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Proposal for a

COUNCIL IMPLEMENTING REGULATION

imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in India, Taiwan and Thailand following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009, and terminating the expiry review proceeding concerning imports of certain polyethylene terephthalate originating in Indonesia and Malaysia

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation'), and in particular Articles 9(2), 9(4) and 11(2) thereof in the expiry review of the anti-dumping duty in force on imports of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, Taiwan and Thailand.

General context

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

Existing provisions in the area of the proposal

By Regulation (EC) No 2604/2000, the Council imposed a definitive anti-dumping duty on imports of certain polyethylene terephthalate ('PET') originating in India, Indonesia, Malaysia, Taiwan and Thailand. Following an expiry review, the Council by Regulation (EC) No 192/2007, imposed a definitive anti-dumping duty for a further period of five years. The anti-dumping measures were subsequently amended by Council Regulation 1286/2008 pursuant to Article 19 of the Council Regulation (EC) No 597/2009 on protection against subsidised import from countries not members of the European Community ('the basic anti-subsidy Regulation'). A later interim review pursuant to Article 11(3) of the basic Regulation amended the measures in force by Council Implementing Regulation No 906/2011.

By Decision 2000/745/EC, as amended from time to time, the Commission accepted undertakings setting a minimum import price offered by three exporting producers in India.

In parallel to the measures against the countries concerned, anti-dumping duties exist against imports of PET from China (extended in November 2010) and countervailing measures are in force since September 2010 against imports of PET originating in Iran, Pakistan and the United Arab Emirates. Anti-dumping and anti-subsidy investigations against Oman and Saudi Arabia were closed in 2011 following a withdrawal of the complaint.

Consistency with other policies and objectives of the Union

Not applicable.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

Interested parties concerned by the proceeding have had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not provide for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

On 24 February 2012, the Commission announced by a notice, published in the Official Journal of the European Union, the initiation of an expiry review of the anti-dumping measures applicable to imports of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, Taiwan and Thailand.

The review was initiated following a request lodged by the Committee of Polyethylene Terephthalate Manufacturers in Europe (CPME) on behalf of Union producers representing around 95 %, of the Union production of certain polyethylene terephthalate.

With respect to India, Taiwan and Thailand, the review investigation found continued dumping of the product concerned which would result in the recurrence of injury to the Union industry in case anti-dumping measures were lifted. It was further established that the continuation of measures was not against the interest of the Union.

As for Indonesia and Malaysia, it was concluded that it was not likely that imports to the Union from those countries would resume at dumped prices in injurious quantities to the Union market in the short to medium term should measures be allowed to lapse.

Therefore it is suggested that the Council adopts the attached proposal for a Regulation in order to extend the existing measures for India, Taiwan and Thailand and to terminate the measures for Indonesia and Malaysia.

Legal basis

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

Subsidiarity principle

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Union, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

Choice of instruments

Proposed instruments: regulation.

Other means would not be adequate for the following reason:

The basic Regulation does not provide for alternative options.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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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 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community¹ ('the basic Regulation'), and in particular Articles 9(2), 9(4) and 11(2) thereof,

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

Whereas:

A. PROCEDURE

1. Previous investigations and measures in force

- (1) By Regulation (EC) No 2604/2000² ('the original investigation'), the Council imposed a definitive anti-dumping duty on imports of certain polyethylene terephthalate ('PET') originating in, inter alia, India, Indonesia, Malaysia, Taiwan and Thailand ('the countries concerned'). Regulation (EC) No 2604/2000 was subsequently amended by Council Regulation (EC) No 496/2002³, Council Regulation (EC) No 823/2004⁴, Council Regulation (EC) No 83/2005⁵ and Council Regulation (EC) No 1646/2005⁶.
- (2) Following an expiry review and partial interim review, the Council, by Regulation (EC) No 192/2007⁷ ('the measures in force'), imposed a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in, inter alia, India,

¹ OJ L 343, 22.12.2009, p. 51.

² OJ L 301, 30.11.2000, p. 21.

³ OJ L 78, 21.3.2002, p.4.

⁴ OJ L 127, 29.4.2004, p. 7.

⁵ OJ L 19, 21.1.2005, p.1.

⁶ OJ L 266, 11.10.2005, p. 10.

⁷ OJ L 59, 27.2.2007, p. 1.

Indonesia, Malaysia, Taiwan and Thailand for a further period of five years. Regulation (EC) No 192/2007 was subsequently amended by Council Regulation (EC) No 1286/2008⁸, Council Implementing Regulation (EU) No 906/2011⁹ and by Council Implementing Regulation (EU) No 295/2013¹⁰.

- (3) By Decision 2000/745/EC¹¹ and subsequent amendments, the Commission accepted undertakings setting a minimum import price offered by exporting producers in India and Indonesia.

2. Countervailing measures in force

- (4) By Regulation (EC) No 2603/2000¹², the Council imposed a definitive countervailing duty on imports of PET originating in India, Malaysia and Thailand. Following an expiry review, the Council, by Regulation (EC) No 193/2007¹³, imposed a definitive countervailing duty on imports originating in India for a further period of five years ('the countervailing measures in force').

3. Request for an expiry review

- (5) Following the publication of a notice of impending expiry¹⁴ of the anti-dumping measures in force, the Commission received on 25 November 2011 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by the Committee of Polyethylene Terephthalate Manufacturers in Europe ('the applicant'), on behalf of producers representing around 95% of the Union production of certain polyethylene terephthalate.

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

4. Initiation of an expiry review

- (7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 24 February 2012, by a notice published in the *Official Journal of the European Union*¹⁵ ('the notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

5. Parallel investigation

- (8) On 24 February 2012, the Commission also announced, by a notice published in the *Official Journal of the European Union*¹⁶, the initiation of an expiry review pursuant

⁸ OJ L 340, 19.12.2008, p. 1.

⁹ OJ L 232, 9.9.2011, p. 19.

¹⁰ OJ L 90, 28.3.2013, p. 1.

¹¹ OJ L 301, 30.11.2000, p. 21.

¹² OJ L 301, 30.11.2000, p. 1.

¹³ OJ L 59, 27.2.2007, p. 88.

¹⁴ OJ C 122, 20.4.2011, p. 10.

¹⁵ OJ C 55, 24.2.2012, p. 4.

¹⁶ OJ C 55, 24.2.2012, p.14.

to Article 18 of Council Regulation (EC) No 597/2009 of 11 June 2009¹⁷ ('the basic anti-subsidy Regulation') of the countervailing measures in force on imports of certain PET originating in India.

6. Investigation

6.1. Review investigation period and period considered

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

6.2. Parties concerned by the investigation

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

(11) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(12) In view of the apparent large number of exporting producers in India, Indonesia, Malaysia, Taiwan and Thailand, as well as unrelated importers it was considered appropriate to examine whether sampling should be used in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested to make themselves known within 15 days of the initiation of the review and to provide the Commission with the information requested in the notice of initiation.

(13) As regards the selection of the samples of exporting producers, seven known exporting producers in India were contacted. Seven exporting producers replied and indicated a willingness to be included in the sample. Based on their volume of exports to the Union, a sample of three Indian exporting producers was selected.

(14) Five known exporting producers in Indonesia were contacted. However, no exporting producer in Indonesia expressed a willingness to cooperate with the investigation. Accordingly, all known exporting producers and the authorities of Indonesia were informed that findings in relation to Indonesia would be made on the basis of the facts available in accordance with Article 18 of the basic Regulation.

(15) Two known exporting producers in Malaysia were contacted. Only one exporting producer replied and indicated a willingness to be included in the sample. Therefore, it was decided that sampling was not necessary with regards to exporting producers in

¹⁷ OJ L 188, 18.7.2009, p. 93.

Malaysia. All other known exporting producers and the authorities of Malaysia were informed that findings in relation to the non-cooperating exporting producers would be made on the basis of the facts available in accordance with Article 18 of the basic Regulation.

- (16) Six known exporting producers in Taiwan and one exporting producers' association were contacted. No exporting producer in Taiwan expressed a willingness to be included in the sample. All known producers, including their representative association, as well as the authorities of Taiwan, were informed that findings in relation to Taiwan would be made on the basis of facts available in accordance with Article 18 of the basic Regulation.
- (17) Nine known exporting producers in Thailand were contacted. Only one exporting producer replied and indicated a willingness to be included in the sample. Therefore, it was decided that sampling was not necessary with regards to exporting producers in Thailand. All other known exporting producers and the authorities of Thailand were informed that findings in relation to non-cooperating exporting producers would be made on the basis of the facts available in accordance with Article 18 of the basic Regulation.
- (18) The Commission announced in the notice of initiation that it had provisionally selected a sample of Union producers. This sample consisted of four companies, out of the thirteen Union producers that were known prior to the initiation of the investigation, selected on the basis of the largest representative volume of production and sales that could reasonably be investigated within the time available. The sample represented over 50% of the total estimated Union production and sales during the RIP. Interested parties were invited to consult the file and to comment on the appropriateness of this choice within 15 days of the date of publication of the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (19) Certain interested parties raised objections concerning the sampling of Union producers. They claimed that: (i) the Commission should not resort to sampling, in particular, since no sampling was used in the previous investigation; (ii) the method used for the selection of the sample was contested on the grounds that it 'confuses three different steps', namely, the support for the initiation of the expiry review, definition of the Union industry and sampling; (iii) the provisional sample was set up on the basis of incorrect and incomplete information; (iv) the selected provisional sample was not representative because it included entities rather than groups; it was also claimed that including one company that went through a recent divestment or another company that had related sales diminished the representativity of the sample.
- (20) The arguments raised by the parties were addressed as follows:
 - The decision to use a sample is made for each investigation independently depending on the particular circumstances of each case and Article 11(9) of the basic Regulation does not govern the use of such a sample for the determination of injury in the context of an expiry review. Unlike the previous investigations, where the investigation of all companies that came forward and cooperated was feasible, the Commission considered in the current review that, in view of their large number, not all Union producers could be reasonably

investigated in the time available and that the conditions of Article 17 were therefore met.

- The Commission did not 'confuse' the determination of the support for the initiation of the expiry review, the determination of the Union industry and the selection of the provisional sample as these steps remained independent from each other and were decided upon separately. It was not demonstrated to what extent the use of the production and sales data provided by the Union producers in the context of the examination of the support for the initiation of the expiry review had affected the representativity of the sample.
 - The sample was set up on the basis of the information available at the time of selection in accordance with Article 17 of the basic Regulation. The representativity of the sample was reviewed following the comments of the parties concerning specific company data. None of the comments made were considered to be founded.
 - As required by Article 17 of the basic Regulation the sample was established on the basis of the largest representative volume of production and sales that could be reasonably investigated within the time available. The entities belonging to larger groups that were found to operate independently from other subsidiaries of the same group were considered representative of the Union industry and there was therefore no need to investigate the entire group on a consolidated basis. At the same time, the companies were sampled as economic entities, ensuring that all relevant data could be verified. Moreover, the divestments and existence of related sales were part of the characteristics of the sector in the period considered and therefore none of these elements was considered to diminish the representativity of the sample.
- (21) Following the disclosure of the essential facts and considerations ('disclosure') the parties reiterated the above-mentioned arguments which have already been addressed.
- (22) The three Indian sampled exporting producers, the sole Malaysian exporting producer and the sole Thai exporting producer that expressed a willingness to be included in the sample submitted questionnaire replies. However the questionnaire reply of one Indian sampled producer revealed that it only exported insignificant volumes of the product concerned during the RIP and therefore verification visits were eventually completed in the two remaining exporting producers which together represented 99% of total imports from India to the Union during the RIP.
- (23) Following disclosure, one Indian cooperating producer requested a calculation of its dumping margin. In this respect it was reconfirmed that the exports from this company were insignificant and consequently had no impact on the determination of the likelihood of continuation or recurrence of dumping in the present expiry review. Therefore, this request was rejected.
- (24) Sampling for unrelated importers was foreseen in the notice of initiation. None of the twenty four contacted unrelated importers cooperated in the present investigation.
- (25) All five known suppliers of raw material were contacted upon the initiation and received relevant questionnaire. Two suppliers replied to the questionnaire.

- (26) All known users and users' associations were contacted upon the initiation. Seventeen users submitted a questionnaire reply. Twenty associations of users from 16 Member States made themselves known and made submissions.
- (27) Verification of information received
- (28) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of a continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following interested parties:
- (a) Union producers
 - Indorama Polymers Europe, UAB, Netherlands
 - Equipolymers, Italy, Germany
 - Neo Group, UAB, Lithuania
 - Novapet SA, Spain
 - (b) Exporting producers in India:
 - Dhunseri Petrochem & Tea Ltd, Kolkata;
 - Reliance Industries Ltd, Navi Mumbai;
 - (c) Producer in Malaysia:
 - MPI Polyester Industries Sdn Bhd, Shah Alam, Selangor;
 - (d) Producer in Thailand:
 - Indorama Polymers Pcl, Bangkok;
 - (e) Users in the Union
 - Coca-Cola Europe, Belgium;
 - Nestle Waters France, France.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (29) The product concerned by this review is the same as the one in the last expiry review concluded in 2007 mentioned above in recital (2), namely polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in India, Indonesia, Malaysia, Taiwan and Thailand.

2. Like product

- (30) As in the original and in the review investigations, it was found that the product concerned and PET produced and sold on the domestic markets in the countries concerned, as well as PET produced and sold in the Union by Union producers had the same basic physical and chemical characteristics and uses. They were therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

3. Preliminary remarks

- (31) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.
- (32) In case of non-cooperation, such as in the case of the Indonesia and Taiwan, use had to be made of facts available in accordance with Article 18 of the basic Regulation. As far as Malaysia and Thailand are concerned, information made available by the cooperating companies as well as facts available were used.
- (33) During the RIP, the total import volume of the product concerned originating from the countries concerned according to Eurostat amounted to 126,500 tonnes, representing 4.5% of the Union market share.
- (34) As regards the development of production capacity and domestic consumption in the countries concerned, a proprietary market intelligence report included in the request was used as well as publicly available information such as public company web profiles and verified questionnaire replies of the cooperating companies.

4. India

4.1. Preliminary remarks

- (35) As mentioned above, seven Indian exporting producers cooperated and three of them were selected for the sample. Since one of the sampled companies was found to only export insignificant volumes of the product concerned during the RIP, verification visits were eventually completed in the two remaining exporting producers which together represented 99% of total imports from India to the Union during the RIP.
- (36) During the RIP total Indian imports amounted to 97,000 tonnes representing 76% of total imports from the countries concerned by the current review and 3.4% of the Union market share. The two sampled Indian exporting producers were subject to an undertaking and were found to respect the minimum import price (MIP) during the RIP. As these represented almost the total export from India, their market share corresponded almost exactly to the market share of all India.

4.2. Dumping of imports during the RIP

4.2.1. Normal value

- (37) In accordance with Article 2(2) of the basic Regulation, it was first established for each sampled Indian exporting producer whether its total domestic sales of the like

product to independent customers were representative, i.e. whether the total volume of such sales was equal to at least 5% of the total volume of the corresponding export sales to the Union.

- (38) Subsequently, those types of the like product sold domestically by the exporting producers having overall representative domestic sales, and that were identical or directly comparable to the types sold for export to the Union, were identified.
- (39) It was further examined whether the domestic sales of each cooperating exporting producer were representative for each product type, i.e. whether domestic sales of each product type constituted at least 5% of the sales volume of the same product type to the Union. For the product types sold in representative quantities it was then examined whether such sales were made in the ordinary course of trade ('OCOT'), in accordance with Article 2(4) of the basic Regulation. This was done by establishing the proportion of domestic sales to independent customers on the domestic market which were profitable for each exported type of the product concerned during the RIP.
- (40) As it was found that the domestic sales of all product types were made in sufficient quantities and in the OCOT, normal value was based on the actual domestic price, calculated as a weighted average of all the domestic sales of that type made during the RIP.

4.2.2. Export price

- (41) Since all export sales of the product concerned were made directly to independent customers in the Union, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable.

4.2.3. Comparison

- (42) The comparison between the weighted average normal value and the weighted average export price was made on an ex-works basis and at the same level of trade.
- (43) In order to ensure a fair comparison between normal value and the export price, in accordance with Article 2(10) of the basic Regulation, account was taken of differences in factors affecting prices and price comparability. For this purpose, due allowance in the form of adjustments was made for differences in transport, insurance, handling, financial costs, packing costs, commissions and rebates where demonstrated to affect price comparability.
- (44) One exporting producer claimed an adjustment pursuant to Article 2(10)(b) of the basic Regulation, on the grounds that import charges were allegedly borne by the like product when intended for consumption in the exporting country but were refunded by means of a duty drawback scheme ('DDS') when the product was sold for export to the Union. The investigation showed, however, that no correlation existed between the duty drawback amount, calculated as a fixed percentage of the FOB value of products exported, and the actual duties paid on imported inputs contained in the exported product. In fact, it has been found that even exporters which procure all their inputs locally and therefore do not import any of their inputs, are still entitled to benefit from the DDS. Therefore, the claim was rejected.

4.2.4. Dumping margin

(45) As provided for under Article 2(11) and (12) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. This comparison showed the existence of dumping which amounted to 4.8% and 6.6% respectively for the two sampled exporting producers which exported to the EU during the RIP, despite the fact both companies were subject to price undertakings.

(46) Following disclosure, an exporting producer claimed that the calculation of the dumping margin on the basis of the domestic sales of four months instead of all months of the RIP was not justified and argued that it artificially inflated its dumping margin. It must be noted that, in the context of an expiry review the measures are either maintained or repealed but cannot be amended. In addition, the four months concerned, i.e. one month per each quarter and the normal value and export prices of the same months were compared. It follows that a fair comparison was guaranteed. Therefore the claim was rejected.

4.3. Development of imports should measures be repealed

(47) Further to the determination of the existence of dumping during the RIP, the likelihood of continuation of dumping should measures be repealed was also investigated.

(48) In this respect the following elements were analysed: the volume and prices of dumped imports from India, attractiveness of the Union market and other third markets, production capacity and excess capacity available for exports of the Indian producers.

(49) The analysis below was mainly based on verified questionnaire replies and the market intelligence study cross-checked with publicly available information.

4.3.1. Volume and prices of dumped imports from India

(50) Imports from India into the Union doubled over the period considered and reached around 97,000 tonnes during the RIP representing 3.5% of the total EU consumption during the RIP.

(51) Throughout the period considered, imports prices were fluctuating and followed the same trends as the sales prices of the Union industry on the Union market. Overall, imports prices increased from 2008 to the RIP by 29%. No undercutting was found during the RIP.

4.3.2. Attractiveness of the Union market and other third markets

(52) During the RIP, Indian export prices to third countries were generally lower than its domestic prices. This price difference amounted to up to 7.5% of the export price level.

(53) Indian export prices to third countries were generally below the price of Indian exports to the Union which supports the conclusion that the Union market is attractive as the Union market may generate higher profits. However, due to this difference in pricing policy, it cannot be excluded that prices to the Union may decrease even further should measures be repealed.

- (54) Following disclosure, an exporting producer contended that the assessment of the attractiveness of the Union market was influenced by the existence of an undertaking, which meant that it could only export when prices were high. However a comparison of the minimum import price (MIP) imposed by the undertaking with the ex-works price of exports to the Union during the eight months where the producer was found exporting to the Union reveals that the export price to the Union was on average significantly higher than the MIP, indicating that the pricing policy was only marginally influenced by the undertaking, if at all. It follows that the existence of an undertaking in itself did not change the conclusion reached regarding the attractiveness of the Union market. Therefore, this argument was rejected.
- (55) Production capacity and excess capacity available for exports of the Indian producers
- (56) During the RIP, India had a production capacity of 700,000-900,000 tonnes and the excess of production capacity available for exports was of a 200,000-300,000 tonnes.
- (57) According to the information collected during the investigation, Indian capacity is projected to increase further and reach some 1,600,000 – 1,800,000 tonnes by 2014. That increase is expected to be much steeper than the increase in domestic consumption. As a result, the excess of capacity over domestic demand is estimated to reach about 600,000-700,000 tonnes in 2014, which would represent around 21-25% of the total Union consumption during the RIP. It is also noted that trade defence measures are in place against India in Turkey and South Africa, thus potentially reducing the markets that could be available for Indian exports.
- (58) There is a likelihood that exports to the Union would increase should the measures be repealed, given in particular the higher price levels in the Union market and the market size with the high consumption. On the other hand, it cannot be excluded that the exporting producers would decrease their export prices to the Union even further and that the dumping observed during the RIP would therefore be exacerbated.
- (59) An exporting producer submitted that the production capacity available for exports in India would decrease after 2014 and therefore the current situation would only be temporary. It is noted that the alleged decrease of capacity available for exports after 2014 was found in line with the projections of the market intelligence report. Therefore it was concluded that this submission was not of a nature to modify the analysis with regard to the development of capacity available for exports. After disclosure, an exporting producer claimed that important temporary excess in capacities available for export were inevitable due to the fact that generally production capacity increases can be done only in large increments due to the minimum size of modern PET plants. In reply to this, it should be noted that during between the RIP and the following year, production capacity extensions in the range of at least 150,000 to 200,000 tonnes were made. It follows that the invoked reasoning alone cannot justify the excess in capacity available for exports quoted in recital (55) above. In any event, in this context the cause of the excess capacity available for exports is irrelevant. Therefore the claim was rejected.
- (60) Some parties claimed that the excess capacity available for exports developing in India could be absorbed also by other third countries and that therefore the excess capacity available for exports as calculated by the Commission was not properly assessed. It

was not assumed in any way that the entirety of any excess capacity available for exports would be directed to the Union. Therefore the claim was rejected.

- (61) An exporting producer stated that Turkey and South Africa were rather unimportant export markets and objected to the existence of trade defence measures against India in these countries being interpreted by the Commission as an indication that India would dump the product concerned on the Union market. The Commission's assessment is that the trade defence measures in place in Turkey and South Africa against imports from India potentially reduce the markets that could be available for Indian exports. Moreover, should the claim that Turkey and South Africa are unimportant export markets be true, the increasing excess capacity in India implies a likelihood of increased exports to the Union even in the absence of the trade defence measures imposed by Turkey and South Africa. Therefore, the claim was rejected.

4.3.3. Conclusion on the likelihood of continuation of dumping

- (62) On the basis of the above, and in particular in view of the continued dumping and the high excess capacity available, it can be concluded that significant volumes of imports from India are likely to be directed to the Union market at dumped prices should measures be allowed to lapse and therefore there is a likelihood of continuation of dumping.

5. Indonesia

5.1. Preliminary remarks

(63) None of the five known Indonesian exporting producers cooperated in the investigation and therefore the analysis of the likelihood of continuation of dumping was based on facts available in accordance with Article 18 of the basic Regulation.

(64) According to Eurostat, import volumes from Indonesia during the RIP amounted to 253 tonnes representing close to 0% of total imports from the countries concerned by the current review and close to 0% in terms of Union market share.

5.2. Dumping of imports during the RIP

(65) In view of the lack of cooperation, based on the elements in the request for review, imports from Indonesia were made at dumped prices with a dumping margin of 10.8%.

5.3. Development of imports should measures be repealed

(66) Further to the determination of the existence of dumping during the RIP, the likelihood of continuation of dumping should measures be repealed was also investigated.

(67) In this respect the following elements were analysed: the volume and prices of dumped imports from Indonesia, attractiveness of the Union market and other third markets, and production capacity and excess capacity available for exports of the Indonesian producers.

5.3.1. The volume and prices of dumped imports from Indonesia

(68) Imports from Indonesia into the Union remained at a very low level during the entire period considered. No imports were made in 2008. In 2009, imports amounted to approximately 400 tonnes, increased in 2010 to about 1000 tonnes and decreased again to 253 tonnes during the RIP. The corresponding market share of the total Union consumption of these imports was close to 0% throughout the whole period considered.

(69) In 2009 and 2010 Indonesian import prices were on average higher than those of the Union industry on the Union market. During the RIP, although the average Indonesian import price was slightly lower than the one of the Union industry on the Union market, those price levels could be considered similar. No undercutting was found during the RIP.

5.3.2. Attractiveness of the Union market and other third markets

(70) Both the information provided in the review request and official Indonesian trade statistics website covered a broader product scope than the product concerned. Therefore prices to third country export markets could not be reliably established.

(71) Due to the absence of cooperation it was also not possible to establish a domestic price.

5.3.3. Production capacity and excess capacity available for exports

(72) Given that there was no cooperation forthcoming from Indonesia, the evolution of production capacity and domestic demand was established on the basis of data contained in the request for review amended following a submission of the applicant received during the investigation stating that the only capacity extension plan forecast in the request for review would not materialise. The amended data was cross-checked with publicly available information such as public company web profiles. On the basis of the above, production capacity in Indonesia appears to remain at the same level during the entire period considered at 400,000-600,000 tonnes. The excess capacity available for export during the period considered continuously decreased and reached 65-70% of the total country capacity during the RIP representing 9-11% of the total EU consumption. There is no increase in capacity forecast until at least 2014. At the same time, consumption in Indonesia is expected to increase. As a result, the portion of the production capacity available for exports is expected to decrease and to represent only a very minor part of the total Union consumption during the RIP.

5.3.4. Conclusion on the likelihood of continuation of dumping

(73) In view of the above, in particular the findings concerning the expected evolution of capacity, it was considered that there is no likelihood that Indonesian exporting producers will resume exporting injurious quantities at dumped prices to the Union market in the short to medium term should measures be repealed.

6. Malaysia

6.1. Preliminary remarks

(74) Only one of the two known exporting producers cooperated in the investigation but was found not to export to the Union during the RIP. This producer represented around 20% of the total production capacity in Malaysia during the RIP. The information provided by the cooperating producer in Malaysia was used with regard to the analysis of the price behaviour on the Malaysian domestic market as well as to other third country markets.

(75) Findings were also based on facts available in accordance with Article 18 of the basic Regulation, i.e. on the request for review and publicly available information such as public web company profiles.

(76) During the RIP, imports into the Union from Malaysia amounted to 17,000 tonnes representing 13% of total imports from the countries concerned by the current review and close to 0.6% of the Union market share.

6.2. Dumping of imports during the RIP

(77) On the basis of the request for review, imports from Malaysia were made at dumped prices with a dumping margin of 6.7%.

(78) Since the cooperating producer did not export to the Union during the RIP, it was not possible to calculate a dumping margin for that company. However a normal value was calculated on the basis of its domestic sales and a comparison of this normal value

with the price of imports from Malaysia to the Union as reported by Eurostat gives a figure that is consistent with the dumping margin referred to in recital (75).

6.3. Development of imports should measures be repealed

(79) Further to the determination of the existence of dumping during the RIP, the likelihood of continuation of dumping should measures be repealed was also investigated.

(80) In this respect the following elements were analysed: the volume and prices of dumped imports from Malaysia, attractiveness of the Union market and other third markets, and production capacity and excess capacity available for exports of the Malaysian producers.

6.3.1. The volume and prices of dumped imports from Malaysia

(81) Imports from Malaysia into the Union increased during the period considered from around 8,000 tonnes to 17,000 tonnes, after a steep decrease in 2009 and 2010. Despite the overall increase of imports from Malaysia, market shares remained close to 0% except for the RIP where it reached 0.6%.

(82) Throughout the period considered, import prices were fluctuating and followed the same trends as the sales prices of the Union industry on the Union market. Overall, imports prices increased from 2008 to the RIP by 25%. No undercutting was found during the RIP.

6.3.2. Attractiveness of the Union market and other third markets

(83) During the RIP, the cooperating exporting producer exported 300-500 tonnes of the like product to other third countries. The analysis of those sales shows that during the RIP Malaysian export prices to third countries were generally higher than its domestic prices. This price difference amounted to 5-10%.

6.3.3. Production capacity and excess capacity available for exports

(84) The total production capacity in Malaysia was around 100,000-300,000 tonnes during the RIP on the basis of the review for request cross-checked with publicly available information such as public company web profiles. The excess capacity available for exports during the period considered continuously decreased and reached around 52-55% of the total country capacity during the RIP representing 3-4% of the total EU consumption. According to the same sources, production capacity is forecast to remain at this level at least until 2014 while domestic consumption is expected to increase. Consequently, the portion of the production capacity available for exports is expected to decrease and to represent 2-3% of the total Union consumption during the RIP. It is therefore not expected that the import volumes from Malaysia would significantly increase should the measures be repealed.

6.3.4. Conclusion on the likelihood of continuation of dumping

(85) In view of the above, in particular the findings concerning the expected evolution of capacity, it was considered that there is no likelihood that Malaysian exporting producers will resume exporting injurious quantities at dumped prices to the Union market in the short to medium term should measures be repealed.

7. Taiwan

7.1. Preliminary remarks

(86) None of the four Taiwanese exporting producers cooperated in the investigation and therefore the analysis of the likelihood of continuation of dumping was based on facts available in accordance with Article 18 of the basic Regulation.

(87) During the RIP import volumes in the Union from Taiwan amounted to 12,000 tonnes, representing 9.7% of total imports from the countries concerned by the current review, and around 0.4% of Union market share.

7.2. Dumping of imports during the RIP

(88) In view of the lack of cooperation, based on the elements in the request for review, imports from Taiwan were made at dumped prices with a dumping margin of 12%.

(89) Following disclosure, some parties claimed that for the purpose of calculating a dumping margin, the Commission should have used the domestic and export prices of a Taiwanese PET producer which was the applicant of a ‘new exporter’ review pursuant Article 11(4) of the basic Regulation¹⁸ for which the investigation period was overlapping with the RIP of the current proceeding. It must be noted, however, that the PET producer in question did not cooperate in this expiry review. Information submitted in the context of an investigation can only be used for the purpose for which it was requested. Therefore, the information obtained in the said ‘new exporter’ review cannot be used in the context of the current expiry review. In addition, it is the smallest PET producer in Taiwan and its export sales to the Union represented only an insignificant share of the total Taiwanese exports during the RIP. Therefore, the claim was rejected. It was claimed that overall, imports from Taiwan during the RIP were not dumped. However, it is recalled that none of the Taiwanese exporting producers cooperated and therefore dumping could not be determined on the basis of data submitted by these exporting producers. The claim that dumping did not exist was therefore not substantiated by any evidence and was rejected.

7.3. Development of imports should measures be repealed

(90) Further to the determination of the existence of dumping during the RIP, the likelihood of continuation of dumping should measures be repealed was also investigated.

(91) In this respect the following elements were analysed: the volume and prices of dumped imports from Taiwan, attractiveness of the Union market and other third markets, and production capacity and excess capacity available for export of the Taiwanese producers.

7.3.1. The volume and prices of dumped imports from Taiwan

(92) Imports from Taiwan into the Union increased during the period considered from around 10,000 tonnes to 12,000 tonnes, after a decrease in 2009 and 2010. Despite the

¹⁸ OJ L 188, 18.7.2012, p.8

overall increase of imports from Taiwan, market shares remained close to 0% and, during the RIP, reached 0.4% of the total Union consumption during the RIP.

- (93) Throughout the period considered, imports prices were fluctuating and followed the same trends as the sales prices of the Union industry on the Union market. Overall, imports prices increased from 2008 to the RIP by 27%. No undercutting was found during the RIP.

7.3.2. Attractiveness of the Union market and other third markets

- (94) Statistics from the Taiwanese Bureau of Foreign Trade indicate that sales to third countries were made in large volumes, accounting for around 60% of the country's total production capacity during the RIP.

- (95) A comparison of the average export price available from the same source with the normal value contained in the request for review indicated that the export prices to third countries were generally lower than its domestic prices. This price difference amounted to up to around 12% of the export price level.

- (96) Statistics from the Taiwanese Bureau of Foreign Trade showed that the average export price to third countries was below the price of the Union industry in the Union. The price difference amounted to around 7% of the export prices. During the RIP, the average price of exports to the Union was also found to be higher than the average price of exports to other third countries. The difference amounted to up to 5.5% of the price of exports to other third countries. There is therefore an incentive to export to the Union where the prevailing price level of the Union industry is higher. This suggests that if measures were repealed, and in connection with the large excess capacities available for exports (see recitals (97) to (98) below), Taiwanese exporters are likely to export PET at dumped prices and at quantities above levels likely to cause injury to the Union.

- (97) Following disclosure, one interested party contested the Commission's use of statistics of the Taiwanese Bureau of Foreign Trade on the basis that the product code allegedly did not coincide with the product concerned. It is true that Taiwan and the Union use different scales to measure viscosity, namely the 'intrinsic viscosity' in Taiwan and the 'viscosity number' in the Union. However, using the mathematical relationship between both scales, it can be concluded that the Taiwanese product code used corresponds to the product concerned. Therefore the allegation was rejected.

7.3.3. Production capacity and excess capacity available for exports

- (98) Given that there was no cooperation forthcoming from Taiwan, the evolution of capacity and domestic demand was established on the basis of data contained in the review request cross-checked with publicly available information such as public company web profiles.

- (99) The total production capacity in Taiwan was around 1,000,000-1,200,000 tonnes during the RIP. The excess capacity available for exports remained stable during the three first years of the period considered and increased during the RIP where it represented around 80% of the total country capacity during the RIP and 28-33% of the total Union consumption during the RIP. According to the same sources, production capacity is forecast to increase significantly at least until 2014 while

domestic consumption is expected to increase only slightly. Consequently, the portion of the production capacity available for exports is expected to increase to 1,200,000-1,300,000 tonnes representing 42-47% of the total Union consumption during the RIP.

- (100) This demonstrates that Taiwanese exporting producers of the product concerned are heavily dependent on export sales and that there is a likelihood that exports to the Union will increase should the measures be repealed. In particular, the price level of the Union industry on the Union market is higher than the export price of Taiwan on third country export markets, which makes the Union market more attractive than other third country markets. On the other hand, it cannot be excluded that in order to gain market share, some exporters may decrease their export prices to the Union. In addition, trade defence measures are in place against Taiwan in Turkey and South Africa. This reduces the free access to potential other markets available for Taiwanese exports.
- (101) Some interested parties argued that there is no spare capacity in Taiwan that would allow for a substantial increase of exports to the Union. In addition, it was argued that the main export markets of Taiwan's PET production are the Asia-Pacific region and the Americas. The CIF prices of imports of PET from Taiwan are higher than those of all other main sources of imports into the Union and the measures in force on imports of PET originating in Taiwan are very low and their expiry would not result in a significant price difference.
- (102) It is to be noted that none of the Taiwanese exporting producers cooperated in the present review. Moreover, the findings described in recitals (97) to (98) above point to the contrary. On these grounds the allegations made by the parties in question have to be rejected.
- (103) Following disclosure, these parties reiterated the importance of the Asia-Pacific and South America regions as export markets and claimed that these markets would attract a significant proportion of the projected Taiwanese increase in the excess capacity available for exports. In support of their claim, the parties provided the relative values of production capacity and domestic demand in 2012 and 2020 for both regions. It should be noted that the situation in 2020 is irrelevant to the current expiry review and that using 2012 as one term of the comparison amounts to disregarding the important capacity extensions made during the RIP up to 2012. Therefore the claim was rejected.
- (104) Moreover, some parties claimed that the excess capacity available for exports developing in Taiwan should take into account the increasing demand on other third markets. As a result they claimed that the excess capacity available for exports was not properly assessed. As already mentioned in recital (58) above, the investigation did not conclude that all capacity available for exports would be directed to the Union. It was not considered in any way that the entirety of any excess capacity available for exports would be directed to the Union. Based on the available data it is reasonable to consider that given the attractiveness of the Union market in terms of price and size and the large volumes of extra capacity available for exports, the quantities likely to be directed to the Union market are expected to be above levels likely to cause injury. In addition, it is recalled that none of the Taiwanese PET producers cooperated in the investigation and precise figures on actual production and capacity as well as domestic and export sales were not available. Therefore, conclusions with regard to continuation of dumping had to be based on the facts available as indicated in recital (84) above. In

this regard, in view of the significant quantities available for exports and given the analysis of the export price levels to other third countries as well as the price level in the Union in recitals (93) to (95) above, it is reasonable to consider that exports from Taiwan will be re-directed to the Union at dumped prices and at quantities above levels likely to cause injury should the measures be repealed. Therefore the claim was rejected.

- (105) Another party claimed that the ad-valorem duty applicable to Taiwan during the RIP is at very low levels and therefore it cannot be concluded that imports from Taiwan will be made at dumped levels should the measures be repealed. The current dumping margin in force is a minimum price based on an ad valorem duty of 12.4%. The fact the prices were higher during the RIP and that therefore the hypothetical ad valorem duty would be at a lower level, is irrelevant because it does not take into consideration likely price developments after the RIP should measures be repealed as shown above in recitals (94) and (98) above. This argument was therefore rejected.

7.3.4. Conclusion on the likelihood of continuation of dumping

- (106) In view of the large and increasing capacity, the attractiveness of the Union market and the measures in force in other third countries, it was concluded that it is likely that exports from Taiwan would be re-directed to the Union at dumped prices in quantities likely to cause injury should the measures be allowed to lapse.
- (107) Following disclosure, one party claimed that the alleged low level of dumping duty during the RIP should have been taken into consideration in the analysis of the likelihood of recurrence or continuation of dumping. However, it should be noted that none of the exporting producers in Taiwan cooperated and that therefore the claim that dumping margins during the RIP were at low levels was not substantiated and rejected. It is recalled that the dumping margins found during the RIP were 12% based on facts available. As mentioned above in recital (104), the analysis of the likely price development of Taiwanese exports should measures be allowed to lapse has shown that continuation of dumping was likely. Therefore the claim was rejected.

8. Thailand

8.1. Preliminary remarks

- (108) Cooperation was only forthcoming from one exporting producer which did not export PET to the Union during the RIP. The cooperating producer represented around 25% of the total production capacity of Thailand during the RIP. Three other producers are present in Thailand which did not cooperate. Findings were therefore also based on facts available in accordance with Article 18 of the basic Regulation.
- (109) During the RIP, exports to the Union amounted to 727 tonnes representing 0.6% of the total imports from the countries concerned by the current review and close to 0% of the Union market share.

8.2. Dumping of imports during the RIP

- (110) According to the review request, the imports in the Union were made at dumped prices with a dumping margin of 14.1%.

(111) Since the cooperating company did not export to the Union during the RIP, it was not possible to calculate a dumping margin for that company. However a normal value was calculated on the basis of its domestic sales and a comparison of this normal value with the price of imports from Thailand to the Union as reported by Eurostat gives a figure that is consistent with the dumping margin referred to in recital (108) above.

8.3. Development of imports should measures be repealed

(112) Further to the determination of the existence of dumping during the RIP, the likelihood of continuation of dumping should measures be repealed was also investigated.

(113) In this respect the following elements were analysed: the volume and prices of dumped imports from Thailand, attractiveness of the Union market and other third markets, and production capacity and excess capacity available for exports of the Thai producers.

8.3.1. The volume and prices of dumped imports from Thailand

(114) Imports from Thailand into the Union remained at a negligible level during the entire period considered with no imports in 2009 and 2010. During the RIP, imports increased from around 500 tonnes in 2008 to around 700 tonnes which represented close to 0% of the total Union consumption during the RIP.

(115) During the period considered, the import prices increased from around 980 EUR/tonne in 2008 to around 1300 EUR/tonne during the RIP, i.e. by 32%. No undercutting was found during the RIP.

8.3.2. Attractiveness of the Union market and other third markets

(116) During the RIP, the average domestic price of the sole cooperating exporting producer was found to be lower than the average price charged by the Union Industry in the Union. The price difference amounted to 9%.

(117) The cooperating exporting producer was found to export to third country markets other than the Union. Its average export price to those markets on an ex-works basis was lower than the normal value. The price difference amounted to 10.8% of the average export price.

(118) Exports from the cooperating exporting producer to other third countries were made at prices below the Union industry price level in the Union. The price difference amounted to 6.6% of the export prices to the third country markets.

8.3.3. Production capacity and excess capacity available for exports

(119) Production capacity in Thailand was established on the basis of the information in the request for review, publicly available information such as public web company profiles, and the questionnaire reply of the cooperating company.

(120) The production capacity in Thailand increased significantly during the period considered and represented more than three times the domestic consumption in Thailand during the RIP. The total production capacity in Thailand was between 700,000-900,000 tonnes during the RIP. The excess production capacity available for

exports during the period considered continuously decreased and reached 70-75% of the total country capacity during the RIP, representing 17-22% of the total EU consumption. This shows that Thailand is an export oriented country and that Thai producers of the product concerned are heavily dependent on export sales. The investigation has shown capacity will further increase by 2014 to up to 800,000-1,000,000 tonnes. At the same time, according to the same sources, the domestic demand will not increase in the same rhythm and will remain at a relatively low level. As a consequence, the excess of capacity over domestic demand is expected to increase significantly to around 700,000-800,000 tonnes in the near future, representing 25-30% of the total Union consumption during the RIP. In addition, trade defence measures are in place against Thailand in Turkey and Malaysia thus reducing the free access to potential other third country markets available for exports. In view of the significant quantities available for exports and given the analysis of the export price levels to other third countries as well as the price level in the Union in recitals (114) to (116) above, it is reasonable to consider that exports from Thailand will be re-directed to the Union at dumped prices and at quantities above levels likely to cause injury should the measures be repealed.

- (121) Following disclosure, the Thai Department of Foreign Trade argued that the comparison of production capacity and domestic demand should have been considered at the level of the ASEAN region. It is noted that the Thai government does not substantiate its claim, and therefore there is no justification to alter the conclusions reached on the basis the excess capacity available for exports in Thailand.

8.3.4. Conclusion on the likelihood of continuation of dumping

- (122) In view of the large and increasing capacity, the attractiveness of the Union market and the measures in force in other third countries, it was concluded that it is likely that exports from Thailand would be re-directed to the Union at dumped prices in quantities likely to cause injury should the measures be allowed to lapse.

D. DEFINITION OF THE UNION INDUSTRY

1. Union production and Union industry

- (123) The like product is manufactured by 13 known producers in the Union. They represent the Union industry within the meaning of Articles 4(1) of the basic Regulation and will thereafter be referred as 'the Union industry'.
- (124) Twelve known Union producers, represented by the complainant in the present case, cooperated and supported the investigation. One more known Union producer did not cooperate in the present review.
- (125) All available information concerning Union industry, such as questionnaire replies, Eurostat and request for review, was used in order to establish the total Union production for the RIP.
- (126) The Union market for PET is characterised by a relatively high number of producers, belonging usually to bigger groups with headquarters outside the Union. Between 2000 and 2012 the Union PET industry has undergone through several transitions. The market is in a process of consolidation with a number of recent takeovers and closures.

New products, such as recycled PET and bio PET continue to be developed together with a relatively recent spinoff of a recycling industry.

- (127) Following the disclosure some parties argued that the description of the situation of the Union industry was inaccurate as five producers were in fact belonging to one large transnational group and another three producers were related to PET packaging companies. None of these facts contradict the description provided in recital (124) explicitly stating that the Union producers are usually belonging to bigger groups as disclosed. The impact of this concentration is addressed in recital (209) below. The assessment of the impact of captive market is analysed in recitals (203) to (205) below.
- (128) As indicated above, given the relatively high number of cooperating Union producers a sample of four Union producers was selected, representing over 50% of the production and sales of the total Union production of the like product in the RIP.

E. SITUATION ON THE UNION MARKET

1. Union Consumption

- (129) Union consumption was established on the basis of the sales volumes of the Union industry on the Union market, the import volumes data obtained from Eurostat and, concerning the non-cooperating Union producer, from estimations based on the request for review.
- (130) After an initial increase in 2009 and 2010, the consumption showed a slight decrease of 2% in the RIP as compared to 2008, totalling to 2.802 million tonnes in the RIP.

Table 1
Consumption

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

Source: Questionnaire replies, Eurostat, review request

2. Imports from countries concerned

2.1. Cumulation

- (131) In the expiry review concluded in 2007, imports of PET originating in India, Taiwan, Thailand, Malaysia and Indonesia were assessed cumulatively in accordance with Article 3(4) of the basic Regulation. It was examined whether a cumulative assessment was also appropriate in the current investigation.
- (132) In this respect, it was found that the dumping margins established for imports from India, Taiwan, Thailand, Indonesia and Malaysia were above the *de minimis* level. As regards the import volumes to the Union market, these were above negligible levels only for India. In the case of Taiwan, Thailand, Indonesia and Malaysia the imports volumes were below *de minimis* levels. A prospective analysis of the likely export volumes by each country, should the measures be repealed, was therefore performed.

It revealed that imports from Taiwan and Thailand, unlike Indonesia and Malaysia, would likely increase to levels above those reached in the RIP and likely exceed the negligibility threshold, if measures were repealed (see recitals (102) and (118)). As to Indonesia and Malaysia, it was found that imports into the Union were negligible in the period considered and the prospective excess capacity available for exports was found to be very low. It is thus not very likely that this situation will change in the short term.

- (133) Given the fact that the volume of dumped imports from Indonesia and Malaysia during the RIP was negligible and that it is not likely to increase as explained in recital (130) above, it was considered that the criteria set out in Article 3(4) of the basic Regulation were not met with regard to imports from Malaysia and Indonesia.
- (134) Regarding imports from India, Taiwan and Thailand, it is to be noted that PET is a commodity based product with similar chemical and technical characteristics regardless of the origin. In that light, it is considered that the imported PET was interchangeable with the types of PET produced in the Union. In addition, they were marketed in the Union during the same period. Therefore, it is considered that the imported PET originating in India, Taiwan and Thailand competed with PET produced in the Union.
- (135) On the basis of the above, it is considered that the criteria set out in Article 3(4) of the basic Regulation were met with regard to India, Taiwan and Thailand. Imports from these three countries were therefore examined cumulatively. Since the criteria set in Article 3(4) of the basic Regulation were not met with regard to Malaysia and Indonesia, imports originating in these two countries were examined individually.
- (136) Following the disclosure one party objected the cumulation of imports from Thailand with imports from India and Taiwan while the imports from Malaysia and Indonesia were decumulated. It was argued that Thailand was in a similar position to Malaysia and Indonesia and thus should have been treated in a similar way. It is recalled that given the excess capacities available for exports found in Thailand (see recital (118) above) the criteria of Article 3(4) of the basic Regulation were fulfilled. No parallel could have been drawn between Thailand and Malaysia and Indonesia since the last two countries did not have excess capacities available for exports similar to those found in Thailand. The comment of the party was therefore dismissed.

3. Imports from India, Taiwan and Thailand

3.1. Volume, market share and prices of imports

- (137) Despite the measures in place, the imports from India, Taiwan and Thailand have nearly doubled over the period considered. This is mainly due to the increase of imports from India which increased from 46,313 tonnes in 2008 to 96,678 tonnes in the RIP out of a total of 109,633 for the three countries in question.
- (138) The market share of imports from India, Taiwan and Thailand rose accordingly from 2% in 2008 to 3.9% in the RIP. Imports from India reached a market share of 3.5% in the RIP, significantly above the market share established in the last expiry review (0.3%)

- (139) The average price stood at 1,290 EUR/tonne in the RIP. This reflects an increase of 23% over the period considered, which was acquired after an initial decline of 20% in 2009.

Table 2
Imports from India, Taiwan and Thailand

	2008	2009	2010	RIP
Volume of imports from India, Taiwan and Thailand (tonnes)	57,178	54,173	90,154	109,633
Index (2008 = 100)	100	95	158	192
Market share of imports from India, Taiwan and Thailand	2.0%	1.8%	3.1%	3.9%
Index (2008 = 100)	100	93	155	196
Price of imports (EUR/tonne)	1,049	838	1,031	1,290
Index (2008 = 100)	100	80	98	123

Source: Eurostat.

3.2. Price undercutting

- (140) In view of the absence of cooperation by the Taiwanese exporting producers, price undercutting regarding imports from Taiwan had to be established on the basis of import statistics (Eurostat). Given that the cooperating Thai exporter did not export to the Union during the RIP, in this case also, the price undercutting regarding imports from Thailand had to be established on the basis of import statistics (Eurostat). For India, the calculation was based on the data collected and verified on spot. The relevant sales prices of the Union industry were those to independent customers, adjusted where needed to ex-works level. In the RIP, no undercutting was found for any of the countries concerned.

4. Imports from Malaysia and Indonesia

4.1. Volume, market share and prices of imports

- (141) The import volumes from Malaysia doubled over the period considered despite a decline of 70% until 2010. The imports from Indonesia remained negligible. The import volumes for both countries remained below *de minimis* level.
- (142) The market share of Malaysia increased accordingly from 0.3% to 0.6%. The market share of Indonesia remained close to 0% over the period considered.
- (143) The average unit price for Malaysia stood at 1,299 EUR/tonne in the RIP. This reflects a 25% increase which was acquired in the last two years of the period considered, after an initial decline of 28% between 2008 and 2009. The average unit price for Indonesia stood at 1,304 EUR/tonne in the RIP. This reflects a 34% increase between 2009 and the RIP. Indonesia did not export to the EU in 2008.

Table 3
Imports from Malaysia

	2008	2009	2010	RIP

Volume of imports (tonnes)	8,213	2,028	308	16,628
Index (2008 = 100)	100	25	4	202
Price of imports (EUR/tonne)	1,038	751	942	1,299
Index (2008 = 100)	100	72	91	125
Market share of imports	0.3%	0.1%	0.0%	0.6%

Source: Eurostat data

*Table 4
Imports from Indonesia*

	2008	2009	2010	RIP
Volume of imports (tonnes)	-	408	991	253
Index (2009 = 100)	-	100	243	62
Price of imports (EUR/tonne)	-	973	1,222	1,304
Index (2009 = 100)	-	100	126	134
Market share of imports	-	0.01%	0.03%	0.01%

Source: Eurostat data

4.2. Price undercutting

(144) In view of the absence of cooperation by the Indonesian exporting producers, price undercutting regarding imports from Indonesia had to be established on the basis of import statistics (Eurostat). Given that the cooperating Malaysian exporters did not export to the Union, in this case also, the price undercutting regarding imports from Malaysia had to be established on the basis of import statistics (Eurostat). The relevant sales prices of the Union industry were those to independent customers, adjusted where needed to ex-works level. In the RIP, no undercutting was found for any of the two countries.

5. Imports from other third countries

5.1. Imports from China, United Arab Emirates (UAE), Iran and Pakistan

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

(146) The market share of the countries in question was reduced from 8.2% in 2008 to 2.6% in the RIP including mainly the UAE (1.7% in RIP) and China (0.6% in RIP).

(147) The average price amounted to 1,258 EUR/tonne in the RIP, 5.5% below the unit price of the Union industry. This reflects a 24% increase over the period considered which was acquired in the RIP after an initial decline of 22% in 2009.

*Table 5
Imports from China, the UAE, Iran and Pakistan*

	2008	2009	2010	RIP
Volume of imports from China, the UAE, Iran and Pakistan (tonnes)	235,913	351,798	188,776	72,054
Index (2008 = 100)	100	149	80	31

Market share of imports from China, the UAE, Iran and Pakistan	8.2%	12.0%	6.5%	2.6%
Index (2008 = 100)	100	146	79	31
Price of imports (EUR/tonne)	1,016	789	949	1,258
Index (2008 = 100)	100	78	93	124

Source: Eurostat

5.2. Imports from other third countries without any measures

- (148) Volumes of imports from other third countries without any measures including Oman, South Korea, Russia, Mexico and Saudi Arabia increased by 59% over the period considered, after a growth of 71% in 2009. Between 2009 and RIP, Oman became the largest exporting country in the Union.
- (149) The market share of the countries in question rose from 9.7% in 2008 to 15.8% in RIP, mainly due to the gain of 4.3% of imports from Oman. The market share of South Korea stood at 4% in the RIP, 5% below its highest level reached in 2009.
- (150) The average price amounted to 1,273 EUR/tonne, 4.3% below the average unit price of the Union industry. This reflects a 10% increase over the period considered which was acquired in 2010 and RIP after an initial decline of 24% in 2009. The average price of imports from Oman stood at 1,310 EUR/tonne in RIP, 1.5% below the unit price of the Union industry. The average price of imports from South Korea stood at 1,294 EUR/tonne, 2.7% below the unit price of the Union industry.

Table 6
Imports from other third countries

	2008	2009	2010	RIP
Volume of imports from other third countries (tonnes)	279,188	478,570	469,753	442,692
Index (2008 = 100)	100	171	168	159
Market share of imports from other third countries	9.7%	16.3%	16.1%	15.8%
Index (2008 = 100)	100	168	165	162
Price of imports (EUR/tonne)	1,156	879	997	1,273
Index (2008 = 100)	100	76	86	110
Main exporters (tonnes)				
Oman	0	52,632	95,646	120,286
South Korea	177,341	254,451	183,801	114,346
Russia	546	546	3	50,427
Mexico	2,650	1,879	29,039	29,409
Saudi Arabia	230	20,454	50,108	24,756
Others	98,422	148,609	111,156	103,468

Source: Eurostat

(151) Following disclosure, some parties argued that the Commission omitted to assess the impact of imports from South Korea. It is recalled that the measures against South Korea expired in 2012. Before expiration of the duties, over 99% of imports from this country were entering with 0% duty rate. For these reasons the imports from South Korea are included in the analysis together with the imports from other countries without any measures (recitals (202) and (212) below). The claim was rejected as unsubstantiated.

6. Economic situation of the Union industry

(152) Pursuant to Article 3(5) of the basic Regulation, all economic factors and indices having a bearing on the state of the Union industry during the period considered have been examined.

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

- the macroeconomic indicators (production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of dumping margins and recovery from the effects of past dumping) were assessed at the level of the whole Union production for all Union producers, on the basis of the information collected from the Union industry, the review request as well as publicly-available statistics;
- the microeconomic indicators (stocks, average unit prices, wages, profitability, return on investments, cash flow, ability to raise capital and investments) were assessed at the level of the sampled Union producers on the basis of the information they submitted.

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

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

7. Comments of the parties

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

- (157) Some parties claimed that the information collected from Union producers did not comply with the instructions for completion of the questionnaire, which requested data from different companies not to be aggregated. It was therefore claimed that the collected information was inaccurate and incomplete given that the reported figures were aggregated per sampled entity. It is to be noted that the information was duly collected and verified on-spot. The information collected was found to provide sufficiently accurate picture of the Union industry and therefore the above-mentioned claim had to be rejected. Following disclosure the parties reiterated their claim. No new arguments or evidence were presented. Same parties reiterated their claim that the data provided by one sampled company were incomplete as they did not relate to the entire group but selected entity within the group. This comment was addressed at the sampling stage as explained in recital (20) above.
- (158) The same parties argued that the Commission attempted to fix the claimed insufficiencies of the collected information by sending additional questionnaires. In this respect it should be clarified that the Commission indeed sent additional questionnaires, but addressed them only to the non-sampled Union producers in order to collect information on macro-economic indicators relevant to the injury assessment therefore this was done to supplement the information provided by the sampled Union producers. Following disclosure some parties reiterated the claim without bringing any new arguments or presenting new evidence. The claim of the parties was therefore dismissed.
- (159) In addition, the same parties also claimed that the information provided by the sampled producers was also contrary to obligations in Article 19 of the basic Regulation because information which was not confidential in nature had been provided as confidential information and thus excluded from the open file. In this respect it is to be noted that the information was classified as limited in line with the request of the submitting party. Upon the request of interested parties the confidentiality status of the submitted information was reconsidered and where appropriate, the information was reclassified as open for inspection by interested parties after consultation and approval of the companies concerned. Also this claim was therefore dismissed.
- (160) Some parties argued that the methodology used to assess injury was in violation of Article 11(9) of the basic Regulation because while the injury determination carried out in the original investigation concluded in 1999 was based on cumulative assessment of imports from six countries, the current assessment does not include imports from South Korea which was claimed to be the largest supplier to the Union and the country with largest export capacity and lowest export prices as compared to other countries concerned by the present review.
- (161) In this context it is to be noted that under the expiry review concluded in 2007 the non-dumped imports from South Korea were already decumulated given that it was found that not all conditions of Article 3(4) of the basic Regulation were met in respect of these imports. Moreover, it is noted that the current review does not cover the imports from Korea as the measures against South Korea has expired. Finally, it is considered that there is no change in methodology since the cumulative assessment is used under the current review for the imports from all the countries that meet criteria for such assessment in accordance with Article 3(4) of the basic Regulation. The argument of the parties has to be therefore dismissed.

8. Macroeconomic indicators

8.1. Production

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

Table 7
Total Union production

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

Source: Questionnaire replies, review request

8.2. Production capacity and capacity utilisation

- (163) The production capacity of the Union industry decreased by 23% between 2008 and the RIP. This trend relates to the closure of several manufacturing facilities which was partly offset by the launch of new factories.
- (164) Capacity utilisation increased from 75% in 2008 to 86% in the RIP. Increased capacity utilisation is to be seen in the context of the restructuring efforts of the Union industry explained in recital (124) above.

Table 8
Production capacity and capacity utilisation

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

Source: Questionnaire replies, review request

8.3. Sales volume

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

Table 9
Total sales of the Union industry in the Union

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

Source: Questionnaire replies, review request

8.4. Market share

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

Table 10
Union industry market share

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

Source: Questionnaire replies, review request and Eurostat

8.5. Growth

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

8.6. Employment and productivity

- (168) The employment level of the Union industry showed a decrease of 41% between 2008 and the RIP. The decline was constant over the period concerned, including in 2010 when the production increased (see recital (161) above). In the light of the growing productivity, this drop is a reflection of the restructuring efforts by a number of Union producers.
- (169) Productivity of the Union industry's workforce, measured as output (tonnes) per person employed per year, increased by 50 % in the period considered. This reflects the fact that production decreased at a slower pace than the employment level and is an indication of increased efficiency by the Union industry. This is particularly obvious in 2010 when production increased while the employment level decreased and the productivity was 37 % higher than in 2008.

Table 11
Employment and productivity

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

Source: Questionnaire replies, review request

8.7. Magnitude of the actual dumping margin

- (170) As concerns the impact on the Union industry of the magnitude of the actual dumping margin of imports from the countries concerned, given the price sensitivity of the market for this product, this impact cannot be considered to be negligible. It should be

noted that this indicator is more relevant in the context of the likelihood of recurrence of injury analysis. Should measures lapse, it is likely that the dumped imports would come back at such volumes and prices that the impact of the magnitude of the dumping margin would be significant.

8.8. Recovery from the effects of past dumping

(171) While the indicators examined above show some improvement in some economic indicators of the Union industry, further to the imposition of definitive antidumping measures in 2000, they also provide evidence that the Union industry is still vulnerable.

9. Microeconomic elements

9.1. Stocks

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

Table 12

Stocks

	2008	2009	2010	RIP
Closing stocks	51,495	54,808	54,314	64,069
Index	100	106	105	124

Source: Questionnaire replies

9.2. Price development

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

(174) The sudden price increase in the RIP should be read in the context of the unexpected market developments at the end of 2010 and in the first quarter of 2011 on the cotton market. As mentioned above (recital (153) above), the record cotton prices caused a switch to polyester fibre that competes for the same raw material as PET. The increased demand for the raw material, in particular, PTA, pushed up the prices of PET in Asia and Middle East with a spill over effect on the prices of PET in the Union. The price increase in the Union at that time was further amplified by the short term scarcity of PTA in the Union due to the declared *force majeure* of one of the PTA producers in the Union.

Table 13

Unit Sales Price in the Union

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

Source: Questionnaire replies

9.3. Factors affecting sales prices

- (175) The sales prices of PET normally follow the price trends of its main raw materials (mainly PTA and monoethylene glycol — MEG) as they constitute up to 90 % of the total cost of PET. PTA is an oil derivative, the price of which fluctuates on the basis of prices of crude oil. This causes high volatility of the prices of PET.
- (176) In addition, PET competes for the same raw material as polyester fibre, the production of which relies to the same extent as PET on the availability of PTA. Since polyester fibre is an alternative to cotton for the textile industry, the price of PET is therefore also sensitive to the developments on the cotton market.

9.4. Wages

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

Table 14

Wages

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

Source: Questionnaire replies

9.5. Profitability and return on investment

- (178) The profitability and returns on investment improved significantly between 2008 and RIP. The profit on sales in the Union market increased from -7.9% in 2008 to 5.3% in RIP while return on investment improved from -9.6% to 10.6%. 2008 was affected by the particularly poor performance of one Union producer. Nevertheless, the improvement of the financial situation of the Union industry in 2009 and 2010, when prices were below their 2008 levels, evidences the loose relationship between prices and profitability. On the contrary, the improvement of profitability appears closely correlated to the improvements in capacity utilisation and to the productivity gains observed above.
- (179) Thanks to the global market developments at the break of 2010/2011, coupled with the restructuring efforts and efficiency gains described above, the Union industry was able to improve its profitability in 2010 and to reach the level of 5.3% in the RIP.
- (180) One interested party argued that this development was unexpected and extraordinary, not to be considered representative of the overall situation of the Union industry.
- (181) In this respect it is to be noted that the Union industry was able to benefit from the PET price increase at the end of 2011 and beginning of 2012 as it had fixed the PTA price before the described market events occurred. Based on the statistical sources concerning the post-RIP development, submitted by the parties, the profit margins of PET producers went substantially down in 2012. This confirms that the profitability in 2011 (RIP) was indeed largely influenced by unexpected and temporary global economic events (recital (153) that are unlikely to recur and cannot be considered permanent and representative of the situation of the Union industry.

Table 15

Profitability and Return on Investments

	2008	2009	2010	RIP
Profitability Union sales	-7.9%	1.6%	4.8%	5.3%
Index	100	221	261	267
Return on investment	-9.6%	2.3%	8.9%	10.6%
Index	100	224	292	310

Source: Questionnaire replies

9.6. Cash flow and ability to raise capital

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

Table 16

Cash flow

	2008	2009	2010	RIP
Cash flow (EUR)	- 59,419,394	40,940,883	96,614,649	103,761,169
Index (2008 = 100)	100	269	363	375
In % of turnover	-5.9%	4.5%	8.3%	7.5%
Index (2008 = 100)	100	176	242	229

Source: Questionnaire replies

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

9.7. Investments

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

Table 17

Investments

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

Source: Questionnaire replies

10. Conclusion on the situation of the Union industry

- (185) The analysis of the macro-economic data showed that the Union industry decreased its production and sales volumes during the period considered. The Union industry's market share has not fully recovered since the initial drop in 2009 and it showed an overall decrease of 3 percentage points over the period considered (to 77% in RIP). The decline in employment and capacity is a result of the on-going restructuring and is to be seen in the context of increasing capacity utilisation and productivity.
- (186) At the same time most of the relevant micro-economic indicators showed signs of improvements. The profitability, return on investment and cash flow rose significantly, in particular in 2010 and in the RIP. The investments, on the other hand, plummeted in 2009 and have not recovered since.

- (187) Overall, the economic situation of the industry has improved. However, these improvements are relatively recent and to some extent based on unforeseen and temporary market developments at the break of 2010/2011 (see recital (153) above). This appears to be supported by the information available on the developments of the margin of the Union industry in 2012 (see recital (179) to above) that show a decline as compared to RIP.
- (188) In view of the above analysis, the situation of the Union industry has improved and no material injury appears to be taking place. Nevertheless, despite apparent positive trends and the significant restructuring efforts, the Union industry is still fragile.
- (189) Following the disclosure some parties contested the conclusion that the Union industry was still fragile claiming that the Union industry was in a healthy state and has substantially transformed since 1999. It is noted that as explained above (recital (185)), despite the overall improvement and consolidation, not all economic indicators developed positively over the period considered. For example, production and sales volumes as well as market share decreased. Moreover, the improvements were relatively recent and with a fall of profitability in 2012 appeared short-lived. On this basis it was considered that while no material injury proved to exist in RIP, the Union industry was still in a fragile state. The argument was therefore rejected.
- (190) Following the disclosure some parties contested the use of data referring to period beyond RIP for the analysis of the economic situation of the Union industry. In response to this claim it is confirmed that the situation of the Union industry was assessed for the period considered and on this basis no material injury was established. However, the development of profitability of the Union industry beyond RIP is in this case relevant mainly in the context of the extraordinary nature of the global market developments at the break of 2010/2011. It also illustrates the volatility of the profit levels typical for this sector (see recital (260) below). The argument is therefore rejected.

F. LIKELIHOOD OF RECURRENCE OF INJURY

1. Impact of the projected volume of imports and price effects in case of repeal of measures
- (191) The investigation has shown that the imports from India, Taiwan and Thailand continued to be dumped and there are no indications that the dumping would be reduced or discontinued in the future.
- (192) A prospective analysis of the likely export volumes from these three countries revealed that, given the excess capacity available for exports (see recitals (55), (97) and (118) above), the domestic prices as well as price levels on the third countries markets and in the Union together with the attractiveness of the Union market the imports from India, Taiwan and Thailand are likely to increase to the levels likely to cause injury above those reached in RIP if the measures were lifted. With the planned capacity expansions in these three countries, the combined excess capacity available for exports is estimated to reach between 2.3-2.8 million tonnes, i.e. over 83-87% of the Union consumption (in RIP) in the near future.
- (193) As regards the expected price development of the imports from the three countries, the imports from these countries are expected to enter at dumped prices, should the

measures against India, Taiwan and Thailand be lifted. Also, as the exporters from these countries will have to compete against low priced imports from other third countries, it cannot be excluded they would have to lower their prices further in order to increase their market share on the Union market.

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

2. Production capacity and excess capacity available for exports of countries concerned

- (195) As indicated above, the exporting producers in India, Taiwan and Thailand have the potential to increase their export volumes to the Union market. All three countries had a significant growth in their production capacity over the period considered. According to market forecasts, it is expected that the gap between domestic consumption and production capacity will grow to between 2.3 to 2.8 million tonnes in the near future. Such excess capacity available for exports in the near future has to be considered as significant as it represents over 83-87% of the Union consumption (in RIP).

- (196) Therefore, although the imports from the three countries to the Union were relatively low, a risk exists that significant export volumes could be diverted to the Union market should the measures be lifted.

- (197) Following the disclosure some parties claimed that the likelihood of recurrence of injury based on excess capacity available for exports has to include the assessment of the growth in demand in the export markets of India and Taiwan. The same parties stated that Thailand was irrelevant because it is controlled by one group present on the Union market. The claim regarding the assessment of excess capacity available for exports is dismissed for the reasons explained in recitals (58) to (59) and (101) to (102) above. The relevance of the statement made regarding the situation on the Thai market was not substantiated. For this reason the claims were dismissed.

3. Loss of export markets

- (198) The trade defence measures against imports of PET from India, Taiwan and Thailand are currently in place in Turkey. Furthermore, measures against the imports from India and Taiwan exist in South Africa and measures against Thailand exist in Malaysia.

- (199) Following the disclosure some parties contested the conclusions regarding the loss of export markets for India and Taiwan. It was claimed that both markets were marginal export market, therefore no significant export volumes from these markets could be redirected to the Union if the measures were lifted. It is noted that mere existence of the trade defence on some markets excludes any meaningful comparison of the relative importance of the markets with and without measures for a given country. In addition, contrary to the claim, it was not considered that the export volumes from these markets would be redirected to the Union market. Instead, The Commission's assessment is that the trade defence measures in place in Turkey and South Africa against imports from India and Taiwan potentially reduce the markets that could be available for Indian and Taiwanese exports. Moreover, should the claim that Turkey and South Africa are unimportant export markets be true, the increasing excess

capacity available for export in India and Taiwan implies a likelihood of increased exports to the Union even in the absence of the trade defence measures imposed by Turkey and South Africa. (see recital (59) above). This argument was therefore rejected.

- (200) The existence of trade defence measures in other third countries is also an indication that the pricing behaviour of India, Taiwan and Thailand is likely to replicate on the Union market.

4. Attractiveness of the Union market

- (201) The Union market is attractive in terms of its size and price, being the third largest market in the world, with a structural need for imports and higher prices as compared to other markets. In case of India, Taiwan and Thailand, the import prices to the Union tend to be higher than the prices to other third countries, which points to the attractiveness of the Union market for the exports from these three countries.

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

5. Other factors

- (203) The impact of imports from other third countries with measures, on the situation of the Union industry was considered low, due to the low import volumes and substantial decrease of their market share in the RIP.

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

6. Captive market

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

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

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

7. Comments of the parties

- (208) Some parties argued that the injury due to imports from India did not exist during the RIP as evidenced by the relative economic health and profits of the Union industry. It has to be note that, indeed, no continuation of injury has been established in the present case, and therefore the claim of the parties corresponds to the investigation findings.
- (209) Some parties claimed that other factors, such as structural inefficiencies of the Union industry and lack of investment as well as seasonal and conjunctural factors (e.g. bad weather, economic crises) could have an impact on the situation of the Union industry. Concerning the first point raised, it is to be noted that the restructuring of the Union industry is already taking place and the efficiency gains obtained suggest that the claim of the parties is unfounded. As to the conjunctural factors, although the economic crises did have an impact on the situation of the Union industry in 2009, as mentioned above, the relevant effects do not appear to be currently present anymore; concerning the effect of bad weather, this could partly explain the shrinking consumption in the RIP, however, on the one hand, its alleged impact on the situation of the Union industry has not been substantiated and, on the other hand, the slight drop in 2011 appears to be rather linked to temporary scarcity of raw materials due to the global market developments in 2011. Therefore, none of these claims is justified in view of the findings of the investigation.
- (210) Furthermore, some parties argued that the recurrence of injury in this case is unlikely if the measures were to expire, given that thanks to its structure (concentration and vertical integration) the Union industry is shielded from the effects of the imports. Moreover, it has been argued that a shift to imported PET is neither desired nor possible in the near future, in particular as purchasing contracts and policies as well as homologation process of large brand owners (downstream users) makes changes of PET suppliers cumbersome. It is to be noted that based on the findings of the investigation the Union industry continued to lose market share to the benefit of imports during the period considered; this shows, on the one hand, that the Union industry is not shielded from the effects of the imports and, on the other hand, that the switch to imports is not hypothetical but is actually already taking place. The arguments had to be therefore dismissed.
- (211) Following the disclosure some parties reiterated the claim that the Union industry was shielded from the potential competition of imports due to its structure. Firstly, as regards the claim on dominant position of one of the producing groups in the Union market controlling five producers, it is noted that the Union market is an open market with other eight producers operating outside this group and growing competition of imports from third countries – with and without any measures in place. Secondly, concentration is typical for this type of business based on commodity product that relies on economies of scale for its competitiveness. Thirdly, no price leader was found to exist on the Union market. Finally, parties reiterated that the impact of the imports from the three countries concerned in the light of the vertical integration of some Union producers with the packaging industry or with producers of PTA was not analysed. As established in recital (207) above these aspects were indeed analysed and found unsubstantiated. Moreover, the verification of companies concerned by vertical integration with producers of raw materials confirmed there was no comparative advantage as the transfers were made at market price. Based on the above, the claim that the Union industry would be shielded from the competition was rejected.

- (212) Next, some parties argued that no elements support a conclusion that the Indian, Taiwanese and Thai export capacity may target the Union market at ‘cheap prices’ given that (i) the domestic demand in India, Taiwan and Thailand is growing and is expected to continue to grow; (ii) PET in excess of domestic consumption exists, yet competition in export markets has not resulted in exports at dump or otherwise abnormally low prices; (iii) increases in production capacity in Asia responds to the increase in demand expected worldwide. It is to be noted that the findings in the present investigation demonstrate that the projected growth of capacity shows a growing excess of the production capacity over domestic demand. In addition, the prices of India, Taiwan and Thailand on third markets were lower as compared to their import prices to the Union. Based on the findings described in recitals (60), (104) and (120), above it is likely that the dumped imports from the countries concerned will target the Union market at volumes likely to cause injury and below the average price of the Union industry should the anti-dumping measures be allowed to lapse. On these grounds the arguments of the parties are dismissed.
- (213) Finally, some Taiwanese producers argued that for the reasons spelt out in recitals (101) to (103) above, there was no likelihood of recurrence of injury due to the imports of PET originating in Taiwan. As noted in the respective recitals, for reasons of non-cooperation, none of the claims made in this respect could be verified. Moreover, the findings described in recitals (86) to (98) above point to the contrary. On these grounds the allegations made by the parties in question have to be rejected.
- (214) Following the disclosure one party claimed that the Commission failed to include the imports from South Korea in the injury assessment. Contrary to this claim, the imports from South Korea were included in the injury analyses (see recital (202) above) and were analysed together with the imports from other third countries without any measures (see recital (148) above). Contrary to the claim, South Korea was not the main exporting country to the Union (RIP). In addition, it is noted that although South Korea represented substantial part of imports, its import volumes declined significantly over the period considered. The claim of the party was therefore rejected.

8. Conclusion on the recurrence of injury

- (215) On the basis of the foregoing it is concluded that in respect of India, Taiwan and Thailand substantial volumes of dumped imports likely to cause injury from would be redirected to the Union should anti-dumping measures be repealed. Thanks to continued dumping, the prices of these imports would most likely undercut the Union industry prices. Also, it cannot be excluded that the prices of imports from India, Taiwan and Thailand would decrease even further should the exporting producers from the countries concerned try to increase their market shares. Such price behaviour, coupled with the ability of the exporting producers in India, Taiwan and Thailand to sell significant quantities of PET on the Union market, would in all likelihood have the effect of reinforcing the price pressure, with an expected negative impact on the situation of the Union industry.
- (216) During the period considered the situation of the Union industry improved, in particular in terms of productivity and capacity utilisation and profit margins reached in the RIP at the level close to the target profit established in the original investigation. It can therefore be concluded that the Union industry, albeit still in a fragile situation, did not suffer material injury during the RIP. However, given the likely substantial

increase of dumped imports from India, Taiwan and Thailand which are likely to undercut the Union industry's sales prices, it was concluded that the situation would very likely deteriorate and the material injury would recur, should measures be allowed to lapse.

- (217) As far as imports from Malaysia and Indonesia are concerned, given, in particular, the lack of significant excess capacities in the near future, no likelihood of continuation of dumping was established. Therefore, it is concluded that lifting the measures against Malaysia and Indonesia would in all likelihood not result in the recurrence of injury to the Union industry.
- (218) Following the disclosure one party invoked that the extension of the duties against Thailand was discriminatory in comparison with Malaysia and Indonesia given that all three countries were in a similar situation. This argument was rejected considering that while excessive capacity was found in case of Thailand and thus likelihood of recurrence of dumping was found, no such findings were established in case of Malaysia and Indonesia.

G. UNION INTEREST

- (219) In accordance with Article 21 of the basic Regulation, it was examined whether the maintenance of the existing anti-dumping measures would be clearly against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved. All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (220) It should be recalled that the adoption of measures was considered not to be clearly against the interest of the Union neither in the original investigation nor in the last expiry review. Furthermore, the analysis in the last expiry review was carried out in the situation where the measures had been already in place and thus the assessment took into account any undue negative impact on the parties concerned by the measures in question.
- (221) On this basis, it was examined whether despite the conclusions on the continuation of dumping and likelihood of recurrence of injury, any compelling reasons existed which would lead to the conclusion that it is clearly not in the Union interest to maintain measures in this particular case.

9. Interest of the Union industry

- (222) The continuation of the anti-dumping measures on imports from India, Taiwan and Thailand would help the Union industry to continue the on-going restructuring and enhance its only recently improved economic situation, as it would help avoiding that the Union industry is exposed to the substantial volumes of dumped imports from India, Taiwan and Thailand which the Union industry could not withstand. The Union industry would therefore continue to benefit from the maintenance of the current anti-dumping measures.
- (223) Accordingly, it is concluded that the maintenance of anti-dumping measures against India, Taiwan and Thailand would be in the interest of the Union industry.

10. Interest of unrelated importers in the Union

- (224) None of the unrelated importers cooperated in the present review.
- (225) Despite the measures in force the imports from India, Taiwan and Thailand continued and nearly doubled over the period considered. The imports from other third countries without any measures were also available and reached significant market share during the RIP (see recital (147) above). Therefore, even with the measures in place, importers had access to alternative sources of supply.
- (226) Bearing in mind that there is no evidence suggesting that the measures in force considerably affected importers, it is concluded that the continuation of measures will not be against the interest of the Union importers.

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

- (227) The raw material for the manufacturing of the product concerned is PTA/MEG. Two out of five known suppliers of raw material (one supplier of PTA and one of MEG) cooperated with the investigation by submitting the questionnaire reply. Both suppliers of the raw material expressed their support for the continuation of the measures.
- (228) The investigation showed that the cooperating PTA producer represented a substantial part of the PTA purchases of the sampled Union producers in the RIP. Given that PTA has no other use in the Union than the production of PET, it is reasonable to assume that PTA producers are largely dependent on the PET industry.
- (229) As to the cooperating MEG supplier, MEG represented relatively small part of its total turnover in the RIP. With regard to MEG, PET is not its only or major possible application and MEG producers are less dependent on the situation of the PET industry. Consequently, it is considered that the continuation of measures against dumped imports of PET from India, Taiwan and Thailand would have a positive, although likely limited, impact on the suppliers of MEG.
- (230) It was alleged that the suppliers of raw material do not depend on the Union producers of PET; in particular, as it was argued that two out of four sampled Union producers were in fact importing the raw materials.
- (231) In relation to this claim the investigation has shown that the imported material was predominantly MEG that can also be used for other than PET applications. No indications were gathered showing more than negligible imports of PTA to the Union. Therefore, this claim does not affect the conclusions taken as regards the dependency of PTA producers on PET production in the Union.
- (232) Consequently, it is considered that the continuation of measures against dumped imports of PET from India, Taiwan and Thailand would benefit the PTA producers and also, although to a lesser extent, the MEG suppliers. As a consequence the continuation of measures against imports from India, Taiwan and Thailand would not be against the interest of the raw material suppliers.
- (233) Following the disclosure some parties claimed that PTA was exported and therefore the PTA producers were claimed not to be dependent on Union industry. No evidence

supporting this claim was presented. Therefore the argument of the parties was dismissed as unsubstantiated.

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

12. Interest of PET recycling industry

- (235) The Union industry argued that the situation of the recycling industry depends on the sustainable price of virgin PET (non-recycled PET) on the Union market. Their claim was substantiated by a press release of an association of plastic recyclers in Europe, according to which a potential lifting of the measures on virgin PET could further worsen the situation of the recycling industry.
- (236) Some interested parties contested that the situation of the recycling industry depends on the sustainable price of virgin PET on the Union market arguing that the prices of virgin PET and recycled PET were unrelated. It was claimed that recycled PET is mainly used for the production of polyester fibre and therefore cannot be linked to the price developments of virgin PET. In addition, it was noted that the recycled PET is entirely supported by bottle-fillers and thus the industry does not depend on PET producers. Finally, it was also noted that recycling industry did not come forward as an interested party in the present investigation.
- (237) Since the recycling industry did not come forward in this investigation, none of the above-mentioned allegations could have been verified against the actual figures. Therefore, it is considered that in overall the measures in force would not be against the interest of the recycling industry in the Union.

13. Interest of the users

- (238) The product concerned is predominantly used to produce bottles for water and other soft drinks. Its use for the production of other packages (foodstuff, sheets, etc.) remains relatively limited. Bottles of PET are produced in two stages: (i) first a pre-form is made by mould injection of PET, and (ii) later the pre-form is heated and blown into a bottle. Bottle making can be an integrated process (i.e. the same company buys PET, produces a pre-form and blows it into the bottle) or limited to the second stage (blowing the pre-form into a bottle). Pre-forms can be relatively easily transported as they are small and dense, while empty bottles are unstable and due to their size very expensive to transport.
- (239) On this basis, two main groups of downstream users have been established for studying of the impact of the measures in force: (i) converters and/or bottle makers, converting PET chips into pre-forms (or bottles) and selling them for downstream processing; and (ii) bottlers, filling (and blowing) the bottles out of pre-form; this group represents mostly the producers of mineral water and soft drinks. The bottlers are often involved in the PET business either via integrated bottle making operations

or via tolling agreements with subcontracted converters and/or bottle makers for whom they negotiate the PET price with the producer (soft tolling) or even buy the PET for their own bottles (hard tolling).

- (240) Seventeen (five converters and twelve bottlers) cooperated in the investigation and provided information collected by the questionnaire. The cooperating converters represented 22.7% and bottlers 13% of the total consumption of PET in the Union. The replies of bottlers came from various branches of the multinational companies (known as brand-owners).
- (241) In total, all independent users that came forward expressed their opposition against the measures. However, one user, vertically integrated with a PET producer, came forward expressing its support for the continuation of the measures on the grounds that the measures in force help to ensure stability of supply of PET on the Union market and to establish a fair competition.
- (242) It has been established that the cooperating users sourced PET predominantly from the Union producers and only a small proportion was sourced from imports. The imports from India, Taiwan and Thailand represented roughly half of these imports and thus a minimal proportion of the sourced PET. Nevertheless, the imports from other third countries without any measures were also available and reached significant market share during the RIP (recital (147)). Therefore, even with the measures in place, the users had access to alternative sources of supply.

14. Arguments of the users' industry

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

14.1. Price sensitivity and cost structure of the users

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

reflecting the variation of PET prices, the converters are increasingly neutral towards the developments of PET prices.

- (245) Following the disclosure some users contested the conclusion on the increased use of tolling and price formulas. The information in the file confirmed existence of such trend. The claim was therefore dismissed.
- (246) It was claimed that the measures in place would not cause damage to the converters, if similar measures were applied on imports of preforms into the Union. It was argued that in the areas close to the Union border with third countries, in which there are no measures against imports of PET from India, Taiwan and Thailand there are incentives to delocalise the production of preforms and import them free of anti-dumping measures on PET into the Union. It is acknowledged that to some extent there is an economic rationale for this process to be happening. However, given the transportation cost, the delocalisation is likely to occur only within limited distances. In overall, the claimed negative impact of the measures in question on some converters is therefore considered to be marginal.
- (247) As regards the PET price impact on bottlers, based on the reported figures, the PET is estimated to represent on a weighted average basis 9% of total costs of bottled soft drinks and 12% of the total costs of bottled mineral water. This shows that PET is not the main cost component for the bottling industry.
- (248) In addition, the investigation has established that PET was the preferred although not the exclusive packaging material of bottlers. PET products represented 75% of the turnover of water bottlers and 50% of the turnover of producers of soft drinks. Furthermore, the investigation showed that contracts between many large bottlers (brand owners) and PET producers were based on a formula whereby the price was adjusted to reflect fluctuation of prices of raw materials for PET. This confirms the existing negotiating power of the large and thus the most representative bottlers over the conversion margin of the PET producers.
- (249) Following the disclosure some users reiterated their argument that PET is a basic cost component for converters, soft drink and bottled water industries and the findings in this respect were inaccurate and not based on the reported data. It is noted that the situation of converters was analysed separately and this comment is in their case unfounded (see recital (244) above). As regards the assessment of the situation of the bottlers it is confirmed that the cost ratios established in the investigation are based on the figures reported by the cooperating bottlers following a methodology available to all parties. The established cost ratios were in line with the findings of previous investigations concerning the same product concerned¹⁹. The claims of the parties were therefore considered unsubstantiated.
- (250) Following the disclosure some users claimed that the essence of the company specific data and information provided by them was not reflected in the analysis of the Union interest. It is confirmed that the data was used as reported by the users in their questionnaire replies. The calculation methodology was made available to all parties concerned. On this ground the claim was rejected.

¹⁹ E.g. Commission Regulation No 473/2010; Council Regulation No 192/2007.

- (251) The investigation has also established that based on the expected and/or desired decrease of PET prices estimated by the verified bottlers themselves, lifting the measures would result in negligible cost reduction for the bottlers. Based on these estimates of PET price decrease and the established cost ratios, the respective cost reduction was calculated to be within the range of 0.3-0.7% of the total costs of the bottlers for their PET-related activities.
- (252) Following the disclosure some users disputed this conclusion arguing that any saving in costs would be significant. Some users put forward new estimates in their submissions without providing any new evidence. It is emphasised that the prospective savings are hypothetical, as was also admitted by some users themselves. As regards the converters, no quantification of prospective saving was put forward for this segment. As regards the bottlers, it was considered that should the alleged PET price decrease materialise, in the light of the costs structure of the bottlers, saving within 0.3%-0.7% of total costs cannot be considered 'significant'. Since no new evidence was provided, the claim was dismissed as unsubstantiated.
- (253) It was claimed that some bottled-water producers have inherent vulnerabilities stemming from legal requirements imposed for the source water to be bottled at the source and limited extraction volumes. The sector is being dominated by SMEs, which has an impact on the cost structure of the companies in questions. Also, variations have been observed in the price levels of final products across Member States depending on the purchasing power of the local population. On these grounds it is considered that the impact of an eventual decrease of PET prices, if the measures were lifted, would be more pronounced for this part of the bottling industry.

14.2. Alleged premium prices and profits of Union industry

- (254) Some parties alleged the existence of premium prices and premium margins practised by PET producers in the Union, claiming that these would be at the origin of the price increases in 2011. This claim was also supported by the comparison made between PET prices and spread over the raw material in the Union to the situation on Asian market and in the USA. It was claimed that this situation results from the accumulation of trade remedies.
- (255) It is to be noted that the increase of the prices of PET in 2011, as well as its decline in 2009, was a worldwide phenomenon driven by the evolution of the cost of raw materials (see recital (153) above). Data submitted by the parties systematically showed a very close correlation between the evolution of PET prices in Europe, Asia and the USA. Nevertheless, there are indeed differences in the prices of PET across the world which are related to various reasons, in particular the specific cost structure in each region. As regards the argument on existing premium margin in the Union, it is noted that even under exceptional circumstances in late 2010 and beginning of 2011 the Union industry has merely reached the profitability considered reasonable for this type of industry. No evidence of premium profit was found. Therefore, the argument on existing 'premium' prices and 'premium' margins on the PET in the Union that are due to the existence of the measures in question has to be rejected.
- (256) Following the disclosure some parties reiterated their argument that the prices in the Union were unjustifiably high reflecting the impact of accumulation of anti-dumping measures operating in a market with concentration among Union producers, vertical

integration and limited production unable to satisfy the consumption. It was also claimed that the price data also showed that the higher prices in the Union are not reflecting the higher costs of raw materials. It is noted that the arguments on concentration, vertical integration and production capacity of Union industry were addressed in recitals (204) and (265) respectively. As regards the claimed impact of these factors on the PET price in the Union it is recalled that the PET price development is driven by the price of raw materials that account for up to 90% of cost of PET (see recital (173) above). Also, the increase in PET prices in 2010/2011 was a worldwide phenomenon (see recital (153) above). The claims of the parties were therefore found unsubstantiated.

- (257) As regards the argument concerning the gap between the Union PET price and prices in Asia and US, and in addition to findings already stated in recital (255) above, it was found that the difference in prices between US and Union market was volatile, yet moderate. Union prices were not systematically higher as claimed. Union and Asian market were found to be very different in terms of cost structures linked in particular to the size of the market and economies of scale, access to the raw materials and capacity. Therefore, comparing the average prices between these two markets was not meaningful. The argument of the parties was therefore found unsubstantiated.
- (258) Also, some parties claimed that the prices in the Union reflect a higher spread over the cost of raw materials as compared to US or Asia. The comparison of spreads follows the same logic as comparison on prices on various regional markets with the difference that the variations of prices of raw materials between various regional markets are accounted for. Nevertheless, the existing structural differences between the markets can justify the difference in conversion fees. The extraordinary profits made by Union industry at the break of 2010/2011 were explained in recital (179) above. In none of the situations the measures were found to play a role. Therefore the argument of the parties was rejected.
- (259) The same parties also claimed that the largest producer in the Union charged higher prices in the Union than on other markets and recorder higher revenues in 2010 in the Union than elsewhere. In this context, it is considered that it is economically justifiable that a transnational company would have different cost structures and thus different prices on different regional markets. The exceptional profitability levels at the break of 2010/2011 were explained in recital (179) above. On these grounds the argument was rejected.

14.3. Economic situation of users and claimed impact of the measures

- (260) Further claims were made as regards the worsening economic situation of the user's industry, such as closing facilities and reducing employment. It was alleged that this was the result of the PET price increase. In addition, it was claimed that the competitiveness of European leading brands has been eroded as their exports in third countries were in direct competition with bottled-products that benefit from PET at international prices.
- (261) It should be noted, that based on the information submitted by the cooperating users, the users segment was not found to be loss-making even though there was a decline in the overall profitability level in RIP. The profit margin of the users' industry established on the basis of the questionnaire replies according to the methodology

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

- (262) Following the disclosure some parties disagreed with the conclusion that the users' industry was not loss making. The parties also claimed that the profit margins of users were lower than those of the Union industry. As regards the assessment of profitability of the users' industry, the information collected from the cooperating users contradicted this claim. Although some cooperating users could have been loss making, the user's industry was overall found to be profitable. In any event, if the increase of PET prices was found to be one element affecting the profitability of the users, no link between the measures and the profitability of the companies in question was demonstrated. As regards the comparison of profit margins of users and the Union industry, this claim was not substantiated. Due to the volatility of the profitability of the Union industry (see recitals (176) to (179) above) the comparison between the two segments was not considered conclusive. In any event, the both segments showed similar profitability levels during the RIP (see recital (259)). In this light, the comments of the parties were rejected as unsubstantiated.
- (263) As regards the alleged erosion of the competitiveness of the exports of the Union producers of bottled mineral water/soft drinks, this claim was neither substantiated, nor has a link to the existence of the measures in place been in this context demonstrated.
- (264) Following the disclosure the parties reiterated that the rising PET prices have a negative impact on the competitiveness of exports of bottled water. It is recognised that the PET price increase, among other things, can have a negative impact on the competitiveness of exports of bottled water. Nevertheless, since no link between the PET price increase and the measures in question was found as the PET prices primarily derive from the prices of raw materials, the claimed impact of the measures on the eroded competitiveness was rejected.
- (265) Finally, as to the claimed effect of the measures on the employment, the investigation revealed that the verified job losses of the users industry were predominantly linked to the productivity and efficiency gains and a part concerned the reduction of the temporary staff.
- (266) Following the disclosure some parties disputed this finding on the grounds that it did not reflect the situation of the entire sector. In addition to the findings described in recital (265) above, it is noted that total jobs reported by the converters significantly increased and none of them reported job losses. Bottlers claimed job losses as a result of increased PET price. However, the increase in PET price being a worldwide

phenomenon, no link between job losses and the measures was established. Furthermore, 90% of the job losses reported by the users' questionnaires replies were concentrated on three companies. One of them, a verified user representing substantial part of the reported job losses, increased substantially its volumes over the period considered and such losses are therefore associated to productivity gains. As for the remaining two companies, they were found to have the profitability margins among the highest of the cooperating parties in their segment and above the target profit of the Union industry in this case. The claims were therefore dismissed.

14.4. Other arguments

- (267) Following the disclosure some parties argued that the Union producers do not have sufficient capacities to meet the existing demand. It is noted that the Union industry operated at 86% of its production capacity in RIP and has sufficient spare capacity to cover total domestic consumption of PET. In addition, imports from other countries with and without measures continue to exist and have an increasing tendency. Also, the current measures expired in case of South Korea and are lifted for imports of the product concerned from Malaysia and Indonesia. In addition, PET recycling industry may constitute further source of PET to cover the PET demand in the Union. For these reasons, the alleged problems faced by users due to the claimed insufficient production in the Union were not considered substantiated.
- (268) Following the disclosure some users claimed the analysis did not address the claimed adverse impact of the accumulation of anti-dumping measures on the product concerned under the present review. In response to this argument it is noted that the anti-dumping measures merely remedy the injurious effect of established dumping. The existence of the claimed 'accumulated' effect was not demonstrated. On the contrary, despite the measures in place, the imports from countries with anti-dumping measures continue and their volumes even increased during the period considered. Also, imports from countries without any measures are available with a growing trend and at substantial volumes. Finally, the termination of the measures against Malaysia and Indonesia, as well as expiry of the measures against South Korea, contribute to the openness of the Union Market. The argument of the parties was therefore dismissed.

15. Conclusion on the Union interest

- (269) To conclude, it is expected that the extension of the anti-dumping measures on imports from India, Taiwan and Thailand would provide an opportunity for the Union industry to improve and to stabilise its economic situation following the investments and consolidation made in the recent years.
- (270) It is also considered that an improved economic situation of the Union industry may be in the interest of PTA producers and, to a lesser extent, MEG producers in the Union.
- (271) The economic situation of some users has worsened since the last review and in particular smaller bottle-water producers were found, among other reasons, to be negatively affected especially it seems by the recent PET price increase since they were unable to pass it on to retailers under the current economic climate. However, the exceptional price and margin developments of 2011 of Union industry were found to be a global phenomenon primarily driven by the increase in the prices of raw materials. Therefore, the allegations on existing 'premium' prices and 'premium'

margins linked to existence of the measures in question were found unjustified. At the same time, Union market continues to be an open market with existing alternative sources of supply from other third countries without any measures.

- (272) Against this background, no link between the PET price increase and the existing measures was demonstrated. Economic situation of converters was found to be stable despite the measures in force. The weight of PET in the total cost of the bottlers was found to be limited. Furthermore, no link between the PET price variations and the measures was demonstrated. On these grounds, the measures were found not have disproportionate effect on the users.
- (273) Taking into account all of the factors outlined above, it cannot be clearly concluded that it is not in the Union interest to maintain the current anti-dumping measures.

H. RELATION BETWEEN ANTI-DUMPING AND COUNTERVAILING MEASURES

- (274) For one exporting country, namely India, a parallel investigation on the expiry of countervailing measures has been carried out (see recital (8) above). That investigation confirmed the necessity to continue the application of such measures at unchanged levels. The present investigation also concluded that anti-dumping measures on exports from India should be kept in force at unchanged levels. In that respect, reference is made to recital (125) of Regulation (EC) No 2604/2000. As the measures currently proposed for exports of PET from India remain unchanged, it follows that Article 14(1) of the basic Regulation and Article 24(1) of the basic anti-subsidy Regulation are complied with.

J. ANTI-DUMPING MEASURES

- (275) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend that the existing measures be maintained on imports of the product concerned originating in India, Taiwan and Thailand and be terminated with regard to imports originating in Indonesia and Malaysia. They were also granted a period to make representations subsequent to this disclosure.
- (276) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of PET originating in India, Taiwan and Thailand should be maintained. Conversely, the measures applicable to imports from Indonesia and Malaysia should be allowed to lapse.

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Country	Company	Anti-dumping duty (EUR/tonne)	TARIC additional code
India	Reliance Industries Ltd	132.6	A181
	Pearl Engineering Polymers Ltd	87.5	A182
	Senpet Ltd	200.9	A183
	Futura Polyesters Ltd	161.2	A184
	Dhunseri Petrochem & Tea Limited	88.9	A585
	All other companies	153.6	A999
Taiwan	Far Eastern New Century Corporation	36.3	A808
	Shinkong Synthetic Fibers Corp.	67.0	A809
	Lealea Enterprise Co., Ltd	0	A996
	All other companies	143.4	A999
Thailand	Thai Shingkong Industry Corp. Ltd	83.2	A190
	Indo Pet (Thailand) Ltd	83.2	A468
	All other companies	83.2	A999

3. In cases where the goods have been damaged before the 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 Code²⁰, the amount of anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

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

6. The review proceeding concerning imports of polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in Indonesia and Malaysia is hereby terminated.

²⁰ OJ L 253, 11.10.1993, p. 1.

Article 2

1. Imports shall be exempt from the anti-dumping duties imposed by Article 1 provided that they are produced and directly exported (i.e. invoiced and shipped) to a company acting as an importer in the Union by the companies whose names are listed in Decision 2000/745/EC, as from time to time amended, declared under the appropriate TARIC additional code and that the conditions set out in paragraph 2 are met.

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

Article 3

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

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

Done at Brussels,

For the Council
The President

ANNEX

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

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

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