

This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents

► **B**

COUNCIL REGULATION (EC) No 2604/2000

of 27 November 2000

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

(OJ L 301, 30.11.2000, p. 21)

Amended by:

	Official Journal		
	No	page	date
► <u>M1</u> Council Regulation (EC) No 496/2002 of 18 March 2002	L 78	4	21.3.2002
► <u>M2</u> Council Regulation (EC) No 823/2004 of 26 April 2004	L 127	7	29.4.2004
► <u>M3</u> Council Regulation (EC) No 83/2005 of 18 January 2005	L 19	1	21.1.2005



**COUNCIL REGULATION (EC) No 2604/2000
of 27 November 2000**

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, and in particular Articles 9 and 10(2) thereof,

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

Whereas:

A. PROVISIONAL MEASURES

- (1) The Commission, by Regulation (EC) No 1742/2000 ⁽²⁾, ('provisional Regulation'), imposed provisional anti-dumping duties on imports of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand.
- (2) In the parallel anti-subsidy proceeding, the Commission also imposed, by Regulation (EC) No 1741/2000 ⁽³⁾ a provisional countervailing duty on imports of certain polyethylene terephthalate originating in India, Malaysia, Taiwan and Thailand.
- (3) It is recalled that the investigation of dumping and injury covered the period from 1 October 1998 to 30 September 1999 ('IP'). The examination of trends relevant for the injury analysis covered the period from 1 January 1996 up to the end of the IP ('analysis period').

B. SUBSEQUENT PROCEDURE

- (4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose anti-dumping measures, several interested parties submitted comments in writing. In accordance with the provisions of Article 20(1) of Regulation (EC) No 384/96 (the 'basic Regulation'), all interested parties who requested a hearing were granted an opportunity to be heard by the Commission.
- (5) The Commission continued to seek and verify all information deemed necessary for the definitive findings.
- (6) An additional verification visit was carried out at the premises of the following company related to a Korean exporting producer which had replied to the questionnaire:
— SK Global Belgium NV (Antwerp).
- (7) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which they could make representations subsequent to this disclosure.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

⁽²⁾ OJ L 199, 5.8.2000, p. 48.

⁽³⁾ OJ L 199, 5.8.2000, p. 6.

▼B

- (8) The oral and written arguments submitted by the parties were considered, and, where deemed appropriate, taken into account for the definitive findings.
- (9) Having reviewed the provisional findings on the basis of the information gathered since then, it is concluded that the main findings as set out in the provisional Regulation should be hereby confirmed.

C. PRODUCT CONCERNED AND LIKE PRODUCT**1. Product concerned**

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

2. Like product

- (11) In recital 12 of the provisional Regulation, the Commission found that PET produced by the Community industry and sold on the Community market as well as PET produced in the countries concerned and exported to the Community were like products, since there were no differences in the basic physical and technical characteristics and uses of the existing different types of PET. Since no new evidence was submitted on this, the provisional findings as regards the like product are confirmed.

D. DUMPING**1. Normal value**

- (12) The Indonesian exporting producer, for whom Article 18(1) of the basic Regulation was applied, because it was found that it had supplied false and misleading information, contested the Commission's findings. It considered that the use of Article 18 was not warranted and that the rejection of its selling, general and administrative ('SG&A') expenses was an unduly harsh measure.
- (13) The Commission re-examined all information submitted by the company in its response to the questionnaire and during the on-the-spot verification. It was confirmed that the activities of the company's organisational unit, which allegedly only dealt with financial activities and which supposedly had no relation to the product concerned, were much broader than reported. In fact, all normal activities of a head office were performed by this unit. It was also confirmed that the activities of and the expenses incurred by that unit could not be considered to be entirely unrelated to the production and sales of the product concerned. It also remained clear that the company provided false and misleading information in respect of the activities performed by the head office.
- (14) It was therefore fully justified and in line with Article 18(1) of the basic Regulation to disregard the SG&A expenses as reported by the company.

Normal value based on domestic sales

- (15) Two Taiwanese companies requested that the determination of the sales made in the ordinary course of trade should be made on a quarterly basis and not on a yearly basis. The reason advanced to support this claim was that during the IP there were significant variations in costs and prices of the product concerned, mainly due to changes in the price of raw materials.

▼B

- (16) Fluctuations in costs and prices during the IP are almost inevitable in any anti-dumping investigation. To take account of these for the purpose of establishing which sales were made in the ordinary course of trade the Commission has consistently applied the methodology of comparing individual domestic prices with the weighted average cost of production for the IP. It is considered that the particular situation of the two companies that made the request does not justify the deviation from the methodology used for all companies concerned by the present proceeding. It would furthermore be contrary to the consistent practice of the Commission to use different time frames for the 'ordinary course of trade test' (quarterly) and for the other steps of the dumping calculation (yearly).
- (17) It should finally be noted that the relevant information (e.g. quarterly cost of production figures) was submitted for the first time following the disclosure of the provisional findings. This despite the fact that it relates to facts that were well known to the companies before the on-the-spot verification or their reply to the questionnaire. Therefore, the Commission would not have been, at this late stage of the investigation in a position to verify the substantial amount of information necessary to modify the methodology for establishing the profitability of domestic sales.
- (18) One Korean company disputed the Commission's methodology for allocating the amount of SG&A as set out in recital 50 of the provisional Regulation.
- (19) The exporting producer, after disclosure of the provisional findings presented new figures, but despite a request by the Commission, did not provide any evidence or explanation of the allocation methodology used. Consequently the claim of the company was rejected.

Constructed normal value

- (20) One Indonesian exporting producer contested the profit margin used in order to construct normal value for one type of PET it had exported to the Community.
- (21) The Commission's approach of using the actual profit margin on sales of other types of PET made in the ordinary course of trade by this exporting producer on its domestic market is fully in line with Article 2(6) of the basic Regulation (see recital 21 of the provisional Regulation). Therefore the provisional findings are confirmed.
- (22) One of the Malaysian exporting producers challenged the turnover based methodology applied by the Commission for the reallocation of certain SG&A expenses used for the purpose of constructing normal value in the provisional Regulation.
- (23) The verification revealed that the allocation key applied by the company in its questionnaire response for certain expenses was inaccurate and inappropriate and had not been used historically. Consequently, and in the absence of a more appropriate allocation key, the relevant SG&A expenses were reallocated on the basis of turnover pursuant to Article 2(5) of the basic Regulation. The approach adopted on this matter in the provisional Regulation is thus confirmed.
- (24) Two Indonesian exporting producers argued that normal values for companies with no sales in the ordinary course of trade on the domestic market should be based, in accordance with Article 2(1) of the basic Regulation, on domestic sales prices of another company rather than on a constructed normal value.
- (25) In recital 19 of the provisional Regulation, it was already explained why domestic sales prices of another company could not be used. Neither of the two exporting producers concerned provided any evidence invalidating the Commission's reasoning to use constructed normal value. The Commission nevertheless

▼B

re-examined all information submitted and the methodology used for provisional measures is consequently confirmed.

- (26) One Korean company argued that the Commission should not have used its own SG&A expenses when constructing normal value, as the domestic sales to which these expenses related were not made in the ordinary course of trade. The company argued that this was in contradiction with Article 2(6) of the basic Regulation.
- (27) It is the Commission's consistent practice, as pointed out also in recital 21 of the provisional Regulation, to consider the actual domestic SG&A expenses reliable if the total domestic sales volume of the company concerned is representative when compared to the volume of export sales to the Community. In fact, the determining factor to consider the SG&A expenses as being usable, is not whether those sales were made at a profit, but whether a sufficiently representative amount of sales were made on an arm's length basis. Therefore the provisional findings are confirmed.
- (28) One Taiwanese company requested that the cost of production for the month of September 1999 should not be taken into consideration due to the earthquake which occurred in Taiwan.
- (29) However, irrespective of the fact whether or not an adjustment as such can be granted for earthquakes or similar cases of force majeure, the company could not demonstrate whether and to what extent the earthquake affected the costs. Moreover, the Commission, on its own initiative analysed the alleged impact on the cost of production and it was found that the quantity produced in September 1999 exceeded the quantity produced in several other months of the IP while the increase in costs was not higher than in other months of the IP. Consequently neither the quantity produced in the month of September nor the costs could be qualified as exceptional. The company's claim had consequently to be rejected.

2. Export price

- (30) One Indonesian exporting producer claimed that the Commission deducted an excessive amount for SG&A expenses and profit for the function performed by the related importer in order to construct its export prices according to Article 2(9) of the basic Regulation.
- (31) As regards the percentage of SG&A expenses deducted, the Commission had to rely on the only information made available, i.e. the audited accounts of the related trading company. In this respect it should be noted that no product specific information on the SG&A expenses was provided despite a specific request to do so in the questionnaire. Consequently, the amount of SG&A expenses deducted was determined on the basis of turnover.
- (32) As regards the profit margin deducted, recital 23 of the provisional Regulation sets out that a profit margin of 5 % was considered to be reasonable for the function performed by a trader. In the absence of any other verifiable information, this approach is hereby confirmed.

3. Comparison

- (33) One Indonesian exporting producer complained that the Commission had ignored its allowances claimed on normal value.
- (34) For this company, the Commission constructed the normal value in accordance with Article 2(3) of the basic Regulation. The amounts for SG&A expenses and for profits were, in accordance with Article 2(6)(a), determined on the basis of the weighted average of the actual amounts determined for other exporting producers subject to investigation in respect of production and sales of the like product in Indonesia. Article 2(10) of the basic

▼B

Regulation states that due allowance in the form of adjustments shall be made for differences in factors which affect prices and price comparability. Since the domestic sales prices of the company concerned were not used, the adjustments affecting price comparability were, in this case, those relating to other companies' SG&A expenses used for constructing the normal value. The approach taken for the provisional determination is therefore confirmed.

Physical characteristics

- (35) One of the Malaysian exporting producers claimed that the type of PET sold on the domestic market had a higher market value than the type of PET exported to the Community and that therefore, the normal value should be adjusted accordingly.
- (36) However, the exporting producer did not claim any adjustment for physical differences in either the questionnaire response or during the on-the-spot verification. Neither did it quantify the market value of the alleged difference. Furthermore, during the investigation no evidence was found or provided to support such a claim. In view of these facts this claim had to be rejected.

Import charges and indirect taxes

- (37) One Indian exporting producer argued that a duty drawback claim should have been granted, since import duties have been refunded upon exportation, while no such refund was made for domestic sales, thus affecting price comparability. The exporter further claimed that the adjustment should have been granted regardless of whether duties were paid on importation of raw materials and regardless of whether those raw materials were physically incorporated in the like product sold on the domestic market.
- (38) According to Article 2(10)(b) of the basic Regulation an adjustment on the normal value can only be granted for import duties borne by the like product and by raw materials physically incorporated therein, when intended for consumption in the exporting country and refunded (or not collected) in respect of the product exported to the Community. It should be noted that in this case, the exporter based its claim for duty drawback merely on the amount of import duties refunded upon exportation of PET. According to the Duty Entitlement Passbook Scheme ('DEPB scheme') applicable to the company, a duty refund upon exportation was granted regardless of whether raw materials for the production of the like product were imported or not. Moreover, the actual amount of the relevant import charges paid on raw materials for the PET sold on the domestic market during the IP and refunded or not collected when exporting the product concerned to the Community was not provided by the company in its questionnaire response or during the on-the-spot verification visit. It follows that the company could not demonstrate that the import duties refunded were included in the domestic price. Consequently, it could not be established that price comparability was affected and the claim had to be rejected.
- (39) The same Indian exporting producer claimed finally that the provisional findings of the anti-dumping investigation were in contradiction with the provisional findings in the parallel anti-subsidy proceeding. It was argued that it would be incorrect to reject the company's claim for a duty drawback adjustment in the context of the anti-dumping investigation, when at the same time the DEPB scheme from which the company benefits had been considered as an export subsidy in the context of the anti-subsidy proceeding.
- (40) This argument cannot be accepted. Indeed, in the context of the parallel anti-subsidy investigation it was found that the scheme which gave right to a customs duty refund or a duty-free import, as the case may be, is a countervailable export subsidy, and not a bona fide duty drawback scheme for the purpose of Council

▼B

Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾ (the 'basic Anti-subsidy Regulation'). Pursuant to Article 14(1) of the basic Regulation, this countervailing duty will be deducted from any anti-dumping duty. Thus, to make the requested adjustment here, on top of this deduction, would amount to a double adjustment which would negate the results of the anti-subsidy investigation.

- (41) Considering the above, the Commission's provisional findings are hereby confirmed, i.e. the company's claim for an adjustment for differences in import charges and indirect taxes was not warranted and had consequently to be rejected.
- (42) One Korean company contested the method of calculation of the duty drawback adjustment made by the Commission, which, according to the company, did not reflect the actual amount of duty drawback received during the IP.
- (43) During the investigation the company did not provide any evidence concerning the link between the amount of duty drawback actually received and the raw materials physically incorporated in the product. In the absence of any new evidence which can support the claim of the exporting producer, the approach followed in recital 58 of the provisional Regulation is confirmed.
- (44) Another Korean company objected to the Commission's decision to reject the duty drawback adjustments in its entirety (see recital 58 of the provisional Regulation).
- (45) In the light of the explanations provided by the company after the publication of the provisional Regulation, and considering the information collected during the investigation, the Commission could re-calculate the amount of the allowance for duty drawback in order to reflect the duty paid for raw materials imported during the IP. The allowance was consequently granted but only to the extent that it could be verified.
- (46) One Indian exporting producer contested the fact that the Commission did not take sales taxes into account when establishing domestic sales prices. It was argued that although the company was exempted from sales taxes during the IP, the invoice price charged to the customers was an all inclusive price and that sales taxes were actually collected from customers and subsequently paid to the government.
- (47) The information presented by the producer after the imposition of the provisional measures contradicts the information collected and verified on-the-spot on which the provisional findings were based. Furthermore, no evidence was submitted to support the claim that the sales tax had in fact been collected from customers and was actually paid to the government. The investigation clearly revealed that the company concerned benefited from a sales tax exemption scheme which was applicable to purchases and sales of the product concerned during the IP. The sales prices on the commercial invoices were found to be 'sales-tax-free' and relevant internal pricing policy documents indicated that the sales tax was 'nil at present'. The legal basis of the sales tax exemption scheme was furthermore examined in detail and no indication could be found to support the company's new claims. The provisional findings are consequently confirmed.

Level of trade

- (48) One Malaysian exporting producer reiterated its claim for an adjustment for differences in the level of trade between sales of the product concerned on the domestic and export markets.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

▼B

- (49) In the absence of any evidence showing consistent and distinct differences in the functions and prices of the seller for the allegedly different levels of trade on the domestic market of the exporting country the provisional findings, as described in recital 69 of the provisional Regulation, are confirmed.

Credit costs

- (50) One Malaysian exporting producer claimed that no account had been taken of the credit costs on domestic sales transactions during the IP.
- (51) In the absence of a substantiated claim for an adjustment for differences in credit costs within the time limits the claim could not be verified and should thus be rejected.
- (52) The other Malaysian exporting producer claimed that the interest rate applied for the calculation of credit costs on the export side in the provisional Regulation was incorrect.
- (53) The provisional findings pertaining to this issue have been reviewed and it has been concluded that the interest rate applied by the company in its questionnaire response was indeed more appropriate and the calculations have been revised accordingly.

Discounts and rebates

- (54) One Indian exporting producer reiterated its claim that the normal value ought to be adjusted by the amount of a 'loyalty discount' granted to certain customers on the domestic market.
- (55) It was found that the discount in question was payable after the IP if and when specific conditions had been fulfilled. As mentioned in recital 35 of the provisional Regulation, there was no evidence that the discount scheme had been consistently and historically used. In fact no disbursements had yet been made under the scheme. Therefore, pursuant with Article 2(10)(c) of the basic Regulation, that stipulates that an adjustment can only be granted when the claim is based on consistent practice in prior periods, including compliance with the conditions required to qualify for the discount, the claim had to be rejected.

Handling cost

- (56) A clerical error was noted in the calculation of the adjustment to be granted for handling charges on the export side for one Indian exporting producer. This has been corrected.

Others

- (57) One Indian exporting producer challenged the grounds on which its claim for an allowance for salesmen's salaries on both the domestic and export markets was rejected and provided new information in support of its claim.
- (58) However, the information or evidence in question, although specifically requested in the questionnaire, was not made available until well after the on-the-spot verification had taken place. In the absence of a substantiated claim for an adjustment for salesmen's salaries within the time limits the claim could not be verified and should thus be rejected.

4. Dumping margin for companies investigated

- (59) One Korean exporting producer claimed that the Commission departed from the rule contained in Article 2(11) of the basic Regulation by comparing the weighted average normal value with the individual export prices in order to calculate the dumping margin. This comparison was considered as discriminatory in contrast with the methodology used for the other Korean exporting producers. The company, which after the provisional disclosure provided modified figures for the weighted average prices per customer and regions, alleged that the variations of

▼B

the prices could not be considered substantial. Furthermore, it claimed that such variations resulted from differences in the conditions of competition in the Community market and not from the intention of practising targeted dumping.

- (60) For the provisional determination the Commission considered that the method of calculation used for the other exporting producers (see recital 60 of the provisional Regulation) would not, in the particular case of this company, have reflected the full degree of dumping being practised. Moreover, a pattern of export prices was found which differed significantly between different purchasers and regions. Consequently the normal value established on a weighted average basis was compared to the prices of all individual export transactions to the Community.
- (61) The methodology used by the Commission to compare the weighted average normal value with individual export prices fully complies with the rule set out in Article 2(11) of the basic Regulation. The second subparagraph of Article 2(11) clearly states that a normal value established on a weighted average basis may be compared to prices of all individual export transactions to the Community if there is a pattern of export prices which differs significantly among different purchasers, regions or time periods, and if the comparison of the normal value and export prices on weighted average basis does not reflect the full degree of dumping. In the present case both of the above conditions are met. Even after the corrections on export prices provided by the exporting producer, it was still evident that the pattern of prices differed significantly among purchasers and regions and the full degree of dumping was not reflected by comparing normal value and export price on a weighted average basis.
- (62) It is therefore considered that there was no discrimination between Korean exporting producers but a mere application of the correct rule to each specific situation. The provisional findings are thus confirmed.
- (63) One Taiwanese company requested that the comparison of constructed normal value and export prices be made on a monthly basis alleging that during the IP there were significant variations in costs and prices due to the changes in prices for raw material.
- (64) Fluctuations in costs and prices during the IP are almost inevitable in an anti-dumping investigation. For the purpose of comparing normal value with the export price, the Commission has established a weighted average of both factors, thus taking into account the effect of the fluctuations, particularly in the case of this exporting producer where there is a clear parallel between the evolution of costs and prices. It is considered that the particular situation of the company that made the request does not justify the deviation from the methodology used for all companies concerned by the present proceeding. It would furthermore be contrary to the consistent practice of the Commission to use different time frames i.e. monthly for the comparison of normal value and export price and yearly for the other steps of the dumping calculation.
- (65) Furthermore it should be noted that the company did not make such claim in its reply to the questionnaire nor during the on-the-spot verification, although it is based upon facts that were well known to the company at that time. All relevant information should have been submitted within the time limits originally set. The information submitted several months after the expiry of these time limits could not reasonably be verified and the company's claim had consequently to be rejected.
- (66) One Taiwanese company for which it was established that its export sales to the Community were just outside the IP requested to be attributed the average dumping margin of the other cooperating companies instead of the residual dumping

▼B

margin for Taiwan, which was set at the level of the highest dumping margin found for the cooperating companies.

- (67) The claim was accepted. Therefore, the dumping margin for the company Nan Ya Plastics Corp. is set at the level of the average dumping margin of the cooperating Taiwanese companies, i.e. 9,6 %.
- (68) Two Taiwanese cooperating companies pointed out clerical errors in the calculation of the provisional dumping margin. These errors have been corrected and the respective dumping margins have been modified accordingly.
- (69) Considering the above and in the absence of other comments by the interested parties it was decided to apply the methods set out in the provisional Regulation for cooperating and non cooperating companies.
- (70) The comparison showed the existence of a *de minimis* dumping margin for the exports of the product concerned to the Community made by one Korean company during the IP.
- (71) The definitive dumping margins, expressed as a percentage of the cif import price at the Community border, are:

India	Reliance Industries Limited	51,5 %
	Pearl Engineering Polymers Limited	30,0 %
	Others	51,5 %
Indonesia	P.T. Bakrie Kasei Corporation	63,5 %
	P.T. Indorama Synthetics Tbk	15,2 %
	P.T. Polypet Karyapersada	73,7 %
	Others	73,7 %
The Republic of Korea	Honam Petrochemical Corporation	19,8 %
	Tongkook Corporation	55,8 %
	Daehan Synthetic Fiber Corporation	5,1 %
	Sk Chemicals Corporation	1,4 % <i>de minimis</i>
	Others	55,8 %
Malaysia	Hualon Corporation (M) Sdn. Bhd.	7,8 %
	MPI Polyester Industries Sdm. Bhd.	34,2 %
	Others	34,2 %
Taiwan	Far Eastern Textile Ltd	7,8 %
	Shingkong Synthetic Fibers Corporation	7,8 %
	Tuntex Distinct Corp.	12,4 %
	Nan Ya Plastics Corporation	9,6 %
	Others	12,4 %
Thailand	Thai Shingkong Industry Corporation Limited	32,5 %
	Others	32,5 %

▼B**E. COMMUNITY INDUSTRY**

- (72) In the absence of any new information submitted with respect to the definition of the Community industry, the findings as set out in recitals 87 to 92 of the provisional Regulation are confirmed.

F. INJURY**1. Preliminary remarks**

- (73) Certain interested parties questioned the use of data submitted by the Community industry only for the period 1996 onwards whilst the developments in the market prior to this period were based on independent market research information.
- (74) The Commission had considered that the data submitted by the Community industry for the year 1995 could not be used due to the split of Kodak and Eastman in 1995 and to the restructuring of the activities of Shell. Neither Shell nor Eastman was able to provide complete figures for this year.
- (75) However, the Commission had considered it essential to give an overview of the shortage crisis that occurred in the Community market in 1995 in view of the impact of this event on both the prices and profitability of the Community industry. As such the use of independent market research information was considered appropriate in establishing the necessary background data for the evaluation of the situation of the Community industry during the analysis period, as explained in recital 97 of the provisional Regulation.

2. Consumption

- (76) In the absence of any new information submitted to the contrary, the findings concerning the consumption of the product concerned in the Community as detailed in recitals 100 and 101 of the provisional Regulation are confirmed.

3. Imports from the countries concerned

- (77) In the absence of any new information the provisional findings as regards the volume and prices of imports from the countries concerned, are confirmed.

Cumulative assessment of the effects of the imports concerned

- (78) An Indonesian exporter claimed that imports originating in Indonesia should not be assessed cumulatively with the other imports concerned, especially in view of the differences in trends in volumes between imports originating in this country and in the other countries subject to the investigation. This argument had already been examined at recital 106 of the provisional Regulation and as no new information was submitted the Commission cannot accept this claim.
- (79) The conclusion that imports originating in Indonesia should be assessed cumulatively with imports from the other countries concerned is therefore confirmed.

4. Situation of the Community industry

- (80) In accordance with Article 3(5) of the basic Regulation the examination of the impact of the dumped imports on the Community industry included an evaluation of all relevant factors and indices having a bearing on the state of the Community industry. The examination included all factors specifically listed in Article 3(5) of the basic Regulation. However, certain factors are not dealt with in detail as they were found not to be relevant for the assessment of the situation of the Community industry in the course of the investigation (wages and stocks see below). As concerns the impact on the Community industry of the magnitude of the actual margin of

▼B

dumping, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

Factors examined in the provisional Regulation

— Investments:

- (81) It was found that some investments made by a cooperating Community producer had not been taken into account at the provisional stage. After the inclusion of these figures, the investment situation does not change the trend previously established.
- (82) Some interested parties argued that the extent of the investments made in 1998 by the Community industry indicated that it was in good financial health. Others remarked that if the level of investments was low during the IP, this was a consequence of the previous years in which the Community industry had registered losses and that this could not be attributed to the effect of the dumped imports during the IP.
- (83) In this respect, the investigation has clearly shown that investment expenditure made in 1997, 1998 and in the IP was mostly a consequence of decisions taken in 1995 and 1996 when prospects in the PET sector were good (although losses were incurred in 1996 this situation was considered to be temporary). In such an industry, it is more relevant to examine plans to invest than the timing of actual expenditure. As stated in recital 124 of the provisional Regulation, it is confirmed that, as a consequence of the further deterioration of its financial situation due to injurious dumping during the IP, the Community industry has not planned any significant expansion in capacity to meet increases in future demand.

— Wages and stocks:

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

— Growth:

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

Other factors examined

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

— Ability to raise capital:

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

— Productivity:

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

▼B

— Return on investments (ROI):

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

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

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

— Cash flow:

(EUR)

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

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

5. Further arguments raised

General arguments raised as to the Commission's conclusions

- (91) Some interested parties questioned the Commission's conclusions on injury since some of the injury indicators showed either increasing or stable trends. In this respect, a number of interested parties pointed to the low level of price undercutting, the increase in sales volume and the overall stability of market share. They considered these indicators showed that the Community industry was in good health and that although prices were very low, they were at normal levels taking into account prevailing market conditions.
- (92) This argument could not be accepted. As established in the provisional Regulation, the increase in sales and the recovery of market share in the IP, after a loss of 5 percentage points between 1997 and 1998, occurred when the Community industry considerably decreased its prices to match those of dumped imports. As explained in the provisional Regulation, it was established that imports were made at dumped prices. In this respect, the low level of price undercutting result from the fact that the Community industry's prices were depressed during the IP. This price depression was the result of the dumped imports, which were very substantial in terms of volume and market share and which forced the Community industry to react by decreasing its prices.

Developments occurring after the IP

- (93) Many interested parties and delegates from the member states requested the Commission to analyse and take into account certain developments that occurred after the IP. In particular these parties underlined the rapid and substantial rise in

▼B

Community industry PET prices in relation to the increase in the cost of raw materials. According to these parties, the Community industry's situation had improved dramatically since the IP and it was likely that the Community industry was no longer suffering material injury.

- (94) It should be recalled that Article 6(1) of the basic Regulation provides that information relating to a period after the IP should, normally, not be taken into account. On the basis of the jurisprudence of the Court, developments after the IP can only be taken in consideration if they make the imposition of anti-dumping measures manifestly unsuitable.
- (95) The Commission analysed developments in the PET market during the nine-month period following the IP, i.e. 1 October 1999 to 30 June 2000. It was found that the prices for PET sales made by the Community industry on the Community market showed a continued increase. The average selling price for the nine-month period was around 40 % higher than the average found for the IP. This increase was more rapid than the increase in costs (around 20 %) leading to an improvement of the Community industry's financial situation. Nonetheless, on average, during this nine-month period, the return on sales for the Community industry was still negative at - 2 % indicating that its financial performance remained unsatisfactory and far from the level that can ensure the viability of this industry.
- (96) This dramatic change in prices mostly originates in the increase in crude oil prices that has occurred since the middle of 1999 and noticeably affected all polymer prices a few months later. It should also be noted that there has been a steady increase in sales and market share of the Community industry at the expense of dumped imports. However, the decrease in the volume of dumped imports may be a consequence of the opening of an anti-dumping investigation. In the present case, the development in the dollar/euro exchange rate also rendered the imports concerned less attractive.
- (97) It is to be noted that exchange rates, as well as the crude oil price, are extremely volatile and changes may be temporary. Furthermore, should the on-going anti-dumping investigation to be terminated without imposing measures, it is likely that dumped imports would rapidly regain market share.
- (98) On the basis of the above, it was concluded that developments occurring after the IP do not show that the injury caused by dumped imports has disappeared. As a result, the imposition of anti-dumping measures is not manifestly unsuitable.

6. Conclusion on injury

- (99) Given that no other arguments were received regarding the injury suffered by the Community industry, the conclusion that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation, as set out in recitals 125 to 128 of the provisional Regulation, is hereby confirmed.

G. CAUSATION

- (100) Several interested parties continued to argue that the Commission wrongly concluded that imports originating in the countries concerned were the cause of the injury suffered by the Community industry whereas, in their opinion, the situation of this industry and the level of prices on the Community market were due to a combination of other factors. In this context, they reiterated the points already raised at the provisional stage (including the price of raw materials, the situation of over capacity, the competition between PET producers).
- (101) Given that no other arguments were received regarding the cause of the injury suffered by the Community industry, the conclusion

▼B

that imports of PET from the countries concerned had caused injury to the Community industry as stated in recital 148 of the provisional Regulation is hereby confirmed.

H. COMMUNITY INTEREST**1. Likely effect of the imposition of measures on downstream industries***Further investigation*

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

The new cooperating companies are:

- three preform/bottle converters:

Lux PET GmbH & Co. (Luxembourg)

Puccetti SpA (Italy)

EBP SA (Spain)

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

RPC Cobelplast Montonate Srl (Italy)

Moplast SpA (Italy)

Alusuisse Thermoplastic (UK)

Klöckner Pentaplast BV (The Netherlands)

- four producers of soft drinks:

L'Abeille (France)

Pepsico Food Beverages Intl. Ltd (Italy)

Pepsico France (France)

Europe Embouteillage Snc (France)

- eight producers of mineral and spring water:

Aguas Minerales Pasqual S.L. (Spain)

Eycam Perrier SA (Spain)

Font Vella SA & Aguas de Lanjarón SA (Spain)

Italaquae SpA (Italy)

Neptune SA (France)

Roxane SA (France)

San Benedetto (Italy)

Società generale delle acque minerali arl (Italy).

- (103) In total, the data submitted by the companies that completed either the first or the second questionnaire covered 26 % of the Community PET consumption during the IP. The cost figures established by aggregating this information have been considered representative of the various user sub-sectors, as individual company information showed a large level of consistency among companies belonging to the same sub-sectors.
- (104) After the imposition of provisional measures, several submissions by users or their representative associations were received by the

▼B

Commission. These mostly comprised comments on the past developments in the PET market and discussions on the possible impact of measures on the user sectors. These submissions originated from:

- Schmalbach-Lubeca, the biggest converter in Europe (18 % of community PET consumption);
- the ‘European plastic Converters’ association (EUPC);
- UNESDA, an association representing soft drink producers;
- the Nestlé group, reiterating that the figures given for the French market are representative of their overall European market. (The total European purchases of PET by the group represent some 9 % of the Community consumption of PET of which 3 % is for the French market only).

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

Description of the user sectors

- (106) After having analysed all the information provided, it was found that the user sector, previously considered as 3 groups (preform makers, water producers and integrated soft drink producers), is more accurately described as two groups:
- The converters, including manufacturers of preforms and bottles as well as producers of sheets. These users are performing a simple transformation activity; therefore the cost of PET is by far their main cost element. The manufacturers of bottles and preforms sell the vast majority of their production to bottlers of non-alcoholic drinks. The sheet producers, that represent only a small proportion of the converters sector, sell to many different types of industries that use sheets mainly to package their goods.
 - The bottlers of non-alcoholic drinks, including water, carbonated and non-carbonated soft drinks, milk, fruit juices etc. The division of this group of users between producers of water and soft drinks is not relevant since in many cases the same manufacturer bottles both water and soft drinks. It is more relevant to distinguish between the different drinks they manufacture since, in relative terms, the share of PET in their cost of production depends on the intrinsic cost of those drinks (sodas or fruit juices require more expensive inputs than water). In any case, PET remains a fairly important cost element and problems faced by bottlers regarding their supply of PET are similar whatever the product they bottle.
- (107) It is to be noted that there is a very close operational link between the converters (except sheet manufacturers) and bottlers.
- Bottlers buy almost all the production of the converters.
 - Every converter has a very limited number of clients (often only one).
 - Converters operate on a contractual basis with their clients, and these contracts very often either include provisions that automatically take into account changes in the price of PET or are renegotiated on a regular basis.

▼B

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

Foreseeable impact of measures on the users

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

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

Impact on converters

- (109) It was estimated that the imposition of both the anti-dumping and countervailing measures proposed (of which 15 % is to be attributed to countervailing measures only), taking into account their volumes of PET purchases originating in the countries concerned during the IP, would result in an increase of 4 % in the cost of production of converters making preforms and bottles (using PET prices of July 2000, this would be 2 %). In the same terms, the impact of measures on the sheet producers would be around 2,3 % (1,2 % with PET prices of July 2000).
- (110) Due to their contractual link with their customers, it is likely that the converters making preforms and bottles will be able to pass most of this increase in cost onto their clients. This is also the case for sheet manufacturers. The direct impact of measures on the return on sales of these companies is therefore estimated to be limited.
- (111) The main risk that was re-iterated by these users relates to a possible relocation of converters' activities to countries outside the Community. However, the Commission did not find any new evidence to suggest there would be such a risk, especially taking into account the estimated impact of the measures proposed on one hand and the costs and disadvantages linked to relocation on the other hand. In recital 179 of the provisional Regulation it was estimated that additional costs relating to transport only would represent an increase of 2,5 % in costs. Furthermore it was also explained that considerations of proximity, flexibility and reliability of supplies were essential to users.

Impact on bottlers of non-alcoholic drinks

- (112) It was estimated that the imposition of both the anti-dumping and countervailing measures proposed, taking into account their volumes of PET purchases originating in the countries concerned during the IP, as well as the fact that most of the increase in the cost of preforms is going to be passed on to them, would result in an average increase of less than 0,9 % in the cost of production of bottlers of non-alcoholic drinks (using PET prices of July 2000 this would be around 0,4 %).

▼B

- (113) This increase in costs of production is estimated to have a limited impact on large companies that sell branded drinks since those companies are very profitable. Small bottlers of non-branded drinks, that represent only a small proportion of this sector, are operating with lower profit margins; such an increase in cost is not likely to severely endanger their activities but it may require some cost restructuring efforts. In this respect it is to be noted that in the past these companies have had to cope with large fluctuations in PET prices.

Overall impact on the users

- (114) As mentioned above, PET is mostly used directly, or indirectly via converters, by the producers of non-alcoholic drinks, whereas PET is only a marginal packaging material for the other industries. As the estimated impact on the non alcoholic drinks sector already includes the impact on the cost of PET transformed by the converters, it can be considered that the increase in costs on users of PET would be limited.

2. The retail price of drinks

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

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

- (116) The measures proposed would, in all likelihood, benefit the Community industry, which, by its restructuring efforts and impressive increase in productivity, has demonstrated its determination to maintain its presence in the rapidly growing Community market. The imposition of measures will allow this industry to improve profitability and to have the possibility of making the new investments, which are crucial, in such a capital-intensive activity, to insure its long-term viable presence in the Community.
- (117) Since the situation of the Community upstream industry is dependent on the financial health of Community PET producers, the improvement of the situation of the latter due to the imposition of measures will also benefit the upstream industry. This has been confirmed by cooperating companies in the upstream industries.

4. Conclusions on Community interest

- (118) On the basis of the additional information obtained from users, it is concluded that the impact of the measures on users would be limited. As converters are able to pass most of the increase in costs on to their clients, the consolidated impact of measures on the producers of drinks is estimated to be marginal on the overall profitability of this sector.
- (119) In addition, it is confirmed that the delocalisation of the production of preforms outside the Community is not likely, that retail prices of non-alcoholic drinks are not usually much affected by fluctuations in PET prices and that imposition of measures is clearly in the interest of the Community industry and of the upstream industries.

▼B

- (120) Given that no other arguments were received regarding Community interest, the conclusion that there are no compelling reasons not to impose measures, as set out in recital 202 is hereby confirmed.

I. DEFINITIVE COURSE OF ACTION

- (121) In view of the conclusions reached regarding dumping, injury, causation and Community interest, it is considered that definitive anti-dumping measures should be taken in order to prevent further injury being caused to the Community by dumped imports originating in the concerned countries.

1. Injury elimination level

- (122) In the absence of any new information, the methodology used for establishing the injury margin as described in recital 206 of the provisional Regulation is hereby confirmed.

2. Form and level of the duties

- (123) In the absence of any new information, the methodology used for establishing the anti-dumping duty rates in conjunction with the relevant countervailing duty rates established in the parallel anti-subsidy investigation, as described in recitals 209 to 213 of the provisional Regulation is hereby confirmed.

- (124) In order to avoid that fluctuations in PET prices caused by fluctuations in crude oil prices should result in higher duties being collected, it is considered appropriate that duties in the form of a specific amount per tonne should be imposed. These amounts result from the application of the anti-dumping duty rate to the cif export prices used for the calculation of the injury elimination level during the IP.

- (125) The proposed anti-dumping duties are the following:

India

Company	Injury elimination margin	Dumping margin	Counter-vailing duty rate (resulting from export subsidies)	Anti-dumping duty rate	Proposed anti-dumping duty
Reliance Industries Limited	44,3 %	51,5 %	8,2 %	36,1 %	181,7 EUR/t
Pearl Engineering Polymers Limited	33,6 %	30,0 %	5,8 %	24,2 %	130,8 EUR/t
Elque Polyesters Limited	44,3 %	51,5 %	4,4 %	39,9 %	200,9 EUR/t
Futura Polymer Limited	44,3 %	51,5 %	0	44,3 %	223,0 EUR/t
All other		51,5 %	8,2 %	36,1 %	181,7 EUR/t

- (126) Elque Polyesters Limited and Futura Polymer Limited participated in the parallel anti-subsidy proceeding but noting the present anti-dumping investigation since they did not export to the Community. They are therefore entitled to ask for a newcomer review when they have actually exported to the Community, or when they can demonstrate that they have entered into irrevocable contractual obligations to export significant quantities to the Community.

▼B

Indonesia

Company	Injury elimination margin	Dumping margin	Proposed anti-dumping duty
P.T. Bakrie Kasei Corporation	35,1 %	63,5 %	187,7 EUR/t
P.T. Indorama Synthetics Tbk	17,8 %	15,2 %	92,1 EUR/t
P.T. Polypet Karya-persada	32,9 %	73,7 %	178,9 EUR/t
All others		73,7 %	187,7 EUR/t

Korea

Company	Injury elimination margin	Dumping margin	Proposed anti-dumping duty
Honam Petrochemical Corporation	16,9 %	19,8 %	101,4 EUR/t
Tongkong Corporation	26,5 %	55,8 %	148,3 EUR/t
Daehan Synthetic Fiber Corporation	28,5 %	5,1 %	28,2 EUR/t
SK Chemicals Corporation	11 %	1,4 %	0
All others		55,8 %	148,3 EUR/t

Malaysia

Company	Injury elimination margin	Dumping margin	Countervailing duty rate (resulting from export subsidies)	Anti-dumping duty rate	Proposed anti-dumping duty
Hualon Corporation(M) Sdn. Bhd.	52,1 %	7,8 %	0,2 %	7,6 %	36,0 EUR/t
MPI Polyester Industries Sdn. Bhd.	54,2 %	34,2 %	0	34,2 %	160,1 EUR/t
All others		34,2 %	Not applicable	34,2 %	160,1 EUR/t

Taiwan

Company	Injury elimination margin	Dumping margin	Proposed anti-dumping duty
Far Eastern Textile Ltd	8,2 %	7,8 %	50,2 EUR/t
Shingkong Synthetic Fibers Corporation	16,6 %	7,8 %	47,0 EUR/t
Tuntex Distinct Corp.	26,3 %	12,4 %	69,5 EUR/t
Nan Ya Plastics Corporation	26,3 %	9,6 %	53,8 EUR/t
All others		12,4 %	69,5 EUR/t

▼B**Tailand**

Company	Injury elimination margin	Dumping margin	Counter-vailing duty rate	Anti-dumping duty rate	Proposed anti-dumping duty
Thai Shingkong Industry Corporation Limited	22,6 %	32,5 %	8,4 %	14,2 %	132,2 EUR/t
All others		32,5 %	8,4 %	14,2 %	132,2 EUR/t

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

3. Definitive collection of provisional duties

- (128) In view of the magnitude of the dumping found for the exporting producers, and in the light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duties shall be collected at the rate of the duty definitively imposed. In those cases, where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

4. Undertakings

- (129) Subsequent to the imposition of provisional anti-dumping measures, exporting producers in India and Indonesia offered price undertakings in accordance with Article 8(1) of the basic Regulation.
- (130) The Commission considers that the undertakings offered by Reliance Industries Limited, Pearl Engineering Polymers Limited and P.T. Polypet Karyapersada can be accepted ⁽²⁾ since they eliminate the injurious effect of the dumping. Moreover, the regular and detailed reports which the companies undertook to provide to the Commission will allow effective monitoring. Furthermore, the sales structure of these companies is such that the Commission considers that the risk of circumvention of the undertakings is minimised.
- (131) A further company also made proposals for offering an undertaking. However, the company provided false and misleading information in respect of certain aspects of the investigation which affected the accuracy and reliability of its cooperation (cf. recital 13). Accordingly, the Commission was not satisfied that an undertaking from this company could be effectively monitored and the offer was therefore rejected.
- (132) In order to ensure the effective respect and monitoring of the undertakings, when the request for release for free circulation

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

⁽²⁾ See page 88 of this Official Journal.

▼B

pursuant to the undertakings is presented, exemption from the duty is conditional upon presentation to the customs service of the Member State concerned a valid 'Undertaking Invoice' issued by the exporting producers from whom the undertakings are accepted and containing the information listed in the Annex. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty should be payable in order to ensure the effective application of the undertakings.

- (133) In the event of a breach or withdrawal of the undertakings an anti-dumping duty may be imposed, pursuant to Article 8(9) and (10) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

▼M3

Country	Anti-dumping duty (EUR/tonne)	TARIC additional code
India	181,7	A999
Indonesia	187,7	A999
Malaysia	160,1	A999
Korea	148,3	A999
Taiwan	143,4	A999
Thailand	83,2	A999

▼B

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

▼M3

Country	Company	Anti-dumping duty (EUR/tonne)	TARIC additional code
India	Pearl Engineering Polymers Ltd	130,8	A182
India	Reliance Industries Ltd	181,7	A181
India	Elque Polyesters Ltd	200,9	A183
India	Futura Polymers Ltd	161,2	A184
Indonesia	P.T. Bakrie Kasei Corp.	187,7	A191
Indonesia	P.T. Indorama Synthetics Tbk	92,1	A192
Indonesia	P.T. Polypet Karyapersada	178,9	A193

▼ **M3**

Country	Company	Anti-dumping duty (EUR/tonne)	TARIC additional code
Malaysia	Hualon Corp. (M) Sdn. Bhd.	36,0	A186
Malaysia	MpI Polyester Industries Sdn. Bhd.	160,1	A185
Republic of Korea	Daehan Synthetic Fiber Co., Ltd	0	A194
Republic of Korea	Honam Petrochemical Corp.	101,4	A195
Republic of Korea	SK Chemicals Co., Ltd	0	A196
Republic of Korea	Tongkong Corp.	148,3	A197
Republic of Korea	KP Chemical Corp.	0	A577
Taiwan	Far Eastern Textile Ltd	0	A188
Taiwan	Tuntex Distinct Corp.	69,5	A198
Taiwan	Shingkong Synthetic Fibers Corp.	24,5	A189
Taiwan	Hualon Corp.	81,9	A578
Thailand	Thai Shingkong Industry Corp. Ltd	83,2	A190
Thailand	Indo Pet (Thailand) Ltd	83,2	A468

▼ **B**

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

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

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

Article 2

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

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

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

▼B

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

Company	Country	TARIC additional code
Reliance Industries Limited	India	A181
Pearl Engineering Polymers Limited	India	A182
▼M1 Futura Polymers Limited	India	A184
▼B P.T. Polypet Karyapersada	Indonesia	A193

Article 3

The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 1742/2000 on imports of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand shall be collected at the rate of the duty definitively imposed. Amounts secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

Article 4

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

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

▼B*ANNEX*

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

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

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