**SCHAGRIN ASSOCIATES**
1100 FIFTEENTH STREET, N.W.
SUITE 700
WASHINGTON, D.C. 20005
(202) 223-1700

FAX (202) 429-2522
EMAIL: schagrin@erols.com

RECEIVED
JUL 25 2005
DEPT. OF COMMERCE
ITA
IMPORT ADMINISTRATION

July 25, 2005

BY HAND DELIVERY

Assistant Secretary for Import Administration
U.S. Department of Commerce
Central Records Unit, Room 1870
Pennsylvania Avenue and 14th Street N.W.
Washington, D.C. 20230

Re: **Drawback Practice in Antidumping Proceedings**

Dear Mr. Assistant Secretary:

The Department has announced that it will solicit public comment on the issue of whether the grant of a drawback adjustment should be limited to the "payment of import duties on raw material inputs used to produce merchandise sold in the home market." Department Notice (June 24, 2005), *Duty Drawback Practice in Antidumping Proceedings*, 70 Fed Reg. 37764 (June 30, 2005). The Appendix to the Notice seeks specific advice on calculation of the adjustment and broadly invites "any additional views" as to drawback practice. Our comments, on behalf of The Committee on Pipe and Tube Imports, are provided below, and the Department's specific questions are answered at the conclusion of this submission.

The Department correctly set out the rationale for a duty drawback adjustment in early 2002, explaining that "{t}his adjustment is necessary to offset duties that are paid on inputs used in production of merchandise sold in the home market." *Silicomanganese from*

*Venezuela*, 67 Fed. Reg. 15533 (April 2, 2002), Decision and Issues Memorandum, Comment 6. In that case, the respondent, "HEVENSA participated in a duty drawback program in which it was exempt from paying import duties on certain inputs used to produce silicomanganese for export." *Id.* HEVENSA was denied a drawback adjustment because it failed "to establish it had paid import duties on inputs used in the production of silicomanganese sold in the home market." *Id.* HEVENSA appealed, but the Court of International Trade upheld the Department's determination and recognized that the Department's policy was in accord with past practice and stated:

> Commerce has reasonably established the payment of import duties on imports used for sales in the domestic home market as a necessary prerequisite for the establishment of a duty drawback claim. See e.g., Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 63 Fed. Reg. 6,899, 6,909 (February 11, 1998) (Payment of ...duties on importation of inputs used for domestic sales, but not for export sales, is necessary to establish a drawback claim). **Hevensa's failure to create a record showing the payment of duties on the importation of inputs used for domestic sales, but not for export sales, defeats its duty drawback claim.**

*Hornos Electricos de Venezuela, S.A. v. United States*, 285 F.Supp.2d 1353, 1360 (CIT 2003) ("*HEVENSA*") (emphasis added).[1] The Court explained that the Department's policy was reasonable because:

> a duty drawback adjustment takes into account any difference in the prices for home market or normal value and export sales accounted for by the fact that **such import duties have been paid on inputs used to produce the merchandise sold in the home market**, but have not been paid on inputs used to the merchandise exported to the United States.

*HEVENSA*, 285 F.Supp.2d at 1358 (emphasis added).

---

[1] The court's observation directly rejects the notion, sometimes advanced, that *HEVENSA* did not address the requirement of payment of import duties on domestic market sales.

The *HEVENSA* decision was consistent with a long recognized principle (but one which has sometimes been ignored in administrative review results). As the Court of International Trade stated:

> **Congress allowed this adjustment because purchasers in the home market presumably must pay the passed on cost of import duties when they buy the merchandise.** If the duties are rebated when the merchandise is exported, presumably no similar cost is passed on to purchasers in the United States. By adding the amount of the rebate to United States price [now export price] this adjustment accommodates the difference in cost to the two different purchasers.

*Huffy Corp. v. United States*, 10 CIT 214, 215-216, 632 F.Supp. 50, 52 (1986) (emphasis added).[2] In sum, the fundamental prerequisite that import duties must be paid on inputs for subject merchandise sold in the home market has been explained and detailed by the Department and accepted by the courts.

It is also important to recognize that the European Community also imposes the fundamental requirement described in the *HEVENSA* litigation. As specifically stated in the basic EC antidumping regulation, the first condition for a drawback adjustment is that "import charges are borne by the like product and by materials physically incorporated therein when intended for consumption in the exporting country...." EC Basic Regulation Article 2(10)(b).[3]

---

[2] Indeed, a drawback adjustment is no different than any circumstances of sales adjustment which "are made when the seller incurs certain costs in its home market sales that it does not incur when selling to United States market." *NTN Bearing Corp. v. United States*, 24 CIT 385, 397, 104 F.Supp.2d 110, 122 (2000) quoting *Torrington v. United States*, 156 F.3d 1361, 1363 (Fed. Cir. 1998).

[3] For application of this principle, *see e.g.*, EC Council Regulation No. 1676/2001 of 13 August 2001 imposing definitive antidumping duty on imports of polyethylene film originating in India and the Republic of Korea (Official Journal L 227, 23/08/2001 p. 0001-0014); *see also* EC Council Regulation No. 2093/2002 of 26 November 2002 imposing a definitive antidumping duty on imports of polyester textured filament yarn originating in India (Official Journal L 323,

While Australia does not have a published regulation comparable to that of the E.U., it is apparent from a recent decision involving Saha Thai that the Australian authorities denied Saha Thai a drawback adjustment under circumstances identical to those in the U.S. administrative review.

It is fundamental to a fair comparison that the United States recognize, as does the EC, that if a respondent does not pay import duties on inputs used for products sold in the home market, the home market sales do not include an import duty cost. If the same respondent does use imported inputs for export sales but does not ultimately pay import duties, those export sales likewise do not include an import duty cost. Thus, in this situation, there is no disparity in price comparability which must be remedied by a drawback adjustment.

In contrast, if a respondent does pay import duties on inputs used for domestic sales, but does not for export sales, a price comparability issue arises. Since drawback programs are acceptable under U.S. international trade obligations, U.S. law provides for a basis to recognize the difference in price comparability created by receipt of drawback benefits. Thus, to the extent a respondent must pay import duties on inputs used for domestic sales, but not for export sales, a drawback adjustment is warranted. Again, if no duties are paid on inputs for domestic sales, no issue of comparability arises.

---

28/11/2002, p. 0001-0020) (denial of adjustment "none of the companies could demonstrate that any import charges or indirect taxes were borne by the like product or by materials physically incorporated therein, when intended for consumption in the exporting country, as required by Article (2)(10)(b) of the basic Regulation."). Included in attachment A.

In separate standard pipe reviews involving Turkey[4] and Thailand[5] (which are cited in the Department's request for public comment), the Department granted drawback adjustments even though respondents failed to establish the payment of import duties on inputs used for home market sales. These decisions ignore the fundamental reason for creation of the drawback adjustment and give a completely unwarranted favorable adjustment to foreign producers dumping in the United States. Grant of a drawback adjustment where there is no difference in price comparability is a complete gift to respondents, the size of which is dependent on the level of import duty avoided. It is not reasonable to infer that Congress intended to grant an adjustment unrelated to cost and price comparability which has the effect of encouraging the maintenance of high import duties by exporting countries. Indeed, grant of drawback adjustments unrelated to import duties paid on domestic sales grossly distorts the price comparisons being made and, where import duties are high, becomes essentially a license to dump. Where input import tariffs run to double digits, the improper grant of these adjustments can result in the complete absence of relief from dumping.

In sum, the Department should conform its practice to that detailed in the HEVENSA litigation and should restrict consideration of claims for drawback adjustments to the amount of import duties paid on inputs used for the domestic sales of the foreign producer making the claim. Our responses to the specific questions posed by the Department follow.

---

[4] *Certain Welded Carbon Steel Pipe from Turkey*, 69 Fed. Reg. 48843 (August 11, 2004) (Final Results)

[5] *Certain Welded Pipe and Tube from Thailand*, 69 Fed. Reg. 61649 (October 20, 2004) (Final Results).

(1) What should the requirements be for making a duty drawback adjustment in an antidumping proceeding? For example, should a party seeking such adjustment be required to demonstrate that it actually paid import duties that were not rebated on some portion of raw material inputs during the relevant period, i.e., that exports did not account for all the imported material in question? Please explain, in detail, any changes to the Department's current practice that would be required to implement such a modification.

ANSWER:

The fundamental test for whether the Department should consider grant of a drawback adjustment claim is that the aspect of price comparability has been placed in issue. Specifically, a respondent must establish the payment of import duties on inputs for home market sales. Thus, eligibility for analysis of a drawback adjustment claim must be predicted on, and limited to, the import duty cost for inputs used in domestic sales of the subject merchandise. Only when an import duty cost disparity is present do the issues of price comparability and the extent of a respondent's drawback benefits become relevant.

In a situation where imports of inputs are fully accounted for by export sales, then a respondent would inherently not have any import duty cost for domestic market sales. Accordingly, the fundamental prerequisite to a drawback claim would be absent. The grant of a drawback adjustment must be limited to a respondent's import duty cost.

We believe the Department's decisions, leading to the HEVENSA litigation and relied upon there, are in accordance with the practice described above. Thus, no change in Department practices in these cases would be required. Of course, the Department has also recently made contrary decisions, which are mentioned in the Department's notice. In the pending litigation involving *Certain Welded Carbon Pipes and Tubes from Thailand* (Final Results), 69 Fed. Reg. 61949 (October 20, 2004), we believe the Department should seek a

remand and issue a new decision in accordance with this policy review. *See Wheatland Tube Co. v. United States*, CIT Ct. No. 04-00568 (June 30, 2005).

(2) How do you propose the amount of the adjustment should be determined, assuming that some domestically sourced and some imported material was used?

ANSWER:

The upper limit of a drawback adjustment claim is the import duty cost to the respondent for home market sales of subject merchandise during the investigation or review period. For example, if a respondent had 50,000 tons of imported inputs, and had 45,000 tons of exports and 100,000 tons of domestic shipments, and applied for 45,000 tons of drawback, but paid duties on 5,000 tons of inputs, the adjustment would be limited to the amount of duties paid on the 5,000 tons of inputs spread over the 45,000 tons of exports. A drawback adjustment would also be limited to a respondent's qualification for drawback benefits under the present two prong test.

(3) If duty drawback (or exemption) is claimed for some, but not all exports incorporating the material input in question, how do you propose the amount of any duty drawback adjustment should be determined?

While the drawback adjustment is limited to the import duty cost, it is also limited by the respondent's qualification for drawback benefits. Generally speaking, the Department already forces respondents to allocate drawback over all exports. In a hypothetical case, let's say Korea has no home market for OCTG, but 20,000 tons of exports to Canada and 200,000 tons of exports to the U.S.A., but has only 20,000 tons of imported inputs, drawback has to be allocated over the 40,000 tons of exports. Neither the U.S. nor Canada could allow drawback

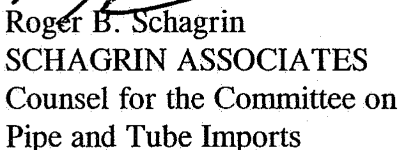
to be allocated completely to exports to the U.S. in one case or to Canada in another case.

(4) Please provide any additional views on any other matter pertaining to the Department's practice regarding duty drawback adjustments.

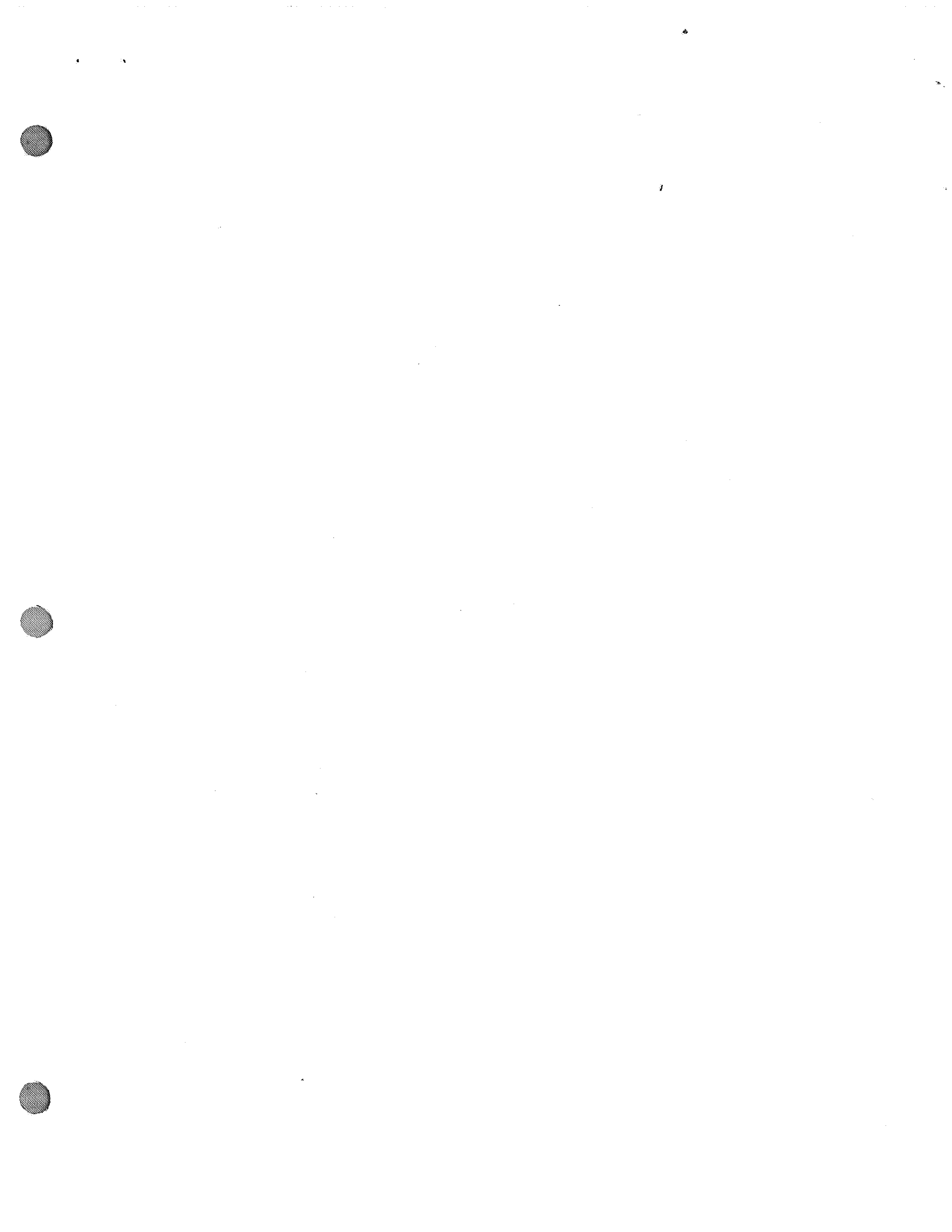
ANSWER:

The Department's position in the recent reviews involving standard pipe from Thailand and Turkey dramatically illustrate the negation of dumping relief present when drawback adjustments are improperly granted. This practice mocks the Department's repeated claims to vigorous enforcement of U.S. trade laws. The improper grant of drawback adjustments is particularly objectionable because it encourages maintenance of high import barriers and is at variance with the practice of our major U.S. trading partners. Thus there is very specific evidence that higher margins found in other jurisdictions, the E.U. and Canada, in the case of Turkish pipe exports, or Australia in the case of Thai pipe exports are resulting in increased exports to the U.S., the low or no margin country, simply because of disparate duty drawback treatment. This is grossly unfair to U.S. manufacturers and denies them the same opportunity for dumping relief as their competitors in the E.U., Canada and Australia.

Respectfully submitted,



Roger B. Schagrin
SCHAGRIN ASSOCIATES
Counsel for the Committee on
Pipe and Tube Imports



# Attachment A

I

*(Acts whose publication is obligatory)*

# COUNCIL REGULATION (EC) No 1676/2001
## of 13 August 2001
## imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate film originating in India and the Republic of Korea

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

### A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 367/2001 [2] (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of polyethylene terephthalate ('PET') film falling within ex CN code 3920 62 19 and ex CN code 3920 62 90 and originating in India and the Republic of Korea ('Korea').

(2) It is recalled that the investigation period of dumping and injury covered the period from 1 April 1999 to 31 March 2000 ('IP'). The examination of trends relevant for the injury analysis covered the period from 1 January 1996 to 31 March 2000 ('period under consideration').

### B. SUBSEQUENT PROCEDURE

(3) Following the imposition of provisional measures on imports of PET film originating in India and Korea, several interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) Additional verification visits were carried out at the premises of the following users:

- Emtec Magnetics GmbH, Ludwigshafen, Germany
- Rogers Induflex NV LEX NV, Gent, Belgium
- Leonhard Kurz GmbH & Co., Fürth, Germany
- Eurofoil, Blaenavon, U.K.

(6) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which they could make representations subsequent to this disclosure.

(7) The oral and written comments submitted by the parties were considered, and, where appropriate, the provisional findings have been modified accordingly.

### C. PRODUCT CONCERNED AND LIKE PRODUCT

#### 1. Product concerned

(a) *Arguments of the parties*

(8) Some exporting producers re-iterated the argument that metallised PET film should be excluded from the product scope of the current proceeding on the grounds that metallised PET film cannot be considered alike to base PET film since it had different basic physical and technical characteristics, required different production equipment and processes, being consequently more expensive to produce and thus sold at a higher price. These parties also argued that the use of metallised PET film is different from that of base PET film and is also classifiable under CN codes other than CN codes ex 3920 62 19 and 3920 62 90, namely within CN code 3921.

(b) *Findings of the investigation*

(9) The investigation showed that the metallisation process consisting of the addition of metal, such as aluminium, by a vapour deposition process, does not alter the basic physical, technical and chemical characteristics of PET film. Moreover, base and metallised PET film are in many applications interchangeable and may have the same, or similar, uses. Therefore the provisional findings

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 55, 24.2.2001, p. 16.

set out in recital 19 of the provisional Regulation, namely that metallised PET film and base PET film constitute one single product and are classifiable under the CN codes covered by the proceeding, i.e. ex 3920 62 19 and 3920 62 90, are confirmed.

(10) It should be noted that the fact that an additional production step is required for the production of metallised PET film, with resulting higher cost of production and sales price, is not an element which could justify per se the exclusion of a certain type of PET film from the product scope of the proceeding.

(11) Finally, the investigation showed that metallised PET film has to be distinguished from film, which is reinforced, laminated, supported or similarly combined with other materials. These processes modify the basic physical, chemical and technical characteristics of PET film to such an extent that the resulting product cannot be considered to be the product concerned. In addition, it should be noted that only when PET film is combined with other materials in such a way, is the final product classifiable under CN code 3921.

(12) In the absence of further comments other than those mentioned above, the product description as set out in recitals 9 to 22 of the provisional Regulation is confirmed.

### 2. Like product

(13) In the absence of any comments, the definition of the like product as described in recital 23 of the provisional Regulation is confirmed.

## D. DUMPING

### 1. General methodology

(a) *Normal value, export price and comparison*

(14) In the absence of any comments under these headings, the provisional findings as set out in recitals 28 to 34 of the provisional Regulation are confirmed.

(b) *Dumping margins*

(15) The general methodology for establishing the dumping margins for the companies investigated, as described in recital 35 of the provisional Regulation, is confirmed.

(16) The general methodology for establishing the dumping margins for the cooperating companies not included in the sample, as described in recital 36 of the provisional Regulation, is confirmed. When the dumping margin for the cooperating companies not included in the sample was established, any zero and *de minimis* margins were disregarded.

(17) The general methodology for establishing the dumping margins for those exporting producers, which neither replied to the questionnaire nor otherwise made themselves known, as described in recitals 37 and 38 of the provisional Regulation, is confirmed. However, in the case of Korea, as only one out of the three sampled exporting producers was found to have practised dumping, the residual dumping margin was set at the weighted average dumping margin of a representative number of models with the highest dumping margins exported by that exporting producer.

(18) It should be noted that in cases where an exporting producer exported more than one product type to the Community, the weighted average overall dumping margin was determined by computing the dumping found on each type without zeroing 'negative dumping' found on individual types.

### 2. India

(a) *Normal value and export price*

(19) In the absence of further comments, the findings of recitals 39 to 42 of the provisional Regulation are confirmed.

(b) *Comparison*

(i) Level of trade

(20) One Indian exporting producer reiterated its claim for an adjustment for differences in the level of trade between sales of the product concerned to traders on the domestic and export markets (recital 47 of the provisional Regulation).

(21) It was also submitted, following disclosure of the essential facts and considerations on the basis of which provisional measures were adopted, that two levels of trade (end-users and traders) existed in both (domestic and export) markets and that a selective comparison should be made: that is, export prices to traders should be compared with normal values based on sales to traders and export prices to end-users compared with normal values based on sales to end-users.

(22) However, the information submitted in the questionnaire reply and subsequently verified already indicated that there were no consistent and distinct differences in functions and prices for the different levels of trade for comparable models when sold in the domestic market of the exporting country. Consequently the findings set out in recitals 46 and 47 of the provisional Regulation are confirmed and the claim for a selective comparison is rejected.

(ii) Other allowances

(23) The Indian exporting producers claimed that the adjustment requested pursuant to Article 2(10)(k) 'other factors' and/or Article 2(10)(b) 'Import charges and indirect taxes' (depending on the exporter) of the basic Regulation on the export price for the benefits received under the Duty Entitlement Passbook ('DEPB') scheme on a post-export basis should have been granted. They claimed that the income received from the DEPB resulted in a lower export price and that therefore, the Commission should have added this income to the export price to ensure a fair comparison with the normal value, as domestic sales do not benefit from such income. Moreover, the Indian exporters claimed that the deduction, in accordance with Article 14(1) of the basic Regulation, of the export subsidies accounted for by the existing countervailing duty from the anti-dumping duty was legally not justified as the countervailing duties were determined on the basis of a different investigation period.

(24) Article 2(10) of the basic Regulation contemplates only the possibility of adjustments that affect price comparability. In the questionnaire replies and during the on-spot verifications, the DEPB benefit was always accounted for as 'other income' and not as a 'negative cost' attributed to the cost of raw materials of the exported goods. Therefore, already on the basis of the company's accounting records, there is no explicit link between pricing of the exported goods and the DEPB income received.

(25) The provision of Article 14(1) of the basic Regulation which reflects Article VI of the GATT Agreement shows that such subsidisation can, albeit indirectly, be addressed in an anti-dumping investigation and any regulation imposing an anti-dumping duty provided that the product is not subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation. The rationale behind Article 14(1) of the basic Regulation is indeed to avoid any duplication of duties intended to counteract the same situation arising from dumping or export subsidisation, and therefore, countervailing duties resulting from export subsidies have to be deducted regardless of the investigation period on the basis of which they were determined. It is noted, as explained under recitals 78 and 79 below, that an adjustment under Article 14(1) of the basic Regulation has been made. For all these reasons, the above request had to be rejected.

(c) *Dumping margin*

(26) In the absence of any comments or new information, the methodology set out in recitals 51 to 53 of the provisional Regulation is confirmed.

(27) The definitive dumping margins, expressed as a percentage of the cif import price at the Community border, are:

| | |
|---|---|
| Ester Industries Limited | 64,5 % |
| Flex Industries Limited | 42,9 % |
| Garware Polyester Limited | 65,3 % |
| Jindal Polyester Limited | 0 % |
| Dumping margin for cooperating companies not part of the sample | 57,70 % |
| Residual dumping margin for non-cooperating companies | 65,3 % |

3. **Korea**

(a) *Normal value*

(28) Two Korean cooperating exporting producers argued that so-called local export sales (i.e. domestic sales foreseen for the export market after further processing and/or packaging) had been excluded from the calculation of normal value with no legal basis for doing so. However, it is evident that Korean authorities permit such sales to be made without the addition of any local sales tax (VAT); the vendor is also able to transfer to the purchaser the right to claim duty drawback and the sales are usually made in a foreign currency. It is therefore evident from the way that such sales are structured in Korea that they are made for export and do not permit a proper comparison. Thus the approach followed for provisional determinations is maintained.

(29) In view of the above, the findings as described in recital 57 of the provisional Regulation are confirmed.

(b) *Export price*

(30) Two of the exporting producers had related importers in the Community and both indicated that they considered that the profit margin allocated to those importers (5,5 %) was unreasonably high given that the functions performed by the importers was limited to the re-invoicing of sales, without playing an active role in the sale itself. It was suggested that these related importers did not generate profit per se, but merely received commission on sales made. Nonetheless, the commission rate indicated cannot be taken as necessarily being accurate as the parties are related. The fact that the related importers may be remunerated on a fixed commission basis does not necessarily bear any relation to the functions performed by those importers. Furthermore, neither of the claimants submitted any specific data which indicated that the margin used was not in line with prevailing market conditions.

(31) In view of the above, the provisional findings as described in recital 58 of the provisional Regulation are confirmed.

(c) *Comparison*

(i) Exchange rates fluctuation

(32) Following a request by the Korean exporting producers the adjustment for a sustained movement in exchange rates was re-examined. Following this re-examination, the average exchange rate was that of two months before the actual invoice date.

(ii) Duty drawback

(33) All of the Korean cooperating exporting producers considered that the methodology used in allocating duty drawback to domestic sales was unreasonable, in particular because the raw materials concerned are used for manufacturing products other than PET film. The Commission therefore reconsidered the issue and decided to adopt a revised two-step approach.

(34) Firstly, the quantities of raw materials purchased and used solely for PET film production, (whether intended for domestic or export sales) were calculated using the nationally approved coefficients and expressed as percentages of the totals of raw materials purchased. These percentages were then applied to each of the individual supplies of raw materials. Thus each raw material was allocated to both domestic and export sales in which the raw material was used, (both product concerned and other products), in the appropriate proportion. The allocation started with supplies carrying the lowest duty rates, as explained in the provisional Regulation. The result led to increased amounts of duty drawback allowable for two exporting producers.

With the above exceptions concerning duty drawback and exchange rate conversion, the provisional findings as described in recitals 59 to 65 of the provisional Regulation are confirmed.

(d) *Dumping margin*

(35) The findings of recitals 66 and 67 of the provisional Regulation are confirmed with the exception of one cooperating exporting producer who objected to the use of the comparison of a weighted-average normal value to individual export transactions to determine its dumping margin on the basis that the mere variation of export prices by customer, region or time period does not justify the use of the weighted average to transaction method for the determination of the dumping margin. The issue was re-examined and it was found that there was a pattern of export prices which differs among customers, the effect of which on the degree of dumping being practised by the exporter was not significant. The methodology for establishing the dumping margins for the companies investigated as described in recitals 66 and 67 of the provisional Regulation was therefore revised in respect of this exporting producer from a weighted average to transaction approach to a weighted average to weighted average approach.

(36) The definitive dumping margins, expressed as a percentage of the cif import price at the Community border are:

| | |
|---|---|
| Kolon Industries Limited | 0,0 % |
| SKC Industries Limited | 7,5 % |
| Toray Saehan Industries | 0,0 % |
| Dumping margin for cooperating companies not part of the sample | 7,5 % |
| Residual dumping margin for non-cooperating companies | 13,4 % |

E. COMMUNITY INDUSTRY

(37) Certain Indian exporting producers argued that the definition of the Community industry and, consequently, the injury analysis, should not have been limited to the three cooperating complainant Community producers, but should have been extended to all the Community producers, including Fapack, which participated in lodging the complaint but only provided some basic information, and three other Community producers, which are not complainants and are not related to any exporting producers and which, as well, only submitted some basic information.

(38) It is confirmed that, as mentioned in recital 73 of the provisional Regulation, all these seven operators are indeed Community producers and thus constitute the Community production within the meaning of Article 4(1) of the basic Regulation. However, as described in recital 70 of the provisional Regulation, the latter four Community producers only submitted some basic information but did not reply fully to the questionnaire intended for Community producers. Therefore, this information could not be used for the purposes of the assessment of the situation of the Community industry. These Community producers were accordingly not included in the definition of the Community industry. The argument had therefore to be rejected.

(39) One interested party contested the finding that the Community industry accounted for more than 70 % of the total Community production of PET film. This element has been re-examined by the Commission, and a clerical error was found. The Community industry actually accounts for 60 % of the total Community production.

(40) Certain interested parties claimed that if indeed metallised PET film remains included in the definition of the product concerned, certain producers of metallised PET film should also be regarded as Community producers forming part of the Community industry.

(41) The investigation showed that the companies in question do not produce base PET film, but in fact purchase base PET film from different sources and then perform the additional metallisation process. This additional processing step undertaken by them is however not in itself sufficient to justify considering them as Community producers of PET film. Indeed, they are simply processors of a product without changing its basic physical, technical and chemical characteristics

## F. INJURY

### 1. Community consumption

(42) In the absence of any new information, the provisional findings concerning the Community consumption as described in recitals 76 to 79 of the provisional Regulation are confirmed.

### 2. Imports concerned

(a) *Preliminary remark*

(43) Certain exporting producers raised the argument that the imports attributable to exporting producers found not to have dumped should be excluded for the analysis of the injury aspect. However, even if such imports were to be excluded from the analysis, the conclusions as to the existence of material injury caused by dumped imports would remain unchanged. Indeed, the price undercutting would remain significant, as well as the increase in volume and market shares and the remaining imports found to be dumped would still represent more than 13 % of the Community market. The decrease observed in the sales prices would also remain significant.

(b) *Cumulative assessment of the effects of the imports concerned*

(44) Certain Indian exporting producers argued that imports of PET film originating in India should not be cumulated with those originating in Korea in view of the differences existing in the conditions of competition. The claim was based on the grounds that the import volume, the market shares and prices developed differently during the period 1997 to IP.

(45) As regards the conditions of competition between Korean and Indian imports, when taking into account the totality of the period under consideration, i.e. between 1996 and the IP, and not, as suggested, the period 1997 to the IP, the volume of imports, market shares and import prices in fact developed in a similar way. It is also confirmed that import volumes from both countries were substantial during the investigation period. Moreover, significant price undercutting was found for both imports originating in India and Korea, which were sold via the same sales channels and with similar commercial conditions. The argument has therefore to be rejected. Given the above, the findings of recital 85 of the provisional Regulation, setting out that that imports originating the countries concerned should be assessed cumulatively, are hereby confirmed.

(c) *Volume, market shares and prices of the imports concerned*

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

(d) *Price undercutting*

(47) As regards the price undercutting margins, certain Indian exporting producers questioned the fact that the Commission services did not consider, in the calculation of the weighted average export prices, the countervailing duties imposed on imports of PET film originating in India in 1999. They also reiterated their request for a level of trade adjustment, since Indian exporters mostly sell to wholesalers while the Community industry nearly always sells directly to users of PET film.

(48) The calculations of price undercutting margins were revised by adding to the export prices the countervailing duties, where applicable. As regards the level of trade adjustment, the further analysis confirmed firstly, that, as described in recital 93 of the provisional Regulation, the selling price to wholesalers or to users does not depend on the type of customer but rather on the purchased volumes, and secondly, that the two levels of trade are not clearly separated and that there is no clear price difference between them. Moreover, it is confirmed that the Community industry also sells the product concerned to distributors and wholesalers and not only to users, contrary to what was claimed by some interested parties. Several companies were indeed found to be supplied by both exporting producers from the countries concerned and the Community industry.

(49) Before the above background, price undercutting margins were reviewed on the basis of the evidence submitted by interested parties and amended where appropriate. The revised weighted average price undercutting margins found per country, expressed as a percentage of the Community industry prices, are as follows:

— Korea: from 14,9 % to 36,8 %, on weighted average 20,6 %

— India: from 34,5 % to 44,8 %, on weighted average by 37,5 %.

### 3. Situation of the Community industry

(50) Several interested parties questioned the conclusion reached in the provisional Regulation that the Community industry suffered material injury on the grounds that some factors have developed positively between 1996 and the IP (i.e. production capacity, production, sales volume, productivity, stocks and wages).

(51) In this respect, it should be noted that not all the factors enumerated in Article 3(5) of the basic Regulation have to indicate a negative development in order to conclude that the Community industry is suffering material injury. In the current case, the Community industry lost market shares and, due to the price depressing effect of imports from the countries concerned, it had to significantly lower its sales prices, leading to a severe deterioration of its financial situation.

(52) A Korean exporting producer questioned that the Community industry suffered material injury on the grounds that it is viable and competitive, as set in recital 159 of the provisional Regulation and that it still held an important position on the Community market during the IP.

(53) The fact that the Community industry is viable and competitive does not preclude the finding of material injury. Indeed, the finding, that the Community industry is viable and competitive had been made in the context of the Community interest analysis which, *inter alia*, examined the effect of taking or not-taking anti-dumping measures on the various operators in the Community. All this does not invalidate the conclusion that the Community industry suffered material injury as evidenced by a number of factors including the significant loss of market share during the period under consideration. The argument has therefore to be rejected.

(54) A Korean exporting producer alleged that the increase of the production capacity by the Community industry, that took place between 1998 and 1999, is in contradiction with the fact that its investments remained limited during the same period. It should be noted in that respect that investments related to the production capacity increase took place during the years 1997 and 1998, as set out in recital 108 of the provisional Regulation. As however the new capacity installed was only operational in 1998 and 1999, the increase in production capacity and the investments did not take place in the same period.

(55) Certain Indian exporters claimed that limiting the analysis of the Community industry's sales to the domestic sales, in terms of volumes and prices, does not comply with the provision of Article 3(4) of the WTO Anti-dumping Agreements on the grounds that the Agreement refers to total sales, thus including exports.

(56) In this respect, it should be noted that the injury assessment was undertaken in line with the relevant provisions of the basic Regulation and consistent practice of the Community institutions. In addition, it should be noted that Article 3(4), in conjunction with Article 3(1) and (2), of the WTO Anti-dumping Agreement, clearly refers to the evaluation of the impact of dumped imports on prices in the domestic market and on the situation of the domestic industry. It also follows from the purpose of this type of investigation where, *inter alia*, the effect of dumped imports from one or more countries into the Community are at issue (and not the effect of dumped imports into third country markets) that injury of the Community industry must be found to exist on the domestic market only and that the situation with respect to exports or on export markets is therefore irrelevant in the context of the injury assessment. The argument has therefore to be rejected. However, and in line with consistent practice, the Community industry's export performance has been examined in the context of the question of causal link between the dumped imports and the injurious situation, as set in recital 144 of the provisional Regulation.

(57) On the basis of the above, the provisional findings as regards the material injury suffered by the Community industry during the IP are confirmed.

## G. CAUSATION

(58) Some interested parties claimed that the assessment of the causal link was flawed since the deterioration of certain injury factors, i.e. profitability, cash flow, return on investments and ability to raise capital, should be considered as being linked to autonomous cyclical developments and to the massive investments made by the Community industry during the period considered rather than to the impact of the imports concerned.

(59) Firstly, there is no indication that the Community industry suffers from a cyclical downturn. Secondly, the further analysis of the financial situation of the Community industry confirmed that its deterioration was mainly due to the decrease of its unit sales prices. Moreover, since during the whole period under consideration the unit cost of production decreased, the deterioration cannot be attributed to higher cost of production related to the new investments.

(60) In the light of the above and in the absence of any new information, the provisional findings as described in recitals 119 to 123 of the provisional Regulation are confirmed.

## H. COMMUNITY INTEREST

### 1. Unrelated importers and traders

(61) One unrelated importer argued that, contrary to what was set out in recital 188 of the provisional Regulation, the imposition of countervailing duties reduced the availability of Indian PET film on the Community market and that the level of the anti-dumping duties as set out in this Regulation will make it unable to source PET film from its traditional Indian suppliers. It further argued that the PET film produced by the Community industry outside the Community is imported by the Community industry itself, and that, due to this relationship, this would eliminate any other real alternative sources of supply.

(62) In this respect, Eurostat data showed that between the year 1999 (the provisional countervailing duties were imposed in August 1999) and the year 2000, imports from India increased by 11 %. As to the level of the anti-dumping duties proposed, it cannot be excluded that they will result in an increase of the import prices. However, given the different levels of measures proposed, it can be expected at the same time that some of the exporting producers concerned will continue to sell on the Community market, albeit at non-dumped prices. Regarding the existence of alternative sources of supply, it appears that, during the year 1999, the Community industry's purchases of PET film originating in the US and Japan, the two major exporting countries which are not the countries concerned by this proceeding, represented around 35 % of the total imports from these countries. It is therefore confirmed that other alternative sources of supply are available.

### 2. Users of PET film in the Community

(63) It should be noted that out of the 23 users that cooperated at the provisional stage of the proceeding, and purchasing slightly over 40 % of the total imports from the countries concerned, only one expressed its concerns after the imposition of the provisional duties. This low degree of reactions might suggest that the measures would not have such an important impact on the users concerned.

(64) Four other users, which made themselves known after the imposition of the provisional measures, argued that the imposition of duties could limit their choice of suppliers and possibly create a shortage of PET film in the Community market. Those users also claimed that a price increase of PET film has occurred in the Community market since provisional duties were imposed, with a negative effect on their competitiveness on the world market.

(65) It should be recalled in this respect that, as found at the provisional stage, investigated users purchased on average around 58 % of their PET film consumption from the Community industry, around 28 % from the countries concerned and around 14 % in other third countries. Furthermore, a significant number of actors will remain active on the Community market, i.e. the Community industry and other Community producers, an economic operator in the Community, at least some of exporting producers in the countries concerned and in other third countries. Therefore, even if it cannot be excluded that some exporting producers in the countries concerned will decrease their level of exports to the Community further to the anti-dumping measures imposed, it is unlikely that a shortage on the Community market will occur. On the other hand, should measures not be imposed, the possible disappearance of the Community industry's manufacturing activities for PET film would, as set out in recital 185 of the provisional Regulation, create severe supply constraints.

(66) As to the level of prices, it should be noted that users have until recently benefited from artificially low prices due to unfair trade practices. Sales prices in the Community market decreased by an average of 40 % between 1996 and the IP. Even if a price increase for PET film in the Community cannot be excluded, it is expected that it will be moderate. This is reinforced in particular by the level of duties imposed for certain exporting producers concerned and the presence of a certain number of actors, which will compete with each other on the Community market.

(67) Moreover, the further analysis and verification visits to users confirmed that PET film, as raw material for different finished products, is frequently not a significant cost item, that products incorporating PET film only account for a small proportion of their total production and, finally, that users also source their products in the Community and other third countries not concerned by the proceeding. It can however not be excluded that, for certain users for which PET film represents a crucial raw material, the anti-dumping duties will have an important impact on the total cost of production. Nevertheless, this does not alter the average overall results of the investigation. The finding of recital 183 of the provisional Regulation that the imposition of duties will probably not have, on average, a significant impact on the users of PET film, is therefore confirmed.

### 3. Conclusion on the Community interest

(68) In the absence of any new information regarding the Community interest, the findings as described in recitals 156 to 191 of the provisional Regulation are confirmed.

## I. DEFINITIVE ANTI-DUMPING MEASURES

### 1. Injury elimination level

(69) Based on the methodology explained in recitals 193 to 195 of the provisional Regulation, and taking into account the arguments and modifications mentioned above in relation to price undercutting calculations, an injury elimination level has been established for the purposes of establishing the level of measures to be definitively imposed. However, regarding the non consideration of the countervailing duties, it should be noted that, as explained in recital 198 of the provisional Regulation, export subsidies are deducted from the proposed anti-dumping duties pursuant to Article 14(1) of the basic Regulation after having applied the lesser duty rule, and there is accordingly no need to consider them at the level of the injury margin calculation.

(70) Certain Indian exporting producers argued that the injury margins have been incorrectly calculated. It has been claimed that the injury margin should be expressed as a percentage of the total cif turnover and not be limited to the cif turnover of the comparable models. They based their arguments on the conclusions of the WTO Appellate body in the bed linen case [1].

(71) Firstly, it should be noted that these conclusions have been drawn in the context of dumping calculations and are not relevant in the context of injury calculations. Secondly, it is consistent practice to express the injury amount as a percentage of the cif turnover of those models which were used in order to establish the said injury amount. The approach proposed by the Indian exporting producers in question would in fact result in the use of figures which are not comparable. For all these reasons, the claim had to be rejected.

(72) The Community industry submitted that a profit margin of 13 % on turnover would be more appropriate than the 6 % profit margin that was used for the provisional injury margin calculation. It argued that a company's own capital resources should at least earn a return on net assets which equals bank loan rates. It was further claimed that this level of profit was reached in 1996, when conditions of fair competition prevailed.

(73) In this respect, it should be noted that the profit margin that is to be used for the determination of the non injurious price should be understood as the profitability level that could reasonably be reached in the absence of injurious dumping. However, it is not important in this case to define a conclusive percentage given that the injury margins are already on the basis of a 6 % profit margin higher than the dumping margins. The argument has therefore no practical impact.

(74) Given the above, and in the absence of new evidence, the methodology used for establishing the injury elimination level as described in recitals 193 to 195 of the provisional Regulation is confirmed.

### 2. Form and level of the duties

(75) The investigation showed that the imports of the product have also taken place under CN codes other than those covered by this proceeding, i.e. CN codes ex 3920 62 19 and 3920 62 90. The attention of the customs authorities is accordingly drawn to this misclassification.

(76) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margins found, since they were in all cases lower than the injury margins.

(77) As regards the residual duty to be applied to the non cooperating exporting producers of the respective countries, as the level of cooperation was considered significant in both countries, for India the residual duty should be fixed on the basis of the highest duty rate established for the sampled cooperating producers. For Korea, as only one of the three sampled exporting producers was found to have practised dumping the residual duty should be set, in application of the lesser duty rule, at the weighted average dumping margin of a representative number of models with the highest dumping margins exported by that exporting producer.

(78) As recalled in recitals 50 and 198 of the provisional Regulation, Article 14(1) of the basic Regulation makes it mandatory that no product be subject to both anti-dumping and countervailing duties for the purpose of dealing with the same situation arising from dumping or export subsidisation. In this context, the fact that the countervailing duties were established on a different IP and that the amount of export subsidy in the anti-subsidy IP and the anti-dumping IP are different, is irrelevant. The rationale behind Article 14(1) of the basic Regulation is indeed to avoid any duplication of duties intended to counteract the same situation arising from dumping or export subsidisation, and therefore, countervailing duties resulting from export subsidies have to be deducted regardless of the investigation period on the basis of which they were determined. It is also noted that no request for a review of the countervailing measures has been received. Therefore, the provisional findings as described in recitals 50 and 198 of the provisional Regulation are confirmed.

[1] European Communities — Anti-dumping duties on imports of cotton-type bed linen from India, WT/DS/AB/R, 1.3.2001.

(79) Consequently, as regards anti-dumping duties for India, the countervailing duty in force that corresponds to export subsidies was deducted from the anti-dumping duty to be applied. For any non-cooperating companies, the deduction corresponds to the export subsidy of the cooperating company on the basis of which the residual dumping margin (and thus the residual duty) was established.

(80) On the basis of the above, and taking into account the findings of the previous anti-subsidy investigation, the proposed definitive duty rates, expressed on the cif Community border price, customs duty unpaid, are as follows:

**India**

| Company | Export subsidy margin | Total subsidy margin | Dumping margin | CVD duty | AD duty | Total duty rate |
|---|---|---|---|---|---|---|
| Ester Industries Ltd | 12,0 % | 12,0 % | 64,5 % | 12,0 % | 52,5 % | 64,5 % |
| Flex Industries Ltd | 12,5 % | 12,5 % | 42,9 % | 12,5 % | 30,4 % | 42,9 % |
| Garware Polyester Ltd | 2,7 % | 3,8 % | 65,3 % | 3,8 % | 62,6 % | 66,4 % |
| Jindal Polyester Ltd | 7,0 % | 7,0 % | 0 % | 7,0 % | 0 % | 7,0 % |
| MTZ Polyesters Ltd | 8,7 % | 8,7 % | 57,7 % | 8,7 % | 49,0 % | 57,7 % |
| Polyplex Corp. Ltd | 19,1 % | 19,1 % | 57,7 % | 19,1 % | 38,6 % | 57,7 % |
| All other companies | 12,0 % (1) | 19,1 % | 65,3 % | 19,1 % | 53,3 % | 72,4 % |

(1) For the purpose of calculating the final anti-dumping duty, the export subsidy margin of the company on the basis of which the dumping margin for the non-cooperating companies is based was taken into consideration.

**Korea**

| Company | AD duty |
|---|---|
| HS Industries | 7,5 % |
| Hyosung Corp | 7,5 % |
| Kohap Corp. | 7,5 % |
| Kolon Industries Limited | 0,0 % |
| SKC Industries Limited | 7,5 % |
| Toray Saehan Industries | 0,0 % |
| All other companies | 13,4 % |

(81) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(82) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales

entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission will, if appropriate, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

### 3. Collection of provisional duties

(83) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected at the rate of the duty definitively imposed. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected.

### 4. Undertakings

(84) Subsequent to the imposition of provisional anti-dumping measures, a number of exporting producers in India offered price undertakings in accordance with Article 8(1) of the basic Regulation. By doing so, they have agreed to sell the product concerned at or above price levels which eliminate the injurious effects of dumping. The companies will also provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertakings can be monitored effectively by the Commission. Furthermore, the sales structure of these exporting producers is such that the Commission considers that the risk of circumventing the agreed undertaking is limited.

(85) In view of this, the offers of undertakings are therefore considered acceptable and the companies concerned have been informed of the essential facts, considerations and obligations upon which acceptance is based.

(86) To further enable the Commission to effectively monitor the compliance of the companies with their undertakings, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty shall be conditional on the presentation of a commercial invoice containing at least the elements listed in the Annex. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that shipments correspond to the commercial documents. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty will instead be payable.

(87) It should be noted that in the event of a breach or withdrawal of the undertaking or a suspected breach, an anti-dumping duty may be imposed, pursuant to Article 8(9) and (10) of the basic Regulation.

### 5. Duration of measures

(88) The anti-dumping measures would be in force until 2006, whereas the existing countervailing duties against India are bound to expire in 2004. In the event of the expiry (or change) of the countervailing measures, the level of the anti-dumping duties should be revised, since they currently take account of the fact that countervailing duties are already in place,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of polyethylene terephthalate ('PET') film falling within CN codes ex 3920 62 19 and ex 3920 62 90 (TARIC codes: 3920 62 19*10, 3920 62 19*15, 3920 62 19*25, 3920 62 19*30, 3920 62 19*35, 3920 62 19*40, 3920 62 19*45, 3920 62 19*50, 3920 62 19*55, 3920 62 19*60, 3920 62 19*62, 3920 62 19*64, 3920 62 19*65, 3920 62 19*70, 3920 62 19*75, 3920 62 19*80, 3920 62 19*81, 3920 62 19*85, 3920 62 19*87, 3920 62 19*89, 3920 62 19*91, 3920 62 90*30 and 3920 62 90*91) and originating in India and the Republic of Korea.

[1] European Commission
DG Trade
Directorate B
TERV 0/10
Rue de la Loi/Wetstraat 20
B-1049 Brussels/Belgium.

*ANNEX*

**Necessary information for commercial invoices accompanying sales made subject to an undertaking**

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'
2. The name of the company mentioned in Article 2(1) which issues the commercial invoice
3. The commercial invoice number
4. The date of issue of the commercial invoice
5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier
6. The exact description of the goods, including:
   - the product code number (PCN),
   - the technical specification of the goods including the thickness (µm), whether or not the goods have had coating/surface treatment after the process (e.g. corona, chemical, metallisation or no coating or surface treatment after the process), the mechanical properties (e.g. balanced or tensilised), clarity/opacity (e.g. clear film with haze < 2 %, hazy film with haze between 2 and 40 %, white film with haze > 40 %, coloured),
   - the company product code number (CPC) (if applicable),
   - CN code,
   - quantity (to be given in kg).
7. The description of the terms of the sale, including:
   - price per kg,
   - the applicable payment terms,
   - the applicable delivery terms,
   - total discounts and rebates.
8. Name of the company acting as an importer to which the invoice is issued directly by the company.
9. The name of the official of the company that has issued the invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company], and accepted by the European Commission through Decision 2001/645/EC. I declare that the information provided in this invoice is complete and correct.'

I

*(Acts whose publication is obligatory)*

# COUNCIL REGULATION (EC) No 2093/2002

## of 26 November 2002

## imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyester textured filament yarn (PTY) originating in India

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

### A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 1412/2002 [2] (the provisional Regulation) imposed a provisional anti-dumping duty on imports into the Community of polyester textured filament yarn (hereinafter PTY) originating in India.

(2) Simultaneously, the Commission also imposed, by Regulation (EC) No 1411/2002 [3], a provisional countervailing duty on the imports of PTY originating in India.

(3) It is recalled that the investigation period of dumping and injury covered the period from 1 October 2000 to 30 September 2001 (IP). A clerical error was found in the provisional Regulation, and it is confirmed that, as showed in the various tables below, the examination of trends relevant for the injury analysis covered the period from 1 January 1996 (and not 1 October 1997 as stated in the provisional Regulation) to the end of the IP (period under consideration). The choice of such period was made in view of analysing the overall evolution of the economic situation of the Community industry considering the impact of the imposition of anti-dumping measures in 1996 against Indonesia, Malaysia, Taiwan and Thailand.

### B. SUBSEQUENT PROCEDURE

(4) Following the imposition of a provisional anti-dumping duty on imports of PTY originating in India, some interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.

(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(6) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
[2] OJ L 205, 2.8.2002, p. 50.
[3] OJ L 205, 2.8.2002, p. 26.

(7) In addition to the verification visits that were already carried out by the Commission at the provisional stage, the company Unifi Textured yarns Ltd, a Community producer of PTY located in Ireland, was also visited after the imposition of the provisional measures.

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

## C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(9) The Indian exporting producers claimed that the Commission, in its analysis, did not take into consideration the existence of three different market segments for PTY in the Community, which is allegedly evidenced by the significantly different levels of the average sales prices for PTY originating in India, in other third countries and PTY produced by the Community industry. This was, according to these exporting producers, confirmed by the fact that the Community industry's average price during the IP was more than 50 % higher than the Indian import price, which allegedly gives an indication that PTY produced in the Community is not alike in all respects to PTY originating in India.

(10) It should be recalled that it was provisionally established that no significant differences exist in the basic physical characteristics and uses of the different types and qualities of PTY, and that, under these circumstances, all types of PTY should be considered as one single product for the purposes of this proceeding. It was also provisionally concluded that the PTY produced in India and exported to the Community shares similar basic physical characteristics and uses as compared with that manufactured by the Community producers, which should therefore be considered as a like product within the meaning of Article 1(4) of Regulation (EC) No 384/96 (the basic Regulation). In this respect, differences in sales prices cannot by themselves be considered a criterion for the determination of the like product.

(11) In addition, as concerns the argument of market segmentation, no evidence was brought forward or found for a clear dividing line based on objective criteria which could have supported the conclusion that imports from India and the product produced by the Community industry are different products. The sales price as such is not considered a sufficient element for establishing market segments, particularly in view of the dumping and subsidisation practices. As to the difference in product types found, which indeed involve different pricing elements, this is taken into account in the undercutting and injury elimination level calculations as explained below under recital 48 of this Regulation.

(12) For the above reasons, the argument was rejected and the conclusions that PTY should be considered one single product and the overall analysis be made at this level were accordingly confirmed.

(13) In the absence of any further comments, the definition of the product under consideration and of the like product as set out in recitals 11 to 13 of the provisional Regulation are confirmed.

## D. SAMPLING

(14) No comments concerning the sampling of Indian exporting producers were received and, therefore, the conclusions set out in recitals 14 to 23 of the provisional Regulation are hereby confirmed.

## E. DUMPING

### 1. Normal value

(15) Following the adoption of provisional measures, the three investigated Indian exporting producers contested, for different reasons, the findings for the determination of cost of production and selling, general and administrative (SG&A) expenses used in the ordinary course of trade test and for the calculation of normal value.

(16) One exporting producer alleged that certain clerical errors had incurred concerning the consumption ratio and occasional double-counting of individual raw materials which affected the cost of production of the product concerned.

(17) This claim was partly rejected in view of the failure of the exporting producer to submit the relevant information for certain raw materials in good time in order to be verified. Some information was only received following the verification visit. Furthermore and in any event, the Commission based its determination on information submitted prior to the on-spot verification.

(18) The same exporting producer argued that it had duly provided the SG&A details for the product concerned but still the Commission overstated these expenses because certain 'establishment expenses' (i.e. administrative expenses), as mentioned in the company's Annual Report, and included in the SG&A, in fact concerned the manufacturing expenses. Also the exporting producer claimed that the foreign exchange profits have been disregarded in the computation of the SG&A expenses.

(19) Article 2(5) of the basic Regulation provides that '(...) Consideration shall be given to evidence submitted on the proper allocation of costs, provided that it is shown that such allocations have been historically utilised.' For the computation of SG&A expenses, the Commission based itself on the audited information included in the Annual Report of the company since the latter had only partially completed the relevant parts of the questionnaire. Therefore, no information was available which could allow the consideration of a different allocation. The establishment expenses in the Annual Report formed part of an account grouping which was distinct and separate from the manufacturing expenses. Therefore, it was concluded that all these establishment expenses have not been incorporated in the cost of manufacturing reported by the company and that they should be incorporated in the SG&A expenses. As far as the foreign exchange profits are concerned, this amount was included in the manufacturing expenses of the Annual Report of the company. It was, therefore, concluded that this amount was already incorporated in the cost of manufacturing reported by the company. Consequently, this claim was rejected and the original calculation with regard to this point is hereby confirmed.

(20) Another exporting producer requested a different method of allocation for the financing costs included in the SG&A expenses. The exporting producer argued that while for working capital turnover was the appropriate method of allocation, in the case of term loans which were taken as an investment for production facilities, the most appropriate method for allocation would be the production of the respective products. Furthermore, it argued that in view of the chain of successive products produced in the same facilities, due account should be taken to avoid double-counting.

(21) The first claim, as to the method of calculation, was accepted because it was shown that it was indeed more appropriate for these costs. The SG&A expenses were therefore revised before being used in the ordinary course of trade test and in the construction of normal value. As to the second claim, it had to be rejected since the information verified during the on-spot verification did not point to any double-counting and therefore such a claim could not be substantiated.

(22) All exporting producers argued that it was not proper to include in domestic selling expenses an amount for ocean freight because no such freight expenses were incurred.

(23) This claim was accepted and the SG&A expenses were revised before being used in the ordinary course of trade test and in the construction of normal value.

(24) Another exporting producer claimed: (1) that the Commission had double-counted and thereby *pro rata* increased financial costs within the SG&A expenses; (2) that the Commission departed from the product or domestic market-wide SG&A expenses allocation and resorted to division-wide SG&A expenses, thus including products other than the product concerned in the allocation; (3) that the

Commission departed from the IP and resorted to the last financial year ending within the IP both for the cost of manufacturing and the SG&A expenses calculation; and (4) that the Commission grouped certain product types and thus departed from its own product control numbers used to ensure a fair comparison.

(25) As far as the first point is concerned, the claim was accepted and therefore the SG&A expenses regarding these costs were modified. As far as the second point is concerned, the provision of Article 2(5) of the basic Regulation as mentioned in recital 19 is again recalled. During the on-spot verification no records were brought to the attention of the Commission demonstrating that the company had historically utilised a product or market-wide allocation of costs. Therefore, this claim was rejected and the division-wide allocation of SG&A expenses was confirmed. As for the third point and with regard to the SG&A expenses, the claim was partly accepted and the Commission having received audited information concerning the most recent financial year which comprised the second half of the IP proceeded to a new calculation of these expenses incorporating the latest relevant information available. As far as the cost of manufacturing is concerned, this claim was rejected because the Commission's calculation was based on the total production of the intermediate product while the exporting producer had provided data regarding only a part of the total production. Therefore, it was considered that the Commission's calculation derived from a more representative basis encompassing all production. As to the fourth point, the claim was rejected because no grouping of different product types outside the scope of the product control numbers used to ensure a fair comparison had been carried out by the Commission. Only groupings of certain types of an intermediate product used for the production of the product under investigation were made in accordance with a table provided by the exporting producer itself in order to calculate the cost of production used in the ordinary course of trade test and the construction of normal value.

## 2. **Export price**

(26) No claims were made concerning the determination of the export price. On this basis, the findings set in recital 32 of the provisional Regulation are confirmed.

## 3. **Comparison**

(i) *Duty drawback under Duty Entitlement Passbook (DEPB)*

(27) All Indian exporting producers reiterated their claim that the adjustment requested pursuant to Article 2(10)(b) or alternatively under Article 2(10)(k) of the basic Regulation on the normal value for the benefits received under the DEPB scheme on a post-export basis should have been granted (recital 34 of the provisional Regulation).

(28) It should be borne in mind that Article 2(10) chapeau refers to '... due allowance, [t]o be made in each case, on its merits, for differences in factors which are claimed, and demonstrated, to affect price comparability ...'. Pursuant to Article 2(10)(b) of the basic Regulation an adjustment is granted provided two conditions are met cumulatively: first, import charges are borne by the like product and by materials physically incorporated therein when intended for consumption in the exporting country and second, these import charges are refunded or not collected when the product is exported to the Community. These conditions provide the basis on which any difference affecting price comparability shall be established for the factors in question. As at the provisional stage, no conclusive evidence was found with regard to the first requirement. Consequently, an adjustment for duty drawback could not be granted. Pursuant to Article 2(10)(k) 'an adjustment may also be made for differences in other factors ... if it is demonstrated that they affect price comparability as required under this paragraph, in particular that customers consistently pay different prices on the domestic market because of the difference in such factors.' In the current case, none of the above-mentioned requirements were demonstrated since the exporting producers did not produce any conclusive evidence that would substantiate their claim. Therefore, an adjustment for differences in other factors could not be granted either and the findings set out in recital 34 of the provisional Regulation are hereby confirmed.

(ii) *Duty drawback under Advance License Scheme (ALS)*

(29) Two Indian exporting producers reiterated their claim that the adjustment requested pursuant to Article 2(10)(b) or alternatively under Article 2(10)(k) of the basic Regulation on the normal value for the benefits received under the ALS scheme should have been granted (recital 34 of the provisional Regulation). Furthermore, both exporting producers argued that in the context of the parallel anti-subsidy proceeding, the Commission had investigated in greater detail and accepted the said scheme as non-countervailable. Therefore, and in order to remedy this alleged contradiction between the two proceedings, the said allowance should have been granted. The exporting producers additionally argued that the requirement to demonstrate that the input raw materials for production in the exporting country contain a duty component imposed an undue burden of proof.

(30) It is recalled that each anti-dumping proceeding is assessed on its own merits and is examined on the basis of its own factual and legal circumstances which may differ from all other proceedings. Therefore, the argument regarding the parallelism between two different proceedings was considered irrelevant. In any event, in recital 66 of Commission's Regulation (EC) No 1411/2002, it was stated that '... both schemes (Advance Licence and Advance Licence for intermediate supply) can be considered countervailable. However, the investigated companies were able to demonstrate that the quantities of imported materials, which were exempted from import duties, did not exceed the quantities used for the exported goods.' This quotation, however, only set out a general principle. In this respect, the requirements of Article 2(10) chapeau, 2(10)(b) and 2(10)(k) of the basic Regulation as stated in recital 28 are recalled. Again as in the case of the provisional Regulation, the requirements of the basic Regulation were not demonstrated since the exporting producers did not produce any conclusive evidence that would substantiate the full amounts of their respective claims. It is also noted that to require the exporting producers to demonstrate that the input raw materials for production in the exporting country contain a duty component did not impose an undue burden of proof. At the time of adoption of the provisional measures due allowance was granted for such charges when substantiated by the accounting records of the exporting producers; otherwise the claims were rejected. This indicated that the companies were in a position to demonstrate as requested in the questionnaire the existence of any import charges borne by the like product and by materials physically incorporated therein, when indented for consumption in India. Consequently and for the reasons stated in recital 28, an adjustment for duty drawback could not be granted and the findings set out in recital 34 of the provisional Regulation are confirmed.

(iii) *Excise duty*

(31) One exporting producer reiterated its claim for an adjustment pursuant to Article 2(10)(b) for an amount corresponding to an indirect tax borne by the like product when intended for consumption in India and refunded in respect of the product exported to the Community.

(32) At the time of the adoption of the provisional measures, it was found that the company was indeed refunded excise duty upon export of the product concerned. However, since the company had failed to demonstrate that the full amount of this indirect tax was refunded, the claim had been adjusted downwards. Following the adoption of the provisional measures, the exporting producer in question submitted, as requested by the Commission, further supplementary information and documentation to substantiate the claim which was verified. In the context of the present case, this information was considered conclusive and therefore the full amount of the claim was granted. Consequently, the findings set out in recital 35 of the provisional Regulation were modified.

(iv) *Sales tax*

(33) Another exporting producer reiterated its claim that as a result of the Indian Government's policy to encourage the setting up of plants in less developed areas, companies were exempted from the payment of sales tax and requested an adjustment to be granted to that effect. The information submitted and the on-spot verification showed that all domestic sales invoices stated that the exporting producer in question was exempt from the payment of this tax, which was not recovered

separately in the invoices. Therefore, it was not demonstrated that the company collected on domestic sales and deposited with the Government treasury the said tax and no such sales tax was 'borne by the like product' sold in the domestic market. Consequently, the findings set out in recital 36 of the provisional Regulation are confirmed.

(v) *Level of trade*

(34) One Indian exporting producer reiterated its claim for an adjustment for differences in the level of trade between sales of the product concerned on the domestic and export markets (recital 37 of the provisional Regulation).

(35) However, the information submitted in the questionnaire reply and during the on-spot verification visit indicated that there were no consistent and distinct differences in functions and prices for the different levels of trade in the domestic market of India. No new information was submitted. Consequently the findings set out in recital 37 of the provisional Regulation are confirmed.

### 4. **Dumping margin**

(36) In the absence of any comments or new information, the methodology set out in recitals 39 to 44 of the provisional Regulation is confirmed.

(37) The comparison of the revised weighted average normal value with the weighted average export price by product type on an ex-factory basis showed the existence of dumping for all investigated exporting producers. The weighted average dumping margin calculated for the cooperating companies not included in the sample was also revised pursuant to Article 9(6) of the basic Regulation. The revised calculations have also affected the residual dumping margin. In view of the high level of cooperation the residual dumping margin is set at the level of the highest dumping margin established for a cooperating exporting producer.

(38) The definitive dumping margins as a percentage of the cif import price duty unpaid are as follows:

| | |
|---|---|
| Indo Rama Synthetics Limited | 10,7 %, |
| Reliance Industries Limited | 6,1 %, |
| Welspum Syntex Limited | 17,0 %, |
| Cooperating exporting producers not in the sample | 8,9 %, |
| Residual dumping margin | 17,0 %. |

## F. COMMUNITY INDUSTRY

(39) Shortly after the imposition of the provisional measures, Dupont SA, one of the cooperating Community producers included in the definition of the Community industry at the provisional stage, definitively ceased the production of PTY in the Community, allegedly because of the low price imports on the Community market. In view of the definitive nature of this event, it was no longer considered appropriate to treat Dupont SA as being part of the Community industry. Consequently, for the determination of the definitive findings, it was considered if the Community industry should be defined as consisting of two remaining cooperating Community producers, namely UNIFI Textured yarns Ltd and Sinterama Spa.

(40) Therefore it was verified whether these two companies still accounted for a major proportion of the Community production as set out by Article 5(4) of the basic Regulation. It was found that the cumulated production of the two remaining cooperating Community producers represented 30 % of the total Community production of the like product in the Community during the IP. This is more than the threshold of 25 % set out in the above mentioned article. Consequently these two companies constitute the Community industry in full accordance with Article 4(1) of the basic Regulation.

(41) The Indian exporting producers argued that the provisional injury analysis was based on the situation of a minor proportion of Community producers only. They based their allegation on the fact that the complainant Community producers that actually cooperated in the investigation did not represent a major proportion of Community production.

(42) That argument is incorrect and was rejected since the two remaining companies represent more than 25 % of the overall Community production. It is therefore confirmed that these two cooperating Community producers constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

## G. INJURY

### 1. Community consumption

(43) In the absence of any new information, the provisional findings concerning Community consumption as described in recitals 54 to 55 of the provisional Regulation are confirmed. Throughout the period under consideration Community consumption developed as follows:

| | 1996 | 1997 | 1998 | 1999 | 2000 | IP |
|---|---|---|---|---|---|---|
| EU consumption | 285 640 | 341 660 | 369 031 | 353 376 | 360 176 | 339 352 |
| 1996 = 100 | 100 | 120 | 129 | 124 | 126 | 119 |

### 2. Imports from India

| | 1996 | 1997 | 1998 | 1999 | 2000 | IP |
|---|---|---|---|---|---|---|
| Indian imports | 7 583 | 16 992 | 18 064 | 11 824 | 18 752 | 22 683 |
| 1996 = 100 | 100 | 224 | 238 | 156 | 247 | 299 |
| Market shares | 2,7 % | 5,0 % | 4,9 % | 3,3 % | 5,2 % | 6,7 % |
| Prices | 1,9 | 2,0 | 1,7 | 1,4 | 1,8 | 1,7 |
| 1996 = 1997 | 100 | 107 | 91 | 75 | 95 | 93 |

(44) In absolute terms, the Indian import volume almost tripled during the period under consideration from 7 583 tonnes in 1996 to 22 683 tonnes during the IP. It should be noted that in the period 1999 to IP, at a time when the overall Community consumption decreased, the Indian import volume almost doubled.

(45) The Indian imports increased their share of the Community market from 2,7 % in 1996 to 6,7 % during the IP. In parallel to the rapid increase of the import volumes between 1999 and the IP, their market share rose from 3,3 % to 6,7 %, while overall Community consumption decreased.

(46) As far as the average import price is concerned, it first increased in the period 1996 to 1997 and then subsequently decreased. The lowest price level was reached in the year 1999.

(47) In the absence of any comments concerning the volume and price of imports from India, the provisional findings as described in recitals 56 to 58 of the provisional Regulation are confirmed.

(48) Concerning price undercutting, in view of the above mentioned changes regarding the constitution of the Community industry, the calculations have been revised. The methodology for the calculation of the undercutting margins, as explained under recitals 59 and 61 of the provisional Regulation, remained however unchanged. It is recalled that, for the purposes of analysing price undercutting, prices for the different types of PTY originating in India were compared to prices for similar types produced and sold by the Community Industry. A comparison of overall average prices, as suggested by the Indian exporting producers, would not take into consideration the existence of the various product types and lead to misleading results.

(49) On this basis, the revised price undercutting margins, expressed as a percentage of the Community industry's prices, ranged between 23 % and 28 % for the exporting producers who cooperated in the investigation.

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

(50) Following the abovementioned exclusion of one cooperating Community producer from the definition of the Community industry, the provisionally established injury indicators have been revised accordingly. The data below show the evolution of the injury indicators during the period under consideration pertaining to the two remaining cooperating Community producers. For confidentiality reasons, since the Community industry only consists of two Community producers, the figures have been indexed.

*Production, production capacity and capacity utilisation (1996 = 100)*

| | 1996 | 1997 | 1998 | 1999 | 2000 | IP |
|---|---|---|---|---|---|---|
| Production volume | 100 | 112 | 117 | 112 | 122 | 118 |
| Production capacity | 100 | 110 | 116 | 118 | 130 | 135 |
| Capacity utilisation | 100 | 101 | 101 | 95 | 94 | 88 |

(51) The Community industry's production volume increased by 18 % during the period under consideration. It should be noted that the major increase took place between the years 1996 and 1998. Thereafter the production volume followed an unsteady curve and reached, in the IP, a level comparable to the level it reached in 1998.

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

(53) The increase of the production capacity developed in two steps. The first increase took place between 1996 and 1998, i.e. an increase of 16 %. It is noted that the Community industry production volume also increased to a comparable extent during that period, resulting in a stable and high level of capacity utilisation. The second increase occurred between 1999 and the end of the IP, when production capacity rose by around 14 %. During this period, the production level remained relatively stable, which explains the decrease of the capacity utilisation rate.

*Stocks (1996 = 100)*

| | 1996 | 1997 | 1998 | 1999 | 2000 | IP |
|---|---|---|---|---|---|---|
| Stocks | 100 | 62 | 10 | 5 | 25 | 72 |

(54) The decrease of the level of stocks in the period 1996 to 1999 is explained by a significant increase of sales volume, namely as compared to the production volume during the same period. Thereafter, the level of stocks increased due to the significant decrease of sales volume while production slightly increased.

*Sales volume, market share and growth (1996 =100)*

| | 1996 | 1997 | 1998 | 1999 | 2000 | IP |
|---|---|---|---|---|---|---|
| Sales volume | 100 | 116 | 121 | 116 | 116 | 106 |
| Market shares | 100 | 98 | 94 | 94 | 92 | 89 |

(55) The Community industry's sales volume increased by 6 % during the period under consideration. It reached a peak during the year 1998 (an increase of 21 % as compared to 1996) and then it decreased by 13 % in the subsequent period.

(56) During the period 1996 to 1998, the Community industry's sales volume increased less significantly as compared to the evolution of the overall consumption in the Community. Subsequently, its decrease was more marked than the decrease of the overall demand for PTY observed in the Community between 1998 and the IP. This explains the fact that market shares constantly decreased.

(57) The Indian exporting producers claimed that the Commission should have taken into account the market share evolution of all Community producers during the period under consideration, and not only the market share evolution of the Community industry. This would have shown an overall increase in market share.

(58) It should be noted that according to Article 3(1) of the basic Regulation, the determination of the injury shall be taken to mean material injury to the Community industry. Therefore, the determination of injury is limited to the overall economic situation of the cooperating Community producers constituting the Community industry as defined in recital 42. Besides this, the table in recital 86 shows that the market share of the other Community producers also decreased, to a significant extent, during the period under consideration. In fact, the role of the other Community producers has been evaluated in the context of the question of causation. The argument was therefore rejected.

*Sales price (1996 = 100)*

| | 1996 | 1997 | 1998 | 1999 | 2000 | IP |
|---|---|---|---|---|---|---|
| Average sales price | 100 | 100 | 100 | 93 | 90 | 95 |

(59) The average Community industry sales price remained stable between 1996 and 1998 and decreased by 5 % during the subsequent period. It is recalled that such a comparison of prices for comparable product types sold in the Community market during the IP established margins of undercutting of 23 % to 28 %.

*Profitability (1996 = 100)*

| | 1996 | 1997 | 1998 | 1999 | 2000 | IP |
|---|---|---|---|---|---|---|
| Profitability | 100 | 125 | 106 | 40 | - 223 | - 254 |

(60) The Community industry's profitability expressed in terms of return on net sales in the Community market fell sharply over the period under consideration from a positive level in 1996 to a significant negative level during the IP.

*Investments and ability to raise capital (1996 = 100)*

| | 1996 | 1997 | 1998 | 1999 | 2000 | IP |
|---|---|---|---|---|---|---|
| Investments | 100 | 59 | 183 | 90 | 69 | 18 |

(61) The level of the investments was especially high in the years 1996 and 1998, and is to be related to the increase of production capacity. During the IP, the investments were extremely limited in comparison to these years.

(62) The Community industry's ability to raise capital, either from external providers of finance or parent companies, was not seriously affected at the beginning of the period under consideration. However, having regard to the level of losses in the IP, the ability to raise capital was seriously jeopardised in the IP.

*Return on investments (1996 = 100)*

| | 1996 | 1997 | 1998 | 1999 | 2000 | IP |
|---|---|---|---|---|---|---|
| Return on assets | 100 | 170 | 130 | 25 | - 5 | - 45 |

(63) The return on net assets (expressing the profitability as a percentage of the total assets of the Community industry) was considered in this case an adequate indicator.

(64) The evolution of the return on net assets was consistent with the profitability figures and showed a clear deterioration of the financial situation of the Community industry, especially subsequently to the year 1998.

(65) The Indian exporting producers questioned the level of the return on assets on the basis of the respective price development of PTY and of the main raw material used to produce PTY (namely POY). It was argued that the average PTY sales price increased more than the purchase price of POY and should therefore result in a positive development of the return on assets.

(66) It should firstly be noted that in the period 1999 to IP the average price of PTY and POY developed similarly. Secondly, consideration should be taken of the other elements of cost, i.e. other materials used as well as the cost of manufacturing. All these elements have been verified and taken into account for the establishment of the profitability and the return on investments in the period under consideration. The evolution of the value of the assets should also be considered in this respect. The argument was therefore rejected.

*Cash flow (1996 = 100)*

| | 1996 | 1997 | 1998 | 1999 | 2000 | IP |
|---|---|---|---|---|---|---|
| Cash flow | 100 | 163 | 67 | 195 | 72 | 43 |

(67) The figures concerning the cash-flow confirmed the deterioration of the financial situation of the Community industry. It however remained positive throughout the period under consideration and reached a peak in 1999. This peak mainly relates to the cash inflows in 1999 of the significant number of sales transactions recorded in the year 1998 which were actually cashed in 1999.

*Employment, wages and productivity (1996 = 100)*

| | 1996 | 1997 | 1998 | 1999 | 2000 | IP |
|---|---|---|---|---|---|---|
| Employees | 100 | 106 | 120 | 129 | 131 | 123 |
| Wages | 100 | 117 | 125 | 142 | 141 | 145 |
| Productivity | 100 | 105 | 98 | 87 | 93 | 95 |

(68) The number of employees increased by 23 % over the period under consideration. Employment costs increased by 45 % over the same period.

(69) Productivity decreased by 5 % during the period under consideration.

*Recovery from past dumping*

(70) In the period 1996 to 1998, the financial results of the Community industry were satisfactory showing that it had, at least partially, recovered from the impact of the dumped imports originating in third countries and for which anti-dumping measures have been imposed in 1996. Thereafter, between 1999 and the IP, in view of the increase of Indian dumped imports, the situation of the Community industry became precarious again.

*Actual margins of dumping*

(71) The definitive margins of dumping are clearly significant. Given the volume and the price of the dumped imports, the impact of these margins of dumping cannot be considered negligible.

### 4. **Conclusion on injury**

(72) The provisional conclusion that the Community industry suffered material injury during the IP within the meaning of Article 3 of the basic Regulation is hereby confirmed. The precarious situation of the Community industry became apparent in the period subsequent to the year 1998. Indeed, between 1996 and 1998 the Community industry production volume increased (+ 17 %) and capacity utilisation rate was high, sales volume also increased (+ 21 %) while sales prices remained stable and the industry was still profitable (in terms of return on net turnover, return on total assets and cash flow position). Consequently the Community industry was in a position to increase its investments, number of employees and the cash flow remained favourable during this period. This positive development is explained by the combined positive effect of the introduction of anti-dumping measures against Indonesia, Thailand, Taiwan and Malaysia, restoring fair trade on the Community market, and by the expansion of the Community consumption of PTY.

(73) After the year 1998, the situation of the Community industry started to significantly deteriorate. Even if the production volume remained stable, the production capacity utilisation decreased by seven percentage points, the sales volume decreased by 13 %, while sales prices also decreased by 5 %. Consequently the Community industry started to incur significant losses and the level of investments was also affected.

(74) The Indian exporting producers argued that some of the above detailed injury indicators developed positively during the period under consideration and accordingly did not point towards injury.

(75) It should firstly be noted that, as per Article 3(5) of the basic Regulation, none of the economic factors listed in this article necessarily give decisive guidance as to whether the Community industry suffers material injury. More importantly, while it is true that the economic situation of the Community industry improved in the period 1996 to 1998, the figures and above conclusions clearly show, in the subsequent period, a strong deterioration of the situation of the Community industry and material injury being suffered by the Community industry in the IP. The argument was therefore rejected and the above conclusions, i.e. that the Community industry suffered material injury, confirmed.

## H. CAUSATION

### 1. **Introduction**

(76) In accordance with Article 3(6) of the basic Regulation, it was reexamined whether the material injury suffered by the Community industry, as defined in recital 42, had been caused by the dumped imports from India. In accordance with Article 3(7) of the basic Regulation, the Commission also reexamined other known factors which might have injured the Community industry in order to ensure that any injury caused by those factors was not wrongly attributed to the dumped imports.

### 2. Effect of the dumped imports

(77) Between 1996 and the IP, the volume of imports originating in India tripled from 7 583 tonnes to 22 683 tonnes. They increased in two steps: a first time between 1996 and 1998, raising by 138 %, and then in the period from 1999 to IP, raising by 92 %, from 11 824 tonnes to 22 683 tonnes, i.e. an increase of around 10 800 tonnes. It should be noted that, while the first increase took place while the Community market was still expanding, the second one occurred at a time when the Community consumption faced a significant downturn (– 14 000 tonnes). During the same period, i.e. from 1999 to the IP, the Community industry's sales volume decreased by around 13 %.

(78) The same can be observed in relative terms. The Indian market share increased from 2,7 % in 1996 to 6,7 % in the IP. This raise occurred in two phases: between 1996 and 1998, from 2,7 % to 4,9 %, and between 1999 and the IP, from 3,3 % to 6,7 %.

(79) In the year 1999, the Indian import price reached the low level of EUR 1,4 per tonne on average, a decrease of around 17 % as compared to the previous year and of 26 % as compared to 1996. By means of this low price policy they were in a position to increase their sales volume and regain their lost market shares in 2000 and the IP. The prices then reached their 1998 level, but were still on average lower than their level in the years 1996 and 1997.

(80) It should be recalled that, during the IP, significant undercutting margins have been established, ranging between 23 % and 28 %. This clearly shows the strong price pressure exerted by the Indian imports during the IP. Indeed, with a market share of 6,7 % during the IP, such a level of price undercutting certainly had a significant negative impact on this transparent and depressed Community market, and for a product which is extremely price sensitive.

(81) At the same time, the Community industry experienced a market share decrease of around one percentage point between 1996 and 1998, and of another percentage point between 1999 and the IP. This decrease should be seen in the light of the Community industry price developments. It indeed had to lower its prices by 7 % in the year 1999 as compared to 1998, in order to maintain its position on the market. It should be recalled that during the same year, the Indian import prices decreased by 17 %. Thereafter, the Community industry price remained relatively stable at a level, however, which was not sufficient to maintain a positive financial situation. Unlike the Indians, the Community industry was not in a position to improve its average sales price in the Community in the period 2000 to IP.

(82) In the period 1996 to 1998, in spite of increasing Indian imports, the Community industry developed favourably since fair trade, on an expanding Community market, was restored following the imposition of anti-dumping duties on imports of PTY originating in various countries (see following). From 1999 onwards, however, the financial situation of the Community industry significantly deteriorated. As explained above, the sales volume and prices started to decrease and the profitability, return on investments as well as cash flow were seriously affected. This coincides with the period when Indian prices significantly decreased and import volume started to significantly increase, i.e. they doubled their import volume in the period 1999 to IP.

### 3. Effect of all other known factors

*Imports originating in other third countries*

(83) Since no additional information or comments have been brought forward by any interested party, the conclusion drawn in recital 91 of the provisional Regulation that the imports originating in Indonesia and Taiwan, are also likely to have contributed to the injury suffered by the Community industry during the IP is therefore confirmed.

(84) In this very transparent market, significant imports of low priced PTY from any country of origin are likely to cause injury to the Community industry to a degree that can be considered material. Should the impact of Indian imports be however quantified as compared to the impact of the imports from Indonesia and Taiwan, one should consider the significant increase of Indian imports in the period 1999 to IP, both in absolute and relative terms, as well as the Indian average import price during the IP which was, on average, lower that the Indonesian and Taiwanese imports prices, namely considering that these imports are partly subject to anti-dumping duties. Under these circumstances, it can be concluded that the impact of the Indian imports was certainly not less important than the impact of the Indonesian and Taiwanese imports, and that therefore there was a genuine and substantial link between the imports from India and the precarious situation of the Community industry.

(85) As to imports from remaining third countries, in absence of any comments, the provisional conclusion that these imports cannot be considered as having had injurious effects on the Community industry is also confirmed.

*Other Community producers*

(86) The table below, based on information received by certain companies and contained in the complaint, shows the evolution of sales volume and market share of the other Community producers.

| | 1996 | 1997 | 1998 | 1999 | 2000 | IP |
|---|---|---|---|---|---|---|
| Tonnes | 134 366 | 144 831 | 150 544 | 136 097 | 142 797 | 131 924 |
| Market share | 47,0 % | 42,4 % | 40,8 % | 38,5 % | 39,6 % | 38,9 % |

(87) From the above data, it can be seen that the other Community producers' sales volume of PTY in the period 1996 to IP significantly decreased both in absolute and relative terms. In addition to this, it should be recalled that a significant proportion of these other Community producers were actually part of the original complainants. These companies were not in a position to fully cooperate to the present investigation due to a lack of resources, but fully supported the proceeding and totally or partially cooperated to other similar recent proceedings.

(88) Given the above, it is concluded that the other Community producers have not contributed to the injury suffered by the Community industry during the IP.

*Investments of the Community industry*

(89) Certain interested parties argued that the heavy investments made by the Community industry during the period under consideration actually also caused a deterioration of its financial situation.

(90) As explained above, the investments made by the Community industry were related to an increase of its production capacity. The first capacity increase was made at a time in which Community consumption was expanding, between 1996 and 1998. Therefore, the Community industry increased its production volume and was in a position to increase the sales volume as well, in line with the expansion of the Community market. In view of this positive development, the Community industry expanded its production capacity a second time between 1999 and the IP. The increase amounted to around 10 000 tonnes. This time, however, the Community industry could not increase its production and sales volume in order to fill its newly installed capacity, and therefore the capacity utilisation rate significantly decreased. As the PTY industry is capital intensive and that fixed costs are accordingly significant, the decrease of the production and sales volume in the period 1999 to IP had a direct negative impact on the financial situation of the Community industry. It is noted that the price for the main raw material remained stable in the same period.

(91) The capacity increase in the period 1999 to IP, therefore, indeed hat a negative impact on the financial situation of the Community industry. This occurred because it coincided wit a decrease of the production and sales volume of the Community industry. The latter decrease, however, was caused by the pressure on the Community market of the Indian imports of PTY. Even though the Community consumption decreased by around 14 000 tonnes during the period 1999 to IP, the Indian import volume of PTY increased by around 10 000 tonnes during the same period, through an aggressive price behaviour. Indeed, Indian import prices of PTY were significantly undercutting the Community industry prices during the IP and the relevant import volume increased to such an extent that the Community industry was not able to increase, or even to limit its decreasing sales and production volume and consequently limit the negative impact of the installed over-capacity.

(92) It is considered that if the costs related to the investments, and therefore the increase of the installed capacity, indeed had a negative impact on the financial situation of the Community industry in the period 1999 to IP, this impact was however exacerbated by the fact that the Community industry had to decrease its sales, production volume and sales prices. This was in turn due to the pressure of the low prices of the Indian imports, the volume of which more than doubled in the same period, when the overall Community consumption decreased.

(93) It is therefore clear that in the absence of dumped imports from India, the Community industry would have been able to maintain its sales prices at the level of 1998 and to increase its volume of production and sales. This would also have led to economies of scale and, under fair trade circumstances, the Community industry would have been able to absorb most, if not all, additional fixed costs related to its investments.

*Contraction in demand*

(94) Whilst Community consumption increased overall during the period under consideration, it decreased in the period 1999 to IP. Even thought this decreasing trend coincided with the decrease of the Community industry sales volume, it should firstly be noted that the Community industry's sales volume proportionally decreased more than the Community consumption. Secondly, during the same period, imports originating in India more than doubled. Therefore, while it cannot be excluded that this contraction in demand had an injurious effect on the situation of the Community industry, this must be considered minor by comparison to the effects of the dumped imports.

*Global economic downturn*

(95) The Indian exporting producers claimed that the Community industry has suffered injury due to the world global economic downturn since the end of 2000, and that this should be taken into consideration and quantified for the purpose of the causation analysis.

(96) It should firstly be noted that the above analysis shows that the economic situation of the Community industry already started to deteriorate before the end of the year 2000. Secondly, under a global economic downturn, one could expect that all operators in the Community be similarly affected. However, at a time when the market was down, the Indian exporting producers managed to significantly increase their sales volume in the Community. As explained above, the Community industry sales volume decreased proportionally more than the Community consumption. In addition, the impact of the global downturn is already reflected in the above mentioned contraction in demand.

(97) In view of the above, even if it can not be excluded that the economic downturn also had an impact on the situation of the Community industry, it is concluded that, in comparison with the price depressive impact of the dumped imports, it is of minor importance.

*Export performances of the Community industry*

(98) The Indian exporting producers argued that the loss of the Community industry's market share is due to the fact that it has opted for export sales rather than domestic sales. The Community industry's increase in export volume shows that it is competitive on markets where fair trade prevails. It should also be recalled that while indeed the export volume quadrupled during the period under consideration, it remained marginal when compared to the total sales of the Community industry. Finally, it is noted that the profitability of the Community industry is established by reference to its sales on the Community market only. In the absence of any further comments under these headings, the provisional conclusions, under recitals 96 to 98 of the provisional Regulation are confirmed.

*Price of raw material*

(99) No comments have been received in this respect, and therefore the conclusions under recitals 93 to 95 of the provisional Regulation, that the price of the raw material of the Community industry can not be responsible for the injury being suffered by the Community industry, are confirmed.

*Other arguments raised by the interested parties*

(100) The Indian exporting producers argued that the decrease of the production volume during the IP is to be attributed to a deliberate shutdown of a plant of one of the two Community producers constituting the Community industry. The investigation, however, showed that there was no closure of a plant during the IP. The producer in question confirmed that no plant shutdown took place and argued that any reduction in their production volume during the IP was due to the effect of the increase in low priced PTY on the Community market. The argument was therefore rejected.

### 4. **Conclusion on causation**

(101) In conclusion, it is confirmed that the dumped imports have had injurious effects on the Community industry, in particular in the period 1999 to IP, the situation of which is characterised by a decreasing sales volume, depressed sales prices, loss of market share and significant deterioration of the financial situation, notably in terms of profitability and return on investments. Indeed, during the same period the Indian import volume significantly increased both in absolute and relative terms at prices which were found to be significantly undercutting the Community industry price.

(102) The following other known factors were examined: imports originating in other third countries, other Community producers sales, investments of the Community industry, contraction in demand, global economic downturn, price of raw material and export performances of the Community industry. It was found that some of these factors also have had an injurious effect on the situation of the Community industry. The effect of these factors was worsened the significant negative effect on the situation of the Community industry caused by the surge of imports originating in India, which, taken in isolation, have also caused a material injury to the Community industry.

(103) Given the above analysis, which has properly distinguished and separated the effects of all the known factors from each other and their effect on the situation of the Community industry from the injurious effects of the dumped imports, and after having ensured that the injury caused by other factors is not attributed to the dumped imports, it is hereby confirmed that these other factors as such do not reverse the fact that there exists a genuine and substantial causal link between the dumped imports and the material injury found.

## I. COMMUNITY INTEREST

(104) In view of the events that took place after the determination of the provisional findings, i.e. the plant shutdown of Dupont SA, it was reexamined whether, despite the conclusions on injurious dumping, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to impose definitive anti-dumping measures.

### 1. Community industry and other Community producers

(105) As explained in the provisional Regulation, there is no reason to doubt the viability and the competitiveness of the Community industry in a situation where normal market conditions apply. The facts have showed, however, that in the absence of fair trade conditions, the existence of the Community industry is seriously jeopardised. Indeed, unfair trade on the Community market already resulted in the shutdown of Dupont SA, that could not survive the current depressed situation of the market. Should measures not be imposed, it could not be excluded that other Community producers would experience the same development.

(106) It should be recalled that, despite the fact that only two Community producers were in a position to cooperate to the investigation, the proceeding was fully supported by Community producers representing around 75 % of the Community production. As explained above, the other Community producers also saw their market share and sales volume on the Community market eroding.

(107) The provisional conclusions that it would be in the interest of the Community industry and of the other Community producers to impose measures, are therefore confirmed.

### 2. Importers

(108) No replies were received from any importer or trader at the provisional stage. In the provisional Regulation it was concluded that the imposition of measures would not significantly affect their situation.

(109) In the absence of any further comments provided by interested parties after the imposition of the provisional measures, the above conclusions are confirmed.

### 3. Suppliers of raw material

(110) In the absence of any comments, the provisional conclusion that it is in the interest of the upstream industry to impose measures is hereby confirmed.

### 4. Users

(111) At the provisional stage, only one user cooperated. In the absence of any comments or reactions subsequent to the imposition of the provisional measures, the conclusion that the imposition of the measures would not be prejudicial to the viability and competitiveness of the users is hereby confirmed.

### 5. Conclusion

(112) Not imposing anti-dumping measures would seriously endanger the existence of the Community industry and of the other Community producers. This is reinforced by the fact that, because of the unfair trade conditions prevailing on the Community market, one Community producer recently had to shutdown its plant in the Community.

(113) To the contrary, should definitive measures not be imposed, the continued decline in the profitability of the Community industry observed during the period under consideration will be further jeopardised with the risk of further PTY plant closures in the Community.

(114) In view of the above, the Commission concluded that no compelling reasons exist not to impose definitive anti-dumping measures.

## J. DEFINITIVE ANTI-DUMPING MEASURES

### 1. Injury elimination level

(115) Based on the methodology explained in recitals 122 to 125 of the provisional Regulation, an injury elimination level was calculated for the purposes of establishing the level of measures to be definitively imposed.

(116) The Indian exporting producers claimed that the level of profit used in order to calculate the non-injurious price was arbitrarily chosen, because it was based on the highest profit margin observed during the period under consideration.

(117) It should be recalled that the level of profit considered for the calculation of the non-injurious price should correspond to a level that the Community industry could reasonably expect to achieve in the absence of injurious dumping. The year 1998 was considered a reasonable choice of reference since it was deemed that, during that year, the imports from India had not yet had a depressing effect on the Community industry's prices and that the imports from the other countries subject to measures were already at a level similar to that prevailing in the IP. The fact that one Community producer had to be excluded from the definition of the Community industry, and therefore new profitability figures were established for the period under consideration, does not alter the provisional findings that such an industry, in fair market conditions, could reasonably expect to reach a level of profit of 8 % in absence of dumped imports.

(118) Considering the above, the methodology used for establishing the injury elimination level as described in recitals 122 to 125 of the provisional Regulation was confirmed.

(119) As above in relation to price undercutting margins, the injury margins were likewise reviewed and amended.

### 2. Definitive measures

(120) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margins found, since they were in all cases lower than the injury margins.

(121) However, with regard to the parallel anti-subsidy proceeding in respect of India, in accordance with Article 24(1) of Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1] (hereinafter 'the basic anti-subsidy Regulation') and Article 14(1) of the basic Regulation, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or export subsidisation. It is therefore necessary to determine whether, and to what extent, the subsidy amounts and the dumping margins arise from the same situation.

(122) A definitive countervailing duty corresponding to the amount of subsidy, which was found to be lower than the injury margin in the case of all exporters, has been imposed by Council Regulation (EC) No 2094/2002 [2]. All subsidy schemes investigated which were found to be countervailable constituted export subsidies within the meaning of Article 3(4)(a) of the basic anti-subsidy Regulation. Therefore, the definitive dumping margins established for the cooperating exporting producers in India are thus partly due to the existence of these export subsidies. In these circumstances, it is not considered appropriate to impose both countervailing and anti-dumping duties to the full extent of the relevant export subsidy amounts and dumping margins definitively established. Therefore, the definitive anti-dumping duty should be adjusted to reflect the actual dumping margin remaining after the imposition of the definitive countervailing duty offsetting the effect of the export subsidies.

[1] OJ L 288, 21.10.1997, p. 1.
[2] See page 21 of this Official Journal.

(123) On the basis of the above, the definitive duties are as follows:

| Company name | Dumping margin | Rate of definitive countervailing duty of export subsidies | Rate of definitive anti-dumping duty |
|---|---|---|---|
| Indo Rama Synthetics Limited | 10,7 % | 4,1 % | 6,6 % |
| Reliance Industries Limited | 6,1 % | 0 % | 6,1 % |
| Welspun Syntex Limited | 17,0 % | 9,1 % | 7,9 % |
| Cooperating companies not included in the sample | 8,9 % | 5,2 % | 3,7 % |
| All other companies | 17,0 % | 9,1 % | 7,9 % |

(124) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

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

(126) Since sampling has been used in the investigation of dumping, a new exporters' review pursuant to Article 11(4) of the basic Regulation with the objective of determining individual dumping margins cannot be initiated in this proceeding. However, in order to ensure equal treatment for any genuine new Indian exporting producer and the cooperating companies not included in the sample, it is considered that provision should be made for the weighted average duty imposed on the latter companies to be applied to any new Indian exporting producer who would otherwise be entitled to an individual duty pursuant to Article 11(4) of the basic Regulation.

### 3. **Collection of provisional duties**

(127) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, i.e. Regulation (EC) No 1412/2002, should be definitively collected at the rate of the duty definitively imposed,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of polyester textured filament yarn falling within CN code 5402 33 00 originating in India.

(1) European Commission, Directorate General for Trade, Directorate B, J-79 5/17, B-1049 Brussels.

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

| Company | Rate of duty (%) | Taric additional code |
|---|---|---|
| Chhabria Polyester Corporation<br>Mehta House, 1st Floor, 91, Bombay Samachar Marg, Mumbai 400 023, India | 3,7 % | A 388 |
| Indo Rama Synthetics Limited<br>51-A, Industrial Area, Sector III, Pithampur, 453 001, Distt. Dhar, Madhya Pradesh, India | 6,6 % | A 389 |
| Microsynth Fabrics Limited<br>6, Jai Tirath Mansion, Barrack Road, Behind Metro Cinema, Mumbai 400 020, India | 3,7 % | A 390 |
| Modern Petrofils<br>NH No 8, Baman Gam, Taluka: Karjan, Distt: Baroda 391 210, India | 3,7 % | A 391 |
| Nova Petrochemicals Limited<br>402, Trividh Chambers, Ring Road, Surat, India | 3,7 % | A 392 |
| Parasrampuria Industries Limited<br>208, Nariman Point, Mumbai 400 021, India | 3,7 % | A 393 |
| Reliance Industries Limited<br>Maker Chambers IV, Nariman Point, Mumbai, 400 021, India | 6,1 % | A 394 |
| Sarla Polyester Limited<br>304, Arcadia, 195 Nariman Point, Mumbai 400 021, India | 3,7 % | A 395 |
| Supertex Industries Limited<br>Balkrishna Krupa, 2nd Floor, 45/49, Babu Genu Road, Princess Stree, Mumbai 400 002, India | 3,7 % | A 396 |
| Welspun Syntex Limited<br>Kamani Wadi, 1st Floor, 542, Jaganath Shankar Sheth Road, Chira Bazar, Mumbai 400 002, India | 7,9 % | A 397 |
| All other companies | 7,9 % | A 999 |

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

*Article 2*

Where any new exporting producer in India provides sufficient evidence to the Commission that:

— it did not export to the Community the product described in Article 1(1) during the investigation period (1 October 2000 to 30 September 2001),

— it is not related to any of the exporters or producers in India which are subject to the anti-dumping measures imposed by this Regulation,

— it has actually exported to the Community the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Community,

the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend Article 1(2) by adding the new exporting producer to the companies subject to the weighted average duty rate of 3,7 % listed in that Article.

*Article 3*

Amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EC) No 1412/2002 on imports of polyester textured filament yarn falling within CN code 5402 33 00 originating in India shall be definitively collected at the rate of the duty definitively imposed by the present Regulation.

Amounts secured in excess of the rates of the definitive anti-dumping duty shall be released.

*Article 4*

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

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

Done at Brussels, 26 November 2002.

*For the Council*

*The President*

B. BENDTSEN