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(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1472/2000

of 6 July 2000

imposing a provisional anti-dumping duty on imports of polyester staple fibres originating in India and the Republic of Korea

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, as last amended by Council Regulation (EC) No 905/98 ⁽²⁾ and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) In August 1999 and November 1999, the Commission received complaints requesting the initiation of anti-dumping proceedings with regard to imports into the Community of polyester staple fibres ('PSF') originating in the Republic of Korea and India, respectively.
- (2) These complaints were lodged by the International Rayon and Synthetic Fibres Committee ('CIRFS') acting on behalf of the following companies: Tergal Fibres (France), Du Pont de Nemours (Deutschland) GmbH, Märkische Faser AG and Trevira GmbH and Co. (Germany), Wellman International Ltd. (Ireland), Montefibre SpA (Italy), Trevira Fibras (Portugal) and Catalana de Polimers (Spain). These producers represented a major proportion of the total Community production of PSF.
- (3) The complaints contained evidence of dumping of the product concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of proceedings for both of these countries. Accordingly, the Commission announced by notices published in the *Official Journal of the European Communities* ⁽³⁾ ⁽⁴⁾ the initiation of anti-dumping proceedings and commenced investigations.
- (4) There are definitive anti-dumping measures currently in force on imports of PSF originating in Belarus (Council

Regulation (EC) No 1490/96 ⁽⁵⁾) and Taiwan (Council Regulation (EC) No 1728/1999 ⁽⁶⁾).

- (5) By Commission Regulation (EC) No 124/2000 ⁽⁷⁾ the Commission imposed provisional anti-dumping duties on imports of PSF originating in Australia, Indonesia and Thailand.
- (6) By Council Regulation (EC) No 978/2000 ⁽⁸⁾ definitive countervailing duties were imposed on imports of PSF originating in Australia, Indonesia and Taiwan.
- (7) The definitive anti-dumping measures imposed by Council Regulation (EEC) No 54/93 ⁽⁹⁾ on imports of PSF originating in India were allowed to lapse on 15 January 1998, while those concerning imports of PSF from the Republic of Korea were repealed in August 1999 (Council Regulation (EC) No 1728/1999).
- (8) For administrative reasons and as the two current proceedings were carried out using data for the same investigation period, it was considered appropriate to merge them into one investigation.
- (9) The Commission officially advised the complainant Community producers, exporting producers and importers known to be concerned, the representatives of the exporting countries as well as Community users and suppliers of the initiation of the proceeding. The parties directly concerned were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the applicable notice of initiation.
- (10) The Commission sent questionnaires to all parties known to be concerned and received replies from seven complaining Community producers, as well as five exporting producers, two importer/users and one user for the proceeding concerning the Republic of Korea, and three exporting producers one importer/user, two importers and one user for the proceeding concerning India.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 128, 30.4.1998, p. 18.

⁽³⁾ OJ C 285, 7.10.1999, p. 3.

⁽⁴⁾ OJ C 369, 21.12.1999, p. 20.

⁽⁵⁾ OJ L 189, 30.7.1996, p. 13.

⁽⁶⁾ OJ L 204, 4.8.1999, p. 3.

⁽⁷⁾ OJ L 16, 21.1.2000, p. 30.

⁽⁸⁾ OJ L 113, 12.5.2000, p. 1.

⁽⁹⁾ OJ L 9, 15.1.1993, p. 2.

- (11) A number of exporting producers in the countries concerned, as well as complainant Community producers, Community users and importers made their views known in writing. All parties, who so requested within the applicable time limit and indicated that there were particular reasons why they should be heard, were granted a hearing.
- (12) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination of dumping, resulting injury and Community interest, and carried out verifications at the premises of the following companies:
- (a) Exporting producers in the exporting countries
- India*
- Indian Organic Chemicals Limited, Mumbai,
 - Reliance Industries Ltd, Mumbai.
- The Republic of Korea*
- Daehan Synthetic Fibre Co. Ltd., Seoul,
 - Saehan Industries Inc., Seoul,
 - Samyang Corporation, Seoul,
 - SK Chemicals Co. Ltd., Seoul,
 - Sung Lim Co. Ltd., Seoul.
- (b) Trading company in an exporting country related to an exporting producer
- SK Global Co. Ltd., Seoul, Korea.
- (c) Importer in the Community related to an exporting producer
- Saehan Deutschland GmbH, Eschborn, Germany.
- (13) At this stage, it was not considered necessary to carry out on-spot verification visits at the premises of the Community industry. In any event, six months of the investigation period in the current proceedings was verified in the context of a related proceeding.
- (14) The investigation of dumping and injury, for the current proceedings, covered the period from 1 October 1998 to 30 September 1999 (hereinafter referred to as 'the investigation period' or 'IP'). The examination of trends in the context of the injury analysis covered the period from 1 January 1996 to the end of the IP.
- (16) The product is a basic material used at various stages of the manufacturing process of textile products. The Community consumption of PSF is either used for spinning, i.e. manufacturing filaments for the production of textiles, mixed or not with other fibres such as cotton and wool or for non-woven applications such as filling (fibrefill), i.e. stuffing or padding of certain textile goods such as cushions, car seats and jackets.
- (17) The product is sold in different product types which can be identified through different specifications such as thickness, length, tenacity, shrinkage, lustre and silicon treatment or through their classification into product families such as regular, hollow, spiral and bicomponent fibres and specialities such as coloured, branded and trilobal fibres. From a production point of view, a distinction can be made between virgin PSF, produced from virgin raw materials, and regenerated PSF, produced from recycled polyester. Finally, quality may be substandard or first grade.
- (18) The different types are considered as one product for the purpose of the investigation in the sense that the basic physical characteristics of the different types do not entail any significant differences, even though the uses and the quality of PSF sold might differ. There exist no clear dividing lines between the various types as there is overlapping and consequently competition between adjacent types.

2. Like product

- (19) The Commission found that there were no differences in the basic physical characteristics and uses of the PSF imported into the Community originating in India and the Republic of Korea and the PSF produced by the complainant Community producers and sold on the Community market. It was also found that there was no difference between the PSF produced in India and the Republic of Korea and exported to the European Community and that sold on the domestic markets of those countries. It was therefore concluded that both the PSF produced and sold by the Community industry on the Community market and the PSF produced and sold on the domestic markets of India and the Republic of Korea were, within the meaning of Article 1(4) of Regulation (EC) No 384/96 (hereinafter 'the basic Regulation'), alike to the PSF imported into the Community from the two countries subject to investigation.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

- (15) The product under consideration is synthetic staple fibres of polyester, 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 (PSF).

C. SAMPLING OF INDIAN EXPORTING PRODUCERS

1. Provision of basic information

- (20) 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 17 of the basic Regulation.

(21) In order to enable the Commission to select a sample, pursuant to Article 17(2) of the basic Regulation, exporting producers were requested to make themselves known within 15 days 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 PSF sector. The Indian authorities and the Indian association of exporting producers were also contacted in this regard by the Commission.

2. Pre-selection of cooperating companies

(22) Five exporting producers reported export sales of the product concerned to the Community during the period 1 October 1998 to 30 September 1999.

(23) The exporting producers, who made themselves known within the fifteen-day period, accounted for up to 100 % of total imports from India into the Community. In these circumstances, the Commission decided not to limit their investigation of dumping to a lower number of exporting producers by using a sample in accordance with Article 17(1) of the basic Regulation. Accordingly, the Commission sent questionnaires to all five companies who reported exports to the Community during the investigation period.

(24) However, only three of these companies responded to the questionnaire and are therefore considered as cooperating with the investigation.

(25) The other two companies, along with exporting producers, if any, which did not make themselves known within the 15-day period, were considered as non-cooperating companies.

D. DUMPING

1. General methodology

(26) This section explains the general methodology used to establish whether the imports into the Community of the product under consideration have been dumped. Specific issues raised by the investigation for each country concerned are described in recitals 45 to 59.

1.1. Normal value

1.1.1. Overall representativity of domestic sales

(27) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of PSF to independent customers by each exporting producer were representative, i.e. whether the total

volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community.

(28) This assessment revealed that all investigated exporting producers had representative sales of PSF on their domestic markets during the investigation period.

1.1.2. Product type comparability

(29) The Commission considered domestically sold and exported product types, which had similar use, quality, denier, lustre and silicon treatment as being directly comparable.

1.1.3. Product type specific representativity

(30) Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.

1.1.4. Ordinary course of trade test

(31) The Commission subsequently examined whether the domestic sales of each exporting producer could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

(32) This was done by establishing the proportion of domestic sales to independent customers, of each exported product type, not sold at a loss on the domestic market during the investigation period:

(a) For those product types where more than 80 %, by volume, of sales on the domestic market were not below unit costs and where the weighted average sales price was equal to or higher than the weighted average production cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question;

(b) For those product types where at least 10 %, but no more than 80 %, by volume, of sales on the domestic market were not below unit costs, normal value, by product type, was calculated as the weighted average of domestic sales prices which were made at prices equal to or above unit costs only, of the type in question;

(c) For those product types where less than 10 %, by volume, was sold on the domestic market at a price not below unit costs, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore, normal value was constructed.

1.1.5. Normal value based on actual domestic price

(33) When the requirements set out in recitals 27 to 32(a) and (b) were met, normal value was based for the corresponding product type on the actual prices paid or payable, by independent customers in the domestic market of the exporting country, during the investigation period, as set out in Article 2(1) of the basic Regulation.

1.1.6. Normal value based on constructed value

(34) For product types falling under recital 32(c), as well as for the product types which were not sold in representative quantities on the domestic market, as mentioned in recital 30, normal value had to be constructed.

(35) For every cooperating exporting producer, their own SG&A expenses incurred on representative domestic sales of the like product and weighted average profit realised on domestic sales of the like product, in the ordinary course of trade, during the investigation period, was added to the average cost of manufacturing during the investigation period in order to determine constructed normal value pursuant to Article 2(6) of the basic Regulation.

1.2. Export price

(36) For those sales made to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable.

(37) For sales made via a related importer, the export price was constructed on the basis of resale prices to independent customers. Adjustments were made for all costs incurred between importation and resale by that importer and for the profit margin found in the investigation to have been attained by independent importers of the product concerned, in accordance with Article 2(9) of the basic Regulation.

1.3. Comparison

(38) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation.

(39) Accordingly, allowances for differences in import charges and indirect taxes, discounts, transport, insurance, handling, loading and ancillary costs, packing costs, credit costs, technical assistance and commissions, have been granted where applicable and justified.

(40) The comparison between normal value and export price was made on an ex-factory basis.

1.4. Dumping margins

1.4.1. Dumping margin for companies investigated

(41) According to Article 2(11) of the basic Regulation, the weighted average normal value by product type, as determined under recitals 27 to 35, was compared with the weighted average export price, as determined under recitals 36 and 37.

1.4.2. Dumping margin for non-cooperating companies

(42) For those exporting producers which neither replied to the questionnaire nor otherwise made themselves known, the dumping margin was established on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation.

(43) For both countries subject to investigation, the volume of exports to the Community reported by the cooperating exporting producers was compared with the equivalent Eurostat import statistics in order to establish the overall level of cooperation. In this respect, it was found that the overall level of cooperation was high for both countries. It was therefore considered appropriate to set a residual dumping margin for the non-cooperating exporting producers at the level of the highest dumping margin established for a cooperating exporting producer in the country in question. This approach was taken, as there is no reason to believe that any non-cooperating exporting producer in the country concerned would have dumped at a lower level than a cooperating exporting producer in the same country.

(44) The above approach with regard to non-cooperating exporting producers was also considered necessary in order to prevent non-cooperating exporting producers benefiting from their non-cooperation.

2. Specific issues raised by the investigation with regard to the establishment of dumping for each of the countries concerned

2.1. India

(45) In total, three exporting producers cooperated in the investigation.

2.1.1. Normal value

(46) For most product types, normal value was based on domestic prices in India. However, for a few product types, of two producers only, normal value was constructed where there were no domestic sales of the type concerned.

2.1.2. Export price

(47) The export price was based on the prices paid or payable.

2.1.3. Comparison

(48) To ensure a fair comparison allowances were made for differences in import charges and indirect taxes, discounts, transport, insurance, handling, loading and ancillary costs, credit costs, technical assistance and commissions, where applicable and justified.

(49) Two exporting producers made a claim for duty drawback on the grounds that import charges were borne by the like product when intended for consumption in the exporting country but were refunded or not paid when the product was sold for export to the Community. In one case the amount claimed was found to be higher than the amount of duty borne by the like product in the domestic market and this claim was adjusted downwards. In another case, there was no evidence that the duty was borne by the like product destined for domestic consumption and this claim was rejected.

2.1.4. Dumping margin

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

— Indian Organic Chemicals Limited, Mumbai	26,6 %
— JCT Limited, New Delhi	32,6 %
— Reliance Industries Ltd, Mumbai	36,5 %
— Non-cooperating exporting producers	36,5 %

2.2. The Republic of Korea

(51) In total, five exporting producers, together with one trading company related to an exporting producer, located in the Republic of Korea and one importer, related to an exporting producer, located in Germany,

made themselves know, and cooperated in the investigation.

2.2.1. Normal value

(52) For those product types where the domestic sales were insufficient or not made in the ordinary course of trade, normal value was constructed.

(53) Four exporting producers in the Republic of Korea included certain sales made to Korean manufacturing companies in their domestic sales listing where the ultimately manufactured product was destined for export. They argued that these sales should be treated as domestic sales as they were intended for domestic consumption. However, these sales were subject to administrative arrangements specific to export sales as they were not subject to domestic sales tax, they were normally invoiced in US dollars and paid for by letters of credit, they were subject to duty drawback arrangements and they were normally classified as local export sales in the companies' accounting records. In these circumstances, these sales were excluded from the domestic sales listings.

2.2.2. Export price

(54) The export price was based on the prices paid or payable, although it was constructed where sales were made via a related importer.

2.2.3. Comparison

(55) To ensure a fair comparison, allowances were made for differences in import charges and indirect taxes, transport, insurance, handling, loading and ancillary costs, packing costs, credit costs and commissions, where applicable and justified.

(56) All five exporting producers made a claim for duty drawback on the grounds that import charges were borne by the like product when intended for consumption in the exporting country but were refunded when the product was sold for export to the Community. In each case the amount claimed was found to be higher than the amount of duty borne by the like product in the domestic market and therefore, the allowances were adjusted accordingly.

(57) In addition, all five exporting producers claimed credit costs on the basis of the actual credit period taken by customers under the 'open account' payment system used on the Korean domestic market. It was found that under such a system, generally, the exporting producers did not actually grant specific credit periods and furthermore, the credit periods taken could not be accurately determined, as receipts could not be linked to specific invoices. In these circumstances, these allowances could not be granted.

2.2.4. Dumping margin

- (58) It is the consistent practice of the Commission to establish one single weighted average dumping margin for related companies. This is because determining individual dumping margins might encourage circumvention of anti-dumping measures, thus rendering them ineffective, by enabling related companies to channel their exports to the Community through the company with the lowest individual dumping margin. In accordance with this practice, the two related exporting companies belonging to the same group were attributed one single dumping margin.
- (59) The provisional dumping margins established, expressed as a percentage of the cif import price at the Community frontier duty unpaid are the following:
- | | |
|--|-------------------------------|
| — Daehan Synthetic Fibre Co. Ltd., Seoul | 0,9 % (<i>de minimis</i>), |
| — Saehan Industries Inc., Seoul | 20,2 %, |
| — Samyang Corporation, Seoul | 5,7 %, |
| — SK Chemicals Co. Ltd., Seoul | 9,7 %, |
| — SK Global Co. Ltd., Seoul | 9,7 %, |
| — Sung Lim Co. Ltd., Seoul | 0,05 % (<i>de minimis</i>), |
| — Non-cooperating exporting producers | 20,2 %. |

E. DEFINITION OF THE COMMUNITY INDUSTRY

- (60) Both complaints were lodged on behalf of 8 of the 14 Community producers known to produce PSF in the Community. One of these complainant producers withdrew from cooperation and another had to be considered as non-cooperating as it did not provide a sufficient questionnaire response.
- (61) The share of total Community production of PSF held by the six cooperating Community producers during the IP was 71,5 %. On this basis, these six complainant producers constitute the Community industry within the meaning of Article 4(1) of the basic Regulation. They are referred to as the 'Community industry' hereafter.
- (62) It was argued that two of the six complainant producers should not be included in the Community industry as they were related to an exporting producer from Indonesia. This country was involved in both an anti-dumping and an anti-subsidy investigation involving PSF.
- (63) It should be recalled that the current proceeding investigates a complaint against imports originating in the Republic of Korea and India. It is further recalled that producers related to exporters may be excluded from the definition of the Community industry if the relationship leads to a behaviour which is different to that of unrelated

Community producers because such related producers are shielded from the effects of dumping, unduly benefiting from the dumping practices or are even participating in the dumping practices. No evidence was found during the investigation that the two Community producers related to the Indonesian exporters would fall under any of the three aforementioned categories. In particular, it was not found that the information relating to the various injury indicators for these two companies was significantly different to other complainants. This shows that the two companies were not shielded from the effects of dumping, unduly benefiting from the dumping practices or are even participating in such practices. Consequently, these two Community producers have not been excluded from the definition of the Community industry.

F. INJURY

1. Community consumption

- (64) Community consumption of PSF was based on the actual sales volume of the Community industry and the excluded complaining producers, an estimate of the sales of the remaining Community producers and Eurostat-information on import volumes. On this basis, Community consumption increased by 29 % over the period from 1996 to the IP. The main increase occurred between 1996 and 1998 when consumption grew from 454 470 tonnes to 585 164 tonnes. During the IP it increased slightly to 588 466 tonnes.

2. Imports of PSF into the Community originating in the Republic of Korea and India

2.1. Cumulative assessment

- (65) The Commission considered whether imports of PSF originating in the countries under investigation should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation. The examination showed that:
- the weighted average margin of dumping for each country was above *de minimis*;
 - the volume of imports from each country was more not negligible when compared to Community consumption;
 - the analysis of the conditions of competition between imported PSF and the like Community product and the conditions of competition between imported PSF from the two individual countries indicated that:
 - the exporting producers from the countries concerned were selling the product concerned to the same customers;

- the exporting producers concerned sold PSF directly to unrelated customers such as textile manufacturers, cushion and quilt manufacturers and PSF merchants and that the Community industry was selling the like product through the same sales channels and to the same categories of unrelated customers.

On this basis, sufficient grounds existed for making a cumulative assessment of the imports from the two countries under investigation.

2.2. Volume, price and market share of imports from the Republic of Korea and India

- (66) The volume of imports from the countries concerned significantly increased over the period from 1996 to the IP, namely from 20 510 tonnes to 86 710 tonnes. Between 1996 and 1997 imports rose by 62 % but the main increase occurred between 1997 and 1998 when imported volumes rose by 125 %. Between 1998 and the IP it increased by a further 16 %.
- (67) The increase in import volume from India and the Republic of Korea over the period from 1996 to the IP coincided with a 31 % decrease in import prices. Over the same period of time the average import price of all other PSF imports into the Community decreased less, namely by 25 %.
- (68) From 1996 to the end of the IP, the Republic of Korea increased its market share from 4 % to 11,8 % and India from 0,5 % to 2,9 %.

2.3. Price undercutting

- (69) For the determination of price undercutting the Commission analysed data referring to the IP. The relevant sales prices of the Community industry were those to independent customers, adjusted where necessary to an ex-works level, i.e. excluding freight costs in the Community and after deduction of discounts and rebates. Prices for the different product families of PSF defined in the questionnaires, were compared with the sales prices charged by the exporters to the same categories of customers, net of discounts and rebates and adjusted where necessary to cif Community frontier.
- (70) During the IP, the overall average price undercutting, expressed as a percentage of the Community industry's price, ranged from 6 % to 27,7 % for India and from 14,8 % to 56,7 % for the Republic of Korea. The weighted average undercutting margin was 21,6 % for India and 23,3 % for the Republic of Korea.

3. Situation of the Community industry

3.1. Preliminary remark

- (71) The examination of the situation of the Community industry covered the period from 1996 until the end of the IP ('the period considered'). As mentioned in recitals 4 and 7, during this period definitive anti-dumping measures were in force against Belarus and Taiwan. In addition, definitive anti-dumping measures were also in force against India until January 1998, and against the Republic of Korea until August 1999.

3.2. Production, capacity and capacity utilisation

- (72) Community industry production increased by only 7 % over the period considered. This is to be compared with the 29 % increase in Community consumption over the same period. Within the period considered, production increased by 9 % between 1996 and 1997 but decreased by 1,5 % between 1997 and 1998.
- (73) In parallel, a 5 % decrease in production capacity over the period considered led to a higher rate of capacity utilisation, namely from 76,4 % to 85,9 %, in that period. The overall decrease in capacity mainly occurred in the period from 1996 to 1998. During the IP one Community producer installed 7 500 tonnes extra capacity. Such an increase in capacity was, however, exceptional since the trend followed by the Community industry was to close down certain production lines or plants or to convert other lines to produce other products not covered by the present investigation. The investigation showed that the decrease in the Community industry's production capacity was not the result of a declining market but was forced by declining sales volume.

3.3. Sales volume

- (74) Indeed, Community industry sales did not follow the trend in consumption over the period considered. On the contrary, overall Community industry sales decreased in volume by 2 %, namely from 259 939 tonnes to 255 420 tonnes, whereas as already said above, consumption increased by 29 % over the same period.
- (75) From 1996 to 1997, when Community consumption rose by 14 %, the Community industry sales volume followed somewhat with a 5 % increase. From 1997 to the end of the IP, however, consumption rose by a further 13,5 % but Community industry sales dropped by 6,3 %.

3.4. Market share

- (76) It is evident from recitals 74 and 75 that the Community industry lost significant market share, namely around 14 percentage points from 57,2 % in 1996 to 43,4 % over the period considered.

3.5. Stocks

- (77) At the end of the IP stocks were 4 % lower than at the end of 1996. However, the stock level at 30 September is traditionally lower than that at fiscal year-end. Indeed, the comparable figure at the end of 1999 showed a 17 % increase in stocks compared to 1996.

3.6. Sales prices and cost of production

- (78) Sales prices obtained by the Community industry on the Community market decreased by 9 % from 1996 to 1997 and stayed relatively constant over the period 1997 to 1998. From 1998 to the end of the IP, however, prices dropped again by a further 12 %.
- (79) The investigation showed that PSF cost of production (COP) was strongly influenced by the price of raw materials, given that the share of manufacturing costs was as high as 84 % during the IP. The main raw materials such as PTA, DMT and glycol (60 to 70 % of full COP), are highly sensitive to fluctuations in the price of crude oil.
- (80) A comparison of sales prices and cost of production shows that from 1996 to 1998 the PSF COP decreased more rapidly than the average sales price. However, this situation changed dramatically during the IP, where the COP continued to decrease albeit less than sales prices.

3.7. Profitability

- (81) Similarly to the trends observed in sales prices and COP, profitability was irregular during the period considered. It increased from 2,3 % in 1996 to 8,9 % in 1997 but was particularly advantageous at 15,4 % in 1998. The investigation, however, showed that such high profits were notably influenced by the exceptionally low crude oil price. These low prices did not last and as a consequence profitability dropped to 3,4 % during the IP.
- (82) The investigation showed that the high profitability obtained in 1998 was also the result of the restructuring processes undertaken by the Community industry. Certain production lines were closed down or converted and the Community industry sought to increase production of more specialised products with higher added value.
- (83) It should be underlined that the overall profitability of 3,4 % during the IP covered losses for standard product families such as PSF for woven applications (-8 %), regular non-woven fibres (-8 %) and hollow non-woven fibres (-1 %). Only 27 % of the Community industry's sales were found to be profitable during the IP. The above three

product types represented 72 % of the Community industry's production and 73 % of its sales during the IP. Similarly, these types represented 71 % of the imports from the countries under investigation. In contrast, profitability of branded PSF and certain other special PSF, which represented only 7 % of Community industry production and 8 % of sales during the IP, was as high as 32 %. Such product types covered less than 2 % of total imports of PSF from the countries concerned during the IP.

3.8. Investments

- (84) Investments during the IP were 17 % higher than in 1996 and amounted to ECU/17,9 million. Apart from 1997, where downsizing was predominant, the majority of investments over the period considered were either replacement investments or investments aimed at restructuring towards higher added value production.

3.9. Employment

- (85) The evolution of employment is a logical consequence of downsizing and restructuring efforts, as illustrated by the investment programmes of the Community industry. Over the period considered, employment for the product concerned declined by 14 %, namely from 2 766 to 2 136.

4. Conclusion

- (86) The above analysis showed that while Community consumption rose by 29 % the Community industry did not participate in the market growth. Indeed, it was found that the Community industry's sales volume decreased by 2 % and that 13,8 percentage points market share were lost. In addition, the increase in the Community industry production was limited to 7 %. Accordingly, the reduction in production capacity triggered an improvement in capacity utilisation.
- (87) Over the period considered both PSF sales price and cost of production significantly decreased. Prices decreased less than costs and profitability during the IP was slightly better than that obtained in 1996. However, this apparently positive situation should not hide the fact that profitability in the IP was not satisfactory. In addition, it covered high losses in the regular PSF segments which represent the large majority of both the Community industry sales and imports from the countries concerned. It should also be underlined that as much as 73 % of Community industry sales were made at a loss during the IP.

- (88) Community industry average sales prices declined by 20 % over the period considered. In the meantime, imports from the countries concerned steadily increased on the Community market; they represented 4,5 % of Community consumption in 1996 and as much as 14,7 % during the IP. During the period considered, the decrease in the price of PSF imported from India and the Republic of Korea was as high as 30 %. Analysis within the period considered showed that Community industry prices decreased by 9 % between 1996 and 1998 whereas import prices decreased by 21 %. Between 1998 and the IP, import prices decreased by a further 13 % and Community industry's prices followed with a reduction of 12 %.
- (89) Investments increased by 17 % over the period considered but were predominantly aimed at downsizing and rationalising the production process towards higher added value products. Accordingly, employment fell by 14 %.
- (90) Based on the foregoing, in particular the decrease in market share and the unsatisfactory level of profits, it is considered that the Community industry suffered material injury.
- Weighted average undercutting margins are 21,2 % for the Republic of Korea and 21,6 % for India. The Commission therefore concluded that a significant downward price pressure was exerted on the Community market by imports from the Republic of Korea and India.
- (94) 71 % of these imports and 73 % of the Community industry's sales consist of PSF for woven applications and of regular and hollow PSF for non-woven purposes. Given the decrease in the Community industry's sales prices, the profitability of these segments has become negative.
- (95) This is in contrast to the segment of branded PSF and other special PSF where imports are less than 2 % of total imports from the countries concerned and where the Community industry obtains a profitability ranging from 14 % to 32 %. This part of the market, however, is not large enough to ensure sufficient overall profitability during the IP.
- (96) Based on these considerations, low-priced dumped imports from the countries concerned had a significant negative impact on the situation of the Community industry.

G. CAUSATION

1. Introduction

- (91) In accordance with Article 3(6) and 7 of the basic Regulation, the Commission examined whether the material injury suffered by the Community industry had been caused by the dumped imports or whether other factors might have caused or contributed to that injury, in order to ensure that injury from other factors was not attributed to the dumped imports.
- (92) It is recalled that it was found in previous proceedings that the Community industry suffered injury caused by dumped imports from a number of countries, i.e. Belarus and Taiwan (definitive findings) and Australia, Indonesia and Thailand (provisional findings). This factor has to be borne in mind in this examination.

2. Effect of the dumped imports

- (93) Imports from the two countries concerned by this investigation have increased significantly over the period considered. While imports in volume quadrupled to reach 86 710 tonnes or 14,7 % of Community consumption, the Community industry sales volume decreased by 2 % and 13,8 percentage points market share were lost.

3. Impact of other factors

3.1. Development of consumption

- (97) Over the period considered Community consumption rose by 29 %. The evolution of consumption can therefore not have been responsible for the injurious situation of the Community industry.

3.2. Imports of PSF from other third countries

- (98) Measures are currently in force against Belarus, Taiwan, Australia, Indonesia and Thailand, which are intended to remove injurious dumping from these countries.
- (99) As to other countries not subject to measures, average import prices are at a higher level than the Community industry sales price on the Community market, indicating that such imports did not contribute to the price deterioration suffered on the Community market.
- (100) Although it was found that Saudi-Arabia exported PSF at a price comparable to that of the countries under investigation, its market share represented 0,78 % and was therefore negligible.

3.3. *Export activity of the Community industry*

- (101) The share of the Community industry's export sales in total sales was 9 % in 1996, 10 % in 1997, 6 % in 1998 and 7 % during the IP. Given that export activity is a relatively minor activity for the Community industry, any injury, in terms of reduced production, caused by the slight decline in export sales during the IP is not such as to explain the material injury suffered by the Community industry.

4. **Conclusion on causation**

- (102) As already mentioned above, imports from the countries on which anti-dumping and countervailing duties have been imposed recently contributed to the injurious situation of the Community industry. However, the increase in import volumes from the countries concerned coincided with a reduction in Community industry sales volume and a strong decline in market share. In addition, significant price undercutting was found to exist during the IP. All this had material negative consequences for the Community industry. Therefore, these imports, taken in isolation, have caused material injury to the Community industry.

H. **COMMUNITY INTEREST**

1. **Introduction**

- (103) The Commission examined whether, despite the conclusions on dumping and injury, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and pursuant to Article 21(1) of the basic Regulation, the Commission considered the impact of measures for all parties concerned in the investigation.

2. **Interest of the Community industry**

- (104) The Community industry has been suffering from low priced dumped imported PSF, causing a situation in which the majority of sales were made at a loss. Although the Community industry is trying to further develop the segment of higher added value PSF, such as bicomponent or trilobal fibres, dyed fibres, fibres with specific characteristics such as fire retardant fibres and by branding fibres, the share of those fibres in overall sales is limited by market demand. The core business therefore remains in regular fibres for both woven and non-woven applications, segments where imports from the countries concerned are increasingly present. The Community industry should continue producing regular PSF because their customers require that the whole range of PSF types is

available. For this reason, as illustrated in the investment programmes, the Community industry is not ready to abandon regular PSF production.

- (105) The Community industry, by downsizing, has been able to improve its capacity utilisation. At the same time, by restructuring and specialising, profitability has been maintained. This strategy was especially successful in 1997 and 1998, but since the first quarter of 1999 pressure on prices has become so strong that profits were not satisfactory.

- (106) The Commission considers that, in the absence of the imposition of anti-dumping measures, a further deterioration of the situation of the Community industry is probable, with a realistic possibility of a further reduction of employment and the certainty that certain Community producers will disappear. Since the objective of the adoption of anti-dumping measures is to re-establish fair competition in the Community market, this would be in the interest of the Community industry which is suffering because of massive presence of low-priced dumped imports.

3. **Impact on importers and users**

- (107) The Commission received three questionnaire replies from companies, which are both importers and users of PSF, two from user companies and two from importers. A submission was also received by a users' association.
- (108) All these interested parties took position against the imposition of anti-dumping duties because it would increase the purchase price of PSF imported from the Republic of Korea and India. In addition, they put forward three main reasons why measures should not be imposed. First, it is allegedly impossible to buy comparable quality from the Community industry at comparably low prices. Second, a differentiation should be made according to the use of PSF for spinning or non-spinning purposes. Third, certain PSF types are not available from the Community industry.
- (109) The Commission established that the low priced PSF resulted from dumping practice, in particular from the countries concerned. The imposition of anti-dumping duties shall restore effective market conditions and as shown below, the overall impact on purchase prices will be very limited. The relative importance of PSF in the cost of production of the finished products of the three cooperating users ranged from 24 % to 48 %. For the countries concerned the weighted average duty proposed is 16,7 % while the share of imports is 14,7 % in the IP.

The proposed measures may thus have the impact of increasing the cost of production of users by 0,6 % to 1,2 % on average. 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.

- (110) The users argued that it was not in the Community interest to impose measures on fibrefill and that a differentiation should be made between PSF used for spinning applications (woven) and PSF used for non-spinning applications (non-woven or fibrefill). They further argued that they had invested in machinery which was only appropriate for the production of certain types and that the Community industry does not sell certain types of PSF on the Community market, so no measures should be imposed on those types.
- (111) With regard to the first argument, no clear criteria were put forward which would allow classification of PSF according to this distinction. Indeed, the physical characteristics do not necessarily determine the ultimate use of the product. Moreover, the Commission has compared export prices and Community industry sales prices on the basis of product families, which were determined with respect to the final use. Dumping, injury and causality were found for all product families. With regard to the second argument, changing the production installations from one type to another requires only minor adjustments, such as a different type of spinneret. This observation was also put forward by the users' association itself. The Commission concluded that, if certain types have not been available from the Community industry, this was not for technical reasons but because the Community industry was unwilling to deliver at the low prices quoted by the potential buyers.

4. Conclusion

- (112) On the basis of the above, the Commission concluded that there were no compelling reasons not to impose measures.

I. PROPOSED MEASURES

- (113) In order to prevent further injury being caused by the dumped imports concerned before the end of the investigation, it is proposed that provisional anti-dumping measures be adopted.

1. Injury elimination level

- (114) For the purpose of establishing the level of the provisional measures, account has been taken of both the dumping margins found and the amount of injury sustained by the Community industry.

- (115) The removal of the injury requires that the industry should be put in a position where the prices of imports of the product concerned originating in the countries concerned should be increased to a non-injurious level.
- (116) The non-injurious price level was determined on the basis of the full cost of production of the Community industry and a 10 % pre-tax profit margin. The injury elimination level was calculated by comparing the non-injurious price with the sales prices charged by the exporting producers following the same methodology as for the price undercutting.
- (117) It was claimed that a 6 % profitability should be used as the relevant profit as in the case against Belarus. However, it was considered that the level of profit deemed reasonable for the Community industry in 1994 does not bind the Commission in the current investigation because firstly the Community industry continued to incur financial losses after 1994 and secondly because the relevant 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 the level of profit that could have been achieved in the absence of dumped imports. In these circumstances, it was considered that 10 % was an appropriate profit margin.
- (118) As a result, the injury elimination levels, expressed as a percentage of the cif free-at-Community-frontier price duty unpaid, were higher than the dumping margins established.

2. Form and level of the provisional measures

- (119) In all cases the dumping margin has been found to be lower than the injury elimination level. As a result, in conformity with Article 7(2) of the basic Regulation, the provisional measures to be imposed should correspond to the dumping margins established.
- (120) 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'.

J. FINAL PROVISION

- (122) In the interest of sound administration, a period should be fixed within which the interested parties may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive measures,

- (121) 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.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, currently classifiable within CN code 5503 20 00, originating in India and the Republic of Korea.

2. The rate of the provisional duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the following companies shall be as follows:

Country	Company	Rate of duty	TARIC additional code
India	Indian Organic Chemicals Limited, Bhupati Chambers, 3 rd floor, 13 Mathew Road, Mumbai — 400 004, India	26,6 %	A148
	JCT Limited, Thapar House, 124 Janpath, New Delhi — 110 001, India	32,6 %	A149
	All other companies	36,5 %	A999
The Republic of Korea	Daehan Synthetic Fibre Co. Ltd., 162-1 Changchoong-dong Chung-gu, Seoul, Korea	0 %	A150
	Samyang Corporation, 263 Yeonji-Dong Chongno-Gu, Seoul, Korea	5,7 %	A151
	SK Chemicals Co. Ltd 948-1, Daechi 3-dong, Kangnam-ku, Seoul 135-283, Korea	9,7 %	A152
	SK Global Co. Ltd, 36-1, 2Ga, Ulchiro, Chung-Gu, Seoul, Korea	9,7 %	A153
	Sung Lim Co. Ltd, Rum 502, Shinhan Building Yuido-Dong, Youngdungpo-Ku Seoul, Korea	0 %	A154
	All other companies	20,2 %	A999

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

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.
4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

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

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

Article 3

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

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

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

Done at Brussels, 6 July 2000.

For the Commission

Pascal LAMY

Member of the Commission
