II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 461/2013

of 21 May 2013

imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of Regulation (EC) No 597/2009

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community [1] ('the basic Regulation') and in particular Article 18 thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Regulation (EC) No 2603/2000 [2], the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate ('PET') originating, inter alia, in India. By Regulation (EC) No 1645/2005 [3], the Council amended the level of countervailing measures in force against imports of PET from India. The amendments were a result of an accelerated review initiated pursuant to Article 20 of the basic Regulation. Following an expiry review, the Council by Regulation (EC) No 193/2007 [4] imposed a definitive countervailing duty for a further period of five years. The countervailing measures were subsequently amended by Regulation (EC) No 1286/2008 [5] and Implementing Regulation (EU) No 906/2011 [6], following partial interim reviews. A later partial interim review was terminated without amending the measures in force by Implementing Regulation (EU) No 559/2012 [7]. By Decision 2000/745/EC [8] the Commission accepted undertakings setting a minimum import price offered by three exporting producers in India.

(2) The countervailing measures consist of a specific duty. The rate of the duty is between 0 and 106,5 EUR per tonne for individually named Indian producers with a residual rate of 69,4 EUR per tonne imposed on imports from all other producers.

2. Existing anti-dumping measures

(3) By Regulation (EC) No 2604/2000 [9], the Council imposed a definitive anti-dumping duty on imports of PET originating, inter alia, in India. Following an expiry review, the Council, by Regulation (EC) No 192/2007 [10], imposed a definitive anti-dumping duty for a further period of five years.

3. Request for an expiry review

(4) Following the publication of a Notice of impending expiry [11] of the definitive countervailing measures in force, the Commission, on 25 November 2011, received a request for the initiation of the review, pursuant to Article 18 of the basic Regulation ('the expiry review'). The request was lodged by the Committee of Polyethylene Terephthalate Manufacturers in Europe ('the applicant') on behalf of producers representing nearly 95 % of the Union production of certain polyethylene terephthalate.

[1] OJ L 188, 18.7.2009, p. 93.
[2] OJ L 301, 30.11.2000, p. 1.
[3] OJ L 266, 11.10.2005, p. 1.
[4] OJ L 59, 27.2.2007, p. 34.
[5] OJ L 340, 19.12.2008, p. 1.
[6] OJ L 232, 9.9.2011, p. 19.
[7] OJ L 168, 28.6.2012, p. 6.
[8] OJ L 301, 30.11.2000, p. 88.
[9] OJ L 301, 30.11.2000, p. 21.
[10] OJ L 59, 27.2.2007, p. 1.
[11] OJ C 116, 14.4.2011, p. 10.

(5) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of subsidisation and injury to the Union industry.

(6) Prior to the initiation of the expiry review, and in accordance with Articles 22(1) and 10(7) of the basic Regulation, the Commission notified the Government of India ('GOI') that it had received a properly documented review request and invited the GOI for consultations with the aim of clarifying the situation as regards the contents of the review request and arriving at a mutually agreed solution. However, the Commission did not receive any answer from the GOI regarding its offer for consultations.

4. **Initiation of an expiry review**

(7) Having determined, after having consulted the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 24 February 2012, by a notice published in the *Official Journal of the European Union* ([1]) ('the notice of initiation'), the initiation of an expiry review pursuant to Article 18 of the basic Regulation.

5. **Parallel investigation**

(8) On 24 February 2012, the Commission also opened a review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 on the anti-dumping measures in force on imports of PET originating in India, Indonesia, Malaysia, Taiwan and Thailand ([2]).

6. **Investigation**

6.1. *Review investigation period and the period considered*

(9) The investigation of the likelihood of a continuation or recurrence of subsidisation covered the period from 1 January 2011 to 31 December 2011 (the 'review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2008 to the end of the RIP (hereinafter referred to as the 'period considered').

6.2. *Parties concerned by the investigation*

(10) The Commission officially advised the applicant, the exporting producers in the country concerned, the importers, the users known to be concerned, and the representatives of the country concerned of the initiation of the expiry review.

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

(12) In view of the apparent large number of exporting producers in India as well as Union producers and importers it was considered appropriate to examine whether sampling should be used in accordance with Article 27 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the exporting producers and unrelated importers were requested to make themselves known within 15 days of the initiation of the review and to provide the Commission with the information requested in the Notice of initiation.

(13) Seven exporting producers responded to the sampling exercise and indicated a willingness to cooperate with the review investigation. On this basis, a sample of three exporting producers was selected based on the volume of exports to the Union. No objections were made to this sample either by the sampled producers themselves, non-sampled producers or the relevant authorities in India.

(14) The three sampled exporting producers were duly sent questionnaires to complete and replies were received from them all. However the questionnaire reply of one Indian sampled producer revealed that it only exported insignificant volumes of the product concerned during the RIP and therefore it was not relevant to calculate subsidy rates for that company. Verification visits were eventually completed in the two remaining exporting producers which together represented 99 % of total imports in volume from India to the Union during the RIP.

(15) Following the disclosure of the essential facts and considerations ('disclosure'), one Indian cooperating producer requested a calculation of a subsidy margin. In this respect it was reconfirmed that the exports from this company were insignificant and consequently had no impact on the determination of the likelihood of continuation or recurrence of subsidisation in the present expiry review. Therefore, this request was rejected.

(16) The Commission announced in the notice of initiation that it had provisionally selected a sample of Union producers. This sample consisted of four companies, out of the thirteen Union producers that were known prior to the initiation of the investigation, selected on

([1]) OJ C 55, 24.2.2012, p. 14.
([2]) OJ C 55, 24.2.2012, p. 4.

the basis of the largest representative volume of production and sales that can reasonably be investigated within the time available. The sample represented over 50 % of the total estimated Union production and sales during the RIP. Interested parties were invited to consult the file and to comment on the appropriateness of this choice within 15 days of the date of publication of the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(17) Certain interested parties raised objections concerning the sampling of Union producers. They claimed that: (i) the Commission should not resort to sampling, in particular, since no sampling was used in the previous investigation; (ii) the method used for the selection of the sample was contested on the grounds that it 'confuses three different steps', namely, standing exercise, definition of the Union industry and sampling exercise; (iii) the provisional sample was set up on the basis of incorrect and incomplete information; (iv) selected provisional sample is not representative because it includes entities rather than groups; it was also claimed that including companies that in one case went through a recent divestment or in another case have related sales diminishes the representativity of the sample.

(18) The arguments raised by the parties were addressed as follows:

— The decision to use a sample of Union producers is made for each investigation independently depending on the particular circumstances of each case and Article 22(6) of the basic Regulation does not govern the use of such a sample for the determination of injury in the context of an expiry review. Unlike the previous investigations, where the investigation of all companies that came forward and cooperated was feasible, the Commission considered in the current review that, in view of their large number, not all Union producers could be reasonably investigated in the time available and that the conditions of Article 27 were therefore met.

— The Commission did not 'confuse' the determination of the standing, the determination of the Union industry and the selection of the provisional sample as these steps remained independent from each other and were decided upon separately. It was not demonstrated to what extent the use of the production and sales data provided by the Union producers in the context of the standing exercise had affected the representativity of the sample.

— The sample was set up on the basis of the information available at the time of selection in accordance with Article 27 of the basic Regulation. The representativity of the sample was reviewed following the comments of the parties concerning specific company data. None of the comments made were considered founded.

— As required by Article 27 of the basic Regulation the sample was established to represent the largest representative volume of production and sales that can be reasonably investigated within the time available. The entities belonging to larger groups that were found to operate independently from other subsidiaries of the same group were considered representative of the Union industry and there was therefore no need to investigate the entire group on a consolidated basis. At the same time, the companies were sampled as economic entities, ensuring that all relevant data could be verified. Moreover, the divestments and existence of related sales were part of the characteristics of the sector in the period considered and therefore none of these elements was considered to diminish the representativity of the sample.

(19) Following the disclosure the parties reiterated the abovementioned arguments which have already been addressed.

(20) Sampling for unrelated importers was foreseen in the notice of initiation. None of the twenty four contacted unrelated importers cooperated in the present investigation.

(21) All five known suppliers of raw material were contacted upon the initiation and received relevant questionnaire. Two suppliers came forward and replied to the questionnaire.

(22) All known users and users' associations were contacted upon the initiation. Seventeen users submitted a questionnaire reply. Twenty associations of users from 16 Member States made themselves known and made submissions.

7. **Verification of information received**

(23) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of a continuation or recurrence of subsidisation and resulting injury and of the Union interest. Verification visits were carried out at the premises of the GOI in Delhi and the following interested parties:

(a) *Exporting producers*

— Dhunseri Petrochem and Tea Limited, Kolkata, India;

— Reliance Industries Limited, Navi Mumbai, India;

(b) *Union producers*

— Indorama Polymers Europe, UAB, Netherlands;

— Equipolymers, Italy, Germany;

— Neo Group, UAB, Lithuania;

— Novapet SA, Spain;

(c) *Users in the Union*

— Coca-Cola Europe, Belgium;

— Nestle Waters France, France.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(24) The product concerned by this review is the same as the one in the original investigation, namely PET with a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, originating in India. It is currently falling within CN code 3907 60 20.

2. Like product

(25) As in the original and in the review investigations, it was found that the product concerned, i.e. PET produced and sold on the domestic market of the country concerned, and PET produced and sold by Union producers had the same basic physical and chemical characteristics and uses. They were therefore considered to be like products according to Article 2(c) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF SUBSIDISATION

1. Introduction

(26) On the basis of the information contained in the review request and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated.

Nationwide schemes

(a) Duty Entitlement Passbook Scheme ('DEPBS')

(b) Duty Drawback Scheme ('DDS')

(c) Focus Market Scheme ('FMS')

(d) Focus Product Scheme ('FPS')

(e) Status Holder Incentive Scrip ('SHIS')

(f) Advance Authorisation Scheme ('AAS')

(g) Export Promotion Capital Goods Scheme ('EPCGS')

(h) Special economic zones/export oriented units ('SEZ/EOU')

(i) Export Credit Scheme ('ECS')

(j) Income Tax Exemption Scheme ('ITES')

Regional schemes

(k) West Bengal Incentive Scheme ('WBIS')

(l) Capital investment incentive scheme of the Government of Gujarat

(m) Gujarat sales tax incentive scheme ('GSTIS')

(n) Gujarat electricity duty exemption scheme ('GEDES')

(o) Package Scheme of Incentives ('PSI') of the Government of Maharashtra

(27) The schemes specified under points (a) and (c) to (h) above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992), which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Foreign Trade Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. The Foreign Trade Policy document relevant to the RIP of this investigation is the 'Foreign Trade Policy 2009-2014' ('FTP 09-14'). In addition, the GOI also sets out the procedures governing FTP 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 09-14'). The Handbook of Procedures is also updated on a regular basis.

(28) The scheme specified under point (b) above is based on section 75 of the Customs Act of 1962, on section 37 of the Central Excise Act of 1944, on sections 93A and 94 of the Financial Act of 1994 and on the Customs, Central Excise Duties and Service Tax Drawback Rules of 1995. Drawback rates are published on a regular basis; those applicable to the RIP were the All Industry Rates (AIR) of Duty Drawback 2011-12, published in notification No. 68/2011- Customs (N.T.), dated 22 September 2011. The duty drawback scheme is also referred to as a duty remission scheme in chapter 4 of FTP 2009-2014.

(29) The scheme specified under point (i) above is based on sections 21 and 35A of the Banking Regulation Act 1949, which allow the Reserve Bank of India ('RBI') to direct commercial banks in the field of export credits.

(30) The scheme specified under point (j) above is based on the Income Tax Act of 1961, which is amended by the yearly Finance Act.

(31) The scheme specified under point (k) above is administered by the Government of West Bengal and set out in Government of West Bengal Commerce & Industries Department notification No 580-CI/H of 22 June 1999, replaced by notification No 134-CI/O/Incentive/17/03/I of 24 March 2004.

(32) The scheme specified under point (l) above is administered by the Government of Gujarat and is based on Gujarat's industrial incentive policy.

(33) The scheme specified under point (m) above is administered by the Government of Gujarat and based on its industrial incentive policy

(34) The scheme specified under point (n) above is based on the Bombay Electricity Duty Act of 1958.

(35) The scheme specified under point (o) above is managed by the state of Maharashtra and is based on resolutions of the Government of Maharashtra Industries, Energy and Labour Department.

(36) The investigation revealed that, during the RIP, the following schemes conferred benefits upon the sampled exporting producers in respect of the product concerned:

Nationwide scheme

(a) Duty Entitlement Passbook Scheme ('DEPBS')

(b) Duty Drawback Scheme ('DDS')

(c) Focus Market Scheme ('FMS')

(d) Status Holder Incentive Scrip ('SHIS')

(e) Advance Authorisation Scheme ('AAS')

Regional schemes

(f) West Bengal Incentive Scheme ('WBIS').

2. **Duty Entitlement Passbook Scheme ('DEPBS')**

(a) *Legal Basis*

(37) The detailed description of the DEPBS is contained in chapter 4.3 of FTP 09-14 as well as in chapter 4 of HOP I 09-14.

(b) *Eligibility*

(38) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) *Practical implementation*

(39) An exporter can apply for DEPBS credits which are calculated as a percentage of the value of products exported under this scheme. Such DEPBS rates have been established by the Indian authorities for most products, including the product concerned. They are determined on the basis of Standard Input Output Norms ('SIONs') taking into account a presumed import content in the export product and the customs duty incidence on the presumed import content, regardless of whether import duties have actually been paid or not. The DEPBS rate for the product concerned during the RIP of the current investigation was 8 % with a value cap of 58 INR/kg.

(40) To be eligible for benefits under this scheme, a company must export. At the time of the export transaction, a declaration must be made by the exporter to the Indian authorities indicating that the export is taking place under the DEPBS. In order for the goods to be exported, the Indian customs authorities issue, during the dispatch procedure, an export shipping bill. This document shows, inter alia, the amount of DEPBS credit which is to be granted for that export transaction. At this point in time, the exporter knows the benefit it will receive. Once the customs authorities issue an export shipping bill, the GOI has no discretion over the granting of a DEPBS credit. The relevant DEPBS rate to calculate the benefit is that which applied at the time the export declaration was made.

(41) It was found that in accordance with Indian accounting standards, DEPBS credits can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation. Such credits can be used for payment of customs duties on subsequent imports of any goods, except capital goods and goods where there are import restrictions. Goods imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise. DEPBS credits are freely transferable and valid for a period of 24 months from the date of issue.

(42) Applications for DEPBS credits are electronically filed and can cover an unlimited amount of export transactions. The deadline to submit applications is 3 months after exportation, but as clearly provided in paragraph 9.3 of the HOP I 09-14, applications received after the expiry of submission deadlines can always be considered with the imposition of a minor penalty fee (i.e. 10 % of the entitlement).

(43) It was found that both sampled companies used this scheme during the first three quarters of the RIP.

(d) *Conclusion on DEPBS*

(44) The DEPBS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A DEPBS credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, the DEPBS credit confers a benefit upon the exporter, because it improves its liquidity.

(45) Furthermore, the DEPBS is contingent in law upon export performance, and is therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(46) This scheme cannot be considered as permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I point (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Moreover, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of point (i) of Annex I and Annexes II and III of the basic Regulation. Lastly, an exporter is eligible for the DEPBS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DEPBS.

(e) *Abolishment of the DEPBS and transition to DDS*

(47) By means of Public Notice No 54 (RE-2010)/2009-2014 of 17 June 2011, the DEPBS received a final three months extension which prolonged its applicability until 30 September 2011. As no further extension was published subsequently, the DEPBS has effectively been withdrawn from 30 September 2011 onwards. Therefore it was necessary to verify whether measures could be imposed with regard to Article 15(1) of the basic Regulation.

(48) The GOI explained to the Commission that upon withdrawal of the DEPBS scheme, companies could opt for other duty exemption/remission schemes defined under chapter 4 of FTP 09-14, i.e. the Advance Authorisation Scheme (AAS) or the Duty Drawback Scheme (DDS).

(49) The investigation revealed that both sampled companies started availing themselves of DDS immediately after the DEPBS was withdrawn. It must be noted that DDS has been introduced in 1995 and coexisted with DEPBS during the three first quarters of the RIP and for a number of years before the RIP. Exporters could, however not avail themselves of DDS and DEPBS simultaneously for the same exports. During the first three quarters of the RIP, the DDS rate amounted to 2,2 % with a cap of 1,5 INR/kg, making the DDS less generous and hence less attractive than the DEPBS. It must be noted that the GOI took steps to organise a smooth transition from DEPBS to DDS, as demonstrated in circular No. – 42/2011-Customs, dated 22 September 2011. In this circular it is explained that "the [duty] drawback schedule this year incorporates items which were hitherto under the DEPB[S] scheme". The same circular states that for sectors operating under DEPBS, it "has been decided to provide a smooth transition for items in these sectors while incorporating these in the drawback schedule. As a transitory arrangement, these items will suffer a modest reduction from their DEPB[S] rates, ranging from 1 % to 3 % for most items." In other words, this circular indicates that the duty drawback rates in force w.e.f. 1 October 2011 were determined so that they would confer a similar benefit as the withdrawn DEPBS.

(50) As of 1 October 2011, the DDS rate applicable to the product concerned was increased from 2,2 % to 5,5 % of FOB value and the associated cap was raised from 1,5 INR/kg to 5,5 INR/kg. This new rate was found to confer similar levels of subsidiation as the DEPBS was until the 30 September 2011 with its 8 % rate and 58 INR/kg cap. In function of PET prices prevailing during the RIP, the DEPBS cap was generally applicable resulting in a theoretical benefit of 4,64 INR/kg or 5,8 %. In the case of the DDS, the cap was not applicable so that the theoretical benefit amounted to 5,5 %.

(51) The investigation confirmed the reasoning of the previous recital. The average annualised subsidy margins of the sampled companies were 5,5 % and 6 % for DEPB and DDS, respectively.

(52) A comparison of both schemes also shows that they share numerous implementation characteristics.

(53) Recitals (47)(48) to (51) above demonstrate that, even though the DEPBS scheme was withdrawn, the underlying benefits continued to be conferred without discontinuation and at an almost identical level by providing a seamless transition to the duty drawback scheme. For that reason, it is concluded that the subsidies have not been withdrawn within the meaning of Article 15(1) and that DEPBS is countervailable.

(54) Following the disclosure of the essential facts and considerations, one exporting producer argued that the DEPBS has been withdrawn and therefore should not be countervailed. In reply to this, it is noted that, as also explained above in recital (47) above, the DEPBS has ceased on 30 September 2011. However, the subsidisation continued and exporters have the possibility as an alternative to the DEPBS to apply for and receive benefits under e.g. the DDS or the AAS. Consequently, this argument was rejected.

(f) *Calculation of the subsidy amount*

(55) In accordance with Articles 3(2) and 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient, which is found to exist during the review investigation period. In this regard, it was considered that the benefit is conferred on the recipient at the time when an export transaction is made under this scheme. At that moment, the GOI is liable to forego the customs duties, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of DEPBS credit which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, it is considered appropriate to assess the benefit under the DEPBS as being the sums of the credits earned on export transactions made under this scheme during the RIP.

(56) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amounts as numerator, pursuant to Article 7(1)(a) of the basic Regulation. In accordance with Article 7(2) of the basic Regulation these subsidy amounts have been allocated over the total export turnover of the product concerned during the RIP as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(57) Based on the above, the subsidy rates established in respect of this scheme for the sampled companies amounted to 3,78 % and 4,42 % respectively.

3. **Duty Drawback Scheme ('DDS')**

(a) *Legal Basis*

(58) The detailed description of the DDS is contained in the Custom & Central Excise Duties Drawback Rules, 1995 as amended by successive notifications.

(b) *Eligibility*

(59) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) *Practical implementation*

(60) An eligible exporter can apply for drawback amount which is calculated as a percentage of the FOB value of products exported under this scheme. The drawback rates have been established by the GOI for a number of products, including the product concerned. They are determined on the basis of the average quantity or value of materials used as inputs in the manufacturing of a product and the average amount of duties paid on inputs. They are applicable regardless of whether import duties have actually been paid or not. The DDS rate for the product concerned during the RIP was 5,5 % of FOB value, subject to a cap of 5,5 INR/kg.

(61) To be eligible to benefits under this scheme, a company must export. At the moment when shipment details are entered in the Customs server (ICEGATE), it is indicated that the export is taking place under the DDS and the DDS amount is fixed irrevocably. After the shipping company has filed the Export General Manifest (EGM) and the Customs office has satisfactorily compared that document with the shipping bill data, all conditions are fulfilled to authorise the payment of the drawback amount by either direct payment on the exporter's bank account or by draft.

(62) The exporter also has to produce evidence of realisation of export proceeds by means of a Bank Realisation Certificate (BRC). This document can be provided after the drawback amount has been paid but the GOI will recover the paid amount if the exporter fails to submit the BRC within a given delay.

(63) The drawback amount can be used for any purpose.

(64) It was found that in accordance with Indian accounting standards, the duty drawback amount can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation.

(65) The sampled companies were found to use the DDS during the last quarter of the RIP.

(d) *Conclusion on DDS*

(66) The DDS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A duty drawback amount is a financial contribution by the GOI. In addition, the duty drawback amount confers a benefit upon the exporter, because it improves its liquidity.

(67) Furthermore, the DDS is contingent in law upon export performance, and is therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

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

(69) There is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of point (i) of Annex I and Annexes II and III of the basic Regulation. Lastly, an exporter is eligible for the DDS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from the DDS.

(70) This is confirmed by GOI's circular n° 24/2001 which clearly states that "[duty drawback rates] have no relation to the actual input consumption pattern and actual incidence suffered on inputs of a particular exporter or individual consignments […]" and instructs regional authorities that "no evidence of actual duties suffered on imported or indigenous nature of inputs […] should be insisted upon by the field formations along with the [drawback claim] filed by exporters".

(71) In view of the above, it is concluded that DDS is countervailable.

(e) *Calculation of the subsidy amount*

(72) In accordance with Articles 3(2) and 5 of the basic Regulation, the amount of countervailable subsidies was calculated in terms of the benefit conferred on the recipient, which is found to exist during the review investigation period. In this regard, it was considered that the benefit is conferred on the recipient at the time when an export transaction is made under this scheme. At this moment, the GOI is liable to the payment of the drawback amount, which constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of drawback which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, it is considered appropriate to assess the benefit under the DDS as being the sums of the drawback amounts earned on export transactions made under this scheme during the RIP.

(73) Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted from the credits so established to arrive at the subsidy amounts as numerator, pursuant to Article 7(1)(a) of the basic Regulation. In accordance with Article 7(2) of the basic Regulation these subsidy amounts have been allocated over the total export turnover of the product concerned during the review investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(74) Based on the above, the subsidy rates established in respect of this scheme for the sampled companies concerned amounted to 1,65 % and 1,32 %, respectively.

4. **Focus Market Scheme (FMS)**

(a) *Legal basis*

(75) The detailed description of FMS is contained in paragraph 3.14 of FTP 09-14 and in paragraph 3.8 of HOP I 09-14.

(b) *Eligibility*

(76) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) *Practical implementation*

(77) Under this scheme exports of all products to countries notified under tables 1 and 2 of Appendix 37(C) of HOP I 09-14 are entitled to duty credit equivalent to 3 % of the FOB value. As of 1 April 2011, exports of all products to countries notified under table 3 of Appendix 37(C) ('Special Focus Markets') are entitled to a duty credit equivalent to 4 % of the FOB value. Certain types of export activities are excluded from the scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units. Also excluded from the scheme are certain types of products, e.g. diamonds, precious metals, ores, cereals, sugar and petroleum products.

(78) The duty credits under FMS are freely transferable and valid for a period of 24 months from the date of issue of the relevant credit entitlement certificate. They can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods.

(79) The credit entitlement certificate is issued from the port from which the exports have been made and after realisation of exports or shipment of goods. As long as the applicant provides to the authorities copies of all relevant export documentation (e.g. export order, invoices, shipping bills, bank realisation certificates), the GOI has no discretion over the granting of the duty credits.

(80) It was found that the sampled companies used this scheme during the RIP.

(d) *Conclusion on FMS*

(81) The FMS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A FMS duty credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, the FMS duty credit confers a benefit upon the exporter, because it improves its liquidity.

(82) Furthermore, FMS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(83) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I point (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. There is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of point (i) of Annex I and Annexes II and III of the basic Regulation. An exporter is eligible for FMS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from FMS. Moreover, an exporter can use FMS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in Annex I point (i) of the basic Regulation, because they are not consumed in the production of the exported products.

(e) *Calculation of the subsidy amount*

(84) The amount of countervailable subsidies was calculated on the basis of the benefit conferred on the recipient, which is found to exist during the RIP as booked by the cooperating exporting producer on an accrual basis as income at the stage of export transaction. In accordance with Article 7(2) and 7(3) of the basic Regulation this subsidy amount (nominator) has been allocated over the export turnover during the RIP as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(85) The subsidy rate established with regard to this scheme during the RIP for the sampled companies concerned amounted to 0,19 % and 0,87 %, respectively.

5. **Status Holder Incentive Scrip (SHIS)**

(a) *Legal basis*

(86) The detailed description of SHIS is contained in chapter 3.16 of FTP 09-14 and in paragraph 3.10 of HOP I 09-14. The detailed description of the Status categories is contained in paragraphs 3.10.1 to 3.10.4 of FTP 09-14 and in paragraphs 3.1 to 3.5 of HOP I 09-14.

(b) *Eligibility*

(87) Manufacturer-exporters or merchant-exporters which are recognised as so-called Status holders are eligible for this scheme.

(c) *Practical implementation*

(88) Merchant as well as manufacturer exporters are eligible for Status. Depending on their export performance during current year plus a number of previous years, applicants are granted one of the following statuses: Export House, Star Export House, Trading House, Star Trading House, Premier Trading House.

(89) Under the SHIS, status holders are entitled to a duty credit equivalent to 1 % of the FOB value of exports in sectors specified in paragraph 3.16.4 of FTP 09-14 i.e. leather (excluding finished leather), textile and jute sector, handicrafts, engineering sector (excluding some subsectors), plastics and basic chemicals (excluding pharmaceutical products). The product concerned, being a type of plastic, is covered by the scheme.

(90) The SHIS duty credits are not transferrable and must be used to pay duty on import of capital goods used to manufacture products falling into one of the covered sectors.

(91) In case an applicant has availed Zero Duty EPCG during a year, it shall not be eligible for SHIS for export made that year.

(92) The scheme was introduced in 2009 for exports made during 2009-2010 and 2010-2011 and has been extended on a yearly basis since then. The last extension (cfr. notification No 07/2012 – Customs dated 9 March 2012) prolonged the validity of the scheme until 31 March 2013.

(93) It was found that in accordance with Indian accounting standards, the SHIS duty credit can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation.

(94) The investigation revealed that one sampled company used this scheme during the RIP while the other one was not eligible as a result of the provision described in recital (90).

(d) *Conclusion on SHIS*

(95) The SHIS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. A SHIS duty credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties, thus decreasing the GOI's duty revenue which would be otherwise due. In addition, the SHIS duty credit confers a benefit upon the exporter, because it improves its liquidity.

(96) Furthermore, SHIS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(97) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I point (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The duty credit will eventually be used to pay duties on imports of capital goods which are not covered by the scope of permissible duty drawback as set out in Annex I point (i) of the basic Regulation, because they are not consumed in the production of the exported products.

(e) *Calculation of the subsidy amount*

(98) The amount of countervailable subsidies was calculated on the basis of the benefit conferred on the recipient, which is found to exist during the RIP as booked by the cooperating exporting producer on an accrual basis as income at the stage of the export transaction. In accordance with Article 7(2) and 7(3) of the basic Regulation this subsidy amount (nominator) has been allocated over the export turnover during the RIP as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(99) The subsidy rate established with regard to this scheme during the RIP for the sole sampled company using that scheme amounted to 1 %.

6. **Export Promotion Capital Goods scheme ('EPCGS')**

(a) *Legal basis*

(100) The detailed description of EPCGS is contained in chapter 5 of FTP 09-14 as well as in chapter 5 of HOP I 09-14.

(b) *Eligibility*

(101) Manufacturer-exporters, merchant-exporters "tied to" supporting manufacturers and service providers are eligible for this scheme.

(c) *Practical implementation*

(102) Under the condition of an export obligation, a company is allowed to import capital goods (new and second-hand capital goods up to 10 years old) at a reduced rate of duty. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. The scheme provides for a reduced import duty rate of 3 % applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of export goods during a certain period. Under FTP 09-14 the capital goods can be imported with a 0 % duty rate under the EPCGS but in such case the time period for fulfilment of the export obligation is shorter.

(103) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail himself of the benefit for duty free import of components required to manufacture such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect of supply of capital goods to an EPCGS licence holder.

(d) *Conclusion on EPCGS*

(104) The EPCGS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI, since this concession decreases the GOI's duty revenue which would be otherwise due. In addition, the duty reduction confers a benefit upon the exporter, because the duties saved upon importation improve the company's liquidity.

(105) Furthermore, EPCGS is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore it is deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(106) EPCGS cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I point (i), of the basic Regulation, because they are not consumed in the production of the exported products.

(e) *Calculation of the subsidy amount*

(107) The subsidy amount was calculated, in accordance with Article 7(3) of the basic Regulation, on the basis of the unpaid customs duty on imported capital goods spread across a period which reflects the normal depreciation period of such capital goods in the industry concerned. The amount so calculated, which is attributable to the RIP, has been adjusted by adding interest during this period in order to reflect the full value of the benefit over time. The commercial interest rate during the investigation period in India was considered appropriate for this purpose. Where justified claims were made, fees necessarily incurred to obtain the subsidy were deducted in accordance with Article 7(1)(a) of the basic Regulation.

(108) In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount has been allocated over the appropriate export turnover during the RIP as the appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(109) The subsidy rate established with regard to this scheme during the RIP for the sampled companies concerned amounted to 0,55 % and 0,56 %, Respectively.

7. **Advance Authorisation Scheme ('AAS')**

(110) It was found that only one sampled company availed of this scheme during the RIP. However, the investigation established that the benefit obtained by the company was insignificant and, thus AAS was not analysed further.

8. **West Bengal Incentive Scheme 1999 ('WBIS 1999')**

(a) *Legal basis*

(111) The detailed description of this scheme as applied by the Government of West Bengal ('GOWB') is set out in Notification No 580-CI/H of 22 June 1999 of the GOWB Commerce & Industries Department.

(b) *Eligibility*

(112) Companies setting up a new industrial establishment or making a large-scale expansion of an existing industrial establishment in backward areas are eligible to avail benefits under this scheme. Nevertheless, an exhaustive list of ineligible industries (negative list of industries) exists preventing companies in certain fields of operations from benefiting from the incentives.

(c) *Practical implementation*

(113) The State of West Bengal grants to eligible industrial enterprises incentives in the form of a number of benefits, including an exemption of central sales tax ('CST') and a remission of central value added tax ('CENVAT') on sales of finished goods, in order to encourage the industrial development of economically backward areas within this State.

(114) Under this scheme, companies must invest in backward areas. These areas, which represent certain territorial units in West Bengal are classified according to their economic development into different categories while at the same time there are developed areas excluded from the application of the incentive schemes. The main criteria to establish the amount of the incentives are the size of the investment and the area in which the enterprise is or will be located.

(115) It was found that one sampled company availed of this scheme during the RIP.

(d) *Conclusion*

(116) This scheme provides subsidies within the meaning of Articles 3(1)(a)(ii) and 3(2) of the basic Regulation. It constitutes a financial contribution by the GOWB, since the incentives granted, in the present CST exemption and CENVAT remission on sales of finished goods, decrease tax revenue which would be otherwise due. In addition, these incentives confer a benefit upon a company, because they improve its financial situation since taxes otherwise due are not paid.

(117) Furthermore, this scheme is regionally specific in the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation since it is only available to certain companies having invested within certain designated geographical areas within the jurisdiction of the State concerned. It is not available to companies located outside these areas and, in addition, the level of benefit is differentiated according to the area concerned.

(118) The WBIS 1999 is therefore countervailable.

(e) *Calculation of the subsidy amount*

(119) The subsidy amount was calculated on the basis of the amount of the sales tax and CENVAT on sales of finished goods normally due during the review investigation period but which remained unpaid under this scheme. In accordance with Article 7(2) of the basic Regulation, the amount of subsidy (numerator) have then been allocated over total sales during the review investigation period as appropriate denominator, because the subsidy is not export contingent and it was not granted by reference to the quantities manufactured, produced, exported or transported. The subsidy rate obtained amounted to 1,36 %.

9. **Amount of countervailable subsidies**

(120) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the sampled exporting producers was 7,53 % and 8,17 %, respectively.

SCHEME	DEPB	DDS	FMS	SHIS	EPCGS	WBIS	Total
COMPANY	%	%	%	%	%	%	%
Dhunseri Petrochem & Tea Limited	3,78	1,65	0,19	nil	0,55	1,36	7,53
Reliance Industries Limited	4,42	1,32	0,87	1,0	0,56	nil	8,17

10. **Conclusions on the likelihood of a continuation or recurrence of subsidisation**

(121) In accordance with Article 18(2) of the basic Regulation, it was examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of subsidisation.

(122) As set out under recitals (26) to (118) above, it was established that during the RIP Indian exporters of the product concerned continued to benefit from countervailable subsidisation by the Indian authorities.

(123) The subsidy schemes give recurring benefits and there is no indication that these benefits will be phased out in the foreseeable future. Moreover, each exporter is eligible to several of the subsidy schemes.

(124) It was also examined whether exports to the Union would be made in significant volumes should the measures be lifted.

(125) India is a large producer of the product concerned. On the basis of data collected during the investigation, India had a production capacity of about 700 000-900 000 tonnes during the RIP and expansion plans bringing the total country capacity to 1 600 000 – 1 800 000 tonnes by 2014. As a result, the excess of capacity over domestic demand is estimated to reach about 600 000-700 000 tonnes in 2014, which would represent 21-25 % of the total Union consumption during the RIP.

(126) Under these circumstances, Indian producers of the product concerned are heavily dependent on export sales and there is a likelihood that exports volumes to the Union, which were already significant during the RIP, would increase should the measures be repealed.

(127) An exporting producer submitted that the excess capacity would decrease after 2014 and therefore the excess capacity situation would only be temporary. It is noted that the alleged decrease of excess capacity after 2014 was found in line with the projections of the market intelligence report. Therefore it was concluded that this submission was not of a nature to modify the analysis with regard to the development of excess capacities.

(128) After the disclosure, an exporting producer claimed that important temporary excess capacities were inevitable due to the fact that generally production capacity increases can be done only in large increments due to the minimum size of modern PET plants. In reply to this it should be noted that during RIP and the following year, production capacity extensions in the range of at least 150 000 to 200 000 tonnes were made. It follows that the invoked reasoning cannot justify alone the excess capacity available for exports quoted in recital (125). In any event, in this context the cause of the excess capacity available for exports is irrelevant. Therefore the claim was rejected.

(129) Some parties claimed that the excess capacity available for exports developing in India could be absorbed also by other third countries and that therefore the excess capacity available for exports as calculated by the Commission was not properly assessed. It was not assume in any way that the entirety of any excess capacity available for exports would be directed to the Union. Therefore the claim was rejected.

(130) In view of the above, it can be concluded that there is a likelihood of a continuation of subsidisation.

D. DEFINITION OF THE UNION INDUSTRY

Union production and Union industry

(131) The like product is manufactured by 13 known producers in the Union. They represent the Union industry within the meaning of Articles 9(1) of the basic Regulation and will thereafter be referred as 'the Union industry'.

(132) Twelve known Union producers, represented by the complainant in the present case, cooperated and supported the investigation. One more known Union producer did not cooperate in the present review.

(133) All available information concerning Union industry, such as questionnaire replies, Eurostat and request for review, was used in order to establish the total Union production for the RIP.

(134) The Union market for PET is characterised by a relatively high number of producers, belonging usually to bigger groups with headquarters outside the Union. Between 2000 and 2012 the Union PET industry has undergone through several transitions. The market is in a process of consolidation with a number of recent takeovers and closures. New products, such as recycled PET and bio PET, continue to be developed together with a relatively recent spinoff of a recycling industry.

(135) Following the disclosure some parties argued that the description of the situation of the Union industry was inaccurate as five producers were in fact belonging to one large transnational group and another three producers were related to PET packaging companies. None of these facts contradict the description provided in recital (134) explicitly stating that the Union producers are usually belonging to bigger groups as disclosed. The impact of this concentration is addressed in recital (207) below. The assessment of the impact of captive market is analysed in recitals (202) to (204) below.

(136) As indicated above, given the relatively high number of cooperating Union producers a sample of four Union producers was selected, representing over 50 % of the production and sales of the total Union production of the like product in the RIP.

E. SITUATION ON THE UNION MARKET

1. Union Consumption

(137) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, the import volumes data obtained from Eurostat and, concerning the non-cooperating Union producer, from estimations based on the review request.

(138) After an initial increase in 2009 and 2010, the consumption showed a slight decrease of 2 % in the RIP as compared to 2008, totalling to 2,802 million tonnes in the RIP.

Table 1

Consumption

	2008	2009	2010	RIP
Volume (tonnes)				
Consumption	2 868 775	2 934 283	2 919 404	2 802 066
Index (2008 = 100)	*100*	*102*	*102*	*98*

Source: Questionnaire replies, Eurostat and review request

2. Volume, market share and prices of imports from India

(139) Despite the measures in place, the imports from India more than doubled over the period considered departing from 46 313 tonnes in 2008 and reaching 96 678 tonnes in the RIP.

(140) The market share of India rose accordingly from 1,6 % in 2008 to 3,5 % in the RIP, reaching a level significantly above the market share established in the last expiry review (0,3 %).

(141) The average price stood at 1 285 EUR/tonne in the RIP. This reflects a 22 % price increase over the period considered, which was acquired in the RIP after an initial decline of 21 % in 2009.

Table 2

Imports from India

	2008	2009	2010	RIP
Volume of imports (tonnes)	46 313	44 482	83 691	96 678
Index (2008 = 100)	*100*	*96*	*181*	*209*
Average price	1 054	834	1 031	1 285
Index (2008 = 100)	*100*	*79*	*98*	*122*
Market share of imports (%)	1,6	1,5	2,9	3,5

Source: Eurostat

3. **Imports from other third countries**

(a) *Imports from Thailand, Taiwan, Malaysia, Indonesia*

(142) As mentioned above, an anti-dumping expiry review concerning imports from India, Indonesia, Malaysia, Taiwan and Thailand was conducted in parallel to the present investigation.

(143) Imports from Indonesia, Malaysia, Taiwan and Thailand increased by 56 % over the period considered despite a decline of 59 % until 2010. Nevertheless, the total import volumes remained below *de minimis* level.

(144) The respective market share increased accordingly from 0,7 % in 2008 to 1,1 % in the RIP.

(145) The average price amounted to 1 310/EUR/tonne in the RIP, 1,5 % below the average unit price of the Union industry. This reflects a 27 % price increase over the period considered, which was acquired in the RIP after an initial decline of 18 % in 2009.

Table 3

Imports from Indonesia, Malaysia, Taiwan and Thailand

	2008	2009	2010	RIP
Volume of imports from Indonesia, Malaysia, Taiwan and Thailand (tonnes)	19 078	12 127	7 762	29 836
Index (2008 = 100)	*100*	*64*	*41*	*156*
Market share of imports from Indonesia, Malaysia, Taiwan and Thailand (%)	0,7	0,4	0,3	1,1
Index (2008 = 100)	*100*	*62*	*40*	*160*
Price of imports (EUR/tonne)	1 030	843	1 055	1 310
Index (2008 = 100)	*100*	*82*	*102*	*127*

Source: Eurostat

(b) *Imports from China, United Arab Emirates (UAE), Iran and Pakistan*

(146) Imports from other third countries with anti-dumping measures in place decreased by 69 % over the period considered after an increase of 49 % in 2009. Only imports from China remained stable.

(147) The market share of the countries in question decreased from 8,2 % in 2008 to 2,6 % in the RIP, including mainly the UAE (1,7 % in RIP) and China (0,6 % in RIP).

(148) The average price amounted to 1 258 EUR/tonne in the RIP, 5,5 % below the average unit price of the Union industry. This reflects a 24 % increase over the period considered which was acquired in the RIP after an initial decline of 22 % in 2009.

Table 4

Imports from China, the UAE, Iran and Pakistan

	2008	2009	2010	RIP
Volume of imports from China, the UAE, Iran and Pakistan (tonnes)	235 913	351 798	188 776	72 054
Index (2008 = 100)	*100*	*149*	*80*	31
Market share of imports from China, the UAE, Iran and Pakistan (%)	8,2	12,0	6,5	2,6
Index (2008 = 100)	*100*	*146*	*79*	*31*
Price of imports (EUR/tonne)	1 016	789	949	1 258
Index (2008 = 100)	*100*	*78*	*93*	*124*

Source: Eurostat

(c) *Imports from other third countries without any measures*

(149) Volumes of imports from other third countries without any measures including Oman, South Korea, Russia, Mexico and Saudi Arabia increased by 59 % over the period considered, after a growth of 71 % in 2009. Between 2009 and the RIP, Oman became the largest exporting country in the Union.

(150) The market share of the countries in question rose from 9,7 % in 2008 to 15,8 % in the RIP, mainly due to the gain of 4,3 % of imports from Oman. The market share of South Korea stood at 4 % in the RIP, 5 % below its highest level reached in 2009.

(151) The average price amounted to 1 273 EUR/tonne, 4,3 % below the average unit price of the Union industry. This reflects a 10 % increase over the period considered which was acquired in 2010 and in the RIP after an initial decline of 24 % in 2009. The average price of imports from Oman stood at 1 310 EUR/tonne in the RIP, 1,5 % below the average unit price of the Union industry. The average price of imports from South Korea stood at 1 294 EUR/tonne, 2,7 % below the average unit price of the Union industry.

Table 5

Imports from other third countries

	2008	2009	2010	RIP
Volume of imports from other third countries (tonnes)	279 188	478 570	469 753	442 692
Index (2008 = 100)	*100*	*171*	*168*	*159*
Market share of imports from other third countries (%)	9,7	16,3	16,1	15,8
Index (2008 = 100)	*100*	*168*	*165*	*162*
Price of imports (EUR/tonne)	1 156	879	997	1 273
Index (2008 = 100)	*100*	*76*	*86*	*110*
Main exporters (tonnes)				
Oman	0	52 632	95 646	120 286
South Korea	177 341	254 451	183 801	114 346
Russia	546	546	3	50 427
Mexico	2 650	1 879	29 039	29 409
Saudi Arabia	230	20 454	50 108	24 756
Others	98 422	148 609	111 156	103 468

Source: Eurostat

4. **Economic situation of the Union industry**

(152) Pursuant to Article 8(4) of the basic Regulation all economic factors and indices having a bearing on the state of the Union industry during the period considered have been examined.

(153) For the purpose of the injury analysis, the injury indicators have been established at the following two levels

— the macro-economic indicators (production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of subsidy margins and recovery from the effects of past subsidisation) were assessed at the level of the whole Union production for all Union producers, on the basis of the information collected from the Union industry, the review request as well as publicly-available statistics;

— micro-economic indicators (stocks, average unit prices, 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 the information they submitted.

(154) One sampled Union producer divested one of its production facilities in June 2010. The latter was acquired by another Union producer. Since the analysis of macro-economic indicators is based on data collected from all Union producers the divestment had no impact on the scope or individual indicators of the injury analysis.

(155) As a preliminary point to the analysis it should be explained that certain global economic events in late 2010 and early 2011 had an impact on the situation on the Union market, in particular on the prices and sales volumes of the like product. In this period the cotton supply fell resulting in an increased demand for polyester fibre on the Asian market. PET and polyester fibre are largely dependent upstream on the same raw material, i.e. purified terephthalic acid (PTA). The increased demand for polyester fibre resulted in insufficient supply of PTA, pushing the prices of PET up. Since the producers of PET in the Middle East also depend on PTA from Asia, this caused sudden fall in imports of PET in the Union. At the same time, the main PTA suppliers in the Union declared a '*force majeure*' resulting in additional restrictions of the domestic PET production.

4.1. *Comments of the parties*

(156) Some parties challenged the validity of the injury analysis on the grounds that it was based on deficient information, which in turn also affected the rights of defence of interested parties. In particular, the below-mentioned arguments were raised.

(157) Some parties claimed that the information collected from Union producers did not comply with the instructions for completion of the questionnaire, which requested data from different companies not to be aggregated. It was therefore claimed that the collected information was inaccurate and incomplete given that the reported figures were aggregated per sampled entity. It is to be noted that the information was duly collected and verified on-spot. The information collected was found to provide sufficiently accurate picture of the Union industry and therefore the above-mentioned claim had to be rejected. Following disclosure the parties reiterated their claim. No new arguments or evidence were presented. Same parties reiterated their claim that the data provided by one sampled company were incomplete as they did not relate to the entire group but selected entity within the group. This comment was addressed at the sampling stage as explained in recital (18) above.

(158) The same parties argued that the Commission attempted to fix the claimed insufficiencies of the collected information by sending additional questionnaires. In this respect it should be clarified that the Commission indeed sent additional questionnaires, but addressed them only to the non-sampled Union producers in order to collect information on macro-economic indicators relevant to the injury assessment therefore this was done to supplement the information provided by the sampled Union producers. Following disclosure some parties reiterated the claim without bringing any new arguments or presenting new evidence. The claim of the parties had to be therefore dismissed.

(159) In addition, the same parties also claimed that the information provided by the sampled producers was contrary to the obligations in Article 29 of the basic Regulation because information which was not confidential in nature had been provided as confidential information and thus excluded from the open file. In this respect it is to be noted that the information was classified as limited in line with the request of the submitting party. Upon the request of the parties the confidentiality status of the submitted information was reconsidered and, where appropriate, the information was reclassified as open for inspection by interested parties after approval by the companies concerned. Also this claim was therefore dismissed.

4.2. *Macro-economic indicators*

(a) *Production*

(160) In line with the loss of market share by the Union industry (discussed in recital (164) below) the Union production decreased by 11 % between 2008 and the RIP. The decline of the Union production was only interrupted in 2010 when it raised in comparison to 2009 but remained nevertheless 4 % below its level of 2008. It further decreased in the RIP.

Table 6

Total Union production

	2008	2009	2010	RIP
Production (tonnes)	2 327 169	2 107 792	2 239 313	2 068 717
Index (2008 = 100)	*100*	*91*	*96*	*89*

Source: Questionnaire replies, review request

(b) *Production capacity and capacity utilisation*

(161) The production capacity of the Union industry decreased by 23 % between 2008 and the RIP. This trend relates to the closure of several manufacturing facilities which was partly offset by the launch of new factories.

(162) Capacity utilisation increased from 75 % in 2008 to 86 % in the RIP. Increased capacity utilisation is to be seen in the context of the restructuring efforts of the Union industry explained in recital (134) above.

Table 7

Production capacity and capacity utilisation

	2008	2009	2010	RIP
Production capacity (tonnes)	3 118 060	2 720 326	2 625 244	2 393 516
Index	*100*	*87*	*84*	*77*
Capacity utilisation (%)	75	77	85	86
Index (2008 = 100)	*100*	*104*	*114*	*116*

Source: Questionnaire replies, review request

(c) *Sales volume*

(163) The sales volume of the Union industry on the Union market followed the same development as production, with a contraction of 6 % over the period considered.

Table 8

Total sales of the Union industry in the Union

	2008	2009	2010	RIP
Sales (tonnes)	2 288 283	2 047 305	2 169 423	2 160 807
Index (2008 = 100)	*100*	*89*	*95*	*94*

Source: Questionnaire replies, review request

(d) *Market share*

(164) After an initial drop of 13 % in 2009, the Union industry regained part of the market share lost by UAE, South Korea, Iran and Pakistan despite increasing volumes of imports from India, Oman and other third countries (Russia, Mexico and Saudi Arabia) over the same period. Overall, the market share of the Union industry declined by 3 % during the period considered.

Table 9

Union industry market share

	2008	2009	2010	RIP
Union industry market share (%)	80	70	74	77
Index (2008 = 100)	*100*	*87*	*93*	*97*

Source: Questionnaire replies, review request and Eurostat

(e) *Growth*

(165) The market stagnated over the period considered. There was no growth for the Union industry to benefit from, on the contrary, despite the restructuring efforts, the Union industry lost further market share to the growing imports, in particular, from the countries without any measures. The slight decline of the consumption the RIP is to be seen against the background of temporary shortage of the raw material (PTA) in the Union as well as in the global market.

(f) *Employment and productivity*

(166) The employment level of the Union industry showed a decrease of 41 % between 2008 and the RIP. The decline was constant over the period concerned, including in 2010 when the production increased (see recital (160) above). In the light of the growing productivity, this drop is a reflection of the restructuring efforts by a number of Union producers.

(167) Productivity of the Union industry's workforce, measured as output (tonnes) per person employed per year, increased by 50 % in the period considered. This reflects the fact that production decreased at a slower pace than the employment level and is an indication of increased efficiency of the Union industry. This is particularly evident in 2010 when production increased while the employment level decreased and the productivity was 37 % higher than in 2008.

Table 10

Employment and productivity

	2008	2009	2010	RIP
Number of employees	2 060	1 629	1 449	1 218
Index	*100*	*79*	*70*	*59*
Productivity (tonne/employee)	1 130	1 294	1 545	1 698
Index (2008 = 100)	*100*	*115*	*137*	*150*

Source: Questionnaire replies, review request

(g) *Magnitude of the actual margin of subsidy*

(168) As concerns the impact on the Union industry of the magnitude of the actual margin of subsidy of Indian imports, given the price sensitivity of the market for this product, this impact cannot be considered to be negligible. It should be noted that this indicator is more relevant in the context of the likelihood of recurrence of injury analysis. Should measures lapse, it is likely that subsidised imports would come back at such volumes and prices that the impact of the magnitude of the subsidy margin would be significant.

(h) *Recovery from the effects of past subsidisation*

(169) While the indicators examined above show an improvement in some economic indicators of the Union industry, further to the imposition of definitive countervailing measures in 2001, they also provide evidence that the Union industry is still vulnerable.

4.3. *Micro-economic indicators*

(a) *Stocks*

(170) The level of stocks was 24 % higher in the RIP in relation with their levels in 2008. However, the stocks have remained at previously established levels in relation to the output, i.e. between 5 % and 6 %.

Table 11

Stocks

	2008	2009	2010	RIP
Closing stocks	51 495	54 808	54 314	64 069
Index (2008 = 100)	*100*	*106*	*105*	*124*

Source: Questionnaire replies

(b) *Price development*

(171) As regards the price development, after an initial drop in 2009 (– 16 %), mainly caused by the economic crisis, the prices came close to 2008 level in 2010. This was followed by a sharp rise of the average unit price in the RIP, bringing the increase over the period considered to 25 %.

(172) The sudden price increase in the RIP should be read in the context of the unexpected market developments at the end of 2010 and in the first quarter of 2011 on the cotton market. As mentioned above (recital (155) above), the record cotton prices caused a switch to polyester fibre that competes for the same raw material as PET. The increased demand for the raw material, in particular, PTA, pushed up the prices of PET in Asia and Middle East with a spill over effect on the prices of PET in the Union. The price increase in the Union at that time was further amplified by the short term scarcity of PTA in the Union due to the declared *force majeure* of one of the PTA producers in the Union.

Table 12

Unit Sales Price in the Union

	2008	2009	2010	RIP
Unit Sales Price in the Union (EUR/tonne)	1 066	891	1 045	1 330
Index (2008 = 100)	*100*	*84*	*98*	*125*

Source: Questionnaire replies

(c) *Factors affecting sales prices*

(173) The sales prices of PET normally follow the price trends of its main raw materials (mainly PTA and monoethylene glycol — MEG) as they constitute up to 90 % of the total cost of PET. PTA is an oil derivative, the price of which fluctuates on the basis of the price of crude oil. This causes high volatility of the prices of PET.

(174) In addition, PET competes for the same raw material with polyester fibre, the production of which relies to the same extent as PET on the availability of PTA. Since polyester fibre is an alternative to cotton for the textile industry, the price of PET is therefore also sensitive to the developments on the cotton market.

(d) *Wages*

(175) The average wages declined by 7 % over the period considered. This reduction occurred in the RIP and amplified the productivity gains observed above (see recital (167) above).

Table 13

Wages

	2008	2009	2010	RIP
Wages (average per person)	54 512	56 014	54 876	50 784
Index (2008 = 100)	*100*	*103*	*101*	*93*

Source: Questionnaire replies

(e) *Profitability and return on investment*

(176) The profitability and returns on investment improved significantly between 2008 and the RIP. The profit on sales in the Union market increased from – 7,9 % in 2008 to 5,3 % in the RIP, while return on investment improved from – 9,6 % to 10,6 %. The year 2008 was affected by the particularly poor performance of one Union producer. Nevertheless, the improvement of the financial situation of the Union industry in 2009 and 2010, when prices were below their 2008 levels, evidences the loose relationship between prices and profitability. On the contrary, the improvement of profitability appears closely correlated to the improvements in capacity utilisation and to the productivity gains observed above.

(177) Thanks to the global market developments at the break of 2010/2011, coupled with the restructuring efforts and efficiency gains described above, the Union industry was able to improve its profitability in 2010 and to reach the level of 5,3 % in the RIP.

(178) One interested party argued that this development was unexpected and extraordinary, not to be considered representative of the overall situation of the Union industry.

(179) In this respect it is to be noted that the Union industry was able to benefit from the PET price increase at the end of 2011 and beginning of 2012 as it had fixed the PTA price before the described market events occurred. Based on the statistical sources concerning the post-RIP development, submitted by the parties, the profit margins of PET producers went substantially down in 2012. This confirms that the profitability in 2011 (RIP) was indeed largely influenced by unexpected and temporary global economic events (recital (155)) that are unlikely to recur and cannot be considered permanent and representative of the situation of the Union industry.

Table 14

Profitability and Return on Investments

	2008	2009	2010	RIP
Profitability Union sales (%)	– 7,9	1,6	4,8	5,3
Index	*100*	*221*	*261*	*267*
Return on investment (%)	– 9,6	2,3	8,9	10,6
Index (2008 = 100)	*100*	*224*	*292*	*310*

Source: Questionnaire replies

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

(180) The cash flows improved significantly over the period considered reflecting the recent improvement of the profitability of the Union Industry.

Table 15

Cash flow

	2008	2009	2010	RIP
Cash flow (EUR)	– 59 419 394	40 940 883	96 614 649	103 761 169
Index (2008 = 100)	*100*	*269*	*363*	*375*
In % of turnover	– 5,9	4,5	8,3	7,5
Index (2008 = 100)	*100*	*176*	*242*	*229*

Source: Questionnaire replies

(181) There were no particular indications that the Union industry would have encountered difficulties in raising capital, mainly as the Union producers are incorporated in larger groups.

(g) *Investments*

(182) The level of investments was overall reduced by 35 % over the period considered. The initial investments made in 2008 were cut sharply in 2009 and have not fully recovered since.

Table 16

Investments

	2008	2009	2010	RIP
Investments (EUR '000)	72 341 598	5 404 705	15 994 659	47 217 003
Index (2008 = 100)	*100*	*7*	*22*	*65*

Source: Questionnaire replies

5. **Conclusion on the situation of the Union industry**

(183) The analysis of the macro-economic data showed that the Union industry decreased its production and sales volumes during the period considered. The Union industry's market share has not fully recovered since the initial drop in 2009 and it showed an overall decrease of 3 percentage points over the period considered (to 77 % in RIP). The decline in employment and capacity is a result of the on-going restructuring and is to be seen in the context of increasing capacity utilisation and productivity.

(184) At the same time most of the relevant micro-economic indicators showed signs of improvements. The profitability, return on investment and cash flow rose significantly, in particular in 2010 and in the RIP. The investments, on the other hand, plummeted in 2009 and have not recovered since.

(185) Overall, the economic situation of the industry has improved. However, these improvements are relatively recent and to some extent based on unforeseen and temporary market developments at the break of 2010/2011 (see recital (155) above). This appears to be supported by the information available on the developments of the margin of the Union industry in 2012 (see recital (179) above) that show a decline as compared to RIP.

(186) In view of the above analysis, the situation of the Union industry has improved and no material injury appears to be taking place. Nevertheless, despite apparent positive trends and the significant restructuring efforts, the situation of the Union industry is still fragile.

(187) Following the disclosure some parties contested the conclusion that the Union industry was still fragile claiming that the Union industry was in a healthy state and has substantially transformed since 1999. It is noted that as explained above (recital (184)), despite the overall improvement and consolidation, not all economic indicators developed positively over the period considered. For example, production and sales volumes as well as market share decreased. Moreover, the improvements were relatively recent and with a fall of profitability in 2012 appeared short-lived. On this basis it was considered that while no material injury proved to exist in RIP, the Union industry was still in a fragile state. The argument was therefore rejected.

(188) Following the disclosure some parties contested the use of data referring to period beyond RIP for the analysis of the economic situation of the Union industry. In response to this claim it is confirmed that the situation of the Union industry was assessed for the period considered and on this basis no material injury was established. However, the development of profitability of the Union industry beyond RIP is in this case relevant mainly in the context of the extraordinary nature of the global market developments at the break of 2010/2011. It also illustrates the volatility typical for this sector. The argument is therefore rejected.

F. **LIKELIHOOD OF RECURRENCE OF INJURY**

1. **Impact of the projected volume of imports and price effects in case of repeal of measures**

(189) The investigation has shown that the imports from India continued to be subsidised and that there are no indications that the subsidisation would be reduced or discontinued in the future.

(190) A prospective analysis of the likely import volumes in the Union from India revealed that, given the excess capacity available for exports (see recital (125) above), the price levels in the Union and the attractiveness of the Union market, the imports from India are likely to increase to levels above those reached in the RIP, if the measures were repealed. With the planned capacity expansions, the excess capacity available for exports is estimated to reach about 600 000-700 000 tonnes in the near future, which would represent around 21-25 % of the total Union consumption in RIP.

(191) Given the continuation of subsidisation, the prices of imports from India are expected to further decrease, should the measures against India be lifted. Also, as the exporters will have to compete against low priced imports from other countries, they are likely to lower their prices further in order to increase market share on the Union market.

(192) On this basis, the Union industry is likely to be exposed to substantial volumes of imports from India at subsidised prices below the average prices of the Union industry, undermining the recently improved economic situation of the latter. As a result, the material injury is likely to recur should the measures against India be lifted.

2. **Production capacity and excess capacity available for exports**

(193) As indicated above (see recital (125) above), the exporting producers in India have the potential to increase their export volumes to the Union market. India had a significant growth in its production capacity over the period considered (see recital (125) above). According to the information available it is expected to increase its capacity further, creating a gap between domestic consumption and production capacity available for exports of 600 000-700 000 tonnes in the near future. Such excess capacity available for exports has to be considered as significant as it represents around 21-25 % of the current Union consumption in RIP.

(194) Therefore, although the imports to the Union were relatively low, they more than doubled over the period considered and there is a risk that significant exports from India could be diverted to the Union.

3. **Loss of export markets**

(195) Trade defence measures are currently in place against Indian imports in Turkey and South Africa. The consequent possible loss of these export markets for India is another indicator that the Union market is likely to be targeted if the measures were allowed to lapse.

(196) Following the disclosure some parties contested the conclusions regarding the loss of export markets for India. It was claimed that both markets were marginal export market, therefore no significant export volumes from these markets could be redirected to the Union if the measures were lifted. It is noted that only the existence of the trade defence on some markets excludes any meaningful comparison of the relative importance of the markets with and without measures for a given country. In addition, contrary to the claim, it was not considered that the export volumes from India placed on these markets would be redirected to the Union market. Instead, it was considered that the existence of the trade defence measures on other third markets restricts the absorption capacity of third markets as regards the foreseen increase in excess capacities available for exports in India. This argument was therefore rejected.

(197) The existence of trade defence measures in third countries is also an indication that the pricing behaviour of Indian exports is likely to replicate on the Union market.

4. **Attractiveness of the Union market**

(198) The Union PET market is attractive in terms of its size and prices, being the third largest market in the world, with a structural need for imports and higher prices as compared to other markets. In the case of India, the import prices to the Union tend to be higher than the prices to other third countries, which points to the attractiveness of the Union market for the Indian exports. This is well illustrated by the fact that the imports from India have doubled over the period considered despite the measures in force.

(199) The attractiveness of the Union market for exporters is also confirmed by the fact that the Union industry continued to lose market share to the rising imports from the countries without measures. This is in particular true in the case of South Korea that significantly increased its exports to the Union market in 2012 after the measures against the country have expired.

5. **Other factors**

(200) The impact of the imports from other third countries with measures on the situation of the Union industry was not considered significant, due to the relevant low import volumes and substantial decrease of their market share in the RIP.

(201) The volume of imports from other third countries without any measures increased during the period considered, however, the respective average import price remained close to the Union industry average price. Therefore, the impact of the imports from these countries on the situation of the Union industry is considered limited.

6. **Captive market**

(202) Following the disclosure some parties claimed that due to the vertical integration between PET producers and converters, a considerable part of PET was sold for captive use that did not compete with imports. It was also claimed that share of captive market was significant, affecting the results of the analysis.

(203) Based on the information collected at the level of sampled Union producers the proportion of captive sales was found not to be significant (below 10 %). It has to be underlined that the parties in question expressed the presence of PET producers in the packaging business in terms of the installed production capacity of PET and not in terms of their market share in packaging. Therefore, the claim on significant proportion of captive use was found unsubstantiated. As regards the price levels, the prices of related and unrelated sales were found to be within the same range.

(204) On these grounds it was concluded that the distinctive analysis of the impact of captive sales was not necessary and the claims of the parties were rejected.

7. **Comments of the parties**

(205) Some parties argued that the injury due to imports from India did not exist during the RIP as evidenced by the relative economic health and profits of the Union industry. It has to be note that, indeed, no continuation of injury has been established in the present case, and therefore the claim of the parties corresponds to the investigation findings.

(206) Some parties claimed that other factors, such as structural inefficiencies of the Union industry and lack of investment as well as seasonal and conjunctural factors (e.g. bad weather, economic crises) could have an impact on the situation of the Union industry. Concerning the first point raised, it is to be noted that the restructuring of the Union industry is already taking place and the efficiency gains obtained suggest that the claim of the parties are unfounded. As to the conjunctural factors, although the economic crises did have an impact on the situation of the Union industry in 2009, as mentioned above (recital (171) above), the relevant effects do not appear to be currently present anymore. Concerning the effect of bad weather, this could partly explain the shrinking consumption in the RIP, however, on the one hand, its alleged impact on the situation of the Union industry has not been substantiated and, on the other hand, the slight drop in 2011 appears to be rather linked to temporary scarcity of raw materials due to the global market developments in 2011. Therefore, none of these claims is justified in view of the findings of the investigation.

(207) Furthermore, some parties argued that the recurrence of injury in this case is unlikely if the measures were to expire, given that thanks to its structure (concentration and vertical integration) the Union industry is shielded from the effects of the imports. Moreover, it has been argued that a shift to imported PET is neither desired nor possible in the near future, in particular as purchasing contracts and policies as well as homologation process of large brand owners (downstream users) makes changes of PET suppliers cumbersome. It is to be noted that based on the findings of the investigation the Union industry continued to lose market share to the benefit of imports during the period considered; this shows, on the one hand, that the Union industry is not shielded from the effects of the imports and, on the other hand, that the switch to imports is not hypothetical but is actually already taking place. The arguments had to be therefore dismissed.

(208) Following the disclosure some parties reiterated the claim that the Union industry was shielded from the potential competition of imports due to its structure. Firstly, as regards the claim on dominant position of one of the producing groups in the Union market controlling five producers, it is noted that the Union market is an open market with other eight producers operating outside this group and growing competition of imports from third countries – with and without any measures in place. Secondly, concentration is typical for this type of business based on commodity product that relies on economies of scale for its competitiveness. Thirdly, no price leader was found to exist on the Union market. Finally, parties reiterated that the impact of the imports from the three countries concerned in the light of the vertical integration of some Union producers with the packaging industry or with producers of PTA was not analysed. As established in recital (205) above these aspects were indeed analysed and found unsubstantiated. Moreover, the verification of companies concerned by vertical integration with producers of raw materials confirmed there was no comparative advantage as the transfers were made at market price. Based on the above, the claim that the Union industry would be shielded from the competition was rejected.

(209) Last, some parties argued that no elements support a conclusion that the Indian export capacity may target the Union market at 'cheap prices' given that (i) the domestic demand in India is growing and is expected to continue to grow; (ii) PET in excess of domestic consumption exists, yet competition in export markets has not resulted in exports at abnormally low prices; (iii) increases in production capacity in Asia responds to the increase in demand expected worldwide. It is to be noted that the findings in the present investigation demonstrate that the projected growth of capacity shows a growing excess of the production capacity over domestic demand. In addition, the Indian prices on third markets were lower as compared to the Indian imports prices to the Union. Based on the findings described above in recitals (189) to (199) it is likely that the subsidised Indian imports will target the Union market at substantial volumes and below the average price of the Union industry should the countervailing measures be allowed to lapse. On these grounds the arguments of the parties are dismissed.

8. **Conclusion on the recurrence of injury**

(210) On the basis of the foregoing it is concluded that it is likely that substantial volumes of subsidised import from India would be redirected to the Union should the countervailing measures be repealed. Thanks to the continued subsidisation, the prices of the imports would most likely undercut the Union industry prices. Also, the prices of these imports are likely to decrease even further should the Indian exporting producers try to increase their market shares. This would in all likelihood have the effect of reinforcing the price pressure on the Union industry, with an expected negative impact on its situation.

(211) During the period considered the situation of the Union industry improved, in particular in terms of productivity and capacity utilisation as well as profit margins that

has reached in the RIP a level close to the target profit established in the original investigation. It can therefore be concluded that the Union industry, albeit still in a fragile situation, did not suffer material injury during the RIP. However, given the likely substantial increase of subsidised imports from India, which are likely to undercut the Union industry's sales prices, it is concluded that the situation would very likely deteriorate and the material injury would recur, should measures be allowed to lapse.

G. UNION INTEREST

(212) In accordance with Article 31 of the basic Regulation, it was examined whether the maintenance of the existing countervailing measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved. All interested parties were given the opportunity to make their views known pursuant to Article 31(2) of the basic Regulation.

(213) It should be recalled that the adoption of measures was considered not to be against the interest of the Union neither in the original investigation nor in the last expiry review. Furthermore, the analysis in the last expiry review was carried out in the situation where the measures had been already in place and thus the assessment took into account any undue negative impact on the parties concerned by the measures in question.

(214) On this basis, it was examined whether despite the conclusions on the continuation of subsidisation and likelihood of recurrence of injury, any compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

1. Interest of the Union industry

(215) The continuation of the countervailing measures on imports from India would help the Union industry to continue the on-going restructuring and enhance its only recently improved economic situation, as it would help avoiding that the Union industry is exposed to the substantial volumes of subsidized imports from India, which the Union industry could not withstand. The Union industry would therefore continue to benefit from the maintenance of the current countervailing measures.

(216) Accordingly, it is concluded that the maintenance of countervailing measures against India would be in the interest of the Union industry.

2. Interest of unrelated importers in the Union

(217) None of the unrelated importers cooperated in the present review. Despite the measures in force the imports from India continued and nearly doubled over the period considered.

(218) The imports from other third countries without any measures were also available and reached significant market share during the RIP (see recital (149) above). Therefore, even with the measures in place, importers had access to alternative sources of supply.

(219) Bearing in mind that there is no evidence suggesting that the measures in force considerably affected importers, it is concluded that the continuation of measures will not be against the interest of the Union importers.

3. Interest of the suppliers of the raw materials in the Union

(220) The raw material for the manufacturing of the product concerned is PTA/MEG. Two out of five known suppliers of raw material (one supplier of PTA and one of MEG) cooperated with the investigation by submitting the questionnaire reply. Both suppliers of the raw material expressed their support for the continuation of the measures.

(221) The investigation showed that the cooperating PTA producer represented a substantial part of the PTA purchases of the sampled Union producers in the RIP. Given that PTA has no other use in the Union than the production of PET, it is reasonable to assume that PTA producers are largely dependent on the PET industry.

(222) As to the cooperating MEG supplier, MEG represented relatively small part of its total turnover in the RIP. With regard to MEG, PET is not its only or major possible application and MEG producers are less dependent on the situation of the PET industry. Consequently, it is considered that the continuation of measures against subsidised imports of PET from India would have a positive, although likely limited, impact on the suppliers of MEG.

(223) It was alleged that the suppliers of raw material do not depend on the Union producers of PET; in particular, as it was argued that two out of four sampled Union producers were in fact importing the raw materials.

(224) In relation to this claim the investigation has shown that the imported material was predominantly MEG that can also be used for other than PET applications. No indications were gathered showing more than negligible imports of PTA to the Union. Therefore, this claim does not affect the conclusions taken as regards the dependency of PTA producers on PET production in the Union.

(225) Consequently, it is considered that the continuation of measures against subsidised imports of PET from India would benefit the PTA producers and also, although to a lesser extent, the MEG suppliers. As a consequence the continuation of measures against imports from India would not be against the interest of the raw material suppliers.

(226) Following the disclosure some parties claimed that PTA was exported and therefore the PTA producers were claimed not to be dependent on Union industry. No evidence supporting this claim was presented. Therefore the argument of the parties was dismissed as unsubstantiated.

(227) Moreover, the same parties claimed that lifting the measures will not have any impact on the PTA producers as the cooperating users will allegedly not switch to imports and will continue to source PET from the Union industry. Therefore, the level of PTA consumption in the Union will remain the same. Based on the findings of the investigation the Union industry continued to lose market share to the benefit of imports during the period considered. This shows that the switch to imports is not hypothetical (see recital (164) above). The argument of the parties was therefore dismissed.

4. **Interest of PET recycling industry**

(228) The Union industry argued that the situation of the recycling industry depends on the sustainable price of virgin PET (non-recycled PET) on the Union market. Their claim was substantiated by a press release of an association of plastic recyclers in Europe, according to which a potential lifting of the measures on virgin PET could further worsen the situation of the recycling industry.

(229) Some interested parties contested that the situation of the recycling industry depends on the sustainable price of virgin PET on the Union market arguing that the prices of virgin PET and recycled PET were unrelated. It was claimed that recycled PET is mainly used for the production of polyester fibre and therefore cannot be linked to the price developments of virgin PET. In addition, it was noted that the recycled PET is entirely supported by bottle-fillers and thus the industry does not depend on PET producers. Finally, it was also noted that recycling industry did not come forward as an interested party in the present investigation.

(230) Since the recycling industry did not come forward in this investigation, none of the above-mentioned allegations could have been verified against the actual figures. Therefore, it is considered that in overall the measures in force would not be against the interest of the recycling industry in the Union.

5. **Interest of the users**

(231) The product concerned is predominantly used to produce bottles for water and other soft drinks. Its use for the production of other packages (foodstuff, sheets, etc.) 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.

(232) On this basis, two main groups of downstream users have been established for studying of the impact of the measures in force: (i) converters and/or bottle makers, converting PET chips into pre-forms (or bottles) and selling them for downstream processing; and (ii) bottlers, filling (and blowing) the bottles out of pre-form; this group represents mostly the producers of mineral water and soft drinks. The bottlers 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).

(233) Seventeen (five converters and twelve bottlers) cooperated in the investigation and provided information collected by the questionnaire. The cooperating converters represented 22,7 % and bottlers 13 % of the total consumption of PET in the Union. The replies of bottlers came from various branches of the multinational companies (known as brand-owners).

(234) It has been established that the cooperating users sourced PET predominantly from the Union producers and only a small proportion was sourced from imports. The imports from India represented roughly half of these imports and thus a minimal proportion of the sourced PET. Nevertheless, the imports from other third countries without any measures were also available and reached significant market share during the RIP (see recital (149) above). Therefore, even with the measures in place, the users had access to alternative sources of supply.

6. **Arguments of the users' industry**

(235) Users claimed to be significantly affected by substantial increases in the price of PET in recent years which cannot be transferred to retailers and consumers in the current economic environment. It is claimed that these price increases have resulted from accumulation of many years of application of trade defence measures, which have protected the Union producers from the competition of imports at the time when the Union PET industry became more concentrated and integrated. As a result, the users claimed that the measures in place, through their alleged impact on the price of PET, are responsible for the deterioration of the downstream industry's employment, R&D and competitiveness on export markets, with a more acute impact on SMEs. It was also claimed that the job losses due to the measures in force exceeded the number of people currently employed by the Union PET industry.

6.1. *Price sensitivity and cost structure of the users*

(236) As regards the PET price sensitivity of converters, PET was found to represent around 80 % of the total costs. PET is therefore considered a critical cost component for this type of activity. In addition, the converters' industry was found to be rather fragmented with a relatively weak negotiating position against large bottlers and inherent structural problems typical for the commodity based industry. As a result, this sector showed an increasing tendency to vertical integration with bottlers and the use of tolling agreements on the basis of which the conversion fees are guaranteed and the PET price is ultimately negotiated and paid by the bottlers. It is estimated that substantial part of PET purchases on the Union market is controlled directly by the large bottlers. Since the contracts for pre-forms often include a mechanism for reflecting the variation of PET prices, the convertors are increasingly neutral towards the developments of PET prices.

(237) Following the disclosure some users contested the conclusion on the increased use of tolling and price formulas. The information in the file confirmed existence of such trend. The claim was therefore dismissed.

(238) It was claimed that the measures in place would not cause damage to the converters, if similar measures were applied on imports of preforms into the Union. It was argued that in the areas close to the Union border with third countries, in which there are no measures against imports of PET from India, there are incentives to delocalise the production of preforms and import them free of countervailing measures on PET into the Union. It is acknowledged that to some extent there is an economic rationale for this process to be happening. However, given the transportation cost, the delocalisation is likely to occur only within limited distances. In overall, the claimed negative impact of the measures in question on some converters is therefore considered to be marginal.

(239) As regards the PET price impact on bottlers, based on the reported figures, the PET is estimated to represent on a weighted average basis 9 % of total costs of bottled soft drinks and 12 % of the total costs of bottled mineral water. This shows that PET is not the main cost component for the bottling industry.

(240) In addition, the investigation has established that PET was the preferred although not the exclusive packaging material of bottlers. PET products represented 75 % of the turnover of water bottlers and 50 % of the turnover of producers of soft drinks. Furthermore, the investigation showed that contracts between many large bottlers (brand owners) and PET producers were based on a formula whereby the price was adjusted to reflect fluctuation of prices of raw materials for PET. This confirms the existing negotiating power of the large and thus the most representative bottlers over the conversion margin of the PET producers.

(241) Following the disclosure some users reiterated their argument that PET is a basic cost component for converters, soft drink and bottled water industries and the findings in this respect were inaccurate and not based on the reported data. It is noted that the situation of converters was analysed separately and this comment is in their case unfounded (see recital (236) above). As regards the assessment of the situation of the bottlers it is confirmed that the cost ratios established in the investigation are based on the figures reported by the cooperating bottlers following a methodology available to all parties. The established cost ratios were in line with the findings of previous investigations concerning the same product concerned [1]. The claims of the parties were therefore considered unsubstantiated.

(242) Following the disclosure some users claimed that the essence of the company specific data and information provided by them was not reflected in the analysis of the Union interest. It is confirmed that the data was used as reported by the users in their questionnaire replies. The calculation methodology was made available to all parties concerned. On this ground the claim was rejected.

(243) The investigation has also established that based on the expected and/or desired decrease of PET prices estimated by the verified bottlers themselves, if the measures would result in negligible cost reduction for the bottlers. Based on these estimates of PET price decrease and the

[1] E.g. Commission Regulation (EU) No 473/2010 (OJ L 134, 1.6.2010, p. 25); Council Regulation (EC) No 192/2007.

established cost ratios, the respective cost reduction was calculated to be within the range of 0,3-0,7 % of the total costs of the bottlers for their PET-related activities.

(244) Following the disclosure some users disputed this conclusion arguing that any saving in costs would be significant. Some users put forward new estimates in their submissions without providing any new evidence. It is emphasised that the prospective savings are hypothetical, as was also admitted by some users themselves. As regards the converters, no quantification of prospective saving was put forward for this segment. As regards the bottlers, it was considered that should the alleged PET price decrease materialise, in the light of the costs structure of the bottlers, saving within 0,3 %-0,7 % of total costs cannot be considered 'significant'. Since no new evidence was provided, the claim was dismissed as unsubstantiated.

(245) It was claimed that some bottled-water producers have inherent vulnerabilities stemming from legal requirements imposed for the source water to be bottled at the source and limited extraction volumes. The sector is being dominated by SMEs, which has an impact on the cost structure of the companies in questions. Also, variations have been observed in the price levels of final products across Member States depending on the purchasing power of the local population. On these grounds it is considered that the impact of an eventual decrease of PET prices, if the measures were lifted, would be more pronounced for this part of the bottling industry.

6.2. *Alleged premium prices and profits of Union industry*

(246) Some parties alleged the existence of premium prices and premium margins practised by PET producers in the Union, claiming that these would be at the origin of the price increases in 2011. This claim was also supported by the comparison made between PET prices and spread over the raw materials in the Union to the situation on Asian market and in the USA. It was claimed that this situation results from the accumulation of trade remedies.

(247) It is to be noted that the increase of the prices of PET in 2011, as well as its decline in 2009, was a worldwide phenomenon driven by the evolution of the cost of raw materials (see recital (155)). Data submitted by the parties systematically showed a very close correlation between the evolution of PET prices in Europe, Asia and the USA. Nevertheless, there are indeed differences in the prices of PET across the world which are related to various reasons, in particular, the specific cost structure in each region,. As regards the argument on existing premium margin in the Union, it is noted that even under exceptional circumstances in late 2010 and beginning of 2011 the Union industry has merely reached the profitability considered reasonable for this type of industry. No evidence of premium profit was found. Therefore, the argument on existing 'premium' prices and 'premium' margins on the PET in the Union that are due to the existence of the measures in question has to be rejected.

(248) Following the disclosure some parties reiterated their argument that the prices in the Union were unjustifiably high reflecting the impact of accumulation of anti-dumping measures operating in a market with concentration among Union producers, vertical integration and limited production unable to satisfy the consumption. It was also claimed that the price data also showed that the higher prices in the Union are not reflecting the higher costs of raw materials. It is noted that the arguments on concentration, vertical integration and production capacity of Union industry were addressed in recitals (207) and (259) respectively. As regards the claimed impact of these factors on the PET price in the Union it is recalled that the PET price development is driven by the price of raw materials that account for up to 90 % of cost of PET (see recital (173) above). Also, the increase in PET prices in 2010/2011 was a worldwide phenomenon (see recital (172) above). The claims of the parties were therefore unsubstantiated.

(249) As regards the argument concerning the gap between the Union PET price and prices in Asia and US, and in addition to findings already stated in recital (244) above, it was found that the difference in prices between US and Union market was volatile, yet moderate. Union prices were not systematically higher as claimed. Union and Asian market were found to be very different in terms of cost structures linked in particular to the size of the market and economies of scale, access to the raw materials and capacity. Therefore, comparing the average prices between these two markets was not meaningful. The argument of the parties was therefore found unsubstantiated.

(250) Also, some parties claimed that the prices in the Union reflect a higher spread over the cost of raw materials as compared to US or Asia. The comparison of spreads follows the same logic as comparison on prices on various regional markets with the difference that the variations of prices of raw materials between various regional markets are accounted for. Nevertheless, the existing structural differences between the markets can justify the difference in conversion fees. The extraordinary profits made by Union industry at the break of 2010/2011 were explained in recital (179) above. In none of the situations the measures were found to play a role. Therefore the argument of the parties was rejected.

(251) The same parties also claimed that the largest producer in the Union charged higher prices in the Union than on other markets and recorder higher revenues in 2010 in the Union than elsewhere. In this context, it is considered that it is economically justifiable that a transnational company would have different cost structures and thus different prices on different regional markets. The exceptional profitability levels at the break of 2010/2011 were explained in recital (179) above. On these grounds the argument was rejected.

6.3. *Economic situation of users and claimed impact of the measures*

(252) Further claims were made as regards the worsening economic situation of the user's industry, such as closing facilities and reducing employment. It was alleged that this was the result of the PET price increase. In addition, it was claimed that the competitiveness of European leading brands has been eroded as their exports in third countries were in direct competition with bottled-products that benefit from PET at international prices.

(253) It should be noted, that based on the information submitted by the cooperating users, the users segment was not found to be loss-making even though there was a decline in the overall profitability level in RIP. The profit margin of the users' industry established on the basis of the questionnaire replies according to the methodology made available to all parties was found to be at similar level as the profitability established for the Union industry in RIP. The two verified companies (bottlers) reported further expansions in production volumes and increased profitability over the period considered. Some converters were found operating on tight margins, in some cases facing structural and financial difficulties. However, no direct the link with the measures in place could have been established in this respect. Similarly, certain decline in the economic situation of the bottlers was linked to the squeeze caused in 2011 by the sudden increase of PET price that could have not been passed on to retailers under the current economic downturn. However, while it has been established that the situation of the users industry deteriorated to certain extent in 2011, the link between the decline and the existence of the measures was not demonstrated, especially given that the measures were in places since 2000.

(254) Following the disclosure some parties disagreed with the conclusion that the users' industry was not loss making. The parties also claimed that the profit margins of users were lower than those of the Union industry. As regards the assessment of profitability of the users' industry, the information collected from the cooperating users contradicted this claim. The methodology was made available to the parties. Although some cooperating users could have been loss making, the user's industry was overall found to be profitable. In any event, if the increase of PET prices was found to be one element affecting the profitability of the users, no link between the measures and the profitability of the companies in question was demonstrated. As regards the comparison of profit margins of users and the Union industry, this claim was not substantiated. Due to the volatility of the profitability of the Union industry (see recitals (176) to (179) above) the comparison between the two segments was not considered conclusive. In any event, the both segments showed similar profitability levels during the RIP (see recital (253). In this light, the comments of the parties were rejected as unsubstantiated.

(255) As regards the alleged erosion of the competitiveness of the exports of the Union producers of bottled mineral water/soft drinks, this claim was neither substantiated, nor has a link to the existence of the measures in place been in this context demonstrated.

(256) Following the disclosure the parties reiterated that the rising PET prices have a negative impact on the competitiveness of exports of bottled water. It is recognised that the PET price increase, among other things, can have a negative impact on the competitiveness of exports of bottled water. Nevertheless, since no link between the PET price increase and the measures in question was found as the PET prices primarily derive from the prices of raw materials, the claimed impact of the measures on the eroded competitiveness was rejected.

(257) Finally, as to the claimed effect of the measures on the employment, the investigation revealed that the verified job losses of the users industry were predominantly linked to the productivity and efficiency gains and a part concerned the reduction of the temporary staff.

(258) Following the disclosure some parties disputed this finding on the grounds that it did not reflect the situation of the entire sector. In addition to the findings described in recital (254) above, it is noted that total jobs reported by the converters significantly increased and none of them reported job losses. Bottlers claimed job losses as a result of increased PET price. However, the increase in PET price being a worldwide phenomenon, no link between job losses and the measures was established. Furthermore, 90 % of the job losses reported by the users' questionnaires replies were concentrated on three companies. One of them, a verified user representing substantial part of the reported job losses, increased substantially its volumes over the period considered and such losses are therefore associated to productivity gains. As for the remaining two companies, they were found to have the profitability margins among the highest of the cooperating parties in their segment and above the target profit of the Union industry in this case. The claims were therefore dismissed.

6.4. *Other arguments*

(259) Following the disclosure some parties argued that the Union producers do not have sufficient capacities to meet the existing demand. It is noted that the Union industry operated at 86 % of its production capacity in RIP and has sufficient spare capacity to cover total domestic consumption of PET. In addition, imports

from other countries with and without measures continue to exist and have an increasing tendency. Also, the current measures expired in case of South Korea and are lifted for imports of the product concerned from Malaysia and Indonesia. In addition, PET recycling industry may constitute further source of PET to cover the PET demand in the Union. For these reasons, the alleged problems faced by users due to the claimed insufficient production in the Union were not considered substantiated.

(260) Following the disclosure some users claimed the analysis did not address the claimed adverse impact of the accumulation of measures on the product concerned under the present review. In response to this argument it is noted that the countervailing measures merely remedy the injurious effect of established subsidisation. The existence of the claimed 'accumulated' effect was not demonstrated. On the contrary, despite the measures in place, the imports from countries with measures continue and their volumes even increased during the period considered. Also, imports from countries without any measures are available with a growing trend and at substantial volumes. The argument of the parties was therefore dismissed.

7. **Conclusion on the Union interest**

(261) To conclude, it is expected that the extension of the countervailing measures on imports from India would provide an opportunity for the Union industry to improve and to stabilise its economic situation following the investments and consolidation made in the recent years.

(262) It is also considered that an improved economic situation of the Union industry may be in the interest of PTA producers and, to a lesser extent, MEG producers in the Union.

(263) The economic situation of some users has worsened since the last review and in particular smaller bottle-water producers were found, among other reasons, to be negatively affected, especially it seems, by the recent PET price increase since they were unable to pass it on to retailers under the current economic climate. However, the exceptional price and margin developments of Union industry in 2011 were found to be a global phenomenon primarily driven by the increase in the prices of raw materials. Therefore, the allegations on existing 'premium' prices and 'premium' margins linked to existence of the measures in question were found unjustified. At the same time, Union market continues to be an open market with existing alternative sources of supply from other third countries without any measures.

(264) Against this background, no link between the PET price increase and the existing measures was demonstrated. Economic situation of converters was found to be stable despite the measures in force. The weight of PET in the total cost of the bottlers was found to be limited. Furthermore, no link between the PET price variations and the measures was demonstrated. On these grounds, the measures were found not have disproportionate effect on the users.

(265) Taking into account all of the factors outlined above, it cannot be clearly concluded that it is not in the Union interest to maintain the current countervailing measures.

H. **COUNTERVAILING MEASURES**

(266) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period within which they could make representations subsequent to this disclosure. The submissions and comments were duly taken into consideration, where warranted.

(267) On the basis of the above analyses the countervailing measures applicable to imports of PET originating in India should be maintained in compliance with Article 18(1) of the basic Regulation. It is recalled that these measures consist of specific duties.

(268) The individual company countervailing duty rates specified in this Regulation are solely applicable to imports of the product concerned produced by these companies and thus by the specific legal entities mentioned. Imports of the product concerned manufactured by any other company not specifically mentioned in Article 1(2) of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(269) Any claim requesting the application of these individual countervailing 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 forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be accordingly amended by updating the list of companies benefiting from individual duty rates.

(270) In order to ensure proper enforcement of the countervailing duty, the residual duty level should not only apply to non-cooperating exporters but also apply to those companies which did not have any exports during the RIP. However, the latter companies are invited, when they fulfil the requirements of article 20 of the basic regulation, to present a request for a review pursuant to that Article in order to have their situation examined individually,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in India.

2. The rate of the definitive countervailing duty applicable to the product described in paragraph 1 and manufactured by the companies listed below shall be as follows:

Country	Company	Countervailing duty (EUR/tonne)	TARIC additional code
India	Reliance Industries Ltd	90,4	A181
India	Pearl Engineering Polymers Ltd	74,6	A182
India	Senpet Ltd	22,0	A183
India	Futura Polyesters Ltd	0	A184
India	Dhunseri Petrochem & Tea Limited	106,5	A585
India	All other companies	69,4	A999

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

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

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

Article 2

1. Imports shall be exempt from the countervailing 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 Union by the companies whose names are listed in Decision 2000/745/EC, as from time to time amended, 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 authorities of the Member State concerned of a valid Undertaking Invoice issued by the exporting companies from which undertakings are accepted, 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.

Article 3

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

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

Done at Brussels, 21 May 2013.

For the Council
The President
E. GILMORE

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

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 Union borders.

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 Union of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by … (name of company), and accepted by the European Commission through Decision 2000/745/EC. I declare that the information provided in this invoice is complete and correct.'