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## Legislation

Contents

I Acts whose publication is obligatory

- ★ **Council Regulation (EC) No 2603/2000 of 27 November 2000 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in India, Malaysia and Thailand and terminating the anti-subsidy proceeding concerning imports of certain polyethylene terephthalate originating in Indonesia, the Republic of Korea and Taiwan** ..... 1
- ★ **Council Regulation (EC) No 2604/2000 of 27 November 2000 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand** ..... 21
- ★ **Council Regulation (EC) No 2605/2000 of 27 November 2000 imposing definitive anti-dumping duties on imports of certain electronic weighing scales (REWS) originating in the People's Republic of China, the Republic of Korea and Taiwan** ... 42
- ★ **Council Regulation (EC) No 2606/2000 of 27 November 2000 amending Regulation (EC) No 772/1999 imposing definitive anti-dumping and countervailing duties on imports of farmed Atlantic salmon originating in Norway** ..... 61
- Commission Regulation (EC) No 2607/2000 of 29 November 2000 establishing the standard import values for determining the entry price of certain fruit and vegetables ..... 67
- Commission Regulation (EC) No 2608/2000 of 29 November 2000 fixing the maximum export refund for white sugar for the 18th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1531/2000 ..... 69
- Commission Regulation (EC) No 2609/2000 of 29 November 2000 fixing the representative prices and the additional import duties for molasses in the sugar sector ..... 70
- Commission Regulation (EC) No 2610/2000 of 29 November 2000 altering the export refunds on white sugar and raw sugar exported in the natural state ..... 72

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(Continued overleaf)

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

<p><b>* Commission Regulation (EC) No 2611/2000 of 29 November 2000 repealing Regulations (EC) No 1667/98, (EC) No 1759/98, (EC) No 1760/98, (EC) No 2198/98, (EC) No 1392/1999 and (EC) No 441/2000 relating to invitations to tender for the export of cereals held by certain intervention agencies</b> .....</p>	74
<p>Commission Regulation (EC) No 2612/2000 of 29 November 2000 fixing the export refunds on olive oil .....</p>	75
<p>Commission Regulation (EC) No 2613/2000 of 29 November 2000 amending the import duties in the cereals sector .....</p>	77
<p>Commission Regulation (EC) No 2614/2000 of 29 November 2000 on the issuing of system B export licences for fruit and vegetables .....</p>	80

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II Acts whose publication is not obligatory

**Commission**

2000/744/EC:

<p><b>* Commission Decision of 30 October 2000 amending Decision 97/634/EC accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of farmed Atlantic salmon originating in Norway (notified under document number C(2000) 3150)</b> .....</p>	82
---	----

2000/745/EC:

<p><b>* Commission Decision of 29 November 2000 accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand (notified under document number C(2000) 3603)</b> .....</p>	88
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## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 2603/2000  
of 27 November 2000**

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community <sup>(1)</sup>, and in particular Articles 14 and 15 thereof,

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

Whereas:

**A. PROVISIONAL MEASURES**

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

**B. SUBSEQUENT PROCEDURE**

- (4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional measures, several interested parties

submitted comments in writing. In accordance with the provisions of Article 11(5) of Regulation (EC) No 2026/97 ('basic Regulation'), all interested parties who requested a hearing were granted an opportunity to be heard by the Commission.

- (5) The Commission continued to seek and verify all information deemed necessary for the definitive findings.
- (6) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive countervailing duties and the definitive collection of amounts secured by way of provisional duties.

They were also granted a period within which they could make representations subsequent to this disclosure.

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

**C. PRODUCT CONCERNED AND LIKE PRODUCT**

**1. Product concerned**

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

<sup>(1)</sup> OJ L 288, 21.10.1997, p. 1.

<sup>(2)</sup> OJ L 199, 5.8.2000, p. 6.

<sup>(3)</sup> OJ L 199, 5.8.2000, p. 48.

## 2. Like product

- (10) In recital 16 of the provisional Regulation, it was found that PET produced by the Community industry and sold on the Community market as well as PET produced in the countries concerned and exported to the Community were like products, since there were no differences in the basic physical and technical characteristics and uses of the existing different types of PET. Since no new evidence was submitted on this, the provisional findings as regards the like product are confirmed.

### D. SUBSIDIES

- (11) The findings made in the provisional Regulation concerning the countervailable subsidies obtained by the exporting producers are hereby definitively confirmed, unless it is expressly found otherwise in this document.

#### I. INDIA

##### General issues

#### 1. Initiation

- (12) The Government of India (GOI) alleges that the Commission initiated this investigation in violation of Article 10 of the basic Regulation and Article 11(2) of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). The GOI claims that the information in the complaint regarding subsidisation and injury was inaccurate and incomplete and did not constitute sufficient evidence in order to initiate this proceeding.
- (13) In reply to this argument, it was found that the complaint contained sufficient evidence of subsidisation and injury within the meaning of Article 10(2) of the basic Regulation and Article 11(2) of the SCM Agreement. The complaint contained information regarding subsidisation, injury and causality which was reasonably available to the complainant. As regards subsidisation, it should also be recalled that most of the programmes available in India had already been examined and countervailed in previous investigations involving imports from India e.g. PET film, flat rolled steel products etc. The evidence in the complaint was examined by the Commission for its accuracy and adequacy in accordance with Article 10(3) of the basic Regulation, and was found to be sufficient to warrant initiation. Therefore, this claim cannot be accepted.

#### 2. Notice of initiation

- (14) The GOI alleges that the notice of initiation<sup>(1)</sup> does not meet the criteria of Article 22(2) of the SCM Agreement since it did not contain information on the basis on which subsidisation is alleged in the application, and a

summary of the factors on which the allegation of injury is based.

- (15) Article 22(2) of the SCM Agreement states that a public notice of an investigation shall contain adequate information on, *inter alia*, a description of the subsidy practices and a summary of the factors on which the allegation of injury is based. As regards the allegation of subsidisation, it was stated in the notice of initiation that 'It is alleged that the producers of the product concerned from India have benefited from a number of subsidies granted by the Government of India. These subsidies are income tax exemption, import of raw materials and capital goods without payment of import duties and benefits for export-oriented companies and companies located in export-processing zones', and that 'It is alleged that the above schemes are subsidies since they involve a financial contribution from the Government of India and confer a benefit on the recipients, i.e. on exporters of polyethylene terephthalate. They are alleged to be contingent upon export performance and therefore specific and countervailable'. As regards the allegation of injury, it was stated in the notice of initiation that 'The complainant has provided evidence that imports of the product concerned from India, Indonesia, the Republic of Korea, Malaysia, Taiwan and Thailand have increased overall in absolute terms and in terms of market share' and furthermore that 'It is alleged that the volumes and the prices of the imported product concerned have, among other consequences, had a negative impact on the market share and the level of prices charged by the Community producers, resulting in substantial adverse effect on the overall performance and the financial situation of the Community industry'.

The above text constituted an adequate summary of the allegations relating to subsidy and injury.

#### Subsidies

##### 1. Duty Entitlement Passbook Schemes (DEPB)

###### (a) DEPB on pre-export basis

- (16) The GOI states that the DEPB on pre-export basis was abolished on 1 April 2000. Therefore, no countervailing duties should be imposed under this programme since the imposition of duties would be contrary to Article 15 of the basic Regulation.
- (17) After disclosure, the GOI submitted evidence that this programme effectively expired and will no longer confer benefits to exporting producers in India. Therefore, this claim is accepted and the benefit is excluded from the calculation of the subsidy rates. Since this programme is no longer countervailed, it is not necessary to deal with other claims made by interested parties regarding this programme.

<sup>(1)</sup> OJ C 319, 6.11.1999, p. 2.

(b) *DEPB on post-export basis*

- (18) The GOI states that the Commission made a manifest error in the assessment of the countervailability of this scheme. In particular, the Commission wrongly concluded that the GOI has no verification system in place which verifies which inputs are consumed in the production process and that this system is applied effectively. Furthermore, they claim that the Commission's assessment of the benefits under these schemes was incorrect since only the excess duty drawback could be considered a subsidy in accordance with Article 2 of the basic Regulation.
- (19) The Commission used the following method in order to establish whether the DEPB on post export-basis constitutes a countervailable subsidy and if so, to calculate the amount of benefit. Pursuant to Article 2(1)(a)(ii) of the basic Regulation, it is concluded that this scheme involves a financial contribution by the GOI since government revenue (i.e. import duties on imports) otherwise due is not collected. There is also a benefit to the recipient since the exporting producers did not have to pay normal import duties.
- (20) However, Article 2(1)(a)(ii) of the basic Regulation provides for an exception to this general rule for, *inter alia*, drawback and substitution drawback schemes which conform to the strict rules laid down in Annex I(i) and Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) thereof.
- (21) The analysis revealed that DEPB on post-export basis is not a drawback or a substitution drawback scheme. The scheme investigated lacks a built-in obligation to import only goods that are consumed in production of the exported goods (Annex II of the basic Regulation). Additionally, there is no verification system in place to check whether the imports are actually consumed in the production process. It is also not a substitution drawback scheme because the imported goods do not need to be of the same quantity and characteristics as the domestically sourced inputs that were used for export production (Annex III of the basic Regulation). Lastly, exporting producers are eligible for the DEPB benefits regardless of whether they import any inputs at all. An exporter obtains the benefit by simply exporting goods without the need to show that any input material was indeed imported; thus, exporting producers which procure all of their inputs locally and do not import goods which can be used as inputs are still entitled to the DEPB benefits. Hence, the DEPB on post-export basis

does not conform to any of the provisions of Annex I to III. Since this exception to the subsidy definition of Article 2 therefore does not apply, the countervailable benefit is the remission of total import duties normally due on all imports.

- (22) From the above, it clearly follows that the excess remission of import duties is the basis for calculating the amount of the benefit only in the case of bona fide drawback and substitution drawback schemes. Since it is established that the DEPB on post-export basis does not fall in one of these two categories, the benefit is the total remission of import duties, not any supposed excess remission.
- (23) As regards the verification system, this argument relates to the issue whether the DEPB on post-export basis can be considered as a drawback scheme or a substitution drawback scheme. Since it was established that the DEPB on post-export basis is not a drawback or a substitution drawback scheme as defined in Annex II and III of the basic Regulation no further examination needs to be carried out. Even if the DEPB were to meet the criteria of Annex II and III, it would be concluded that no reasonable verification system exists. The input/output norms are a list of possible items that can be consumed in the production process and in what amounts. However, the input/output norms are not a verification system within the meaning of paragraph 5 of Annex II of the basic Regulation. These norms do not provide for a verification of the inputs that are actually consumed in the production process and do not provide for a verification system whether these inputs were effectively imported.
- (24) For the above reasons, this claim cannot be accepted and the provisional findings as regards the countervailability of this scheme and the calculation of the benefit are confirmed.

## 2. Export Processing Zones (EPZ/Export Oriented Units (EOU))

- (25) One exporting producer and the GOI claimed that benefits obtained under the EOU scheme should not be deemed to constitute a subsidy, since the excise tax and duty exemption under this scheme is only granted for the quantity of inputs consumed in the production of the final product which is exported. The scheme, it is alleged, constitutes a drawback system in conformity with the conditions laid down in Annex I(i) and Annex II of the basic Regulation.

- (26) Two Indian exporters are located in an EOU. Without prejudice to the question of whether the scheme constitutes a drawback system in conformity with the provisions of the basic Regulation, the Commission, following further examination, accepts that there is in fact no excess remission of duty in the case of either company concerned. Consequently, in the present investigation the duty exemption on raw material will for these companies not be countervailed.
- (27) The subsidy amounts for the two companies located in EPZ/EOU have therefore been limited to the customs duties exempted on capital goods, and respectively have been reduced to 0,37 % and 4,43 %.

### 3. Export Promotion Capital Goods Scheme (EPCGS)

- (28) The GOI noted that under the EPCG scheme no obligation is imposed on the beneficiary to export all products manufactured with the capital good, and that the license holder is free to sell part of the production on the domestic market. The GOI therefore argued that any benefit conferred under this scheme should be allocated over total production.
- (29) In reply to this argument, it should be stressed that, as explained in recital 52 of the provisional Regulation, depending on the level of export commitment which the company is prepared to undertake, the company will be allowed to import capital goods at either a zero rate of duty or at a reduced rate. The scheme is therefore contingent in law upon export performance since no benefit can be obtained without a commitment to export goods. As such, it is deemed to be specific under the provisions of Article 3(4)(a) of the basic Regulation. Since the subsidy is an export subsidy, it is considered to benefit only export sales. In conclusion, the correct denominator is total export sales.
- (30) Since no other comments were received regarding this scheme subsequent to the disclosure of the provisional findings, the findings of recitals 50 to 57 of the provisional Regulation are hereby confirmed.

### 4. Amount of countervailable subsidies

- (31) All subsidies found were identified as being export subsidies. The amount of countervailable export subsidies, expressed *ad valorem*, for the investigated exporting producers is as follows:

Type of subsidy	DEPB	EPCGS	EPZ/EOU	Total
	Post-export			
Reliance Industries Limited	6,52 %	1,71 %		8,23 %
Futura Polymer Limited			0,37 %	0,37 %
Pearl Engineering Polymers Limited	5,01 %	0,79 %		5,8 %
Elque Polyesters Limited			4,43 %	4,43 %
All Others				8,23 %

- (32) The weighted average countrywide subsidy margin for all exporting producers investigated, which represents above 90 % of exports of the product concerned to the Community originating in India is above the applicable *de minimis* margin for this country of 3 %.
- (33) In view of the high level of cooperation, the residual rate for non-cooperating companies was determined as the rate of the cooperating company with the highest subsidy margin i.e. 8,23 %.

## II. INDONESIA

- (34) Since no substantial comments were received subsequent to the disclosure of the provisional findings, the conclusion that the subsidy margin for Indonesia has to be considered negligible and the findings of recital 78 of the provisional Regulation is hereby confirmed. Therefore, the proceeding concerning Indonesia should be terminated.

## III. KOREA

- (35) Since no comments were received subsequent to the disclosure of the provisional findings, the conclusion that the subsidy margin for Korea has to be considered negligible and the findings of recital 79 of the provisional Regulation is hereby confirmed. Therefore, the proceeding concerning Korea should be terminated.

## IV. MALAYSIA

## 1. Introduction

- (36) In the provisional Regulation, the benefit derived from Pioneer Status was in recital 132 wrongly classified as an export subsidy. However, the findings of countervailability of the scheme in recitals 93 to 95 as a specific domestic subsidy are hereby confirmed. This would imply that the amount of subsidy found should no longer be offset against the anti-dumping duty.
- (37) Since no other comments were received subsequent to the disclosure of the provisional findings, the findings of recitals 80 to 133 of the provisional Regulation are hereby confirmed, subject to the correction of certain calculation errors.

## 2. Amount of countervailable subsidies

- (38) The amount of countervailable export subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers is as follows:

Type of subsidy	Export	Domestic	Domestic	Export	Total
	Double deductions	Pioneer status	Import duty exemption and sales tax exemption	Import duty exemption and sales tax exemption	
Hualon Corporation (M) Sdn. Bhd.	0	3,3 %	0	0,27 %	3,57 %
MPI Polyester Industries Sdn. Bhd.	0	0	0,91 %	0	0,91 %
All others					3,57 %

- (39) The weighted average countrywide subsidy margin for all exporting producers investigated, which represents above 90 % of exports of the product concerned to the Community originating in Malaysia is above the applicable *de minimis* margin for this country of 2 %.

## V. TAIWAN

- (40) One company claimed that the Commission made a calculation error for its benefit obtained under the scheme for import duty exemption for machinery. The benefit obtained under this scheme has been recalculated and it was found that a calculation error occurred. The error was rectified and the benefit under this programme is reduced from 1,92 % to 0,27 %.
- (41) The Commission hereafter undertook a thorough investigation of the whole dossier of Taiwan, including checking the calculations for all four exporting producers in order to investigate the impact of this revision for the determination of the countrywide subsidy margin.
- (42) It was established that, as a result of the decrease in the subsidy rate for the above company, the countrywide margin has decreased to 0,94 %, which is below the *de minimis* threshold for this country of 1 %. Therefore, the investigation concerning imports originating in Taiwan should be terminated.

## VI. THAILAND

## 1. General

- (43) At the provisional stage, it was found that although one zone in Thailand (zone 3) is a clearly designated geographical area which meets the definition of a disadvantaged region according to Article 4(3) of the basic Regulation, the benefits of the different subsidy schemes are sectorally specific since the access to the programmes is limited to certain industries. The Government of Thailand (GOT) claims that the schemes are available to a wide variety of industries and are consequently, generally available.
- (44) It was found that the GOT has established a limited list of activities which are eligible for investment promotion, which by definition limits the access to the subsidy since companies which manufacture products which are not promoted are not eligible for benefits under the Investment Promotion Act. Furthermore, this list should be considered as a positive list, which clearly defines the specific products, the producers of which are favoured over others. The fact that the benefits under the Investment Promotion Act are available to 200 different products is irrelevant since companies, which do not produce these products are excluded from any benefit. Therefore, the provisional findings as regards specificity are confirmed.
- (45) In recitals 193 and 196 of the provisional Regulation, it was found that projects which apply for Board of Investment (BOI) incentives need to meet a 20 % value added standard. It was provisionally found that this condition encourages enterprises to use domestic over imported goods and is consequently, specific under Article 3(4)(b) of the basic Regulation.
- (46) After disclosure, the GOT has submitted evidence that the value-added criterion does not mandate PET producers to use domestic inputs over imported inputs. The GOT provided evidence that shows that the value-added criterion can be met even if only imported raw materials are used for the production of the finished product. Therefore, for the product under investigation, this programme is not contingent upon the use of domestic over imported goods within the meaning of Article 3(4)(b) of the basic Regulation.

## 2. Corporate income tax exemption

- (47) The exporting producer claims that it opted to use its accumulated net losses from the previous years, instead of the corporate income tax exemption, to offset current taxable profit, and consequently no benefit was obtained during the period of investigation.
- (48) It was established that a company which benefits from income tax exemption and at the same time can offset its profits against losses carried forward under normal tax provisions has a choice to use either option. The Ministry of Taxation and the Thai Board of Investment confirmed this. In the present case, it was established that the exporting producer used the corporate income tax exemption since the amount of taxes payable was not offset against the accumulated net losses. In fact, the accumulated net losses increased during the last financial year (from 1 655 089 790 Baht to 1 704 894 309 Baht). If the exporting producer had opted to offset its profit against the accumulated net losses, it would not have completed the section on non-taxable income which is only for income benefiting from BOI exemption. Furthermore, the WTO Appellate Body has established, in the Canada civil aircraft case<sup>(1)</sup>, that in order to determine whether a financial contribution in the sense of Article 1(1)(a)(i) of the SCM Agreement confers a 'benefit', i.e., an advantage, it is necessary to determine whether the financial contribution places the recipient in a more advantageous position than would have been the case but for the financial contribution. As mentioned above, the exporting producer is in a more advantageous situation through the use of the corporate income tax exemption, because it was able to carry forward for future use a greater amount of accumulated losses than would otherwise have been the case. Therefore, the exporting producer used the income tax exemption and obtained a benefit and this claim cannot be accepted.

(<sup>1</sup>) Canada — Measures affecting the export of civilian aircraft, Report of the Appellate Body, Doc. WT/DS70/AB/R, 2 August 1999 (recitals 149 and sub.)



### 3. Import duty exemption on machinery

- (49) Since no comments were received regarding this scheme, the conclusions of recitals 202 to 208 of the provisional Regulation are hereby confirmed.

### 4. Amount of countervailable subsidies

- (50) On the basis of the comments received after the provisional findings, the amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producer is determined at the following rate:

	Income tax exemption	Import duty exemption on machinery	Total
Thai Shingkong, Industry Corporation Limited	8,13 %	0,35 %	8,4 %

- (51) Since the investigated exporting producer accounted for virtually all of the imports of the product concerned into the Community originating in Thailand, the weighted average countrywide subsidy margin is well above the applicable 2 % *de minimis* margin for subsidisation.

## E. DEFINITION OF THE COMMUNITY INDUSTRY

- (52) In the absence of any new information submitted with respect to the definition of the Community industry, the findings as set out in recitals 226 to 231 of the provisional Regulation are confirmed.

## F. INJURY

### 1. Preliminary remarks

- (53) Certain interested parties questioned why data submitted by the Community industry was only used for the period 1996 onwards whilst developments in the market prior to this period were based on independent market research information.
- (54) The Commission had considered that the data submitted by the Community industry for the year 1995 could not be used due to the split of Kodak and Eastman in 1995 and to the restructuring of the activities of Shell. Neither Shell nor Eastman was able to provide complete figures for this year.
- (55) However, the Commission had considered it essential to give an overview of the shortage crisis that occurred in the Community market in 1995 in view of the impact of this event on both the prices and profitability of the Community industry. As such the use of independent market research information was considered appropriate in establishing the necessary background data for the evaluation of the situation of the Community industry during the analysis period, as explained in recital 236.

### 2. Consumption

- (56) In the absence of any new information submitted to the contrary, the findings concerning the consumption of the product concerned in the Community as detailed in recitals 239 and 240 of the provisional Regulation are confirmed.

### 3. Imports from the countries concerned

Imports originating in Korea, Indonesia and Taiwan

- (57) The findings as described in recital 242 of the provisional Regulation concerning the *de minimis* subsidy margins for imports originating in Korea and Indonesia are confirmed. Both countries are thereby excluded from the injury assessment.
- (58) In the light of new findings described above, subsidy margins found for imports originating in Taiwan are now *de minimis*, therefore, those imports are not taken into consideration for the injury assessment.

Imports originating in India, Malaysia and Thailand

#### (a) Cumulation

- (59) The GOT claimed that imports originating in its country should not be assessed cumulatively with the other imports concerned because imports originating in Thailand had the smallest market share of the three countries considered and they did not undercut Community industry prices, thus showing that the Thai exporter did not exhibit the same behaviour as the exporters from the other countries. It was considered that these elements were not new, this claim was therefore rejected and it is confirmed that imports originating in Thailand should be assessed cumulatively with imports originating in India and Malaysia.
- (60) The governments of India and Malaysia claimed that only subsidised imports originating in their respective countries should be cumulated. As it was established that the countrywide weighted average subsidy margins for all investigated imports originating in India and Malaysia were above the applicable *de minimis* margins for subsidisation, all their exports to the Community have to be taken into account. This claim has thus been rejected and it is concluded that all imports originating in India, Malaysia and Thailand should be cumulated in order to assess the injury suffered by the Community industry.

#### (b) Volume of imports

- (61) As the following table indicates, the volume of imports originating in India, Malaysia and Thailand increased sharply between 1996 and the IP (an increase of nearly seven times) to reach a level of 123 563 tonnes.

Imports	1996	1997	1998	IP
Total: India, Malaysia, Thailand	17 831 t	44 708 t	118 113 t	123 563 t
Index (1996-100)	100	251	662	693

- (62) After dramatic growth between 1996 and 1998 when imports more than doubled each year, the growth in imports levelled off from 1998 to the IP. It should be noted however that imports continued to increase, albeit at a slower rate, despite the effort made by the Community industry to match the price competition of the subsidised imports and regain market share.

#### (c) Market shares

- (63) The market share of imports concerned developed as follows:

Market shares of imports	1996	1997	1998	PI
Total: India, Malaysia, Thailand	2,2 %	4,1 %	9,0 %	9,2 %
Index (1996-100)	100	190	417	424

- (64) The market share of imports originating in India, Malaysia and Thailand reached 9,2 % during the IP. This figure was more than four times the level achieved in 1996, the start of the analysis period. Between 1998 and the IP, the market share of these imports levelled off, as result of the slowdown in import volumes described above.

(d) *Prices of imports*

- (65) The prices of imports concerned originating in India, Malaysia and Thailand decreased by 34 % over the period 1996 to the IP. On an annual basis they fell by 16 % between 1996 and 1997, by 5 % between 1997 and 1998 and by 13 % between 1998 and the IP. On average, the cif duty unpaid price for the product concerned originating in these countries was 516 EUR/t during the IP. It was confirmed, during the investigation, that a large number of exporters were selling at a loss to the Community, indicating an aggressive pricing policy regarding the Community market.

(e) *Price undercutting*

- (66) The price undercutting by the subsidised imports, calculated as detailed in recital 254 of the provisional Regulation, is confirmed as follows:

Undercutting margins: ranges		
India	Malaysia	Thailand
1,2 - 7,9 %	11,8 - 12,9 %	0 %

- (67) In the absence of any representations and new information from interested parties to suggest the contrary, the findings concerning price undercutting as noted in recital 254 of the provisional Regulation are confirmed. In particular it is noted that the low average rates of undercutting were due to the price suppression brought about by the behaviour of the exporting producers in the countries concerned which sold the product concerned on the Community market at prices which were not only subsidised but also loss-making.

#### **4. Impact of the change in imports concerned for the assessment of injury and causation**

- (68) It is to be noted that the exclusion of the imports originating in Taiwan from the injury analysis does not change the trends established for the imports concerned in the provisional Regulation. It is thus concluded that the findings established in the provisional Regulation regarding the impact of the imports concerned on the situation of the Community industry and the causal link are not changed by the revised information shown above.

#### **5. Situation of the Community industry**

- (69) In accordance with Article 8(5) of the basic Regulation, the examination of the impact of the subsidised imports on the Community industry included an evaluation of all relevant factors and indices having a bearing on the state of the Community industry.

The examination included all factors specifically listed in Article 8(5) of the basic Regulation. However, certain factors are not dealt with in detail as they were found not to be relevant for the assessment of the situation of the Community industry in the course of the investigation (wages and stocks see below). As concerns the impact on the Community industry of the magnitude of the amount of countervailing subsidies, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

## Factors examined in the provisional Regulation

### — Investments:

- (70) It was found that some investments made by a cooperating Community producer had not been taken into account at the provisional stage. After the inclusion of these figures, the investment situation does not change the trend previously established.

Some interested parties argued that the extent of the investments made in 1998 by the Community industry indicated that it was in good financial health. Others remarked that if the level of investments was low during the IP, this was a consequence of the previous years in which the Community industry had registered losses and that this could not be attributed to the effect of the subsidised imports during the IP.

In this respect, the investigation has clearly shown that investment expenditure made in 1997, 1998 and in the IP was mostly a consequence of decisions taken in 1995 when prospects in the PET sector were good (although losses were incurred in 1996 this situation was considered to be temporary). In such an industry, it is more relevant to examine plans to invest than the timing of actual expenditure. As stated in recital 264 of the provisional Regulation, it is confirmed that, as a consequence of the further deterioration of its financial situation due to injurious subsidisation during the IP, the Community industry has not planned any significant expansion in capacity to meet increases in future demand.

### — Wages and stocks:

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

### — Growth:

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

## Other factors examined

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

### — Ability to raise capital:

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

### — Productivity:

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

— Return on investments (ROI):

	1996	1997	1998	IP
Return on capital employed <sup>(1)</sup>	- 6 %	- 7 %	1 %	- 8 %

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

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

— Cash flow:

<i>(EUR)</i>		
1996	Net cash in(out)flow from operating activities	- 79 002 884
1997	Net cash in(out)flow from operating activities	84 901 988
1998	Net cash in(out)flow from operating activities	132 915 718
IP	Net cash in(out)flow from operating activities	51 115 757

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

## 6. Further arguments raised

(a) *General arguments raised as to the Commission's conclusions*

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

(b) *Developments occurring after the IP*

- (74) Many interested parties and delegates from the Member States requested the Commission to analyse and take into account certain developments that occurred after the IP. In particular these parties underlined the rapid and substantial rise in Community industry PET prices in relation to the increase in the cost of raw materials. According to these parties, the Community industry's situation had improved dramatically since the IP and it was likely that the Community industry was no longer suffering material injury.
- (75) It should be recalled that Article 11(1) of the basic Regulation provides that information relating to a period after the IP should, normally, not be taken into account. On the basis of the case law of the Court, developments after the IP can only be taken into consideration if they make the imposition of countervailing measures manifestly unsuitable.
- (76) The Commission analysed developments in the PET market during the nine-month period following the IP, i.e. 1 October 1999 to 30 June 2000. It was found that the prices for PET sales made by the Community industry on the Community market showed a continued increase. The average selling price for the nine-month period was around 40 % higher than the average found for the IP. This increase was more rapid than the increase in costs (around 20 %) leading to an improvement of the Community industry's financial situation. Nonetheless, on average, during this nine-month period, the return on sales for the Community industry was still negative at - 2 % indicating that its financial performance remained unsatisfactory and far from the level that can ensure the viability of this industry.
- (77) This dramatic change in prices is, to a large degree, due to the increase in crude oil prices that has occurred since the middle of 1999 and which noticeably affected all polymer prices a few months later. It should also be noted that there has been a steady increase in sales and market share of the Community industry at the expense of subsidised imports. However, the decrease in the volume of subsidised imports may be a consequence of the opening of an anti-subsidy investigation. In the present case, the development in the dollar/euro exchange rate also rendered the imports concerned less attractive.
- (78) It is to be noted that exchange rates, as well as the crude oil price, are extremely volatile and changes may be temporary. Furthermore, should the on-going anti-subsidy investigation be terminated without imposing measures, subsidised imports could rapidly regain market share.
- (79) On the basis of the above, it was concluded that developments occurring after the IP do not show that the injury caused by subsidised imports has disappeared. As a result, the imposition of countervailing measures is not manifestly unsuitable.

## **7. Conclusion on injury**

- (80) Given that no other arguments were received regarding the injury suffered by the Community industry, the conclusion that the Community industry has suffered material injury within the meaning of Article 8 of the basic Regulation as set out in recitals 265 to 268 of the provisional Regulation, is hereby confirmed.

## **G. CAUSATION**

- (81) Several interested parties continued to argue that the Commission wrongly concluded that imports originating in the countries concerned were the cause of the injury suffered by the Community industry whereas, in their opinion, the situation of this industry and the level of prices on the Community market were due to a combination of other factors. In this context, they reiterated the points already raised at the provisional stage (including the price of raw materials, the situation of overcapacity, the competition between PET producers).
- (82) Given that no other arguments were received regarding the cause of the injury suffered by the Community industry, the conclusion that imports of PET from the countries concerned had caused injury to the Community industry as stated in recital 290 of the provisional Regulation is hereby confirmed.

## H. COMMUNITY INTEREST

## 1. Likely effect of the imposition of measures on downstream industries

## (a) Further investigation

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

The new cooperating companies are:

- three preform/bottle converters:
  - Lux PET GmbH & Co. (Luxembourg)
  - Puccetti SpA (Italy)
  - EBP SA (Spain)
- four producers of PET films and sheets using the product concerned:
  - RPC Cobelplast Montonate Srl (Italy)
  - Moplast SpA (Italy)
  - Alusuisse Thermoplastic (UK)
  - Klöckner Pentaplast BV (The Netherlands)
- four producers of soft drinks:
  - L'Abeille (France)
  - Pepsico Food Beverages Intl. Ltd (Italy)
  - Pepsico France (France)
  - Europe Embouteillage Snc (France)
- eight producers of mineral and spring water:
  - Aguas Minerales Pasqual SL (Spain)
  - Eycam Perrier SA (Spain)
  - Font Vella SA & Aguas de Lanjarón SA (Spain)
  - Italaquae SpA (Italy)
  - Neptune SA (France)
  - Roxane SA (France)
  - San Benedetto (Italy)
  - Società generale delle acque minerali arl (Italy)

In total, the data submitted by the companies that completed either the first or the second questionnaire covered 26 % of the Community PET consumption during the IP. The cost figures established by aggregating this information have been considered representative of the various user sub-sectors, as individual company information showed a large level of consistency among companies belonging to the same sub-sectors.

- (84) After the imposition of provisional measures, several submissions by users or their representative associations were received. These mostly comprised comments on the past developments in the PET market and discussions on the possible impact of measures on the user sectors. These submissions originated from:
- Schmalbach-Lubeca, the biggest converter in Europe (18 % of Community PET consumption);
  - the 'European Plastic Converters' association (EUPC);
  - UNESDA, an association representing soft drink producers;
  - the Nestlé group, reiterating that the figures given for the French market are representative of their overall European market. (The total European purchases of PET by the group represent some 9 % of the Community consumption of PET of which 3 % is for the French market only).

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

(b) *Description of the user sectors*

(85) After having analysed all the information provided, it was found that the user sector, previously considered as three groups (preform makers, water producers and integrated soft drink producers), is more accurately described as two groups:

- The converters, including manufacturers of preforms and bottles as well as producers of sheets. These users are performing a simple transformation activity; therefore the cost of PET is by far their main cost element. The manufacturers of bottles and preforms sell the vast majority of their production to bottlers of non-alcoholic drinks. The sheet producers, that represent only a small proportion of the converters sector, sell to many different types of industries that use sheets mainly to package their goods.
- The bottlers of non-alcoholic drinks, including water carbonated and non-carbonated soft drinks, milk, fruit juices etc. The division of this group of users between producers of water and soft drinks is not relevant since in many cases the same manufacturer bottles both water and soft drinks. It is more relevant to distinguish between the different drinks they manufacture since, in relative terms, the share of PET in their cost of production depends on the intrinsic cost of those drinks (sodas or fruit juices require more expensive inputs than water). In any case, PET remains a fairly important cost element and problems faced by bottlers regarding their supply of PET are similar whatever the product they bottle.

(86) It is to be noted that there is a very close operational link between the converters (with the exception of sheet manufacturers) and bottlers.

- Bottlers buy almost all the production of the converters.
- Every converter has a very limited number of clients (often only one).
- Converters operate on a contractual basis with their clients, and these contracts very often either include provisions that automatically take into account changes in the price of PET or are renegotiated on a regular basis.

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

(c) *Foreseeable impact of measures on the users*

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

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



(d) *Impact on converters*

- (88) It was estimated that the imposition of the countervailing measures proposed, taking into account their volumes of PET purchases originating in the countries concerned during the IP, would result in an increase of 0,75 % in the cost of production of converters making preforms and bottles. In the same terms, the impact of measures on the sheet producers would be around 0,4 %. Due to their contractual link with their customers, it is likely that converters will be able to pass most of this increase in cost on to their clients. The impact of countervailing measures on the profitability of these companies is therefore estimated to be very limited.

(e) *Impact on bottlers of non-alcoholic drinks*

- (89) It was estimated that the imposition of countervailing measures proposed, taking into account their volumes of PET purchases originating in the countries concerned during the IP, would result in an average increase of less than 0,2 % in the cost of production of bottlers of non-alcoholic drinks. It can thus be considered that the increase in costs would be negligible.

## 2. The retail price of drinks

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

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

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

## 4. Conclusions on Community interest

- (93) On the basis of the additional information obtained from users, it is concluded that the impact of the measures on users would be limited. Indeed, as converters are able to pass most of the increase in costs on to their clients, the consolidated impact of measures on the producers of drinks is estimated to be marginal on the overall profitability of this sector.
- (94) In addition, it is confirmed that the delocalisation of the production of preforms outside the Community is not likely, that retail prices of non alcoholic drinks are not usually much affected by fluctuations in PET prices and that the imposition of measures is clearly in the interest of the Community industry and of the upstream industries.
- (95) Given that no other arguments were received regarding Community interest, the conclusion of the provisional Regulation that there are no compelling reasons not to impose measures, as set out in recital 344 thereof, is hereby confirmed.

## I. NON-IMPOSITION OF DUTIES

- (96) In the light of the above findings that the countrywide weighted average subsidy margin for imports originating in Indonesia, Korea and Taiwan are *de minimis*, it is definitively decided not to impose countervailing measures as regards imports originating in these countries. Consequently, the proceeding in respect of imports from these countries should be terminated.

## J. DEFINITIVE COURSE OF ACTION

- (97) In view of the conclusions reached regarding subsidisation, injury, causation and Community interest, it is considered that definitive countervailing measures should be taken in order to prevent further injury being caused to the Community by subsidised imports originating in India, Malaysia and Thailand.
- (98) In the absence of any new information, the methodology used for establishing the injury elimination level as described in recitals 349 and 350 of the provisional Regulation is hereby confirmed.
- (99) In order to avoid that fluctuations in PET prices caused by fluctuations in crude oil prices should result in higher duties being collected, it is considered appropriate that duties in the form of a specific amount per tonne should be imposed. These amounts result from the application of the countervailing duty rate to the cif export prices used for the calculation of the injury elimination level during the IP.
- (100) This led to the following countervailing duty rates (EUR per tonne) for the cooperating exporting producers:
- |  |            |
|--|------------|
| (a) INDIA                                  |            |
| Reliance Industries Limited                | 41,3 EUR/t |
| Pearl Engineering Polymers Limited         | 31,3 EUR/t |
| Elque Polyesters Limited                   | 22,0 EUR/t |
| Futura Polymer Limited                     | 0          |
| (b) MALAYSIA                               |            |
| MPI Polyester Industries Sdn. Bhd.         | 0          |
| Hualon Corporation (M) Sdn. Bhd.           | 16,6 EUR/t |
| (c) THAILAND                               |            |
| Thai Shinkong Industry Corporation Limited | 49,1 EUR/t |
- (101) In order to avoid granting a bonus for non-cooperation, it was considered appropriate to establish the duty rate for the non-cooperating companies as the highest rate established for any cooperating exporting producers, i.e. 41,3 EUR/t for Indian producers, 16,6 EUR/t for Malaysian producers and 49,1 EUR/t for Thai producers.
- (102) The individual company specific countervailing duties specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during the investigation with respect to these companies. These duties (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this regulation with its name, included entities related to those specifically mentioned, cannot benefit from these duties and shall be subject to the duties applicable to 'all other companies'.
- (103) Any claim requesting the application of these individual company 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 <sup>(1)</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

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

### K. COLLECTION OF THE PROVISIONAL DUTY

- (104) In view of the amount of the countervailable subsidies found for the exporting producers and in light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional countervailing duty under Regulation (EC) No 1741/2000 be definitively collected to the extent of the amount of definitive duties imposed. In those cases, where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected. The amounts secured by way of provisional countervailing duties on imports of certain polyethylene terephthalate originating in Taiwan shall be released.

### L. UNDERTAKINGS

- (105) Subsequent to the imposition of provisional countervailing duties, two exporting producers in India offered a price undertaking in accordance with Article 13(1) of the basic Regulation.
- (106) The Commission considers that the undertakings offered by Reliance Industries Limited and Pearl Engineering Polymers Limited can be accepted <sup>(1)</sup> since they eliminate the injurious effect of subsidisation. Moreover, the regular and detailed reports which the companies undertook to provide to the Commission will allow an effective monitoring. Furthermore, the sales structure of these companies is such that the Commission considers that the risk of circumvention of the undertakings is minimised.
- (107) In order to ensure the effective respect and monitoring of the undertakings, when the request for release for free circulation pursuant to the undertakings is presented, exemption from the duty is conditional upon presentation to the customs service of the Member State concerned of a valid 'Undertaking Invoice' issued by the exporting producers from whom the undertakings are accepted and containing the information listed in the Annex. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of countervailing duty should be payable in order to ensure the effective application of the undertakings.
- (108) In the event of a breach or withdrawal of the undertakings a countervailing duty may be imposed, pursuant to Article 13(9) and (10) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive countervailing duty is hereby imposed on imports of polyethylene terephthalate with a coefficient of viscosity of 78ml/g or higher, according to DIN (Deutsche Industrienorm) 53728, falling within CN code 3907 60 20 and CN code ex 3907 60 80 (TARIC code 3907 60 80 10).
2. Except as provided for in paragraph 3, the rate of the definitive countervailing duty applicable to the net, free-at-Community-frontier price, before duty, for products originating in the following countries, shall be as follows:

Country	Definitive duty EUR per tonne	TARIC additional code
India	41,3	A999
Malaysia	16,6	A999
Thailand	49,1	A999

<sup>(1)</sup> See page 88 of this Official Journal.

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

Country	Company	Definitive duty (EUR per tonne)	TARIC additional code
India	Reliance Industries Limited	41,3	A181
India	Pearl Engineering Polymers Limited	31,3	A182
India	Elque Polyesters Limited	22,2	A183
India	Futura Polymer Limited	0	A184
Malaysia	MPI Polyester Industries Sdn. Bhd.	0	A185
Malaysia	Hualon Corporation (M) Sdn. Bhd.	16,6	A186
Thailand	Thai Shingkong Industry Corporation Limited	49,1	A190

4. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 <sup>(1)</sup>, 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.

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

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

#### Article 2

1. Imports shall be exempt from the 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 Community by the companies mentioned in paragraph 3, declared under the appropriate TARIC additional code and provided that the conditions set in paragraph 2 are met.

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

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

Company	Country	TARIC additional code
Reliance Industries Limited	India	A181
Pearl Engineering Polymers Limited	India	A182

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

*Article 3*

The amounts secured by way of provisional countervailing duties pursuant to Regulation (EC) No 1741/2000 on imports of certain polyethylene terephthalate originating in India, Malaysia and Thailand shall be collected at the rate of the duty definitively imposed. Amounts secured in excess of the definitive rate of countervailing duties shall be released.

*Article 4*

The anti-subsidy proceeding concerning imports of certain polyethylene terephthalate originating in Indonesia, the Republic of Korea and Taiwan is hereby terminated.

*Article 5*

The amounts secured by way of provisional countervailing duties pursuant to Regulation (EC) No 1741/2000 on imports of certain polyethylene terephthalate originating in Taiwan shall be released.

*Article 6*

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

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

Done at Brussels, 27 November 2000.

*For the Council*

*The President*

L. FABIUS

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## ANNEX

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

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

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

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

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

**A. PROVISIONAL MEASURES**

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

**B. SUBSEQUENT PROCEDURE**

- (4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose anti-dumping measures, several interested parties submitted comments in writing. In accordance with the provisions of Article 20(1) of Regulation (EC) No 384/96 (the 'basic Regulation'), all interested parties who requested a hearing were granted an opportunity to be heard by the Commission.
- (5) The Commission continued to seek and verify all information deemed necessary for the definitive findings.

- (6) An additional verification visit was carried out at the premises of the following company related to a Korean exporting producer which had replied to the questionnaire:

— SK Global Belgium NV (Antwerp).

- (7) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which they could make representations subsequent to this disclosure.
- (8) The oral and written arguments submitted by the parties were considered, and, where deemed appropriate, taken into account for the definitive findings.
- (9) Having reviewed the provisional findings on the basis of the information gathered since then, it is concluded that the main findings as set out in the provisional Regulation should be hereby confirmed.

**C. PRODUCT CONCERNED AND LIKE PRODUCT**

**1. Product concerned**

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

**2. Like product**

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

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

<sup>(2)</sup> OJ L 199, 5.8.2000, p. 48.

<sup>(3)</sup> OJ L 199, 5.8.2000, p. 6.

## D. DUMPING

## 1. Normal value

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

*Normal value based on domestic sales*

- (15) Two Taiwanese companies requested that the determination of the sales made in the ordinary course of trade should be made on a quarterly basis and not on a yearly basis. The reason advanced to support this claim was that during the IP there were significant variations in costs and prices of the product concerned, mainly due to changes in the price of raw materials.
- (16) Fluctuations in costs and prices during the IP are almost inevitable in any anti-dumping investigation. To take account of these for the purpose of establishing which sales were made in the ordinary course of trade the Commission has consistently applied the methodology of comparing individual domestic prices with the weighted average cost of production for the IP. It is considered that the particular situation of the two companies that made the request does not justify the deviation from the methodology used for all companies concerned by the present proceeding. It would furthermore be contrary to the consistent practice of the Commission to use different time frames for the 'ordinary course of trade test' (quarterly) and for the other steps of the dumping calculation (yearly).

- (17) It should finally be noted that the relevant information (e.g. quarterly cost of production figures) was submitted for the first time following the disclosure of the provisional findings. This despite the fact that it relates to facts that were well known to the companies before the on-the-spot verification or their reply to the questionnaire. Therefore, the Commission would not have been, at this late stage of the investigation in a position to verify the substantial amount of information necessary to modify the methodology for establishing the profitability of domestic sales.
- (18) One Korean company disputed the Commission's methodology for allocating the amount of SG&A as set out in recital 50 of the provisional Regulation.
- (19) The exporting producer, after disclosure of the provisional findings presented new figures, but despite a request by the Commission, did not provide any evidence or explanation of the allocation methodology used. Consequently the claim of the company was rejected.

*Constructed normal value*

- (20) One Indonesian exporting producer contested the profit margin used in order to construct normal value for one type of PET it had exported to the Community.
- (21) The Commission's approach of using the actual profit margin on sales of other types of PET made in the ordinary course of trade by this exporting producer on its domestic market is fully in line with Article 2(6) of the basic Regulation (see recital 21 of the provisional Regulation). Therefore the provisional findings are confirmed.
- (22) One of the Malaysian exporting producers challenged the turnover based methodology applied by the Commission for the reallocation of certain SG&A expenses used for the purpose of constructing normal value in the provisional Regulation.
- (23) The verification revealed that the allocation key applied by the company in its questionnaire response for certain expenses was inaccurate and inappropriate and had not been used historically. Consequently, and in the absence of a more appropriate allocation key, the relevant SG&A expenses were reallocated on the basis of turnover pursuant to Article 2(5) of the basic Regulation. The approach adopted on this matter in the provisional Regulation is thus confirmed.
- (24) Two Indonesian exporting producers argued that normal values for companies with no sales in the ordinary course of trade on the domestic market should be based, in accordance with Article 2(1) of the basic Regulation, on domestic sales prices of another company rather than on a constructed normal value.



- (25) In recital 19 of the provisional Regulation, it was already explained why domestic sales prices of another company could not be used. Neither of the two exporting producers concerned provided any evidence invalidating the Commission's reasoning to use constructed normal value. The Commission nevertheless re-examined all information submitted and the methodology used for provisional measures is consequently confirmed.
- (26) One Korean company argued that the Commission should not have used its own SG&A expenses when constructing normal value, as the domestic sales to which these expenses related were not made in the ordinary course of trade. The company argued that this was in contradiction with Article 2(6) of the basic Regulation.
- (27) It is the Commission's consistent practice, as pointed out also in recital 21 of the provisional Regulation, to consider the actual domestic SG&A expenses reliable if the total domestic sales volume of the company concerned is representative when compared to the volume of export sales to the Community. In fact, the determining factor to consider the SG&A expenses as being usable, is not whether those sales were made at a profit, but whether a sufficiently representative amount of sales were made on an arm's length basis. Therefore the provisional findings are confirmed.
- (28) One Taiwanese company requested that the cost of production for the month of September 1999 should not be taken into consideration due to the earthquake which occurred in Taiwan.
- (29) However, irrespective of the fact whether or not an adjustment as such can be granted for earthquakes or similar cases of force majeure, the company could not demonstrate whether and to what extent the earthquake affected the costs. Moreover, the Commission, on its own initiative analysed the alleged impact on the cost of production and it was found that the quantity produced in September 1999 exceeded the quantity produced in several other months of the IP while the increase in costs was not higher than in other months of the IP. Consequently neither the quantity produced in the month of September nor the costs could be qualified as exceptional. The company's claim had consequently to be rejected.

## 2. Export price

- (30) One Indonesian exporting producer claimed that the Commission deducted an excessive amount for SG&A expenses and profit for the function performed by the related importer in order to construct its export prices according to Article 2(9) of the basic Regulation.

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

## 3. Comparison

- (33) One Indonesian exporting producer complained that the Commission had ignored its allowances claimed on normal value.
- (34) For this company, the Commission constructed the normal value in accordance with Article 2(3) of the basic Regulation. The amounts for SG&A expenses and for profits were, in accordance with Article 2(6)(a), determined on the basis of the weighted average of the actual amounts determined for other exporting producers subject to investigation in respect of production and sales of the like product in Indonesia. Article 2(10) of the basic Regulation states that due allowance in the form of adjustments shall be made for differences in factors which affect prices and price comparability. Since the domestic sales prices of the company concerned were not used, the adjustments affecting price comparability were, in this case, those relating to other companies' SG&A expenses used for constructing the normal value. The approach taken for the provisional determination is therefore confirmed.

### *Physical characteristics*

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

*Import charges and indirect taxes*

- (37) One Indian exporting producer argued that a duty drawback claim should have been granted, since import duties have been refunded upon exportation, while no such refund was made for domestic sales, thus affecting price comparability. The exporter further claimed that the adjustment should have been granted regardless of whether duties were paid on importation of raw materials and regardless of whether those raw materials were physically incorporated in the like product sold on the domestic market.
- (38) According to Article 2(10)(b) of the basic Regulation an adjustment on the normal value can only be granted for import duties borne by the like product and by raw materials physically incorporated therein, when intended for consumption in the exporting country and refunded (or not collected) in respect of the product exported to the Community. It should be noted that in this case, the exporter based its claim for duty drawback merely on the amount of import duties refunded upon exportation of PET. According to the Duty Entitlement Passbook Scheme ('DEPB scheme') applicable to the company, a duty refund upon exportation was granted regardless of whether raw materials for the production of the like product were imported or not. Moreover, the actual amount of the relevant import charges paid on raw materials for the PET sold on the domestic market during the IP and refunded or not collected when exporting the product concerned to the Community was not provided by the company in its questionnaire response or during the on-the-spot verification visit. It follows that the company could not demonstrate that the import duties refunded were included in the domestic price. Consequently, it could not be established that price comparability was affected and the claim had to be rejected.
- (39) The same Indian exporting producer claimed finally that the provisional findings of the anti-dumping investigation were in contradiction with the provisional findings in the parallel anti-subsidy proceeding. It was argued that it would be incorrect to reject the company's claim for a duty drawback adjustment in the context of the anti-dumping investigation, when at the same time the DEPB scheme from which the company benefits had been considered as an export subsidy in the context of the anti-subsidy proceeding.
- (40) This argument cannot be accepted. Indeed, in the context of the parallel anti-subsidy investigation it was found that the scheme which gave right to a customs duty refund or a duty-free import, as the case may be, is a countervailable export subsidy, and not a bona fide duty drawback scheme for the purpose of Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community<sup>(1)</sup> (the 'basic Anti-subsidy Regulation'). Pursuant to Article 14(1) of the basic Regulation, this countervailing duty will be deducted from any anti-dumping duty. Thus, to make the requested adjustment here, on top of this deduction, would amount to a double adjustment which would negate the results of the anti-subsidy investigation.
- (41) Considering the above, the Commission's provisional findings are hereby confirmed, i.e. the company's claim for an adjustment for differences in import charges and indirect taxes was not warranted and had consequently to be rejected.
- (42) One Korean company contested the method of calculation of the duty drawback adjustment made by the Commission, which, according to the company, did not reflect the actual amount of duty drawback received during the IP.
- (43) During the investigation the company did not provide any evidence concerning the link between the amount of duty drawback actually received and the raw materials physically incorporated in the product. In the absence of any new evidence which can support the claim of the exporting producer, the approach followed in recital 58 of the provisional Regulation is confirmed.
- (44) Another Korean company objected to the Commission's decision to reject the duty drawback adjustments in its entirety (see recital 58 of the provisional Regulation).
- (45) In the light of the explanations provided by the company after the publication of the provisional Regulation, and considering the information collected during the investigation, the Commission could re-calculate the amount of the allowance for duty drawback in order to reflect the duty paid for raw materials imported during the IP. The allowance was consequently granted but only to the extent that it could be verified.
- (46) One Indian exporting producer contested the fact that the Commission did not take sales taxes into account when establishing domestic sales prices. It was argued that although the company was exempted from sales taxes during the IP, the invoice price charged to the customers was an all inclusive price and that sales taxes were actually collected from customers and subsequently paid to the government.

<sup>(1)</sup> OJ L 288, 21.10.1997, p. 1.

(47) The information presented by the producer after the imposition of the provisional measures contradicts the information collected and verified on-the-spot on which the provisional findings were based. Furthermore, no evidence was submitted to support the claim that the sales tax had in fact been collected from customers and was actually paid to the government. The investigation clearly revealed that the company concerned benefited from a sales tax exemption scheme which was applicable to purchases and sales of the product concerned during the IP. The sales prices on the commercial invoices were found to be 'sales-tax-free' and relevant internal pricing policy documents indicated that the sales tax was 'nil at present'. The legal basis of the sales tax exemption scheme was furthermore examined in detail and no indication could be found to support the company's new claims. The provisional findings are consequently confirmed.

#### *Level of trade*

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

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

#### *Credit costs*

(50) One Malaysian exporting producer claimed that no account had been taken of the credit costs on domestic sales transactions during the IP.

(51) In the absence of a substantiated claim for an adjustment for differences in credit costs within the time limits the claim could not be verified and should thus be rejected.

(52) The other Malaysian exporting producer claimed that the interest rate applied for the calculation of credit costs on the export side in the provisional Regulation was incorrect.

(53) The provisional findings pertaining to this issue have been reviewed and it has been concluded that the interest rate applied by the company in its questionnaire response was indeed more appropriate and the calculations have been revised accordingly.

#### *Discounts and rebates*

(54) One Indian exporting producer reiterated its claim that the normal value ought to be adjusted by the amount of a 'loyalty discount' granted to certain customers on the domestic market.

(55) It was found that the discount in question was payable after the IP if and when specific conditions had been fulfilled. As mentioned in recital 35 of the provisional Regulation, there was no evidence that the discount scheme had been consistently and historically used. In fact no disbursements had yet been made under the scheme. Therefore, pursuant with Article 2(10)(c) of the basic Regulation, that stipulates that an adjustment can only be granted when the claim is based on consistent practice in prior periods, including compliance with the conditions required to qualify for the discount, the claim had to be rejected.

#### *Handling cost*

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

#### *Others*

(57) One Indian exporting producer challenged the grounds on which its claim for an allowance for salesmen's salaries on both the domestic and export markets was rejected and provided new information in support of its claim.

(58) However, the information or evidence in question, although specifically requested in the questionnaire, was not made available until well after the on-the-spot verification had taken place. In the absence of a substantiated claim for an adjustment for salesmen's salaries within the time limits the claim could not be verified and should thus be rejected.

#### **4. Dumping margin for companies investigated**

(59) One Korean exporting producer claimed that the Commission departed from the rule contained in Article 2(11) of the basic Regulation by comparing the weighted average normal value with the individual export prices in order to calculate the dumping margin. This comparison was considered as discriminatory in contrast with the methodology used for the other Korean exporting producers. The company, which after the provisional disclosure provided modified figures for the weighted average prices per customer and regions, alleged that the variations of the prices could not be considered substantial. Furthermore, it claimed that such variations resulted from differences in the conditions of competition in the Community market and not from the intention of practising targeted dumping.

- (60) For the provisional determination the Commission considered that the method of calculation used for the other exporting producers (see recital 60 of the provisional Regulation) would not, in the particular case of this company, have reflected the full degree of dumping being practised. Moreover, a pattern of export prices was found which differed significantly between different purchasers and regions. Consequently the normal value established on a weighted average basis was compared to the prices of all individual export transactions to the Community.
- (61) The methodology used by the Commission to compare the weighted average normal value with individual export prices fully complies with the rule set out in Article 2(11) of the basic Regulation. The second subparagraph of Article 2(11) clearly states that a normal value established on a weighted average basis may be compared to prices of all individual export transactions to the Community if there is a pattern of export prices which differs significantly among different purchasers, regions or time periods, and if the comparison of the normal value and export prices on weighted average basis does not reflect the full degree of dumping. In the present case both of the above conditions are met. Even after the corrections on export prices provided by the exporting producer, it was still evident that the pattern of prices differed significantly among purchasers and regions and the full degree of dumping was not reflected by comparing normal value and export price on a weighted average basis.
- (62) It is therefore considered that there was no discrimination between Korean exporting producers but a mere application of the correct rule to each specific situation. The provisional findings are thus confirmed.
- (63) One Taiwanese company requested that the comparison of constructed normal value and export prices be made on a monthly basis alleging that during the IP there were significant variations in costs and prices due to the changes in prices for raw material.
- (64) Fluctuations in costs and prices during the IP are almost inevitable in an anti-dumping investigation. For the purpose of comparing normal value with the export price, the Commission has established a weighted average of both factors, thus taking into account the effect of the fluctuations, particularly in the case of this exporting producer where there is a clear parallel between the evolution of costs and prices. It is considered that the particular situation of the company that made the request does not justify the deviation from the methodology used for all companies concerned by the present proceeding. It would furthermore be contrary to the consistent practice of the Commission to use different time frames i.e. monthly for the comparison of normal value and export price and yearly for the other steps of the dumping calculation.
- (65) Furthermore it should be noted that the company did not make such claim in its reply to the questionnaire nor during the on-the-spot verification, although it is based upon facts that were well known to the company at that time. All relevant information should have been submitted within the time limits originally set. The information submitted several months after the expiry of these time limits could not reasonably be verified and the company's claim had consequently to be rejected.
- (66) One Taiwanese company for which it was established that its export sales to the Community were just outside the IP requested to be attributed the average dumping margin of the other cooperating companies instead of the residual dumping margin for Taiwan, which was set at the level of the highest dumping margin found for the cooperating companies.
- (67) The claim was accepted. Therefore, the dumping margin for the company Nan Ya Plastics Corp. is set at the level of the average dumping margin of the cooperating Taiwanese companies, i.e. 9,6 %.
- (68) Two Taiwanese cooperating companies pointed out clerical errors in the calculation of the provisional dumping margin. These errors have been corrected and the respective dumping margins have been modified accordingly.
- (69) Considering the above and in the absence of other comments by the interested parties it was decided to apply the methods set out in the provisional Regulation for cooperating and non cooperating companies.
- (70) The comparison showed the existence of a *de minimis* dumping margin for the exports of the product concerned to the Community made by one Korean company during the IP.
- (71) The definitive dumping margins, expressed as a percentage of the cif import price at the Community border, are:

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

#### E. COMMUNITY INDUSTRY

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

#### F. INJURY

##### 1. Preliminary remarks

- (73) Certain interested parties questioned the use of data submitted by the Community industry only for the period 1996 onwards whilst the developments in the market prior to this period were based on independent market research information.
- (74) The Commission had considered that the data submitted by the Community industry for the year 1995 could not be used due to the split of Kodak and Eastman in 1995 and to the restructuring of the activities of Shell. Neither Shell nor Eastman was able to provide complete figures for this year.

- (75) However, the Commission had considered it essential to give an overview of the shortage crisis that occurred in the Community market in 1995 in view of the impact of this event on both the prices and profitability of the Community industry. As such the use of independent market research information was considered appropriate in establishing the necessary background data for the evaluation of the situation of the Community industry during the analysis period, as explained in recital 97 of the provisional Regulation.

## 2. Consumption

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

## 3. Imports from the countries concerned

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

### *Cumulative assessment of the effects of the imports concerned*

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

## 4. Situation of the Community industry

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

### *Factors examined in the provisional Regulation*

#### — Investments:

- (81) It was found that some investments made by a cooperating Community producer had not been taken into account at the provisional stage. After the inclusion of these figures, the investment situation does not change the trend previously established.
- (82) Some interested parties argued that the extent of the investments made in 1998 by the Community industry indicated that it was in good financial health. Others remarked that if the level of investments was low during the IP, this was a consequence of the previous years in which the Community industry had registered losses and that this could not be attributed to the effect of the dumped imports during the IP.

- (83) In this respect, the investigation has clearly shown that investment expenditure made in 1997, 1998 and in the IP was mostly a consequence of decisions taken in 1995 and 1996 when prospects in the PET sector were good (although losses were incurred in 1996 this situation was considered to be temporary). In such an industry, it is more relevant to examine plans to invest than the timing of actual expenditure. As stated in recital 124 of the provisional Regulation, it is confirmed that, as a consequence of the further deterioration of its financial situation due to injurious dumping during the IP, the Community industry has not planned any significant expansion in capacity to meet increases in future demand.

— Wages and stocks:

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

— Growth:

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

*Other factors examined*

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

— Ability to raise capital:

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

— Productivity:

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

— Return on investments (ROI):

	1996	1997	1998	IP
Return on capital employed <sup>(1)</sup>	- 6 %	- 7 %	1 %	- 8 %

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

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

— Cash flow:

<i>(EUR)</i>		
1996	Net cash in(out)flow from operating activities	- 79 002 884
1997	Net cash in(out)flow from operating activities	84 901 988
1998	Net cash in(out)flow from operating activities	132 915 718
IP	Net cash in(out)flow from operating activities	51 115 757

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

## 5. Further arguments raised

### *General arguments raised as to the Commission's conclusions*

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

### *Developments occurring after the IP*

- (93) Many interested parties and delegates from the member states requested the Commission to analyse and take into account certain developments that occurred after the IP. In particular these parties underlined the rapid and substantial rise in Community industry PET prices in relation to the increase in the cost of raw materials. According to these parties, the Community industry's situation had improved dramatically since the IP and it was likely that the Community industry was no longer suffering material injury.



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

#### **6. Conclusion on injury**

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

#### **G. CAUSATION**

- (100) Several interested parties continued to argue that the Commission wrongly concluded that imports originating in the countries concerned were the cause of the injury suffered by the Community industry whereas, in their opinion, the situation of this industry and the level of prices on the Community market were due to a combination of other factors. In this context, they reiterated the points already raised at the provisional stage (including the price of raw materials, the situation of over capacity, the competition between PET producers).
- (101) Given that no other arguments were received regarding the cause of the injury suffered by the Community industry, the conclusion that imports of PET from the countries concerned had caused injury to the Community industry as stated in recital 148 of the provisional Regulation is hereby confirmed.

## H. COMMUNITY INTEREST

## 1. Likely effect of the imposition of measures on downstream industries

*Further investigation*

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

The new cooperating companies are:

— three preform/bottle converters:

Lux PET GmbH & Co. (Luxembourg)  
Puccetti SpA (Italy)  
EBP SA (Spain)

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

RPC Cobelplast Montonate Srl (Italy)  
Moplast SpA (Italy)  
Alusuisse Thermoplastic (UK)  
Klöckner Pentaplast BV (The Netherlands)

— four producers of soft drinks:

L'Abeille (France)  
Pepsico Food Beverages Intl. Ltd (Italy)  
Pepsico France (France)  
Europe Embouteillage Snc (France)

— eight producers of mineral and spring water:

Aguas Minerales Pasqual S.L. (Spain)  
Eycam Perrier SA (Spain)  
Font Vella SA & Aguas de Lanjarón SA (Spain)  
Italaquae SpA (Italy)  
Neptune SA (France)  
Roxane SA (France)  
San Benedetto (Italy)  
Società generale delle acque minerali arl (Italy).

- (103) In total, the data submitted by the companies that completed either the first or the second questionnaire covered 26 % of the Community PET consumption during the IP. The cost figures established by aggregating this information have been considered representative of the various user sub-sectors, as individual company information showed a large level of consistency among companies belonging to the same sub-sectors.
- (104) After the imposition of provisional measures, several submissions by users or their representative associations were received by the Commission. These mostly comprised comments on the past developments in the PET market and discussions on the possible impact of measures on the user sectors. These submissions originated from:
- Schmalbach-Lubeca, the biggest converter in Europe (18 % of community PET consumption);
  - the 'European plastic Converters' association (EUPC);
  - UNESDA, an association representing soft drink producers;
  - the Nestlé group, reiterating that the figures given for the French market are representative of their overall European market. (The total European purchases of PET by the group represent some 9 % of the Community consumption of PET of which 3 % is for the French market only).
- (105) These submissions, as well as those made by associations representing the water producers (that had made themselves known during the first stage of the investigation) have been taken into account, and in total all submissions represent at least half of the market.

*Description of the user sectors*

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

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

*Foreseeable impact of measures on the users*

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

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

*Impact on converters*

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

*Impact on bottlers of non-alcoholic drinks*

- (112) It was estimated that the imposition of both the anti-dumping and countervailing measures proposed, taking into account their volumes of PET purchases originating in the countries concerned during the IP, as well as the fact that most of the increase in the cost of preforms is going to be passed on them, would result in an average increase of less than 0,9 % in the cost of production of bottlers of non-alcoholic drinks (using PET prices of July 2000 this would be around 0,4 %).
- (113) This increase in costs of production is estimated to have a limited impact on large companies that sell branded drinks since those companies are very profitable. Small bottlers of non-branded-drinks, that represent only a small proportion of this sector, are operating with lower profit margins; such an increase in cost is not likely to severely endanger their activities but it may require some cost restructuring efforts. In this respect it is to be noted that in the past these companies have had to cope with large fluctuations in PET prices.

*Overall impact on the users*

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

**2. The retail price of drinks**

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

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

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

### 4. Conclusions on Community interest

- (118) On the basis of the additional information obtained from users, it is concluded that the impact of the measures on users would be limited. As converters are able to pass most of the increase in costs on to their clients, the consolidated impact of measures on the producers of drinks is estimated to be marginal on the overall profitability of this sector.
- (119) In addition, it is confirmed that the delocalisation of the production of preforms outside the Community is not likely, that retail prices of non-alcoholic drinks are not usually much affected by fluctuations in PET prices and that imposition of measures is clearly in the interest of the Community industry and of the upstream industries.
- (120) Given that no other arguments were received regarding Community interest, the conclusion that there are no compelling reasons not to impose measures, as set out in recital 202 is hereby confirmed.

## I. DEFINITIVE COURSE OF ACTION

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

### 1. Injury elimination level

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

### 2. Form and level of the duties

- (123) In the absence of any new information, the methodology used for establishing the anti-dumping duty rates in conjunction with the relevant countervailing duty rates established in the parallel anti-subsidy investigation, as described in recitals 209 to 213 of the provisional Regulation is hereby confirmed.
- (124) In order to avoid that fluctuations in PET prices caused by fluctuations in crude oil prices should result in higher duties being collected, it is considered appropriate that duties in the form of a specific amount per tonne should be imposed. These amounts result from the application of the anti-dumping duty rate to the cif export prices used for the calculation of the injury elimination level during the IP.

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

**India**

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

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

**Indonesia**

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

**Korea**

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

**Malaysia**

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

**Taiwan**

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

**Tailand**

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

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

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

### 3. Definitive collection of provisional duties

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

### 4. Undertakings

- (129) Subsequent to the imposition of provisional anti-dumping measures, exporting producers in India and Indonesia offered price undertakings in accordance with Article 8(1) of the basic Regulation.
- (130) The Commission considers that the undertakings offered by Reliance Industries Limited, Pearl Engineering Polymers Limited and P.T. Polypet Karyapersada can be accepted <sup>(1)</sup> since they eliminate the injurious effect of the dumping. Moreover, the regular and detailed reports which the companies undertook to provide to the Commission will allow effective monitoring. Furthermore, the sales structure of these companies is such that the Commission considers that the risk of circumvention of the undertakings is minimised.
- (131) A further company also made proposals for offering an undertaking. However, the company provided false and misleading information in respect of certain aspects of the investigation which affected the accuracy and reliability of its cooperation (cf. recital 13). Accordingly, the Commission was not satisfied that an undertaking from this company could be effectively monitored and the offer was therefore rejected.
- (132) In order to ensure the effective respect and monitoring of the undertakings, when the request for release for free circulation pursuant to the undertakings is presented, exemption from the duty is conditional upon presentation to the customs service of the Member State concerned a valid 'Undertaking Invoice' issued by the exporting producers from whom the undertakings are accepted and containing the information listed in the Annex. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty should be payable in order to ensure the effective application of the undertakings.
- (133) In the event of a breach or withdrawal of the undertakings an anti-dumping duty may be imposed, pursuant to Article 8(9) and (10) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

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

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

<sup>(1)</sup> See page 88 of this Official Journal.



Country	Definitive duty (euro/t)	TARIC additional code
India	181,7	A999
Indonesia	187,7	A999
Malaysia	160,1	A999
Republic of Korea	148,3	A999
Taiwan	69,5	A999
Thailand	83,2	A999

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

Country	Company	Definitive duty (euro/t)	TARIC additional code
India	Pearl Engineering Polymers Limited	130,8	A182
India	Reliance Industries Limited	181,7	A181
India	Elque Polyesters Limited	200,9	A183
India	Futura Polymer Limited	223,0	A184
Indonesia	P.T. Bakrie Kasei Corporation	187,7	A191
Indonesia	P.T. Indorama Synthetics Tbk	92,1	A192
Indonesia	P.T. Polypet Karyapersada	178,9	A193
Malaysia	Hualon Corporation (M) Sdn. Bhd.	36,0	A186
Malaysia	MpI Poyester Industries Sdn. Bhd.	160,1	A185
Republic of Korea	Daehan Synthetic Fiber Co., Limited	28,2	A194
Republic of Korea	Honam Petrochemical Corporation	101,4	A195
Republic of Korea	SK Chemicals Co., Limited	0	A196
Republic of Korea	Tongkong Corporation	148,3	A197
Taiwan	Far Eastern Textile Limited	50,2	A188
Taiwan	Tuntex Distinct Corporation	69,5	A198
Taiwan	Shingkong Synthetic Fibers Corporation	47,0	A189
Taiwan	Nan Ya Plastics Corporation	53,8	A187
Thailand	Thai Shingkong Industry Corporation Limited	83,2	A190

4. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code <sup>(1)</sup>, the amount of anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.
5. Notwithstanding paragraph 1, the definitive duty shall not apply to imports released for free circulation in accordance with the provisions of Article 2.
6. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### Article 2

1. Imports shall be exempt from the anti-dumping duties imposed by Article 1 provided that they are produced and directly exported (i.e. invoiced and shipped) to a company acting as an importer in the Community by the companies mentioned in paragraph 3, declared under the appropriate TARIC additional code and that the conditions set out in paragraph 2 are met.
2. When the request for release for free circulation is presented, exemption from the duties shall be conditional upon presentation to the customs service of the Member State concerned of a valid 'Undertaking Invoice' issued by the exporting companies mentioned in paragraph 3, containing the essential elements listed in the Annex. Exemption from the duty shall further be conditional on the goods declared and presented to customs corresponding precisely to the description on the 'Undertaking Invoice'.
3. Imports accompanied by an 'Undertaking Invoice' shall be declared under the following TARIC additional codes:

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

#### Article 3

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

#### Article 4

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

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

Done at Brussels, 27 November 2000.

*For the Council*  
*The President*  
L. FABIUS

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

## ANNEX

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

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

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

**COUNCIL REGULATION (EC) No 2605/2000  
of 27 November 2000**

**imposing definitive anti-dumping duties on imports of certain electronic weighing scales (REWS)  
originating in the People's Republic of China, the Republic of Korea and Taiwan**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

**A. PROCEDURE**

**1. Initiation**

- (1) On 16 September 1999, the Commission announced by a notice ('Notice of initiation') published in the Official Journal of the European Communities <sup>(2)</sup>, the initiation of an anti-dumping proceeding with regard to imports into the Community of certain electronic weighing scales ('REWS') originating in the People's Republic of China ('PRC'), the Republic of Korea ('Korea') and Taiwan.
- (2) The proceeding was initiated as a result of a complaint lodged on 30 July 1999 on behalf of the Community producers representing a major proportion of the Community REWS industry, as defined in Article 5(4) of Regulation (EC) No 384/96 ('basic Regulation'). The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

**2. Investigation**

- (3) The Commission officially advised the complainant Community producers, the exporting producers, the importers, the users (as well as representative associations) known to be concerned and the representatives of the exporting countries concerned of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limits set out in the Notice of initiation.
- (4) The Commission sent questionnaires to parties known to be concerned and to other parties that made themselves known within the deadlines set out in the Notice of initiation. Replies were received from two

Community producers, eight exporting producers in the countries concerned, as well as certain known related importers in the Community and the cooperating producer in the analogue country. Replies were also received from two users of the product concerned in the Community.

- (5) The Commission sought and verified all the information it deemed necessary for the purpose of a determination of dumping, injury and Community interest. Verification visits were carried out at the premises of the following companies:

(a) *Community producers*

Avery Berkel Ltd, Birmingham, United Kingdom

Bizerba GmbH., Balingen, Germany

Bizerba Belgium SA, Brussels, (a subsidiary of Bizerba GmbH)

(b) *Exporting producers*

KOREA

A & D Korea Co. Ltd, Seoul

CAS Corporation, Seoul

Descom Scales Mfg. Co. Ltd, Kyungki-Do

TAIWAN

Snowrex International Co. Ltd, Taipei

UWE-Universal Weight Enterprise Co. Ltd, Taipei

PEOPLE'S REPUBLIC OF CHINA

Mettler-Toledo Changzhou Scale Ltd, Changzhou

Shanghai Teraoka Electronic Co. Ltd, Shanghai

Shanghai Yamato Scale Co. Ltd, Shanghai

(c) *Analogue country*

INDONESIA

PT TEC Indonesia Co. Ltd, Batam

(d) *Related importers*

Ishida Europe AB, Gustavsberg, Sweden

Mettler-Toledo GmbH, Gießen, Germany

Mettler-Toledo (Albstadt) GmbH, Albstadt, Germany

Mettler-Toledo GmbH, Wien, Austria.

- (6) The investigation of dumping and injury covered the period from 1 September 1998 to 31 August 1999 ('investigation period' or 'IP'). The examination of trends relevant for the determination of injury covered the period from 1 January 1995 up to the end of the investigation period ('analysis period').

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

<sup>(2)</sup> OJ C 262, 16.9.1999, p. 8.

- (7) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of the existing measures. Representations were received from interested parties following these disclosures. The comments of these parties were considered and, where appropriate, the findings have been modified accordingly.

### 3. Previous proceedings involving the product concerned

- (8) In October 1993, by Regulation (EEC) No 2887/93 <sup>(1)</sup>, the Council imposed definitive anti-dumping measures on imports on REWS originating in Singapore and Korea. The measures applicable to Singapore are subject to an ongoing review which was opened in October 1998 <sup>(2)</sup> whereas the measures applicable to Korea lapsed in October 1998.
- (9) In April 1993, by Regulation (EEC) No 993/93 <sup>(3)</sup>, the Council imposed definitive anti-dumping measures on imports of REWS originating in Japan. These measures are also subject to an ongoing review which was opened in April 1998 <sup>(4)</sup>.

## B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

### 1. Product under consideration

- (10) The product under consideration is electronic weighing scales for use in the retail trade which incorporate a digital display of the weight, unit price and price to be paid (whether or not including a means of printing this data) falling within CN code ex 8423 81 50. REWS have different models or levels of performance and technology. In this respect, the industry defines three segments of REWS; low, mid and high. These vary from stand-alone REWS, without built-in printers, to more sophisticated models with pre-set key systems and the possibility of integration into computer-related control and management systems.
- (11) Although the potential use of REWS can vary because of additional functionality in the mid and high range segments, there is no significant difference in the basic physical and technical characteristics of the various models of REWS. In addition, the investigation has shown that between the three segments there are no clear dividing lines, models in neighbouring segments often being interchangeable. They have, therefore, to be

considered as one single product for the purposes of this investigation.

### 2. Like product

- (12) The investigation has shown that the various REWS produced in the PRC, Korea, Taiwan and Indonesia (which served as an analogue country for the PRC) and sold on these markets are, despite differences in size, life span, voltage or design, identical to or closely resemble the REWS exported from the PRC, Korea and Taiwan to the Community and accordingly have to be considered as like products.
- (13) Likewise, the REWS produced by the Community industry and sold on the Community market, are alike in all respects to the REWS produced and exported from the PRC, Korea and Taiwan to the Community.
- (14) Therefore these products are alike within the meaning of Article 1(4) of the basic Regulation.

## C. DUMPING

### 1. Market economy countries

#### General methodology

#### Normal value

- (15) As far as the determination of normal value is concerned, it was first established, for each exporting producer, whether its total domestic sales of REWS were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.
- (16) Subsequently those types of REWS sold domestically by the companies, that were identical or directly comparable to the types sold for export to the Community, were identified.
- (17) For each of the types sold by the exporting producers on their domestic markets and found to be directly comparable to types sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type were considered sufficiently representative when the total domestic sales volume of REWS of that type during the investigation period represented 5 % or more of the total sales volume of REWS of the comparable type exported to the Community.

<sup>(1)</sup> OJ L 263, 22.10.1993, p. 1.

<sup>(2)</sup> OJ C 324, 22.10.1998, p. 4.

<sup>(3)</sup> OJ L 104, 29.4.1993, p. 4.

<sup>(4)</sup> OJ C 128, 25.4.1998, p. 11.

(18) An examination was also made as to whether the domestic sales of each type could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the type in question. In cases where the sales volume of REWS sold at a net sales price equal to or above the calculated cost of production represented 80 % or more of the total sales volume, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales made during the investigation period, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of REWS represented less than 80 % but 10 % or more of the total domestic sales volume, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only. In cases where the volume of profitable sales of any type of REWS represented less than 10 % of the total sales volume, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(19) Wherever domestic prices of a particular type sold by an exporting producer could not be used, normal value was constructed. Consequently, in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses ('SG & A') and a reasonable margin of profit. To this end, it was examined whether the SG & A incurred and the profit realised by each of the producing exporters concerned on the domestic market constituted reliable data.

(20) Actual domestic SG & A expenses were considered reliable when the domestic sales volume of the company concerned could be regarded as representative. The domestic profit margin was determined on the basis of domestic sales made in the ordinary course of trade, i.e. when these sales to independent customers at prices equal to or above the cost of production represented at least 10 % of the total of domestic sales volume of the company concerned. Where this criterion was not met, a weighted average profit margin of the other companies in the country concerned with sufficient sales made in the ordinary course of trade was used.

#### *Export price*

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

(22) Where the export sale was made to a related importer, the export price was constructed pursuant to Article 2(9) of the basic Regulation, namely on the basis of the price at which the imported products were first resold to an independent buyer. In such cases, adjustments were made for all costs incurred between importation and resale and for profits accruing, in order to establish a reliable export price. On the basis of the information available, this profit was set at around 10 %. The information available was that obtained from unrelated importers in a recent investigation concerning the same product. This was also considered to be reasonable for the functions performed by the parties concerned.

#### *Comparison*

(23) The comparison was made on an ex-factory basis and at the same level of trade. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation.

#### *Dumping margin for the companies investigated*

(24) According to Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price for each producer. However, the normal value established on a weighted average basis was compared to prices of all individual export transactions to the Community where there was a pattern of export prices which differed significantly among different regions, purchasers or time periods, and if the weighted average to weighted average comparison would not reflect the full degree of dumping being practised.

#### *Dumping margin for non-cooperating companies*

(25) For non-cooperating companies, a 'residual' dumping margin was determined in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(26) For those countries with a high level of cooperation, it was decided to set the residual dumping margin at the level of the cooperating company with the highest dumping margin.

(27) For those countries where the level of cooperation was low, information from the cooperating company with the highest dumping margin was used. The residual dumping margin was determined on the basis of the

weighted average margin of the dumped types with the highest dumping margins exported in representative quantities. This approach was also considered necessary in order to avoid giving a bonus for non-cooperation and in view of the fact that there were no indications that a non-cooperating party had dumped at a lower level.

## 2. Korea

- (28) Three companies replied to the questionnaire for exporting producers. Two importers in the Community which were related to two exporting producers also replied to the questionnaire.

### Normal value

- (29) For one exporting producer, normal value was entirely based on domestic prices and for another exporting producer entirely on constructed normal value. For the third company, both constructed normal values and normal values based on domestic prices were used.
- (30) Where normal values were constructed, the manufacturing cost and the SG&A of each exporting producer in question could be used. For one producer, where sales of certain models were made at a loss, the average profit of the remaining profitable models on the domestic market was used. For the remaining producer, where all domestic sales were made at a loss, the average profit of the two other producers was used.

### Export price

- (31) In cases of sales for export to the Community of the product concerned by the producing exporters to independent importers in the Community the export price was established in accordance with Article 2(8) of the basic Regulation by reference to the prices actually paid or payable.
- (32) In cases of sales for export to the Community by the exporting producers through related importers in the Community the export price was reconstructed on the basis of the price at which the imported products were first resold to an independent buyer pursuant to Article 2(9) of the basic Regulation. Adjustments were then made for all costs incurred between importation and resale and for profits accruing, in order to establish a reliable export price.

### Comparison

- (33) The comparison was made on an ex-factory basis and at the same level of trade. For the purpose of ensuring a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect

prices and price comparability; all allowances for differences in transport, insurance, handling, loading and ancillary costs, credit, commissions, import charges and after sales costs (warranty/guarantee etc.) have been granted when applicable and justified. This included, in the case of two companies, adjustments for costs incurred by a related party in Japan.

- (34) The same adjustments made to the normal value based on domestic sales were also made on the normal value calculated in accordance with Article 2(3) of the basic Regulation.

### Dumping margin

- (35) As provided by Article 2(11) of the basic Regulation, the weighted average normal values of each type of the product concerned exported to the Community were compared to the weighted average export price of each corresponding type of the product concerned. However, for two exporting producers, this method did not reflect the full degree of dumping being practised and there was a pattern of export prices which differed significantly among different purchasers and regions. Therefore the normal value established on a weighted average basis was compared to prices of all individual transactions to the Community.
- (36) The comparison showed the existence of dumping in respect of two cooperating producers. The dumping margin expressed as a percentage of the cif import price at the Community border is:

CAS Corporation, Seoul	0 %
A & D Korea Co. Ltd, Seoul	4,7 %
Descom Scales Mfg. Co. Ltd, Kyungki-Do	4,9 %

Since the level of cooperation was high the residual dumping margin was set at the same level as for the cooperating company i.e. 4,9 %.

## 3. Taiwan

- (37) Two companies replied to the questionnaire for exporting producers.

### Normal value

- (38) For one producer all domestic sales of REWS (all of the low-range segment) had been made at a loss. For the other producer, the comparable exported REWS (all of the low-range segment) had not been sold on the domestic market.

- (39) Therefore, for all product models sold for export to the Community, normal value was constructed in accordance with Article 2(3) of the basic Regulation. For each exporting producer its manufacturing costs of the exported models and its own domestic SG&A expenses were used. The profit margin used for both exporting producers was the one established for the profitable company on domestic sales of REWS models which were made in the ordinary course of trade but which were not comparable to the models exported.

#### *Export prices*

- (40) All sales for export to the Community of the product concerned by the two exporting producers were to independent importers in the Community. Consequently, the export price was established pursuant to Article 2(8) of the basic Regulation by reference to the prices actually paid or payable.

#### *Comparison*

- (41) The comparison was made on an ex-factory basis and at the same level of trade. For the purpose of ensuring a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability; all allowances for differences in transport, import charges, credit and commissions, handling, loading and ancillary costs have been granted where applicable and justified, in accordance with Article 2(10) of the basic Regulation.
- (42) The same adjustments were also made to the normal values calculated in accordance with Article 2(3) of the basic Regulation, where applicable and justified.

#### *Dumping margin*

- (43) As provided by Article 2(11) of the basic Regulation, the weighted average normal values of each type of the product concerned exported to the Community were compared to the weighted average export price of each corresponding type of the product concerned. However, for one exporting producer, this method did not reflect the full degree of dumping being practised and there was a pattern of export prices which differed significantly among different purchasers and regions. Therefore, the normal value established on a weighted average basis was compared to prices of all individual transactions to the Community.
- (44) The comparison showed the existence of dumping in respect of two cooperating producers. The dumping margin expressed as a percentage of the cif import price at the Community border is:

Universal Weight Enterprise (UWE)	5,5 %
Snowrex International	5,9 %

Since the level of cooperation was low, the residual dumping margin was set at the level of the model with the highest individual dumping margin sold in representative quantities.

#### **4. The People's Republic of China**

##### *Analysis of market economy status*

- (45) Three Chinese companies requested market economy status ('MES'), pursuant to Article 2(7) of the basic Regulation. The claim made by one company had to be rejected on the grounds that the information submitted reached the Commission considerably outside the deadlines and was furthermore incomplete in the essential parts of the response with regard to the information requested. The Commission sought all information deemed necessary and verified all information submitted in the MES applications, on-the-spot, at the premises of the remaining two companies.
- (46) The Commission found that both companies were selling at more or less uniform, loss making prices in the PRC for several years. Furthermore, both companies were not fully free to decide whether and to what extent they should sell their production on the domestic market. It has been the Commission's practice to reject MES claims when domestic sales are restricted and where there is no price variations between customers as such similar pricing may result from centrally imposed price controls. Moreover, the evidence indicated that these prices were at loss-making levels for several years which also indicates that the producers did not operate under market economy conditions.
- (47) Consequently, the conditions set out in Article 2(7)(c) of the basic Regulation were not met by the other two companies investigated. After consultation of the Advisory Committee, the companies concerned were therefore informed that their MES applications had to be rejected.

##### *Choice of analogue country*

- (48) In the absence of any companies fulfilling the requirements of MES, it was necessary to compare the export prices of the Chinese exporting producers with a normal value established for an appropriate market economy country, pursuant to Article 2(7) of the basic Regulation.



(49) Indonesia was suggested by the complainant and proposed by the Commission in the Notice of initiation. No objections were raised by any interested party with regard to this choice. One Indonesian producer did subsequently cooperate and submitted a reply to the questionnaire. This response was found to be acceptable. Consequently, it was considered feasible to use Indonesia as an analogue country in this investigation.

(50) It was decided that Indonesia was the most appropriate market economy third country for the purpose of establishing normal value, in view of the significant volume of domestic and export sales made by the Indonesian producer as compared to imports into the Community from the PRC and the level of competition on the Indonesian and export markets which allowed for reasonable, but not excessive profits. In addition, sales in Korea and Taiwan were not considered as an appropriate basis for establishing normal value, as the REWS sold in these markets were at the lower end of the low range segment and, were not therefore, comparable to the exported models originating in the PRC.

#### *Individual treatment*

(51) Each of the cooperating Chinese exporting producers requested individual treatment. They replied to comprehensive questions included in the MES claim form which was sent to the parties concerned upon initiation of the proceeding. It was examined these claims focusing mainly on those areas having a direct impact on the companies' export activities. It was found that with regard to the export activities the level of State interference was not such as to allow for any substantial influence nor to permit circumvention of measures if exporters were given individual rates of duty.

(52) For all three companies, an examination of the information provided appeared to indicate that the companies fulfilled the conditions for obtaining individual treatment.

Consequently, it has been decided to grant individual treatment to the three companies.

#### *Normal value*

(53) Normal value for the Chinese exporting producers — which exported only low-range segment types to the EU — was calculated, in accordance to Articles 2(2) and 2(3) of the basic Regulation, on the basis of the normal values established for the cooperating Indonesian company by using the most competitive low-range segment model sold both on the Indonesian and on the export markets in significant quantities, and which was found to be comparable to the Chinese types exported to the Community.

#### *Export prices*

(54) In cases of sales for export to the Community of the product concerned by the producing exporters to independent importers in the Community the export price was established according to Article 2(8) of the basic Regulation by reference to the prices actually paid of payable.

(55) In cases of sales for export to the Community by the exporting producers through related importers in the Community the export price was reconstructed on the basis of the price at which the imported products were first resold to an independent buyer pursuant to Article 2(9) of the basic Regulation.

#### *Comparison*

(56) The comparison was made on an ex-factory basis and at the same level of trade. For the purpose of ensuring a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability; all allowances for differences in transport, insurance, handling, loading and ancillary costs, credit, commissions, import charges and after sales costs (warranty/guarantee, etc.) have been granted when applicable and justified.

#### *Dumping margin*

(57) As provided by Article 2(11) of the basic Regulation, the weighted average normal values of the low-range segment type of the product concerned exported to the Community were compared to the weighted average export price of the corresponding type of the product concerned. However, for one exporting producer the normal value established on a weighted average basis was compared to prices of all individual transactions to the Community, as there was a pattern of export prices which differed significantly among different purchasers, regions or time periods and as the weighted average method did not reflect the full degree of dumping being practised.

(58) The comparison showed the existence of dumping in respect of the three cooperating producers accepted for individual treatment. The dumping margin expressed as a percentage of the cif import price at the Community border is:

Shanghai Teraoka Electronic Co. Ltd, Shanghai	12,8 %
Shanghai Yamato Scale Co. Ltd, Shanghai	9,0 %
Mettler-Toledo Changzhou Scale Ltd, Changzhou	12,2 %

Since the level of cooperation was low, the residual dumping margin was set at the level of the model with the highest individual dumping sold in representative quantities as for the cooperating companies, i.e. 30,7 %.

## D. INJURY

## 1. Structure of the Community industry

- (59) The structure of the Community industry has changed substantially over the analysis period. Since October 1993 (i.e. when definitive anti-dumping measures were imposed on imports of REWS originating in Singapore and Korea) a restructuring and consolidation programme has meant that of the nine companies which cooperated in that investigation only four remained active in the investigation period for the current investigation. It has become evident during the investigation that other Community producers have restructured and consolidated along similar lines.
- (60) Although four Community producers supported the complaint (representing over 50 % of Community production) only two of these companies cooperated with the investigation by responding to questionnaires. These two companies represented 39 % of total Community production in the investigation period.
- (61) It should be noted that for the purposes of the calculation of total Community REWS production, in accordance with Article 4(1)(a) and (2) of the basic Regulation, any company operating in the Community related to exporting producers in the countries concerned was excluded from the definition of total Community production. In the case of Mettler-Toledo, it was clear that the producer in the Community directly controlled its subsidiary in the PRC.
- (62) It was claimed by one of the other operators in the Community (which has been excluded from the definition of a Community producer because it is also one of the exporting producers in the PRC) that the level of cooperation mentioned above (39 %) was not sufficient to justify the continuation of the investigation. This claim was rejected because the two cooperating Community producers represented substantially more than 25 % of the total production in the Community and, thus, qualify as a major proportion of the Community production pursuant to Article 4(1) of the basic Regulation. These two producers, therefore, constitute the Community industry.

## 2. Apparent Community consumption

*General*

- (63) Consumption in the Community has been calculated using verified sales data provided by the Community industry and, figures provided in the complaint (for other operators in the Community), and import volumes obtained via Eurostat.

REWS in units	1995	1996	1997	1998	IP
Consumption in the Community	161 682	172 314	177 391	201 123	218 655
Index — 1995 = 100	100	107	110	124	135
Low range REWS	59 952	77 100	74 614	79 502	79 754
Index — 1995 = 100	100	129	124	133	133

Over the analysis period consumption of all REWS increased by 35 % and consumption of low range REWS increased by 33 %. The increase in consumption in the low range segment is shown separately because it is in this segment that 97 % of the imports from the countries concerned in the investigation period were concentrated. The increase in consumption in 1996 was caused by a large increase in imports from the countries concerned. The volume of imports then fell in 1997.

*The euro-effect*

- (64) The increase in consumption from 1997 to the investigation period was mainly due to a one-off increase in demand from retailers arising from the introduction of the euro. Indeed, in anticipation of the introduction of the euro retailers needed to be able to show prices to customers in euros as well as in national currencies and were, thus, bringing forward their replacement of old REWS. This created an increase in demand within the Community market and the volume of sales increased in all segments. This improved situation will be of short-term duration and consumption is forecast to fall, because many retailers who would have replaced their REWS in the period from 2001 to 2004, will already have done so from 1997 to 2000. Therefore, the overall impact of the euro-effect will not be to increase consumption but simply to bring forward some sales from one period (2001 to 2004) to another (1997 to 2000).
- (65) Although the final date for the implementation of retail metrification in the UK will also have increased consumption, this impact was not as important in increasing sales and affected that Member State only.
- (66) The table below shows the actual development/expected development in consumption from 1995 to 2005. The table also shows that the euro-effect provides a temporary boost to sales over the period 1997 to 2000 and that from 2000 to 2002 consumption is forecast to be lower. From 2004 onwards consumption is forecast to return to its normal level (i.e. that of 1995/96).

*(Consumption in '000 units)*

1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
162	172	178	201	219	177	144	126	144	172	172

- (67) The existence and/or importance of the euro-effect was contested by some of the exporting producers. However, no alternative explanation for the increase in consumption was provided. Their claim was, therefore, rejected.
- (68) It was pointed out by an exporting producer that consumption had increased since the previous investigations into the product concerned, mentioned at recitals 8 and 9. Indeed, it was found that consumption of the product concerned had increased and continued to do so throughout the analysis period. However, as explained above, this increase can in large part be attributed to the euro-effect.

**3. Imports into the Community from the countries concerned***Cumulative assessment of the effects of the imports concerned*

- (69) It was first examined whether imports from the countries concerned should be assessed cumulatively, taking into account the findings on dumping as established above. It was found that:
- the dumping margins established were more than *de minimis* for all countries concerned;
  - the volume of imports from each country and corresponding market shares were not negligible when compared to Community consumption;
  - the product concerned imported from the countries concerned was largely interchangeable;
  - the prices of the imports followed largely the same trend;
  - an analysis of the conditions of competition between imported REWS and the like products indicates that all REWS are sold with a similar pricing policy to the same level of customers.

Certain exporting producers alleged that their imports should not be cumulated with those from other countries, because the level of price and trends in volume of their sales were not the same. It was concluded, however, that all of the conditions justifying the cumulation of the imports from the countries concerned were met for the reasons given above. These arguments were therefore rejected.

*Volume of the imports concerned*

- (70) Based on information from Eurostat, the volume of REWS imported from the countries concerned into the Community during the analysis period increased from 14 533 units in 1995 to 33 063 units in the investigation period (i.e. by 123 %). The investigation showed that more than 97 % of REWS imported from the countries concerned during the investigation period were in the low range segment as explained in recital 73.

*Market share of imports*

- (71) The market share of the exporting producers increased from 9,2 % to 15,0 % over the analysis period. This contrasts with the loss in the Community industry market share over this period of - 4,6 % for all REWS (i.e. from 26,1 % to 24,9 %) and - 22 % for REWS in the low range segment (i.e. from 21,8 % to 17,1 %).

*Price undercutting*

- (72) A comparison of sales prices on the Community market during the investigation period was made between prices of the Community industry and those of the cooperating exporting producers. In accordance with previous investigations of this product, the comparisons were made on the basis of sales on the Community market of comparable models at the same level of trade (prices to independent dealers/importers). Also in accordance with previous investigations, prices were compared by Member State of sale on a weighted average basis per exporting producer. All prices were net of rebates. Prices of the Community industry were adjusted to ex-works prices. Prices of the dumped imports were cif Community frontier and included import duties where applicable.
- (73) The vast majority of models sold in the Community by the cooperating exporting producers were for low range models (over 97 % by volume). The calculations made have not, therefore, included the smaller quantities of mid and high range models as they were considered unrepresentative.
- (74) Within the low range sector three types of models were sold by the Community industry:
- I. standard counter scales or 'mono' scales (hereinafter referred to as 'mono');
  - II. counter scales with a tower or customer display (hereinafter referred to as 'tower'); and
  - III. other types of low range scales such as hanging scales.

The comparisons were made taking into account 'mono' and 'tower' scales. Other low range scales (category III above) were not taken into account because they were sold in marginal volumes by both the Community industry and the exporting producers and were, therefore, considered unrepresentative.

*Results of the price comparisons*

- (75) The results of the price comparisons showed margins of undercutting ranging from 0 % to 52 % for PRC, 60 % to 65 % for Taiwan and 30 % to 50 % for Korea.

**4. Situation of the Community industry***Preliminary remarks*

- (76) As the Community industry data relates to only two Community producers, some information shown below has been indexed for reasons of confidentiality.

- (77) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry. However, certain factors are not dealt with in detail below because they were found to be not relevant for the situation of the Community industry in the course of this investigation. It should finally be noted that none of these factors necessarily gives decisive guidance.

*Production, utilisation of capacity and inventories*

- (78) Production of all REWS over the analysis period increased by 22 %. In contrast, however, the production of low range REWS increased by only 5 % over the analysis period. The capacity utilisation rate of the Community industry increased from 55 % to 65 % during the analysis period.

Community industry production and capacity Index — 1995 = 100	1995	1996	1997	1998	IP
Volume all REWS produced	100	102	105	107	122
Volume low range REWS produced	100	123	114	100	105
Capacity (all REWS)	100	100	100	100	105
Capacity utilisation rate (all REWS)	55 %	56 %	58 %	60 %	65 %

It was considered that the level of inventories could not be considered to have any significant effect on the situation of the Community industry because the Community industry used a production to order system whereby stocks were almost non-existent.

*Sales volume*

- (79) Sales of total REWS units made by the Community industry on the Community market during the analysis period increased in volume by 29 %. In contrast, sales of low range REWS increased in volume by only 10 %.

*Sales turnover*

- (80) The evolution of sales turnover is shown in indexed form in the table below. The sales turnover of total REWS of the Community industry on the Community market increased by 27 % during the analysis period. In contrast, sales turnover of low range REWS fell by 11 % during the analysis period.

Sales turnover Index — 1995 = 100	1995	1996	1997	1998	IP
All REWS	100	96	97	111	127
Low range	100	95	94	90	89

#### *Market share and growth*

- (81) The Community industry's share of the Community market fell for all REWS from 26,1 % in 1995 to 24,9 % in the investigation period; i.e. a fall of 4,6 %. In contrast the Community industry's share of the low range market fell from 21,8 % in 1995 to 17,1 % in the investigation period; i.e. a fall of 22 %.
- (82) Therefore, the Community industry could not benefit fully from the growth of the market.

Market share of the Community industry	1995	1996	1997	1998	IP
All REWS	26,1 %	25,1 %	26,0 %	23,6 %	24,9 %
Index	100	96	100	91	96
Low range REWS	21,8 %	17,9 %	19,8 %	16,1 %	17,1 %
Index	100	82	91	74	78

#### *Sales prices*

- (83) The average sales prices of all ranges of REWS to unrelated customers decreased in value over the analysis period:

high range (– 11 %);

mid range (– 18 %); and

low range (– 17 %).

It was pointed out by an exporting producer that average sales prices of all REWS increased over the analysis period which, it was alleged, indicated that the Community industry had not suffered injury. However, this apparent increase was entirely due to changes in the product mix (i.e. substantial changes in the volume of sales of the product ranges from 1995 to the investigation period) and this claim was, therefore, rejected. This is clearly shown from the above price trends for each range segment.

#### *Profitability*

- (84) The return on turnover of REWS as a whole rose from low positive levels in 1995 to around 10 % in the investigation period. In contrast the low range segment suffered a fall from low positive profitability in 1995 to substantial losses in the investigation period (around 20 %).

- (85) The trend for REWS as a whole can be explained by an increased sales volume and turnover resulting from the 'euro effect' as explained at recital 64. It should be noted that the Community industry could not achieve an acceptable profit level in the years prior to the existence of the 'euro-effect' and profitability was only at levels sufficient to maintain the Community industry's viability in the investigation period because the 'euro-effect' had increased sales volume.
- (86) An evaluation of the impact of the 'euro-effect' on profitability was carried out, in order to show how profitability is expected to deteriorate as the euro-effect recedes. It is forecast that Community industry turnover will fall by at least 27 % (i.e. the same amount that turnover rose under the euro-effect as shown at recital 80).
- (87) Further evidence of the impact of the euro-effect is apparent from the profitability rate of the Community industry in 1996 (i.e. before the euro-effect had an impact). At this time the profitability rate was below 3 %.
- (88) It is important to point out that the Community industry was not able to fully benefit from the euro-effect because the return on sales of low range REWS was well below the break even point during the investigation period. This is significant because it is the segment in which the imports from the countries concerned are concentrated. The losses in this segment have reduced the overall profitability of the Community industry and prevented it from fully benefiting from the euro-effect and the anti-dumping measures against imports originating in Japan and Singapore. In addition, it is considered that the price depressive effects of the dumped imports have also been felt within the mid and high range segments because prices in one range inevitably have a knock-on effect on the other segments.
- (89) In conclusion, the overall profitability of the Community industry was not at the level it could reasonably have expected during the investigation period, due to the price depressive effects of the dumped imports.

*Other performance related factors*

- (90) No detailed analysis was carried out on cash flow, ability to raise capital (or investments) and return on investments because such an analysis would relate to the situation of the company as a whole. The companies other business lines represent more than 50 % of total company turnover and, therefore, an overall analysis would not necessarily be representative for the product under consideration.

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

*Productivity, employment and wages*

- (91) The table below shows that during the analysis period employment in the Community industry decreased by 11 %.

Productivity per employee Index — 1995 = 100	1995	1996	1997	1998	IP
Number of units produced	100	102	105	107	122
Number of employees	100	91	82	90	89
Productivity per employee	100	107	123	123	140

- (92) Productivity per employee increased by 40 % over the analysis period.
- (93) No detailed analysis was carried out on wages given the importance of other business lines in the overall companies' activities. Such an analysis would relate to the situation of the company as a whole and not necessarily be representative for the product under consideration.

#### **5. Conclusion on injury**

- (94) The above findings show that in the investigation period, taking into account the developments over the period considered, the Community industry suffered a reduction in average prices (in all three ranges) and a loss in market share. The findings concerning the low range REWS (in terms of sales volumes, average prices, production, market share and profitability) show a substantially worse situation to that of REWS as a whole. In particular, the poor economic situation of the low range segment has prevented the Community industry from achieving the overall profitability level that it could have expected under the circumstances of the euro-effect and the anti-dumping measures in place, particularly bearing in mind the restructuring efforts which it has implemented.
- (95) It was, therefore, considered that the Community industry has suffered material injury in the investigation period.
- (96) It should be noted that the low range segment is important to the Community industry as it needs to offer all three range segments to its customers and any price pressure in the low range segment inevitably depresses prices in the other segments which are largely sold to the same customers.
- (97) The euro-effect is temporary in nature, whereas there is no indication that competition from dumped imports will cease. It is, therefore, only a matter of time before the overall situation of the Community industry deteriorates further. This is likely because a fall in demand is expected to reduce production, sales, market share and prices. It also should be recalled that average prices in the euro currency zone were much higher than outside this area, giving an additional indication for future developments.

### **E. CAUSATION**

#### **1. Introduction**

- (98) The effect of the dumped imports on the Community industry was examined.
- (99) Furthermore, an assessment of the impact of all other known factors on the Community industry was made. Such analysis ensures that any injury caused by factors other than the dumped imports concerned is not wrongly attributed to those dumped imports.

#### **2. Effect of the dumped imports**

##### *Effect on the volume of sales and market share*

- (100) During the period considered consumption on the Community market increased by 35 %. However, Community industry sales only increased by 29 % and the imports from the countries concerned increased by 123 %.
- (101) As explained at recital 81, the Community industry's market share fell by 4.6 % over the period considered. In contrast, the market share of imports from the countries concerned increased from 9,2 % to 15,1 % over the same period.
- (102) As explained at recital 82, the Community industry's sales prices decreased over the period considered. Over the same period, these prices were significantly undercut by imports originating in the countries concerned as shown by recital 75. All this had adverse consequences for the profitability of the Community industry.



- (103) The above analysis shows that there is a clear coincidence in time between the decline of the Community industry in terms of key financial and economic indicators and the rise in dumped imports from the countries concerned.

*Impact of the dumped imports on the low range segment*

- (104) The negative impact of the dumped imports on the overall situation of the Community industry can be traced back by making a refined causal link analysis based on the various market segments of REWS.
- (105) It should be recalled that during the investigation period, 97 % of the imports from the cooperating exporting producers, amounting to almost 15 000 units, were in the low range segment. Total imports from the countries concerned amounted to 33 063 units in the investigation period. It was, therefore, assumed that 97 % of total imports were in the low range. This assumption was based on the facts available, there being no reason to believe that the pattern of the rest of the imports would be any different from those of the cooperating exporting producers. Therefore, whereas the sales of the Community industry in the low range segment were only slightly lower than imports from the countries concerned at the beginning of the period considered, they amounted to considerably less than half of the imports from the countries concerned in the investigation period. The table below shows the growth of the sales volume of the Community industry low range segment compared to an estimate of sales in the same segment by the exporting producers in the countries concerned. This shows that over the period considered, the exporting producers increased their sales volume by 123 % in this segment whereas the Community industry only managed to increase its sales volume by 10 %.

Sales volume on the Community market of low range REWS Index — 1995 = 100	1995	1996	1997	1998	IP
Community industry	100	106	109	104	110
Countries concerned — based on 97 % of total exports	14 407	31 849	25 629	33 430	32 071
Index of countries concerned	100	221	178	232	223

- (106) The corresponding development in market share also shows that imports from the countries concerned had increased over the period considered at the expense of the Community industry. The market share of low range imports from the countries concerned increased from 9,2 % to 15,1 % (i.e. an overall increase of 65 %), whereas the Community industry low range market share fell from 21,8 % to 17,1 % (i.e. a decrease of 22 %).
- (107) Recital 82 records the development of average prices of the Community industry. Although the Community industry's average prices fell in all 3 model ranges, the fall in the low range segment was significantly greater than the fall in overall average prices.
- (108) It should also be recalled that the profits of the Community industry were not evenly spread across the model range segments. The anti-dumping duties, relating to imports from Japan and Singapore (described at recitals 8 and 9) relate mainly to the high and medium range segments and contributed to this profitability situation. In contrast, the Community industry's sales in the low range segment were made at a substantial loss. It is precisely this segment which was targeted by the exporting producers in the countries concerned.

### 3. Imports from other third countries

- (109) During the investigation period, other imports into the Community originated in several countries including Japan and Singapore as shown in the table below.

Volume of imports of REWS (excluding the countries concerned)	1995	1996	1997	1998	IP
Japan	474	954	1 606	2 794	2 332
Japan — market share	0,3 %	0,6 %	1,0 %	1,6 %	1,2 %
Singapore	3 776	863	987	1 332	427
Singapore — market share	2,5 %	0,6 %	0,6 %	0,8 %	0,2 %
Others	7 079	6 663	8 357	9 514	7 897
Others — market share	4,4 %	3,9 %	4,7 %	4,7 %	3,6 %
Total imports (excluding the countries concerned)	11 329	8 480	10 950	13 640	10 656

- (110) Imports from Japan and Singapore have been subject to anti-dumping measures ranging from 15 % to 32 % throughout the period considered and were small in volume. Prices to end customers can be considered to be non-injurious. It is clear therefore, that imports from these countries did not contribute to the depression of prices and are unlikely to have contributed significantly to the injury suffered by the Community industry.
- (111) Imports from other third countries (mainly Switzerland, USA and Indonesia) were made at low volumes. The only price information available to the Commission was from Eurostat, which did not indicate the range involved, and it was, therefore, difficult to draw conclusions concerning the level of these prices. According to the Community industry their only concerns relating to imports from these countries related to Indonesian exports. However, bearing in mind the *de minimis* (1 451 units) volume of imports from Indonesia in the investigation period, it is clear that they are unlikely to have contributed significantly to the injury suffered by the Community industry.

### 4. Effect of internal competition within the Community

- (112) It was submitted by exporting producers that internal competition on the Community market for REWS, arising from changes in the structure in the Community retail sector, had a downward effect on prices. It was, therefore, investigated whether these changes were of such a nature that they could break the causal link between the dumped imports and the injury suffered by the Community industry.
- (113) Throughout the Community, the market share of the multiple users (i.e. large supermarket chains) has increased significantly, whereas the number of smaller users has declined. This change of structure has increased the buying power of the user industry in general, and it is likely that this change has had some downward effect on average prices.
- (114) As mentioned at recital 59, the structure of the Community industry has also changed substantially over the period considered. The reduction in the number of companies and improvements in productivity, shown in recital 90 were designed to deal with these market changes. It was concluded that internal market competition arising from changes in the structure of the Community retail sector did not break the causal link between the dumped imports and the injury suffered by the Community industry.

## 5. Conclusion on causation

- (115) In view of the coincidence in time between, on the one hand, the price undercutting established, the significant market share gained by the dumped imports from the countries concerned and, on the other hand, the corresponding loss of market share suffered by the Community industry, as well as the reduction of its sales prices, it is concluded that the dumped imports originating in the countries concerned have caused material injury to the Community industry.
- (116) It was, therefore, concluded that the dumped imports originating in the countries concerned have caused material injury to the Community industry. While other factors may have contributed, they are not such as to break the causal link between the dumped imports and the injury suffered by the Community industry.

## F. COMMUNITY INTEREST

### 1. General considerations

- (117) In accordance with Article 21 of the basic Regulation, it was examined whether the imposition of anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers and the users of the product concerned to the extent that the relevant interested parties submitted the information requested in this respect.
- (118) In order to assess the likely impact of the imposition or non-imposition of measures, information was requested from all interested parties. Questionnaires were sent to the Community industry, importers/traders and two associations of users of the product concerned.
- (119) On this basis it was examined whether, despite the conclusions on dumping, injury and causation, compelling reasons exist which would lead to the conclusion that it is not in the Community interest to impose measures in this particular case.

### 2. Interests of Community industry

- (120) In the absence of measures against injurious dumping, the situation of the Community industry is certain to deteriorate in terms of market share, profitability and employment. This is particularly true in view of the fact that the euro-effect, which to a certain degree compensates for the effects of the dumped imports, will soon come to an end. The dumped imports have had an immediate impact in the low range segment which the Community industry cannot sustain in the long term. The importance of this segment to the Community industry is that it must continue to offer all 3 segments for sale in order to supply major users on the market.
- (121) There has been a large scale consolidation of Community production over the analysis period. This has continued a process which has taken place throughout the 1990's involving various mergers and acquisitions. This consolidation has helped ensure the survival of the production of REWS in the Community and thereby maintain weighing technology generally. This is important because there would inevitably be knock-on effects (in terms of reduced profitability and employment), both on the industry's suppliers and on the related sectors of production within the Community industry should measures be allowed to lapse. This is because the technologies of REWS and a whole range of other products are related. Any loss of technological know-how in the REWS sector will mean a global loss of competitiveness in the related sectors too. The Community industry also produces other electronic scales such as those used in the industrial sector and provides servicing of such scales. In addition the Community industry manufactures a range of other retail equipment such as slicers which are also sold through the same sales channels. It is clear that employment in these areas would also be jeopardised should injurious dumping be allowed to continue.

(122) In addition, the Community industry has made every effort to meet the competition from the PRC, Korea and Taiwan. Examples of such steps are:

- a progression towards greater consolidation (fewer companies),
- the closure of excess capacity,
- greater use of modern production techniques (e.g. production to order, increased mechanisation and computerisation),
- improvements in productivity,
- reducing costs by increasing the contracting-out of the supply of components and making changes in the use of its distribution channels, and
- investing in new model ranges and improved weighing technology.

Community producers have, therefore, shown a willingness to maintain a competitive presence on the Community market and are capable of benefiting from anti-dumping measures should they be imposed. All this would be put in jeopardy if the anti-dumping measures were not imposed.

### 3. Interests of other parties

(123) The cooperation of representatives of the interests of retail outlets was sought, including multiple users of the product concerned (supermarkets), in order to identify if there was any significant impact on users.

(124) Only two users cooperated with the investigation. One user expressed its support of the complainant Community industry stating that the long-term benefits from the overall quality of provision and service obtained from the Community industry would outweigh any temporary benefits which could be achieved by purchasing REWS from the exporting countries concerned at dumped prices.

In contrast the other user pointed out that if measures were imposed it would suffer from increased costs and reduced competitiveness.

(125) The lack of cooperation from users is no doubt due to the very small proportion of users' total costs represented by REWS. The impact of imposing measures, in what is a highly competitive market, can be assumed to be negligible.

(126) The views of importers in the Community were also sought. Only one incomplete questionnaire response was received. It was concluded that, if measures were imposed, there would be an impact on importers turnover and profits. However, it is likely that this impact would be small given that the importers also trade in other products.

### 4. Conclusion

(127) The low level of cooperation by users and importers clearly makes it difficult to draw conclusions on the effect anti-dumping measures would have in these sectors. It was concluded, however, that the impact would be negligible, particularly for the retail sector where the proportion of costs represented by REWS is very small.

(128) It should be recalled, however, that the dumped imports from the countries concerned have caused material injury to the Community industry, which has made great efforts to remain competitive. The full extent of this injury is concealed by temporary benefits caused by the introduction of the euro. However, in the absence of measures, and in view of the diminishing effect of the euro, it is likely that the Community industry will deteriorate further and may cease production of low range REWS and, thus, the viability of the entire Community industry would be threatened.

(129) On the basis of the above the Commission finds that there are no compelling reasons of Community interest not to impose anti-dumping measures.

## G. PROPOSED DUTIES

### 1. Injury elimination level

- (130) In order to prevent further injury being caused by the dumped imports, it is proposed to adopt anti-dumping measures in the form of definitive duties. For the purpose of determining the level of these duties, account was taken of the dumping margins found, the amount of duty necessary to eliminate the injury sustained by the Community industry and the market situation of the Community industry.
- (131) To this end, the representative production costs of the two basic low range models (i.e. mono and tower) of the Community industry were used, together with a profit margin of 10 %. The resulting non-injurious prices based on these costs and profit represent the level of sales prices the Community industry is expected to be able to achieve in the absence of dumped imports. The two non injurious prices were compared with the prices of the dumped imports used to establish undercutting, as outlined at recitals 72 to 75. The differences between these prices (on a weighted average basis and expressed as a percentage at cif level) showed the underselling margins applicable to each company.
- (132) These margins including those for non cooperating exporters are above the dumping margins established (with the exception of Mettler-Toledo where the injury margin was 0 %). In accordance with the lesser duty rule in accordance with Article 9(4) of the basic Regulation, it is proposed that the duty should be set at the level of the lowest margins.

### 2. Form and level of the definitive measures

- (133) In the light of the foregoing, it is considered that, in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping duties should be imposed. An *ad valorem* duty is considered the most appropriate measure in this proceeding.
- (134) The residual duty rate has been set at a level which does not reward non cooperation in each of the countries concerned. As cooperation was high in Korea the residual duty level has been set at the level of the highest dumping margin for cooperating companies. As cooperation was low in the PRC and Taiwan, the residual duty level has been set at the level of the model with the highest individual dumping margin sold in representative quantities.
- (135) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, it reflects the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the company and thus by the specific legal entity mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from this rate and shall be subject to the duty rate applicable to 'all other companies'.
- (136) Any claim requesting the application of this individual company anti-dumping duty rate (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 e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of electronic weighing scales having a maximum weighing capacity not exceeding 30 kg, for use in the retail trade which incorporate a digital display of the weight, unit price and price to be paid (whether or not including a means of printing this data) currently classifiable within CN code ex 8423 81 50 (TARIC code 8423 81 50 10) and originating in the People's Republic of China, Korea and Taiwan.

2. The duty, calculated on the basis of the net free-at-Community-frontier price of the product, before duty, shall be:

Country	Company	Rate of duty	TARIC additional code
The People's Republic of China	Shanghai Teraoka Electronic Co. Ltd	12,8 %	A207
	Mettler-Toledo Changzhou Scale Ltd	0 %	A208
	Shanghai Yamato Scale Co. Ltd	9,0 %	A209
	All other companies	30,7 %	A999
The Republic of Korea	CAS Corporation	0 %	A210
	A & D Korea Co. Ltd	4,7 %	A211
	All other companies	4,9 %	A999
Taiwan	UWE-Universal Weight Enterprise Co. Ltd, Taipei	5,5 %	A213
	Snowrex International Co. Ltd, Taipei	5,9 %	A214
	All other companies	13,4 %	A999

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

*Article 2*

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

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

Done at Brussels, 27 November 2000.

*For the Council*  
*The President*  
 L. FABIUS

**COUNCIL REGULATION (EC) No 2606/2000  
of 27 November 2000**

**amending Regulation (EC) No 772/1999 imposing definitive anti-dumping and countervailing duties  
on imports of farmed Atlantic salmon originating in Norway**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup>, and in particular Article 8 thereof,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community <sup>(2)</sup>, and in particular Article 13 thereof,

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

Whereas:

**A. PREVIOUS PROCEDURE**

- (1) On 31 August 1996, by means of two separate notices published in the *Official Journal of the European Communities*, the Commission announced the initiation of an anti-dumping proceeding <sup>(3)</sup> and an anti-subsidy proceeding <sup>(4)</sup> in respect of imports of farmed Atlantic salmon originating in Norway.
- (2) These proceedings resulted in anti-dumping and countervailing duties being imposed in September 1997 in order to eliminate the injurious effects of dumping and subsidisation, by means of Council Regulations (EC) No 1890/97 <sup>(5)</sup> and (EC) No 1891/97 <sup>(6)</sup>.
- (3) However, at the same time, the Commission accepted undertakings from 190 Norwegian exporters, which meant that farmed Atlantic salmon originating in Norway exported by these companies was exempted from the anti-dumping and countervailing duties, by means of Commission Decision 97/634/EC <sup>(7)</sup>.
- (4) Regulations (EC) No 1890/97 and (EC) No 1891/97 set out the definitive findings and conclusions on all aspects of the investigations. The form of the duties having been

reviewed, both Regulations were replaced by Regulation (EC) No 772/1999 <sup>(8)</sup>.

**B. NEW EXPORTERS, TRANSFER OF UNDERTAKINGS AND CHANGES OF NAME**

- (5) Two Norwegian companies have claimed that they are 'new exporters' within the meaning of Article 2 of Regulation (EC) No 772/1999 in conjunction with Article 11(4) of Regulation (EC) No 384/96 and Article 20 of Regulation (EC) No 2026/97, and offered undertakings, requesting exemption from the anti-dumping and countervailing duties. Having investigated the matter, it was established that the applicants fulfilled the conditions for being considered as new exporters and, accordingly, the undertakings offered have been accepted.
- (6) The Commission's findings in this respect are set out more fully in Commission Decision 2000/744/EC <sup>(9)</sup>.
- (7) Certain Norwegian exporters with undertakings have advised the Commission that the groups of companies to which they belong have been reorganised, or that they have changed their names. Accordingly, they have either requested that their undertakings be transferred to other companies within the relevant group, or that their name be amended on the list of companies from which undertakings are accepted and the list of companies benefiting from an exemption to the duties.
- (8) Having verified the nature of the requests, the Commission considered that the requests are acceptable since the modifications did not entail any substantive changes which require a re-assessment of dumping.
- (9) Accordingly, the rights and obligations of the undertakings accepted from Atlantis Filtfabrikk A/S, Domstein Salmon A/S, Eurolaks A/S, Fjord Seafood Leines A/S and Namdal Salmon A/S have, by means of the abovementioned Decision, been transferred to Fjord Seafood Måløy, Domstein Fish A/S, Fjord Seafood ASA, Fjord Domstein A/S and Fjord Seafood Midt-Norge A/S respectively.

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

<sup>(2)</sup> OJ L 288, 21.10.1997, p. 1.

<sup>(3)</sup> OJ C 253, 31.8.1996, p. 18.

<sup>(4)</sup> OJ C 253, 31.8.1996, p. 20.

<sup>(5)</sup> OJ L 267, 30.9.1997, p. 1.

<sup>(6)</sup> OJ L 267, 30.9.1997, p. 19.

<sup>(7)</sup> OJ L 267, 30.9.1997, p. 81. Decision as last amended by Decision 2000/522/EC, (OJ L 208, 18.8.2000, p. 47).

<sup>(8)</sup> OJ L 101, 16.4.1999, p. 1. Regulation as last amended by Regulation (EC) No 1783/2000, (OJ L 208, 18.8.2000, p. 1).

<sup>(9)</sup> See page 82 of this Official Journal.

- (10) As concerns A/S Austevoll Fiskeindustri, Nor-Fa Food A/S and Ryfisk A/S, these companies have changed their names to Austevoll Eiendom A/S, Nor-Fa Fish A/S and Hydro Seafood Rogaland A/S respectively.

**C. AMENDMENT OF THE ANNEX TO REGULATION (EC)  
No 772/1999**

- (11) In view of all the above, the Annex to Regulation (EC) No 772/1999 which lists the companies exempted from the anti-dumping and countervailing duties should be amended to take account of the changes,

HAS ADOPTED THIS REGULATION:

*Article 1*

The Annex to Regulation (EC) No 772/1999 is hereby replaced by the Annex hereto.

*Article 2*

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

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

Done at Brussels, 27 November 2000.

*For the Council*

*The President*

L. FABIUS

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## ANNEX

**List of companies from which undertakings are accepted and thus exempted from the definitive anti-dumping and countervailing duties**

Undertaking No	Company name	TARIC additional code
3	Rosfjord Seafood AS	8325
7	Aqua Export A/S	8100
8	Aqua Partner A/S	8101
11	Arctic Group International	8109
13	Artic Superior A/S	8111
15	A/S Aalesundfisk	8113
16	Austevoll Eiendom AS	8114
17	A/S Keco	8115
20	A/S Refsnes Fiskeindustri	8118
21	A/S West Fish Ltd	8119
22	Astor A/S	8120
24	Atlantic Seafood A/S	8122
26	Borkowski & Rosnes A/S	8124
27	Brødrene Aasjord A/S	8125
31	Christiansen Partner A/S	8129
32	Clipper Seafood A/S	8130
33	Coast Seafood A/S	8131
35	Dafjord Laks A/S	8133
36	Delfa Norge A/S	8134
39	Domstein Fish A/S	8136
41	Ecco Fisk & Delikatesse	8138
42	Edvard Johnsen A/S	8139
43	Fjord Seafood ASA	8140
44	Euronor AS	8141
46	Fiskeforsyningen AS	8143
47	Fjord Aqua Group AS	8144
48	Fjord Trading Ltd AS	8145
50	Fossen AS	8147

Undertaking No	Company name	TARIC additional code
51	Fresh Atlantic AS	8148
52	Fresh Marine Company AS	8149
58	Grieg Seafood AS	8300
60	Haafa fisk AS	8302
61	Hallvard Lerøy AS	8303
62	Fjord Seafood Måløy A/S	8304
66	Hydro Seafood Norway AS	8159
67	Hydrotech-gruppen AS	8428
72	Inter Sea AS	8174
75	Janas AS	8177
76	Joh. H. Pettersen AS	8178
77	Johan J. Helland AS	8179
79	Karsten J. Ellingsen AS	8181
80	Kr Kleiven & Co. AS	8182
82	Labeyrie Norge AS	8184
83	Lafjord Group AS	8185
85	Leica Fiskeprodukter	8187
87	Lofoten Seafood Export AS	8188
92	Marine Seafood AS	8196
93	Marstein Seafood AS	8197
96	Memo Food AS	8200
98	Misundfisk AS	8202
100	Naco Trading AS	8206
101	Fjord Seafood Midt-Norge A/S	8207
104	Nergård AS	8210
105	Nils Williksen AS	8211
107	Nisja Trading AS	8213
108	Nor-Food AS	8214
111	Nordic Group ASA	8217
112	Nordreisa Laks AS	8218
113	Norexport AS	8223
114	Norfi Produkter AS	8227

Undertaking No	Company name	TARIC additional code
115	Norfood Group AS	8228
116	Norfra Eksport AS	8229
119	Norsk Akvakultur AS	8232
120	Norsk Sjømat AS	8233
121	Northern Seafood AS	8307
122	Nortrade AS	8308
123	Norway Royal Salmon Sales AS	8309
124	Norway Royal Salmon AS	8312
126	Frionor AS	8314
128	Norwell AS	8316
130	Nova Sea AS	8235
134	Ok-Fish Kvalheim AS	8239
137	Pan Fish Sales AS	8242
140	Polar Seafood Norway AS	8247
141	Prilam Norvège AS	8248
142	Pundslett Fisk	8251
144	Rolf Olsen Seafood AS	8254
145	Hydro Seafood Rogaland AS	8256
146	Rørvik Fisk-og fiskematforretning AS	8257
147	Saga Lax Norge AS	8258
148	Prima Nor AS	8259
151	Sangoltgruppa AS	8262
153	Scanfood AS	8264
154	Sea Eagle Group AS	8265
155	Sea Star International AS	8266
156	Sea-Bell AS	8267
157	Seaco AS	8268
158	Seacom AS	8269
160	Seafood Farmers of Norway Ltd AS	8271
161	Seanor AS	8272
162	Sekkingstad AS	8273
164	Sirena Norway AS	8275
165	Kinn Salmon AS	8276

Undertaking No	Company name	TARIC additional code
167	Fjord Domstein A/S	8278
168	SMP Marine Produkter AS	8279
172	Stjernelaks AS	8283
174	Stolt Sea Farm AS	8285
175	Storm Company AS	8286
176	Superior AS	8287
178	Terra Seafood AS	8289
180	Timar Seafood AS	8294
182	Torris Products Ltd AS	8298
183	Troll Salmon AS	8317
188	Vikenco AS	8322
189	Wannebo International AS	8323
190	West Fish Norwegian Salmon AS	8324
191	Nor-Fa Fish AS	8102
192	Westmarine AS	8625
193	F. Uhrenholt Seafood Norway AS	A033
194	Mesan Seafood AS	A034
195	Polaris Seafood AS	A035
196	Scanfish AS	A036
197	Normarine AS	A049
198	Oskar Einar Rydbeck	A050
199	Emborg Foods Norge AS	A157
200	Helle Mat AS	A158
201	Norsea Food AS	A159
202	Salmon Company Fjord Norway AS	A160
203	Stella Polaris AS	A161
204	First Salmon AS	A205
205	Norlaks A/S	A206

**COMMISSION REGULATION (EC) No 2607/2000**  
**of 29 November 2000**  
**establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables <sup>(1)</sup>, as last amended by Regulation (EC) No 1498/98 <sup>(2)</sup>, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 30 November 2000.

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

Done at Brussels, 29 November 2000.

*For the Commission*  
Franz FISCHLER  
*Member of the Commission*

<sup>(1)</sup> OJ L 337, 24.12.1994, p. 66.

<sup>(2)</sup> OJ L 198, 15.7.1998, p. 4.

## ANNEX

**to the Commission Regulation of 29 November 2000 establishing the standard import values for determining the entry price of certain fruit and vegetables**

(EUR/100 kg)

CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	052	108,6
	204	116,6
	999	112,6
0707 00 05	052	116,0
	999	116,0
0709 90 70	052	78,7
	999	78,7
0805 20 10	204	75,1
	999	75,1
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	66,3
	999	66,3
	0805 30 10	75,1
0808 10 20, 0808 10 50, 0808 10 90	528	28,7
	600	76,7
	999	60,2
	052	76,5
	400	84,8
	404	88,4
0808 20 50	999	83,2
	052	80,3
	064	58,5
	400	85,5
	999	74,8

(<sup>1</sup>) Country nomenclature as fixed by Commission Regulation (EC) No 2543/1999 (OJ L 307, 2.12.1999, p. 46). Code '999' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 2608/2000  
of 29 November 2000**

**fixing the maximum export refund for white sugar for the 18th partial invitation to tender issued  
within the framework of the standing invitation to tender provided for in Regulation (EC) No  
1531/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector <sup>(1)</sup>, as amended by Commission Regulation (EC) No 1527/2000 <sup>(2)</sup>, and in particular the second subparagraph of Article 18(5) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1531/2000 of 13 July 2000 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar <sup>(3)</sup>, requires partial invitations to tender to be issued for the export of this sugar.
- (2) Pursuant to Article 9(1) of Regulation (EC) No 1531/2000 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community

and world markets in sugar, for the partial invitation to tender in question.

- (3) Following an examination of the tenders submitted in response to the 18th partial invitation to tender, the provisions set out in Article 1 should be adopted.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

*Article 1*

For the 18th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1531/2000 the maximum amount of the export refund is fixed at 41,270 EUR/100 kg.

*Article 2*

This Regulation shall enter into force on 30 November 2000.

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

Done at Brussels, 29 November 2000.

*For the Commission*  
Franz FISCHLER  
*Member of the Commission*

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<sup>(1)</sup> OJ L 252, 25.9.1999, p. 1.  
<sup>(2)</sup> OJ L 175, 14.7.2000, p. 59.  
<sup>(3)</sup> OJ L 175, 14.7.2000, p. 69.

**COMMISSION REGULATION (EC) No 2609/2000  
of 29 November 2000**

**fixing the representative prices and the additional import duties for molasses in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the market in sugar <sup>(1)</sup>, as amended by Commission Regulation 1527/2000 <sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68 <sup>(3)</sup>, and in particular Articles 1(2) and 3(1) thereof,

Whereas:

- (1) Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68 <sup>(4)</sup>. That price should be fixed for the standard quality defined in Article 1 of the above Regulation.
- (2) The representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality. The standard quality for molasses is defined in Regulation (EEC) No 785/68.
- (3) When the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States. Under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends.
- (4) The information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small

quantity that is not representative of the market. Offer prices which can be regarded as not representative of actual market trends must also be disregarded.

- (5) If information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68.
- (6) A representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price.
- (7) Where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95. Should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed.
- (8) Application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

*Article 1*

The representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 30 November 2000.

<sup>(1)</sup> OJ L 252, 25.9.1999, p. 1.

<sup>(2)</sup> OJ L 175, 14.7.2000, p. 59.

<sup>(3)</sup> OJ L 141, 24.6.1995, p. 12.

<sup>(4)</sup> OJ L 145, 27.6.1968, p. 12.



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

Done at Brussels, 29 November 2000.

*For the Commission*  
Franz FISCHLER  
*Member of the Commission*

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ANNEX

**fixing the representative prices and additional import duties to imports of molasses in the sugar sector**

*(in EUR)*

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 <sup>(2)</sup>
1703 10 00 <sup>(1)</sup>	9,34	—	0
1703 90 00 <sup>(1)</sup>	10,51	—	0

<sup>(1)</sup> For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

<sup>(2)</sup> This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

**COMMISSION REGULATION (EC) No 2610/2000**  
**of 29 November 2000**  
**altering the export refunds on white sugar and raw sugar exported in the natural state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector <sup>(1)</sup>, as amended by Commission Regulation (EC) No 1527/2000 <sup>(2)</sup>, and in particular the third subparagraph of Article 18(5) thereof,

Whereas:

- (1) The refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 2459/2000 <sup>(3)</sup>, as last amended by Regulation (EC) No 2544/2000 <sup>(4)</sup>.
- (2) It follows from applying the detailed rules contained in amended Regulation (EC) No 2459/2000 to the information known to the Commission that the export

refunds at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

The export refunds on the products listed in Article 1(1)(a) of Regulation (EC) No 2038/1999, undenatured and exported in the natural state, as fixed in the Annex to amended Regulation (EC) No 2459/2000 are hereby altered to the amounts shown in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 30 November 2000.

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

Done at Brussels, 29 November 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 252, 25.9.1999, p. 1.

<sup>(2)</sup> OJ L 175, 14.7.2000, p. 59.

<sup>(3)</sup> OJ L 283, 9.11.2000, p. 6.

<sup>(4)</sup> OJ L 291, 18.11.2000, p. 21.

## ANNEX

**to the Commission Regulation of 29 November 2000 altering the export refunds on white sugar and raw sugar exported in its unaltered state**

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	A00	EUR/100 kg	35,64 <sup>(1)</sup>
1701 11 90 9910	A00	EUR/100 kg	31,09 <sup>(1)</sup>
1701 11 90 9950	A00	EUR/100 kg	<sup>(2)</sup>
1701 12 90 9100	A00	EUR/100 kg	35,64 <sup>(1)</sup>
1701 12 90 9910	A00	EUR/100 kg	31,09 <sup>(1)</sup>
1701 12 90 9950	A00	EUR/100 kg	<sup>(2)</sup>
1701 91 00 9000	A00	EUR/1 % of sucrose × net 100 kg of product	0,3874
1701 99 10 9100	A00	EUR/100 kg	38,74
1701 99 10 9910	A00	EUR/100 kg	38,22
1701 99 10 9950	A00	EUR/100 kg	38,22
1701 99 90 9100	A00	EUR/1 % of sucrose × net 100 kg of product	0,3874

<sup>(1)</sup> Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 19 (4) of Council Regulation (EC) No 2038/1999.

<sup>(2)</sup> Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ L 255, 26.9.1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ L 309, 21.11.1985, p. 14).

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2543/1999 (OJ L 307, 2.12.1999, p. 46).

**COMMISSION REGULATION (EC) No 2611/2000  
of 29 November 2000**

**repealing Regulations (EC) No 1667/98, (EC) No 1759/98, (EC) No 1760/98, (EC) No 2198/98, (EC) No 1392/1999 and (EC) No 441/2000 relating to invitations to tender for the export of cereals held by certain intervention agencies**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals<sup>(1)</sup>, as last amended by Regulation (EC) No 1666/2000<sup>(2)</sup>, and in particular Article 5 thereof,

Whereas:

- (1) Commission Regulation (EEC) No 2131/93<sup>(3)</sup>, as last amended by Regulation (EC) No 1630/2000<sup>(4)</sup>, lays down the procedures and conditions for the disposal of cereals held by the intervention agencies.
- (2) For economical reasons, it is appropriate to repeal the invitations to tender under Commission Regulations (EC) No 1667/98<sup>(5)</sup>, as last amended by Regulation (EC) No 2022/2000<sup>(6)</sup>, (EC) No 1759/98<sup>(7)</sup>, as last amended by Regulation (EC) No 2022/2000, (EC) No 1760/98<sup>(8)</sup>, as last amended by Regulation (EC) No 2258/2000<sup>(9)</sup>, (EC) No 2198/98<sup>(10)</sup>, as last amended by Regulation (EC) No

2022/2000, (EC) No 1392/1999<sup>(11)</sup>, as last amended by Regulation (EC) No 2105/2000<sup>(12)</sup>, and (EC) No 441/2000<sup>(13)</sup>, as last amended by Regulation (EC) No 2025/2000<sup>(14)</sup>.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulations (EC) No 1667/98, (EC) No 1759/98, (EC) No 1760/98, (EC) No 2198/98, (EC) No 1392/1999 and (EC) No 441/2000 are hereby repealed.

*Article 2*

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

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

Done at Brussels, 29 November 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 193, 29.7.2000, p. 1.

<sup>(3)</sup> OJ L 191, 31.7.1993, p. 76.

<sup>(4)</sup> OJ L 187, 26.7.2000, p. 24.

<sup>(5)</sup> OJ L 211, 29.7.1998, p. 17.

<sup>(6)</sup> OJ L 242, 27.9.2000, p. 3.

<sup>(7)</sup> OJ L 221, 8.8.1998, p. 8.

<sup>(8)</sup> OJ L 221, 8.8.1998, p. 13.

<sup>(9)</sup> OJ L 258, 12.10.2000, p. 26.

<sup>(10)</sup> OJ L 277, 14.10.1998, p. 9.

<sup>(11)</sup> OJ L 163, 29.6.1999, p. 21.

<sup>(12)</sup> OJ L 250, 5.10.2000, p. 14.

<sup>(13)</sup> OJ L 54, 26.2.2000, p. 29.

<sup>(14)</sup> OJ L 242, 27.9.2000, p. 11.

**COMMISSION REGULATION (EC) No 2612/2000**  
**of 29 November 2000**  
**fixing the export refunds on olive oil**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats <sup>(1)</sup>, as last amended by Regulation (EC) No 2702/1999 <sup>(2)</sup>, and in particular Article 3(3) thereof,

Whereas:

- (1) Article 3 of Regulation No 136/66/EEC provides that, where prices within the Community are higher than world market prices, the difference between these prices may be covered by a refund when olive oil is exported to third countries.
- (2) The detailed rules for fixing and granting export refunds on olive oil are contained in Commission Regulation (EEC) No 616/72 <sup>(3)</sup>, as last amended by Regulation (EEC) No 2962/77 <sup>(4)</sup>.
- (3) Article 3(3) of Regulation No 136/66/EEC provides that the refund must be the same for the whole Community.
- (4) In accordance with Article 3(4) of Regulation No 136/66/EEC, the refund for olive oil must be fixed in the light of the existing situation and outlook in relation to olive oil prices and availability on the Community market and olive oil prices on the world market. However, where the world market situation is such that the most favourable olive oil prices cannot be determined, account may be taken of the price of the main competing vegetable oils on the world market and the difference recorded between that price and the price of olive oil during a representative period. The amount of the refund may not exceed the difference between the price of olive oil in the Community and that on the world market, adjusted, where appropriate, to take

account of export costs for the products on the world market.

- (5) In accordance with Article 3(3) third indent, point (b) of Regulation No 136/66/EEC, it may be decided that the refund shall be fixed by tender. The tendering procedure should cover the amount of the refund and may be limited to certain countries of destination, quantities, qualities and presentations.
- (6) The second indent of Article 3(3) of Regulation No 136/66/EEC provides that the refund on olive oil may be varied according to destination where the world market situation or the specific requirements of certain markets make this necessary.
- (7) The refund must be fixed at least once every month. It may, if necessary, be altered in the intervening period.
- (8) It follows from applying these detailed rules to the present situation on the market in olive oil and in particular to olive oil prices within the Community and on the markets of third countries that the refund should be as set out in the Annex hereto.
- (9) The Management Committee for Oils and Fats has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

*Article 1*

The export refunds on the products listed in Article 1(2)(c) of Regulation No 136/66/EEC shall be as set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 30 November 2000.

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

Done at Brussels, 29 November 2000.

*For the Commission*  
 Franz FISCHLER  
 Member of the Commission

<sup>(1)</sup> OJ 172, 30.9.1966, p. 3025/66.

<sup>(2)</sup> OJ L 327, 21.12.1999, p. 7.

<sup>(3)</sup> OJ L 78, 31.3.1972, p. 1.

<sup>(4)</sup> OJ L 348, 30.12.1977, p. 53.

## ANNEX

**to the Commission Regulation of 29 November 2000 fixing the export refunds on olive oil**

Product code	Destination	Unit of measurement	Amount of refund
1509 10 90 9100	A00	EUR/100 kg	0,00
1509 10 90 9900	A00	EUR/100 kg	0,00
1509 90 00 9100	A00	EUR/100 kg	0,00
1509 90 00 9900	A00	EUR/100 kg	0,00
1510 00 90 9100	A00	EUR/100 kg	0,00
1510 00 90 9900	A00	EUR/100 kg	0,00

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2543/1999 (OJ L 307, 2.12.1999, p. 46).

**COMMISSION REGULATION (EC) No 2613/2000**  
**of 29 November 2000**  
**amending the import duties in the cereals sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, as last amended by Regulation (EC) No 1666/2000 <sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector <sup>(3)</sup>, as last amended by Regulation (EC) No 2235/2000 <sup>(4)</sup>, and in particular Article 2(1) thereof,

Whereas:

(1) The import duties in the cereals sector are fixed by Commission Regulation (EC) No 2515/2000 <sup>(5)</sup>.

(2) Article 2(1) of Regulation (EC) No 1249/96 provides that if during the period of application, the average import duty calculated differs by EUR 5 per tonne from the duty fixed, a corresponding adjustment is to be made. Such a difference has arisen. It is therefore necessary to adjust the import duties fixed in Regulation (EC) No 2515/2000,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annexes I and II to Regulation (EC) No 2515/2000 are hereby replaced by Annexes I and II to this Regulation.

*Article 2*

This Regulation shall enter into force on 30 November 2000.

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

Done at Brussels, 29 November 2000.

*For the Commission*  
Franz FISCHLER  
*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 193, 29.7.2000, p. 1.

<sup>(3)</sup> OJ L 161, 29.6.1996, p. 125.

<sup>(4)</sup> OJ L 256, 10.10.2000, p. 13.

<sup>(5)</sup> OJ L 289, 16.11.2000, p. 27.

## ANNEX I

## Import duties for the products covered by Article 10(2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (EUR/tonne)	Import duty by air or by sea from other ports <sup>(2)</sup> (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00	0,00
	medium quality <sup>(1)</sup>	0,00	0,00
1001 90 91	Common wheat seed	0,00	0,00
1001 90 99	Common high quality wheat other than for sowing <sup>(3)</sup>	0,00	0,00
	medium quality	10,54	0,54
	low quality	40,06	30,06
1002 00 00	Rye	30,60	20,60
1003 00 10	Barley, seed	30,60	20,60
1003 00 90	Barley, other <sup>(3)</sup>	30,60	20,60
1005 10 90	Maize seed other than hybrid	58,45	48,45
1005 90 00	Maize other than seed <sup>(3)</sup>	58,45	48,45
1007 00 90	Grain sorghum other than hybrids for sowing	30,60	20,60

<sup>(1)</sup> In the case of durum wheat not meeting the minimum quality requirements for durum wheat of medium quality, referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

<sup>(2)</sup> For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or

— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic Coasts of the Iberian Peninsula.

<sup>(3)</sup> The importer may benefit from a flat-rate reduction of EUR 24 or 8 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.



## ANNEX II

**Factors for calculating duties**

(period from 15 November 2000 to 28 November 2000)

## 1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Kansas-City	Chicago	Chicago	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	Medium quality (*)	US barley 2
Quotation (EUR/t)	137,35	133,10	110,78	96,94	191,18 (**)	181,18 (**)	120,37 (**)
Gulf premium (EUR/t)	—	17,50	10,30	5,75	—	—	—
Great Lakes premium (EUR/t)	28,53	—	—	—	—	—	—

(\*) A discount of 10 EUR/t (Article 4(1) of Regulation (EC) No 1249/96).

(\*\*) Fob Great Lakes.

## 2. Freight/cost: Gulf of Mexico — Rotterdam: 21,30 EUR/t; Great Lakes — Rotterdam: 31,47 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)  
0,00 EUR/t (SRW2).

**COMMISSION REGULATION (EC) No 2614/2000**  
**of 29 November 2000**  
**on the issuing of system B export licences for fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 2190/96 of 14 November 1996 on detailed rules for implementing Council Regulation (EC) No 2200/96 as regards export refunds on fruit and vegetables <sup>(1)</sup>, as last amended by Regulation (EC) No 298/2000 <sup>(2)</sup>, and in particular Article 5(6) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1877/2000 <sup>(3)</sup> fixed the indicative quantities laid down for the issue of export licences other than those requested in the context of food aid.
- (2) In the light of information now available to the Commission, the indicative quantities have been exceeded in the case of hazelnuts in shell, walnuts in shell, oranges, lemons, table grapes and apples.
- (3) Those overruns are without prejudice to compliance with the limits resulting from the agreements concluded in accordance with Article 300 of the Treaty. The rate of

refund for all products covered by licences applied for under system B from 16 September to 15 November 2000 should be the indicative rate,

HAS ADOPTED THIS REGULATION:

*Article 1*

The percentages for the issuing of system B export licences, as referred to in Article 5 of Regulation (EC) No 2190/96, and applied for between 16 September and 15 November 2000, by which the quantities applied for and the rates of refund applicable must be multiplied, are as fixed in the Annex hereto.

The above subparagraph does not apply to licences applied for in connection with food-aid operations as provided for in Article 10(4) of the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations.

*Article 2*

This Regulation shall enter into force on 30 November 2000.

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

Done at Brussels, 29 November 2000.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 292, 15.11.1996, p. 12.

<sup>(2)</sup> OJ L 34, 9.2.2000, p. 16.

<sup>(3)</sup> OJ L 225, 5.9.2000, p. 10.

## ANNEX

**Percentages for the issuing of licences and rates of refund applicable to system B licences applied for between 16 September and 15 November 2000**

Product	Percentage for the issuing of licences	Rate of refund (EUR/tonne net)
Tomatoes	100 %	18,0
Shelled almonds	100 %	45,0
Hazelnuts in shell	100 %	53,0
Shelled hazelnuts	100 %	103,0
Walnuts in shell	100 %	66,0
Oranges	100 %	45,0
Lemons	100 %	45,0
Table grapes	100 %	23,0
Apples	100 %	36,0
Peaches and nectarines	100 %	27,0

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 30 October 2000

**amending Decision 97/634/EC accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of farmed Atlantic salmon originating in Norway**

(notified under document number C(2000) 3150)

(2000/744/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup>, as last amended by Regulation (EC) No 905/98 <sup>(2)</sup>, and in particular Article 8 thereof,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community <sup>(3)</sup>, and in particular Article 13 thereof,

After consulting the Advisory Committee,

Whereas:

subsidisation (see Council Regulations (EC) No 1890/97 <sup>(6)</sup> and 1891/97 <sup>(7)</sup>).

(3) However, at the same time, the Commission accepted undertakings from 190 Norwegian exporters, which meant that farmed Atlantic salmon originating in Norway exported by these companies was exempted from the anti-dumping and countervailing duties (see Decision 97/634/EC <sup>(8)</sup> as last amended by Decision 2000/522/EC <sup>(9)</sup>).

(4) Whilst Regulations (EC) No 1890/97 and 1891/97 set out the definitive findings and conclusions on all aspects of the investigations, the form of the duties was later reviewed and replaced by Regulation (EC) No 772/1999 <sup>(10)</sup>, as last amended by Regulation (EC) No 1783/2000 <sup>(11)</sup>.

## A. PREVIOUS PROCEDURE

- (1) On 31 August 1996, by means of two separate notices published in the *Official Journal of the European Communities*, the Commission announced the initiation of an anti-dumping proceeding <sup>(4)</sup> and an anti-subsidy proceeding <sup>(5)</sup> in respect of imports of farmed Atlantic salmon originating in Norway.
- (2) These proceedings resulted in anti-dumping and countervailing duties being imposed in September 1997 in order to eliminate the injurious effects of dumping and

## B. NEW EXPORTERS

- (5) Subsequent to the imposition of definitive anti-dumping and countervailing duties, two Norwegian companies have made themselves known to the Commission, claiming to be new exporters and requested, in accordance with Article 2 of Regulation (EC) No 772/1999 in conjunction with Article 11(4) of Regulation (EC) No 384/96 and Article 20 of Regulation (EC) No 2026/97, that the exemption to the duties be extended to them.

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1.

<sup>(2)</sup> OJ L 128, 30.4.1998, p. 18.

<sup>(3)</sup> OJ L 288, 21.10.1997, p. 1.

<sup>(4)</sup> OJ C 253, 31.8.1996, p. 18.

<sup>(5)</sup> OJ C 253, 31.8.1996, p. 20.

<sup>(6)</sup> OJ L 267, 30.9.1997, p. 1.

<sup>(7)</sup> OJ L 267, 30.9.1997, p. 19.

<sup>(8)</sup> OJ L 267, 30.9.1997, p. 81.

<sup>(9)</sup> OJ L 208, 18.8.2000, p. 47.

<sup>(10)</sup> OJ L 101, 16.4.1999, p. 1.

<sup>(11)</sup> OJ L 208, 18.8.2000, p. 1.

- (6) In this regard, First Salmon AS and Norlaks A/S demonstrated that they did not export the product concerned to the Community during the investigation period which led to imposition of the current anti-dumping and countervailing duties.
- (7) These companies also showed that they are not related to any of the companies in Norway which are subject to anti-dumping and countervailing duties and provided evidence of having entered into an irrevocable contractual obligation to export a significant amount of the product concerned to the Community.
- (8) The two companies have offered undertakings which are identical to those previously offered by other Norwegian companies exporting to the Community farmed Atlantic salmon originating in Norway. By doing so, they have both agreed to sell the product concerned at or above price levels which eliminate the injurious effects of dumping and subsidisation. The companies will also provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertakings can be monitored effectively by the Commission.
- (9) The offers of undertakings are therefore considered acceptable and, in this regard, the companies concerned have been informed of the essential facts, considerations and obligations upon which acceptance is based.
- (10) The names of the two companies should therefore be added to the list of exporters from which undertakings are accepted in the Annex to Decision 97/634/EC.

**C. TRANSFER OF UNDERTAKINGS AND CHANGES OF NAME**

- (11) Certain Norwegian exporters with undertakings have advised the Commission that the groups of companies to which they belong have been re-organised, or that their names have changed. Accordingly, they have either requested that their undertakings be transferred to other companies within the relevant group, or that their name is amended on the list of companies from which undertakings are accepted.
- (12) Having verified the nature of the requests, the Commission considers that they are acceptable since the modifications do not entail any substantive changes which would require re-assessment of dumping.

- (13) Accordingly, the rights and obligations of the undertakings accepted from Atlantis Filtfabrikk A/S, Domstein Salmon A/S, Eurolaks A/S, Fjord Seafood Leines A/S and Namdal Salmon A/S are transferred herewith to Fjord Seafood Måløy, Domstein Fish A/S, Fjord Seafood ASA, Fjord Domstein A/S, Fjord Seafood Midt-Norge A/S respectively.
- (14) As concerns, A/S Austevoll Fiskeindustri, Nor-Fa Food A/S and Ryfisk AS, it should be noted that these companies have changed their names to Austevoll Eiendom AS, Nor-Fa Fish A/S and Hydro Seafood Rogaland AS respectively.

**D. AMENDMENT OF THE ANNEX TO DECISION 97/634/EC**

- (15) In view of the above, the list of companies from which undertakings are accepted in the Annex to Decision 97/634/EC should be amended accordingly.
- (16) The Advisory Committee has been consulted on all of the above changes and has raised no objections.
- (17) For the sake of clarity, however, an updated version of the Annex to that Decision is published herewith, showing all the exporters whose undertakings are currently in force,

HAS DECIDED AS FOLLOWS:

*Article 1*

The Annex to Decision 97/634/EC is hereby replaced by the Annex hereto.

*Article 2*

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

Done at Brussels, 30 October 2000.

*For the Commission*

Pascal LAMY

*Member of the Commission*

## ANNEX

## LIST OF COMPANIES FROM WHICH UNDERTAKINGS ARE ACCEPTED

Undertaking No	Company name	TARIC additional code
3	Rosfjord Seafood AS	8325
7	Aqua Export A/S	8100
8	Aqua Partner A/S	8101
11	Arctic Group International	8109
13	Artic Superior A/S	8111
15	A/S Aalesundfisk	8113
16	Austevoll Eiendom AS	8114
17	A/S Keco	8115
20	A/S Refsnes Fiskeindustri	8118
21	A/S West Fish Ltd	8119
22	Astor A/S	8120
24	Atlantic Seafood A/S	8122
26	Borkowski & Rosnes A/S	8124
27	Brødrene Aasjord A/S	8125
31	Christiansen Partner A/S	8129
32	Clipper Seafood A/S	8130
33	Coast Seafood A/S	8131
35	Dafjord Laks A/S	8133
36	Delfa Norge A/S	8134
39	Domstein Fish A/S	8136
41	Ecco Fisk & Delikatesse	8138
42	Edvard Johnsen A/S	8139
43	Fjord Seafood ASA	8140
44	Euronor AS	8141
46	Fiskeforsyningen AS	8143
47	Fjord Aqua Group AS	8144
48	Fjord Trading Ltd AS	8145
50	Fossen AS	8147

Undertaking No	Company name	TARIC additional code
51	Fresh Atlantic AS	8148
52	Fresh Marine Company AS	8149
58	Grieg Seafood AS	8300
60	Haafa fisk AS	8302
61	Hallvard Lerøy AS	8303
62	Fjord Seafood Måløy A/S	8304
66	Hydro Seafood Norway AS	8159
67	Hydrotech-gruppen AS	8428
72	Inter Sea AS	8174
75	Janas AS	8177
76	Joh. H. Pettersen AS	8178
77	Johan J. Helland AS	8179
79	Karsten J. Ellingsen AS	8181
80	Kr Kleiven & Co. AS	8182
82	Labeyrie Norge AS	8184
83	Lafjord Group AS	8185
85	Leica Fiskeprodukter	8187
87	Lofoten Seafood Export AS	8188
92	Marine Seafood AS	8196
93	Marstein Seafood AS	8197
96	Memo Food AS	8200
98	Misundfisk AS	8202
100	Naco Trading AS	8206
101	Fjord Seafood Midt-Norge A/S	8207
104	Nergård AS	8210
105	Nils Williksen AS	8211
107	Nisja Trading AS	8213
108	Nor-Food AS	8214
111	Nordic Group ASA	8217
112	Nordreisa Laks AS	8218
113	Norexport AS	8223
114	Norfi Produkter AS	8227

Undertaking No	Company name	TARIC additional code
115	Norfood Group AS	8228
116	Norfra Eksport AS	8229
119	Norsk Akvakultur AS	8232
120	Norsk Sjømat AS	8233
121	Northern Seafood AS	8307
122	Nortrade AS	8308
123	Norway Royal Salmon Sales AS	8309
124	Norway Royal Salmon AS	8312
126	Frionor AS	8314
128	Norwell AS	8316
130	Nova Sea AS	8235
134	Ok-Fish Kvalheim AS	8239
137	Pan Fish Sales AS	8242
140	Polar Seafood Norway AS	8247
141	Prilam Norvège AS	8248
142	Pundslett Fisk	8251
144	Rolf Olsen Seafood AS	8254
145	Hydro Seafood Rogaland AS	8256
146	Rørvik Fisk-og fiskematforretning AS	8257
147	Saga Lax Norge AS	8258
148	Prima Nor AS	8259
151	Sangoltgruppa AS	8262
153	Scanfood AS	8264
154	Sea Eagle Group AS	8265
155	Sea Star International AS	8266
156	Sea-Bell AS	8267
157	Seaco AS	8268
158	Seacom AS	8269
160	Seafood Farmers of Norway Ltd AS	8271
161	Seanor AS	8272
162	Sekkingstad AS	8273
164	Sirena Norway AS	8275
165	Kinn Salmon AS	8276



Undertaking No	Company name	TARIC additional code
167	Fjord Domstein A/S	8278
168	SMP Marine Produkter AS	8279
172	Stjernelaks AS	8283
174	Stolt Sea Farm AS	8285
175	Storm Company AS	8286
176	Superior AS	8287
178	Terra Seafood AS	8289
180	Timar Seafood AS	8294
182	Torris Products Ltd AS	8298
183	Troll Salmon AS	8317
188	Vikenco AS	8322
189	Wannebo International AS	8323
190	West Fish Norwegian Salmon AS	8324
191	Nor-Fa Fish AS	8102
192	Westmarine AS	8625
193	F. Uhrenholt Seafood Norway AS	A033
194	Mesan Seafood AS	A034
195	Polaris Seafood AS	A035
196	Scanfish AS	A036
197	Normarine AS	A049
198	Oskar Einar Rydbeck	A050
199	Emborg Foods Norge AS	A157
200	Helle Mat AS	A158
201	Norsea Food AS	A159
202	Salmon Company Fjord Norway AS	A160
203	Stella Polaris AS	A161
204	First Salmon AS	A205
205	Norlaks A/S	A206

## COMMISSION DECISION

of 29 November 2000

**accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand**

(notified under document number C(2000) 3603)

(2000/745/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup>, as last amended by Regulation (EC) No 2238/2000 <sup>(2)</sup> (the basic AD Regulation), and in particular Articles 8 and 9 thereof,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community <sup>(3)</sup> (the basic AS Regulation), and in particular Articles 13 and 15 thereof,

After consulting the Advisory Committee,

Whereas:

## A. PROCEDURE

- (1) By Regulation (EC) No 1742/2000 <sup>(4)</sup>, the Commission imposed provisional antidumping duties on imports into the Community of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand.
- (2) By Regulation (EC) No 1741/2000 <sup>(5)</sup>, the Commission imposed provisional countervailing duties on imports into the Community of PET originating in India, Malaysia, Taiwan and Thailand.
- (3) Following the adoption of the provisional anti-dumping and countervailing measures, the Commission continued the investigation of dumping, subsidisation, injury and Community interest. The definitive findings and conclusions of the investigation are set out in Regulation (EC) No 2604/2000 <sup>(6)</sup> imposing definitive anti-dumping duties on imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand and in Council Regulation (EC) No 2603/2000 <sup>(7)</sup>

imposing definitive countervailing duties on imports of PET originating in India, Malaysia and Thailand.

- (4) The investigations confirmed the provisional findings of injurious dumping relating to imports originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand and of injurious subsidisation relating to imports originating in India, Malaysia and Thailand.

## B. UNDERTAKINGS

- (5) Subsequent to the adoption of provisional anti-dumping and countervailing measures, two exporting producers in India that participated in both investigations offered undertakings (within the meaning of Article 8(1) of the basic AD Regulation and Article 13(1) of the basic AS Regulation). Moreover, as regards the anti-dumping investigation, two of the exporting producers in Indonesia offered undertakings. According to these undertakings, the exporting producers in question have offered not to sell to their unrelated customers below certain minimum prices.
- (6) The Commission considers that the undertakings offered by the Indian companies, Pearl Engineering Polymers Limited and Reliance Industries Limited, can be accepted since they eliminate the injurious effects of dumping and subsidisation. The Commission also considers that the undertakings offered by the Indonesian company, P.T. Polypet Karyapersada, can be accepted since it eliminates the injurious effect of dumping. Moreover, the regular and detailed reports which the companies undertook to provide to the Commission will allow effective monitoring. Furthermore, the cooperation of these companies during the investigation, their structure and their sales organisation, and the specificities of the present product are such that the Commission considers that the risk of circumvention of the undertaking(s) will be limited.
- (7) A second Indonesian company also offered an undertaking. However, the company provided false and misleading information in respect of certain aspects of

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1.

<sup>(2)</sup> OJ L 257, 11.10.2000, p. 2.

<sup>(3)</sup> OJ L 288, 21.10.1997, p. 1.

<sup>(4)</sup> OJ L 199, 5.8.2000, p. 48.

<sup>(5)</sup> OJ L 199, 5.8.2000, p. 6.

<sup>(6)</sup> See page 21 of this Official Journal.

<sup>(7)</sup> See page 1 of this Official Journal.

the antidumping investigation which affected the accuracy and reliability of its cooperation (See recital 13 of Regulation (EC) No 2604/2000). Accordingly, the Commission was not satisfied that an undertaking from this company could be effectively monitored and the offer was rejected.

- (8) In order to ensure the effective respect and monitoring of the undertakings, when the request for release for free circulation pursuant to the undertakings is presented, exemption from the duty is conditional on presentation to the customs service of the Member State concerned of a valid 'Undertaking invoice'. Such undertaking invoice has to be issued by the exporting producers from whom the undertakings are accepted and must contain the information listed in the Annexes to Regulation (EC) No 2604/2000 and Regulation (EC) No 2603/2000. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of duty should be payable in order to ensure the effective application of the undertakings.
- (9) In the event of a breach, or withdrawal of the undertakings, or if there are reasons to believe that the undertakings have been breached, a provisional or definitive duty may be imposed pursuant to Article 8(9) and (10) of the basic AD Regulation and, where applicable, pursuant to Article 13(9) and (10) of the basic AS Regulation,

HAS ADOPTED THIS DECISION:

*Article 1*

The undertakings offered by the exporting producers mentioned below, in the framework of the anti-dumping proceeding concerning imports of certain polyethylene tereph-

thalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand and in the framework of the anti-subsidy proceeding concerning imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand are hereby accepted.

Country	Manufacturer	TARIC additional code
India	Pearl Engineering Polymers Limited	A182
India	Reliance Industries Limited	A181
Indonesia	P.T. Polypet Karyapersada	A193

*Article 2*

This Decision shall enter into force the day after its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 29 November 2000.

*For the Commission*

Pascal LAMY

*Member of the Commission*