COMMISSION REGULATION (EC) No 1412/2002

of 29 July 2002

imposing a provisional anti-dumping duty on imports of polyester textured filament yarn (PTY) originating in India

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 9 November 2001, the Commission announced, by a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding with regard to imports into the Community of polyester textured filament yarn (hereinafter 'PTY') originating in India.

(2) The proceeding was initiated as a result of a complaint lodged in September 2001 by the International Committee of Rayon and Synthetic Fibres (CIRFS), acting on behalf of producers representing a major proportion of the total Community production of PTY. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-dumping proceeding.

(3) There are definitive anti-dumping measures currently in force on imports of PTY originating in Malaysia (Council Regulation (EC) No 1001/97 [4], as amended by Council Regulation (EC) No 1992/2000 [5]), Indonesia, Thailand (Council Regulation (EC) No 2160/96 [6], as last amended by Council Regulation (EC) No 1078/2001 [7]) and Taiwan (Council Regulation (EC) No 3905/88 [8], as last amended by Council Regulation (EC) No 2010/2000 [9]). The expiry of these measures regarding imports originating in Malaysia [10], Taiwan [11], Indonesia [12], Thailand [13] is currently being reviewed under Article 11(2) of Regulation (EC) No 384/96 (hereinafter 'the basic Regulation').

(4) A parallel anti-subsidy proceeding concerning imports into the Community of the same product originating in India and Indonesia was announced by a notice published in the *Official Journal of the European Communities* [14] on the same date.

(5) The Commission officially advised the complainant and other known Community producers, exporting producers, their representative association, importers, users and suppliers known to be concerned as well as the representatives of India of the initiation of the proceeding. The parties directly concerned were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 257, 11.10.2000, p. 2.
[3] OJ C 315, 9.11.2001, p. 2.
[4] OJ L 145, 5.6.1997, p. 1.
[5] OJ L 238, 22.9.2000, p. 1.
[6] OJ L 289, 12.11.1996, p. 14.
[7] OJ L 149, 2.6.2001, p. 5.
[8] OJ L 347, 16.12.1988, p. 10.
[9] OJ L 241, 26.9.2000, p. 1.
[10] OJ C 135, 6.6.2002, p. 10.
[11] OJ C 170, 14.6.2001, p. 2.
[12] OJ C 316, 10.11.2001, p. 9.
[13] OJ C 316, 10.11.2001, p. 9.
[14] OJ C 315, 9.11.2001, p. 5.

(6) A number of exporting producers in India and their association, as well as Community producers, users and importers/traders made their views known in writing. All parties who so requested within the above time limit and indicated that there were particular reasons why they should be heard were granted a hearing.

(7) In view of the apparent large number of exporting producers in India, as set out in the complaint, the application of sampling techniques for the investigation of dumping was applied in accordance with Article 17 of the basic Regulation and as described more in detail in recital 14 et seq. of this Regulation. The Commission sent questionnaires to, and received detailed information from, a representative sample of exporting producers in India.

(8) The Commission also sent questionnaires to all other parties known to be concerned. Replies were received from two of the six complainant Community producers and from one Community producer who did not originally form part of the complaint. The Commission also received replies from one user and two suppliers of raw material providing information, which was sufficiently complete and representative to use in the assessment of Community interest. No importers in the Community which were not related to exporting producers replied to the questionnaire or made themselves known.

(9) The Commission sought and verified all information it deemed necessary for the purpose of a preliminary determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:

(a) *Community producers*

— Dupont SA, United Kingdom,

— Sinterama SpA, Italy;

(b) *Exporting producers in India*

— Indo Rama Synthetics Ltd, Nagpur,

— Reliance Industries Ltd and its related companies, Mumbai and Nagpur,

— Welspun Syntex Ltd, Mumbai.

(10) The investigation of dumping and injury covered the period from 1 October 2000 to 30 September 2001 (hereinafter referred to as the investigation period or IP). The examination of trends relevant for the assessment of injury covered the period from 1 October 1997 to the end of the IP (analysis period).

B. **PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT**

1. **Product under consideration**

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

2. **Like product**

(12) The investigation showed that PTY produced and sold on the domestic market of India has similar basic physical characteristics and uses compared with that exported from this country to the Community. Similarly, the PTY manufactured by the complainant Community producers and sold on the Community market has similar basic physical characteristics and uses when compared to that exported to the Community from the country in question.

(13) Consequently, PTY sold on the domestic market of India and exported to the Community as well as PTY produced and sold in the Community are considered as a like product within the meaning of Article 1(4) of the basic Regulation.

C. **SAMPLING**

1. **Sampling of Indian exporters**

(14) In view of the large number of exporting producers in India mentioned in the complaint, the Commission initially considered that it might be necessary to apply sampling techniques in accordance with Article 17 of the basic Regulation.

(15) In order to enable the Commission to select a sample, pursuant to Article 17(2) of the basic Regulation, exporting producers were requested to make themselves known within three weeks of the initiation of the proceeding and to provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies in the production and/or selling of PTY. The Indian authorities and the Indian association of exporting producers were also contacted in this regard by the Commission and raised no objection against the use of sampling.

2. **Pre-selection of cooperating companies**

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

(17) Companies, which did not make themselves known within the three-week period, were considered as non-cooperating companies.

3. **Selection of the sample**

(18) According to Article 17(1) of the basic Regulation, the selection was based on the largest representative volume of exports, which could reasonably be investigated within the time available.

(19) On this basis three exporting producers were chosen to constitute the sample in agreement with the Indian association of exporting producers and the Indian authorities. The three companies selected in the sample represented around 70 % of Indian PTY exports to the Community and around 65 % of PTY domestic sales in India.

(20) The six cooperating exporting producers, who were not finally retained in the sample, were informed that any anti-dumping duty on their exports would be calculated in accordance with the provisions of Article 9(6) of the basic Regulation. Some of these companies initially indicated their intention to claim an individual margin in accordance with Article 17(3) of the basic Regulation in case they were not selected in the sample. However, no substantiated claim was received within the deadline specified in the notice of initiation.

(21) The exporting producer that was not related to any of the exporting producers subject to the investigation and did not export the product concerned to the Community during the IP though it had some exports after the IP, was also informed that any anti-dumping duty on its exports would be calculated in accordance with the provisions of Article 9(6) of the basic Regulation.

(22) Questionnaires were sent for completion to all three initially sampled companies and a shorter questionnaire was sent to the company that only exported subsequently to the IP.

(23) The companies which finally constituted the sample and which fully cooperated with the investigation were attributed their own dumping margin and individual duty rate.

D. **DUMPING**

1. **Normal value**

(24) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of PTY to independent customers by each exporting producer were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community.

(25) This assessment revealed that all investigated exporting producers had representative sales of PTY on the domestic market during the investigation period.

(26) The Commission subsequently considered whether domestically sold and exported product types had similar quality, denier, filament, flame retardant characteristics, colouring and twisting and concluded that they were identical or directly comparable.

(27) Additionally and for each product type sold by the exporting producer on the domestic market, which was found to be directly comparable with the type sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered as sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable product type exported to the Community.

(28) The Commission subsequently examined whether the domestic sales of each company could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

This was done by establishing the proportion of domestic sales to independent customers, of each exported product type, sold at a loss on the domestic market during the investigation period:

(a) for those product types where more than 80 % by volume of sales on the domestic market were not below unit costs, and where the weighted average sales price was equal to or higher than the weighted average production cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question;

(b) for those product types where at least 10 %, but no more than 80 %, by volume of sales on the domestic market were not below unit costs, normal value, by product type, was calculated as the weighted average of domestic sales prices which were found equal to or above unit costs only, of the type in question;

(c) for those product types where less than 10 %, by volume of sales, on the domestic market, were not below unit costs, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore, normal value was constructed.

(29) For certain types sold for export to the Community by all three investigated companies, domestic sales were found to have been made in the ordinary course of trade. Normal value was based for the corresponding product type on the actual prices paid or payable, by independent customers in the domestic market of India, during the investigation period, as set out in Article 2(1) of the basic Regulation.

(30) For sales of product types not made in the ordinary course of trade, as well as for product types which were not sold in representative quantities on the domestic market, normal value had to be constructed. All three investigated companies sold certain such product types for export to the Community.

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

2. **Export price**

(32) As all exports of the product under consideration by all three exporting producers were made directly to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable.

3. **Comparison**

(33) The comparison between normal value and export price was made on an ex-factory basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. For all investigated exporting producers allowances for differences in physical characteristics, transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, import charges and indirect taxes, credit costs, after-sales costs, commissions, discounts and rebates have been granted where applicable and justified.

(34) All three investigated companies claimed a duty drawback adjustment pursuant to Article 2(10)(b) of the basic Regulation on the grounds that import charges were allegedly borne by the like product when intended for consumption in the exporting country but were refunded or not paid when the product was sold for export to the Community. All companies made use of the Duty Entitlement Passbook Scheme (DEPB) on post-export basis and/or Advance License Scheme (ALS) for that reason. This claim was rejected because there was no evidence that any import charge was borne by the like product when destined for domestic consumption. Alternatively, the companies claimed the same adjustment pursuant to Article 2(10)(k). However, because the companies failed to demonstrate that the DEPB on post-export basis and/or ALS schemes affect price comparability, and in particular that customers consistently pay different prices on the domestic market because of the benefits of the abovementioned schemes, the adjustment could not be accepted.

(35) One investigated company claimed an adjustment pursuant to Article 2(10)(b) for an amount corresponding to an indirect tax borne by the like product when intended for consumption in India and refunded in respect of the product exported to the Community. It was found that the company was indeed refunded upon export of the product concerned. However, since the company failed to demonstrate that the full amount of this indirect tax was refunded, the claim was adjusted downwards. Another investigated company claimed an adjustment pursuant to the same Article of the basic Regulation for an amount corresponding to an indirect tax borne by the like product when intended for consumption in India and not collected in respect of the product exported to the Community. In this respect, it was found that the company failed to duly report the relevant quantities of the raw material used in the production of the like product. Consequently, there was no evidence as to the precise amount of indirect tax borne by the like product and this claim was rejected.