COUNCIL REGULATION (EC) No 2160/96

of 11 November 1996

imposing definitive anti-dumping duties on imports of polyester textured filament yarn originating in Indonesia and Thailand, terminating the proceeding concerning imports of polyester textured filament yarn originating in India and collecting definitively the provisional duties imposed

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 23 thereof,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [2], and in particular Article 12 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 940/96 [3] (hereinafter referred to as the 'provisional Regulation') imposed provisional anti-dumping duties on imports of polyester textured filament yarn (hereinafter referred to as 'PTY' or 'product concerned'), originating in Indonesia and Thailand, and falling within CN codes 5402 33 10 and 5402 33 90.

(2) With the same Regulation, it was provisionally concluded that imports of the product concerned originating in India, essentially due to their negligible import volume, had not contributed to the material injury suffered by the Community industry, and therefore it was considered unnecessary to impose provisional protective measures on these imports at that stage of the investigation.

(3) By Council Regulation (EC) No 1370/96 [4], the provisional duties were extended for a period of two months, up to 1 December 1996.

B. SUBSEQUENT PROCEDURE

(4) The provisional Regulation set up a time limit within which the parties concerned could make known their views in writing and apply to be heard orally by the Commission.

(5) Immediately after the imposition of the provisional measures on imports of PTY from Indonesia and Thailand, the interested parties were informed of the essential facts and considerations on the basis of which provisional measures had been adopted.

Comments thereon were received in writing from the following interested parties within the time limit set:

1. *Producers in Indonesia:*
   - PT Panasia Indosyntec (formerly: PT Hadtex Indosyntec),
   - PT Indo Rama Synthetics,
   - PT Polysindo Eka Perkasa,
   - PT Susilia Indah Synthetic Fibres Industries,
   - PT Vastex Prima Industries.
2. *Producers in Thailand:*
   - Sunflag (Thailand) Ltd,
   - Tuntex (Thailand) plc.

(6) Parties who so requested were also granted an opportunity to be heard orally by the Commission services.

(7) Parties were informed of the essential facts and consideration on the basis of which it is intended to recommend the imposition of definitive measures and the definitive collection of amounts secured by way of provisional duties. They also were granted a period within which they could make representations subsequent to this disclosure.

(8) The parties' oral and written comments were considered and, where appropriate, the provisional determinations were modified to take account of these comments.

C. PRODUCT AND LIKE PRODUCT

(9) The product under consideration is PTY, directly derived from polyester oriented yarn ('POY'). PTY

[1] OJ No L 56, 6. 3. 1996, p. 1.
[2] OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).
[3] OJ No L 128, 29. 5. 1996, p. 3.
[4] OJ No L 178, 17. 7. 1996, p. 1.

is used in both the weaving and the knitting sectors to make polyester or polyester/cotton fabrics.

It was concluded at the provisional stage of the investigation that PTY sold on the domestic markets of India, Indonesia and Thailand has similar basic characteristics and uses compared to that exported from those countries to the Community. Similarly, the PTY manufactued by the Community industry and sold on the Community market has similar basic characteristics and uses when compared to that exported to the Community from the countries in question.

(10) Since no new arguments were put forward by any of the parties concerned on the Commission's provisional findings on the product under consideration and the considerations made on like product, the facts and findings as set out in recitals 9 and 10 of the provisional Regulation, are confirmed by the Council.

D. DUMPING

1. India

(11) It was provisionally established by the Commission that the Indian exporters who cooperated in the proceeding had exported PTY to the Community during the investigation period at dumped prices, individual dumping margins ranging from 0,3 % to 42,9 %.

(12) Since no new arguments were advanced by any of the parties concerned as to the Commission's provisional conclusions on normal value, export price, comparison and hence the dumping margins provisionally established for exports to the Community of PTY originating in India, the facts and findings as set out in recitals 12 to 18 and 29 to 35 of the provisional Regulation are confirmed by the Council, as far as India is concerned.

2. Indonesia

Normal value

(13) The Indonesian exporters argued that, when their costs of production were compared to the corresponding domestic selling prices in order to assess whether domestic sales were made in the ordinary course of trade within the meaning of Article 2 (4) of Regulation (EEC) No 2423/88 (hereinafter referred to as the 'basic Regulation'), certain directly related selling expenses such as inland freight and packing had been included in the costs, whereas they had been deducted from the domestic prices.

After verification of additional data submitted in that respect by the companies concerned and retracing of the individual claims to the audited accounts of the companies, the provisional calculations on normal values, where warranted, were duly revised.

(14) The production of PTY of first quality, which was the only yarn exported by the Indonesian producers concerned to the Community, implies the manufacturing of PTY of inferior quality, so called substandard PTY. However, the Indonesian producers did not keep separate accounting data for each quality and, therefore, the costs associated with the first quality exported to the Comunity were not reasonably reflected in the producers' records.

At the provisional stage of the investigation, and in order to establish the cost of production of first quality PTY, the Commission estimated the cost of production of the substandard PTY by reference to the average variable manufacturing costs associated with the overall production of PTY only. This approach was considered reasonable, in particular given the relatively limited production of substandard PTY and its inevitable linkage with the production of first quality PTY. Furthermore, the allocation of the full cost of production on the basis of turnover did not appear to be an appropriate method, as not all the elements in the cost of production appeared to be associated with the production and sale of substandard PTY.

One Indonesian producer asked the Commission to reconsider the possibility of accepting the cost allocation method leading to the costs reported in the reply to the Commission's questionnaire, and which has been historically utilized by the exporter concerned.

Following this request, the Commission reviewed its provisional findings and considered the allocation method in question acceptable, though only to the extent that it reasonably reflected the costs associated with the production and sale of both qualities of PTY. This approach was extended to all Indonesian producers, since they all replied to the Commission's questionnaire using the same allocation method.

(15) At the request of the Indonesian producers, the Commission revised its provisional findings as regards the amount of financial expenses, as well as the criteria for the allocation of the net financial costs to the product concerned.

In this respect it was considered appropriate to offset against financial expenses only financial income, which showed a clear link with the production and sale of PTY. Furthermore, the allocation of net financial expenditure, which at the provisional stage of the proceeding had been made by reference to turnover, was modified to take separate account of products manufactured or merely traded.

(16) Since no further arguments were pursued by any of the parties concerned as to the Commission's provisional conclusions on normal value for Indonesia, the facts and findings as set out in recitals 19 to 23 of the provisional Regulation are confirmed by the Council, considering also the revisions made under recitals 13 and 14 above.

Export prices

(17) Two of the Indonesian producers sold PTY for export to the Community through two related trading companies located in Singapore. In the provisional determinations, the export prices were established by reference to the prices actually paid or payable for the products concerned when sold for export to the Community by the related trading companies in Singapore, since the prices charged by the Indonesian producers to the related Singaporean traders were considered as being influenced by this relationship, and thus not being reliable.

To establish a reliable export price to the Community from Indonesia, the prices charged from Singapore were adjusted to an ex-Indonesia level by deducting from the prices charged by the related companies in Singapore to the independent customers in the Community an average amount of 4 % of these prices, which was calculated by reference to the selling, general and administrative expenses incurred by the related companies in respect of the sales under consideration.

This approach was contested by the two Indonesian producers concerned, who argued that the said adjustment was too high. Alternatively, these producers proposed their own calculation method by singling out only some allegedly directly related selling expenses, thus ignoring the vast majority of all other expenses incurred by the related trading companies in Singapore.

The Council, however, confirms the provisional approach taken by the Commission, considering the degree of involvement of the related traders in the selling activities of the Indonesian producers. Furthermore, on the basis of the accounting data of the related traders, no additional information was provided by the latter, which would indicate that the adjustment applied was inappropriate.

(18) Since no further arguments were made by any of the parties concerned as to the Commission's provisional conclusions on export prices for exports to the Community of PTY originating in Indonesia, the facts and findings as set out in recital 29 of the provisional Regulation are confirmed by the Council as far as Indonesia is concerned.

Comparison

(19) Since no new arguments were made by any of the parties concerned as to the Commission's provisional conclusions on the comparison made between normal value and export prices, the facts and findings as set out in recitals 31 and 32 of the provisional Regulation are confirmed by the Council as far as Indonesia is concerned.

Dumping margins

(20) Taking into account the abovementioned revisions, the Council confirms, in applying the same methodology as used for the provisional assessment (see recital 34 of the provisional Regulation), the definitive dumping margins for the cooperating Indonesian exporters concerned as follows:

— PT Indo Rama Synthetics:	1,7 %
— PT Panasia Indosyntec (formerly: P.T. Hadtex Indosyntec):	5,4 %
— PT Polysindo Eka Perkasa:	10,9 %
— PT Susilia Indah Synthetic Fibres Industries:	8,8 %
— PT Vastex Prima Industries:	20,2 %

(21) Confirming the method chosen for the provisional assessment (see recital (35) of the provisional Regulation), the Council considered that the dumping margin for non-cooperating producers in Indonesia should be based on facts available and verified during the investigation. On that basis, it is considered that the highest definitive dumping margin, i.e. 20,2 %, found with regard to a producer in Indonesia which had cooperated in the investigation, should also apply to non-cooperating producers in that country.

3. **Thailand**

Normal value

(22) One Thai producer realized that the costs data, which it had submitted, contained an arithmetical material error. Indeed, in allocating the costs for

two raw materials produced by this company and used both in the production of PTY and in other polyester end-products, the company erroneously added to the PTY cost of production the total transformation costs of the aforementioned two raw materials, instead of considering the appropriate proportion for PTY only.

After verifying the revised additional data submitted in that respect by the company concerned, the Commission duly revised the normal value where warranted.

(23) One Thai producer argued that its costs during the investigation period were affected by the use of new production facilities, and certain cost items should therefore be adjusted accordingly.

The Commission could not share this approach, since no adjustment had been claimed in the Company's reply to the questionnaire or piror to the verification visit. Furthermore, the capacity utilization rates as well as the production costs of the company during the investigation period, which commenced eight months after the start-up of the production, appeared reasonable and in line with those incurred by most of the other PTY producers. The claim was therefore disregarded by the Commission.

(24) One Thai producer argued that its depreciation rate of 10 % on machinery, as reflected in its costs, was too high as compared to other Thai producers, and that its costs should therefore be adjusted accordingly by using a 5 % rate.

To apply a straight depreciation rate of 10 % on machinery is not uncommon. Furthermore, this rate is reflected in the accounting records of the company. The claim was therefore disregarded by the Commission.

(25) Since no further arguments were proffered by any of the parties concerned as to the Commission's provisional conclusions on normal value for Thailand, the facts and findings as set out in recitals 24 to 28 of the provisional Regulation are confirmed by the Council, considering also the revision made under recital 22 above.

Export prices

(26) Since no new arguments were put forward by any of the parties concerned as to the Commission's provisional conclusions on export prices for exports to the Community of PTY originating in Thailand, the facts and findings as set out in recital 29 of the provisional Regultion are confirmed by the Council.

Comparison

(27) One Thai producer argued that the normal credit rates applicable in respect to the currency expressed on the export invoice should be corrected.

After verifying the additional data submitted, the Commission duly revised, where warranted, the allowance for credit costs granted for the sales under consideration.

(28) Since no further arguments were advanced by any of the parties concerned as to the Commission's provisional conclusions on the comparison made between normal value and export prices, the facts and findings as set out in recitals 31 to 33 of the provisional Regulation are confirmed by the Council, with the exception of the revision under recital 27 above and as far as Thailand is concerned.

Dumping margins

(29) Taking into account the abovementioned revisions, the Council confirms, in applying the same methodology as used for the provisional assessment (see recital 34 of the provisional Regulation), the definitive dumping margins for the cooperating Thai exporters concerned as follows:

— Tuntex (Thailand) plc: 6,7 %

— Sunflag (Thailand) Ltd: 13,5 %

— Chareonsawatt Stretched Yarn Co. Ltd: 20,2 %

(30) Confirming the method chosen for the provisional assessment (see recital 35 of the provisional Regulation), the Council considered that the dumping margin for non-cooperating producers in Thailand should be based on facts available and verified during the investigation. On that basis, it is considered that the highest definitive dumping margin, i.e. 20,2 %, found with regard to a producer in Thailand which had cooperated in the investigation, should also apply to non-cooperating producers in this country.

E. COMMUNITY INDUSTRY

(31) In the absence of new evidence or any futher substantiated argument put forward by any of the parties concerned, the facts and findings set out in recitals 36 to 39 of the provisional Regulation are confirmed by the Council, i.e. the complainant

Community producers representing more than 50 % of the Community output of PTY constitute the Community industry, in accordance with Article 4 (5) of the basic Regulation

F. INJURY

(32) As mentioned under recital 20, the individual definitive dumping margin established for one of the Indonesian exporters is *de minimis*. Whether, under these conditions, the imports in question should be excluded from the injury assessment, does not need to be decided in the present case.

Indeed, even if these producers' imports were excluded from the injury assessment, the volume and the Community market share of the remaining dumped imports from Indonesia were still significant enough to justify the Commission's provisional conclusions in this respect.

(33) Since no new arguments were advanced by any of the parties concerned as to the provisional findings concerning the injury suffered by the Community industry, the Council confirms those findings as established in recitals 40 to 55 of the provisional Regulation, i.e. the exclusion of imports of PTY originating in India from the injury assessment due to its negligible market share, as well as the precarious situation of the Community industry, in particular the deterioration of its financial results, the decline in production, capacity utilization and market share, notwithstanding a certain increase in the Community consumption of PTY, which demonstrates that this industry has suffered material injury within the meaning of Article 4 (1) of the basic Regulation.

G. CAUSATION OF INJURY

(34) It was provisionally concluded that, notwithstanding the fact that imports from other third countries might have contributed to the injury suffered by the Community industry, the surge of Indonesian and Thai dumped imports of PTY into the Community at low prices has had a particular destabilizing impact on the Community market by lowering the price level on that market, and has led the Community industry to suffer a loss of profitability, thus causing material injury to this industry.

(35) Since no new arguments were advanced by any of the parties concerned as to the Commission's provisional conclusions on causation of injury, the facts and findings as set out in recitals 56 to 81 of the provisional Regulation are confirmed by the Council.

H. COMMUNITY INTEREST

(36) The Commission concluded at the provisional stage of the investigation that, after examining the various interests involved, it is in the Community interest to prevent a further decline in the already precarious situation of the Community industry and to re-establish, with the imposition of remedial measures, a fair and competitive economical environment in the Community market. Furthermore, it was considered necesary to ensure a non-discriminatory treatment with regard to imports of PTY originating in Indonesia and Thailand as compared to imports of PTY originating in other third countries at present subject to anti-dumping measures.

(37) On this basis, the Council confirms, as set out in recitals 82 to 93 of the provisional Regulation, that the Community interest calls for the imposition of definitive anti-dumping measures on imports of PTY originating in Indonesia and Thailand.

I. DEFINITIVE DUTY

India

(38) Given the above confirmed provisional conclusions with regard to exports of PTY to the Community originating in India (insignificant market share), the Council confirms that no definitive anti-dumping duty should be imposed and that the proceeding should be terminated in respect of this country.

Indonesia and Thailand

(39) For the purpose of establishing the level of the definitive measures to be imposed, and in line with the same methodology applied at the provisional stage of the investigation, the Council took account of the dumping margins found and the level of duty necessary to eliminate the injury sustained by the Community industry.

(40) It is confirmed at this definitive stage that for all Indonesian and Thai exporters concerned the level of the injury margins were higher than the dumping margins found, both being expressed as a

percentage of the CIF Community frontier price. Consequently, in accordance with Article 13 (3) of the basic Regulation, it is confirmed that the level of the duty should be based on the level of the dumping margins definitively established.

(41) With regard to the Indonesian company PT Indo Rama Synthetics, the Council confirms, considering that the individual definitive dumping margin established is *de minimis*, that the investigation be terminated without measures although the company shall remain subject to the proceeding and may be reinvestigated in any subsequent review carried out for Indonesia.

J. COLLECTION OF THE PROVISIONAL DUTY

(42) In view of the dumping margins definitively established and the substantial injury caused to the Community industry, the Council considers that the amounts secured by way of the provisional anti-dumping duties should be definitively collected at the level of the amounts of duties 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 codes 5402 33 10 and 5402 33 90 and originating in Indonesia and Thailand.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows:

Indonesia

	Duty	*Taric additional Code*
— PT Panasia Indosyntec (formerly: PT Hadtex Indosyntec)	5,4 %	8884
— PT Polysindo Eka Perkasa	8,8 %	8886
— PT Susilia Indah Synthetic Fibres Industries	8,3 %	8887
— Others	20,2 %	8888

The duties shall not apply to imports of the products specified in paragraph 1 which are produced and exported by the Indonesian company PT Indo Rama Synthetics (Taric additional Code 8885).

Thailand

	Duty	*Tarif additional Code*
— Tuntex (Thailand) PLC	6,7 %	8889
— Sunflag (Thailand) Ltd	13,5 %	8907
— Others	20,2 %	8891

3. No anti-dumping duty shall be applicable to imports of the product specified in paragraph 1 and originating in India. The proceeding concerning imports of the product originating in India shall be terminated.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. The amounts secured by way of the provisional anti-dumping duties under Regulation (EC) No 940/96 shall be definitively collected at the rate of the duties definitively imposed. Amounts secured in excess of the definitive rate of anti-dumping duties shall be released.

2. The provisions referred to in Article 1 (4) shall also apply to the definitive collection of the amounts secured by way of the provisional anti-dumping duties.

Article 3

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, 11 November 1996.

For the Council

The President

R. QUINN