

COMMISSION REGULATION (EC) No 306/2004

of 19 February 2004

imposing a provisional anti-dumping duty on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and Pakistan

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 Communities ⁽¹⁾, as last amended by Regulation (EC) No 1972/2002 ⁽²⁾ (the basic Regulation), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

- (1) On 22 May 2003, the Commission announced, by a notice published in the *Official Journal of the European Union* ⁽³⁾, the initiation of an anti-dumping proceeding with regard to imports into the Community of poly(ethylene terephthalate) originating in Australia, the People's Republic of China (PRC) and Pakistan (countries concerned).
- (2) The proceeding was initiated as a result of a complaint lodged in April 2003 by the Association of Plastic Manufacturers in Europe (APME) (the complainant) on behalf of producers representing a major proportion, in this case more than 80 %, of the total Community production of poly(ethylene terephthalate). The complaint contained evidence of dumping of the product concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) The initiation of a partial interim review concerning imports of the same product originating in the Republic of Korea and Taiwan was announced by a notice published in the *Official Journal of the European Union* ⁽⁴⁾, on the same date.

2. Parties concerned by the proceeding

- (4) The Commission officially advised the complainant, the exporting producers, importers, suppliers and users as well as user associations known to be concerned, and representatives of Australia, the PRC and Pakistan, of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (5) The complainant producers, other cooperating Community producers, exporting producers, importers, suppliers, users and user associations made their views

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

- (6) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent market economy treatment and individual treatment claim forms to the Chinese companies known to be concerned. Eight companies requested MET pursuant to Article 2(7) of the basic Regulation or individual treatment should the investigation establish that they did not meet the conditions for MET, and one company requested only IT.
- (7) In the notice of initiation, the Commission indicated that sampling may be applied in this investigation. However, given the lower than expected number of exporting producers in the PRC which indicated their willingness to cooperate, it was decided that sampling was not required.
- (8) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from the seven Community producers included in the complaint, four other Community producers, two exporting producers in Australia, nine exporting producers in the PRC, two exporting producers in Pakistan, one importer related to one Australian exporter and located in the EC, two suppliers, four unrelated importers and nine unrelated users in the Community.
- (9) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping and resulting injury and carried out verifications at the premises of the following companies:
 - (a) Community producers
 - Aussapol SpA, San Giorgio Di Nogaro (UD), Italy
 - Brilen SA, Zaragoza, Spain
 - Catalana di Polimers, Barcelona, Spain
 - Dupont Sabanci SA, Middlesbrough, United Kingdom
 - INCA International, Milano, Italy
 - KoSa, Frankfurt am Main, Germany
 - M & G Finanziaria Industriale, Milano, Italy
 - Tergal Fibres, Gauchy, France
 - VPI SA, Athens, Greece
 - Vordian, Rotterdam, Netherlands
 - Wellman PET Resins, Arnhem, Netherlands;

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 305, 7.11.2002, p. 1.

⁽³⁾ OJ C 120, 22.5.2003, p. 9.

⁽⁴⁾ OJ C 120, 22.5.2003, p. 13.

- (b) Exporting producers/exporters in Australia
 — Leading Synthetics Pty Ltd, Melbourne
 — Novapex Australia Pty Ltd, Melbourne;
- (c) Exporting producers in the PRC
 — Sinopec Yizheng Chemical Fibre Company Ltd, Yizheng city
 — Changzhou Worldbest Radici Co. Ltd, Changzhou city
 — Jiangyin Xingye Plastic Co. Ltd, Jiangyin city
 — Far Eastern Industries Shanghai Ltd, Shanghai
 — Yuhua Polyester Co. Ltd. of Zhuhai, Zhuhai
 — Jiangyin Chengsheng New Packing Material Co. Ltd., Jiangyin
 — Hubei Changfeng Chemical Fibres Industry Co. Ltd, Yichang;
- (d) Exporting producers in Pakistan
 — Gatron (Industries) Ltd, Karachi
 — Novatex Ltd, Karachi;
- (e) Related importers
 — Mitsubishi Chemicals, Düsseldorf, Germany;
- (f) Unrelated importers
 — Helm AG, Hamburg, Germany
 — Global Services International, Milano, Italy
 — ABIC Italia, Milano, Italy;
- (g) Community suppliers
 — Interquisa SA, Madrid, Spain
 — BP Chemicals, Sunbury-on-Thames, United Kingdom;
- (h) Community users
 — Danone Waters Group, Paris, France
 — Aqua Minerale San Benedetto, Scorze (VE), Italy
 — RBC Cobelplast Mononate, Varese, Italy
 — Nestlé Espana SA, Barcelona, Spain.
- (10) In light of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country took place at the premises of the following company:
 Producer in the United States of America (the US)
 — Wellman Inc., Charlotte.

3. Investigation period

- (11) The investigation of dumping and injury covered the period from 1 April 2002 to 31 March 2003 (IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 1999 to the end of the investigation period (period considered).

4. Product concerned and like product

4.1 General

- (12) Poly(ethylene terephthalate) (PET) is a chemical, which is normally used in the plastic industry, for the production of bottles and sheets. There is also another type of PET

for use in polyester fibre production. The production process of the two types of poly(ethylene terephthalate) is identical up to a certain stage since they are both produced by the polycondensation of purified terephthalic acid (PTA) or dimethyl terephthalate (DMT) with mono ethylene glycol (MEG). Poly(ethylene terephthalate) for use in the plastics industry is polymerised in a similar way to that for polyester fibre production, in some cases in common facilities. The difference between the two types of poly(ethylene terephthalate) is primarily determined by the fact that the product concerned undergoes a further process called 'solid state processing' which increases its 'intrinsic viscosity' value (IV value or ItV value). It is thus the level of IV that differentiates the product concerned from the poly(ethylene terephthalate) used in the polyester fibre industry. Poly(ethylene terephthalate) with an IV value below 0,7 is used for the production of polyester fibre and is thus not concerned by this anti-dumping investigation.

- (13) The viscosity of poly(ethylene terephthalate) may also be expressed in a different form, namely in terms of 'viscosity number'. The equivalent of an IV value of 0,7 as measured by tests performed according to ISO standard 1628-5 is a viscosity number of 78 ml/g which is the coefficient of viscosity for the type of poly(ethylene terephthalate) used in the production of plastic bottles and sheets.

4.2 Product concerned

- (14) The product concerned is poly(ethylene terephthalate) with a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5 originating in Australia, the PRC and Pakistan, currently classifiable within CN code 3907 60 20.
- (15) The investigation has shown that all types of the product concerned as defined in the preceding recital, despite differences in a variety of factors such as, *inter alia*, viscosity, additives, melting behaviour, have the same basic physical, and chemical characteristics and are used for the same purposes. Therefore, and for the purpose of the present anti-dumping proceeding, all types of the product concerned are regarded as one product.

4.3 Like product

- (16) No differences were found between the product concerned and the PET produced and sold on the domestic market in Australia, the PRC, Pakistan and the US, which served as an analogue country for the purpose of establishing the normal value with respect to imports from the PRC. Indeed, PET has the same basic physical and chemical characteristics and uses compared with that exported from these countries to the Community.

- (17) Likewise, no differences were found between the product concerned and the PET produced by the complainant Community industry and sold on the Community market. They both share the same physical and chemical characteristics and uses.
- (18) Consequently, PET produced and sold on the domestic market of Australia, the PRC and Pakistan as well as that exported to the Community, PET produced and sold on the domestic market of the analogue country, and PET produced and sold in the Community by the Community industry have the same basic physical and chemical characteristics and uses. It is therefore concluded that all types of PET form one product family and are considered to be alike within the meaning of Article 1(4) of the basic Regulation.
- (23) An examination was also made as to whether the domestic sales of each type of PET 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 PET type in question. In cases where the sales volume of PET type, sold at a net sales price equal to or above the calculated cost of production, represented 80 % or more of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of PET type represented less than 80 % of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.

B. DUMPING

1. General methodology

- (19) The general methodology set out hereinafter has been applied to all exporting producers in Australia and Pakistan as well as for the cooperating Chinese exporting producers for which MET was granted. The presentation of the findings on dumping for each of the countries concerned therefore only describes what is specific for each exporting country.
- (24) In cases where the volume of profitable sales of any type of PET represented less than 10 % of the total sales volume of that type, 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.

1.1 Normal value

- (20) As far as the determination of normal value is concerned, the Commission first established, for each exporting producer, whether its total domestic sales of the product concerned 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.
- (21) The Commission subsequently identified those types of PET, sold domestically by the companies having overall representative domestic sales and that were identical or directly comparable to the types sold for export to the Community.
- (22) For each type sold by the exporting producers on their domestic markets and found to be directly comparable to the type of PET 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 of PET were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable PET type exported to the Community.
- (25) Wherever domestic prices of a particular type sold by an exporting producer could not be used, constructed normal value had to be used in preference to domestic prices of other exporting producers. Due to the number of different types and the variety of factors (such as viscosity, additives, melting behaviour, etc.) affecting them, using domestic prices of other exporting producers would have meant, in this case, making numerous adjustments, most of which would have had to be based on estimates. It was therefore considered that the construction of the normal value for each exporting producer formed a more appropriate method.
- (26) 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 amount for selling, general and administrative expenses (SG and A) and a reasonable margin of profit. To this end, the Commission examined whether the SG and A incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data.

(27) Actual domestic SG and A expenses were considered reliable when the total domestic sales volume of the company concerned could be regarded as representative when compared to the volume of export sales to the Community. The domestic profit margin was determined on the basis of domestic sales of those types which were sold in the ordinary course of trade. For this purpose, the methodology set out in recital 23 was applied. Where these criteria were not met, a weighted average SG and A expenses and/or profit margin of the other companies with sufficient sales in the ordinary course of trade in the country concerned was used.

1.2 *Export price*

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

(29) In the case where sales were made via a related importer, the export price was constructed on the basis of the resale prices to independent customers. Adjustments were made for all costs incurred between importation and resale by that importer, including SG and A expenses, and a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation.

1.3 *Comparison*

(30) The normal value and export prices were normally compared on an ex-works basis. 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. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

1.4 *Dumping margin*

(31) According to Article 2(11) of the basic Regulation, for each exporting producer the weighted average normal value was compared with the weighted average export price.

(32) 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.

(33) For those countries where the level of cooperation was high and where there was no reason to believe that any exporting producer abstained from cooperating, it was

decided to set the residual dumping margin at the level of the cooperating company with the highest dumping margin, in order to ensure the effectiveness of any measures.

(34) In case where the level of cooperation for one country was low, the residual dumping margin was determined on the basis of the highest dumped export sales to the Community of representative quantities. This approach was also considered necessary in view of the fact that there were no indications that a non cooperating party had dumped at a lower level and in order to avoid giving a bonus for non cooperation.

2. **Australia**

(35) Questionnaire replies were received from two exporting producers and one importer related to one of the exporters.

2.1 *Normal value*

(36) For all types of PET exported by the Australian exporting producers, the Commission could establish normal value on the basis of the prices paid or payable in the ordinary course of trade by independent customers on the domestic market, in accordance with Article 2(1) of the basic Regulation.

2.2 *Export price*

(37) One of the Australian exporting producers made export sales to the Community both directly to independent customers and via a related importer in the Community. Consequently, for the latter a constructed export price has been established pursuant to Article 2(9) of the basic Regulation.

2.3 *Comparison*

(38) In order to ensure 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. On this basis, allowances for differences in transport, insurance, handling charges, commissions, credit, packing and bank charges have been granted.

2.4 *Dumping margin*

(39) 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.

(40) The comparison showed the existence of dumping in respect of the cooperating exporting producers. The provisional dumping margins expressed as a percentage of the cif import price at the Community border, duty unpaid are the following:

- Leading Synthetics Pty Ltd: 8,6 %,
- Novapex Australia Pty Ltd: 17,6 %.

(41) Since the level of cooperation was high (indeed, there are only two exporting producers of the product concerned in Australia), the residual provisional margin was set at the level of the cooperating company with the highest dumping margin to ensure the effectiveness of any measures.

- Residual dumping margin: 17,6 %.

3. Pakistan

(42) Two companies replied to the questionnaire for exporting producers. Both companies were found to be related to each other.

3.1 Normal value

(43) For all types of PET, except one, exported by one of the Pakistani exporting producers, the Commission could establish normal value on the basis of the prices paid or payable in the ordinary course of trade by independent customers on the domestic market in accordance with Article 2(1) of the basic Regulation. For the sole PET type where less than 10 % of the domestic sales are in the ordinary course of trade, constructed normal value was used, in accordance with Article 2(3) of the basic Regulation.

(44) The second exporting producer had no domestic sales. Therefore, given the sole two exporting producers in Pakistan were linked to each other, the normal value was established on the basis of the prices of the product concerned charged on the domestic market by the first exporting producer, in accordance with Article 2(1) of the basic Regulation.

3.2 Export price

(45) All sales of the product concerned made by the two related Pakistani exporting producers on the Community market were made to independent customers in the Community. Consequently, the export price was established according to Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable.

3.3 Comparison

(46) In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demon-

strated to affect prices and price comparability. On this basis, allowances for differences in transport, insurance, handling charges, commissions, credit and other factors have been granted.

3.4 Dumping margin

(47) 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.

(48) The comparison showed the existence of dumping in respect of the cooperating exporting producers. These two companies being related, the provisional dumping margin expressed as a percentage of the cif import price at the Community border has been calculated as the weighted average of the dumping margins of the two cooperating producers, in line with the Community's policy for related exporting producers. This margin amounts to:

- Gatron (Industries) Ltd: 14,8 %,
- Novatex Ltd: 14,8 %.

(49) Since the level of cooperation was high (indeed there are only two exporting producers of the product concerned in Pakistan), the residual provisional margin was set at the level of the cooperating company with the highest dumping margin to ensure the effectiveness of any measures.

- Residual dumping margin: 14,8 %.

4. People's Republic of China

4.1 Market Economy Treatment

(50) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c).

(51) Briefly, and for ease of reference only, these criteria are set out in summarised form below:

1. business decisions and costs are made in response to market conditions; and without significant State interference;
2. accounting records are independently audited and applied for all purposes;
3. there are no significant distortions carried over from former non-market economy system;

4. legal certainty and stability is provided by bankruptcy and property laws;
5. currency exchanges are carried out at the market rate.
- (52) Eight exporting producers in the PRC requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers.
- (53) Two companies have been rejected already on the basis of a first analysis of the MET claim form which failed to show that all the criteria were met. Of the remaining six companies, the Commission sought and verified at the premises of these companies all information submitted in the MET applications and deemed necessary.
- (54) The investigation revealed that two of the eight Chinese exporting producers fulfilled all of the conditions for granting MET. The remaining six claims had to be rejected. The criteria not met by the six exporting producers are set out in the table of recital 56 below.
- (55) The two exporting producers in the PRC which obtained MET are:
- Changzhou Worldbest Radici Co. Ltd,
 - Far Eastern Industries Shanghai Ltd.
- (56) The following table summarises the determination for each company against each of the five criteria as set out in Article 2(7)(c) of the basic Regulation.

Summary determination against the five criteria as set out in Article 2(7)(c) of the basic Regulation

Company	Criteria				
	Article 2(7)(c) indent 1	Article 2(7)(c) indent 2	Article 2(7)(c) indent 3	Article 2(7)(c) indent 4	Article 2(7)(c) indent 5
1	Not met	Not met	Met	Met	Met
2	Not met	Not met	Met	Met	Met
3	Not met	Met	Met	Met	Met
4	Not met	Not met	Not met	Not met	Met
5	Met	Met	Met	Met	Met
6	Met	Met	Met	Met	Met
7	Met	Not met	Met	Met	Met
8	Met	Not met	Met	Met	Met

Source: Verified questionnaire replies of cooperating Chinese exporters.

- (57) The companies concerned and the complainant were given an opportunity to comment on the above findings.
- (58) Six exporting producers submitted that the determination was wrong and that MET should be granted to them.
- (59) Companies 1 to 4 argued that the sole or one of the reasons to reject their claim for MET was that they are State-owned companies while the State interference regarding decisions of firms could not be demonstrated.

- (60) These companies argued that the fact that a company be State-owned does not mean in itself that the State interferes and they also claimed that the Commission failed to establish any State interference in the management and operations of the companies.
- (61) Further to Article 2(7)(c) of the basic Regulation, a MET claim must contain sufficient evidence that the exporting producer operates under market economy conditions. In particular, the exporting producer must evidence that its decisions regarding prices, costs and inputs, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand, and without significant State interference in this regard.
- (62) Based on the above-referred provision of the basic Regulation, it is not to the Commission to establish any State interference, but to the companies requesting MET to demonstrate the absence of any significant State interference in their business decisions.
- (63) Therefore, in cases where companies are entirely or predominantly State owned with all consequences on the decision making process and the nomination of key positions such as directors or managers etc., the aim of the investigation is also to assess to which extent the State could interfere in case anti-dumping measures are imposed and which measures were taken by the company to prevent such interference.
- (64) In these particular cases, it was considered that the companies which were all entirely or predominantly State-owned, failed to demonstrate that appropriate measures have been taken to prevent State interference and that the State did not interfere in their business decisions. Under these circumstances, it can be assumed that there was a significant State interference in the business decisions of these entirely or predominantly State-owned companies. In addition, given the nature of the product concerned, which cannot be identified as having been produced by a particular producer, the risk of circumvention of measures by way of exporting via a company with a lower level of duty was also deemed significant.
- (65) Companies 1 and 2 also complained about the fact that no verification visit took place in their premises and argued that this was discriminatory in view of the companies which have been visited. It is however recalled that according to Article 16 of the basic Regulation, verification visits are not compulsory but shall be carried out, where it is considered appropriate. In addition, as already explained under recital 53, the claims of these two companies have been rejected already on the basis of a first analysis of their MET claim form, since they failed to show that all the criteria were met. The claim was therefore rejected.
- (66) These two companies also claimed that contrary to the Commission's conclusions, their accounts were fully in line with international standards although the auditor made reservations with regard to particular points and that consequently criterion 2 is met. According to these companies, should the accounts not have been in line with international standards, the auditors would not only have made a reservation but would have simply refused to certify the annual accounts.
- (67) Companies 7 and 4 were also found to not meet the criterion 2. These companies argued that the basic Regulation requests that the annual accounts of the companies be audited independently and in line with international accounting standards (IAS). According to these companies, the fact that the auditors mentioned a mistake in their respective annual accounts precisely demonstrates that the conditions of the basic Regulation are met, i.e. that their accounts are audited independently and in line with IAS.
- (68) However, from a general point of view, it is noteworthy that the purpose of requesting accounts audited in line with IAS is to assess the reliability of the accounts and more particularly of revenues, costs and profit booked by the company since the bulk of the anti-dumping verification visit consists precisely in verifying these three items. In addition, it is recalled that the opinion expressed by the auditors (approval without or with reservation or refusal to approve) depends on the significance of the mistake found in the accounts and the fact that an auditor does not issue an 'adverse opinion' does not mean in itself that the accounts are correct which could only be guaranteed by an approval without conditions by the auditor. Finally, concerning these particular companies, it is confirmed that the notes included in the auditor's report were deemed sufficiently significant to consider that the criterion was not met. The claim was therefore rejected.

- (69) Company 8 claimed that the accounting issues, on the basis of which the Commission decided to reject its claim for MET, relate to a short period of time i.e. last quarter of 2001 when the company was being set up. In addition, according to this company, such transactions would be allowed by 'the generally accepted accounting principles'.
- (70) However, likewise the previous companies, the mistakes found were deemed significant and not in line with the IAS. The claim was therefore rejected.
- (71) Finally, several exporters claimed that the Commission failed to respect the three month deadline in its assessment for MET as required by Article 2(7)(c) of the basic Regulation. However, it is recalled that the verification visits, which were planned to take place in July and August, had to be postponed due to the SARS issue. Although some of the Chinese Provinces where some of the companies are located, were not on the list of the World Health Organisation at that time, given the uncertainty and in view of the likely changes that could occur between the decision to go on spot and the arrival of the case-handlers in the PRC, it was decided to postpone all the verifications on behalf of the principle of prudence. It is only when all restrictions have been relieved that the verification visits could take place. Consequently, given the time constraint, the MET claim form and the anti-dumping questionnaire had to be verified at the same time, i.e. during the same verification visit.
- (72) One company argued that the time to decide on MET was 'undue and discriminatory'. However, as explained above, the SARS issue entailed serious delays in the verification process and so do also, the number of verification visits to be carried out in view of the large number of Chinese exporting producers which cooperated. In addition, given the decision on MET have been released to all the cooperating exporting producers at the same time, there is no reason to believe that the procedure has been discriminatory.
- (73) The two companies whose claims for MET have been rejected on the basis of a first analysis of their MET claim form, i.e. without any verification visit, claimed that there is no reason why the three month deadline was not met. However, in order to avoid any discrimination among the cooperating exporting producers, the decision on MET have been released to all the cooperating exporting producers at the same time.

4.2 *Individual treatment*

- (74) Further to Article 2(7)(a), a country-wide duty, if any, is established for countries falling under Article 2(7), except in those cases where companies are able to demonstrate, in accordance with Article 9(5), that their export prices and quantities as well as the conditions and terms of the sales are freely determined, that exchange rates are carried out at market rates, and that any State interference is not such as to permit circumvention of measures if exporters are given different rates of duty.
- (75) The eight exporting producers, as well as requesting MET, also claimed individual treatment in the event they were not granted MET and one additional exporting producer requested only individual treatment. On the basis of information available it was found that for three companies all of the requirements for IT, set forth in Article 9(5) of the basic Regulation were met.
- (76) The four remaining companies were found to be entirely or predominantly state owned. For these companies, the risk of State interference was deemed significant. Given the nature of the product concerned, which cannot be identified as having been produced by a particular producer, the risk of circumvention of measures by way of exporting via a company with a lower level of duty was also deemed significant. Consequently, the conditions set in Article 9(5)(c) and (e) of the basic Regulation were not met. It was therefore decided not to grant them IT.

- (77) It was therefore concluded that IT should be granted to the following three exporting producers in the PRC:
- Jiangyin Xingye Plastic Co. Ltd,
 - Jiangyin Chengsheng New Packing Material Co. Ltd,
 - Hubei Changfeng Chemical Fibres Industry Co. Ltd.

4.3 Normal value

4.3.1 Determination of normal value for all exporting producers not granted MET

(a) Analogue country

- (78) According to Article 2(7) of the basic Regulation, for non-market-economy countries and, to the extent that MET could not be granted, for countries in transition, normal value has to be established on the basis of the price or constructed value in an analogue country.
- (79) In the notice of initiation, the Commission indicated its intention to use the United States of America as an appropriate analogue country for the purpose of establishing normal value for the PRC and invited interested parties to comment on this.
- (80) The investigation showed that the United States of America had a highly competitive market for the product concerned with 10 producers operating on the NAFTA market, eight major buyers and significant imports from third countries. The consumption on the American market is large and imports represent about 15 % of the American consumption of the product concerned. The American market was, therefore, deemed substantial and sufficiently representative in comparison to the volume of Chinese exports of the product concerned to the EU.
- (81) The exporting producers in the PRC objected to this proposal. The arguments against the choice of the United States of America were the facts that allegedly (i) it is the practice to use one of the countries involved in the same investigation; (ii) the cooperating United States producer is related to a Community producer; and (iii) the costs in the United States of America are higher than in China. The interested parties in question suggested Pakistan or the Republic of Korea as appropriate analogue countries but provided no evidence justifying that these countries would constitute a better alternative to the United States of America. Nevertheless, the Commission considered the two proposals.
- (82) Regarding Pakistan it should be noted that only two companies manufacture the product concerned in Pakistan, compared to at least eight producers in the United States of America. In addition, imports of PET in Pakistan are subject to 20 % custom duties while in the United States of America there are 6,8 % customs duty (+ 0,3 c/kg). For these reasons, the Pakistani market appears to be less competitive than the US market for the product concerned. Finally, it was found that the domestic sales of the Pakistani producer to independent customers were small as compared to exports of the product concerned originating in the PRC and were, therefore, much less representative compared to the very large exports from China.
- (83) Concerning the Republic of Korea, it is recalled that the Republic of Korea is not subject to the same investigation, as claimed by several exporters, but to a partial interim review pursuant to Article 11(3) of the basic Regulation. In addition, the investigation has shown that, all Korean producers, were producers of a smaller size than the American cooperating company, which had also much larger domestic sales. Furthermore, the biggest Korean producer appeared to be partially integrated (i.e. produces itself at least one of the main raw materials), which was not the case for the producers in China. Therefore, the Republic of Korea was not deemed an appropriate analogue country.
- (84) Regarding the allegation that the relationship between the American cooperating company and a European producer could have distorting effects on the data provided, these allegations did not coincide with the findings of the investigation. The Commission checked whether the relationship had any distorting impact on the prices, costs of production and profitability of the United States producer, in particular during the on-the-spot verification of the company's data. No indication was found of any such distortions and the Commission satisfied itself on the accuracy and reliability of the information provided for the purposes of this investigation.

- (85) Finally, the argument concerning the difference in costs was also considered. The price of the main raw material (PTA) used in the production of the product concerned by the United States company and which represents the most significant part of PET cost of production was compared to the prices paid by the Chinese companies for PTA and no significant differences were found. The argument was therefore rejected.
- (86) In view of the above, it is provisionally concluded that the United States constitutes an appropriate analogue country in accordance with Article 2(7) of the basic Regulation.

(b) Determination of normal value

- (87) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET was established on the basis of verified information received from the producer in the analogue country, i.e. on the basis of all prices paid or payable on the domestic market of the United States for comparable product types, since these were found to be made in the ordinary course of trade.
- (88) As a result, normal value was established as the weighted average domestic sales price to unrelated customers by the cooperating producer in the United States.

4.3.2 Determination of normal value for exporting producers granted MET

- (89) The companies granted MET were requested to submit a full questionnaire reply including domestic sales information and information on costs of production of the product concerned and these replies were verified at the premises of the companies concerned.
- (90) As far as the determination of normal value is concerned, the Commission followed the same methodology as the one explained in recitals 20 to 27.
- (91) For all types of PET, except one, exported by the Chinese exporting producers, the Commission could establish normal value on the basis of the prices paid or payable in the ordinary course of trade by independent customers on the domestic market in accordance with Article 2(1) of the basic Regulation. For the sole PET type where less than 10 % of the domestic sales were made in the ordinary course of trade, constructed normal value was used, in accordance with Article 2(3) of the basic Regulation.

4.4 *Export prices*

- (92) All export sales of exporters granted MET or IT to the Community were made directly to independent customers in the Community and the export price was established pursuant to Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable.

4.5 *Comparison*

- (93) The comparison was made on an ex-factory basis and at the same level of trade. In order to ensure 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. On this basis, allowances for differences in transport, insurance, handling, loading and ancillary costs, credit, commissions, import charges and after sales costs (warranty/guarantee) were made.

4.6 *Dumping margin*

4.6.1 For the cooperating exporting producers granted MET/IT

- (94) For the two companies granted MET, the weighted average normal value of each type of the product concerned exported to the Community was compared with the weighted average export price of the corresponding type of the product concerned, as provided for under Article 2(11) of the basic Regulation.

- (95) For the three companies granted individual treatment, the weighted average normal value for each type exported to the Community established for the analogue country was compared with the weighted average export price of the corresponding type exported to the Community, as provided for under Article 2(11) of the basic Regulation.
- (96) The provisional weighted average dumping margins expressed as a percentage of the cif Community frontier price duty unpaid are:

Changzhou Worldbest Radici Co. Ltd	17,4 %
Far Eastern Industries Shanghai Ltd	12,6 %
Jiangyin Xingye Plastic Co. Ltd	21,0 %
Jiangyin Chengsheng New Packing Material Co. Ltd	29,5 %
Hubei Changfeng Chemical Fibres Industry Co. Ltd	18,1 %

4.6.2 For all other exporting producers

- (97) In order to calculate the country-wide duty applicable to all other exporters in the PRC, the Commission first established the level of cooperation. A comparison was made between the total imports of the product concerned originating in the PRC calculated on the basis of Eurostat and the actual questionnaire replies received from exporters in the PRC. On this basis it was established that the level of cooperation was close to 100 %.
- (98) The dumping margin was consequently calculated as a weighted average of the dumping margin established for the remaining cooperating exporters which were neither granted MET nor IT. The dumping margin for the remaining cooperating exporters mentioned above was calculated by comparing the weighted average normal value established for the analogue country and the weighted average export price reported by the exporter concerned.
- (99) On this basis the country-wide level of dumping was provisionally established at 23,2 % of the cif Community frontier price.

C. INJURY

1. Community production

- (100) During the investigation period, PET was manufactured by:
- seven complainant Community producers, which fully cooperated with the Commission during the investigation,
 - four other producers, which fully supported and cooperated with the Commission during the investigation,
 - one other producer which supported the proceedings and provided some general information concerning its production and sales.
- (101) The complainant knows of no more producers of the product concerned, nor have any other producer of the product concerned made themselves known to the European Commission. Hence, the PET produced by the 12 companies listed above constitutes the Community production within the meaning of Article 4(1) of the basic Regulation.

2. Definition of the Community industry

- (102) The accumulated production of the 11 Community producers that fully cooperated in the investigation was at 1 634 477 tonnes during the investigation period, or around 97 % of the estimated total production of PET in the Community. Thus the 11 Community producers that fully cooperated have been considered to represent the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

3. Community consumption

3.1 Preliminary remarks

3.1.1 Import data

- (103) Eurostat information, related to volumes and values for CN code 3907 60 20, together with data submitted by exporting producers, were used as the source of the import data.

3.1.2 Community industry data

- (104) Community industry data were obtained from the verified questionnaire responses of the 11 cooperating Community producers.

3.2 Community consumption

- (105) Apparent consumption in the Community was established on the basis of:
- the total imports of the product concerned into the Community as reported by Eurostat together with data submitted by exporting producers,
 - the total verified sales of the Community industry on the Community market, and
 - the sales data of the other Community producer who provided some general information.
- (106) Community consumption reached 1 845 962 tonnes during the IP, which is 37 % above the level of consumption at the beginning of the period considered. The significant increase of PET consumption has been triggered by a significant increase of the consumption of bottled drinks, i.e. soft drinks and bottled water, and follows the trend already established in a previous investigation ⁽¹⁾.

	1999	2000	2001	2002	IP
EU consumption	1 348 628	1 349 763	1 420 759	1 795 883	1 845 962
1999 = 100	100	100	105	133	137

4. Imports into the Community from the countries concerned

4.1 Cumulative assessment of the effects of the imports concerned

- (107) It was first examined whether imports from the PRC, Pakistan and Australia should be assessed cumulatively, in accordance with Article 3(4) of the basic Regulation.
- (108) The evolution of imports from the countries concerned, in volume (tonnes) and market share, has been the following:

	1999	2000	2001	2002	IP
PRC	144	20	9 000	89 329	120 814
Market share (%)	0	0	0,6	5,0	6,6
Australia	0	0	5 157	17 031	27 538
Market share (%)	0	0	0,4	0,9	1,5
Pakistan	0	8 500	14 678	47 767	74 311
Market share (%)	0	0,6	1,0	2,6	4,0
Total imports from the countries concerned	144	8 520	28 835	154 127	222 663
Total market share (%)	0	0,6	2,0	8,6	12,1

⁽¹⁾ See paragraph 101 in Commission Regulation (EC) No 1742/2000 (OJ L 199, 5.8.2000, p. 48), imposing provisional anti-dumping duties on imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand.

- (109) It was found that:
- the dumping margins established in relation to the imports from each of the countries concerned were above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation,
 - the volumes of imports from each of these countries were not negligible during the investigation period, as market shares for these countries ranged from 1,5 % to 6,6 % in the IP, and
 - the cumulative assessment was found to be appropriate in view of the conditions of competition both between imports originating in these countries, and between these imports and the like Community product. This is evidenced by the fact that the level of undercutting, ranging from 10,0 % to 17,9 % is relatively similar, and that they use similar sales channels. Moreover, the investigation has shown that the imports concerned and the like product share the same physical and chemical characteristics. Finally, the imports concerned and the like product follow the same price trends, which reflect the price of their basic raw material, naphta (refined oil).
- (110) For this reason, it is provisionally concluded that all the criteria set out in Article 3(4) of the basic Regulation are met and that imports originating in the PRC, Australia and Pakistan should be assessed cumulatively.

4.2 Market share of imports concerned

- (111) As shown above, the imports from the countries concerned started from the year 2000, but became significant as from 2002 due to the fact that new production facilities in the countries concerned were established. Their market share of the Community consumption went from 0,6 % in 2000 to 8,6 % in 2002 to reach 12,1 % during the investigation period.

4.3 Prices of imports and undercutting

- (112) A comparison of selling prices on the Community market during the IP was made between the prices of the Community industry and those of the exporting producers in the countries concerned. This comparison was made after deduction of rebates and discounts. The prices of the Community industry were adjusted to ex-works prices, and the prices of the imports were cif Community frontier, plus duties, with adjustments made for the level of trade and handling costs, based on information collected during the investigation, notably from cooperating unrelated importers.
- (113) The comparison showed that, during the IP, the products concerned originating in the countries concerned were sold in the Community at prices which undercut the Community industry's prices, when expressed as a percentage of the latter, as follows: PRC 13,5 % to 17,9 %, Australia: 10 % to 11,9 % and Pakistan: 12,7 %.
- (114) The relative low average rates of undercutting are due to price depression caused by the behaviour of the exporting producers in the countries concerned which sold at dumped prices. The Community industry was forced to match these prices in order to try to keep its market share. It should be borne in mind that, given the market power of several large users of PET, price considerations is the ultimate driver in the market.

5. Situation of the Community industry

- (115) 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 from 1999 (base year) to the IP.
- (116) The Community industry data below represent the aggregated information of the 11 cooperating Community producers.

5.1 Production, production capacity and capacity utilisation

- (117) The production capacity was established on the basis of the theoretical maximum hourly output of the machines installed, multiplied by the annual theoretical working hours, considering maintenance and other similar production interruptions.

	1999	2000	2001	2002	IP
Production	1 168 334	1 432 785	1 546 672	1 629 703	1 642 100
Index (1999 = 100)	100	123	132	139	141
Production capacity	1 346 074	1 595 962	1 759 762	1 948 248	1 955 954
Index (1999 = 100)	100	119	131	145	145
Capacity utilisation	87 %	90 %	88 %	84 %	84 %
Index (1999 = 100)	100	103	101	96	97

- (118) As shown in the table above, production during the period 1999 to the IP increased by 41 %, a reflection of the strong growth in Community consumption. During the same period production capacity increased by 45 %, i.e. somewhat more than consumption. This increase should be seen in the light of the strong demand in the Community consumption during the last years. Moreover, it should also be noted that the Community industry had been affected by injurious dumping up to 5 August 2000 ⁽¹⁾, and thus could have been expected to benefit from increased sales due to the removal of injurious dumping from these sources. The increase in production capacity for the Community industry was absolutely necessary in order to keep its market shares and to meet the growing demand by the users, which is forecasted to increase further. The capacity utilisation shows an uneven trend during the period considered, with the capacity utilisation rate in the IP at 84 %, slightly below the level at the beginning of the period.
- (119) Some exporters have claimed that the increased capacity during the period considered is a sign of strength rather than of injury. The same exporters have also referred to planned new investments into new capacity in this respect.
- (120) As stated above, the increases in production capacity were made in order to meet the demand in consumption. Indeed, and as mentioned in the Commission Regulation imposing anti-dumping measures on PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand ⁽²⁾, one of the general fears that the Community users had in imposing measures at that time was a possible shortage of PET in the Community market.
- (121) Moreover, it normally takes two years between a decision to invest in new capacity and the moment when the new capacity is installed and ready to run. As can be seen above, the major increase in new capacity during the period considered took place between 1999 and 2000. Consequently, the decision to install this capacity must have been taken before the period considered, thus the increased capacity cannot be seen as a 'sign of strength' as suggested by the exporters.
- (122) In respect of planned new capacity, some of the Community producers have officially announced further investments into new capacity. Some exporters have consequently taken these announcements as a sign of strength for the Community producers.

⁽¹⁾ Provisional anti-dumping duties on imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand were introduced by Regulation (EC) No 1742/2000, with effect from 6 August 2000.

⁽²⁾ See recital 194 in Regulation (EC) No 1742/2000.

- (123) Whereas it is confirmed that several Community producers have plans to further increase their production capacity (with approximately 300 000 to 400 000 tonnes), these plans should be seen in the light of the increased consumption of PET in the Community market. Moreover, under the current circumstances, several of the Community producers are now reconsidering their investment plans, as the level of prices on the Community market makes it difficult for these Community producers to finance the envisaged investments.
- (124) Indeed, some of the producers have in fact been forced to temporarily close down capacity during the latter part of the IP and following the end of the IP, as they made financial losses at the prevailing price levels. One producer closed down capacity corresponding to 73 000 tonnes during the IP, and another Community producer closed its operations with a capacity of 270 000 tonnes following the end of the IP.

5.2 Stocks

- (125) The figures below represent the volume of stocks at the end of each period.

	1999	2000	2001	2000	IP
Stocks (tonnes)	74 796	76 463	112 991	110 020	95 841
as % of production	6,4 %	5,3 %	7,3 %	6,8 %	5,8 %

- (126) The level of stocks have remained stable throughout the whole period considered. Moreover, this economic indicator has not been considered relevant in the present injury analysis, as the product concerned is bulky with a relatively low value per m³. Hence, for purely practical reasons, the Community industry will always try to keep their level of stock to a minimum.

5.3 Sales volume, market shares, growth and average unit prices in the EC

- (127) The figures below represent the Community industry's sales to independent customers in the Community.

	1999	2000	2001	2002	IP
Sales volume (tonnes)	994 290	1 249 609	1 286 705	1 426 864	1 403 430
Index (1999 = 100)	100	126	129	144	141
Market Share	73,7 %	92,6 %	90,6 %	79,5 %	76,0 %
Index (1999 = 100)	100	126	123	108	103
Average unit prices (EUR/tonne)	686	1 014	1 125	977	986
Index (1999 = 100)	100	148	164	143	144

- (128) The Community industry's sales volumes have increased with 41 % during the period considered, of which 26 % occurred between 1999 and 2000. The increase in sales volumes should be seen in the light of the increased consumption during the same period, which increased by 37 %.

- (129) Following the introduction of anti-dumping measures on 5 August 2000 ⁽¹⁾, the Community industry was able to regain lost market shares. Between 1999 and 2000, the market shares of the Community industry increased from 73,7 to 92,6 % of Community consumption. However, following this period of relative strength, the market share of the Community industry decreased again. Between 2001 and the IP, its share of Community consumption decreased from 90,6 to 76,0 %, as dumped imports from the countries concerned started to penetrate the Community market.
- (130) Whereas the Community industry initially could benefit from the increased consumption and from the increase in average sales prices, with its turnover growing with 112 % from 1999 to 2001, this growth abruptly stopped in 2002, as dumped imports from the countries concerned forced the Community industry to cut its average sales prices.
- (131) The Community industry's average sale prices increased by 48 % between 1999 and 2000, to reach a more sustainable level following the imposition of anti-dumping measures against dumped imports from India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand in 2000. Part of this increase was linked to higher prices of its raw materials (see recital 169 below), which the Community industry was able to carry forward to its customers. Still, this increase also allowed the Community industry to return to profitability, although the levels of profit and return on investment were, as described in detail below, comparatively low. The Community industry succeeded to increase its prices further in 2001, but this period was followed by the period of price depression in 2002 and during the IP. Indeed, between 2001 and the IP, the prices decreased by 12 %, a development which coincided in time with fierce competition from imports originating in the countries concerned.

5.4 Profitability, return on investments and cash flow

- (132) 'Profitability on EC sales' represents the profit generated by sales of the product concerned on the Community market. 'Return on total assets' and 'cash flow' could only be measured at the level of the narrowest group of products which included the like product, pursuant to Article 3(8) of the basic Regulation.
- (133) Moreover, the return on investments has been calculated on the basis of return on total assets, as return on total assets is considered more relevant for the analysis of trend.

	1999	2000	2001	2002	IP
Profitability on EC sales	- 16,4 %	4,0 %	7,6 %	2,9 %	0,9 %
Return on total assets	- 12,1 %	3,7 %	7,7 %	2,2 %	0,4 %
Cash flow (as % on total sales)	- 9,7 %	- 4,4 %	20,2 %	19,5 %	14,0 %

- (134) Following the imposition of the anti-dumping measures against imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand, the Community industry could, as seen above, increase the prices to a more sustainable level. Still, it took until 2001 before the Community industry reached the level of profit envisaged as target profit (7 %) in Commission Regulation (EC) No 1742/2000.
- (135) Following a price depression in 2002 and during the IP, coinciding with massive increases of dumped imports from the countries concerned, the financial situation of the Community industry started to deteriorate again. The profit level reached during the IP was just above break-even, and is far from sufficient to finance necessary re-investments as requested by the customers.

⁽¹⁾ Regulation (EC) No 1742/2000 imposing provisional anti-dumping duties on imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand.

- (136) Indeed, both the profitability on EC sales as well as return on total assets show the same trends, namely an improvement from 1999 to 2001, followed by a deterioration from 2001 to the IP.
- (137) The trend for cash flow developed in a similar fashion, albeit with a backlog of one year, explained by the movements in short-term assets as a result of the sales increases.

5.5 Investments and ability to raise capital

	1999	2000	2001	2002	IP
Investments	17 818	19 371	69 813	44 179	34 380

- (138) Following the imposition of the anti-dumping measures against imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand, the Community industry decided to make new investments into its capacity.
- (139) As mentioned above, there is an approximately two-year time lap between the decision to invest into new capacity and the moment when this new capacity is ready to be used. However, the time lap between the decision to invest and the moment when the new machinery appears on the balance sheet is naturally shorter, as the investments are charged to the balance sheet as soon as they are being built. This explains why the level of investments above does not always correspond to an immediate increase of capacity as given under recital 117.
- (140) The Community industry's ability to raise capital, either from external providers of finance or parent companies, was not seriously affected during the period considered.

5.6 Employment, productivity and wages

	1999	2000	2001	2002	IP
Number of employees	1 606	1 692	1 701	1 681	1 659
Index 1999 = 100	100	105	106	105	103
Employment costs (in EUR '000)	31 291	33 236	34 541	35 478	36 045
Index 1999 = 100	100	106	110	113	115
Productivity (tonne/employee)	727	847	909	969	990
Index 1999 = 100	100	116	125	133	136

- (141) As seen above, the Community industry increased its production with 41 % during the period considered. Despite the increase, the number of employees in production remained at approximately the same level.
- (142) This is due to the fact that the Community industry has invested in new highly automated installations, which do not require major increases in the work force. Indeed, the productivity increased with 36 % during the period considered, while at the same time the employment costs increased with 15 %.

5.7 Recovery from past dumping

- (143) Following the imposition of anti-dumping measures in 2000 ⁽¹⁾, the Community industry could increase its average sales prices to a more sustainable level, while at the same time keeping its market shares in the increasing PET market. As mentioned in recital 134, the Community industry reached a sustainable profit margin in 2001. It can therefore be concluded that the Community has recovered from past dumping.

5.8 Magnitude of the actual margin of dumping

- (144) The dumping margins are specified in the dumping part (see recitals 40, 48 and 96). These margins established are clearly above *de minimis*, as defined in Article 9(3) of the basic Regulation). Furthermore, given the volume and the price of the dumped imports, the impact of the actual margin of dumping cannot be negligible.

6. Conclusion on injury

- (145) It is recalled that, following the imposition of anti-dumping measures against imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand, the Community industry immediately gained confidence. Average prices of its EC sales increased with 64 % between 1999 and 2001 (which partially represented compensation for increased prices of raw materials) and sales volumes in the EC increased with 29 %. The result of these developments was increased profitability; in 2001 the Community industry succeeded to obtain the profit margin envisaged as target profit in the Commission Regulation (EC) No 1742/2000 mentioned above, enabling it to invest in new capacity as demanded by its customers and to engage in environmental-related projects such a recycling of used bottles.
- (146) However, as could be seen above, the level of imports from the countries concerned started to penetrate the Community market at a massive scale as from 2002, resulting in price depression on the Community market. The Community industry lost market shares and its financial stability was again threatened as reflected in its poor financial results.
- (147) In view of the above, it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

D. CAUSATION

1. Preliminary remarks

- (148) In accordance with Article 3(6) of the basic Regulation, it was examined whether the material injury suffered by the Community industry had been caused by the dumped imports from the countries concerned. In accordance with Article 3(7) of the basic Regulation, the Commission also examined other factors which might have injured the Community industry in order to ensure that any injury caused by those factors was not wrongly attributed to the dumped imports.
- (149) Measures are currently in force against imports originating in India, Indonesia, Republic of Korea, Malaysia, Taiwan and Thailand. As already mentioned in recital 3, the anti-dumping measures against imports of PET originating in the Republic of Korea and Taiwan are presently subject to an interim review pursuant to Article 11(3) of the basic Regulation. These elements have been taken into account in this examination.

2. Effect of the dumped imports

- (150) The volume of PET originating in the countries concerned increased dramatically during the period considered. As can be seen in the table under recital 108 the imports from the three countries concerned increased from quasi non-existent quantities in 1999 to a level of 223 000 tonnes in the IP which equalled a market share of 12,1 %.

⁽¹⁾ Regulation (EC) No 1742/2000 imposing provisional anti-dumping duties on imports of PET originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand.

- (151) The substantial increase in the volume of imports originating in the countries concerned and their gain in market share in 2002 and during the IP, at prices which remained well below those of the Community industry, coincided in time with the deterioration of the situation of the Community industry during the very same period.
- (152) As could be established in recital 113, the imports originating in the countries concerned undercut the average sales price of the Community industry with significant amounts, with undercutting margins ranging from 10 % to 17,9 %.
- (153) It is therefore provisionally concluded that the pressure exerted by the imports concerned, which significantly increased their volume and market share from 2001 onwards, and which were made at low dumped prices, played a determining role in causing price decreases and lost market shares for the Community industry and, as a consequence, a deterioration of its financial situation.

3. Effect of other factors

3.1 Imports originating in other third countries

- (154) The imports from third countries not concerned by this investigation showed the following development during the period considered:

	1999	2000	2001	2002	IP
Third countries with anti-dumping duties in force					
India	38 393	4 920	3 909	2 258	2 899
Indonesia	27 537	3 121	5 370	4 461	3 548
Republic of Korea	88 790	5 361	2 818	86 748	95 414
Malaysia	29 481	4 917	8 327	12 983	10 566
Taiwan	38 595	7 500	589	27 787	25 748
Thailand	23 880	441	0	18	18
Subtotal	247 266	26 260	21 013	134 255	138 193
Third countries with no anti-dumping duties.					
Brazil	0	6	0	8 464	8 464
Turkey	12 811	1 692	2 636	7 206	7 950
United States of America	21 983	32 431	31 465	18 577	15 855
Other third countries with no anti-dumping duties	47 686	3 192	13 381	5 767	7 302
Subtotal	82 480	37 321	47 482	40 014	39 571
Total imports from third countries other than the countries concerned	329 746	63 581	68 495	174 269	177 764

- (155) Following the introduction of anti-dumping measures in 2000, the imports from third countries not concerned by this investigation decreased dramatically, as the measures went into effect. With the exception of the Republic of Korea and Taiwan, none of the other countries show an absolute increase in volume at a level which could have caused any injury to the Community industry, or this increase did not coincide in time with the injury evolution of the Community industry.

- (156) However, for the Republic of Korea and Taiwan, the imports originating in these countries showed a similar trend to the imports originating in the countries concerned, namely a significant increase in imports volumes towards the end of the period considered. Moreover, this development also coincided in time with the deterioration of the situation of the Community industry. It is however noted that the combined volume of imports from these two countries amounts only to about half of the import volume from the three countries concerned.
- (157) No other countries showed a significant increase of import volumes during the period considered.
- (158) Furthermore, based on Eurostat data, the average cif prices excluding anti-dumping duties for imports originating in the Republic of Korea was EUR 842/tonne, and for Taiwan EUR 784/tonne during the IP. The range of anti-dumping duties in force varies between EUR 0/tonne to EUR 148,3/tonne for the Republic of Korea, and between EUR 47/tonne to EUR 69,5/tonne for Taiwan. The third country duty rate was 6,5 % for both the Republic of Korea and for Taiwan.
- (159) Hence, the average price duty paid for imports of PET originating in the Republic of Korea varied between EUR 896/tonne and EUR 1 044/tonne, and between EUR 882/tonne to EUR 905/tonne for Taiwan. Recalling that the average sales prices of the Community industry during the IP, as given under recital 127, was EUR 986/tonne, the average exports prices correspond to a level of undercutting between 0 to 9,1 % for the Republic of Korea, and 8,2 to 10,5 % for imports originating in Taiwan. Moreover, it is likely that the exporters with the lower level of anti-dumping duty have increased their share of the imports at the expense of the exporters with the higher level of anti-dumping duty.
- (160) It is therefore provisionally not excluded that some of the imports of PET originating in the Republic of Korea and Taiwan have also contributed to the injury suffered by the Community industry. It is to be recalled that the measures against these two countries are currently subject to an interim review pursuant of Article 11(3) of the Basic Regulation which will examine whether the existing measures are sufficient to counteract the dumping which is causing injury.

3.2 *Prices of raw materials*

3.2.1 Preliminary remarks

- (161) The quarterly data concerning average sales prices of PET in the EC and on cost of raw materials used in this analysis have been supplied by the Community industry.

3.2.2 Causation by prices of raw materials

- (162) The cost of production of PET depends to a high degree (approximately two thirds) on the prices of raw material and utilities such as electricity and gas (variable costs). Prices of PTA as well as other production inputs such as MEG and DMT reflect the prices of oil. It has therefore been considered relevant for the proceeding to assess whether or not the price increases of PTA have been passed on to the customers, or if the Community industry have been squeezed between increases in raw material prices and average sales prices.
- (163) In this respect, two types of Community producers of PET were found, those who purchased their raw materials from related companies (integrated producers) and those who purchased their raw materials from external suppliers (independent producers).
- (164) It was first determined whether the prices of raw materials were structurally different due to the fact that integrated producers bought their raw materials from related suppliers and independent producers bought their raw materials from external suppliers.

- (165) It was found that the cost of raw materials for integrated producers did not significantly differ from the independent producers. Hence, for this analysis, the cost of raw materials for the Community producers could be assessed for all Community producers together.
- (166) Having determined that the causation by raw materials could be assessed not taking into account whether the producer was integrated or independent, a comparison of the prices at different levels were then carried out for the Community industry as a whole.
- (167) As has been explained in recital 12, PET is derived from PTA (or DMT), mixed with MEG. The quarterly evolution of prices for raw materials (PTA/DMT and MEG) for the production of PET and the quarterly average sale price by the Community industry are shown below.
- (168) Moreover, to enable a comparison with price of oil, the quarterly prices of naphta (refined oil), being the main input to the production of Paraxylene (PX), which in its turn constitute approximately two thirds of the input for the production of PTA, have been inserted for the same period.

Period	Average naphta price (EUR) (*)	Index	Average price for raw materials to PET (mainly PTA) (**)	Index	Average sales price for PET (**)	Index
Q1/1999	12,67	100	466	100	634	100
Q2/1999	16,36	137	454	97	633	100
Q3/1999	21,61	178	532	114	701	111
Q4/1999	25,09	200	585	126	756	119
Q1/2000	26,55	224	645	138	941	148
Q2/2000	24,93	201	692	148	1 087	171
Q3/2000	27,56	216	741	159	1 108	175
Q4/2000	25,69	208	735	158	1 050	166
Q1/2001	23,85	202	702	151	1 164	184
Q2/2001	23,86	194	734	158	1 228	194
Q3/2001	22,54	158	734	158	1 139	180
Q4/2001	17,36	122	688	148	984	155
Q1/2002	18,53	144	575	123	936	148
Q2/2002	23,02	174	657	141	1 052	166
Q3/2002	26,41	203	667	143	986	155
Q4/2002	26,82	210	653	140	926	146
Q1/2003	33,80	298	690	148	1 001	158

(*) Source: International Energy Agency: Oil Product Spot Prices, Rotterdam in EUR/bbl.

(**) Source: Information from Community producers, EUR/tonne.

- (169) As can be seen above, the prices for the raw materials for the Community producers increased with 59 % from Q1/1999 to Q3/2000, from EUR 466/tonne to EUR 741/tonne, a reflection of the underlying price of Naphta which at the same time increased with 116 %. Between Q3/2000 and Q3/2001, the prices for the raw materials remained relatively stable, whereas the subperiod from Q3/2001 up to the end of the IP, the information shows a slight decrease of the prices of the raw materials, whereas the price of Naphta increased with 188 % during the same subperiod.
- (170) Meanwhile, the average sales prices for the Community industry increased by 75 % from Q1/1999 to Q3/2000, from EUR 634/tonne to EUR 1 108/tonne. Between Q3/2000 and Q3/2001, the average sales prices show only minor fluctuations, with a net change of only 3 % during this period. Finally during the period Q3/2001 up to the end of the IP, the average sales price decreased from EUR 1 139/tonne to EUR 1 001/tonne.
- (171) When comparing the price evolution for the Community industry, i.e. for the raw materials and for the average sales price, the figures above show that, during the first subperiod (Q1/1999 to Q3/2000), the price of raw materials increased by 59 % and the average sales price increased with 75 %. During the following subperiod (Q3/2000 to Q3/2001), both the price of raw materials and the average sales prices remained stable. Finally, during the last subperiod (Q3/2001 to Q1/2003), the prices of raw materials decreased by 6 % and the average sales price decreased with 13 %, i.e. by more than was necessary to compensate for lower prices for raw materials.
- (172) The fact that average sales price decreased more than the corresponding decrease for raw materials should be seen as a direct result of price depression caused by dumped imports.
- (173) It is therefore provisionally concluded that the cost of raw materials did not significantly contribute to the injury suffered by the Community industry, as all increases of its raw materials (which includes all upstream price fluctuations) have been passed on to the customers. It is only during the last subperiod when the average sales prices of the Community Industry, as a result of competition from dumped imports, have decreased more than the corresponding decrease for the raw materials.

3.3 Causation due to changes in the pattern on consumption

- (174) As mentioned in recital 106, the consumption of PET in the Community increased by 37 % during the period considered. The pattern of consumption has therefore provisionally not been considered to have inflicted any injury suffered by the Community industry.

3.4 Causation due to transfer pricing

- (175) It has been claimed by some exporters that the injury suffered by those of the Community producers that are owned by multinational corporations may have been caused by group companies overcharging its European Community subsidiary for raw materials delivered.
- (176) It is recalled that in recital 165, no differences between integrated and independent Community producers were found. Given the fact that the claim concerns integrated producers, and that no structural differences in prices for raw materials were found between integrated and independent producers, this argument could therefore be dismissed.

3.5 Conclusion of causation

- (177) On the basis of the above, it is provisionally concluded that there is a casual link between dumped imports and the injury suffered by the Community industry. This conclusion is based on the fact that there were significant increases in volumes and market shares of imports, which also undercut considerably the prices of the Community industry, from the countries concerned during the period considered. Moreover, there is a striking coincidence in time between the sharp rise of dumped imports and the deterioration of the financial situation for the Community industry.
- (178) The investigation has also shown that it cannot be excluded that some of the imports from Taiwan and the Republic of Korea also have contributed to the injury. However, there is no indication that the potential effect of these imports is such as to break the casual link between dumped imports from Australia, Pakistan and the People's Republic of China, and the injury suffered by the Community Industry as a result of dumped imports. No other factors have been put forward or been found which could have affected in a significant way the situation of the Community industry.

E. COMMUNITY INTEREST

1. General considerations

- (179) It has been examined whether compelling reasons existed that could lead to the conclusion that it would not be in the Community interest to introduce anti-dumping duties against imports from the countries concerned. For this purpose and in accordance with Article 21(1) of the basic Regulation, the determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers/traders as well as the users and suppliers of the product concerned.
- (180) The Commission sent questionnaires to importers/traders, suppliers of raw materials, industrial users as well as various associations of users. In all, 84 questionnaires were sent out.
- (181) Complete questionnaire replies were received from the following interested parties:

Suppliers

- Interquisa SA
- BP Chemicals;

Importers/Traders

- Mitsui & Co Benelux
- Helm AG
- Global Services International (agent)
- Sabic Italy;

Users

- Schweppes Benelux SA (bottler of soft drinks)
- Resilux SA (preform/bottle converter)
- Danone Waters Europe SA (bottler of mineral water)
- Nestlé Waters Spain SA (bottler of mineral water)
- L'Abeille SA (bottler of soft drinks)
- Pepsico France SA (bottler of soft drinks)
- Amcor PET Europe (preform/bottle converter)
- RBC Cobelplast Mononate (sheet producer)
- Aqua Minerale San Benedetto (bottler of mineral water);

User associations

- European Plastic Converters.

- (182) Moreover, several hearing have been held by the parties mentioned above, and by parties who made themselves known to the Commission, but who did not submit a questionnaire. Finally, information have also been submitted and several hearings have also been held by exporters in relation to the Community Interest.

2. Interest of the Community industry

- (183) It is recalled that the Community industry consisted of 11 producers which employs approximately 1 700 staff for the production and sales of PET. It is also recalled that the economic indicators of the Community industry above showed deteriorating financial results in 2002 and during the investigation period. Despite the growing demand of PET in the Community, the Community industry do not at present have the financial stability to invest in new production capacity, as demanded by the users.
- (184) Following the introduction of the anti-dumping measures against imports originating in, *inter alia*, India and Indonesia in 2000, the Community Industry showed that it was able to benefit from these measures. Indeed, the industry recovered in a satisfactory way already towards the end of 2000 to 2001 and, by a high level of investment, demonstrated its commitment to the Community market and to remain a viable player. Given the prevailing financial situation for the Community industry, it is clear that anti-dumping measures would be in the interest of the Community industry.

3. Interest of unrelated importers

- (185) Several importers and one trader made themselves known to the Commission, representing 26 % of the imports from the countries concerned during the IP. They argue that it would not be in the Community interest to impose measures, as the Community market need imports in order to supply the increasing demand for PET in the EC. Moreover, the import restrictions would harm the activities of the importers, which could have an effect on the employment of these companies.
- (186) The purpose of the anti-dumping measures is to restore fair trade. It is neither to prohibit imports nor to hamper the activities of the importers in the EC. In fact, any measures to be proposed are to be set at a level which will enable the continuation of imports also in future, but at prices that are non dumped or non injurious, whichever is the lower.
- (187) Hence, as fairly-priced imports will still be allowed to enter into the Community market, it is likely that the traditional business of the importers will continue even if anti-dumping measures against dumped imports are imposed.

4. Interest of suppliers

- (188) It is recalled that several Community producers receive their raw material from group companies (integrated producers). Only suppliers independent of the Community producers have been included in this examination.
- (189) The two cooperating suppliers sold the bulk of the Community industry's purchases of PTA (the main input) where this was not supplied internally such as in integrated producers. The two suppliers both supported the procedures. The imposition of measures would help to maintain the Community producers' demand for their raw material and therefore it would be in the interest of the suppliers to have measures in force against dumped imports from the countries concerned.

5. Interest of users

5.1 Preliminary remarks

- (190) PET is at present mostly used to produce bottles for soft drinks and mineral and spring water. It is also used for the production of certain types of plastic sheets and films. Bottles in PET are produced in two steps in order to obtain enough strength: 'preforms' are obtained by mould injection of PET, these preforms are then blown and transformed into bottles. Preforms can be fairly easily transported because they are small and dense, while empty bottles are fragile and very expensive to transport.

- (191) The water and soft drink markets are organised differently in terms of bottling:
- mineral and spring water producers have more constraints in terms of health regulations. The large majority of preforms used by water producers are self-produced close to the blowing and filling lines,
 - soft drinks producers may either purchase blown bottles, purchase preforms and blow them or produce their own preforms and blow their own bottles.
- (192) Hence, for the Community industry, there are three major types of customers (the user share information have been obtained from the complainant):
- preform/bottle converters, accounting for approximately 40 % of PET consumption,
 - mineral and spring water producers, whose share in PET consumption is around 45 % producers,
 - soft drink integrated producers that account for around 7 % of PET consumption by direct purchases, but indirectly consume 40 % of the consumption via the preform/bottle converters mentioned above,
 - sheet/film producers that account for approximately 8 % of the PET consumption.

5.2 *Preform/bottle converters*

- (193) The two cooperating converters represented approximately 11 % of the PET consumption, of which 10 % was purchased from the Community industry and 1 % was imported. In relation of the estimated consumption of PET by preform/bottle converters, the sales to the two cooperating companies by the Community industry represent approximately 27 % of the sales to this sector; Moreover, the association of the Plastic converters also cooperated in the investigation.
- (194) For the cooperating companies, the costs for purchasing PET are essential, representing approximately 65 % of their total costs.
- (195) Both companies cooperating in the investigation were in general positive to imposing measures against dumped imports, as this could lead to a certain stability to the prices and a secured supply of various qualities of PET in the Community market. However, the Association of Plastic Converters feared that increased prices for PET would result in difficulties for especially the estimated 50 to 100 small- and medium-sized converters, and that some of the processing would be outsourced to third countries which have no duties in force against imports of PET, and taking advantage of the fact that there are no anti-dumping duties in force on imports of preforms into the Community.
- (196) To conclude, whereas the two cooperating converters, assumed to represent the bigger preform/converters, in principle are in favour of anti-dumping measures against dumped imports, the small- and medium-sized preform/bottle converters, represented by the Association of Plastic Converters, were against the imposition of anti-dumping duties. On the basis of these contradictory views, it cannot be established whether it would be in the interest of the preform/bottle converters to impose anti-dumping duties.

5.3 *The mineral and spring water producers*

- (197) The three companies cooperating in the investigation represented approximately 13,3 % of the PET consumption, of which 7,8 % was purchased from the Community industry and 5,5 % was imported. In relation of the PET consumed by the mineral and spring water producers, the sales of PET by the Community industry to these three cooperating companies represent approximately 28 % of the sales to this sector.

- (198) For the cooperating companies, the costs for purchasing PET are not as essential as for the preform/bottle converters, but still represent approximately 30 % of the total manufacturing costs.
- (199) Indeed, for a 1,5 litre bottle with a retail price of 35 to 50 cents at the supermarket (TVA included), the costs for PET represents only 3 cents (6 to 10 %) of this retail price.
- (200) Whereas one of the mineral water producers expressed strong opposition to any measures, the two other mineral water producers were in principle in favour of measures against dumped imports, as long as the supply of PET of sufficient quality could be safeguarded, and as they saw the need for the Community industry to invest in new production capacity.
- (201) However, they all expressed some concern over the fact that the main retailers are very strong and that the mineral and spring water producers would not be in a position to pass on any major price increases as a result of the imposition of anti-dumping measures.
- (202) As noted above, the cost of PET at the retail level only represents 6 to 10 % of the retail price to consumers, which means that a 10 % increase of the prices would entail a 0,6 to 1,0 % price increase at the level of consumers, a level which is not considered significant to the extent that it could not be absorbed by the downstream industry or passed on to retailers or the consumers

5.4 *The soft drink producers*

- (203) All the soft drink producers that cooperated in the investigation were non-integrated bottlers, i.e. were indirect users of PET by buying PET indirectly via preform/converting companies. None the less, based on their costs for preforms and knowing the average price for a preform, their indirect consumption of PET corresponded to less than 1 % of Community consumption of PET. Given this low level of representativity among cooperating soft drink producers, the views presented below cannot be said to represent the soft drink producers as a whole.
- (204) The three cooperating soft drink producers were in general opposed to imposing measures and expressed concern over the fact that the main retailers are very strong and that the soft drink producers would not be in a position to carry forward any major price increases as a result of the imposition of anti-dumping measures.
- (205) It has already been demonstrated that the price of PET is a rather marginal cost for the end-consumer; a 10 % increase of PET entails an increase of 0,3 cents for a 1,5 litre bottle, which represents an increase in the range of 0,6 % for that bottle at the supermarket. Indeed, as a 1,5 litre of soft drink normally cost around EUR 1 at the level of the supermarket, the same 10 % increase of PET would entail a minor 0,3 % increase of the price for the end-consumer.
- (206) Given the marginal effect that price increases of PET have on the retail price, it is not unreasonable to believe that the users will be able to pass on this increase to the retailers and to the end-consumer.

6. **Shortages of PET in the Community market**

- (207) Several interested parties have expressed concern that the Community industry would not be able to meet the increasing volumes of PET if measures were introduced, and that imports are needed to fill this gap between production and consumption.

- (208) It is recalled that the Community industry have increased its capacity by 45 % during the period considered. Moreover, several of the Community producers have announced plans of further increases in their capacity by 300 to 400 thousand tonnes. Taken into account that financial stability normally is a prerequisite for obtaining financial resources, if anti-dumping measures are introduced and financial stability is restored, there is nothing that speaks against that the Community industry will reinvest these profits into capacity building. Moreover, similar comments have already been made in the course of the investigation leading to measures against imports from India, Indonesia, Republic of Korea, Malaysia, Taiwan and Thailand. The current investigation has indeed shown that there was no supply shortage following the imposition of anti-dumping measures as a result of the previous investigation. There are no indications, also in the light of the explanations given in the next recital, as to why this should now be different as a result of this investigation.
- (209) Moreover, and as already stated above, if anti-dumping measures are introduced, fairly-priced imports will still be allowed to enter into the Community market in order to cover any gap between production and Community consumption, to ensure a healthy competition on the EC market. It is also noted that the level of anti-dumping measures proposed is not such as to make imports from the countries concerned commercially no longer viable.

7. Conclusion on Community interest

- (210) The imposition of measures against imports of PET originating in the countries concerned would clearly be in the interest of the Community industry. As expressed by the suppliers in the investigation, it would also be in their interest to ensure a healthy PET-market to which the suppliers could deliver their raw material. Finally, also some of the major users have expressed an interest in introducing measures against dumped imports, if this leads to more production capacity being built in the EC. The interest of some of the other users and the importers do not overturn this positive picture.
- (211) In view of the above, it is concluded that there are no compelling reasons not to impose anti-dumping duties against imports of PET originating in the countries concerned.

F. PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

- (212) In view of the provisional conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.
- (213) For the purpose of establishing the level of the provisional measures, account has been taken of both the dumping margin found and the amount of duty necessary to eliminate the injury sustained by the Community industry.
- (214) The provisional measures should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production and obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community. The pre-tax profit margin used for this calculation was 7 % of turnover i.e. the same as the one which was considered necessary to ensure the viability of the industry in the previous proceeding against India, Indonesia, Malaysia the Republic of Korea, Taiwan and Thailand⁽¹⁾. On this basis a non-injurious price was calculated for the Community industry of the like product. The non-injurious price has been obtained by adding the above mentioned profit margin of 7 % to the cost of production.

⁽¹⁾ OJ L 199, 5.8.2000, p. 48.

- (215) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the average non-injurious price. Any difference resulting from this comparison was then expressed as a percentage of the average import cif value. These differences were in all cases above the dumping margin found.

2. Provisional measures

- (216) In the light of the foregoing, it is considered that a provisional anti-dumping duty should be imposed at the level of the dumping margin found, but should not be higher than the injury margin calculated above in accordance with Article 7(2) of the basic Regulation.
- (217) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by 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 and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (218) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.
- (219) That PET prices can fluctuate in line with fluctuations in crude oil prices, should not entail a higher duty. It was therefore considered appropriate to impose duties in the form of a specific amount per tonne. 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.
- (220) The proposed anti-dumping duties are the following.

Country	Company	Injury elimination margin	Dumping margin	Anti-dumping duty rate	Proposed anti-dumping duty
Australia	Leading Synthetics Pty Ltd	19,3 %	8,6 %	8,6 %	72 EUR/t
	Novapex Australia Pty Ltd	24,9 %	17,6 %	17,6 %	141 EUR/t
	All other companies	24,9 %	17,6 %	17,6 %	141 EUR/t
PRC	Sinopec Yizheng Chemical Fibre Company Ltd	28,9 %	23,2 %	23,2 %	180 EUR/t
	Changzhou Worldbest Radici Co. Ltd	29,4 %	17,4 %	17,4 %	137 EUR/t
	Jiangyin Xingye Plastic Co. Ltd	23,9 %	21,0 %	21,0 %	172 EUR/t
	Far Eastern Industries Shanghai Ltd	21,2 %	12,6 %	12,6 %	106 EUR/t
	Yuhua Polyester Co. Ltd of Zhuhai	28,9 %	23,2 %	23,2 %	188 EUR/t
	Jiangyin Chengsheng New Packing Material Co. Ltd	30,9 %	29,5 %	29,5 %	230 EUR/t

⁽¹⁾ European Commission
Directorate-General for Trade
Direction B
Office J-79 5/16
B-1049 Brussels

Country	Company	Injury elimination margin	Dumping margin	Anti-dumping duty rate	Proposed anti-dumping duty
	Guangdong Kaiping Polyester Enterprises Group Co. and Guangdong Kaiping Chunhui Co. Ltd	28,9 %	23,2 %	23,2 %	191 EUR/t
	Wuliangye Group Push Co. Ltd	28,9 %	23,2 %	23,2 %	179 EUR/t
	Hubei Changfeng Chemical Fibres Industry Co. Ltd	27,4 %	18,1 %	18,1 %	144 EUR/t
	All other companies	28,9 %	23,2 %	23,2 %	183 EUR/t
Pakistan	Gatron (Industries) Ltd	21,8 %	14,8 %	14,8 %	128 EUR/t
	Novatex Ltd	21,8 %	14,8 %	14,8 %	128 EUR/t
	All other companies	21,8 %	14,8 %	14,8 %	128 EUR/t

G. FINAL PROVISION

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of poly(ethylene terephthalate) having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, classified under CN code 3907 60 20 and originating in Australia, People's Republic of China and Pakistan.

2. The rate of the provisional anti-dumping duty applicable to the net free-at-Community-frontier price for products manufactured by the companies listed below shall be as follows:

Country	Company	Anti-dumping duty (EUR/t)	TARIC additional code
Australia	Leading Synthetics Pty Ltd	72	A503
	Novapex Australia Pty Ltd	141	A504
	All other companies	141	A999
PRC	Sinopec Yizheng Chemical Fibre Company Ltd	180	A505
	Changzhou Worldbest Radici Co. Ltd	137	A506
	Jiangyin Xingye Plastic Co. Ltd	172	A507
	Far Eastern Industries Shanghai Ltd	106	A508
	Yuhua Polyester Co. Ltd of Zhuhai	188	A509
	Jiangyin Chengsheng New Packing Material Co. Ltd	230	A510

Country	Company	Anti-dumping duty (EUR/t)	TARIC additional code
	Guangdong Kaiping Polyester Enterprises Group Co. and Guangdong Kaiping Chunhui Co. Ltd	191	A511
	Wuliangye Group Push Co. Ltd	179	A512
	Hubei Changfeng Chemical Fibres Industry Co. Ltd	144	A513
	All other companies	183	A999
Pakistan	Gatron (Industries) Ltd	128	A514
	Novatex Ltd	128	A515
	All other companies	128	A999

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

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

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

Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 30 days of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

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

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

Done at Brussels, 19 February 2004.

For the Commission
Pascal LAMY
Member of the Commission

⁽¹⁾ OJ L 253, 11.10.1993, p. 1.