

**COUNCIL REGULATION (EC) No 2094/2002  
of 26 November 2002**

**imposing a definitive countervailing duty on imports of polyester textured filament yarn (PTY) originating in India and terminating the proceeding concerning imports of PTY originating in Indonesia**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community <sup>(1)</sup>, and in particular Articles 14 and 15 thereof,

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

Whereas:

**A. PROVISIONAL MEASURES**

- (1) By Commission Regulation (EC) No 1411/2002 <sup>(2)</sup>, (hereinafter referred to as 'the provisional Regulation'), a provisional countervailing duty was imposed on imports into the Community of polyester textured filament yarn (hereinafter referred to as 'PTY') falling within CN code 5402 33 00 and originating in India. The subsidies amount established for Indonesia was *de minimis* and, therefore no provisional countervailing duty was imposed for this country.
- (2) Simultaneously, the Commission also imposed, by Regulation (EC) No 1412/2002 <sup>(3)</sup>, a provisional anti-dumping duty on imports of PTY originating in India.
- (3) It is recalled that the investigation period of subsidisation and injury covered the period from 1 October 2000 to 30 September 2001 (IP). A clerical error was found in the provisional Regulation, and it is confirmed that, as showed in the various tables below, the examination of trends relevant for the injury analysis covered the period from 1 January 1996 (and not 1 October 1997 as stated in the provisional Regulation) to the end of the IP (period under consideration). The choice of such period was made in view of analysing the overall evolution of the economic situation of the Community industry considering the impact of the imposition of anti-dumping measures in 1996 against Indonesia, Malaysia, Taiwan and Thailand.

**B. SUBSEQUENT PROCEDURE**

- (4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional measures, several interested parties submitted comments in writing. In accordance with Article 11(5) of Regulation (EC) No 2026/97 (hereinafter referred to as the 'basic Regulation'), all interested parties who requested a hearing were granted an opportunity to be heard by the Commission.
- (5) The Commission continued to seek and verify all information deemed necessary for the definitive findings.
- (6) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing duty and the definitive collection of amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.

<sup>(1)</sup> OJ L 288, 21.10.1997, p. 1. Regulation as amended by Regulation (EC) No 1973/2002 (OJ L 305, 7.11.2002, p. 4).

<sup>(2)</sup> OJ L 205, 2.8.2002, p. 26.

<sup>(3)</sup> OJ L 205, 2.8.2002, p. 50.

- (7) In addition to the verification visits that were already carried out by the Commission at the provisional stage, the company Unifi Textured yarns Ltd, a Community producer of PTY located in Ireland, was also visited after the imposition of the provisional measures.
- (8) The oral and written arguments submitted by the parties were considered, and, where appropriate, the provisional findings have been modified accordingly.

### C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

- (9) The Indian exporting producers claimed that the Commission, in its analysis, did not take into consideration the existence of three different market segments for PTY in the Community, which is allegedly evidenced by the significantly different levels of the average sales prices for PTY originating in India, in other third countries and PTY produced by the Community industry. This was, according to these exporting producers, confirmed by the fact that the Community industry's average price during the IP was more than 50 % higher than the Indian import price, which allegedly gives an indication that PTY produced in the Community is not alike in all respects to PTY originating in India.
- (10) It should be recalled that it was provisionally established that no significant differences exist in the basic physical characteristics and uses of the different types and qualities of PTY, and that, under these circumstances, all types of PTY should be considered as one single product for the purposes of this proceeding. It was also provisionally concluded that the PTY produced in India and exported to the Community shares similar basic physical characteristics and uses as compared with that manufactured by the Community producers, which should therefore be considered as a like product within the meaning of Article 1(5) of the basic Regulation. In this respect, differences in sales prices cannot by themselves be considered a criterion for the determination of the like product.
- (11) In addition, as concerns the argument of market segmentation, no evidence was brought forward or found for a clear dividing line based on objective criteria which could have supported the conclusion that imports from India and the product produced by the Community industry are different products. The sales price as such is not considered a sufficient element for establishing market segments, particularly in view of the dumping and subsidisation practices. As to the difference in product types found, which indeed involve different pricing elements, this is taken into account in the undercutting and the injury elimination level calculations as explained in recital 46.
- (12) For the above reasons, the argument was rejected and the conclusions that PTY should be considered one single product and the overall analysis be made at this level were accordingly confirmed.
- (13) In the absence of any further comments, the definition of the product under consideration and of the like product as set out in recitals 14 to 16 of the provisional Regulation are confirmed.

### D. SUBSIDIES

#### I. INDIA

##### 1. Sampling

- (14) The investigation of subsidisation in India was conducted in accordance Article 27 of the basic Regulation. Following the imposition of a provisional countervailing duty, no comments concerning the sampling of Indian exporting producers were received and, therefore, the conclusions set out in recitals 17 to 23 of the provisional Regulation are confirmed.

## 2. Duty Entitlement Passbook Schemes (DEPB) on post-export basis

- (15) Following the disclosure of provisional findings, one exporting producer and the Association representing the industry in India argued that the company had stopped using DEPB licences during the IP and therefore the scheme should not be countervailed for this company.
- (16) The company has not challenged the findings that it has used the DEPB scheme on post-export basis during the IP and that the scheme is still available in India. The benefit under the DEPB scheme was calculated on the basis of the credit granted in the licences which have been utilised or transferred (sold) during the IP. Thus, the claim that the company stopped receiving DEPB licenses and shifted to the use of another scheme during the IP, did not change the fact that it actually utilised and sold DEPB licences during the IP and that the scheme was and is still available for the company. Therefore, it was concluded that the company received a benefit under the DEPB scheme during the IP and there is no reason to conclude that the company will not benefit from this scheme in the future.
- (17) Two exporting producers claimed that they have used the DEPB benefit for the purpose of purchase of raw materials for the production of the product concerned only, and therefore, this should not be regarded as a countervailable subsidy.
- (18) As already noted in the provisional findings, the DEPB scheme is not a permitted remission/draw-back scheme within the meaning of Annexes I, II and III of the basic Regulation. The exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used. Goods which are imported against such credits can be sold on the domestic market or used otherwise. In addition, the licenses can be freely sold. The investigation has shown that these companies sold more than 90 % and 60 % respectively of their DEPB licenses during the IP. It is therefore concluded that the DEPB benefit for these companies was a countervailable subsidy.
- (19) One exporting producer claimed that the benefit conferred under the DEPB scheme on post-export basis should be limited to the DEPB amount of licences granted for exports of the product concerned, i.e. PTY.
- (20) The fact that such licences can be used for any kind of imports, or even be transferred, did not allow an allocation of the full benefit over different products. Licences granted for products other than the product concerned, can also be used to import inputs that enter directly or indirectly in the production of PTY. The allocation of the benefit from the DEPB on post-export basis over total export turnover during the IP should be therefore confirmed (recitals 40 and 41 of the provisional Regulation).
- (21) One exporting producer also claimed a number of allowances related to hypothetical costs like, tax reduction, interest and exchange losses.
- (22) Within the meaning of Article 7(1)(a) of the basic Regulation, only costs necessarily incurred in order to qualify for, or to obtain the subsidy, may be deducted from the total subsidy. In this respect, such hypothetical allowances claimed by the exporter would not be eligible for deduction from the amount of the countervailable subsidy established.
- (23) In conclusion, the findings set out in recitals 31 to 41 of the provisional Regulation are confirmed.

## 3. Export Promotion Capital Goods Scheme (EPCGS)

- (24) One exporting producer claimed that the EPCG benefit should be allocated over the total turnover (export and domestic) in consideration that the capital goods obtained under this scheme have been used both for domestic and export production.

- (25) It is noted that the EPCG is clearly a subsidy scheme contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation. The licence cannot be obtained without a commitment to export goods. This finding has not been challenged.
- (26) Therefore, the export subsidy, i.e. the duty exempted for capital goods acquired under this scheme, should be allocated over the export turnover.
- (27) The same exporting producer also claimed that the calculation of the EPCG benefit should be limited to the investment used for the production of the product concerned, i.e. PTY.
- (28) EPCG licences have been obtained by this exporting producer not only to produce the product concerned (PTY), but also to produce other products like polyester oriented yarn (POY), which is the main input that entered in the production of PTY. POY was produced in three different units and was sold as a finished product or used for the production of different products.
- (29) It was impossible to establish through the accounts of the company which capital goods or, which proportion of them, was used for the production of PTY. It has been therefore concluded that the full benefit of all the EPCG licences compared to the total export turnover was the most appropriate way to determine the subsidy amount.
- (30) Consequently, the findings set out in recitals 42 to 49 of the provisional Regulation are confirmed.

#### 4. Amount of countervailable subsidies

- (31) Following the imposition of a provisional countervailing duty, a clerical error was detected in the total subsidy amount established for the cooperating companies not included in the sample. In particular, the 5,0 % *ad valorem* subsidy amount established in recital 69 of the provisional Regulation in respect of cooperating companies not included in the sample should have been 5,2 %.
- (32) The Association representing the industry in India claimed that the genuine weighted average subsidy amount of the three investigated companies was below the *de minimis* threshold and therefore, 'the proceeding should be terminated in accordance with consistent EC case law'.
- (33) As set out in recital 69 of the provisional Regulation, subsidy amounts have been established for all exporting producers in India ranging from 1,0 % to 9,1 %. The subsidy amount for only one company was found to be below the 3 % *de minimis* threshold for India.
- (34) The countrywide weighted average subsidy amount, taking into account all the subsidy amounts established in recital 69 of the provisional Regulation, is 3,9 %, i.e. above the *de minimis* threshold. There is, therefore, no reason to terminate the proceeding against India.
- (35) No other changes were necessary to subsidy amounts established in recitals 68 and 69 of the provisional Regulation. The findings are therefore confirmed as follows:

Type of subsidy	EOU/EPZ	DEPB Post export	EPCGS	ITES	Advance Licence	Total
IndoRama Synthetics Limited		2,9 %	1,2 %			4,1 %
Reliance Industries Limited		0,4 %		0,6 %		1,0% <i>de minimis</i>
Welspun Syntex Limited		9,1 %				9,1 %
Cooperating exporting producers not in the sample						5,2 %
All other companies						9,1 %

## II. INDONESIA

- (36) Following the imposition of provisional measures, no comments were received concerning the finding of *de minimis* subsidies amount in respect of Indonesia. The findings in recitals 70 to 74 of the provisional Regulation should be, therefore, confirmed and the proceeding concerning Indonesia should be terminated accordingly.

## E. DEFINITION OF THE COMMUNITY INDUSTRY

- (37) Shortly after the imposition of the provisional measures, Dupont SA, one of the cooperating Community producers included in the definition of the Community industry at the provisional stage, definitively ceased the production of PTY in the Community, allegedly because of the low priced imports on the Community market. In view of the definitive nature of this event it was considered appropriate to no longer treat Dupont SA as being part of the Community industry. Consequently, for the determination of the definitive findings, it was considered that the Community industry should be defined as consisting of two remaining cooperating Community producers, namely UNIFI Textured yarns Ltd and Sinterama Spa.
- (38) Therefore, it was verified whether these two companies still accounted for a major proportion of the Community production as set out by Article 10(8) of the basic Regulation. It was found that the cumulated production of the two remaining cooperating Community producers represented 30 % of the total Community production of the like product in the Community during the IP. This is more than the threshold of 25 % set out in the abovementioned article. Therefore, these two companies constitute the Community industry in full accordance with Article 9(1) of the basic Regulation.
- (39) The Indian exporting producers argued that the provisional injury analysis was based on the situation of a minor proportion of Community producers only. They based their allegation on the fact that the complainant Community producers that actually cooperated in the investigation did not represent a major proportion of Community production.
- (40) That argument is incorrect and was rejected since the two remaining companies represent more than 25 % of the overall Community production. It is therefore confirmed that these two cooperating Community producers constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

## F. INJURY

## 1. Community consumption

- (41) In the absence of any new information, the provisional findings concerning Community consumption as described in recitals 84 to 85 of the provisional Regulation are confirmed. Throughout the period under consideration Community consumption developed as follows:

	1996	1997	1998	1999	2000	IP
Community consumption	285 640	341 660	369 031	353 376	360 176	339 352
1996 = 100	100	120	129	124	126	119

## 2. Subsidised imports from India

	1996	1997	1998	1999	2000	IP
Indian imports	7 583	16 992	17 210	7 696	12 886	22 683
1996 = 100	100	224	238	156	247	299
Market shares	2,7 %	5,0 %	4,9 %	3,3 %	5,2 %	6,7 %
Prices	1,9	2,0	1,7	1,4	1,8	1,7
1996 = 100	100	107	91	75	95	93

- (42) In absolute terms, the Indian import volume almost tripled during the period under consideration from 7 583 tonnes in 1996 to 22 683 tonnes during the IP. It should be noted that in the period 1999 to IP, at a time when the overall Community consumption decreased, the Indian import volume almost doubled.

- (43) The Indian imports increased their share of the Community market from 2,7 % in 1996 to 6,7 % during the IP. In parallel to the rapid increase of the import volumes between 1999 and the IP, their market share rose from 3,3 % to 6,7 %, while the overall Community consumption decreased.
- (44) As far as the average import price is concerned, it first increased in the period 1996 to 1997 and then subsequently decreased. The lowest price level was reached in the year 1999.
- (45) In the absence of any comments concerning the volume and price of imports from India, the provisional findings as described in recitals 86 to 88 of the provisional Regulation are confirmed.
- (46) Concerning price undercutting, in view of the above mentioned changes regarding the constitution of the Community industry, the calculations have been revised. The methodology for the calculation of the undercutting margins, as explained under recitals 89 and 92 of the provisional Regulation, remained however unchanged. It is recalled that, for the purposes of analysing the price undercutting, prices for the different types of PTY originating in India were compared to prices for similar types produced and sold by the Community Industry. A comparison of overall average prices, as suggested by the Indian exporting producers, would not take into consideration the existence of the various product types and lead to misleading results.
- (47) On this basis, the revised price undercutting margins, expressed as a percentage of the Community industry's prices, ranged between 23 % and 28 % for the exporting producers who cooperated in the investigation.
- (48) In view of the fact that the subsidy amount established for one Indian exporting producer was found to be below the *de minimis* threshold, the Commission has analysed whether the exclusion of those non subsidised imports would significantly alter the above conclusions. On this basis it was found that the level of the increase of the subsidised Indian imports would be comparable, both in absolute volume and relative terms, i.e. doubled between 1996 and IP, and more specifically, after a drop in 1999, also doubled between this year end the IP. As far as average import prices are concerned, even though the trend during the period under consideration would be increasing, the Indian import prices would still significantly undercut the Community industry prices during the IP, i.e. from 23 % to 28 %. It is therefore concluded that even if the imports from the company for which a *de minimis* injury margin was established would be excluded for the purpose of the above analysis, the conclusions thereof would remain similar.

### 3. Situation of the Community industry

- (49) Following the abovementioned exclusion of one cooperating Community producer from the definition of the Community industry, the provisionally established injury indicators have been revised accordingly. The data below show the evolution of the injury indicators during the period under consideration pertaining to the two remaining cooperating Community producers. For confidentiality reasons, since the Community industry only consists of two Community producers, the figures have been indexed.

*Production, production capacity and capacity utilisation (1996 = 100)*

	1996	1997	1998	1999	2000	IP
Production volume	100	112	117	112	122	118
Production capacity	100	110	116	118	130	135
Capacity utilisation	100	101	101	95	94	88

- (50) The Community industry's production volume increased by 18 % during the period under consideration. It should be noted that the major increase took place between the years 1996 and 1998. Thereafter the production volume followed an unsteady curve and reached, in the IP, a level comparable to the level it reached in 1998.
- (51) The production capacity was established on the basis of the theoretical maximum hourly output of the machines installed, multiplied by the annual theoretical working hours, considering maintenance and other similar production interruptions.

- (52) The increase of the production capacity developed in two steps. The first increase took place between 1996 and 1998, i.e. an increase of 16 %. It is noted that the Community industry production volume also increased to a comparable extent during that period, resulting in a stable and high level of capacity utilisation. The second increase occurred between 1999 and the end of the IP, when production capacity rose by around 14 %. During this period, the production level remained relatively stable, which explains the decrease of the capacity utilisation rate.

*Stocks (1996 = 100)*

	1996	1997	1998	1999	2000	IP
Stocks	100	62	10	5	25	72

- (53) The decrease of the level of stocks in the period 1996 to 1999 is explained by a significant increase of sales volume, namely as compared to the production volume during the same period. Thereafter, the level of stocks increased due to the significant decrease of sales volume while production slightly increased.

*Sales volume, market share and growth (1996 = 100)*

	1996	1997	1998	1999	2000	IP
Sales volume	100	116	121	116	116	106
Market shares	100	98	94	94	92	89

- (54) The Community industry's sales volume increased by 6 % during the period under consideration. It reached a peak during the year 1998 (an increase of 21 % as compared to 1996) and then it decreased by 13 % in the subsequent period.
- (55) During the period 1996 to 1998, the Community industry's sales volume increased less significantly as compared to the evolution of the overall consumption in the Community. Subsequently, its decrease was more marked than the decrease of the overall demand for PTY observed in the Community between 1998 and the IP. This explains the fact that market shares constantly decreased.
- (56) The Indian exporting producers claimed that the Commission should have taken into account the market share evolution of all Community producers during the period under consideration, and not only the market share evolution of the Community industry. This would have shown an overall increase in market share.
- (57) It should be noted that according to Article 8(1) of the basic Regulation, the determination of the injury shall be taken to mean material injury to the Community industry. Therefore, the determination of injury is limited to the overall economic situation of the cooperating Community producers constituting the Community industry as defined in recital 40. Besides this, the table in recital 86 shows that the market share of the other Community producers also decreased, to a significant extent, during the period under consideration. In fact, the role of the other Community producers has been evaluated in the context of the question of causation. The argument was therefore rejected.

*Sales price (1996 = 100)*

	1996	1997	1998	1999	2000	IP
Average sales price	100	100	100	93	90	95

- (58) The average Community industry sales price remained stable between 1996 and 1998 and decreased by 5 % during the subsequent period. It is recalled that such a comparison of prices for comparable product types sold in the Community market during the IP established margins of undercutting of 23 % to 25 %.

*Profitability (1996 = 100)*

	1996	1997	1998	1999	2000	IP
Profitability	100	125	106	40	- 223	- 254

- (59) The Community industry's profitability expressed in terms of return on net sales in the Community market fell sharply over the period under consideration from a positive level in 1996 to a significant negative level during the IP.

*Investments and ability to raise capital (1996 = 100)*

	1996	1997	1998	1999	2000	IP
Investments	100	59	183	90	69	18

- (60) The level of the investments was especially high in the years 1996 and 1998, and is to be related to the increase of production capacity. During the IP, the investments were extremely limited in comparison to these years.
- (61) 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 period under consideration. 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 (1996 = 100)*

	1996	1997	1998	1999	2000	IP
Return on assets	100	170	130	25	- 5	- 45

- (62) The return on net assets (expressing the profitability as a percentage of the total assets of the Community industry) was considered in this case an adequate indicator.
- (63) The evolution of the return on net assets was consistent with the profitability figures and showed a clear deterioration of the financial situation of the Community industry, especially subsequently to the year 1998.
- (64) The Indian exporting producers questioned the level of the return on net assets on the basis of the respective price development of PTY and of the main raw material used to produce PTY (namely POY). It was argued that the average PTY sales price increased more than the purchase price of POY and should therefore result in a positive development of the return on net assets.
- (65) It should firstly be noted that in the period 1999 to IP the average price of PTY and POY developed similarly. Secondly, consideration should be taken of the other elements of cost, i.e. other materials used as well as the cost of manufacturing. All these elements have been verified and taken into account for the establishment of the profitability and the return on investments in the period under consideration. The evolution of the value of the assets should also be considered in this respect. The argument was therefore rejected.



*Cash flow (1996 = 100)*

	1996	1997	1998	1999	2000	IP
Cash flow	100	163	67	195	72	43

- (66) The figures concerning the cash-flow confirmed the deterioration of the financial situation of the Community industry. It however remained positive throughout the period under consideration and reached a peak in 1999. This peak mainly relates to the cash inflows in 1999 of the significant number of sales transactions recorded in the year 1998 which were actually cashed in 1999.

*Employment, wages and productivity (1996 = 100)*

	1996	1997	1998	1999	2000	IP
Employees	100	106	120	129	131	123
Wages	100	117	125	142	141	145
Productivity	100	105	98	87	93	95

- (67) The number of employees increased by 23 % over the period under consideration. Employment costs increased by 45 % over the same period.
- (68) Productivity decreased by 5 % during the period under consideration.

*Recovery from past dumping*

- (69) In the period 1996 to 1998, the financial results of the Community industry were satisfactory showing that it had, at least partially, recovered from the impact of the dumped imports originating in third countries and for which anti-dumping measures have been imposed in 1996. Thereafter, between 1999 and the IP, in view of the increase of Indian subsidised imports, the situation of the Community industry became precarious again.

*Actual margins of subsidy*

- (70) The definitive margins of subsidy are clearly significant. Given the volume and the price of the subsidised imports, the impact of these margins of subsidy cannot be considered negligible.

**4. Conclusion on injury**

- (71) The provisional conclusion that the Community industry suffered material injury during the IP within the meaning of Article 8 of the basic Regulation is confirmed. The precarious situation of the Community industry became apparent in the period subsequent to the year 1998. Indeed, between 1996 and 1998 the Community industry production volume increased (+17 %) and capacity utilisation rate was high, sales volume also increased (+21 %) while sales prices remained stable and the industry was still profitable (in terms of return on net turnover, return on total assets and cash flow position). Consequently the Community industry was in a position to increase its investments, number of employees and the cash flow remained favourable during this period. This positive development is explained by the combined positive effect of the introduction of anti-dumping measures against Indonesia, Thailand, Taiwan and Malaysia, restoring fair trade on the Community market, and by the expansion of the Community consumption of PTY.
- (72) After 1998, the situation of the Community industry started to significantly deteriorate. Even if the production volume remained stable, the production capacity utilisation decreased by seven percentage points, the sales volume decreased by 13 %, while sales prices also decreased by 5 %. Consequently the Community industry started to incur significant losses and the level of investments was also affected.
- (73) The Indian exporting producers argued that some of the above detailed injury indicators developed positively during the period under consideration and accordingly did not point towards injury.

- (74) It should firstly be noted that, in accordance with Article 8(5) of the basic Regulation, none of the economic factors listed in this article necessarily give decisive guidance as to whether the Community industry suffers material injury. More importantly, while it is true that the economic situation of the Community industry improved in the period 1996 to 1998, the figures and above conclusions clearly show, in the subsequent period, a strong deterioration of the situation of the Community industry and material injury being suffered by the Community industry in the IP. The argument was therefore rejected and the above conclusions, i.e. that the Community industry suffered material injury, confirmed.

## G. CAUSATION

### 1. Introduction

- (75) In accordance with Article 8(6) of the basic Regulation, it was examined whether the material injury suffered by the Community industry, as defined in recital 40, had been caused by the subsidised imports from India. In accordance with Article 8(7) of the basic Regulation, the Commission also examined other known factors which might have injured the Community industry in order to ensure that any injury caused by those factors was not wrongly attributed to the subsidised imports.

### 2. Effect of the subsidised imports

- (76) Between 1996 and the IP, the volume of imports originating in India tripled from 7 583 tonnes to 22 683 tonnes. They increased in two steps: a first time between 1996 and 1998, raising by 138 %, and then in the period from 1999 to IP, raising by 92 %, from 11 824 tonnes to 22 683 tonnes, i.e. an increase of around 10 800 tonnes. It should be noted that, while the first increase took place while the Community market was still expanding, the second one occurred at a time when the Community consumption faced a significant downturn (-14 000 tonnes). During the same period, i.e. from 1999 to the IP, the Community industry's sales volume decreased by around 13 %.
- (77) The same can be observed in relative terms. The Indian market share increased from 2,7 % in 1996 to 6,7 % in the IP. This raise occurred in two phases: between 1996 and 1998, from 2,7 % to 4,9 %, and between 1999 and the IP, from 3,3 % to 6,7 %.
- (78) In the year 1999, the Indian import price reached the low level of 1,4 euro per tonne on average, a decrease of around 17 % as compared to the previous year and of 26 % as compared to 1996. By means of this low price policy they were in a position to increase their sales volume and regain their lost market shares in 2000 and the IP. The prices then reached their 1998 level, but were still on average lower than their level in the years 1996 and 1997.
- (79) It should be recalled that, during the IP, significant undercutting margins have been established, ranging between 23 % and 28 %. This clearly shows the strong price pressure exerted by the Indian imports during the IP. Indeed, with a market share of 6,7 % during the IP, such a level of price undercutting certainly had a significant negative impact on this transparent and depressed Community market, and for a product which is extremely price sensitive.
- (80) At the same time, the Community industry experienced a market share decrease of around one percentage point between 1996 and 1998, and of another percentage point, between 1999 and the IP. This decrease should be seen in the light of the Community industry price developments. It indeed had to lower its prices by 7 % in the year 1999 as compared to 1998, in order to maintain its position on the market. It should be recalled that during the same year, the Indian import prices decreased by 17 %. Thereafter, the Community industry price remained relatively stable at a level, however, which was not sufficient to maintain a positive financial situation. Unlike the Indians, the Community industry was not in a position to improve its average sales price in the Community in the period 2000 to IP.

- (81) In the period 1996 to 1998, in spite of increasing Indian imports, the Community industry developed favourably since fair trade, on an expanding Community market, was restored following the imposition of anti-dumping duties on imports of PTY originating in various countries (see below). From 1999 onwards, however, the financial situation of the Community industry significantly deteriorated. As explained above, the sales volume and prices started to decrease and the profitability, return on investments as well as cash flow were seriously affected. This coincides with the period when Indian prices significantly decreased and import volume started to significantly increase, i.e. they doubled their import volume in the period 1999 to IP.

### 3. Effect of all other known factors

#### *Imports originating in other third countries*

- (82) Since no additional information or comments have been brought forward by any interested party, the conclusion drawn in recital 121 of the provisional Regulation that the imports originating in Indonesia and Taiwan are also likely to have contributed to the injury suffered by the Community industry during the IP is therefore confirmed.
- (83) In this very transparent market, significant imports of low priced PTY from any country of origin are likely to cause injury to the Community industry to a degree that can be considered material. Should the impact of Indian imports be however quantified as compared to the impact of the imports from Indonesia and Taiwan, one should consider the significant increase of Indian imports in the period 1999 to IP, both in absolute and relative terms, as well as the Indian average import price during the IP which was, on average, lower than the Indonesian and Taiwanese imports prices, namely considering that these imports are partly subject to anti-dumping duties. Under these circumstances, it can be concluded that the impact of the Indian imports was certainly not less important than the impact of the Indonesian and Taiwanese imports, and that therefore there was a genuine and substantial link between the imports from India and the precarious situation of the Community industry.
- (84) As to the imports from remaining third countries, in absence of any comments, the provisional conclusion that these imports cannot be considered as having had injurious effects on the Community industry is also confirmed.

#### *Non subsidised imports*

- (85) In view of the fact that the subsidy amount established for one of the Indian exporting producers was found to be below the *de-minimis* threshold, the Commission examined whether these imports have also caused injury to the Community industry. In the parallel anti-dumping proceeding concerning imports of PTY originating in India, it was definitively concluded (reference to the definitive Anti-dumping Regulation) that the imports of, amongst others, this specific Indian producer were dumped and caused injury to the Community industry. However, this does not affect the conclusion that the subsidised imports from India caused injury to the Community industry.

#### *Other Community producers*

- (86) The table below, based on information received by certain companies and contained in the complaint, shows the evolution of sales volume and market share of the other Community producers.

	1996	1997	1998	1999	2000	IP
Sales volume (tonnes)	134 366	144 831	150 544	136 097	142 797	131 924
Market share	47,0 %	42,4 %	40,8 %	38,5 %	39,6 %	38,9 %

- (87) From the above data, it can be seen that the other Community producers' sales volume of PTY in the period 1996 to IP significantly decreased both in absolute and relative terms. In addition to this, it should be recalled that a significant proportion of these other Community producers were actually part of the original complainants. These companies were not in a position to fully cooperate to the present investigation due to a lack of resources, but fully supported the proceeding and totally or partially cooperated to other similar recent proceedings.
- (88) Given the above, it is concluded that the other Community producers have not contributed to the injury suffered by the Community industry during the IP.

*Investments of the Community industry*

- (89) Certain interested parties argued that the heavy investments made by the Community industry during the period under consideration actually also caused a deterioration of its financial situation.
- (90) As explained above, the investments made by the Community industry were related to an increase of its production capacity. The first capacity increase was made at a time in which Community consumption was expanding, between 1996 and 1998. Therefore, the Community industry increased its production volume and was in a position to increase the sales volume as well, in line with the expansion of the Community market. In view of this positive development, the Community industry expanded its production capacity a second time between 1999 and the IP. The increase amounted to around 10 000 tonnes. This time, however, the Community industry could not increase its production and sales volume in order to fill its newly installed capacity, and therefore the capacity utilisation rate significantly decreased. As the PTY industry is capital intensive and that fixed costs are accordingly significant, the decrease of the production and sales volume in the period 1999 to IP had a direct negative impact on the financial situation of the Community industry. It is to be noted that the price for the main raw material remained stable in the same period.
- (91) The capacity increase in the period 1999 to IP, therefore, indeed had a negative impact on the financial situation of the Community industry. This occurred because it coincided with a decrease of the production and sales volume of the Community industry. The latter decrease, however, was caused by the pressure on the Community market of the Indian imports of PTY. Even though the Community consumption decreased by around 14 000 tonnes during the period 1999 to IP, the Indian import volume of PTY increased by around 10 000 tonnes during the same period, through an aggressive price behaviour. Indeed, Indian import prices of PTY were significantly undercutting the Community industry prices during the IP and the relevant import volume increased to such an extent that the Community industry was not able to increase, or even to limit its decreasing sales and production volume and consequently limit the negative impact of the installed over-capacity.
- (92) It is considered that if the costs related to the investments, and therefore the increase of the installed capacity, indeed had a negative impact on the financial situation of the Community industry in the period 1999 to IP, this impact was however exacerbated by the fact that the Community industry had to decrease its sales, production volume and sales prices. This was in turn due to the pressure of the low prices of the Indian imports, the volume of which more than doubled in the same period, when the overall Community consumption decreased.
- (93) It is therefore clear that in the absence of subsidised imports from India, the Community industry would have been able to maintain its sales prices at the level of 1998 and to increase its volume of production and sales. This would also have led to economies of scale and, under fair trade circumstances, the Community industry would have been able to absorb most, if not all, additional fixed costs related to its investments.

*Contraction in demand*

- (94) Whilst Community consumption increased overall during the period considered, it decreased in the period 1999 to IP. Even though this decreasing trend coincided with the decrease of the Community industry sales volume, it should firstly be noted that the Community industry's sales volume proportionally decreased more than the Community consumption. Secondly, during the same period, imports originating in India more than doubled. Therefore, while it cannot be excluded that this contraction in demand had an injurious effect on the situation of the Community industry, this must be considered minor by comparison to the effects of the subsidised imports.

*Global economic downturn*

- (95) The Indian exporting producers claimed that the Community industry has suffered injury due to the world global economic downturn since the end of 2000, and that this should be taken into consideration and quantified for the purpose of the causation analysis.
- (96) It should firstly be noted that the above analysis shows that the economic situation of the Community industry already started to deteriorate before the end of the year 2000. Secondly, under a global economic downturn, one could expect that all operators in the Community be similarly affected. However, at a time when the market was down, the Indian exporting producers managed to significantly increase their sales volume in the Community. As explained above, the Community industry sales volume decreased proportionally more than the Community consumption. In addition, the impact of the global downturn is already reflected in the above mentioned contraction in demand.
- (97) In view of the above, even if it can not be excluded that the economic downturn also had an impact on the situation of the Community industry, it is concluded that, in comparison with the price depressive impact of the subsidised imports, it is of minor importance.

*Export performances of the Community industry*

- (98) The Indian exporting producers argued that the loss of the Community industry's market share is due to the fact that it has opted for export sales rather than domestic sales. The Community industry's increase in export volume shows that it is competitive on markets where fair trade prevails. It should also be recalled while indeed the export volume quadrupled during the period under consideration, it remained marginal when compared to the total sales of the Community industry. Finally, it is noted that the profitability of the Community industry is established by reference to its sales on the Community market only. In the absence of any further comments under these headings, the conclusions under recitals 126 to 127 of the provisional Regulation are confirmed.

*Price of raw material*

- (99) No comments have been received in this respect, and therefore the conclusions under recitals 123 to 125 of the provisional Regulation, that the price of the raw material of the Community industry can not be responsible for the injury being suffered by the Community industry, are confirmed.

*Other arguments raised by the interested parties*

- (100) The Indian exporting producers argued that the decrease of the production volume during the IP is to be attributed to a deliberate shutdown of a plant of one of the two Community producers constituting the Community industry. The investigation, however, showed that there was no closure of a plant during the IP. The producer in question confirmed that no plant shutdown took place and argued that any reduction in their production volume during the IP was due to the effect of the increase in low priced PTY on the Community market. The argument was therefore rejected.

#### 4. Conclusion on causation

- (101) In conclusion, it is confirmed that the subsidised imports have had injurious effects on the Community industry, and in particular in the period 1999 to IP, the situation of which is characterised by a decreasing sales volume, depressed sales prices, loss of market share and significant deterioration of the financial situation, notably in terms of profitability and return on investments. Indeed, during the same period the Indian import volume significantly increased both in absolute and relative terms at prices which were found to be significantly undercutting the Community industry price.
- (102) The following other known factors were examined: imports originating in other third countries, other Community producers' sales, investments of the Community industry, contraction in demand, global economic downturn, price of raw material and export performances of the Community industry. It was found that some of these factors also have had an injurious effect on the situation of the Community industry. The effect of these factors worsened the significant negative effect on the situation of the Community industry caused by the surge of imports originating in India, which, taken in isolation, have also caused a material injury to the Community industry.
- (103) Given the above analysis, which has properly distinguished and separated the effects of all the known factors from each other and their effect on the situation of the Community industry from the injurious effects of the subsidised imports, and after having ensured that the injury caused by other factors is not attributed to the subsidised imports, it is hereby confirmed that the effect of these other factors was not such as to alter the fact that there exists a genuine and substantial relationship of cause and effect between the subsidised imports and the material injury suffered by the Community industry.

#### H. COMMUNITY INTEREST

- (104) In view of the events that took place after the determination of the provisional findings, i.e. the plant shutdown of Dupont SA, it was re-examined whether, despite the conclusions on injurious subsidisation, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to impose definitive countervailing measures.

##### 1. Community industry and other Community producers

- (105) As explained in the provisional Regulation, there is no reason to doubt the viability and the competitiveness of the Community industry in a situation where normal market conditions apply. The facts have showed, however, that in the absence of fair trade conditions, the existence of the Community industry is seriously jeopardised. Indeed, unfair trade on the Community market already resulted in the shutdown of Dupont SA, that could not survive the current depressed situation of the market. Should measures not be imposed, it could not be excluded that other Community producers would experience the same development.
- (106) It should be recalled that, despite the fact that only two Community producers were in a position to cooperate to the investigation, the proceeding was fully supported by Community producers representing around 75 % of the Community production. As explained above, the other Community producers also saw their market share and sales volume on the Community market eroding.
- (107) The provisional conclusions that it would be in the interest of the Community industry and of the other Community producers to impose measures, are therefore confirmed.

##### 2. Importers

- (108) No replies were received from any importer or trader at the provisional stage. In the provisional Regulation it was concluded that the imposition of measures would not significantly affect their situation.
- (109) In the absence of any further comments provided by interested parties after the imposition of the provisional measures, the above conclusions are confirmed.

### 3. Suppliers of raw material

- (110) In the absence of any comments, the provisional conclusion that it is in the interest of the upstream industry to impose measures is confirmed.

### 4. Users

- (111) At the provisional stage, only one user cooperated. In the absence of any comments or reactions subsequent to the imposition of the provisional measures, the conclusion that the imposition of the measures would not be prejudicial to the viability and competitiveness of the users is confirmed.

### 5. Conclusion

- (112) Not imposing countervailing measures would seriously endanger the existence of the Community industry and of the other Community producers. This is reinforced by the fact that, because of the unfair trade conditions prevailing on the Community market, one Community producer recently had to shutdown its plant in the Community.
- (113) To the contrary, should definitive measures not be imposed, the continued decline in the profitability of the Community industry observed during the period under consideration will be further jeopardised with the risk of further PTY plant closures in the Community.
- (114) In view of the above, the Commission concluded that no compelling reasons exist not to impose definitive countervailing measures.

## I. DEFINITIVE COURSE OF ACTION

- (115) In view of the conclusions reached regarding subsidies, injury, causation and Community interest, it is considered that definitive countervailing measures should be taken in order to prevent further injury being caused to the Community industry by subsidised imports from India.

### 1. Injury elimination level

- (116) For the purpose of establishing the level of measures definitively to be imposed, it is hereby confirmed that the prices of the subsidised imports should be increased to a non-injurious level.
- (117) The Indian exporting producers claimed that the level of profit used in order to calculate the non-injurious price was arbitrarily chosen, because it was based on the highest profit margin observed during the period under consideration.
- (118) It should be recalled that the level of profit considered for the calculation of the non-injurious price should correspond to a level that the Community industry could reasonably expect to achieve in the absence of injurious dumping. The year 1998 was considered a reasonable choice of reference since it was deemed that, during that year, the imports from India had not yet had a depressing effect on the Community industry's prices and that the imports from the countries subject to measures were already at a level similar to that prevailing in the IP. The fact that one Community producer had to be excluded from the definition of the Community industry, and therefore new profitability figures were established for the period under consideration, does not alter the provisional findings that such an industry, in fair market conditions, could reasonably expect to reach a level of profit of 8 % in absence of dumped and subsidised imports.
- (119) Considering the above, the methodology used for establishing the injury elimination level as described in recitals 155 to 157 of the provisional Regulation was confirmed.
- (120) As above in relation to price undercutting margins, the injury margins were likewise reviewed and amended.

## 2. Form and level of the duty

- (121) Since subsidy amounts have been found to be lower than injury elimination margins, the definitive countervailing duty rates to be imposed should correspond to the subsidy amounts established, in accordance with Article 15(1) of the basic Regulation.

Indo Rama Synthetics Limited	4,1 %
Reliance Industries Limited	0 %
Welspun Syntex Limited	9,1 %
Cooperating exporting producers not in the sample	5,2 %
All other companies	9,1 %

- (122) The individual company countervailing 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'.

- (123) Any claim requesting the application of these individual company countervailing 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 <sup>(1)</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

## J. COLLECTION OF THE PROVISIONAL DUTY

- (124) In view of the amount of the countervailable subsidies 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 countervailing duty under Regulation (EC) No 1411/2002 be definitively collected to the extent of the rate of the definitive duty imposed or the rate of the provisional duty if the latter was lower,

HAS ADOPTED THIS REGULATION:

### Article 1

1. A definitive countervailing duty is hereby imposed on imports of polyester textured filament yarn (PTY) falling within CN code 5402 33 00 and originating in India.

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

<sup>(1)</sup> European Commission — J-79 5/17 — B-1049 Brussels.



Company	Rate of duty (%)	Taric additional code
Chhabria Polyester Corporation Mehta House, 1st Floor, 91, Bombay Samachar Marg, Mumbai 400 023, India	5,2 %	A 388
Indo Rama Synthetics Limited 51-A, Industrial Area, Sector III, Pithampur, 453 001, Distt. Dhar, Madhya Pradesh, India	4,1 %	A 389
Microsynth Fabrics Limited 6, Jai Tirath Mansion, Barrack Road, Behind Metro Cinema, Mumbai 400 020, India	5,2 %	A 390
Modern Petrofils NH No 8, Baman Gam, Taluka: Karjan, Distt: Baroda 391 210, India	5,2 %	A 391
Nova Petrochemicals Limited 402, Trividh Chambers, Ring Road, Surat, India	5,2 %	A 392
Parasrampur Industries Limited 208, Nariman Point, Mumbai 400 021, India	5,2 %	A 393
Reliance Industries Limited Maker Chambers IV, Nariman Point, Mumbai, 400 021, India	0,0 %	A 394
Sarla Polyester Limited 304, Arcadia, 195 Nariman Point, Mumbai 400 021, India	5,2 %	A 395
Supertex Industries Limited Balkrishna Krupa, 2nd Floor, 45/49, Babu Genu Road, Princess Stree, Mumbai 400 002, India	5,2 %	A 396
Welspun Syntex Limited Kamani Wadi, 1st Floor, 542, Jaganath Shankar Sheth Road, Chira Bazar, Mumbai 400 002, India	9,1 %	A 397
All other companies	9,1 %	A 999

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

#### Article 2

The amounts secured by way of the provisional countervailing duty on imports of PTY originating in India pursuant to Regulation (EC) No 1411/2002 shall be collected at the rate of the duty definitively imposed or the rate of the provisional duty if the latter was lower. Amounts secured in excess of the definitive rates of the countervailing duty shall be released.

#### Article 3

The anti-subsidy proceeding concerning imports of PTY originating in Indonesia is hereby terminated.

#### 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, 26 November 2002.

For the Council  
The President  
B. BENDTSEN