COMMISSION REGULATION (EU) No 473/2010

of 31 May 2010

imposing a provisional countervailing duty on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ('the basic Regulation') ([1]), and in particular Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 3 September 2009 the Commission announced, by a notice published in the *Official Journal of the European Union* ([2]) ('notice of initiation'), the initiation of an anti-subsidy proceeding with regard to imports into the Union of certain polyethylene terephthalate ('PET') originating in Iran, Pakistan and the United Arab Emirates ('the countries concerned').

(2) On the same day, the Commission announced, by a notice published in the *Official Journal of the European Union* ([3]), the initiation of an anti-dumping proceeding with regard to imports into the Union of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates and commenced a separate investigation ('AD proceeding').

(3) The anti-subsidy proceeding was initiated following a complaint lodged on 20 July 2009 by the Polyethylene Terephthalate Committee of Plastics Europe ('the complainant') on behalf of producers representing a major proportion, in this case more than 50 %, of the total Union production of certain polyethylene terephthalate. The complaint contained *prima facie* evidence of subsidisation of the said product and material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-subsidy proceeding.

(4) Prior to the initiation of the proceeding and in accordance with Article 10(7) of the basic Regulation, the Commission notified the Governments of Iran, Pakistan and the United Arab Emirates ('UAE') that it had received a properly documented complaint alleging that subsidised imports of PET originating in Iran, Pakistan and the UAE were causing material injury to the Union industry. The respective Governments were invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. All the Governments accepted the offer of consultations and consultations were subsequently held. During the consultations, no mutually agreed solution could be arrived at. However, due note was taken of comments made by the authorities of the countries concerned in regard to the allegations contained in the complaint regarding the lack of countervailability of the schemes. During or following the consultations, submissions were received from the governments of Pakistan and the UAE.

1.2. Parties concerned by the proceeding

(5) The Commission officially advised the complainant producers, other known Union producers, importers/traders and users known to be concerned, the exporting producers and the representatives of the exporting countries concerned, of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(6) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(7) In view of the apparently large number of Union producers and importers, the use of sampling techniques for the investigation of injury was envisaged in accordance with Article 27 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all Union producers and importers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product under investigation during the investigation period (1 July 2008 – 30 June 2009).

(8) Fourteen Union producers provided the requested information and agreed to be included in the sample. On the basis of the information received from the cooperating Union producers, the Commission selected a sample of five Union producers representing 65 % of the sales by all cooperating Union producers.

([1]) OJ L 188, 18.7.2009, p. 93.
([2]) OJ C 208, 3.9.2009, p. 7.
([3]) OJ C 208, 3.9.2009, p. 12.

(9) Eight importers provided the requested information and agreed to be included in the sample. On the basis of the information received from the cooperating importers, the Commission selected a sample of two importers representing 83 % of imports by all cooperating importers and 48 % of all imports from the UAE, Iran and Pakistan.

(10) The Commission sent questionnaires to the authorities of the countries concerned, to the exporting producers, to the sampled Union producers, sampled importers and to all users and suppliers known to be concerned as well as to those that made themselves known within the deadlines set out in the notice of initiation.

(11) Questionnaire replies were received from the authorities of the countries concerned, one exporting producer in Iran and its related trader, one exporting producer in Pakistan and one exporting producer in the United Arab Emirates, from five sampled Union producers, one sampled importer, ten users in the Union, three suppliers of raw materials. In addition, seven cooperating Union producers provided the requested general data for the injury analysis.

(12) The Commission sought and verified all information deemed necessary for the determination of subsidisation, resulting injury and Union interest.

(13) Verification visits were carried out at the premises of the following State authorities:

Government of Iran

— Iranian Ministry of Commerce, Trade Representation Office, Tehran, Iran;

— Iran Customs Office, Bandar Imam Khomeini, Iran;

Government of the United Arab Emirates

— Ministry of Economy and Industry of the United Arab Emirates, Abu Dhabi, United Arab Emirates;

— RAK Investment Authority, Government of Ras Al Khaimah, Ras Al Khaimah, United Arab Emirates;

(14) Verification visits were also carried out at the premises of the following companies:

Union producers

— Novapet SA, Spain

— Equipolymers Srl, Italy

— UAB Orion Global PET (Indorama), Lithuania

— UAB Neo Group, Lithuania

Exporting producer in Iran

— Shahid Tondguyan Petrochemical Co. (STPC) and its related companies, Bandar Imam Khomeini and Tehran;

Exporting producer in Pakistan

— Novatex Limited, Karachi

Exporting producer in the United Arab Emirates

— JBF RAK LLC, Ras Al Khaimah

1.3. **Investigation period**

(15) The investigation of subsidisation and injury covered the period from 1 July 2008 to 30 June 2009 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the investigation period ('period considered').

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(16) The product concerned is polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, originating in Iran, Pakistan and the UAE ('the product concerned'), currently falling within CN code 3907 60 20.

(17) PET is a chemical product which is normally used in the plastics industry, for the production of bottles and sheets. Since this grade of PET is a homogeneous product, it was not further subdivided into different product types.

2.2. **Like product**

(18) The investigation showed that the PET produced and sold in the Union by the Union industry, and the PET produced and sold on the domestic markets of Iran, Pakistan and the United Arab Emirates, and exported to the Union have essentially the same basic chemical and physical characteristics and the same basic uses. They are therefore provisionally considered to be alike within the meaning of Article 2(c) of the basic Regulation.

3. SUBSIDISATION

3.1. Iran

3.1.1. *Introduction*

(19) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involved the granting of subsidies by a Governmental authority, were investigated:

(I) Measures connected to Special Economic Zones ('SEZs') – Petrochemical SEZ

(II) Financing from National Petrochemical Company to the PET exporting producer

3.1.2. *Specific Schemes*

I. ***Measures connected to Special Economic Zones (SEZs) – Petrochemical SEZ***

(20) According to the legal provisions, a company established in an SEZ benefits from the duty-free import of input material under the condition that it is used in the production process of a product for subsequent exports. During the verification, it was also found that companies in SEZs also benefit from the duty-free import of capital goods.

(a) *Legal Basis*

(21) The full legal description of the SEZs scheme is currently set out in the following laws and regulations: 'The Law for Establishment and Management of the Special Economic Zones in the Islamic Republic of Iran' No. 257/184168, enacted on May 19, 2005; Approval of Commission of Art. 138 of Constitutional Act Secretariat of High Council of Free Industrial-Trade Zones, dated May 27, 2007; Executive By-law for Establishment and Management of Special Economic Zone of the Islamic Republic of Iran; Approval of Board of Ministers dated April 29, 2006.

(22) The Petrochemical SEZ was founded on 30 April 1997 (year 1376 according to the Persian calendar) by Act No. 58548, published in the Official Gazette No. 15275 on 25 May 1997.

(b) *Eligibility*

(23) No specific rule on eligibility has been found in the set of Legislative/Administrative Acts provided by the Iranian Government during the investigation. The sole Iranian cooperating exporting producer has its factory premises established in the Petrochemical SEZ of Mahshahr, Bandar Imam Khomeini. According to the information made available by the Iranian authorities, this zone is the only Petrochemical SEZ in Iran.

(c) *Practical implementation*

(24) Each SEZ is considered as being situated outside the country's Customs territory. Hence, all imports are exempted from duties under the condition that the imported input materials are used to produce the resulting export product.

(25) In order to monitor the amount of duty-free imported raw materials consumed in the production of the resultant export product, the Customs offices register both the import allowance and export obligation at the time of import and of export on the basis of standard input-output norms specified in a certificate entitled 'Production Permit' released by the Ministry of Health, General Department and which is valid for five years. For every transaction the Customs offices releases upon request a code-number (B-Jack) necessary for the company to clear goods through Customs.

(26) In addition, the company provides periodically to the relevant authority with the exports and domestic sales that it intends to carry out in the following year. On the basis of the aforesaid available information, the Customs offices supervise the correct use of the benefits availed by the company.

(27) As regards a domestic sale, i.e. a sale from the SEZ into the mainland, a customs duty will be imposed on the part of the imported duty-free input incorporated in the final product according to the standard input-output norms.

(d) *Findings of the investigation*

(28) During the verification visit, it has been found that there are no concrete, statutory and publicly available criteria that govern the decision of the granting authority on who is entitled to be established in the Petrochemical SEZ. A company willing to establish in that zone has to lodge an application to the relevant authority but no guidelines are available in order to show on what basis the request can be accepted or rejected. Moreover, the founding Act of the Petrochemical SEZ entrusts National Petrochemical Company ('NPC') (shareholder of the sole cooperating exporting producer) to manage and organize this zone for the purpose of petrochemical activities.

(29) Serious discrepancies and malfunctions of the system have been found. The Iranian authorities did not establish a proper verification system to monitor the amount of duty-free imported raw materials consumed in the production of the resultant export product. STPC, the sole cooperating producer in Iran, did not report the actual raw material yields and no verification system has been implemented in practice by NPC in order to confirm that the inputs for which exemption has been granted are consumed in the production of the exported product and their amounts. The standard input-output norms are production ratios proposed by the company and accepted by the Government that derive from the standard applied in the Petrochemical Industry.

(30) The sole cooperating exporting producer benefited from the above scheme and also from a duty-free import of capital goods.

(e) *Conclusion*

(31) Account taken of all the above, the import of duty-free inputs in the SEZ has to be considered a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, i.e. a financial contribution of the Iranian Government which conferred a benefit upon the investigated exporter.

(32) Moreover, the scheme is specific within the meaning of the Article 4(2)(a) of the basic Regulation, given that the legislation, pursuant to which the granting authority operates, explicitly limits access to this zone to certain enterprises belonging to the petrochemical sector of production.

(33) In addition, the scheme is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4)(a) of the basic Regulation. Without an export commitment, a company cannot obtain benefits under this scheme.

(34) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation since it does not conform to the rules laid down in Annex I, in particular point (i), Annex II and Annex III of the basic Regulation.

(35) Specifically, the Iranian Government has no verification system or procedure in place to confirm whether and in what amounts inputs were consumed in the production of the exported product (in accordance with Annex II, part (II), point (4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III, part (II), point (2) of the basic Regulation). The standard input-output norms themselves cannot be considered company specific standards nor a verification system of actual consumption. This type of process does not enable the Government to verify with sufficient precision what amounts of inputs were consumed in the export production and under which standard input-output norm benchmark they should be compared. Furthermore, the Government did not perform an effective control based on a correctly kept actual consumption register. In fact, the Government of Iran did not carry out a further examination, based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (in accordance with Annex II, part (II), point (5) and, in the case of substitution drawback schemes, Annex III, part (II), point (3) of the basic Regulation).

(36) In addition, the benefit derived from the duty unpaid from the import of capital goods is also a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, i.e. a financial contribution of the Iranian Government which conferred a benefit upon the investigated exporter. In addition, the scheme is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4)(a) of the basic Regulation. Without an export commitment, a company cannot obtain benefits under this scheme.

(37) It cannot be considered a permissible duty drawback system because it concerns capital goods which are not consumed in the production process and thus are not covered by the scope of permissible duty drawback systems set out in Annex I, point (i) of the basic Regulation.

(38) Account taken of above, the subsidies in question are considered countervailable.

(f) *Calculation of the subsidy amount*

(39) In the absence of permitted duty drawback systems or substitution drawback systems, the benefit consists in the remission of total import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an 'excess' remission of duties. According to Article 3(1)(a)(ii) and Annex I, point (i) of the basic Regulation, only an excess remission of duties can be countervailed, provided the conditions of Annexes II and III of the basic Regulation are met. However, these conditions were not fulfilled in the present case. Thus, if an absence of an adequate monitoring process is established, the above exception for drawback schemes is not applicable and the normal rule of countervailing of the amount of (revenue forgone) unpaid duties applies, rather than any purported excess remission.

(40) The subsidy amount for the exporter with regard to the duty-free import of input products was calculated on the basis of import duties forgone (basic customs duty) on the material imported for the product concerned during the IP (nominator). In accordance with Article 7(2) of the basic Regulation, this subsidy amount has been allocated over the export turnover generated by the product concerned during the IP, because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(41) The subsidy rate established in respect of this scheme during the IP for the exporting producer amounts to 1,13 %.

(42) In addition, the benefit derived from the unpaid duty from the import of capital goods cannot be considered a permissible duty drawback system because it concerns capital goods which are not consumed in the production process. The subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period of 15 years which reflects the minimum depreciation period that has been found in all the three countries involved in the current investigation in relation to the industry concerned. In accordance with the established practice, the amount so calculated, which is attributable to the IP, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the IP in Iran was considered appropriate for this purpose.

(43) In accordance with Articles 7(2) and 7(3) of the basic Regulation, this subsidy amount (as nominator) has been allocated over the total export turnover during the IP, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy rate established in respect of this subsidy during the IP for the exporting producer amounts to 0,93 %.

(44) The total subsidy rate established in respect of the above measures during the IP for the exporting producer amounts to 2,06 %.

II. ***Financing from National Petrochemical Company to the PET exporting producer***

(45) This scheme consists of a direct transfer of non-repayable funds from NPC to the sole cooperating Iranian exporting producer.

(a) *Findings of the investigation*

(46) The investigation established that NPC is the main shareholder of STPC, owning 75 % of its shares. The remaining shareholders are the Petroleum Ministry Retirement & Welfare Fund, which owns 15 % of shares and the Justice Shares Broker Co., which owns 10 % of shares. It was established during the verification visit that NPC has financed a substantial part of STPC's capital cost and its circulating/working capital as well as the instalments of bank loans of STPC on their due dates. Therefore, as the Audited Financial Statements for the financial year covering the IP clearly show, the continuation of the cooperating exporting producer's activity depends on the financial support of the main shareholder that is fully owned by National Iranian Oil Company, which belongs to the Iranian Ministry of Petroleum.

(47) Furthermore, the liquidity injections to STPC are not reported in the company's accounts as loans provided.

(48) STPC's debt towards NPC, as clearly stated in the STPC Audited Financial Statements ending on March 20, 2009, equals to 51 % of its total assets. In this respect it is noted that Article 141 of the Iranian Amendment Bill of Commercial Code requires the shareholder to decide on the dissolution or continuation of the company whenever any company has to allocate at least half of its capital to cover losses occurred.

(49) Until now no action has been taken by NPC, as principal shareholder of STPC, in order to increase the STPC's capital against the financial situation, although on 3 June 2009 the General Assembly Meeting of STPC decided that the situation of the company's debts to NPC should be clarified.

(50) The investigation has also established that the transfer of funds described above is a recurring practice that has been taking place for a number of years. Indeed, STPC's relevant Audited Financial Statements reveal that non-repayable funds have been accumulated since the beginning of the company's activity, as certified in the Audited Financial Statements since the financial year 2004.

(b) *Conclusion*

(51) Account taken of above, this financial support from NPC can be considered a subsidy because it is a government practice which provides a financial contribution within the meaning of Article 3(1)(a)(i) of the basic Regulation, i.e. a direct transfer of funds in the form of working capital infusion and grants to cover the repayment of loans. In addition, the fact that the non-repayable funds have been accumulated since at least 2004 confirms that this is a recurring subsidy, the purpose of which is to keep in operation the sole cooperating Iranian exporting producer.

(52) Furthermore, NPC is to be considered a public body on the basis of the following factors: 1) Government ownership: NPC is 100 % state-owned, a subsidiary of National Iranian Oil Company which is fully owned by the Ministry of Petroleum; 2) The Articles of Association of the NPC have been enacted through a legislative procedure; 3) The general Assembly of Representatives of Shareholders is formed by six Ministers, including the Prime Minister, and two of the directors of National Iranian Oil Company, elected by Chairman of the Board of Directors and Managing Director of National Iranian Oil Company. In other words, the government exercises total control over NPC; 4) NPC is responsible for the development and operation of the country's petrochemical sector and for this reason has been entrusted to manage the Petrochemical Special Economic Zone.

(53) As regards the existence of a benefit conferred upon the recipient company, the investigation established that STPC, as currently constituted, could not continue to operate without the financial support of NPC. This practice is inconsistent with the usual investment practice of private investors since no commercial organisation would continue to inject such non-repayable funding.

(54) This NPC financing intervention is specific within the meaning of Article 4(2)(a) of the basic Regulation, given that the granting authority explicitly limits access to that subsidy only to STPC, in line with its policy to develop the Petrochemical Sector.

(55) Account taken of above, this subsidy is considered countervailable.

(c) *Calculation of the subsidy amount*

(56) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipient, which is found to exist during the IP. The benefit conferred on the recipient is considered to be the total amount of non-repayable funding, as reported by the cooperating exporting producer in its accounts. In accordance with Article 7(2) of the basic Regulation this subsidy amount (nominator) has been allocated over the total sales turnover of the company during the IP, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(57) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producer amounts to 51,02 %.

3.1.3. *Amount of countervailable subsidies*

(58) The provisional amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the sole cooperating Iranian exporting producer is 53,08 %.

3.2. **Pakistan**

(59) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involved the granting of subsidies by a Governmental authority, were investigated:

(I) Manufacturing Bond Scheme

(II) Imports of plant, machinery and equipment in Manufacturing Bond

(III) Tariff protection on purchases of PTA in the domestic market

(IV) Final Tax Regime (FTR)

(V) Export Long-Term Fixed Rate Financing Scheme (LTF-EOP)

(VI) Export Finance Scheme from the State Bank of Pakistan (EFS)

(VII) Finance under F.E. Circular No. 25 of the State Bank of Pakistan

3.2.1. *Specific Schemes*

I. ***Manufacturing Bond Scheme***

(60) This scheme permits the import of duty-free input material under the condition that it is used for subsequent exports.

(a) *Legal Basis*

(61) The scheme is based on the Customs Act 1969, as amended on 30 June 2008. Section 219 (Chapter XX) of this Customs Act authorises the Central Board of Revenue to issue Notifications regarding the export and import policy. Accordingly, Chapter XV of the Customs Rules 2001 (SRO 450(I)/2001, published on 18 June 2001) provides a detailed regulation for the duty exemption of goods imported in the manufacturing bond warehouse.

(b) *Eligibility*

(62) In order to avail the Manufacturing Bond Scheme, it is necessary to obtain a license released by the Customs Collectorate to any applicant person or firm, as described in the Article 343 of the Customs Rules 2001, Chapter XV.

(c) *Practical implementation*

(63) At the moment of import of input materials, the producing company has to mention the SRO number 450/(I)/2001 on the Customs prescribed declaration form, i.e. 'Goods Declaration'. However, an Indemnity Bond and post dated cheques in the amount of customs duty and sales tax are deposited with Customs Department and are valid for a period of three years. This guarantee is released/discharged by the Customs upon evidence of the export of finished goods provided by the company.

(64) Finished goods manufactured from imported input materials are recorded in the Bond Register and the raw materials are adjusted according to the input ratios certified in the Analysis Certificate. This certificate released by the Customs Department attests the input-output ratios of all raw materials for manufacturing 1 000 kg. of the product concerned. These input-out ratios are proposed by the company and accepted by the Government and derive from the standard applied in the industry concerned.

(65) At the time of export, a declaration is made on the Customs Goods Declaration that the exports are from the Manufacturing Bond and a consumption sheet of input materials used in the manufacturing of the finished goods for export is attached to the Customs Goods Declaration. After examining all the aspects of the Goods Declaration, the concerned Customs official allows the export of the finished goods.

(66) When the imports of input materials are consumed against respective export of finished goods in the Bond Register, the company submit a letter to the Customs Department along with a copy of import Goods Declaration and export Shipping Bills along with a summary/reconciliation showing the consumption of raw materials and its export in the shape of finished goods under the Manufacturing Bond. Accordingly, the Customs official releases the Indemnity Bond and the post dated cheques deposited at the time of import of input materials.

(d) *Findings of the investigation*

(67) The sole cooperating exporting producer obtained benefits under the Manufacturing Bond scheme.

(68) The verification visit established that, in practice, the Pakistani authorities did not apply a proper verification system to monitor the amount of duty-free imported raw materials and consumed in the production of the resultant export product. Serious discrepancies and malfunctions of the system have been found in comparison with the drawback system established in the legal provisions (Chapter XV of the Customs Rules 2001).

(69) In the manufacturing bond, the manufacturing area and separate stores of finished goods, rejects and waste, were not clearly ear-marked in the premises. Only the raw materials imported duty-free were separated from locally procured input goods. The premises of the warehouse, that is the bonded warehouse and the manufacturing bond, were not in an independent area having an independent entry or exit from a public area and having no other entry or exit, as prescribed in the Article 349 of the abovementioned Chapter XV.

(70) The relevant record of input goods received, manufactured and exported was not kept on the basis of actual consumption. Only the theoretical consumption was registered, according to an Analysis Certificate, with input-output ratios of all the raw materials for producing 1 000 kg of outputs. These input-output norms are set out by the authorities and periodically reviewed but there are no clear rules and no evidence of how these reviews are performed.

(71) Furthermore, no effective verification system has been implemented in practice by the Government of Pakistan. The authorities claimed that they perform audits on the documentation kept by companies but this is done by looking at what the companies report per standard input-output norm and not on what were the actual production material yields.

(72) The authorities submitted that the relevant PET Analysis Certificate for the sole cooperating exporting producer was reviewed from 2002 (when the first submitted Analysis Certificate was issued) up to IP. In support of this claim, the authorities provided copy of one review performed in 2004. Nevertheless, although this review resulted in a restriction on the amount of raw materials allowed for duty-free import, no control of any excess remission investigation on the duties forgone was performed. From the moment of the adjustment of the Analysis Certificate and onwards, the cooperating exporting producer simply adjusted its registration quantities in the Bond Register as per the Analysis Certificate yields. Since 2004, despite the clear evidence that the production process could lead to better performing raw material yields (and thus excess remission of duties), no review of the Analysis Certificate and no investigation on the actual consumption of raw materials used by the cooperating exporting producer was performed.

(e) *Conclusion*

(73) Account taken of all the above, the Manufacturing Bond Scheme has to be considered a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation in the form of forgone government revenue which confers a benefit upon the recipient company.

(74) In addition, this subsidy scheme can be considered specific, since it is provided to companies that manufacture products in bond and further export goods and is therefore contingent in law on export performance in line with Article 4(4)(a) of the basic Regulation.

(75) Furthermore, this scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I, in particular point (i), Annex II and Annex III of the basic Regulation.

(76) Specifically, the Pakistani Government did not effectively apply its verification system or procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (in accordance with Annex II, part (II), point (4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III, part (II), point (2) of the basic Regulation). The input-output ratios cannot be considered company-specific standards and not even a verification system of actual consumption. This type of process does not enable the Government to verify with sufficient precision what amounts of inputs were consumed in the export production. Furthermore, an effective control done by the Government based on a correctly kept actual consumption register did not take place. In addition, the Pakistani Government did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II, part (II), point(5) and Annex III, part (II), point (3) to the basic Regulation).

(77) Account taken of above, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(78) In the absence of permitted duty drawback systems or substitution drawback systems, the benefit consists in the remission of total import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an 'excess' remission of duties. According to Article 3(1)(a)(ii) and Annex I, point (i) of the basic Regulation, only an excess remission of duties can be countervailed, provided the conditions of Annexes II and III of the basic Regulation are met. However, these conditions were not fulfilled in the present case. Thus, if an absence of an adequate monitoring process is established, the above exception for drawback schemes is not applicable and the normal rule of countervailing of the amount of (revenue forgone) unpaid duties applies, rather than any purported excess remission.

(79) The subsidy amount for the exporter was calculated on the basis of import duties forgone (basic customs duty) on the material imported under the Manufacturing Bond scheme used for the product concerned during the IP (nominator). In accordance with Article 7(2) of the basic Regulation, this subsidy amount has been allocated over the export turnover generated by the product concerned during the IP because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(80) The subsidy rate established in respect of this scheme during the IP for the exporting producer amounts to 2,57 %.

II. ***Imports of plant, machinery and equipment in Manufacturing Bond***

(81) This scheme allowed free of duty import of plant and machinery destined to Manufacturing Bond and imported by 30 June 2004. Machinery and spare parts not manufactured locally had to be imported for setting up a manufacturing unit or for the expansion, balancing, modernization and replacement of existing units in bond.

(a) *Legal Basis*

(82) The scheme is provided by SRO No. 554(I)/98, dated 12 June 1998.

(b) *Eligibility*

(83) In order to avail this scheme, the importer had to declare to the Customs authorities that the machinery has been duly installed or used in the bonded premises.

(c) *Practical implementation*

(84) The importer, at the time of importation, had to satisfy the Collector of Customs that the machinery or spare parts had been imported for setting up a manufacturing unit in bond and furnish an indemnity bond in the amount of the customs duty. The said indemnity bond would have been discharged on production of a certificate of installation of the imported machinery.

(d) *Findings of the investigation*

(85) This scheme was used up to June 2004 and the sole cooperating exporting producer availed benefits for the import of one portion of its plant between 2002 and 2003.

(e) *Conclusion*

(86) Account taken of above, the scheme has to be considered a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation in the form of foregone government revenue which confers a benefit upon the recipient company.

(87) This subsidy scheme can be considered specific, since it is provided to companies that manufacture products in bond and further export goods and is therefore contingent in law on export performance in line with Article 4(4)(a) of the basic Regulation.

(88) In addition, the benefit derived from the duty unpaid from the import of capital goods cannot be considered a permissible duty drawback system because it concerns capital goods which are not consumed in the production process and thus are not covered by the scope of permissible duty drawback systems set out in Annex I, point (i) of the basic Regulation.

(89) Account taken of above, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(90) The subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period of 15 years which reflects the minimum depreciation period that has been found in all the three countries involved in the current investigation in relation to the industry concerned. In accordance with the established practice, the amount so calculated, which is attributable to the IP, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the IP in Pakistan was considered appropriate for this purpose.

(91) In accordance with Articles 7(2) and 7(3) of the basic Regulation, this subsidy amount (as numerator) has been allocated over the total export turnover during the IP, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(92) The subsidy rate established in respect of this scheme during the IP for the exporting producer amounts to 0,01 %.

III. ***Tariff protection on purchases of PTA in the domestic market***

(93) The scheme provides a financial refund for domestic purchases of PTA (the main raw material used in the production of PET) produced in Pakistan at 7,5 % of the invoice selling price.

(a) *Legal Basis*

(94) The scheme is based on the SRO No. 1045(I)/2008 dated September 19, 2008, amended by SRO No. 1299(I)/2008 dated December 22, 2008, and allows all PTA consumers and users to obtain a refund of 7,5 % of their purchases of locally procured PTA.

(b) *Eligibility*

(95) This scheme is a Compensatory Support to PTA users or consumers listed in the aforesaid SRO and to any other user approved by the Ministry of Textile Industry who becomes eligible in the future. This Compensatory Support is provided to offset the impact of locally procured or imported PTA through the State Bank of Pakistan. Application forms to benefit from the scheme are set out as Annexure of the SROs. Furthermore, a list of recipient companies of the scheme is provided directly by the SRO No. 1045(I)/2008.

(c) *Practical implementation*

(96) This refund is a compensatory support/tariff protection for the polyester industry and is administrated by the State Bank of Pakistan. If PTA is imported, an import duty of 7,5 % is levied.

(97) If PTA is purchased from a Pakistani manufacturer that locally produced PTA, a price component of 7,5 % is identified on the invoice sent by the domestic PTA producer to the buyer. Accordingly, the buyer obtains a refund of this 7,5 % upon request.

(d) *Findings of the investigation*

(98) The investigation established that in practice the scheme provides a direct financing to the polyester industry of Pakistan. The SROs are intended to favour the procurement of domestically produced PTA. This support for the domestically procured PTA is considered a direct financing to the buyer. The investigation established that the sole cooperating exporting producer was explicitly listed in the relevant SRO as a beneficiary of this scheme. In fact, the relevant SRO only mentioned eight companies in Pakistan as parties entitled to this scheme. Thus, the cooperating exporting producer obtained benefits derived from the PTA Compensatory Support.

(e) *Conclusion*

(99) Account taken of all the above, this scheme is considered to be a subsidy within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation because it provides a financial contribution in the form of a direct transfer of funds that confers a clear benefit upon the recipient company.

(100) In addition, the scheme is specific within the meaning of Article 4(4)(b) of the basic Regulation, given that the subsidy is contingent upon the use of domestic over imported goods.

(101) Furthermore, this subsidy can also be considered specific within the meaning of Article 4(4)(a) of the basic Regulation, given that the legislation itself explicitly limits access to this scheme to certain enterprises belonging to the polyester industry.

(102) Consequently, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(103) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipient, which is found to exist during the IP. The benefit conferred on the recipient is considered to be the total amount of the financial refund, as reported by the cooperating exporting producer in its accounts.

(104) In accordance with Article 7(2) of the basic Regulation this subsidy amount (nominator) has been allocated over the total sales turnover of the company during the IP because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(105) The subsidy rate established with regard to this scheme during the IP for the cooperating exporting producer amounts to 2,38 %.

IV. ***Final Tax Regime (FTR)***

(106) Under this scheme a company can benefit from a special tax regime on its export turnover.

(a) *Legal Basis*

(107) The scheme is based on the Sections 154 and 169 of the Income Tax Ordinance, 2001 (ITO) and Division IV of Part III of the First Schedule to the ITO 2001.

(b) *Eligibility*

(108) This scheme is a system to levy income on the basis of the export turnover and is accessible to every exporter at the time of realisation of the proceeds on account of a sale of goods.

(c) *Practical implementation*

(109) A withholding tax of 1 % is deducted by an authorized bank on the value of the export transaction at the time of the realization of foreign exchange proceeds, regardless of any profit of the company. On the other hand, the taxable income of companies on their domestic activities is subject to a 35 % income tax.

(110) This tax deduction, applied directly on the exchange proceeds, is to be considered a final tax on the income arising from the export transactions. No deduction is allowed for any expenditure pertaining to the realisation of the export turnover.

(d) *Findings of the investigation*

(111) The investigation established that in practice the scheme provides a special and favourable tax treatment for the exporters. Although the portion of the expenses related to the export turnover cannot be deducted, the low tax rate at 1 % of the total export turnover represents an advantageous tax system in comparison with the normal tax regime where a higher rate at 35 % is applied on the normal income, provided that the profits from exports are taxed at a lower rate than those earned on domestic sales. The cooperating exporting producer obtained benefits derived from the FTR scheme.

(e) *Conclusion*

(112) To the extent that this tax regime results in profits due to the fact that exports are taxed at a lower rate the domestic sales, this scheme is considered to be a subsidy within the meaning of Article 3(1)(a) (ii) and Article 3(2) of the basic Regulation in the form of forgone government revenue that confers a benefit upon the recipient company.

(113) In addition, this subsidy can be considered specific within the meaning of the Article 4(4)(a) of the basic Regulation, given that the subsidy is contingent upon export performance.

(114) Consequently, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(115) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipient, which is found to exist during the IP. The benefit conferred on the recipient is considered to be the amount of total tax payable according to the income relating to the receipts subject to the FTR (exports), after the deduction of the FTR paid (1 % of the export turnover). In accordance with Article 7(2) of the basic Regulation this subsidy amount (nominator) has been allocated over the total export turnover of the company during the IP, because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(116) The subsidy rate established with regard to this scheme during the IP for the exporting producer amounts to 1,95 %.

V. ***Export Long-Term Fixed Rate Financing Scheme (LTF-EOP)***

(117) The purpose of the Long-Term Financing for the Export Oriented Projects (LTF-EOP) is to enable eligible financial institutions to provide financing facilities on attractive terms and conditions to borrowers for import of machinery, plant, equipment and accessories thereof.

(a) *Legal Basis*

(118) The legal bases are provided under Section 17(2)(a)/17(4)(c) and Section 22 read with 17(2)(d) respectively of the State Bank of Pakistan Act, 1956. Details of the scheme are set out in the State Bank of Pakistan ('SBP') Circular No. 14, dated 18 May 2004.

(b) *Eligibility*

(119) As expressly stated in the SBP Circular No. 14, dated 18 May 2004, companies which export directly or indirectly at least 50 % of their annual production are eligible for financing under the scheme.

(c) *Practical implementation*

(120) Participating financial institutions approved for FTF-EOP are those who comply with the capital adequacy requirement set by the SBP. Those institutions can provide a long-term financing of up to 7-1/2 years to their borrowers.

(121) Credit provided to companies could then be used for various purposes (modernization of factories, purchase of locally manufactured plant and machinery, import of machinery etc.).

(122) Banks are allowed to charge the borrower up to 3 % over and above the rates notified by the SBP. Interest rates for financing under LTF-EOP scheme are benchmarked with the weighted average yields of 12 months Treasury Bills and three and five years Pakistan Investment Bond, depending on the period of financing.

(123) After the disbursement of the loan, the banks can approach the concerned office of the SBP for obtaining refinance in the amount of the loan disbursed.

(d) *Findings of the investigation*

(124) Although this scheme ceased in June 2007, the sole cooperating exporting producer is still benefiting the scheme, given that this is a long-term financing and the benefit was availed of in April 2005 for a period of 7-1/2 years.

(125) Under this scheme, the SBP mandatorily sets maximum ceiling interest rates applicable to long-term loans.

(126) As result, exporters can obtain long-term loans at preferential interest rates compared with the interest rates for ordinary commercial credits, which are set purely under market conditions.

(e) *Conclusion*

(127) The scheme has to be considered a subsidy within the meaning of Article 3(1)(a)(iv) and Article 3(2) of the basic Regulation in the form of government practice which involves a public body (i.e., the SBP), which is therefore part of the government, instructing commercial banks to carry out functions illustrated under Article 3(1)(a)(i) (i.e. direct transfer of funds in the form of loans). A benefit is conferred upon the recipient company in the form of the preferential interest rate.

(128) In this context, it has to be highlighted that SBP falls under the definition of a 'government' as set out in Article 2(b) of the basic Regulation. It is 100 % government-owned and pursues public policy objectives. Indeed, SBP performs all the functions attributed to central banks, including the issue of notes, regulation and supervision of the financial system, acting as bankers' bank, lender of last resort, banker to the Government, conducting monetary policy, managing the public debt, managing the foreign exchange, developing the financial framework, institutionalising savings and investments, providing training facilities to bankers, and providing credit to priority sectors.

(129) Account taken of above, this subsidy can be considered specific pursuant to Article 4(4)(a) of the basic Regulation because the legislation itself, on the part of the eligibility criteria, explicitly provides a subsidy contingent upon export performance.

(130) Consequently, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(131) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipient, which is found to exist during the IP. Pursuant to Article 6(b) of the basic Regulation, the benefit to the recipient is calculated by taking the difference between the central bank's (State Bank of Pakistan) imposed credit ceiling and the applicable commercial credit rates.

(132) In accordance with Article 7(2) of the basic Regulation, the subsidy amount (nominator) has been allocated over the export turnover of the product concerned during the IP because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(133) The subsidy rate established with regard to this scheme for the IP for the exporting producer amounts to 0,60 %.

VI. ***Export Finance Scheme from the State Bank of Pakistan (EFS)***

(134) Under the EFS short-term financing, facilities are provided to the exporters through commercial banks for exports of all manufactured goods. This scheme is primarily a working capital facility of short-term nature for a maximum period of 180 days.

(a) *Legal Basis*

(135) The legal bases are provided under Section 17(2)(a)/17(4)(c) and Section 22 read with 17(2)(d) respectively of the State Bank of Pakistan Act, 1956. Details of the scheme are set out in the SBP Circular No. 35, dated 28 September 2001 and Circular No. 44, dated 17 December 1998.

(b) *Eligibility*

(136) Any exporter can benefit from the EFS by applying to any commercial bank and by fulfilling the other requirements required by the financial institution. In fact, the decision to lend is taken by the bank under its own internally-approved credit policy.

(c) *Practical implementation*

(137) This benefit can be granted both on export transactions and on export performance.

(138) Under the transaction-based facility, finance is granted by the bank to the exporter on the basis of a Firm Export Order/Export Letter of Credit for a maximum period of 180 days. The financing facility can be availed at pre-shipment stage for procuring inputs and manufacturing the goods to be exported. Financing at post-shipment stage is also granted for goods already shipped to the importer abroad for the period up to realization of export proceeds or 180 days, whichever is earlier.

(139) Under the performance-based facility, this revolving finance is granted to the exporter up to 50 % of his export performance realized during the previous year. Exporters can avail themselves of this financing facility for a period of 180 days. This facility, once availed, needs to be repaid in totality.

(d) *Findings of the investigation*

(140) This scheme provides a short-term financing export credit from commercial banks at preferential interest rates prescribed by the State Bank of Pakistan. The sole cooperating exporting producer benefits from this scheme for both domestic and export sales.

(141) EFS Mark-up rates are benchmarked with the weighted average yields of six months Pakistan Treasury Bills.

(142) As result, exporters can obtain financing facility at preferential interest rates compared with the interest rates for ordinary short-term commercial credits, which are set purely under market conditions.

(e) *Conclusion*

(143) The scheme is considered to be a subsidy within the meaning of Article 3(1)(a)(iv) and Article 3(2) of the basic Regulation because it provides a financial contribution in the form of government practice which involves a public body (i.e. SBP) instructing commercial banks to carry out functions illustrated under Article 3(1)(a)(i) (i.e. direct transfer of funds in the form of loans). A benefit is conferred upon the recipient company in the form of the preferential interest rate.

(144) Furthermore, account taken of above, this subsidy can be considered specific pursuant to Article 4(4)(a) of the basic Regulation because the legislation itself, on the part of the eligibility criteria, explicitly provides a subsidy contingent upon export performance.

(145) Consequently, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(146) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipient, which is found to exist during the IP. Pursuant to Article 6(b) of the basic Regulation, the benefit to the recipient is calculated by taking the difference between the central bank's (State Bank of Pakistan) imposed credit ceiling and the applicable commercial credit rates.

(147) In accordance with Article 7(2) of the basic Regulation, the subsidy amount (nominator) has been allocated over the export turnover during the IP because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(148) The subsidy rate established with regard to this scheme for the IP for the exporting producer amounts to 2,22 %.

VII. ***Finance under F.E. Circular No. 25 of the State Bank of Pakistan***

(149) This scheme is a short term financing facility for export and import provided by commercial banks at preferential interest rates prescribed by the State Bank of Pakistan.

(a) *Legal Basis*

(150) This financing facility is governed under F.E. Circular No. 25 of June 20, 1998, further modified by F.E. Circular No. 05 of August 23, 2002.

(b) *Eligibility*

(151) Any exporter and importer can avail itself of this short-term financing.

(c) *Practical implementation*

(152) Under this scheme banks have been allowed to use/invest their dollar deposits for financing importers and exporters. This loan is advanced out of the dollar deposits/interbank placements, nominated in dollar but disbursed in equivalent rupees. The financing made under F.E. Circular No. 25 ('F.E. 25') is made by banks against relevant evidence of trade transactions.

(153) As illustrated by the F.E. Circular No. 05 of August 23, 2002 In the case of a loan to an exporter, it is possible to adjust the foreign currency proceeds of export in repayment of the loan and profit/interest thereon, only if the exporter has surrendered the full proceeds of the loan to a bank against payment in rupees. Trade loan facility under the F.E. 25 scheme is entirely on self-liquidating basis from export proceeds.

(154) As illustrated by the F.E. Circular No. 05 of August 23, 2002 the financing facility for imports can be allowed only from the date of actual execution of import payments in foreign currency by creating a foreign currency loan for the benefit of the importer. The maximum period of such loans should not exceed six months from the date of the disbursement to the importer.

(d) *Findings of the investigation*

(155) This scheme provides short-term financing export credit from commercial banks at preferential interest rates prescribed by the State Bank of Pakistan.

(156) The interest/mark-up for this financing is benchmarked to LIBOR rate plus a spread charged by the banks.

(157) As result, exporters can obtain financing facility at preferential interest rates compared with the interest rates for ordinary short-term commercial credits, which are set purely under market conditions.

(e) *Conclusion*

(158) The scheme is considered to be a subsidy within the meaning of Article 3(1)(a)(iv) and Article 3(2) of the basic Regulation because it provides a financial contribution in the form of government practice which involves a public body (i.e. SBP) instructing commercial banks to carry out functions illustrated under Article 3(1)(a)(i) (i.e. direct transfer of funds in the form of loans). A benefit is conferred upon the recipient company in the form of the preferential interest rate.

(159) Furthermore, account taken of above, this subsidy can be considered specific pursuant to Article 4(4)(a) of the basic Regulation because the legislation itself, on the part of the eligibility criteria, explicitly provides a subsidy contingent upon export performance.

(160) Consequently, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(161) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipient, which is found to exist during the IP. Pursuant to Article 6(b) of the basic Regulation, the benefit to the recipient is calculated by taking the difference between the central bank's (State Bank of Pakistan) imposed credit ceiling and the applicable commercial credit rates.

(162) In accordance with Article 7(2) of the basic Regulation, the subsidy amount (nominator) has been allocated over the export turnover during the IP because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(163) The subsidy rate established with regard to this scheme for the IP for the exporting producer amounts to 0,06 %.

3.2.2. *Amount of countervailable subsidies*

(164) The provisional amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the sole cooperating Pakistani exporting producer is 9,79 %.

3.3. **United Arab Emirates (UAE)**

(165) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involved the granting of subsidies by a Governmental authority, were investigated:

(I) Federal Law No. 1 of 1979

(II) Free Trade Zone

3.3.1. *Specific Schemes*

I. ***Federal Law No. 1 of 1979***

(166) This scheme permits the import of duty-free raw materials, packing material and capital goods at zero-duty rates.

(a) *Legal Basis*

(167) The scheme is based on the Federal Law No. 1 of 1979, Organising Industrial Affairs.

(b) *Eligibility*

(168) In order to avail the benefits of the abovementioned Federal Law, it is necessary to obtain an Industrial License released by the Ministry of Finance and Industry.

(169) According to Article 8 of the Federal Law, licences for the establishment of an industrial project may be granted only to UAE citizens, or to companies with local capital shares amount to 51 % minimum, and provided the manager in charge thereof is a local, or the board of directors is constituted in its majority by local citizens.

(170) Furthermore, the same Federal Law provides a set of other eligibility requirements that parties should fulfil: fixed capital should not be lower than 250 000 Dirhams, the number of employees not lower than 10 persons, the use of motive power exceeding 5 horse powers (Article 2). Another requirement is that 25 % of the employees should be locals, but the Minister may decide to exempt or reduce this percentage (Article 33). According to Article 13, application for industrial projects has to be considered in light of the following: industrial project belonging to the industrial development program of the country and agreement made with Arab countries, local consumption requirements. To those projects that comply with the requirements set out in the Article 13 and that are competitive and export-oriented, Article 21 provides a special priority in the granting of privileges.

(171) On the basis of the application provided and the relevant documentation submitted, a relevant committee of the Ministry of Finance and Industry recommends to the Minister the approval or rejection of the application. In line with Article 12 of the Federal Law No. 1, the Minister may decide to grant or not the license.

(c) *Practical implementation*

(172) In order to fall within the scope of application of this scheme, the applicant has to comply with the following procedure: application for Industrial Licence to be submitted to the Ministry of Finance and Industry; grant of Industrial Licence by the Ministry; approvals for duty-free imports through on-line application.

(173) The Ministry concerned has set up an Electronic Industrial System ('EIS') for this scheme and issued a relevant User Manual to guide the user of the scheme. The EIS is an on-line system implemented by the

Ministry. On the one hand, it allows users a direct access to their respective licence. On the other hand, it enables the Industrial Development Department of the Ministry overall control of the scheme and supervision of the use of the benefits availed by the companies.

(174) Each user of the scheme has reserved access to the EIS where it is possible to view its respective raw materials list used in its factory production process (Item name, HS code, Measurement unit, Total balance - which means the item's quantity - and Remaining balance which means the remaining quantity of this item that the company can get a duty exemption for). An on-line application has to be filed for every import transaction in order to obtain a special code that permits to clear the goods duty-free through Customs. The Industrial Development Department can refuse applications for raw materials exemption if the quantity requested exceeds the Remaining balance of that item. It can also reject the exemption for capital goods that are not included in the industrial project. In this latter case, the decision is based on the information provided by the company during the first Registration to the scheme. Following a rejection, the company can view through the system all the details and the rejection reasons and can act accordingly in order to provide the requested clarifications.

(d) *Findings of the investigation*

(175) During the verification visit it has been found that the sole cooperating exporting producer benefits from a general duty exemption on imports of raw materials, packing material and capital goods without any condition such as a subsequent export of the final product. No Federal/local law or regulation obliges the company to keep any kind of register for subsequent control carried out by the competent authorities.

(176) Although the company has to lodge applications through the on-line EIS to import free of duty, no guideline has been found in order to show on what basis the requests are accepted or rejected.

(177) Furthermore, the granting authorities are not aware of the actual consumption of the duty-free input goods. Only the theoretical consumption is reported by the company into the EIS. In fact, from the moment of the first Registration into the system, the checks carried out by the granting authorities take place only electronically. No evidence has been provided that the first Registration input-output material yields are in all cases checked and verified. Furthermore, no effective verification system has been implemented in practice by the Government of the UAE. The authorities claimed that they perform audits via the EIS and on the basis of the documentation that all companies are requested to submit every year for the renewal of their licences (information referring to the local industrial licence, audited Accounts, production and sales data, etc.). Nevertheless, this is done by looking at what the companies report yearly and compared as per their first Registration and not the actual production. In fact, no information was provided to confirm that the authorities are aware at any stage of the procedure of what are the actual production material yields for the sole cooperating exporting producer availing benefits from this scheme.

(e) *Conclusion*

(178) Account taken of all the above, this scheme is considered to be a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because it provides a financial contribution in the form of government revenue forgone and confers a benefit upon the recipient company because it gives the possibility to be exempt from import duties. In this context it should be noted that this cannot not be considered a permissible duty drawback system or substitution drawback system since it does not conform to the rules laid down in Annex I, in particular point (i), Annex II and Annex III of the basic Regulation. In fact the Government of the UAE has submitted that there are no provisions for duty drawback rules in the UAE.

(179) In addition, the scheme is specific within the meaning of the Article 4(2)(a) of the basic Regulation given that access is limited to certain enterprises and there are no objective criteria to limit eligibility in accordance with Article 4(2)(b) of the basic Regulation. Indeed, with regard to the on-line application, the eligibility criteria of the granting authority for choosing recipients of the scheme is a mixture of some clear and objective, although discriminatory, criteria (i.e. licences can be granted only to UAE citizens, or to companies with local capital shares amount to 51 % minimum, and provided the manager in charge thereof is a local, or the board of directors is constituted in its majority by local citizens, 25 % of the employees should be locals) and some conditions which are not clearly defined (i.e. established in areas determined by the government, fulfil the industrial development programme of the country and agreements made with Arab countries, fulfil local consumption requirements, be competitive and export-oriented). No rule clarifies the role of the Industrial Development Department mentioned only in the User Manual issued by the Ministry and not in the Federal Law establishing the scheme.

(180) Furthermore, there is evidence that the allocation of the subsidies is not automatic. The legislation itself, pursuant to which the granting authority operates, empowers the Minister to make the final decision on the granting of Industrial License without any kind of evidence to show on what basis applications can be accepted or rejected. Furthermore, the authorities are always in a position to exercise discretion in granting or rejecting the requested duty exemptions.

(181) Account taken of above, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(182) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipient, which is found to exist during the IP, that is the total duties unpaid in the import of raw materials during the IP. This subsidy amount (numerator) has been allocated over the total sales turnover of the product concerned of the company during the IP.

(183) The subsidy rate established in respect of this scheme during the IP for the exporting producer amounts to 5,02 %.

II. ***Free Trade Zone (FTZ)***

(184) The exporting producer was operating under the regime of the Free Trade Zone of Ras Al Khaimah from its establishment and up to May 2008 and availed the benefits of duty-free imports of capital goods.

(a) *Legal Basis*

(185) No federal legislation regulating matters concerning the establishment and management of FTZ exits in the UAE. Each Emirate issues its own legislation and rules and has the responsibility to monitor via its Customs services the relevant FTZs.

(b) *Eligibility*

(186) No specific rule or limit on eligibility exists in order to establish a company in the FTZ of Ras Al Khaimah: any national or fully owned foreign company can establish itself in the FTZ.

(c) *Practical implementation*

(187) The most important benefits linked with the establishment in a FTZ are the ability to import duty-free all items (raw, essential, auxiliary materials, intermediate products, capital goods) and to decide without any State-imposed precondition on the shareholding structure of the company. Goods manufactured in FTZs are considered for origin purposes as originating in the UAE. Nevertheless, when taken out of the FTZ into the UAE domestic market they are treated as foreign goods, i.e. import duties apply when put into free circulation.

(188) Although a company located in a FTZ benefits from duty-free imports and exports, customs declarations have to be filed at the relevant federal Customs at the moment of import. The company has to furnish a Bank Guarantee with Customs at the import entry point. The imported goods are cleared by Customs under an exit/entry declaration. On receipt of the goods at the FTZ entry/import location, the concerned Customs zone authority inspects the goods received and upon satisfaction endorses the exit/entry declaration. The latter, duly signed by the receiving Customs check point, is to be submitted back to the Customs authority at the import entry/point in order to release the Bank Guarantee.

(d) *Findings of the investigation*

(189) During the verification visit it has been found that there are no concrete, statutory and publicly available criteria that govern the decision of the granting authority on who is entitled to establish itself in the FTZ. A company willing to establish itself in that zone has to lodge an application to the authority of the Emirate of Ras Al Khaimah but no legislation or guidelines are available in order to show on what basis the request can be accepted or rejected.

(190) As to the existence of the various FTZ in the UAE, the investigation established that there are no unified statutory criteria that govern the set-up and management of FTZs in the UAE. No evidence was provided that all FTZs in the UAE perform under the same regulatory framework and follow the same operational rules. Serious doubts were also raised as to whether eligibility to being established in the FTZs could be restricted on the basis of certain type of business activity. Indeed, on the basis of information provided it appears that certain FTZs in the UAE are exclusively dedicated to specific types of business activities (e.g. Dudai Auto Free Zone, International Media Production Free Zone, Dubai Flower Centre Free Zone, etc.).

(191) The sole cooperating exporting producer benefited from a duty-free import of capital goods.

(e) *Conclusion*

(192) Account taken of the above, the scheme has to be considered to be a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because it provides a financial contribution in the form of government revenue forgone and confers a benefit upon the recipient company.

(193) Moreover, the scheme is specific in the meaning of the Article 4(2)(a) of the basic Regulation, since these benefits are only available to companies in FTZs i.e. therefore access to the subsidy is limited to companies in certain locations operating under the FTZ regime. Furthermore, the investigation has established that the granting of FTZ status in the UAE is discretionary and does not follow and neutral or objective criteria, as provided for in Article 4(2)(b). Given the lack of any federal legislation regulating the establishment and management of the FTZs in the UAE, every granting authority of the seven Emirates forming the UAE provides access to the FTZs according to its own rules. Since no legislation or guidelines are available in the Emirate of Ras Al Khaimah, the relevant authority decides on a discretionary basis which company can be entitled to enter the FTZ.

(194) In addition, the benefit derived from the duty unpaid from the import of capital goods cannot be considered a permissible duty drawback system because it concerns capital goods which are not consumed in the production process and thus are not covered by the scope of permissible duty drawback systems set out in Annex I, point (i) of the basic Regulation.

(195) Account taken of above, this subsidy is considered countervailable.

(f) *Calculation of the subsidy amount*

(196) Considering that the company was established in the FTZ from its establishment up to May 2008 but the production process of PET started in September 2007 and the company was operating since January 2008 its production under a preliminary industrial license of Federal Law No. 1 of 1979, the subsidy availed during the IP has to be considered as being only the duty-free imports of capital goods.

(197) In accordance with Article 7(3) of the basic Regulation, the subsidy amount was calculated on the basis of the unpaid customs duty on imported capital goods spread across a period of 15 years which reflects the minimum depreciation period that has been found in all the three countries involved in the current investigation in relation to the industry concerned. In accordance with the established practice, the amount so calculated, which is attributable to the IP, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the IP in the UAE was considered appropriate for this purpose.

(198) In accordance with Articles 7(2) and 7(3) of the basic Regulation, this subsidy amount (as nominator) has been allocated over the total sales turnover during the IP since the attribution of the benefit is not contingent on export performance.

(199) The subsidy rate established in respect of this scheme during the IP for the exporting producer amounts to 0,11 %.

3.3.2. *Amount of countervailable subsidies*

(200) The provisional amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the sole cooperating United Arab Emirates exporting producer is 5,13 %.

4. **INJURY**

4.1. **Union production and Union industry**

(201) During the IP, the like product was manufactured by 17 producers in the Union. The output of these producers is therefore deemed to constitute the Union production within the meaning of Article 9(1) of the basic Regulation.

(202) Of these 17 producers, 12 producers cooperated with the investigation. These 12 producers were found to account for a major proportion, in this case more than 80 %, of the total Union production of the like product. The 12 cooperating producers therefore constitute the Union industry within the meaning of Article 9(1) and Article 10(6) of the basic Regulation and will be hereafter referred to as the 'Union industry'. The remaining Union producers will be hereafter referred to as the 'other Union producers'. These other Union producers have not actively supported or opposed the complaint.

(203) It is noted that the EU market for PET is characterised by a relatively high number of producers, belonging usually to bigger groups with headquarters outside the EU. The market is in a process of consolidation with a number of recent takeovers and closures. For instance, since 2009, PET production plants of Tergal Fibers (France), Invista (Germany) and Artenius (UK) closed while Indorama took over the former Eastman plants in UK and the Netherlands.

(204) As indicated above at recital (8), a sample of five individual producers was selected, representing 65 % of the sales by all cooperating Union producers. One company was not in a position to provide all data as requested and the sample consequently had to be reduced to four companies representing 47 % of the sales by all cooperating producers.

4.2. **Union consumption**

(205) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, the import volumes data for the EU market obtained from EUROSTAT and, concerning the other Union producers, from estimations based on the complaint.

(206) Union consumption of the product under investigation increased between 2006 and the IP by 11 %. In detail, the apparent demand grew in 2007 by 8 %, decreased slightly between 2007 and 2008 (by 2 percentage points) and increased by further 5 percentage points between 2008 and the IP.

Table 1

	2006	2007	2008	IP
Total EU consumption (tonnes)	2 709 400	2 936 279	2 868 775	2 996 698
Index (2006=100)	*100*	*108*	*106*	*111*

Source: questionnaire replies, Eurostat data and complaint.

4.3. **Imports from the countries concerned**

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

(207) The Commission examined whether imports of PET from Iran, Pakistan and the United Arab Emirates should be assessed cumulatively in accordance with Article 8(3) of the basic Regulation.

(208) With regard to the effects of the imports originating in the UAE, Iran and Pakistan, the investigation showed that the subsidy margins were above the *de minimis* threshold as defined in Article 14(5) of the basic Regulation and the volume of subsidised imports from these countries was not negligible in the sense of Article 10(9) of the basic Regulation.

(209) With regard to the conditions of competition between imports from Iran, Pakistan and the United Arab Emirates and the like product, the investigation revealed that the producers from these countries use the same sales channels and sell to similar categories of customers. Moreover, the investigation also revealed that the imports from all these countries had an increasing trend in the period considered.

(210) In view of the above, it is provisionally considered that all the criteria set out in Article 8(3) of the basic Regulation were met and that imports from Iran, Pakistan and the United Arab Emirates should be examined cumulatively.

(b) *Volume of the imports concerned*

(211) The volume of subsidised imports of the product concerned into the EU rose by more than 5 times between 2006 and the IP and reached 304 202 tonnes in the IP. More specifically, imports from the countries concerned increased by 20 % between 2006 and 2007, before further increasing by 270 percentage points in 2008 compared to 2007, and again by 154 percentage points between 2008 and the IP.

Table 2

	2006	2007	2008	IP
Volume of subsidised imports (tonnes)	55 939	67 067	218 248	304 202
Index (2006=100)	*100*	*120*	*390*	*544*
Market share of subsidised imports	2,1 %	2,3 %	7,6 %	10,2 %

Source: Eurostat.

(c) *Market share of the imports concerned*

(212) The market share held by subsidised imports from the countries concerned stood at 2,1 % during 2006 and increased steadily by 8 percentage points throughout the period considered. More specifically, it rose by 0,2 percentage points between 2006 and 2007, by further 5,3 percentage points between 2007 and 2008 and by 2,6 percentage points between 2008 and the IP. In the IP, the market share of subsidised imports from the countries concerned was 10,2 %.

(213) It is noted that the UAE entered the market only as of 2007, but managed quickly to gain a substantial market share.

(d) *Prices*

(i) Price evolution

(214) The average import price decreased by 14 % in the period considered with the sharpest decline between 2008 and the IP. More specifically, the average price decreased by 1 % in 2007 and stayed close to that level in 2008, before dropping by further 13 percentage points in the IP.

Table 3

	2006	2007	2008	IP
Price of imports (EUR/ton)	1 030	1 023	1 015	882
Index (2006=100)	*100*	*99*	*99*	*86*

Source: Eurostat.

(ii) Price undercutting

(215) In consideration of the fact that the prices and costs of the product concerned were subject to considerable fluctuations in the IP, selling prices and costs were collected by quarters and undercutting and underselling calculations were conducted on a quarterly basis.

(216) For the purpose of analysing price undercutting, the weighted average sales prices of the Union industry to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports from the countries concerned to the first independent customer on the Union market, established on a CIF basis with appropriate adjustments for post-importation costs and differences in the level of trade.

(217) The comparison showed that during the IP, the subsidised imports originating in the UAE sold in the Union undercut the Union industry's prices by 3,9 %. The subsidised imports originating in Iran sold in the Union undercut the prices of the Union industry by 3,2 %. The subsidised imports originating in Pakistan sold in the Union undercut the prices of the Union industry by 1,4 %. The weighted average undercutting margin of the countries concerned during the IP is 3,2 %.

4.4. **Situation of the Union industry**

(218) Pursuant to Article 8(4) of the basic Regulation, examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic factors and indices having a bearing on the state of the Union industry during the period considered.

(219) As explained above, considering the large number of Union producers, sampling had to be used. For the purpose of the injury analysis, the injury indicators have been established at the following two levels:

— The macroeconomic elements (production, capacity, sales volume, market share, growth, employment, productivity, average unit prices and magnitude of dumping margins and recovery from the effects of past dumping) were assessed at the level of the whole Union production, on the basis of the information collected from the cooperating producers and for the other Union producers an estimation based on the data from the complaint was used.

— The analysis of microeconomic elements (stocks, wages, profitability, return on investments, cash flow, ability to raise capital and investments) was carried out for the sampled Union producers on the basis of their information.

4.4.1. *Macroeconomic elements*

(a) *Production*

(220) The Union production decreased by 4 % between 2006 and the IP. More specifically, it increased by 5 % in 2007 to around 2 570 000 tonnes, but sharply decreased by 10 percentage points in 2008 compared to 2007 and slightly increased by 1 percentage point between 2008 and the IP, when it reached around 2 300 000 tonnes.

Table 4

	2006	2007	2008	IP
Production (tonnes)	2 439 838	2 570 198	2 327 169	2 338 577
Index (2006=100)	*100*	*105*	*95*	*96*

Source: questionnaire replies and complaint.

(b) *Production capacity and capacity utilisation rates*

(221) The production capacity of the Union producers increased by 15 % throughout the period considered. Specifically, it increased by 1 % in 2007, by further 5 percentage points in 2008 and by even further 9 percentage points in the IP.

Table 5

	2006	2007	2008	IP
Production capacity (tonnes)	2 954 089	2 971 034	3 118 060	3 385 738
Index (2006=100)	*100*	*101*	*106*	*115*
Capacity utilisation	83 %	87 %	75 %	69 %
Index (2006=100)	*100*	*105*	*90*	*84*

Source: questionnaire replies and complaint.

(222) Capacity utilisation was 83 % in 2006, increased to 87 % in 2007 but later dropped to 75 % in 2008 and to only 69 % in the IP. The dropping utilisation rate in 2008 and the IP reflects decreased production and increased production capacity in this period.

(c) *Sales volume*

(223) The sales volume of the Union producers to unrelated customers on the EU market modestly decreased in the period considered. The sales increased by 5 % in 2007, but in the following year decreased slightly below the 2006 level, and in the IP they were 3 % lower that in 2006, at around 2 100 000 tonnes. Given the limited volume of stocks, the development of sales closely reflects the development in the production.

Table 6

	2006	2007	2008	IP
EU sales (tonnes)	2 202 265	2 318 567	2 171 203	2 133 787
Index (2006=100)	*100*	*105*	*99*	*97*

Source: questionnaire replies and complaint.

(d) *Market share*

(224) During the period considered, the Union producers lost 10 percentage points of market share, which decreased from 85 % in 2006 to 75 % in the IP. This loss of market share reflects the fact that, despite an increase in consumption, the Union industry's sales dropped by 3 % in the period considered. It is noted that this decreasing trend was also found for the sampled Union producers.

Table 7

	2006	2007	2008	IP
Market share of the Union producers	84,9 %	83,2 %	79,8 %	75,1 %
Index (2006=100)	*100*	*98*	*94*	*88*

Source: questionnaire replies, complaint and Eurostat.

(e) *Growth*

(225) Between 2006 and the IP, whilst the Union consumption increased by 11 %, the volume of sales by the Union producers on the EU market decreased by 3 %, and the Union producers' market share decreased by 10 percentage points. On the other hand, the market share of the subsidised imports increased from 2,1 % to 10,2 % in the same period of time. It is thus concluded that the Union producers could not benefit from any growth of the market.

(f) *Employment*

(226) The employment level of the Union producers shows a decrease of 15 % between 2006 and the IP. More specifically, the number of people employed decreased significantly from 2 400 in 2006 to 2 100 in 2007 or by 13 % and remained close to this level in 2008 and in the IP. The drop in 2007 is a reflection of the restructuring efforts by a number of EU producers.

Table 8

	2006	2007	2008	IP
Employment (persons)	2 410	2 100	2 060	2 057
Index (2006=100)	*100*	*87*	*85*	*85*

Source: questionnaire replies and complaint.

(g) *Productivity*

(227) Productivity of the Union producers' workforce, measured as output (tonnes) per person employed per year, increased by 12 % in the period considered. This reflects the fact that production decreased at a lower pace than the employment level and is an indication of increased efficiency by the Union producers. This is particularly obvious in 2007 when production increased while the employment level decreased and the productivity was 21 % higher than in 2006.

Table 9

	2006	2007	2008	IP
Productivity (tonnes per employee)	1 013	1 224	1 130	1 137
Index (2006=100)	*100*	*121*	*112*	*112*

Source: questionnaire replies and complaint.

(h) *Factors affecting sales prices*

(228) The annual average sales prices of the Union producers on the EU market to unrelated customers remained stable between 2006 and 2008 at around 1 100 EUR per tonne. In the IP the annual average sale price decreased by 12 % and reached 977 EUR per tonne. The annual average sales price does not reflect the monthly or even daily price fluctuations of the PET on the European (and world) market, but is considered sufficient to show the trend during the period considered. The sales prices of PET normally follow the price trends of its main raw materials (mainly PTA and MEG) as they constitute up to 80 % of the total cost of PET.

Table 10

	2006	2007	2008	IP
Unit price EU market (EUR/ton)	1 110	1 105	1 111	977
Index (2006=100)	*100*	*100*	*100*	*88*

Source: questionnaire replies and complaint.

(229) As indicated above, the sales prices of the Union industry were undercut by the subsidised imports from the countries concerned.

(i) *Magnitude of the subsidy margin and recovery from past dumping and subsidisation*

(230) Given the volume, market share and prices of the imports from the countries concerned, the impact on the Union industry of the actual margins of subsidy cannot be considered to be negligible. It is important to recall that since 2000, there have been anti-dumping measures in force against imports of PET from India, Indonesia, the Republic of Korea, Malaysia, Taiwan, Thailand and since 2004 against the People's Republic of China. There have also been countervailing measures against imports from India since 2000. Given that in the period considered by this investigation the Union industry lost market share and increased their losses, no actual recovery from the past dumping and subsidisation can be established and it is considered that Union production remains vulnerable to the injurious effect of any subsidised imports in the Union market.

4.4.2. *Microeconomic elements*

(a) *Stocks*

(231) The level of closing stocks of the sampled producers decreased between 2006 and the IP by 22 %. It is noted that the stocks represent less than 5 % of the annual production and therefore the relevance of this indicator in the injury analysis is limited.

Table 11

Sample	2006	2007	2008	IP
Closing stock (tonnes)	61 374	57 920	46 951	47 582
Index (2006=100)	*100*	*94*	*77*	*78*

Source: questionnaire replies.

(b) *Wages*

(232) The annual labour cost increased by 11 % between 2006 and 2007, before decreasing by 2 percentage points in 2008 compared to 2007 and further 9 percentage points in the IP compared to 2008 reaching the same level as in 2006. Overall, labour costs thus remained stable.

Table 12

Sample	2006	2007	2008	IP
Annual labour cost (EUR)	27 671 771	30 818 299	30 077 380	27 723 396
Index (2006=100)	*100*	*111*	*109*	*100*

Source: questionnaire replies.

(c) *Profitability and return on investments*

(233) During the period considered, the profitability of the sampled producers' sales of the like product on the EU market to unrelated customers, expressed as a percentage of net sales, remained negative and even dropped from – 6,9 % to – 7,5 %. More specifically, the situation with regard to profitability of the sampled producers improved in 2007 when net losses accounted only – 1,5 % of net sales, but losses increased sharply in 2008 to – 9,3 %. The situation slightly improved in the IP.

Table 13

Sample	2006	2007	2008	IP
Profitability of EU (% of net sales)	– 6,9 %	– 1,5 %	– 9,3 %	– 7,5 %
Index (2006=-100)	*– 100*	*– 22*	*– 134*	*– 108*
ROI (profit in % of net book value of investments)	– 9,6 %	– 3,1 %	– 16,8 %	– 12,3 %
Index (2006=-100)	*– 100*	*– 32*	*– 175*	*– 127*

Source: questionnaire replies.

(234) The return on investments ('ROI'), expressed as the profit in percent of the net book value of investments, broadly followed the profitability trend. It increased from a level of – 9,6 % in 2006 to – 3,1 % in 2007. It decreased to – 16,8 % in 2008 and increased again in the IP to – 12,3 %. Overall, the return on investments remained negative and deteriorated by 2,7 percentage points over the period considered.

(d) *Cash flow and ability to raise capital*

(235) The net cash flow from operating activities was negative at 18,5 million EUR in 2006. It improved significantly in 2007 when it became positive at 19,5 million EUR, but deteriorated massively in 2008 (– 42 million EUR) before reaching the negative – 11 million EUR in the IP. Overall, cash flow improved in the period considered although it remained negative.

(236) There were no indications that the Union industry encountered difficulties in raising capital, mainly due to the fact that some of the producers are incorporated in larger groups.

Table 14

Sample	2006	2007	2008	IP
Cash flow (EUR)	– 18 453 130	19 478 426	– 42 321 103	– 11 038 129
Index (2006=100)	*– 100*	*206*	*– 229*	*– 60*

Source: questionnaire replies.

(e) *Investments*

(237) The sampled companies' annual investments in the production of the like product decreased by 34 % between 2006 and 2007, by a further 59 percentage points between 2007 and 2008 and then it slightly decreased in the IP compared to 2008. Overall, investments decreased by 96 % in the period considered. This sharp drop in investments can be partially explained by the fact that in 2006 and 2007 new production lines were acquired aiming at increasing capacity.

Table 15

Sample	2006	2007	2008	IP
Net investments (EUR)	98 398 284	64 607 801	6 537 577	4 298 208
Index (2006=100)	*100*	*66*	*7*	*4*

Source: questionnaire replies.

4.5. **Conclusion on injury**

(238) The analysis of the macroeconomic data show that the Union producers decreased their production and sales during the period considered. Although the observed decrease was not dramatic as such, it needs to be seen in the context of increased demand between 2006 and the IP, which resulted in the Union producers' market share dropping by 10 percentage points to 75 %.

(239) At the same time the relevant microeconomic indicators show a clear deterioration of the economic situation of the sampled Union producers. The profitability and return on investment remained negative and they overall declined further between 2006 and the IP. The cash flow, despite an overall positive development, also remained negative in the IP.

(240) In the light of the foregoing, it is provisionally concluded that the Union industry has suffered material injury within the meaning of Article 8(4) of the basic Regulation.

5. CAUSATION

5.1. Introduction

(241) In accordance with Article 8(5) and Article 8(6) of the basic Regulation, the Commission examined whether the subsidised imports have caused injury to the Union industry to a degree that enables it to be classified as material. Known factors other than the subsidised imports, which could at the same time have injured the Union industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the subsidised imports.

5.2. Effect of the subsidised imports

(242) Between 2006 and the IP, the volume of the subsidised imports of the product concerned increased by more than 5 times to 304 200 tonnes, and their market share increased by almost 8 percentage points (from 2,1 % to 10,2 %). At the same time, the Union industry lost some 10 percentage points of market share (from 84,9 % to 72,1 %). The average price of these imports decreased between 2006 and the IP and remained lower than the average price of Union producers.

(243) As indicated above at recital (217), price undercutting of the subsidised imports was on average 3,2 %. Even if the price undercutting was below 4 %, it cannot be considered as insignificant given that PET is a commodity and competition takes place mainly via price.

(244) The Iranian exporter claimed that Iranian PET imports could not have caused material injury to the Union industry in view of the fact that these import levels would only marginally exceed the *de minimis* threshold for imports. However, during the IP, imports from Iran, corresponding to a market share of 1.9 %, exceeded the *de minimis* threshold specified in the basic Regulation. In addition, Iranian import prices were undercutting the Union industry's sales prices. Against this background, the argument raised by the Iranian exporter is rejected.

(245) In view of the undercutting of Union industry's prices by imports from the countries concerned, it is considered that these subsidised imports exerted a downward pressure on prices, preventing the Union industry from keeping its sales prices to a level that would have been necessary to cover its costs and to realise a profit. Therefore, it is considered that a causal link exists between those imports and the Union industry's injury.

5.3. Effect of other factors

5.3.1. *Export activity of the Union industry*

(246) One interested party claimed that any injury was due to the poor export activity of the Union producers. As it can be seen from the table below, the volume of exports of the Union industry increased during the period considered by 11 %. The level of export prices over the same period decreased by 10 % which resulted in stable export sales value during the period considered. Consequently, there is no indication that the export performance contributed to the injury suffered by the Union industry.

Table 16

Union industry	2006	2007	2008	IP
Export sales (tonnes)	25 677	24 103	23 414	28 504
Index (2006=100)	*100*	*94*	*91*	*111*
Export sales (EUR)	28 473 679	27 176 204	25 109 209	28 564 676
Index (2006=100)	*100*	*95*	*88*	*100*
Price of exports (EUR/ton)	1 109	1 128	1 072	1 002

Source: questionnaire replies.

(247) Another interested party claimed that the prices of the Union industry on the EU market were artificially high. According to the interested party, this claim is evidenced by the fact that prices on the EU market remained stable whereas export sales prices have dropped. However, the investigation has shown that the annual average sales prices of the Union industry on the EU market decreased by 12 % over the period considered, in line with the decrease in export prices over the same period. The argument is thus rejected.

5.3.2. *Imports from third countries*

(a) *Republic of Korea*

(248) The Republic of Korea is subject to anti-dumping duties since 2000. However, two Korean companies are subject to a zero duty and the investigation established that imports from the Republic of Korea remain at a high level and increased significantly in the period considered. The Korean imports increased by almost 150 % between 2006 and the IP and their corresponding market share increased from 3,5 % in 2006 to 7,7 % in the IP.

Table 17

	2006	2007	2008	IP
Volume of imports from South Korea (tonnes)	94 023	130 994	177 341	231 107
Index (2006=100)	*100*	*139*	*189*	*246*
Market share of imports from South Korea	3,5 %	4,5 %	6,2 %	7,7 %
Price of imports (EUR/ton)	1 084	1 071	1 063	914

Source: Eurostat.

(249) The average price of the Korean imports remained in general slightly below the average prices of the Union producers. However, the Korean prices were higher than the average prices from the countries concerned. Consequently, although it cannot be excluded that imports from the Republic of Korea contributed to the injury suffered by the Union industry, their contribution was only limited and they are considered not to have broken the causal link established as regards the subsidised imports from the countries concerned.

(250) The Iranian exporter claimed that any increase in Iranian imports was due to a decline in South Korean imports and therefore was not at the expense of European producers. However, Eurostat data show that, over the period considered, import volumes from both countries have been increasing steadily in parallel. Hence, it can not be concluded that imports from Iran merely substituted imports from South Korea.

(b) *Other countries*

(251) Imports from other countries were, on average, at prices substantially higher than average sales prices of the Union producers. In addition, these imports have lost market share in the period considered. Consequently, these imports are not considered as being a possible cause of injury for the Union industry.

Table 18

	2006	2007	2008	IP
Volume of imports from other countries (tonnes)	259 438	296 418	185 286	210 772
Index (2006=100)	*100*	*114*	*71*	*81*
Market share of imports from other countries	9,6 %	10,1 %	6,5 %	7,0 %
Price of imports (EUR/ton)	1 176	1 144	1 194	1 043

Source: Eurostat.

5.3.3. *Competition from the non-cooperating producers in the Union*

(252) Some interested parties claimed that the injury suffered by the Union industry would be due to competition form the non-cooperating producers in the Union. Five Union producers did not cooperate in this proceeding. One of them stopped its production already in the IP while two other ones did so shortly thereafter. The sales volumes of non-cooperating producers have been estimated based on the information submitted in the complaint. Based on the information available it appears that these producers lost their market share during the period considered from 20,5 % in 2006 to 16 % in the IP. The investigation has not shown any evidence that the behaviour of these producers has broken the causal link between the subsidised imports and the injury established for the Union industry.

Table 19

Non-cooperating EU producers	2006	2007	2008	IP
EU sales (tonnes)	554 329	493 363	356 581	478 282
Index (2006=100)	*100*	*89*	*64*	*86*
Market share	20,5 %	16,8 %	12,4 %	16,0 %

Source: complaint.

5.3.4. *Economic downturn*

(253) The financial and economic crisis of 2008 led to a market growth that was slower than expected and unusual as compared to the beginning of the years 2000 where yearly growth rates around 10 % could be observed. For the first time, there was a contraction of demand for PET in 2008. This clearly had an effect on the overall performance of the Union industry.

(254) However, the negative effect of the economic downturn and the contraction in demand was exacerbated by the increased subsidised imports from the countries concerned, which undercut the prices of the Union industry. Even if the economic downturn could therefore be considered as contributing to the injury for the period starting in the last quarter of 2008, this cannot in any way diminish the damaging injurious effects of low priced subsidised imports in the EU market over the whole period considered. Even in a situation of decreasing sales, the Union industry should be able to maintain an acceptable level of prices and therefore limit the negative effects of any decrease in the growth of consumption, but only in the absence of the unfair competition of low priced imports in the market.

(255) The economic downturn has also no impact whatsoever on the injury suffered and observed already before the last quarter of 2008.

(256) Consequently, the economic downturn must be considered as an element contributing to the injury suffered by the Union industry as from last quarter of 2008 only and given its global character cannot be considered as a possible cause breaking the causal link between the injury suffered by the Union industry and the subsidised imports from the countries concerned.

5.3.5. *Geographical location*

(257) Some interested parties argued that any injury suffered by the Union industry would be caused in the first place by the unfavourable location of at least some Union producers (i.e. far away from a harbour thus incurring additional unnecessary transportation costs for the raw materials as well as for the final product).

(258) As regards the above argument, it is recognised that being located in a place not easily accessible by relatively cheaper means of transport has certain disadvantages in terms of cost for the delivery of both raw materials from the suppliers and the final product to the customers. However, the investigation and the verified data from the sampled Union producers (two of them located close to a harbour and two further inland) did not show any significant correlation between the geographical location and the economic performance of the Union producers. In fact, the injury found applied also to those producers located close to a harbour.

(259) Consequently, it is concluded that geographical location did not materially contribute to the injury suffered by the Union industry to a material extent.

5.3.6. *Vertical integration*

(260) Some interested parties argued that any injury suffered by the Union industry would be caused by the fact that many Union producers are not vertically integrated (in terms of production of PTA) and thus have a significant cost disadvantage vis-à-vis integrated exporters. The verified data from the sampled Union producers did not show any significant correlation between the vertical integration of the PTA production and the economic performance of the Union producers.

(261) Consequently, it is concluded that lack of vertical integration of the PTA production did not contribute to the injury suffered by the Union industry.

5.4. **Conclusion on causation**

(262) The coincidence in time between, on the one hand, the increase in subsidised imports from the countries concerned, the increase in market shares and the undercutting found and, on the other hand, the deterioration in the situation of the Union producers, leads to the conclusion that the subsidised imports caused material injury to the Union industry within the meaning of Article 8(5) of the basic Regulation.

(263) Other factors were analysed but were found not to break the causal link between the effects of the subsidised imports and the injury suffered by the Union industry. Imports from the Republic of Korea may have contributed to the injury suffered by the Union industry, but given the small price difference between these imports and the Union market, this is considered not to break the causal link established with the subsidised imports from the countries concerned. Due to the declining market share and their high price level, there is no evidence that imports from other third counties have contributed to the injury suffered by the Union industry. Moreover, no other known factor, i.e. the export performance of the Union industry, competition from the other Union producers, the economic downturn, the geographical location and lack of vertical integration, has contributed to the injury of the Union industry to an extent that it would break the causal link.

(264) Based on the above analysis, which has properly distinguished and separated the effects of all known factors having an effect on the situation of the Union industry from the injurious effect of the subsidised imports, it is provisionally concluded that the imports from the countries concerned have caused material injury to the Union industry within the meaning of Article 8(5) of the basic Regulation.

6. UNION INTEREST

(265) In accordance with Article 31 of the basic Regulation, the Commission examined whether, despite the conclusions on subsidisation, injury, and causation, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to adopt measures in this particular case. For this purpose and pursuant to Article 31(1) of the basic Regulation, the Commission considered the likely impact of possible measures on all parties involved as well as the likely consequences of not taking measures.

(266) The Commission sent questionnaires to independent importers, suppliers of raw materials, users and their associations. In total, over 50 questionnaires were sent out, but only 13 replies were received within the time limits set. In addition, 22 users came forward later in the proceeding with letters expressing opposition to any possible measures in this case.

6.1. Interest of the Union industry and other Union producers

(267) It is expected that the imposition of measures on imports from the countries concerned would prevent further distortions of the market, suppression of prices and restore fair competition. This, in turn, would provide the Union industry with an opportunity to improve its situation due to increased prices, increased sales volumes and market share.

(268) In the absence of measures, it is expected that imports from the countries concerned would continue to increase at low prices undercutting the prices of the Union industry. In this case, the Union industry would not have the opportunity to improve its situation. Given the bad financial state of the Union industry, more closures would be expected with the resulting loss in employment.

(269) There is no indication that the interests of the other producers in the Union that have not actively cooperated with the investigation would be different from those indicated for the Union industry.

(270) The Iranian company argued that the imposition of measures would not help the Union industry because it would only lead to new investments in other exporting countries. This argument can not be accepted as it would mean, when pushed to its logical consequence, that countervailing measures could never be imposed on products for which investments can be shifted to other countries. It would also mean denying protection against unfair trade just because of the possibility of new competition from other third countries.

(271) The same interested party claimed that any measures could not remedy a structural competitive disadvantage of the EU PET production industry in comparison to the PET production industry in Asia and the Middle East. This argument, however, was not sufficiently substantiated. It is noted that some sampled Union producers which are vertically integrated are also in a difficult financial situation. In addition, even if there were possible competitive advantages (for example through cheaper access to raw materials), exporting producers were still found to receive countervailable subsidies.

(272) Accordingly, it is provisionally concluded that the imposition of countervailing measures would clearly be in the interest of the Union industry.

6.2. Interest of unrelated importers in the Union

(273) As indicated above, sampling was applied for the unrelated importers and out of two sampled companies only one importing agent (Global Services International, 'G.S.I'.) has fully cooperated in this investigation by submitting a questionnaire reply. The imports declared by the cooperating agent represent a significant proportion of all imports from the countries concerned in the IP. Commissions for the imports of PET represent the majority of the G.S.I. business. Given that the agent works on a commission basis, imposition of any duties is not expected to have a significant impact on his performance as any actual import price increase would likely be borne by his clients.

(274) No other importer submitted relevant information. Given that imports from other countries where there are currently anti-dumping and/or countervailing measures in force did not stop and that imports are available from countries without any trade defence measures (e.g. Oman, USA, Brazil), it is considered that importers can import from these countries.

(275) Accordingly, it is provisionally concluded that the imposition of provisional measures will not have negative effects on the interest of the EU importers to any significant extent.

6.3. Interest of the raw material suppliers in the Union

(276) Three raw material suppliers (two of PTA and one of MEG) cooperated with the investigation by submitting the questionnaire reply within the set time limit. The staff employed in their European facilities and involved in the production of PTA/MEG was around 700.

(277) The cooperating PTA producers represent around 50 % of the PTA purchases of the sampled Union producers. PTA producers are heavily dependant on the state of the PET producers that constitute their major clients. Low prices of PET translate into lower prices of PTA and lower margins for the PTA producers. It is noted that there is an ongoing anti-dumping and an anti-subsidy investigation concerning imports of PTA originating in Thailand, meaning that the EU PTA producers may also face unfair competition from Thai imports. Consequently, it is considered that the imposition of measures on the subsidised imports of PET would benefit the PTA producers.

(278) For the cooperating MEG supplier, MEG represents less than 10 % of its total turnover. It is noted that with regard to MEG, PET is not its only or even the major possible application and MEG producers are less dependent on the situation of the PET industry. Nonetheless, the difficulties of the PET industry may have some limited impact on the suppliers of MEG, at least in a short to medium term.

(279) Given the above, it is provisionally concluded that imposition of measures on the subsidised imports from the counties concerned would be in the interest of raw material suppliers.

6.4. **Interest of the users**

(280) PET subject to this proceeding (i.e. with the viscosity number of 78 ml/g or higher, so called 'bottle grade') is mostly used to produce bottles for water and other drinks. Its use for the production of other packages (solid foodstuff or detergents) and to produce sheet is developing, but it remains relatively limited. Bottles of PET are produced in two stages: (i) first a pre-form is made by mould injection of PET and (ii) later the pre-form is heated and blown into a bottle. Bottle making can be an integrated process (i.e. the same company buys PET, produces a pre-form and blows it into the bottle) or limited to the second stage (blowing the pre-form into a bottle). Pre-forms can be relatively easily transported as they are small and dense, while empty bottles are instable and due to their size very expensive to transport.

(281) PET bottles are filled with water and/or other beverages by the bottling companies ('bottlers'). The bottling companies are often involved in the PET business either via integrated bottle making operations or via tolling agreements with subcontracted converters and/or bottle makers for whom they negotiate the PET price with the producer (soft tolling) or even buy the PET for their own bottles (hard tolling).

(282) Consequently, two groups of users may be distinguished:

— converters and/or bottle makers – that buy PET directly from producers, convert it into pre-forms (or bottles) and sell it further for downstream processing (or filling), and

— bottlers – that buy PET for their subcontracting bottle makers/converters (hard tolling) or negotiate the price for which the subcontracted converter and/or bottle maker will get the PET (soft tolling).

(a) *Converters*

(283) The producers of pre-forms are the main users of the bottle grade PET. Four converters, representing 16 % of the Union consumption in the IP, fully cooperated with the investigation (i.e. submitted full questionnaire replies within the time limits). As mentioned above, a significant number of converters also came forward later in the proceeding stating their opposition, but did not provide any verifiable data with regard to their consumption. The cooperating import agent claimed during a hearing that over 80 % of the EU users are opposing the measures. This information was however not sufficiently substantiated and could not be verified.

(284) An association representing European plastic converters (EuPC) stated during a hearing that it takes a neutral stance towards this proceeding. Although some of its members would oppose any measures, the current level of PET prices on the European market is not sustainable for the PET recycling companies. PET recycling companies (also represented by EuPC) would be in favour of measures. However, at a later stage of the investigation, the association changed its position and expressed its opposition to the imposition of measures. The association claimed that the imposition of measures would bring excessive costs to the EU plastic converting industry, which is mainly composed of small and medium-sized enterprises (SMEs). The association argued that these SMEs would not be able to absorb higher PET prices, which would either force them to close their activities or encourage them to relocate outside the EU. These claims were not further substantiated at this stage.

(285) The total staff employed by the cooperating converters amounted to 1 300 people, while the declared staff employed by the converters that came forward later in the proceeding would amount to further 6 000 people. The import agent and his clients indicated during the hearing an employment level for converters of around 20 000 people. The employment information remains to be verified.

(286) On the basis of the information available, the PET used in the production of pre-forms amounts to between 70 % and 80 % of the total cost of production for converters. It is therefore a critical cost component for these companies. The investigation so far indicated that on average the cooperating converters are already making some losses. Given that the majority of converters are small and medium sized local companies, they may have in the short to medium term only limited possibilities to pass on any increase in their costs, in particular when their client (bottling companies) is a rather big player with a much better negotiating position. However, the contracts (normally negotiated every year) for selling pre-forms and/or bottles often include a mechanism for reflecting the variation of PET prices.

(287) Converters and the cooperating import agent argued that measures would result in some bigger pre-form makers moving their standardised production lines to the countries neighbouring EU. Given that the cost of transportation of pre-forms over a limited distance is relatively low, this process is already happening to some extent. Still, for the moment, considerations like proximity to the client or flexibility of deliveries appear to compensate for the advantages the neighbouring countries may offer. Given that the proposed level of measures is moderate, it is provisionally considered that the advantages of producing the pre-forms outside the EU should not outweigh the current drawbacks. Moreover, given the transportation cost, the delocalisation is expected to be an alternative only for companies whose clients are located close to the EU borders, but not for converters that have their clients in other parts of the EU.

(288) Converters and the cooperating import agent also argued that measures could only bring a short term relief to the PET producers. They claimed that in the medium to long term, once the pre-form makers move out of the EU, there would be insufficient demand on the EU market for PET producers and the falling prices would ultimately force the PET producers to closures or relocation out of the EU. Given the considerations in the preceding recital and given that it is provisionally considered not yet economically mandatory for the pre-form makers to move out of the EU, this scenario is unlikely to happen.

(289) It can, thus, provisionally not be excluded that the imposition of measures will have a significant impact on the production cost of converters. However, given the uncertainties as to the possibilities for the pre-form and/or bottle makers to pass on the increased costs to their customers, the impact on the profitability of converters and their overall performance cannot be clearly stated at this provisional stage.

(b) *Bottlers*

(290) Six bottling companies including branches of Coca-Cola Co., Nestle Waters, Danone and Orangina cooperated with the investigation, i.e. submitted full questionnaire replies within the time limits. They represent around 11 % of the Union consumption of PET in the IP. The format of the information provided does not allow identifying easily the number of staff directly involved in the production that uses PET. However, it is provisionally estimated at around 6 000 people. Based on the information available, it is estimated that the total bottling industry in the Union employs between 40 000 and 60 000 employees directly involved in the production using PET.

(291) On the basis of the information available, the cost of PET in the total cost of the cooperating bottlers vary between 1 % and 14 %, depending on the cost of other components used in the production of their respective products. The information available indicates that PET tends to be a more important cost item for the mineral water producers (especially not branded), while for some soft drink bottling companies it would be marginal. The information on the file shows that in some cases the PET cost may represent up to 20 % of the final price of the mineral water for the customers. It is estimated that on average the cost of PET can constitute up to 10 % of the total cost of the bottling companies.

(292) Given the above, it is considered that any increase in prices for PET following the imposition of the proposed measures will only have a limited (less than 2 % cost increase) impact on the overall situation of the bottling companies, even if, as claimed, they would have difficulties in passing on the increased cost to their customers, which in any case is unlikely at least in the mid-term perspective.

6.5. **Shortage of PET supply**

(293) Several interested parties argued that imposition of measures would result in a shortage of PET on the EU market and that the Union producers do not have sufficient capacities to meet the existing demand.

(294) It is noted in this respect that Union producers operated only at 69 % of their capacity in the IP and have sufficient spare capacity to replace the imports from the countries concerned, should this become necessary. However, the purpose of the duty should not be to discourage any imports but only to restore fair competition on the market. Moreover, other sources of supply are also available.

(295) In addition, it is expected that the PET recycling industry would increase production if the price of virgin PET in the EU is maintained at a reasonable level and not allowed to drop because of unfair competition.

6.6. **Other arguments**

(296) The Iranian exporter argued that the imposition of measures against Iranian PET would have a disproportionate negative effect in view of the country's status as developing country and the fact that Iranian exporters already face serious disadvantages due to international sanctions. It is the Commission's constant practice to take anti-subsidy actions against developing and developed countries alike whenever the legal requirements warrant such action. Moreover, the fact that there are sanctions in place against Iran is an irrelevant consideration under the existing anti-subsidy rules.

6.7. **Conclusion on Union interest**

(297) To conclude, it is expected that the imposition of measures on imports from the countries concerned would provide an opportunity for the Union industry, as well as the other Union producers, to improve their situation through increased sales volumes, sales prices and market share. While some negative effects may occur in the form of cost increases for users (mainly converters), they are likely to be outweighed by the expected benefits for the producers and their suppliers.

(298) Restoring fair competition and maintaining a reasonable price level in the EU will encourage PET recycling, thus, assisting in the protection of the environment. In light of the above, it is provisionally concluded that on balance, no compelling reasons exist for not imposing measures in the present case. This preliminary assessment may need to be revised at final stage, after the verification of the user questionnaire replies and further investigation.

7. **PROVISIONAL COUNTERVAILING MEASURES**

(299) In view of the provisional conclusions reached with regard to subsidisation, resulting injury and Union interest, provisional measures on imports of the product concerned from Iran, Pakistan and the United Arab Emirates should be imposed in order to prevent further injury being caused to the Union industry by the subsidised imports.

7.1. **Injury elimination level**

(300) The provisional measures on imports originating in the countries concerned should be imposed at a level sufficient to eliminate the injury caused to the Union industry by the subsidised imports, without exceeding the subsidy margin found. When calculating the amount of duty necessary to remove the effects of the injurious subsidisation, it is considered that any measures should allow the Union industry to cover its costs of production and obtain overall a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of subsidised imports.

(301) The Union claimed a 7,5 % target profit, as was used in the proceeding against the People's Republic of China. However, during the period considered the Union industry never achieved such a profit (in fact it was never profitable) and it generally commented that it usually operates on rather low margins. The highest profit achieved by two sampled companies during one year of the period considered was 3 %. In these circumstances, a 5 % was provisionally considered as the most appropriate target profit.

(302) On this basis, a non-injurious price was calculated for the Union industry of the like product. The non-injurious price has been established by deducting the actual profit margin from the ex-works price and adding to the so calculated break even price the above-mentioned target profit margin.

(303) Given that during the IP the raw material prices and consequently the PET prices on the Union market experienced significant variations, it was considered appropriate to calculate the injury elimination level based on quarterly data.

Country	Injury elimination level
Iran	17,0 %
Pakistan	15,2 %
UAE	18,5 %

7.2. **Provisional measures**

(304) In the light of the foregoing and pursuant to Article 12(1) of the basic Regulation, it is considered that a provisional countervailing duty should be imposed on imports of the product concerned originating in Iran, Pakistan and the United Arab Emirates at the level of the lowest of the subsidisation and injury elimination level found, in accordance with the lesser duty rule.

(305) In the light of the foregoing, and in accordance with Article 12(1) of the basic Regulation, it is considered that the provisional countervailing duty rate should be imposed on imports originating in Iran at the level of the injury margin found while for imports originating in Pakistan and the United Arab Emirates, the provisional countervailing duty rate should be imposed at the level of the subsidy margin found.

(306) It is noted that costs and prices of PET are subject to considerable fluctuations in relative short periods of time. It was therefore considered appropriate to impose duties in the form of a specific amount per tonne. This amount results from the application of the countervailing rate to the CIF export prices used for the calculations in the parallel anti-dumping proceeding.

(307) On the basis of the above, the proposed countervailing duty amounts, expressed on the CIF Union border price, customs duty unpaid, are as follows:

Country	Total subsidy margin	of which Export subsidy	Injury margin (on quarterly basis)	Provisional Countervailing duty rate	
				%	Amount (EUR/t)
Iran	53 %	2 %	17,0 %	17,0 %	142,97
Pakistan	9,7 %	7,4 %	15,2 %	9,7 %	83,64
UAE	5,1 %	0 %	18,5 %	5,1 %	42,34

7.3. **Final provision**

(308) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive measures,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional countervailing 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, currently falling within CN code 3907 60 20 and originating in Iran, Pakistan and the United Arab Emirates.

2. The rate of the provisional countervailing duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 shall be as follows:

Country	Countervailing duty rate (EUR/tonne)
Iran: all companies	142,97
Pakistan: all companies	83,64
United Arab Emirates: all companies	42,34

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

4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

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

Article 2

Without prejudice to Article 30 of Regulation (EC) No 597/2009, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 31(4) of Regulation (EC) No 597/2009, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Article 1 of this Regulation shall apply for a period of four months.

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

Done at Brussels, 31 May 2010.

For the Commission
The President
José Manuel BARROSO

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