►**B** **COUNCIL IMPLEMENTING REGULATION (EU) No 857/2010**

of 27 September 2010

imposing a definitive countervailing duty and collecting definitely the provisional duty imposed on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates

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imposing a definitive countervailing duty and collecting definitely the provisional duty imposed on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community (the 'basic Regulation') ([1]), and in particular Article 15(1) thereof,

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

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The Commission, by Regulation (EU) No 473/2010 ([2]) ('the provisional Regulation'), imposed a provisional countervailing duty on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates ('the countries concerned').

(2) The proceeding was initiated following a complaint lodged on 20 July 2009 by the Polyethylene Terephthalate Committee of Plastics Europe ('the complainant') on behalf of producers representing a major proportion, in this case more than 50 %, of the total Union production of certain polyethylene terephthalate.

(3) As set out in recital (15) of the provisional Regulation, the investigation of subsidisation and injury covered the period from 1 July 2008 to 30 June 2009 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the IP ('period considered').

(4) In the parallel anti-dumping proceeding, the Commission by Regulation (EU) No 472/2010 ([3]), imposed a provisional anti-dumping duty on imports of certain polyethylene terephthalate originating in Iran and the United Arab Emirates.

1.2. Subsequent procedure

(5) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional countervailing measures ('provisional disclosure'), several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were also granted the opportunity to be heard.

([1]) OJ L 188, 18.7.2009, p. 93.
([2]) OJ L 134, 1.6.2010, p. 25.
([3]) OJ L 134, 1.6.2010, p. 4.

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(6) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties following the provisional disclosure were considered and, where appropriate, the provisional findings were modified accordingly.

(7) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing duty on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates and the definitive collection of the amounts secured by way of the provisional duty (‘final disclosure’). They were also granted a period within which they could make representations subsequent to this disclosure.

(8) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings were modified accordingly.

1.3. **Parties concerned by the proceeding**

(9) Some interested parties claimed that the sample of EU producers was not representative and inconsistent and that therefore the injury analysis was deficient. In particular, it was claimed that sampling was not necessary since the number of producers was not large. In addition, it was claimed that by ‘artificially’ splitting company groups into individual legal entities, the sample would not contain some of the market leaders (Artenius, M&G Polimeri) and that the methodology for the selection of the sample is inconsistent since the sample also included two groups of companies. It was also claimed that the sample was not representative since it did not contain any producer that is selling to a related PET processor in sufficient quantities. As a result, the institutions allegedly could not assess the real supply capability of the Union industry and did not take into account the Union industry’s conflict of interest. Moreover, as one company did not provide all necessary information and was excluded from the sample, the representativity allegedly dropped to 28 % of EU production. The same parties claimed that the selected sample was not statistically valid.

(10) With regard to the argument that sampling was not necessary since the number of producers was not large, it is reiterated that in the sampling exercise 14 Union producers belonging to eight groups of companies came forward. Given the objectively high number of EU producers that cooperated, i.e. 14, sampling was applied in accordance with Article 27(1) of the basic Regulation on the basis of the largest representative volume of sales that could reasonably be investigated within the time available. The sample selected consisted of five individual companies (with six producing locations).

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(11) With regard to the first claim concerning the representativity of the sample, it should be noted that the institutions can include individual companies which are part of a company group within the sample as long as they are representative and have separate financial accounts. Otherwise, investigating all fourteen EU producers belonging to the eight groups of companies would have prevented the timely completion of the investigation. However, the fact that two company groups have been included in the sample is not inconsistent with the sampling methodology applied in this case, i.e. the largest representative volumes of sales to EU clients.

(12) As regards Indorama, this group had two different production plants in the IP – one in the Netherlands and the other one in UK. Including this group in the sample is in line with the sampling methodology applied since those plants formed one entity from the legal and financial perspective. As regards Equipolymers, which had two separate entities producing PET in the IP (one in Italy and another one in Germany), the company reported consolidated figures for both locations. Given that the verification of these consolidated figures was possible during one visit at the company's headquarters, it was decided to treat Equipolymers PET producing companies as one entity for the purpose of this proceeding. With regard to the claim that Artenius and M&G Polimeri had to be included in the sample because they were the market leaders, it is noted that none of their individual entities belonged to the companies with the highest volumes of sales to EU clients.

(13) As regards the claim that the sample was not representative because it did not include one producer who produces mainly for internal consumption, it should be noted that the capability to supply can be examined in the framework of the Union interest analysis if such a claim is made and for that purpose the captive consumption can be deducted from the production volume. Thus, there is no need to have such a producer in the sample for the examination of certain injury factors. Secondly, any double interest resulting from the position of a company as EU producer and processor at the same time can also be assessed in the Union interest analysis. The position of a company as EU producer and processor is not linked with the performance of the Union industry where sales to unrelated customers in the EU are taken as a benchmark. The claim is thus rejected.

(14) With regard to the claim concerning the overall representativity of the sample, it is reiterated that the reduction of the sample to four companies lowered the representativity from 65 % to 47 % of the sales by all cooperating producers. The same four companies accounted for 52 % of the Union production. This is considered to be a representative sample of the EU producers in terms of sales to independent customers in the EU.

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(15) As regards the claim that the sample selected was not statistically valid, it is noted that Article 27(1) of the basic Regulation clearly allows for a sample to be based on the largest representative volume of the sales that can reasonably be investigated in the time available, as an alternative for a 'statistically valid' sample.

(16) In the absence of any other comments concerning the sampling, the findings in recitals (5) to (14) of the provisional Regulation are hereby confirmed.

2. PRODUCT CONCERNED AND LIKE PRODUCT

(17) It is recalled that, in recital (16) of the provisional Regulation, the product concerned was defined as polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, originating in the countries concerned and currently falling within CN code 3907 60 20.

(18) Moreover, in recital (18) of the provisional Regulation, it was stated that the investigation showed that PET produced and sold in the Union by the Union industry, and the PET produced and sold on the domestic markets of the countries concerned, and exported to the Union were like products.

(19) Since the product under investigation was considered a homogeneous product, it was not further subdivided into different product types for calculating the injury margins.

(20) One exporting producer claimed that PET should be subdivided into different product types according to their different viscosity numbers since the viscosity number is essential to determine the different possible applications of the PET type produced. It was considered that the claim should be accepted and the methodology for calculating injury margins was adapted accordingly.

3. SUBSIDISATION

3.1. Iran

3.1.1. *Introduction*

(21) The Government of Iran and the cooperating exporting producer submitted comments on the following schemes, countervailed in the provisional Regulation:

(I) Measures connected to Special Economic Zones ('SEZs') – Petrochemical SEZ

(II) Financing from National Petrochemical Company to the PET exporting producer

3.1.2. *Specific Schemes*

(I) Measures connected to Special Economic Zones (SEZs) – Petrochemical SEZ

(22) The Government of Iran (GOI) disputed that duty-free imports in Free Trade Zones of raw materials and capital goods can be countervailed. Free Trade Zone and Special Economic Zones are by definition duty-free zones for import and export, compatible with the WTO. Besides, the GOI as well as the

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cooperating exporting producer asserted that the import of duty-free capital goods is not contingent in law on export performance because this exemption exists also for the companies established in the rest of the Iranian territory.

(23) With respect to the compliance of SEZs with WTO rules, it is noted that the general argument submitted cannot dispute the established facts that the subsidies in question are counter-vailiable as no elaborated analysis was provided to rebut the one presented in the provisional Regulation. With regards to the duty-free importation of capital goods in Iran, the information at the time submitting comments on the provisional disclosure suggests that this possibility exists only for companies that are modernizing their infrastructure, i.e. it is not an automatic provision applicable to all parties. Therefore, the above claims had to be rejected.

(24) The cooperating exporting producer argued that the Commission disregarded the principle of non-discrimination given that similar rules and regimes are also applied in other countries. The company also claimed that the Commission did not correctly inform it of the scope of the verification visit and the corresponding information requirements before such verification.

(25) As regards the general allegation of violation of the principle of non-discrimination, it is recalled that the Commission initiated this anti-subsidy investigation against the three countries mentioned in the complaint in line with the provisions of Article 10 of the basic Regulation. Thus the Commission's recommendation could only be based on the findings of this investigation. As to the alleged lack of advance information on the points to be investigated, it is noted that the Commission informed the cooperating exporting producer well in advance of the verification visit that it would seek information during the verification visit on the relationship between the exporting producer and its shareholder. Therefore, these claims had to be rejected.

(26) The cooperating exporting producer brought to the attention of the institutions two clerical mistakes in the calculation of the duty exemption on imports of one raw material of the production process and in the total import value of capital goods exempted. Those errors are herein corrected. The revised subsidy rates are 0,14 % for the duty-free import of input products and 0,72 % for the duty-free import of capital goods. The revised total subsidy rate for this scheme is 0,86 %.

(27) In the light of the above and in the absence of any other relevant comments, the findings in relation to this scheme as set out in recitals (20) to (44) of the provisional Regulation, as modified by recital (26) of this Regulation, are hereby confirmed.

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(II) Financing from National Petrochemical Company to the PET exporting producer

(28) The cooperating exporting producer (Shahid Tondguyan Petrochemical Co. or STPC) claimed that its main shareholder, National Petrochemical Company (NPC), is not a public body and that the GOI neither entrusted nor directed NPC to make payments to STPC. In addition, it was submitted that the NPC financing to the STPC has to be considered as repayable and thus not a subsidy.

(29) In addressing these claims, it should be recalled that, in order to assess whether an entity should be considered as a public body for purposes of anti-subsidy investigations, the following factors are relevant: 1) government ownership; 2) the government's presence on the entity's board of directors; 3) the government's control over the entity's activities and the entity's pursuit of governmental policies or interests; and 4) whether the entity is created by statute. All these requirements have been analysed as reported in recital (52) of the provisional Regulation. The NPC, as a government body, does not need entrustment or delegation, concepts that refer to private entities. In fact the investigation has established that NPC's role is to develop and operate the country's petrochemical sector and that the company has received from the GOI the additional task of managing as a state administrative authority the Petrochemical Special Economic Zone. Thus any claim disputing NPC's public body role has to be rejected.

(30) With regards to the claim that the financing to STPC is repayable, it is pertinent to note that the investigation has established that the repayment of this funding is only a hypothetical allegation as no evidence was provided at any stage of the proceeding that such repayment has materialized. Indeed, as explained in the recital (51) of the provisional Regulation, the fact that the non-repayable funds have been accumulated since at least 2004 confirms that this is a recurring subsidy, the purpose of which is to keep in operation the sole cooperating Iranian exporting producer. Account taken of the above, the relevant claim has to be rejected.

(31) The cooperating exporting producer also argued that the subsidy amount was overstated. To this respect it was claimed that it is a perfectly normal business practice in Iran not to add interest between a parent company (in this case NPC) and its subsidiary (in this case STPC). It was also argued that when calculating the subsidy rate the amounts used on total funding provided by NPC and total turnover of STPC were not correct as the turnover figure was understated and that another amount should have been used while the total funding provided was overstated as certain amounts should not to be attributed to the funds provided from NPC to STPC.

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(32) The above claims had to be rejected. With respect to the former claim concerning the interest rate calculations, it is noted that evidence gathered does not uphold the company's claim that the normal business practice in Iran is that no interest is added between a parent company and its subsidiary in their funding transactions. Moreover, any such practice is clearly inconsistent with the usual economic practice of private investors.

(33) As regards the latter argument, it is pertinent to note that the subsidy amount has been calculated by using the financing and turnover figures provided by the cooperating exporting producer and verified during the verification visit.

(34) With respect to the alleged new total turnover it is recalled that the figure provided at the time of submitting comments on the provisional Regulation is not substantiated by any verifiable evidence and does not tally with what the company has reported prior to and during the verification visit.

(35) With respect to the total funding figure, the cooperating exporting producer argued that certain amounts should not be considered as forming part of NPC's funding to STPC. Nevertheless the information provided could not corroborate this claim as no evidence was provided to prove that the amounts in question were not relevant to NPC's funding to STPC. In fact part of the explanations given reconfirmed that NPC was acting as a public body taking up obligations for financing the cooperating exporting producer without charging any interest that should have been honoured by another public body. Therefore, no deduction from the total financing amount can be granted since no verifiable evidence was provided.

(36) The GOI claimed that pursuant to Article 14 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), 'government provision of equity capital … [and] loan by government shall not be considered as conferring a benefit … ', so the NPC financing to SPTC should not be considered a subsidy. This claim has to be rejected since the same abovementioned Article 14 concludes that 'the government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice of private investors in the territory of that Member'. This practice is indeed inconsistent with the usual investment practice of private investors since no commercial organisation in any WTO Member would conceivably continue to provide such non-repayable funding. In any event it should be noted that Iran is not a WTO member.

(37) In the light of the above and in the absence of any other relevant comments, the findings in relation to this scheme as set out in recitals (45) to (57) of the provisional Regulation are hereby confirmed.

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3.1.3. *Amount of countervailable subsidies*

(38) Account taken of recitals (21) to (37) above, the definitive amount of countervailiable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the sole cooperating Iranian exporting producer is 51,88 %.

3.2. **Pakistan**

3.2.1. *Introduction*

(39) The Government of Pakistan (GOP) and the cooperating exporting producer submitted comments on the following schemes, countervailed in the provisional Regulation:

(I) Manufacturing Bond Scheme

(II) Imports of plant, machinery and equipment in Manufacturing Bond

(III) Tariff protection on purchases of PTA in the domestic market

(IV) Final Tax Regime (FTR)

(V) Export Long-Term Fixed Rate Financing Scheme (LTF-EOP)

(VI) Export Finance Scheme from the State Bank of Pakistan (EFS)

(VII) Finance under F.E. Circular No 25 of the State Bank of Pakistan.

(40) The GOP as a preliminary remark submitted that the Commission has failed to grasp or overlooked its past submissions on the subsidy schemes. The cooperating exporting producer as a preliminary remark argued that the past submissions of the GOP provided a reasoned legal analysis demonstrating that the schemes should not be considered as ‘prohibited’ subsidies. It was also argued by this party that the Commission based its findings in the provisional Regulation not only on an incorrect appraisal of factual elements but rather on an incorrect legal analysis as well. It was further claimed that the correct legal analysis was the one presented by the GOP.

(41) With respect to submissions prior to the provisional Regulation, it is noted that the Commission has fully taken them into consideration during the process of the investigation as they formed part, together with the relevant questionnaire replies of the parties and subsequent data provided, of the information on the basis of which the provisional determination was made.

(42) Furthermore, it is noted that the Commission has accurately listed the legal provisions of the relevant schemes and the practical implementations derived from them. No evidence was provided that the legal provisions listed were not accurate. As to the Commission’s legal analysis, this was based on the relevant provisions of the basic Regulation and reinforced by the long-standing legal analysis used by the EU in past anti-subsidy investigation when analysing for example duty drawback schemes,

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export credit schemes and income tax schemes ([1]). The fact that a party does not agree with the presented legal analysis does not imply that this analysis is incorrect, especially when no evidence is provided to corroborate this claim. This is even more obvious since the GOP expressed with its submission to provisional Regulation its willingness to amend to the extent possible a number of schemes. Account taken of the above the claims presented in recital (40) had to be rejected.

3.2.2. *Specific Schemes*

(I) Manufacturing Bond Scheme

(43) The GOP and the cooperating exporting producer reiterated their views that the Manufacturing Bond scheme is properly managed thanks to the existence of an effective implementation and monitoring system that records consumption/deduction and controls duty-free raw materials and the company's actual consumption as per its total production records. It was also submitted that the input/output ratio is based on actual consumption of the relevant company availing the benefits of the scheme and that the record on input is subject to verification. According to these claims the input/output ratio was established with a verified benchmarking system that was regularly updated on the basis of company's actual consumption. After any change in the ratio, the excess remission of the previous period was added back to update the stock-in register, thus obtaining the actual stock, and it is on the basis of such actual stock that the company availing benefits under the scheme must demonstrate the export of finished products. Furthermore, the cooperating exporting producer submitted two letters in which it disclosed to the Customs authorities the materials saved in the Manufacturing Bond showing that the company was allowed to utilise the resultant excess input materials for the manufacturing of goods for export in the future.

(44) In regard to this scheme, as stated in recital (70) of the provisional Regulation, the relevant record of input goods received, manufactured and exported was not kept on the basis of actual consumption. Only the theoretical consumption was registered, according to an Analysis Certificate, with input-output ratios of all the raw materials for producing 1 000 kg of outputs. These input-output norms are set out by the authorities and periodically reviewed on the basis of information derived from the cooperating exporting producer but there are no clear rules and no evidence of how these reviews are performed. In addition, following the revisions made on the Analysis Certificate which indicated the existence of excess remission no follow-up action was taken by the authorities to verify the totality of the previous actual consumption and to request payments made for the previous years. In other words no control of any excess remission on the duties foregone was performed. The cooperating exporting producer alleged that the excess raw materials accounted in the previous period was added back to update the stock-in register, thus obtaining the actual stock. It is worth noting that this practice relies on the fact that it is the

([1]) See for example Council Regulations (EC) No 713/2005 (OJ L 121, 13.5.2005, p. 1) and (EC) No 1176/2008 (OJ L 319, 29.11.2008, p. 1).

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exporting producer that, by its own initiative, proceeds to show to the relevant authority the excess remission accumulated in the previous period. More interestingly, this practice was not in any way foreseen in the legislative provisions disciplining this scheme. All the above confirms that no effective implementation and monitoring system exist for this scheme. In these circumstances, all the relevant claims had to be rejected.

(45) Both parties argued also that the customs duty under the normal import regime was zero during the IP and thus no government revenue is foregone on imports of PTA under Manufacturing Bond.

(46) This claim had to be rejected. It is clear from the information submitted by parties that the normal customs duty on imports of PTA is 7,5 %. By derogation and under certain conditions parties may avail of a zero duty rate. The fact that the GOP has established the Manufacturing Bond scheme or the scheme on Tariff protection on purchases of PTA does not in any way imply that the customs duty rate for all imports of PTA is zero. In fact, the existence of the aforesaid schemes confirms that there is revenue forgone for the government and this is the reason why special derogation schemes with specific rules and eligible users have been implemented.

(47) The cooperating exporting producer also claimed that there was no breach of Article 349 of Chapter XV of the Pakistani Customs Rules 2001. In this respect it was submitted that the Manufacturing Bond covers all the company's factory and thus the premises of the warehouse fulfilled the relevant rules requesting an independent area having an independent entry or exit from a public area and having no other entry or exit with the manufacturing area and separate stores of finished goods, rejects and waste clearly ear-marked in the premises.

(48) With regards to the above comments, it has to be reiterated that the verification visit revealed that only the raw materials imported duty-free were separated from locally procured input goods. The premises of the warehouse, that is the bonded warehouse and the manufacturing bond, were not in an independent area having an independent entry or exit from a public area and having no other entry or exit, as prescribed in Article 349 mentioned above. Furthermore the party's claim that its entire factory is under

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Manufacturing Bond is not based on any verifiable evidence (e.g. an explicit permit on the surface of the Manufacturing Bond) apart from an analysis of the wording of Article 349. Thus, the relevant claims had to be rejected.

(49) The GOP provided very recent administrative changes in relation to this scheme. It has introduced a more detailed definition of the Manufacturing Bond in the legislation and has taken steps to enhance the relevant authority's control on the scheme.

(50) With respect to the control exercised by the authority on the Manufacturing Bond, the changes introduced do not address the most critical flaws of the system as identified by the current investigation i.e.: (i) the lack of reporting of the actual consumption of raw materials imported and (ii) the lack of a verification system that focuses on the actual results rather than the historically set standards. Furthermore, as the implementation of any change made with respect to this scheme needs to be properly verified (the problems identified refer also to the management of the scheme) a certain period of time would be necessary before making any conclusive ruling on the amendments made to the scheme and the way the authorities have implemented these amendments and ensured a properly managed verification system.

(51) The GOP expressed also its willingness to provide the Commission with an undertaking concerning the concrete implementation of the rules applicable to the Manufacturing Bond. It was proposed that this would take the form of providing evidence that the cooperating exporting producer complies with the new rules (e.g. changes in the premises, revision of input/output ratios, remission of duties), providing periodical reports and allowing for verifications visits by the Commission.

(52) As regards the above it is noted that by this undertaking proposal the GOP indirectly confirms all the flaws highlighted by the provisional Regulation with respect to this scheme. In addition, as it is stated at recital (50) above it is not possible to accept an undertaking referring to the management of a scheme on the basis of evidence that would materialise only in the future. Finally, such an undertaking is not practical because the necessary monitoring would effectively require repeating important parts of the investigation on a regular basis. In this respect it should be highlighted that the GOP and/or the cooperating exporting producer may request, should the relevant provisions of Article 19 of the basic Regulation be fulfilled, an interim review of the measures.

(53) In the light of the above and in the absence of any other relevant comments, the findings in relation to this scheme as set out in recitals (60) to (80) of the provisional Regulation, as modified in recitals (44) to (52) above, are hereby confirmed.

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(II) Imports of plant, machinery and equipment in Manufacturing Bond

(54) Concerning this scheme both parties claimed that the interest rate used to calculate the subsidy margin has to be the interest rate available to the concerned exporter during the IP. Further, the parties argued that as the plant, machinery and equipment were used for the production of PET meant for exports as well as domestic sales, the subsidy margin should be determined on the basis of the total turnover of the exporting producer.

(55) In replying to these claims it should be noted that the interest rate used in the calculation is the commercial interest rate applied during the IP in Pakistan, as sourced from the website of the State Bank of Pakistan. This rate represents the normal credit rate prevailing in the market. With regards to the denominator in the subsidy calculation, it has to be recalled that the precondition to avail of the scheme is to install the imported machinery in the Manufacturing Bond which is a system of duty-free import of raw materials used only for subsequent export of the production under the Manufacturing Bond. Thus, the subsidy amount (nominator) has to be allocated over the total export turnover during the IP because the subsidy is contingent upon export performance. Consequently, all the above claims had to be rejected.

(56) In the light of the above and in the absence of any other relevant comments, the findings in relation to this scheme, as set out in recitals (81) to (92) of the provisional Regulation, are hereby confirmed.

(III) Tariff protection on purchases of PTA in the domestic market

(57) The GOP argued that the price of locally produced PTA is not reduced by 7,5 % over the international price and that the refund is not only given for domestically-produced PTA but also for imported PTA. The cooperating exporting producer argued that the scheme allows refund of customs duties for both locally-procured as well as imported PTA and thus the scheme does not favour procurement of domestically-produced PTA. It was also argued that the legislation does not limit access to this scheme.

(58) The above arguments had to be rejected. In this regard it is noted that this scheme provides a financial contribution in the form of a direct transfer of funds that confers a clear benefit upon the recipient company. By analyzing the information submitted by the GOP, it is clear that an eligible company may: (i) buy in the domestic market PTA and receive a compensatory support of a portion equal to 7,5 % of the price paid for PTA purchases manufactured locally or (ii) import PTA and receive a refund of the applicable customs duty (7,5 %) paid on imports of PTA. Nevertheless, the latter option is not permitted if the eligible

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company uses a duty drawback scheme (e.g. Manufacture Bond) on imports of PTA. It is clear form the above that the cooperating exporting producer was de jure forced to use this scheme only for its purchases of domestically-procured PTA as it was using in parallel the Manufacturing Bond scheme for its imported PTA.

Furthermore it is obvious that even in cases where one eligible company makes use of both available options of the scheme (i.e. by denouncing the possibility to use the drawback scheme of Manufacturing Bond) it is clear that the refunds that one would expect to receive would have been different as in one case the rate is calculated on a full domestic invoice price while on the other case it is calculated on the declared value at customs that is not necessarily the full invoice price. No verifiable evidence was provided that could undermine the aforesaid conclusions. Finally, with respect to the argument that there are no restrictions in the access of the scheme, the investigation has established that the relevant legislation clearly listed by name the eligible parties. In any event, domestically-produced PTA is not subject to any duty and therefore the 7,5 % 'refund' is a direct transfer of funds, or a pure grant. The only way for a producer of PET to obtain this subsidy, i.e. the grant, is to purchase domestically-produced PTA. On the other hand, any 'refund' of customs duty on imported PTA is an exemption of a payment normally due, not a direct transfer of funds; therefore, there is no equivalence between the two situations.

(59) Consequently, the scheme confers a clear benefit to the domestic buyer i.e. the producer of PET by means of a direct transfer of funds and it is specific, within the meaning of Article 4(4)(b) of the basic Regulation, given that the subsidy is contingent upon the use of domestic over imported goods, since only domestic goods are eligible for the direct grant. Furthermore, this subsidy can also be considered specific within the meaning of Article 4(4)(a) of the basic Regulation, given that the legislation itself explicitly limits access to this scheme to certain enterprises belonging to the polyester industry.

(60) In relation to this scheme, the GOP provided with its comments on the provisional Regulation a Government Order issued on 28 June 2010 stating that the SRO No 1045(I)/2008 has been repealed with effect from 1 July 2010. The GOP submitted that this development will ensure that no refund on domestically procured or imported PTA is allowed or will be allowed anymore to the users of PTA.

(61) Furthermore, a press clipping submitted on the same matter from the cooperating exporting producer appears to suggest that the GOP decided to withdraw the regulation relevant to this scheme in order for Pakistan to meet international standards in this regard. The cooperating exporting producer corroborated the information provided by GOP by data confirming that starting from 1 July 2010 it is not possible anymore to receive the relevant grant when purchasing domestically-produced PTA. In this respect it is recalled that in line with Article 15 of the basic Regulation no measure shall be imposed if the subsidy is withdrawn or it has been demonstrated that the subsidy no longer confers any benefit on the exporters involved. It is

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obvious from the above information that Pakistan in substance accepts that the points highlighted by the provisional Regulation with respect to this scheme called for corrective action from its side, that the GOP has terminated the scheme and that the cooperating exporting producer is not receiving any benefits related to this scheme. Under these circumstances it is considered that the conditions set out by Article 15 of the basic Regulation are met and thus this scheme should not be countervailed.

(62) In the light of the above and in the absence of any other relevant comments, the findings in relation to this scheme as set out in recitals (93) to (105) of the provisional Regulation, as modified in recitals (58) to (61) above, are hereby confirmed.

(IV) Final Tax Regime (FTR)

(63) Both parties claimed that this scheme constitutes a different taxation system and should not be countervailed given that Pakistan has sovereignty of taxation and is free to apply the taxation system it wishes. It was also argued that the FTR does not imply any financial contribution to any company and it is a generalised rule of taxation in Pakistan (a withholding tax of 1 % at the time of the realisation of foreign exchange proceeds) that operates under a different concept and on a different basis as compared to the Normal Tax Regime (NTR) which provides for a taxation at 35 % on the domestic income. According to these parties it is not possible to determine which of the two systems is more favourable and thus the FTR does not result in revenue foregone or not collecting government revenue that is otherwise due.

(64) With respect to these claims, it should be noted that it is not Pakistan's sovereignty that is questioned, but the alleged subsidies granted to certain exporting producers. Moreover, it should be recalled that profits from exports are taxed in a different way from those earned on domestic sales. To the extent that this tax regime results in profits from exports being taxed at a lower rate than those earned on domestic sales, this scheme is considered to be a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation in the form of forgone government revenue that confers a benefit upon the recipient company. It is also a specific subsidy under Article 4(4)(a) given that it is contingent upon export performance.

(65) In addition, the cooperating exporting producer provided a set of calculations made in excel format for the years 2008 and 2009 and a notice of tax demand and assessment order issued by the Deputy Commissioner of Income Tax which revised a set of figures of the company's 2008 income tax return statement. The GOP corroborated the claims of the cooperating exporting producer by arguing that the provided calculations show that the cooperating exporting producer has paid more tax under the FTR regime compared to what it would have paid in case of application of the NTR regime.

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(66) These arguments had to be rejected. Firstly, the calculations provided do not form part of the company's income tax return statement or any other official tax authority document. Thus there in no verifiable evidence that they accurately picture the income tax obligations of the cooperating exporting producer.

(67) Secondly, an analysis of the submitted official tax documents (notice of tax demand and assessment order) does not in any way confirm the claims made by parties on the levels of tax due under the different tax regimes.

(68) With respect to the submitted documentation referring to 2008, the parties have failed to show how the amounts presented can accurately tally with the company's 2008 income tax return statement and the two documents issued subsequently by the relevant tax authorities. With respect to the latter documents they appear to confirm that the company is requested to pay an income tax amount on its domestic income. Nevertheless, it is not at all clear from the submitted information that this tax amount (or any other tax amount) was actually paid or if the company has appealed the above-mentioned tax notice. It is also not clear how the amounts submitted in the excel calculations could tally either with the company's income tax return statement or with the tax authority's assessment order. In any event even if one was to accept that the amount set in the notice of tax demand was paid, this would not alter the conclusion that the cooperating exporting producer paid less tax than it would have paid if the 35 % rate was applied to export income.

(69) With respect to the submitted documentation relating to 2009 it is noted that the parties have not provided the cooperating exporting producer's 2009 income tax return statement. Instead of providing the official tax declarations and return statements, an Excel calculation was provided as evidence. Such kind of information is clearly non verifiable and cannot corroborate any claim made for post IP income tax developments. In this respect it should be highlighted that the GOP and/or the cooperating exporting producer may request, should the relevant provisions of Article 19 of the basic Regulation be fulfilled, an interim review of the measures.

(70) However, when calculating the subsidy amount under the FTR, a clerical error referring to the cooperating exporting producer's export income as stated in the company's 2008 income tax return statement was discovered. This was corrected accordingly. The subsidy rate established with regards to this scheme during the IP for the exporting producer amounts to 1,97 % (instead of 1,95 %).

(71) In the light of the above, and in the absence of any other relevant comments, the findings in relation to this scheme as set out in recitals (106) to (116) of the provisional Regulation, as modified in recital (70) above, are hereby confirmed.

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(V) Export Long-Term Fixed Rate Financing Scheme (LTF-EOP)

(72) Both parties claimed that the interest rate used to calculate the subsidy margin of this financing scheme has to be the interest rate available at the time the exporting producer was negotiating the fixed rate financing, namely the rate in the year 2004-2005. Furthermore, the denominator used to calculate the provisional subsidy margin should be the total company turnover rather than the total export turnover, given that the same manufacturing facilities which are financed under the LTF-EOP are used to produce both domestic and exported goods.

(73) These claims had to be rejected. First of all, it should be clarified that the rate used in the calculation is the commercial interest rate which prevailed during the IP in Pakistan, as sourced from the website of the State Bank of Pakistan. The financing negotiated in 2004/2005 was drawn down in tranches by the exporter concerned. When calculating the subsidy amount the amount of credit drawn down for the IP, as reported by the cooperating exporting producer, was used. When examining the benefit received by a party during a specific IP the applicable commercial credit rate prevailing in the market during the IP is normally compared to the rate paid on the loan received during the IP, and this was done here. With regards to the denominator in the subsidy calculation, it has to be recalled that a precondition to benefit from the scheme is that the company has to export directly or indirectly at least 50 % of its annual production. Thus, the subsidy amount (nominator) has to be allocated over the export turnover of the product concerned during the IP because the subsidy is contingent upon export performance.

(74) In the light of the above and in the absence of any other relevant comments, the findings in relation to this scheme as set out in recitals (117) to (133) of the provisional Regulation are hereby confirmed.

(VI) Export Finance Scheme from the State Bank of Pakistan (EFS)

(75) The Government of Pakistan submitted that the PET sector was excluded from this scheme by a decision taken by the State Bank of Pakistan on 28 June 2010. It was thus argued that this scheme is in line with the provisions of Article 15 of the basic Regulation and that the Commission should not countervail since it is demonstrated that the subsidy is withdrawn. To this matter the cooperating exporting producer argued that pursuant to the State Bank of Pakistan (SBP) Circular No 09 of 2010, dated 28 June 2010 the company has repaid the entire amounts of EFS financing and there is no amount outstanding on 30 June 2010 with respect to the EFS.

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(76) With respect to this claim it is recalled that Article 15 of the basic Regulation states that no measures shall be imposed if the subsidy is withdrawn or it is demonstrated that the subsidy no longer confers a benefit on the exporter involved. With respect to the submitted documentation relevant to the EFS facility it is noted that indeed the decision of the State Bank of Pakistan states that banks may not allow financing facilities for PET under this scheme. The relevant text also states that existing facilities granted to exporters will remain valid up to the maturity date of the respective loans while the export performance of companies will be taken into account for the companies' borrowing during 2009-2010 and for entitlements up to 2011.

As regards these points the GOP clarified, by providing the necessary documentation, that companies which do not hold short-term loans under this scheme within the Pakistani Financial Year 2009-2010 (i.e. up to 30 June 2010) are not entitled to any benefit in the transitional period up to 2011. As to the claim that the cooperating exporting producer has no outstanding financing under the EFS it is noted that this claim has been substantiated with a set of evidence provided by the relevant banks and complemented by the company's chartered accountant. Account taken of the above, it is concluded that the parties were in a position to demonstrate that the EFS scheme no longer confers any benefit on the exporter involved. Thus the conditions lay down in Article 15 of the basic Regulation are fulfilled and the claims made were considered warranted. It was therefore concluded that this scheme should not be countervailed.

(77) The cooperating exporting producer also claimed that the interest rate used to calculate the subsidy margin has to be the short-term interest rate available to the company during the IP. It was also argued that the finance obtained is used to meet the overall financing needs of the company's current assets for both domestic and export sales and thus the denominator in the subsidy margin calculation should be the total company's turnover.

(78) These claims had to be rejected. It is recalled that the rate used in the calculation is the commercial interest rate applied during the IP in Pakistan, as sourced from the website of the State Bank of Pakistan. This rate represents the normal credit rate prevailing in the market. With regards to the denominator in the subsidy calculation, it is noted that the precondition to avail of the scheme is either the fulfilment of specific export transactions or the overall export performance. Thus, the subsidy amount (nominator) has to be allocated over the total export turnover during the IP because the subsidy is contingent upon export performance.

(79) In the light of the above and in the absence of any other relevant comments, the findings in relation to this scheme as set out in recitals (134) to (148) of the provisional Regulation, as modified in recitals (75) to (78) above, are hereby confirmed.

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(VII) Finance under F.E. Circular No 25 of the State Bank of Pakistan

(80) Both parties submitted that there is no intervention of the State Bank of Pakistan in this scheme, that commercial banks provide financing in foreign currency without preferential interest rates and that the scheme is not contingent upon export performance since both exporters and importers may use it.

(81) The arguments provided were analysed in the light of the relevant legal provisions and practical implementation of the scheme and they were found warranted. It was therefore concluded that this scheme should not be countervailed. Since the scheme under F.E. Circular No 25 of the State Bank of Pakistan will not be countervailed, it is not necessary to respond to the corresponding disclosure comments.

3.2.3. *Amount of countervailable subsidies*

(82) Account taken the above, the definitive amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the sole cooperating Pakistani exporting producer is 5,15 %.

3.3. **United Arab Emirates (UAE)**

3.3.1. *Introduction*

(83) The Government of the UAE (GUAE) and the cooperating exporting producer submitted comments on the following schemes, countervailed in the provisional Regulation:

(I) Federal Law No 1 of 1979

(II) Free Trade Zone (FTZ).

3.3.2. *Specific Schemes*

(I) Federal Law No 1 of 1979

(84) The GUAE submitted that the scheme under Federal Law No 1 of 1979 is broadly and horizontally available to all industrial sectors and enterprises in the UAE and is granted without any exemption. The cooperating exporting producer submitted that the licence issued under the Federal Law No 1 of 1979 constitutes the precondition to exist and operate in the UAE.

(85) With respect to the above it is noted that the investigation established that industrial undertakings in the UAE could operate under various types of licences. Indeed, apart from the licence granted under Federal Law No 1 of 1979, an industrial undertaking may operate under a licence issued by the regional authorities in the specific emirate where it is established. This was the case for the cooperating exporting producer who holds a licence issued by the Government of the Ras al Khaimah Emirate. Furthermore, an industrial undertaking could operate under a Free Trade Zone where no licence is required under the aforementioned law. Thus, it is not correct to say that all industrial undertakings in the UAE operate under Federal Law No 1 of 1979. Thus it is not proved that the allocation of the scheme is automatic and the relevant claim has to be rejected.

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(86) Both parties argued that the requirements provided in the law are just the necessary preconditions for any industrial project to operate in the country and not to obtain the exemptions from payment of customs duties and thus the Commission's analysis in the provisional Regulation of Articles 12, 13 and 21 of the Federal Law No 1 is erroneous. The GUAE also submitted that with respect to Article 13 the term 'considered' has no mandatory meaning in the Arabic version of the law. The GUAE also argued that Articles 11 and 12 of the aforesaid law were never applied in practice as the Technical Committee responsible for recommending to the Minister on the applications has never been established. It was also submitted that the role of the Industrial Development Department is set out in the User Manual of the Electronic Industrial System issued by the Ministry, as mentioned in recital (173) of the provisional Regulation.

(87) These claims had to be rejected. It is noted that Articles 13 and 21 of the law form part of the step-by-step process foreseen in the analysis for the Industrial Licence under Federal Law No 1 of 1979. With respect to Articles 11 and 12 it is noted that these articles set out the role and responsibilities of the various bodies of the state authority issuing the Industrial Licence under Federal Law No 1 of 1979. The fact that a body has never been established although it is foreseen by the law and it is responsible for: (i) assessing the input provided by the Industrial Development Department and (ii) recommending to the Minister the approval or rejection of applications, confirms that the legislation pursuant to which the granting authority operates is in practice not followed and thus there is no legal certainty on the way the subsidy is granted. Moreover, in fact the claim of the GUAE with respect to the Technical Committee is contradictory to previous claims according to which the Minister requested this committee to provide comments on a possible revision of the law. With respect to the definition of the word 'considered' in Article 13 of the Federal Law it is noted that the English version was the only text provided by the GUAE during the investigation. Moreover, it only submitted subsequent to the provisional disclosure that there may be differences in definitions between English and Arabic texts. The fact that the two versions of the text raise doubts on certain parts of the eligibility criteria is again a clear indication that there is no legal clarity on the criteria and conditions governing the eligibility of the subsidy. With respect to the role of the Industrial Development Department it is noted that no new information was submitted that could undermine the findings of the investigation.

(88) The GUAE submitted that its industrial statistics prove that there are more than 4 000 industrial firms registered under Federal Law No 1 of 1979. Both parties argued that the Commission failed to provide positive evidence that the UAE authorities have exercised discretion in granting or rejecting applications to the scheme.

(89) These claims had to be rejected. It is noted that the investigation has established that the granting of Industrial Licence under Federal Law No 1 of 1979 is not automatic and that the rules governing the granting process for choosing recipients are not objective. Account taken of the fact that the scheme was found to be specific in line with the provisions of Article 4(2)(a) and 4(2)(b) of the basic Regulation, it was up to the GUAE to prove,

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in line with the provisions of Article 4(2)(c) of the basic Regulation, its claim that the requests from all parties that have submitted applications for Industrial Licence under Federal Law No 1 of 1979 since the enactment of the law have been approved. No such verifiable information was ever provided.

(90) Both parties claimed that all industrial undertakings in the UAE obtain customs duty exemptions for their production. The cooperating exporting producer also claimed that the WTO Trade Policy Review on the UAE, published in 2006, has analysed the Federal Law No 1 of 1979 and found that custom duties exemptions are granted to all industrial concerns. It was also argued that there are controls of the system as Industrial Licences are renewed every year, companies under the scheme report the imported duty-free materials and authorities reject duty-free imports if inputs are not related to production.

(91) These claims had to be rejected. It is pertinent to note that customs duty exemptions are granted to companies availing of the scheme under Federal Law No 1 of 1979 and the normal customs duty rate for the raw materials is not zero. The cooperating exporting producer has failed to demonstrate how a general statement in the WTO Trade Policy Review document is more accurate than the detailed analysis, based on the verification visit, provided in the provisional Regulation explicitly on the eligibility and practical implementations of the Federal Law No 1 of 1979. Even more importantly, the investigation has established that the authorities act in a discriminatory way when managing the importation of duty-free materials under the scheme. Indeed since there are no rules on the way requests to duty-free imports are accepted or rejected and in view of the absence of an effective verification system on the management of the scheme, it is unclear why one party at a certain time may be allowed to import duty-free while at some other date it may be refused to import duty-free. In fact this was the case for the cooperating exporting producer who was requested from time to time to pay duties without any justification provided by the granting authority. Therefore the two parties have failed to provide any evidence to corroborate their claims on the management of the scheme and allocation of duty-free imports.

(92) It was also submitted that the scheme is governed by objective criteria, namely the requirement that the duty exemption can only concern imported goods used for the industrial undertaking's production. This claim had to be rejected since, as it is explained under recitals (89) and (91) above, no such objective criteria have been demonstrated to exist.

(93) The GUAE submitted that the Federal Law No 1 of 1979 is under revision and that this information was provided to the Commission. It was also argued that the Commission has disregarded the information and documents submitted by GUAE and did not provide arguments and positive evidence on the facts and law which led to its conclusions.

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(94) With respect to the above it is noted that the Commission has closely evaluated and analysed all information provided by the parties. With respect to the revision of the Federal Law No 1 of 1979 it is pertinent to note that the text provided by GUAE is an internal draft document of the Ministry of Finance and Industry. As such it has no legal value. The investigating authority is bound to analyze the actual legal provisions and the way these are implemented and not a non-binding draft that has not been approved by the administrative and legislative branches of the UAE and has not been enacted. Even more importantly, the fact that the GUAE is currently working on a possible revision of the Federal Law No 1 of 1979 confirms that the authorities have realised that there is a need, as the GUAE has stated, to remove any inconsistency with the WTO Agreement on Subsidy and Countervailing Measures.

(95) In the light of the above, the findings in relation to this scheme as set out in recitals (166) to (183) of the provisional Regulation are hereby confirmed.

(II) Free Trade Zone (FTZ)

(96) Both parties submitted that all enterprises in the UAE are granted duty-free imports of capital goods.

(97) In this respect it is noted that the investigation has established that companies established in the FTZ receive duty-free imports of capital goods. The fact that one party may avail of the same benefit by using another scheme (namely the Federal Law No 1 of 1979) does not imply that the subsidy in question is not considered countervailable. Furthermore, the parties were not in a position to provide any factual evidence to rebut the findings of the investigation with respect to the FTZ. Account taken of the above, the submitted claim had to be rejected.

(98) In the light of the above, the findings in relation to this scheme as set out in recital (184) to (199) of the provisional Regulation are hereby confirmed.

3.3.3. *Amount of countervailable subsidies*

(99) Account taken the above, the definitive amount of countervailable subsidies in accordance with the provisions of the basic Regulation expressed *ad valorem*, for the sole cooperating United Arab Emirates exporting producer is 5,13 %.

3.4. **Comments on final disclosure**

(100) It is recalled that all interested parties were given an opportunity to comment and make representations subsequent to final disclosure. Their comments were considered and taken into account where appropriate but they were not of a nature as to change the above findings.

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(101) The Iranian cooperating exporting producer presented again its analysis of the facts of the case but did not provide any new conclusive evidence which would undermine the findings of the investigation.

(102) The Government of Pakistan expressed dissatisfaction with the rejection of its undertaking with respect to the Manufacturing Bond scheme and repeated comments on the LTF-EOP scheme and FTR. It also submitted a new decision of the Federal Board of Revenue issued on 27 July 2010 setting the customs duty on imports of PTA (raw material used for PET) at the rate of 3 % and argued that the institutions were bound by law to recalculate the subsidy margin established for the Manufacturing Bond scheme. This had to be rejected because there is no indication that the subsidy does not continue to exist. The Government of Pakistan claims that it is reduced. Nevertheless, as per Manufacturing Bond scheme rules, input material may be used at least up to two years after importation. In other words something that was imported up to July 2010 (when the duty rate was 7,5 %) may be used up to July 2012. The institutions have made a determination of the amount of subsidy on the basis of data pertaining to the IP and in accordance with the scheme rules there may still be an impact of the previous customs rate up to 2012. Thus, subsidisation is clearly present at the time of the definitive duty imposition. Furthermore, the customs duty is just one element of the data set and, as demonstrated under recitals (43) to (53) above, if the duty rate had been lower, import volumes may have been higher.

(103) The Pakistani cooperating exporting producer disagreed with the analysis concerning FTR but the elements provided could not alter the findings of the investigation. It also submitted that there is verifiable evidence picturing accurately its income tax obligations and provided a set of documents to prove that the findings of the Commission are not accurate. In this respect it is noted that the information provided is inconclusive and non-verifiable and thus it cannot be taken into consideration.

(104) The Government of the United Arab Emirates presented again its analysis of the facts of the case and argued that the institutions based their findings on an unclear interpretation of the Federal Law 1 of 1979 and failed to provide any positive evidence. In this respect it is recalled that specificity has been established in accordance with Articles 4(2)(a) and 4(2)(b) of the basic Regulation, that the interpretation of the Federal Law 1 of 1979 by the institutions was based on the submitted information, evidence and data and no conclusive evidence was found that could alter the findings of the investigation. GUAE clarified that the amendment process of the Federal Law 1 of 1979 has been advanced and it is reaching its final steps for promulgation. In this respect it is noted that the Commission welcomes the efforts made by UAE to amend its relevant legal provisions but the aforesaid developments bear no impact on the findings of the investigation, as there is no clear timetable for the conclusion of the amendment process and the enactment of the new law.

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(105) The UAE cooperating exporting producer repeated its claims concerning the Federal Law 1 of 1979. It also submitted that there are errors in the calculation of the subsidy margin. It was argued that the company realised following definitive disclosure that procurements of raw material made from Saudi Arabia bear no customs duty because UAE and Saudi Arabia form part of the customs union of the Gulf Cooperation Council and provided a set of documentation related to its claims. In this respect it is noted that these representations form part of a totally new set of information that should already have been presented in the questionnaire reply or in the verification visit at the latest so that the Commission would have been able to verify the veracity of these claims. Thus the data provided cannot be verified at this late stage of the investigation. Moreover, there is also no conclusive evidence to corroborate these claims. Furthermore it was argued that the benefit should be calculated on the basis of raw materials consumed during the IP and not on the basis of raw materials purchased. In this respect it is noted that the split between raw materials consumed and purchased is irrelevant as the amount countervailed is the total amount attributable to the IP as explained in recitals (84) to (95) above.

4. INJURY

4.1. Union production, Union industry and Union consumption

(106) No comments have been received with regard to Union production, Union industry and Union consumption. Consequently, recitals (201) to (206) of the provisional Regulation are hereby confirmed.

4.2. Imports from the countries concerned

(107) No comments have been received with regard to the cumulative assessment of the effects of the imports concerned, the volume of imports from the countries concerned and their respective market share. Consequently, recitals (207) to (213) of the provisional Regulation are hereby confirmed.

Prices and price undercutting

(108) Given that, as mentioned above at recital (20), it was decided to divide the product under investigation into several product types a new undercutting calculation reflecting that change was performed.

(109) For the purpose of analysing price undercutting, the weighted average sales prices of the Union industry to unrelated customers on the Union market per product type, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports from the countries concerned to the first independent customer on the Union market, established on a CIF basis with appropriate adjustments for post-importation costs and differences in the level of trade.

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(110) The comparison showed that, during the IP, the subsidised imports originating in the UAE sold in the Union undercut the Union industry's prices by 3,2 %. The subsidised imports originating in Iran sold in the Union undercut the prices of the Union industry by 3,0 %. The subsidised imports originating in Pakistan sold in the Union undercut the prices of the Union industry by 0,5 %. The weighted average undercutting margin of the countries concerned during the IP is 2,5 %.

(111) The Iranian exporter commented that its injury margin was overstated since the weighted average unit sales price established was understated due to an incorrect calculation of the amount of level of trade adjustment. As regards this claim it must be noted that the amount for the level of trade used in the provisional calculation was a fixed amount per tonne which is the commission charged by the cooperating importing agent and which represents around 1 % of the average CIF price. However, since no alternative quantification of the level of trade adjustment was proposed and no other information is available for such an adjustment, the claim is thus rejected.

(112) The same party also claimed that the 2 % rate taken for post-importation costs appeared to be understated.

(113) It is reiterated in this regard that no importer cooperated in this investigation and it was not possible to verify the actual post-importation cost. Thus, in absence of any other information available, the rate used in previous proceedings was applied.

4.3. **Situation of the Union industry**

(114) Some interested parties claimed that injury did not exist since the sample was wrongly chosen and as a result no results could be extrapolated for the total Union industry. It was claimed that since one company (not in the sample) had indicated that it was using over 100 % of its capacity, this would be a clear sign of no injury. It is noted that the information submitted is an extract of this company's submission to the stock exchange authorities in a third country and is not verified. This information also does not square with the information on the file. Moreover, and in any event, the capacity utilisation of one EU producer alone cannot alter the findings of injury for the sampled EU producers and the other EU producers.

(115) In the absence of any other claims or comments, recitals (218) to (237) of the provisional Regulation are hereby confirmed.

4.4. **Conclusion on injury**

(116) In the absence of any specific comments, the conclusion on injury laid down in recitals (238) to (240) of the provisional Regulation is hereby confirmed.

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5. CAUSATION

5.1. **Effect of the subsidised imports**

(117) In the absence of any specific comments, recitals (241) to (245) of the provisional Regulation are hereby confirmed.

5.2. **Effect of other factors**

(118) Some interested parties claimed that any injury found would not be due to the subsidised imports, but that the low prices for PET in the EU reflect the worldwide cycle of the industry and that from September 2008 until June 2009 the PET prices in the EU followed the low prices of crude oil. As regards this argument, it is acknowledged that the prices of PET depend to some extent on the prices of crude oil, its derivatives being the main raw material to produce PET. However, prices for crude oil were not low during the whole IP but very volatile, starting with a huge decrease and followed by a recovery. This volatility of world prices of crude oil cannot explain why imports of PET were subsidised and therefore undercut the Union producers' prices. It was precisely this undercutting, made possible due to the subsidies received, that depressed the prices of the Union industry, forcing EU producers to sell at a loss in order not to loose their clients.

(119) The Iranian exporter claimed that financial and technical problems of some EU producers were not properly separated from the injury analysis and wrongly attributed to Iranian imports since it only entered the market after 2006. In this respect it is noted that imports from Iran were present already in 2006 and 2007 in quantities below 1 % of the market share. Since 2008, they were above 1 % and contributed with their low prices to the price suppression in the EU. Moreover, the conditions for cumulative assessment were fulfilled in this case and the effects of subsidised imports from all countries concerned could be assessed cumulatively. In addition, only one of the companies mentioned by the Iranian exporter was in the sample and the technical problems of this EU producer, limited from September to mid-October 2008, did not significantly influence the overall injury picture.

(120) The same party reiterated that any injury found would be linked to the contraction in demand, especially during the IP which was marked by the global financial and economic crisis. However this party did not rebut the arguments given in recitals (254) to (256) of the provisional Regulation: that the economic downturn starting in the last quarter of 2008 cannot in any way diminish the damaging injurious effects of low priced subsidised imports in the EU market over the whole period considered and that, even though the shrinking demand was a factor contributing to the injury suffered, it did not break the causal link. It is further noted that those subsidised imports even increased their market share when demand contracted, i.e. from 7,6 % to 10,2 %, to the detriment of the EU producers.

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(121) Some interested parties claimed that any injury was due to lack of investment by the EU PET producers and their consequent cost disadvantage vis-à-vis the exporters.

(122) It is recognised that PET is a capital intensive industry and that a certain level of investment is necessary to remain competitive in the mid-to-long term perspective. It is recalled that, as mentioned in recital (237) of the provisional Regulation, some of the sampled companies made important investments in 2006 and 2007, but there was only a minimal level of investment in 2008 and in the IP.

(123) It is noted in this regard that given the decreasing production and capacity utilisation rates in 2008 and in the IP combined with the sharply dropping market share of the Union producers, it would be unreasonable to expect any major investment in new capacities in the same period.

(124) It is also reiterated that, as mentioned in recitals (233) and (234) of the provisional Regulation, the financial situation of the sampled Union producers was very bad during the whole period considered and that they experienced significant losses between 2006 and the IP. Again, in such a situation, it would be unreasonable to expect any major investment by the Union producers.

(125) Consequently, it is concluded that the limited investment in 2008 and the IP did not materially contribute to the injury suffered by the Union industry but was rather a result thereof.

5.3. **Conclusion on causation**

(126) In the absence of any further comments on causation, recitals (246) to (264) of the provisional Regulation are hereby confirmed.

6. **UNION INTEREST**

(127) Following the provisional disclosure a significant number of EU converters and/or bottlers came forward and claimed that the Union interest analysis would not correctly reflect the arguments of the great number of cooperating users and that the findings contradicted the current economic environment. There was, however, no further substantiation or explanation. The companies all requested a hearing, but only two companies of this group of users and one association of Italian bottlers actually came to the hearing. More substantive comments were received from one cooperating EU converter (ALPLA), a group of processors (Caiba SA, Coca-Cola group, Danone Waters, Logoplaste, MFS Commodities, PepsiCO, Novara International and Silico Polymers), the cooperating import agent (GSI) and the association of plastic converters (EuPC). All these parties strongly opposed the imposition of any measures.

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6.1. **Interest of the Union industry and other Union producers**

(128) Some interested parties claimed that the EU producers would (mis-)use trade defence instruments to shield the Union market and to set artificially high prices in the EU. These parties point to the existing anti-dumping and/or countervailing measures in place against India, Indonesia, South Korea, Malaysia, Taiwan, Thailand and the People's Republic of China. However, it is noted that any company producing in the EU has a right to complain and to seek remedies in case it can demonstrate the existence of injurious subsidisation practices. The fact that subsidisation and dumping practices have been found concerning numerous countries can possibly be explained by the fact that demand for this product increased tremendously since the '90s with usually double digit annual growth rates. This attracted significant investments worldwide, leading to a structural worldwide oversupply for PET. It is also noted that some third countries have measures in place against several of the above-mentioned countries, underlining the existing structural problem.

(129) Several interested parties reiterated that the Union producers would not be able to improve their performance in the long term since new investments in other third countries would come on-stream soon and decrease the artificially high prices in the EU.

(130) The investigation showed that a new investment that only recently came on-stream in Oman has increased its import volumes considerably in 2009 and it cannot be excluded that it might cause problems to the Union industry in the future. However, as already indicated in recital (270) of the provisional Regulation, new investments that might come on-stream and might cause injury to the Union industry are no valid reason to deny legitimate protection in this proceeding.

(131) One interested party claimed that that the increase in the PET prices in the EU would allow only the EU producers with investment in third countries not subject to measures (Thailand, US, Russia) or other PET producers in third countries (South Korea) to improve their performance. Thus, the party argued, the short-term benefit for the EU producers would clearly be outweighed by the transfer of wealth to producers outside the EU.

(132) In this respect it is noted that there is no evidence on file supporting the statement that any financial benefit that might be shifted to producers in third countries not subject to trade defence measures or to companies with a zero duty would outweigh the benefits to the Union industry.

(133) It was also claimed that Union producers only employ some 2 000 people whereas PET processors and bottlers that would be highly affected by any duty employ around 20 000 and 60 000 people respectively.

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(134) It is noted that the employment created by PET producers is not marginal and the question whether the imposition of measures is against the Union interest as a whole cannot be reduced to a simple question of the number of people employed. In this regard it is also particularly relevant that the relevant users would likely not significantly be affected by the measures, taking into account the level of the duty as well as alternative sources of supply, as set out below in recitals (141) to (156).

6.2. **Interest of unrelated importers in the Union**

(135) It is reiterated that no unrelated importer cooperated in this investigation.

(136) The cooperating agent strongly contested that the imposition of duties would not have a considerable impact on its business. The company claimed that while it was indeed working on a commission basis, the impact would be important since an important part of its business was linked to the countries concerned. Should definitive measures be imposed, the commission obtained from the producers in the countries concerned would be affected given that the PET from the countries concerned could no longer compete with PET produced by other producers.

(137) In view of the overall moderate duty level, it is not likely that PET sales from the countries concerned will be affected substantially. Moreover, the agent can in the medium term most probably switch to other sources of supply, namely to imports from Oman, US, Brazil, Mexico and the companies with a zero anti-dumping duty rate in South Korea. Sales of these exporting producers should put the agent in a position to compensate for any loss that may be incurred due to the imposition of measures. Consequently, the claim is rejected.

6.3. **Interest of the raw material suppliers in the Union**

(138) One interested party claimed that it is not legitimate to protect the raw material suppliers of the EU PET producers at the expense of the packaging industry, the bottlers and the final consumers.

(139) It is noted that the analysis of the impact of measures on the supplying industry is in conformity with Article 31 of the basic Regulation. It is a standard practice to carry out such an analysis, in particular when there is a strong dependency between raw material suppliers and Union producers.

(140) In the absence of any other comments in this regard, recitals (265) to (279) of the provisional Regulation are hereby definitively confirmed.

6.4. **Interest of users**

(141) It is reiterated that PET used in the production of bottle pre-forms amounts to between 70 % and 80 % of the total cost of production for converters. It is therefore a critical cost component for these companies.

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(142) Some interested parties indicated that the EU packaging industry is constantly challenged by the requirements of the bottle fillers for new designs and more environmental friendly packaging. To that end, some of the converters appear to invest constantly in R & D to invent new products and design in order to remain competitive and to add more value in the chain.

(143) Some interested parties claimed that the impact on the EU converting industry will be very heavy and will lead to the erosion of their resources to invest in new, environmental friendly packaging and possibly even to the closure of hundreds of smaller companies as their margins are even narrower due to the small volumes processed and limited negotiation power.

(144) Indeed, should the converters absorb the whole price increase due to the measures, the impact on them could be sizeable, depending on their sources of supply, given that the cost of PET constitutes the majority of their costs and that many of the small and medium-sized companies operate on low margins.

(145) In this regard, a verification visit was carried out to a small plastic converter in Italy in order to gain a better insight about the impact of duties on this user group. The investigation showed that, although limited, processors normally have some ability to pass on their price increase, especially if the price increase is not marginal and can be anticipated. Moreover, some PET processors have adaptation clauses in their contracts for raw material prices and this might help EU converters to pass on some price increase to bottlers.

(146) Consequently, and against the background of the rather moderate duty level, it is concluded that the imposition of countervailing duties would likely not have a devastating effect on converters.

(147) Some interested parties reiterated the argument that the risk of delocalisation of PET processors/converters would increase if definitive measures were imposed. These parties also claimed that due to the delocalisation of EU processors there would be no long-term benefit to EU producers. One of the cooperating PET converters stated that the process of delocalisation is already ongoing and that any imposition of countervailing duties would further accelerate this development. This party claimed that a substantial part of EU converters would be located in areas which are close to EU borders (Switzerland, Croatia, Bosnia, Serbia, Turkey, Russia and Ukraine) and that some converters would be much more flexible to move their production to these areas than suggested in the provisional Regulation.

(148) Based on the information on file, the delocalisation is indeed already an ongoing process and it is thus considered that the imposition of countervailing duties might be one factor out of many other considerations influencing such a company decision. It was not found that, without the imposition of measures in this

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case, those companies would be ready to stay within the EU given that such a decision is normally a result of an analysis taking into account a number of aspects other than trade defence measures, such as being close to the client, having access to skilled workers for R & D, general cost structure, etc.

(149) It is also noted that the information on the file shows that the EU converter industry is facing a number of important challenges due to inherent structural deficiencies that are becoming more and more apparent in the fast changing and increasingly competitive environment. It is evident that size matters in that business and that the consolidation of the market is already ongoing, including closures and delocalisation. Consequently, it is considered that any price increase for PET due to countervailing measures is not the reason for the feared closures of the smaller converters.

(150) Consequently, it is concluded that the imposition of countervailing duties is not going to be a determinative factor in the eventual decision about delocalising for the companies in the PET processing industry.

(151) Several interested parties stated that any measures would have a sizeable effect on many bottlers as due to contractual arrangements any increase in PET resin prices would be (at least partially) passed on to them. It was also claimed that some bottle fillers might not be in a position to pass on price increases to their clients, being the supermarket/retail chains, and that they might not survive any increased cost.

(152) These parties claimed that the range of products that will be affected by duties was underestimated as they will not only affect bottled water, soft drinks and edible oil, but also beer, milk and dairy products, juice producers, ketchup and spices, cosmetic and personal care products, drugs, vitamins and supplements, household cleaning products and oil and lubricants for cars.

(153) It is acknowledged that PET packaging is manifold. It is noted, however that the provisional Regulation focused on the impact on bottlers, as it based on the data submitted by the companies cooperating in this investigation, being mainly water, soft-drink or juice producers. No other detailed data was available showing an even higher impact on the other applications mentioned above.

(154) Consequently, it is considered that the provisional findings described in recital (291) of the provisional Regulation can be definitively confirmed. In addition, given the moderate level of the proposed measures, they may result in a cost increase of not more than 1 % (in the worst case scenario – i.e. full impact of the measures to be born by the bottling companies) and thus will only have a limited impact on the overall situation of the bottling companies, even if, as claimed, they would not be in a position to pass on the increased cost to their customers.

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(155) Several interested parties claimed that any trade defence measures will exacerbate the shortage of supply in the Union market which will be particularly problematic in the summer months given the higher demand for water/drinks. It was claimed that up to 900 000 tonnes of imports would be needed in 2010. This problem would be notably reinforced by the fact that some EU producers are also PET processors and would only sell to the free market once their internal demand is satisfied and at premium prices.

(156) In this regard no new information was submitted and the arguments provided in recitals (294) and (295) of the provisional Regulation were not refuted. It is also noted that given the moderate level of duties imposed on imports from UAE and Pakistan, the impact on trade volumes from those countries might not be significantly affected. Consequently, the findings set out in recitals (294) and (295) are definitively confirmed.

6.5. **Impact on consumers**

(157) Several interested parties claimed that the provisional Regulation failed to properly address the impact on consumers which would buy, on a daily basis, products containing PET resins. These claims were not substantiated further than stating that an increase of 50 EUR/t applied to a consumption of 3 million tonnes would lead to EUR 150 million to be borne by the final consumer per year.

(158) It is noted that the proposed estimate is unrealistic given that most parties agreed that some impact will be borne by the PET processors, the bottlers and supermarkets/retail chains, i.e. that some of the increased costs will be diluted in the sales chain.

(159) The impact on the final consumer, in the worst case scenario (i.e. the unrealistic scenario where the customer would bear all the impact of the price increase), given the moderate level of measures proposed, would not exceed 0,5 eurocent per bottle consumed, and is highly likely to be much less.

6.6. **Conclusion on Union interest**

(160) Given the above and after analysing in detail all the interests at stake, it is definitively concluded that, on balance, no compelling reasons exist for not imposing measures in the present case. In the absence of any other comments in this regard, recitals (280) to (298) of the provisional Regulation are hereby definitively confirmed.

6.7. **Comments on final disclosure**

(161) Following disclosure of the essential facts and considerations on the basis of which the Commission has proposed the imposition of definitive countervailing duty some interested parties submitted further comments. Considering that the majority of these comments were a repetition of the observations already submitted and addressed, they did not change the above findings.

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(162) With regard to the reiterated argument that the recent change in the exchange rate between USD and EUR led to a significant increase in the price of the imported PET and consequently the Union industry allegedly does not need to be granted protection by trade defence measures, it is noted that any anti-subsidy investigation normally does not take into account the post IP developments; unless, in extraordinary situations, it can be shown, inter alia, that they are of a lasting nature and would significantly alter the findings of the case. Any changes in the exchange rate between USD and EUR cannot be considered to be of such nature.

7. DEFINITIVE MEASURES

7.1. Injury elimination level

(163) One interested party claimed that a target profit of 5 % was overstated for the second quarter of the IP given that in this quarter (4th quarter of 2008) not only the demand was lower (winter season), but the global economic crisis also affected the PET producers heavily. Thus, it is claimed that a correct application of the principle developed in Case T-210/95 [1] must lead to a 0 % margin in the absence of subsidised imports. Moreover, the party claimed, since all quarters of the IP were affected by the crisis, also in the other quarters, a 5 % profit margin would appear as unrealistic given that even without an economic crisis, i.e. in 2006/2007, the Union industry did not come close to the 5 % profit.

(164) It is acknowledged that in line with the jurisprudence, the target profit to be used should be the profit which the Union industry could reasonably achieve under normal conditions of competition, in the absence of subsidised imports. It is recalled that in previous investigations for the same product a target profit of 7 % and above was used instead of the 5 % provisionally used in the current investigation. The 5 % target profit is considered to be the profit that the Union industry could expect in the absence of subsidised imports. Consequently, the claim for reducing the target profit is rejected.

(165) Given the adjusted undercutting calculation mentioned in recitals (108) to (110) above, the corresponding injury elimination levels are as follows:

Country	Injury elimination level
Iran	16,7 %
Pakistan	14,1 %
UAE	17,5 %

7.2. Definitive measures

(166) In view of the definitive conclusions reached with regard to subsidisation, injury, causation and Union interest, and in accordance with Article 15(1) of the basic Regulation, it is considered that a definitive countervailing duty should be

(1) Case T-210/95 European Fertilizer Manufacturers' Association (EFMA) v Council of the European Union, ECR 1999, p. II-3291.

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imposed on imports of the product concerned originating in Iran, Pakistan and the United Arab Emirates at the level of the lowest of the subsidisation and injury elimination level found, in accordance with the lesser duty rule.

(167) In the light of the foregoing, and in accordance with Article 12(1) of the basic Regulation, it is considered that the definitive countervailing duty rate should be imposed on imports originating in Iran at the level of the injury margin found while for imports originating in Pakistan and the United Arab Emirates, the definitive countervailing duty rate should be imposed at the level of the subsidy margin found.

(168) It is recalled that costs and prices of PET are subject to considerable fluctuations in relatively short periods of time. It was therefore considered appropriate to impose duties in the form of a specific amount per tonne. This amount results from the application of the countervailing rate to the CIF export prices used for the calculations in the parallel anti-dumping proceeding.

(169) On the basis of the above, the proposed countervailing duty amounts, expressed on the CIF Union border price, customs duty unpaid, are as follows:

Country	Total subsidy margin	Injury margin	Definitive countervailing duty rate	
			%	Amount (EUR/tonne)
Iran	51,8 %	16,7 %	16,7 %	139,70
Pakistan	5,1 %	14,1 %	5,1 %	44,02
UAE	5,1 %	17,5 %	5,1 %	42,34

(170) Any claim requesting the application of an individual company countervailing duty rate (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

7.3. **Undertakings**

(171) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-subsidy measures, the Iranian exporting producer offered a price undertaking in accordance with Article 13(1) of the basic Regulation.

(1) European Commission, Directorate-General for Trade, Directorate H, Office N105 04/092, 1049 Brussels, BELGIUM.

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(172) The offer was examined and in view of the fact that the prices for the individual product types differ significantly, it was found that the sole minimum import price (MIP) offered would not guarantee the elimination of the injurious subsidisation for all products.

(173) It was also established that the Iranian cooperating exporting producer sells the product concerned and other products to the EU exclusively through a related trading company which exports a multitude of products manufactured by various companies. This sales structure bears a very high risk of cross-compensation as PET subject to an undertaking could be sold together with other products to the same customers and prices set for a variety of products sold to the same client could be very easily compensated or off-set. Finally, it also appears from publicly available sources that there is at least one additional producer of PET in Iran. In view of the above sales structure, this situation casts serious doubts on whether the institutions and customs authorities can ensure that only PET from the cooperating exporting producer is sold according to the provisions of the undertaking as the product is a commodity product and easily interchangeable in the sense that in such commodity products it is not at all clear to physically recognise the producer.

(174) On the basis of the above, it was concluded that such undertaking was impractical and therefore it cannot be accepted. The party was informed accordingly and given an opportunity to comment. However, its comments have not altered the above conclusion.

8. **DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY**

(175) In view of the magnitude of the countervailable subsidies found and in the light of the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of provisional duty imposed by the provisional Regulation be definitively collected to the extent of the amount of definitive duties imposed,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

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Country	Definitive countervailing duty rate (EUR/tonne)
Iran: all companies	139,70
Pakistan: all companies	35,39
United Arab Emirates: all companies	42,34

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

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

Article 2

The amounts secured by way of provisional countervailing duty pursuant to Commission Regulation (EU) No 473/2010 on imports of polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in Iran, Pakistan and the United Arab Emirates, shall be definitively collected at the rate of the definitive countervailing duty imposed pursuant to Article 1. The amounts secured in excess of the rate of the definitive countervailing duty shall be released.

Article 3

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

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

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