

Proposal for a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyester textured filament yarn (PTY) originating in India

(2003/C 45 E/27)

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EXPLANATORY MEMORANDUM

On 9 November 2001, the Commission initiated an anti-dumping investigation with regard to imports into the Community of polyester textured filament yarn originating in India.

A parallel anti-subsidy proceeding concerning imports of polyester textured filament yarn originating in India and Indonesia was initiated the same day.

The investigations revealed the existence of injurious dumping and subsidisation, and consequently the Commission, by Regulation (EC) No 1411/2002 and (EC) No 1412/2002, imposed provisional anti-dumping and countervailing duties on imports from India.

The attached proposal for a Council Regulation is based on the definitive findings on dumping, injury, causation and Community interest which confirmed the provisional findings.

It is therefore proposed that the Council adopt the attached proposal for a Regulation which should be published in the *Official Journal of the European Communities* no later than 30 November 2002.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

A. PROVISIONAL MEASURES

- (1) The Commission, by Regulation (EC) No 1412/2002 ⁽²⁾ (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports into the Community of polyester textured filament yarn (hereinafter 'PTY') originating in India.
- (2) Simultaneously, the Commission also imposed, by Regulation (EC) No 1411/002 ⁽³⁾, a provisional countervailing duty on the imports of PTY originating in India.
- (3) It is recalled that the investigation period of dumping 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.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. As last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

⁽²⁾ OJ L 205, 2.8.2002, p. 50.

⁽³⁾ OJ L 205, 2.8.2002, p. 26.

B. SUBSEQUENT PROCEDURE

- (4) Following the imposition of a provisional anti-dumping duty on imports of PTY originating in India, some interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.
- (5) The Commission continued to seek and verify all information it deemed necessary for its 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 anti-dumping 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.
- (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 comments 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(4) of Regulation (EC) No 384/96 (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 injury elimination level calculations as explained below under recital of this Regulation.
- (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 (11) to (13) of the provisional Regulation are confirmed.

D. SAMPLING

- (14) No comments concerning the sampling of Indian exporting producers were received and, therefore, the conclusions set out in recitals (14) to (23) of the provisional Regulation are hereby confirmed.

E. DUMPING**1. Normal Value**

- (15) Following the adoption of provisional measures, the three investigated Indian exporting producers contested, for different reasons, the findings for the determination of cost of production and selling, general and administrative ('SG&A') expenses used in the ordinary course of trade test and for the calculation of normal value.
- (16) One exporting producer alleged that certain clerical errors had incurred concerning the consumption ratio and occasional double-counting of individual raw materials which affected the cost of production of the product concerned.
- (17) This claim was partly rejected in view of the failure of the exporting producer to submit the relevant information for certain raw materials in good time in order to be verified. Some information was only received following the verification visit. Furthermore and in any event, the Commission based its determination on information submitted prior to the on-spot verification.
- (18) The same exporting producer argued that it had duly provided the SG&A details for the product concerned but still the Commission overstated these expenses because certain 'establishment expenses' (i.e. administrative expenses), as mentioned in the company's Annual Report, and included in the SG&A, in fact concerned the manufacturing expenses. Also the exporting producer claimed that the foreign exchange profits have been disregarded in the computation of the SG&A expenses.
- (19) Article 2(5) of the basic Regulation provides that '[...] Consideration shall be given to evidence submitted on the proper allocation of costs, provided that it is shown that such allocations have been historically utilised'. For the computation of SG&A expenses, the Commission based itself on the audited information included in the Annual Report of the company since the latter had only partially completed the relevant parts of the questionnaire. Therefore, no information was available which could allow the consideration of a different allocation. The establishment expenses in the Annual Report formed part of an account grouping which was distinct and separate from the manufacturing expenses. Therefore, it was concluded that all these establishment expenses have not been incorporated in the cost of manufacturing reported by the company and that they should be incorporated in the SG&A expenses. As far as the foreign exchange profits are concerned, this amount was included in the manufacturing expenses of the Annual Report of the company. It was, therefore, concluded that this amount was already incorporated in the cost of manufacturing reported by the company. Consequently, this claim was rejected and the original calculation with regard to this point is hereby confirmed.
- (20) Another exporting producer requested a different method of allocation for the financing costs included in the SG&A expenses. The exporting producer argued that while for working capital turnover was the appropriate method of allocation, in the case of term loans which were taken as an investment for production facilities, the most appropriate method for allocation would be the production of the respective products. Furthermore, it argued that in view of the chain of successive products produced in the same facilities, due account should be taken to avoid double-counting.
- (21) The first claim, as to the method of calculation, was accepted because it was shown that it was indeed more appropriate for these costs. The SG&A expenses were therefore revised before being used in the ordinary course of trade test and in the construction of normal value. As to the second claim, it had to be rejected since the information verified during the on-spot verification did not point to any double-counting and therefore such a claim could not be substantiated.

- (22) All exporting producers argued that it was not proper to include in domestic selling expenses an amount for ocean freight because no such freight expenses were incurred.
- (23) This claim was accepted and the SG&A expenses were revised before being used in the ordinary course of trade test and in the construction of normal value.
- (24) Another exporting producer claimed (1) that the Commission had double-counted and thereby pro-rata increased financial costs within the SG&A expenses; (2) that the Commission departed from the product or domestic market-wide SG&A expenses allocation and resorted to division-wide SG&A expenses, thus including products other than the product concerned in the allocation; (3) that the Commission departed from the IP and resorted to the last financial year ending within the IP both for the cost of manufacturing and the SG&A expenses calculation and (4) that the Commission grouped certain product types and thus departed from its own product control numbers used to ensure a fair comparison.
- (25) As far as the first point is concerned, the claim was accepted and therefore the SG&A expenses regarding these costs were modified. As far as the second point is concerned, the provision of Article 2(5) of the basic Regulation as mentioned in recital (19) above is again recalled. During the on-spot verification no records were brought to the attention of the Commission demonstrating that the company had historically utilised a product or market-wide allocation of costs. Therefore, this claim was rejected and the division-wide allocation of SG&A expenses was confirmed. As for the third point and with regard to the SG&A expenses, the claim was partly accepted and the Commission having received audited information concerning the most recent financial year which comprised the second half of the IP proceeded to a new calculation of these expenses incorporating the latest relevant information available. As far as the cost of manufacturing is concerned, this claim was rejected because the Commission's calculation was based on the total production of the intermediate product while the exporting producer had provided data regarding only a part of the total production. Therefore, it was considered that the Commission's calculation derived from a more representative basis encompassing all production. As to the fourth point, the claim was rejected because no grouping of different product types outside the scope of the product control numbers used to ensure a fair comparison had been carried out by the Commission. Only groupings of certain types of an intermediate product used for the production of the product under investigation were made in accordance with a table provided by the exporting producer itself in order to calculate the cost of production used in the ordinary course of trade test and the construction of normal value.

2. Export Price

- (26) No claims were made concerning the determination of the export price. On this basis, the findings set in recital (32) of the provisional Regulation are confirmed.

3. Comparison

(i) *Duty drawback under Duty Entitlement Passbook ('DEPB')*

- (27) All Indian exporting producers reiterated their claim that the adjustment requested pursuant to Article 2(10)(b) or alternatively under Article 2(10)(k) of the basic Regulation on the normal value for the benefits received under the DEPB scheme on a post-export basis should have been granted (recital (34) of the provisional Regulation).
- (28) It should be borne in mind that Article 2(10) chapeau refers to '[...] due allowance, [t]o be made in each case, on its merits, for differences in factors which are claimed, and demonstrated, to affect price comparability [...]' (emphasis added). Pursuant to Article 2(10)(b) of the basic Regulation an

adjustment is granted provided two conditions are met cumulatively: first, import charges are borne by the like product and by materials physically incorporated therein when intended for consumption in the exporting country and second, these import charges are refunded or not collected when the product is exported to the Community. These conditions provide the basis on which any difference affecting price comparability shall be established for the factors in question. As at the provisional stage, no conclusive evidence was found with regard to the first requirement. Consequently, an adjustment for duty drawback could not be granted. Pursuant to Article 2(10)(k) 'an adjustment may also be made for differences in other factors [...] if it is demonstrated that they affect price comparability as required under this paragraph, in particular that customers consistently pay different prices on the domestic market because of the difference in such factors' (emphasis added). In the current case, none of the above-mentioned requirements were demonstrated since the exporting producers did not produce any conclusive evidence that would substantiate their claim. Therefore, an adjustment for differences in other factors could not be granted either and the findings set out in recital (34) of the provisional Regulation are hereby confirmed.

(ii) *Duty drawback under Advance License Scheme ('ALS')*

- (29) Two Indian exporting producers reiterated their claim that the adjustment requested pursuant to Article 2(10)(b) or alternatively under Article 2(10)(k) of the basic Regulation on the normal value for the benefits received under the ALS scheme should have been granted (recital (34) of the provisional Regulation). Furthermore, both exporting producers argued that in the context of the parallel anti-subsidy proceeding, the Commission had investigated in greater detail and accepted the said scheme as non-countervailable. Therefore, and in order to remedy this alleged contradiction between the two proceedings, the said allowance should have been granted. The exporting producers additionally argued that the requirement to demonstrate that the input raw materials for production in the exporting country contain a duty component imposed an undue burden of proof.

- (30) It is recalled that each anti-dumping proceeding is assessed on its own merits and is examined on the basis of its own factual and legal circumstances which may differ from all other proceedings. Therefore, the argument regarding the parallelism between two different proceedings was considered irrelevant. In any event, in recital (66) of Commission's Regulation (EC) No 1411/2002, it was stated that '[...] both schemes [Advance Licence and Advance Licence for intermediate supply] can be considered countervailable. However, the investigated companies were able to demonstrate that the quantities of imported materials, which were exempted from import duties, did not exceed the quantities used for the exported goods'. This quotation, however, only set out a general principle. In this respect, the requirements of Article 2(10) chapeau, 2(10)(b) and 2(10)(k) of the basic Regulation as stated in recital (28) above are recalled. Again as in the case of the provisional Regulation, the requirements of the basic Regulation were not demonstrated since the exporting producers did not produce any conclusive evidence that would substantiate the full amounts of their respective claims. It is also noted that to require the exporting producers to demonstrate that the input raw materials for production in the exporting country contain a duty component did not impose an undue burden of proof. At the time of adoption of the provisional measures due allowance was granted for such charges when substantiated by the accounting records of the exporting producers; otherwise the claims were rejected. This indicated that the companies were in a position to demonstrate as requested in the questionnaire the existence of any import charges borne by the like product and by materials physically incorporated therein, when intended for consumption in India. Consequently and for the reasons stated in recital (28) above, an adjustment for duty drawback could not be granted and the findings set out in recital (34) of the provisional Regulation are confirmed.

(iii) *Excise duty*

- (31) One exporting producer reiterated its claim for 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.

- (32) At the time of the adoption of the provisional measures, it was found that the company was indeed refunded excise duty upon export of the product concerned. However, since the company had failed to demonstrate that the full amount of this indirect tax was refunded, the claim had been adjusted downwards. Following the adoption of the provisional measures, the exporting producer in question submitted, as requested by the Commission, further supplementary information and documentation to substantiate the claim which was verified. In the context of the present case, this information was considered conclusive and therefore the full amount of the claim was granted. Consequently, the findings set out in recital (35) of the provisional Regulation were modified.

(iv) *Sales tax*

- (33) Another exporting producer reiterated its claim that as a result of the Indian Government's policy to encourage the setting up of plants in less developed areas, companies were exempted from the payment of sales tax and requested an adjustment to be granted to that effect. The information submitted and the on-spot verification showed that all domestic sales invoices stated that the exporting producer in question was exempt from the payment of this tax, which was not recovered separately in the invoices. Therefore, it was not demonstrated that the company collected on domestic sales and deposited with the Government treasury the said tax and no such sales tax was 'borne by the like product' sold in the domestic market. Consequently, the findings set out in recital (36) of the provisional Regulation are confirmed.

(v) *Level of trade*

- (34) One Indian exporting producer reiterated its claim for an adjustment for differences in the level of trade between sales of the product concerned on the domestic and export markets (recital (37) of the provisional Regulation).
- (35) However, the information submitted in the questionnaire reply and during the on-spot verification visit indicated that there were no consistent and distinct differences in functions and prices for the different levels of trade in the domestic market of India. No new information was submitted. Consequently the findings set out in recital (37) of the provisional Regulation are confirmed.

4. Dumping Margin

- (36) In the absence of any comments or new information, the methodology set out in recitals (39) to (44) of the provisional Regulation is confirmed.
- (37) The comparison of the revised weighted average normal value with the weighted average export price by product type on an ex-factory basis showed the existence of dumping for all investigated exporting producers. The weighted average dumping margin calculated for the cooperating companies not included in the sample was also revised pursuant to Article 9(6) of the basic Regulation. The revised calculations have also affected the residual dumping margin. In view of the high level of cooperation the residual dumping margin is set at the level of the highest dumping margin established for a cooperating exporting producer.
- (38) The definitive dumping margins as a percentage of the CIF import price duty unpaid are as follows:

Indo Rama Synthetics Limited: 10,7 %

Reliance Industries Limited: 6,1 %

Welspun Syntex Limited: 17,0 %

Cooperating exporting producers not in the sample: 8,9 %

Residual dumping margin: 17,0 %.

F. COMMUNITY INDUSTRY

- (39) 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 price imports on the Community market. In view of the definitive nature of this event, it was no longer considered appropriate to treat Dupont SA as being part of the Community industry. Consequently, for the determination of the definitive findings, it was considered if the Community industry should be defined as consisting of two remaining cooperating Community producers, namely Unifi Textured yarns Ltd and Sinterama SpA.
- (40) Therefore it was verified whether these two companies still accounted for a major proportion of the Community production as set out by Article 5(4) 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 above mentioned article. Consequently these two companies constitute the Community industry in full accordance with Article 4(1) of the basic Regulation.
- (41) 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.
- (42) 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.

G. INJURY**1. Community consumption**

- (43) In the absence of any new information, the provisional findings concerning Community consumption as described in recitals 54 to 55 of the provisional Regulation are confirmed. Throughout the period under consideration Community consumption developed as follows:

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

2. Imports from India

	1996	1997	1998	1999	2000	IP
Indian imports	7 583	16 992	18 064	11 824	18 752	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

- (44) 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.
- (45) 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 overall Community consumption decreased.
- (46) 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.
- (47) In the absence of any comments concerning the volume and price of imports from India, the provisional findings as described in recitals (56) to (58) of the provisional Regulation are confirmed.
- (48) 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 (59) and (61) of the provisional Regulation, remained however unchanged. It is recalled that, for the purposes of analysing 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.
- (49) 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.

3. Situation of the Community industry

- (50) Following the above mentioned 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

- (51) 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.
- (52) 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.

- (53) 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

- (54) 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

- (55) 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.
- (56) 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.
- (57) 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.
- (58) It should be noted that according to Article 3(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. Besides this, the table below 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

- (59) 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 28 %.

Profitability (1996 = 100)

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

- (60) 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

- (61) 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.
- (62) 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

- (63) 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.
- (64) 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.
- (65) The Indian exporting producers questioned the level of the return on 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 assets.
- (66) 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

- (67) 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

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

- (69) Productivity decreased by 5 % during the period under consideration.

Recovery from past dumping

- (70) 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 dumped imports, the situation of the Community industry became precarious again.

Actual margins of dumping

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

4. Conclusion on injury

- (72) The provisional conclusion that the Community industry suffered material injury during the IP within the meaning of Article 3 of the basic Regulation is hereby 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.
- (73) After the year 1998, the situation of the Community industry started to significantly deteriorate. Even if the production volume remained stable, the production capacity utilisation decreased by 7 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.
- (74) 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.

- (75) It should firstly be noted that, as per Article 3(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.

H. CAUSATION

1. Introduction

- (76) In accordance with Article 3(6) of the basic Regulation, it was re-examined whether the material injury suffered by the Community industry, as defined in recital above, had been caused by the dumped imports from India. In accordance with Article 3(7) of the basic Regulation, the Commission also re-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.

2. Effect of the dumped imports

- (77) 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 %.
- (78) 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 %.
- (79) In the year 1999, the Indian import price reached the low level of EUR 1,4 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.
- (80) 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.
- (81) 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.

- (82) 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

- (83) Since no additional information or comments have been brought forward by any interested party, the conclusion drawn in recital (91) 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.
- (84) 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.
- (85) As to 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.

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
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 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 dumped 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 under consideration, 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 dumped 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 dumped 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 that 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 provisional conclusions, under recitals (96) to (98) 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 (93) to (95) 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 dumped imports have had injurious effects on the Community industry, 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 was 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 dumped imports, and after having ensured that the injury caused by other factors is not attributed to the dumped imports, it is hereby confirmed that these other factors as such do not reverse the fact that there exists a genuine and substantial causal link between the dumped imports and the material injury found.

I. 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 dumping, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to impose definitive anti-dumping 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 hereby 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 hereby confirmed.

5. Conclusion

- (112) Not imposing anti-dumping 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 anti-dumping measures.

J. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level

- (115) Based on the methodology explained in recitals (122) to (125) of the provisional Regulation, an injury elimination level was calculated for the purposes of establishing the level of measures to be definitively imposed.
- (116) 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.
- (117) 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 other 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 imports.
- (118) Considering the above, the methodology used for establishing the injury elimination level as described in recitals (122) to (125) of the provisional Regulation was confirmed.
- (119) As above in relation to price undercutting margins, the injury margins were likewise reviewed and amended.

2. Definitive measures

- (120) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margins found, since they were in all cases lower than the injury margins.

(121) 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.

(122) A definitive countervailing duty corresponding to the amount of subsidy, which was found to be lower than the injury margin in the case of all exporters, has been imposed by Council Regulation (EC) No .../2002. 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. Therefore, the definitive dumping margins established for the cooperating exporting producers in India are thus partly due to the existence of these 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 definitively established. Therefore, the definitive anti-dumping duty should be adjusted to reflect the actual dumping margin remaining after the imposition of the definitive countervailing duty offsetting the effect of the export subsidies.

(123) On the basis of the above, the definitive duties are as follows:

Company name	Dumping margin	Rate of definitive countervailing duty of export subsidies	Rate of definitive anti-dumping duty
Indo Rama Synthetics Limited	10,7 %	4,1 %	6,6 %
Reliance Industries Limited	6,1 %	0 %	6,1 %
Welspun Syntex Limited	17,0 %	9,1 %	7,9 %
Cooperating companies not included in the sample	8,9 %	5,2 %	3,7 %
All other companies	17,0 %	9,1 %	7,9 %

(124) 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'.

(125) 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 ⁽²⁾ 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.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

⁽²⁾ European Commission, Directorate General for Trade, Directorate B, J-79 5/17, B-1049 Brussels.

(126) Since sampling has been used in the investigation of dumping, a new exporters' review pursuant to Article 11(4) of the basic Regulation with the objective of determining individual dumping margins cannot be initiated in this proceeding. However, in order to ensure equal treatment for any genuine new Indian exporting producer and the cooperating companies not included in the sample, it is considered that provision should be made for the weighted average duty imposed on the latter companies to be applied to any new Indian exporting producer who would otherwise be entitled to an individual duty pursuant to Article 11(4) of the basic Regulation.

3. Collection of provisional duties

(127) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, i.e. Regulation (EC) No 1412/2002, should be definitively collected at the rate of the duty definitively imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive 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 definitive 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:

Company	Rate of duty	TARIC additional code
Chhabria Polyester Corporation Mehta House, 1st Floor, 91, Bombay Samachar Marg, Mumbai 400 023, India	3,7 %	A388
Indo Rama Synthetics Limited 51-A, Industrial Area, Sector III, Pithampur, 453 001, Distt. Dhar, Madhya Pradesh, India	6,6 %	A389
Microsynth Fabrics Limited 6, Jai Tirath Mansion, Barrack Road, Behind Metro Cinema, Mumbai 400 020, India	3,7 %	A390
Modern Petrofils NH No 8, Baman Gam, Taluka: Karjan, Distt: Baroda 391 210, India	3,7 %	A391
Nova Petrochemicals Limited 402, Trividh Chambers, Ring Road, Surat, India	3,7 %	A392
Parasrampur Industries Limited 208, Nariman Point, Mumbai 400 021, India	3,7 %	A393
Reliance Industries Limited Maker Chambers IV, Nariman Point, Mumbai, 400 021, India	6,1 %	A394
Sarla Polyester Limited 304, Arcadia, 195 Nariman Point, Mumbai 400 021, India	3,7 %	A395
Supertex Industries Limited Balkrishna Krupa, 2nd Floor, 45/49, Babu Genu Road, Princess Street, Mumbai 400 002, India	3,7 %	A396
Welspun Syntex Limited Kamani Wadi, 1st Floor, 542, Jaganath Shankar Sheth Road, Chira Bazar, Mumbai 400 002, India	7,9 %	A397
All other companies	7,9 %	A999

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

Article 2

Where any new exporting producer in India provides sufficient evidence to the Commission that:

- it did not export to the Community the product described in Article 1(1) during the investigation period (1 October 2000 to 30 September 2001),
- it is not related to any of the exporters or producers in India which are subject to the anti-dumping measures imposed by this Regulation,
- it has actually exported to the Community the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Community,

the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend Article 1(2) by adding the new exporting producer to the companies subject to the weighted average duty rate of 3,7 % listed in that Article.

Article 3

Amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EC) No 1412/2002 on imports of polyester textured filament yarn falling within CN code 5402 33 00 originating in India shall be definitively collected at the rate of the duty definitively imposed by the present Regulation.

Amounts secured in excess of the rates of the definitive anti-dumping duty shall be released.

Article 4

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

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