

COMMISSION REGULATION (EC) No 2005/2006**of 22 December 2006****imposing provisional anti-dumping duties on imports of synthetic staple fibres of polyesters (PSF) originating in Malaysia and Taiwan**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('basic Regulation'), as last amended by Regulation (EC) No 2117/2005 ⁽²⁾, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE**1. Initiation**

- (1) On 12 April 2006, the Commission announced by a notice ('notice of initiation') published in the *Official Journal of the European Union* ⁽³⁾, the initiation of an anti-dumping proceeding with regard to imports into the Community of synthetic staple fibres of polyesters ('PSF') originating in Malaysia and Taiwan.
- (2) The anti-dumping proceeding was initiated following a complaint lodged on 3 March 2006 by the Comité International de la Rayonne et des Fibres Synthétiques ('CIRFS' or 'the complainant') on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of PSF. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

2. Measures in force

- (3) In March 2005, by Regulation (EC) No 428/2005 ⁽⁴⁾, the Council imposed definitive anti-dumping duties on imports of PSF originating in the People's Republic of China, and Saudi Arabia and amended the existing anti-dumping duties on PSF originating in the Republic of Korea. Also, definitive anti-dumping measures are in force on imports of PSF from Belarus ⁽⁵⁾.

3. Parties concerned by the proceeding

- (4) The Commission officially advised the exporting producers in Malaysia and in Taiwan, importers/traders and their associations, suppliers and users known to be concerned, the representatives of the exporting countries concerned as well as the complainant and all known Community producers of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. The parties who so requested were granted the opportunity to be heard.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 340, 23.12.2005, p. 17.

⁽³⁾ OJ C 89, 12.4.2006, p. 2.

⁽⁴⁾ OJ L 71, 17.3.2005, p. 1.

⁽⁵⁾ OJ L 274, 11.10.2002, p. 1.

- (5) In view of the apparent large number of Taiwanese exporting producers listed in the complaint, and the large number of Community producers and importers of PSF, sampling was envisaged in the notice of initiation for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation.
- (6) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers from Taiwan, Community producers and importers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to PSF during the period 1 January 2005 to 31 December 2005. ('investigation period' (IP)).
- (7) In the case of Taiwan, nine companies replied to the sampling questions. Eight out of nine reported export sales to the Community during the IP. Four companies representing more than 80.0 % of the reported export quantities to the Community, during the IP, were included in the sample. The sample selected was based on the largest representative volume of exports which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, the Taiwanese authorities were consulted and raised no objection. The sample consists of the following companies:
- Far Eastern Textile Ltd.
 - Nan Ya Plastics Corporation
 - Tung Ho Spinning Weaving & Dyeing Co., Ltd.
 - Tuntex Distinct Corporation and its related company Tuntex Synthetic Corporation.
- (8) As far as importers into the European Community are concerned, only three unrelated importers made themselves known and provided the requested information in due time. It was therefore not necessary to use the sampling methodology. Questionnaires have been sent to these three unrelated importers but two of them were subsequently considered as non-cooperating given that they refrained to fill in the full questionnaire sent to them.
- (9) As far as Community industry producers are concerned, only three of them made themselves known, provided the requested information in due time and were ready to reply to the questionnaire. It was therefore not necessary to use the sampling methodology.
- (10) The Commission sent questionnaires to all parties known to be concerned and/or to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from two Malaysian exporting producers, from four Taiwanese exporting producers included in the sample, from one company related to a Taiwanese exporting producer, as well as from three Community producers, one unrelated importer, one supplier of raw material and from seven users.
- (11) The Commission and verified all the information it deemed necessary for the purpose of a provisional determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:
- (a) Community producers
- Advansa GmbH, Hamm, Germany
 - Wellman International Ltd., Kells, Ireland
 - La Seda de Barcelona, Barcelona, Spain

(b) Unrelated importer

— SIMP SPA, Verrone, Italy

(c) Users

— Tharreau Industries, Chemillé, France

— Libeltex, Meulebeke, Belgium

(d) Exporting producers in Malaysia

— Hualon Corporation (M) Sdn. Bhd., Kuala Lumpur

— Penfibre Sdn. Bhd., Penang

(e) Exporting producers in Taiwan

— Far Eastern Textile Ltd., Taipei

— Nan Ya Plastics Corporation, Taipei

— Tung Ho Spinning Weaving & Dyeing Co., Ltd., Taipei

— Tuntex Distinct Corporation, Hsichih, Taipei County, and its related company Tuntex Synthetic Corporation, Hsichih, Taipei County

4. Investigation period

- (12) The investigation of dumping and injury covered the period from 1 January 2005 to 31 December 2005 ('period' or 'IP'). The examination of trends in the context of the injury analysis covered the period from 1 January 2002 to the end of the IP ('period considered' or Injury Investigation Period 'IIP').

B. PRODUCT CONCERNED AND LIKE PRODUCT

5. Product concerned

- (13) The product concerned is synthetic staple fibres of polyester, not carded, combed or otherwise processed for spinning and is currently classifiable within CN code 5503 20 00. It is commonly referred to as polyester staple fibres.
- (14) The product is a basic material used at various stages of the manufacturing process of textile products. The Community consumption of PSF is either used for spinning, i.e. manufacturing filaments for the production of textiles, mixed with other fibres such as cotton and wool or for non-woven applications such as filling, i.e. stuffing or padding of certain textile goods such as cushions, car seats and jackets.
- (15) The product is sold in different product types which can be identified through different specifications such as weight, tenacity, lustre and silicon treatment or through their classification into product families such as round, hollow, bi-component fibres and specialities such as coloured and tri-lobal fibres. From a production point of view, a distinction can be made between virgin PSF, produced from virgin raw materials, and regenerated PSF, produced from recycled polyester. Finally, quality may be substandard or first grade.
- (16) The investigation has shown that all types of the product concerned as defined in recital 13, despite differences in a variety of factors as defined in the preceding recital, have the same basic physical and chemical characteristics and are used for the same purposes. Therefore, and for the purpose of the present anti-dumping proceeding, all types of the product concerned are regarded as one product.

6. Like product

- (17) The product concerned, and the PSF produced and sold in the Community by the Community industry and the PSF produced and sold on the domestic market of both exporting countries were found to have essentially the same physical and chemical characteristics and the same uses. They are therefore provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

7. General methodology

- (18) Below, the general methodology is described. The subsequent presentation of the findings on dumping for the countries concerned therefore only describes issues specific to each exporting country.

7.1 Normal value

- (19) In accordance with Article 2(2) of the basic Regulation, it was first examined for each co-operating exporting producer whether its domestic sales of PSF were representative, i.e. whether the total volume of such sales represented at least 5 % of the total export sales volume of the producer to the Community.
- (20) The Commission subsequently identified those types of PSF sold domestically that were identical or directly comparable with the types sold for export to the Community. With regard to the examination on a product type basis, and as indicated in recital 17, the Commission considered domestically sold and exported product types, which had similar origin, denier, composition, cross-section, lustre, colour, silicon treatment, quality and use, as being directly comparable.
- (21) For each type sold by the exporting producers on their domestic markets and found to be directly comparable with the type of PSF sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of PSF were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type of PSF exported to the Community.
- (22) The Commission subsequently examined whether the domestic sales of each type of PSF, sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation, by establishing the proportion of profitable sales to independent customers of the PSF type in question.
- (23) In cases where the sales volume of the PSF type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.
- (24) Where the volume of profitable sales of the PSF type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.

- (25) Where the volume of profitable sales of any product type represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.
- (26) Wherever domestic prices of a particular product type sold by an exporting producer could not be used in order to establish normal value, another method had to be applied. In such cases, and in accordance with Article 2(3) of the basic Regulation, normal value was constructed on the basis of each exporting producer's own cost of manufacturing plus a reasonable amount for selling, general and administrative ('SG&A') expenses and a reasonable margin for profit.
- (27) Therefore, the Commission examined whether the SG&A incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data.
- (28) Actual domestic SG&A expenses were considered reliable where the domestic sales volume of the company concerned could be regarded as representative as defined in Article 2(2) of the basic Regulation. The domestic profit margin was determined on the basis of domestic sales made in the ordinary course of trade.
- (29) In all cases where these conditions were not met, the Commission examined whether data of other exporters or producers in the domestic market of the country of origin could be used in accordance with Article 2(6)(a) of the basic Regulation. Where reliable data were only available for one exporting producer, no average as set out in Article 2(6)(a) of the basic Regulation could be established and it was examined whether the conditions of Article 2(6)(b) were fulfilled, i.e. the use of data with regard to the production and sales of the same general category of products for the exporter or producer in question. Where such data regarding SG&A and profit were not available or were not provided by the exporting producer, SG&A and profit were established in accordance with Article 2(6)(c) of the basic Regulation, i.e. on the basis of any other reasonable method.

7.2. Export price

- (30) As all exports were made to independent customers in the Community, the export prices were established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

7.3. Comparison

- (31) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where applicable, accurate and supported by verified evidence.

7.4. Dumping margins

- (32) According to Article 2(11) and (12) of the basic Regulation the dumping margins for each exporting producer were established on the basis of a comparison between the weighted average normal value by product type with the weighted average export price by product type as established above.
- (33) It is the consistent practise of the Commission to consider related exporting producers or producers belonging to the same group as one single entity for the determination of a dumping margin and thus to establish one single dumping margin for them. This is in particular because calculating individual dumping margins might encourage circumvention of anti-dumping measures, thus rendering them ineffective, by enabling related exporting producers to channel their exports to the Community through the company with the lowest individual dumping margin.

- (34) In accordance with this practise, the related exporting producers belonging to the same groups were regarded as one single entity and attributed one single dumping margin which was calculated on the basis of the weighted average of the dumping margins of the cooperating producers in the respective group.
- (35) The dumping margin for cooperating exporting producers, which made themselves known in accordance with Article 17 of the basic Regulation, but were not part of the sample, has been established on the basis of the weighted average of the dumping margins of the companies selected in the sample, pursuant to Article 9(6) of the basic Regulation.
- (36) For those exporting producers which did not cooperate, the dumping margin was established on the basis of facts available in accordance with Article 18 of the basic Regulation. To this end, the level of non-cooperation was first established by comparing the volume of exports to the Community reported by the cooperating exporting producers with the equivalent Eurostat import statistics during the investigation period.
- (37) As the level of cooperation was low for both exporting countries, i.e. exports by cooperating exporting producers of each exporting country represented less than 80 % of the import volume from that country, the residual dumping margin was determined on the basis of the average of the highest dumped transactions, in representative quantities, of the cooperating exporting producers. This approach was also considered necessary in order to avoid giving a bonus for non-cooperation and in view of the fact that there were no indications that a non-cooperating party had dumped at a lower level.

7.5. Malaysia

- (38) Questionnaire replies were received from two exporting producers.

7.5.1. Normal value

- (39) One of the co-operating exporting producers did not have sufficient representative sales of the like product in its domestic market.
- (40) Therefore, normal value was constructed as described in recital 26 above.
- (41) The investigation revealed that the company's reported cost of manufacturing was underestimated as factory overheads costs (including depreciation, rent expenses, salaries and maintenance) actually incurred during the IP were reclassified to SG&A expenses. The company argued that this practice was made in order to reflect the low capacity utilization rate of its production facilities. However, actual costs incurred do include also the reclassified factory overhead costs. The fact that the company operated at a fraction of its full capacity of production does not mean that costs arising from such facilities are not incurred. Indeed, such costs were booked in the company's accounting records and since they were directly linked to production of the like product, a correction of the reported cost of manufacturing had to be done.
- (42) In the absence of domestic sales of the like product and data on the same general category of products, during the investigation period, SG&A expenses were determined in accordance with Article 2(6)(c) of the basic Regulation. In particular, SG&A expenses were based on total sales of all products on the domestic market. Such expenses were added to the company's own average cost of manufacturing, of each exported type, during the investigation period.
- (43) With regard to profit, and in the absence of any other reasonable basis, a profit margin of 5 % was used. No information was available which would indicate that such profit margin exceeds the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of Malaysia, as required by Article 2(6)(c) of the basic Regulation.

- (44) A second co-operating exporting producer had representative domestic sales of the like product in its domestic market. However, sales in the ordinary course of trade were not made in sufficient quantities for normal value to be based on actual domestic prices. Therefore, normal value had to be constructed. In accordance with Article 2(6) of the basic Regulation, SG&A expenses were based on the company's actual data pertaining to production and sales, of the like product. For profit, in line with the other exporting producer, a 5 % margin was used.

7.5.2. Export price

- (45) Both exporting producers sold directly to independent customers in the Community. Therefore, export prices were established on the basis of the prices actually paid or payable in the Community in accordance with Article 2(8) of the basic Regulation.

7.5.3. Comparison

- (46) To ensure a fair comparison, allowances were made for differences in transport, insurance, handling, loading and ancillary costs, credit costs and commissions where applicable and justified.

7.5.4. Dumping margins

- (47) The provisional dumping margins established, expressed as a percentage of the CIF import price at the Community frontier duty unpaid are the following:

— Hualon Corporation (M) Sdn. Bhd., Kuala Lumpur 12,4 %

— Penfibre Sdn. Bhd., Penang 14,7 %

— All other companies 23,0 %

7.6. Taiwan

- (48) Questionnaire replies were received from the four exporting producers selected in the sample, as well as from one related company in the exporting country.

- (49) One Taiwanese producer replied to the sampling form and requested that an individual duty be established. However, this company had no exports of PSF to the Community during the IP and thus could not be considered as an exporting producer. Consequently, no individual dumping margin could be established for this company and it has to be subject to the provisional residual duty established for all other Taiwanese producers. The company was informed of this approach and did not react.

7.6.1. Non-cooperation

- (50) The investigation revealed that two exporting producers selected in the sample provided false and misleading information to the Commission.

- (51) One exporting producer reported domestic sales quantities and sales values which did not correspond to the actual quantities and values shipped to domestic customers of the like product. Indeed, for many transactions it was found that the reported quantities were higher and values were lower than those ordered by the domestic customers, as reflected in the company's register in the shipping department. It thus had to be concluded that the quantities actually sold were those as ordered by the domestic customer and booked in the shipping register, rather than those reported and contained in the invoices shown to the Commission.

- (52) Moreover, with regard to the sales values reported, it was also found that the company added fictitious transactions to pretend that the total amount of all invoices under one order matched the total amount of that order. These additional transactions had to be fictitious since they were not reported in the company's actual shipping register.
- (53) It should be noted that for the reported domestic transactions, showing falsified quantities and values and including the fictitious transactions, the company has provided delivery notes and invoices claiming that these were the genuine underlying documents. Given the fact that the reported data was found to be faked it has to be concluded that also the underlying documents were forged in order to be brought in line with the reported falsified information.
- (54) By thereby manipulating the domestic unit prices and quantities, the company provided false and misleading information to the Commission.
- (55) The other exporting producer was also found to have reported false and misleading information with regard to its domestic sales. In particular, the company reported certain product types of domestic transaction that were not the same as the one contained in the customer order and registered in the order book kept by the company's sales department. This was done for the most widely exported types of PSF, therefore misleading the Commission into using domestic prices although the sales concerned were not representative in the sense of Article 2(2) of the basic Regulation, given their low volumes.
- (56) Moreover, in order to justify a difference found for one specific transaction which would show that the product type delivered did correspond to the one reported to the Commission, the company provided a falsified document, which was a copy of a signed delivery note which had allegedly been faxed by a customer, at the company's request. This document did not correspond to the original which had previously been provided by the company. Indeed, the product types were not the same which indicates that the alleged supporting evidence was fabricated for the purpose of misleading the Commission.
- (57) In addition, the investigation revealed that it is common practice for companies in Taiwan to keep the delivery notes signed by the customer, as a proof that the quantities ordered were actually delivered. This was confirmed by the exporting producer in question and by the other exporting producers visited. However, even though the Commission specifically requested those delivery notes for the IP, no such documents were made available during the verification visit. The company thus did not only refuse to provide necessary documents, but also significantly impeded the investigation.
- (58) Given the fact that both companies were able to provide forged delivery notes and invoices to justify domestic transactions, and that such documents are part of an integrated system, it has to be concluded that any document which ties to such system can be manipulated and is therefore unreliable. Furthermore, the nature and extent of the false and misleading information also casts doubt on the integrity of all the data submitted by the companies. Therefore, it has been decided to entirely disregard the information provided by these companies, in line with Article 18 of the basic Regulation.
- (59) The companies were informed forthwith of the basis on which it was intended to disregard the information provided and were given the opportunity to provide further explanations, in accordance with Article 18(4) of the basic Regulation. However, the explanations given by the companies were unsatisfactory and could not refute the evidence showing that they had submitted falsified and misleading information.
- (60) The dumping margins were therefore provisionally determined on the basis of facts available, in accordance with Article 18 of the basic Regulation.

7.6.2. Normal value

- (61) For two co-operating producers, domestic sales of the like product were representative.
- (62) One exporting producer sold in the domestic market to both related and unrelated customers. Sales to the related customer were resold to independent customers. Given the fact that these two related companies shared functions with regard to production and sales it was considered appropriate to consider them as one single economic entity. Therefore, wherever possible, normal value was established on the basis of the price paid or payable, in the ordinary course of trade, by the first independent customer.
- (63) For most product types sold by those cooperating producers there were no sufficient domestic sales made in the ordinary course of trade and normal value had to be constructed in accordance with Article 2(3) of the basic Regulation. In this case, SG&A and profit were based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product by the exporting producer under investigation, in accordance with the chapeau of Article 2(6) of the basic Regulation.

7.6.3. Export price

- (64) For the two co-operating exporting producers export prices were established on the basis of the prices actually paid or payable by unrelated customers in the Community in accordance with Article 2(8) of the basic Regulation.

7.6.4. Comparison

- (65) To ensure a fair comparison, allowances were made for differences in transport, insurance, handling, loading and ancillary costs, credit cost, technical assistance costs and commissions where applicable and justified.

7.6.5. Dumping margins

- (66) For cooperating companies not included in the sample, the dumping margin was established on the basis of a weighted average of the dumping margins calculated for the companies selected in the sample, representing more than 12,0 % of Taiwanese exports to the Community. For this purpose, the dumping margins established for the non-cooperating exporting producers, which were based on the facts available according to Article 18 of the basic Regulation, were not included in the average, as stipulated by Article 9(6) of the basic Regulation.
- (67) The provisional dumping margins established, expressed as a percentage of the CIF import price at the Community frontier duty unpaid are the following:
- Far Eastern Textile Ltd., Taipei 29,5 %
 - Nan Ya Plastics Corporation, Taipei 29,5 %
 - Tung Ho Spinning Weaving & Dyeing Co., Ltd., Taipei 14,7 %
 - Tuntex Distinct Corporation, Hsichih, Taipei County 18,2 %
 - Tuntex Synthetic Corporation, Hsichih, Taipei County 18,2 %
 - Cooperating companies not included in the sample 16,5 %
 - All other companies 29,5 %

D. INJURY**1. Community production**

- (68) During the IP, PSF was manufactured by 18 companies in the Community:
- eight complainant Community producers, out of which three fully co-operated with the Commission during the investigation,
 - six producers, which fully supported the complaint but did not co-operate in the proceeding,
 - four producers which remained silent at the complaint stage and did not co-operate in the proceeding.
- (69) On the above basis, it was considered that the PSF produced by all the above mentioned companies constitute the total Community production within the meaning of Article 4(1) of the basic Regulation.

2. Community industry

- (70) As explained in recital 9 above, three Community producers made themselves known, provided the information requested in the notice of initiation in due time and were ready to reply to the questionnaire. Questionnaires have therefore been sent to these three Community producers who supported the complaint and fully co-operated in the investigations. These producers account for more than 25 % of Community production of the product concerned and are therefore deemed to constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

3. Community consumption

- (71) Community consumption was established on the basis of the volume of imports of the product concerned from the countries concerned based on reported data and complemented by Eurostat data and from all other third countries known to produce and export the product concerned to the Community based on Eurostat, plus the volume of sales in the Community market of both the Community industry and other Community producers. For these latter, data reported in mini questionnaires that were sent as explained in recital 143 and regarding those Community producers which did not cooperate at all, data contained in the complaint was used.
- (72) On this basis, the Community consumption slightly increased over the period considered, i.e. by 3 % between 2002 and the IP. It first decreased by 5 % between 2002 and 2003 and then rose by more than 8 % to reach 834 093 tonnes during the IP.

Table 1

Consumption in the EU (volume)

	2002	2003	2004	IP = 2005
Consumption (tonnes)	810 226	771 298	825 969	834 093
<i>Index</i>	100	95	102	103

4. Cumulative assessment of the effects of the imports concerned

- (73) It was first examined whether imports from Taiwan and Malaysia should be assessed cumulatively, in accordance with Article 3(4) of the basic Regulation.

(74) It was found that:

- the dumping margins established in relation to the imports from each of the countries concerned were above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation,
- the volumes of imports from each of these countries were not negligible in the sense of Article 5(7) of the basic Regulation, as market shares for these countries ranged from 2 % to 13 % during the investigation period and,
- the cumulative assessment was found to be appropriate in view of the conditions of competition both between imports originating in these countries, and between these imports and the like Community product. To this end, the market behaviour of the exporters was analysed in terms of trends of export prices and volumes. It was found that the level of undercutting, ranging from 43 % to 50 % is relatively similar, and that the sales prices of both countries follow the same trends as the like product produced and sold by the Community industry. It was also found that exporters from the countries concerned use similar sales channels as the Community industry, namely directly to independent customers. Moreover, the investigation has shown that the imports concerned and the like product share the same physical and chemical characteristics, and are thus competing against each other on a type by type basis.
- As illustrated in the table below the volume of imports both from Taiwan and Malaysia showed a significant increase in particular between 2004 and the end of the IP.

(75) For these reasons, it is provisionally concluded that all the criteria set out in Article 3(4) of the basic Regulation are met and that imports originating in Taiwan and Malaysia should be assessed cumulatively.

5. Imports from the countries concerned

5.1. Volume and market share of the imports concerned

(76) The volume of imports from the countries doubled between 2002 and the IP. While these imports amounted to 62 574 tonnes in 2002 they reached a level of 127 890 tonnes during the IP. They first decreased by 5 % between 2002 and 2003 and then rose by 115 % until the end of the IP. The increase of imports was particularly marked between 2004 and the IP since they rose by 76 %.

Table 2
Imports from the countries concerned

Imports (tonnes)	2002	2003	2004	IP
Taiwan	58 679	54 869	66 915	111 390
<i>Index</i>	100	94	114	190
Malaysia	3 894	4 494	5 825	16 500
<i>Index</i>	100	115	150	424
Total countries concerned	62 574	59 363	72 740	127 890
<i>Index</i>	100	95	116	204

(77) The market share held by the countries concerned almost doubled between 2002 and the IP: from 8 % to 15 % i.e. plus 7 percentage points. The increase was particularly marked between 2004 and the IP when it went up by 73,8 %.

Table 3

Market share of the countries concerned

Market shares	2002	2003	2004	IP
Taiwan	7,2 %	7,1 %	8,1 %	13,4 %
Malaysia	0,5 %	0,6 %	0,7 %	2,0 %
Total countries concerned	7,7 %	7,7 %	8,8 %	15,3 %

5.2. Prices

- (78) From 2002 to the IP, prices of the imports from the countries concerned increased by 9 %. They first decreased by 7 % between 2002 and 2003 and then rose by 16 % between 2003 and the IP when they reached 1 156 Euros per metric tonne.
- (79) This increase should be seen in the light of the raw material price which as explained in recitals 124 to 129 increased by more than 30 % between 2002 and the IP at worldwide level.

Table 4

Prices of the imports concerned

Unit prices (Euro / tonne)	2002	2003	2004	IP
Taiwan	1 078	1 000	1 055	1 171
<i>Index</i>	100	93	98	109
Malaysia	846	872	989	1 051
<i>Index</i>	100	103	117	124
Total countries concerned	1 063	990	1 050	1 156
<i>Index</i>	100	93	99	109

5.3. Price undercutting

- (80) For the determination of price undercutting the price data referring to the IP was analysed. The relevant sales prices of the Community industry were net prices after deduction of discounts and rebates. Where necessary, these prices were adjusted to an ex-works level, i.e. excluding freight cost in the Community. The import prices of the countries concerned were also net of discounts and rebates and were adjusted where necessary to CIF Community frontier.
- (81) The Community industry's sales prices and the import prices of the countries concerned were compared at the same level of trade, namely to independent customers within the Community market.
- (82) During the IP, weighted average price undercutting margins, expressed as a percentage of the Community industry's sales prices, ranged from 48 % to 50 % for the Taiwanese exporters and from 43 % to 47 % for the Malaysian exporters. The weighted average price undercutting margin was 49 % for Taiwan and 45 % for Malaysia.

6. Situation of the Community industry

- (83) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the Community industry during the period considered.

6.1. *Production, capacity and capacity utilisation*

Table 5

Production, capacity and capacity utilisation

	2002	2003	2004	IP
Production (tonnes)	145 279	142 463	139 395	130 998
<i>Index</i>	100	98	96	90
Production capacity (tonnes)	172 334	172 734	174 134	156 734
<i>Index</i>	100	100	101	91
Capacity utilisation	84 %	82 %	80 %	84 %
<i>Index</i>	100	98	95	99

- (84) As shown in the table above, the production of the Community industry decreased by 10 % between 2002 to the IP. The decrease was particularly sharp between 2004 and the IP when it lost 6 % of production volume or around 8 400 tonnes.
- (85) The production capacity remained relatively stable between 2002 and 2004 and then decreased by 10 % between 2004 and the IP. This is due to the fact that one of the Community industry producers reorganised its production and temporarily decided to use part of its equipment for the production of more profitable products.
- (86) In the light of the evolution of the production and the capacity, the capacity utilisation decreased by 2 percentage points per annum between 2002 and 2004 and then increased by 4 percentage points to reach in the IP the same level as in 2002.

6.2. *Sales volume, market shares, growth and average unit prices in the EC*

- (87) The table below shows the Community industry's performances in relation to its sales to independent customers in the Community.

Table 6

Sales volume, market share, prices

	2002	2003	2004	IP
Sales volume (tonnes)	136 030	131 354	135 838	121 057
<i>Index</i>	100	97	100	89
Market Share	16,8 %	17,0 %	16,4 %	14,5 %
<i>Index</i>	100	102	98	86
Unit prices (Euro/tonne)	1 271	1 228	1 295	1 417
<i>Index</i>	100	97	102	112

- (88) The Community industry's sales volumes have decreased by 11 % between 2002 and the IP. Although the decrease between 2002 and 2003 has been nearly offset by the increase between 2003 and 2004 the investigation showed that the main decrease occurred between 2004 and the IP when 11 % of sale volume was lost.

- (89) Overall, the market share of the Community industry decreased from 16,8 % to 14,5 % between 2002 and the IP. This market share slightly increased between 2002 and 2003 and subsequently continuously decreased until the IP. The decrease was particularly pronounced between 2004 and the IP where 2 percentage points were lost. Both the decrease in sales volume and market shares should be seen in the light of the evolution of the Community consumption which rose by 3 % during the period considered.
- (90) The Community industry unit prices first decreased by 3 % between 2002 and 2003 and then rose until the IP to reach 1 417 Euro per tonne, i.e. an increase of 12 % between 2002 and the IP. As already mentioned in recital 79, this should also be seen in the light of the raw material price evolution (i.e. increase by more than 30 % during the same period).

6.3. Stocks

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

Table 7

Stocks

	2002	2003	2004	IP
Stocks (in mt)	12 997	14 940	10 517	12 760
Index	100	115	81	98

- (92) The investigation revealed that stocks cannot be considered as a meaningful injury factor, since it is not produced for stock, and therefore the trends in stocks are given for information. The level of stocks remained rather stable overall. It increased by 15 % between 2002 and 2003, then decreased by 29 % until the end of 2004 and then rose again by 21 % to reach almost the same level as in 2002.

6.4. Investments and ability to raise capital

Table 8

Investments

	2002	2003	2004	IP
Investments (in '000 Euros)	3 772 874	7 143 402	5 042 707	9 657 326
Index	100	189	134	256

- (93) Although investment significantly increased between 2002 and the IP it is considered that the level and nature of the investments (mainly replacements of machinery and maintenance) is low for a capital intensive industry such as the PSF industry.
- (94) The investigation showed that the financial performances of the Community industry deteriorated but it did not reveal that its ability to raise capital was seriously affected yet during the period considered.

6.5. Profitability, return on investment and cash flow

Table 9

Profitability, return on investment and cash flow

	2002	2003	2004	IP
Profitability on EC sales	0,4 %	– 5,6 %	– 0,8 %	– 4,9 %
<i>Index</i>	100	– 1 311	– 181	– 1 137
Return on total assets	– 0,8 %	– 8,9 %	2,1 %	– 7,8 %
<i>Index</i>	– 100	– 1 094	265	– 966
Cash Flow (in '000 Euro)	11 299	3 810	8 692	– 4 393
<i>Index</i>	100	34	77	– 39

- (95) The profitability achieved by the Community industry significantly decreased between 2002 and 2003 since it declined by 6 percentage points. Breakeven point could almost be reached in 2004 but a further decline of the financial results between 2004 and the IP led to losses amounting to 4,9 % of the turnover. As a consequence, the financial results of the Community industry were negative for most of the IIP.
- (96) It should also be noted that during the same period, the cost of production increased by 17 % in the Community. As regard the raw material, the increase was as high as 30 % at worldwide level. Both the return on total assets and the cash flow show the same trends as the profitability, namely deterioration from 2002 to 2003, followed by an improvement between 2003 and 2004 and a further sharp decline between 2004 and the IP.
- (97) The evolution of the financial results of the Community industry should be seen in the light of the decision taken by one of the Community industry producers to reorganise its production already mentioned under recital 85 above. This reorganisation has had a negative effect on the financial results of this specific producer who used the most efficient production process for the production of more profitable products to the detriment of PSF. For this reason, the cost of production of this Community producer has not been taken into account in the calculation of the injury elimination level described in recital 172 below.
- (98) However it is worth noting that the said producer is rather small compared to the other producers included in the definition of the Community industry, the injury analysis and the trends thereof are not affected.

6.6. Employment, Productivity and Wages

Table 10

Employment, Productivity and Wages

	2002	2003	2004	IP
Number of employees	813	796	701	659
<i>Index</i>	100	98	86	81
Employment cost (in '000 Euros)	37 452	37 223	36 663	39 666
<i>Index</i>	100	99	98	106
Productivity (tonne/employee)	178,7	179,0	198,9	198,8
<i>Index</i>	100	100	111	111

- (99) The number of personnel employed by the Community industry continuously decreased from 813 employed in 2002 to 659 persons during the IP i.e. a decrease of 19 %. This decrease was however sharper than the decrease in production and thus led to an improvement of the productivity which gained 11 % in the same period.
- (100) It should be noted that because of the social cost inherent to the reduction of the workforce the cost linked to the personnel could not be reduced during the period considered.

6.7. *Magnitude of the dumping margin*

- (101) The dumping margins specified in the dumping part are clearly above *de minimis*, as defined in Article 9(3) of the basic Regulation. Furthermore, given the volume and the price of the dumped imports, the impact of the actual margins of dumping cannot be considered negligible.

6.8. *Recovery from past dumping*

- (102) Despite the fact that anti-dumping measures were imposed on imports of PSF originating in the People's Republic of China, and Saudi Arabia in March 2005 (i.e. during the IP), the injury data collected during the IP do not point towards a recovery from the effects of past dumping.

6.9. *Growth*

- (103) The investigation showed that despite an increase in consumption by 3 % or by around 24 000 tonnes, the Community industry lost sales volume (– 13 000 tonnes) and market share (– 1,9 percentage points) during the period considered.

7. **Conclusion on injury**

- (104) During the period considered, the volume of dumped imported PSF doubled and its share of the market increased by 7 percentage points to reach 15,3 % of the Community market in the IP. Following a worldwide increase in raw material prices, the price of the dumped import from the countries concerned were increased between 2004 and the IP. However, the increase was not such as to compensate for the raw material cost increase and these prices were consistently and significantly lower than those of the Community industry during the period considered.
- (105) The investigation showed that some injury indicators pertaining to the Community industry remained stable or experienced positive developments during the IIP, as for example the capacity utilisation, investments and productivity.
- (106) However, a general deterioration in the economic situation of the Community industry has been apparent as from 2002 up to the IP: production, production capacity, market share, sales volume and the employment decreased. The decrease of sales volume also implied that the Community industry could not benefit from the increase of demand in its core market. The investigation also showed a sharp deterioration in the financial situation of the Community industry: losses were incurred for most of the IIP and the return on investments and the cash-flow from operating activities followed the same negative trend.
- (107) In spite of a 12 % increase between 2002 and the IP, the sales prices of the Community industry could not reflect the 30 % increase in raw material prices which occurred at the same time. Moreover, it was found that the prices of the imports from the countries concerned were undercutting those of the Community industry by more than 40 % during the IP.

- (108) In view of the losses in market share, sales volume, and the negative financial results achieved by the Community industry in particular during the IP it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

E. CAUSATION

- (109) In accordance with Article 3(6) of the basic Regulation, it was examined whether the material injury suffered by the Community industry had been caused by the dumped imports from the countries concerned. In accordance with Article 3(7) of the basic Regulation, the Commission also examined other factors which might have injured the Community industry in order to ensure that any injury caused by those factors was not wrongly attributed to the dumped imports.

1. Effect of dumped imports

- (110) It is recalled that the volume of dumped imports originating in the countries concerned increased dramatically during the period considered. As can be seen in the table 2. under recital 76, the imports concerned had doubled between 2002 and the IP, i.e. an increase from 62 Ktonnes in 2002 to around 127 Ktonnes in the IP. During the same period of time, their market share significantly increased by 7 percentage points i.e. from 8 % to over 15 %.
- (111) The most important increase in dumped import volume took place between 2004 and the IP when these imports increased by 75 % and gained 6,5 percentage points in market share. The surge in dumped imports coincided with the deterioration of the economic situation of the Community industry. Indeed, the investigation showed that most of the injury indicators pertaining to the Community industry, in particular, production, production capacity, sales volume, market share and profitability, deteriorated sharply between 2004 and the IP, namely at the time when the volumes of dumped imports increased most significantly.
- (112) This is particularly true for the production which decreased by 6 %, the sales volume which decreased by 11 %, the market share which declined by 1,9 percentage points and profitability which declined by 5,7 percentage points between 2004 and the IP. Moreover, this occurred at a time where dumped imports were significantly undercutting Community industry prices by over 40 %. The effect of this unfair pricing behaviour was that the Community industry's prices were suppressed and could not even cover the increase in raw material prices. This was further confirmed by the significant losses incurred by the Community industry during the IP.
- (113) Based on the above facts and considerations, it is evident that the surge in low-priced dumped imports from the countries concerned coincided with the injurious situation of the Community industry. The negative impact of the dumped imports was particularly pronounced from 2004 up to the IP and had a determining role in the deterioration of the economic situation of the Community industry.

2. Effect of other factors

2.1. Development of consumption

- (114) Between 2002 and the IP, the Community consumption increased by more than 3 %. The development of consumption thus has not contributed to the injury suffered by the Community industry. To the contrary, under normal market conditions, the Community industry could have expected an increase in its sales volumes.

2.2. Imports from other third countries

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

2.3. Imports from other countries subject to anti-dumping duties

Table 11

Imports from other countries subject to anti-dumping duties

Import volume in tonnes	2002	2003	2004	IP
Australia	145	2	13	0
Belarus	0	75	171	73
China	24 722	33 194	45 313	36 530
India	474	258	510	336
Indonesia	1 423	285	493	234
South Korea	97 980	87 525	108 572	106 222
Saudi Arabia	16 859	21 816	27 096	6 383
Thailand	472	10	41	2
Total	142 075	143 164	182 209	149 779

Source: Eurostat

Table 12

Market share of other countries subject to anti-dumping duties

Market share	2002	2003	2004	IP
Australia	0 %	0 %	0 %	0 %
Belarus	0 %	0 %	0 %	0 %
China	3 %	4 %	5 %	4 %
India	0 %	0 %	0 %	0 %
Indonesia	0 %	0 %	0 %	0 %
South Korea	12 %	11 %	13 %	13 %
Saudi Arabia	2 %	3 %	3 %	1 %
Thailand	0 %	0 %	0 %	0 %
Total	18 %	19 %	22 %	18 %

Source: Eurostat

- (116) As shown in the table above, market share of the countries subject to anti-dumping duties remained stable between 2002 and the IP. They first gained 4 percentage points between 2002 and 2004 and then fall back to the 2002 level. Imports from all countries subject to anti-dumping measures decreased between 2004 and the IP i.e. by 18 % in volume and 4 percentage points in market share.
- (117) In the light of the above, it is provisionally concluded that imports from third countries subject to anti-dumping measures did not have an appreciable effect on the injury of the Community industry.

2.4. Imports from other third countries not subject to anti-dumping duties

Table 13

Imports from other third countries not subject to anti-dumping duties

	2002	2003	2004	IP
Import volume in tonnes	64 305	63 720	86 359	92 775
Unit prices (Euro/mt)	1 346	1 210	1 139	1 257
Market share	8 %	8 %	10 %	11 %
<i>Of which Nigeria</i>				
Import volume in tonnes	6 677	8 173	11 834	10 901
— prices (Euro/mt)	1 063	947	995	1 218
— Market share	1 %	1 %	1 %	1 %
<i>Of which Turkey</i>				
Import volume in tonnes	20 157	15 922	38 188	37 742
— prices (Euro/mt)	1 116	1 061	1 067	1 204
— Market share	2 %	2 %	5 %	5 %

(118) Imports from other third countries not subject to anti-dumping duties slightly decreased between 2002 and 2003 and then increased by 45 % between 2003 and the IP. Although their prices decreased by 7 % between 2002 and the IP they remained however 9 % higher than the prices of the countries concerned in the IP.

(119) Only two countries had market share equal or above 2 % i.e. Turkey and Nigeria

(120) However, it should be noted that their prices were increasing respectively by 8 % and 15 % between 2002 and the IP and even more significantly between 2004 and the IP respectively by 13 % and 22 % while prices from the countries concerned increased by only 10 % during the same period. In addition, their prices were on average 4 % higher than the prices charged by Taiwanese and Malaysian exporters during the IP. Although the volume of Turkish and Nigerian PSF significantly increased between 2002 and the IP, they respectively amount to only 10,1 % and 2,7 % of the imports into the Community and only Turkey gained a small market share between 2002 and the IP i.e. 3 percentage points. Thus, Nigerian imports could not have contributed to the injury suffered by the Community industry.

(121) Regarding Turkey, it should be mentioned that most of the imports of PSF into the Community are made by one of the complainant companies included in the definition of the Community industry, which is related to a Turkish exporting producer. These purchases aimed at supplementing the product range of the Community producer in question in periods of intensive market demand. Furthermore, these imports were not caused by any abandoned or delayed investment projects susceptible of having provoked a reduction in the production capacity of the Community related company. It was therefore concluded that the Turkish products completed the product range of the Community industry enabling it to offer a wider choice of models to customers and that they did not affect negatively the situation of the Community industry.

- (122) In the light of the above, it is provisionally concluded that imports from third countries without anti-dumping measures did not have an appreciable effect on the injury of the Community industry.

2.5. Other Community producers

- (123) The other Community producers of the product concerned held a market share of 41 % during the IP. During the period considered, their sales volume decreased by 15 % and their market share declined by 9 percentage points. This suggests that they are in a similar situation to the Community industry, i.e. that they have suffered injury from the dumped imports. Therefore, it cannot be concluded that other Community producers caused material injury to the Community industry.

2.6. Fluctuation of raw material prices

- (124) Since the cost of raw materials is a substantial part of the total cost of production of PSF (about 60 % of total cost of production) it was also examined whether the material injury suffered by the Community industry had been caused by any increase of the raw material prices. The production of so called virgin PSF is made out of derivatives of petroleum (mainly mono ethylene glycol — MEG — and purified terephthalic acid — PTA —). It can also be produced out of recycled materials (polyethylene terephthalate — PET — bottles and other waste). Finally, PSF can be made from a combination of both kinds of raw materials, derivatives of petroleum and recycled PET waste.
- (125) Prices of MEG and PTA, as derivatives of petroleum, depend on the price fluctuations of this latter. In this respect, as already explained in the Council Regulation (EC) No 428/2005 ⁽¹⁾, prices of MEG and PTA increased from 2002 until the end of 2003 by 14 %. In addition, on the basis of different submissions which referred to international sources for the MEG and PTA price evolutions, it was found that prices of MEG and PTA increased from 2003 until the mid of the IP by 25 % and 29 % respectively i.e. an increase of around 40 % between 2002 and mid 2005.
- (126) Extraction from Eurostat even showed a price increase of 36 % between 2002 and the IP for PTA and 75 % for the MEG during the same period. This trend was also confirmed by information submitted by the sole supplier of raw materials which cooperated.
- (127) As can be seen from recital 95 above the full cost of production increased by 17 % between 2002 and the IP. This shows that rationalisation efforts have been made by the Community industry to improve its efficiency and offset in particular the effect of the raw materials price increase described in recitals 124 and 125 above. This is also confirmed by the gain in productivity as shown in recital 99. However, in spite of the rationalisation efforts of the Community industry, this increase in raw materials prices could not be totally reflected in the average sales price of the Community produced PSF which rose by only 9 % from 2002 to the IP, despite the fact that fibres are price sensitive products.
- (128) Moreover, it is worth noting that all producers in the world, thus including those in the countries concerned, were facing similar increase in raw material prices as these are worldwide traded commodity products. It is therefore clear that the producers in the countries concerned did not increase significantly their export prices to the Community to reflect that evolution. It is therefore considered that the low level of export price from the countries concerned has caused a price suppression and led to a situation where the Community Industry could not increase its own sales prices adequately. Otherwise the loss in customers and market share would have been greater than the one found.

⁽¹⁾ OJ L 71, 17.3.2005, p. 1.

- (129) Accordingly, it is considered that even if it may appear that the increase of raw material costs may have contributed to some extent to the injury suffered by the Community industry, it is not the real cause of that injury. Indeed, it is the presence of low-priced dumped imports which prevented the Community industry to adapt their prices to the increased costs and thus have caused the material injury.

2.7. Fluctuation of exchange rates

- (130) Some interested parties argued that the price evolution of the imports concerned was influenced by the evolution of the Euro vis-à-vis the US dollar. It is true that between 2002 and the IP, the US dollar continuously depreciated, i.e. from 1,06 EUR to 0,79 EUR or – 25 %.
- (131) It is recalled that the investigation has to establish whether the dumped imports (in terms of prices and volume) have caused material injury to the Community industry or whether such material injury was due to other factors. In this respect, Article 3(6) of the basic Regulation states that it is necessary to show that the price level of the dumped imports cause injury. It therefore merely refers to a difference between price levels, and there is thus no requirement to analyse the factors affecting the level of those prices.
- (132) In practice, the effect of the dumped imports on the Community industry's prices is essentially examined by establishing price undercutting, price depression and price suppression. For this purpose, the dumped export prices and the Community industry's sales prices are compared, and export prices used for the injury calculations may sometimes need to be converted into another currency in order to have a comparable basis. Consequently, the use of exchange rates in this context only ensures that the price difference is established on a comparable basis. From this, it becomes obvious that the exchange rate can in principle not be another factor of the injury.
- (133) The above is also confirmed by the wording of Article 3(7) of the basic Regulation, which refers to known factors other than dumped imports. The list of the other known factors in this Article does not make reference to any factor affecting the price level of the dumped imports. To summarise, if the exports are dumped, and even if they benefited from a favourable development of exchange rates, it is difficult to see how the development of such exchange rate could be another factor causing injury.
- (134) Thus, the analysis of the factors affecting the level of the prices of the dumped imports, be it exchange rate fluctuations or something else, cannot be conclusive and such analysis would go beyond the requirements of the basic Regulation.
- (135) In any event, and without prejudice of the above, any allegation of the Euro appreciation in respect of the USD as a cause of injury of the Community industry should be especially valid for the period where said appreciation mainly took place i.e. from 2002 to 2004, and in particular during the first two years, when the differences among both currencies have been more accentuated. In that respect, it is noteworthy that imports concerned decreased by 5 % between 2002 and 2003 while the sharpest depreciation of the USD vis-à-vis the Euro took place during the same period (i.e. -16 %). Similarly, while the USD depreciated by 25 % between 2002 and 2004, imports concerned increased by only 16 %, while when the USD depreciated by a further 2 % between 2004 and 2005, imports concerned increased by 75 %.
- (136) Moreover, imports from countries other than those found to be dumping have also benefited from the appreciation of the Euro. However, their volumes increased much more smoothly than those from the countries concerned and their trend was more in line with the exchange rates fluctuations. Indeed, they increased by 35 % between 2002 and 2004 when USD depreciated by 25 % (while imports concerned increased by 17 %), and by only 7 % between 2004 and the IP, when the USD depreciated by a further 2 % (while imports concerned increased by 75 %).

- (137) The fact that currency exchange rates and imports from the countries concerned followed different trends (between 2002 and 2003) or trends with diverging extent (between 2004 and the IP) indicates that it cannot be considered as a causal factor for the surge of dumped imports from the countries concerned as argued by interested parties.

2.8. Lack of restructuring of the Community industry

- (138) Some interested parties argued that the Community industry was unable to restructure and to fully benefit from the anti-dumping duties imposed for many years on a wide range of third countries.
- (139) However, it should be considered that during that number of years, the Community industry has been suffering from trade distortion and dumped prices which third countries practiced in turn. The Community market was therefore systematically biased by these distortions thus preventing the Community industry to recover from dumping practices and take business decisions on a sound basis. This has deprived that industry of the necessary predictability in particular for long term decisions.
- (140) In addition, as explained in recital 127 the Community industry has made restructuring efforts that allowed gaining productivity and compensating for raw material price increases. This was done with the continued presence of dumped imports and thus shows that that industry is viable and can be profitable, should a level playing field be restored on the Community market.

3. Conclusion on Causation

- (141) Based on the above analysis, which has properly distinguished and separated the effects of all known factors having an effect on the situation of the Community industry from the injurious effect of the dumped imports, it is provisionally concluded that there is a causal link between the dumped imports and the material injury suffered by the Community industry within the meaning of Article 3(6) of the basic Regulation. This conclusion is based, on the one hand, on the significant increases in volumes and market shares of the imports concerned, accompanied by a substantial price undercutting, and, on the other the loss of market share and the consequent worsening financial situation. All these developments coincided in time. None of the other factors examined could have explained the deteriorating situation of the Community industry.

F. COMMUNITY INTEREST

1. Preliminary remark

- (142) In accordance with Article 21 of the basic Regulation, it was considered whether despite the conclusion of injurious dumping, compelling reasons exist for concluding that it is not in the Community interest to adopt anti-dumping measures in that particular case. The determination of the Community interest was based on an examination of all the various interests involved, i.e. those of the Community industry, the importers, traders and the users of the product concerned.
- (143) In order to assess the likely impact of the imposition or non-imposition of measures information was requested from all interested parties which were either known to be concerned or which made themselves known. On this basis, the Commission sent questionnaires to the Community industry, three unrelated importers, 22 users and three suppliers of raw materials. In addition, the Commission contacted also 14 Community producers which did not provide the information requested for the selection of the sample in order to obtain basic information on their production and sales.
- (144) As explained in recital 10, the three complainant Community industry producers, one unrelated importer, seven users and one supplier of raw materials replied to the questionnaire. In addition, six Community producers provided the basic information on their production and sales. In addition, three users associations provided submissions against the measures.

2. Community industry

- (145) It is recalled that the Community industry has suffered material injury, as set out in recitals 104 to 108.
- (146) The imposition of measures is expected to prevent a continuing distortion of the market and suppression of prices. Measures would enable the Community industry to increase its sales and thereby recover lost market share, and benefiting from economies of scale. Moreover, it is expected that the Community industry could slightly increase their selling prices at a level that would cover costs and allow for a profit. This would likely enable the Community industry to reach the levels of profitability which are necessary in that capital intensive business where continued investments need to be done and to take advantage of developments in the Community market. This would guarantee the viability of the Community industry's PSF business.
- (147) Otherwise, should anti-dumping measures not be imposed, it is likely that the negative trend of the financial situation of the Community industry will continue. The Community industry is particularly marked by a loss of revenue due to depressed prices, falling market share and significant losses. Indeed, in view of the decreasing revenue and the significantly worsening trend in the IP, it is most likely that the financial situation of the Community industry will deteriorate further in the absence of any measures. This would ultimately lead to cuts in production and closures of production sites, which would therefore threaten employment and investments in the Community. This is particularly true since the European market is now one of the few export markets left to the countries concerned after the imposition of anti-dumping duties on PSF from Taiwan in other third countries such as the United States of America, India and Japan.
- (148) Accordingly, it is provisionally concluded that the imposition of anti-dumping measures would allow the Community industry to recover from the injurious dumping suffered and would thus be in the interest of the Community industry. The other Community producers would also in all likelihood benefit from the imposition of anti-dumping measures. Indeed, the other Community producers which did not provide the information requested for the selection of the sample but were subsequently contacted in order to obtain basic information on their production and sales were found in similar situation since their sales volume decreased by 23 % and their sales prices increased also by only 12 %.

3. Impact on importers and users

- (149) Only one importer could be considered as cooperating and this importer was against the imposition of measures for the reason that they prevented import of PSF as raw material and could allegedly force the downstream industry to delocalise outside the EU. However, this importer was not able to provide precise information on the consequence of any measures on its own business or any data regarding the profitability of its sales of the product concerned. Therefore, it has not been possible to assess the likely effect of the proposed anti-dumping measures on the profitability of the co-operating importer.
- (150) It should be recalled that anti-dumping measures are not intended to prevent imports into the Community, but they are ensuring that imports are not made at dumped prices and that operators have access to fairly-priced PSF. Imports have always been allowed and will still be allowed to enter into the Community market. Recent experience has shown that even with anti-dumping measures traditional South Korean exporters have continued to supply Community-based customers. As explained in recital 159 below anti-dumping measures on certain countries such as India, Australia and Indonesia have expired and there are alternative sources of supply available which are not subject to anti-dumping duties, as for example PSF from Nigeria and Turkey.

- (151) On this basis, and given the large number of importers not cooperating in the proceeding, it is provisionally concluded that anti-dumping measures will not have such a negative impact on importers as a whole as to outweigh the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition.
- (152) Users of the product concerned belong to the textile sector. The PSF market is divided into the spinning consumption (i.e. the manufacturing of filaments for the production of textiles, after mixing or not with other fibres such as cotton or wool), the non-woven consumption (i.e. the manufacturing of sheets and webs that have not been converted into yarns and that are bonded to each other by friction, and/or cohesion, and/or adhesion, excluding paper), and the filling consumption (i.e. the stuffing or padding of certain textile goods, as for example cushions or car seats).
- (153) Most of the cooperating users in this proceeding are producers of non-woven products. Said users are members of one of the three users associations cooperating in this proceeding, which represents the non woven industry at a European level.
- (154) Further to information on purchases reported in their responses to the questionnaires, cooperating users during the IP represent about 6 % of total Community consumption of PSF and about 7 % of total imports from the countries concerned. It is noteworthy that imports from the countries concerned represent the minor part of their purchases i.e. 16 %, while imports from other third countries and purchases in the EU still represent respectively 44 % and 40 % of their purchases. One of the cooperating users did not even import from the countries concerned between 2002 and the IP.
- (155) Users have indicated a number of arguments against the imposition of duties.
- (156) First, the users claimed that anti-dumping measures could put at risk a downstream industry which employs more than 20 000 people, while the Community industry allegedly employs less than 1 700 persons. It has been alleged that the imposition of duties could lead to a loss of jobs in the downstream industry or to moving manufacturing facilities overseas.
- (157) They also claimed that the imposition of anti-dumping duties would trigger price increases which users would need to reflect in downstream products. This development would in turn trigger an increase in imports of lower priced downstream products from other third countries and from the countries concerned by this investigation.
- (158) They finally claimed that the Community industry is unable to fully supply the Community market and that the imposition of the anti-dumping duties would worsen the users' financial situation given that they would have to continue to import from the countries concerned products which are not available within the Community such as the so-called low melt polyester.

- (159) Regarding the Community market's alleged dependence on external suppliers, it is recalled that by Council Regulation (EC) No 1515/2006 ⁽¹⁾ it was decided to repeal the existing measures on imports from Australia, Indonesia, Thailand and India. While the anti-dumping measure imposed by Council Regulation (EC) No 1522/2000 ⁽²⁾ and Council Regulation (EC) No 2852/2000 ⁽³⁾ almost stopped imports from those countries, it is noteworthy that before the imposition of anti-dumping measures on their imports of PSF in the Community market, Australia, Indonesia and Thailand held a market share of 8,9 % and India a market share of 2,9 %. It is therefore likely that, once anti-dumping measures are removed, imports from these third countries will resume and be reoriented towards the Community market. In addition, imports from other third countries already hold an important share of the Community market, reaching 11 % in the IP.
- (160) Therefore, in spite of the proposed introduction of duties against Taiwan and Malaysia, and taking into account the termination of the measures against Australia, Indonesia, Thailand and India, the Community users which already during the IP purchased 84 % of their needs outside the countries concerned, would still be able to rely on (or to switch to) important suppliers of the product concerned in the Community or on other major providers located in countries not subject to antidumping duties, should it be for specific product such as low melt polyester (LMF).
- (161) This is also confirmed by one of the users which stated that the so called LMF can be supplied by Korea or Japan and that two European producers also produce it. It shows that at least two European producers have technology and know how to produce such a specific product and that it cannot be excluded that once prices reach a level at which the effects of injurious dumping are removed, production and supply will increase within the Community.
- (162) In addition although certain types of PSF were not produced by the Community industry during certain periods, this does not mean that the Community industry would not be in a position to produce those types. Indeed, depending on the product type, only small adaptations of the production process, requiring low investment, would be needed. Rather, at particular moments in time, certain PSF types were not available because the Community producers could not deliver the quantities involved at the depressed price levels which users were willing to pay.
- (163) Regarding the level of employment within the Community industry and the downstream industry, it is noteworthy that during a number of years, the Community industry has been suffering from low priced, dumped, imported PSF causing a situation in which employment continuously decreased, as shown in recital 99. The fact that more people are employed in the downstream industry than in the PSF production does not in itself justify to put at risk a Community industry which can merely be less labour intensive than the downstream industry and which is, as demonstrated in recital 154 above, also vital for the users, since all the cooperating users purchased partially the Community product.
- (164) Regarding the likely impact on the downstream industry's financial situation, the information available on the cost structure of the user industry, the level of the proposed measures and the share between dumped imports and the other sources of supply indicate that:

— PSF represents between 10 % and 40 % of the users total cost of production of downstream products,

⁽¹⁾ OJ L 282, 13.10.2006, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 10.

⁽³⁾ OJ L 332, 28.12.2000, p. 17.

- the average anti-dumping duty is about 24,9 % for the countries concerned,
- the share of dumped imports is 15,3 % of total consumption of PSF.

The proposed measures may thus have the impact of increasing the cost of production of users by between 0,4 % to a maximum of 1,5 %. This likely maximum increase is considered to be relatively low when compared to the positive impact of the proposed measures in restoring effective competition on the Community market.

- (165) This analysis on the impact of the proposed measures on users therefore indicated that the imposition of anti-dumping measures is not likely to trigger an increase in the import of cheap downstream products into the Community. This conclusion was also reached in the absence of any evidence from the users concerned substantiating their claim, e.g. that past measures on this product had led to such effects.

4. Impact on suppliers of raw materials

- (166) One provider of raw materials has cooperated in the present proceeding by submitting a response to the questionnaire. It supplies the PSF industry with PTA and MEG and has expressly supported the imposition of duties which would allow the Community industry to remain viable and would also secure his own position.

5. Conclusion on Community interest

- (167) Taking into account all of the above factors, and taking into account the level of measures as well as the termination of the proceeding against Australia, Indonesia, Thailand and India, it is concluded that the imposition of measures would not have a significantly negative effect, if any at all, on the situation of the users and importers of the product concerned. It is also recalled that in the previous proceedings concerning the same product, the adoption of measures was considered not to be against the interest of the Community.
- (168) On this basis, it is provisionally concluded that there are no compelling reasons not to impose anti-dumping measures.

G. PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

- (169) In view of the provisional conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.
- (170) For the purpose of establishing the level of the provisional measures, account has been taken of both the dumping margin found and the amount of duty necessary to eliminate the injury sustained by the Community industry.

- (171) The provisional measures should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production and obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community.
- (172) The investigation confirmed that in the absence of dumped imports the Community industry should yield a profit before taxes of 5 %. This profit should allow the industry to cover its costs. On this basis a non-injurious price was calculated for the Community industry of the like product. The non-injurious price has been obtained by adding the above mentioned profit margin of 5 % to the cost of production.
- (173) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the average non-injurious price. Any difference resulting from this comparison was then expressed as a percentage of the average import CIF value.

2. Provisional measures

- (174) In the light of the foregoing, it is considered that a provisional anti-dumping duty should be imposed at the level of the dumping margin found, but should not be higher than the injury margin calculated above in accordance with Article 7(2) of the basic Regulation.
- (175) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigations. Therefore, they reflect the situation found during these investigations with respect to the cooperating companies. These duty rates (as opposed to the residual duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the countries 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'.
- (176) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.
- (177) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporting producers, but also to those producers which did not have any exports to the Community during the IP. However, with regard to exporting producers in Malaysia, for which no sampling was applied, those latter companies are invited, when they fulfil the requirement of Article 11(4) of the basic Regulation, second paragraph, to present a request pursuant to that Article in order to have their situation examined individually.

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

The proposed anti-dumping duties are the following:

Country	Company	Anti-dumping duty (in %)
Malaysia	Hualon Corportaion (M) Sdn. Bhd. Level 9 Wisma Goldhill 67 Jalan Raja Chualan 50200 Kuala Lumpur	12,4
	Penfibre Sdn. Bhd. Lot 109-114 Prai Free Industrial Zone 1 13600 Prai, Penang	14,7
	All other companies	23,0
Taiwan	Chung Shing Textile Co., Ltd. No 463, Hua Cheng Road, Hsin Chuang City Taipei Hsien	16,5
	Far Eastern Textile Ltd. 33Fl, No 207, Sec. 2, Tun Hwa South Road Taipei	29,5
	Nan Ya Plastics Corporation 5Fl, No. 201, Tung Hwa North Road Taipei	29,5
	Shing Ming Ind., Co., Ltd. No 330, Ho Shin Rd, Chu-Nan, Miao-Li	16,5
	Shingkong Synthetic Fibres Corporation 8Fl, No 123, Sec. 2, Nanking E. Road Taipei	16,5
	Tainan Spinning Co., Ltd. 4Fl, No 560, Sec. 4, Chung Hsia e. Road Taipei	16,5
	Tung Ho Spinning Weaving & Dyeing Co., Ltd. 13Fl, No 376, Sec. 4, Jen Ai Rd Taipei	14,7
	Tuntex Distinct Corporation 16Fl, No. 90, Sec 1, Hsin-Tai 5th Rd Hsichih Taipei County	18,2
	Tuntex Synthetic Corporation 16Fl. No 90, Sec 1, Hsin-Tai 5th Rd Hsichih Taipei County	18,2
	True Young Co., Ltd. 8, Li Hsing St. Erch Chen Village Kwantien Hsiang Tainan Hsien, 720	29,5
	All other companies	29,5

H. FINAL PROVISION

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on synthetic staple fibres of polyesters, not carded, not combed or otherwise processed for spinning, falling within CN code 5503 20 00, originating in Malaysia and Taiwan.
2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products described in paragraph 1, shall be as follows:

Country	Manufacturer	Rate of duty (%)	Taric Additional code
Malaysia	Hualon Corporation (M) Sdn. Bhd. Level 9 Wisma Goldhill 67 Jalan Raja Chualan 50200 Kuala Lumpur	12,4	A796
	Penfibre Sdn. Bhd. Lot 109-114 Prai Free Industrial Zone 1 13600 Prai, Penang	14,7	A797
	All other companies	23,0	A999
Taiwan	Chung Shing Textile Co., Ltd. No 463, Hua Cheng Road, Hsin Chuang City Taipei Hsien	16,5	A798
	Far Eastern Textile Ltd. 33Fl, No 207, Sec. 2, Tun Hwa South Road Taipei	29,5	A799
	Nan Ya Plastics Corporation 5Fl, No. 201, Tung Hwa North Road Taipei	29,5	A800
	Shing Ming Ind. Co., Ltd. No 330, Ho Shin Rd, Chu-Nan, Miao-Li	16,5	A801
	Shingkong Synthetic Fibres Corporation 8Fl, No 123, Sec. 2, Nanking E. Road Taipei	16,5	A802
	Tainan Spinning Co., Ltd. 4Fl, No 560, Sec. 4, Chung Hsia e. Road Taipei	16,5	A803
	Tung Ho Spinning Weaving & Dyeing Co., Ltd. 13Fl, No 376, Sec. 4, Jen Ai Rd Taipei	14,7	A804

Country	Manufacturer	Rate of duty (%)	Taric Additional code
	Tuntex Distinct Corporation 16Fl, No. 90, Sec 1, Hsin-Tai 5th Rd Hsichih Taipei County	18,2	A805
	Tuntex Synthetic Corporation 16Fl. No. 90, Sec 1, Hsin-Tai 5th Rd Hsichih Taipei County	18,2	A806
	True Young Co., Ltd. 8, Li Hsing St. Erch Chen Village Kwantien Hsiang Tainan Hsien, 720	29,5	A807
	All other companies	29,5	A999

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

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

Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, the interested parties may make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

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

Article 3

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

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

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

Done at Brussels, 22 December 2006.

For the Commission

Peter MANDELSON

Member of the Commission