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Legislation

Contents

I Acts whose publication is obligatory

- ★ **Council Regulation (EC) No 2093/2002 of 26 November 2002 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyester textured filament yarn (PTY) originating in India** 1
- ★ **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** 21
- Commission Regulation (EC) No 2095/2002 of 27 November 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables 38
- Commission Regulation (EC) No 2096/2002 of 27 November 2002 opening an invitation to tender for the reduction in the duty on maize imported into Spain from third countries 40
- ★ **Commission Regulation (EC) No 2097/2002 of 27 November 2002 amending Regulation (EC) No 94/2002 laying down detailed rules for applying Council Regulation (EC) No 2826/2000 on information and promotion actions for agricultural products on the internal market** 41
- Commission Regulation (EC) No 2098/2002 of 27 November 2002 on the issuing of system B export licences for fruit and vegetables 46

II Acts whose publication is not obligatory

Conference of the Representatives of the Governments of the Member States

2002/929/EC:

- ★ **Decision of the Representatives of the Governments of the Member States, meeting within the Council of 18 November 2002 concerning the conclusions of the European Council meeting in Brussels on 24 and 25 October 2002** 48

European Central Bank

2002/930/EC:

- ★ **Decision of the European Central Bank of 21 November 2002 on the distribution of the income of the European Central Bank on euro banknotes in circulation to the national central banks of the participating Member States (ECB/2002/9) 49**

EUROPEAN ECONOMIC AREA

EFTA Surveillance Authority

- ★ **EFTA Surveillance Authority Decision No 125/02/COL of 25 July 2002 releasing Norway from the obligation to apply to certain species the Acts referred to in Points 3 and 4 of Chapter III of Annex I to the Agreement on the European Economic Area, on the marketing of cereal seed (Council Directive 66/402/EEC) and on the marketing of seed of oil and fibre plants (Council Directive 69/208/EEC) 51**

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2093/2002**of 26 November 2002****imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyester textured filament yarn (PTY) originating in India**

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 1411/2002 ⁽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.

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.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).

⁽²⁾ OJ L 205, 2.8.2002, p. 50.

⁽³⁾ OJ L 205, 2.8.2002, p. 26.

- (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 48 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 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 ...'. 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.' 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 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 indented for consumption in India. Consequently and for the reasons stated in recital 28, 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 %
Welspum 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 = 1997	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 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

- (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 42. 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

- (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 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.
- (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 reexamined whether the material injury suffered by the Community industry, as defined in recital 42, had been caused by the dumped imports from India. In accordance with Article 3(7) of the basic Regulation, the Commission also reexamined 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 following). 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 reexamined 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 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community⁽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 2094/2002⁽²⁾. 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.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1.

⁽²⁾ See page 21 of this Official Journal.

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

(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.

⁽¹⁾ European Commission, Directorate General for Trade, Directorate B, J-79 5/17, B-1049 Brussels.

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 %	A 388
Indo Rama Synthetics Limited 51-A, Industrial Area, Sector III, Pithampur, 453 001, Distt. Dhar, Madhya Pradesh, India	6,6 %	A 389
Microsynth Fabrics Limited 6, Jai Tirath Mansion, Barrack Road, Behind Metro Cinema, Mumbai 400 020, India	3,7 %	A 390
Modern Petrofils NH No 8, Baman Gam, Taluka: Karjan, Distt: Baroda 391 210, India	3,7 %	A 391
Nova Petrochemicals Limited 402, Trividh Chambers, Ring Road, Surat, India	3,7 %	A 392
Parasrampur Industries Limited 208, Nariman Point, Mumbai 400 021, India	3,7 %	A 393
Reliance Industries Limited Maker Chambers IV, Nariman Point, Mumbai, 400 021, India	6,1 %	A 394
Sarla Polyester Limited 304, Arcadia, 195 Nariman Point, Mumbai 400 021, India	3,7 %	A 395
Supertex Industries Limited Balkrishna Krupa, 2nd Floor, 45/49, Babu Genu Road, Princess Stree, Mumbai 400 002, India	3,7 %	A 396
Welspun Syntex Limited Kamani Wadi, 1st Floor, 542, Jaganath Shankar Sheth Road, Chira Bazar, Mumbai 400 002, India	7,9 %	A 397
All other companies	7,9 %	A 999

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.

Done at Brussels, 26 November 2002.

For the Council

The President

B. BENDTSEN

**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 ⁽¹⁾, 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 ⁽²⁾, (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 ⁽³⁾, 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.

⁽¹⁾ 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).

⁽²⁾ OJ L 205, 2.8.2002, p. 26.

⁽³⁾ 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 was 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 ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

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:

⁽¹⁾ 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

COMMISSION REGULATION (EC) No 2095/2002
of 27 November 2002
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1947/2002 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 28 November 2002.

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

Done at Brussels, 27 November 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 299, 1.11.2002, p. 17.

ANNEX

to the Commission Regulation of 27 November 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	61,5
	204	62,8
	999	62,1
0707 00 05	052	144,8
	628	196,3
	999	170,6
0709 90 70	052	113,3
	204	114,0
	999	113,7
0805 20 10	052	72,1
	204	77,5
	999	74,8
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	68,5
	999	68,5
0805 50 10	052	83,3
	600	75,2
	999	79,3
0808 10 20, 0808 10 50, 0808 10 90	060	31,2
	400	103,1
	404	112,0
	720	105,0
	999	87,8
0808 20 50	052	108,0
	400	117,2
	720	43,1
	999	89,4

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 2096/2002**of 27 November 2002****opening an invitation to tender for the reduction in the duty on maize imported into Spain from third countries**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals⁽¹⁾, as last amended by Regulation (EC) No 1666/2000⁽²⁾, and in particular Article 12(1) thereof,

Whereas:

- (1) Pursuant to the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations, the Community has undertaken to import a certain quantity of maize into Spain.
- (2) Commission Regulation (EC) No 1839/95 of 26 July 1995 laying down detailed rules for the application of tariff quotas for imports of maize and sorghum into Spain and imports of maize into Portugal⁽³⁾, as amended by Regulation (EC) No 2235/2000⁽⁴⁾, lays down the rules governing the administration of those special arrangements. This Regulation lays down the special additional detailed rules necessary for implementing the invitation to tender, in particular those relating to the lodging and release of the security to be lodged by operators to ensure compliance with their obligations and, in particular, the obligation to process or use the imported product on the Spanish market.
- (3) In the light of current market needs in Spain, an invitation to tender for the reduction in the duty on imports of maize should be opened in the framework of these special arrangements for imports.

- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

1. An invitation to tender is hereby opened for the reduction in the import duty referred to in Article 10(2) of Regulation (EEC) No 1766/92 on maize to be imported into Spain.
2. The invitation to tender shall be open until 19 December 2002. During that period, weekly invitations shall be issued with quantities and closing dates as shown in the notice of invitation to tender.
3. Regulation (EC) No 1839/95 shall apply save as otherwise provided for in this Regulation.

Article 2

Import licences issued under these invitations to tender shall be valid 50 days from the date they are issued within the meaning of Article 10(4) of Regulation (EC) No 1839/95.

Article 3

This Regulation shall enter into force on the day 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, 27 November 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 177, 28.7.1995, p. 4.

⁽⁴⁾ OJ L 256, 10.10.2000, p. 13.

**COMMISSION REGULATION (EC) No 2097/2002
of 27 November 2002**

amending Regulation (EC) No 94/2002 laying down detailed rules for applying Council Regulation (EC) No 2826/2000 on information and promotion actions for agricultural products on the internal market

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2826/2000 of 19 December 2000 on information and promotion actions for agricultural products on the internal market ⁽¹⁾, and in particular Article 12 thereof,

Whereas:

- (1) Article 5(1) of Commission Regulation (EC) No 94/2002 ⁽²⁾, as last amended by Regulation (EC) No 1186/2002 ⁽³⁾, lays down, for the purposes of implementing measures contained in programmes as referred to in Article 6 of Regulation (EC) No 2826/2000, the deadline of 15 June each year for Community trade federations or interbranch organisations to submit programmes to the Member State concerned.
- (2) In view of the utilisation of available financial resources provided for by the support measures for information and promotion actions when first applied in August 2002, these organisations should be given the opportunity to submit new programmes.
- (3) It would therefore appear useful to provide for the possibility of submitting new information and promotion programmes twice a year.
- (4) Taking account of the experience acquired in examining the programmes submitted in the field of information on the Community systems for PDOs, PGIs and TSGs and for organic production, on the one hand, and of the development of Community policy in these areas on the other, the guidelines in these sectors should be adapted.
- (5) Regulation (EC) No 94/2002 should therefore be amended.
- (6) The measures provided for in this Regulation are in accordance with the opinion delivered at the joint meeting of the management committees on agricultural product promotion,

Article 1

Regulation (EC) No 94/2002 is hereby amended as follows:

1. the first sentence of Article 5(1) is replaced by the following:

‘With a view to implementing measures contained in programmes as referred to in Article 6 of Regulation (EC) No 2826/2000, the Community trade federations or interbranch organisations that are representative of the sector(s) concerned shall submit programmes in response to calls for proposals issued by the Member States concerned no later than 31 January and 31 July each year.’;

2. Article 7 is amended as follows:

- (a) the first sentence of paragraph 1 is replaced by the following:

‘No later than 15 March and 30 September each year the Member States shall send the Commission a provisional list of the programmes and proposed implementing bodies and a copy of each programme which they have selected.’;

- (b) the first subparagraph of paragraph 3 is replaced by the following:

‘After checking programmes on the final list referred to in the third subparagraph of Article 6(3) of Regulation (EC) No 2826/2000 the Commission shall decide, no later than 31 May and 15 December, which programmes it may part-finance under the indicative budgets listed in Annex III to this Regulation.’;

3. Annex III is amended in accordance with the Annex to this Regulation.

Article 2

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

⁽¹⁾ OJ L 328, 21.12.2000, p. 2.

⁽²⁾ OJ L 17, 19.1.2002, p. 20.

⁽³⁾ OJ L 173, 3.7.2002, p. 4.

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

Done at Brussels, 27 November 2002.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

Annex III to Regulation (EC) No 94/2002 is hereby amended as follows:

1. The section entitled 'Information on the Community system of protected designations of origin (PDOs), protected geographical indications (PGIs) and traditional specialties guaranteed (TSGs) and their respective logos' is replaced by the following:

'1. OVERVIEW OF THE SITUATION

The Community's information campaign in 1996 to 1998 was the first step taken to publicise the existence, meaning and benefits of the two Community systems for protecting agri-foodstuffs with specific characteristics and for increasing their commercial value.

In view of the campaign's short run, recognition of these designations, which now cover more than 600 Community products, should be improved by continuing with the measure to publicise their meaning and benefits. The information will also cover the Community logos created to this end, in particular the logo for PDOs and PGIs created in 1998.

2. GOALS

- To provide comprehensive information on the quality system and its effects on protecting the products that have been registered and increasing their commercial value,
- to demonstrate the content and European nature of quality systems for agricultural products and foodstuffs by means of multi-product campaigns for products from a single Member State or from several Member States,
- to encourage producers/processors not yet taking part in the Community quality system to use such a system by conforming to the specifications for the various products registered,
- to stimulate demand for the products concerned by informing consumers and distributors of the existence, significance and benefits of the quality systems and their logos, the conditions under which designations are awarded, the relevant checks and controls, and the traceability system.

3. MAIN TARGETS

- Producers and processors, and associations thereof,
- distributors (supermarkets, wholesalers, retail outlets, restaurants), and associations thereof,
- consumers and associations thereof,
- opinion multipliers.

4. MAIN MESSAGES

- The product/products has/have specific characteristics associated with its/their geographical origin (PDO/PGI), in particular as regards the elements justifying the link with its/their geographical environment/geographical origin and its/their reputation/renown. Preference will be given to multi-product campaigns for products from a single Member State or from several Member States,
- the product/products has/have specific characteristics associated with its/their particular traditional method of production, regardless of where it is/they are produced (TSG),
- quality aspects (safety, nutritional value and taste, traceability),
- diversity, richness and flavour of the products concerned,
- the presentation of some PGI, PDO or TSG products as examples of the successful commercial enhancement of foodstuffs with special characteristics,
- goals of the system: protecting the products that have been registered and increasing their commercial value, and in particular combating usurpation and imitations of protected designations.

5. MAIN CHANNELS

- Electronic (Internet site),
- PR contacts with the media (specialised, women's and culinary press),
- contacts with consumer associations,
- point-of-sale information,
- audio-visual media,

- written documents (leaflets, brochures, etc.),
- participation at trade fairs and shows,
- publicity in the specialised press,
- for programmes submitted by one or more Member States, information and training actions on the Community systems for PDOs/PGIs/TSGs.

6. DURATION OF THE PROGRAMME

Between 24 and 36 months, with targets set for each stage.

7. INDICATIVE BUDGET

EUR 4 million.'

2. The section entitled 'Organic production' is replaced by the following:

'1. OVERVIEW OF THE SITUATION

The consumption of organically produced agricultural products is particularly popular among urban populations, but the market share of these products is still fairly limited.

Levels of awareness among consumers and other interested parties about the characteristics of the organic farming method are still relatively low.

2. GOALS

- To encourage the consumption of organic farming products,
- to broaden awareness among consumers, farmers, processors and distributors of organic farming and its products,
- to make the Community rules on organic production methods, the checks performed and the Community organic farming logo known to the public at large.

3. MAIN TARGETS

- Consumers in general and specific target groups of consumers,
- farmers, processors and distributors (supermarkets, wholesalers, caterers and canteens, points of sale),
- opinion multipliers.

4. MAIN MESSAGES

- Organic products are natural, suited to modern daily living and a pleasure to consume. They result from production methods that respect the environment and animal welfare. The products are subject to stringent production and traceability rules. They are checked for compliance throughout the food chain by independent bodies and public authorities,
- information on the Community logo (which may be supplemented with information on the collective logos introduced in the Member States, provided that their specifications meet stricter conditions than those laid down for the Community logo).

(The messages must be well thought out and positive; messages for consumers must take account of the specific consumption patterns of the different target groups.

Use of the word 'organic' and its equivalent in other languages with respect to food products is protected by law. The Community logo is the symbol for organic products which is understood throughout the European Union and which indicates that the products meet strict EU production criteria and have undergone stringent checks).

5. MAIN CHANNELS

- Electronic channels (e.g. Internet site) and audiovisual media,
- telephone information line,

- PR contacts with the media (e.g. specialised journalists, women's press, food industry press, radio and TV broadcasts on organic food products or cookery),
- contacts with doctors, nutritionists, teachers and other specific groups,
- point-of-sale information and demonstrations,
- written documents (brochures, journals, etc.),
- publicity in the general and specialised press.

6. DURATION OF THE PROGRAMME

Between 12 and 36 months, giving priority to multiannual programmes that set objectives for each stage.

7. INDICATIVE BUDGET

EUR 6 million.'

COMMISSION REGULATION (EC) No 2098/2002
of 27 November 2002
on the issuing of system B export licences for fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1961/2001 of 8 October 2001 on detailed rules for implementing Council Regulation (EC) No 2200/96 as regards export refunds on fruit and vegetables ⁽¹⁾, as amended by Regulation (EC) No 1176/2002 ⁽²⁾, and in particular Article 6(7) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1312/2002 ⁽³⁾ fixed the indicative quantities laid down for the issue of export licences in the fruit and vegetable sector other than those requested in the context of food aid.
- (2) In the light of information now available to the Commission, the indicative quantities have been exceeded in the case of oranges, lemons, table grapes and apples.
- (3) Those overruns are without prejudice to compliance with the limits resulting from the agreements concluded in accordance with Article 300 of the Treaty. The rate of

refund for all products covered by licences applied for under system B between 17 September and 15 November 2002 should be the indicative rate,

HAS ADOPTED THIS REGULATION:

Article 1

1. The percentages for the issuing of system B export licences, as referred to in Article 6 of Regulation (EC) No 1961/2001, and applied for between 17 September and 15 November 2002, by which the quantities applied for and the rates of refund applicable must be multiplied, are as fixed in the Annex hereto.

2. Paragraph 1 does not apply to licences applied for in connection with food-aid operations as provided for in Article 10(4) of the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations.

Article 2

This Regulation shall enter into force on 29 November 2002.

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

Done at Brussels, 27 November 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 268, 9.10.2001, p. 8.

⁽²⁾ OJ L 170, 29.6.2002, p. 69.

⁽³⁾ OJ L 192, 20.7.2002, p. 13.

ANNEX

Percentages for the issuing of licences and rates of refund applicable to system B licences applied for between 17 September and 15 November 2002

Product	Percentage for the issuing of licences	Rate of refund (EUR/t net)
Tomatoes	100 %	17,0
Oranges	100 %	28,0
Lemons	100 %	15,0
Table grapes	100 %	12,0
Apples	100 %	15,0

II

(Acts whose publication is not obligatory)

CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL

of 18 November 2002

concerning the conclusions of the European Council meeting in Brussels on 24 and 25 October
2002

(2002/929/EC)

The representatives of the Governments of the Member States meeting within the Council recall point 12 'direct payments' of the conclusions of the European Council meeting in Brussels on 24 and 25 October 2002 according to which the phasing-in as described in this point will take place within a framework of financial stability, where total annual expenditure for market-related expenditure and direct payments in a Union of 25 cannot, in the period 2007 to 2013, exceed the amount in real terms of the ceiling of category 1.A for the year 2006 agreed in Berlin for the EU 15 and the proposed corresponding expenditure ceiling for the new Member States for the year 2006. The overall expenditure in nominal terms for market-related expenditure and direct payments for each year in the period 2007 to 2013 shall be kept below this 2006 figure increased by 1 % per year. The representatives of the Governments of the Member States hereby agreed that this results in the following figures:

HEADING 1.A EU 25 current prices

(EUR million)

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
TOTAL EU 25 ceiling	42 979	44 474	45 306	45 759	46 217	46 679	47 146	47 617	48 093	48 574

Done at Brussels, 18 November 2002.

The President

P. S. MØLLER

EUROPEAN CENTRAL BANK

DECISION OF THE EUROPEAN CENTRAL BANK

of 21 November 2002

on the distribution of the income of the European Central Bank on euro banknotes in circulation to the national central banks of the participating Member States

(ECB/2002/9)

(2002/930/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular to Article 33 thereof,

Whereas:

(1) Decision ECB/2001/15 of 6 December 2001 on the issue of euro banknotes ⁽¹⁾ establishes the allocation of euro banknotes in circulation to the NCBs in proportion to their paid-up shares in the capital of the ECB. Article 4 and the Annex of that Decision allocates to the ECB 8 % of the total value of euro banknotes in circulation. The ECB holds intra-Eurosystem claims on NCBs in proportion to their shares in the subscribed capital key, for a value equivalent to the value of euro banknotes that it issues.

(2) Under Article 2(2) of Decision ECB/2001/16 of 6 December 2001 on the allocation of monetary income of the national central banks of participating Member States from the financial year 2002 ⁽²⁾, the intra-Eurosystem balances on euro banknotes in circulation are remunerated at the reference rate. Under Article 2(3) of the same Decision, this remuneration is settled by TARGET payments on a quarterly basis. In derogation from this provision, Article 2(4) establishes that for the financial year 2002, the remuneration is settled at the end of the year.

(3) Recital 6 of Decision ECB/2001/16 states that the income accruing to the ECB on the remuneration of its intra-Eurosystem claims on NCBs related to its share of euro banknotes in circulation should in principle be distributed to the NCBs in accordance with the decisions of the Governing Council, in proportion to their shares in the subscribed capital key in the same financial year it accrues.

(4) In distributing the income accruing to the ECB on the remuneration of its intra-Eurosystem claims on NCBs related to its share of euro banknotes in circulation, the ECB should take into account an estimate of its financial result for the year that makes due allowance for the availability of provisions that may be released to offset anticipated expenses.

(5) In determining the amount of the net profit of the ECB to be transferred to the general reserve fund pursuant to Article 33.1 of the Statute, the Governing Council should consider that any part of that profit which corresponds to income on euro banknotes in circulation should be distributed to the NCBs in full,

HAS DECIDED AS FOLLOWS:

Article 1

Definitions

For the purposes of this Decision:

- (a) 'participating Member States' shall mean the Member States which have adopted the single currency in accordance with the Treaty establishing the European Community;
- (b) 'NCBs' shall mean the national central banks of the participating Member States;
- (c) 'intra-Eurosystem balances on euro banknotes in circulation' shall mean the claims and liabilities arising between a NCB and the ECB and between a NCB and the other NCBs as a result of the application of Article 4 of Decision ECB/2001/15;
- (d) 'ECB's income on euro banknotes' in circulation shall mean the income accruing to the ECB on the remuneration of its intra-Eurosystem claims on NCBs related to its share of euro banknotes in circulation as a result of the application of Article 2 of Decision ECB/2001/16.

⁽¹⁾ OJ L 337, 20.12.2001, p. 52.

⁽²⁾ OJ L 337, 20.12.2001, p. 55.

*Article 2***Interim distribution of the ECB's income on euro banknotes in circulation**

1. The ECB's income on euro banknotes in circulation shall be due in full to the NCBs in the same financial year it accrues and shall be distributed to the NCBs in proportion to their paid-up shares in the subscribed capital of the ECB.
2. From the financial year 2003, the ECB shall distribute its income on euro banknotes in circulation earned in each preceding quarter to the NCBs on the second working day of April, July, October and January.
3. The ECB shall distribute its income on euro banknotes in circulation earned in 2002 to the NCBs on the second working day of 2003.
4. The amount of the ECB's income on euro banknotes in circulation may be reduced in accordance with any decision of the Governing Council of the ECB on the basis of the Statute in respect of expenses incurred by the ECB in connection with the issue and handling of euro banknotes.

*Article 3***Derogation from Article 2**

1. If, on the basis of a reasoned estimate prepared by the Executive Board, and in respect of the amount due for the fourth quarter, the Governing Council expects that the ECB will have an overall annual loss or will make an annual net profit that is less than the estimated amount of its income on euro banknotes in circulation, the Governing Council shall decide before the end of the financial year not to distribute part or all of the ECB's income on euro banknotes in circulation in accordance with Article 2 to the extent necessary to ensure that the amount of the distributed income does not exceed the ECB's net profit for that year.

2. The Governing Council shall instruct the NCBs to repay to the ECB part or all of the income already distributed during the year to the extent necessary to ensure that the total distribution for the year does not exceed the ECB's net profit for that year.

3. In the financial year 2002, the decision not to distribute part or all of the ECB's income on euro banknotes in circulation shall apply to the total amount due for the year.

4. The preceding paragraphs shall apply where a potential overall annual loss cannot be covered by provisions made in past years. These provisions shall be released to the profit and loss account in the following order:

- (a) provisions made against known liabilities;
- (b) provisions equivalent to reserves arising from the application of Article 49 of the Statute and held as special revaluation accounts;
- (c) provisions against risks of a general nature, including without exception provisions against unspecified exchange rate and market price risk.

*Article 4***Final provisions**

1. This Decision shall enter into force two days following its adoption.
2. This Decision shall be published in the *Official Journal of the European Communities*.

Done at Frankfurt am Main, 21 November 2002.

On behalf of the Governing Council of the ECB
Willem F. DUISENBERG

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 125/02/COL

of 25 July 2002

releasing Norway from the obligation to apply to certain species the Acts referred to in Points 3 and 4 of Chapter III of Annex I to the Agreement on the European Economic Area, on the marketing of cereal seed (Council Directive 66/402/EEC) and on the marketing of seed of oil and fibre plants (Council Directive 69/208/EEC)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area, in particular Article 17 and Protocol 1, Article 4(d) thereof,

Having regard to the Act referred to in Point 3 of Chapter III of Annex I to the Agreement on the European Economic Area on the marketing of cereal seed (Council Directive 66/402/EEC), and in particular Article 23a thereof,

Having regard to the Act referred to in point 4 of Chapter III of Annex I to the Agreement on the European Economic Area on the marketing of seed of oil and fibre plants (Council Directive 69/208/EEC), and in particular Article 22 thereof,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice, in particular Article 5(2)(d) and Protocol 1, Article 1(c) thereof,

Having regard to the EFTA Surveillance Authority Decision No 171/94/COL of 23 November 1994 empowering the Member with special responsibility for the free movement of goods to take certain decisions and measures,

Having regard to a request by Norway 15 February 2000,

Whereas seed of rice, canary grass, sorghum, sudan grass, durum wheat, maize except popcorn and sweet-corn, hybrids resulting from the crossing of sorghum and sudan grass, groundnut, safflower and cotton are not normally reproduced and marketed in Norway;

Whereas as long as those conditions remain, Norway should be released from the obligation to apply the provisions of the aforementioned Acts to the species in question;

Whereas such release shall be without prejudice to the marketing in Norway of seeds produced, in accordance with the Acts, in another Contracting Party to the EEA Agreement;

Whereas the measures provided for in this Decision are in accordance with the opinion of the EFTA Plants and Animal Feedingsuffs Committee assisting the EFTA Surveillance Authority,

HAS ADOPTED THIS DECISION:

1. Norway is hereby released from the obligation to apply:

- 1.1. The Act referred to in Point 3 of Chapter III of Annex I to the Agreement on the European Economic Area on the marketing of cereal seed (Council Directive 66/402/EEC), with the exception of the provisions of Article 14(1), to the following species:

<i>Oryza sativa</i> L.	Rice
<i>Phalaris canariensis</i> L.	Canary grass
<i>Sorghum bicolor</i> (L.) Moench	Sorghum
<i>Sorghum sudanese</i> (Piper) Stapf.	Sudan grass
<i>Triticum durum</i> Desf.	Durum wheat
<i>Zea mays</i> L. (partim)	Maize except popcorn and sweetcorn
<i>Sorghum bicolor</i> (L.) Moench.X	Hybrids resulting from the crossing of sorghum and Sudan grass
<i>Sorghum sudanese</i> (Piper) Stapf.	

- 1.2. The Act referred to in Point 4 of Chapter III of Annex I to the Agreement on the European Economic Area on the marketing of seed of oil and fibre plants (Council Directive 69/208/EEC), with the exception of the provisions of Article 13(1), to the following species:

<i>Arachis hypogea</i> L.	Groundnut
<i>Carthamus tinctorius</i> L.	Safflower
<i>Gossypium</i> spp.	Cotton

2. This Decision shall enter into force on 19 August 2002.

3. This Decision shall be addressed to Norway.

4. This Decision shall be authentic in the English language.

Done at Brussels, 25 July 2002.

For the EFTA Surveillance Authority

Hannes HAFSTEIN

College Member

Niels FENGER

Director
