COMMISSION REGULATION (EC) No 367/2001

of 23 February 2001

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

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 last amended by Regulation (EC) No 2238/2000 [2] and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 27 May 2000, the Commission announced by a notice ('Notice of Initiation') published in the *Official Journal of the European Communities* [3] the initiation of an anti-dumping proceeding with regard to imports into the Community of polyethylene terephthalate film ('PET film') originating in India and the Republic of Korea ('Korea').

(2) The proceeding was initiated as a result of two complaints (one against imports originating in India and another one against imports originating in Korea) lodged in April 2000 by four Community producers, Du Pont Teijin Films Ltd, Mitsubishi Polyester Film GmbH, Nuroll SpA and Fapack ('the complainants'), representing more than 50 % of the total Community production of PET film. The complaints contained sufficient evidence of dumping and of material injury resulting therefrom to justify the initiation of an anti-dumping proceeding.

(3) The Commission officially informed the exporting producers, importers, end-users and suppliers of raw material known to be concerned, the representatives of the exporting countries concerned and the complainants, about the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of Initiation.

(4) A number of exporting producers in the countries concerned, as well as Community producers, end-users, suppliers of raw material and importers made their views known in writing. All parties who so requested within the above time limit and who demonstrated that there were particular reasons why they should be heard were granted the opportunity to be heard orally.

(5) The Commission sent questionnaires to all parties known to be concerned and to all other companies which made themselves known within the deadlines set in the Notice of Initiation, with the exception of the exporting producers not sampled and that did not request individual treatment. Replies were received from three complainant Community producers, from three non-complainant Community producers, from seven exporting producers in the countries concerned, as well as from their related importers in the Community, from 2 unrelated importers in the Community and from 23 users.

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

(a) *Complainant Community producers*

— Du Pont Teijin Films Ltd, Contern, Luxembourg and Wilton, United Kingdom,

— Mitsubishi Polyester Film GmbH, Wiesbaden, Germany,

— Nuroll Spa, Caserta, Italy.

(b) *Non-complainant Community producers*

— 3M, Caserta, Italy

(c) *Unrelated importers in the Community*

— Coveme SpA, San Lazzaro di Savena, Italy

— Montefiore, Bioggio, Switzerland.

(d) *Exporting producers in the exporting countries concerned*

India

— Ester Industries Limited, New Delhi,

— Gareware Polyester Limited, Aurungabad,

— Flex Industries Limited, Noida,

— Jindal Polyester Limited, New Delhi,

Korea

— Toray Saehan Inc./Saehan Ind Inc., Seoul,

— Kolon Industries Inc., Kwacheon,

— SKC Co Ltd., Seoul.

(e) *Related importers*

— Gareware Polyester International Ltd, Harrow Middlesex, United Kingdom,

— SKC Europe GmbH, Frankfurt, Germany,

— Saehan Deutschland GmbH, Eschborn, Germany

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 257, 11.10.2000, p. 2.
[3] OJ C 148, 27.5.2000, p. 22.

(7) The investigation of dumping and injury covered the period from 1 April 1999 to 31 March 2000 ('the investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 1996 to 31 March 2000 ('period under consideration').

2. **Existing countervailing duties against imports from India**

(8) Imports of PET film from India were recently subject to an anti-subsidy investigation and definitive anti-countervailing measures were imposed on imports of PET film originating in India by Council Regulation (EC) No 2597/1999 [1].

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(a) *Product description*

(9) The product concerned is non-self-adhesive film of polyethylene terephthalate, excluding film for the manufacture of flexible magnetic discs and photopolymer printing plates imported in accordance with the end-use provisions of the Community legislation. PET film is always produced from PET polymer and consists of a base film which may be subjected to further treatment either during or after the production process. Such treatments of the base film may typically include corona treatment, metallisation or chemical coating.

(10) PET film has specific physical, chemical and technical characteristics which distinguishes it from other plastic films. Some of these characteristics of PET film are e.g. its high tensile strength, the very good electrical properties, low moisture absorption and humidity resistance, low shrinkage and good barrier properties. Therefore, while these specific characteristics determine various types of PET film, they retain the same basic physical, technical and chemical characteristics of base PET film.

(11) PET film has five broad end-uses and fall within five market segments, i.e. magnetic media, packaging, electrical, imaging and industrial applications. However, the same type of PET film can often be used for different applications, thus indicating that there is a large degree of interchangebility. For the purpose of the investigation, the PET film was grouped in types according to market segment, thickness, coating properties, surface treatment, mechanical properties and clarity/opacity, which sought to reflect the above-mentioned characteristics.

(12) The product is currently classifiable within CN codes ex 3920 62 19 and 3920 62 90. The investigation has shown that imports of the product concerned have also taken place under CN code 3920 69 00. However this has to be considered as a misclassification and cannot constitute grounds to justify an extension of the scope of the proceeding to different products falling under other CN codes. It was also alleged that imports may also have taken place under CN codes 3920 62 11 and 3920 62 13 but no evidence was found during the investigation for misclassification under these codes.

(b) *Arguments of the parties*

(13) Two sampled exporting producers alleged that metallised PET film should be excluded from the product scope of the current proceeding since it was not identical to nor alike to base PET film. It was argued that metallised PET film is further processed on the basis of an off-line production system, which applies particles of metal, notably aluminium, to the base PET film. It was also submitted that metallised film is correctly classifiable under HS code 3921 and that this code was not mentioned in the Notice of Initiation.

(14) It was also claimed that PET video film cannot be considered alike to base PET film since video film is a post-process coated PET film obtained on the basis of an off-line production system and not in the normal production line. In addition, its price would also be higher than the price of base PET film.

(15) It was submitted that PET film for electrical applications for insulation purposes was not interchangeable with PET film for other applications and should therefore also be excluded from the scope of the proceeding.

(16) Certain sampled exporting producers claimed that the proceeding should have been limited to PET film of a thickness under 25 µ, i.e. so-called 'thin film' and consequently should have excluded PET film above 25 µ, ('thick film'). It was claimed that they are used in different market segments and that the machinery to manufacture thin and thick film were different. It was also argued that the Commission made a distinction between thick and thin film in past investigations.

(17) One sampled exporting producer argued that the product scope of the investigation should have been limited to those thickness of PET film, i.e. 12 µ to 15 µ, where, according to the complaint, injury to the Community industry would exist.

[1] OJ L 316, 10.12.1999, p. 1.

(c) *Findings of the investigation*

(18) It was found that PET film is produced in a wide range of types by both the Community industry and the exporting producers. However, despite the existence of differences in the properties of the various types of PET film such as thickness, coating or surface treatment (e.g. metallisation) as well as uses of PET film, it was concluded that the different types of PET Film constitute one single product.

(19) With regard to metallised film, it was found that the addition of one or two layers of metal, such as aluminium, to the base PET film does not markedly alter the basic physical, technical and chemical characteristics of the product. Indeed, the actual composition of metallised film shows little variation from that of base film given that the quantity of metal actually applied to the base PET film is minuscule (typically of the order of 20 grams of aluminium per tonne of film). Moreover, base and metallised PET film are in many applications interchangeable and therefore have the same or a similar use. While it is true that metallised PET film may be intended for particular applications, the fact remains that other standard types of PET film could also be used in a number of those particular applications, for instance in food packaging applications, showing the existence of a certain degree of competition and interchangeability between the product types. For all of the above reasons metallised film is considered to fall under the definition of the product concerned. It was also found that metallised film based on polyethylene terephthalate is classified under CN codes 3920 62 19 and 3920 62 90.

(20) With regard to PET video film, it was found that (similar to the addition of metal to the base PET film) the off-line addition of a layer of magnetic coating to the base PET film does not alter the fundamental characteristics of base PET film, and that PET video film and other types of PET films should therefore be considered as the same product.

(21) In respect of PET film for electrical applications (namely for insulation purposes) it was found that whilst this type of PET film is specifically used for certain applications, its basic physical, technical and chemical characteristics are the same as that of the other types of PET film. Just as with metallised film, PET film for electrical applications is a surface treated base PET film. The surface treatment only represents a minuscule percentage of the final weight of the PET film for electrical application and therefore does not change the physical characteristics of the base PET film.

(22) As regards the distinction between so-called thick and thin PET film and the contention that the complaint appeared to be based on PET film of thickness 12 µ to 15 µ, it was found that no clear dividing line existed between the suggested 'thick' and 'thin' groupings or between PET film within the range 12 µ to 15 µ and other PET film. The previous investigations had focused either on all imports of PET film (1989) or on specific segments of the PET film industry, notably so-called 'thin film' (1991) and video film (1996). In the current proceeding, the complaints submitted contained substantiated evidence justifying that the full range of PET film thicknesses constituted a single product. Accordingly, the investigation was initiated on that basis and subsequently confirmed that PET film of various thicknesses were one single product as explained above.

2. **Like product**

(23) PET film produced and sold on the domestic market in India and Korea and PET film exported to the Community from India and Korea as well as PET film produced and sold by the Community industry on the Community market were found to have the same physical and technical characteristics and uses. It was therefore concluded that they are a like product within the meaning of the basic Regulation.

C. **SAMPLING OF INDIAN AND KOREAN EXPORTING PRODUCERS**

(24) Given the number of exporting producers both in India and Korea, the Commission decided to apply sampling techniques in accordance with Article 17 of the basic Regulation. In order to enable the Commission to select a sample for each country concerned, exporting producers were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within two weeks of the initiation of the proceeding and to provide basic information on their production, domestic sales and exports for the investigation period as well as the names and activities of all related companies. The companies were also asked to indicate whether they intended to submit a request for an individual dumping margin.

(25) 12 exporting producers reported export sales to the Community during the IP and expressed their willingness to participate in the sample. The selection of the samples was made in consultation and with the consent of the parties concerned. According to Article 17(1) of the basic Regulation, the selection was based on the largest representative volume of exports which could reasonably be investigated within the time available. The following exporting producers were selected for the samples ('the sampled exporting producer/s'):

India

— Ester Industries Limited, New Delhi,

— Gareware Polyester Limited, Mumbai,

— Flex Industries Limited, Noida,

— Jindal Polyester Limited, New Delhi.

Korea

— Toray Saehan Inc./Saehan Ind Inc., Seoul,

— Kolon Industries Inc., Kwacheon,

— SKC Co. Ltd, Seoul.

(26) The volume of exports to the Community by the sampled exporting producers during the investigation period represented nearly 90 % for both India and Korea of all PET film originating in these countries exported to the Community during the investigation period.

(27) Apart from one exporting producer, all of the companies which expressed willingness to participate in the sample also requested that, should they not be selected, an individual margin be calculated for them pursuant to Article 17(3) of the basic Regulation. However, individual dumping margins could not be established for these cooperating companies because individual examinations would have been unduly burdensome and would have jeopardised the completion of the investigation in good time.

D. **DUMPING**

1. **General methodology**

(a) *Normal value*

(28) In order to establish normal value, it was first determined for each sampled exporting producer whether the total volume of domestic sales of the product concerned were representative in accordance with Article 2(2) of the basic Regulation, i.e. whether these sales represented more than 5 % of the sales volume of the product concerned exported to the Community.

(29) It was then ascertained whether or not total domestic sales of each product type constituted 5 % or more of the sales volume of the same type exported to the Community during the IP and were thus representative.

(30) For those product types passing the 5 % test, it was established whether sufficient sales had been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation. Where, for any product type, the volume of domestic sales above unit cost represented at least 80 % of sales, normal value was established on the basis of the weighted average prices actually paid for all domestic sales. For those product types where the volume of profitable transactions was equal to or lower than 80 %, but not lower than 10 % of sales, normal value was established on the basis of the weighted average prices actually paid for the remaining profitable domestic sales.

(31) For those product types where the volume of domestic sales in the ordinary course of trade was lower than 5 % of the volume exported to the Community, or where the volume of profitable domestic sales was less than 10 %, domestic sales of that product type were considered insufficient within the meaning of Article 2(4) of the basic Regulation and were therefore disregarded. In these cases, where possible, normal value was based on the weighted average of the prices charged by other producers in the country concerned for representative domestic sales of the corresponding product type made in the ordinary course of trade in accordance with Article 2(1) of the basic Regulation. Where, for any product type, neither the exporting producer in question nor any other cooperating exporting producer in the country concerned had sufficient sales in the ordinary course of trade, normal value was constructed on the basis of the costs of manufacturing incurred by the exporting producer concerned for the exported product type in question plus a reasonable amount for sales, general and administrative costs and for profits in accordance with Article 2(3) and (6) of the basic Regulation. The sales, general and administrative costs were based on representative domestic market sales of the like product and the profit on domestic sales which were made in representative quantities and in the ordinary course of trade.

(b) *Export price*

(32) In all cases where PET film was directly exported to independent customers in the Community, the export prices were established in accordance with Article 2(8) of the basic Regulation, namely on the basis of prices actually paid or payable.

(33) Where the export sale was made to a related importer, the export price was constructed pursuant to Article 2(9) of the basic Regulation, namely on the basis of the price at which the imported products were first resold to an independent buyer. In such cases, adjustments were made for all costs incurred between importation and resale by that importer and for a reasonable profit margin. The latter was assessed on the basis of the profit achieved by independent importers of the product concerned.

(c) *Comparison*

(34) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation.

(d) *Dumping margins*

(i) Dumping margin for the sampled cooperating exporting producers

(35) According to Article 2(11) of the basic Regulation, the weighted average normal value per product type was compared with the weighted average export price on an ex-works basis and at the same level of trade. Whenever it was established that there was a pattern of export prices which differed significantly among different purchasers, regions or time periods and that the above mentioned method did not reflect the full degree of dumping, the weighted average normal value was compared with the prices of all individual transactions to the Community.

(ii) Dumping margin for the cooperating companies not included in the sample but which requested individual treatment

(36) The weighted average dumping margin of the sampled cooperating exporting producers was applied to the cooperating exporting producers, which were not included in the sample.

(iii) Dumping margin for non-cooperating companies

(37) For those exporting producers which neither replied to the questionnaire nor otherwise made themselves known, the dumping margin was established on the basis of the facts available, in accordance with Article 18 (1) of the basic Regulation.

(38) Taking into account the high level of cooperation in both countries subject to the investigation, it was decided to set, in each country, the residual dumping margin at the level established for the exporting producer with the highest dumping margin. This approach was taken, as there is no reason to believe that any non-cooperating exporting producer in the countries concerned would have dumped at a lower level than a cooperating exporting producer in the same country.

2. **India**

(a) *Normal value*

(39) For about half of the models, domestic prices of the sampled exporting producers could not be used to establish normal value because of a lack of sales in the ordinary course of trade or insufficient representativity. The price of models sold by other sampled exporting producers could only be used for a limited number of models, mainly due to the lack of identical models. For the remaining models, normal value was constructed.

(40) Three out of the four Indian sampled exporting producers claimed that their raw material costs should be adjusted by the amount of export subsidies received on exportation under the Duty Entitlement Passbook Scheme ('DEPB') on post-export basis (see recitals 49 and 50). This adjustment could not be granted since the accounting records of the companies (where the raw material costs were accounted at their full purchasing value without DEPB benefits) were found to reflect the cost associated with the production and sale of the product. Likewise, Article 2(10) of the basic Regulation only contemplates the possibility of adjustments that affect price comparability. As the DEPB scheme did not affect price comparability (see recitals 49 and 50), there is no legal basis to adjust costs by the amount of the DEPB scheme.

(41) One exporting producer claimed that the cost of manufacturing incurred in one plant did not reflect adequately the costs associated with manufacturing because the very low capacity utilisation implied the overstatement of the cost of manufacturing. No adjustment could be granted in this regard as it was found that the low utilisation of capacity was not due to investments in new production lines and therefore did not correspond to the situation contemplated by Article 2(5) of the basic Regulation.

(b) *Export price*

(42) The procedures and methodologies followed by the Commission services in order to determine the export price of products originating in India were those explained in recitals 32 and 33.

(c) *Comparison*

(43) Allowances for differences in transport, insurance, handling, loading and ancillary costs, packing, credit and commissions have been made where applicable and justified.

(i) Indirect taxes

(44) One sampled exporting producer claimed an adjustment to the normal value, pursuant to Article 2(10)(b) of the basic Regulation, for sales taxes (a tax imposed by Indian regional authorities) paid on domestic sales. During some months of the IP the company was exempted from the sales tax. This sales tax exemption is given to companies which invest in the region concerned. The

exporting producer claimed an adjustment calculated as the total sales tax charged to its customers and paid to the regional authorities during the IP, divided by the total domestic sales over the IP. The adjustment should then be applied to all domestic sales during the IP, both to transactions for which sales tax was paid as well as to those which were exempted. The reason for the claiming of an adjustment of the sales transactions where no sales tax was paid was that, allegedly, the sales tax was paid implicitly by undertaking investments in the region.

(45) It was found that the company was indeed exempted from the sales tax for some months during the IP and for the rest of the IP sales taxes had to be paid. For those transactions for which no sales tax at all was paid no adjustment could be made because such sales tax was not 'borne by the like product' sold in the domestic Indian market. For those transactions where it was found that the sales tax was paid and that an adjustment was in principle justified it was found that the domestic sales prices provided by the company for those transactions were already net of these sales taxes and therefore no further adjustment needed to be made.

(ii) Level of Trade

(46) One sampled exporting producer claimed an adjustment for differences in the level of trade pursuant to Article 2(10)(d) of the basic Regulation. The adjustment could not be granted, since the company could not demonstrate that the export price was at a different level of trade from the normal value and that price comparability was affected. In fact, two different levels of trade were argued to exist, both on export and domestic market, but no consistent and distinct differences in functions and prices of the sellers for the different levels of trade in the domestic market of India could be found.

(47) Another sampled exporting producer alleged that the traders in the Community bought higher quantities than the domestic traders and therefore that domestic selling prices were higher, which would justify a level of trade adjustment pursuant to Article 2(10)(d) of the basic Regulation. This adjustment could not be granted, since the company could not demonstrate that there was a difference in the functions performed by the alleged various categories of traders.

(iii) Currency conversions

(48) One sampled exporting producer presented two claims under Article 2(10)(j) of the basic Regulation: (i) export prices should be converted into Indian rupees using the exchange rate of the date of payment; and (ii) that if the first claim was rejected, a currency conversion adjustment be made. The first claim could not be granted as Article 2(10)(j) does not provide for an adjustment which takes into account exchange rate variations that occur after the date of sale. The second claim was also rejected as no sustained movement in exchange rates between the currencies of the Community and the Indian rupee existed during the IP.

(iv) Other allowances

(49) All Indian sampled exporting producers claimed an adjustment on the export price pursuant to Article 2(10)(k) of the basic Regulation for the benefits received under the ('DEPB') scheme on a post-export basis. During the IP the Indian exporting producers of PET film were entitled to receive credits under the DEPB scheme when exporting the product concerned. For metallised PET film the rate was 20 % for the period 1 April 1999 to 28 February 2000 and was amended to 20 % but with a total cap of 85 rupees per kg. For all other types of PET film, the credits amounted to 19 % of the fob value of the export transactions of the product concerned during 1 April 1999 to 28 February 2000 and 15 % thereafter. The credits received during the IP could be used to offset customs duties normally due on imports of any goods or freely sold to other companies. It should be noted that the duty-free imported goods could be sold on the domestic market or used in any other way and no restriction existed to use the imported goods only in the production of the exported product.

(50) It should be noted that, in a previous anti-subsidy investigation [1] on the same product, the Commission found the DEPB scheme to be an export subsidy. The exporting producers did not demonstrate that the export subsidy under the DEPB scheme on post export basis affected price comparability, and in particular that the customers paid different prices on the domestic market because of the DEPB benefits. Therefore this claim was rejected. However no product should be subject to both anti-dumping and countervailing duties for the purpose of dealing with the same situation arising from dumping or export subsidisation. Therefore, in accordance with Article 14(1) of the basic Regulation, the export subsidies accounted for by the existing countervailing duty shall be deducted from the anti-dumping duty.

[1] Regulation (EC) No 2597/1999 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India.

(d) *Dumping margin*

(51) As provided by Article 2(11) of the basic Regulation, the weighted average normal value of each type of the product concerned exported to the Community was compared to the weighted average export price of each corresponding type of the product concerned.

(52) For two sampled exporting producers, it was found that their export prices had varied by purchaser, time-period and region. However, given that the comparison of weighted average normal value per product type with the weighted average export price reflected the full degree of dumping practice, the dumping margins for these companies were calculated as explained above.

(53) The dumping margin for the cooperating exporting producers not part of the sample and for the non-cooperating companies was established in accordance with the methodology described in recitals 36, 37 and 38.

(54) The comparison showed the existence of dumping in respect of the sampled cooperating exporting producers. The provisional dumping margins expressed as a percentage of the cif import price at the Community frontier, duty unpaid are for:

Ester Industries Limited	71,0 %
Flex Industries Limited	48,3 %
Gareware Polyester Limited	69,5 %
Jindal Polyester Limited	10,6 %
Dumping margin for cooperating companies not part of the sample	55,0 %
Residual dumping margin for non-cooperating companies	71,0 %

3. **Korea**

(a) *Company structure issue*

(55) One of the Korean sampled exporting producers claimed that a determination of dumping and injury in its regard should be limited to the last four months of the IP. The request was based on the claim that four months prior to the end of the IP, control of the PET film division of the original exporting producer was transferred to a joint-venture between that company and a Japanese company and consequently the commercial strategy of the operation (including its pricing policy) was substantially changed.

(56) On the basis of the information submitted in respect of the ownership structure and nature of the operation, the Commission noted that the Japanese company was already a significant shareholder of the Korean company prior to the set up of the joint venture, and the manufacturing assets of the joint venture were the same as those of the preceding Korean company in respect of the product concerned. It was further noted that the joint venture continued to sell the product concerned under the brand name of the former exporting producer. There was no evidence of a clear change in pricing policy within the IP and since the set up of the joint-venture. It was therefore concluded that the joint venture was effectively a continuation of the previous operation and that the data relating to the entire investigation period should be used.

(b) *Normal value*

(57) For the large majority of types, normal values were based on the domestic sales price. Wherever domestic prices of a particular model could not be used to establish normal value, normal values were constructed given that no domestic sales of identical models by other sampled exporting producers could be found. Two sampled exporting producers reported as domestic transactions certain sales made to Korean manufacturing companies where ultimately the manufactured product was destined for export. It was argued that these sales should be treated as domestic sales as they were intended for domestic consumption. However, these sales were subject to administrative arrangements specific to export sales. They were not subject to domestic sales tax, they were often invoiced in US dollars and paid for by letters of credit, they were subject to (transferable) duty drawback arrangements and they were normally classified as local export sales in the companies' accounting records. In these circumstances, these sales could not be considered to have been made in the ordinary course of trade or permitting a proper comparison, and thus were not considered for the determination of normal value.

(c) *Export price*

(58) All of the sampled exporting producers export some of the product concerned to the Community through related importers in the Community. One of those related importers transforms the imported base film. In transforming the product by various processes significant value is added by the related importer at considerable cost. Given the complexity of this transformation, it would have been difficult to arrive with a sufficient degree of precision at a constructed export price. However, since export sales to unrelated importers in the Community made by this sampled exporting producer accounted for around 63 % of that sampled exporting producers sales, it was considered that these transactions to unrelated importers were representative and it was decided to establish the export price on the basis of these exports to unrelated importers only.

(d) *Comparison*

(59) Allowances for differences in transport, insurance, handling, loading and ancillary costs, packing, and credit have been made where applicable and justified.

(i) Exchange rate fluctuation

(60) One sampled exporting producer claimed an adjustment, pursuant to Article 2(10)(j) of the basic Regulation, for sustained fluctuations in the exchange rate between the Korean Won and the Euro, and the Korean Won and the US Dollar during the last four months of the investigation period. The claim was found to be justified and an adjustment was made in respect of all of the sampled exporting producers.

(ii) Duty drawback

(61) All sampled exporting producers claimed an adjustment to the normal value to account for refunds of import duty received under the national duty drawback scheme on the grounds that import charges were borne by the like product when consumed in the exporting country but were refunded when the product concerned was sold for export. The claims were based on an average of the duty refunded per kilogram exported.

(62) The requested adjustment could not be granted in full.

(63) In this respect the following should be noted. The exporting producers had two sources of supply for their main raw materials, i.e. imports and purchases on their domestic markets. It was found that the sampled exporting producers could not establish which deliveries of raw materials were incorporated into any individual production of PET film, and thus could not identify the duties that were attributable to export or domestic sales. The national duty drawback scheme permitted exports to be imputed against any valid import certificate showing duty paid. It was also found that the duty paid (per kilogram) varied considerably for one and the same type of raw material, as a reflection of market price variations, currency fluctuations and the quantities of local inputs incorporated into the raw materials delivered to the producers.

(64) As far as the determination of the allowable duty drawback was concerned, the following approach was adopted. The exporting producers are able to claim from the national customs and tax authorities a duty refund upon proof of export and thus, as rational economic operators, they would seek to maximise their duty drawback by claiming this refund at the highest duty rates possible. Effectively this would mean allocating to domestic sales, firstly any domestically produced raw materials, and thereafter any imported raw materials carrying the lowest duty rates. Accordingly, the duty drawback adjustment was determined on this basis.

(65) In each case the amounts claimed were found to be higher than the amounts of duty borne by the like product in the domestic market, as determined using the above method, and the allowances were adjusted accordingly.

(e) *Dumping margin*

(66) As provided for by Article 2(11) of the basic Regulation, the weighted average normal value of each type of the product concerned exported to the Community was compared to the weighted average export price of each corresponding type of the product concerned.

(67) One sampled exporting producer indicated that its prices had varied by purchaser and by time-periods. A second company indicated that its prices had varied by purchaser, time-periods and by region. For one of these companies it was found that the weighted-average to weighted-average method did not fully reflect the amount of dumping and the dumping margin for this company was therefore calculated on the basis of a comparison of the weighted average normal value with the prices of all individual transactions to the Community. For the other company, the weighted-average to weighted-average method fully reflected the amount of dumping and the dumping margin was established accordingly.

(68) In the case of Korea it was considered reasonable to attribute the highest dumping margin found to non cooperating companies.

(69) The provisional dumping margins expressed as a percentage of the cif import price at the Community frontier, duty unpaid are for:

Kolon Industries Limited	3,5 %
SKC Industries Limited	12,4 %
Toray Saehan Industries	3,5 %
Dumping margin for cooperating companies not part of the sample	7,8 %
Residual dumping margin for non cooperating companies	12,4 %

E. **COMMUNITY INDUSTRY**

1. **Community production**

(70) Within the Community, the product under consideration is manufactured by:

— three operators, i.e. DuPont Teijin Films, Mitsubishi Polyester Films and Nuroll SpA, who lodged the complaint and cooperated in the investigation ('the cooperating complainants');

— one operator, Fapack, who participated in lodging the complaint but only provided some basic information, although expressly supporting the proceeding;

— other operators, 3M, Agfa Gevaert and Kodak Eastman Ltd, which are not complainants, which submitted some basic information even though not fully replying to the questionnaire but which did not oppose the proceeding, and

— one operator, Toray Plastics Europe SA, which only replied in its capacity as a related importer but not as a producer in the Community.

(71) The Commission assessed whether the above companies could be considered as constituting the Community production within the meaning of Article 4(1)(a) of the basic Regulation.

(72) Toray Plastics Europe was found to be related to a cooperating exporting producer, i.e. Toray Saehan Industries, as from December 1999. It refused to cooperate as regards its production activities in the Community and its sales of own-manufactured products. Given its relationship with the exporting producer, and in the absence of any cooperation, findings had to be made on the basis of facts available. Thus, it was provisionally concluded that this operator must be considered as shielded from the negative consequences of the injurious dumping found. It should therefore not be considered as a Community producer.

(73) None of the other companies mentioned above was found to import from the countries concerned during the investigation period. Accordingly it is considered that, except for Toray Plastics Europe, all the above operators are Community producers and thus constitute the Community production within the meaning of Article 4(1) of the basic Regulation.

2. **Definition of the Community industry**

(74) The three cooperating complainant Community producers fulfil the requirements of Article 5(4) of the basic Regulation, since they account for more than 70 % of the total Community production of PET film. They are therefore deemed to constitute the Community industry within the meaning of Article 4(1) of the same Regulation and will hereinafter be referred to as 'the Community industry'.

F. **INJURY**

1. **Preliminary remarks**

(75) The imposition of provisional and definitive countervailing duties on PET film originating in India [1], took place during the investigation period, from 1 April 1999 to 31 March 2000, and is therefore relevant for the analysis of the trends relevant for the injury assessment.

[1] By means of Commission Regulation (EC) No 1810/1999 (OJ L 219, 19.8.1999, p.14) which was confirmed by Regulation (EC) No 2597/1999.

2. **Community consumption**

(76) The apparent Community consumption was established on the basis of:

— information reported by the Community industry, by other cooperating Community producers and by cooperating exporting producers concerning their volume of sales in the Community;

— Eurostat information and Regulation (EC) No 1810/1999 as regards non cooperating exporting producers in the countries concerned and imports from third countries; and

— Regulation (EC) No 1810/1999 and information from the complaint were used in accordance with Article 18 of the basic Regulation as regards sales in the Community by Toray Plastics Europe which as mentioned below only cooperated as a related importer but not as a producer in the Community.

(77) Captive production, which amounted to over 75 000 tonnes during the investigation period, was not taken into consideration when establishing Community consumption since this production is not sold on the free market as PET film but further processed and sold on the market in the form of end-products other than PET film, for which the product under consideration is only one of the components. Sales of PET film produced for and used in the captive market were not in competition with sales of PET film produced for and sold in the non-captive market and were thus not likely to be subject to the effects of the dumped imports.

(78) In this respect, PET film exceptionally used for captive purposes by the Community industry until 1998 was not included in the Community consumption, whilst there were certain sales made by captive producers in the non-captive market which were included in the Community consumption.

(79) On this basis, the apparent Community consumption of PET film has increased by around 36 %, i.e. from 183 923 tonnes in 1996 to 249 544 tonnes during the investigation period. It went up particularly between 1996 and 1997, i.e. to 212 845 tonnes, and between 1998 and 1999, i.e. from 216 729 tonnes to 241 188 tonnes, and continued to increase until the investigation period when it reached 249 544 tonnes. The growth of the Community market by 36 % between 1996 and the investigation period is due to the very strong development of certain end uses, such as packaging or other industrial applications.

3. **Imports concerned**

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

(80) Certain Korean exporting producers argued that imports originating in Korea should not be cumulated with imports originating in India since conditions of competition between imports originating in these two countries are different in view of the higher prices on average of imports of PET film originating in Korea and of the fact that Indian exporting producers had benefited from national and regional export subsidies as concluded in Regulation (EC) No 1810/1999 and confirmed by Regulation (EC) No 2597/1999.

(81) The Commission examined these claims, taking account of the conditions set out in Article 3(4) of the basic Regulation. The dumping margins were found to be more than *de minimis* as defined in Article 9(3) of the basic Regulation and the volume of imports from each of these two countries was not negligible.

(82) As regards the conditions of competition, as mentioned above, PET film imported from the two countries concerned was found to be alike in all respects, and also to PET film manufactured and sold in the Community. Import volumes from the two countries concerned were substantial and increased, from both countries, between 1996 and the investigation period. During the same period, their corresponding market shares also increased. Moreover, both Korean and Indian prices have considerably decreased since 1996 and they have undercut in both cases the sales prices of the Community industry, while being sold via the same or similar channels of trade and with similar commercial conditions.

(83) Furthermore, as concerns the claim that Indian exporting producers had benefited from national and regional export subsidies, it should be noted that the Commission has established that conditions of competition were similar for imports originating in both countries as concerns sales prices, channels of trade and commercial conditions. The fact that Indian exporting producers had benefited from subsidies is not relevant in this context and in any event, countervailing duties were imposed in 1999 in order to compensate the amount of subsidies found during that investigation.

(84) The cumulative assessment of imports from the countries concerned also appears appropriate in view of the conditions of competition both between the imports concerned and between these imports and the like Community product.

(85) For these reasons, it is provisionally concluded that imports originating in the countries concerned should be assessed cumulatively.

(b) *Volume and market share of the imports concerned*

(86) The volume of imports from the countries concerned increased by 83 %, i.e. from 27 624 tonnes in 1996 to 50 590 tonnes during the investigation period, whereas apparent Community consumption increased by 36 %. Imports concerned significantly increased between 1996 and 1997, from 27 624 tonnes to 40 344 tonnes and went up again in 1998, reaching 46 793 tonnes. They increased in 1999 to 48 067 tonnes and went up even further during the investigation period.

(87) The share of the Community market held by imports from the countries concerned increased between 1996 and the investigation period by around five percentage points from 15,0 % to 20,3 %. It increased between 1996 and 1997 from 15,0 % to 19,0 % and again in 1998 reaching 21,6 %. It went down slightly between 1998 and 1999 to 19,9 % reflecting the imposition of countervailing duties on imports originating in India, and increased again towards the investigation period, reaching 20,3 %.

(c) *Prices of the dumped imports*

(i) Price evolution

(88) Import prices from the countries concerned, as provided by Eurostat, decreased by around 50 % over the period under consideration, i.e. from EUR 3 411/tonne to EUR 1 692/tonne. Prices decreased by 26 % between 1996 and 1997, to EUR 2 516/tonne, they continued to decrease in 1998 and 1999, when they reached EUR 1 670/tonne and remained relatively stable, even slightly increasing, during the investigation period at EUR 1 692/tonne.

(ii) Price undercutting

(89) It was examined whether the exporting producers in the countries concerned were undercutting the sales prices of the Community industry during the investigation period.

(90) Weighted average export prices per PET film type defined according to the criteria mentioned above under B.1 were compared with the corresponding weighted average sales prices of the Community industry, in both cases to unrelated parties. When imports were made through related companies, resale prices to first independent customers were used.

(91) Adjustments to the sales prices of the exporting producers to unrelated customers in the Community were made, where appropriate, for transport costs, handling and import charges in order to arrive at a free at Community frontier level duty paid. The Community industry's sales prices were similarly adjusted, where appropriate, to arrive at ex-factory level.

(92) Indian exporting producers requested a level of trade adjustment. They argued that whereas they sold a major proportion of their PET film to wholesalers in the Community, the Community industry was mainly selling directly to users of PET film. Therefore, they claimed that the comparison for the purposes of undercutting should be made between prices at the same level of trade.

(93) The investigation showed that, as far as the Community industry's sales are concerned, the average selling price to distributors or to converters, i.e. users, does not depend on the type of customer but on the purchased volumes. Indeed, prices to wholesalers are sometimes higher than the prices charged to the users because the latter buy larger quantities and therefore receive a discount. It was also found that these two levels of trade are not clearly separated due to the fact that some major companies act both as a wholesaler and as a user. Furthermore, no clear price difference was found between the two levels, either in the Community industry's sales price or in the exporting producers' sales price since, as mentioned above, the quantity purchased seems to be a more important factor in the price fixing system than the level of trade. Finally, and contrary to the allegation put forward by the Indian exporting producers, the investigation has shown that the Community industry also sells the product under consideration to wholesalers and distributors and not only to users. On this basis, it was concluded that there were no grounds to grant Indian exporting producers any allowance for the level of trade.

(94) On this basis, the price undercutting margins found per country, expressed as a percentage of the Community producers' prices, are as follows:

— Korea: they ranged from 16,4 % to 37,9 %, on weighted average 21,9 %,

— India: they ranged from 36,7 % to 49,1 %, on weighted average by 41,7 %.

4. **Situation of the Community industry**

(95) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

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

(96) Between 1996 and the investigation period, the total production capacity of the Community industry, measured in tonnes which could be manufactured per year, went up by around 37 % from 126 594 tonnes to 173 537 tonnes. It should be noted that a large capacity increase took place in 1998 and 1999. Between 1999 and the investigation period, capacity remained stable.

(97) Actual production of the Community industry increased by around 27 % over the period considered, going from 109 028 tonnes in 1996 to 138 216 tonnes during the investigation period. It increased steadily between 1996 and 1998, to 118 190 tonnes and went up significantly between 1998 and 1999, reaching 132 385 tonnes, coinciding with the imposition of countervailing measures, increasing again during the investigation period to 138 216 tonnes since the new production capacity installed by the Community industry in 1998 and 1999 had become operational during the investigation period.

(98) The level of utilisation of the capacity decreased between 1996 and the investigation period from 86,1 % in 1996 to 79,6 % during the investigation period. It decreased especially between 1997 and 1998 from 84,6 % to 73,9 %, increasing in 1999 to 77,1 % and again during the investigation period, reaching 79,6 %.

(b) *Stocks*

(99) The level of stocks of the Community industry has remained relatively stable over the period under consideration, i.e. from 15 077 tonnes in 1996 to 14 916 tonnes during the investigation period although it decreased when expressed as a percentage of production from 13,8 % in 1996 to 10,8 % during the investigation period.

(c) *Sales volume and market share of own-produced products*

(100) The sales volume of the Community industry increased steadily between 1996 and 1998, i.e. from 87 549 tonnes to 96 542 tonnes, went up significantly in 1999, to 106 834 tonnes, and increased again during the investigation period, reaching 109 675 tonnes. However, it should be noted that while the sales volume of the Community industry increased by around 25 %, Community consumption increased by around 36 % between 1996 and the investigation period and the volume imports originating in the countries concerned also increased by 83 %.

(101) This development should be seen in the light of the fact that the Community industry, when faced with low-priced imports originating in India and in Korea, had the choice of either maintaining its sales prices at the expense of a negative development of its sales volume and market share, or to lower its sales prices and follow

the trend of the imports concerned at the expense of its profitability. Most Community producers lowered their sales prices as from 1997 trying to maintain or even increase their volume of sales in order to reach the critical mass of production needed to cover their fixed costs.

(102) The corresponding share of the Community market decreased in overall terms between 1996 and the investigation period from 47,6 % to 44 %. It decreased between 1996 and 1997 from 47,6 % to 43,8 %, increased in 1998 to 44,5 %, and went down in 1999 and again during the investigation period, reaching 44 %. In this context, it should be recalled that the growth of the Community market for PET film between 1996 and the investigation period was around 36 % and that the share of the market held by imports concerned increased by around five percentage points during the same period.

(d) *Growth*

(103) As mentioned above, while Community consumption increased by around 36 % between 1996 and the investigation period, the sales volume of the Community industry increased by around 25 % and the volume of imports concerned by 83 %. The growing trend of the market as well as the decrease of imports originating in third countries other than the countries concerned did not translate into an increase of the Community industry's share of the market. On the contrary, its market share decreased between 1996 and the investigation period from 47,6 % to 44 %, whereas the share of imports concerned increased by around five percentage points during the same period. Thus, the Community industry could not fully benefit from the growth of the market.

(e) *Sales prices of own produced PET film*

(104) Weighted average sales prices of the Community industry decreased between 1996 and the investigation period from EUR 4 212/tonne to EUR 2 769/tonne, i.e. by around 34 %. Prices decreased substantially between 1996 and 1997, i.e. from EUR 4 212/tonne to EUR 3 604/tonne, went down dramatically in 1998 and in 1999, to EUR 2 830/tonne, and further decreased during the investigation period reaching a level of EUR 2 769/tonne. It should be noted that sales prices of the Community industry followed the same evolution as sales prices of the imports concerned and that the Community industry was not able to increase its sales prices during the period under consideration, even though the Community industry, as shown below, has made losses on its sales of own produced PET film since 1998.

(f) *Employment*

(105) The level of employment of the Community industry during the period under consideration has decreased by 11 %, i.e. from 2 165 employees in 1996 to 1 921 employees during the investigation period.

(g) *Productivity*

(106) Productivity of the Community industry's workforce linked to manufacturing of PET film has increased between 1996 and the investigation period by around 27 %, from around 68 tonnes per employee in 1996 to around 87 tonnes per employee during the investigation period. The main increase took place between 1997 and 1998, from around 70 tonnes/employee to around 72 tonnes/employee and between 1998 and 1999, reaching around 81 tonnes/employee. Productivity increased again during the investigation period to around 87 tonnes/employee.

(h) *Wages*

(107) Between 1996 and the investigation period, average wages per employee have increased by 21 %, i.e. from around EUR 42 000 in 1996 to around EUR 51 000 during the investigation period, following the same trend as productivity.

(i) *Investments*

(108) Between 1996 and the investigation period, investments of the Community industry went down in overall terms, from around EUR 94 million in 1996 to around EUR 14 million during the investigation period. This shows that the Community industry took the decision to invest in new production capacity in 1995/96, but given the long time necessary for commissioning new plants, they were installed only in 1997 and 1998. The level of investments sharply decreased in 1999 and remained stable during the investigation period.

(j) *Profitability*

(109) The financial situation of the Community industry deteriorated between 1996 and the investigation period. The Community industry's profitability as return on sales went down sharply between 1996 and 1997, from around 13 % to around 3 %. The Community industry started to make losses in 1998 (around -7 %). These losses reached a level of around -13 % in 1999 and only slightly diminished during the investigation period -11 %.

(110) It should be noted that all the costs related to the start-up costs of the new production lines as well as those of the restructuring activities mentioned above were excluded by the Commission in the calculation of the Community industry's profitability for PET film. These restructuring and start-up costs of the Community industry were well over EUR 50 million in 1998.

(k) *Cash flow*

(111) The development of the Community industry's cash flow generated by the PET film manufacturing activities is very similar to that of the profitability. Indeed, cash flow has dramatically decreased from around EUR 100 million in 1996 to around -EUR 3 million in 1999, improving only marginally during the investigation period.

(l) *Return on investments (ROI)*

(112) The ('ROI'), expressed as the relation between the above net profits of the Community Industry for PET film and the net value of its investments, followed the negative trend of the profitability described above, i.e. ROI sharply decreased from 21,2 % in 1996 to -12,4 % in 1999 and slightly improved towards the investigation period, reaching -10,3 %.

(m) *Ability to raise capital*

(113) The investigation has shown that the Community industry was not able to raise capital during the period under consideration and will most likely be unable to do it in the future due to its financial situation and, in particular, to its deteriorated profitability and to the negative trend of the cash flow generated by its PET film manufacturing activities. In this respect, it should be noted that even if two of the three companies constituting the Community industry belong to globally organised groups of companies which have diversified activities in sectors other than PET film, the profit centres dealing with the product under consideration are in many aspects separate entities which have their own administration and management.

(n) *Magnitude of dumping margin*

(114) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

(o) *Recovery from past subsidisation*

(115) As to the potential recovery from past subsidisation, it should be noted that countervailing duties were provisionally imposed in July 1999 and definitively confirmed in December 1999 with regards to imports originating in India. However, the Community industry does not appear to have already benefited from the effect of these measures.

5. **Conclusions on injury**

(116) The examination of the abovementioned factors shows that between 1996 and the investigation period the situation of the Community industry deteriorated. Even though the Community industry increased its production and sales volume during the period under consideration, it could not follow the growth of the Community consumption. This resulted in a loss of market share over the period under consideration which would have been even more severe had the Community industry not lowered its sales prices by around 34 % at the expense of its financial situation, i.e. profitability and cash flow generated by PET film activity. These substantially deteriorated between 1996 and the investigation period, the former reaching a level of -11 % in an industry where a profit level of 6 % must be considered as the minimum required to finance the investment and R&D needed to keep up to date with technological development and market requirements. The Community industry also had to reduce the workforce linked to PET film by 11 %.

(117) Nevertheless, the Community industry restructured its manufacturing activities for the product under consideration both by installing new production lines and dismantling old ones which were less efficient in order to remain competitive in terms of productivity and efficiency. The Community industry has nowadays some of the most modern and efficient production lines for PET film in the world.

(118) On the basis of the above, it was therefore provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

G. **CAUSATION**

1. **Introduction**

(119) According to Article 3(6) and (7) of the basic Regulation, the Commission examined whether the dumped imports of PET film originating in the countries concerned have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

2. **Effect of the dumped imports from the countries concerned**

(120) The significant increase in volume of the imports concerned by 83 %, i.e. from 27 624 tonnes in 1996 to 50 590 tonnes during the investigation period, and of their corresponding share of the Community market, i.e. from 15 % in 1996 to 20,3 % during the investigation period as well as the substantial undercutting found (up to 49 % during the investigation period) coincided with the deterioration of the economic situation of the Community industry, in particular, in terms of loss of market share, of price depression and suppression and of a deterioration of profitability which turned into significant losses since 1998 (around -11 % during the investigation period).

(121) The Community industry, when faced with low-priced and dumped imports, had the possibility to either maintain its sales prices at the expense of a negative development of its sales volume and market share, or to lower its sales prices and follow the trend of the imports concerned at the expense of its profitability. Most Community producers decided to lower their sales prices as from 1997 trying to maintain or even increase their volume of sales in order to reach the critical mass of production needed by the Community industry to cover its costs of production. This strategy resulted clearly in a deterioration of the profitability situation of the Community industry which decreased already between 1996 and 1997, and started to be at a loss as from 1998, reflecting the fact that the market for PET film is price sensitive and import prices from the countries concerned had decreased substantially, i.e. by 40 %, between 1996 and 1998.

(122) At the same time, the Community industry was not able to benefit from the significant growth of the Community market, which increased by around 36 % between 1996 and the investigation period, whilst the sales volume of the Community industry only increased by 25 %. It should be noted that imports from countries concerned increased by 83 % during the same period. However, as mentioned before, had the Community industry not lowered its sales prices in line with those of the imports concerned, which went down by 50 % during the period under consideration, the decline of its market share would have been more pronounced.

(123) It is therefore considered that the pressure exerted by the imports concerned, which significantly increased their volume and market share at low prices, as shown by the significant price undercutting found, caused a price depression for the Community industry resulting in a deterioration of its financial situation.

3. **Effects of other factors**

(a) *Imports from third countries*

(124) In overall terms, imports originating in third countries not concerned by the current proceeding remained at a lower level in terms of volume and market share than the imports concerned since 1997.

(125) More particularly, during the investigation period, only imports originating in two countries other than the countries concerned had a share of the Community market beyond 2 %, i.e. the United States of America and Japan.

(126) In this respect, it should be noted that two of the complainant Community producers belong to or have recently merged with Japan or US-based companies. As a consequence, these companies have a global organisation of the production of their overall product range, i.e. production takes place in different production sites world-wide. Thus, the Community-based companies have concentrated on the production of certain product types and complement their own production with products manufactured by other companies belonging to the same groups located outside the Community, mainly in the USA and Japan. At the same time, companies outside the Community also purchase those product types for which production is concentrated in the Community in order to sell it on their respective geographical markets. These increasing trade flows are reflected on import volumes originating in the USA and in Japan as well as on the Community industry's export volumes shown below.

(127) Moreover, the investigation also showed that some of the exporting producers from the countries concerned belong as well to groups with global organisation of their production which also import some of the PET film types sold on the Community market from the USA and Japan in order to complement their range of PET film types manufactured in the countries concerned. This situation is also reflected in the figures below regarding imports originating in the USA and Japan.

(128) In terms of volume, imports originating in the USA have increased over the period under consideration and, in particular, they went up significantly between 1996 and 1997 from 14 968 tonnes to 19 746 tonnes and continued to increase in 1998 reaching 21 321 tonnes. They slightly declined in 1999 to 21 037 tonnes and increased again during the investigation period, reaching 22 113 tonnes. The corresponding market share increased, by around two percentage points between 1996 and 1998, went down by around one percentage point in 1999, to 8,7 %, and has remained stable during the investigation period.

(129) Furthermore, between 1996 and the investigation period, average prices of imports originating in the USA were higher than those of imports originating in the countries concerned and also than the Community industry's average sales prices, i.e. they went up from EUR 4 693/tonne in 1996 to EUR 6 582/tonne during the investigation period. It can therefore be concluded that these imports were done at prices which did not undercut sales prices of the Community industry.

(130) As regards imports originating in Japan, they decreased in terms of volume between 1996 and 1999 from 14 012 tonnes to 7 523 tonnes, slightly increasing during the investigation period to 8 091 tonnes. As to their share of the Community market, it went down substantially between 1996 and 1998, i.e. from 7,6 % to 3,5 %, remaining stable since then.

(131) Moreover, these imports also took place at prices which were on average higher than those of the imports concerned and of the Community industry during the

period under consideration. Import prices were relatively stable over the period under consideration from EUR 5 798/tonne in 1996 to EUR 5 129/tonne during the investigation period, thus not undercutting the sales prices of the Community industry.

(132) As concerns imports originating in third countries other than the US and Japan, their market share has remained by and large stable over the period under consideration, and imports increased by 53 % in terms of volume from 7 088 tonnes in 1996 to 10 830 tonnes during the investigation period. They accounted individually in all cases for less than 1 % of the Community market. Moreover, the average price during the same period remained at a higher level than those of imports originating in the countries concerned, even though it decreased over the period under consideration following the general trend of the market from 3 827 EUR/tonne in 1996 to 2 426 EUR/tonne during the investigation period. The investigation showed the existence of imports originating in Switzerland and in Israel, with a share of the market during the investigation period of 0,8 % and 0,7 % respectively. However, it has been found that no significant production for PET film exists in those countries. It cannot be therefore excluded that some of these imports from these countries originate in one of the countries concerned by the current proceeding.

(133) On the basis of the above, it is provisionally concluded that imports originating in third countries other than the countries concerned, and in particular those originating in the US and in Japan, did not contribute to the material injury suffered by the Community industry and could in any event not break the causal link between the dumped imports and that material injury.

(b) *Evolution of prices of raw materials*

(134) A number of interested parties have argued that the decrease in sales prices of PET film in the Community market was mainly due to the world-wide decline of prices of raw materials for PET film, i.e. dimethyl terephthalate ('DMT'), pure terephthalic acid ('PTA') and monoethylene glycol ('MEG').

(135) The investigation showed that prices for raw materials have indeed decreased between 1996 and 1998, but started to increase in 1999 and continued to increase during the investigation period. Moreover, costs of raw materials per tonne sold of PET film produced by the Community industry have also decreased until 1998 by 15 % and have started to increase as from 1999 and during the investigation period. In overall terms, average cost of raw materials per tonne sold have decreased by 10 % between 1996 and the investigation period, whilst sales prices of the Community industry decreased by 34 % during the same period.

(136) The proportion of full manufacturing costs for PET film represented by the cost of raw materials was around 35 % on average in 1996 and went down to around 30 % in 1998. However, as prices of raw materials started to increase, this proportion increased to around 34 % in 1999 and to 37 % during the investigation period. Thus, the development of the costs of raw materials per tonne sold does not justify a decline in sales prices of the Community industry by 34 %.

(137) Therefore, even if the decline of prices of raw materials might have had a certain impact on the decline in sales prices until 1998, it cannot explain the overall decrease of sales price by 34 %, or the negative development of the Community industry's profitability.

(c) *Development of the consumption on the Community market*

(138) Given that the apparent Community consumption for PET film increased by around 36 % during the period under consideration, the material injury suffered by the Community industry cannot be attributed to a contraction of demand on the Community market.

(d) *Overcapacity of the Community industry and world-wide oversupply*

(139) Certain interested parties have argued that the injury suffered by the Community industry was due to its decision to increase capacity when the market for PET film was not growing to the same extent. It has been claimed that the Community industry could not justify a claim of injury on the grounds that an increase in capacity had not been accompanied by a proportionate increase in sales, resulting in lower capacity utilisation levels at a time when there was an overcapacity for PET film in the world market overall.

(140) In this respect, it was found that the Community industry's decision to increase capacity taken in 1995/1996 was based on a sound analysis of the evolution of the Community market for PET film. Indeed, as stated in the Regulation (EC) No 1810/1999 and confirmed by Regulation (EC) No 2597/1999 of 6 December 1999 imposing a countervailing duty on imports of PET film originating in India, 'the increase of Community consumption in 1995 encouraged the Community industry to invest in new production lines. This decision had to be seen in the light of the significant capital costs and the long periods of time for commissioning new plants'.

(141) The new capacity installed by the Community industry between 1996 and the investigation period was not only the consequence of the decisions taken in 1995 but also the result of replacing or modernising outdated production lines as well as of the global production strategy of some of the complainant Community producers.

Between 1996 and the investigation period Community consumption did indeed increase by around 36 %, i.e. to a larger extent than production and sales of the Community industry during the same period. Furthermore, as explained above, the Community industry manufactures PET film also for export markets.

(142) Furthermore, it was found that worldwide overcapacity seems to be admitted by a number of independent sources for this product. However, the same sources state that whereas in the case of the Community market for PET film, the existent production capacity in the Community is lower than the demand, the production capacity which exists in the countries concerned is by far too large in relation to their domestic markets. Therefore, if a worldwide overcapacity for this product was to exist, it is probably due to new capacities which were built in recent years, in many cases also by exporting producers concerned, in India, Korea and in other third countries where the size of the domestic market would not be able to absorb these new capacities.

(e) *Competitiveness and export performance of the Community industry*

(143) In relation to the developments in technology and the productivity of the Community industry, it has been established that the Community industry has tried to maintain its production and sales levels between 1996 and the investigation period, has carried out investments and installed new production lines, increasing its productivity in order to not to lose market shares and competitiveness.

(144) As regards the export performance of the Community industry, during the period under consideration, the Community industry has increased its sales in export markets where it was likewise in competition with the exporting producers concerned. This reflects as well the global structure of two complainant Community producers which belong to US and Japan based companies with a global manufacturing strategy and, therefore, manufacture in the Community PET film types which are then exported to other parts of the world.

(145) Export sales of the Community industry increased by 49 % between 1996 and the investigation period, from 19 118 tonnes to 28 580 tonnes, the main increase taking place between 1998 and 1999, from 20 951 tonnes to 26 743 tonnes. The volume of exports continued to increase during the investigation period. Furthermore, it should be noted that export sales represented around 18 % of the total sales of the Community industry during the investigation period.

(146) On this basis, the Community industry has proven to be competitive as shown by the performance of its export activities. Its export activity cannot therefore have contributed to the injury suffered by the Community industry.

(f) *Situation of other Community producers*

(147) As concerns the situation of the other Community producers, their sales volume has decreased in overall terms from 13 263 tonnes in 1996 to 12 235 tonnes during the investigation period. Thus, the corresponding market share of the Community market went down from 7,2 % to 4,9 %. After a slight increase in sales volume and the corresponding market share between 1996 and 1997, both indicators have decreased towards the investigation period.

(148) Nevertheless, it was also found that their production volume has increased from 75 130 tonnes in 1996 to 91 654 tonnes during the investigation period. The difference between production and sales volumes is explained by the fact that some of these other Community producers manufacture PET film essentially for their own captive use and only sell a marginal quantity of their production. It should be noted that PET film used for captive purposes in the Community during the investigation period amounted to more than 75 000 tonnes.

(149) Given the above, it is provisionally concluded that the other Community producers have suffered the same negative trend as the Community industry and have thus not contributed to the injury suffered.

(g) *Traded PET film by the Community industry*

(150) Some interested parties claimed that in view of the Community industry's gains on productivity and efficiency during the period over consideration, its sales of traded PET film sourced mainly in the USA and in Japan may have contributed to the material injury suffered by the Community industry.

(151) As mentioned above, two of the complainant Community producers belong to or have recently merged with Japan or US based companies. They have therefore a global organisation of the production of their overall product range and the Community based companies complement their own production with products manufactured by other companies belonging to the same groups located outside the Community, mainly in the USA and Japan.

(152) The investigation showed that the Community industry's sales volume of traded PET film decreased continuously from 15 236 tonnes in 1996 to 8 723 tonnes in 1999. It increased during the investigation period, to 11 495 tonnes, due to a shutdown in one of the production lines of one of the Community producers which had to complement its production with PET film originating in the USA. The share of sales of traded PET film in relation to total sales of the three complainant Community producers in the EC decreased from 14,8 % in 1996 and to 9,5 % during the investigation period.

(153) Thus, sales of traded PET film by the Community industry cannot have contributed to the injury suffered by the Community industry.

4. **Conclusions on causation**

(154) The substantial increase in terms of volume and market share of imports from the countries concerned, the considerable decreases of their prices and the level of price undercutting found had material negative consequences on the situation of the Community industry. In addition, no other factors were found which could have contributed to the injury suffered by the Community industry.

(155) It is therefore provisionally concluded that the material injury suffered by the Community industry has been caused by imports of PET film originating in India and Korea.

H. **COMMUNITY INTEREST**

(156) In order to assess the Community interest, the Commission carried out an investigation into the likely effects of the imposition/non-imposition of anti-dumping measures on the economic operators concerned. Specific questionnaires were sent to a number of interested parties which were deemed to be directly concerned by the product subject to the investigation, namely the Community industry, other Community producers, Toray Plastics Europe, suppliers of raw materials for PET film, unrelated importers and traders dealing with the product under consideration and users of PET film.

1. **The Community industry**

(a) *Nature and structure of the Community industry*

(157) The Community industry is composed of three companies which are exclusively dealing with PET film. Indeed, even if two of them belong to globally organised companies based in Japan and the USA, the profit centres dealing with manufacturing and selling activities for PET film are separate entities with administration and research and development activities located in the Community.

(158) Production of PET film is capital intensive and highly automated. The Community industry's workforce directly linked to PET film amounted to 1 921 employees during the investigation period.

(b) *Viability of the Community industry*

(159) In spite of the finding of material injury, the Community industry appears to be viable and competitive. This provisional assessment is based on an appreciation of the following elements:

— *Position in the Community market*: The Community industry has a market share of 44 % and is thus a firmly implanted player in the Community market and partner of the user industry.

— *Degree of investments and machinery replacement*: The Community industry has invested in new production lines and has closed down those production lines which were less efficient.

— *Restructuring and efficiency gains*: The Community industry has rationalised its production, modernised its machinery and increased its production capacity. At the same time, it had reduced its workforce and has thus increased productivity for PET film manufacturing activities by rendering the existing plants more efficient. Furthermore, it has managed to reduce its cost of production per unit during the period under consideration by around 16 %.

— *Export performance*: Exports of the product under consideration by the Community industry have increased during the period under consideration and amounted to 28 580 tonnes during the investigation period.

— *Production technology*: The Community industry has been at the origin of key developments of the production technology for PET film. It keeps productivity and efficiency up to world-wide standards. The Community industry has nowadays some of the most modern and efficient production lines for PET film in the world.

(160) As mentioned above, due to the existence of dumping the Community industry does not appear to have benefited from the effect of countervailing measures imposed in 1999 as it would have been expected.

(c) *Possible effects of taking measures or of not taking measures*

(161) Should anti-dumping measures not be imposed, the Community industry will continue to face price undercutting and the consequent price depression which led to the deterioration of its profitability. In the event that such a situation would continue, the Community producers would be left with no other alternative but to close down certain production lines or even entire plants devoted exclusively to the production of PET film.

(162) Given that the companies constituting the Community industry are mainly, if not exclusively, manufacturing PET film, even the survival of these companies could be endangered in the long term. Therefore around 1 900 jobs directly linked to the manufacturing activities for PET film would be also endangered if the Community industry was to close down its plants.

(163) On the other hand, should anti-dumping measures be imposed, it can be expected that, firstly, prices will increase, although most likely not by the level of any anti-dumping duty since competition will still remain amongst Community producers, imports originating in the countries concerned and imports originating in other third countries. Secondly, as it can be expected that the utilisation of the capacity will increase, this will lead to an increase in production, which in turn will allow the Community industry to further reduce unit costs. Consequently, it can be also expected that the Community industry increases its share of the Community market as a consequence of increased sales. In conclusion it is expected that the increase in production and sales volume, on the one hand, and the further decrease in unit costs, on the other hand, eventually combined with a modest price increase, will allow the Community industry to regain profitability and market share.

2. **Other Community producers and Toray Plastics Europe**

(164) On the basis of the information submitted by these companies, there are no indications that the effects of the proposed measures on their situation will be significantly different from the abovementioned for the Community industry, although in the case of captive producers these effects will most likely be more limited.

3. **Suppliers of raw material for PET film**

(165) Community interest questionnaires were sent to 10 suppliers of raw materials for PET film, i.e. DMT, PTA and MEG, which mainly sell to the Community industry but also to some of the exporting producers. Only four suppliers cooperated in the investigation.

(166) On the basis of the information provided by these cooperating suppliers, it was found that sales of the raw materials concerned to producers of PET film only represented a minor share of the total turnover of these companies. It is therefore considered that the imposition of any anti-dumping measures would have limited effects on these companies, which could, nevertheless, benefit from higher sales volumes and an improvement of their profitability level, whereas in the event of non imposition of anti-dumping measures, these companies would most likely reduce or even close down their manufacturing activities for the raw materials concerned if the Community industry reduces its purchases thereof.

4. **Unrelated importers and traders in the Community**

(a) *Structure of the import and distribution channels*

(167) The distribution of PET film in the Community is characterised by a relatively small number of importers and traders. Indeed, the investigation showed that PET film producers and users have direct contacts, since the latter do not always use intermediaries in their purchases of PET film.

(b) *Economic situation of importers/traders*

(168) Around 20 questionnaires were sent to importers and traders in the Community. Only two replies were received. On the basis of the information obtained, it appears that importers in the Community purchase PET film from a variety of sources, which include the countries concerned and the Community industry. It thus can be concluded that, apart from importing the product concerned originating in India and Korea, they also trade in PET film purchased from the Community industry and/or from other third countries. For those companies who replied to the questionnaires PET film sales represented a significant part of their respective total turnover.

(c) *Effect of imposition/non-imposition of measures*

(169) The two cooperating importers have claimed that the imposition of high anti-dumping measures would close the Community market to the traditional suppliers from the Far East. It is also alleged that since the Community industry was incapable of meeting the Community demand of PET film, should imports originating in the countries concerned cease, the economic situation of importers and traders would deteriorate since they would not be able to meet the demand.

(170) As regards the closure of the Community market to imports, the aim of any anti-dumping measures is not to prevent imports from entering the Community market but to re-establish fair conditions of competition on the market. In this respect, it should be noted that imports originating in one of the exporting countries concerned are already subject to countervailing measures and have nevertheless continued after the imposition of the measures. Furthermore, a number of alternative sources of supply (i.e. third countries not concerned by the current investigation) exist not subject to measures which represented around 19 % of the Community consumption during the investigation period.

(171) The impact of any anti-dumping measures on the economic situation of importers and traders in the light of the measures already imposed in the countervailing proceeding was also examined. In this context, it is worth noting that the level of cooperation in the current proceeding is even lower than in the previous investigation which could indicate that the countervailing measures imposed in 1999 did not have a significant impact on them.

(172) The impact of any anti-dumping duty on the situation of importers and traders should also be seen in the light of the fact that these parties trade in other products and source themselves in different sources, i.e. Community industry, countries concerned and other third countries. The two cooperating importers have indeed stated that price is not the only factor taken into consideration when purchasing PET film, but also others such as service, delivery terms, etc.

(173) Should any anti-dumping measures be imposed, prices of PET film on the Community market may increase. It cannot be therefore excluded that this increase in prices will have a negative impact on importers and traders who may see their margins reduced. However, it should be noted that importers and traders may choose to increase their purchases from the Community industry, and obtain discounts for larger volumes, or to switch to third countries. Indeed, as mentioned above, the two importers which cooperated in the current investigation do not only purchase PET film in the countries concerned but also from the Community industry and from other third countries.

(174) On this basis, it is provisionally concluded that the imposition of any measures is not likely to seriously affect the situation of importers and traders of PET film in the Community.

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

(a) *Nature and structure of user industries*

(175) PET film has five broad uses which are typically identified within the industry, i.e. magnetic media, packaging, electrical, imaging and industrial applications. PET film is thus used in a wide variety of applications: packaging for foodstuff, medical applications, household appliances, automobile, motors, capacitors, electrical applications, credit cards, bank notes, security badges, video or audio tapes, etc. In view of the wide range of user industries involved, PET film represents different proportions of the costs of the final end-products.

(b) *Effect of imposition/non-imposition of measures*

(176) Questionnaires were sent to more than 80 users in the Community. 23 replies were received, many of them incomplete and one containing very limited information which could not be taken into consideration. Some users decided not to reply to the questionnaire but submitted a number of comments. This limited cooperation suggests that the outcome of the investigation will most likely not have an important impact on a number of users, either because PET film as a raw material is not a significant cost factor for them or because their production of downstream products incorporating PET film only accounts for a small proportion of their total production.

(177) The cooperating users represent a significant proportion of the Community consumption. Indeed, on the basis of those replies which provided purchase volumes of PET film, it was established that purchases of PET film by 20 of the cooperating users accounted for around 28 % of the Community consumption during the investigation period and for around 40 % of the imports from the countries concerned.

(178) On the basis of the information provided by 22 of the cooperating users, it was found that their total workforce was around 19 571 people during the investigation period, of which approximately 7 390 were directly or indirectly involved in the production of the products incorporating PET film. Their total turnover was around EUR 4 204 million during the investigation period, of which around EUR 1 195 million related to products incorporating PET film. Between 1996 and the investigation period, sales in the Community of these end-products slightly decreased from around EUR 1 196 million to around EUR 1 195 Million.

(179) As regards profitability on the sales of products incorporating PET film in the Community, 15 users provided this information. On this basis, a weighted average profit of around 4,3 % was found in the investigation period. This weighted average profit reflects the situation of certain users in declining market segments (magnetic applications, video or audio film production). The average profit for cooperating users in other segments will be significantly higher, i.e. over 10 %.

(180) Furthermore, on the basis of the information provided in this respect by 16 users, it was found that for 11 users, purchases of PET film accounted for less than 20 % of the cost of production for the end-products whereas for five users, it represented between 20 % and 54,6 % of their costs. It was found that out of the latter five users, four were purchasing almost exclusively from Community producers and one was purchasing from both Community producers and countries concerned.

(181) Users were found to purchase PET film from a variety of sources. Indeed, during the investigation period, eight users were found to purchase PET film exclusively from Community producers, eight from the countries concerned and Community producers, three users purchased only from Community producers and third countries and finally, three users were found to purchase from Community producers, the countries concerned and third countries. None of the users purchased exclusively from the countries concerned.

(182) Thus, on the basis of the information provided by cooperating users, an average user of PET film would be purchasing around 58 % of its PET film consumption from the Community industry, around 28 % from the countries concerned and around 14 % in other third countries.

(183) On the basis of this information, it is concluded that the outcome of the investigation will probably not have an important impact on the user industries since, in certain cases, PET film as a raw material is not a significant cost factor for them and, in other cases, their production of downstream products based on PET film only accounts for a small proportion of their total production. Furthermore, users purchasing PET film from India and Korea were found to purchase it as well from other sources, including both Community producers and third countries other than the countries concerned.

(184) Furthermore, those users which claimed that there might be a capacity shortage in the Community either in general or for specific product types which are not manufactured in the Community, will be able to purchase PET film either from the countries concerned or from other alternative sources of supply.

(185) Should measures not be imposed, the eventual disappearance of the Community industry's manufacturing activities for PET film is likely to create severe supply constraints which would have negative effects for users. Indeed, a number of cooperating users, some of them purchasing exclusively from Community producers and some others having several sources of supply, have stated their preference for PET film manufactured in the Community due to a number of factors, such as the quality of service and logistics, price stability, security and proximity of supply, reliability on the product, the possibility of developing tailor-made applications and products, etc.

(186) On this basis, it is provisionally concluded that the imposition of any measures is not likely to seriously affect the situation of users of PET film in the Community.

6. **Competition and trade distorting effects**

(187) With respect to the effects of possible measures on competition in the Community, some interested parties have argued that duties would lead to the disappearance of the exporting producers concerned from the Community market, thus considerably weakening competition and increasing the already dominant position of the Community industry as a result of the recent merger processes.

(188) However, it appears more likely that at least some of the exporting producers concerned will continue to sell PET film in the Community, albeit at non-injurious prices, as they have a solid technological basis, a strong market position in the Community. This conclusion is confirmed by the market developments further to the imposition of countervailing duties on imports of PET film originating in India in 1999. On the other hand, should anti-dumping measures not be imposed, it cannot be excluded that the Community industry would cease its manufacturing activities for PET film in the Community, thus reinforcing the position of exporting producers of PET film and considerably weakening competition on the Community market.

(189) Finally, as concerns the argument on the potential dominant position of the Community industry, it should be noted that the Commission decisions [1] concerning recent mergers affecting certain complainant Community producers have concluded that those operations did not lead to the creation or the strengthening of dominant positions under any market definition for these companies. Furthermore, the investigation showed that Community producers compete amongst themselves both on the Community market and in export markets. Moreover, the producers in the Community do not have the production capacity to fully meet the overall demand in the Community market. Therefore, imports will most certainly continue to take place after the imposition of any anti-dumping measures.

(190) Given that, as mentioned above, imports originating in the countries concerned will most likely continue to take place, competition will still remain strong after the imposition of any anti-dumping-measures. There will be an important number of actors in the market who will be able to satisfy demand and, amongst them, the Community industry will offer a wide range of product types. Thus, the imposition of anti-dumping duties, if any, will not limit the choice of the user industries or weaken competition.

7. **Conclusion on Community interest**

(191) Given the above reasons, it is considered that there are no compelling reasons against the imposition of anti-dumping duties.

I. **PROVISIONAL ANTI-DUMPING MEASURES**

(192) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be taken in order to prevent further injury being caused to the Community industry by the dumped imports.

[1] Commission Decision of 2 October 1997, OJ C 4, 8.1.1998 (Case No COMP/M.984 DuPont/ICI), Commission Decision of 24 November 1999, OJ C 4, 7.1.2000 (Case No COMP/M.1599 DuPont/Teijin) and Commission Decision of 24 November 1999, OJ C 16, 20.1.2000 (Case No COMP/M.1538 DuPont/Sabanci).

1. **Injury elimination level**

(193) The provisional measures should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margins found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain overall a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community.

(194) On the basis of the information available, it was preliminarily found that a profit margin of 6 % of turnover could be regarded as an appropriate minimum which the Community industry could be expected to obtain in the absence of injurious dumping, taking into account its financial situation in previous years. It is also considered that this profit margin would allow the Community industry to make the necessary investments.

(195) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the non-injurious price of the different models sold by the Community industry on the Community market. The non-injurious price has been obtained by adding to the sales price of the Community industry an amount equivalent to its average actual loss as well as the above mentioned profit margin of 6 %. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value. These differences were in all cases above the dumping margins found.

2. **Provisional measures**

(196) In the light of the foregoing and in accordance with Article 7(2) of the basic Regulation, it is considered that provisional anti-dumping duties should be imposed at the level of the dumping margins found, since as mentioned above the injury elimination margins found were in all cases above the dumping margins.

(197) 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, the residual duty should be fixed on the basis of the highest duty rate established for the sampled cooperating producers of these countries.

(198) Pursuant to Article 14(1) no product shall be 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. Therefore, as regards duties for India, the countervailing duty in force that corresponds to export subsidy was deducted from the proposed anti-dumping duty to be applied. For the 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.

(199) On the basis of the above, and taking into account the findings of the previous anti-subsidy investigation, the proposed provisional duty amounts, 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 %	71,0 %	12,0 %	59,0 %	71,0 %
Flex Industries Ltd	12,5 %	12,5 %	48,3 %	12,5 %	35,8 %	48,3 %
Gareware Polyester Ltd	2,7 %	3,8 %	69,5 %	3,8 %	66,8 %	70,6 %
Jindal Polyester Ltd	7,0 %	7,0 %	10,6 %	7,0 %	3,6 %	10,6 %
MTZ Polyesters Ltd	8,7 %	8,7 %	55,0 %	8,7 %	46,3 %	55,0 %
Polyplex Corp. Ltd	19,1 %	19,1 %	55,0 %	19,1 %	35,9 %	55,0 %
All other companies	12,0 % [1]	19,1 %	71,0 %	19,1 %	59,0 %	78,1 %

[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 (see also paragraph 8.2).

KOREA

Company	AD duty
HS Industries	7,8 %
Hyosung Corp.	7,8 %
Kohap Corp.	7,8 %
Kolon Industries Limited	3,5 %
SKC Industries Limited	12,4 %
Toray Saehan Industries	3,5 %
All other companies	12,4 %

(200) 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'.

(201) 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, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

J. **FINAL PROVISION**

(202) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of polyethylene terephthalate ('PET') film falling within ex CN code 3920 62 19 and ex CN code 3920 62 90 (TARIC codes: 3920 62 19 10, 3920 62 19 15, 3920 62 19 25, 3920 62 19 30, 3920 62 19 35, 3920 62 19 40, 3920 62 19 45, 3920 62 19 50, 3920 62 19 55, 3920 62 19 60, 3920 62 19 62, 3920 62 19 64, 3920 62 19 65, 3920 62 19 70, 3920 62 19 75, 3920 62 19 80, 3920 62 19 81, 3920 62 19 85, 3920 62 19 87, 3920 62 19 89, 3920 62 19 91, 3920 62 90 30 and 3920 62 90 91) and originating in India and the Republic of Korea.

[1] European Commission
Directorate-General Trade
Directorate C
TERV 0/13
Rue de la loi/Wetstraat 200
B-1049 Brussels

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, for the products manufactured by the companies listed below, shall be as follows:

Country	Company	Provisional duty	TARIC additional code
India	Ester Industries Limited, 75-76, Amrit Nagar, Behind South Extension Part — I, New Delhi — 110 003 India	59,0 %	A026
India	Flex Industries Limited, A-1, Sector 60, NOIDA, 201 301 (U.P.) India	35,8 %	A027
India	Gareware Polyester Limited, Gareware House, 50-A, Swami Nityanand Marg Vile Parle (East) Mumbai 400 057 — India	66,8 %	A028
India	Jindal Polyester Limited 115-117 Indra Prakash Building 21 Barakhamba Road New Delhi 110 001 India	3,6 %	A030
India	MTZ Polyesters Limited Saranath Centre, Upvan Area, Upper Govind Nagar, Malad (E) Mumbai 400 097 India	46,3 %	A031
India	Polyplex Corporation Limited, B-37, sector-1, Noida-201 301 Dist. Gautam Budh Nagar Uttar Pradesh, India	35,9 %	A032
India	All other companies	59,0 %	A999
The Republic of Korea	HS Industries Co Ltd Seoul	7,8 %	A226
The Republic of Korea	Hyosung corporation Seoul	7,8 %	A225
The Republic of Korea	Kohap Corp. Kwacheon	7,8 %	A223
The Republic of Korea	Kolon Industries Inc. Seoul	3,5 %	A244
The Republic of Korea	SKC Co Ltd Seoul	12,4 %	A224
The Republic of Korea	Toray Saehan Inc. Seoul	3,5 %	A222
The Republic of Korea	All other companies	12,4 %	A999

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

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

Article 2

1. Without prejudice to Article 20 of Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

2. Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

2. Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 23 February 2001.

For the Commission

Pascal LAMY

Member of the Commission