COUNCIL REGULATION (EC) No 2852/2000

of 22 December 2000

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROCEDURE

1. Provisional measures

(1) By Commission Regulation (EC) No 1472/2000 [2] ('the provisional Regulation') provisional anti-dumping duties were imposed on imports into the Community of polyester staple fibres ('PSF') falling within CN code 5503 20 00 and originating in India and the Republic of Korea.

2. Subsequent procedure

(2) Following the imposition of provisional anti-dumping duties, several parties submitted comments in writing. In accordance with the provisions of Article 6(5) of Council Regulation (EC) No 384/96 ('the basic Regulation'), the parties which so requested were granted an opportunity to be heard. Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection, at the level of the definitive duty, of amounts secured by way of provisional duty. They were also granted a period within which to make representations subsequent to this disclosure.

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

(4) Certain interested parties claimed that the initiation standards applied by the Commission were improper and arbitrary. They further claimed that the initiation of a new proceeding against the Republic of Korea two months after the termination of a previous proceeding (see recital 7 of the provisional Regulation), contradicted the finding in that investigation that there was no likelihood of a recurrence of dumping. In this respect, it should be noted that the finding that there was no likelihood of a recurrence of dumping was based on findings related to a twelve month investigation period ending in September 1997, i.e. two years before the initiation of the current proceeding. In addition, the Commission had examined the new evidence submitted in the complaint of August 1999 and considered this evidence sufficient to initiate the present investigation.

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

B. PRODUCT CONCERNED

(6) A users' association claimed that the Notice of Initiation of the present proceeding did not cover PSF types for non-spinning applications, and that consequently these PSF types should have been excluded from the proceeding.

(7) It should be noted that the Notice of Initiation, as well as the complaint, clearly reproduce the description of the relevant CN code which covers all types of PSF imported from the exporting producers of the countries concerned and produced by the Community industry irrespective of their use. The wording of the description of the relevant CN code was understood correctly by all interested parties to this proceeding except for the users' association mentioned, that repeated a claim that had already been rejected in an earlier investigation on imports of PSF from Australia, Indonesia and Thailand contained in Regulation (EC) No 1522/2000 [3].

(8) Some interested parties also argued that, in any event, a differentiation should be made between PSF types used for spinning applications (also called woven, hereafter referred to as PSF-Sp) and PSF used for non-spinning applications (also called non-woven or fibrefill, hereafter referred to as PSF-NW) because of different specific basic physical characteristics, determining the end-use of the product. Accordingly, it was claimed that imported fibres should be subject to neutral laboratory certificates attesting these characteristics. Furthermore, it was alleged that interchangeability, if any, between PSF-Sp and PSF-NW was very limited and only concerned certain types of fibres originally intended for PSF-Sp which might be used as PSF-NW. PSF-NW therefore, if not excluded from investigation, should at least have been examined in a separate proceeding.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 166, 6.7.2000, p. 1. Regulation as amended by Regulation (EC) No 1899/2000 (OJ L 228, 8.9.2000, p. 24).
[3] OJ L 175, 14.7.2000, p. 10.

(9) Regarding the use of the product concerned, significant overlapping, substitution and competition between different types of PSF was found. The investigation has shown that there is no clear dividing line between the various types which would establish a unique link between physical product characteristics and the use of the product and that, consequently, the available evidence does not allow a product differentiation on this basis. In that respect, it is also underlined that the results of independent laboratory analysis cannot possibly determine definitely the ultimate use of the product. Consequently, the various types of PSF involved should be considered as forming one single product for the purposes of this proceeding.

(10) Based on the foregoing, it is considered that the comments received regarding the definition of the product concerned, are not such as to invalidate the conclusions of recital 18 of the provisional Regulation. Consequently, these conclusions, which are in line with the conclusions reached for the same product in previous investigations, are hereby confirmed.

C. **DUMPING**

1. **India**

(11) No claims were made concerning the decision not to sample Indian exporting producers and, therefore, the findings set out in recitals 20 to 25 of the provisional Regulation are hereby confirmed.

1.1. *Normal value*

(12) Following the adoption of provisional measures, one exporting producer requested that the cost of production of certain second quality product types sold in the domestic market should be adjusted downwards for the ordinary course of trade test. This request cannot be accepted because the company reported identical costs of production for different qualities of each product type in its questionnaire response.

(13) No other claims were made concerning the determination of the normal value. The conclusions set out in recital 46 of the provisional Regulation are hereby confirmed.

1.2. *Export price*

(14) No claims were made concerning the determination of the export price. The conclusions set out in recital 47 of the provisional Regulation are hereby confirmed.

1.3. *Comparison*

(15) Following the adoption of provisional measures, one exporting producer argued that the product types sold on the domestic market which were compared to those exported to the Community had different physical and technical characteristics and different end-uses. The company, therefore, requested an adjustment for physical characteristics and submitted new information to support its request. It was found that the new information submitted following the adoption of provisional measures concerned additional product characteristics which had never been requested by the Commission or identified by the company in its questionnaire response. At this stage of the investigation it was not possible to change the basis of product comparison which is set out in the specifications table of the Commission's questionnaire and concerns all cooperating exporting producers. In addition, the new information contradicted that previously received and, therefore, the request for an adjustment for physical characteristics was rejected.

(16) Another exporting producer argued that differences due to the thickness of the fibres, expressed in denier or decitex, should be ignored and that consequently all product types should be treated as one. In this respect, in order to ensure a fair and meaningful comparison between the products sold in the domestic and export markets, products manufactured by all exporting producers are compared on a type-by-type basis as defined in the Commission's questionnaire. Consequently, the argument of limiting the comparison to one product type cannot be accepted.

(17) One exporting producer submitted new information to support a duty drawback claim which had been rejected by the Commission at the provisional stage. This request cannot be accepted since this information, although requested in the questionnaire, had not been submitted in good time and thus could not be verified.

(18) The same exporting producer further argued that since the claim for a duty drawback adjustment had already been proven in the context of a previous proceeding initiated some ten years ago (Council Regulation (EEC) No 54/93 [1]), it should not be reinvestigated. In this connection, it should be borne in mind that each anti-dumping proceeding is assessed on its own merits and is examined on the basis of its own factual and legal circumstances which may be different in each proceeding. As indicated in the previous recital, this exporting producer failed to provide evidence capable of supporting its claim in the framework of this investigation. In particular, it was not shown that any duty was borne during the IP by the like product destined for domestic consumption. The claim was therefore rejected.

[1] OJ L 9, 15.1.1993, p. 2. Regulation as last amended by Regulation (EC) No 907/97 (OJ L 131, 23.5.1997, p. 1).

(19) Within the context of the duty drawback issue, two exporting producers claimed that this adjustment should be granted automatically as soon as duties were refunded on the export side and that the question of whether these duties were incorporated on the domestic side was immaterial. Pursuant to Article 2(10)(b) of the basic Regulation, a duty adjustment is only granted provided two conditions are met cumulatively: first, it must be shown that import charges are borne by the like product and by materials physically incorporated therein when intended for consumption in the exporting country and second, these import charges are refunded or not collected when the product is exported to the Community. If one of the requirements is not fulfilled, the adjustment for duty drawback cannot be granted.

(20) One exporting producer claimed that certain import duties were incorporated in the product sold in the domestic market in excess of the amount granted by the Commission in the provisional findings. This additional claim was examined and it was found that import duties paid for certain materials incorporated in the product sold domestically were indeed in excess of the amount previously established. Therefore, the provisional calculations were revised accordingly.

(21) However, this exporting producer's new claim for a further adjustment on import duties for a material imported and paid for by a related company cannot be accepted since this claim was neither made in good time nor demonstrated to affect price comparability and in addition, the new information submitted in this respect was not verifiable at this stage of the investigation.

(22) One exporting producer claimed that as a result of the Indian Government's policy to encourage the setting up of plants in less developed areas, companies were exempted from the payment of sales tax owed to the government and it requested an adjustment to be granted to that effect. The information submitted shows that all sales invoices concerning products from these exempted factories state that no sales taxes are to be collected by the State and that the buyer is not entitled to claim any drawback, set off or refund of any sales tax. In these circumstances, since no sales tax is paid, no adjustment can be granted. However, in cases where sales invoices concerning products manufactured from other factories included sales taxes collected by the State, it was considered that an adjustment was warranted and the calculations were revised accordingly.

(23) One exporting producer contended that the payment of income tax related only to the profit generated on the domestic and not on the export market, thus affecting price comparability. In this respect, it should be noted that the income tax constitutes a charge levied on the company's profit, if any, and as such it is calculated retroactively at the end of each financial year. It cannot, therefore, be taken into account when the price is established. In addition, the company did not provide any evidence demonstrating that the tax was included in the domestic invoices. This request was therefore rejected.

1.4. *Dumping margin*

(24) The comparison of the revised, where appropriate, weighted average normal value with the weighted average export price by product type on an ex-factory basis showed the existence of dumping for all investigated exporting producers. Since the level of cooperation was high, the dumping margin for all other companies is set at the level of the highest dumping margin established for a cooperating exporting producer.

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

Indian Organic Chemicals Limited, Mumbai	23,3 %
JCT Limited, New Delhi	32,6 %
Reliance Industries Ltd, Mumbai	35,4 %
All other companies	35,4 %

2. **The Republic of Korea**

2.1. *Normal value*

(26) Following the adoption of provisional measures, three exporting producers argued that the exclusion of 'local export' sales from the domestic sales listings used to establish normal value was wrong or unreasonable.

(27) They argued that the exclusion was in contradiction with the provisions of Article 2 of the basic Regulation and with the Commission's normal practice and that it was inconsistent with the approach adopted by other WTO member countries. Two of these exporting producers also argued that the Commission did not explain the legal basis on which these sales were excluded.

(28) The exporting producers further indicated that in previous proceedings concerning the Republic of Korea (e.g. PSF expiry review in Council Regulation (EC) No 1728/1999 [1] and stainless steel wires in Council Regulation (EC) No 1600/1999 [2] and Commission Decision No 1999/483/EC [3]), the Commission had not objected to the exporting producers' categorisation of 'local export' sales within the domestic sales listing and in one cited instance had requested their inclusion in the domestic sales listing.

[1] OJ L 204, 4.8.1999, p. 3.
[2] OJ L 189, 22.7.1999, p. 19.
[3] OJ L 189, 22.7.1999, p. 50.

(29) It is considered that the specific administrative arrangements applicable to the 'local export' sales, whereby they were not subject to domestic sales tax, were normally invoiced in USD and paid for by letters of credit and were subject to duty drawback arrangements, evidenced the fact that these sales were made through a specific export oriented sales channel with a particular market situation. The exporting producers concerned specifically identified these sales in their accounting records as being destined for incorporation in products for export. Given their particular market situation, it was concluded that such 'local export' sales were not made in the ordinary course of trade and therefore, that their inclusion in the normal value calculations would not permit a proper and fair comparison with the export price in accordance with Article 2 of the basic Regulation. The Commission does not accept that the past practice has been to expressly include such sales in the normal value calculations. Their inclusion in previous proceedings may reflect the fact that they were not specifically identified or that their inclusion was not considered to have a significant impact on the results. In this case however, for the reasons given above, 'local export' sales have been excluded from the domestic sales listing used to establish normal value.

(30) One exporting producer argued that certain raw materials were purchased from a related supplier at an arm's length price, and therefore, the Commission was not justified in determining a higher market value purchase price and increasing the cost of production accordingly. They further argued that in any case the adjustment was excessive as it did not take account of technical and price differences between the raw material principally purchased from the related supplier and a similar raw material purchased from other suppliers.

(31) It was found that the relationship with the supplier was such that the exporting producer would be in a position to exercise significant influence on the purchase price. Furthermore, as the average price for the raw material purchased from the related supplier was significantly lower than the average price of the same raw material purchased from unrelated suppliers and as the purchase price appeared to be at a loss for the supplier, the raw material prices were considered to be unreliable transfer prices. In these circumstances, the calculation methodology in determining an arm's length purchase price by increasing the price of the raw materials purchased from the related supplier in proportion to the weighted average difference in purchase price of the raw material which was purchased from the related supplier and from unrelated suppliers has been maintained.

(32) One exporting producer argued that the normal value for one product type should have been based on domestic price rather than constructed value. This argument was accepted as it was found that sales of this product type were made in representative quantities and were nearly all profitable. The calculations were therefore adjusted accordingly.

(33) One exporting producer argued that the Commission incorrectly rejected the net foreign exchange gain included in the selling, general and administrative expenses, used in determining the full cost of production, for use in establishing constructed normal value and in the ordinary course of trade test. It argued further that this should be reconsidered because part of the foreign currency translation gain was realised and furthermore, that a turnover basis was the most appropriate basis for the allocation of the net foreign exchange gain to different markets.

(34) It was found that the exchange gain related mainly to translation gains on the re-statement of long-term foreign currency liabilities, rather than pertaining to production and sales in the ordinary course of trade in the domestic market during the investigation period (1 October 1998 to 30 September 1999 'IP'). Since such exchange gains or losses are not taken into account in anti-dumping investigations, whether realised or not, the argument was rejected.

2.2. *Export price*

(35) One exporting producer argued that its related company in the Community only had a minor role in the sales process for sales to unrelated customers in the Community and therefore, it was not justifiable to deduct profit in constructing the export price. It also argued that there was no basis for establishing the level of the profit margin used. In accordance with Article 2(9) of the basic Regulation, the items for which adjustment should be made in order to construct the export price include a reasonable margin of profit. It is considered that the profit deducted in order to construct the export price was reasonable, as compared to information available from cooperating independent importers. The claim is, therefore, rejected.

(36) No other claims were made concerning the determination of the export price. Therefore, the conclusions set out in recital 54 of the provisional Regulation are hereby confirmed.

2.3. *Comparison*

(37) One exporting producer argued that they had mistakenly included the same adjustments, concerning credit costs, in different columns of the export sales listing and therefore, the Commission was double counting the deductions in establishing the export price for a fair comparison with the normal value. The credit costs reported by

the company in the response to the questionnaire in relation to the payment terms agreed in each transaction were examined and this claim was accepted where justified.

(38) One exporting producer argued that the basis of the Commission's calculation underestimated the amount of duty drawback, as it was based on duty paid on imports of raw materials physically incorporated in the like product rather than duty drawback received on exports of the product concerned to the Community, during the IP. It argued further that the Commission's calculation was unreasonably based on duty paid during the first eight months of the IP divided by the total import volume for the whole IP. The first argument was rejected as the amount paid during the IP was lower than the amount refunded as provided in Article 2(10)(b) of the basic Regulation. However, as requested by the company, the duty drawback per kilogram was recalculated based on the import volume for the first eight months.

(39) Another exporting producer argued that in calculating the duty drawback allowance per kilogram, the Commission should have divided the total import duties incorporated in purchases of certain imported raw materials by the quantity of imported raw materials only and not by the total quantity of raw materials purchased both locally and imported. It is considered that the duty drawback allowance to be deducted from the normal value should be based on the average duty incorporated in the cost of domestic sales, as the product sold domestically would incorporate raw materials purchased both domestically and imported. This argument is therefore rejected.

(40) Two exporting producers argued that the approach followed by the Commission in rejecting claimed credit cost adjustments under an open account system, because the payments could not be clearly linked to the invoices, was without legal basis. However, it was not possible to verify that payments made under the 'open account' system were made in accordance with any agreed payment terms. In these circumstances, there was no reason to assume that contractual payment terms were a factor taken into account in the determination of the prices charged and therefore the claims were rejected.

2.4. *Dumping margin*

(41) The comparison of the appropriately revised weighted average normal value with the weighted average export price by product type on an ex-factory basis showed the existence of dumping for all investigated exporting producers. Since the level of cooperation was high, the dumping margin for all other companies is set at the level of the highest dumping margin established for a cooperating exporting producer.

(42) Following disclosure of the provisional findings, two exporting producers, Samyang Corporation and SK Chemicals Co. Ltd informed the Commission that they would merge their polyester business activities into one jointly-owned company, i.e. Huvis Corporation. These exporting producers provided additional information with regard to this change of circumstances on request by the Commission and as a result it was decided that a single dumping margin should be definitively established for Huvis Corporation. This dumping margin was therefore established as the weighted average of the revised dumping margins of the two exporting producers concerned. The dumping margin for the related trading company in Korea was set at the same level as for Huvis Corporation.

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

Daehan Synthetic Fibre Co. Ltd, Seoul	0,9 % (*de minimis*)
Huvis Corporation, Seoul	4,8 %
Saehan Industries Inc, Seoul	20,2 %
SK Global Co. Ltd, Seoul	4,8 %
Sung Lim Co. Ltd, Seoul	0,05 % (*de minimis*)
All other companies	20,2 %

D. **INJURY**

1. **Procedural issues**

(44) It was claimed that by combining both the anti-dumping proceedings concerning the Republic of Korea and India, it was unfair to establish the same IP for the examination of possible injurious dumping caused by imports from these countries. With respect to the latter country, this meant omitting the last three months of 1999 and it was argued that, given the increase in oil prices, this would have an impact on the results of the examination of sales price, cost of production and profitability in the injury investigation.

(45) It should be recalled that, as stated in recital 8 of the provisional Regulation, the combination of the proceedings regarding India and the Republic of Korea was carried out for administrative reasons. The determination of the IP is covered by Article 6(1) of the basic Regulation, which *inter alia* stipulates that the IP shall normally cover a period of not less than six months immediately prior to the initiation of the proceeding. In the case of India, the initiation of the investigation occurred in December 1999. Thus the period by which the IP could

have been shifted was at most two months. It must also be recalled that imports from both countries can be cumulatively assessed since the criteria mentioned in Article 3(4) of the basic Regulation have been met (see recital 65 of the provisional Regulation). Finally, in order to take the underlying concerns into account, the influence of increased cost of raw materials for 1999 were analysed and compared to the IP.

(46) The investigation showed that prices of the main raw material used in PSF production, namely the terephthalic acid (PTA) and the monoethyleneglycol (MEG), increased both in 1999 and during the IP. It also showed that PSF sales prices in the Community in 1999 were 2,6 % higher than during the IP. Notwithstanding these findings, the Community industry was shown to be more profitable during the IP than in 1999.

(47) Some exporting producers claimed that the Commission had not verified the information submitted by the Community industry. In this respect, it is confirmed that substantial parts of the information submitted by the Community industry had already been verified during a related anti-dumping proceeding. All other information received from the Community industry has been examined for accuracy in accordance with Article 6(8) of the basic Regulation.

2. **Definition of the Community industry**

(48) Recital 63 of the provisional Regulation stated that the two Community producers related to Indonesian exporting producers were not found to be shielded from the effect of dumping, or to be unduly benefiting from dumping practices, or even participating in dumping practices. In this respect some exporting producers claimed that the two companies should be excluded from the assessment of the situation of the Community industry, by reference to other anti-dumping cases, namely magnetic disks in Commission Regulations (EC) No 534/94 and (EC) No 2426/95 [1] and microwave ovens in Commission Regulation (EC) No 1645/95 [2].

(49) It is to be noted that any exclusion of Community producers from the definition of Community industry may only be warranted on the basis of the facts of each case. In this case no arguments were put forward regarding the facts of the case and no evidence was submitted to substantiate the claim for an exclusion of the two producers. On this basis, the above request is not founded and is therefore rejected.

(50) An additional request was made by some exporting producers to exclude another Community producer from the definition of the Community industry, given its relationship with an importer located outside the Community, although not in one of the countries concerned. It was alleged that the Community producer caused injury to the Community industry by importing PSF from its related importer.

(51) Firstly, the Commission found no evidence of imports of PSF from this importer over the period considered, namely from 1996 up to the IP. In addition, the fact that a Community producer is related to an importer located outside the Community cannot as such be a reason to exclude this producer from the definition of the Community industry. Given that no other arguments were put forward, the definition of the Community industry as contained in recital 60 of the provisional Regulation is confirmed.

3. **Imports of PSF into the Community from the countries concerned**

3.1. *Cumulative assessment of imports*

(52) Two Indian exporting producers claimed that a cumulative assessment of imports was unjustified because the growth as well as the absolute volume of Indian imports was insignificant when compared to Korean imports and to the sales volume of the Community industry. Also it was argued that the Indian exporting producers had to be considered as price followers and not as price leaders. Furthermore, on the basis of Eurostat data, Indian imports were lower than stated in the provisional Regulation.

(53) These arguments were analysed in the light of the provisions of Article 3(4) of the basic Regulation. In this respect, it is recalled that the margin of dumping found for India is above the *de minimis* level. In addition, the volume of imports originating in India is not negligible, being above *de minimis* level during the IP.

(54) In fact, the growth of imports over the period 1996 up to the IP is even more pronounced for Indian imports (around 600 % increase) than for Korean imports (around 300 % increase). As to the average price level of Indian imports, this was consistently below that of the Korean exporting producers prices and it declined more sharply over the period 1996 up to the IP. This does not suggest a behaviour of price followers. Finally, as concerns the discrepancy between Eurostat figures and the findings of the Commission, the Community institutions have based their findings on verified questionnaire replies given that higher imports were reported than those recorded in the Eurostat statistics. The claims of the Indian exporting producers are therefore rejected.

[1] OJ L 68, 11.3.1994, p. 5 and OJ L 249, 17.10.1995, p. 3.
[2] OJ L 156, 7.7.1995, p. 5.

3.2. *Imports from the Republic of Korea*

(55) An exporting producer claimed that certain non-dumped imports originating in the Republic of Korea should be excluded from the injury analysis.

(56) In this respect, when the country-wide dumping margin (representing a weighted average margin including all the companies under investigation) has been found to be above the *de minimis* level, in accordance with Article 9(3) of the basic Regulation, it is the practice of the Commission to assess the effects of the dumped imports on a country-wide level.

3.3. *Price undercutting and underselling*

(57) An exporting producer claimed that the calculation of injury margins based on families grouping various types of PSF was unjustified, given that further information on the characteristics of individual types of PSF was asked for in the questionnaires. He also claimed that the details of individual transactions were ignored, and that it was wrong to exclude negative undercutting/underselling from the overall result of the calculations.

(58) On reexamination of the differences attributed to characteristics such as length, thickness, elongation, tenacity, crimp, shrinkage, lustre and spin finish, it is concluded that the product types within the defined families were sufficiently comparable. On this basis, it is confirmed that the undercutting and underselling exercises at the level of product families are meaningful. In addition, they provide a representative result in terms of number of transactions as laid down by Article 3(3) of the basic Regulation. Furthermore, it is considered that the information per transaction was indeed taken into account in the price comparison exercises. However, it is confirmed that no compensation was made for the amount which did not undercut/undersell Community industry prices in the final comparison at the level of product families. Since no further arguments were put forward, the above claims were rejected.

(59) An exporting producer requested that an adjustment should be applied to its cif prices in the undercutting and underselling calculations because such adjustment was indicated in the complaint.

(60) In this respect, it should be recalled that the Commission collected information by means of questionnaires and verified it by means of on-site inspection and it did not base itself on the figures mentioned in the complaint. However, it was found that the customs duty was erroneously omitted in the underselling calculations regarding two Indian exporting producers. At the same time a request for changing the weighing method and a specific level of trade adjustment were also accepted. Consequently, the underselling margins for the two Indian exporting producers were revised accordingly.

(61) The results of the undercutting calculations, taking into account the lowered undercutting found for another Indian exporting producer mentioned in recital 75, range between 0 % and 27,7 % for India and remain between 14,8 % and 56,7 % for the Republic of Korea. The weighted average undercutting margin was 19,9 % for India and 23,3 % for the Republic of Korea.

4. **Economic situation of the Community industry**

4.1. *General*

(62) It was claimed by some exporting producers that, pursuant to the provisions of Article 3.4 of the WTO Anti-Dumping Agreement, the examination of the economic situation of the Community industry required an assessment of all relevant economic factors and indices having a bearing on the state of that industry.

(63) This examination would include factors not commented upon in the provisional Regulation such as the impact of the magnitude of the margin of dumping, productivity, return on investment, cash flow, wages, growth and the ability to raise capital. In this respect, the following has been found.

4.1.1. The impact of the magnitude of the margin of dumping

(64) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

4.1.2. Productivity

(65) The productivity of the Community industry, calculated as the production of the product concerned per employee, shows an improvement from 92,1 tonnes in 1996 to 127,1 tonnes during the IP (+38 %). This improvement is mainly a consequence of the decline in employment described in recital 85 of the provisional Regulation.

4.1.3. Return on investment

(66) Return on investment was calculated by relating the net profit before taxes and extra-ordinary items to the net book-value of investments related to the product concerned. The return on investment for the product concerned increased from 4,6 % in 1996 to 16,7 % in 1997 and 25,7 % in 1998. Subsequently, it fell back to 5,5 % during the IP. The evolution of this indicator is similar to the evolution of profitability described in recitals 81 to 83 of the provisional Regulation.

4.1.4. Cash flow

(67) The cash flow of the Community industry for the product concerned increased considerably from 1996 to 1997 (+84 %) and from 1997 to 1998 (+28 %) as a consequence of the good results of these two years. From 1998 to the IP, cash flow dropped by 60 % to arrive at a level that was 6 % lower than in 1996. The improvement of cash flow in 1997 and 1998 is less pronounced than that of profitability. Moreover, for the IP, the cash flow is lower than in 1996, whereas net profit and profitability are higher.

4.1.5. Wages

(68) Wages form a part of the analysis of the cost of production as described in recitals 79 and 80 of the provisional Regulation. The Community industry's wages increased by 10 % from 1996 to 1997, but significantly decreased from 1997 to 1998 and the IP, where the absolute level of wages was 24 % and 23 % respectively lower than in 1996.

4.1.6. Growth

(69) The growth of the market of the product concerned was commented upon in recital 64 of the provisional Regulation. The (negative) growth of the market share of the Community industry was mentioned in recital 76 of the provisional Regulation.

4.1.7. Ability to raise capital

(70) As far as the ability to raise capital is concerned, present cash flow is on average considered as being still sufficient to make the necessary replacement investments. The depressed situation of the market however has negatively affected the ability of the Community industry to attract additional external funding in the form of bank loans or increased involvement of shareholders for the initiation of new projects. Especially when other products are manufactured, the comparison of return on investment of PSF with that of those other products is unfavourable, causing difficulties in allocating budgets to the product concerned.

4.1.8. Conclusion

(71) It is considered that in the provisional Regulation, all factors and indices which were decisive for a meaningful analysis of the state of the Community industry were analysed. The description of the indicators not commented upon in the Provisional Regulation as presented under recitals 65 to 70 here above, indeed reinforces the conclusions mentioned in the provisional Regulation.

4.1.9. Stocks

(72) An exporting producer argued that the comparison made by the Commission in recital 77 of the provisional Regulation concerning the level of stocks at the end of 1998 and at the end of 1999 was irregular and in contravention of the basic Regulation. It was claimed that comparing the stocks at the end of the month of September (1999) with those at year-end (1998) was the only valid, unbiased and objective method to analyse the evolution of PSF stocks.

(73) In this respect, attention is drawn to the seasonal nature of stockbuilding in the PSF industry. Indeed, stock levels fluctuate during the calendar year and, consequently, a comparison of stock levels between 1998 and the IP only makes sense if corresponding points in time during the year are considered. Therefore, the stock level at the end of 1998 (31 December) cannot be compared to the one at the end of the IP (30 September).

4.2. *Cost of production*

(74) An exporting producer submitted that the cost of production for one Community industry producer was too high in comparison with the other producers in order to be used in determining the underselling margin.

(75) The costs attributed to the product concerned by each company were verified by the Commission. As a result, no reasons were found to exclude any company from the underselling calculation on the basis of the absolute level of its cost of production.

(76) Another exporting producer claimed that a producer that produces PSF from dimethyl terephthalate (DMT) and MEG instead of PTA and MEG should be excluded because this allegedly does not represent the cheapest production method.

(77) On the basis of the reasoning set out in recital 75, neither the production process as such nor the cost of production pertaining to it can constitute criteria on the basis of which companies should be eliminated from the scope of the investigation.

4.3. *Conclusion*

(78) Based on the foregoing, it is considered that the above arguments and claims are not such as to change the findings made in the provisional Regulation. Consequently, the contents of recitals 86 to 90 of the provisional Regulation and the conclusion that the Community industry suffered material injury during the IP are hereby confirmed.

E. **CAUSATION**

1. **Effect of dumped imports**

(79) An exporting producer claimed that the only factor that explained the low profitability of the Community industry during the IP was raw material prices and not the effect of dumped imports. It was also claimed that the improvement in the Community industry's profitability from 2,30 % to 3,38 % over the period 1996 to the IP excluded injury caused by dumped imports over this period.

(80) It is to be noted that the presence of dumped imports exercised a downward pressure on the sales prices prevailing in the Community market, thereby prohibiting sales prices to correctly reflect increases in raw material prices.

(81) As to the low increase in profitability from 1996 to the IP, the investigation has shown that the improvement of profitability was mainly the result of the restructuring process undertaken by the Community industry. This also included the reduction in selling, general and administrative costs.

(82) As indicated in recital 87 of the provisional Regulation regarding the conclusions on the economic situation of the Community industry, the low profitability achieved by the industry could not be considered satisfactory. On the contrary, it must be considered to be unduly low as a consequence of the price-suppressive effects of the dumped imports. Additional negative indicators were the decrease in sales volume, the loss of market share, the reduction of production capacity and employment, and the increase of stock levels.

(83) Based on the foregoing the conclusion as set out in recital 87 of the provisional Regulation is hereby confirmed.

(84) It was further claimed by an exporting producer that any injury suffered by the Community industry could not have been caused by imports from the Republic of Korea given that anti-dumping measures were already in place for most of the period from January 1996 to the end of the IP. Definitive anti-dumping measures imposed on imports of PSF originating in the Republic of Korea were repealed in August 1999 by Regulation (EC) No 1728/99 [1].

(85) It must be recalled that the measures imposed on imports of PSF originating in the Republic of Korea were repealed because it was considered there was no likelihood of recurrence of dumping following the findings of an expiry review, the investigation period of which covered from 1 January 1996 to 30 September 1997. During the IP of the current proceeding however, dumping was established and the above argument is therefore not valid.

2. **Other imports**

(86) An exporting producer claimed that the Commission should also have examined possible effects of imports from Poland, Turkey and the Czech Republic.

(87) On the basis of Eurostat information it was determined that the price levels at which these imports entered the Community were significantly higher than the import prices of the countries under investigation (from 12,3 % to 30,5 % during the IP). Consequently there was no reason to classify these imports within the same import price range as the one for the countries under investigation nor to consider that any injury which may have been caused by them was such as to break the causal link between the injury found to be suffered and the dumping by exporting producers in the countries concerned.

3. **Conclusion**

(88) Given the above, the conclusion that the dumped imports have caused material injury to the Community industry, as stated in recital 102 of the provisional Regulation, is hereby confirmed.

F. **COMMUNITY INTEREST**

1. **Interest of the Community industry**

(89) Since no comments were received in this respect, the findings on the interest of the Community industry cited in recitals 104 to 106 of the provisional Regulation are hereby confirmed.

2. **Impact on importers and users**

(90) It was claimed by a users' association and also, separately, by a user, member of this association, that certain PSF types were not on offer from Community producers and that consequently, users were forced to source outside the Community. Another user claimed that the Community producers could not satisfy the Community demand.

[1] OJ L 204, 4.8.1999, p. 3.

(91) The investigation has established that although certain types of PSF were not produced by the Community industry during certain periods, this does not mean that the Community industry would not be in a position to produce those types. Indeed, only small adaptations, such as changing of a spinerette and omission or addition of an additive, requiring low investment, would be needed. Rather, at particular moments in time, certain PSF types were not available because the Community producers could not deliver the quantities involved at the depressed price levels which users were willing to pay.

(92) As concerns Community consumption, given the level of the duties proposed, imports from the countries concerned will continue to be able to enter the Community market albeit at non-dumped prices. As concerns the prices of the Community industry, although these are likely to increase, this increase should be limited given that imports from other third countries also exist. In view of the above the impact of the anti-dumping measures will not endanger sufficient choice and supply to the Community users.

(93) Clarification has been requested for recital 109 of the provisional Regulation, mentioning that the proposed measures may have the impact of increasing the cost of production of users by 0,6 % to 1,2 %.

(94) On the basis of information received by the few cooperating Community users, it was found that the impact of anti-dumping measures on PSF originating in India and the Republic of Korea on their cost of production would range from 0,6 % to 1,2 %. This finding was arrived at by taking into account the importance of PSF in the cost of production of these users' finished products, the average anti-dumping duty provisionally imposed on imports from the Republic of Korea and India and the market share of Korean and Indian imports compared to Community consumption during the IP.

(95) It is clear that the situation in which a particular user finds itself is dependent on the degree to which it imports from the countries and exporting producers concerned, and on its own cost structure. The average impact quoted therefore depicts a company with a representative average behaviour of alternative sourcing, of which the Republic of Korea and India account for 14,7 %.

(96) Following the publication of the Provisional Regulation, a number of Community users claimed that the imposition of anti-dumping duties would have negative effects on their competitiveness in the downstream products' markets and would ultimately endanger their survival. In their opinion, the imposition of anti-dumping duties would trigger price increases which users would need to reflect in their downstream products' prices. This development would in turn cause an increase in imports of lower-priced downstream products from other third countries and from the countries concerned by this investigation and would oblige certain Community producers of downstream end-products incorporating PSF to relocate their production outside the Community.

(97) However, the analysis of the maximum average impact of the proposed measures on users indicates that the imposition of anti-dumping measures is not likely to cause a significant increase in the import of cheap downstream products into the Community. This conclusion is also reached in the absence of any evidence from the users concerned substantiating their claim, and indeed such effects were not in evidence during the period of validity of past measures concerning PSF. Moreover, it should be noted that woven finished products (such as used in clothing and household furniture) fall under the quantitative restrictions of the textiles quota system.

(98) As the examination of the above arguments submitted by the user companies does not lead to new conclusions, the considerations of recitals 109 and 111 of the provisional Regulation on the likely impact of the proposed measures on the users is hereby confirmed.

3. **Conclusion**

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

G. **DEFINITIVE DUTY**

(100) In view of the conclusions reached regarding dumping, injury, causation and Community interest, it is considered that definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Community industry by dumped imports from India and the Republic of Korea.

1. **Injury elimination level**

(101) As explained in recital 116 of the provisional Regulation, a non-injurious level of prices was determined which would cover the Community industry's full cost of production and a reasonable profit which would be obtained in the absence of dumped imports from the countries concerned.

(102) Some exporting producers argued that 6 % should be used as a reasonable profit, referring to cases on PSF and polyester textured filament yarn (PTY) preceding the investigation against Australia et al. However, in this latter proceeding, the reasonable profit had been determined at a level of 10 %, as was also the case for the current investigation. Other exporting producers argued that the reasonable profit should even be lower, such as 4 %, since the overall profitability of the Community industry was better now than at the time of those former proceedings relating to Belarus in Regulation (EC) No 1490/96 [1] and Indonesia in Regulation (EC) No 2160/96 [2].

[1] OJ L 189, 30.7.1996, p. 13.
[2] OJ L 289, 12.11.1996, p. 14. Regulation as amended by Regulation (EC) No 1822/98 (OJ L 236, 22.8.1998, p. 3).

(103) It should be noted that the Commission indicated in recital 116 of the provisional Regulation that a margin of 10 % should be considered as the level of profit that could have been achieved in the absence of dumped imports.

(104) The level of profit that is considered reasonable is determined on the basis of what the Community industry would be likely to obtain in the absence of injurious dumping. As the IP of previous investigations were different and the price depressive effects of dumping established in those cases, were of a different order, there is no reason to suppose that the Community industry would have achieved the same level of profit. Consequently, previous levels of profit are not necessarily appropriate in the present case. In this respect, reference is furthermore made to the reasoning as contained in recital 117 of the provisional Regulation.

(105) Consequently, based on the foregoing, the conclusions as contained in recital 117 of the provisional Regulation are hereby confirmed.

2. **Form and level of the duty**

(106) In accordance with Article 9(4) of the basic Regulation, the following anti-dumping duty rates correspond to the dumping margins when these are found to be lower than the injury margins. This is the case for all but one company.

Country	Company	Rate of duty
India	Indian Organic Chemicals Limited	14,7 %
	JCT Limited	32,6 %
	All other companies	35,4 %
The Republic of Korea	Daehan Synthetic Fibre Co. Ltd	0 %
	Huvis Corporation	4,8 %
	SK Global Co. Ltd	4,8 %
	Sung Lim Co. Ltd	0 %
	All other companies	20,2 %

(107) The individual company anti-dumping duty rates 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 any 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'.

(108) 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 any Regulation accordingly by updating the list of companies benefiting from individual duty rates.

[1] European Commission, Directorate-General Trade, Directorate B, TERV — 0/13, Rue de la Loi/Wetstraat 200, B-1049 Brussels/Belgium.

H. **COLLECTION OF THE PROVISIONAL DUTY**

(109) In view of the magnitude of the dumping margins found for the exporting producers, and in light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty under Commission Regulation (EC) No 124/2000 [1] be definitively collected to the extent of the amount of definitive duties imposed if this amount is equal or lower than the amount of the provisional duty. Otherwise, only the amount of the provisional duty should be definitively collected. Amounts secured in excess of the rate of the definitive anti-dumping duty shall be released.

(110) Following the merger of the polyester business activities of Samyang Corporation and SK Chemicals Co. Ltd into one jointly owned company i.e. Huvis Corporation, definitive collection of provisionally imposed duties should be made for these companies with reference to the definitively imposed duty for Huvis Corporation.

I. **UNDERTAKING**

(111) Subsequent to the imposition of provisional anti-dumping measures, one exporting producer in India offered a price undertaking in accordance with Article 8(1) of the basic Regulation.

(112) The Commission considers that the undertaking offered by Reliance Industries Limited can be accepted since it eliminates the injurious effect of the dumping. Moreover, the regular and detailed reports which the company undertook to provide to the Commission will allow effective monitoring and the structure of the company is such that the Commission considers that the risk of circumvention of the undertaking is minimised.

In order to ensure the effective respect and monitoring of the undertaking, when the request for release for free circulation pursuant to the undertaking is presented, exemption from the duty is conditional upon presentation of a commercial invoice containing the information listed in the Annex which is necessary for customs to ascertain that shipments correspond to the commercial document at the required level of detail. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty should be payable.

(113) In the event of a suspected breach, breach or withdrawal of the undertaking an anti-dumping duty may be imposed, pursuant to Articles 8(9) and (10) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Country	Company	Rate of duty	TARIC additional code
India	Indian Organic Chemicals Limited, Bhupati Chambers 3rd floor, 13 Mathew Road, Mumbai — 400 004, India	14,7 %	A148
	JCT Limited, Thapar House, 124 Janpath, New Delhi — 110 001, India	32,6 %	A149
	All other companies	35,4 %	A999

[1] OJ L 16, 21.1.2000, p. 30.

Country	Company	Rate of duty	TARIC additional code
The Republic of Korea	Daehan Synthetic Fibre Co. Ltd, 162-1 Changchoong-dong Chung-gu, Seoul, Korea	0 %	A150
	Huvis Corporation, 77-1 Garak-dong, Songpaku, Seoul, Korea	4,8 %	A151
	SK Global Co. Ltd, 36-1, 2Ga, Ulchiro, Chung-Gu Seoul, Korea	4,8 %	A153
	Sung Lim Co. Ltd, Rum 502, Shinhan Building, Youido-Dong Youngdungpo-Ku Seoul, Korea	0 %	A154
	All other companies	20,2 %	A999

3. Notwithstanding Article 1(1), the definitive duty shall not apply to imports released for free circulation in accordance with the provisions of Article 2.

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

Article 2

1. Goods produced by the following company and imported in accordance with paragraph 2 shall be exempted from the duty in Article 1:

Company	Country	TARIC additional code
Reliance Industries Limited, Marker Chamber IV, 3rd Floor 222, Nariman Point, Mumbai 400 021	India	A212

2. Imports declared under TARIC additional code A212 shall be exempt from the anti-dumping duties imposed by Article 1 if they are produced and directly exported (i.e. invoiced and shipped) to a company acting as an importer in the Community by the company mentioned in paragraph 1, provided that the commercial invoice presented to the relevant customs authorities at the same time as the request for free circulation contains the information listed in the Annex.

3. Exemption from the duties shall further be conditional on the goods declared and presented to customs corresponding precisely to the description on the commercial invoice.

Article 3

1. The amounts secured by way of the provisional anti-dumping duty on imports originating in India and the Republic of Korea under Regulation (EC) No 1472/2000 shall be collected at the rate of the duty definitively imposed by this Regulation. Amounts secured in excess of the rate of definitive anti-dumping duty shall be released. In cases where the rate of the definitive duty imposed is higher than the rate of the provisional duty, only the amounts secured at the level of the provisional duty should be definitively collected.

2. With regard to Samyang Corporation and SK Chemicals Co. Ltd, the amounts secured by way of the provisional anti-dumping duty shall be collected at the level of the duty definitively imposed by this Regulation on Huvis Corporation. Amounts secured in excess of the rate of the definitive duty imposed on Huvis Corporation should be released.

Article 4

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

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

Done at Brussels, 22 December 2000.

For the Council

The President

C. PIERRET

ANNEX

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

Elements to be indicated in the commercial invoice referred to in Article 2(2):

1. The invoice number.
2. The TARIC additional code under which the goods on the invoice may be customs-cleared at Community borders (as specified in the Regulation).
3. The exact description of the goods, including:
   — the product reporting code number (PRC) (as established in the undertaking offered by the producing exporter in question);
   — CN code;
   — quantity (to be given in kg).
4. The description of the terms of the sale, including:
   — price per kg;
   — the applicable payment terms;
   — the applicable delivery terms;
   — total discounts and rebates.
5. Name of the company acting as an importer to which the invoice is issued directly by the company.
6. The name of the official of the company that has issued the undertaking invoice and the following signed declaration:
   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by … [company], and accepted by the European Commission through Decision 2000/818/EC. I declare that the information provided in this invoice is complete and correct.'