COMMISSION REGULATION (EC) No 940/96

of 23 May 1996

imposing a provisional anti-dumping duty on imports of polyester textured filament yarn originating in Indonesia and Thailand

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], 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 Community [2], as last amended by Regulation (EC) No 522/94 [3], and in particular Article 11 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) In July 1994, the Commission announced, by a notice published in the *Official Journal of the European Communities* [4], the initiation of an anti-dumping proceeding concerning imports of polyester textured filament yarn originating in Indonesia, India and Thailand and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged by the International Committee of Rayon and Synthethic Fibres (Cirfs), acting on behalf of Community producers whose collective output of the yarn concerned represented a major proportion of the total Community production of this yarn.

The complaint contained evidence of dumping of the product originating in the countries indicated above, and of material injury resulting therefrom; this evidence was considered sufficient to justify opening a proceeding.

(3) The Commission officially advised the producers, exporters and importers known to be concerned, the representatives of the exporting countries and the complainant, and gave the parties concerned the opportunity to make their views known in writing and to request a hearing.

(4) Representatives of some exporters, the complainant and one association of exporters made their views known in writing. The association of Indian exporters requested and was granted a hearing.

(5) The Commission sent questionnaires to all parties known to be concerned and received detailed information from the complaining Community producers, a number of producers in India, Indonesia and Thailand and one importer in the Community related to an Indian producer.

(6) The Commission sought and verified all information it deemed necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following firms:

(a) *Community producers*

Rhône Poulenc, France

Hoechst AG, Germany

Nylstar, Germany

Unifi, Ireland

Montefibre SpA Enichem, Italy

Akzo Fibres and Polymers Division, Netherlands

Nurel SA, Spain

Exsa, United Kingdom

(b) *Producers/exporters in the exporting countries*

India

Akai Impex Limited, Bombay

Bahuma Polytex Ltd, Ahmedabad

Century Enka Ltd, Pune

DCL Polyesters Ltd, Hyderabad

Indo Rama Synthetics (India) Ltd, Bombay

Raymond Synthetics Ltd, Allahabad

Reliance Industries Ltd, Bombay

Indonesia

P. T. Hadtex Indosyntec, Bandung

P. T. Indo Rama Synthetics, Jakarta

P. T. Polysindo Eka Perkasa, Jakarta Pusat

[1] OJ No L 56, 6. 3. 1996, p. 1.
[2] OJ No L 209, 2. 8. 1988, p. 1.
[3] OJ No L 66, 10. 3. 1994, p. 10.
[4] OJ No C 209, 29. 7. 1994, p. 2.

P. T. Susilia Indah Synthetic Fibres Industries, Jakarta Pusat

P. T. Vastex Prima Industries, Bandung

Thailand

Sunflag (Thailand) Ltd, Bangkok

Tuntex (Thailand) Public Company Limited, Bangkok

Chareonsawatt Stretched Yarn Co. Ltd, Nakhorn Pathom.

(7) The investigation of dumping covered the period from 1 July 1993 to 30 June 1994 (hereinafter referred to as 'the investigation period').

(8) Owing to the large number of parties involved and the consequent volume and complexity of the data gathered and examined, the investigation has exceeded the normal period of one year referred to in Article 7 (9) (a) of Regulation (EEC) No 2423/88 (hereinafter referred to as 'the basic Regulation').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Description of the product concerned

(9) The product covered by the complaint is polyester textured filament yarn (PTY) which falls within CN codes 5402 33 10 and 5402 33 90. It is directly derived from partially oriented polyester yarn and is used in both the weaving and the knitting sectors to make polyester or polyester/cotton fabric.

There are different types of PTY, depending on the weight (denier), the number of filaments and the lustre. 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

(10) The investigation showed 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 manufactured 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.

(11) Consequently PTY sold on the respective domestic markets of the exporting countries, that exported from these countries to the Community and that produced and sold in the Community are considered as a like product within the meaning of Article 2 (12) of the basic Regulation.

C. DUMPING

1. Normal value

(a) *India*

(12) It was first examined whether the volume of sales of the product concerned by each Indian producer on the domestic market attained at least 5 % of the volume of the exports of the like product to the Community, a percentage which has consistently been considered to constitute sales in sufficient quantities to permit a proper comparison. The seven Indian companies which cooperated achieved individually a volume of domestic sales higher than this 5 % threshold.

(13) For each of the types sold by the seven Indian companies on the domestic market and found to be identical or directly comparable to types sold for export to the Community, the Commission then established whether domestic sales per type were made in sufficient quantities.

(14) Domestic sales of each product type were considered to have been made in sufficient quantities within the meaning of Article 2 (3) of the basic Regulation where the volume of each type of PTY sold in India during the investigation period represented 5 % or more of the quantity of the comparable type of PTY sold for export to the Community.

(15) The Commission subsequently examined for each of the seven Indian companies whether the domestic sales of each type of PTY could be considered to have been effected in the ordinary course of trade, by looking at the proportion of profitable sales of the type in question.

(16) The methodology applied to assess the ordinary course of trade for domestic sales was as follows.

In cases where the volume of the type of PTY sold at a net sales price equal to or above the calculated cost of production as defined in Article 2 (3) (b) (ii) of the basic Regulation represented more than 80 % of the total sales volume of that type, the normal value was established as a weighted average of all domestic sales transactions of the type concerned during the investigation period, whether profitable or not.

In cases where the volume of the type of PTY sold at a net sales price equal to or above the calculated cost of production represented less than 80 % but still a sufficient quantity of the total sales volume of that type, the normal value was established as a weighted average of profitable domestic sales transactions of the type concerned only.

In cases where the volume of the type of PTY sold at a net sales price equal to or above the calculated cost of production represented an insufficient quantity of the total sales volume of that type, it was considered that the type in question was not sold in the ordinary course of trade and that the normal value needed therefore to be constructed.

(17) As a result of the methodology referred to above, for five Indian companies, normal value for all their types of PTY exported to the Community could be based on the domestic price of comparable types, after deducting from the sales price all discounts and rebates directly linked to the sales under consideration, in accordance with Article 2 (3) (a) of the basic Regulation. For one Indian company exporting two types of PTY to the Community, normal value for one type has been based on the domestic price of the comparable type, and for the other type, normal value needed to be constructed as described in recital (18), since there were no sales of that type on the domestic market. For another company which exported to the Community only one type of PTY and sold the comparable type in the domestic market at a loss, normal value had also to be constructed, in accordance with Article 2 (3) (b) (ii) of the basic Regulation.

(18) The constructed value was determined by adding to the manufacturing costs of the product types concerned, a reasonable amount for selling, general and administrative expenses (SG&A) and profit.

The amount of SG&A was established for the two producers concerned by reference to the expenses incurred by each producer on the profitable sales of like products on the domestic market. The amount of profit was calculated for one producer by reference to the profit realized by the producer concerned on the profitable sales of like products on the domestic market. For the other producer, since no profitable sales of like products on the domestic market were available, the amount of profit was calculated by reference to the profit realized by the other producers on profitable sales of the like product on the domestic market.

(b) *Indonesia*

(19) In assessing whether domestic sales of the product concerned by the Indonesian cooperating producers were made in sufficient quantities to permit a proper comparison and in the ordinary course of trade, the Commission applied the same methodology followed with regard to the Indian producers (see recitals (12) to (16)).

(20) On this basis it was found that for each of the Indonesian producers concerned, both the total volume of domestic sales of PTY and the domestic sales volume of each type of PTY, were higher than 5 % of the corresponding volumes of the like product sold for export to the Community. As a consequence, total domestic sales and domestic sales of each product type were considered to have been made in sufficient quantities to permit a proper comparison.

(21) It was also found that out of a total of 49 types of PTY sold for export to the Community by the five Indonesian producers concerned, only for 32 types had the corresponding like product been sold on the domestic market in the ordinary course of trade. Normal value was therefore established for these 32 types on the basis of domestic price of comparable types, after deducting all discounts and rebates directly linked to the sales under consideration, in accordance with Article 2 (3) (a) of the basic Regulation.

(22) For the remaining 17 types of PTY sold for export to the Community, normal value needed to be constructed since the comparable types were not found to have been sold on the domestic market in the ordinary course of trade.

(23) For each on the Indonesian producers concerned, the constructed normal value was determined by adding to the manufacturing cost of the product types in question a reasonable amount for SG&A and profit. This amount was established by reference to the expenses incurred and the profit realized by each producer on the profitable sales and of the like products on the domestic market.

(c) *Thailand*

(24) In assessing whether domestic sales of the product concerned by the cooperating producers in Thailand were made in sufficient quantities to permit a proper comparison and in the ordinary course of trade, the Commission applied the same methodology followed with regard to the Indian producers (see recitals (12) to (16)).

(25) On this basis it was found that for each of the producers concerned in Thailand, both the total volume of domestic sales of PTY and the domestic sales volume of each type of PTY, were higher than 5 % of the corresponding volumes of the like product sold for export to the Community. As a consequence, total domestic sales and domestic sales of each product type were considered to have been made in sufficient quantities to permit a proper comparison.

(26) It was also found that out of a total of 19 types of PTY sold for export to the Community by the three producers concerned in Thailand, only for 14 types had the corresponding like product been sold on the domestic market in the ordinary course of trade. Normal value was therefore established for these 14 types on the basis of the domestic price of comparable types, after deducting all discounts and rebates directly linked to the sales under consideration, in accordance with Article 2 (3) (a) of the basic Regulation.

(27) For the remaining five types of PTY sold for export to the Community by one of the producers concerned in Thailand, normal value needed to be constructed since the comparable types were not found to have been sold on the domestic market in the ordinary course of trade.

(28) For this producer, the constructed normal values was determined by adding to the manufacturing costs of the product types in question a reasonable amount of SG&A and profit. This amount was established by reference to the expenses incurred and the profit realized by the producer concerned on the profitable sales of the like products on the domestic market.

2. Export price

(29) Export price was generally established on the basis of the price actually paid or payable for the product concerned when sold for export to the Community, in accordance with Article 2 (8) (a) of the basic Regulation.

(30) In the case of one Indian exporter who sold a small quantity of the product to a related importer in the Community, in accordance with Article 2 (8) (b) of the basic Regulation, export prices were constructed on the basis of the price at which the imported product was first resold to an independent purchaser in the Community. In constructing the export prices, adjustments were made for all costs incurred between importation and resale and for a profit margin of 3 % which was provisionally considered to be reasonable in the light of the information available to the Commission concerning the profits made by independent importers in the sector concerned.

3. Comparison

(31) Normal value by product type was compared with the export price for the corresponding type, on a transaction-by-transaction basis at an ex-works level and at the same level of trade.

(32) For the purpose of a fair comparison, normal value and export price were adjusted in accordance with the provisions of Article 2 (9) and (10) of the basic Regulation to take account of differences directly affecting price comparability. These adjustments concerned import charges and indirect taxes, and selling expenses arising from sales made under different conditions and terms of sale. Adjustments granted for the above differences were limited to those for which satisfactory evidence was submitted that they had a direct relationship to the sales under consideration.

(33) An allowance claimed by some exporters in Thailand and India was granted in respect of import charges borne by raw materials physically incorporated in the like product, when destined for consumption in the country of origin and proved not to have been collected or refunded in respect of the product exported to the Community.

4. Dumping margins

(a) *Cooperating producers*

(34) The comparison revealed the existence of dumping for all cooperating companies concerned, the margins of dumping being equal to the amount by which the normal value, as established, exceeds the price for export to the Community. The weighted average dumping margins by producer, expressed as a percentage of the free-at-Community-frontier prices customs duty unpaid, are as follows:

India	
Akai Impex Ltd	42,9 %
Bahuma Polytex Ltd	0,3 %
Century Enka Ltd	23,0 %
DCL Polyester Ltd	3,4 %
Indo Rama Synthetics (India) Ltd	25,0 %
Raymond Synthetics Ltd	7,2 %
Reliance Industries Ltd	6,5 %

Indonesia	
P. T. Hadtex Indosyntec	10,2 %
P. T. Indo Rama Synthetics	4,6 %
P. T. Polysindo Eka Perkasa	15,5 %
P. T. Susilia Indah Synthetic Fibres Industries	14,7 %
P. T. Vastex Prima Industries	22,0 %
Thailand	
Sunflag (Thailand) Ltd	29,6 %
Tuntex (Thailand) Public Company Limited	7,9 %
Chareonsawatt Stretched Yarn Co. Ltd	20,2 %

(b) *Non-cooperating producers*

(35) For those producers in the exporting countries concerned which neither replied satisfactorily to the Commission's questionnaire nor otherwise made themselves known, the Commission considered that the dumping margin should be determined on the basis of the facts available in accordance with Article 7 (7) (b) of the basic Regulation. In this respect, the most reasonable facts available were considered to be those verified by the Commission during the investigation. In order to avoid giving a premium for non-cooperation and to ensure that the measures introduced constitute effective protection for the Community industry from unfair trade, it was considered appropriate, for the provisional determination, to establish the dumping for non-cooperating producers in each of the countries concerned at the level of the highest dumping margin found for the cooperating producers in the respective country.

On this basis, the provisional dumping margins for non-cooperating producers has been established at 42,9 % for India, 22 % for Indonesia and 29,6 % for Thailand.

D. COMMUNITY INDUSTRY

(36) Not all the producers of PTY in the Community cooperated in the investigation. Therefore, in order to establish the total PTY production in the Community and to define the Community industry in the meaning of Article 4 (5) of the basic Regulation, data obtained from the responses to the questionnaires, from Eurostat figures and from the Cirfs concerning the output of the non-cooperating companies were used. On this basis, the total PTY output in the Community was estimated at about 95 000 tonnes.

(37) The Commission considered whether one cooperating company, producing PTY in the Community which is a subsidiary of a producer in Turkey and which cooperated in the investigation, should be excluded from the definition of the Community industry pursuant to Article 4 (5) of the basic Regulation.

In this respect, it should be recalled that this company purchased the essential element for the PTY production, partially oriented polyester yarn (POY) from its parent company in Turkey which was found to export POY and PTY to the Community market. The Turkish company, as a producing exporter, is an interested party in the review of the anti-dumping measures on imports of POY and PTY originating, *inter alia*, in Turkey which has been conducted simultaneously with the present proceeding.

(38) Following previous Community practice, it was considered that this Community producer, through its relationship with the producer/exporter concerned in Turkey was shielded from the injurious effects of the dumped imports. It was further considered, in accordance with that practice, that to include this producer in the definition of the Community industry would distort the assessment of these effects. Indeed, the fact that the Community producer concerned produces PTY from POY bought at transfer prices from the related Turkish exporter found to have been dumping and causing injury to the complainants renders the production cost data for the product concerned unreliable. On these grounds, it was considered that the Community producer concerned had to be excluded from the definition of the Community industry.

(39) On the basis of the above, the share of the total Community production held by the complainant cooperating producers during the investigation period amounted to more than 50 %. It is confirmed, therefore, that these complainants represent a major proportion of the total Community production of the product concerned and constitute the Community industry within the meaning of Article 4 (5) of the basic Regulation.

E. INJURY

1. Community consumption of PTY

The Commission determined that the total apparent Community consumption of PTY evolved as follows: it went from 230 000 tonnes in 1991, to 237 000 tonnes in 1992 and fell back to 221 000 tonnes in 1993, to increase again to 241 000 tonnes in the investigation period. This represents an overall increase of consumption of around 5 % during the period under consideration.

2. Exporters' behaviour on the Community market

(a) *Cumulation of the dumped imports*

(40) The Commission examined whether the imports from the countries concerned should be analyzed cumulatively in order to assess their impact on the Community industry. This analysis was carried out on the basis of following criteria:

volume of imports from each of the countries concerned, similarity of physical characteristics and interchangeability of end-uses between the imported products and between these and the like products manufactured in the Community, and similarity of channels of distribution and price behaviour in the Community market of the producers in the countries concerned.

(41) As regards India, the volume of imports originating in that country has continuously decreased since 1992, falling to 2 274 tonnes during the investigation period, which represents 0,9 % of the total Community consumption in that period. This import volume was found to be negligible and, therefore, in conformity with the standard practice of the Community, and for the purpose of provisional findings, imports of the product concerned originating in India are considered not to have contributed to the material injury to the Community industry and are accordingly excluded from the injury assessment.

(42) As regards imports originating in Indonesia and Thailand, the producers concerned in these countries claimed that their respective exports to the Community should not be cumulated with those from the other countries involved because of their alleged low level. However, it was found that imports into the Community from each of the two countries concerned have, since 1991, continuously increased, and that during the investigation period, Indonesia exported 11 518 tonnes of PTY, representing 4,8 % of Community consumption and Thailand 6 925 tonnes, representing 2,9 % of Community consumption. These import levels cannot be considered to be negligible either in absolute or in relative terms.

(43) After examination of the facts, it was found that the PTY imported from Indonesia and Thailand were, between themselves and with regard to the PTY manufactured in the Community, alike in all respects and highly interchangeable. The investigation further showed that Indonesian and Thai imports of PTY are competing with each other and with the like product produced by the Community industry. Moreover, these imports are sold in the Community through similar commercial channels and followed comparable price trends. Under these circumstances, it was concluded that the effects of the imports concerned originating in Indonesia and Thailand should be assessed on a cumulative basis.

(b) *Volume and market shares of the dumped imports*

(44) Imports of PTY originating in Indonesia and Thailand, taken together, increased from 3 863 tonnes in 1991 to 9 490 tonnes in 1993, and to 18 443 tonnes during the investigation period. This represents an increase in the share of the Community market from 1,7 % in 1991 to 4,3 % in 1993, and to 7,7 % during the investigation period.

3. Prices of the dumped imports

(45) In order to examine whether price undercutting existed, all the types manufactured by the Community industry and those imported into the Community from Indonesia and Thailand were divided into three groups depending on the weight (denier) of the different types. The Commission then compared the weighted average Community industry's selling price of each group with the weighted average price of each exporting company concerned for the comparable group at the same level of trade. The undercutting margins obtained per group were then weighted in order to reach one margin per exporting company.

The Community industry's prices were taken at an ex-works basis and the exporters' prices were at free-at-Community-frontier, customs cleared.

(46) This comparison showed undercutting margins during the investigation period. The margins ranged for Indonesia from 37,4 % to 46,8 % depending on the exporter concerned, with an overall weighted average of 41,3 % and for Thailand from 48,2 % to 52,7 % with an overall weighted average of 49,6 %.

4. Situation of the Community industry

(a) *Production, production capacity and capacity utilization*

(47) The Community industry production of PTY dropped steadily from 104 000 tonnes in 1991 to 92 000 tonnes in 1993 and slightly recovered to 95 000 tonnes during the investigation period. This represents an overall decrease in Community production of 8,6 % while consumption increased by 5 % over the same period.

(48) The PTY production capacity of the Community industry has increased by about 7 % from 114 000 tonnes in 1991 to 122 000 tonnes during the investigation period.

(49) The utilization rate of production capacity of the Community industry globally decreased from 91 % to 78 %. Given the fact that the polyester yarn industry is very capital intensive (up to 90 % utilization rate being considered to be normal), the decreasing utilization rate had a significant effect on the allocation of fixed costs.

(b) *Sales volume and market share*

(50) The quantity of PTY sold in the Community by the Community industry declined from about 87 000 tonnes in 1991 and 1992 to 83 000 tonnes in 1993 to increase again to 87 000 tonnes during the investigation period in a context of growing demand.

(51) The Community industry's share of the Community market developed as follows: 37,7 % in 1991, 36,8 % in 1992, 37,7 % in 1993 and 36 % during the investigation period. The overall relative stability of sales led to a slight decrease of the market share due to the increase in Community consumption.

(c) *Price evolution*

(52) Prices of PTY have fluctuated in line with the prices of the raw materials used for producing the upstream product POY, i.e. pure terephthalic acid (PTA), dimethyl ethylene (DMT), glycol. The increasing price trend of PTY recorded at the end of the investigation period (first half 1994) as compared to 1993 (second half), is the result of the worldwide shortage of these raw materials and their subsequent price increases. These price increases occurred consequently for all operators in the market at the same time.

(d) *Profitability*

(53) It was found that, in general and from 1992 onwards, the Community industry has recorded deteriorating financial results. The overall profitable situation in 1992 turned into losses and has particularly worsened during the investigation period to reach average losses of around 10 % on turnover. All complaining Community producers suffered heavy losses, or decreasing profitability.

(e) *Employment and investment*

(54) It should be noted that though the production of PTY is not labour-intensive, there has been a steady curtailment in employment of the Community industry. The level of investment was generally reduced for most companies. The increase in PTY production capacity is specifically the result of significant investment in 1992 and 1993 by one company, related to a third country producer; this company reduced drastically its imports of POY from the parent company and as a counterpart extended its production of POY and consequently its PTY capacity in the Community.

5. Conclusions on injury

(55) Based on the negative trends of the economic indicators mentioned above, which consist mainly in a decline of production, capacity utilization and market share, notwithstanding a certain increase in Community consumption of PTY, as well as increasing financial losses, it is provisionally concluded that the Community industry is suffering material injury.

F. CAUSATION OF INJURY

(56) The Commission has examined whether the material injury suffered by the Community industry had been caused by the dumped imports and whether other factors might have caused or contributed to that injury.

1. Effect of dumped imports from Indonesia and Thailand

(57) In view of the increased market penetration combined with aggressive low pricing of imports of PTY originating in Indonesia and Thailand, it appears that these imports have contributed to the deteriorated situation of the Community industry. Since 1991, imports from the two countries concerned have achieved by far the highest Community market share (7,7 % during the investigation period), when compared to imports from other third countries. During the same period the Community industry has suffered some loss of market share, despite the increase recorded in Community consumption, and substantial financial losses. The progression of imports from Indonesia and Thailand can largely be explained by their low level of prices which significantly undercut those of the Community industry. This was the case even during the second half of the investigation period (first half of 1994) when Community prices slightly recovered to reflect an increase in the prices of raw materials.

2. **Effect of other factors**

(58) The Commission also examined whether the injury suffered by the Community industry could be attributed to factors other than the imports from Indonesia and Thailand. This analysis was all the more warranted as the profitability situation of the Community industry had already started to deteriorate in 1992 while imports from Indonesia and Thailand showed the most significant increase in 1993.

(a) *Imports from other countries*

— Taiwan and Turkey

(59) It has to be borne in mind that anti-dumping measures introduced in 1988 are still in force on imports of PTY originating in Turkey and Taiwan. The ongoing review of these measures by the Commission may conclude that the imports from Turkey and Taiwan, although they decreased in terms of volume and market share had an injurious impact on the Community industry and that they had contributed to the difficult situation of the Community industry.

— Malaysia, the USA, South Africa and Slovakia

(60) Imports from these countries were claimed to have influenced the situation of the Community industry.

(61) As regards Malaysia, an anti-dumping proceeding was initiated in April 1995 and the investigation is still in progress. Since the Commission concluded that there was sufficient evidence of dumping causing injury to commence the investigation, it cannot be excluded that the Malaysian imports, whose Community market share went from 0 % in 1991 to 1,9 % during the investigation period, contributed to the injury suffered by the Community industry.

(62) Imports of PTY from the USA, though still significant (4,1 % market share during the investigation period), dropped by 16 % in volume between 1991 and the investigation period. As to imports of PTY from South Africa, they increased in terms of Community market share from 1,07 % in 1991 to 1,47 % during the investigation period. Eurostat figures do not, however, provide information on the types of PTY imported and, therefore, no conclusions can be drawn with regard to the prices at which imports of PTY from the USA and South Africa were made.

(63) As far as Slovakia is concerned, imports of PTY into the Community from this country reached a Community market share in the investigation period of 3,1 %. However, it appeared that since 1993 due to an investment by a Community producer in Slovakia, a major part of the imports into the Community originating in that country was made at transfer prices between related parties. It can reasonably be assumed that such imports cannot have been made by the Community producer in question with a view to adversely affect its own profitability. Consequently, it is concluded that the Slovakian imports cannot have had a meaningful impact on the situation of the Community industry.

— Conclusion

(64) Imports of PTY from Taiwan, Turkey and Malaysia, for which injurious dumping has either been found or is being investigated in the framework of an anti-dumping proceeding, may have contributed to the unfavourable situation of the Community industry. As to imports of PTY from the USA and South Africa for which no conclusive information on prices exists, a possible contribution to the injury suffered by the Community industry cannot be excluded. However, even if it had to be concluded that these imports could have contributed to that injury, they could not have the result of eliminating the injurious effect of the imports from Indonesia and Thailand.

(b) *Other Community producers*

(65) Since the complaining Community producers represent about 50 % of the total Community production of PTY, it was considered necessary to examine the behaviour of the other Community producers of PTY and their possible impact on the situation of the complainants.

(66) The estimated production capacity of the other PTY producers in the Community appears to have remained stable over the last four years. The same applies to their actual production which showed a slight increase similar to the Community industry's production, in the first half of 1994 only. As to the market share of these other Community producers it showed during the investigation period a slight decrease similar to that of the complainant industry.

(67) Therefore, it does not appear that these producers' behaviour had injurious effects on the precarious situation of the complainant industry other than that resulting from normal competition.

(c) *Competitiveness of the Community industry*

(68) Indian exporters argued that the Community industry has developed, through extensive restructuring, very technically advanced plants and created overcapacity. These exporters further argued that in these conditions any material injury suffered by the Community industry was self-inflicted.

(69) The Commission examined this argument and concluded that for some Community companies the level of investment remained significant, especially because this type of industry required constant renewal of machinery and installations. These investments were necessary in order to be able to compete efficiently and explain in part only the decrease in the rate of capacity utilization of the Community industry. In any case, the total production capacity of the Community industry is not excessive in comparison with the Community consumption and reasonable sales expectations.

(d) *Exports of the Community industry*

(70) Some producers in the exporting countries concerned argued that the critical situation alleged by the Community industry on the Community market can be explained by the fact that Community industry's exports have increased since 1991.

(71) In response to this argument, it has to be noted that Eurostat statistics on Community exports of PTY show an increase of 15,5 % in volume terms during the period under consideration. However, this performance is only attributable to exports of Community producers not included in the Community industry since exports of the latter have slightly decreased over the same period. As a consequence, the argument put forward by the producers in the exporting countries concerned is not founded.

(e) *Exchange rates and market conditions*

(72) Indonesian exporters claimed that favourable exchange rates of the US dollar against the ecu have fostered Indonesian exports to the Community.

(73) The fact that the exchange rates of the dollar against the ecu might have rendered the imported PTY invoiced in US dollars more attractive for the importers, does not detract from the fact that the product was exported at dumped prices throughout the entire investigation period and that the injurious effect of such imports may have been reinforced.

(74) Indonesian exporters also alleged that labour costs are much higher in the Community than in Indonesia, which leads to much higher prices of Community producted PTY, in comparison with Indonesian produced PTY.

(75) It should be noted that labour in this type of industry constitutes a minor part of the production costs. The difference in price of the dumped imported yarn and the price of the yarn produced by the Community industry cannot be accounted for in a significant proportion by differences in labour costs.

(76) Producers in Thailand claimed that the imposition of anti-dumping measures would be totally unjustified in the present circumstances given the dramatic increase of their export prices since spring 1994 which was more than sufficient to remove any alledged dumping or injury during the investigation period.

(77) The price increase in the first half of 1994, i.e. the second part of the investigation period, is mainly the result of a cost increase due to higher priced raw materials and therefore merely reflecting an overall worldwide general increase in prices. As previously stated, undercutting margins remained identical during the said period of time.

(78) Furthermore, it should be recalled that it is the Commission's standard practice in anti-dumping proceedings to investigate facts and figures relating to a precise period of investigation. Events occurring after the investigation period, in that case after June 1994, cannot normally be taken into consideration for the purpose of dumping and injury calculations, as the need to verify these events would render an investigation virtually permanent. It would also allow exporters to manipulate the results by short-lived price increases after the initiation of the anti-dumping proceeding. In any event, on the basis of the information obtained for the investigation period, the price increase, if maintained after the investigation period, would still be at injurious dumping levels.

3. Conclusions on causation of injury

(79) It results from the foregoing that, having excluded other factors which had, if any, only a limited impact, the imports of PTY originating in Indonesia and Thailand constitute a relevant cause of the deterioration of the Community industry's situation.

(80) Indeed, the surge of Indonesian and Thai imports which were consistently sold at low, dumped prices during the investigation period has had a particularly destabilizing impact on the Community industry, which was just on the way to recovering from injury caused by other dumped imports.

The latter were still found to significantly undercut the Community producer prices during the investigation period, but by less than the Indonesian and Thai imports.

(81) It has therefore to be concluded that, by penetrating the Community market due to low, dumped prices which led to a lowering of the price level on the Community market and accordingly the Community industry to suffer a loss of profitability, the cumulated Indonesian and Thai dumped imports have caused material injury to the Community PTY industry.

G. COMMUNITY INTEREST

1. General considerations

(82) A determination as to whether the Community interest calls for intervention is to be based on an appreciation of all the various interests taken as a whole, including those of producers, users and consumers in the Community.

In such an examination, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration.

2. Interest of the Community industry and impact on competition

(83) In the framework of the investigation it has been established that the Community industry is facing an injurious situation in the form of an overall decrease in production, stagnant sales at depressed prices and a slightly regressing market share, which together led to substantial financial losses. In addition, it has had to reduce the number of employees.

Removing the unfair advantages gained by dumping practices should place the Community industry in a position to compete with imports on equal terms; falling this, it is in danger of becoming uncompetitive. Competitiveness in this sector, for a large part, depends on the capacity to modernize production equipment regularly, an investment which may become problematic for the Community industry in view of its poor and worsening financial situation.

(84) When examining the effect on competition of possible anti-dumping measures in the present case, account has to be taken of the fact that the Community PTY industry held a market share of 36 % during the investigation period. In this connection, the considerations set out in recitals (85), (86) and (87) appear relevant.

(85) The imposition of anti-dumping measures will affect price levels of the imports from Thailand and Indonesia into the Community and may have subsequently some influence on the relative competitiveness of such imports. However, competition on the Community market cannot be expected to be reduced as a consequence of such measures.

(86) On the contrary, the removal of the unfair advantages gained by the dumping practices is designed to prevent the further decline of the Community industry and the possibility of producers in third countries selling in the Community which did not resort to unfair pricing and thus to help to maintain the availability of a wide choice of PTY producers. It appears indisputable that, unless measures are taken, the situation of the Community industry will further deteriorate.

(87) It has also to be recalled that the Community industry has been affected by imports from other third countries, namely Taiwan and Turkey, which are currently subject to anti-dumping measures. These countries would be treated in a discriminatory manner and the effectiveness of measures would be undermined, if no measures were taken in order to eliminate the injurious effects of dumped imports from Indonesia and Thailand.

3. Other specific interests involved

(88) The effects of imposing anti-dumping measures on imports of PTY from Thailand and Indonesia in relation to the specific interests of parties other than the Community industry, including the processing industry and the consumers, have also to be considered.

(89) No arguments were submitted by users as regards the impact of the price of PTY on the end products. Nevertheless, given the limited level of the measures proposed, the impact on the end

products — mainly fabrics and carpets — has been estimated to be moderate.

(90) Some producers in Indonesia and Thailand claimed that the imposition of anti-dumping measures would not be in the Community interest, because Community installations did not provide sufficient production capacity to supply Community buyers. Producers in Thailand added that the anti-dumping measures would contribute to further increase the current market disruptions caused by the absence of sufficient supply and be detrimental to the Community processing industry.

(91) These arguments have to be rejected since when considering both complainant and non-complainant Community producers' production capacity, no structural supply deficit seems to exist (consumption and production capacity averaging about 240 000 tonnes).

4. Conclusion on Community interest

(92) Having examined the various interests involved, the Commission concludes that to leave the Community PTY industry suffering material injury especially demonstrated by financial losses, decreased production and a slight decrease in market share, without protection against injurious dumping, would accelerate the deterioration of such industry and would therefore not be in the interest of the Community. It is furthermore considered necessary to assure a non-discriminatory treatment of PTY originating in Indonesia and Thailand as compared to imports of PTY originating in other third countries, presently subject to anti-dumping measures. No compelling reasons not to impose anti-dumping measures were found.

(93) Therefore, it is concluded that the Community interest calls for the imposition of anti-dumping measures.

H. DUTY

(94) In order to prevent further injury being caused to the Community industry during the investigation, it is considered that anti-dumping measures should be established in respect of imports of PTY originating in Indonesia and Thailand in such a way as to allow that industry to obtain the reasonable profit it has been deprived of through the effects of the dumped imports. To this end, a provisional anti-dumping duty in the form of an *ad valorem* duty should be imposed.

(95) For the purpose of establishing the level of the provisional duty, the Commission took account of the level of dumping found and the amount of duty necessary to eliminate the injury sustained by the Community industry.

(96) When calculating the amount of duty adequate to remedy the precarious situation of the Community industry, the Commission had to consider that this situation consists mainly of deteriorating financial results due to depressed prices resulting from price undercutting. The removal of such injury requires that the measures taken allow the Community industry to realize sales on the basis of prices which provide for a reasonable profit.

(97) In this respect, the Commission has calculated the price level considered to be adequate to remove injury on the basis of the weighted average cost of production of the Community industry including a profit of 6 % considered reasonable for guaranteeing the industry productive investment on a long-term basis. It has then compared this injury elimination level to the average import prices on a free-at-Community-frontier basis, duty paid.

Since the injury margins found exceed, for all companies and countries concerned, the dumping margins established, the duties should be based on the dumping margins found pursuant to Article 13 (3) of the basic Regulation.

(98) In establishing the level of provisional duty for producers in each of the exporting countries concerned which neither replied to the Commission's questionnaire nor otherwise made themselves known, the Commission considers it appropriate, for the reasons oulined in recital (35), to establish the level of provisional anti-dumping duty at the dumping margin established in that recital for imports originating in Indonesia and Thailand, namely 22 % and 29,6 % respectively.

(99) As explained in recital (41) it has been concluded provisionally that imports of the products concerned originating in India were not considered to have contributed to the material injury suffered by the Community industry. The Commission considers therefore that protective measures with regard to these imports are unnecessary at this stage of the investigation.

I. RIGHTS OF INTERESTED PARTIES

(100) In the interest of sound administration, a period should be fixed within which the parties concerned may make their views known in writing and request a hearing. Furthermore, it should be stated that all findings made for the purpose of the Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional 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 duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows:

Country	Manufacturer	Rate of duty	Taric additional code
Indonesia	P.T. Hadtex Indosyntec	10,2 %	8884
	P.T. Indo Rama Synthetics	4,6 %	8885
	P.T. Polysindo Eka Perkasa	15,5 %	8886
	P.T. Susilia Indah Synthetic Fibres Industries	14,7 %	8887
	Others	22,0 %	8888
Thailand	Tuntex (Thailand) Public Company Limited	7,9 %	8889
	Chareonsawatt Stretched Yarn Co. Ltd	20,2 %	8890
	Others	29,6 %	8891

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

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard orally within one month of the date of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the day following 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, 23 May 1996.

For the Commission

Leon BRITTAN

Vice-President