

COMMISSION REGULATION (EU) No 472/2010

of 31 May 2010

imposing a provisional anti-dumping duty on imports of certain polyethylene terephthalate originating in Iran 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 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 7 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-dumping 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) The 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 dumping of the product concerned originating in the countries concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

1.2. Parties concerned by the proceeding

- (3) The Commission officially advised the complainant producers, other known Union producers, importers/traders and users known to be concerned, exporting producers and 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.
- (4) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (5) In view of the apparent high number of Union producers and importers, sampling was envisaged in the notice of initiation, in accordance with Article 17 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).

- (6) 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.
- (7) 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.
- (8) The Commission sent questionnaires to exporting producers, 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.
- (9) Questionnaire replies were received from five sampled Union producers, one sampled importer, ten users in the Union, three suppliers of raw materials, one exporting producer in Iran and its related trader, one exporting producer in Pakistan and one exporting producer in the United Arab Emirates. In addition, seven cooperating Union producers provided the requested general data for the injury analysis.
- (10) The Commission sought and verified all the information deemed necessary for a preliminary determination of dumping, resulting injury and Union interest. Verification visits were carried out at the premises of the following companies:
 - (a) *Union producers*
 - Novapet SA, Spain,
 - Equipolymers srl, Italy,
 - UAB Orion Global PET (Indorama), Lithuania,
 - UAB Neo Group, Lithuania;

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 208, 3.9.2009, p. 12.

(b) *Exporting producer in Iran*

- Shahid Tondguyan Petrochemical Co. and its related companies, Bandar Imam Khomeini and Tehran;

(c) *Exporting producer in Pakistan*

- Novatex Limited, Karachi;

(d) *Exporting producer in the United Arab Emirates*

- JBF RAK LLC, Ras Al Khaimah.

1.3. Investigation period

- (11) The investigation of dumping and injury covered the period from 1 July 2008 to 30 June 2009 ('the 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**

- (12) 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 United Arab Emirates ('the product concerned'), currently falling within CN code 3907 60 20.
- (13) 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

- (14) 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 1(4) of the basic Regulation.

3. DUMPING

- (15) Given the considerable fluctuations in raw material costs and PET market prices observed during the IP, it was considered appropriate to make use of quarterly data in establishing the normal value and export price. However, this methodology could not be applied for Iran, since the sole Iranian producer was unable to provide full quarterly cost data.

3.1. Iran**3.1.1. Normal Value**

- (16) In accordance with Article 2(2) of the basic Regulation, the Commission first established whether the domestic sales of the sole Iranian producer were sufficiently representative, i.e. whether the total volume of such sales represented at least 5 % of its total volume of export sales of the product concerned to the Union. The domestic sales of the sole Iranian producer were considered sufficiently representative during the investigation period.

- (17) The Commission subsequently examined whether the domestic sales of the like product could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for the like product sold on the Iranian market the proportion of profitable domestic sales to independent customers during the IP.

- (18) Since the volume of profitable sales of the like product represented 80 % or less of the total sales volume of the like product normal value was based on the actual domestic price, calculated as a weighted average of profitable sales.

3.1.2. Export price

- (19) Since export sales to the Union were made through a related trading company located in Iran, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices of this related trader to independent customers in the Union.

3.1.3. Comparison

- (20) The normal value and the export price of the sole exporting producer were compared on an ex-works basis.
- (21) For the purpose of ensuring a fair comparison between the normal value and export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, adjustments for differences in level of trade, transport costs, handling, loading and ancillary costs, packing costs, credit costs, and other factors (bank charges) have been made where applicable and justified.

- (22) The company claimed an adjustment for differences in level of trade due to different sales patterns between its customers in its domestic and EU market. This was granted to the extent that the company could substantiate its claim.

(23) The Iranian exporting producer furthermore submitted a particular claim regarding the alleged impact of the international sanctions against Iran. The company claimed that, due to the sanctions, certain big US based PET customers like Coca-Cola and Pepsi are not allowed to buy PET from Iran and consequently do not issue quality certificates for PET coming from Iran. This allegedly also has an impact on other European customers who require lower prices for PET that has not been certified by Coca Cola or Pepsi. However, the Iranian exporting producer was not able to quantify the alleged impact of the sanctions in a way that could be supported by any evidence. Finally, the company encountered similar problems on the domestic market where local Coca-Cola and Pepsi licensees were not allowed to source PET from Iranian producers and have to rely on imports from other countries. Consequently, the sanctions should also exert a downward pressure on domestic prices and, thus, there is no apparent difference for price comparison purposes. It was therefore concluded that there were no grounds to make an allowance in the form of an adjustment for the impact of sanctions on Iran.

3.1.4. Dumping margin

- (24) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin for the sole Iranian producer was established on the basis of a comparison of the weighted average normal value with the weighted average export price.
- (25) Based on information available from the complaint and the cooperating Iranian exporting producer, there are no other known producers of the product concerned in Iran. Therefore, the country-wide dumping margin to be established for Iran should be equal to the dumping margin established for the sole cooperating exporting producer in Iran.
- (26) The provisional dumping margin for Iran, expressed as a percentage of the CIF Union frontier price, duty unpaid, is 28,6 %.

3.2. Pakistan

3.2.1. Normal value

(27) In accordance with Article 2(2) of the basic Regulation, the Commission first established whether the domestic sales of the sole Pakistani producer were sufficiently representative, i.e. whether the total volume of such sales represented at least 5 % of its total volume of export sales of the product concerned to the Union. The domestic sales of the sole Pakistani producer were considered sufficiently representative during the investigation period.

(28) The Commission subsequently examined whether the domestic sales of the like product could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for the like product sold on the Pakistani market the proportion of profitable domestic sales to independent customers during the IP.

(29) Since the volume of profitable sales of the like product represented more than 80 % of the total sales volume of the like product on the domestic market, normal value was calculated as the weighted average of all domestic sales prices of the like product.

3.2.2. Export price

(30) The sole exporting producer in Pakistan exported the product concerned directly to independent customers in the Union. Export prices were therefore established on the basis of the prices actually paid or payable by these independent customers for the product concerned, in accordance with Article 2(8) of the basic Regulation.

3.2.3. Comparison

- (31) The normal values and the export price of the sole exporting producer were compared on an ex-works basis.
- (32) For the purpose of ensuring a fair comparison between the normal value and export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, adjustments for differences in import charges, discounts, rebates, transport, insurance, handling, loading and ancillary costs, packing costs, credit costs, after-sales costs (technical assistance and services), commissions, and other factors (bank charges) have been made where applicable and justified.

3.2.4. Dumping margin

(33) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin for the sole Pakistani producer was established on the basis of a comparison of the weighted average normal value with the weighted average export price.

(34) The provisional dumping margin for the sole Pakistani exporting producer, Novatex Limited, expressed as a percentage of the CIF Union frontier price, duty unpaid, is 1,5 % for, i.e. below *de minimis* in the sense of Article 9(3) of the basic Regulation.

(35) Since there are no other producers of the product concerned in Pakistan, no provisional measures should be imposed.

3.3. United Arab Emirates

3.3.1. Normal value

- (36) In accordance with Article 2(2) of the basic Regulation, the Commission first established whether the domestic sales of the sole producer in the United Arab Emirates (UAE) were sufficiently representative, i.e. whether the total volume of such sales represented at least 5 % of its total volume of export sales of the product concerned to the Union. The domestic sales of the sole UAE producer were considered sufficiently representative during the investigation period.
- (37) The Commission subsequently examined whether the domestic sales of the like product could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for the like product sold on the UAE market the proportion of profitable domestic sales to independent customers during the IP.
- (38) Since the volume of profitable sales of the like product represented 80 % or less of the total sales volume of the like product, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales.

3.3.2. Export price

- (39) The sole exporting producer in the United Arab Emirates exported the product concerned directly to independent customers in the Union. Export prices were therefore established on the basis of the prices actually paid or payable by these independent customers for the product concerned, in accordance with Article 2(8) of the basic Regulation.

3.3.3. Comparison

- (40) The normal values and the export prices of the sole exporting producer were compared on an ex-works basis.
- (41) For the purpose of ensuring a fair comparison between the normal value and export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. On this basis, adjustments for differences in transport, insurance, handling, loading and ancillary costs, credit costs and commissions have been made where applicable and justified.

3.3.4. Dumping margin

- (42) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin for the sole UAE producer was established on the basis of a comparison of the weighted average normal value with the weighted average export price.

- (43) Based on information available from the complaint and the cooperating UAE exporting producer, there are no other known producers of the product concerned in the United Arab Emirates. Therefore, the country-wide dumping margin to be established for the United Arab Emirates should be equal to the dumping margin established for the sole cooperating exporting producer in the United Arab Emirates.
- (44) The provisional dumping margin for the United Arab Emirates, expressed as a percentage of the CIF Union frontier price, duty unpaid, is 6,6 %.

4. INJURY

4.1. Union production and Union industry

- (45) During the IP, the like product was manufactured by 17 producers in the Union. The output of these producers (established on the basis of the information collected from the cooperating producers and for the other Union producers on the data from the complaint) is therefore deemed to constitute the Union production within the meaning of Article 4(1) of the basic Regulation
- (46) 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 4(1) and Article 5(4) 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.
- (47) 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.

- (48) As indicated above at recital (6), 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

- (49) 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.
- (50) 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
<i>Index (2006 = 100)</i>	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

- (51) The Commission examined whether imports of PET in Iran, Pakistan and the United Arab Emirates should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.
- (52) As the dumping margin found for Pakistan is *de minimis*, it is considered that the effect of those imports cannot be assessed together with dumped imports from Iran and the UAE.
- (53) With regard to the effects of the imports originating in the UAE and Iran, the investigation showed that the dumping margins were above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation and the volume of dumped imports from these two countries was not negligible in the sense of Article 5(7) of the basic Regulation.
- (54) With regard to the conditions of competition between imports from Iran 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 both these countries had an increasing trend in the period considered.
- (55) In view of the above, it is provisionally considered that all the criteria set out in Article 3(4) of the basic Regulation were met and that imports from Iran and the United Arab Emirates should be examined cumulatively.

(b) Volume of the imports concerned

- (56) The volume of dumped imports of the product concerned into the EU rose by almost 20 times between 2006 and the IP and reached 212 198 tonnes in the IP. More specifically, imports from the UAE and Iran almost tripled between 2006 and 2007, before further increasing by 4 times in 2008 compared to 2007 and almost doubling between 2008 and the IP.

Table 2

	2006	2007	2008	IP
Volume of dumped imports from the UAE and Iran (tonnes)	11 752	33 812	133 389	212 198
<i>Index (2006 = 100)</i>	100	288	1 135	1 806
Market share of dumped imports from the UAE and Iran	0,4 %	1,2 %	4,6 %	7,1 %

Source: Eurostat.

(c) Market share of the imports concerned

- (57) The market share held by dumped imports from the UAE and Iran stood at 0,4 % during 2006 and increased steadily by almost 7 percentage points throughout the period considered. More specifically, it rose by 0,8 percentage points between 2006 and 2007, by further 3,4 percentage points between 2007 and 2008 and by 2,5 percentage points between 2008 and the IP. In the IP, the market share of dumped imports from the UAE and Iran was 7,1 %.
- (58) 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*

- (59) The average import price decreased by 15 % in the period considered with the sharpest decline between 2008 and the IP. More specifically, the average price decreased by 1 % in 2007 and by another percentage point in 2008, before dropping by further 13 percentage points in the IP.

Table 3

	2006	2007	2008	IP
Price of imports from the UAE and Iran (EUR/ton)	1 033	1 023	1 010	874
<i>Index</i>	100	99	98	85

Source: Eurostat.

(ii) Price undercutting

- (60) 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.
- (61) 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 UAE and Iran 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.
- (62) The comparison showed that during the IP, the dumped product concerned originating in the UAE sold in the Union undercut the Union industry's prices by 3,9 %. The dumped products originating in Iran sold in the Union undercut the prices of the Union industry by 3,2 %. The weighted average undercutting margin of both countries during the IP is 3,8 %.

4.4. Situation of the Union industry

- (63) Pursuant to Article 3(5) of the basic Regulation, the examination of the impact of the dumped 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 has been conducted.
- (64) 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.

4.5. Macroeconomic elements

(a) Production

- (65) 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

- (66) 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.

- (67) 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

- (68) 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 than 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
<i>Index (2006 = 100)</i>	100	105	99	97

Source: questionnaire replies and complaint.

(d) *Market share*

- (69) 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 %
<i>Index (2006 = 100)</i>	100	98	94	88

Source: questionnaire replies, complaint and Eurostat.

(e) *Growth*

- (70) 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 dumped imports increased from 0,4 % to 7,1 % 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*

- (71) 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
<i>Index (2006 = 100)</i>	100	87	85	85

Source: questionnaire replies and complaint.

(g) *Productivity*

- (72) 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
<i>Index (2006 = 100)</i>	100	121	112	112

Source: questionnaire replies and complaint.

(h) *Factors affecting sales prices*

- (73) 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
<i>Index (2006 = 100)</i>	100	100	100	88

Source: questionnaire replies and complaint.

- (74) As indicated above, the sales prices of the Union industry were undercut by the dumped imports from UAE and Iran.

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

- (75) Given the volume, market share and prices of the imports from the UAE and Iran, the impact on the Union industry of the actual margins of dumping 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. 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 can be established and it is considered that Union production remains vulnerable to the injurious effect of any dumped imports in the Union market.

4.6. Microeconomic elements

(a) *Stocks*

- (76) 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

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

Source: questionnaire replies.

(b) *Wages*

- (77) 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*

- (78) 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.

- (79) 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*

- (80) 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.

- (81) 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*

- (82) 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.

4.7. Conclusion on injury

- (83) 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 %.
- (84) 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.
- (85) In the light of the foregoing, it is provisionally concluded that the Union industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

5.1. Introduction

- (86) In accordance with Article 3(6) and Article 3(7) of the basic Regulation, the Commission examined whether the dumped imports originating in Iran and the United Arab Emirates have caused injury to the Union industry to a degree that enables it to be classified as material. Known factors other than the dumped 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 dumped imports.

5.2. Effect of the dumped imports

- (87) Between 2006 and the IP, the volume of the dumped imports of the product concerned originating in the UAE and Iran increased by almost 20 times to 212 200 tonnes, and their market share increased by almost 7 percentage points (from 0,4 % to 7,1 %). At the same time, the Union industry lost some 10 percentage points of market share (from 84,9 % to 75,1 %). The average price of these imports decreased between 2006 and the IP and remained lower than the average price of Union producers.

- (88) As indicated above at recital (62), price undercutting of the dumped imports was 3,9 % in case of the UAE and 3,2 % for Iran. 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.
- (89) 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.
- (90) In view of the undercutting of Union industry's prices by imports from the UAE and Iran, it is considered that these dumped 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

- (91) 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

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

Source: questionnaire replies.

- (92) 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) Pakistan

- (93) Considering that the imports from Pakistan were found not to be dumped, it is necessary to analyse if they nevertheless contributed to the injury suffered by the Union producers. The volume of imports from Pakistan increased twofold in the period considered. More specifically, they decreased between 2006 and 2007 by 25 % but then increased significantly in 2008 compared to 2007 by 117 percentage points and in the IP by a further 16 percentage points compared to 2008 reaching 92 000 tonnes. The corresponding market share held by these imports increased from 1,6 % in 2006 to 3,1 % in the IP.

Table 17

	2006	2007	2008	IP
Volume of imports from Pakistan (tonnes)	44 187	33 255	84 859	92 004
<i>Index (2006 = 100)</i>	100	75	192	208
Market share of imports from Pakistan	1,6 %	1,1 %	3,0 %	3,1 %
Price of imports (EUR/ton)	1 030	1 022	1 023	900

Source: Eurostat.

- (94) The average price of the Pakistani imports remained in general below the average prices of the Union producers. However, the detailed analysis of the price information provided by the cooperating exporter in Pakistan showed that its prices undercut the Union prices by less than 1,5 %, i.e. less than half the undercutting established for dumped imports from Iran and the UAE. Consequently, although it cannot be excluded that imports from Pakistan contributed to the injury suffered by the Union industry, their contribution was only limited and could not have broken the causal link between the dumped imports and the injury suffered by the Union industry.

(b) *Republic of Korea*

- (95) 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 18

	2006	2007	2008	IP
Volume of imports from South Korea (tonnes)	94 023	130 994	177 341	231 107
<i>Index (2006 = 100)</i>	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.

- (96) 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 UAE and Iran, and they were also higher than the average prices from Pakistan. 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 dumped imports from the UAE and Iran.

- (97) 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.

(c) *Other countries*

- (98) 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 19

	2006	2007	2008	IP
Volume of imports from other countries (tonnes)	259 438	296 418	185 286	210 772
<i>Index (2006 = 100)</i>	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

- (99) Some interested parties claimed that the injury suffered by the Union industry would be due to competition from 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 dumped imports and the injury established for the Union industry.

Table 20

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

Source: Eurostat.

5.3.4. Economic downturn

- (100) 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.
- (101) However, the negative effect of the economic downturn and the contraction in demand was exacerbated by the increased dumped imports from Iran and the UAE, 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 dumped 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 dumped imports in the market.
- (102) The economic downturn has also no impact whatsoever on the injury suffered and observed already before the last quarter of 2008.
- (103) 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 dumped imports from the UAE and Iran.

5.3.5. Geographical location

- (104) 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).
- (105) 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.
- (106) Consequently, it is concluded that geographical location did not materially contribute to the injury suffered by the Union industry.

5.3.6. Vertical integration

- (107) 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.
- (108) 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

- (109) The coincidence in time between, on the one hand, the increase in dumped imports from the UAE and Iran, 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 dumped imports caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.
- (110) Other factors were analysed but were found not to break the causal link between the effects of the dumped imports and the injury suffered by the Union industry. As concerns Pakistan, since the undercutting is very low, it is considered that its imports did not contribute to the

injury of the Union industry to any material extent. 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 dumped imports from the UAE and Iran. Due to the declining market share and their high price level, there is no evidence that imports from other third countries 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.

- (111) 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 dumped imports, it is provisionally concluded that the imports from the UAE and Iran have caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.

6. UNION INTEREST

- (112) In accordance with Article 21 of the basic Regulation, the Commission examined whether, despite the conclusions on dumping, 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 21(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.
- (113) 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

- (114) It is expected that the imposition of measures on imports from the UAE and Iran 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.

- (115) In the absence of measures, it is expected that imports from the UAE and Iran 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.
- (116) 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.
- (117) 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 anti-dumping measures can 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.
- (118) 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 dump.
- (119) Accordingly, it is provisionally concluded that the imposition of anti-dumping measures would clearly be in the interest of the Union industry.

6.2. Interest of unrelated importers in the Union

- (120) 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.
- (121) No other importer submitted relevant information. Given that imports from other countries where there are currently anti-dumping measures in force did not stop and that imports are available from countries without any anti-dumping measures (e.g. Oman, USA, Brazil), it is considered that importers can import from these countries.

- (122) 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

- (123) 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.
- (124) 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 dumped imports of PET would benefit the PTA producers.
- (125) 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.
- (126) Given the above, it is provisionally concluded that imposition of measures on the dumped imports from the UAE and Iran would be in the interest of raw material suppliers.

6.4. Interest of the users

- (127) 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 unstable and due to their size very expensive to transport.

(128) 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).

(129) 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*

(130) 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.

(131) 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.

(132) 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.

(133) 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.

(134) 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.

(135) 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.

(136) 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*

(137) 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.

(138) 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.

(139) 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

(140) 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.

(141) 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 UAE and Iran, 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.

(142) 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

(143) 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-dumping 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-dumping rules.

6.7. Conclusion on Union interest

(144) To conclude, it is expected that the imposition of measures on imports from the UAE and Iran 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.

- (145) 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 ANTI-DUMPING MEASURES

- (146) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, provisional measures should be imposed on imports of the product concerned originating in the Iran and the United Arab Emirates in order to prevent further injury to the Union industry by the dumped imports.
- (147) As far as imports of the product concerned originating in Pakistan are concerned, no dumping was provisionally found, as indicated above. Consequently, no provisional measures should be imposed.

7.1. Injury elimination level

- (148) The provisional measures on imports originating in the UAE and Iran should be imposed at a level sufficient to eliminate the injury caused to the Union industry by the dumped imports, without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, 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 dumped imports.
- (149) 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.
- (150) 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
- (151) 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

- (152) In the light of the foregoing and pursuant to Article 7(2) of the basic Regulation, it is considered that a provisional anti-dumping duty should be imposed on imports of the product concerned originating in Iran and the United Arab Emirates at the level of the lowest of the dumping and injury elimination level found, in accordance with the lesser duty rule.
- (153) On the basis of the above, and in accordance with Article 7(2) of the basic Regulation, it is considered that the proposed duty rate for the product concerned originating in Iran should be based on the injury elimination level 17 %. Moreover, the proposed duty rate for the product concerned originating in the United Arab Emirates should be based on dumping 6,6 %. No provisional measures should be imposed on imports of the product concerned originating in Pakistan.
- (154) It is noted that an anti-subsidy investigation was carried out in parallel with the anti-dumping investigation concerning imports of PET for Iran, Pakistan and United Arab Emirates. Since, pursuant to Article 14(1) of the basic Regulation, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation, it was considered necessary to determine whether, and to what extent, the subsidy amounts and the dumping margins arise from the same situation.
- (155) As concerns the subsidy schemes that constituted export subsidies within the meaning of Article 4(4)(a) of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community⁽¹⁾, the provisional dumping margins established for the exporting producer in Iran are partly due to the existence of countervailable export subsidies. However, since the same injury elimination level applies for both the anti-dumping and the anti-subsidy investigations, no provisional anti-dumping duty is proposed against Iran.

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

(156) As already mentioned at recital (15) above 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 anti-dumping rate to the CIF export prices used for the calculation of the dumping margin.

(157) On the basis of the above, and taking into account the findings set out in the Regulation imposing a provisional countervailing duty (Commission Regulation (EU) No 473/2010) ⁽¹⁾, the proposed anti-dumping duty amounts, expressed on the CIF Union border price, customs duty unpaid, are provisionally as follows:

Country	Total subsidy margin	of which Export subsidy	Dumping margin	Injury margin (on quarterly basis)	Provisional CV duty		Provisional AD duty	
					%	Amount (EUR/t)	%	Amount (EUR/t)
Iran	53 %	2 %	28,6 %	17,0 %	17,0 %	142,97	0 %	0
UAE	5,1 %	0 %	6,6 %	18,5 %	5,1 %	42,34	6,6 %	54,80

7.3. Final Provision

(158) 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,

the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽²⁾, the amount of anti-dumping 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.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of polyethylene terephthalate having a viscosity number of 78 ml/g or higher according to the ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in Iran and the United Arab Emirates.

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

Country	Anti-Dumping duty rate (EUR/tonne)
Iran: all companies	0
United Arab Emirates: all companies	54,80

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

Article 2

Without prejudice to Article 20 of Council Regulation (EC) No 1225/2009, 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 21(4) of Council Regulation (EC) No 1225/2009, 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 six months.

⁽¹⁾ See page 25 of this Official Journal.

⁽²⁾ OJ L 253, 11.10.1993, p. 1.

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
