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.

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[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/drawback 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% *de minimis*
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.