

COUNCIL REGULATION (EC) No 1522/2000**of 10 July 2000****imposing a definitive anti-dumping duty on imports of synthetic staple fibres of polyester originating in Australia, Indonesia and Thailand and collecting definitively the provisional duty imposed**

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:

1. PROCEDURE**1.1. Provisional measures and definitive countervailing duties**

- (1) By Commission Regulation (EC) No 124/2000⁽²⁾ (the 'provisional duty Regulation') provisional anti-dumping duties were imposed on imports into the Community of polyester staple fibres ('PSF') falling within CN code 5503 20 00 and originating in Australia, Indonesia and Thailand.
- (2) As a result of a parallel anti-subsidy investigation, provisional countervailing duties were imposed under Commission Regulation (EC) No 123/2000⁽³⁾ on imports into the Community of PSF originating in Australia, and Taiwan.
- (3) Regarding the abovementioned anti-subsidy investigation, by Council Regulation (EC) No 978/2000⁽⁴⁾ definitive countervailing duties on imports originating in Australia, Taiwan and Indonesia were adopted.

1.2. Subsequent procedure

- (4) Following the imposition of provisional anti-dumping duties, several parties submitted comments in writing. In accordance with the provisions of Article 6(5) of Regulation (EC) No 384/96 (the 'basic Regulation'), the parties which so requested were granted an opportunity to be heard. 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, at the level of this duty, of amounts secured by way of provisional duty.

They were also granted a period within which to make representations subsequent to this disclosure.

- (5) The oral and written comments submitted within the deadlines set for that purpose by the interested parties were considered and, where deemed appropriate, taken into account for the definitive findings.

1.3. Non-cooperation

- (6) Following the imposition of provisional measures, one non-cooperating Indonesian exporting producer requested the Commission to reconsider its status as non-cooperator. The claim was that, despite the difficulties caused by the deadlines, this company replied to the Commission questionnaire and that this was an indication of its intention to cooperate.
- (7) As explained in recital 18 of the provisional duty Regulation, this exporting producer failed to provide a completed response to the questionnaire within the deadline, which was extended several times in order to enable the company to submit a meaningful reply. The provisional determination of non-cooperation should therefore be confirmed.

2. PRODUCT CONCERNED AND LIKE PRODUCT

- (8) The product concerned is synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, which is currently classifiable under CN code 5503 20 00. It is commonly referred to as polyester staple fibres or PSF.
- (9) The Royal Thai Government ('RTG'), the Government of Indonesia ('GOI'), certain exporting producers and a users' association ('Eurofibrefill') claimed that the Notice of Initiation of the present proceeding did not cover PSF types for non-spinning applications, and consequently these PSF types should have been excluded from the proceeding.
- (10) It was also argued that, in any event, a differentiation should be made between PSF types used for spinning applications (also called woven, or 'PSFS') and PSF used for non-spinning applications (also called non-woven, fibrefill or 'PSFNS') because of different physical, technical and chemical characteristics and different use. Furthermore, it was alleged that inter-changeability, if any, between PSFS and PSFNS was very limited and concerned only certain types of fibres originally intended for PSFS which may be used as PSFNS. Actually, some interested parties indicated that the differentiation

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).

⁽²⁾ OJ L 16, 21.1.2000, p. 3.

⁽³⁾ OJ L 16, 21.1.2000, p. 30.

⁽⁴⁾ OJ L 113, 12.5.2000, p. 1.

between PSFS and PSFNS types would be reflected in the thickness expressed in 'denier'. In their opinion, PSF types below 3 denier are used by the spinning industry, whereas types above 3 denier are used in non-spinning applications.

however be noted that differences in physical characteristics exist for types of even the same thickness, since production is normally made according to customers' specifications.

- (11) Moreover, they argued that the Community industry mainly produces PSFS and that consequently most PSFNS types have to be sourced outside the Community.
- (12) Similarly, one exporting producer in Indonesia claimed that PSF produced from recycled raw materials ('recycled PSF') should not be included in the same category as PSF produced from regular raw materials ('regular PSF'), because both have a distinct production process, they are produced with different raw material and they have different end-uses. They therefore argued that recycled PSF should not be covered by the present proceeding.
- (13) In this respect it should be noted that the Notice of Initiation, as well as the complaint, clearly reproduce the description of the relevant CN code which covers all types of PSF. Notwithstanding this, after the initiation of the present investigation, the wording of the description of the relevant CN code was wrongly interpreted by certain exporting producers. Subsequently, it was clarified that both the complaint and the Notice of Initiation covered all types of PSF exported by the countries concerned and produced by the Community industry irrespective of their use.
- (14) In fact, the Community industry produces all types of PSF and in particular PSFNS. Indeed, contrary to allegations suggesting very limited activity of the Community industry in PSFNS production, the investigation showed that during the investigation period, 'IP' (1 April 1998 to 31 March 1999), the sales of PSFS types represented around 25 % of sales of the Community industry, whereas PSFNS types represented around 75 %.
- (15) It was also found that about 50 % of the imports of PSF originating in Australia, Indonesia and Thailand were PSFS types, whereas the other 50 % were PSFNS types.
- (16) As far as the alleged differences in physical, technical and chemical characteristics are concerned, it should be recalled that PSF comes in a wide range of different types, of generally the same chemical composition. They are also produced with the same production facilities and even on the same production lines. The investigation has shown that, depending on the operator, between 15 and 80 types of PSF are produced by both exporting producers and the Community industry. The main characteristics by which different types of PSF can be distinguished are thickness (denier), length, tenacity, grimp and shrinkage. It is clear that between the 'bottom end' and the 'top end' of the range, there are differences, in terms of the above technical characteristics. It must
- (17) The alleged almost complete differentiation of PSF types using the 3 denier threshold reflecting differences in the use of the product, was not confirmed by the present investigation, in particular by the analysis of the actual data received from the exporting producers and the Community industry. In fact, significant overlapping between different types of PSF was actually established. This examination showed that sales of PSF below 3 denier to non-spinning industries and above 3 denier to the spinning industry covers about 20 % of the imports from the three countries concerned and of the Community industry's sales. Moreover, 7 % of the fibres are exactly at the threshold point of 3 denier, which are sold either for spinning or non-spinning uses. The investigation has therefore shown that there is no clear dividing line between the various types, as there is overlapping and consequently competition between 'adjacent' types within this range of types.
- (18) Apart from the overlap mentioned above, the fact that the same PSF is used for both spinning and non-spinning applications has also been confirmed by the existence of a clear one-way inter-changeability found for certain PSF types. Indeed, PSFS can be sold for non-spinning uses if the quality of the fibres is not suitable for spinning uses. Consequently, following the practice of the Community in such cases, the various types of PSF involved should be considered as forming one single product.
- (19) As regards the alleged difference in cost of production of PSFS and PSFNS, it should be noted that such difference is negligible. This is also reflected in the fact that there are no big differences in the sales prices of the PSFS and PSFNS, e.g. the regular types of PSF for spinning and non-spinning purposes.
- (20) As mentioned above, all PSF types are produced using the same production equipment. Furthermore, switching from one PSF type to another, apart from certain adjustment and calibration costs, does not involve any additional investments. Although as such this is not relevant for the determination of the product concerned and like product, it follows that the Community industry can produce any type of PSF. Consequently, even if, as alleged, certain PSF types were not readily available from the Community industry, this is not due to technical reasons but to the depressed price level caused by dumped imports which customers have used in their requests for price quotes. Therefore, the argument that certain types of PSF are not available from the Community industry has not been confirmed.

- (21) Finally, it should be recalled that the existence of different types of PSF, variation in quality of raw material used, production processes and uses does not entail any significant differences in the basic physical, chemical and technical characteristics of PSF. Therefore, recycled and regular PSF should be considered as being part of the product concerned for the purpose of this proceeding.
- (22) Based on the foregoing, it is considered that the comments received regarding the definition of the product concerned and the like product, are not such as to invalidate the conclusions of recitals 10 to 12 of the provisional duty Regulation. Consequently, these conclusions, which are in line with the conclusions reached for the same product in previous investigations, are hereby confirmed.

3. DUMPING

3.1. Australia

3.1.1. Normal value

- (23) Following the adoption of provisional measures, the sole Australian exporting producer claimed that the Commission had wrongly considered one domestic user as a related company and should therefore not have excluded the transactions to this company in determining normal value. According to the exporting producer, this user was an independent customer.
- (24) This claim was rejected because according to the information received on the spot, the user in question and the Australian exporting producer were each owned by a trust. Both trusts were controlled by the same family. Moreover, the company itself admitted that some directors and shareholders in both companies were common. The conclusion drawn was that both companies were associated parties within the meaning of Article 2(1) of the basic Regulation. In addition, the company did not show that the relationship had not affected the price levels between the two parties. Furthermore, the Commission established that these transactions were not made in the ordinary course of trade, as they were made at a loss.
- (25) The Australian exporting producer also claimed that in determining the cost of the raw materials the amounts actually paid instead of the prices invoiced for raw materials should have been used.
- (26) This claim was accepted and the cost of production used in the ordinary course of trade test and in constructing normal value was revised accordingly.

3.1.2. Export price

- (27) No claims were made concerning the determination of the export price. The conclusions set out in the provisional duty Regulation are hereby confirmed.

3.1.3. Comparison

- (28) Following the adoption of provisional measures, the Australian exporting producer reiterated its request for an allowance for technical services in the domestic market.
- (29) As laid out in recital 40 of the provisional duty Regulation, the company did not give a satisfactory explanation with regard to the nature of its claims and also did not provide satisfactory explanations or documentary evidence to support the amounts of the adjustment claimed. Furthermore, the company was not able to demonstrate that the factor concerned led to different prices being charged to customers on the domestic and export markets.
- (30) The claim was consequently rejected and the conclusions set out in the provisional duty Regulation are confirmed.

3.1.4. Dumping margin

- (31) 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. The definitive dumping margin as a percentage of the cif import price duty unpaid is 18 %.

3.2. Indonesia

3.2.1. Sampling

- (32) As explained in the provisional duty Regulation, sampling has been used for Indonesia. Following the adoption of provisional measures, the Indonesian authorities argued that they had not agreed to the sample proposed by the Commission at the time of the selection of the sample. However, it should be recalled that the companies finally selected in the sample were those which had been suggested in writing for this purpose by the Indonesian authorities themselves. No further comments concerning sampling were received and, therefore, the conclusions of the provisional duty Regulation are hereby confirmed.

3.2.2. Normal value

- (33) Following the adoption of provisional measures, the Commission reviewed the extent of the cooperation it had received from one Indonesian exporting producer. In this respect, it was concluded that problems which were encountered both with the information provided in the response to the questionnaire and with the subsequent on-the-spot verification meant that certain information supplied by the company could not be adequately verified in particular in relation to the cost of production. The information as presented was misleading and as such impeded the investigation. Moreover, explanations submitted following the adoption of provisional measures raised further doubts about the original information submitted. The company was therefore informed that certain information submitted will not be taken into account and was granted an opportunity to provide further explanations. The explanations

provided were not considered satisfactory. In these circumstances, the findings were made on the basis of the facts available in accordance with Article 18 of the basic Regulation. However, information supplied by this company was still used to the extent possible for the purpose of this investigation.

- (34) This Indonesian exporting producer claimed that the Commission should have calculated separate normal values and separate dumping margins for second and third quality grades of the product concerned. The company claimed that by reporting data for different sub-qualities separately, it had followed the instructions of the questionnaire, since it considered that the technical specifications of second and third qualities were different and that, furthermore, these qualities were differentiated in the company's records. The company also reported different costs of production for the different qualities, allegedly based on a costing system which allocated costs in order to allow cost recovery for the sub-qualities. In addition, the company claimed that the comparison of grouped sub-qualities was not appropriate.
- (35) It was found that the company neither followed the reporting instructions set out in the questionnaire, nor its own records, as made available to the Commission, with regard to the classification of sub-standard qualities. Notwithstanding the above, the cost of production of the different qualities as reported by the company in the response to the questionnaire was further examined. In this respect, it was established that these costs of production of the second and third qualities did not reasonably reflect the costs associated with the production and sale of the product under consideration, as provided in Article 2(5) of the basic Regulation. In fact, the costs of production reported for the sub-qualities did not contain labour cost, depreciation, overheads and selling, general & administrative ('SG & A') expenses. Furthermore, it was found that the company's allegation that they priced just to cover cost conflicted with the information submitted, which showed high profits for the sub-qualities. Moreover, it was not contested that the aim of the company was to produce the first quality PSF. This implied that the actual cost of production of all PSF, irrespective of quality, was the same. Therefore, the cost of production was recalculated on the basis of the total actual cost incurred during the investigation period which was then divided by the total volume produced in order to establish an average cost of production.
- (36) According to the methodology described in the provisional duty Regulation, the revised cost of production was then applied to verify whether domestic prices were made in the ordinary course of trade. Where this was found to be the case, domestic prices were used to establish normal value. Otherwise, normal value was constructed. On this basis, the grouping or otherwise of the allegedly different sub-qualities did not affect the

outcome. However, it was accepted that the company had some sub-standard output of the product concerned and this was treated the matter as a comparison issue.

- (37) The same Indonesian exporting producer claimed that the general and administrative expenses used in calculating normal value should have been allocated over the entire sales of the division producing the product concerned, including the internal sales.
- (38) This claim was rejected, as expenses were incurred by sales to independent customers and not by internal transfers to other divisions that further process the product concerned.
- (39) The same Indonesian exporting producer claimed that the Commission should have used the product specific SG & A expenses in calculating normal value and not the total SG & A expenses of the division producing the product concerned.
- (40) This claim was rejected, as the company failed to provide the necessary supporting documentation which would have allowed a proper verification of the product specific SG & A expenses during the on-the-spot investigation. Therefore, the overall allocation of the SG & A expenses of the division was maintained.
- (41) The same Indonesian exporting producer claimed that the Commission had included certain identifiable export expenses in the cost of the product sold on the domestic market in calculating normal value.
- (42) The claim was accepted and the allocation of the SG & A expenses was revised on the basis of the chart of accounts submitted with the questionnaire response and used in the verification, provided that it clearly indicated the accounts concerned as related to exports.
- (43) The same Indonesian exporting producer claimed that the Commission should not have allocated to the product concerned the SG & A of one organisational unit of the company allegedly involved in financial market activities as this unit was a separate profit centre and did not act as a central service provider to other divisions.
- (44) This claim was rejected. The company provided no evidence that the organisational unit in question was a division independent from the operational divisions nor that it acted as a profit centre. In particular, the audited financial statements of the company made no reference to financial market activities carried out by an independent profit centre. In fact, the documents provided by the company showed that the organisational unit in question was centrally involved in the operations of the company as defined in the audited accounts. Its activities were those normally carried out by a head office. Therefore, the allocation of the SG & A expenses of this unit to the product concerned was maintained in the calculation of normal value.

- (45) The same Indonesian exporting producer claimed that the Commission should not have allocated the interest expenses of the organisational unit mentioned above to the product concerned. The company argued that the loans declared for this unit funded activities on financial markets and investments in subsidiary companies. These loans were therefore, according to the company, unrelated to the production and sales of the product concerned and an attribution to the different operational divisions would be incorrect. It was further argued that the funding requirements of the division involved in the production and sales of the product concerned were met by the division itself.
- (46) This claim was rejected because, as indicated in recital 44, above, the activities of this organisational unit were those normally carried out by a head office. In addition, the company did not provide any satisfactory evidence why the loans would not have been used to finance the activities of the different operational divisions. Moreover, the explanation provided with regard to the funding of the manufacturing and the financial market activities were not confirmed by the audited financial statements of the company.
- (47) When examining the claim concerning these financial expenses, it was established that the company entered into hedging arrangements in order to limit exchange rate risks related to the abovementioned loans. These hedging transactions bore an annual cost in the form of a premium. Although the company claimed that this cost should not be allocated to the product concerned for the reasons mentioned in recital 45, it was considered that these costs had to be included in the SG & A expenses and allocated to all products on the basis of the total turnover of the company. In addition, a claim to consider foreign exchange gains on hedging transactions was rejected, since such exchange rate gains are not taken into account in anti-dumping investigations, whether realised or not.
- (48) The same Indonesian exporting producer claimed that if interest expenses were allocated to the different operational divisions, these should be offset by corresponding income.
- (49) This claim was accepted insofar as it concerned income from short-term deposits of funds. The SG & A expenses were therefore revised before being used in the ordinary course of trade test and in constructing normal value.

3.2.3. Export price

- (50) No claims were made concerning the determination of the export price. The conclusions set out in the provisional duty Regulation are hereby confirmed.

3.2.4. Comparison

- (51) As indicated in recital 36, one exporting producer claimed that quality differences of the production output should be taken into account. In these circumstances, it was considered appropriate to grant a special adjustment on the normal value for sub-standard quality.

- (52) Following the adoption of provisional measures, one Indonesian exporting producer claimed that the Commission should have calculated the amount for credit costs on export sales on the basis of the actual expenses incurred by the company when discounting L/C Bills. The company further claimed that the interest rates charged in the framework of export sales were lower than the interest rates for domestic sales in the same currency.

- (53) This claim was rejected because, in accordance with Article 2(10)(g) of the basic Regulation, an adjustment is to be made for differences in the cost of any credit granted for the sale under consideration only 'provided that it is a factor taken into account in the determination of the prices charged'. In its questionnaire response, the company did not supply any information with regard to the interest rates charged for credit in the framework of export sales, although this was explicitly requested in the questionnaire. The claim that the rate of interest for export sales credit was lower than that for domestic sales, which were both made in the same currency, could therefore not be verified because this factor was unknown at the time of the verification.

3.2.5. Dumping margin

- (54) The comparison of the weighted average normal value, revised as appropriate, with the weighted average export price by product type on an ex factory basis, showed the existence of dumping for both investigated exporting producers included in the sample.
- (55) The dumping margin of one investigated company was revised. Accordingly, the weighted average dumping margin calculated for the cooperating companies not included in the sample pursuant to Article 9(6) of the basic Regulation was also revised. However, the revised calculations have not affected the dumping margin established for the non-cooperating companies which is hereby confirmed. The definitive dumping margins as a percentage of the cif import price duty unpaid are as follows:

— Sampled exporting producers investigated:

- | | |
|---------------------------------|--------|
| — PT. Indorama Synthetics Tbk.: | 8,4 % |
| — PT. Panasia Indosyntec: | 14,8 % |

— Cooperating exporting producers not included in the sample:

- | | |
|---|--------|
| — PT. GT Petrochem Industries Tbk.: | 14,0 % |
| — PT. Susilia Indah Synthetic Fiber Industries: | 14,0 % |
| — PT. Teijin Indonesia Fiber Corporation Tbk.: | 14,0 % |
| — Non-cooperating exporting producers: | 20,8 % |

3.3. Thailand

3.3.1. Normal value

- (56) Following the adoption of provisional measures, one exporting producer, which did not keep separate cost of sales accounts by finished product, argued that the Commission should have accepted the detailed model-specific cost of production calculations which they had made expressly for the purpose of replying to the questionnaire.
- (57) This exporting producer further argued, after provisional measures, that their investigation period-end closing stock value from their monthly internal management results had been calculated on an expected market value basis rather than on a cost basis and therefore it was not appropriate for that figure to be used for the cost of production.
- (58) It also argued that it would have been more appropriate to establish the cost of production on the closing stock figure at the end of the financial year than on the closing stock figure at the end of the investigation period, as the year end closing stock figure was audited, covered nine months of the investigation period rather than three months and was similar to the cost of production specifically calculated by the company for the first nine months of the investigation period.
- (59) In addition, it claimed that monthly costs of production should have been used due to fluctuations in raw material costs and exchange rates and the fact that there were no exports to the Community during certain months.
- (60) However, it was found that the specifically calculated costs were inconsistent with certain closing stock values reported by this exporting producer in its questionnaire response, given the stock valuation method reported therein, i. e. the lower of average cost or net realisable value.
- (61) The exporting producer had denied the existence of management accounts for the product concerned in its questionnaire response and no internal management results containing closing stock values were obtained or verified during the on-the-spot verification.
- (62) With regard to allegedly audited stock figures, no financial year end closing stock valuation schedules were obtained during the verification visit, despite being requested, and therefore, it was not possible to determine the historically utilised stock valuation method or to verify the unit stock values on a product type or total basis at the year end.
- (63) In these circumstances, it was considered that the specifically calculated monthly and annual costs of production were not reliable. Therefore, the investigation period-end closing stock value, which according to all information received by the Commission up to the end of the verification visit, was based on the lower of cost or net realisable value, should be maintained as the cost of production for the determination of normal value.
- (64) Claims made by another exporting producer for adjustments to its SG & A expenses were rejected where the items had already been taken into account or with regard to financial expenses and income and certain fees and taxes, because the claims were inconsistent with the company's questionnaire response.
- (65) The same exporting producer claimed that certain goods returns and sales discounts should have been deducted from the domestic sales transaction listing. The claim with regard to goods returns was rejected as the returns did not relate to sales in the investigation period and the related quantities had not been included in the listing. The claim relating to sales discounts was rejected as for certain discounts, no direct link to the sales under consideration was demonstrated before completion of the verification visit while for other discounts, no claim was made in the exporting producer's questionnaire response. However, the net sales figure used in determining the SG & A percentage for the investigation period was increased to be consistent.
- (66) Two exporting producers argued that for the purposes of the ordinary course of trade test, the comparison of prices with the cost of production should be carried out on a quarterly basis. They indicated that both raw material prices and sales prices decreased significantly throughout the investigation period and therefore, it was necessary to perform the test on a quarterly basis to ensure a fair comparison. This aspect was examined and the calculation was adjusted to a quarterly basis.
- (67) Two exporting producers claimed that technical assistance costs should be allocated on a turnover basis for the purpose of calculating the domestic SG & A expenses to be included in the cost of production. This argument was accepted.
- (68) Three exporting producers argued that the exclusion of foreign exchange gains and losses from their SG & A expenses at the provisional stage was unjustified. In general, exchange rate gains and losses were not taken into account as the exchange rates used by the Commission were those applicable on the invoice date. However, insofar as they arose from purchases of raw materials, the Commission adjusted the normal value calculations in order to take the relevant exchange gains and losses

into account. One of these exporting producers then claimed that the calculation of the foreign exchange gain included within the SG & A expenses should have been based on audited figures. However, this was not accepted as no allegedly audited figures were received until late in the investigation when they were no longer verifiable.

3.3.2. Export price

- (69) No claims were made concerning the determination of the export price. The conclusions set out in the provisional duty Regulation are hereby confirmed.

3.3.3. Comparison

- (70) Two exporting producers requested a comparison of export price with normal value on a quarterly basis and one on a monthly basis. The request was granted for the exporting producers requesting on a quarterly basis and rejected for the third exporting producer for which no reliable normal value could be determined on a monthly/quarterly basis.
- (71) One exporting producer argued that an allowance should be granted for freight paid on returned goods. However, this claim was rejected as it was not considered appropriate to include an inland freight cost allowance for return freight costs where the sales were partially or totally cancelled.
- (72) The same exporting producer requested that an allowance should be granted for technical assistance, but the allowance was rejected as the technical assistance was not carried out on the basis of a contractual or legal obligation.
- (73) Two exporting producers claimed that different levels of trade existed for export and domestic sales of the product concerned. This was accepted, but given that the existing difference in the levels of trade could not be quantified because of the absence of the relevant levels on the domestic market, a special adjustment was granted under Article 2(10)(d)(ii) of the basic Regulation.
- (74) Two exporting producers claimed that they should be granted a currency conversion adjustment as they argued that the currency movement had been significant (over 10 %) and took place over a period of five months. This adjustment was not accepted as it was considered that the currency movement was fluctuating rather than reflecting a sustained movement.

3.3.4. Dumping margin

- (75) The comparison of the revised, where appropriate, 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.
- (76) Following changes to the calculations in accordance with the findings noted above, the dumping margins of one company and one group of companies were revised. In consequence, the dumping margin for any non-cooperating companies, which is set at the level of the highest

dumping margin established for a cooperating company, was also revised. The definitive dumping margins as a percentage of the cif import price duty unpaid are as follows:

— Indo Poly (Thailand) Ltd.	15,5 %
— Teijin Polyester (Thailand) Ltd.	26,9 %
— Teijin (Thailand) Ltd.	26,9 %
— Tuntex (Thailand) Public Co. Ltd.	27,7 %
— Non-cooperating exporting producers	27,7 %.

4. INJURY

4.1. Procedural issues

- (77) The RTG and one exporting producer in Indonesia, claimed that the non-confidential summaries of submissions made by some Community producers included in the definition of the Community industry were not complete or sufficiently detailed, in order to allow them to effectively exercise their right of defence. They therefore argued that the Commission's failure to take this into account constituted a violation of the WTO Anti-Dumping Agreement (hereinafter WTO ADA) and Article 19 of the basic Regulation.
- (78) Regarding this claim, it must be noted that these parties received full disclosure in accordance with Article 19(4) of the basic Regulation. The disclosure included the general information and the detailed evidence relied on by the Commission for its findings. In addition, the Commission requested the Community producers in question to submit additional non-confidential information. This non-confidential information was submitted by the Community producers concerned, following the Commission's definitive disclosure to the interested parties, which had full access to it, consequently allowing them to exercise their right of defence. In any event, even if one of the Community producers concerned were excluded from the definition of the Community industry, as argued by the abovementioned parties, such a development would have not affected the overall conclusions on the situation of the Community industry. Indeed, it was established that such an exclusion would have neither any impact on the trends of the economic indicators pertaining to the Community industry, nor on the standing of the Community industry, since the production of this Community producer was small in comparison to the total production of the other Community industry producers.

4.2. Definition of the Community industry

- (79) The RTG and one Indonesian exporting producer argued that the production volume of the Community industry as indicated in recital 64 of the provisional duty Regulation had been overstated. More specifically, they underlined that it was determined that the seven cooperating

Community producers included in the definition of the Community industry represented about 85 % of the total Community production, whereas the complaint stated that the nine complaining producers represented the same share of the total Community production.

(80) Furthermore, it was argued that two complaining Community producers included in the definition of the Community industry were related to an exporting producer in a country concerned. According to the Commission's consistent practice these two producers should be excluded from the Community industry.

(81) As far as the representativity of the Community industry is concerned, it should be noted that, on the one hand, the data contained in the complaint covered 10 months of 1998. These data were thus extrapolated to cover a 12-month period. On this basis, the nine complaining companies represented in fact around 89 % of total Community production in 1998. On the other hand, based on the data received in the course of the present investigation and verified at the level of the seven cooperating Community producers constituting the Community industry, the investigation revealed that these represented around 85 % of total Community production in 1998. Consequently, the share of total Community production represented by the Community industry mentioned in recital 64 of the provisional duty Regulation is hereby confirmed.

(82) It should be underlined that the provisions of Article 4(1)(a) of the basic Regulation do not call for an automatic exclusion of Community producers from the Community industry when they are related to exporting producers concerned. This Article states that the term 'Community industry' may be interpreted as referring to the rest of the producers, when it is found that certain producers are related to the exporters. The situation should therefore be examined on a case-by-case basis in the light of Article 4(2) of the basic Regulation. In fact, Community producers related to exporters are to be excluded from the definition of the Community production, if this relationship leads the producer concerned to behave differently from other producers.

(83) In the light of the above considerations, the investigation showed that the two Community producers in question did not behave differently to other producers which were not related to the exporting producers concerned. They fully supported the complaint which led to the initiation of the present proceeding and actively participated in the investigation. Furthermore, during the on-the-spot verification and based on the evidence available, no statutory or organisational restrictions imposed by the shareholders in the country concerned were

found to exist in relation to the operation and business decisions of the two companies in question. Finally, the RTG and the above exporting producer did not provide any proof of such restraining control. Consequently, it was confirmed that the two Community producers should not be excluded from the definition of the Community production and therefore from the Community industry. Since no other comments were received regarding the definition of the Community industry, the conclusions of recital 64 of the provisional duty Regulation are hereby confirmed.

4.3. Injury analysis period

(84) The GOI claimed that in order to obtain a meaningful assessment of the trends upon which the injury determinations are based, the information relating to the indicators examined should be established on the basis of 12-monthly periods from 1996 onwards in line with the IP.

(85) It must be noted that the IP covers the last nine months of 1998 and the first three of 1999. The examination of indicators for the calendar years 1996 to 1998 covers also three-quarters of the IP. The comparison of 1998 and IP figures therefore, simply shows the impact of the first quarter of 1999 to these indicators and cannot be considered as invalidating the examination of the trends established on the basis of these indicators. This claim was therefore rejected.

(86) The GOI furthermore argued that the period of injury assessment, which covered 1996 to the IP, was different from the period where dumping was assessed, i.e. the IP. As these two periods did not coincide, the conclusions on injury were considered by the GOI as legally flawed. It was moreover argued that if the basis for the injury assessment was set at 1998, the trends of all indicators would be significantly different.

(87) The purpose of the injury investigation is to evaluate the effect of the dumped imports on the economic situation of the Community industry during the IP. This entails a finding of injury during the IP. In order to make such analysis, trends are established for a number of indicators on the basis of information relating to a number of years preceding the IP. Therefore, a comparison of indicators between the IP and one specific previous year, as suggested by the GOI, does not affect the results of the analysis derived therefrom. Indeed, it is the trends of the indicators which are examined over a number of years up to the IP and not the absolute comparison of figures of the IP with any particular year that precedes it, which are relevant to reach a conclusion on injury.

4.4. Consumption in the Community

- (88) Two exporting producers argued that the consumption in the Community set out in recital 65 of the provisional duty Regulation was significantly incorrect. In particular, they argued that the production, sales and stocks figures of the Community industry could not be reconciled. In addition, they claimed that the Commission did not reveal the basis upon which the determinations concerning the sales of the non-cooperating Community producers was estimated.
- (89) As regards the reconciliation of the consumption figures, it should be noted that one Community producer related to a company belonging to the Community industry closed down before the IP. Therefore, no reliable information on its production and production capacity could be obtained from this company. As far as sales and stocks information is concerned, this company made its sales exclusively through the related company belonging to the Community industry. Therefore, reliable information relating to sales and stocks was obtained from the latter company covering the whole period considered and the data were reconciled appropriately.
- (90) Finally, the Commission estimated the sales volume of the non-cooperating Community producers in the provisional duty Regulation on the basis of facts available. For one non-cooperating producer the figures included in its partial reply to the Commission's questionnaire had been used, whereas for the others the figures indicated in the complaint were used.
- (91) In the light of the above explanations, the consumption figures indicated in recital 65 of the provisional duty Regulation are confirmed.

4.5. Imports of PSF into the Community from the countries concerned

4.5.1. Cumulative assessment of imports

- (92) Some exporting producers argued that the imports of PSF from Thailand should not be assessed cumulatively with the imports from Australia and Indonesia because they represented less than 1 % of consumption in 1996 and 1997.
- (93) In the context of cumulation, it is considered that the assessment of whether imports from a country concerned by an anti-dumping investigation are negligible should exclusively be made during the IP. Indeed, dumping margins, as well as the existence of injury are established during the IP. Since the imports from Thailand were above negligible levels during this period, the above claim was rejected.

4.5.2. Price undercutting

- (94) Some exporting producers claimed that the Commission did not take into account differences in quality of types of PSF in determining price undercutting leading to incorrect results. In their opinion, the price comparison should be performed separately for the first and lower quality products, as well as for the recycled PSF types. They also claimed that an adjustment for level of trade should have been granted, given that their sales were mainly destined to wholesalers and distributors whereas the Community industry mainly sold PSF to end-users.
- (95) Following these claims, prices were compared separately for lower quality and recycled PSF and it was considered that an adjustment for level of trade differences should be granted to all the exporting producers including those which were only selling to wholesalers and distributors. The results of this price comparison showed slightly higher undercutting margins than those established at the provisional stage for Australia and slightly lower for Indonesia and Thailand. The results of the revised undercutting calculations expressed on the Community industry's turnover, taking into account both of the above claims, ranged between 24,9 % and 46,8 % for the countries concerned and between 17,7 % and 61 % for individual companies.

4.6. Economic situation of the Community industry

4.6.1. General

- (96) The RTG and one exporting producer claimed that, based on an interpretation of the WTO ADA, the examination of the economic situation of the Community industry requires an evaluation of all relevant economic factors and indices having a bearing on the state of that industry, including factors such as productivity, return on investments, the magnitude of the actual margin of dumping, negative effects on cash flow, wages and growth.
- (97) Furthermore, they contested the accuracy of the data provided in the provisional duty Regulation for certain injury factors. In their opinion, although the seven Community producers constituting the Community industry in the present investigation were the same as in a previous proceeding, the data provided for some injury factors were different. They therefore requested disclosure of the names of the companies which participated in the previous proceeding.
- (98) It should be recalled in this regard that Article 3(5) of the basic Regulation lists a number of factors and economic indicators and the Commission collected information which enabled it to consider all factors and indices which were decisive for a meaningful analysis of the state of the Community industry. It follows that the claim that the Commission's analysis was not complete is not valid.

(99) It is confirmed that the seven Community producers which constituted the Community industry in the previous proceeding were not the same as in the current proceeding. However, the request for disclosure could not be accepted given that the RTG and the exporting producer in question were not interested parties in that previous proceeding.

4.6.2. Production, capacity and capacity utilisation

(100) The Government of Australia (hereafter 'GOA') contested the method used by the Commission to assess the production capacity of the Community industry for the product concerned. In its opinion, the decrease in production capacity by 7 % was determined with regard to capacity used for the production of other products and was therefore incorrect. The GOA considered that production capacity for PSF should have been assessed exclusively on the actual production of the PSF covered by the investigation.

(101) In any event, the GOA considered that the reduction in the Community industry's production capacity was not compatible with a finding of material injury: firstly because this reduction did not allow the Community industry to participate in the considerable growth of the market (+ 27 %) during the period considered; and secondly, because the reduction in capacity was motivated by the fact that production was oriented to more profitable products than PSF.

(102) With respect to the assessment of production capacity, it should be underlined that the product concerned is produced on the same production lines as other products of the same family. It is therefore impossible and meaningless to directly identify the actual capacity exclusively installed for one product as compared to all the products produced on the same production lines. In actual fact, the assessment of production capacity for PSF was based on a ratio comparing the actual production of PSF to the total production of all products produced on the same production lines. Consequently, contrary to the claim made by the GOA, the assessment of production capacity for PSF takes into account the actual production of PSF.

(103) Furthermore, it should be noted that the switch from the production of PSF to the production of other products was motivated mainly by the long-term losses incurred by the Community industry on production and sales of PSF facing continued unfair competition from dumped and subsidised imports from third countries. The reduction in capacity is therefore particularly relevant for the determination of injury but more specifically for the analysis of the causal link between the dumped imports and the injury suffered by the Community industry discussed below.

(104) On this basis, it is considered that the claims of the GOA are unfounded. Accordingly, the data provided, the method described for assessing production capacity for PSF and the conclusions contained in recitals 72 to 74 of the provisional duty Regulation are hereby confirmed.

4.6.3. Sales prices of the Community industry

(105) Following a more detailed analysis of the Community industry's sales prices, the Commission found that the figures indicated in the table of recital 76 of the provisional duty Regulation should be slightly revised as follows:

Average sales price	1996	1997	1998	IP
Community industry - Index (1996-100)	100	92	92	88

(106) Some exporting producers argued that the above decrease in the Community industry's sales prices should be seen in the light of the significant decrease in raw material purchase price in particular during the IP. Accordingly, the decrease in sales price does not constitute a valid indicator of injury in the present case.

(107) In this respect, it should be clarified that in recital 79 of the provisional duty Regulation the 31 % decrease in cost of manufacturing should in fact read 31 % decrease on cost of raw materials. The Commission made an analysis on the impact of the decrease of raw material costs on sale prices. The analysis showed that for the overall Community industry the above decrease in raw material costs represented around 23 % of total cost of production, or 21 % of sales price between 1996 and the IP. On this basis, the statement made in recital 79 of the provisional duty Regulation that the cost of production was reduced faster than sales prices is hereby confirmed. This situation in fact allowed profitability to be increased by 10,7 percentage points in absolute terms during the period considered (from - 4 % in 1996 to 6,7 % in the IP).

(108) However, it is considered that the evolution of the Community industry's sales price should be seen in the light of the price evolution of the countries concerned. Indeed, as stated in recital 69 of the provisional duty Regulation it is recalled that PSF imported from the countries concerned followed a continuous decreasing tendency throughout the period considered. The decrease was as high as 22 % during that period. If the Community industry would have followed this trend it would still have incurred losses at the same level as in 1996.

- (109) Finally, when analysing the Community industry's prices on the Community market, one should bear in mind that the Community industry did not reach the minimum level of profit of 10 % during the IP. Under these circumstances, it is considered that the Community industry's sales prices constitute a relevant injury indicator given it had a bearing on the state of the industry.

4.6.4. Profitability of the Community industry

- (110) The GOA claimed that in the absence of data relating to the profitability of the Community industry prior to the appearance of dumped imports, no proper assessment could be made as to whether the injury suffered by the Community industry was material.

- (111) Some exporting producers claimed that the improvement in the Community industry's profitability did not indicate injury. Indeed, profitability significantly improved over the period considered, namely from a loss of around 4 % to a profit of over 6 %. They further argued that the overall profit achieved by the Community industry within the IP could not be further increased with the current product mix of commodities and specialities, unless more speciality PSF types would be produced and sold by the Community industry.

- (112) The present investigation showed that its improvement in profitability was mainly the result of both the restructuring process undertaken by the Community industry and the resulting reduction in sales, general and administrative costs and the decrease of the raw materials purchase prices. Production costs were reduced faster than sales prices decreased, allowing thus the Community industry to return to profit in 1998. Nevertheless, it was emphasised that this improvement in profitability may only be temporary and any adverse factors, particularly possible unfavourable developments in raw material prices, could have negative implications on the current profitability. This statement was reinforced by the fact that the main raw materials used in the PSF industry are largely influenced by the price of crude oil.

- (113) It should also be noted that an improvement in profitability during the period considered does not automatically lead to the conclusion that the Community industry did not suffer material injury. The assessment as to whether the injury suffered by the Community industry was material cannot only be based on the profitability nor can it be based on a comparison of profitability between 1996 and the IP. Indeed, the provisions of the basic Regulation enumerate a number of factors among which the volume of dumped imports and the effect of dumped imports on prices on the Community

market for like products and specifies no one or more of these factors can necessarily give decisive guidance for a negative finding on injury.

- (114) As indicated in recitals 82 to 85 of the provisional duty Regulation regarding the conclusions on the economic situation of the Community industry, profitability achieved by the industry was not considered to be a major indicator of the injury suffered by the Community industry. Indeed, negative developments were observed for most of the economic indicators pertaining to that industry: market share, production capacity, sales volume, sales prices, stocks, investments, employment and significant price undercutting by dumped imports from the countries concerned.

- (115) Based on the foregoing, since no further comments were received regarding the profitability of the Community industry, the conclusion that profitability during the IP is inadequate is hereby confirmed.

4.6.5. Market share

- (116) It has to be recalled that as mentioned in recital 77 of the provisional duty Regulation, the market share held by the Community industry decreased significantly from 68 % to 50,3 % of the total Community market from 1996 to the IP.

- (117) Some exporting producers argued that the Community industry's loss in market share has to be seen in the light of the cost disadvantage it suffers as compared to the countries concerned. In their opinion, it cannot be expected that the industry could maintain its market share given that its production costs are significantly higher than those of the exporting producers concerned.

- (118) This argument was considered not relevant in the context of an anti-dumping investigation. In such an investigation, it has to be established whether imports are dumped and cause injury to the Community industry, as this was established in the present case. This being said, exporting producers can fully reflect cost advantages they may have in their sales prices, as long as this is done both on the domestic and export markets.

4.6.6. Conclusion

- (119) Based on the foregoing, it is considered that the above arguments and claims are not such as to change the findings made in the provisional duty Regulation. Consequently, the contents of recitals 82 to 85 of the provisional duty Regulation and the conclusion that the Community industry suffered material injury during the IP is hereby confirmed.

5. CAUSATION

5.1. Effect of dumped imports

- (120) The GOA claimed that there is no evidence that the injury suffered by the Community industry was caused by the limited volumes imported from Australia. The GOA claimed that the market share of Australian imports was too limited (2 % of consumption) to have any influence on prices on the Community market. Rather, they had to follow the price trends imposed by the large operators on the Community market. Accordingly, the GOA suggested that injury, if any, was caused by large imports from other third countries.
- (121) Similarly, the RTG claimed that since the imports from Thailand were negligible in 1996 and 1997, they could not cause injury to the Community industry and therefore the analysis of the impact of these imports should begin from 1998.
- (122) The RTG and one Indonesian exporting producer argued that in view of the data published in the provisional duty Regulation the conclusion reached by the Commission that the Community industry has been weakened was wrong. Their statement was based particularly on the improvement in the Community industry's profitability during the IP. It was furthermore based on an analysis of market share and sales indicators pertaining to both the current investigation and the corresponding 1996 indicators from the expiry review concerning PSF from Taiwan and Korea, as evidenced by Regulation (EC) No 1728/1999 ⁽¹⁾.
- (123) The same parties further claimed that some producers included in the definition of the Community industry concentrated on the production of high-profit speciality products. Accordingly, it could not be concluded that the Community industry was vulnerable particularly to Indonesian imports which are largely made of regular PSF. In their opinion, the very high profits obtained on speciality fibres indicated that the Community industry is largely shielded from the effects of imports.
- (124) Regarding the arguments raised by the GOA on its market share, it is recalled that imports from Australia were found to be clearly above the *de minimis* level during the IP. In addition, it was found that all conditions required for a cumulated analysis were met. In these circumstances, comments concerning individual market shares held by individual countries during the IP and in previous to the IP years were not considered relevant. The same remark applied to the similar argument raised by the RTG.

- (125) In addition, it should be recalled that prices of dumped imported PSF from all the countries concerned were undercutting the Community industry's prices on the Community market having a significant negative impact on the economic situation of the Community industry. This finding is reinforced by the fact that the PSF market is transparent and that, therefore, price differentials or low priced offers can have a price depressing effect.
- (126) It is furthermore considered that the GOA did not provide any evidence which would contradict the provisional finding that the Community industry suffered material injury as a result of low-priced dumped imports. Accordingly, the conclusion that dumped imports, taken in isolation, had caused material injury to the Community industry is hereby confirmed.
- (127) The development of the Community industry's profitability was extensively analysed in recital 79 of the provisional duty Regulation and further information has been given in section 4.6.4. above. In this respect, it should be noted that the statement that the Community industry is concentrating in high-value PSF types is not correct. Indeed, during the IP, the Community industry's sales of the so-called commodity PSF types, which are mainly imported from the countries concerned, represented over 72 % of its total sales. This finding therefore leads to confirm the conclusion that the Community industry as a whole is affected by low-priced dumped imports.
- (128) Regarding the validity of the data for 1996 extracted from the expiry review concerning PSF from Taiwan and Korea, as explained in recital 99, the Community producers which constituted the Community industry in this expiry review were not the same as those constituting the Community industry in the present proceeding. Consequently, it is impossible to establish a coherent and reliable trend on the basis of the economic indicators reported for 1996 in this expiry review and on figures for subsequent years reported in the present proceeding. Such an approach would lead to erroneous and meaningless results.

5.2. Other factors

5.2.1. Currency fluctuations

- (129) The GOA argued that the Commission failed to look at the effect that exchange rate fluctuations have had on import prices from Australia, specifying that during the investigation period PSF imported from Australia had benefited from a favourable exchange rate appreciation.

⁽¹⁾ OJ L 204, 4.8.1999, p. 3.

- (130) In this respect it should be noted that imports from this country were invoiced in USD, in DEM and in GBP and not in AUD on the Community market. The parity of the Australian currency was therefore not relevant in the determinations made.
- (131) In any event, it should be pointed out that the Australian currency depreciated during the first seven months of the IP and subsequently appreciated during the next five months of the IP, as compared to its parity to the ECU/EUR of the first month of the IP. Consequently, there was no constant decreasing trend of the Australian currency during the IP.

5.2.2. Raw material prices in the exporting countries

- (132) The RTG further argued that for the determination of the impact of the prices of the Thai imports on the Community industry the Commission should have considered the sharp decrease of the raw material prices in Thailand.
- (133) It is considered that the above argument is irrelevant for the analysis of the cause of injury to the Community industry. Indeed, the cost of production factors in any exporting country is relevant only to the dumping determinations. The important parameter for injury and causation considerations is the price that the imported product concerned is sold in the Community market.

5.3. Conclusion

- (134) Given that no other new arguments were received regarding the cause of the injury suffered by the Community industry, the conclusion that dumped imports, taken in isolation, had caused injury to the Community industry, as stated in recital 99 of the provisional duty Regulation, is hereby confirmed.

6. COMMUNITY INTEREST

6.1. Interest of the Community industry

- (135) Since no comments were received regarding the above issues, the findings on the interest of the Community industry cited in recital 101 of the provisional duty Regulation are hereby confirmed.

6.2. Impact on users

- (136) Following the publication of the provisional duty Regulation, a number of Community users claimed that the imposition of anti-dumping duties would have negative effects on their competitiveness on the downstream products and would ultimately threaten their survival. In their opinion, 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.

- (137) In addition, Eurofibrefill reacted to the provisional duty Regulation and argued that specific PSFNS were either not produced at all by the Community industry, or not in sufficient quantities to cover the Community demand. In their opinion, this situation was due to the fact that the Community industry mainly focused on the production of PSFS. Therefore it would have to continue to source PSFNS from abroad, despite the proposed imposition of anti-dumping duties.
- (138) Eurofibrefill further argued that the impact of the proposed measures on users should be also assessed taking into account the existing anti-dumping and anti-subsidy measures on imports from other countries (e.g. from Taiwan). In their opinion, the Community industry continuously asked for protection and that in the near future all sources of supply would be subject to anti-dumping or countervailing measures.
- (139) In support of the claim of Eurofibrefill, two of its members provided the Commission with letters addressed to producers included in the Community industry showing that these producers were not able to provide the requested types of PSF in the short term.
- (140) It should be noted that certain of the above users who came forward after the imposition of provisional duties either did not make themselves known within the time limit set out in the Notice of Initiation of the proceeding, or did not reply to the questionnaire sent by the Commission at that stage. Consequently, most of them could not be considered as interested parties under Article 21(2) of the basic Regulation and their views could not, normally, be taken into account at the definitive stage of the proceeding.
- (141) In addition, as stated in recital 102 of the provisional duty Regulation, the overall level of cooperation in the Community interest investigation was very low. The user companies who participated in the investigation only represented around 4 % of total consumption in the Community market. It was therefore considered that at a broader level no real concern about the impact of the imposition of anti-dumping measures on PSF on their activities existed. In any event, it was considered that no meaningful conclusions could be drawn from such limited information.
- (142) Regarding the claim by Eurofibrefill, that the Community industry mainly focused on PSFS, it should be noted that, as already explained above, the Community industry production and sales of PSFNS types represented about 75 % of its total production during the IP. The claim therefore that the Community industry focused on PSFS has not been confirmed by the investigation.

(143) As regards the availability of specific PSF types, it is recalled that there are no or only minor technical difficulties in producing any type of fibre. As far as the Community industry is concerned and as already stated in recital 20, it was found that it could produce all types of PSF without any significant additional investment. The important parameter influencing the decision to produce certain types was whether the price the user was ready to pay covered the costs of production and allow a profit to be earned. As long as exporting producers practising dumping were taking advantage of unfair trade practices and offered PSF at low prices on the Community market, the Community industry was not able and willing to compete and therefore did not produce these types in the prevailing market circumstances. However, for the future it could be expected that once a situation were reestablished in which the exporting producers carried out their exports at fair market conditions, the Community industry would resume production of such product types.

(144) In any event, 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 25 % and 45 % of the users total cost of production of downstream products;
- the average anti-dumping duty is about 22 % for the countries concerned;
- the share of dumped imports is 9 % of total consumption of PSF.

The proposed measures may thus have the impact of increasing the cost of production of users by between 0,5 % to a maximum of 0,9 %. 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.

(145) This analysis on the impact of the proposed measures on users therefore indicated that the imposition of anti-dumping measures was 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.

(146) Furthermore, regarding the impact of the existing measures on the cost of production of the user industries, it should be noted that the anti-dumping measures in force on PSF against third countries are already reflected in the cost information, used by the Commission in the current Community interest investigation.

(147) As far as the countervailing measures imposed in the framework of the parallel anti-subsidy proceeding are concerned, it has been established that their impact may cause an increase of between 0,1 and 0,16 % on the cost of production of the user companies. Consequently the total impact of the proposed anti-dumping and countervailing measures would lead to a possible increase

between 0,6 and 1,06 % of the cost of production of the overall users industries.

(148) In this context, it should be recalled that the share of the imports from countries concerned by all anti-dumping proceedings, including the present proceeding and the parallel anti-subsidy proceeding, represented about 37 % of the total imports to the Community market during the IP. It therefore follows that there are other significant sources of supply, to which no anti-dumping or countervailing duties apply.

(149) As the examination of the above arguments submitted by the user companies does not lead to new conclusions, the considerations of recital 105 of the provisional duty Regulation on the impact of the proposed measures to the users is hereby confirmed.

6.3. Conclusion

(150) The new arguments received regarding the determination of the Community interest, are not considered to be such as to reverse the conclusion that no compelling reasons exist against the imposition of anti-dumping measures. The provisional findings are therefore confirmed.

7. DEFINITIVE DUTY

(151) In view of the conclusions reached regarding dumping, injury, causation and Community interest, it is considered that definitive anti-dumping measures should be taken in order to prevent further injury being caused to the Community industry by dumped imports from Australia, Indonesia and Thailand.

7.1. Injury elimination level

(152) As explained in recital 108 of the provisional duty Regulation, a non-injurious level of prices was determined which would cover the Community industry's cost of production and a reasonable profit which would be obtained in the absence of dumped imports from the countries concerned.

(153) The RTG and some exporting producers argued that while it was mentioned in the provisional duty Regulation that the 6,7 % profitability achieved by the Community industry during the IP was still inadequate in the present proceeding, it was considered reasonable in previous proceedings⁽¹⁾ involving PSF and PTY (polyester textured filament yarn). On this basis they questioned the level of the required profit margin of 10 % in the present proceeding which in their opinion the Commission did not justify.

⁽¹⁾ PSF from Belarus, PTY (Polyester textured filament yarn) from Indonesia and Thailand.

- (154) Other exporting producers argued that the Commission's justification in the provisional duty Regulation that the required profit should ensure the Community industry's long-term viability was not valid according to the latest jurisprudence from the Court of First Instance on this issue.
- (155) As far as the required profit is concerned, it should be noted that the Commission indicated in recital 79 of the provisional duty Regulation that a margin of 10 % should be considered as a minimum that would ensure the viability of the industry. This statement should be seen in the light of the contents of recital 101 of the provisional duty Regulation which indicates that the Community industry suffered from low-priced dumped imports from various countries and incurred losses for a decade. In this context, the profit achieved by the Community industry before the appearance of dumped imports from Australia, Indonesia and Thailand is not a reliable basis on which to determine such profit.
- (156) In addition, it must be noted that, as acknowledged by the exporting producers themselves, the PTY industry is completely different from the PSF industry. Therefore, it was considered that the profit for PTY is not relevant for establishing the profit for PSF.
- (157) Furthermore, it is considered that the level of profit deemed reasonable for the Community industry in 1994 should not necessarily determine the margin to be used more than four years later. Firstly, because the Community industry continued to incur financial losses after 1994. Secondly because the reasonable profit in 1994 was determined having regard to the long term needs in investments at that time whereas in the present case, due account was taken of the long term losses incurred by the Community industry and, as pointed out by some exporting producers, the level of profit that could be achieved in the absence of dumped imports. In any event, however, even by employing the suggested profit margin of 6 %, the level of the proposed measures would not change as these measures would still be based on the dumping margins.
- (158) Finally, it should be underlined that the above exporting producers did not provide any evidence showing that the approach of the Commission on the reasonable level of profit was not correct and they did not make any relevant analysis demonstrating what such margin should be.
- (159) Consequently, based on the foregoing, the contents of recital 108 of the provisional duty Regulation are hereby confirmed.

7.2. Form and level of the duty

- (160) In accordance with Article 9(4) of the basic Regulation the anti-dumping duty rates correspond to the dumping margins, as the injury margins are found to be higher for all exporters in the countries concerned.
- (161) However, with regard to the parallel anti-subsidy proceeding, in accordance with Article 24(1) of Regulation (EC) No 2026/97 ⁽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 purposes of dealing with one and the same situation arising from dumping and from export subsidization. In the present investigation, it was found that a definitive anti-dumping duty should be imposed on imports of the product concerned originating in Australia, Indonesia and Thailand and therefore, it is necessary to determine whether, and to what extent, the subsidy and the dumping margins arise from the same situation.
- (162) In the parallel anti-subsidy proceeding it was found that in, *inter alia*, Thailand (all companies) and Indonesia (only cooperating companies), the level of subsidisation was below the *de minimis* level and therefore, no countervailing duty was imposed.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

- (163) With regard to Australia, a definitive countervailing duty corresponding to the amount of subsidy, which was found to be lower than the injury margin, was proposed in accordance with Article 15(1) of the basic anti-subsidy Regulation. All of the subsidy schemes investigated in Australia constituted export subsidies within the meaning of Article 3(4)(a) of the basic anti-subsidy Regulation. As such, the subsidies could only affect the export price of the Australian exporting producer, thus leading to an increased margin of dumping. In other words, the definitive dumping margin established for the sole cooperating Australian producer is partly due to the existence of 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 subsidy 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.
- (164) For the non-cooperating Indonesian exporting producers, a definitive countervailing duty corresponding to the amount of subsidy, which was found to be lower than the injury margin, was proposed in accordance with Article 15(1) of the basic anti-subsidy Regulation. It was determined that half of the subsidy schemes in Indonesia constituted export subsidies within the meaning of Article 3(4)(a) of the basic anti-subsidy Regulation. As such, the subsidies could only affect the export price of the Indonesian non-cooperating exporting producers, thus leading to an increased margin of dumping. In other words, the definitive dumping margin established for these non-cooperating Indonesian exporting producers is partly due to the existence of 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 subsidy and dumping margins definitively established. Therefore, the definitive anti-dumping duty for the non-cooperating Indonesian exporting producers 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.
- (165) On the basis of the above, the definitive duty rates, expressed as a percentage of the cif Community border price, customs duty unpaid, taking into account the results of the anti-subsidy proceeding, are as follows:

Country	Company	Rate of anti-dumping duty
Australia	All companies	12,0 %
Indonesia	P.T. Indorama Synthetics Tbk	8,4 %
	P.T. Panasia Indosyntec	14,8 %
	P.T. GT Petrochem Industries Tbk	14,0 %
	P.T. Susilia Indah Synthetic Fiber Industries	14,0 %
	P.T. Teijin Indonesia Fiber Corporation Tbk	14,0 %
	All other companies	15,8 %
Thailand	Indo Poly (Thailand) Ltd.	15,5 %
	Teijin Polyester (Thailand) Ltd.	26,9 %
	Teijin (Thailand) Ltd.	26,9 %
	All other companies	27,7 %

- (166) 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'.

- (167) 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.
- (168) Since sampling has been used in the investigation of dumping in Indonesia, 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 as far as it concerns Indonesia. However, in order to ensure equal treatment for any genuine new Indonesian exporting producer and the cooperating companies not included in the sample for this country, it is considered that provision should be made for the weighted average duty imposed on the latter companies to be applied to any new Indonesian exporting producer who would otherwise be entitled to a review pursuant to Article 11(4) of the basic Regulation.

8. COLLECTION OF THE PROVISIONAL DUTY

- (169) In view of the magnitude of the dumping margins found for the exporting producers, and in light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty under the provisional duty regulation be definitively collected to the extent of the amount of definitive duties imposed if this amount is equal or lower than the amount of the provisional duty. Otherwise, only the amount of the provisional duty should be definitively collected,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, falling within CN code 5503 20 00 and originating in Australia, Indonesia and Thailand.
2. The rate of the definitive duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the companies indicated shall be as follows:

Country	Company	Rate of duty	TARIC additional code
Australia	All companies	12,0 %	—
Indonesia	P.T. Indorama Synthetics Tbk, Graha Idma, 17 th floor, Jl. HR Rasuna Said Blok X-1, Kav. 1-2, P.O. Box 3375 Jakarta 12950, Indonesia	8,4 %	A051
	P.T. Panasia Indosyntec Jl. Garuda 153/74, Bandung 40184, Indonesia	14,8 %	A052
	P.T. GT Petrochem Industries Tbk, Exim Melati Building - 9 th floor, Jl. M.H. Thamrin Kav. 8-9, Jakarta 10230, Indonesia	14,0 %	A053

⁽¹⁾ European Commission, Directorate-General Trade, Directorate C, DM 24-8/38, Rue de la Loi/Wetstraat 200, B-1049 Brussels/Belgium

Country	Company	Rate of duty	TARIC additional code
	P.T. Susilia Indah Synthetic Fiber Industries, Jl. Kh. Zainul Arifin Kompleks Ketapang Indah Blok B 1 No.: 23, Jakarta 11140, Indonesia	14,0 %	A054
	P.T. Teijin Indonesia Fiber Corporation Tbk, 5 th floor Mid Plaza 1, Jl Jend. Sudirman Kav. 10-11, Jakarta 10220, Indonesia	14,0 %	A055
	All other companies	15,8 %	A999
Thailand	Indo Poly (Thailand) Ltd. 35/8 MOO 4, Tambol Khunkaew Amphur Nakhornchaisri, Nakhornprathom 73120 Thailand	15,5 %	A056
	Teijin Polyester (Thailand) Ltd. 19 th floor, Ploenchit Tower 898 Ploenchit road, Lumpinee, Patumwan Bangkok 10330, Thailand	26,9 %	A155
	Teijin (Thailand) Ltd., 19 th floor, Ploenchit Tower 898 Ploenchit road, Lumpinee, Patumwan Bangkok 10330, Thailand	26,9 %	A155
	All other companies	27,7 %	A999

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

Article 2

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

- it did not export to the Community the products described in Article 1(1) during the IP,
- it is not related to any of the exporters or producers in Indonesia which are subject to the anti-dumping measures imposed by this Regulation,
- it has actually exported to the Community the products concerned after the IP 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 listed in that Article.

Article 3

The amounts secured by way of the provisional anti-dumping duty on imports originating in Australia, Indonesia and Thailand under the provisional duty Regulation shall be collected at the rate of the duty definitively imposed by this Regulation. Amounts secured in excess of the rate of definitive anti-dumping duty shall be released. In cases where the rate of the definitive duty imposed is higher than the rate of the provisional duty, only the amounts secured at the level of the provisional duty should be definitively collected.

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, 10 July 2000.

For the Council

The President

H. VÉDRINE
