

COMMISSION REGULATION (EC) No 1411/2002**of 29 July 2002****imposing a provisional countervailing duty on imports of polyester textured filament yarn originating in India**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community ⁽¹⁾, and in particular Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) On 9 November 2001, the Commission announced, by a notice (notice of initiation) published in the *Official Journal of the European Communities* ⁽²⁾, the initiation of an anti-subsidy proceeding concerning imports into the Community of polyester textured filament yarn (PTY) originating in India and Indonesia.
- (2) The proceeding was initiated as a result of a complaint lodged in September 2001 by the International Committee of Rayon and Synthetics Fibres (CIRFS), on behalf of producers, representing a major proportion of the Community production of PTY. The complaint contained evidence of subsidisation of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) The initiation of a parallel anti-dumping proceeding concerning imports of the same product originating in India was announced by a notice published in the *Official Journal of the European Communities* ⁽²⁾ on the same date.
- (4) There are definitive anti-dumping measures currently in force on imports of PTY originating in Malaysia (Council Regulation (EC) No 1001/97 ⁽³⁾, as amended by Regulation (EC) No 1992/2000 ⁽⁴⁾), Indonesia, Thailand (Council Regulation (EC) No 2160/96 ⁽⁵⁾, as last amended by Regulation (EC) No 1078/2001 ⁽⁶⁾) and Taiwan (Council Regulation (EC) No 3905/88 ⁽⁷⁾, as last amended by Regulation (EC) No 2010/2000 ⁽⁸⁾). The expiry of these measures regarding imports originating in Malaysia ⁽⁹⁾, Taiwan ⁽¹⁰⁾, Indonesia ⁽¹¹⁾ and Thailand ⁽¹²⁾ is currently being reviewed under Article 11(2) of Regulation (EC) No 384/96 ⁽¹³⁾, as last amended by Regulation (EC) No 2238/2000 ⁽¹⁴⁾.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

⁽²⁾ OJ C 315, 9.11.2001, pp. 2 and 5.

⁽³⁾ OJ L 145, 5.6.1997, p. 1.

⁽⁴⁾ OJ L 238, 22.9.2000, p. 1.

⁽⁵⁾ OJ L 289, 12.11.1996, p. 14.

⁽⁶⁾ OJ L 149, 2.6.2001, p. 5.

⁽⁷⁾ OJ L 347, 16.12.1988, p. 10.

⁽⁸⁾ OJ L 241, 26.9.2000, p. 1.

⁽⁹⁾ OJ C 135, 6.6.2002, p. 10.

⁽¹⁰⁾ OJ C 170, 14.6.2001, p. 2.

⁽¹¹⁾ OJ C 316, 10.11.2001, p. 9.

⁽¹²⁾ OJ C 316, 10.11.2001, p. 9.

⁽¹³⁾ OJ L 56, 6.3.1996, p. 1.

⁽¹⁴⁾ OJ L 257, 11.10.2000, p. 2.

- (5) Prior to the initiation of the proceeding and in accordance with Article 10(9) of Council Regulation (EC) No 2026/97 (basic Regulation), the Commission notified the Governments of India (GOI) and Indonesia (GOID) that it had received a properly documented complaint alleging that subsidised imports of PTY originating in India and Indonesia are causing material injury to the Community industry. The GOI and GOID were invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. Consultations with the GOI were subsequently held with the Commission at its offices in Brussels, where no conclusive evidence was provided by the GOI which could refute the allegations made in the complaint. The GOID did not respond to this invitation.
- (6) The Commission officially advised the exporting producers and their representative associations, and importers/traders known to be concerned, the representatives of the exporting countries concerned, users, suppliers, the complainant Community producers and all other known producers in the EC, of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (7) The GOI, the GOID and a number of exporting producers in the countries concerned, as well as Community producers, Community users and importers/traders made their views known in writing. All parties who so requested within the above time limit and showed that there were particular reasons why they should be heard were granted the opportunity to be heard.
- (8) In view of the apparent large number of exporting producers of the product concerned in India and Indonesia, known from the complaint, the application of sampling techniques for the investigation of subsidisation was envisaged in the notice of initiation.
- (9) Regarding exporting producers in India, the Commission sent questionnaires to, and received detailed information from, a representative sample of exporting producers (see recitals 17 to 22).
- (10) Regarding Indonesia, sampling techniques were not considered necessary since the number of exporting producers that made themselves known and provided the information requested in the notice of initiation was limited. The Commission sent questionnaires and received replies from five exporting producers in Indonesia.
- (11) The Commission also sent questionnaires to all other parties known to be concerned. Replies were received from two of the six complainant Community producers, from one Community producer who did not originally form part of the complaint, and both the GOI and the GOID. The Commission also received replies from one user and two suppliers of raw material providing information which was sufficiently complete and representative to use in the assessment of Community interest. No importers in the Community which were not related to exporting producers replied to the questionnaire or made themselves known.
- (12) The Commission sought and verified all information it deemed necessary for the purpose of a determination of subsidisation, injury and Community interest. Verification visits were carried out at the premises of the GOI, the GOID and the following companies:
 - (a) *Community producers:*
 - Dupont SA, United Kingdom,
 - Sinterama SpA, Italy;
 - (b) *Exporting producers in India:*
 - Indo Rama Synthetics Ltd, Nagpur, Maharashtra,
 - Reliance Industries Ltd, Mumbai, Maharashtra,
 - Welspun Syntex Ltd, Mumbai, Maharashtra;
 - (c) *Exporting producers in Indonesia:*
 - PT. Indorama Synthetics Tbk, Jakarta,
 - PT. Mutu Gading Tekstil, Jakarta,
 - PT. Pania Indosyntec, Bandung,
 - PT. Polyfin Canggih, Bandung,
 - PT Sulindafin (PT Susilia Idah Synthetic Fiber Industries), Jakarta.

- (13) The investigation of subsidisation and injury covered the period from 1 October 2000 to 30 September 2001 (IP). The examination of trends relevant for the assessment of injury covered the period from 1 October 1997 to the end of the IP (analysis period).

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

- (14) The product under consideration is polyester textured filament yarn (PTY) originating in India and Indonesia which falls within CN codes 5402 33 00. It is directly derived from partially oriented polyester yarn then textured and is used in both the weaving and the knitting sectors to make polyester or polyester/cotton fabric. The product is sold in different product types which can be identified through different specifications such as the weight (denier), the number of filaments, the nature of the yarn as flame retardant, the colouring, the twisting. There are also different qualities, depending on the efficiency of the production process. However, no significant differences exist in the basic physical characteristics and uses of the different types and qualities of PTY. In these circumstances, all types of PTY should be considered as one product for the purposes of this proceeding.

2. Like product

- (15) The investigation showed that PTY produced and sold on the domestic markets of India and Indonesia has similar basic physical characteristics and uses compared with that exported from these countries to the Community. Similarly, the PTY manufactured by the complainant Community producers and sold on the Community market has similar basic physical characteristics and uses when compared to that exported to the Community from the countries in question.
- (16) Consequently, PTY sold on the domestic markets of India and Indonesia and exported to the Community as well as PTY produced and sold in the Community are considered as a like product within the meaning of Article 1(5) of the basic Regulation.

C. SAMPLING

1. Sampling of Indian exporters

- (17) In view of the large number of exporting producers in India mentioned in the complaint, the Commission initially considered that it might be necessary to apply sampling techniques in accordance with Article 27 of the basic Regulation.
- (18) In order to enable the Commission to select a sample, pursuant to Article 27(2) of the basic Regulation, exporting producers were requested to make themselves known within three weeks of the initiation of the proceeding and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies in the production and/or selling of PTY. The Indian authorities and the Indian association of exporting producers were also contacted in this regard by the Commission and raised no objection against the use of sampling.

2. Pre-selection of cooperating companies

- (19) Twelve companies in India came forward and provided the requested information within the three-week period set in Article 27(2) of the basic Regulation. However, two of these companies were traders which could not be taken into account in the selection of the sample. The remaining ten producers which expressed a wish to participate in the sample, were initially considered as cooperating and were taken into account in the selection of the sample. They represented up to 98 % of total exports of the product concerned from India to the Community.

- (20) Companies which did not make themselves known within the three-week period were considered as non-cooperating companies.

3. Selection of the sample

- (21) According to Article 27(1) of the basic Regulation, the selection was based on the largest representative volume of exports which could reasonably be investigated within the time available. On this basis three exporting producers were chosen to constitute the sample in agreement with the Indian association of exporting producers and the Indian authorities. The three companies which were selected in the sample represented around 70 % of Indian PTY exports to the Community and around 65 % of PTY domestic sales in India.
- (22) The seven cooperating companies which were not finally retained in the sample, were informed that any countervailable duty on their exports would be calculated in accordance with the provisions of Article 15(3) of the basic Regulation. Some of these companies initially indicated their intention to claim an individual margin in accordance with Article 27(3) of the basic Regulation in case they were not selected in the sample. However, no substantiated claim was received within the deadline specified in the notice of initiation.
- (23) Questionnaires were sent for completion to the sampled companies. The companies which finally constituted the sample and which fully cooperated with the investigation were attributed their own anti-subsidy margin and individual duty rate.

D. SUBSIDIES

I. INDIA

1. Introduction

- (24) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following five schemes, which allegedly involved the granting of export subsidies, were investigated:
- (i) Export Processing Zones/Export Oriented Units (EPZ/EOU);
 - (ii) Duty Entitlement Passbook Scheme (DEPB);
 - (iii) Export Promotion Capital Goods Scheme (EPCG);
 - (iv) Income Tax Exemption Scheme;
 - (v) Advance License Scheme.
- (25) The schemes (i), (ii), (iii) and (v) specified in recital 24 are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992. The Foreign Trade Act (Section 5) authorises the Government of India (GOI) to issue notifications regarding the export and import policy. These are summarised in the 'Export and Import Policy' documents which are issued by the Ministry of Commerce every five years and updated annually. One export and import policy document, i.e. the five-year plan relating to the period 1 April 1997 to 31 March 2002, is relevant to the investigation period of this case. In addition, the GOI also sets out the procedures governing India's foreign trade policy in the 'Handbook of Procedures for Exports and Imports — 1.4.1997 — 31.3.2002' (Volume 1).

The Income Tax Exemption Scheme (iv) specified in recital 24, is based on the Income Tax Act of 1961 which is amended yearly by the Finance Act.

2. Export Processing Zones (EPZ)/Export Oriented Units (EOU)

(a) *Legal basis*

- (26) The EPZ/EOU scheme, which was introduced in 1965, is an instrument under the 'Export Import Policy' involving export-related incentives. During the IP the scheme was regulated by Customs Notification No 53/97, No 133/94 and No 126/94. Details of the schemes are contained in Chapter 9 and Appendix I of the 1997/2002 Export and Import Policy document, as well as the relevant Handbook of Procedures.

(b) *Eligibility*

- (27) In principle, companies undertaking to export their entire production of goods and services may be set up under the EPZ/EOU scheme. Once the EPZ/EOU status is granted, those companies can avail themselves of certain benefits. There are seven identified EPZs in India. EOUs can be located anywhere in India. They are bonded units under the surveillance of Customs officials in accordance with Section 65 of the Customs Act. Although companies operating within the EOU/EPZ scheme are normally expected to export their entire production, the GOI does allow these units to sell a part of their production on the domestic market under certain conditions.

(c) *Findings*

- (28) It was established that none of the investigated companies availed themselves of this scheme, since they did not have plants in Export Processing Zones or Export Oriented Units. Therefore, this scheme was not considered further in the context of this investigation.

3. Duty Entitlement Passbook Scheme (DEPB)

Legal basis

- (29) The DEPB entered into force on 1 April 1997 by means of Customs Notification 34/97. Paragraphs 7.14 to 7.17 of the Export and Import Policy document and paragraphs 7.32 to 7.53 of the Handbook of Procedures contain a detailed description of the scheme. The DEPB is the successor to the Passbook Scheme (PBS) which was terminated on 31 March 1997. There are two types of the DEPB:

- DEPB on pre-export basis,
- DEPB on post-export basis.

DEPB on pre-export basis

- (30) The GOI states that the DEPB on pre-export basis was abolished on 1 April 2000 and therefore the scheme is not applicable during the IP. It was established that the investigated companies did not benefit under DEPB on pre-export basis. Therefore, it is not necessary to establish the countervailability of this scheme.

DEPB on post-export basis

(a) *Eligibility*

- (31) The DEPB on post-export basis is available to manufacturer-exporters (i.e. every manufacturer in India who exports) or merchant-exporters (i.e. traders).

(b) *Practical implementation of DEPB post-export basis*

- (32) Under this scheme, any eligible exporter can apply for credits which are calculated as a percentage of the value of exported finished products. Such DEPB rates have been established by the Indian authorities for most products, including the product concerned, on the basis of the Standard Input-Output Norms (SION). A licence stating the amount of credit granted is issued automatically.
- (33) DEPB on post-export basis allows for such credits to offset customs duties on any subsequent imports (e.g. raw materials or capital goods) except for those goods whose importation is restricted or prohibited. Goods which are imported against such credits can be sold on the domestic market (subject to sales tax) or used otherwise.
- (34) DEPB licences are freely transferable and, as a consequence, are frequently sold. A DEPB licence is valid for a period of 12 months from the date on which it is granted. The company has to pay a fee equivalent to 0,5 % of the DEPB credit received to the relevant authority.

(c) *Conclusions on DEPB on post-export basis*

- (35) This scheme is clearly contingent upon export performance. When a company exports goods, it is granted a credit which can be used to offset amounts of customs duties due on future imports of any goods (whether raw materials or capital goods) or can just be sold.
- (36) The credit is automatically calculated on the basis of a formula, using SION rates, independently of whether inputs have been imported, duty has been paid on them or whether the inputs were actually used for export production and in what quantities. Indeed a company can apply for a licence on the basis of past exports, irrespective of whether it makes any imports or purchases imported goods from other sources.
- (37) DEPB on post-export basis is not a permitted remission/drawback scheme within the meaning of the basic Regulation. In particular, the exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. It appears therefore that an excess remission is involved, in accordance with the meaning in Article 2(1)(a)(ii) of the basic Regulation. In fact, the remission of import duties is not limited to that payable on goods consumed in the production process of the exported product.
- (38) In this case, one of the visited companies sold more than 90 % of its DEPB licenses during the investigation period, another company sold 60 % of its licenses, while the third company used all its licenses itself and even purchased a significant number of them.
- (39) On the basis of the above, the scheme constitutes a subsidy as the financial contribution by the GOI in the form of duties forgone on imports confers a benefit upon the DEPB holder who can import goods duty free using credits based on past exports. It is a subsidy contingent in law upon export performance and is therefore deemed to be specific under Article 3(4)(a) of the basic Regulation.

(d) *Calculation of the subsidy amount for DEPB post-export basis*

- (40) The benefit for the companies was calculated on the basis of the amount of credit granted in the licences which have been utilised or transferred. In cases where the licenses were transferred (sold), the benefit was calculated regardless of the sales prices of the licences, since the sale of a licence is a pure commercial decision which does not alter the amount of benefit received from the scheme. The amount of subsidy has been allocated over total exports during the IP. The sampled companies obtained subsidies of 9,1 %, 2,9 % and 0,4 % respectively. In calculating the benefit, the necessary fees incurred to obtain the subsidy were deducted.

- (41) One company claimed that the benefit of DEPB should be limited to the licences used only for imports related to the PTY production. Since DEPB licences had also been sold by this company, it is impossible to link these licences to any specific product produced by the company. Therefore, the benefit could not be limited to PTY only, but the benefit of all licenses was allocated over total exports.

4. Export Promotion Capital Goods Scheme (EPCGS)

(a) *Legal basis*

- (42) The EPCGS was announced on 1 April 1992. During the IP the scheme was regulated by Customs Notifications No 28/1997, 29/1997 and 49/2000. Details of the schemes are contained in Chapter 6 of the 1997/2002 Export and Import Policy documents, as well as the relevant Handbook of Procedures.

(b) *Eligibility*

- (43) The EPCGS is available to manufacturers-exporters (i.e. every manufacturer in India who exports) or merchants-exporters (i.e. traders). Since 1 April 1997, manufacturers linked with merchants-exporters can also benefit from the scheme.

(c) *Practical implementation*

- (44) To benefit from the scheme, a company must provide to the relevant authorities, details of the type and value of capital goods, which are to be imported. Depending on the level of export commitment which the company is prepared to undertake, the company will be allowed to import capital goods at either a zero rate of duty or a reduced rate. A license authorising the import at preferential rates is issued automatically. An application fee is payable to obtain the licence. In order to meet the export obligation, goods exported must have been produced using the imported capital goods.

(d) *Conclusions on EPCGS*

- (45) The payment by an exporter of a reduced or zero rate of duty constitutes a financial contribution by the GOI, since revenue otherwise due is forgone and a benefit is conferred on the recipient by lowering the duties payable or fully exempting him from paying the import duties. Hence, the EPCGS is a subsidy.
- (46) As the subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, it is countervailable. The licence cannot be obtained without a commitment to export goods, and is therefore deemed to be specific.

(e) *Calculation of the subsidy amount*

The benefit to the exporters has been calculated on the basis of the amount of unpaid customs duty on imported capital goods by spreading this amount across a period which reflects the normal depreciation of such capital goods in the industry of the product concerned. The amount of subsidy has then been allocated over total exports during the investigation period. The amount so calculated which is attributable to the investigation period has been adjusted by adding interest during the investigation period in order to establish the full benefit of this scheme to the recipient. Given the nature of this subsidy, which is equivalent to a one-time grant, the commercial interest rate during the investigation period in India, i.e. 11,5 % was considered appropriate. The amount of subsidy has then been allocated over total exports during the investigation period.

- (47) Only two of the investigated exporting producers benefited from this scheme during the IP. For one exporting producer the subsidy obtained was 1,25 %, whereas for the other the subsidy established was negligible.

- (48) One of the exporting producers claimed that 'in circumstances where the EPCGS licenses have already redeemed there can be no actionable subsidy as the condition of contingent export performance completely exhausts and become free of any export obligation and hence clearly outside the scope of countervailable subsidies'.
- (49) The company's claim above to exclude the duty exemption benefit for those licenses which have already redeemed (i.e. the export obligation for these licences has already been fulfilled) can not be accepted since the capital goods under these licenses were still in use in the production process and they were not yet fully depreciated. As the EPCGS constitutes a non recurring subsidy, the benefit for the company should be treated as a one-time-grant which has to be allocated over the normal depreciation period, even if all export obligation have already been fulfilled.

5. Income Tax Exemption Scheme (ITES)

(a) *Legal basis*

- (50) The Income Tax Act 1961 is the legal basis under which ITES operates. The Act, which is amended yearly by the annual Finance Act, sets out the basis for the collection of taxes as well as for the various exemptions/deductions which can be claimed. Among the exemptions which can be claimed by firms are those covered by sections 10A, 10B and 80HHC of the Act, which provide an income tax exemption on profits from export sales.

(b) *Eligibility*

- (51) Exemption under Section 10A can be claimed by firms located in Free Trade Zones. Exemption under Section 10B can be claimed by Export Oriented Units. Exemption under Section 80HHC can be claimed by any firm which exports goods.

(c) *Practical implementation*

- (52) To benefit from the abovementioned tax deductions/exemptions, a company must make the relevant claim when submitting its tax return to the Tax Authorities at the end of the tax year. The tax year runs from 1 April to 31 March. The tax return must be submitted to the authorities by the following 30 November. The final assessment by the authorities can take up to three years following the submission of the tax return. A company may only claim one of the deductions available under the three sections mentioned above.

(d) *Conclusion on ITES*

- (53) Item (e) of the Illustrative List of export subsidies (Annex I to the basic Regulation) refers to the 'full or partial exemption ... related to exports, of direct taxes' as constituting an export subsidy. Under the ITES, the GOI confers a financial contribution to the company by forgoing government revenue in the form of direct taxes which would otherwise be due if the income tax exemptions were not claimed by the company. This financial contribution confers a benefit on the recipient by reducing its income tax liability.
- (54) The subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, since it exempts profits from export sales only, and is therefore deemed to be specific.

(e) *Calculation of the subsidy amount*

- (55) Claims for benefit under sections 10A, 10B and 80HHC are made when submitting a tax return at the end of the tax year. As the tax year in India runs from 1 April to 31 March, it was considered appropriate to calculate the benefit under this scheme on the basis of the tax year 2000/2001 (i.e. 1 April 2000 to 31 March 2001) which covers six months of the IP. The benefit to the exporting producers has therefore been calculated on the basis of the difference between the amount of taxes normally due with and without the benefit of the exemption. The rate of corporate tax applicable during this tax year was 39,55 %. The amount of subsidy has been allocated over total exports during the tax year 2000/2001.
- (56) Only one investigated exporting producer benefited under Section 80HHC of this scheme and obtained a subsidy of 0,6 %. The other two investigated exporting producers incurred fiscal losses during the tax year 2000/2001 and, thus did not obtain any benefits under this scheme during the IP.

6. Advance Licence Scheme

(a) *Legal basis*

- (57) The scheme is based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992. The scheme is specified in paragraphs 7.2 to 7.13 of the Export and Import Policy and paragraphs 7.2 to 7.31 and 7.54 of the Handbook of Procedures.

(b) *Eligibility*

- (58) Advance licences are available to exporters (manufacturer-exporters or merchant-exporters) to enable them to import inputs used in the production of exports, duty-free.

(c) *Practical implementation*

- (59) The amount of imports allowed under this scheme, is determined as a percentage of the amount of finished products exported. The advance licences measure the units of authorised imports either in terms of their quantity or in terms of their value. In both cases the rates used to determine the allowed duty free purchases are established, for most products including the product covered by this investigation, on the basis of the SION. The input items specified in the advance licences are items used in the production of the relevant exported finished product.
- (60) The advance licence holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against Advance licenses for intermediate supplies. In such cases the quantities purchased on the domestic market are written off from the advance licences, and an intermediate advance licence is issued to the benefit of the domestic supplier. The holder of such an intermediate advance licence is entitled to the benefit of importing duty free the goods needed to produce those inputs delivered to the final exporter.
- (61) According to the reply of the questionnaire from the GOI and according to the handbook of procedures, Appendix 21, the Indian law requests the Advance Licence holders to maintain, 'a true and proper account of licence-wise consumption and utilisation of imported goods' with respect to each licence.

(d) *Conclusions on the scheme*

- (62) The scheme is clearly contingent upon export performance. Only exporting companies are granted licences which can be used to offset amounts of customs duties due on imports or otherwise purchased inputs on the basis of their anticipated exportation.
- (63) For the three investigated companies, it was established that only Advance Licenses and Advance Licenses for intermediate supply were used during the IP.

- (64) The GOI claimed that the Advance License Scheme is a quantity based scheme, and that the inputs allowed under the licence are with reference to the quantity of exports. It was also argued that whatever inputs are imported under the Advance License Scheme, the same inputs have to be used in manufacturing of the exported products or for replenishment of the stock of inputs used in the products already exported.
- (65) However, it was noted that there was no system or procedure in place to confirm whether and which inputs are consumed in the production process of the exported products. The system only shows that the goods imported duty-free imported have been used in the production process, with no distinction between the destination of the goods (domestic or export market). On the basis of these findings, it cannot be concluded that the Advance Licence Scheme or Advance Licence for intermediate supply scheme fulfil the requirements of a duty drawback scheme or a substitution duty drawback scheme.
- (66) Therefore, both schemes can be considered countervailable. However, the investigated companies were able to demonstrate that the quantities of imported materials, which were exempted from import duties, did not exceed the quantities used for the exported goods. It was therefore concluded that, in the case in question, the exemption of import duties on inputs were granted in accordance with the provisions of Annex I to III of the basic Regulation.
- (67) Therefore, there is no benefit granted to the companies under this scheme in this proceeding.

7. Amount of countervailable subsidies

- (68) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers were 9,1 %, 4,1 % and 1,0 % (i.e. below the 3 % *de minimis* threshold in accordance with Article 14(5)(b) of the basic Regulation) respectively.
- (69) In accordance with Article 15(3) of the basic Regulation, the resulting weighted average subsidy margin for the cooperating companies not included in the sample is 5,0 %. Given that the level of the overall cooperation for India was high (above 98 %), the residual subsidy margin for all other companies was set at the level for the company with the highest individual margin, i.e. 9,1 %.

Type of subsidy	EOU/EPZ	DEPB	EPCGS	ITES	Advance licence	Total
		Post-export				
IndoRama Synthetics Ltd, Nagpur, Maharashtra		2,9 %	1,2 %			4,1 %
Reliance Industries Ltd, Mumbai, Maharashtra		0,4 %		0,6 %		1,0 % <i>de minimis</i>
Welspun Syntex Ltd, Mumbai, Maharashtra		9,1 %				9,1 %
Cooperating exporting producers not in the sample						5,0 %
All others						9,1 %

II. INDONESIA

1. Introduction

- (70) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following three schemes, which allegedly involve the granting of subsidies, were investigated:
- (i) Investment Coordinating Board Scheme (Badan Koordinasi Penanaman Modal — BKPM);
 - (ii) BAPEKSTA (Centre for Administration of Import Duty Exemption and Drawback of the Ministry of Finance) Scheme;
 - (iii) Company (specific) Income Tax Exemption Scheme.

2. Calculation of the subsidy amount

- (71) The Commission firstly calculated the benefits obtained by the investigated exporting producers for each of the abovementioned schemes. The benefit under the Bapeksta scheme was calculated on the basis of the amount of customs duty exemption granted during the IP, allocated over total export turnover during the IP. The benefit under the BKPM scheme was calculated on the basis of the amount of duties unpaid during the IP as far as raw materials and spare parts are concerned, and over the period from 1 January 1991 up to the end of the IP for capital goods, for which the normal depreciation in the industry concerned has been applied. As for the Company Income Tax Exemption Scheme it was found that non of the investigated companies benefited from this scheme.
- (72) The countrywide weighted average subsidy margin for imports from Indonesia was found to be 0,4 % which is well below the *de minimis* threshold for subsidisation for Indonesia, which pursuant to Article 14(5)(b) of the basic Regulation, is set at 3 %.
- (73) As for the amounts of subsidies found for the individual exporters, these vary from 0,1 % to 2,3 % and are in all cases below the *de minimis* threshold. It is noted that the country-wide weighted average subsidy margin was established by setting the subsidy rate for the volumes for which cooperation was not obtained (3 % of total imports into the Community during the IP) at the level of the highest subsidy margin established for cooperating exporting producers.
- (74) On the basis of the above, the Commission does not need to consider whether the subsidies in question are countervailable.

E. COMMUNITY INDUSTRY

1. Community production

- (75) PTY is manufactured in the Community by the following companies:
- three Community producers, which fully cooperated with the Commission during the investigation. Two of these community producers were party to the complaint,
 - four Community producers, out of the six who lodged the complaint, provided some general information on their activities in the complaint. They did not fully cooperate in the investigation, but supported the proceeding,
 - two other non-complainant producers who provided some general information on their activities and supported the complaint but did not supply detailed data,
 - 14 other non-complainant producers who neither cooperated in the investigation nor expressed an opinion.

- (76) Therefore, the PTY produced by all these companies constitutes the Community production within the meaning of Article 9(1) of the basic Regulation.

2. Definition of the Community industry

- (77) The cumulated production of the three cooperating producers was 85 238 tonnes in the IP out of an estimated total Community production of around 228 491 tonnes, i.e. 37 %. However, when the nine producers supporting the proceedings are considered together, they represent 74 % of Community production during the IP.
- (78) One interested party claimed that only three Community producers cooperated in the investigation and that their collective output did not constitute a major proportion of total Community production. Furthermore, this party alleged that four out of the six Community producers that lodged the complaint, eventually decided not to cooperate because they did not consider themselves as being injured, therefore the case was initiated on a wrong basis and the data used to assess the injury suffered by the Community industry was biased.
- (79) First of all it should be noted that all the producers explicitly supporting the complaint prior to initiation represented approximately two thirds of Community production and therefore the support was sufficient to initiate an investigation. Secondly, the three companies that fully cooperated in the investigation represented more than 25 % of Community production and, therefore, a major proportion within the meaning of Article 9(1) and Article 10(8) of the basic Regulation.
- (80) The Commission, therefore, provisionally considers that the three cooperating Community producers constitute the 'Community industry' within the meaning of Article 9(1) and Article 10(8) of the basic Regulation.

F. INJURY

1. Preliminary remarks

1.1. Import data

- (81) Import trends in volume and prices were established using Eurostat information. All imported PTY falls under the CN code 5402 33 00 and no other product is classified under this code. Eurostat data for India was compared to data provided by exporting producers for the IP and was found to be very close.
- (82) The subsidy margins found for Indonesia are below *de minimis*, therefore Indonesia should be provisionally excluded from the injury assessment.

1.2. Community industry data

- (83) Community industry data were obtained from the verified questionnaire responses of the three cooperating Community producers.

2. Community consumption

- (84) Apparent consumption of PTY in the Community was established on the basis of the total imports of the product concerned into the Community, total verified sales of the Community industry on the Community market and estimated sales of other producers operating in the Community based on replies to the Commission's questionnaires, evidence contained in the complaint, and Eurostat export statistics.

- (85) Community consumption of PTY reached approximately 340 000 tonnes during the IP. As shown in the table below, it increased by 19 % over the analysis period. It should be noted that consumption reached a peak in 1998 but subsequently slightly fell back.

Community consumption	1996	1997	1998	1999	2000	IP
Tonnes	285 640	341 660	369 031	353 376	360 176	339 352
1996 = 100	100	120	129	124	125	119

3. Imports from India

3.1. Volume of imports

- (86) The volume of imports originating in India tripled during the analysis period from 7 583 tonnes in 1996 to 22 683 tonnes in the IP. After a sharp rise between 1996 and 1998, imports fell back in 1999 to recover in 2000. There was a further increase of 17 % during the IP compared to the year 2000.
- (87) The market share of the imports concerned reached 7 % during the IP compared to 3 % at the beginning of the analysis period.

Imports from India	1996	1997	1998	1999	2000	IP
Tonnes	7 583	16 992	18 064	11 824	18 752	22 683
1996 = 100	100	224	238	156	247	301
Market share	3 %	5 %	5 %	3 %	5 %	7 %

3.2. Prices of imports

- (88) The prices of the imports concerned decreased by 7 % over the analysis period. A steep drop in price occurred in 1999 when volumes of imports dropped dramatically.

Prices cif	1996	1997	1998	1999	2000	IP
EUR/kg	1,86	1,99	1,69	1,40	1,77	1,73
1996 = 100	100	107	91	75	95	93

3.3. Price undercutting

- (89) For the purposes of analysing price undercutting, the prices of the product concerned sold by the Community industry were compared to the prices of Indian imports on the Community market during the IP, on the basis of weighted average prices per type of PTY.
- (90) The elements taken into account when comparing the imported products with the PTY produced by the Community industry were the decitex (number of grams for 1 000 metres of yarn), the number of filaments, the chemical modification (e.g. flame retardant) and the colour of the yarn (non died, span died or traditionally died).
- (91) The prices of the Indian imports are those reported by the cooperating exporting producers in their responses to the questionnaires on a cif basis at the Community border, duly adjusted for customs duties and post-importation costs. The prices of the Community industry are those reported in the responses to the questionnaires for their sales in the Community to the first unrelated customer on an ex-works basis.

- (92) On this basis, the price-undercutting margin, expressed as a percentage of the Community industry's prices was found to be in the range of 21 % to 36 % for the investigated exporting producers during the IP.

4. Situation of the Community industry

4.1. Production, production capacity and capacity utilisation

- (93) The Community industry's production increased by 18 % over the analysis period but decreased by 3 % in the IP compared to 2000. The production capacity increased by 33 % over the same period. Capacities were continuously extended and modernised in order to increase the competitiveness of the Community industry. Capacity utilisation rates that were fairly high until 1998 but then decreased by 11 percentage points during the following periods.

	1996	1997	1998	1999	2000	IP
Production tonnes	72 330	80 130	83 860	79 607	88 189	85 239
1996 = 100	100	111	116	110	122	118
Capacity tonnes	76 104	84 685	88 240	91 506	98 713	101 400
1996 = 100	100	111	116	120	130	133
Capacity utilisation	95 %	95 %	95 %	87 %	89 %	84 %

4.2. Stocks

- (94) Year-end stock levels varied across the years with a tendency to decline in relation to production levels.

Stocks	1996	1997	1998	1999	2000	IP
Tonnes	5 958	4 791	3 627	1 824	1 794	5 184
1996 = 100	100	80	61	31	30	87

4.3. Sales volume, market share and growth

- (95) The sales made by the Community industry on the Community market during the analysis period increased by 8 % in volume terms. However, the Community industry's sales did not grow as much as consumption; which increased by 16 % over this period. Therefore, the Community industry lost two percentage points of market share over the analysis period.

	1996	1997	1998	1999	2000	IP
Sales volume tonnes	72 318	82 501	85 434	82 749	84 964	77 846
1996 = 100	100	114	118	114	117	108
Market share	25 %	24 %	23 %	24 %	24 %	23 %

4.4. Factors affecting prices

- (96) The selling prices of the Community industry decreased by 9 % over the analysis period. The increasingly high level of imports originating in India, their low prices and their declining price trend created a substantial price depression for the Community industry which was obliged to lower its prices in order to try and maintain its market share.

Average selling price delivered	1996	1997	1998	1999	2000	IP
EUR/kg	2,94	3,00	2,93	2,69	2,58	2,68
1996 = 100	100	102	100	91	88	91

4.5. Profitability

- (97) The Community industry's profitability expressed in terms of return on net sales in the Community market fell sharply over the analysis period from a figure of + 3 % in 1996 to - 12 % in the IP.

	1996	1997	1998	1999	2000	IP
Profitability	3 %	7 %	8 %	2 %	- 7 %	- 12 %

4.6. Investments and ability to raise capital

- (98) Investment was sustained over the analysis period but it reached a lower level in the IP. The majority of these expenditures was recorded under the category machinery, equipment and other items. In 1998, investments were particularly high which corresponds to the creation of a new PTY plant by one Community producer at a time when the Community industry financial prospects were still good.

Investment	1996	1997	1998	1999	2000	IP
1 000 EUR	35 997	30 138	57 567	39 158	33 884	23 051
1996 = 100	100	84	160	109	94	64

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

4.7. Return on investments (ROI)

- (100) In assessing the impact of the subsidised imports on the Community industry's return on investments, the Commission examined the pre-tax profit or loss compared to the total assets of the Community industry.
- (101) The sales of PTY constitutes the largest part of the turnover of the Community industry. ROI was thus apportioned to reflect this share.
- (102) The evolution of the ROI was consistent with the profitability figures and showed the clear deterioration of the financial situation of the Community industry.

	1996	1997	1998	1999	2000	IP
Return on total assets	20 %	25 %	19 %	4 %	- 3 %	- 10 %

4.8. Cash flow

- (103) The sales of PTY constitute the major part of the turnover of the Community industry. Cash flow was thus apportioned to reflect this share.
- (104) The figures in the table below concerning the cash flow of the Community industry clearly confirmed the deterioration of its financial situation.

	1996	1997	1998	1999	2000	IP
Net cash inflow (outflow) from all activities (EUR 1 000)	23 014	30 128	14 778	38 113	15 427	15 836
Index	100	131	64	166	67	69

4.9. *Employment, productivity and wages*

- (105) The following table shows the number of people employed by the Community industry in the area of the product concerned and their associated employment cost.

	1996	1997	1998	1999	2000	IP
Number of employees	1 180	1 260	1 419	1 482	1 487	1 403
1996 = 100	100	107	120	126	126	119
Employment costs (EUR 1 000)	27 362	32 522	35 035	38 864	39 861	40 832
1996 = 100	100	119	128	142	146	149
Productivity	61 297	63 595	59 098	53 716	59 307	60 755
1996 = 100	100	104	96	88	97	99

- (106) The number of people employed by the Community industry at the end of the IP was 1 403, an overall increase by 19 % over the analysis period, mainly following an important increase in 1998 and 1999 when the Community industry decided to substantially develop its production capacities. This extension was planned when prospects were still good (see recital 98). Employment costs in relation to the number of employees increased by 30 % over the same period.
- (107) Productivity in the IP was approximately the same as in 1996. In 1999 when production capacities increased as well as the number of employees, productivity had temporarily deteriorated.

4.10. *Recovery from past dumping*

- (108) In 1997 and 1998, the financial results of the Community industry were satisfactory showing that it had recovered from past dumping from imports originating in third countries for which anti-dumping measures were put in force. There are definitive anti-dumping measures in force on imports of PTY originating in Malaysia, Indonesia, Thailand and Taiwan (see recital 4).

4.11. *Actual margin of subsidisation*

- (109) The subsidy margins for India are specified in the subsidies part (see recital 69). These margins established are clearly above *de minimis*. Furthermore, given the volume and the price of the subsidised imports, the impact of the actual subsidy margin cannot be considered negligible.

5. **Conclusion on injury**

- (110) Between 1996 and the IP, the volume of imports of PTY originating in India was multiplied by three from under 7 500 tonnes to over 22 000 tonnes. This resulted in an overall increase in the market share of the imports concerned of four percentage points at a time when consumption grew by 19 %. The prices of the imports concerned remained below those of the Community industry throughout the period considered with a price undercutting ranging between 30 % and 45 % during the IP.
- (111) Simultaneously, between 1996 and the IP the situation of the Community industry deteriorated in terms of market share, sale prices, profitability, return on investments, cash flow and ability to raise capital. The poor financial results of the Community industry resulted from the depression of its prices.
- (112) In view of the above it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 8 of the basic Regulation.

G. CAUSATION OF INJURY

1. Introduction

- (113) In accordance with Article 8(6) of the basic Regulation, the Commission examined whether the material injury suffered by the Community industry had been caused by the subsidised imports from the country concerned. In accordance with Article 8(7) of the basic Regulation, the Commission also examined other known factors which might have injured the Community industry in order to ensure that any injury caused by those factors was not wrongly attributed to the subsidised imports.
- (114) Anti-dumping measures are currently in force against imports originating in Thailand, Indonesia, Taiwan and Malaysia which are intended to remove injurious dumping from these countries. The PTY imports originating in these four countries are presently subject to expiry anti-dumping review (see recital 4). This element was borne in mind in this examination.

2. Effect of the subsidised imports

2.1. Volume

- (115) The imports of PTY originating in India tripled over the analysis period to reach a level of 22 683 tonnes during the IP.
- (116) The substantial increase in the volume of imports originating in India and their gain in market share over the period considered, at prices which remained well below those of the Community industry coincided in time with a serious deterioration of the situation of the Community industry notably in terms of market share, sale prices, cash flow, ability to raise capital, return on investments and profitability.
- (117) This deterioration was most marked between 2000 and the IP when the volume of subsidised imports increased by a further 17 % to reach record levels.

2.2. Prices

- (118) From 1996 to the IP, prices of subsidised imports decreased by 7 % while their market share increased by four percentage points. At the same time, the Community industry decreased its selling prices by 9 % in an unsuccessful effort to maintain its market share.
- (119) Prices of subsidised imports were constantly below the Community industry's prices with an undercutting margin in the range of 30 % to 45 % for the investigated exporting producers during the IP.
- (120) It is therefore considered that the pressure exerted by the imports concerned, which significantly increased their volume and market share from 1996 onwards and which were made at particularly low subsidised prices, resulted in price depression for the Community industry and a deterioration of its financial situation.

3. Effect of other factors

3.1. Imports originating in other third countries

- (121) Four countries exporting PTY to the Community are subject to anti dumping duties: Indonesia, Malaysia, Taiwan and Thailand. These four countries represented a market share of 18 % during the IP. Over the analysis period, the market share of imports originating in these countries increased by three percentage points from 15 % in 1996 to 18 % during the IP. Average cif prices of these imports are below the Community industry prices. The exporting producers in Indonesia and Taiwan benefiting from 0 % anti-dumping duty rates are those which effectively increased their sales on the Community market. It cannot be excluded that these imports have contributed to the injury suffered by the Community industry. This is currently being investigated within review investigations initiated on 31 May 2002 ⁽¹⁾ on the basis of Article 11(3) of Regulation (EC) No 384/96.
- (122) Imports originating in other third countries represented a market share of 19 % during the IP and increased, in volume, by 47 % over the analysis period. The most significant volumes originated in the United States of America, Turkey and South Korea. Average cif prices of these imports are slightly below ex works prices of the Community industry. However, if one takes into account customs duties and post importation costs, they are approximately at the same level as the Community industry prices. Accordingly, these imports cannot be considered as having injured the Community industry.

	1996	1997	1998	1999	2000	IP
Indonesia, Malaysia, Taiwan and Thailand						
Quantity — Tonnes	43 443	50 030	55 778	61 485	62 450	61 193
Market share	15 %	15 %	15 %	17 %	17 %	18 %
cif prices EUR/kg	1,88	2,02	1,66	1,38	1,81	1,85
Other third countries						
Quantity — Tonnes	41 574	61 630	73 575	75 912	68 209	61 377
Market share	15 %	20 %	20 %	22 %	19 %	19 %
cif prices EUR/kg	2,30	2,30	2,09	1,86	2,29	2,30

3.2. Prices of raw materials

- (123) The main raw material used in the production of PTY is polyester oriented yarn (POY).
- (124) The Community industry is buying POY both inside and outside the Community. Some POY is also purchased from related companies. A detailed comparison decitex by decitex between intra-group prices, prices paid on the market and prices published by specialised press (PCI) proved that the purchases from related companies are done on an arm's length basis price. Selling conditions are also similar to general market conditions.
- (125) The actual price paid by the Community industry for its POY, as shown in the table below, increased considerably in 1997-1998 and then decreased to levels which were lower than at the beginning of the analysis period. It cannot thus be considered that costs of raw materials caused injury to the Community industry.

	1996	1997	1998	1999	2000	IP
Average cost of POY EUR/kg	1,5	2,0	1,7	1,4	1,4	1,4

⁽¹⁾ OJ C 129, 31.5.2002, pp. 2 and 5.

3.3. *The export performance of the Community industry*

- (126) The volume of the Community industry's exports increased by nearly 400 % over the analysis period to reach a figure of 5 200 tonnes, as the Community industry has developed long term trade relations with partners outside the Community. It should be noted that the actual tonnage exported is small when compared to the volume of total sales of the Community industry.
- (127) In conclusion, as exports have increased over the period, it is considered that they cannot be responsible for the injury suffered by the Community industry.

3.4. *Changes in the pattern of consumption*

- (128) Consumption of the product concerned in the Community increased by 19 % over the analysis period. It is therefore considered that this factor did not contribute to the injury suffered by the Community industry.

4. **Conclusion on causation**

- (129) The substantial increase in the volume and market share of imports from India over the analysis period and most notably in the IP and their level of price undercutting during the IP had material negative consequences on the market share and selling prices of the Community industry. This in turn affected a number of the Community industry's economic indicators, in particular profitability and return on investments. Given the above analysis, it is considered that imports of PTY originating in India had a significant negative impact on the situation of the Community industry and that the effect of other factors, notably imports from third Countries including Indonesia, Malaysia, Taiwan and Thailand, was not such as to alter the finding of a genuine and substantial relationship of cause and effect between the subsidised imports from India and the material injury suffered by the Community industry.

Given the analysis, which has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is hereby concluded that these other factors as such do not reverse the fact that the material injury found may be attributed to the subsidised imports.

- (130) It is therefore provisionally concluded that the subsidised imports from the country concerned have caused material injury to the Community industry within the meaning of Article 8(6) of the basic Regulation.

H. **COMMUNITY INTEREST**

1. **General remarks**

- (131) The Commission examined whether, despite the conclusion on injurious subsidisation, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose and in accordance with Article 31(1) of the basic Regulation, the determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, other Community producers, the importers/traders as well as the users and suppliers of the product under consideration.

2. **The investigation**

- (132) The Commission sent questionnaires to importers, suppliers of raw materials and industrial users of the product concerned. In total, 13 questionnaires were sent to suppliers, 21 to users, 14 to importers and 16 to other producers of PTY.

- (133) Questionnaire responses were received within the time limits from:
- one direct supplier of raw materials, supplying MEG and PTA to the Community industry:
 - BP Chemicals Ltd (United Kingdom),
 - one user of the product concerned, producing textiles to be used mainly in the automotive and upholstery sectors:
 - Mattes & Ammann KG (Germany),
 - two other producers of PTY:
 - FITEGAR SA (Portugal),
 - Manifattura di Stabbia SpA (Italy),
 - no importer of the product concerned has sent a questionnaire response.

3. Likely effect of the imposition of measures on the Community industry and other Community producers of PTY

- (134) The Community industry is viable and capable of supplying the market. Indeed, the Community industry has made a great effort to meet the requirements of the users, and particularly of the car industry, demanding high quality products to be delivered at their convenience. The Community industry has shown a willingness to maintain a competitive presence on the Community market. Examples of steps taken are:
- (a) develop specific products to supply niche markets;
 - (b) improve productivity, including a widespread use of modern production techniques (e.g. increased mechanisation and computerisation).
- (135) It is clear that the proposed measures would benefit the Community industry. There is no reason to doubt the viability and competitiveness of the Community industry in a situation where normal market conditions apply. This is supported by its profitability level between 1996 and 1999 and by its position on the Community market in the specialities sector, which are not yet targeted by the subsidised imports.
- (136) The Community industry has suffered from injurious subsidisation. The subsidised imports from India undercut and depressed the Community industry selling prices, caused a slight reduction of its market share and did not allow it to grow as fast as the market. The subsidised imports from India eroded severely the profitability and return on investment of the Community industry. Investments were also reduced particularly during the IP. If this situation remains unchanged, losses at the levels reached during the IP will persist and the long-term viability of the Community industry will be endangered.
- (137) The other producers that answered the Commission's questionnaire supported these views.
- (138) It is therefore provisionally concluded that it would be in the interest of the Community industry and of the other Community producers that measures are imposed.

4. Likely effects of the imposition of measures on importers

- (139) No answers were received from any importer or trader.
- (140) The non-cooperation of importers in this case leads to the conclusion that the imposition of measures on imports originating in India is not likely to have any significant impact on the situation of unrelated importers and traders of PTY in the Community.

5. Likely effects of the imposition of measures on suppliers of raw materials

- (141) Community producers are mainly buying Mono Ethylene Glycol (MEG), Purified Terephthalic acid (PTA) or Dimethylterephthalate (DMT) to produce Polyester Oriented Yarn (POY), to subsequently texture it to make PTY. Some Community producers are also buying POY directly.
- (142) The supplier that cooperated in the investigation is employing more than 300 persons dedicated to the production of PTA and MEG.
- (143) The cooperating supplier worked closely with Community producers, deriving a substantial part of its turnover from sales to them. Therefore any reduction in the Community industry's purchases would have a dramatic effect on this company.
- (144) It is clear that the imposition of measures would help to maintain the level of activity of the Community industry and by extension of its suppliers. The Commission has therefore provisionally concluded that the imposition of anti-dumping measures is in the interest of the upstream industries.

6. Likely effects of the imposition of measures on users

- (145) As mentioned only one user cooperated. This user is mainly concerned by the possible further concentration of the PTY sector if measures are imposed as a certain movement of concentration took place within large multinational companies.
- (146) This argument is not persuasive because there were 23 producers in the Community industry during the IP. Furthermore, if measures were not imposed, the difficult financial situation of the Community industry is likely to lead to further world wide concentration. Moreover, the very existence of the Community industry might be at stake, making the users completely dependent on imports. On the contrary if measures are imposed the various Community producers are likely to continue competing among themselves and with non subsidised imports, assuring the best market conditions to users.
- (147) It is therefore provisionally considered that, in view of the low level of response to the Commission's questionnaires and despite the comments made by the company that did respond, the imposition of anti-subsidy measures would not be prejudicial to the viability and competitiveness of users.

7. Conclusion

- (148) The imposition of countervailing measures is in the interest of the Community industry, other Community producers of PTY and suppliers of raw materials. It will allow these sectors to improve profitability and to have the possibility of making the new investments which are crucial for their viability.
- (149) If measures are not imposed, the continued decline in the profitability of the Community industry observed over the analysis period will seriously jeopardise.
- (150) It has also be concluded that the imposition of countervailing measures on users would not be prejudicial to their viability and competitiveness.
- (151) In view of the above, the Commission provisionally concluded that no compelling reasons exist not to impose provisional countervailing measures in the present case.

I. NON-IMPOSITION OF DUTIES

- (152) In the light of the findings that the countrywide weighted average subsidy margin for imports originating in Indonesia is *de minimis*, it is provisionally decided not to impose countervailing duties as regards imports originating in this country.

J. PROVISIONAL ANTI-SUBSIDY MEASURES

1. Injury elimination margin

- (153) In order to prevent further injury being caused by the subsidised imports, it was considered appropriate to adopt countervailing measures in the form of provisional duties.
- (154) For the purpose of determining the level of these duties, the Commission took account of the subsidy margins found and the amount of duty necessary to eliminate the injury sustained by the Community industry.
- (155) To this end, the Commission determined a non-injurious price based on production costs of the Community industry, together with a reasonable profit margin of 8 %, this being considered necessary to ensure the viability of the industry and being a profit which this industry experienced in 1998 when the subsidised imports from India had not such a depressing effect on the Community industry's prices and where the imports from the countries subject to measures were already at a level similar to that prevailing in the IP. The non-injurious price was compared with the prices of the subsidised and dumped imports used to establish undercutting, as outlined above. Differences resulting from this comparison were then expressed as a percentage of the total cif import value to establish the injury elimination margin.
- (156) In order to calculate the injury elimination margin applicable to exporting producers that cooperated but were not part of the sample, the weighted average injury elimination margin of the companies included in the sample was used.
- (157) For those exporting producers in India which neither replied to the Commission's questionnaire nor otherwise made themselves known, the countrywide injury elimination margin was established on the basis of the facts available, in accordance with Article 28(1) of the basic Regulation. In view of the high level of cooperation it was considered appropriate to set the injury elimination margin for the non-cooperating companies at the level of the highest injury margin established for a cooperating company in the country in question.

2. Provisional measures

- (158) Since subsidy margins have been found to be lower than injury elimination margins, the provisional duties to be imposed should correspond to the subsidy margins established, in accordance with Article 12(1) of the basic Regulation.

Reliance Industries Ltd	0 %
Indo Rama Synthetics Ltd	4,1 %
Welspun Syntex Ltd	9,1 %
Cooperating exporting producers not in the sample	5,0 %
Non-cooperating exporting producers	9,1 %

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

- (160) Any claim requesting the application of these individual company anti-subsidy 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.

3. Final provision

- (161) In the interest 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 duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional countervailing duty is hereby imposed on imports of PTY falling within CN code 5402 33 00 and originating in India.
2. The rate of the provisional countervailing duty applicable to the net-free-at-Community-frontier-price, before duty, for products produced by the following companies shall be as follows:

Company	Rate of duty (%)	TARIC additional code
Chhabria Polyester Corporation Mehta House, 1 st Floor, 91, Bombay Samachar Marg, Mumbai 400 023, India	5,0	A 388
Indo Rama Synthetics Limited 51-A, Industrial Area, Sector III, Pithampur, 453 001, Distt. Dhar, Madhya Pradesh, India	4,1	A 389
Microsynth Fabrics Limited 6, Jai Tirath Mansion, Barrack Road, Behind Metro Cinema, Mumbai 400 020, India	5,0	A 390
Modern Petrofils NH No 8, Baman Gam, Taluka: Karjan, Distt. Baroda 391 210, India	5,0	A 391
Nova Petrochemicals Limited 402, Trividh Chambers, Ring Road, Surat, India	5,0	A 392
Parasrampur Industries Limited 208, Nariman Point, Bombay, 400 021, India	5,0	A 393

⁽¹⁾ European Commission
Directorate-General for Trade
Directorate B
J-79 5/17
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

Company	Rate of duty (%)	TARIC additional code
Reliance Industries Limited Maker Chambers IV, Nariman Point, Bombay, Mumbai, 400 021, India	0,0	A 394
Sarla Polyester Limited 304, Arcadia, 195 Nariman Point, Bombay, Mumbai, 400 021, India	5,0	A 395
Supertex Industries Limited Balkrishna Krupa, 2 nd Floor, 45/49, Babu Genu Road, Princess Stree, Bombay, 400 002, India	5,0	A 396
Welspun Syntex Limited Kamani Wadi, 1 st Floor, 542, Jaganath Shankar Sheth Road, Chira Bazar, Stree, Bombay, 400 002, India	9,1	A 397
All others	9,1	A 999

3. Unless otherwise specified, the provisions in force concerning custom 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 provision of a security equivalent to the amount of provisional duty.

Article 2

Without prejudice to Article 30 of Regulation (EC) No 2026/97 interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 20 days of the date of entry into force of this Regulation.

Pursuant to Article 31(4) of Regulation (EC) No 2026/97, the parties concerned may comment on the application of this Regulation within one month of the date 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 Communities*.

Article 1 shall apply for a period of four months.

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

Done at Brussels, 29 July 2002.

For the Commission
Pascal LAMY
Member of the Commission