COMMISSION REGULATION (EC) No 1411/2002

of 29 July 2002

imposing a provisional countervailing duty on imports of polyester textured filament yarn 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 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1], and in particular Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 9 November 2001, the Commission announced, by a notice (notice of initiation) published in the *Official Journal of the European Communities* [2], the initiation of an anti-subsidy proceeding concerning imports into the Community of polyester textured filament yarn (PTY) originating in India and Indonesia.

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

(3) The initiation of a parallel anti-dumping proceeding concerning imports of the same product originating in India was announced by a notice published in the *Official Journal of the European Communities* [2] on the same date.

(4) There are definitive anti-dumping measures currently in force on imports of PTY originating in Malaysia (Council Regulation (EC) No 1001/97 [3], as amended by Regulation (EC) No 1992/2000 [4]), Indonesia, Thailand (Council Regulation (EC) No 2160/96 [5], as last amended by Regulation (EC) No 1078/2001 [6]) and Taiwan (Council Regulation (EC) No 3905/88 [7], as last amended by Regulation (EC) No 2010/2000 [8]. The expiry of these measures regarding imports originating in Malaysia [9], Taiwan [10], Indonesia [11] and Thailand [12] is currently being reviewed under Article 11(2) of Regulation (EC) No 384/96 [13], as last amended by Regulation (EC) No 2238/2000 [14].

[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ C 315, 9.11.2001, pp. 2 and 5.
[3] OJ L 145, 5.6.1997, p. 1.
[4] OJ L 238, 22.9.2000, p. 1.
[5] OJ L 289, 12.11.1996, p. 14.
[6] OJ L 149, 2.6.2001, p. 5.
[7] OJ L 347, 16.12.1988, p. 10.
[8] OJ L 241, 26.9.2000, p. 1.
[9] OJ C 135, 6.6.2002, p. 10.
[10] OJ C 170, 14.6.2001, p. 2.
[11] OJ C 316, 10.11.2001, p. 9.
[12] OJ C 316, 10.11.2001, p. 9.
[13] OJ L 56, 6.3.1996, p. 1.
[14] OJ L 257, 11.10.2000, p. 2.

(5) Prior to the initiation of the proceeding and in accordance with Article 10(9) of Council Regulation (EC) No 2026/97 (basic Regulation), the Commission notified the Governments of India (GOI) and Indonesia (GOID) that it had received a properly documented complaint alleging that subsidised imports of PTY originating in India and Indonesia are causing material injury to the Community industry. The GOI and GOID were invited for consultations with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. Consultations with the GOI were subsequently held with the Commission at its offices in Brussels, where no conclusive evidence was provided by the GOI which could refute the allegations made in the complaint. The GOID did not respond to this invitation.

(6) The Commission officially advised the exporting producers and their representative associations, and importers/traders known to be concerned, the representatives of the exporting countries concerned, users, suppliers, the complainant Community producers and all other known producers in the EC, of the initiation of the proceeding. Interested parties 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.

(7) The GOI, the GOID and a number of exporting producers in the countries concerned, as well as Community producers, Community users and importers/traders made their views known in writing. All parties who so requested within the above time limit and showed that there were particular reasons why they should be heard were granted the opportunity to be heard.

(8) In view of the apparent large number of exporting producers of the product concerned in India and Indonesia, known from the complaint, the application of sampling techniques for the investigation of subsidisation was envisaged in the notice of initiation.

(9) Regarding exporting producers in India, the Commission sent questionnaires to, and received detailed information from, a representative sample of exporting producers (see recitals 17 to 22).

(10) Regarding Indonesia, sampling techniques were not considered necessary since the number of exporting producers that made themselves known and provided the information requested in the notice of initiation was limited. The Commission sent questionnaires and received replies from five exporting producers in Indonesia.

(11) The Commission also sent questionnaires to all other parties known to be concerned. Replies were received from two of the six complainant Community producers, from one Community producer who did not originally form part of the complaint, and both the GOI and the GOID. 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.

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

(a) *Community producers:*

— Dupont SA, United Kingdom,

— Sinterama SpA, Italy;

(b) *Exporting producers in India:*

— Indo Rama Synthetics Ltd, Nagpur, Maharashtra,

— Reliance Industries Ltd, Mumbai, Maharashtra,

— Welspun Syntex Ltd, Mumbai, Maharashtra;

(c) *Exporting producers in Indonesia:*

— PT. Indorama Synthetics Tbk, Jakarta,

— PT. Mutu Gading Tekstil, Jakarta,

— PT. Panasia Indosyntec, Bandung,

— PT. Polyfin Canggih, Bandung,

— PT Sulindafin (PT Susilia Idah Synthetic Fiber Industries), Jakarta.

(13) The investigation of subsidisation and injury covered the period from 1 October 2000 to 30 September 2001 (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

(14) The product under consideration is polyester textured filament yarn (PTY) originating in India and Indonesia which falls within CN codes 5402 33 00. It is directly derived from partially oriented polyester yarn then textured and 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

(15) The investigation showed that PTY produced and sold on the domestic markets of India and Indonesia has similar basic physical characteristics and uses compared with that exported from these countries 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 countries in question.

(16) Consequently, PTY sold on the domestic markets of India and Indonesia 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(5) of the basic Regulation.

C. SAMPLING

1. Sampling of Indian exporters

(17) 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 27 of the basic Regulation.

(18) In order to enable the Commission to select a sample, pursuant to Article 27(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

(19) Twelve companies in India came forward and provided the requested information within the three-week period set in Article 27(2) of the basic Regulation. However, two of these companies were traders which could not be taken into account in the selection of the sample. The remaining ten producers which 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.

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

3. **Selection of the sample**

(21) According to Article 27(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. 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 which were selected in the sample represented around 70 % of Indian PTY exports to the Community and around 65 % of PTY domestic sales in India.

(22) The seven cooperating companies which were not finally retained in the sample, were informed that any countervailable duty on their exports would be calculated in accordance with the provisions of Article 15(3) of the basic Regulation. Some of these companies initially indicated their intention to claim an individual margin in accordance with Article 27(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.

(23) Questionnaires were sent for completion to the sampled companies. The companies which finally constituted the sample and which fully cooperated with the investigation were attributed their own anti-subsidy margin and individual duty rate.

D. **SUBSIDIES**

I. INDIA

1. **Introduction**

(24) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following five schemes, which allegedly involved the granting of export subsidies, were investigated:

(i) Export Processing Zones/Export Oriented Units (EPZ/EOU);

(ii) Duty Entitlement Passbook Scheme (DEPB);

(iii) Export Promotion Capital Goods Scheme (EPCG);

(iv) Income Tax Exemption Scheme;

(v) Advance License Scheme.

(25) The schemes (i), (ii), (iii) and (v) specified in recital 24 are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992. The Foreign Trade Act (Section 5) authorises the Government of India (GOI) to issue notifications regarding the export and import policy. These are summarised in the 'Export and Import Policy' documents which are issued by the Ministry of Commerce every five years and updated annually. One export and import policy document, i.e. the five-year plan relating to the period 1 April 1997 to 31 March 2002, is relevant to the investigation period of this case. In addition, the GOI also sets out the procedures governing India's foreign trade policy in the 'Handbook of Procedures for Exports and Imports — 1.4.1997 — 31.3.2002' (Volume 1).

The Income Tax Exemption Scheme (iv) specified in recital 24, is based on the Income Tax Act of 1961 which is amended yearly by the Finance Act.

2. **Export Processing Zones (EPZ)/Export Oriented Units (EOU)**

(a) *Legal basis*

(26) The EPZ/EOU scheme, which was introduced in 1965, is an instrument under the 'Export Import Policy' involving export-related incentives. During the IP the scheme was regulated by Customs Notification No 53/97, No 133/94 and No 126/94. Details of the schemes are contained in Chapter 9 and Appendix I of the 1997/2002 Export and Import Policy document, as well as the relevant Handbook of Procedures.

(b) *Eligibility*

(27) In principle, companies undertaking to export their entire production of goods and services may be set up under the EPZ/EOU scheme. Once the EPZ/EOU status is granted, those companies can avail themselves of certain benefits. There are seven identified EPZs in India. EOUs can be located anywhere in India. They are bonded units under the surveillance of Customs officials in accordance with Section 65 of the Customs Act. Although companies operating within the EOU/EPZ scheme are normally expected to export their entire production, the GOI does allow these units to sell a part of their production on the domestic market under certain conditions.

(c) *Findings*

(28) It was established that none of the investigated companies availed themselves of this scheme, since they did not have plants in Export Processing Zones or Export Oriented Units. Therefore, this scheme was not considered further in the context of this investigation.

3. **Duty Entitlement Passbook Scheme (DEPB)**

Legal basis

(29) The DEPB entered into force on 1 April 1997 by means of Customs Notification 34/97. Paragraphs 7.14 to 7.17 of the Export and Import Policy document and paragraphs 7.32 to 7.53 of the Handbook of Procedures contain a detailed description of the scheme. The DEPB is the successor to the Passbook Scheme (PBS) which was terminated on 31 March 1997. There are two types of the DEPB:

— DEPB on pre-export basis,

— DEPB on post-export basis.

DEPB on pre-export basis

(30) The GOI states that the DEPB on pre-export basis was abolished on 1 April 2000 and therefore the scheme is not applicable during the IP. It was established that the investigated companies did not benefit under DEPB on pre-export basis. Therefore, it is not necessary to establish the countervailability of this scheme.

DEPB on post-export basis

(a) *Eligibility*

(31) The DEPB on post-export basis is available to manufacturer-exporters (i.e. every manufacturer in India who exports) or merchant-exporters (i.e. traders).