Community exports are likely to be made at dumped prices.

Indonesia

Relationship between prices in the Community and prices within Indonesia

(80) Prices in the Community were generally higher than those achieved by the two cooperating Indonesian exporting producers on their domestic market. This would suggest that it would be an attractive alternative for the Indonesian exporting producers to shift sales to the Community should the anti-dumping measures be repealed.

Relationship between export prices to third countries and prices within Indonesia

(81) For Polypet, which was operating at a loss on all markets, domestic prices were not seen as reliable and hence a normal value had to be constructed based on its cost of production plus a normal profit. A profit margin of 7 %, equivalent to the margin used in the original investigation was used for the calculations. A 25,0 % price difference was identified between this constructed normal value and the export prices to third countries. The fact that export prices were lower than normal value by this amount suggests a likelihood of recurrence of dumping on the Community market should measures be repealed.

(82) Petnesia was operating at around breakeven during the RIP and normal value was therefore calculated using both domestic sales and a constructed normal value using the same method as described above for Polypet. The difference between the normal values and the export price to third countries was between 5 and 10 % (for these methods). The fact that export prices were lower than normal value by this amount suggests a likelihood of recurrence of dumping on the Community market should measures be repealed.

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Relationship between Indonesian export prices to third countries and the price level in the Community

(83) The sales prices of the Community producers for sales in the EU were established at EUR 1 058 in the RIP. In the same period, the sales prices of the Indonesian exporters were EUR 911 to third country markets. Therefore sales on the EU market were 16 % higher than on other markets. This would suggest that it would be an attractive alternative for the Indonesian exporting producers to shift sales to the Community should the anti-dumping measures be repealed.

Unused capacities and stocks

(84) As mentioned above, five producers were operating in Indonesia during the RIP. The market intelligence report shows 324 000 tonnes of production in Indonesia and the cooperating producers represented around 47 % of this. Information from the cooperating producers and market intelligence suggest that unused capacities were around 10 % of total capacity or around 37 000 tonnes. This represents around 1,5 % of Community consumption.

(85) Information from the cooperating producers showed that stocking of PET was low.

(86) In respect to unused capacities and stocks, the investigation showed that a significant volume of PET could be made available for sale on the Community market.

Conclusion on Indonesia

(87) The assessment of the abovementioned factors showed that there was a substantial difference in price between those realised by the Indonesian producers in third country markets and their normal value.

(88) Furthermore, the export prices of the cooperating exporting producers on third country markets and the Indonesian domestic market are considerably lower than Community industry sales prices in the Community. Taken together with the availability of spare capacity, there is therefore an incentive for the Indonesian exporting producers to increase sales to the Community market should measures be repealed and that these sales are likely to be dumped.

Malaysia

Preliminary remarks

(89) While the total estimated production and sales of the product concerned by Malaysian producers is estimated at around 120 000 tonnes, the total consumption of PET in Malaysia is only around 60 000 tonnes. With a domestic market that is capable of consuming only about half of the total production and sales, it is clear that Malaysian producers of the product concerned are in general dependent on export markets for the continuation of operations at current capacities.

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Relationship between the domestic prices level and the price level in the Community

(90) The investigation revealed that domestic prices were about 10 to 20 % lower than average prices charged on the Community market. There is no reason to conclude that this would change should the measures be repealed.

Relationship between the domestic prices level and export prices to third countries

(91) The information provided by both the cooperating exporters mentioned above in recital 17, showed that exports to third countries were made in large volumes accounting for 67 % of total sales in the RIP.

(92) For one Malaysian exporter, which had exported to the Community, the weighted average export prices to third countries were below the weighted average normal values, which were established for its dumping calculation, and also appeared to be lower than the sales prices to the Community. This indicates that this Malaysian exporter also sells its PET at probably dumped prices to third country markets, and that the price difference is even higher than the one found on the European market.

(93) For the other exporter, which had no exports to the Community in the RIP, the investigation revealed that average export prices to third countries were below the cost of production, which also indicates that the like product is also dumped on third markets.

(94) The above indicates a strong likelihood of a recurrence of dumping on exports to the Community should the measures be repealed.

Relationship between export prices to third countries and the price level in the Community

(95) The information provided by the cooperating exporters mentioned above in recital 17, showed that exports to third countries were made at a weighted average export price significantly below the Community industry sales prices in the Community.

(96) With the prevailing price level, it can therefore be concluded that the Community would be considered as an attractive market for producing exporters in Malaysia. On this basis it is considered that there would be an economic incentive for a shift from exports to third countries to the more profitable Community market should the measures be repealed. Should sales shift to the Community these are also likely to be at dumped prices.

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Unused capacities and stocks

(97) The investigation revealed that the capacity utilisation of the two sole cooperating producers was very low during the RIP, i.e. in the range of between 30 and 80 %. On this basis, it can be concluded that there are significant spare capacities in Malaysia. Should measures be repealed, there would be an incentive for the Malaysian exporting producers to use this spare capacity and increase export sales, notably to the Community.

(98) The two cooperating exporting producers were found to have a normal level of stock. It is however noted that stocks cannot be considered a meaningful indicator because the production of PET in Malaysia is mostly based on orders from customers. Therefore, stocks are mainly made up of PET that is waiting to be shipped to already known customers.

Conclusion on Malaysia

(99) The investigation has shown that one of the cooperating producers continued its dumping practices despite the measures in force.

(100) Furthermore, the weighted average export prices of the cooperating exporting producers on third country markets and the prices of sales on the domestic market are also considerably lower than the prevailing price level in the Community. Taken together with the low capacity utilisation, there is therefore an incentive for the Malaysian exporting producers to shift to the Community market at likely dumped prices should measures be repealed.

The Republic of Korea

Relationship between prices in the Community and prices within the Republic of Korea

(101) In recital 60, it has been explained that the dumping margins found for all four of the cooperating exporting producers were below *de minimis*. It is recalled that these exports took place during the period when two of the cooperating exporters were able to export at zero-duty to the Community. As the exports from these four exporting producers represented close to 100 % of all imports of PET during the RIP (as reported by Eurostat), there seems to be a low risk of recurrence of dumping by any of the exporting producers which cooperated in the investigation.

(102) The investigation has shown that prices on the Korean domestic market charged by the cooperating companies are higher than those charged by the Community industry on the Community market. There is no reason to believe that those domestic prices found for the cooperating companies were not representative or that non-cooperating exporting producers sell at significantly lower prices on the domestic market than the cooperating companies. Moreover, it is likely that the non-cooperating companies which did not sell to the EC would sell at low prices to regain lost market share on the EC market. This suggests a likelihood of recurrence of dumping from the non-cooperating companies, should measures be repealed. It is also noted that these non-cooperating companies exported to the community in the original investigation in quantities that were not insignificant.

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Relationship between export prices to third countries and prices within the Republic of Korea

(103) For the cooperating exporting producers, a price difference between the prevailing price level on the Korean domestic market and their exports to third countries of around 5 % was found. Still, given that they have had the possibility to export unlimited quantities of PET to the Community at zero duty, the risk for trade diversion to the Community appears to be rather low.

(104) Export prices to third countries were also available on a general basis, including such prices that were charged by not cooperating producers. The latter prices were lower than the domestic prices charged by cooperating producers. This price difference again shows that exports to the Community may be made at dumped prices should measures be repealed.

Relationship between Korean export prices to third countries and the price level in the Community

(105) The investigation showed that the cooperating exporting producers in the Republic of Korea have sold significant quantities to third countries. Still, for SK Chemicals and KP Chemicals, given that they have had the possibility to export unlimited quantities of PET to the Community at zero duty, the risk of trade diversion by the cooperating exporting producers appears to be rather low.

(106) For non-cooperating exporting producers, information from a market intelligence report and information from the Korean statistical office had been used.

(107) When summarising the overall exports to third countries by Korean exporting producers in the RIP (727 000 tonnes) as reported by Korean statistical office and deducting the exports by the cooperating exporting producers (320 000 tonnes), the total exports by non-cooperating exporting producers have been calculated to 407 000 tonnes.

(108) The quantities exported to each destination by the non-cooperating exporting producers were established by taking the overall exports by destination and deducting exports by the cooperating exporting producers by destination. The five destinations to which the non-cooperating exporting producers are assumed to have exported the largest quantities are the PRC followed by Ukraine, Japan, Tunisia and the Islamic Republic of Iran.

(109) On the basis of export values provided by the Korean statistical office, the weighted average price to the five destinations with the largest exports has been calculated as EUR 759/tonne. Whereas this price is based on rough unverified statistical data (partially containing statistical values by the cooperating exporting producers, and possibly containing exports prices to related companies as well as prices excluding ocean freight), the average price remains significantly lower than the average import prices (at cif level) to the Community (about 25 %).

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(110) On this basis, i.e. given the apparent significant volumes of exports to third countries by non-cooperating exporting producers and the fact that prices to the five largest destinations of the non-cooperating exporting producers are significantly lower than the average import price into the Community, there appears to be a significant risk of trade diversion by non-cooperating exporting producers should measures be allowed to lapse. Given the significant dumping margin found (55 %) for the biggest of the non-cooperating exporting producers in the original investigation, it is highly likely that the non-cooperating exporting producers would resume their dumping practises, should measures be repealed.

Unused capacities and stocks

(111) For the cooperating exporting producers, they were all found to have a normal level of stock and were operating at almost full capacity. Thus, the risk of recurrence of dumping on this basis appears to be very limited.

(112) For the non-cooperating exporting producers, the capacity was established on the basis of the overall capacity of Korean exporting producers given by market intelligence. No information is available on the level of stock. When subtracting the capacity of the cooperating exporting producer from the overall Korean capacity, an estimated capacity for the non-cooperating exporting producers has been calculated. This capacity has been estimated to be at around 550 000 tonnes which would correspond to a market share of 23 % of the total Community consumption.

(113) Based on the market intelligence report, unused capacity for the Republic of Korea as a whole is estimated at around 200 000 tonnes. Thus, it cannot be excluded that there is a risk of recurrence of dumping by non-cooperating exporting producers with unused capacity should measures be repealed.

Conclusion on the Republic of Korea

(114) Although for the four cooperating companies there seems to be no apparent risk of recurrence of dumping, the investigation has shown that for the non-cooperating companies a real risk of recurrence of dumping exists. This was shown by a comparison of the prevailing price level on the Korean domestic market and the price level on the Community market as well as by a comparison of that domestic price level with the average export price level to third country markets.

(115) Moreover, a significant threat of trade diversion can indeed be found when comparing the significant volumes of PET that they sell to third countries, at prices which are significantly lower than the prices at which PET is imported to the Community. Given the history of dumping of those non-cooperating companies (at 55 % in the original investigation), there is no reason to believe that those companies would not resume their dumping practices should measures be allowed to lapse.

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Taiwan

Relationship between prices in the Community and prices within Taiwan

(116) Taiwanese domestic prices of cooperating and non-cooperating exporting producers were generally lower than prices in the Community. The former prices were indeed profitable. This means that the Community price level would also be very attractive from a Taiwanese exporting producer's point of view. Given the price relationship found, Taiwanese export prices are also likely to be significantly lower than the averages prices charged by the Community industry.

Relationship between export prices to third countries and prices within Taiwan

(117) In case of one cooperating producer, prices to third countries were significantly lower than Taiwanese domestic prices. In the case of the other cooperating producer that mainly sold to Japan, export prices to third countries exceeded domestic sales prices. On that basis, it cannot be ruled out that export prices to the Community will follow the trend of Taiwanese prices to other countries (except Japan) once measures are repealed. Therefore, dumping is likely to recur under such a scenario. This assessment is based on the data supplied by cooperating producers as no other data could be retrieved in this regard.

Relationship between Taiwanese export prices to third countries and the price level in the Community

(118) Taiwanese export prices to third countries were significantly below the price level in the Community. Taiwanese exports to other countries were not subject to anti-dumping duties during the RIP. Should measures be repealed it cannot be excluded that export prices to the Community would follow the trend of prices to other markets. Under such circumstances, future exports to the Community would be made at dumped prices. Again, this assessment is based on data provided by cooperating producers. However, as there is no information available indicating that the export prices to third countries or domestic prices found for the cooperating companies would not be representative for all Taiwanese exporting producers, it can also be concluded that future exports to the EC from the non-cooperating companies would be likely to be made at dumped prices.

Unused capacities and stocks

(119) While one cooperating company made full use of its capacity during the RIP, the other one did not use a significant quantity of its total capacity. The companies not cooperating with the investigation seem to have unused capacities in a range between 400 000 and 500 000 tonnes. This amounts to around 20 % of the Community consumption during the RIP. Indeed, given the attractive price level on the Community market, such unused capacities are likely to be redirected to the Community should measures be repealed.

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Conclusion on Taiwan

(120) With a view to the unused capacities, it appears that such capacities are likely to be redirected to the Community should measures be repealed. Moreover, such Community exports are likely to be made at dumped prices given the low price level for exports to third country markets, with the exception of Japan. Community prices are likely to be put under pressure once larger quantities are imported into the Community market. Such a downwards price trend is likely to exacerbate the dumping established for the RIP.

Thailand

Preliminary remarks

(121) As outlined in recital 71 it is known that there were at least three other PET producers in Thailand during the RIP which did not cooperate in the investigation. For those non-cooperating producers, the information available from Eurostat and other sources were analysed.

(122) The information on stocks and sales to third markets refers only to the cooperating exporting producer. It was possible to obtain data on the overall production capacity in Thailand and to make an estimate of the production volume of all exporting producers in Thailand based on market intelligence. In this respect, it was considered that findings for non-cooperating companies could not be more favourable than those established for cooperating companies.

Relationship between the domestic prices level and price level in the Community

(123) The investigation revealed that domestic prices were 10 to 20 % lower than average prices charged on the Community market. There is no reason to conclude that this would change should the measures be repealed.

Relationship between the domestic prices level and export prices to third countries

(124) The information provided by the cooperating producing exporter mentioned above in recital 17 which did not export to the Community, showed that exports to third countries were made in large volumes accounting for over 80 % of total sales in the RIP. It was also found that the average export prices to third countries were below cost, which indicates that the product is sold at dumped prices on third country markets. Moreover, concerning the non-cooperating companies, there is no information available to indicate that their pricing behaviour is different regarding the Thai domestic or third country markets and it can therefore be assumed that they also sell at lower prices to third countries than on their domestic market.

Relationship between export prices to third countries and the price level in the Community

(125) The information provided by the cooperating exporter which did not export to the Community, showed that exports to third countries were made at a weighted average export price significantly below the Community industry sales prices in the Community.

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(126) Assuming that the prevailing price level in the Community would remain the same, it can therefore be concluded that the Community would be a considered an attractive market for producing exporters in Thailand. On this basis it is considered that there would be an economic incentive for a shift from exports to third countries to the more profitable Community market should the measures be repealed.

Unused capacities and stocks

(127) There are significant spare capacities in Thailand. The investigation revealed that the capacity utilisation of the cooperating exporting producer was found to be low during the RIP.

(128) According to the market intelligence report, the capacity level of the non-cooperating producing exporters is estimated at around 500 000 tonnes with a total production of around 430 000. Based on these figures the spare capacity would amount to approximately 70 000 tonnes. This spare capacity would amount to around 2,9 % of the total Community consumption, should it be directed towards sales on the Community market.

(129) Overall, market intelligence data suggests that the domestic market in Thailand can absorb less than 94 000 tonnes or 25 % of the domestic production of PET. Under these circumstances, Thai producers of the product concerned are heavily dependent on export sales for the continuation of operation at current capacity. Under these circumstances, there is a strong likelihood that exports to the EC would increase should the measures be repealed. Therefore, it cannot be excluded that the Thai exporting producers would lower their export prices to the Community to a level of export prices for other third country markets, in an effort to regain lost market, should measures be repealed. Thus, it cannot be excluded that there is a threat of recurrence of dumping by non-cooperating exporting producers should measures be repealed.

(130) The cooperating exporting producer was found to have a normal level of stock. It is however noted that stocks cannot be considered a meaningful indicator because the production of PET in Thailand is mostly based on orders from customers. Therefore, stocks are mainly made up of PET that is waiting to be shipped to already known customers.

Conclusion on Thailand

(131) As the sole cooperating exporting producer did not export to the Community, the investigation could not conclude as to whether dumping continues despite the measures in force.

(132) However the weighted average export prices of the cooperating exporting producer on third country markets and the prices of sales on the domestic market were considerably lower than Community industry sales prices in the Community. The sales prices were below the cost of production. This is considered as an indicator that sales would probably be made at dumped prices should measures be repealed. Moreover, given the attractive price level in the Community, there is an incentive for the Thai exporting producers to sell to the Community market should the measures be repealed.

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(133) For the non-cooperating exporting producers, a significant threat of trade diversion can be found when comparing the domestic demand and the significant volumes of PET that are sold to third countries. It is recalled, as stated in recital 131 and onwards, that Thai producers are heavily dependent on exports and that there is a large overall spare capacity that could be diverted towards the Community. Given their history of dumping (at 32,5 % in the original investigation), it appears that there is a risk for recurrence of dumping should measures be repealed.

4. **Conclusion on the likelihood of a continuation and/or recurrence of dumping**

India, Indonesia, Malaysia, Taiwan and Thailand

(134) On the basis of the above, it is concluded that dumping is likely to continue and/or recur should measures be repealed. Accordingly, it is proposed that measures applicable to imports of PET originating in India, Indonesia, Malaysia, Taiwan and Thailand should be maintained.

The Republic of Korea

(135) On the basis of information collected for non-cooperating exporting producers, there seems to be a significant risk of recurrence of dumping. This risk is based primarily on data suggesting a significant production and export capacity by the non-cooperating exporting producers and, as demonstrated by dumping practises in the original investigation, would in all likelihood materialise as exports at dumped prices to the Community should measures be repealed.

(136) Accordingly, it is proposed that measures applicable to imports of PET originating in the Republic of Korea should be maintained.

D. **LASTING NATURE OF CHANGED CIRCUMSTANCES**

(137) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances with respect to the original investigation regarding dumping could reasonably be considered to be of a lasting nature.

The Republic of Korea

(138) It is recalled that the scope of the interim review in respect of the Republic of Korea is limited to the dumping margins for the three companies SK Chemicals Co. Ltd, KP Chemicals Corp. and Daehan Synthetic Fibres Co. Ltd and their related companies.

Cooperating exporting producers (SK Chemicals Co. Ltd and KP Chemicals Corp.)

(139) For the cooperating exporting producers which exported PET to the Community during the RIP, the interim review showed that their dumping margin remained at a *de minimis* level. The main reason for this was that whilst the normal values and domestic sales prices for these companies had risen as compared to the data in the original investigation, sales prices on the Community market had increased correspondingly.

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(140) No indications were found suggesting that these changes leading to a *de minimis* dumping margin would not be of lasting nature, as all of the cooperating exporting producers had been found to operate at a high capacity utilisation rate (above 90 %). Moreover, none of them had any plans to increase their production capacity in the Republic of Korea. Indeed one of them, SK Chemicals, had set up a production plant within the Community and is more likely to decrease its exports from the Republic of Korea.

Other exporting producers (Daehan Synthetic Fibres Co. Ltd)

(141) For the exporting producer Daehan, which, as stated in recital 49, eventually chose not to cooperate in the investigation, none of the facts related to this company could be verified.

(142) Thus, the conclusion for this company had to be based on facts available in accordance with Article 18 of the basic Regulation, i.e. on the basis of information in the complaint and information in the unverified questionnaire.

Conclusion on the Republic of Korea

(143) For the two cooperating exporting producer groups, SK Chemicals and KP Chemicals, the circumstances under which the dumping margins have been calculated in this investigation can be considered to be of lasting nature.

(144) For the third exporting producer Daehan Synthetic Fibres, it should be recalled that this company did not cooperate and that the analysis therefore has to be based on facts available, suggesting that dumping continue. Under these circumstances this company should be subject to the residual duty as established in the original investigation and confirmed in the most recent review.

Taiwan

(145) In the present proceeding, only two Taiwanese exporting producers cooperated. The analysis on the lasting nature of changed circumstances is therefore limited to these two companies.

(146) Far Eastern Textiles has been subject to a zero duty since Council Regulation (EC) No 83/2005 was adopted ([1]). The other cooperating exporting producer, Shinkong Synthetic Fibres, was allocated a dumping margin of 3,1 % by the same Regulation.

(147) On the basis of the analysis on dumping carried out for the RIP, changed dumping margins of 3,5 % for Far Eastern and 6,5 % for Shinkong have been established.

([1]) OJ L 19, 21.1.2005, p. 6, recital 58.

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(148) For the two cooperating producers which exported to the Community during the RIP, there is no reason to believe that the nature of the changes between the current and the previous investigations, particularly the changes in export prices to the Community and normal values that both led to the revised dumping margins, are not of a lasting nature. With regard to the company for which a pattern of dumping was found, the investigation showed that the company had sold significant quantities to a new customer at a price that was considerably below its general export price level. As the company did not state that it will cease selling to this customer or that it will adapt its export prices, it can be concluded that the pattern will subsist. Moreover, this company made almost full use of its capacity during the RIP. Thus, major changes in the company's sales pattern which would have an impact on their price levels with according effects on normal values and export prices are unlikely to happen.

(149) Regarding the second cooperating company, the changes observed were not huge, i.e. change in dumping margins from 3,1 % to 6,5 % due to slightly more pronounced changes in the normal values than in the export prices. This circumstance is not likely to change in the future because oil prices which are a major cost factor to produce PET are stabilising at a high level.

(150) Accordingly, it is considered that the dumping margins for both companies, calculated on the basis of the data provided in this investigation are reliable and that the changes found are deemed to be of a lasting nature.

E. DEFINITION OF THE COMMUNITY INDUSTRY

1. Community production

(151) PET is manufactured in the Community by the following companies:

— producers which requested the expiry review, supported it and cooperated in the investigation (see recital 154),

— two producers which have requested the expiry review but have not cooperated in the current investigation,

— one subsidiary of a Korean producer located in the Community who has cooperated in the investigation and has supported the request.

(152) PET produced by all these companies constitutes the total Community production within the meaning of Article 4(1) of the basic Regulation.

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2. **Community industry**

(153) The Commission examined whether the cooperating Community producers requesting or supporting the request for the expiry reviews represented a major proportion of the total Community production of PET. Those Community producers accounted for 88 % of the total Community production of PET. Those Community producers who did not fully cooperate were excluded from the definition of the Community industry. The Commission therefore considered that these fully cooperating Community producers represent the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation. In the original investigations, the Community industry represented more than 85 % of the total PET production in the Community at that time.

(154) The following twelve Community producers partly mentioned in recital 16 constitute the Community industry:

Voridian BV (The Netherlands), M & G Polimeri Italia Spa (Italy), Equipolymers Srl (Italy), La Seda de Barcelona SA (Spain), Novapet SA (Spain), Selenis Industria de Polimeros SA (Portugal), Aussapol Spa (Italy), Advansa Ltd (UK), Wellman BV (The Netherlands), Boryszew subsidiary Elana Wse (Poland), V.P.I. SA (Greece), SK Eurochem (Poland).

F. **SITUATION ON THE COMMUNITY MARKET**

1. **Consumption in the Community market**

(155) Community consumption was established on the basis of the sales volumes of the Community industry, of estimates of the sales of the other Community producers on the Community market based on data provided at the complaint stage, and Eurostat data for all Community imports from third countries.

(156) Between 2002 and the RIP, Community consumption of the product concerned in the Community continuously increased to reach a total of 2 400 000 tonnes in the RIP. The overall increase over the period was 18 %. The increase was partly due to new applications (beer, wine, *inter alia*) and partly due to the increase of consumption in the countries acceding to the EU in 2004.

Table 1

	2002	2003	2004	RIP
Community consumption (tonnes)	2 041 836	2 213 157	2 226 751	2 407 387
Index	100	108	109	118

2. **Imports from the countries concerned**

2.1. *Cumulation*

(157) In the original investigation, imports of the product concerned originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand were assessed cumulatively in accordance with Article 3(4) of the basic Regulation. It was examined whether a cumulative assessment was also appropriate in the current investigation.

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(158) With regard to imports of the two cooperating Korean companies, the investigation has shown either *de minimis* or no dumping. Therefore, in accordance with Article 3(4) of the basic Regulation, those imports concerned could not be cumulatively assessed. However, it was found that the margin of dumping established in relation to the imports from India, Malaysia and Taiwan was above the *de minimis* level. Concerning imports from Indonesia and Thailand, the investigation has shown that the imports were not representative and therefore no dumping margin could be established. However, it was also concluded that should measures be allowed to lapse, there is a likelihood of recurrence of dumping. As regards the quantities exported by each of the six countries concerned it was considered that if the measures were repealed, imports from each of the countries concerned would be likely to increase to levels significantly above those reached in the RIP and would certainly exceed the negligibility threshold. As regards the condition of competition, the investigation has confirmed that PET chips imported from the countries concerned were alike in all their essential physical and technical characteristics. Moreover, these chips were interchangeable with those produced in the Community and they were marketed in the Community during the same period, through similar sales channels under similar commercial conditions. The imported PET chips were therefore considered to compete with each other and with the PET chips produced in the Community.

(159) In the light of the above, it was considered that all the criteria set out in Article 3(4) of the basic Regulation were met regarding imports from India, Malaysia, Thailand, Indonesia, Taiwan and the dumped imports from the Republic of Korea. The imports from the six countries concerned were therefore examined cumulatively with the exception of those non-dumped imports produced by the two cooperating Korean exporting producers.

2.2. *Volume, market share and prices of imports*

(160) With respect to the six countries concerned, the import volumes, market shares and average prices developed as indicated below. The data are based on Eurostat statistics. In these figures, non-dumped Korean imports should in principle be taken out. For reasons of confidentiality, however, they have been deliberately included. The development of the trend would be however substantially the same if the data concerning the non-dumped Korean imports would be taken out.

(161) Between 2002 and the RIP, imports from the countries concerned decreased by 13 %, i.e. from 192 000 tonnes in 2002 to 167 000 tonnes in the RIP. Compared to the year 2002, they remained unchanged in 2003 and decreased by 3 % in 2004, and by another 10 % in the RIP.

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Table 2

	2002	2003	2004	RIP
Volume	192 192	191 455	186 892	166 982
Index	100	100	97	87
Market share	9,4 %	8,6 %	8,4 %	7,0 %
Prices (EUR/tonne)	850	803	854	1 030
Index	100	94	100	121

G. **ECONOMIC SITUATION OF THE COMMUNITY INDUSTRY**

1. **Preliminary remarks**

(162) At the beginning of the review, sampling of the Community producers was foreseen but considering that their number was not excessive, it was decided to include all of them and consequently, injury factors have been assessed on the basis of information collected at the level of the entire Community industry.

(163) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

2. **Analysis of economic indicators**

2.1. *Production*

(164) The Community industry's production increased by 20 % between 2002 and the RIP, i.e. from a level of 1 465 000 tonnes in 2002 to 1 760 000 tonnes in the RIP. The yearly increase was 4,8 % in 2003 and 4,6 % in 2004. A further increase occurred in the RIP, when production soared by 150 000 tonnes, i.e. by 10,8 %. This was due to the restructuring process undertaken by the industry with the aim to better control the production costs and thereby take advantage of the growing consumption in the Community market which, as stated above, increased by 19 % between 2002 and the RIP (from 2 million tonnes in 2002 to 2,4 million tonnes in the RIP).

Table 3

	2002	2003	2004	RIP
Production (tonnes)	1 464 522	1 534 480	1 602 086	1 760 828
Index	100	105	109	120

2.2. *Capacity and capacity utilisation*

(165) Production capacity increased by 22 % between 2002 and the RIP, i.e. from a level of 1 760 000 tonnes in 2002 to 2 156 000 tonnes in the RIP. The increase occurred mainly in the RIP, when production capacity, compared to the year 2004, increased by 300 000 tonnes, i.e. 16,7 %. This significant increase of production capacity was parallel to the increase of production over the same period (see recital 164). The increase in production capacity resulted from additional investments in production lines designed to take advantage of the growing market. The capacity utilisation increased by four percentage points in 2003, remained

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on this level in 2004 and then decreased in the RIP by five percentage points to the level of 82 %. The decrease between 2004 and the RIP results from the significant increase of production capacity in that period. Consequently, a higher production volume in the RIP, when compared with 2004, coincided with a lower capacity utilisation rate.

Table 4

	2002	2003	2004	RIP
Production capacity (tonnes)	1 760 332	1 762 378	1 848 315	2 156 294
Index	100	100	105	122
Capacity utilisation	83 %	87 %	87 %	82 %
Index	100	105	104	98

2.3. *Sales and market share*

(166) The volume sold by the Community industry on the Community market increased by 21 % between 2002 and the RIP. A growth of 2 % in 2003 was followed by an increase in both 2004 and the RIP, by 8 and 11 percentage points respectively. Notwithstanding the increase of sales due to the higher consumption, the Community industry's market share fell by four percentage points in 2003 to then gradually rise by five percentage points in 2004 and one percentage point in the RIP.

Table 5

	2002	2003	2004	RIP
Sales in the EC (tonnes)	1 306 768	1 333 976	1 438 883	1 586 902
Index	100	102	110	121
Market share	64 %	60 %	65 %	66 %

2.4. *Growth*

(167) Overall, it has to be noted that the Community industry's market share increased by 2 % in the period considered, which shows that its growth lagged behind the growth of consumption of the overall market.

2.5. *Employment*

(168) The level of employment of the Community industry increased by 18 % in the period considered. The main increase occurred in 2003 (11 percentage points) and 2004 (further six percentage points). Although this rising tendency continued in the RIP, the increase amounted to only two percentage points. This increase of 18 % during the whole period is linked to the production level which increased by 20 %.

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Table 6

	2002	2003	2004	RIP
Employees	1 010	1 124	1 170	1 190
Index	100	111	116	118

2.6. *Productivity*

(169) The Community industry's productivity, measured as the output in tonnes per person employed per year, had an overall increase during the period considered. Productivity initially fell by 6 % in 2003 compared to the year 2002 and remained at this level in 2004 but productivity in the RIP then increased significantly by more than 8 % compared to 2004.

Table 7

	2002	2003	2004	RIP
Productivity (tonne/employee)	1 450	1 365	1 369	1 480
Index	100	94	94	102

2.7. *Wages*

(170) It has to be noted that PET chips production is a capital intensive industry and that therefore labour costs have a limited impact on the overall cost of the product. During the period, wages increased by 12 %, compared to a 20 % increase of the overall production cost. Another significant indicator is the cost of wages spent per tonne produced. During the period, this cost decreased by 6 %.

Table 8

	2002	2003	2004	RIP
Wages (EUR million)	62,3	63,0	66,3	69,5
Index	100	101	106	112
Wages per tonne produced (EUR)	44,4	42,9	43,6	41,9
Index	100	96	98	94

2.8. *Magnitude of the actual margin of dumping and recovery from the effects of past dumping*

(171) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

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2.9. *Sales prices and factors affecting Community prices*

(172) The unit sales prices increased from EUR 924/tonne in 2002 to EUR 1 058/tonne in the RIP. Overall, the tendency was rising (by 15 % in the whole period). This increase is to a large extent a consequence of the increase in the price of raw materials, which is due to the increase in the oil price. Although the Community industry had increased prices it was not in the position to pass the increase on to the downstream sector and fully reflect the increase of raw materials prices in its sales prices. This was principally due to the fact that the increase in the price of raw materials was higher than the increase of PET prices. In addition, the Community industry had to face the pressure from imports. With the aim to maintain its market share, the Community industry could only moderately increase its prices and thus experienced price suppression.

Table 9

	2002	2003	2004	RIP
Weighted average price (EUR/tonne)	924	902	1 006	1 058
Index	100	98	109	115

2.10. *Cost of production of the main raw materials*

(173) Bearing in mind that around 850 kg of purified terephthalic acid (PTA) and 350 kg of mono ethylene glycol (MEG) (the main raw materials) are needed to produce 1 tonne of PET, the costs of raw materials (PTA and MEG) increased significantly respectively by 67 % and by 31 % between 2002 and the RIP to reach the level of EUR 770/tonne (PTA) and EUR 721/tonne (MEG) (average of the RIP). Although a small decline in prices of PTA has been noted in the third quarter of 2005 when the prices dropped to the level of EUR 700/tonne, and a substantially stable price was observed for MEG, it has to be pointed out that the raw materials are purchased in advance based on long term contracts. As a result, for the period considered, despite the small decline in prices of PTA at the end of the RIP, the Community industry still bears the consequences of the heavily increased costs. In addition, due to the situation on the world oil market the prices of raw materials for the production of PET are susceptible of unpredictable changes but they are most likely to remain at a high level. All these factors contribute to an increased level of vulnerability of the Community PET producers.

Table 10

Average cost (EUR/tonne)

	2002	2003	2004	RIP
— PTA	460	566	718	770
Index	100	123	156	167
— MEG	551	550	650	721
Index	100	100	118	131

▼B

(174) By comparison, the average unit cost per tonne of PET chips produced by the Community industry was the following:

Table 11

	2002	2003	2004	RIP
Weighted average cost (EUR/tonne)	899	918	1 013	1 092
Index	100	102	113	121

(175) During the period considered, as indicated in tables 10 and 11, the main raw materials have continuously increased (PTA by 67 %, MEG by 31 %), while the overall cost of production raised only by 21 %. However, as shown in table 9 prices have only increased by 15 % due to the fact that the Community industry was not in a position to pass the increase on to the downstream sector and fully reflect the rise in the price of raw materials in its sales prices.

2.11. *Stocks*

(176) The evolution of stocks over the whole period considered, i.e. between 2002 and the RIP is down by 10 %. However as in the original investigations, stocks should not be considered as a meaningful indicator as regards PET produced by the Community industry, given the seasonal nature of the PET market throughout the year. When compared to the production, stocks represent around 5/6 % of the output.

Table 12

	2002	2003	2004	RIP
Stocks (tonnes)	101 554	110 695	90 422	91 123
Index	100	109	89	90

2.12. *Profitability, return on investments and cash flow*

(177) Profitability on sales represents the profit generated by sales of the product concerned in the Community. Return on total assets and cash flow could only be measured at the level of the narrowest group of products which included the like product, pursuant to Article 3(8) of the basic Regulation. Moreover, return on investments has been calculated on the basis of return on total assets, as return on total assets is considered more relevant for the analysis of the trend.

Table 13

	2002	2003	2004	RIP
Pre-tax profit margin on sales in the Community	2,7 %	–1,8 %	–0,7 %	–3,2 %
Return on total assets	2,0 %	–1,4 %	–0,6 %	–2,4 %
Cash flow (% of total sales)	18,1 %	5,5 %	10,1 %	–2,6 %

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(178) Further to the price suppression starting in 2002 and coinciding with a strong increase of dumped imports from the countries concerned, the financial situation of the Community industry deteriorated and turned into losses in 2003. After a small recovery in 2004 due to the measures imposed on PRC and Australia, losses increased to – 3,2 % in the RIP. It is therefore noted that there is a clear downward trend.

(179) The trends for return on total assets and for cash flow developed similarly i.e. showed a relatively good situation in 2002, a deterioration in 2003, a small recovery in 2004 and a further deterioration in the RIP.

2.13. *Investments and ability to raise capital*

Table 14

	2002	2003	2004	RIP
Investments (EUR 1 000)	31 779	42 302	63 986	50 397
Index	100	133	201	159

(180) The investments were partly dedicated to an increase of capacity and partly to the improvement of the production process. The bulk of the expenditure was made in 2004 and during the RIP, coinciding with the increase of the capacity and with the aim to maintain market share in view of the increased consumption. Nevertheless, the current situation of the Community industry and the evolution of the Community and world markets for PET marked out by lack of profitability were not an incentive to make excessive investments. Although in some circumstances Community producers have been able to raise capital (in particular from related companies), the lack of profitability of PET did not encourage investment and in some cases the decision was postponed.

3. **Conclusion on the situation of the Community industry**

(181) The constant increase of consumption partly due to new applications (beer, wine *inter alia*) and partly due to the increase of consumption in the countries acceding to the EU in 2004, obliged the Community industry to increase capacity and production in order not to lose market share. To do so, an important restructuring process accompanied by a frequent change of the ownership of the different producers, took place in 2004 and during the RIP. In parallel, the number of production lines was generally increased in order to follow the increase of the consumption and to concurrently achieve economies of scale. Thus, some economic indicators, i.e. consumption, capacity production, production, EU sales, employment indeed followed a positive trend.

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(182) However, all those restructuring efforts described above could not counterbalance the impact of the constant and massive increase of raw material prices in the period considered. The higher raw material costs could not be passed on to the downstream sector to the extent it would have been necessary to maintain a certain level of profitability. This coincided with the low price level of the imports from the countries concerned which clearly exerted a significant downward pressure on the price of the Community industry. Thus, despite the apparent positive developments concerning production, sales and sales price, the overall financial situation of the Community industry deteriorated and is reflected in the negative developments of profitability (from 2,7 % profit in 2002 to 3,2 % losses in the RIP), of export sales, production cost, return on investments and cash flow.

(183) Consequently, despite some apparent positive trends showed by the injury indicators, the situation of the Community industry is still far from the levels that could be expected had it fully recovered from the injury found in the original investigations.

(184) It is therefore concluded that the situation of the Community industry has slightly improved, as compared to the period preceding the imposition of measures, but is still very fragile and vulnerable. Furthermore, the price pressure from imports did not allow the Community industry to fully reflect the increase of raw materials prices in its sales prices.

4. **Imports from other countries**

4.1. *Other countries concerned by anti-dumping measures*

(185) As mentioned in recital 2, it is recalled that, since August 2004, there have also been definitive anti-dumping measures in force on imports of PET originating in Australia and the PRC.

(186) During the period considered, the total volume of imports from these countries increased by 12 % (from 65 000 tonnes to 73 000 tonnes). Although there was a significant increase in the market share (by four percentage points) in the year 2003, this rising tendency was reversed in 2004 when the market share of imports decreased to the level of 2,4 %. In the RIP a slight increase of 0,6 % stemming from Chinese imports has been noted. The effect of the definitive anti-dumping duties is reflected as from 2004. Whereas imports from Australia ceased completely, the volume of imports from China increased steadily by 130 % in 2003, decreased in 2004 in coincidence with the measures and increased again by 47 % during the RIP. Australian prices decreased by 7 % in 2003 and by another 6 % in 2004. Chinese prices increased slowly in 2003 and 2004 and by 24 % in the RIP, i.e. from EUR 827 to EUR 1 022 per tonne. As a conclusion it is noted that significant imports from these two countries were made at prices constantly lower than the Community prices, thus contributing to the injury suffered by the Community industry.

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Table 15

	2002	2003	2004	RIP
Australia				
Volume (tonnes)	17 179	18 727	2 842	—
Price (EUR/tonne)	851	789	741	—
Market share	0,8 %	0,8 %	0,1 %	—
People's Republic of China				
Volume (tonnes)	47 875	131 343	49 678	72 814
Price (EUR/tonne)	804	806	827	1 022
Market share	2,3 %	5,9 %	2,2 %	3 %
Total tonnes	65 054	150 070	52 520	72 814
Total market share	3,1 %	6,8 %	2,4 %	3 %

4.2. *Other third countries not mentioned above*

(187) In these figures, non-dumped Korean imports should in principle be included. For reasons of confidentiality they have been deliberately taken out. However the development of the trend would be substantially the same if the Korean non-dumped imports were to be included.

(188) Between 2002 and the RIP, total imports of PET originating in other countries have increased by 136 %, to reach 174 000 tonnes. Their market share in the EU increased from 3,6 to 7,1 % in the period considered. The table below illustrates these trends.

Table 16

	2002	2003	2004	RIP
Total volume (tonnes) of which:	73 549	119 973	182 687	173 597
Pakistan	28 558	83 208	55 125	73 426
USA	20 570	16 105	49 763	50 393
Mexico	1 476	20	32 112	20 501
Turkey	7 208	17 001	24 032	15 374
Others	15 737	3 639	21 655	13 903
Market share	3,6 %	5,4 %	8,2 %	7,1 %

(189) Imports from Pakistan rose by 157 % over the period considered, and in particular after the termination of the proceeding against them in 2004. Imports from the United States increased considerably, i.e. by 144 % to reach 50 000 tonnes in the RIP. Imports from Mexico passed from 1 500 tonnes in 2002 to 20 000 tonnes in the RIP, an increase of 1 390 %. As far as Turkey is concerned, its imports were rising significantly between 2002 and 2004 (by 244 %), to then decrease in the RIP by 36 %. Regarding the prices it is important to note, however, that the prices of the imports from the United States,

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Mexico and Turkey increased and were higher than prices of other imports and of those of the Community industry. Moreover, most likely, imports from USA are Pet G, a special variety of PET having higher viscosity requirements and sold on average at 50 % more than normal PET. Imports prices for Pakistan were lower than the average prices of the Community industry from 2002 to 2004. During the RIP, import prices from Pakistan increased at the level of the Community industry. Therefore, it is considered that these imports could not affect the situation of the Community market.

5. **Export Activity of the Community Industry**

(190) The export activity of the Community industry showed a downward trend during the period considered, i.e. decreasing from 7,9 % to 4,9 % of the Community industry's total sales. Only in 2003, the Community industry's export performance increased considerably, probably due to low EU sales prices. However, during the RIP, they represent less than 5 % of the total sales. It should be noted that export prices were constantly above EC sales price.

Table 17

	2002	2003	2004	RIP
Export sales (tonnes)	111 381	141 627	97 686	82 388
Index	100	127	87	74
% of total sales	7,9 %	9,6 %	6,3 %	4,9 %
Price per tonne	959	942	1 026	1 096
Index	100	98	107	114

H. **CONCLUSION ON THE LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY**

(191) As concluded previously, the exporting producers in India, Indonesia, Thailand, the Republic of Korea, Taiwan and Malaysia have the potential to increase their export volumes to the Community market.

(192) The cif export prices of PET originating in India, Thailand and Malaysia were higher than the prices of the Community industry. The difference, however, was not significant which leads to the conclusion that in the absence of anti-dumping duties these countries could exercise an even stronger price pressure on the Community industry. Moreover, the prices of Korean, Taiwanese and Indonesian imports into the Community were lower than the Community price. The difference was small for the Republic of Korea and Taiwan (3 to 4 %) and significant in the case of Indonesia (amounting to 27 %). Therefore there is a clear indication for a likelihood of continuation or recurrence of injury.

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(193) As indicated above, the situation of the Community industry has also been considerably affected by the imports from the PRC. The prices of those imports were below the Community price (EUR 1 022/tonne as compared to 1 058 in the Community). In addition, in terms of volume, the imports from the PRC amounted to 73 000 tonnes, representing a market share of 3 % in the RIP.

(194) Furthermore, in terms of volumes of imports from the countries concerned, it can be concluded that there is likelihood that those quantities will significantly increase due to the overall production capacity and spare capacity available in the countries concerned as further detailed in recital 199.

(195) On the basis of the foregoing, it is concluded that the import prices would most likely be lower on the Community market in the absence of anti-dumping measures, as the producers in these countries would possibly try to regain lost market shares or to increase their current market shares. Such price behaviour, coupled with the ability of the exporting producers in these countries to sell significant quantities of PET on the Community market, would in all likelihood have the effect of reinforcing the price pressure, with an expected further negative impact on the situation of the Community industry.

(196) In this context, it should be recalled that in all the six countries concerned a significant spare production capacity was established, ranging from 37 000 tonnes in Malaysia to 400 000 tonnes in Taiwan, and totalling around 1 million tonnes, i.e. 45 % of the Community industry production capacity. In addition the import prices oscillated in the period concerned slightly above or below Community prices. The prices of imports originating in Taiwan, for example, a country with by far the highest spare production capacity, fell during the period when anti-dumping measures were in force below the level of Community prices. Furthermore, the prevailing price level in the Community makes the EU an attractive market. Thus, it can be concluded that should the measures be allowed to lapse, there exists a strong incentive for producers in the countries concerned to redirect their sales to the EU market at low prices.

(197) Moreover, recent publicly available information indicates that unusual quantities of PET chips have been purchased by operators in Bulgaria and Romania from the Asian countries under review. The shipments were due to take place in November and December 2006. This information is an indication of the likelihood of recurrence of injury to the Community industry, as it clearly demonstrates that significantly more imports from the countries concerned would be present on the Community market in the absence of anti-dumping measures.

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(198) As shown above, although the situation of the Community industry has slightly improved when compared to the one before the imposition of anti-dumping measures, it remains vulnerable and fragile. It is likely that if the Community industry was exposed to increased volumes of imports from the countries concerned at dumped prices, this would result in a deterioration of its financial situation and most probably in the further loss of profitability. On this basis, it is therefore concluded that the repeal of the measures against India, Indonesia, Thailand, the Republic of Korea, Taiwan and Malaysia would in all likelihood result in the recurrence of injury to the Community industry.

I. COMMUNITY INTEREST

1. Introduction

(199) According to Article 21 of the basic Regulation, it was examined whether the maintenance of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the various interests involved. The present investigation analyses a situation in which anti-dumping measures have already been in place and allows for assessment of any undue negative impact on the parties concerned due to the current anti-dumping measures.

(200) On this basis, it was examined whether, despite the conclusions on the likelihood of a continuation or recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

2. Interest of the Community industry

(201) As outlined above, there is a clear likelihood of recurrence of injurious dumping if measures were to be repealed. All Community producers but two fully cooperated and indicated their support for the ongoing measures. One Community producer linked to one of the Korean exporters has also expressed support for the measures. It has to be considered, however, that its mother company is exporting at 0 % duty.

(202) The continuation of anti-dumping measures on imports from countries concerned would enhance the possibility for the Community industry to reach a reasonable level of profitability. More importantly, it will avoid that the Community industry is pushed out of the market. Indeed, there is a clear likelihood of injurious dumping in substantial volumes which the Community industry could not withstand. The Community industry would therefore continue to benefit from the maintenance of the current anti-dumping measures, in particular as there are now also measures against imports originating in Australia and the PRC.

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3. **Interest of importers**

(203) The Commission sent questionnaires to 18 importers/traders of the product concerned. However, cooperation from the importers/traders that are purchasing mainly from the countries concerned and representing around 5 % of the EU consumption was very low. Only one importer/trader supplied data and the bulk of its purchases were made from the Community industry. Only marginal quantities were from the countries concerned or from other exporting countries. This importer/trader would prefer a market with zero duties although they are currently enjoying healthy financial results. Bearing in mind that the measures in force did not considerably affect importers, it is concluded that maintaining the existing anti-dumping measures against imports originating in India, Indonesia, Thailand, Malaysia, the Republic of Korea and Taiwan would not have a significant negative effect on the situation of the importers in the Community.

4. **Interest of converters/users**

(204) The Commission sent questionnaires to 47 known converters/-users. Only 10 converters/users with an overall low representativity replied to the questionnaire.

(205) According to the information on purchases supplied in their responses to the questionnaire, cooperating converters/users during the RIP represent about 20 % of total Community consumption of PET. They purchased during the RIP 95 % of their PET from Community producers and the remainder from imports originating in countries other than those subject to these reviews. A number of arguments against the imposition of duties were presented.

(206) Five converters (transforming PET chips in pre-forms and bottle grade and representing 10 % of the consumption) replied to the questionnaire. The cost of PET chips accounts for 55 % of their final product (mostly pre-forms). It has been established that they import negligible quantities from the countries concerned and other third countries. Nevertheless they oppose the imposition of duties claiming that the prolongation of the measures could have the effect of artificially raising the prices in Europe.

(207) Five users accounting for about 10 % of the consumption supplied rather incomplete data. The low level of cooperation from the big users is likely to be due to the fact that the last investigation concerning imports from PRC, Australia and Pakistan took place only two years ago. PET costs account for around 6/7 % of the overall cost and are therefore rather limited. Although they have declared no imports from the countries concerned, similarly as the converters, they oppose the imposition of duties claiming that the measures could have the effect of artificially raising the prices in Europe.

(208) Considering the rather good financial situation of the downstream industry, in contrast to the one of the Community industry, no converter/user put forward the argument that maintaining the current duties could lead to a loss of jobs or to moving manufacturing facilities overseas.

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(209) Furthermore, in terms of output, the Community industry adapted its size to match the increased consumption and therefore it is very likely that the unused capacity of the Community industry could fully cover the amount of the imports.

(210) Bearing in mind that there are still alternative sources of supply with no anti-dumping measures, i.e. Mexico, Turkey, USA, Brazil, Pakistan, Iran, Saudi Arabia the Community users would moreover be able to rely on (or to switch to) diversified suppliers of the product concerned.

(211) As concerns the performance of the user industry, the investigation has shown that during the period considered, the cooperating users increased their turnover, maintained employment stable and rather improved their overall profitability. Therefore it was found that they were not negatively affected by the anti-dumping measures.

(212) On the basis of the above, it is concluded that maintaining the existing anti-dumping measures against imports originating in India, Indonesia, Thailand, Malaysia, the Republic of Korea and Taiwan would not have a significant negative effect on the situation of the users in the Community.

5. **Interest of suppliers**

(213) The suppliers of raw material (mono ethylene glycol (MEG)) and purified terephthalic acid (PTA), DMT and isophthalic acid (IPA), all petrochemical products derivatives of naphtha, clearly indicated their support for the measures. They would benefit from the fact that the Community industry would very likely be able to recover from the effects of dumping and thus improve their performance.

6. **Conclusion on Community interest**

(214) Taking into account all of the factors outlined above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

J. **RELATION BETWEEN ANTI-DUMPING AND COUNTERVAILING MEASURES**

(215) For one export country, namely India, a parallel investigation on the expiry of countervailing measures has been carried out (see recital 10). This investigation confirmed the necessity to continue the application of such measures at unchanged levels. The present investigation also concluded that anti-dumping measures on exports from India should be kept in force at unchanged levels. In that respect, reference is made to recital 125 of Regulation (EC) No 2604/2000. As the measures currently proposed for exports of PET from India remain unchanged, it follows that Article 14(1) of the basic anti-dumping Regulation and Article 24(1) of Council Regulation (EC) No 2026/97 are complied with.

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K. FINAL PROVISIONS

(216) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained respectively their levels be amended where warranted. They were also granted a period to submit comments and claims subsequent to disclosure. In particular one Indian exporter alleged that in the absence of measures it is not likely that India will re-direct sales to the Community. This exporter claimed that emerging markets are more attractive than the Community, that Indian demand is growing fast and that, therefore, no spare capacity is available. It is however to be considered that, notwithstanding an increase of the demand in the Indian market, the investigation at company level indicated spare capacities, in excess of the increase in demand on the Indian market, as also confirmed by the market intelligence report mentioned at recital 74. It is therefore concluded that none of the disclosure comments received were such as to alter the conclusions as contained in this regulation.

(217) It follows from the above that the anti-dumping duties are maintained respectively, their levels are amended where warranted,

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, falling within CN code 3907 60 20 and originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand.

▼M1

2. Except as provided for in Article 2, the rate of the anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty for products manufactured by the companies listed below shall be as follows:

Country	Company	Anti-dumping duty (EUR/tonne)	TARIC additional code
▼M2 India	Reliance Industries Ltd	132,6	A181
▼M1 India	Pearl Engineering Polymers Ltd	87,5	A182
India	Senpet Ltd	200,9	A183
India	Futura Polyesters Ltd	161,2	A184
India	South Asian Petrochem Ltd	88,9	A585
India	All other companies	153,6	A999
Indonesia	P.T. Mitsubishi Chemical Indonesia	187,7	A191
Indonesia	P.T. Indorama Synthetics Tbk	92,1	A192
Indonesia	P.T. Polypet Karyapersada	178,9	A193

▼M1

Country	Company	Anti-dumping duty (EUR/tonne)	TARIC additional code
Indonesia	All other companies	187,7	A999
Malaysia	Hualon Corp. (M) Sdn. Bhd.	36,0	A186
Malaysia	MpI Polyester Industries Sdn. Bhd.	160,1	A185
Malaysia	All other companies	160,1	A999
Republic of Korea	SK Chemicals Group:		
	SK Chemicals Co. Ltd	0	A196
	Huvis Corp.	0	A196
Republic of Korea	KP Chemical Group:		
	Honam Petrochemicals Corp.	0	A195
	KP Chemical Corp.	0	A195
Republic of Korea	All other companies	148,3	A999
Taiwan	Far Eastern Textile Ltd	36,3	A808
Taiwan	Shinkong Synthetic Fibers Corp.	67,0	A809
▼M3			
Taiwan	Lealea Enterprise Co., Ltd	0	A996
▼M1			
Taiwan	All other companies	143,4	A999
Thailand	Thai Shingkong Industry Corp. Ltd	83,2	A190
Thailand	Indo Pet (Thailand) Ltd	83,2	A468
Thailand	All other companies	83,2	A999

▼B

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

4. Notwithstanding paragraphs 1 and 2, the definitive anti-dumping duty shall not apply to imports released for free circulation in accordance with Article 2.

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

Article 2

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

([1]) OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 1875/2006 (OJ L 360, 19.12.2006, p. 64).

▼B

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

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

▼M4

Country	Companies	TARIC additional code
India	Reliance Industries Ltd	A181
India	Pearl Engineering Polymers Ltd	A182
India	Dhunseri Petrochem & Tea Ltd	A585

▼B

Article 3

This Regulation shall enter into force on the day following 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.

▼B

ANNEX

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

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

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