COMMISSION REGULATION (EC) No 53/97

of 14 January 1997

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

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 amended by Regulation (EC) No 2331/96 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) In April 1995, the Commission announced, by a notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding concerning imports of polyester textured filament yarn originating in Malaysia, pursuant to Article 5 (9) of Council Regulation (EC) No 3283/94 [4], subsequently replaced by Regulation (EC) No 384/96 (hereinafter referred to as the 'Basic Regulation').

(2) The proceeding was initiated as a result of a complaint lodged in December 1994 by the International Committee of Rayon and Synthetic Fibres (Cirfs), acting on behalf of Community producers representing allegedly a major proportion of the Community production of polyester textured filament yarn.

The complaint contained evidence of dumping and of material injury resulting therefrom; this evidence was considered sufficient to justify the opening of a proceeding.

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

(4) The Commission sent questionnaires to all parties known to be concerned.

It received detailed information from the complaining Community producers.

Exporter's questionnaires were sent to 15 alleged producers in Malaysia according to the information supplied by Cirfs; however, only one producer/exporter in Malaysia cooperated in this proceeding.

25 importers known to the Commission were given the opportunity to submit information or to make their views known. Neither these nor other importers cooperated in this proceeding.

(5) 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 companies:

(a) *Community producers*

Rhône Poulenc (France)

Hoechst AG (Germany)

Montefibre Spa Enichem (Italy)

Akzo Fibres and Polymers Division Enka BV (Netherlands)

Nurel SA (Spain)

Exsa (United Kingdom)

Unifi (Ireland).

(b) *Producer/exporter in the exporting country*

Hualon Corporation (M) Sdn. Bhd., Kuala Lumpur

This cooperating company exported during the investigation period some 90 % of the total Malaysian exports of polyester textured filament yarn to the Community.

(6) The investigation of dumping covered the period from 1 January 1994 to 31 March 1995 (hereinafter referred to as ' the investigation period').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Description of the product concerned

(7) The product covered by the complaint is polyester textured filament yarn (hereinafter referred to as 'PTY'), which falls under CN codes 5402 33 10 and 5402 33 90. It is directly derived from partially oriented polyester yarn (hereinafter referred to as 'POY'), and is used in both the weaving and the knitting sectors to make polyester or polyester/cotton fabrics.

[1] OJ No L 56, 6. 3. 1996, p. 1.
[2] OJ No L 317, 6. 12. 1996, p. 1.
[3] OJ No C 95, 19. 4. 1995, p. 5.
[4] OJ No L 349, 31. 12. 1994, p. 1.

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 are considered as one product for the purposes of this proceeding.

2. Like product

(8) The investigation showed that PTY sold on the domestic market of Malaysia has similar basic physical characteristics and uses to the PTY exported from that country to the Community. Similarly, the PTY manufactured by the Community industry and sold on the Community market has similar basic physical characteristics and uses when compared to that exported to the Community from Malaysia.

(9) Consequently, PTY sold on the respective domestic market of the exporting country, PTY exported from this country to the Community and PTY produced by the Community industry and sold in the Community market are considered 'like product', within the meaning of Article 1 (4) of the Basic Regulation.

C. DUMPING

1. Normal value

(10) It was first examined whether the volume of sales of the product concerned by the sole cooperating Malaysian producer on the domestic market reached in total 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 in accordance with Article 2 (2) of the Basic Regulation. The producer achieved a level in excess of this 5 % threshold.

(11) For each of the types sold 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.

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

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

(14) 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 unit costs, as defined in Article 2 of the Basic Regulation, represented 80 % or more 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 unit costs represented less than 80 % 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, where these transactions were made in sufficient quantities.

As a result of the methodology set out above, normal value for all 20 types of PTY exported to the Community during the investigation period could be based on the domestic selling prices of comparable types of PTY.

2. Export prices

(15) Export prices were established on the basis of the prices actually paid or payable for the product concerned when sold for export from the exporting country to the Community, in accordance with Article 2 (8) of the Basic Regulation.

3. Comparison

(16) Normal value by product type was compared with the export price for the corresponding type, at an ex-works level and at the same level of trade. Normal value, established on a weighted average basis, was compared to a weighted average of prices of all export transactions to the Community, in accordance with Article 2 (11) of the Basic Regulation.

(17) For the purpose of a fair comparison, normal value and export price were adjusted in accordance with the provisions of Article 2 (10) of the Basic Regulation to take account of differences affecting price comparability.

(18) In the case of normal value, adjustments were made to take account of inland transport costs, insurance, handling and loading expenses and payment terms so as to bring the normal value to an ex-factory level.

(19) Adjustments for transport costs (inland and ocean), handling and ancillary expenses as well as payment terms and, where appropriate, commissions and insurance were made to export prices to arrive at an ex-factory level.

(20) Adjustments granted were limited to those claimed for which satisfactory evidence was submitted that the differences concerned affected prices and price comparability.

4. Dumping margin

(21) The comparison made as described under recital (16) above revealed the existence of dumping, the margin of dumping being equal to the amount by which the normal value exceeds the export price to the Community.

A weighted average dumping margin, expressed as a percentage of the free-at-Community-frontier price, customs duty unpaid, was established. For Hualon Corporation (M) Sdn. Bhd., the sole co-operating producer in Malaysia, this margin amounts to 16,4 %.

(22) In the case of producers in Malaysia which neither replied to the Commission's questionnaire nor otherwise made themselves known, and which thus failed to cooperate in the investigation, the Commission considered that the dumping margin should be determined on the basis of the facts available in accordance with Article 18 (1) of the Basic Regulation. In this connection, it was considered that the most reasonable facts were those established during the investigation, and that in order to avoid giving a premium for non-cooperation, the dumping margin attributable to those producers should be based on the highest dumping margin found for a type of PTY most representative, in terms of volume and quality, of the types of PTY exported by the sole cooperating Malaysian producer. The dumping margin thereby established for this type, representing some 20 % of the export volume by Hualon Corporation (M) Sdn. Bhd. to the Community, amounts to 32,5 %, and should be attributed to the producers in Malaysia which failed to cooperate in the investigation.

D. COMMUNITY INDUSTRY

(23) Not all the producers of PTY in the Community cooperated in the investigation, though no producer expressed opposition to the complaint. Accordingly, in order to establish the total PTY production in the Community, data obtained from the responses to the questionnaires, from Eurostat figures and from Cirfs concerning the output of the non-cooperating producers were used. On this basis, the total PTY annual output in the Community during the investigation period was estimated at about 193 000 tonnes, of which 97 000 tonnes were produced by the Community producers supporting the complaint which were not related to exporters of the allegedly dumped product and which cooperated during the proceeding.

(24) As in the review proceeding of anti-dumping measures concerning imports of PTY from Turkey and Taiwan [1] as well as in the anti-dumping proceeding concerning imports of PTY from India, Indonesia and Thailand [2], the Commission considered whether one company, Exsa, producing PTY in the Community, which is a subsidiary of an exporting company located in Turkey, should, in this proceeding too, be excluded from the definition of the Community industry, pursuant to Article 4 (1) (a) of the Basic Regulation.

(25) In this connection, it should be recalled that Exsa purchased the essential element for the PTY production, POY, from its parent company which was found to be exporting POY to the Community market at dumped prices. Exsa processed the POY into PTY which was mainly sold on the Community market. In addition, the Turkish parent company exported PTA at dumped prices to the Community [3]. For these reasons, Exsa was excluded from the definition of the Community PTY industry in both those proceedings.

(26) In the present proceeding, Exsa is not related to any of the Malaysian exporters concerned. However, in view of the fact that Exsa has produced PTY from POY obtained from its parent company which was found to be dumping, the Commission took the view that to include the data relating to PTY produced by this company would distort the assessment of the situation of the Community industry and would thus make it unreliable. Accordingly, Exsa was also excluded in this proceeding from the definition of the Community industry.

[1] Council Regulation (EC) No 1074/96 of 10 June 1996, amending further Regulation (EEC) No 3905/88 as regards definitive anti-dumping duties on imports of polyester yarn originating in Taiwan and Turkey (OJ No L 141, 14. 6. 1996, p. 45).

[2] 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 (OJ No L 128, 29. 5. 1996, p. 3).

[3] See recital (112) of Regulation (EC) No 1074/96.

(27) On this basis, the share of the total Community production held by the complainant producers during the investigation period was about 50 %. Therefore, the complainants represent a major proportion of the total Community production of the product concerned within the meaning of Article 4 (1) of the Basic Regulation. For the remainder of this document, the term 'Community industry' refers only to the complaining companies of the Community industry.

E. INJURY

(28) The injury assessment made by the Commission was based on the relevant economic indicators covering the period January 1991 to March 1995 (hereinafter referred to as the 'period under consideration'). This assessment was based on information available for the fifteen Member States.

1. Community consumption of PTY

(29) The Commission determined that the total apparent Community consumption of PTY has, with the exception of 1993, increased during the period under consideration. Thus, it went from around 236 000 tonnes in 1991, to around 243 000 tonnes in 1992 and fell back to around 227 000 tonnes in 1993, to increase again to around 262 000 tonnes in 1994. Total Community consumption during the investigation period (15 months) amounts to around 330 000 tonnes. Overall, consumption of PTY in the Community increased by some 11 % from 1991 to 1994, and this trend seems to have continued in 1995.

2. Exporters' behaviour in the Community market

(a) *Volume and market share of the dumped imports*

(30) At the beginning of the period under consideration, no exports of PTY originating in Malaysia were registered in the Community market (1991). Malaysian exports increased from 0 tonnes in 1991 to around 1 100 tonnes in 1992 (0,4 % market share), to around 2 400 tonnes in 1993 (1,0 % market share), and to around 7 900 during 1994 (3,0 % market share). During the investigation period (see recital (6)), Malaysian exports amounted to around 9 000 tonnes representing, again, a 3,0 % market share (see recital (29)).

(b) *Prices of the dumped imports*

(31) In order to assess the pricing of the imports concerned, PTY types manufactured and sold by the Community producers and those exported from Malaysia to the Community have been divided into comparable product groups, depending on the denier and filament number of the types. The Commission then compared the weighted average Community industry's selling price of each group with the weighted average price of the comparable group of PTY exported, at the same level of trade. On this basis, undercutting margins, obtained per individual group, were then weighted in order to reach one overall margin.

The Community industry's selling prices were established on an ex-works basis and the comparable export prices at a free-at-Community-frontier stage, duty paid.

(32) This comparison showed undercutting margins constantly during the investigation period, ranging from 5 % to 43 %, with an overall weighted average margin of 18,2 %.

3. Situation of the Community industry

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

(33) The Community industry's production of PTY dropped from around 104 000 tonnes in 1991 to around 92 000 tonnes in 1993, and then recovered to around 95 000 tonnes in 1994. During the investigation period (15 months), the production of the Community industry reached around 121 000 tonnes (representing around 97 000 tonnes on an annual basis).

It should be noted that the actual level of production, although increasing since 1994, was during the investigation period still nearly 7 % lower than the output level in 1991, notwithstanding an increase of 11 % in Community consumption of PTY over the same period.

(34) The PTY production capacity of the Community industry developed from 114 000 tonnes in 1991, to 118 000 tonnes in 1992, to 122 000 tonnes in 1993, and fell back to 107 000 tonnes in 1994. During the investigation period (15 months) the capacity of the Community industry amounted to 135 925 tonnes (representing 108 740 tonnes on an annual basis).

The increase in PTY production capacity from 1991 to 1993 is mainly the result of the development of an Irish company, Unifi, related to a US company. It is noted that this production facility merely replaced imports of POY from the USA.

(35) Capacity utilisation of the Community industry steadily declined from 91 % in 1991 to 76 % in 1993 and then recovered to 89 % during the investigation period, mainly as a result of the reduction in production capacity which took place in 1994.

(b) *Sales volume and market share*

(36) The quantity of PTY sold in the Community by the Community industry moved as follows: 87 000 tonnes in 1991, 91 000 tonnes in 1992, 87 000 tonnes in 1993, 89 000 tonnes in 1994, and reached around 114 000 tonnes during the investigation period (15 months), representing 87 000 tonnes on an annual basis, in the context of growing demand.

(37) The Community industry's market share developed as follows: 37,2 % in 1991, 37,7 % in 1992, 38,7 % in 1993, 34,0 % in 1994, and 34,5 % for the investigation period. This decline in the market share is the result of the relative stability of sales volume by the Community industry in an expanding market, and has to be seen in the light of the expansion of a producer in the period 1992 to 1993 (see recital (34)). Had the sales of this producer not been taken into account, the market share of the remaining producers making up the Community industry would have decreased even more substantially.

(c) *Price movements*

(38) Prices for PTY, charged by the Community industry on the Community market, decreased steadily from 1991 onwards. On average this decrease amounted to 16 % during the investigation period when compared to the prices of the Community industry in 1991, and despite a price increase in raw materials which occurred at the end of the investigation period (see also recitals (58) and (59)).

(d) *Profitability*

(39) It was found that, overall and from 1992 onwards, the Community PTY industry has recorded deteriorating financial results. The profitable situation in 1991 (+ 11,2 %) sharply shrank to an unsatisfactory profit margin of 2,1 % in 1992, and turned into losses as from 1993 (– 9,4 %). Since then, all Community producers have continued to suffer heavy losses, or decreasing profitability, notwithstanding a certain reduction on the overall losses incurred.

(e) *Employment and investment*

(40) Although the production of PTY is not labour intensive, there has been a steady curtailment in employment by the Community industry.

As a result of insufficient profitability, investments by the Community industry were reduced to a level which in many cases jeopardises the efficiency of the production process.

4. Conclusion on injury

(41) On the basis of the unsatisfactory movement of the economic indicators as outlined above, which consists mainly in a decline in actual production, in production capacity and in market share, as well as a price decrease and considerable financial losses, it is provisionally concluded that the Community industry has suffered material injury.

F. CAUSATION OF INJURY

1. Causal link between dumped imports and injury

(42) Dumped imports of PTY originating in Malaysia have been made at low prices as compared to the prices of the Community industry (see recitals (30) (31) and (32)). This finding is particularly relevant as the PTY market is highly transparent, with the effect that pricing behaviour of particular market participants has an effect on the prices that other market participants can obtain; this conclusion is underlined by the fact that the dumped imports concerned have been sold through the same channels and to the same kinds of customers as sales from the Community industry. Furthermore, the investigation has established that these imports have gained a significant share of the Community market during the period under consideration. During the same period, the Community industry has suffered a loss in market share despite the increase recorded in Community consumption of PTY, as well as substantial financial losses.

2. Effect of other facts

(43) In order to ensure that injury suffered by the Community industry due to other factors is not attributed to the dumped imports, the Commission examined further these other factors. This examination was all the more warranted as the profitability of the Community industry had already started to deteriorate in 1992, whereas imports from Malaysia showed the most significant increase in 1994.

(a) *Imports from other countries*

— Taiwan and Turkey

(44) Anti-dumping measures were introduced in 1988 on imports of PTY originating in Turkey and Taiwan and they remain in force, duly amended as the result of a review investigation that shows that the expiry of the measures would lead to a recurrence of injury to the Community industry.

— India, Indonesia and Thailand

(45) Imports into the Community of PTY from India, Indonesia and Thailand are also subject to an anti-dumping proceeding. The findings made in the investigation showed that, while Indian imports were negligible, imports from Indonesia and Thai-

land have increased significantly at dumped prices which undercut Community producers' prices. It was therefore concluded that imports from Indonesia and Thailand contributed materially to the injurious situation of the Community industry and that anti-dumping measures needed to be imposed on those imports.

— USA, South Africa and Slovakia

(46) Imports from these countries were claimed to have influenced the situation of the Community industry and it was alleged that the complaint was discriminatory as a number of countries had not been included.

(47) In this respect, the investigation confirmed that imports of PTY from the USA during the period under consideration had increased reaching a peak level in 1992. Since then, though still significant (4,9 % absolute market share during the investigation period), they dropped consistently, both in volume (− 28 % between 1992 and the investigation period) and in market share (− 21 % between 1992 and the investigation period). Furthermore, as far as import prices are concerned, the information available to the Commission based on Eurostat figures does not specify the types of PTY imported from the USA. Consequently, no conclusion on prices can be drawn, although it should also be noted that the Commission did not have any indication whatsoever that imports of PTY from the USA might have been made at dumped prices.

As to imports of PTY from South Africa, they remained stable at a negligible level of ± 1 % market share. For these imports, a conclusion on prices cannot be drawn in view of the lack of information provided in Eurostat data on the individual types of PTY imported from South Africa, although the imports were made during the investigation period at prices which were, on average, 24 % higher than those of imports originating in Malaysia.

For these reasons, it is concluded that those imports could not have contributed to the deteriorating economic situation of the Community industry.

(48) As far as Slovakia is concerned, imports of PTY into the Community from this country achieved a Community market share in the investigation period of 3,3 %. However, it appeared that since 1993, owing to an investment of a Community producer in Slovakia, a major proportion of 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 the intention of adversely affecting its own profitability, and the investigation has shown that the company concerned belonging to the Community industry has seen a deterioration of its financial results. Consequently, it is concluded that the Slovakian imports cannot have had a meaningful impact on the situation of the Community industry.

(b) *Other Community producer*

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

(50) 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. As to the market share of these other Community producers, it showed during the investigation period a slight decrease as against that of the Community industry.

(51) Therefore, it does not appear that these producers' behaviour could have a negative impact on the situation of the Community industry other than that resulting from normal competition.

(c) *Exports of the Community industry*

(52) The Malaysian exporter argued that the critical situation alleged by the Community industry on the Community market can be explained by the fact that Community exports have increased since 1991.

(53) This argument is of doubtful logic. Independently of the fact that only non-complaining Community producers were able to increase their exports (export sales of the complaining industry decreased as from 1991), there are no rational grounds for concluding that a strong export performance is a reason for poor results on the domestic market. The claim by the Malaysian exporter, therefore, appears unfounded.

(d) *Exchange rates and market conditions*

(54) The Malaysian exporter claimed that favourable exchange rates of the US dollar against the ecu have fostered Malaysian exports to the Community.

(55) The fact that the exchange rate of the dollar against the ecu might have rendered the imported PTY invoiced in US dollars more attractive to the importers does not detract from the fact that the product was exported at dumped prices throughout the entire period. While the exchange rate fluctuations may have reinforced the injurious effect to the Malaysian imports, they cannot explain nor justify the considerable price undercutting exercised by these imports during the investigation period (see recital (32)).

(56) The Malaysian exporter also alleged that labour costs are much higher in the Community than in Malaysia, which leads to much higher prices of Community produced PTY than of Malaysian-produced PTY.

(57) 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 to any significant extent by differences in labour costs.

(58) The producer in Malaysia claimed that the imposition of anti-dumping measures would be unjustified in the present circumstances given the dramatic increase in their export prices since the end of 1994 which was more than sufficient to remove any alleged dumping or injury during the investigation period.

(59) This price increase is mainly the result of a cost increase due to higher-priced raw materials and therefore merely reflecting an overall world-wide general increase in prices. As previously stated, undercutting margins were also found throughout the investigation period (see recital (32)), and imports continued to be made at dumped prices.

(60) 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 occuring after the investigation period, in this case after March 1995, cannot normally be taken into consideration for the purpose of dumping and injury calculations, as the need to verify these events would perpetuate an investigation almost indefinitely. It would also allow exporters to manipulate the results by short-lived price increase 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.

(e) *Recession*

(61) The Malaysian producer argued that a recession was a major factor having caused injury to the Community producer.

(62) In this respect it has to be noted that the development of the apparent Community consumption described in recital (29) above does not reflect any recession in the PTY market.

3. Conclusions on causation of injury

(63) The surge of Malysian imports, which were consistently sold during the investigation period at low, dumped prices, undercutting Community producers' prices, has had a particularly destabilizing impact on the Community industry, which experienced a decline in production, market share and prices, as well as substantial financial losses. Like the PTY imports from Taiwan, Turkey, Indonesia and Thailand, which are subject to anti-dumping proceedings, the dumped imports from Malaysia, taken in isolation, must, in these circumstances, be considered to have caused material injury to the Community industry.

G. COMMUNITY INTEREST

1. General considerations

(64) A determination as to whether the Community interest calls for intervention should be based on an appraisal 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 while assessing the situation in the Community with and without the imposition of anti-dumping measures.

2. Interest of the Community industry and impact on competition

(65) The investigation has established that the Community industry is facing an injurious situation in the form of an overall decrease in production, market share and selling prices, which together have led to substantial financial losses. In addition, it has had to reduce the number of employees.

Restoring a situation in which the imports concerned will be made at undumped prices should prevent the further deterioration of the situation of the Community industry, which is in danger of becoming uncompetitive given the nature of the injury suffered and given the opportunities for the Community industry to increase its market position. Competitiveness in this sector is largely dependent on the capacity for regular modernization of the production equipment, an investment which may become problematic for the Community industry in view of its precarious financial situation (see also recitals (39) and (40)).

(66) 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 only around 35 % during the investigation period. In this connection, the following considerations appear relevant.

(67) The imposition of anti-dumping measures could affect the price levels of the Malaysian exporters in the Community and may subsequently have some influence on the relative competitiveness of their products. However, competition on the Community market cannot be expected to be reduced in any significant way as a consequence of such measures. On the contrary, the removal of the unfair advantages gained by the dumping practices is designed to place the Community industry, and possibly those producers in third countries selling to the Community at fair prices, in a position to compete in the Community market with the dumped imports on equal terms, and thus to help to maintain the availability of a wide choice of PTY sources.

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

3. Other specific interests involved

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

(70) Though no arguments were submitted by users of PTY in the Community with regard to the impact of an increase in the price of PTY, the Commission has analysed this aspect and has come to the conclusion that the anti-dumping duties proposed can be considered a minor factor in the global cost structure of the textile industry: the cost of PTY imported from Malaysia accounts for only 14 % of the Community selling price of polyester dyed filament fabric. With a 16,4 % anti-dumping duty, the maximum impact would be 2,3 % on polyester dyed filament fabric.

4. Conclusion on Community interest

(71) Having examined the various interests involved, the Commission concludes that to leave the Community PTY industry suffering material injury, as especially demonstrated by declining production and market share, as well as by financial losses, without protection against the dumped imports concerned, would accelerate the deterioration of that industry and would therefore not be in the interest of the Community. It is furthermore considered necessary to assure a non-discriminatory treatment between dumped imports of PTY from Malaysia and from other third countries.

(72) In these circumstances, no compelling reasons for not imposing anti-dumping measures were found, and it is concluded that the Community interest calls for the imposition of anti-dumping measures.

H. DUTY

(73) Based on the provisional findings made during the investigation, it is considered that anti-dumping measures should be established in such a way as to allow the Community industry to obtain the reasonable profit it has been deprived of through the injurious effects of the dumped imports. To this end, a provisional anti-dumping duty in the form of an *ad valorem* duty should be imposed.

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

(75) When calculating the amount of duty adequate to remedy the injury suffered by the Community industry, the Commission had to consider that injury has manifested itself mainly in the form of a

loss of market share and worsening 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 at a non-injurious level.

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

(77) Since the injury margin thus established exceeds, for the sole Malaysian cooperating exporter, the dumping margin found, the duties should be based on the dumping margin pursuant to Article 7 (2) of the Basic Regulation.

(78) In establishing the level of provisional duty to be imposed in respect of producers in the exporting country concerned which neither replied to the Commission's questionnaire nor otherwise made themselves known, the Commission considered it appropriate, for the reasons outlined in recital (22), to establish the level of provisional anti-dumping duty at the dumping margin provisionally used in that recital for imports originating in Malaysia.

I. RIGHTS OF INTERESTED PARTIES

(79) In the interests 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 this 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 Malaysia.

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

Company	Duty	Taric additional Code
Hualon Corporation (M) Sdn. Bhd.	16,4 %	8933
Others	32,5 %	8900

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 20 of Regulation (EC) No 384/96, the parties concerned may make known their views in writing and apply to be heard orally by the Commission 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 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, 14 January 1997.

For the Commission

Leon BRITTAN

Vice-President