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COUNCIL REGULATION (EC) No 1676/2001

of 13 August 2001

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate film originating in India and the Republic of Korea

(OJ L 227 , 23.8.2001, p. 1)

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imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate film originating in India and the Republic of Korea

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]), (the 'basic Regulation') and in particular Article 9 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 367/2001 ([2]) (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of polyethylene terephthalate ('PET') film falling within ex CN code 3920 62 19 and ex CN code 3920 62 90 and originating in India and the Republic of Korea ('Korea').

(2) It is recalled that the investigation period of dumping and injury covered the period from 1 April 1999 to 31 March 2000 ('IP'). The examination of trends relevant for the injury analysis covered the period from 1 January 1996 to 31 March 2000 ('period under consideration').

B. SUBSEQUENT PROCEDURE

(3) Following the imposition of provisional measures on imports of PET film originating in India and Korea, several interested parties submitted comments in writing. The parties who so requested were also granted an opportunity to be heard orally.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) Additional verification visits were carried out at the premises of the following users:

— Emtec Magnetics GmbH, Ludwigshafen, Germany

— Rogers Induflex NV LEX NV, Gent, Belgium

— Leonhard Kurz GmbH & Co., Fürth, Germany

— Eurofoil, Blaenavon, U.K.

(6) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which they could make representations subsequent to this disclosure.

(7) The oral and written comments submitted by the parties were considered, and, where appropriate, the provisional findings have been modified accordingly.

([1]) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

([2]) OJ L 55, 24.2.2001, p. 16.

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C. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(a) *Arguments of the parties*

(8) Some exporting producers re-iterated the argument that metallised PET film should be excluded from the product scope of the current proceeding on the grounds that metallised PET film cannot be considered alike to base PET film since it had different basic physical and technical characteristics, required different production equipment and processes, being consequently more expensive to produce and thus sold at a higher price. These parties also argued that the use of metallised PET film is different from that of base PET film and is also classifiable under CN codes other than CN codes ex 3920 62 19 and 3920 62 90, namely within CN code 3921.

(b) *Findings of the investigation*

(9) The investigation showed that the metallisation process consisting of the addition of metal, such as aluminium, by a vapour deposition process, does not alter the basic physical, technical and chemical characteristics of PET film. Moreover, base and metallised PET film are in many applications interchangeable and may have the same, or similar, uses. Therefore the provisional findings set out in recital 19 of the provisional Regulation, namely that metallised PET film and base PET film constitute one single product and are classifiable under the CN codes covered by the proceeding, i.e. ex 3920 62 19 and 3920 62 90, are confirmed.

(10) It should be noted that the fact that an additional production step is required for the production of metallised PET film, with resulting higher cost of production and sales price, is not an element which could justify per se the exclusion of a certain type of PET film from the product scope of the proceeding.

(11) Finally, the investigation showed that metallised PET film has to be distinguished from film, which is reinforced, laminated, supported or similarly combined with other materials. These processes modify the basic physical, chemical and technical characteristics of PET film to such an extent that the resulting product cannot be considered to be the product concerned. In addition, it should be noted that only when PET film is combined with other materials in such a way, is the final product classifiable under CN code 3921.

(12) In the absence of further comments other than those mentioned above, the product description as set out in recitals 9 to 22 of the provisional Regulation is confirmed.

2. Like product

(13) In the absence of any comments, the definition of the like product as described in recital 23 of the provisional Regulation is confirmed.

D. DUMPING

1. General methodology

(a) *Normal value, export price and comparison*

(14) In the absence of any comments under these headings, the provisional findings as set out in recitals 28 to 34 of the provisional Regulation are confirmed.

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(b) *Dumping margins*

(15) The general methodology for establishing the dumping margins for the companies investigated, as described in recital 35 of the provisional Regulation, is confirmed.

(16) The general methodology for establishing the dumping margins for the cooperating companies not included in the sample, as described in recital 36 of the provisional Regulation, is confirmed. When the dumping margin for the cooperating companies not included in the sample was established, any zero and *de minimis* margins were disregarded.

(17) The general methodology for establishing the dumping margins for those exporting producers, which neither replied to the questionnaire nor otherwise made themselves known, as described in recitals 37 and 38 of the provisional Regulation, is confirmed. However, in the case of Korea, as only one out of the three sampled exporting producers was found to have practised dumping, the residual dumping margin was set at the weighted average dumping margin of a representative number of models with the highest dumping margins exported by that exporting producer.

(18) It should be noted that in cases where an exporting producer exported more than one product type to the Community, the weighted average overall dumping margin was determined by computing the dumping found on each type without zeroing 'negative dumping' found on individual types.

2. **India**

(a) *Normal value and export price*

(19) In the absence of further comments, the findings of recitals 39 to 42 of the provisional Regulation are confirmed.

(b) *Comparison*

(i) Level of trade

(20) One Indian exporting producer reiterated its claim for an adjustment for differences in the level of trade between sales of the product concerned to traders on the domestic and export markets (recital 47 of the provisional Regulation).

(21) It was also submitted, following disclosure of the essential facts and considerations on the basis of which provisional measures were adopted, that two levels of trade (end-users and traders) existed in both (domestic and export) markets and that a selective comparison should be made: that is, export prices to traders should be compared with normal values based on sales to traders and export prices to end-users compared with normal values based on sales to end-users.

(22) However, the information submitted in the questionnaire reply and subsequently verified already indicated that there were no consistent and distinct differences in functions and prices for the different levels of trade for comparable models when sold in the domestic market of the exporting country. Consequently the findings set out in recitals 46 and 47 of the provisional Regulation are confirmed and the claim for a selective comparison is rejected.

(ii) Other allowances

(23) The Indian exporting producers claimed that the adjustment requested pursuant to Article 2(10)(k) 'other factors' and/or Article 2(10)(b) 'Import charges and indirect taxes' (depending on the exporter) of the basic Regulation on the export price for

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the benefits received under the Duty Entitlement Passbook ('DEPB') scheme on a post-export basis should have been granted. They claimed that the income received from the DEPB resulted in a lower export price and that therefore, the Commission should have added this income to the export price to ensure a fair comparison with the normal value, as domestic sales do not benefit from such income. Moreover, the Indian exporters claimed that the deduction, in accordance with Article 14(1) of the basic Regulation, of the export subsidies accounted for by the existing countervailing duty from the anti-dumping duty was legally not justified as the countervailing duties were determined on the basis of a different investigation period.

(24) Article 2(10) of the basic Regulation contemplates only the possibility of adjustments that affect price comparability. In the questionnaire replies and during the on-spot verifications, the DEPB benefit was always accounted for as 'other income' and not as a 'negative cost' attributed to the cost of raw materials of the exported goods. Therefore, already on the basis of the company's accounting records, there is no explicit link between pricing of the exported goods and the DEPB income received.

(25) The provision of Article 14(1) of the basic Regulation which reflects Article VI of the GATT Agreement shows that such subsidisation can, albeit indirectly, be addressed in an anti-dumping investigation and any regulation imposing an anti-dumping duty provided that the product is not subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation. The rationale behind Article 14(1) of the basic Regulation is indeed to avoid any duplication of duties intended to counteract the same situation arising from dumping or export subsidisation, and therefore, countervailing duties resulting from export subsidies have to be deducted regardless of the investigation period on the basis of which they were determined. It is noted, as explained under recitals 78 and 79 below, that an adjustment under Article 14(1) of the basic Regulation has been made. For all these reasons, the above request had to be rejected.

(c) *Dumping margin*

(26) In the absence of any comments or new information, the methodology set out in recitals 51 to 53 of the provisional Regulation is confirmed.

(27) The definitive dumping margins, expressed as a percentage of the cif import price at the Community border, are:

Ester Industries Limited	64,5 %
Flex Industries Limited	42,9 %
Garware Polyester Limited	65,3 %
Jindal Polyester Limited	0 %
Dumping margin for cooperating companies not part of the sample	57,70 %
Residual dumping margin for non-cooperating companies	65,3 %

3. **Korea**

(a) *Normal value*

(28) Two Korean cooperating exporting producers argued that so-called local export sales (i.e. domestic sales foreseen for the export market after further processing and/or packaging) had been excluded from the calculation of normal value with no legal basis for doing so. However, it is evident that Korean authorities permit such sales to be made without the addition of any local sales tax (VAT); the vendor is also able to transfer to the purchaser the

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right to claim duty drawback and the sales are usually made in a foreign currency. It is therefore evident from the way that such sales are structured in Korea that they are made for export and do not permit a proper comparison. Thus the approach followed for provisional determinations is maintained.

(29) In view of the above, the findings as described in recital 57 of the provisional Regulation are confirmed.

(b) *Export price*

(30) Two of the exporting producers had related importers in the Community and both indicated that they considered that the profit margin allocated to those importers (5,5 %) was unreasonably high given that the functions performed by the importers was limited to the re-invoicing of sales, without playing an active role in the sale itself. It was suggested that these related importers did not generate profit per se, but merely received commission on sales made. Nonetheless, the commission rate indicated cannot be taken as necessarily being accurate as the parties are related. The fact that the related importers may be remunerated on a fixed commission basis does not necessarily bear any relation to the functions performed by those importers. Furthermore, neither of the claimants submitted any specific data which indicated that the margin used was not in line with prevailing market conditions.

(31) In view of the above, the provisional findings as described in recital 58 of the provisional Regulation are confirmed.

(c) *Comparison*

(i) Exchange rates fluctuation

(32) Following a request by the Korean exporting producers the adjustment for a sustained movement in exchange rates was re-examined. Following this re-examination, the average exchange rate was that of two months before the actual invoice date.

(ii) Duty drawback

(33) All of the Korean cooperating exporting producers considered that the methodology used in allocating duty drawback to domestic sales was unreasonable, in particular because the raw materials concerned are used for manufacturing products other than PET film. The Commission therefore reconsidered the issue and decided to adopt a revised two-step approach.

(34) Firstly, the quantities of raw materials purchased and used solely for PET film production, (whether intended for domestic or export sales) were calculated using the nationally approved coefficients and expressed as percentages of the totals of raw materials purchased. These percentages were then applied to each of the individual supplies of raw materials. Thus each raw material was allocated to both domestic and export sales in which the raw material was used, (both product concerned and other products), in the appropriate proportion. The allocation started with supplies carrying the lowest duty rates, as explained in the provisional Regulation. The result led to increased amounts of duty drawback allowable for two exporting producers.

With the above exceptions concerning duty drawback and exchange rate conversion, the provisional findings as described in recitals 59 to 65 of the provisional Regulation are confirmed.

(d) *Dumping margin*

(35) The findings of recitals 66 and 67 of the provisional Regulation are confirmed with the exception of one cooperating exporting producer who objected to the use of the comparison of a

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weighted-average normal value to individual export transactions to determine its dumping margin on the basis that the mere variation of export prices by customer, region or time period does not justify the use of the weighted average to transaction method for the determination of the dumping margin. The issue was re-examined and it was found that there was a pattern of export prices which differs among customers, the effect of which on the degree of dumping being practised by the exporter was not significant. The methodology for establishing the dumping margins for the companies investigated as described in recitals 66 and 67 of the provisional Regulation was therefore revised in respect of this exporting producer from a weighted average to transaction approach to a weighted average to weighted average approach.

(36) The definitive dumping margins, expressed as a percentage of the cif import price at the Community border are:

Kolon Industries Limited	0,0 %
SKC Industries Limited	7,5 %
Toray Saehan Industries	0,0 %
Dumping margin for cooperating companies not part of the sample	7,5 %
Residual dumping margin for non-cooperating companies	13,4 %

E. **COMMUNITY INDUSTRY**

(37) Certain Indian exporting producers argued that the definition of the Community industry and, consequently, the injury analysis, should not have been limited to the three cooperating complainant Community producers, but should have been extended to all the Community producers, including Fapack, which participated in lodging the complaint but only provided some basic information, and three other Community producers, which are not complainants and are not related to any exporting producers and which, as well, only submitted some basic information.

(38) It is confirmed that, as mentioned in recital 73 of the provisional Regulation, all these seven operators are indeed Community producers and thus constitute the Community production within the meaning of Article 4(1) of the basic Regulation. However, as described in recital 70 of the provisional Regulation, the latter four Community producers only submitted some basic information but did not reply fully to the questionnaire intended for Community producers. Therefore, this information could not be used for the purposes of the assessment of the situation of the Community industry. These Community producers were accordingly not included in the definition of the Community industry. The argument had therefore to be rejected.

(39) One interested party contested the finding that the Community industry accounted for more than 70 % of the total Community production of PET film. This element has been re-examined by the Commission, and a clerical error was found. The Community industry actually accounts for 60 % of the total Community production.

(40) Certain interested parties claimed that if indeed metallised PET film remains included in the definition of the product concerned, certain producers of metallised PET film should also be regarded as Community producers forming part of the Community industry.

(41) The investigation showed that the companies in question do not produce base PET film, but in fact purchase base PET film from different sources and then perform the additional metallisation process. This additional processing step undertaken by them is however not in itself sufficient to justify considering them as

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Community producers of PET film. Indeed, they are simply processors of a product without changing its basic physical, technical and chemical characteristics

F. INJURY

1. Community consumption

(42) In the absence of any new information, the provisional findings concerning the Community consumption as described in recitals 76 to 79 of the provisional Regulation are confirmed.

2. Imports concerned

(a) *Preliminary remark*

(43) Certain exporting producers raised the argument that the imports attributable to exporting producers found not to have dumped should be excluded for the analysis of the injury aspect. However, even if such imports were to be excluded from the analysis, the conclusions as to the existence of material injury caused by dumped imports would remain unchanged. Indeed, the price undercutting would remain significant, as well as the increase in volume and market shares and the remaining imports found to be dumped would still represent more than 13 % of the Community market. The decrease observed in the sales prices would also remain significant.

(b) *Cumulative assessment of the effects of the imports concerned*

(44) Certain Indian exporting producers argued that imports of PET film originating in India should not be cumulated with those originating in Korea in view of the differences existing in the conditions of competition. The claim was based on the grounds that the import volume, the market shares and prices developed differently during the period 1997 to IP.

(45) As regards the conditions of competition between Korean and Indian imports, when taking into account the totality of the period under consideration, i.e. between 1996 and the IP, and not, as suggested, the period 1997 to the IP, the volume of imports, market shares and import prices in fact developed in a similar way. It is also confirmed that import volumes from both countries were substantial during the investigation period. Moreover, significant price undercutting was found for both imports originating in India and Korea, which were sold via the same sales channels and with similar commercial conditions. The argument has therefore to be rejected. Given the above, the findings of recital 85 of the provisional Regulation, setting out that that imports originating the countries concerned should be assessed cumulatively, are hereby confirmed.

(c) *Volume, market shares and prices of the imports concerned*

(46) In the absence of any new information as regards the volume and prices of imports from the countries concerned, the provisional findings are confirmed.

(d) *Price undercutting*

(47) As regards the price undercutting margins, certain Indian exporting producers questioned the fact that the Commission services did not consider, in the calculation of the weighted average export prices, the countervailing duties imposed on imports of PET film originating in India in 1999. They also reiter-

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ated their request for a level of trade adjustment, since Indian exporters mostly sell to wholesalers while the Community industry nearly always sells directly to users of PET film.

(48) The calculations of price undercutting margins were revised by adding to the export prices the countervailing duties, where applicable. As regards the level of trade adjustment, the further analysis confirmed firstly, that, as described in recital 93 of the provisional Regulation, the selling price to wholesalers or to users does not depend on the type of customer but rather on the purchased volumes, and secondly, that the two levels of trade are not clearly separated and that there is no clear price difference between them. Moreover, it is confirmed that the Community industry also sells the product concerned to distributors and wholesalers and not only to users, contrary to what was claimed by some interested parties. Several companies were indeed found to be supplied by both exporting producers from the countries concerned and the Community industry.

(49) Before the above background, price undercutting margins were reviewed on the basis of the evidence submitted by interested parties and amended where appropriate. The revised weighted average price undercutting margins found per country, expressed as a percentage of the Community industry prices, are as follows:

— Korea: from 14,9 % to 36,8 %, on weighted average 20,6 %

— India: from 34,5 % to 44,8 %, on weighted average by 37,5 %.

3. **Situation of the Community industry**

(50) Several interested parties questioned the conclusion reached in the provisional Regulation that the Community industry suffered material injury on the grounds that some factors have developed positively between 1996 and the IP (i.e. production capacity, production, sales volume, productivity, stocks and wages).

(51) In this respect, it should be noted that not all the factors enumerated in Article 3(5) of the basic Regulation have to indicate a negative development in order to conclude that the Community industry is suffering material injury. In the current case, the Community industry lost market shares and, due to the price depressing effect of imports from the countries concerned, it had to significantly lower its sales prices, leading to a severe deterioration of its financial situation.

(52) A Korean exporting producer questioned that the Community industry suffered material injury on the grounds that it is viable and competitive, as set in recital 159 of the provisional Regulation and that it still held an important position on the Community market during the IP.

(53) The fact that the Community industry is viable and competitive does not preclude the finding of material injury. Indeed, the finding, that the Community industry is viable and competitive had been made in the context of the Community interest analysis which, *inter alia*, examined the effect of taking or not-taking anti-dumping measures on the various operators in the Community. All this does not invalidate the conclusion that the Community industry suffered material injury as evidenced by a number of factors including the significant loss of market share during the period under consideration. The argument has therefore to be rejected.

(54) A Korean exporting producer alleged that the increase of the production capacity by the Community industry, that took place between 1998 and 1999, is in contradiction with the fact that its investments remained limited during the same period. It should be noted in that respect that investments related to the production capacity increase took place during the years 1997 and 1998, as

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set out in recital 108 of the provisional Regulation. As however the new capacity installed was only operational in 1998 and 1999, the increase in production capacity and the investments did not take place in the same period.

(55) Certain Indian exporters claimed that limiting the analysis of the Community industry's sales to the domestic sales, in terms of volumes and prices, does not comply with the provision of Article 3(4) of the WTO Anti-dumping Agreements on the grounds that the Agreement refers to total sales, thus including exports.

(56) In this respect, it should be noted that the injury assessment was undertaken in line with the relevant provisions of the basic Regulation and consistent practice of the Community institutions. In addition, it should be noted that Article 3(4), in conjunction with Article 3(1) and (2), of the WTO Anti-dumping Agreement, clearly refers to the evaluation of the impact of dumped imports on prices in the domestic market and on the situation of the domestic industry. It also follows from the purpose of this type of investigation where, *inter alia*, the effect of dumped imports from one or more countries into the Community are at issue (and not the effect of dumped imports into third country markets) that injury of the Community industry must be found to exist on the domestic market only and that the situation with respect to exports or on export markets is therefore irrelevant in the context of the injury assessment. The argument has therefore to be rejected. However, and in line with consistent practice, the Community industry's export performance has been examined in the context of the question of causal link between the dumped imports and the injurious situation, as set in recital 144 of the provisional Regulation.

(57) On the basis of the above, the provisional findings as regards the material injury suffered by the Community industry during the IP are confirmed.

G. **CAUSATION**

(58) Some interested parties claimed that the assessment of the causal link was flawed since the deterioration of certain injury factors, i. e. profitability, cash flow, return on investments and ability to raise capital, should be considered as being linked to autonomous cyclical developments and to the massive investments made by the Community industry during the period considered rather than to the impact of the imports concerned.

(59) Firstly, there is no indication that the Community industry suffers from a cyclical downturn. Secondly, the further analysis of the financial situation of the Community industry confirmed that its deterioration was mainly due to the decrease of its unit sales prices. Moreover, since during the whole period under consideration the unit cost of production decreased, the deterioration cannot be attributed to higher cost of production related to the new investments.

(60) In the light of the above and in the absence of any new information, the provisional findings as described in recitals 119 to 123 of the provisional Regulation are confirmed.

H. **COMMUNITY INTEREST**

1. **Unrelated importers and traders**

(61) One unrelated importer argued that, contrary to what was set out in recital 188 of the provisional Regulation, the imposition of countervailing duties reduced the availability of Indian PET film on the Community market and that the level of the anti-dumping duties as set out in this Regulation will make it unable to source PET film from its traditional Indian suppliers. It further argued

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that the PET film produced by the Community industry outside the Community is imported by the Community industry itself, and that, due to this relationship, this would eliminate any other real alternative sources of supply.

(62) In this respect, Eurostat data showed that between the year 1999 (the provisional countervailing duties were imposed in August 1999) and the year 2000, imports from India increased by 11 %. As to the level of the anti-dumping duties proposed, it cannot be excluded that they will result in an increase of the import prices. However, given the different levels of measures proposed, it can be expected at the same time that some of the exporting producers concerned will continue to sell on the Community market, albeit at non-dumped prices. Regarding the existence of alternative sources of supply, it appears that, during the year 1999, the Community industry's purchases of PET film originating in the US and Japan, the two major exporting countries which are not the countries concerned by this proceeding, represented around 35 % of the total imports from these countries. It is therefore confirmed that other alternative sources of supply are available.

2. **Users of PET film in the Community**

(63) It should be noted that out of the 23 users that cooperated at the provisional stage of the proceeding, and purchasing slightly over 40 % of the total imports from the countries concerned, only one expressed its concerns after the imposition of the provisional duties. This low degree of reactions might suggest that the measures would not have such an important impact on the users concerned.

(64) Four other users, which made themselves known after the imposition of the provisional measures, argued that the imposition of duties could limit their choice of suppliers and possibly create a shortage of PET film in the Community market. Those users also claimed that a price increase of PET film has occurred in the Community market since provisional duties were imposed, with a negative effect on their competitiveness on the world market.

(65) It should be recalled in this respect that, as found at the provisional stage, investigated users purchased on average around 58 % of their PET film consumption from the Community industry, around 28 % from the countries concerned and around 14 % in other third countries. Furthermore, a significant number of actors will remain active on the Community market, i.e. the Community industry and other Community producers, an economic operator in the Community, at least some of exporting producers in the countries concerned and in other third countries. Therefore, even if it cannot be excluded that some exporting producers in the countries concerned will decrease their level of exports to the Community further to the anti-dumping measures imposed, it is unlikely that a shortage on the Community market will occur. On the other hand, should measures not be imposed, the possible disappearance of the Community industry's manufacturing activities for PET film would, as set out in recital 185 of the provisional Regulation, create severe supply constraints.

(66) As to the level of prices, it should be noted that users have until recently benefited from artificially low prices due to unfair trade practices. Sales prices in the Community market decreased by an average of 40 % between 1996 and the IP. Even if a price increase for PET film in the Community cannot be excluded, it is expected that it will be moderate. This is reinforced in particular by the level of duties imposed for certain exporting producers concerned and the presence of a certain number of actors, which will compete with each other on the Community market.

(67) Moreover, the further analysis and verification visits to users confirmed that PET film, as raw material for different finished products, is frequently not a significant cost item, that products

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incorporating PET film only account for a small proportion of their total production and, finally, that users also source their products in the Community and other third countries not concerned by the proceeding. It can however not be excluded that, for certain users for which PET film represents a crucial raw material, the anti-dumping duties will have an important impact on the total cost of production. Nevertheless, this does not alter the average overall results of the investigation. The finding of recital 183 of the provisional Regulation that the imposition of duties will probably not have, on average, a significant impact on the users of PET film, is therefore confirmed.

3. **Conclusion on the Community interest**

(68) In the absence of any new information regarding the Community interest, the findings as described in recitals 156 to 191 of the provisional Regulation are confirmed.

I. **DEFINITIVE ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(69) Based on the methodology explained in recitals 193 to 195 of the provisional Regulation, and taking into account the arguments and modifications mentioned above in relation to price undercutting calculations, an injury elimination level has been established for the purposes of establishing the level of measures to be definitively imposed. However, regarding the non consideration of the countervailing duties, it should be noted that, as explained in recital 198 of the provisional Regulation, export subsidies are deducted from the proposed anti-dumping duties pursuant to Article 14(1) of the basic Regulation after having applied the lesser duty rule, and there is accordingly no need to consider them at the level of the injury margin calculation.

(70) Certain Indian exporting producers argued that the injury margins have been incorrectly calculated. It has been claimed that the injury margin should be expressed as a percentage of the total cif turnover and not be limited to the cif turnover of the comparable models. They based their arguments on the conclusions of the WTO Appellate body in the bed linen case ([1]).

(71) Firstly, it should be noted that these conclusions have been drawn in the context of dumping calculations and are not relevant in the context of injury calculations. Secondly, it is consistent practice to express the injury amount as a percentage of the cif turnover of those models which were used in order to establish the said injury amount. The approach proposed by the Indian exporting producers in question would in fact result in the use of figures which are not comparable. For all these reasons, the claim had to be rejected.

(72) The Community industry submitted that a profit margin of 13 % on turnover would be more appropriate than the 6 % profit margin that was used for the provisional injury margin calculation. It argued that a company's own capital resources should at least earn a return on net assets which equals bank loan rates. It was further claimed that this level of profit was reached in 1996, when conditions of fair competition prevailed.

(73) In this respect, it should be noted that the profit margin that is to be used for the determination of the non injurious price should be understood as the profitability level that could reasonably be reached in the absence of injurious dumping. However, it is not important in this case to define a conclusive percentage given that

([1]) European Communities — Anti-dumping duties on imports of cotton-type bed linen from India, WT/DS/AB/R, 1.3.2001.

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the injury margins are already on the basis of a 6 % profit margin higher than the dumping margins. The argument has therefore no practical impact.

(74) Given the above, and in the absence of new evidence, the methodology used for establishing the injury elimination level as described in recitals 193 to 195 of the provisional Regulation is confirmed.

2. **Form and level of the duties**

(75) The investigation showed that the imports of the product have also taken place under CN codes other than those covered by this proceeding, i.e. CN codes ex 3920 62 19 and 3920 62 90. The attention of the customs authorities is accordingly drawn to this misclassification.

(76) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margins found, since they were in all cases lower than the injury margins.

(77) As regards the residual duty to be applied to the non cooperating exporting producers of the respective countries, as the level of cooperation was considered significant in both countries, for India the residual duty should be fixed on the basis of the highest duty rate established for the sampled cooperating producers. For Korea, as only one of the three sampled exporting producers was found to have practised dumping the residual duty should be set, in application of the lesser duty rule, at the weighted average dumping margin of a representative number of models with the highest dumping margins exported by that exporting producer.

(78) As recalled in recitals 50 and 198 of the provisional Regulation, Article 14(1) of the basic Regulation makes it mandatory that no product be subject to both anti-dumping and countervailing duties for the purpose of dealing with the same situation arising from dumping or export subsidisation. In this context, the fact that the countervailing duties were established on a different IP and that the amount of export subsidy in the anti-subsidy IP and the anti-dumping IP are different, is irrelevant. The rationale behind Article 14(1) of the basic Regulation is indeed to avoid any duplication of duties intended to counteract the same situation arising from dumping or export subsidisation, and therefore, countervailing duties resulting from export subsidies have to be deducted regardless of the investigation period on the basis of which they were determined. It is also noted that no request for a review of the countervailing measures has been received. Therefore, the provisional findings as described in recitals 50 and 198 of the provisional Regulation are confirmed.

(79) Consequently, as regards anti-dumping duties for India, the countervailing duty in force that corresponds to export subsidies was deducted from the anti-dumping duty to be applied. For any non-cooperating companies, the deduction corresponds to the export subsidy of the cooperating company on the basis of which the residual dumping margin (and thus the residual duty) was established.

(80) On the basis of the above, and taking into account the findings of the previous anti-subsidy investigation, the proposed definitive duty rates, expressed on the cif Community border price, customs duty unpaid, are as follows:

India

Company	Export subsidy margin	Total subsidy margin	Dumping margin	CVD duty	AD duty	Total duty rate
Ester Industries Ltd	12,0 %	12,0 %	64,5 %	12,0 %	52,5 %	64,5 %

▼B

Company	Export subsidy margin	Total subsidy margin	Dumping margin	CVD duty	AD duty	Total duty rate
Flex Industries Ltd	12,5 %	12,5 %	42,9 %	12,5 %	30,4 %	42,9 %
Garware Polyester Ltd	2,7 %	3,8 %	65,3 %	3,8 %	62,6 %	66,4 %
Jindal Polyester Ltd	7,0 %	7,0 %	0 %	7,0 %	0 %	7,0 %
MTZ Polyesters Ltd	8,7 %	8,7 %	57,7 %	8,7 %	49,0 %	57,7 %
Polyplex Corp. Ltd	19,1 %	19,1 %	57,7 %	19,1 %	38,6 %	57,7 %
All other companies	12,0% (1)	19,1 %	65,3 %	19,1 %	53,3 %	72,4 %

(1) For the purpose of calculating the final anti-dumping duty, the export subsidy margin of the company on the basis of which the dumping margin for the non-cooperating companies is based was taken into consideration.

Korea

Company	AD duty
HS Industries	7,5 %
Hyosung Corp	7,5 %
Kohap Corp.	7,5 %
Kolon Industries Limited	0,0 %
SKC Industries Limited	7,5 %
Toray Saehan Industries	0,0 %
All other companies	13,4 %

(81) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(82) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission (1) forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission will, if appropriate, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

(1) European Commission
DG Trade
Directorate B
TERV 0/10
Rue de la Loi/Wetstraat 20
B-1049 Brussels/Belgium.

▼B

3. **Collection of provisional duties**

(83) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected at the rate of the duty definitively imposed. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties should be definitively collected.

4. **Undertakings**

(84) Subsequent to the imposition of provisional anti-dumping measures, a number of exporting producers in India offered price undertakings in accordance with Article 8(1) of the basic Regulation. By doing so, they have agreed to sell the product concerned at or above price levels which eliminate the injurious effects of dumping. The companies will also provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertakings can be monitored effectively by the Commission. Furthermore, the sales structure of these exporting producers is such that the Commission considers that the risk of circumventing the agreed undertaking is limited.

(85) In view of this, the offers of undertakings are therefore considered acceptable and the companies concerned have been informed of the essential facts, considerations and obligations upon which acceptance is based.

(86) To further enable the Commission to effectively monitor the compliance of the companies with their undertakings, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty shall be conditional on the presentation of a commercial invoice containing at least the elements listed in the Annex. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that shipments correspond to the commercial documents. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty will instead be payable.

(87) It should be noted that in the event of a breach or withdrawal of the undertaking or a suspected breach, an anti-dumping duty may be imposed, pursuant to Article 8(9) and (10) of the basic Regulation.

5. **Duration of measures**

(88) The anti-dumping measures would be in force until 2006, whereas the existing countervailing duties against India are bound to expire in 2004. In the event of the expiry (or change) of the countervailing measures, the level of the anti-dumping duties should be revised, since they currently take account of the fact that countervailing duties are already in place,

HAS ADOPTED THIS REGULATION:

▼M2

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of polyethylene terephthalate (PET) film falling within CN codes ex 3920 62 19 (TARIC codes 3920 62 19 03, 3920 62 19 06, 3920 62 19 09, 3920 62 19 13, 3920 62 19 16, 3920 62 19 19,

▼M2

3920 62 19 23, 3920 62 19 26, 3920 62 19 29, 3920 62 19 33, 3920 62 19 36, 3920 62 19 39, 3920 62 19 43, 3920 62 19 46, 3920 62 19 49, 3920 62 19 53, 3920 62 19 56, 3920 62 19 59, 3920 62 19 63, 3920 62 19 69, 3920 62 19 76 and 3920 62 19 94) and ex 3920 62 90 (TARIC codes 3920 62 90 33 and 3920 62 90 94) and originating in India and the Republic of Korea.

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

Country	Company	Definitive Duty (%)	TARIC Additional Code
India	Ester Industries Limited 75-76, Amrit Nagar, Behind South Extension Part-1, New Delhi — 110 003, India	17,3 %	A026
India	Flex Industries Limited A-1, Sector 60, Noida 201 301, (U.P.), India	0,0 %	A027
India	Garware Polyester Limited Garware House, 50-A, Swami Nityanand Marg, Vile Parle (East), Mumbai 400 057, India	17,4 %	A028
India	Jindal Poly Films Limited 56 Hanuman Road, New Delhi 110 001, India	0,0 %	A030
India	MTZ Polyfilms Limited New India Centre, 5th floor, 17 Co-operage Road, Mumbai 400 039, India	18,0 %	A031
India	Polyplex Corporation Limited B-37, Sector-1, Noida 201 301, Dist. Gautam Budh Nagar, Uttar Pradesh, India	0,0 %	A032
India	All other companies	17,3 %	A999
Korea	Kolon Industries Inc. Kolon Tower, 1-23, Byulyang-dong, Kwacheon-city, Kyunggi-do, Korea	0,0 %	A244
Korea	SKC Co. Ltd. Kyobo Gangnam Tower, 1303-22, Seocho 4 Dong, Seocho Gu, Seoul 137-074, Korea	7,5 %	A224

▼**M2**

Country	Company	Definitive Duty (%)	TARIC Additional Code
Korea	Toray Saehan Inc. 17F, LG Mapo B/D 275 Kongdug-Dong Mapo-Gu Seoul 121-721 Korea	0,0 %	A222
Korea	HS Industries Co. Ltd. Kangnam Building, 5th floor 1321, Seocho-Dong Seocho-Ku Seoul Korea	7,5 %	A226
Korea	Hyosung Corporation 450, Kongduk-Dong Mapo-Ku Seoul Korea	7,5 %	A225
Korea	KP Chemical Corporation No. 89-4, Kyungun-Dong Chongro-Ku Seoul Korea	7,5 %	A223
Korea	All other companies	13,4 %	A999

3. Where any party provides sufficient evidence to the Commission:

— that it did not export the goods described in Article 1(1) during the original investigation period,

— that it is not related to any exporter or producer subject to the measures imposed by this Regulation,

and

— that it has exported the goods concerned after the investigation period, or that it has entered into an irrevocable contractual obligation to export a significant quantity to the Community,

the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend Article 1(2) by adding that party to the list of companies subject to anti-dumping measures as appears in the table in Article 1(2).

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

▼**M1**

▼**B**

Article ► **M1** *2* ◄

The amounts secured by way of provisional anti-dumping duties pursuant to the provisional Regulation shall be collected at the rate of the duty definitively imposed. Amounts secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

Article ► **M1** *3* ◄

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

▼B

This Regulation shall be binding in its entirety and directly applicable in all Member States.

▼B

ANNEX

Necessary information for commercial invoices accompanying sales made subject to an undertaking

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'
2. The name of the company mentioned in Article 2(1) which issues the commercial invoice
3. The commercial invoice number
4. The date of issue of the commercial invoice
5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier
6. The exact description of the goods, including:
   - the product code number (PCN),
   - the technical specification of the goods including the thickness (μm), whether or not the goods have had coating/surface treatment after the process (e.g. corona, chemical, metallisation or no coating or surface treatment after the process), the mechanical properties (e.g. balanced or tensilised), clarity/opacity (e.g. clear film with haze < 2 %, hazy film with haze between 2 and 40 %, white film with haze > 40 %, coloured),
   - the company product code number (CPC) (if applicable),
   - CN code,
   - quantity (to be given in kg).
7. The description of the terms of the sale, including:
   - price per kg,
   - the applicable payment terms,
   - the applicable delivery terms,
   - total discounts and rebates.
8. Name of the company acting as an importer to which the invoice is issued directly by the company.
9. The name of the official of the company that has issued the invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company], and accepted by the European Commission through Decision 2001/645/EC. I declare that the information provided in this invoice is complete and correct.'