COMMISSION IMPLEMENTING DECISION

of 16 December 2014

terminating the anti-subsidy proceeding concerning the imports of polyester staple fibres originating in the People's Republic of China, India and Vietnam

(2014/918/EU)

THE EUROPEAN COMMISSION,

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ([1]), and in particular Article 14(2) thereof,

Whereas:

1. PROCEDURE

1.1. INITIATION

(1) On 19 December 2013, the European Commission ('the Commission') initiated an anti-subsidy investigation with regard to imports into the Union of polyester staple fibres originating in the People's Republic of China, India and Vietnam ('the countries concerned') on the basis of Article 10 of Regulation (EC) No 597/2009 ('the basic Regulation'). It published a Notice of Initiation in the *Official Journal of the European Union* ([2]) ('the Notice of Initiation').

(2) The Commission initiated the investigation following a complaint lodged on 4 November 2013 by the European Man-made Fibres Association (CIRFS) ('the complainant') on behalf of seven producers. The complainant represented more than 70 % of the total Union production of Polyester Staple Fibres ('PSF'). The complaint contained prima facie evidence of subsidisation and of resulting material injury that was sufficient to justify the initiation of the investigation.

(3) Prior to the initiation of the proceeding and in accordance with Article 10(7) of the basic Regulation, the Commission notified the Government of the People's Republic of China ('the GOC'), the Government of India ('GOI') and the Government of Vietnam ('GOV') that it had received a properly documented complaint alleging that subsidised imports of PSF originating in their countries were causing material injury to the Union industry. The respective governments were invited for individual consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution.

The People's Republic of China (China)

(4) The GOC did not accept the offer for consultations claiming a misunderstanding concerning the lodging date of the complaint. However, the GOC submitted comments in regard to the allegations contained in the complaint regarding the lack of countervailability of the schemes.

India

(5) The GOI accepted the offer for consultations and the consultation took place. During the consultations, no mutually agreed solution could be arrived at. However, due note was taken of comments made by the GOI regarding the schemes listed in the complaint.

Vietnam

(6) The GOV accepted the offer for consultations and the consultations took place. During the consultations, no mutually agreed solution could be arrived at. However, due note was taken of comments made by the GOV regarding the schemes listed in the complaint.

([1]) (OJ L 188, 18.7.2009, p. 93).
([2]) Notice of initiation of an anti-subsidy proceeding concerning imports of polyester staple fibres originating in the People's Republic of China, India and Vietnam (OJ C 372, 19.12.2013, p. 31).

1.2. INTERESTED PARTIES

(7) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainants, other known Union producers, the known exporting producers and the GOC, GOI and GOV, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(8) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

(a) Sampling

(9) In view of the apparent high number of exporting producers, Union producers and unrelated importers, all known exporting producers and unrelated importers were asked to make themselves known to the Commission and to provide, as specified in the Notice of Initiation, basic information on their activities related to PSF during the period from 1 October 2012 to 30 September 2013. This information was requested under Article 27 of the basic Regulation in order to enable the Commission to decide whether sampling would be necessary and, if so, to select samples. The authorities of China, India and Vietnam were also consulted.

Sampling of Union producers

(10) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the sales and production volume of PSF during the investigation period and taking into account the geographical spread. This sample consisted of four Union producers. The sampled Union producers accounted for 54 % of the total Union production of PSF.

(11) The Commission invited interested parties to comment on the provisional sample. No comments were received. The sample is representative of the Union industry.

Sampling of importers

(12) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

(13) Eight unrelated importers provided the requested information and agreed to be included in the sample. In accordance with Article 27(1) of the basic Regulation, the Commission initially selected a sample of three unrelated importers on the basis of the largest volume of imports into the Union. In accordance with Article 27(2) of the basic Regulation, all known importers concerned were consulted on the selection of the sample.

(14) One of the sampled importers withdrew from the sample, informing the Commission that it would not submit a questionnaire reply. Subsequently, the Commission abandoned sampling in view of the limited remaining (non-sampled) importers, which were all requested to submit a questionnaire reply. Two companies who import as well as use the product concerned indicated that they did not want to cooperate as importers but as users. From the remaining five unrelated importers, four questionnaire replies were received.

Sampling of exporting producers in China

(15) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in China to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(16) Initially 23 exporting producers/groups of exporting producers provided the requested information and agreed to be included in the sample. On the basis of the information received from the exporting producers/groups of exporting producers and in accordance with Article 27 of the basic Regulation the Commission initially proposed a sample of the five cooperating exporting producers/groups of exporting producers with the largest volume of exports to the Union during the investigation period. Another two Chinese exporting producers/groups of exporting producers submitted the requested information at a later stage. However, the size of these two Chinese exporting producers/groups of exporting producers was not at such as to change the sample, had they submitted the requested information within the deadline.

(17) Two Chinese exporting producers/groups of exporting producers requested that the sample should be selected on the basis of the raw material used for the production of PSF. Thus they argued that the same number of PSF producers using purified terephthalic acid/mono ethylene glycol ('PTA/MEG') on the one hand and PSF producers using PET flakes on the other hand should be selected for the sample. They argued further that the production processes were different depending on the raw material used and that producers using different raw materials do not compete in the same market. Moreover, it has been claimed that PSF producers that do not use PTA/MEG as raw materials would not benefit from the provision for PTA/MEG for less than adequate remuneration described in the complaint.

(18) The Commission selected the sample based on the largest volume of exports to the Union during the investigation period in accordance with Article 27(1) of the basic Regulation. The sample did also take into account that some of the schemes might not be used by all exporting producers in China. Moreover, it was noted that the sample included companies using both production processes.

(19) Basing the selection of the sample merely on the types of production processes would risk prejudging the outcome of the investigation by assuming that countervailable subsidies will be found with regard to PSF producers using PTA/MEG as raw materials only and not for PSF producers using PET flakes as the raw material. In addition, it was considered that such a selection criteria would have been arbitrary as the consequent sample with an equal number of companies would not be representative in terms of export volume to the Union in line with Article 27(1) of the basic Regulation and therefore the request was rejected.

(20) One of the Chinese exporting producers/group of exporting producers claimed that the sample should be based on export value rather than export volume and asked to be included in the sample. Selecting a sample based on export values would not lead to representative and objective results as prices may be distorted by subsidisation. The Commission had selected the five largest exporting producers/groups of exporting producers in terms of volume, representing 53 % of total export volumes to the Union by the cooperating Chinese exporters. This is considered to be the largest representative volume of exports which can reasonably be investigated within the time available in accordance with Article 27(1) of the basic Regulation. This claim was therefore rejected.

(21) The same party argued that its raw material consisted entirely of recycled textile waste and it did not benefit from any subsidies which may be associated with the use of PTA/MEG. The party claimed that no subsidy margin should be attributed to it which was calculated based on information pertaining to companies which used PTA/MEG as their raw materials. As explained in recital 18 above the sample takes into account that some of the schemes may not be used by all exporting producers in China. Therefore, the request was rejected.

(22) The provisional sample of five exporting producers, as described in recital 16 was therefore confirmed as the final sample.

(23) Following disclosure, the complainant questioned the sampling methodology applied by the Commission. It raised doubts about the representativeness of the 23 cooperating Chinese exporting producers/groups of exporting producers mentioned in recital 16 above in relation to the total quantity of PSF exported from China to the Union. In addition, it considered that a sample made of five companies was not sufficient in view of an alleged number of 150 producers of PSF in China. Moreover, it claimed that the sampling has not taken into consideration the geographical spread of the Chinese producers and the proportion of Chinese producers using the various production processes involved. Finally, the complainant argued that the Commission has not disclosed the actual volume of PSF produced by the sampled Chinese companies and whether the production volume is representative in relation to the total volume of PSF produced in China.

(24) The imports of the 23 cooperating Chinese exporting producers/groups of exporting producers represented 83 % of the total Chinese import volume and cooperation was therefore considered high. As mentioned in recital 16 the Commission selected a sample of five exporting producers/groups of exporting producers that cooperated in the investigation with the largest volume of exports to the Union during the investigation period in accordance with Article 27 of the basic Regulation. On this basis the sample was considered representative. The selected companies were requested to fill in the full questionnaire. In any case, exporting producers not willing to cooperate in the investigation cannot be selected in the sample as the Commission seeks to establish findings based on the information collected from the cooperating exporting producers via their questionnaire responses, which are verified on spot.

(25) Regarding the selection of a sample of exporting producers taking into consideration their geographical spread in China, the complainant did not substantiate its claim. In particular, the complainant did not explain why a sample based on the criterion of geographical spread would have been in accordance with Article 27 of the basic Regulation, which does provide for the option to sample on the basis of largest volume of exports.

(26) As concerns the claim that the sample did not take into account the proportion of Chinese producers using the various production processes involved, it is highlighted that as explained in recital 18 above, the sample included companies using both production processes. In addition, the largest Chinese exporters are using PTA/MEG to produce PSF for the Union market.

(27) Furthermore, while the complainant refers to production rather than exports to the Union, it is noted that the Commission does not need to provide the volume of PSF produced by the sampled Chinese exporting producers/groups of exporting producers as the purpose of the current proceeding is the assessment of subsidisation in relation to the volume of PSF produced in China and exported to the Union.

(28) Therefore, all claims made by the complainant in relation to the sample methodology were rejected.

Sampling of exporting producers in India

(29) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all known exporting producers in India to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of India to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(30) Eight exporting producers in India provided the requested information and agreed to be included in the sample. In accordance with Article 27(1) of the basic Regulation, the Commission selected a sample of four companies on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 27(2) of the basic Regulation, all known exporting producers concerned, and the authorities of India, were consulted on the selection of the sample. No comments were made.

(31) Following disclosure, the complainant referred to the existence of 17 producers of PSF in India and put in question whether a sample of four exporting producers was representative. The Commission confirms that the sample of four Indian exporting producers was considered representative as it covers about 90 % of the total Indian exports to the Union in the investigation period.

Sampling of exporting producers in Vietnam

(32) The Commission asked all known exporting producers in Vietnam to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of Vietnam to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(33) Five exporting producers in Vietnam provided the requested information and agreed to be included in the sample, but one of these companies did not have any export sales to the Union during the investigation period. Therefore, the Commission decided not to investigate this company. In view of the low number of remaining exporting producers, the Commission decided that sampling was not necessary.

(34) Following disclosure, the complainant noted that for Vietnam questionnaire replies were received from three out of the four exporting producers and that the Commission should have sought to achieve the same coverage also for the Chinese and Indian exports. The Commission highlights that the industry situation was quite different in Vietnam given the very limited number of cooperating exporting producers (i.e. three) as opposed to the significant number of exporting producers in China and India. Hence there was a need for sampling in these two latter countries only. The Commission also clarifies that the three cooperating and investigated Vietnamese exporting producers represent over 99 % of the total volume of imports of the product concerned from Vietnam into the Union.

(b) Individual examination

(35) Three exporting producers/groups of exporting producers in China requested individual examination under Article 27(3) of the basic Regulation. Given the number of requests for individual examination and the size of the sample of exporting producers from China, the examination of these requests would have been unduly burdensome. These requests were therefore rejected.

(36) One exporting producer in India requested individual examination under Article 27(3) of the basic Regulation. The examination of this request was accepted. In particular, it was decided that the individual examination in this particular case would not be unduly burdensome and would not prevent completion of the investigation in good time.

(c) Replies to the questionnaire

(37) The Commission sent questionnaires to the representatives of China (including specific questionnaires for banks and producers of PTA and MEG), the representatives of India (including specific questionnaires for banks) and the representatives of Vietnam (including specific questionnaires for banks and producers of PTA and MEG). The Commission further sent questionnaires to five sampled exporting producers in China, five exporting producers (four sampled and one non-sampled) in India, four exporting producers in Vietnam, four Union producers, five unrelated importers and 105 users.

(38) As concerns China, questionnaire replies were received from the GOC (Ministry of Commerce) and the five sampled exporting producers/groups of exporting producers in China. As concerns India, questionnaire replies were received from the GOI (Ministry of Commerce & Industry), the four sampled exporting producers in India and the Indian exporting producer which requested individual examination. As concerns Vietnam, replies were received from the GOV (the Vietnam Competition Authority, the Ministry of Industry and Trade and various banks). One exporting producer, which accounted for a very low volume of exports to the Union, withdrew its cooperation and did not reply to the questionnaire. Questionnaire replies were received from the remaining three exporting producers (two of them belonging to the same group) in Vietnam. Furthermore, four Union producers, four unrelated importers and twelve users submitted questionnaire replies.

(39) Following disclosure, the complainant commented that there seemed to be a lack of proportionality regarding the number of questionnaires sent to the sampled Union producers on the one hand and to the importers and users on the other hand. First and foremost, the number of questionnaires sent to one group of economic actors (Union producers, exporting producers, importers or users) is not indicative for the weight the Commission attributes to their respective situation. The only objective is to obtain the right level and amount of information to make the best possible analysis of subsidy, injury and Union interest.

(40) In this case, questionnaires were sent to the four sampled Union producers, the five sampled Chinese exporting producers, five Indian exporting producers, four Vietnamese exporting producers, five importers and all known users and those users who had made themselves known. Indeed, Article 27 of the basic Regulation does not provide for sampling of users. Moreover, experience from trade defence investigations so far shows that although in certain cases, based on the available information, a large number of users may be contacted, usually only a limited number of them are willing to provide a questionnaire reply. Therefore, the Commission, also in this case, actively sought the cooperation of a maximum number of users.

(d) Verification visits

(41) The Commission sought and verified all the information deemed necessary for a determination of subsidisation, resulting injury and Union interest. Verification visits pursuant to Article 26 of the basic Regulation were carried out at the following State authorities and financial institutions and companies:

Government of China

— Chinese Ministry of Commerce, Beijing, China

Government of India

— Ministry of Commerce & Industry, New Delhi

Government of Vietnam

— Vietnam Competition Authority, Ministry of Industry and Trade, Hanoi

— Ministry of Finance, Hanoi (including verification visits to several banks)

— Thai Binh customs authorities, Thai Binh City, Thai Binh Province

Union producers

— Trevira GmbH, Bobingen, Germany

— Wellman International Ltd, Kells, Ireland

— Greenfiber International S.A., Buzau, Romania

— Silon s.r.o., Sezimovo Ústí, Czech Republic

Importers

— Elias Enterprises Limited, Altrincham, United Kingdom

Users

— Sandler AG, Schwarzenbach/Saale, Germany

Exporting producers in China

— Far Eastern Industries (Shanghai) Ltd, Shanghai

— Jiangsu Huaxicun Co., Huaxi Village, Jiangyin

— Jiangsu Xinsu Chemical Fibre Co., Suzhou

— Xiamen Xianglu Chemical Fibre Co., Xiamen

— Zhejiang Anshun Pettechs Fibre Co., Fuyang

Exporting producers in India

— Bombay Dyeing and Manufacturing Co. Ltd, Mumbai

— Ganesha Ecosphere Limited, Kanpur

— Indo Rama Synthetics Ltd, Nagpur

— Reliance Industries Limited, Mumbai

— Polyfibre Industries Pvt. Ltd, Mumbai

Exporting producers in Vietnam

— Vietnam New Century Polyester Fibre Co. Ltd, Halong City

— Thai Binh Polyester Staple Fibre Joint Stock Company, Thai Thuy Town, Thai Binh Province and Hop Than Co. Ltd, Thai Binh City, Thai Binh Province (jointly referred to as 'Thai Binh Group').

(42) Following disclosure, the complainant argued that most of the Chinese producers are regionally concentrated in the south eastern coastal provinces of Jiangsu and Zhejiang and none of the five verification visits took place in either of these two provinces. In this regard, it is noted that Jiangsu Xinsu Chemical Fibre Co. and Jiangsu Huaxicun Co. are located in Jiangsu province, while Zhejiang Anshun Pettechs Fibre is located in Zhejiang province. Therefore, the claim was rejected.

(43) In addition, the complainant argued that two large Chinese producers, in terms of production capacity, were not included in the sample. In this regard, it is recalled that as explained in recitals 16 and 18 above, the Commission selected the sample based on the volume of exports to the Union and chose the largest five exporters/groups of exporting producers to the Union in accordance with Article 27 of the basic Regulation. The mere fact that there are other large producers of PSF in China does not as such question the representativeness of the sample.

(44) The complainant raised a similar claim for Vietnam, arguing that two major Vietnamese PSF producers were not included in the scope of the investigation. As the Commission explained in recitals 32-34 above, the investigation covered the totality of Vietnamese producers exporting PSF to the Union, and replies were received from three exporting producers representing almost the totality of PSF exports to the Union. The fact that there may exist other major PSF producers in Vietnam that do not export the product concerned to the Union does not bear relevance for the representativeness of the cooperating exporting producers.

1.3. INVESTIGATION PERIOD AND PERIOD CONSIDERED

(45) The investigation of subsidisation and injury covered the period from 1 October 2012 to 30 September 2013 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2010 to the end of the investigation period ('the period considered').

(46) Following disclosure, the complainant commented on the duration of the investigation period, which it considered to be short and therefore to have 'detrimentally affected' the findings of the Commission. The complainant stated that the duration of 12 months ignored that the injury suffered by the Union industry had allegedly been on-going for a period of several years. The complainant was also of the opinion that the subsidies listed in the complaint could not have been adequately analysed using an investigation period of 12 months.

(47) As regards the injury analysis, it needs to be underlined that the Commission assessed the years 2010, 2011, 2012 and the investigation period and not, as the complainant states, only the 12 months of the investigation period. Regarding the determination of subsidisation, the Commission chose, within its margin of discretion and in line with Articles 5 and 11 of the basic Regulation, an investigation period of 12 months. Until disclosure neither the complainant nor any other interested party commented on the duration of the investigation period which was stipulated in the Notice of Initiation and the questionnaires. The Commission considers that an investigation period of 12 months is appropriate to ensure representative findings for the for the purpose of the investigation. Therefore, this claim is rejected.

1.4. DISCLOSURE

(48) On 2 October 2014, the Commission disclosed to all interested parties the essential facts and considerations on the basis of which it intended to terminate the proceeding and invited all interested parties to comment. Comments were received from a user association, the complainant, one Chinese exporting producer and its affiliates, four Indian exporting producers, the GOC and the GOV. The comments made were considered by the Commission and taken into account, where appropriate.

(49) The comments received from the user association addressed the issue of Union interest, which was not assessed as there are no grounds for the imposition of measures.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. PRODUCT CONCERNED

(50) The product concerned is synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning originating in the People's Republic of China, India and Vietnam, currently falling within CN code 5503 20 00 ('the product concerned').

(51) The product concerned can normally be produced either by using PTA (Purified Terephthalic Acid) and MEG (Mono Ethylene Glycol) or by using recycled PET bottle flakes to produce recycled PSF. The product is used in a wide range of applications, for example in clothing, apparel and home furnishings but in the automotive industry, the hygiene and medical industries as well as the construction industry.

2.2. LIKE PRODUCT

(52) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:

— the product concerned,

— the product produced and sold on the domestic market of the countries concerned, and

— the product produced and sold in the Union by the Union industry.

(53) The Commission decided that those products are therefore like products within the meaning of Article 2(c) of the basic Regulation.

2.3. CLAIMS REGARDING PRODUCT SCOPE

2.3.1. **PSF made from PTA/MEG and PSF made from recycled PET bottles**

(54) Two government authorities and an association representing exporting producers of one of the countries concerned claimed that PSF made from PTA/MEG and PSF made from recycled PET bottles should be treated as two different products. The claim was based on the difference in main raw materials used as for certain types of PSF, PTA/MEG are used, while for certain other types, flakes made from recycled PET bottles are used instead. Related to this, cost and sales prices were mentioned as important differences. It was also claimed that there are substantial quality differences between PSF made from PTA and MEG and PSF made from recycled PET bottles, impacting the use and application.

(55) PSF made from PTA/MEG and PSF made from recycled PET bottles indeed constitute two different PSF types within the product scope of PSF. Nevertheless, the two types share the same physical and chemical characteristics and their end-uses are basically the same. It is recognised that not all product types are interchangeable, but previous investigations and the current investigation established that there is at least a partial interchangeability and overlapping use across the different product types. The claim was therefore dismissed.

(56) One exporting producer re-iterated in its submission that the use of recycled PET bottles as opposed to the use of flakes made from recycled PET bottles entails a different production process and constitutes a different raw material. The same party also added that the cost and selling price as well as the quality of the PSF produced with recycled PET bottles are significantly lower than those of 'normal PSF'. The Commission maintains that the raw material, be it recycled PET bottles or flakes made from recycled PET bottles, is essentially the same. Compared to PET flakes, the additional steps needed, when using PET bottles, are the sorting and washing of the bottles, followed by the shredding of the bottles into flakes. All subsequent production steps are the same. In addition, the final product has the same characteristics, with the understanding that various grades of quality may exist as was also foreseen in the PCN. Price difference (if any) as a result of various grades of quality is therefore also captured by the PCN. Therefore, this claim is rejected.

2.3.2. **Commodity PSF and specialty PSF**

(57) One government authority and four exporting producers claimed that commodity PSF and specialty PSF are to be treated as different products, due to differences in cost of production, selling prices and use. It was also claimed that the Union industry focuses on speciality PSF as the core type PSF, while the countries concerned mainly supply commodity PSF.

(58) The government authority and the four exporting producers making the claim as described in recital 57 did not provide a definition for specialty PSF.

(59) Specialty PSF, as defined by the sampled Union producers, range from PSF made from a combination of polyester and polyethylene for use in hygiene products, coloured (dyed) PSF, PSF with a specific tenacity, flame retardant PSF, PSF for technical use (such as geotextiles and non-wovens used in the building industry), PSF that is defined, developed and customised together with the customer for specific applications, to PSF used for the automotive industry (specifically visible linings of cars need to be consistent in colour).

(60) Standard PSF, according to the sampled Union producers, cover those PSF that have a wider range of flexibility for its specifications.

(61) With the proposed definition of the specialty PSF type and the commodity PSF type, the two types share the same basic physical, technical and chemical characteristics. The fact that there are several types, grades or qualities does not exclude that they can be regarded as a single product. The possible uses of commodity PSF seem wider than the specialty type of PSF but these differences were insufficient to have them classified as two single products. Although the types of PSF have different characteristics corresponding to their specific purpose, their basic physical characteristics, application and uses are the same.

(62) Furthermore, it needs to be clarified that during the investigation period the specialty PSF types were not the core type of PSF produced by the Union producers. On average, it constituted around 40 % of all PSF types produced by the sampled Union producers, according to their own definition of commodity PSF and specialty PSF.

(63) Following disclosure, one exporting producer resubmitted that the specialty PSF type and the commodity PSF type are not 'like products' and therefore, cannot be examined together. The same party noted that the specialty PSF type and the commodity PSF type differ in end use, in cost of production and sales price. Therefore, it considered it a failure of the Commission not having examined the differences in cost and sales price of the specialty PSF type and the commodity PSF type. It stated that it is unclear how the cost of production and the sales price of the product under investigation have been determined and requested the Commission to examine the underselling analysis after segregating the data for commodity PSF and specialty PSF.

(64) The Commission confirms that PSF is sold in different product types for use in spinning or non-woven applications. For example, PSF can have a mono- or bicomponent composition as well as different specifications such as decitex, tenacity, lustre, quality grade, etc. Such specificities were captured by the PCN, on which the Commission did not receive any comments. It is recognised that commodity and speciality PSF are not interchangeable in all possible applications, but there is a partial interchangeability and overlapping use between different product types. As described in recital 61 and established in earlier proceedings concerning the same product, the physical and chemical characteristics as well as the end-uses of these types are basically the same. All types are based on the same raw materials (PTA/MEG or on recycled PET) which account for over 60 % of the cost of production. To this, additives or additional components can be added to ensure certain specific properties of the fibre. The PCN covers the origin of the raw materials and other elements that have an impact on the cost of production and the sales prices. However, no substantial difference in the production process of commodity and specialty PSF exists. This can be seen in the case of the sampled Union producers, of which none produced exclusively either commodity PSF or specialty PSF. Finally, no consistent and commonly agreed definition of specialty PSF seems to exist. For example, as described in recital 59 PSF used in the hygiene industry is considered by some Union producers as a specialty type. On the contrary, various users and a user association have indicated that the PSF to be used in the hygiene industry for, for example, wet wipes, is a commodity type, although it should preferably not be, for health and safety reasons, of recycled origin. In addition, some Union producers consider PSF types that have particular customer specific requirements (for example, a specific die colour) to be specialty PSF, even though such types may follow the exact same production process and have the same cost of production as any other (commodity) type. Therefore, the Commission could not rely on a self-proclaimed categorisation of commodity versus specialty PSF type and therefore this claim is rejected.

2.3.3. **Other claims made with regards to product scope**

(65) One user and a user association claimed that PSF imported from China is of higher quality than the PSF produced in the Union. One argument provided was that the PSF from the People's Republic of China does not contain hard polymer pieces. Another argument put forward was the brightness of Chinese PSF, while PSF produced in the Union were said to contain grey shades, as most of the Union PSF is PSF made from recycled PET bottles.

(66) The first argument as regards Union PSF containing hard polymer pieces was not substantiated by any evidence. Moreover, the contrary has also been stated in other user submissions and in replies to the user questionnaire (that is to say that PSF produced by Union producer is usually of higher quality than PSF produced by the countries concerned).

(67) As regards the second argument on brightness, the information provided during the investigation confirms that PSF made from PTA/MEG is usually brighter than PSF made from recycled PET bottles (when no pigment and/or brighteners are added during the production process). However, both types of PSF share the same physical and chemical characteristics and their end-uses are basically the same. It should also be noted that in calculating injury, the basic raw material was one of the features which was taken into account. In other words, the imported PSF made from recycled PET bottles would be compared only with Union produced PSF made from recycled PET bottles. Likewise, the imported PSF made from PTA and MEG would be compared only with Union produced PSF made from PTA and MEG.

(68) A user association, exporting producer and government authority claimed that downstream users often demand that products are made using PSF originating in the countries concerned (in particular, China).

(69) No evidence was put forward to support this statement nor to further detail the reasoning behind the insistence on PSF from the three countries concerned (if such an insistence indeed is being put forward by downstream customers).

(70) The user association claimed more specifically that the Union automotive industry accepts only PSF from Chinese origin.

(71) However, it failed to substantiate its claim and demonstrate that PSF produced by Union producers cannot be used by the Union automotive industry. Moreover, verified data have demonstrated that Union producers also sell substantial quantities of PSF to the Union automotive industry, which points to the contrary.

(72) One exporting producer claimed that the PSF made by this exporting producer and the PSF produced by Union producers, although both made from recycled PET bottles, are different products. According to this exporting producer, its PSF is (mainly) produced from recycled PET bottles (not flakes), which follows a different production process and constitutes different raw materials compared to PSF producers using flakes made from recycled PET bottles.

(73) This claim was rejected as well, since PET bottles and PET bottle flakes (which are PET bottles crushed into flakes) are essentially the same raw material albeit in another form.

2.3.4. **Conclusion**

(74) It was therefore concluded that all PSF types covered by the investigation share the same basic physical, technical and chemical characteristics and their end-uses are basically the same.

3. **SUBSIDISATION**

3.1. CHINA

3.1.1. **General**

(75) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involved the granting of subsidies by Governmental authorities of China, were investigated:

A. Preferential lending to the PSF industry by state-owned banks and the government entrustment and direction of private bank

B. Government Provisions of goods and services for less than adequate remuneration and the Government entrustment and direction of private suppliers

— Government provision of PTA and MEG for less than adequate remuneration;

— Government provision of land and land-use rights for less than adequate remuneration;

— Government provision of electricity;

— Programme consisting of provision of cheap water.

C. Development Grants and Interest Subsidies for the Textile Sector

— The 'Go Global' Special Fund;

— The Trade Promotion Fund for Agriculture, Light Industry and Textile Products.

D. Direct Tax Exemption and Reduction programmes

— Income tax exemptions on foreign (investment) enterprises;

— Income tax exemptions on dividend income between qualified resident enterprises;

— Income tax reductions for recognised high and new technology enterprises;

— Income tax reductions in special economic zones;

— Income tax reductions for export-oriented enterprises;

— Tax credits of up to 40 % of the purchase value of domestically produced equipment.

E. Indirect Tax and Import Tariff Programmes

— Value added Tax exemptions and import tariff rebates for the use of imported equipment;

— VAT rebates on FIE purchases of Chinese-made equipment.

F. Other Regional/Provincial Programmes

— Tax (and other) exemptions in development zones in the Province of Jiangsu;

— Tax incentives in the City of Changzhou;

— Preferential rents in the City of Changzhou;

— Export incentive programmes in Zhejiang province;

— Technology innovation grants in Zhejiang province;

— Tax and duty incentives in development zones in Guangdong province;

— Export incentives in Guangdong province;

— Reimbursement of legal fees in Guangdong province;

— Foreign trade activities (special) funds programme in Guangdong province;

— Loan interest subsidies to support technological innovation projects in Guangdong province;

— Preferential tax rates in development zones in Shanghai province;

— Preferential infrastructure in Shanghai province;

— Lending and tax policies for export-oriented enterprises in the Province of Shanghai.

(76) The Commission investigated all schemes alleged in the complaint. For each scheme it was investigated whether, pursuant to provisions of Article 3 of the basic Regulation, a financial contribution by the GOC and a benefit conferred to the sampled exporting producers could be established. The investigation revealed that in the present case any benefit found for the investigated schemes is below the applicable *de minimis* threshold in Article 14(5) ([3]) of the basic Regulation. Therefore, it is not considered necessary to conclude on the countervailability of individual schemes.

Details of the schemes and the corresponding benefit rates for individual companies are set out below.

3.1.2. **Specific Schemes**

Schemes not used by sampled Chinese exporting producers during the investigation period

(77) The below schemes were found not to be used by the sampled Chinese exporting producers/groups of exporting producers during the investigation period and therefore no benefit could be established.

— Provision of PTA and MEG for less than adequate remuneration;

— Government provision of electricity for less than the adequate remuneration;

([3]) For the application of Article 14(5), a country is considered as a developing country if it is listed in Annex II of Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (OJ L 303, 31.10.2012, p. 1).

— Government provision of cheap water for less than the adequate remuneration;

— The 'Go Global' Special Fund;

— The Trade Promotion Fund for Agriculture, Light Industry and Textile Products;

— Income tax exemptions on foreign (investment) enterprises;

— Income tax reductions for recognised high and new technology enterprises;

— Income tax reductions in special economic zones;

— Income tax reductions for export-oriented enterprises;

— Tax credits of up to 40 % of the purchase value of domestically produced equipment;

— Other Regional/Provincial Programmes.

(78) As concerns the provision of PTA and MEG for less than adequate remuneration, the complaint alleged that the GOC controls certain upstream industries and products so as to provide favourably priced inputs to producers of PSF, namely for PTA and MEG. On this basis PSF producers receive countervailable subsidies through the purchase from State-owned enterprises of government-produced PTA and MEG at below market price and thus at less than adequate remuneration.

(79) However, the investigation revealed that the Chinese exporting producers/groups of exporting producers of PSF were importing most of their PTA and MEG inputs to produce PSF for export under an inward processing system.

(80) Consequently, no subsidies for the sampled companies under this alleged programme could be established.

(81) Following disclosure, the complainant noted that the Commission provided a partial analysis only for one subsidy scheme not used by the sampled Chinese exporting producers during the investigation period that is the provision of PTA/MEG at subsidised prices. With regard to this scheme, the complainant argued that the way the sample was established and the fact that a major PSF producer in China was not covered by the investigation affected the determination of subsidisation for this scheme.

(82) As it was explained in recitals 16 and 18 above, out of the 23 Chinese exporting producers/group of exporting producers that cooperated in the investigation, the Commission selected a sample comprising of the five largest exporting producers/groups of exporting producers which was considered representative within the meaning of Article 27 of the basic Regulation. The Chinese producer to which the complainant referred and which was not included in the sample was not exporting PSF to the Union in significant quantities during the investigation period. Therefore, the non-inclusion of this producer did not affect the representativity of the sample and did not have any significant effect on the conclusions regarding the subsidy scheme in question.

(83) The Commission confirms that it sought information and replies concerning all subsidy schemes alleged in the complaint including those mentioned by the complainant in its comments to the disclosure, but these schemes were found not to be used by the sampled exporting producers/group of exporting producers. In recital 78 the Commission provided additional details on the provision of PTA/MEG for less than adequate remuneration as this subsidy scheme was featured as a major allegation in the complaint possibly conferring a significant countervailable subsidy.

Schemes used by sampled Chinese exporting producers during the investigation period

3.1.3. **Preferential loans to the PSF industry**

(84) The complainant alleged that the producers of PSF benefit from low (subsidised) interest rate loans from policy banks and State-owned commercial banks, pursuant to the GOC policy to provide financial assistance in order to encourage and support to growth and development of the textile and chemical fibre industry.

(a) Legal basis

(85) The following legal provisions provide for preferential lending in China: The Law of the PRC on Commercial Banks (the banking law), The General Rules on Loans promulgated by the People's Bank of China (PBOC) on 28 June 1996 and Decision No 40 of the of the State Council.

(b) Calculation of the subsidy amount

(86) Article 6(b) of the basic Regulation provides that the benefit on preferential loans should be calculated as the difference between the amount of interest paid and the amount that would be paid for a comparable commercial loan which the firm could obtain on the market. The Commission established a market benchmark for comparable commercial loans.

(87) The benchmark was constructed based on the Chinese interest rates, adjusted to reflect normal market risk (i.e. it was considered that all firms in China would be accorded the highest grade of 'Non-investment grade' bonds only (BB at Bloomberg) and an appropriate premium expected on bonds issued by firms with this rating to the standard lending rate of the People's Bank of China was applied).

(88) The benefit to the exporting producers/groups of exporting producers has been calculated by taking the interest rate differential, expressed as a percentage, multiplied by the outstanding amount of the loan, i.e. the interest not paid during the investigation period. This amount was then allocated over the total sales turnover of the cooperating exporting producers.

(c) Conclusion

(89) The benefit established for this scheme ranges between 0 % and 0,50 %.

3.1.4. **Provision of land use rights for less than the adequate remuneration**

(a) Legal basis

(90) The land-use right provision in China falls under Land Administration Law of the People's Republic of China and Real Right Law of the People's Republic of China.

(b) Practical implementation

(91) According to Article 2 of the Land Administration Law, all land is government-owned since, according to the Chinese constitution and relevant legal provisions, land belongs collectively to the people of China. No land can be sold but land-use rights may be assigned according to the law. The State authorities can assign it through public bidding, quotation or auction.

(c) Findings of the investigation

(92) The cooperating exporting producers/groups of exporting producers have reported information regarding the land they hold as well as the relevant land-use rights contracts/certificates, but no information was provided by the GOC about pricing of land-use rights.

(d) Calculation of the subsidy amount

(93) As it was concluded that the situation in China with respect to land-use rights is not market-driven, there appear to be no available private benchmarks at all in China. Therefore, an adjustment of costs or prices in China is not practicable. In these circumstances it is considered that there is no market in China and, in accordance with Article 6(d)(ii) of the basic Regulation, the use of an external benchmark for measuring the amount of benefit is warranted. Given that the GOC failed to submit any proposal for an external benchmark the Commission had to resort to facts available in order to establish an appropriate external benchmark. In this respect it was considered appropriate to use information from the Separate Customs Territory of Taiwan as an appropriate benchmark for reasons set out in recital 94 below.

(94) The Commission considers that the land prices in Taiwan offer the best proxy to the areas in China where the cooperating exporting producers are based. The majority of the exporting producers are located in the eastern part of China, in developed high-GDP (gross domestic product) areas in provinces with a high population density.

(95) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the investigation period. The benefit conferred on the recipients is calculated by taking into consideration the difference between the amount paid by each company for land use rights and the amount that should have been normally paid on the basis of the Taiwanese benchmark.

(96) In doing this calculation, the Commission used the average land price per square meter established in Taiwan corrected for currency depreciation and GDP evolution as from the dates of the respective land use right contracts. The information concerning industrial land prices was retrieved from the website of the Industrial Bureau of the Ministry of Economic affairs of Taiwan. The currency depreciation and GDP evolution for Taiwan were calculated on the basis of inflation rates and evolution of GDP per capita at current prices in USD for Taiwan as published by the International Monetary Fund in its 2011 World Economic Outlook. In accordance with Article 7(3) of the basic Regulation this subsidy amount (numerator) has been allocated to the investigation period using the normal life time of the land use right for industrial use land in China, i.e. 50 years or 70 years. This amount has then been allocated over the total sales turnover of the sampled exporting producers during the investigation period, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(e) Conclusion

(97) The benefit established for this scheme ranges between 0,02 % and 0,82 %.

3.1.5. **Direct Tax Exemption and Reduction programmes**

3.1.5.1. *Income tax exemptions on dividend income between qualified resident enterprises*

(a) Legal basis

(98) The legal bases of such tax exemption of dividend income are Articles 25-26 of the Enterprise Income Tax Law and Article 83 of the Regulations on the Implementation of Enterprise Income Tax Law.

(b) Practical implementation

(99) This programme consists of a preferential tax treatment for Chinese resident enterprises that are shareholders in other Chinese resident enterprises in the form of tax exemption on income from certain dividends, bonuses and other equity investments for the resident parent enterprises.

(c) Findings of the investigation

(100) On the income tax statement of two sampled exporting producers/groups of exporting producers there is an amount exempted from income tax. This amount is referred to as dividends, bonuses and other equity investment income of eligible residents and enterprises in line with the conditions in Appendix 5 to the Income tax return (Annual Statement of Tax Preferences). No income tax was paid by the relevant companies on these amounts.

(d) Calculation of the subsidy amount

(101) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the investigation period. The benefit conferred on the recipients is considered to be the amount of total tax payable with the inclusion of the dividend income coming from other resident enterprises in China, after the subtraction of what was actually paid with the dividend tax exemption. In accordance with Article 7(2) of the basic Regulation this subsidy amount (numerator) has been allocated over the total sales turnover of the cooperating exporting producers companies during the investigation period, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(e) Conclusion

(102) The benefit established for this scheme ranges between 0 % and 0,06 %.

3.1.6. **Indirect Tax and Import Tariff Programmes**

3.1.6.1. *Value added Tax ('VAT') exemptions and import tariff rebates for the use of imported equipment*

(a) Legal basis

(103) The legal bases of this programme are Circular of the State Council on Adjusting Tax Policies on Imported Equipment, 'Guo Fa No 37/1997', Announcement of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation [2008] No 43, Notice of the NDRC on the relevant issues concerning the Handling of Confirmation letter on Domestic or Foreign-funded Projects encouraged to develop by the State, No 316 2006 of 22 February 2006 and Catalogue on Non-duty-exemptible Articles of importation for either foreign-invested companies or domestic enterprises, 2008.

(b) Practical implementation

(104) This programme provides an exemption from VAT and import tariffs in favour of foreign-invested enterprises or domestic enterprises for imports of capital equipment used in their production. To benefit from the exemption, the equipment must not fall in a list of non-eligible equipment and the claiming enterprise has to obtain a 'Certificate of State-Encouraged projects' issued by the Chinese authorities or by the National Development and Reform Commission in accordance with the relevant investment, tax and customs legislation.

(c) Findings of the investigation

(105) Four of the sampled Chinese exporting producers/groups of exporting producers reported an exemption from VAT and import tariffs for the imported equipment.

(d) Calculation of the subsidy amount

(106) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the investigation period. The benefit conferred on the recipients is considered to be the amount of VAT and duties exempted on imported equipment. The benefit received was amortised over the life of the equipment according the company's normal accounting procedures. In accordance with Article 7(2) of the basic Regulation this subsidy amount (numerator) has been allocated over the total sales turnover of the cooperating exporting producers companies during the investigation period, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(e) Conclusion

(107) The benefit established for this scheme ranges between 0 % and 0,45 %.

3.1.6.2. *VAT rebates on FIE purchases of Chinese-made equipment*

(a) Legal basis

(108) The legal bases of this programme are Circular of State Administration of taxation on the release of the provisional measures for the Administration of tax refunds for purchase domestically-manufactured equipment by FIEs No 171, 199, 20.9.1999; Notice of the Ministry of Finance and the State Administration of Taxation on Stopping the Implementation of the Policy of Refunding Tax to Foreign-funded Enterprises for Their Purchase of Homemade Equipment, No 176 [2008] of the Ministry of Finance.

(b) Practical implementation

(109) This programme provides benefits in the form of VAT refunds for the purchase of domestically produced equipment by FIEs. The equipment must not fall into the Non-Exemptible Catalogue and the value of the equipment must not exceed the total investment limit on an FIE according to the 'trial Administrative Measures on Purchase of Domestically Produced Equipment'.

(c) Findings of the investigation

(110) Two sampled exporting producers/groups of exporting producers submitted detailed information concerning this scheme, including the amount of benefit received.

(d) Calculation of the subsidy amount

(111) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the investigation period. The benefit conferred on the recipients is considered to be the amount of VAT reimbursed on the purchase of domestically produced equipment. The benefit received was amortised over the life of the equipment according the usual industry practice.

(e) Conclusion

(112) The benefit established for this scheme ranges between 0 % and 0,01 %.

3.1.7. **Other Regional/Provincial Programmes**

(113) The investigation confirmed that no benefits had been received under the programmes mentioned in recital 75 by the sampled companies during the investigation period.

3.1.8. **Amount of subsidies**

(114) The amount of subsidies in accordance with the provisions of the basic anti-subsidy Regulation, expressed *ad valorem*, for the Chinese exporting producers ranges between 0,76 % to 1,77 %.

(115) Following disclosure, the complainant argued that it was unclear how the Commission calculated the range of the total subsidy margin. The range of the total aggregated subsidies for the Chinese sampled exporting producers/group of exporting producers expressed *ad valorem* provided in recital 114 represents the lower and higher total subsidy margin of the five sampled Chinese exporting producers/group of exporting producers.

3.1.9. **Conclusion on China**

(116) In view of the *de minimis* amounts of countervailable subsidies for the Chinese exporting producers, measures on imports of PSF originating in China should not be imposed. It has been concluded that the investigation should be terminated with regard to imports originating in the People's Republic of China, in accordance with Article 14(3) of the basic Regulation.

3.2. INDIA

3.2.1. **General**

(117) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involved the granting of subsidies by the governmental authorities of India, were investigated:

(1) Focus Market Scheme

(2) Focus Product Scheme

(3) Advance Authorisation Scheme

(4) Duty Drawback Scheme

(5) Export Promotion Capital Goods Scheme

(6) Tax and duty exemptions and reductions in Export Oriented Units and the Special Economic Zones

(7) Export Credit Scheme

(8) Income Tax Exemption Scheme

(9) Incremental Exports Incentivisation Scheme

(10) Duty Free Import Authorisation Scheme

(11) Market Development Assistance Scheme and loan guarantees

(12) Capital Investment Incentive Scheme of the Government of Gujarat

(13) Gujarat Sales Tax Incentive Scheme and Electricity Duty Exemption Scheme

(14) West Bengal Subsidy Schemes — incentives and tax concessions, including grants and the exemption of sales tax,

(15) Maharashtra Package Scheme of Incentives including Maharashtra Electricity Duty Exemption Scheme and Industrial Promotion Subsidy.

Subsidy schemes used by the Indian investigated exporting producers during the investigation period

(118) The investigation found that in the investigation period the following schemes conferred benefit upon the verified exporting producers:

(1) Focus Market Scheme ('FMS')

(2) Focus Product Scheme ('FPS')

(3) Duty Drawback Scheme ('DDS')

(4) Advance Authorisation Scheme ('AAS')

(5) Duty Free Import Authorisation Scheme ('DFIA')

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

(7) Maharashtra Package Scheme of Incentives ('PSI')

(119) The schemes specified above under recital 118(1), (2), (4), (5) and (6) are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act' or 'FTP'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Foreign Trade Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. The Foreign Trade Policy document relevant to the investigation period of this investigation is 'Foreign Trade Policy 2009-2014' ('FTP 09-14'). In addition, the GOI also sets out the procedures governing FTP 09-14 in a 'Handbook of Procedures, Volume I' ('HOP I 09-14'). The Handbook of Procedures is updated on a regular basis.

(120) The DDS scheme specified above under recital 118(3) is based on section 75 of the Customs Act of 1962, on section 37 of the Central Excise Act of 1944, on sections 93A and 94 of the Financial Act of 1994 and on the Customs, Central Excise Duties and Service Tax Drawback Rules of 1995. Drawback rates are published on a regular basis.

(121) The PSI scheme specified above under (7) is based on 'Package Scheme of Incentives' of 2007 of the Government of Maharashtra, Resolutions No PSI-1707/(CR-50)/IND-8, dated 30 March 2007.

3.2.2. **Focus Market Scheme ('FMS')**

(a) Legal basis

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

(b) Eligibility

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

(c) Practical implementation

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

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

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

(126) Four of the verified exporting producers used this scheme during the investigation period.

(127) Upon disclosure, three of the sampled Indian exporting producers argued that although they were eligible for the benefit they had not applied for it at all for the export sales to the Union and thus no conclusion on the availing of such benefit can be made. Also, they argued that the FMS scheme is geographically related to countries not part of the Union and can thus not be countervailed by the Union. In this respect, the verification visits confirmed that FMS benefit was claimed for exports to third countries as the scheme principally relates to the exports made to third countries. The exporting producers in question were, however, not able to dispute either the practical implementation of the scheme as described under recitals 123 to 125 or that the FMS benefit can be used for the product concerned, namely that duty credits under FMS are freely transferable and can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods. In particular, the party could not dispute the fact that duty credits conferred under FMS on exports to eligible third countries can be used to offset import duties payable on inputs incorporated in product concerned exported to the Union.

(128) Finally, these benefits are booked on an accrual basis in the company accounts on the dates when the export transactions take place, demonstrating that the entitlement to the benefit is created at the time of the export transaction and that there is no doubt that the duty credit obtained will be used at a later stage. Therefore, this claim had to be rejected.

(d) Conclusion on FMS

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

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

(131) This scheme cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I point (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. An exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. There is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of point (i) of Annex I and Annexes II and III of the basic Regulation. An exporter is eligible for FMS benefits regardless of whether it imports any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply

export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods which can be used as inputs are still entitled to benefit from FMS. Moreover, an exporter can use FMS duty credits in order to import capital goods although capital goods are not covered by the scope of permissible duty drawback systems, as set out in Annex I point (i) of the basic Regulation, because they are not consumed in the production of the exported products.

(e) Calculation of the subsidy amount

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

(133) The subsidy rate established with regard to this scheme during the investigation period for the four companies concerned amounted to 0,15 %, 0,19 %, 0,42 % and 0,63 % respectively.

3.2.3. **Focus Product Scheme ('FPS')**

(a) Legal basis

(134) The detailed description of the scheme is contained in paragraphs 3.15 to 3.17 of the FT-policy 09-14 and chapters 3.9 to 3.11 of the HOP I 09-14.

(b) Eligibility

(135) According to paragraph 3.15.2 of the FT-policy 09-14, exporters of notified products in Appendix 37D of HOP I 09-14 are eligible for this scheme.

(c) Practical implementation

(136) An exporter of products included in the list of Appendix 37D of HOP I 09-14 can apply for FPS Duty Credit scrip equivalent to 2 % or 5 % of FOB value of exports. The product concerned under investigation is listed under Table 1 of Appendix 37D and is entitled to a 2 % duty credit.

(137) FPS is a post export scheme, i.e. a company must export to be eligible for benefits under this scheme. As a result, the company proceeds to file an online application to the relevant authority along with copies of the export order and invoice, the bank receipt showing payment of application fees, copy of the shipping bills and bank realisation certificate for the receipt of payment or foreign inward remittance certificate in the case of direct negotiation of documents. In cases where the original copy of the shipping bills and/or bank realisation certificates have been submitted for claiming benefits under any other scheme, the company can submit self- attested copies quoting the relevant authority where the original documents have been submitted. The online application for FPS credits can cover a maximum of up to 50 shipping bills.

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

(139) All five verified exporting producers used this scheme during the investigation period.

(140) Following disclosure three of the sampled Indian exporting producers argued that although they were eligible for the benefit they had not applied for it for at least some export sales and thus no conclusion on the availing of the benefit can be made. Nevertheless, the exporting producers in question were not able to dispute either the practical implementation as described under recitals 123 to 125 of the scheme or that the FPS benefit can be used for the product concerned, namely that duty credits under FPS are freely transferable and can be used for payment of custom duties on subsequent imports of any inputs or goods including capital goods. It is reiterated that these benefits are booked on an accrual basis in the company accounts on the dates when the export transactions take place, demonstrating that the entitlement to benefit is created at the time of the export transaction and that there is no doubt that the duty credit obtained will be used at a later stage.

(d) Conclusion on the FPS

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

(142) Furthermore, the FPS is contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4)(a) of the basic Regulation.

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

(e) Calculation of the subsidy amount

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

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

(146) The subsidy rates established in respect of this scheme for the five companies concerned during the investigation period amounted to 1,59 %, 1,75 %, 1,77 %, 1,85 % and 1,95 % respectively.

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

(a) Legal Basis

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

(b) Eligibility

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

(c) Practical implementation

(149) An eligible exporter can apply for drawback amount which is calculated as a percentage of the FOB value of products exported under this scheme. The drawback rates have been established by the GOI for a number of products, including the product concerned. They are determined on the basis of the average quantity or value of materials used as inputs in the manufacturing of a product and the average amount of duties paid on inputs. They are applicable regardless of whether import duties have actually been paid or not. The DDS rate for the product concerned during the investigation period was: 3 % until 9 October 2012, 2,1 % between 10 October 2012 and 20 September 2013 and 1,7 % as of 21 September 2013 of the FOB value.

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

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

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

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

(154) Two of the verified exporting producers used DDS during the investigation period.

(d) Conclusion on DDS

(155) The DDS provides subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation. The so-called duty drawback amount is a financial contribution by the GOI as it takes form of a direct transfer of funds by the GOI. In addition, the duty drawback amount confers a benefit upon the exporter, because it improves its liquidity on terms which are not available on the market.

(156) The rate of duty drawback for exports is determined by the GOI on a product by product basis. However, although the subsidy is referred to as a duty drawback, the scheme does not have the characteristics of a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. The cash payment to the exporter is not linked to actual payments of imports duties on raw materials, and is not a duty credit to offset import duties on past or future imports of raw materials.

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

(158) The payment which takes form of a direct transfer of funds by the GOI subsequent to exports made by exporters has to be considered as a direct grant from the GOI contingent on export performance and is therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

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

(e) Calculation of the subsidy amount

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

(161) In accordance with Article 7(2) of the basic Regulation these subsidy amounts have been allocated over the total export turnover of the product concerned during the investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(162) Based on the above, the subsidy rates established in respect of this scheme for the two companies concerned in the investigation period amounted to 0,24 % and 2,12 % respectively.

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

(a) Legal basis

(163) The detailed description of the scheme is contained in paragraphs 4.1.1 to 4.1.14 of the FTP 09-14 and chapters 4.1 to 4.30 of the HOP I 09-14.

(b) Eligibility

(164) The AAS consists of six sub-schemes, as described in more detail in recital 165. Those sub-schemes differ, inter alia, in the scope of eligibility. Manufacturer- exporters and merchant-exporters 'tied to' supporting manufacturers are eligible for the AAS physical exports and for the AAS for annual requirement sub-schemes. Manufacturer–exporters supplying the ultimate exporter are eligible for AAS for intermediate supplies. Main contractors which supply to the 'deemed export' categories mentioned in paragraph 8.2 of the FTP 09- 14, such as suppliers of an export oriented unit, are eligible for the AAS deemed export sub-scheme. Eventually, intermediate suppliers to manufacturer- exporters are eligible for 'deemed export' benefits under the sub-schemes Advance Release Order ('ARO') and back to back inland letter of credit.

(c) Practical implementation

(165) The AAS can be issued for:

(a) Physical exports: This is the main sub-scheme. It allows for duty-free import of input materials for the production of a specific resulting export product. 'Physical' in this context means that the export product has to leave Indian territory. An import allowance and export obligation including the type of export product are specified in the licence;

(b) Annual requirement: Such an authorisation is not linked to a specific export product, but to a wider product group (e.g. chemical and allied products). The licence holder can — up to a certain value threshold set by its past export performance — import duty-free any input to be used in manufacturing any of the items falling under such a product group. It can choose to export any resulting product falling under the product group using such duty- exempt material;

(c) Intermediate supplies: This sub-scheme covers cases where two manufacturers intend to produce a single export product and divide the production process. The manufacturer-exporter who produces the intermediate product can import duty-free input materials and can obtain for this purpose an AAS for intermediate supplies. The ultimate exporter finalises the production and is obliged to export the finished product;

(d) Deemed exports: This sub-scheme allows a main contractor to import inputs free of duty which are required in manufacturing goods to be sold as 'deemed exports' to the categories of customers mentioned in paragraph 8.2(b) to (f), (g), (i) and (j) of the FTP 09-14. According to the GOI, deemed exports refer to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to an export-oriented unit or to a company situated in a special economic zone ('SEZ');

(e) Advance Release Order ('ARO'): The AAS holder intending to source the inputs from indigenous sources, instead of direct import, has the option to source them against AROs. In such cases the advance authorisations are validated as AROs and are endorsed to the indigenous supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the indigenous supplier to the benefits of deemed exports as set out in paragraph 8.3 of the FTP 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty). The ARO mechanism refunds taxes and duties to the supplier instead of refunding the same to the ultimate exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs;

(f) Back to back inland letter of credit: This sub-scheme again covers indigenous supplies to an advance authorisation holder. The holder of an advance authorisation can approach a bank for opening an inland letter of credit in favour of an indigenous supplier. The authorisation will be validated by the bank for direct import only in respect of the value and volume of items being sourced indigenously instead of importation. The indigenous supplier will be entitled to deemed export benefits as set out in paragraph 8.3 of the FTP 09-14 (i.e. AAS for intermediate supplies/deemed export, deemed export drawback and refund of terminal excise duty).

(166) Three verified companies received concessions under the AAS linked to the product concerned during the investigation period. These companies made use of (a), (d) and (e) of the sub-schemes referred to above. It is therefore not necessary to establish the countervailability of the remaining unused sub-schemes.

(167) For verification purposes by the Indian authorities, an advance authorisation holder is legally obliged to maintain 'a true and proper account of consumption and utilisation of duty-free imported/domestically procured goods' in a specified format (chapters 4.26 and 4.30 and Appendix 23 HOP I 09-14), i.e. an actual consumption register. This register has to be verified by an external chartered accountant/cost and works accountant who issues a certificate stating that the prescribed registers and relevant records have been examined and the information furnished under the format of Appendix 23 is true and correct in all respects.

(168) With regard to the use of AAS for physical exports referred to in recital 165(a), used by two verified companies during the investigation period, the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the advanced authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by Government officials on the advanced authorisation. The volume of imports allowed under the AAS is determined by the GOI on the basis of Standard Input Output Norms ('SIONs') which exist for most products including the product concerned.

(169) Imported input materials are not transferable and have to be used to produce the resultant export product. The export obligation must be fulfilled within a prescribed time frame after issuance of the licence (24 months with two possible extensions of 6 months each).

(170) The investigation established that the verification requirements stipulated by the Indian authorities were not respected in practice.

(171) Only one of the two verified companies that made use of this sub-scheme maintained a production and consumption register. However, the consumption register did not allow verifying which inputs were consumed in the production of the exported product and in what amounts. Regarding the verification requirements referred to above, there were no records kept by the companies which would prove that the external audit of the consumption register took place. In sum, it is considered that the investigated exporters were not able to demonstrate that the relevant FT-policy provisions were met.

(172) With regard to the use of AAS for ARO referred to in recital 165(e), used by one verified company during the investigation period, the amount of imports allowed under this scheme, is determined as a percentage of the amount of exported finished products. The advance licences measure the units of authorised imports either in terms of their quantity or in terms of their value. In both cases the rates used to determine the allowed duty free purchases are established, for most products including the product covered by this investigation, on the basis of the SIONs. The input items specified in the advance licences are items used in the production of the relevant exported finished product.

(173) The advance licence holder intending to source the inputs from indigenous sources, instead of direct import, has the option to source them against AROs. In such cases the advance licences are validated as AROs and are endorsed to the supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the supplier to the benefits of deemed export such as deemed exports drawback and refund of the so-called terminal excise duty.

(174) The investigation established that the verification requirements stipulated by the Indian authorities were not respected in practice.

(175) With regard to the use of AAS for deemed exports referred to in recital 165(d), used by one verified company during the investigation period, both the import allowance and the export obligation are fixed in volume and value by the GOI and are documented on the authorisation. In addition, at the time of import and of export, the corresponding transactions are to be documented by government officials on the authorisation. The volume of imports allowed under this scheme is determined by the GOI on the basis of SIONs.

(176) The export obligation must be fulfilled within a prescribed time-frame (24 months with two possible extensions of 6 months each) after issuance of the authorisation.

(177) It was established that there were no links between the imported inputs and the exported finished products. Furthermore, it was found that, although mandatory, the applicant did not keep the consumption register referred to in recital 167, verifiable by an external accountant. In spite of the breach of this requirement, the applicant did avail the benefits under AAS.

(d) Conclusion on the AAS

(178) The exemption from import duties is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, namely it constitutes a financial contribution of the GOI since it decreases duty revenue which would otherwise be due and it confers a benefit upon the investigated exporters since it improves their liquidity.

(179) All sub-schemes concerned in the present case are clearly contingent in law upon export performance, and therefore deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation. Without an export commitment a company cannot obtain benefits under this scheme.

(180) None of the sub-schemes concerned in the present case can be considered permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The GOI did not effectively apply a verification system or a procedure to confirm whether and in what amounts inputs were consumed in the production of the exported product (Annex II(II)(4) of the basic Regulation and, in the case of substitution drawback schemes, Annex III(II)(2) of the basic Regulation). It is also considered that the SIONs for the product concerned were not sufficiently precise and that themselves cannot constitute a verification system of actual consumption because the design of those standard norms does not enable the GOI to verify with sufficient precision what amounts of inputs were consumed in the export production. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would normally need to be carried out in the absence of an effectively applied verification system (Annex II(II)(5) and Annex III(II)(3) to the basic Regulation).

(181) Following disclosure one sampled Indian exporting producer argued that the scheme should not be countervailed as the company fulfilled its legal obligation with regard to the independent audits of the input consumption register and this should be considered as a sufficient check for the GOI. Such reasoning cannot be accepted. The GOI verification shall be considered distinct from any obligations imposed on the companies. The verification visit confirmed that the verification system in place on the side of the GOI does not conform to the rules laid down in Annex II (II) 4 of the basic Regulation. Therefore, this claim had to be rejected.

(182) The same party argued that clubbing of licences is legal in India and that the company cannot be disadvantaged by the use of total export turnover instead of the turnover of the product concerned in the calculations of the subsidy margin. However, the legality of clubbing of licences in India as such was irrelevant in this context. The investigation revealed that as a result of clubbing no reasonable allocation of licences corresponding to PSF could be made. Indeed, the benefit at the division level and not at PSF level must have been used in the calculations of the subsidy margin as the verified information did not allow for proper allocation of the use of inputs (used in the production of other products) to PSF only. Therefore, this claim had to be rejected.

(183) The sub-schemes referred to in recital 165 under (a), (d) and (e) are therefore countervailable.

(e) Calculation of the subsidy amount

(184) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of total import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an 'excess' remission of duties. According to Article 3(1)(a)(ii) and Annex I(i) of the basic Regulation only when the conditions of Annexes II and III of the basic Regulation are met that the excess remission of duties can be countervailed. However, these conditions were not fulfilled in the present case. Thus, if an adequate monitoring process is not demonstrated, the above exception for drawback schemes is not applicable and the normal rule of the countervailing of the amount of unpaid duties (revenue forgone), applies, rather than of any purported excess remission. As set out in Annexes II(II) and III(II) of the basic Regulation the burden is not upon the investigating authority to calculate such excess remission. To the contrary, according to Article 3(1)(a)(ii) of the basic Regulation, the investigating authority only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.

(185) The subsidy amount for the companies which used the AAS was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the sub-scheme during the investigation period (numerator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amount where justified claims were made. In accordance with Article 7(2) of the basic Regulation, this subsidy amount was allocated over the export turnover of the product concerned during the investigation period as appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(186) The subsidy rates established in respect of this scheme for the three concerned companies for the investigation period amounted to 0,11 %, 1,89 % and 4,31 % respectively.

3.2.6. **Duty Free Import Authorisation ('DFIA')**

(a) Legal basis

(187) The detailed description of the DFIA is contained in paragraphs 4.2.1 to 4.2.47 of the FTP 09-14 and in paragraphs 4.31 to 4.36 of the HOP I 09-14.

(b) Eligibility

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

(c) Practical implementation

(189) The DFIA is a post- and pre-export scheme which allows duty-free imports of goods determined according to SION norms, but which, in case of transferable DFIA, do not have to be necessarily used in the manufacture of the exported product.

(190) The DFIA only covers the import of inputs as prescribed in the SION. The import entitlement is limited to the quantity and value mentioned in the SION, but can be revised by regional authorities on request.

(191) The export obligation is subject to the minimum value addition requirement of 20 %. The exports may be performed in anticipation of a DFIA authorisation, in which case the import entitlement is set in proportion of the provisional exports.

(192) Once the export obligation is fulfilled, the exporter can request the transferability of the DFIA authorisation, which in practice means a permission to sell the duty-free import licence on the market.

(193) One of the verified exporting producers used DFIA during the investigation period.

(d) Conclusion on DFIA

(194) The exemption from import duties is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. It constitutes a financial contribution of the GOI since it decreases duty revenue which would otherwise be due and it confers a benefit upon the investigated exporters since it improves their liquidity.

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

(196) This scheme cannot be considered as permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. It does not conform to the strict rules laid down in Annex I point (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. In particular: (i) it allows for *ex-post* refund or drawback of import charges on inputs which are consumed in the production process of another product; (ii) there is no verification system or procedure in place to confirm whether and which inputs are consumed in the production of process of the exported product or whether excess benefit occurred within the meaning of point (i) of Annex I and Annexes II and III to the basic Regulation; and (iii) the transferability of certificates/authorisations implies that an exporter granted a DFIA is under no obligation actually to use the certificate to import the inputs.

(197) Following disclosure one sampled Indian exporting producer argued that the verification system put in place in India is reasonable, effective and in line with commercial practices in India and thus the 'primary' reason to countervail the scheme no longer exists. In contrast to what was claimed, the investigation did not confirm that the verification system in place in India allows verification of whether and which inputs are consumed in the production of process of the exported product or whether excess benefit occurred within the meaning of point (i) of Annex I and Annexes II and III to the basic Regulation. Moreover, the producer did not dispute either that the system allows for *ex-post* refund or drawback of import charges on inputs, which are consumed in the production process of another product nor that the transferability of certificates/authorisations implies that an exporter granted a DFIA is under no obligation actually to use the certificate to import the inputs. Therefore, this claim had to be rejected.

(e) Calculation of the subsidy amount

(198) In the absence of permitted duty drawback systems or substitution drawback systems, the countervailable benefit is the remission of total import duties normally due upon importation of inputs. In this respect, it is noted that the basic Regulation does not only provide for the countervailing of an 'excess' remission of duties.

(199) According to Article 3(1)(a)(ii) and Annex I(i) of the basic Regulation only when the conditions of Annexes II and III of the basic Regulation are met that the excess remission of duties can be countervailed. However, these conditions were not fulfilled in the present case. Thus, if an adequate monitoring process is not demonstrated, the above exception for drawback schemes is not applicable and the normal rule of the countervailing of the amount of unpaid duties (revenue forgone), applies, rather than of any purported excess remission. As set out in Annexes II(II) and III(II) of the basic Regulation the burden is not upon the investigating authority to calculate such excess remission. To the contrary, according to Article 3(1)(a)(ii) of the basic Regulation, the investigating authority only has to establish sufficient evidence to refute the appropriateness of an alleged verification system.

(200) The subsidy amount for the companies which used the DFIA was calculated on the basis of import duties forgone (basic customs duty and special additional customs duty) on the material imported under the sub-scheme during the investigation period (numerator). In accordance with Article 7(1)(a) of the basic Regulation, fees necessarily incurred to obtain the subsidy were deducted from the subsidy amount where justified claims were made. In accordance with Article 7(2) of the basic Regulation, this subsidy amount was allocated over the export turnover of the product concerned during the investigation period as appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(201) The subsidy rates established in respect of this scheme for the single concerned company for the investigation period amounted to 4,95 %.

3.2.7. **Export Promotion Capital Goods Scheme ('EPCGS')**

(a) Legal basis

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

(b) Eligibility

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

(c) Practical implementation

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

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

(206) It was found that three companies in the sample received concessions under the EPCGS which could be allocated to the product concerned in the investigation period.

(d) Conclusion on EPCGS

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

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

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

(e) Calculation of the subsidy amount

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

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

(212) Following disclosure two sampled Indian exporting producers requested a re-examination of the calculation of the subsidy amount. They argued that an invalidation of an EPCG licence may occur and result in indigenous procurement of capital goods where Central Excise duty would apply. In this respect however, no explicit reference to the specific invalidated licences was made. Also, this issue was not raised during the investigation, which would have allowed a proper verification of this claim. In any event, the determination of the subsidy amount was based on the verified company's record of inputs purchased under this scheme. Therefore, this claim had to be rejected.

(213) The subsidy rate established with regard to this scheme during the investigation period for the three companies concerned amounted to 0,37 %, 0,40 % and 0,46 % respectively.

3.2.8. **Package Scheme of Incentives**

(a) Legal basis

(214) In order to encourage the dispersal of industries to the less developed areas, the Government of Maharashtra (GOM) has been granting incentives to new expansion units set up in developing regions of the State, since 1964, under a scheme commonly known as the Package Scheme of Incentives. The scheme has been amended several times since its introduction and the versions relevant to the current investigation are the versions of 2001 and 2007. Package Scheme of Incentives of 2001 is dated 31 March 2001 and bears Resolution No IDL-1021/(CR-73)/IND-8. Package Scheme of Incentives of 2007 is dated 30 March 2007 and bears Resolution No PSI-1707/(CR-50)/IND-8.

(b) Eligibility

(215) The abovementioned Resolutions list the categories of industries and enterprises which can be considered eligible for incentives.

(c) Practical implementation

(216) In order to encourage the dispersal of industries to the less developed areas, the Maharashtra Government has provided a package of incentives to new/expansion industrial units set up in the developing region of the Maharashtra State. For the purpose of the Scheme, Annex I to the Resolution classifies the State areas eligible for incentives. However, the incentives under the 2007 Scheme cannot be claimed unless an Eligibility Certificate has been issued under the 2007 Scheme and the beneficiary has complied with the stipulations/conditions of the eligibility certificate. The latter is issued by the Implementing Agency (State bod) with effect from the date of commencement of commercial production of the beneficiary (also called an eligible unit).

(217) The PSI is composed of several sub-schemes, of which the following two conferred benefit upon two verified exporting producer during the investigation period:

— Electricity Duty Exemption (EDE)

— Industrial Promotion Subsidy (IPS)

(218) EDE is granted to eligible new units set up in specified areas for a period specified in the Eligibility Certificates. In the current case the two exporting producers concerned are exempted from the payment of the Electricity Duty respectively for 9 year and 7 years. In other parts of the State, 100 % exported oriented units, Information Technology and Bio-Technology units are exempted from payment of Electricity Duty for a period of 10 years.

(219) During the investigation it was found that one exporting producer located in Maharashtra benefited from the electricity duty exemption sub-scheme during the investigation period.

(220) IPS entitles the beneficiary to a subsidy equivalent to a percentage comprised between 75 % and 100 % of the amount of eligible investments less the amount of benefits derived from other sub-schemes of the PSI scheme, such as the EDE. The benefit is conferred over a period of time specified in the Eligibility Certificate and cannot exceed the amount of VAT tax paid to the State of Maharashtra over the same period. The eligible investments are capital expenditure made in building, plant and machinery.

(221) During the investigation it was found that two exporting producers located in Maharashtra benefited from the IPS sub-scheme.

(222) Following disclosure two sampled Indian exporting producers argued that the IPS sub-scheme offered by the GOM does not apply to the stages of manufacturing, production or export of PSF, either directly or indirectly, and that the benefit is dependent on the amount of domestic taxes paid. They further argued that the objective of the scheme is not to provide benefits to exporting producers but to compensate for the costs born in connection to the backwardness of the region and hence that the scheme cannot be countervailed. Moreover, they claimed that the scheme should be treated as a capital subsidy rather that a recurring subsidy and that the total benefit received should be spread over the normal depreciation period of the subsidised capital. In this respect, the investigation revealed as mentioned in recital 220 that the grant is paid on a yearly basis for the eligible investments which are expenditures made in building, plant and machinery. Such investments are directly related to PSF. The mere fact that the yearly amount that can be claimed is capped by the amount of the domestic taxes paid to the GOM over the same period does not change the fact that the yearly benefit of the GOM constitutes a financial contribution of the GOI which confers a benefit upon the investigated exporting producers. Finally, the grant paid on a yearly basis does not have the feature of the capital subsidy even if an investment in capital goods is at the origin of such payment. Therefore, this claim had to be rejected.

(d) Conclusion on the EDE and IPS

(223) Both sub-schemes are subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation, since they constitute a financial contribution of the GOI which conferred a benefit upon the investigated exporters.

(224) The subsidy sub-schemes are specific within the meaning of Article 4(3) of the basic Regulation given that the legislation itself, pursuant to which the granting authority operates, limited the access to this scheme to a limited number of enterprises within a designated geographical region.

(225) Consequently, the subsidy should be considered countervailable.

(e) Calculation of the subsidy amount

(226) In accordance with Article 3(2) and Article 5 of the basic Regulation, the amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipient in relation to the product concerned, which is found to exist during the investigation period. This amount (numerator) has been allocated over the total sales turnover of the product concerned of the exporting producer during the investigation period, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported, pursuant to Article 7(2) of the basic Regulation.

(227) The subsidy rate established with regard to the EDE sub-scheme amounted to 0,31 % for the single company availing of this benefit.

(228) The subsidy rate established with regard to the IPS sub-scheme amounted to 1,03 % and 1,91 % respectively during the investigation period for the companies concerned.

3.2.9. **Amount of countervailable subsidies**

(229) Based on the findings, the total amount of countervailable subsidies for the verified exporting producers, expressed ad valorem, were found to range from 4,16 % to 7,65 %, as summarised in the below table.

Table 1

Amount of countervailable subsidies — India

(%)

Scheme / Company	FMS	FPS	DDS	AAS	DFIA	EPCGS	PSI/EDE	PSI/IPS	Total
Bombay Dyeing and Manufacturing Co. Ltd	0,42	1,77	—	—	—	—	0,31	1,91	**4,41**
Ganesha Ecosphere Ltd	—	1,95	0,24	0,11	4,95	0,40	—	—	**7,65**
Indo Rama Synthetics Ltd	0,15	1,75	—	1,89	—	0,37	—	1,03	**5,19**
Polyfibre Industries Pvt. Ltd	0,19	1,85	2,12	—	—	—	—	—	**4,16**
Reliance Industries Limited	0,63	1,59	—	4,31	—	0,46	—	—	**6,99**

3.3. VIETNAM

3.3.1. **General**

(230) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following schemes, which allegedly involved the granting of subsidies by Government of Vietnam, were investigated:

A. government preferential lending to the PSF industry by state-owned banks and the government entrustment and direction of private banks, and interest rate support;

B. government provision of goods to the PSF industry by state-owned enterprises for less than adequate remuneration;

C. government provision of land for less than adequate remuneration and other land-related benefits;

D. direct tax exemptions and reductions programmes;

E. indirect tax and import tariff programmes;

F. accelerated depreciation on fixed assets;

G. other subsidy programmes, including state, regional, and local government schemes.

(231) The Commission investigated all schemes alleged in the complaint. For each scheme it was investigated whether, pursuant to provisions of Article 3 of the basic Regulation, a financial contribution by the GOV and a benefit conferred to the exporting producers could be established. The investigation revealed that in the present case any benefit found for the investigated schemes is below the applicable *de minimis* threshold in Article 14(5) ([4]) of the basic Regulation. Therefore, it is not considered necessary to conclude on the countervailability of individual schemes.

(232) Nevertheless, for the purpose of clarity and transparency the details of the schemes and the corresponding subsidy rates for individual companies are set out below, without prejudice to whether or not the subsidies are considered to be countervailable. The benefit was calculated in line with Article 6 of the basic Regulation.

3.3.2. **Specific subsidy schemes**

Subsidy schemes not used by the Vietnamese exporting producers during the investigation period

(233) The investigation found that the following schemes were not used by the investigated Vietnamese exporting producers:

(a) government provision of goods to the PSF industry by state-owned enterprises for less than adequate remuneration;

(b) accelerated depreciation on fixed assets;

(c) other subsidy programmes, including state, regional, and local government schemes.

(234) As concerns in particular the government provision of goods to the PSF industry by state-owned enterprises for less than adequate remuneration, the allegation in this regard contained in the complaint was that PTA/MEG, which can be used as main raw material for the production of PSF, was obtained by the Vietnamese producers at subsidised prices. The investigation showed however that none of the investigated exporting producers were using PTA/MEG as main raw material but that they were all using recycled PET bottles or PET bottle flakes instead.

(235) Further to the disclosure, the complainant noted that the Commission provided a partial analysis only for one of them, that is the provision of PTA/MEG at subsidised prices. With regard to this programme, the complainant argued that the way the sample was established and the fact that major PSF producers in Vietnam were not included in the investigation affected the determination on this programme. The complainant also listed other alleged subsidy programmes in Vietnam for which information had been submitted in the complaint.

(236) As the Commission has explained in recitals 32-34 and 42 above, no sampling was necessary for Vietnam as all Vietnamese exporting producers expressed their intention to cooperate, and the replies received from the three cooperating producers covered over 99 % of imports from Vietnam. Therefore, the complainant's arguments concerning sampling are not relevant for the findings of the investigation. In addition, the mere fact that there are other large producers of PSF in Vietnam does not as such question the representativeness of the cooperating exporting producers. The Commission confirms that it sought information and replies on all of the alleged subsidies included in the complaint including the ones mentioned by the complainant in its comments to the disclosure, but these programmes were found not to be used by the cooperating exporters. The Commission provided details on the provision of PTA/MEG as this programme featured as a major allegation in the complaint possibly conferring a significant countervailable subsidy.

Subsidy schemes used by the Vietnamese investigated exporting producers during the investigation period

(237) The below schemes were found to be used by the investigated Vietnamese exporting producers during the investigation period.

([4]) See footnote 3.

3.3.3. **Preferential lending**

3.3.3.1. *Post-investment interest rate support by the Vietnam Development Bank*

(238) The Vietnam Development Bank ('VDB') is a state-owned policy bank established in 2006 under Decision No 108/2006/QD-TTg to implement state policies on development investment credit and export credit. During the investigation period, the Vietnam Development Bank ('VDB') administered a programme for interest rate support on some loans from commercial banks. Within this framework, the Thai Binh Group companies had contracts with the VDB for the support of loans from BIDV and Vietcom Bank.

(239) The legal basis for the programme is Decree No 75/2011/ND-CP from 30 August 2011, which replaces the Decree No 151/2006/ND-CP, Decree No 106/2008/ND-CP and Decree 106/2004 ND-CP. When the contracts have been signed before the application of the Decree No 75/2011, the previous Decrees apply.

(240) The benefit from this programme equals the difference between the interest rates offered by the VDB and interest rates from commercial banks applied on the loans to these two companies. The programme applies to the long and medium term loans from commercial banks used for the financing of investments projects.

(241) The benefit from this scheme ranged between 0 % and of 0,28 %.

3.3.3.2. *Low interest loans granted by some state-owned commercial banks*

(242) The investigation showed that a significant part of the banking sector in Vietnam is state-owned; almost 50 % of the loans in the Vietnamese economy during the investigation period was made by the 5 large state-owned banks ([5]). There are limitations to the foreign ownership of banks established in Vietnam ([6]). Commercial banks are instructed to provide interest rate support to businesses ([7]). The State Bank of Vietnam sets the maximum interest rates which the commercial banks can charge for loans to some entities ([8]). Information on the file shows that the state-owned commercial banks are offering lower interest rates than other banks.

(243) Several laws in Vietnam concerning the banking sector and lending refer to preferential lending. For example, Regulation 1627 of 2001 refers to loans to customers which are subject to preferential credit policy (Articles 20 and 26) or the Law on Credit Institutions refers to concessional credits (Article 27).

(244) The amount of subsidy is calculated in terms of benefit conferred on the recipients, which is found to exist during the investigation period. According to Article 6(b) of the basic Regulation the benefit conferred on the recipients is considered the difference between the amount the company pays on the preferential loan and the amount that the company would pay for a comparable commercial loan obtainable on the market.

(245) The information described in recitals 242 and 243 above point to significant distortions in the Vietnamese financial sector. Therefore the Commission resorted to an external benchmark for the calculation of benefit from preferential loans. As stated in recital 231 above this is without prejudice to the countervailability of the subsidy resulting from preferential lending. Also because of the *de minimis* subsidisation, the Commission did not make any final conclusions whether the banks concerned are public bodies or whether the credit risk assessment performed by the banks is sufficient.

(246) The external benchmark was required to cover loans in VND currency only as no evidence was seen that loans given in USD were subsidised. Of the cooperating companies only the Thai Binh Group received loans in VND. The benchmark was calculated using the lending interest rates of a basket of 48 nations in lower middle income (GDP) countries in the most recent period available (2012). Such countries were chosen because they had a similar GDP to Vietnam. These rates were then adjusted for inflation in the investigation period to produce real interest rates and an average for the 48 countries was calculated for those countries for which data were available. The source of the country interest and inflation rates was the World Bank. The average real interest rate for these lower middle income countries was 8,23 % in the investigation period. This benchmark was compared to the inflation adjusted interest rates of all VND loans for the investigated companies.

([5]) Bank for Agriculture and Rural Development, Vietnam Foreign Commercial Bank, Industrial and Commercial Bank, Bank for Investment and Development of Vietnam and Mekong Housing Bank.
([6]) Article 4 of the Decree 69/2007/ND-CP.
([7]) Articles 2, 3 and 4(a) of Prime Minister Decision No 443/QD-TTf of 4 April 2009.
([8]) E.g. Circular No 102013/TT-NHNN, Article 1.2(b), (c) and (d).

(247) The benefit for this programme ranged between 0 % and 1,34 %.

(248) Following disclosure, the GOV disputed the conclusions on the distortions of the Vietnamese financial system and submitted that the Commission should have assessed whether the state-owned commercial banks are public bodies and whether the credit risk assessment performed by them is sufficient. In GOV's view, this analysis would have affected the conclusion on the existence of a financial contribution and also the use of an external benchmark to establish the benefit conferred by this programme.

(249) As specified in recitals 242-243 above, the information and evidence collected in the investigation show significant distortions in the Vietnamese banking system. Because of these distortions, in line with the rules of the basic Regulation, an external benchmark must be used to determine the amount of benefit (if any). Since the benefits for Vietnamese exporting producers are *de minimis,* the Commission does not consider it necessary to examine whether the banks are public bodies and/or whether the risk assessment is sufficient as clarified in recitals 231 and 232 above.

3.3.4. **Provision of land use rights**

(250) Both cooperating exporting producers were allocated land use rights in special industrial zones. While the Thai Binh Group received the LUR directly from the state, the land to the Vietnam New Century Polyester Fibre Co. Ltd ('VNC') is sub-leased through a partially state-owned company.

(251) Thai Binh Group has three plots of land in the industrial zone. During the investigation period the Group was fully exempted from the payment of rent for two plots. The bases for the exemption are Decree No 121/2010/ND-CP and Decree No 142/2005/ND-CP. The Group also did not pay the rent for the third plot as it is in the administrative process requesting the exemption. The exempted rent rates are well below the rates paid by the Group for other similar plots in close proximity of the industrial zone and seem to be well below the normal prices of land in the region.

(252) VNC did not get a full exemption of land use rights, however it was clear that they were receiving a benefit during the investigation period. VNC sub-leases three plots of land from a partially state-owned company. Although the GOV claimed that these are transactions between private parties, the information on the file is in contradiction with this claim. The investment licence of VNC lists the lease of land as a preferential benefit. In the licence the Quang Ninh's People's Committee obliges VNC to rent the land from this company. Also according to the original contract between the partially state-owned company renting the plot to VNC and the local land authority the subsequent transfer of the land is only possible under certain conditions set by the local land authority. This shows that the state is involved in the land transaction between the two parties.

(253) For the purpose of benefit assessment the Commission compared the low land prices related to transactions in the industrial zones to a benchmark price for similar land. The investigation found indications that the market for land in Vietnam seems to be regulated and is distorted by the government intervention, as there is an exemption or a preferential remuneration for LUR concerning land located in designated industrial zones and/or encouraged business sectors. In this specific case, the Commission found a LUR transaction of a sufficiently reliable nature because the land concerned is located outside any encouraged zone and because the company concerned is active in a sector unrelated to PSF and not encouraged under government policies. The prices in this transaction are used as a benchmark for the benefit assessment, without prejudice to any conclusion on the overall land market situation in Vietnam.

(254) The benefit for this scheme ranged between 0,17 % and 0,37 %.

3.3.5. **Direct tax exemption and reduction programmes**

(255) Both cooperating exporting producers benefited from several direct tax reliefs based on exemptions listed in their investment licences. The legal basis for these exemptions are Decree No 164/2003/ND-CP replaced by Decrees 124/2008/ND-CP and 122/2011/ND-CP, Circular 140/2012, Decree No 164/2003/ND-CP amended ad supplemented by Decree No 152/204/ND-CPDuty and VAT exemption on the imports of machinery.

(256) According to the above legislation the direct tax exemptions and reduction are available, inter alia, to companies located in special industrial zones/parks, or companies which employ a high number of employees, or companies operating in certain sectors of the economy.

(257) The amount of subsidy is calculated in terms of benefit conferred on the recipients which is found to exist during the investigation period. The benefit conferred on the recipients is considered to be the amount of total tax payable according to the normal tax rate, after the deduction of what was paid with the reduced preferential tax rate, or the amount of fully exempted tax respectively. The amounts considered to be a subsidy are based on the most recent annual tax returns. The subsidy was allocated on a total company basis and expressed as a percentage of the CIF Union export turnover.

(258) The benefit for this scheme ranged between 0,11 % and 0,36 %.

3.3.6. **Import duty exemption on imported raw materials**

(259) Both cooperating exporting producers received exemptions from payment of duties on imported raw materials during the investigation period. The legal basis for the exemption is the Law on Import and Export Tax No 45/2005/QH11 implemented by Decree No 87/2010/ND-CP. The rules for inspection and supervision system and procedures are set in Circular 194/2010TT.

(260) The GOV reported in its questionnaire reply that it operates a duty drawback/suspension system. According to the legislation the exemption applies to imported raw materials consumed in the production of the exported products. The duties can be refunded to the extent determined by the ratio of how much of imported raw materials is used in the exported final product.

(261) It was found that during the investigation period both cooperating exporting producers did not receive any economic benefit from this scheme in the investigation period. Although they were exempted from the payment of import duty on raw materials, no excess remission was found in the investigation period. Both companies had relatively small domestic sales of product concerned. Moreover, they sourced a significant share of the main raw materials domestically as the volumes they imported for the production of exported product concerned were not sufficient.

(262) In view of the above it was not considered necessary to conclude whether the reported duty drawback system is in line with the WTO rules and with the Articles of Annex II and Annex III of the basic Regulation.

(263) Further to the disclosure, the GOV supported the Commission findings on this programme. However, it also wished to highlight that the Vietnamese duty drawback system is fully in line with the rules in Annex II and Annex III of the basic Regulation despite the absence of conclusions on this point. The Commission takes note of this position of the GOV. However, given that the benefits for Vietnamese exporting producers are *de minimis,* the Commission restates its position that it does not consider it necessary for the purpose of this investigation to examine whether the duty drawback scheme complies with the rules in Annex II and Annex III of the basic Regulation as explained in recitals 231-232 above.

3.3.7. **Import duty exemption on imported machinery**

(264) Both cooperating exporting producers received exemptions from payment of duties and VAT on imported machinery during the investigation period. The legal basis for the exemption is the Law on Import and Export Tax No 45/2005/QH11 implemented by Decree No 87/2010/ND-CP. The rules for inspection and supervision system and procedures are set in Government Decree No 154./2005/N-CP, Circular 194/2010TT, and Circular 117/2011.

(265) The companies were asked to report machinery imports over a 10 year period. Although it was clear that benefits did accrue to the cooperating exporting producers as a result of this scheme, these were not substantial. This is because the companies' imports of machinery were not important when compared to the turnover of the EU sales of PSF. Also any benefits were diluted by the fact that machinery was amortised over a number of years (usually 10) and therefore the benefit to the investigation period was correspondingly reduced.

(266) The benefit for this scheme ranged between 0,08 % and 0,1 %.

3.3.8. **Amount of subsidies**

(267) The amount of subsidies in accordance with the provisions of the basic anti-subsidy Regulation, expressed *ad valorem,* for the Vietnamese exporting producers ranges between 0,6 % to 2,31 %. The country-wide subsidy margin is the weighted average of the two margins above, i.e. 1,25 %. The subsidies described above were allocated on a total company basis and expressed as a percentage of the CIF Union export turnover.

(268) Further to the disclosure, the complainant argued that it was unclear how the Commission calculated this range of the subsidy margin and why the Commission has not taken the higher end of these margins which would have been above the *de minimis* margin. As the Commission has explained in the previous recital, the range of the total aggregated subsidies for the Vietnamese cooperating exporting producers expressed *ad valorem* varies between a minimum of 0,6 % and a maximum of 2,31 %. However, the calculation of the weighted average of these margins leads to a per country average of the subsidy margin equal to 1,25 %, which is below the *de minimis* threshold. This is the methodology constantly used to calculate the per country average of the subsidy margin in accordance with the relevant rules of the basic Regulation.

3.3.9. **Conclusion on Vietnam**

(269) The country-wide subsidy rate for Vietnam 1,25 %. As this margin is *de minimis*, it has been concluded that the investigation should be terminated with regard to imports originating in Vietnam, in accordance with Article 14(3) of the basic Regulation.

4. **INJURY**

4.1. DEFINITION OF THE UNION INDUSTRY AND UNION PRODUCTION

(270) The like product was manufactured by 18 producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(271) The total Union production during the investigation period was established at around 401 000 tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as verified production figures of the sampled cooperating Union producers as well as figures provided by the complainant. As indicated in recital 10, four Union producers were selected in the sample representing 54 % of the total Union production of the like product.

4.2. UNION CONSUMPTION

(272) The Commission established the Union consumption on the basis of the volume of sales of the Union industry on the Union market using the data provided by the complainant and imports from third countries based on Eurostat data.

(273) Union consumption developed as follows:

Table 2

Union consumption (tonnes)

	2010	2011	2012	Investigation period
Total Union consumption	838 397	869 025	837 066	890 992
Index	100	104	100	106

Source: Complaint, Eurostat.

(274) The Union consumption peaked in 2011 due to the hike in cotton prices as a result of difficulties experienced regarding the cotton crop in 2010. The demand for PSF, as a substitute for cotton, increased as a result, but dropped again the following year. In the investigation period, a rise of 6 % in Union consumption is again observed.

4.3. IMPORTS FROM THE COUNTRIES CONCERNED

4.3.1. **Cumulative assessment of the effects of imports from the countries concerned**

(275) The Commission examined whether imports of PSF originating in the countries concerned should be assessed cumulatively, in accordance with Article 8(3) of the basic Regulation.

(276) The subsidy margin established in relation to the imports from the People's Republic of China and Vietnam was below the *de minimis* threshold laid down in Article 8(3)(a) of the basic Regulation.

(277) Therefore, the conditions for cumulation are not met and the causation analysis is thus limited to the effect of the imports from India.

4.3.2. **Volume and market share of the imports from India**

(278) The Commission established the volume of imports on the basis of Eurostat. The market share of the imports was established on the basis of the volume of imports from India as part of the total Union consumption (the latter being determined by all Union sales by Union producers plus all imports of PSF into the Union).

(279) Imports into the Union from India developed as follows:

Table 3

Import volume (tonnes) and market share

	2010	2011	2012	Investigation period
Volume of imports from India (tonnes)	51 258	59 161	63 191	60 852
Index	100	115	123	119
Market share	6,1 %	6,8 %	7,5 %	6,8 %
Index	100	111	123	112

Source: Eurostat.

(280) Overall, imports from India remained rather stable, accounting for a Union market share of between 6 % and 7,5 % in the period considered.

4.3.3. **Prices of the imports from India and price undercutting**

(281) The Commission established the prices of imports on the basis of Eurostat statistics and verified data from cooperating exporters. Price undercutting of the imports was established on the basis of verified data provided by cooperating exporters and cooperating Union producers.

(282) The average price of imports into the Union from India developed as follows:

Table 4

Import prices (EUR/tonne)

	2010	2011	2012	Investigation period
India	1 025	1 368	1 239	1 212
Index	100	134	121	118

Source: Eurostat and verified data from cooperating exporters.

(283) A price hike for PSF was observed for the year 2011, which is the year of the earlier mentioned cotton crisis. Prices decreased in the years after, but remained higher than the price observed for 2010. In the investigation period, the price was 18 % higher than the price for PSF in 2010.

(284) The Commission determined the price undercutting during the investigation period by comparing the weighted average landed import prices per product type of the imports from the sampled cooperating Indian producers to the first independent customer on the Union market, with appropriate adjustments for customs duties and post-importation costs and the weighted average sales prices of the same product types of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level.

(285) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period. It showed a weighted average undercutting margin of between 4,1 % and 43,7 % by the imports from India on the Union market.

4.4. ECONOMIC SITUATION OF THE UNION INDUSTRY

4.4.1. **General remarks**

(286) In accordance with Article 8(4) of the basic Regulation, the examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(287) As mentioned in recital 10, sampling was used for the determination of possible injury suffered by the Union industry.

(288) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the complaint, additional information provided by the complainant during the course of the proceeding and Eurostat. These data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of the duly verified data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

(289) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, and productivity.

(290) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.4.2. **Macroeconomic indicators**

4.4.2.1. *Production, production capacity and capacity utilisation*

(291) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

Production, production capacity and capacity utilisation

	2010	2011	2012	Investigation period
Production volume (tonnes)	362 195	355 240	361 159	401 119
Index	100	98	100	111
Production capacity (tonnes)	492 059	451 310	468 115	466 744
Index	100	92	95	95

	2010	2011	2012	Investigation period
Capacity utilisation	73,6 %	78,7 %	77,2 %	85,9 %
Index	100	107	105	117

Source: Complainant (CIRFS).

(292) The production volume went up by 11 % during the period considered. This increase took place only during the investigation period (which covers the most recent 12 months of the period considered). During the part of the period considered preceding the investigation period (meaning 2011 and 2012) the Union industry's production volume decreased or stagnated.

(293) On the contrary, production capacity underwent a downward trend, with a decrease by 5 % in the investigation period. Coupled with the upward trend of the production volume as described in recital 292, the capacity utilisation increased by 17 %. It needs to be underlined though that the capacity utilisation in 2010, which is used as a basis for the trend analysis, was low for a capital-intensive industry such as the PSF industry and during the investigation period the capacity utilisation rate was at 85,9 %.

4.4.2.2. *Sales volume and market share*

(294) The Union industry's sales volume and market share developed over the period considered as follows:

Table 6

Sales volume and market share

	2010	2011	2012	Investigation period
Total Sales volume on the Union market (tonnes)	379 840	366 341	344 134	358 130
Index	100	96	91	94
Market share	45,3 %	42,2 %	41,1 %	40,2 %
Index	100	93	91	89

Source: Eurostat, complainant (CIRFS).

(295) The sales volumes on the Union market decreased in 2011 and 2012, but recovered slightly during the investigation period. However, overall a drop by 6 % was still observed vis-à-vis volumes sold in 2010.

(296) The market share of the Union industry decreased significantly throughout the period considered. The largest drop in market share took place in 2011, but the downward trend continued in 2012 and the investigation period, resulting in an overall loss of market share during the period considered of 11 %.

4.4.2.3. *Growth*

(297) Despite the moderate growth in Union consumption during the period considered (plus 6 %) and the increase in production volume by Union producers (plus 11 %), sales by Union producers fell by 6 %.

4.4.2.4. *Employment and productivity*

(298) Employment and productivity developed over the period considered as follows:

Table 7

Employment and productivity

	2010	2011	2012	Investigation period
Number of employees	1 914	1 935	2 000	2 036
Index	100	101	105	106
Productivity (tonne/employee)	189,3	183,6	180,6	197,0
Index	100	97	95	104

Source: Complainant (CIRFS).

(299) The number of employees rose steadily during the period considered resulting in a 6 % increase, in tandem with the increase in production as demonstrated in recital 292.

(300) Productivity dropped in 2011 and 2012, as the number of employees grew while production volumes stagnated during those years. Overall, it saw an increase during the period considered by 4 %.

4.4.3. **Microeconomic indicators**

4.4.3.1. *Prices and factors affecting prices*

(301) The average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 8

Sales prices in the Union

	2010	2011	2012	Investigation period
Average unit sales price in the Union on the total market (EUR/tonne)	1 283	1 608	1 509	1 489
Index	100	125	118	116
Unit cost of production (EUR/tonne)	1 453	1 666	1 629	1 542
Index	100	115	112	106

Source: Verified data from sampled Union producers.

(302) The largest increase in sales price in the Union was observed for 2011, when PSF was sold for 25 % more compared the average sales price in 2010. This was the result of the cotton crisis in 2011, when demand for PSF rose as substitute for cotton, which was scarce due to the disappointing crop in 2010. Overall, the sales prices in the Union increased by 16 % during the period considered.

(303) Unit cost of production also increased during the period considered with a peak of 15 % in 2011 due to an increase in petrol prices that year, which is a significant cost driver. The overall increase of the unit cost of production amounted to 6 % during the period considered.

4.4.3.2. *Labour costs*

(304) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 9

Average labour costs per employee

	2010	2011	2012	Investigation period
Average labour costs per employee (EUR)	31 561	31 080	31 661	32 356
Index	100	98	100	103

Source: Verified data from sampled Union producers.

(305) Average labour costs per employee first dropped in 2011, and then slightly increased the years following. For the period considered, an increase by 3 % was observed.

4.4.3.3. *Inventories*

(306) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 10

Inventories

	2010	2011	2012	Investigation period
Closing stocks (tonnes)	15 731	16 400	15 039	19 108
Index	100	104	96	121
Closing stocks as a percentage of production	7,3 %	7,8 %	7,1 %	8,8 %
Index	100	107	97	120

Source: Verified data from sampled Union producers.

(307) The closing stocks increased, with the exception of 2012, and resulted in an overall surge of 21 % in the investigation period. This corresponds to the increase in production volume (overall increase of 11 %), while sales volumes fell during the period considered (an overall decrease of 6 %). These trends were also reflected by the closing stocks as percentage of production.

4.4.3.4. *Profitability, cash flow, investments, return on investments and ability to raise capital*

(308) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2010	2011	2012	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	– 5,4 %	1,0 %	– 0,8 %	0,3 %
Index	– 100	18	– 14	5
Cash flow (EUR)	– 12 068 770	12 017 353	13 048 405	10 725 084
Index	– 100	100	108	89
Investments (EUR)	5 240 603	7 671 607	4 488 296	4 145 991
Index	100	146	86	79
Return on investments	– 25,1 %	5,5 %	– 4,5 %	1,5 %
Index	– 100	22	– 18	6

Source: Verified data from sampled Union producers.

(309) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. Profitability margins fluctuated during the period considered. Overall, profitability improved by moving from substantially loss making in 2010 to break-even in the investigation period.

(310) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed positively during the period considered.

(311) Investments peaked in 2011 with an increase of 46 % compared to investments made in 2010, but followed a downward trend in the years after. During the period considered, investments fell by 21 %.

(312) The return on investments is the profit in percentage of the net book value of investments. It developed positively during the period considered.

(313) None of the sampled Union producers expressed to have had difficulties raising capital during the period considered.

4.4.4. **Conclusion on injury**

(314) Imports from India remained stable (accounting for a Union market share of between 6 % and 7 % in the period considered). Undercutting was significant (up to 43,7 %).

(315) Most injury indicators improved. The profitability of the Union producers went up by close to 6 percentage points, but the average profit margin was still at an unsatisfactory break-even level of 0,3 % in the investigation period. The capacity utilisation rate increased from 74 % to 86 %. This however was the result of an increase in Union production volumes as well as the decrease in Union capacity. Average sales prices in the Union peaked in 2011, caused by the sharp surge of the cotton and petrol prices. Overall, average Union sales prices increased by 16 % in the period considered. Return on investment and cash flow developed positively. Employment also increased during the period considered. Signs of recovery were thus observed in a still injurious situation.

(316) The following injury indicators developed negatively during the period considered: the Union market share of Union producers dropped from 45,3 % to 40,2 % as Union sales volumes fell by 6 %. The level of investments decreased overall with the exception of 2011. Capacity, as mentioned in recital 293, declined by 5 % during the period considered.

(317) Overall, the situation of the Union industry can still be described as injurious, although it has clearly improved over the last years. On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 8(4) of the basic Regulation.

(318) Commenting on the disclosure, the complainant stated that it considered the stability of the Indian market share in the Union market the result of substantial subsidisation. The Commission indeed found countervailable subsidies (see recital 229), but no causal link to the injurious situation of the Union industry could be established (see recitals 319-323).

5. **CAUSATION**

(319) In accordance with Article 8(5) of the basic Regulation, the Commission examined whether the subsidised imports from India caused material injury to the Union industry. In accordance with Article 8(6) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the subsidised imports from India was not attributed to the subsidised imports. These factors are imports from other third countries, export performance of the Union industry and consumption.

5.1. EFFECTS OF THE SUBSIDISED IMPORTS

(320) In view of the findings of below *de minimis* subsidisation with regard to China and Vietnam (see recitals 76 and 231), the conditions for cumulation are not met. The causation analysis is therefore limited to the effect of the imports from India.

(321) During the period considered the Union industry saw its market share declining from 45,3 % to 40,2 %, while the market share of Indian imports remained rather stable between 6 % and 7 %. Consumption grew by 6 % during the period considered. The Union industry was thus not able to benefit from this growth in terms of market share, but this is not likely to be attributed to the Indian market share, which remained constant.

(322) Average Eurostat prices for PSF from India were lower than average PSF prices from most other countries, but it is important to note that there are large differences in qualities and product types. In any event, precise type-by-type comparisons demonstrated significant undercutting with regard to imports from India.

(323) Despite the significant undercutting, it cannot be concluded that Indian imports have resulted in the injury. Indeed, the market share decrease of the Union industry (minus 5,1 percentage points) cannot be attributed to the development of Indian import volumes as their market share remained fairly stable (up by 0,7 percentage points only during the period considered). Moreover, average prices of imports from India have increased by 18 % over the period considered. The prices of Indian imports do not seem to have resulted in price depression, as the financial situation of the Union industry, though still injurious in the investigation period, has improved significantly over the period considered.

5.2. EFFECTS OF OTHER FACTORS

5.2.1. **Imports from third countries**

(324) The volume of imports from third countries developed over the period considered as follows:

Table 12

Imports from third countries

Country		2010	2011	2012	Investigation period
The Republic of Korea	Volume (tonnes)	129 918	165 365	163 540	181 540
	Index	100	127	126	140
	Market share	15,5 %	19,0 %	19,5 %	20,4 %
	Index	100	123	126	131
	Average price (EUR/tonne)	1 116	1 367	1 361	1 300
	Index	100	123	122	116
Taiwan	Volume (tonnes)	121 656	108 645	100 072	92 423
	Index	100	89	82	76
	Market share	14,5 %	12,5 %	12,0 %	10,4 %
	Index	100	86	82	71
	Average price (EUR/tonne)	1 131	1 416	1 383	1 369
	Index	100	125	122	121
China	Volume (tonnes)	5 198	8 980	23 209	44 651
	Index	100	173	446	859
	Market share	0,6 %	1,0 %	2,8 %	5,0 %
	Index	100	167	447	808
	Average price (EUR/tonne)	1 065	1 279	1 265	1 209
	Index	100	120	119	113
Turkey	Volume (tonnes)	32 921	29 969	34 303	36 908
	Index	100	91	104	112
	Market share	3,9 %	3,4 %	4,1 %	4,1 %
	Index	100	88	104	105

Country		2010	2011	2012	Investigation period
	Average price (EUR/tonne)	1 133	1 466	1 383	1 382
	Index	100	129	122	122
Vietnam	Volume (tonnes)	24 884	25 487	26 410	29 717
	Index	100	102	106	119
	Market share	3,0 %	2,9 %	3,2 %	3,3 %
	Index	100	99	106	112
	Average price (EUR/tonne)	978	1 182	1 175	1 096
	Index	100	121	120	112
Indonesia	Volume (tonnes)	25 902	30 285	24 032	24 699
	Index	100	117	93	95
	Market share	3,1 %	3,5 %	2,9 %	2,8 %
	Index	100	113	93	90
	Average price	1 055	1 329	1 267	1 167
	Index	100	126	120	111
Thailand	Volume (tonnes)	17 548	23 510	17 103	18 952
	Index	100	134	97	108
	Market share	2,1 %	2,7 %	2,0 %	2,1 %
	Index	100	129	98	102
	Average price (EUR/tonne)	1 140	1 449	1 310	1 298
	Index	100	127	115	114
Other imports	Volume (tonnes)	49 272	51 282	41 074	43 120
	Index	100	104	83	88
	Market share	5,9 %	5,9 %	4,9 %	4,8 %
	Index	100	100	83	82
	Average price (EUR/tonne)	1 323	1 681	1 603	1 532
	Index	100	127	121	116

Source: Eurostat.

(325) The largest share of imports (181 540 tonnes, representing a market share of 20,4 %, during the investigation period) comes from the Republic of Korea, which saw its market share increase by 4,9 percentage points during the period considered. Taiwan is the second biggest exporter to the Union. Though imports from Taiwan during the period considered declined (minus 4,1 percentage points), Taiwan still held a market share of 10,4 % in the investigation period. The fourth largest on the list of exporters (following India, which is the third largest) is China, whose market share increased by 4,4 percentage points to a level of 5 %. Imports from other third countries are smaller than imports from India but substantial quantities of PSF are also imported from Turkey, Vietnam, Indonesia and Thailand (all four with rather stable market shares). Collectively, the imports from Turkey, Vietnam, Indonesia and Thailand account for a market share of around 12 % (12,4 % in the investigation period).

(326) The increasing imports from notably the Republic of Korea are worth noting. The Korean imports amounted, during the investigation period, to three times the volumes of Indian imports. They went up by 40 % during the period considered and their market share went up by 4,9 percentage points to 20,4 %. Also imports from China strongly went up, by more than 700 % in volume or 4,4 percentage points in terms of market share. Imports from China undercut also significantly the prices of the Union industry.

(327) On the basis of the above, it can be concluded that, if the injurious situation of the Union industry has been the result of imports, this is rather due to imports from sources other than India.

(328) Following disclosure, the complainant commented that the Commission did not further investigate the export prices of China and Vietnam. It is recalled that *de minimis* subsidy levels were found for both China and Vietnam. The Commission therefore assessed the export prices for these two respective countries in its causality analysis regarding the effect of other factors and indeed did not perform a cumulative assessment of the imports of all three countries concerned by this proceeding, since it was determined that the subsidies found in China and Vietnam were *de minimis* as explained in recital 275-277.

(329) The complainant provided comments on the average price of imports from Korea as well as the (slight) increase in their volume between 2011 and 2012. In view of the overall increase of both the volume and the market share of Korean imports during the period considered and its average prices being lower than the average Union industry sales prices, the Commission maintains that Korean imports are a relevant other factor in the causality analysis.

(330) The complainant also referred to average export prices of the three countries initially concerned by this proceeding and of Korea and Taiwan for the period January to July 2014. This is however not the period considered, which is from 2010 to the end of the investigation period. The comment is therefore rejected.

5.2.2. **Export performance of the Union industry**

(331) The volume and average value of exports of the Union industry developed over the period considered as follows:

Table 13

Export performance of Union producers

	2010	2011	2012	Investigation period
Export volume (tonnes)	31 158	32 204	41 279	36 149
Index	100	103	132	116
Average price (EUR/tonne)	1 760	1 945	1 924	1 962
Index	100	111	109	112

Source:

Volume: Complainant (CIRFS)

Value: Verified data from sampled Union producers

(332) The Union industry is selling, outside the EU, mainly speciality products, which explains the higher average sales price observed on those markets.

(333) Export volumes of the sampled Union producers increased by nearly 30 % during the period considered with its highest peak in 2012. Average sales prices went up in 2011 and then remained at a stable level until the investigation period.

(334) Despite the good export performance of the sampled Union producers, the absolute volumes exported were relatively small compared to the sales volumes sold in the Union. Their effect was therefore not sufficient to compensate for the difficult and injurious situation on the Union domestic market.

5.2.3. **Consumption**

(335) The Union market for PSF was 838 397 tonnes in 2010 and reached in the investigation period 890 992 tonnes. This implies a market growth of 6 % during the period considered. In other words, there was no decline in demand which could have contributed to the injurious situation of the Union industry.

5.2.4. **Economic crisis**

(336) A user association, the chamber of commerce of one of the countries concerned, and a government authority commented that the injury was caused by the economic crisis. This argument does not hold, as the Union market for PSF grew by 6 % and the average sales price in the Union went up as well by 16 %.

(337) The chamber of commerce also commented that due to the economic crisis the demand for specialty PSF fell, while the demand for commodity PSF grew. It is recalled that specialty PSF and commodity PSF have the same physical and chemical characteristics and their end-uses are basically the same. It is recognised that not all product types are interchangeable, but previous investigations and the current investigation established that there is at least a partial interchangeability and overlapping use across the different product types. The argument is therefore dismissed.

5.2.5. **High capacity utilisation**

(338) One government authority submitted that injury, in terms of loss of market share, could not have been caused by subsidised imports in view of the high capacity utilisation rate of the Union industry. The capacity utilisation of the Union industry indeed went up during the period considered, but at no point did it come close to the limits of the available capacity. At its highest peak, which was in the investigation period, the capacity utilisation rate was 85,9 %. This leaves ample margin to further increase production. However, as sales volumes in the Union of Union producers did not follow the upward trend in consumption, the loss in market share is still considered as one of the indicators for the injurious situation of the Union industry.

5.3. CONCLUSION ON CAUSATION

(339) On the basis of the above the Commission considers that it is not possible to establish a causal link between the injurious situation of the Union industry and the subsidised imports from India. This conclusion is firstly based on the relatively low and only slightly increasing market share of the imports from India (from 6,1 % to 6,8 %), as compared to a much higher but still significantly declining market share of the Union industry (from 45,3 % to 40,2 %). Secondly, imports from certain other countries (Korea, Taiwan, China) have been more voluminous and/or more strongly increasing and therefore, if imports have contributed to the injury suffered by the Union industry, this is to be attributed to imports from those countries rather than to imports from India (see recitals 325-327).

(340) The causal link within the meaning of Article 8(5) and (6) of the basic Regulation between the subsidised imports from India, and the material injury suffered by the Union industry could therefore not be established.

6. **CONCLUSION**

(341) The proceeding should therefore be terminated, as subsidy for the People's Republic of China and Vietnam were found to be *de minimis* and due to the lack of a causal link between injury and subsidy insofar as imports originating in India are concerned.

(342) The Committee established by Article 25(1) of the basic Regulation did not deliver an opinion,

HAS ADOPTED THIS DECISION:

Article 1

The anti-subsidy proceeding concerning imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning currently falling within CN codes 5503 20 00 and originating in the People's Republic of China, India and Vietnam is hereby terminated.

Article 2

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

Done at Brussels, 16 December 2014.

For the Commission
The President
Jean-Claude JUNCKER