

COMMISSION REGULATION (EC) No 1412/2002**of 29 July 2002****imposing a provisional anti-dumping duty on imports of polyester textured filament yarn (PTY) originating in India**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, as last amended by Regulation (EC) No 2238/2000 ⁽²⁾, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) On 9 November 2001, the Commission announced, by a notice published in the *Official Journal of the European Communities* ⁽³⁾, the initiation of an anti-dumping proceeding with regard to imports into the Community of polyester textured filament yarn (hereinafter 'PTY') originating in India.
- (2) The proceeding was initiated as a result of a complaint lodged in September 2001 by the International Committee of Rayon and Synthetic Fibres (CIRFS), acting on behalf of producers representing a major proportion of the total Community production of PTY. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-dumping proceeding.
- (3) There are definitive anti-dumping measures currently in force on imports of PTY originating in Malaysia (Council Regulation (EC) No 1001/97 ⁽⁴⁾, as amended by Council Regulation (EC) No 1992/2000 ⁽⁵⁾), Indonesia, Thailand (Council Regulation (EC) No 2160/96 ⁽⁶⁾, as last amended by Council Regulation (EC) No 1078/2001 ⁽⁷⁾) and Taiwan (Council Regulation (EC) No 3905/88 ⁽⁸⁾, as last amended by Council Regulation (EC) No 2010/2000 ⁽⁹⁾). The expiry of these measures regarding imports originating in Malaysia ⁽¹⁰⁾, Taiwan ⁽¹¹⁾, Indonesia ⁽¹²⁾, Thailand ⁽¹³⁾ is currently being reviewed under Article 11(2) of Regulation (EC) No 384/96 (hereinafter 'the basic Regulation').
- (4) A parallel anti-subsidy proceeding concerning imports into the Community of the same product originating in India and Indonesia was announced by a notice published in the *Official Journal of the European Communities* ⁽¹⁴⁾ on the same date.
- (5) The Commission officially advised the complainant and other known Community producers, exporting producers, their representative association, importers, users and suppliers known to be concerned as well as the representatives of India of the initiation of the proceeding. The parties directly concerned were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 257, 11.10.2000, p. 2.

⁽³⁾ OJ C 315, 9.11.2001, p. 2.

⁽⁴⁾ OJ L 145, 5.6.1997, p. 1.

⁽⁵⁾ OJ L 238, 22.9.2000, p. 1.

⁽⁶⁾ OJ L 289, 12.11.1996, p. 14.

⁽⁷⁾ OJ L 149, 2.6.2001, p. 5.

⁽⁸⁾ OJ L 347, 16.12.1988, p. 10.

⁽⁹⁾ OJ L 241, 26.9.2000, p. 1.

⁽¹⁰⁾ OJ C 135, 6.6.2002, p. 10.

⁽¹¹⁾ OJ C 170, 14.6.2001, p. 2.

⁽¹²⁾ OJ C 316, 10.11.2001, p. 9.

⁽¹³⁾ OJ C 316, 10.11.2001, p. 9.

⁽¹⁴⁾ OJ C 315, 9.11.2001, p. 5.

- (6) A number of exporting producers in India and their association, as well as Community producers, users and importers/traders made their views known in writing. All parties who so requested within the above time limit and indicated that there were particular reasons why they should be heard were granted a hearing.
- (7) In view of the apparent large number of exporting producers in India, as set out in the complaint, the application of sampling techniques for the investigation of dumping was applied in accordance with Article 17 of the basic Regulation and as described more in detail in recital 14 et seq. of this Regulation. The Commission sent questionnaires to, and received detailed information from, a representative sample of exporting producers in India.
- (8) The Commission also sent questionnaires to all other parties known to be concerned. Replies were received from two of the six complainant Community producers and from one Community producer who did not originally form part of the complaint. The Commission also received replies from one user and two suppliers of raw material providing information, which was sufficiently complete and representative to use in the assessment of Community interest. No importers in the Community which were not related to exporting producers replied to the questionnaire or made themselves known.
- (9) The Commission sought and verified all information it deemed necessary for the purpose of a preliminary determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:
- (a) *Community producers*
- Dupont SA, United Kingdom,
 - Sinterama SpA, Italy;
- (b) *Exporting producers in India*
- Indo Rama Synthetics Ltd, Nagpur,
 - Reliance Industries Ltd and its related companies, Mumbai and Nagpur,
 - Welspun Syntex Ltd, Mumbai.
- (10) The investigation of dumping and injury covered the period from 1 October 2000 to 30 September 2001 (hereinafter referred to as the investigation period or IP). The examination of trends relevant for the assessment of injury covered the period from 1 October 1997 to the end of the IP (analysis period).

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

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

2. Like product

- (12) The investigation showed that PTY produced and sold on the domestic market of India has similar basic physical characteristics and uses compared with that exported from this country to the Community. Similarly, the PTY manufactured by the complainant Community producers and sold on the Community market has similar basic physical characteristics and uses when compared to that exported to the Community from the country in question.
- (13) Consequently, PTY sold on the domestic market of India and exported to the Community as well as PTY produced and sold in the Community are considered as a like product within the meaning of Article 1(4) of the basic Regulation.

C. SAMPLING

1. Sampling of Indian exporters

- (14) 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.
- (15) 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 three weeks of the initiation of the proceeding and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies in the production and/or selling of PTY. The Indian authorities and the Indian association of exporting producers were also contacted in this regard by the Commission and raised no objection against the use of sampling.

2. Pre-selection of cooperating companies

- (16) Twelve companies in India came forward and provided the requested information within the three-week period set in Article 17(2) of the basic Regulation. However, only nine were producers reporting exports to the Community during the investigation period. Those producers that exported the product concerned to the Community during the investigation period and expressed a wish to participate in the sample were initially considered as cooperating and were taken into account in the selection of the sample. They represented up to 98 % of total exports of the product concerned from India to the Community. As to the remaining three companies, two were traders that could not be taken into account in the selection of the sample and one was an exporting producer with no exports to the Community during the IP.
- (17) Companies, which did not make themselves known within the three-week period, were considered as non-cooperating companies.

3. Selection of the sample

- (18) According to Article 17(1) of the basic Regulation, the selection was based on the largest representative volume of exports, which could reasonably be investigated within the time available.
- (19) On this basis three exporting producers were chosen to constitute the sample in agreement with the Indian association of exporting producers and the Indian authorities. The three companies selected in the sample represented around 70 % of Indian PTY exports to the Community and around 65 % of PTY domestic sales in India.
- (20) The six cooperating exporting producers, who were not finally retained in the sample, were informed that any anti-dumping duty on their exports would be calculated in accordance with the provisions of Article 9(6) of the basic Regulation. Some of these companies initially indicated their intention to claim an individual margin in accordance with Article 17(3) of the basic Regulation in case they were not selected in the sample. However, no substantiated claim was received within the deadline specified in the notice of initiation.
- (21) The exporting producer that was not related to any of the exporting producers subject to the investigation and did not export the product concerned to the Community during the IP though it had some exports after the IP, was also informed that any anti-dumping duty on its exports would be calculated in accordance with the provisions of Article 9(6) of the basic Regulation.
- (22) Questionnaires were sent for completion to all three initially sampled companies and a shorter questionnaire was sent to the company that only exported subsequently to the IP.
- (23) The companies which finally constituted the sample and which fully cooperated with the investigation were attributed their own dumping margin and individual duty rate.

D. DUMPING**1. Normal value**

- (24) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of PTY 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.
- (25) This assessment revealed that all investigated exporting producers had representative sales of PTY on the domestic market during the investigation period.
- (26) The Commission subsequently considered whether domestically sold and exported product types had similar quality, denier, filament, flame retardant characteristics, colouring and twisting and concluded that they were identical or directly comparable.
- (27) Additionally and for each product type sold by the exporting producer on the domestic market, which was found to be directly comparable with the type sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered as sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable product type exported to the Community.
- (28) The Commission subsequently examined whether the domestic sales of each company could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

This was done by establishing the proportion of domestic sales to independent customers, of each exported product type, 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 found equal to or above unit costs only, of the type in question;
- (c) for those product types where less than 10 %, by volume of sales, on the domestic market, were 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.
- (29) For certain types sold for export to the Community by all three investigated companies, domestic sales were found to have been made in the ordinary course of trade. Normal value was based for the corresponding product type on the actual prices paid or payable, by independent customers in the domestic market of India, during the investigation period, as set out in Article 2(1) of the basic Regulation.
- (30) For sales of product types not made in the ordinary course of trade, as well as for product types which were not sold in representative quantities on the domestic market, normal value had to be constructed. All three investigated companies sold certain such product types for export to the Community.

- (31) To construct normal value pursuant to Article 2(6) of the basic Regulation, the selling, general and administrative (hereinafter referred to as SGA) expenses incurred and the weighted average profit realised by the cooperating exporting producers concerned on domestic sales of the like product, in the ordinary course of trade, during the investigation period, was added to their own average cost of manufacturing during the investigation period. Where necessary, the manufacturing costs and SGA expenses reported were corrected, before being used in the ordinary course of trade test and in constructing normal values.

2. Export price

- (32) As all exports of the product under consideration by all three exporting producers were made directly 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.

3. Comparison

- (33) The comparison between normal value and export price was made on an ex-factory basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. For all investigated exporting producers allowances for differences in physical characteristics, transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, import charges and indirect taxes, credit costs, after-sales costs, commissions, discounts and rebates have been granted where applicable and justified.
- (34) All three investigated companies claimed a duty drawback adjustment pursuant to Article 2(10)(b) of the basic Regulation on the grounds that import charges were allegedly 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. All companies made use of the Duty Entitlement Passbook Scheme (DEPB) on post-export basis and/or Advance License Scheme (ALS) for that reason. This claim was rejected because there was no evidence that any import charge was borne by the like product when destined for domestic consumption. Alternatively, the companies claimed the same adjustment pursuant to Article 2(10)(k). However, because the companies failed to demonstrate that the DEPB on post-export basis and/or ALS schemes affect price comparability, and in particular that customers consistently pay different prices on the domestic market because of the benefits of the abovementioned schemes, the adjustment could not be accepted.
- (35) One investigated company claimed an adjustment pursuant to Article 2(10)(b) for an amount corresponding to an indirect tax borne by the like product when intended for consumption in India and refunded in respect of the product exported to the Community. It was found that the company was indeed refunded upon export of the product concerned. However, since the company failed to demonstrate that the full amount of this indirect tax was refunded, the claim was adjusted downwards. Another investigated company claimed an adjustment pursuant to the same Article of the basic Regulation for an amount corresponding to an indirect tax borne by the like product when intended for consumption in India and not collected in respect of the product exported to the Community. In this respect, it was found that the company failed to duly report the relevant quantities of the raw material used in the production of the like product. Consequently, there was no evidence as to the precise amount of indirect tax borne by the like product and this claim was rejected.

- (36) One investigated company claimed an adjustment pursuant to Article 2(10)(b) of the basic Regulation for a sales tax (indirect tax) imposed by the Indian regional authorities and allegedly paid on domestic sales. The company in question was exempted from depositing with the government treasury the sales tax. This exemption is given to companies, which invest in the region concerned. In this respect, it was not demonstrated that the company collected on domestic sales and deposited with the government treasury the said tax and, therefore no such sales tax was 'borne by the like product' sold in the domestic market. Thus, the claim was considered to be unfounded.
- (37) Two investigated companies claimed an adjustment pursuant to Article 2(10)(d) of the basic Regulation for differences in the level of trade. The adjustment could not be granted since the companies could not demonstrate that the export price was set at a different level of trade from the normal value and that price comparability was affected. In fact, two different levels of trade were argued to exist, both on export and domestic market, but no consistent and distinct differences in functions and prices of the companies concerned for the different levels of trade in the domestic market of India could be found. Alternatively, both companies claimed the same adjustment pursuant to Article 2(10)(c) or Article 2(10)(k). The claim could not be granted under the provisions of Article 2(10)(c) of the basic Regulation, since quantity discounts can only be considered for an adjustment when they are actually given for differences in quantities directly linked to the sales under consideration, and no such discounts were given by the companies concerned. Nor could the claim be granted pursuant to Article 2(10)(k) since it was found that the pattern claimed by the companies was not consistently applied to their sales in the domestic market and since it was found that these were essentially the same claims under level of trade and quantity discounts, which had already been rejected.
- (38) One investigated company claimed an adjustment pursuant to Article 2(10)(f) of the basic Regulation for differences in the directly related packing costs between the exported and the domestically sold products. In this respect, the company failed to demonstrate that a cost difference, affecting price comparability, could be directly related to the packing cost for the product concerned. Thus, this claim was rejected.

4. Dumping margins

(a) *Dumping margin for companies investigated*

- (39) Dumping margins were established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type.

(b) *Dumping margin for cooperating companies not in the sample*

- (40) The dumping margin for exporting producers, which made themselves known in accordance with Article 17 of the basic Regulation but were not examined individually, has been established on the basis of the weighted average of the dumping margins of the companies in the sample pursuant to Article 9(6) of the basic Regulation.

(c) *Dumping margin for non-cooperating companies*

- (41) For those exporting producers which neither replied to the Commission's 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.
- (42) For the country 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.
- (43) It was found that the overall level of cooperation was high and it was considered appropriate to set a residual dumping margin for the non-cooperating companies at the level of the highest dumping margin established for a cooperating company in the country in question.

- (44) The above approach with regard to non-cooperating companies was also considered necessary in order to prevent any non-cooperating companies benefiting from their non-cooperation.
- (45) The provisional dumping margins, expressed as a percentage of the cif import price at the Community border duty unpaid, are the following:

Indo Rama Synthetics Ltd	15,7 %
Reliance Industries Ltd	19,1 %
Welspun Syntex Ltd	17,2 %
Cooperating exporting producers not in the sample	17,7 %
Non-cooperating exporting producers	19,1 %

E. COMMUNITY INDUSTRY

1. Community production

- (46) PTY is manufactured in the community by the following companies:
- three community producers, which fully cooperated with the Commission during the investigation. Two of these community producers were party to the complaint,
 - four community producers, out of the six who lodged the complaint, provided some general information on their activities in the complaint. They did not fully cooperate in the investigation, but supported the proceeding,
 - two other non-complainant producers who provided some general information on their activities and supported the complaint but did not supply detailed data,
 - fourteen other non-complainant producers who neither cooperated in the investigation nor expressed an opinion.
- (47) Therefore, the PTY produced by all these companies constitutes the Community production within the meaning of Article 4(1) of the basic Regulation.

2. Definition of the Community industry

- (48) The cumulated production of the three cooperating producers was 85 238 tonnes in the IP out of an estimated total Community production of around 228 491 tonnes, i.e. 37 %. However, when the nine producers supporting the proceedings are considered together, they represent 74 % of Community production during the IP.
- (49) One interested party claimed that only three Community producers cooperated in the investigation and that their collective output did not constitute a major proportion of total Community production. Furthermore, this party alleged that there were four out of the six Community producers that lodged the complaint that eventually decided not to cooperate because they did not consider themselves as being injured, therefore the case was initiated on a wrong basis and the data used to assess the injury suffered by the Community industry was biased.
- (50) First of all it should be noted that all the companies explicitly supporting the complaint prior to initiation represented approximately two-thirds of Community production and therefore support was sufficient to initiate an investigation. Secondly, the three companies that fully cooperated in the investigation represented more than 25 % of Community production and, therefore, a major proportion within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.
- (51) The Commission, therefore, provisionally considers that the three cooperating Community producers constitute the 'Community industry' within the meaning of Article 4(1) and Article 5(4).

F. INJURY

1. Preliminary remarks

Import data

- (52) Import trends in volume and prices were established using Eurostat information. All imported PTY falls under the CN code 5402 33 00 and no other products is classified under this code. Eurostat data for India was compared to data provided by exporting producers for the IP and was found to be very close.

Community industry data

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

2. Community consumption

- (54) Apparent consumption of PTY in the Community was established on the basis of the total imports of the product concerned into the Community, total verified sales of the Community industry on the Community market and estimated sales of other producers operating in the Community based on replies to the Commission's questionnaires, evidence contained in the complaint and Eurostat export statistics.
- (55) Community consumption of PTY reached approximately 340 000 tonnes during the IP. As shown in the table below, it increased by 19 % over the analysis period. It should be noted that consumption reached a peak in 1998 but subsequently fell back afterwards.

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

3. Imports from India

Volume of imports

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

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

Prices of imports

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

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

Price undercutting

- (59) For the purposes of analysing price undercutting, the prices of the product concerned sold by the Community industry were compared to the prices of Indian imports on the Community market during the IP, on the basis of weighted average prices per type of PTY.
- (60) The elements taken into account when comparing the imported products with the PTY produced by the Community industry were the decitex (number of grams for 1 000 metres of yarn), the number of filaments, the chemical modification (e.g. flame retardant) and the colour of the yarn (non-died, span-died or traditionally-died).
- (61) The prices of the Indian imports are those reported by the cooperating exporting producers in their responses to the questionnaires on a cif basis at the Community border, duly adjusted, for customs duties and post-importation costs. The prices of the Community industry are those reported in the responses to the questionnaires for their sales in the Community to the first unrelated customer on an ex-works basis.
- (62) On this basis, the price-undercutting margin, expressed as a percentage of the Community industry's prices was found to be in the range of 21 % to 36 % for the exporting producers who cooperated in the investigation.

4. Situation of the Community industry*Production, production capacity and capacity utilisation*

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

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

Stocks

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

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

Sales volume, market share and growth

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

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

Factors affecting prices

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

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

Profitability

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

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

Investments and ability to raise capital

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

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

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

Return on investments (ROI)

- (70) In assessing the impact of the dumped imports on the Community industry's return on investments, the Commission examined the pre-tax profit or loss compared to the total assets of the Community industry.

- (71) The sales of PTY constitutes the largest part of the turnover of the Community industry ROI was thus apportioned to reflect this share.
- (72) The evolution of the ROI was consistent with the profitability figures and showed the clear deterioration of the financial situation of the Community industry.

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

Cash flow

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

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

Employment, productivity and wages

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

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

- (76) The number of people employed by the Community industry at the end of the IP was 1 403, an overall increase by 19 % over the analysis period but following an important increase in 1999 when the Community industry decided to substantially develop its production capacities. This extension was planned when prospects were still good (see recital 68). Employment costs in relation to the number of employees increased by 30 % over the same period.
- (77) Productivity in the IP was approximately the same as in 1996. In 1999 when production capacities increased as well as the number of employees, productivity had temporarily deteriorated.

Recovery from past dumping

- (78) In 1997 and 1998, the financial results of the Community industry were satisfactory showing that it had recovered from past dumping from imports originating in third countries for which anti-dumping measures were put in force (see recital 3).

Actual margin of dumping

- (79) The dumping margins are specified in the dumping part (see recital 45). These margins established are clearly above *de minimis*. Furthermore, given the volume and the price of the dumped imports, the impact of the actual margin of dumping cannot be negligible.

5. Conclusion on injury

- (80) Between 1996 and the IP, the volume of imports of PTY originating in India was multiplied by three from under 7 500 tonnes to over 22 000 tonnes. This resulted in an overall increase in the market share of the imports concerned of 4 percentage points at a time when consumption grew by 19 %. The prices of the imports concerned remained below those of the Community industry throughout the period considered with a price undercutting ranging between 30 % and 45 %.
- (81) Simultaneously, between 1996 and the IP the situation of the Community industry deteriorated most notably in terms of market share, sale prices, profitability, return on investments, cash flow and ability to raise capital. The poor financial results of the Community industry resulted from the depression of its prices.
- (82) In view of the above it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

G. CAUSATION OF INJURY**1. Introduction**

- (83) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the material injury suffered by the Community industry had been caused by the dumped imports from the country concerned. In accordance with Article 3(7) of the basic Regulation, the Commission also examined other known factors which might have injured the Community industry in order to ensure that any injury caused by those factors was not wrongly attributed to the dumped imports.
- (84) Measures are currently in force against imports originating in Thailand, Indonesia, Taiwan and Malaysia, which are intended to remove injurious dumping from these countries. Furthermore, the PTY imports originating in these four countries are presently subject to anti-dumping investigation (see recital 3). This element was borne in mind in this examination.

2. Effect of the dumped imports*Volume*

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

Prices

- (88) From 1996 to the IP, prices of dumped imports decreased by 7 % while their market share increased by 4 percentage points. At the same time, the Community industry decreased its selling prices by 9 % in an unsuccessful effort to maintain its market share.

- (89) Prices of dumped imports were constantly below the Community industry's prices with an undercutting margin in the range of 30 % to 45 % for the investigated exporters during the IP.
- (90) It is therefore considered that the pressure exerted by the imports concerned, which significantly increased their volume and market share from 1996 onwards and which were made at particularly low dumped prices, resulted in price depression for the Community industry and a deterioration of its financial situation.

3. Effect of other factors

Imports originating in other third countries

- (91) Four countries exporting PTY to the Community are subject to anti-dumping duties: Indonesia, Malaysia, Taiwan and Thailand. These four countries represented a market share of 18 % during the IP. Over the analysis period, the volume of imports originating in these countries increased by 41 % from a level of approximately 43 000 tonnes in 1996 to 61 000 tonnes in the IP. Average cif prices of these imports are clearly below the Community industry prices. The exporting producers in Indonesia and Taiwan benefiting from 0 % anti-dumping duty rates are those which effectively increased their sales on the Community market. It cannot be excluded that these imports have contributed to the injury suffered by the Community industry. This is currently being investigated within review investigations initiated both on 31 May 2002 ⁽¹⁾ on the basis of Article 11(3) of the basic Regulation.
- (92) Imports originating in other third countries represented a market share of 19 % during the IP and increased, in volume, by 47 % over the analysis period. The most significant volumes originated in the United States of America, Turkey and South Korea. Average cif prices of these imports are slightly below ex-works prices of the Community industry. However, if one takes into account customs duties and post importation costs, they are approximately at the same level as the Community industry prices. These imports cannot be considered as having injured the Community industry.

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

Prices of raw materials

- (93) The main raw material used in the production of PTY is polyester oriented yarn (POY).
- (94) The Community industry is buying POY both inside and outside the Community. Some POY is also purchased from related companies. A detailed comparison Decitex by Decitex between intra-group prices paid on the market and prices published by specialised press (PCI) proved that the purchases from related companies are done on an arm's length price. Selling conditions are also similar to general market conditions.

⁽¹⁾ OJ C 129, 31.5.2002, pp. 2 and 5.

- (95) The actual price paid by the Community industry for its POY, as shown in the table below, increased considerably in 1997 to 1998 and then decreased to levels which were lower than at the beginning of the analysis period. It cannot thus be considered that costs of raw materials caused injury to the Community industry.

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

The export performance of the Community industry

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

Changes in the pattern of consumption

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

Conclusion on causation

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

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

- (100) It is therefore provisionally concluded that the dumped imports from the country concerned have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

H. COMMUNITY INTEREST

1. General remarks

- (101) The Commission examined whether, despite the conclusion on injurious dumping, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose and in accordance with Article 21(1) of the basic Regulation, the determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, other Community producers, the importers/traders as well as the users and suppliers of the product under consideration.

2. The investigation

- (102) The Commission sent questionnaires to importers, suppliers of raw materials and industrial users of the product concerned. In total, 13 questionnaires were sent to suppliers, 21 to users, 14 to importers and 16 to other producers of PTY.
- (103) Questionnaire responses were received within the time limits from:
- one direct supplier of raw materials, supplying MEG and PTA to the Community industry:
 - BP Chemicals Ltd (United Kingdom),
 - one user of the product concerned, producing textiles to be used mainly in the automotive and upholstery sectors:
 - Mattes & Ammann KG (Germany),
 - two other producers of PTY:
 - FITEXAR SA (Portugal), and
 - Manifattura di Stabbia SpA (Italy),
- no importers of the product concerned has sent a questionnaire response.

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

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

4. Likely effects of the imposition of measures on importers

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

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

- (110) Community producers are mainly buying mono ethylene glycol (MEG), purified terephthalic acid (PTA) or dimethylterephthalate (DMT) to produce polyester oriented yarn (POY), to subsequently texture it to make PTY. Some Community producers are also buying POY directly.
- (111) The supplier that cooperated in the investigation is employing more than 300 persons dedicated to the production of PTA and MEG.
- (112) The cooperating supplier worked closely with Community producers, deriving a substantial part of its turnover from sales to them. Therefore any reduction in the Community industry's purchases would have a dramatic effect on this company.
- (113) It is clear that the imposition of measures would help to maintain the level of activity of the Community industry and by extension of its suppliers. The Commission has therefore provisionally concluded that the imposition of anti-dumping measures is in the interest of the upstream industries.

6. Likely effects of the imposition of measures on users

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

7. Conclusion

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

I. PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination margin

- (121) In order to prevent further injury being caused by the dumped imports, it was considered appropriate to adopt anti-dumping measures in the form of provisional duties.

- (122) For the purpose of determining the level of these duties, the Commission took account of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Community industry.
- (123) To this end, the Commission determined a non-injurious price based on production costs of the Community industry, together with a reasonable profit margin of 8 %, this being considered necessary to ensure the viability of the industry and being a profit which this industry experienced in 1998 when the dumped imports from India had not such a depressing effect on the Community industry's prices and where the imports from the countries subject to measures were already at a level similar to that prevailing in the IP. The non-injurious price was compared with the prices of the dumped imports used to establish undercutting, as outlined above. Differences resulting from this comparison were then expressed as a percentage of the total cif import value to establish the injury elimination margin.
- (124) In order to calculate the injury elimination margin applicable to exporting producers that cooperated but were not part of the sample, the weighted average injury elimination margin of the companies included in the sample was used.
- (125) For those exporting producers in India which neither replied to the Commission's questionnaire nor otherwise made themselves known, the countrywide injury elimination margin was established on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation. In view of the high level of cooperation it was considered appropriate to set the injury elimination margin for the non-cooperating companies at the level of the highest injury margin established for a cooperating company in the country in question.

2. Provisional measures

- (126) Since dumping margins have been found to be lower than injury elimination margins, the provisional duties to be imposed should correspond to the dumping margins established, in accordance with Article 7(2) of the basic Regulation.
- (127) However, with regard to the parallel anti-subsidy proceeding in respect of India, in accordance with Article 24(1) of Council Regulation (EC) No 2026/97 ⁽¹⁾ (hereinafter 'the basic anti-subsidy Regulation') and Article 14(1) of the basic Regulation, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or export subsidisation. It is therefore necessary to determine whether, and to what extent, the subsidy amounts and the dumping margins arise from the same situation.
- (128) A provisional countervailing duty corresponding to the amount of subsidy, which was found to be lower than the injury margin, was proposed in accordance with Article 12(1) of the basic anti-subsidy Regulation. All subsidy schemes investigated which were found to be countervailable constituted export subsidies within the meaning of Article 3(4)(a) of the basic anti-subsidy Regulation. As such, these subsidies could only affect the export price of the Indian exporting producers, thus leading to an increased margin of dumping. In other words, the provisional dumping margins established for the cooperating exporting producers in India are partly due to the existence of export subsidies. In these circumstances, it is not considered appropriate to impose both countervailing and anti-dumping duties to the full extent of the relevant export subsidy amounts and dumping margins provisionally established. Therefore, the provisional anti-dumping duty should be adjusted to reflect the actual dumping margin remaining after the imposition of the provisional countervailing duty offsetting the effect of the export subsidies. Consequently, the anti-dumping duty rate has been set at the level of the dumping margin minus the rate of countervailing duty of the export subsidies as indicated in the following table:

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

Company name	Dumping margin	Rate of provisional countervailing duty of export subsidies	Provisional anti-dumping duty
Indo Rama Synthetics Limited	15,7 %	4,1 %	11,6 %
Reliance Industries Limited	19,1 %	0 %	19,1 %
Welspun Syntex Limited	17,2 %	9,1 %	8,1 %
Cooperating companies not included in the sample	17,7 %	5,0 %	12,7 %
All other companies	19,1 %	9,1 %	10,0 %

- (129) 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 countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (130) 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, for example, that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

3. Final provisions

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of polyester textured filament yarn falling within CN code 5402 33 00 originating in India.
2. The rate of the provisional anti-dumping duty applicable to the net-free-at-Community-frontier-price, before duty, for products manufactured by the companies listed below shall be as follows:

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

Company	Rate of duty (%)	TARIC additional code
Chhabria Polyester Corporation Mehta House, 1 st Floor, 91, Bombay Samachar Marg, Mumbai 400 023, India	12,7	A 388
Indo Rama Synthetics Limited 51-A, Industrial Area, Sector III, Pithampur, 453 001, Distt. Dhar, Madhya Pradesh, India	11,6	A 389
Microsynth Fabrics Limited 6, Jai Tirath Mansion, Barrack Road, Behind Metro Cinema, Mumbai 400 020, India	12,7	A 390
Modern Petrofils NH No 8, Baman Gam, Taluka: Karjan, Distt: Baroda 391 210, India	12,7	A 391
Nova Petrochemicals Limited 402, Trividh Chambers, Ring Road, Surat, India	12,7	A 392
Parasrampur Industries Limited 208, Nariman Point, Bombay 400 021, India	12,7	A 393
Reliance Industries Limited Maker Chambers IV, Nariman Point, Mumbai, 400 021, India	19,1	A 394
Sarla Polyester Limited 304, Arcadia, 195 Nariman Point, Mumbai, 400 021, India	12,7	A 395
Supertex Industries Limited Balkrishna Krupa, 2 nd Floor, 45/49, Babu Genu Road, Prin- cess Stree, Mumbai, 400 002, India	12,7	A 396
Welspun Syntex Limited Kamani Wadi, 1 st Floor, 542, Jaganath Shankar Sheth Road, Chira Bazar, Mumbai, 400 002, India	8,1	A 397
All others	10,0	A 999

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

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

Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96 interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 20 days of the date of entry into force of this Regulation.

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

Article 3

This Regulation shall enter into force on the day following 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, 29 July 2002.

For the Commission
Pascal LAMY
Member of the Commission
