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COUNCIL REGULATION (EC) No 428/2005

of 10 March 2005

imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the People's Republic of China and Saudi Arabia, amending Regulation (EC) No 2852/2000 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the Republic of Korea and terminating the anti-dumping proceeding in respect of such imports originating in Taiwan

(OJ L 71, 17.3.2005, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EC) No 1333/2005 of 9 August 2005	L 211	1	13.8.2005
►**M2**	Council Regulation (EC) No 412/2009 of 18 May 2009	L 125	1	21.5.2009

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ([1]) ('Basic Regulation'), and in particular Articles 9 and 11(3) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. MEASURES IN FORCE

(1) In July 1999, by Regulation (EC) No 1728/1999 ([2]), the Council imposed definitive anti-dumping duties on imports of polyester staple fibres ('PSF') originating in Taiwan.

(2) In December 2000, by Regulation (EC) No 2852/2000 ([3]), the Council imposed definitive anti-dumping duties on imports of polyester staple fibres originating, *inter alia*, in the Republic of Korea.

(3) The level of the definitive anti-dumping duties established for the exporting producers in the Republic of Korea and Taiwan subject to the above mentioned investigations, expressed as a percentage of the CIF frontier value, was as follows:

Taiwan

— Far Eastern Textile Ltd.	6,8 %
— Nan Ya Plastics Corporation	5,9 %
— Shingkong Synthetic Fibres Co.	13,0 %
— All other companies	13,0 %

Republic of Korea

— Daehan Synthetic Fibre Co. Ltd.	0 %
— Huvis Corporation	4,8 %
— SK Global Co. Ltd.	4,8 %
— Sung Lim Co. Ltd.	0 %
— All other companies	20,2 %

([1]) OJ L 56, 6.3.1996, p. 1, Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
([2]) OJ L 204, 4.8.1999, p. 3.
([3]) OJ L 332, 28.12.2000, p. 17.

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2. PRESENT INVESTIGATIONS

(4) On 19 December 2003, the Commission announced by a notice ('notice of initiation') published in the *Official Journal of the European Union* ([1]), the initiation of an anti-dumping proceeding with regard to imports into the Community of polyester staple fibres originating in the People's Republic of China ('PRC') and Saudi Arabia.

(5) On the same day, pursuant to Article 11(3) of the Basic Regulation, the Commission announced by a notice published in the *Official Journal of the European Union* ([2]) the initiation of an interim review of the definitive anti-dumping duties imposed by Council Regulations (EC) No 1728/1999 and (EC) No 2852/2000 on imports of PSF originating in the Republic of Korea and Taiwan.

(6) The anti-dumping investigations were initiated following a complaint and a request lodged on 10 November 2003 by the Comité International de la Rayonne et des Fibres Synthétiques ('CIRFS' or 'the complainant') on behalf of producers representing a major proportion, in this case more than 40 %, of the Community production of PSF. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of the proceedings.

3. INVESTIGATIONS CONCERNING OTHER COUNTRIES AND MEASURES IN FORCE

(7) There are definitive anti-dumping measures currently in force on imports of PSF originating in (i) Australia, Indonesia and Thailand imposed by Regulation (EC) No 1522/2000 ([3]); (ii) India imposed by Regulation (EC) No 2852/2000; as well as (iii) Belarus imposed by Regulation (EC) No 1799/2002 ([4]).

4. PARTIES CONCERNED BY THE PROCEEDING

(8) The Commission officially advised the known exporting producers in the PRC, in Saudi Arabia, in Korea and in Taiwan, importers/traders and their associations, suppliers and users known to be concerned, the representatives of the exporting countries concerned and the complainant and other known Community producers of 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 notices of initiation.

(9) In view of the large number of Chinese, Taiwanese and Korean exporting producers, listed in the complaint and in the request, and the large number of Community importers of the product concerned, sampling was envisaged in both notices of initiation for the determination of dumping and injury, in accordance with Article 17 of the Basic Regulation.

(10) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in the countries mentioned in recital (9), and Community importers were asked to make themselves known to the Commission and to provide, as specified in the notices of initiation, basic information on their activities related to the product concerned during the period 1 January 2003 to 30 November 2003 ('sampling period').

([1]) OJ C 309, 19.12.2003, p. 6.
([2]) OJ C 309, 19.12.2003, p. 2.
([3]) OJ L 175, 14.7.2000, p. 10.
([4]) OJ L 274, 11.10.2002, p. 1.

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(11) After examination of the information submitted by Chinese exporting producers and due to the low number of replies to the sampling questions, it was decided that sampling was not necessary in respect of Chinese exporting producers.

(12) In the case of Korea, nine exporting producers replied to the sampling questions. The three largest exporting producers in terms of export quantities were selected in the sample. However, one of the companies selected withdrew its cooperation subsequently, and was therefore replaced by the fourth largest company in terms of export quantity. The final sample represented more than 80 % of the reported exports of the product concerned to the Community during the sampling period and consisted of the following companies:

— Huvis Corporation

— Sung Lim Co. Ltd.

— Saehan Industries Inc.

(13) In the case of Taiwan, five companies replied to the sampling questions and reported export sales of the product concerned to the Community during the sampling period. The three largest companies in terms of export quantities were included in the sample. Subsequently, it appeared, however, that one of the selected companies did not export the product concerned for consumption in the Community during the sampling period. It had therefore to be excluded from the sample. The fourth largest company which was then invited to fill in the questionnaire appeared to be in the same situation. Any further inclusion of another company in the sample, which would have implied an extended deadline to fill in the questionnaire, would have jeopardized the timely completion of the investigation at that stage of the investigation. In any case, the two remaining companies counting for more than 95 % of the exports of the product concerned to the Community during the sampling period were considered representative. The sample consisted therefore of the following companies:

— Far Eastern Textile Ltd.

— Nan Ya Plastics Corporation

(14) As far as importers into the European Community are concerned, five companies unrelated to the exporting producers were initially selected for the sample, based on their volume of imports from the countries concerned. One of the three selected companies was subsequently considered as non cooperating and then disregarded as part of the sample. The remaining four sampled companies cover 14,6 % of total imports concerned. The final sample consisted of the following companies:

— S.I.M.P., SpA, Italy

— Highams Group Ltd., United Kingdom

— Tob Herman Industries, N.V., Belgium

— Marubeni Europe plc Hamburg Branch, Germany

(15) The Commission sent market economy treatment ('MET') or individual treatment ('IT') claim forms to the Chinese exporting producers known to be concerned. Claims for MET, or for IT in case the investigation establishes that the exporting producers do not meet the conditions for MET, were received from five exporting producers plus two related companies.

(16) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notices of initiation. Replies were received from five Chinese exporting producers,

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from two Saudi Arabian exporting producers, from three Korean exporting producers included in the sample, from two Taiwanese exporting producers included in the sample, five importers in the Community related to a Saudi exporter, one importer in the Community importing the product concerned from Korea, two unrelated importers included in the sample, six Community industry producers, two non complainant producers, two suppliers of raw materials, ten users and one producer in the analogue country, the United States of America ('USA').

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

(a) Community industry producers

— Catalana de Polimers, S.A., Spain

— Dupont Sabanci Polyester GmbH, Germany

— Industrias Químicas Textiles, S.A., Spain

— Tergal Fibres, S.A., France

— Trevira GmbH, Germany

— Wellman International Limited, Ireland

(b) Non-complainant producers

— Freudenberg Politex, S.r.l., Italy.

— Realplastic, S.r.l., Italy

(c) Exporting producers in the People's Republic of China

— AnShun Pettechs Group:

— Hangzhou AnShun Pettechs Fibre Industry Co., Ltd.

— Deqing AnShun Pettechs Fibre Industry Co., Ltd.

— Kunshan AnShun Pettechs Fibre Industry Co., Ltd.

— Cixi Jiangnan Chemical Fiber Co. Ltd.

— Far Eastern Industries (Shanghai) Ltd.

— Jiangyin Changlong Chemical Fibre Co. Ltd.

— Xiake Color Spinning Co., Ltd.

(d) Exporting producers in Saudi Arabia

— National Polyester Fibers Factory

— Saudi Basic Industries Corporation (Sabic), and related producer Arabian Industrial Fibres Company (Ibn Rushd)

(e) Exporting producers in the Republic of Korea

— Huvis Corporation, Seoul

— Saehan Industries Inc., Seoul

— Sung Lim Co., Ltd., Kumi-si

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(f) Exporting producers in Taiwan

— Nan Ya Plastics Corporation, Taipei

— Far Eastern Textile Ltd., Taipei

(g) Related importers

— Sabic Global Ltd., The Netherlands

(h) Importer importing the product concerned from Korea

— Saehan Industries Deutschland (Eschborn, Germany)

(i) Unrelated importers

— S.I.M.P. SpA, Italy

— Highams Group Ltd., United Kingdom

— Tob Herman Industries, N.V., Belgium

— Marubeni Europe plc Hamburg Branch, Germany

(18) In view of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted, a verification visit to establish normal value on the basis of data from an analogue country, the USA, took place at the premises of the following company:

— Wellman Inc., United States of America

5. INVESTIGATION PERIOD

(19) The investigation of dumping and injury covered the period from 1 January 2003 to 31 December 2003 ('investigation period' or 'IP'). The examination of trends in the context of the injury analysis covered the period from 1 January 2000 to the end of the IP ('period under consideration').

6. DISCLOSURE

(20) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend:

(i) the imposition of definitive anti-dumping duties on imports of PSF originating in PRC and Saudi Arabia;

(ii) the termination of the proceeding against imports of PSF originating in Taiwan;

(iii) to amend Regulation (EC) No 2852/2000 imposing definitive measures on imports of PSF originating, *inter alia*, in the Republic of Korea.

In accordance with the provisions of the basic Regulation, parties were granted a period in which they could make representations subsequent to this disclosure.

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

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. PRODUCT CONCERNED

(22) The definition of the product concerned corresponds to the one that was used in the investigations mentioned under recitals (1) and (2).

(23) The product concerned is synthetic staple fibres of polyester, not carded, combed or otherwise processed for spinning and is

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currently classifiable within CN code 5503 20 00. It is commonly referred to as polyester staple fibres.

(24) The product is a basic material used at various stages of the manufacturing process of textile products. The Community consumption of PSF is either used for spinning, i.e. manufacturing filaments for the production of textiles, mixed with other fibres such as cotton and wool or for non-woven applications such as filling, i.e. stuffing or padding of certain textile goods such as cushions, car seats and jackets.

(25) The product is sold in different product types which can be identified through different specifications such as weight, tenacity, lustre and silicon treatment or through their classification into product families such as round, hollow, bi-component fibres and specialities such as coloured and tri-lobal fibres. From a production point of view, a distinction can be made between virgin PSF, produced from virgin raw materials, and regenerated PSF, produced from recycled polyester. Finally, quality may be substandard or first grade.

(26) The investigation has shown that all types of the product concerned as defined in recital (23), despite differences in a variety of factors as defined in the preceding recital, have the same basic physical and chemical characteristics and are used for the same purposes. Therefore, and for the purpose of the present anti-dumping proceeding, all types of the product concerned are regarded as one product.

2. LIKE PRODUCT

(27) The PSF imported from the exporting countries under consideration and sold domestically in these countries, the product produced and sold on the domestic market of the analogue country (USA) as well as the one manufactured and sold in the Community by the Community industry were found to have the same basic physical and chemical characteristics and the same uses. Therefore, these products are considered to be alike within the meaning of Article 1(4) of the Basic Regulation.

C. **DUMPING**

1. GENERAL METHODOLOGY

(28) The general methodology set out hereinafter has been applied to all exporting producers in the Republic of Korea, Taiwan, Saudi Arabia and to the extent possible for the PRC. The subsequent presentation of the findings on dumping for the countries concerned therefore only describes issues specific to each exporting country.

2. NORMAL VALUE

(29) In accordance with Article 2(2) of the Basic Regulation, it was first examined for each cooperating exporting producer whether its domestic sales of PSF were representative, i.e. whether the total volume of such sales represented at least 5 % of the total export sales volume of the producer to the Community.

(30) The Commission subsequently identified those types of PSF sold domestically that were identical or directly comparable with the types sold for export to the Community. With regard to the examination on a product type basis, and as indicated in recital (27), the Commission considered domestically sold and exported product types, which had similar origin, denier, composition, cross-section, lustre, colour, silicon treatment, quality and use, as being directly comparable.

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(31) For each type sold by the exporting producers on their domestic markets and found to be directly comparable with the type of PSF sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the Basic Regulation. Domestic sales of a particular type of PSF were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type of PSF exported to the Community.

(32) The Commission subsequently examined whether the domestic sales of each type of PSF, sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade in accordance with Article 2(4) of the Basic Regulation, by establishing the proportion of profitable sales to independent customers of the PSF type in question. In cases where the sales volume of the PSF type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of the PSF type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.

(33) In cases where the volume of profitable sales of any product type represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value. Wherever domestic prices of a particular product type sold by an exporting producer could not be used in order to establish normal value, another method had to be applied.

(34) It was examined whether normal value could be established on the basis of the domestic prices of other producers in accordance with Article 2(1) of the Basic Regulation. Since no reliable domestic prices of other producers were available constructed normal value was used, in accordance with Article 2(3) of the Basic Regulation.

(35) In accordance with Article 2(3) of the Basic Regulation, normal value was constructed on the basis of each exporting producer's own cost of manufacturing plus a reasonable amount for selling, general and administrative (‘SG&A’) expenses and for profit.

(36) Therefore, the Commission examined whether the SG&A incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data.

(37) Actual domestic SG&A expenses were considered reliable where the domestic sales volume of the company concerned could be regarded as representative as defined in Article 2(2) of the Basic Regulation. The domestic profit margin was determined on the basis of domestic sales made in the ordinary course of trade.

(38) In all cases where these conditions were not met, the Commission examined whether data of other exporters or producers in the domestic market of the country of origin could be used in accordance with Article 2(6)(a) of the Basic Regulation. Where reliable data were only available for one exporting producer, no

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average as set out in Article 2(6)(a) of the Basic Regulation could be established and it was examined whether the conditions of Article 2(6)(b) were fulfilled, i.e. the use of data with regard to the production and sales of the same general category of products for the exporter or producer in question. Where these data were not available or were not provided by the exporting producer, SG&A and profits were established in accordance with Article 2(6)(c) of the Basic Regulation, i.e. on the basis of any other reasonable method.

3. EXPORT PRICE

(39) In all cases where the product concerned was exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the Basic Regulation, namely on the basis of export prices actually paid or payable.

(40) Where the export sale was made via a related importer and it was not deemed to be reliable, the export price was constructed, pursuant to Article 2(9) of the Basic Regulation, on the basis of the price at which the imported products were first resold to an independent buyer, duly adjusted for all costs incurred between importation and resale, as well as a reasonable margin for SG&A and profits. In this regard, the related importer's own SG&A costs were used. It is the Commission's practice to establish the profit margin on the basis of the information available from cooperating unrelated importers.

(41) It should be noted that the investigation has revealed that one unrelated importer deals with the product concerned in an ancillary way. The profit margin of this importer was therefore not taken into consideration.

4. COMPARISON

(42) The normal value and export prices for comparable product types were compared on an ex-works basis. 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 prices and price comparability in accordance with Article 2(10) of the Basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

5. DUMPING MARGIN FOR THE COMPANIES INVESTIGATED

(43) According to Article 2(11) of the Basic Regulation, and except for the cases described in recital (45) below, the dumping margin for each exporting producer was established on the basis of a comparison between the weighted average normal value with the weighted average export price per product type.

(44) In one case it had to be examined whether a transaction-to-transaction method would be possible, because the average-to-average method did not reflect the full degree of dumping practiced (see recitals (133) to (135)). A transaction-to-transaction comparison was, however, not possible, due to the fact that the number of the domestic and the export transactions was significantly different. Furthermore, no domestic transactions coinciding in time with export transactions could be found.

(45) In cases where the pattern of export prices differed significantly among time periods, and the method described in recitals (43) and (44) did not reflect the full degree of dumping taking place, the weighted average normal value was compared to prices of all

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individual export transactions, in accordance with Article 2(11) of the Basic Regulation.

(46) For those exporting producers found to be related companies, an average dumping margin was calculated in accordance with the standard practice of the Commission for related exporting producers.

6. RESIDUAL DUMPING MARGIN

(47) For non-cooperating companies, a 'residual' dumping margin was determined in accordance with Article 18 of the Basic Regulation, on the basis of the facts available.

(48) In order to determine the residual dumping margin, the level of cooperation was first established. The level of cooperation was considered to be high when the volume of exports by the cooperating exporting producers was close to that provided by Eurostat for the country concerned and there was no reason to believe that any exporting producer abstained from cooperating. In this case it was decided to set the residual dumping margin at the level of the cooperating company with the highest dumping margin, in order to ensure the effectiveness of any measure.

(49) Where the level of cooperation was low, the residual dumping margin was determined on the basis of the highest dumped and representative model for another cooperating producer. This approach was also considered necessary in order to avoid giving a bonus for non-cooperation and in view of the fact that there were no indications that a non-cooperating party had dumped at a lower level.

7. PEOPLE'S REPUBLIC OF CHINA

7.1. **Market Economy Treatment (MET)**

(50) In anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of Article 2 of the Basic Regulation for those producers which were found to meet the criteria laid down in Article 2(7)(c).

(51) Briefly, and for ease of reference only, the criteria in Article 2(7)(c) of the Basic Regulation, fulfilment of which the applicant companies have to demonstrate, are set out in summarised form below:

1. business decisions and costs are made in response to market conditions, and without significant State interference;
2. accounting records are independently audited in line with international accounting standards and applied for all purposes;
3. there are no significant distortions carried over from the former non-market economy system;
4. legal certainty and stability are provided by bankruptcy and property laws;
5. currency exchanges are carried out at the market rate.

(52) Five exporting producers in the PRC requested MET pursuant to Article 2(7)(b) of the Basic Regulation and replied to the MET claim form for exporting producers. For these companies, the Commission sought and verified at the premises of these companies all information submitted in the MET applications and deemed necessary.

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(53) The investigation showed that only one of the five companies mentioned above fulfilled all the criteria required and it was therefore granted MET. This exporting producer in the PRC which was granted MET is:

— Far Eastern Industries (Shanghai) Ltd.

(54) The remaining four claims had to be rejected. The following table summarizes the determination for the four companies for which MET was not granted against each of the five criteria as set out in Article 2(7)(c) of the Basic Regulation.

Company	Criteria				
	Article 2(7)(c) indent 1	Article 2(7)(c) indent 2	Article 2(7)(c) indent 3	Article 2(7)(c) indent 4	Article 2(7)(c) indent 5
1	Not met	Not met	Not met	Met	Met
2	Met	Not met	Not met	Met	Met
3	Not met	Not met	Not met	Met	Met
4	Not met	Not met	Not met	Met	Met

Source: Verified questionnaire replies of cooperating Chinese exporters.

(55) The companies concerned were given an opportunity to comment on the above findings. All four companies to which MET was not granted disagreed with the determinations made and claimed that they should be granted MET.

(56) Concerning the first criterion, i.e. that business decisions are made in response to market signals, without significant State interference, and costs reflect market values, one company objected to the Commission's conclusion that it received a State subsidy and therefore costs did not entirely reflect market values. In this case, the collectively owned shareholder contributed assets when the company was established and was not compensated for the increased value of the company when subsequently selling its shares. During the on-spot verification evidence was collected confirming that the State owned shareholder was not compensated for such increase in value. Due to this financial benefit, the company did not have to pay the market value for the assets necessary to produce the product concerned. Consequently, decisions regarding costs and inputs were not considered to be made in response to market signals.

(57) In addition, the company tried to hide possible State interference. Indeed, when reviewing the translation of the Chinese version of the company's business licence, it was found that information concerning the business scope of its shareholder, in particular the reference to management and operation of the town-owned assets, was blatantly omitted. Therefore, it had to be concluded that the exporting producer did not provide sufficient information that it was operating under market economy conditions. None of the arguments brought forward by the company concerned subsequent to the disclosure could reverse this conclusion and the claim had to be rejected.

(58) Regarding the second criterion, i.e. that firms have one clear set of basic accounting records which are independently audited in line with international accounting standards, four companies submitted that they are fulfilling the criterion because their accounting records are independently audited. However, it was found that the auditor's reports of three of the companies did not mention several serious problems (including non-respect of basic international accounting rules) detected during the on-spot verifi-

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cation, or explain changes in the accounting policy of the companies concerned. Another company was found not to reflect in its accounts the recommendations made by its auditor. Therefore, it had to be concluded that the accounting records of all four companies concerned were not audited in line with international accounting standards as required by Article 2(7)(c) second indent of the Basic Regulation and the claims were rejected.

(59) Regarding the third criterion, three companies submitted that contrary to the Commission's findings, there were no significant distortions carried over from the former non-market economy system. In one case, this claim had to be rejected because it was found that the company concerned received an interest-free loan from the government and several other subsidies. This means that there are significant distortions carried over from the former non-market economy system having an impact on the production costs. As far as the second company is concerned, no reconciliation could be established between the amounts due and those actually paid for the company's land use rights. Furthermore, and this relates also to the second criterion, this company's depreciation of intangible assets was not made according to accounting standards. A third company argued that the fact that it could not submit any evidence concerning the payment of its capital contribution by the shareholders, as determined by the Articles of Association, was unrelated to any significant distortion from the former non-market economy system, because the interests involved were private. The investigation revealed, however, that the rules regarding the company paid in capital were not enforced by the Chinese authorities. Therefore, it was concluded that this company was subject to a significant distortion carried over from the non-market economy system and its costs, in particular in relation to depreciation of assets, were significantly distorted. It was consequently concluded that the companies concerned did not fulfil the conditions set out in Article 2(7)(c) third indent of the Basic Regulation and their claims had therefore to be rejected.

(60) One company argued that the Commission had made a determination regarding its application for MET beyond the three month period mentioned under Article 2(7)(c) of the Basic Regulation, and that this determination was therefore not valid.

(61) In this respect it is noted that the Commission granted several extensions to the deadline to the Chinese exporting producers concerned, including the above mentioned company, which had major difficulties to fill in the MET claim forms within the deadline set in the notice of initiation.

(62) It is also noted that most MET claims received were deficient and required a number of substantial clarifications and additional information which delayed the investigation. Finally, the complexity of a number of issues such as the company structures and sales channels as well as the serious problems found during the on-spot verification with regard to the companies' accounts prolonged the analysis and it was not possible to make a determination regarding the MET claims received within three months from the initiation.

(63) In this respect, it is noted that the non-respect of such deadline does not entail any apparent legal consequences as companies have equally been granted the opportunity to comment. Furthermore, it is noted that the above mentioned company did not claim any negative impact due to the longer period needed for the MET determination. Indeed, none of the other interested parties claimed that it had suffered such prejudice.

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(64) Given the above, it is concluded that a valid determination with regard to MET can be made even after the three months period and the claim of the company concerned was therefore rejected.

(65) The Advisory Committee was consulted and the parties directly concerned were informed accordingly. The Community industry was given the opportunity to comment, but no comments were received concerning the MET determination.

7.2. **Individual Treatment (IT)**

(66) Further to Article 2(7)(a) of the Basic Regulation, a country-wide duty, if any, is established for countries falling under Article 2(7) of the Basic Regulation, except in those cases where companies are able to demonstrate, in accordance with Article 9(5) of the Basic Regulation, that (a) they are free to repatriate capital and profits; (b) their export prices and quantities, as well as the conditions and terms of the sales are freely determined; (c) the majority of shares belong to private persons; (d) exchange rate conversions are carried out at market rates, and (e) any State interference is not such as to permit circumvention of measures if exporters are given different rates of duty.

(67) The five exporting producers, as well as requesting MET, also claimed individual treatment in the event of not being granted MET. As specified above, the companies have to demonstrate that they are complying with the criteria set out in Article 9(5) of the Basic Regulation. As described in recital (57), one company provided misleading information concerning the business scope of one of its shareholders in order to hide possible State interference. Therefore, the company could not demonstrate that it was completely free to determine export prices and quantities, and conditions and terms of sale. In addition, it was not able to demonstrate whether the State interference was not such as to permit circumvention of measures if this exporter were to be granted an individual duty rate. As this company did not meet all the criteria set out in Article 9(5) of the Basic Regulation, it was decided not to grant IT to this company.

(68) One of the other three companies which was not granted MET, was partly foreign owned and was free to repatriate its profits. The other two companies are owned by Chinese individuals located in the PRC and therefore do not fall under this criterion. On the basis of the verified information provided by the three companies, it was found that the State had no influence on the ability of the firms to freely set their export prices and quantities and conditions and terms of sale. The degree of State interference in these companies was also not considered such as to permit circumvention of measures as the majority of the shares in these companies belong to genuinely private companies. As they are competing with each other both on the domestic as well as on the export market, each company will take advantage of its individual margin rather than allow any circumvention. As already mentioned in recital (54), all companies met the fifth criterion set out in Article 2(7)(c) of the Basic Regulation that all exchange rate conversions are carried out at market rates. Therefore, it was concluded that three of the companies to which MET was not granted, met the requirements for IT, set forth in Article 9(5) of the Basic Regulation.

(69) It was therefore concluded that IT should be granted to the following three exporting producers in the PRC:

— AnShun Pettechs Group, comprising the following related exporters:

  — Hangzhou AnShun Pettechs Fibre Industry Co., Ltd.

  — Deqing AnShun Pettechs Fibre Industry Co., Ltd.

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— Kunshan AnShun Pettechs Fibre Industry Co., Ltd.

— Cixi Jiangnan Chemical Fiber Co. Ltd.

— Jiangyin Changlong Chemical Fibre Co. Ltd.

7.3. **Normal value**

7.3.1. *Determination of normal value for cooperating exporting producers granted MET*

(70) The Chinese exporting producer granted MET was requested to submit a full questionnaire reply including domestic sales information and information on costs of production of the product concerned. This reply was verified at the premises of the company concerned.

(71) As far as the determination of normal value is concerned, the Commission followed the same methodology as the one explained in recitals (29) to (38).

7.3.2. *Determination of normal value for all exporting producers not granted MET*

(i) *Analogue country*

(72) Pursuant to Article 2(7)(a) of the Basic Regulation, normal value for the exporting producers not granted market economy treatment has to be established on the basis of the prices or constructed value in a market economy third country ('analogue country').

(73) In the notice of initiation, the USA was envisaged as an appropriate market economy third country for the purpose of establishing normal value for the PRC and interested parties were invited to comment on this. Three exporting producers contested this choice within the deadlines and one proposed the choice of an exporting country involved in the current proceeding with the lowest normal value found as analogue country. It was argued that the level of economic development of the USA is different from that of PRC and that costs, including prices of raw materials, are relatively higher in the USA.

(74) In order to establish whether the envisaged choice of the USA as analogue country was appropriate, the Commission first requested information regarding sales and market conditions from known producers of PSF in other market economy countries, namely in the USA, India, Indonesia and Thailand. Replies to the requested information were received from one producer in the USA, a producer in India and two producers in Indonesia. It was also examined whether Taiwan or the Republic of Korea, which are subject to the parallel interim review mentioned in recital (5) regarding the same product, could be regarded as an appropriate analogue country.

(75) Regarding Taiwan, the information available from the parallel interim review investigation showed that only virgin PSF was sold on the domestic market while Chinese exporters not granted MES sold exclusively recycled PSF, which would require important adjustments when comparing normal value to the export price. Concerning Korea, it was found that the exporting producers exported at dumped prices to the Community (see recital (112) to (137)), which pointed to the very likely distortion in the domestic market of this country. In addition, most sales in the Korean market were of virgin PSF, while only one company (out of three) produced recycled PSF. In contrast, in the USA both virgin and recycled PSF was sold in

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significant quantities. It was therefore concluded that there is no apparent reason that Korea or Taiwan is more appropriate than the USA as an analogue country. The other potential analogue countries are subject to anti-dumping duties and/or countervailing duties which could indicate distortions in their domestic markets of this product.

(76) The analysis of all of the information available to the Commission showed that the USA has a large and highly competitive market for the product concerned, with more than ten producers and significant imports from third countries. Although anti-dumping duties were imposed on imports of the product concerned from the Republic of Korea and Taiwan, there were still substantial imports of PSF from other countries.

(77) As mentioned in recital (27) the product produced and sold in the US domestic market was a like product to the product exported from China to the Community. In this respect, only those product types produced in the USA with the same production process were taken into account for the comparison, i.e. PSF from recycled waste.

(78) In China, the main raw material used, i.e. recycled waste, was largely sourced on the domestic market, while some was also imported from the USA and Europe. The producer in the analogue country purchased raw materials exclusively from domestic suppliers. It was therefore concluded that the access to raw materials in the USA was easier or at least similar as compared to the PRC.

(79) The choice of the analogue country on the basis of the lowest normal value found was considered unreasonable as it is not based on clear criteria but rather on the final result. Equally, the fact that costs are allegedly higher in a market economy third country as such cannot be considered as a reason not to consider such country as an appropriate analogue country. One possible objective of State interference may be to keep a low cost level in order to support certain domestic industries and maintain them competitive. In these cases, lower costs would simply be the consequence of this State interference and not be the result of market forces. It is precisely the aim of Article 2(7)(a) of the Basic Regulation that an analogue country is selected in order for normal value to be based on prices and costs unbiased by non-market economy conditions.

(80) As far as the different level of economic development of the USA and the PRC is concerned, this in itself is not a relevant factor when selecting an analogue country. Indeed, the selection of a modern and cost efficient market characterised by intensive competition should result in a lower normal value than if the analogue country has a comparable economic development to the non market economy country.

(81) Considering the above, it was concluded that the USA was the most appropriate analogue country and that under these circumstances the selection of the USA seemed reasonable and justified in accordance with Article 2(7) of the Basic Regulation.

(82) The Commission subsequently sent a more detailed questionnaire to the producer in the USA requesting information on domestic sales prices and cost of production of the like product. The reply of the producer was verified on the spot.

(83) After the expiry of the deadline to submit comments on the disclosure, two Chinese exporting producers argued that the USA did not constitute an appropriate analogue country as since January 2001 there is an on-going investigation for anti-competitive behaviours and price fixing in the American PSF market, involving the cooperating as well as eight other

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companies in the US. In the framework of this investigation two of the co-defendants have pleaded guilty and one of them was fined. It was argued that South Korea or Taiwan should be used instead.

(84) It should be noted that the above investigation relates to practices occurring more than a year before the start of the investigation period and no information was available which would indicate that such practices, carried-out by the two market actors which have pleaded guilty, would have affected the prices during the IP which were used as the basis for the normal value calculation. On the contrary, when comparing the profit margin made by the producer in the analogue country on domestic sales of the like product, with that made by producers in Korea and Taiwan, such margin was found to be either similar or lower. Furthermore, the investigation has not resulted in any charges against the cooperating US producer (Wellman Inc.), which was informed by the US authorities in September 2004 that no indictment was sought for the company or its employees. In light of the above, it is concluded that the information provided by the cooperating US producer and used as a basis for determining normal value has not been distorted by any anti-competitive behaviour that may have existed on the US market in the past. In these circumstances, the US is confirmed as a suitable choice of analogue country. However, it is noted that, in any event, should an investigation find that such anti-competitive practices would have taken place during the investigation period or would have distorted the findings of this investigation, the current findings may be subject to a review.

(ii) *Determination of normal value in the analogue country*

(85) Pursuant to Article 2(7) of the Basic Regulation, normal value for the exporting producers not granted MET was established on the basis of verified information received from the producer in the analogue country, i.e. on the basis of all prices paid or payable on the domestic market of the USA for comparable product types, since these were found to be made in the ordinary course of trade and in representative quantities.

(86) As far as the determination of normal value is concerned, the Commission followed the same methodology as the one explained in recitals (29) to (38).

7.4. **Export price**

(87) All export sales to the Community by the exporting producers granted MET or IT were made directly to independent customers in the Community and therefore, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable.

7.5. **Comparison**

(88) Claimed adjustments were made in respect of duty drawback, transport, insurance and handling, packing and credit costs, bank charges and commissions where applicable and justified.

(89) Certain product types exported by the Chinese exporting producers which were granted IT had some different physical characteristics when compared to the comparable types sold in the analogue country, such as lustre, colour, cross section or silicon treatment. Therefore, an allowance in line with Article 2(10)(a) of the Basic Regulation was made. In the absence of any more reliable information, the adjustment was

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established on the basis of the price difference related to these specific characteristics found in the analogue country.

(90) The investigation revealed that sales in the analogue country were made exclusively to end-users while Chinese exporting producers made also sales through other sales channels. In the absence of the same sales channels in the analogue country, a special adjustment has been granted, in accordance with Article 2(10)(d)(ii) of the Basic Regulation, by deducting from the end-users normal value, an amount corresponding to 10 % of the gross profit margin.

(91) On the basis of the above, normal value was established for between around 70 % and around 90 % of the companies' granted IT exported quantity of the product concerned to the Community. This was considered representative of the degree of dumping being practiced.

(92) An adjustment was also made with regard to the Chinese exporting producer for differences in VAT reimbursement.

7.6. **Dumping margin**

(93) For the company granted MET the dumping margin was established on the basis of a comparison of the company's weighted average normal value with its weighted average export prices per product type, as determined above.

(94) For the three companies granted IT, the weighted average normal value for the types exported to the Community established for the analogue country was compared with the weighted average export price of the corresponding type exported to the Community, as provided for under Article 2(11) of the Basic Regulation.

(95) For the cooperating company neither granted MET nor IT, and for all non-cooperating exporters, the country-wide dumping margin was established as the weighted average of the dumping margin found for the non-market economy producer without IT and the highest dumped and representative model for one cooperating non-market economy exporting producer, as explained in recital (49) above.

(96) The dumping margins expressed as a percentage of the CIF net free-at-Community-frontier price, before duty, are:

Company	Dumping margin
Cixi Jiangnan Chemical Fiber Co. Ltd.	26,3 %
Far Eastern Industries (Shanghai) Ltd.	4,9 %
Hangzhou AnShun Pettechs Fibre Industry Co., Ltd.	49,0 %
Deqing AnShun Pettechs Fibre Industry Co., Ltd.	
Kunshan AnShun Pettechs Fibre Industry Co., Ltd.	
Jiangyin Changlong Chemical Fibre Co. Ltd.	63,2 %
All other companies	85,8 %

8. SAUDI ARABIA

(97) Questionnaire replies were received from two exporting producers and five importers related to one of the exporters.

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8.1. **Saudi Basic Industries Corporation ('Sabic')**

8.1.1. *Normal value*

(98) This exporting producer had representative sales of the like product on the domestic market. Nevertheless, such sales could not be regarded as being made in the ordinary course of trade by reason of price. Consequently, and in the absence of reliable data from other producers in the exporting country, normal value had to be constructed, as determined by Article 2(3) of the Basic Regulation.

(99) To construct normal value actual SG&A expenses incurred by the cooperating exporting producer concerned on domestic sales of the like product, in the ordinary course of trade, during the investigation period, were added to its own average cost of manufacturing, of each exported type, during the investigation period.

(100) Since no reliable data was available for other exporting producers in Saudi Arabia (see recitals (104) to (106)) and since no information pertaining to production and sales of the same general category of products was made available by the exporting producer concerned, the profit margin had to be determined on the basis of any other reasonable method, as determined by Article 2(6)(c) of the Basic Regulation. In this respect it was considered that a profit margin of 5 % was reasonable. No information was available which would indicate that such profit margin exceeds the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of Saudi Arabia, as required by Article 2(6)(c) of the Basic Regulation.

8.1.2. *Export price*

(101) All sales were made to the Community via a related importer, which resold the product to both related and unrelated customers. Those related customers, in turn, resold the product concerned to other independent customers. Consequently, the export price was constructed pursuant to Article 2(9) of the Basic Regulation.

8.1.3. *Comparison*

(102) Adjustments were made for differences in transportation, insurance, packing, and credit costs.

(103) An allowance to the normal value was also claimed by this exporting producer for after sales costs on the domestic market. Besides the fact that no evidence was available substantiating the amount claimed, it could not be concluded, on the basis of the information made available, that this factor affected price comparability. In particular, it could not be shown that domestic customers consistently paid different prices due to this factor. In addition, it was established that these expenses related not only to sales of the like product in the domestic market but also to other markets, including sales of the product concerned to the Community. On the basis of the above, the allowance claimed had to be rejected, since it did not meet the requirements of Article 2(10).

8.2. **National Polyester Fibers Factory ('NPF')**

(104) The questionnaire reply submitted by this exporting producer was significantly deficient and contained contradictory information. Although the company was requested to correct, complete and clarify its reply, it did not provide the missing information and did not make appropriate corrections. Furthermore, the on-spot

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verification revealed that NPF did not report more than half of its domestic sales of PSF in the IP. In addition, it was not possible to reconcile the company's reported total sales, including export sales to the Community, with its accounting documents. It was therefore considered that the sales data submitted in the questionnaire reply could not be regarded as a reliable basis to establish a dumping margin.

(105) Furthermore, data pertaining to cost of production could not be reconciled with the company's internal accounting documents and no substantiating evidence was made available showing that the reported data was indeed complete and correct. It was therefore concluded that the information submitted on the cost of production of the like product was not reliable and could not be used as a basis to determine the normal value.

(106) In view of the above, it was considered that the dumping margin for this exporting producer could not be established on the basis of its own data. The dumping margin was therefore determined on the basis of facts available, as foreseen by Article 18 of the Basic Regulation. In this regard, and given the insufficient information submitted by NPF, there were no reasons to conclude that NPF dumped at a different level than the other exporting producer in Saudi Arabia. Therefore, it was considered appropriate to set the dumping margin for NPF at the same level as the one established for the other exporting producer in Saudi Arabia.

(107) The company contested the approach arguing that it had acted with total transparency and that any errors in the information provided were unintentional and purely clerical. Nevertheless, no further verifiable information was provided which could allow the Commission to revise its findings.

(108) The other Saudi exporting producer disagreed with the above approach, arguing that it would constitute a bonus for non-cooperation. It was further argued that NPF exported other product types, which are not comparable to the types exported by Sabic. In this respect it should be noted that the determination of the dumping margin for NPF was made on the basis of the best information available. The vast majority (81 %) of exports of the product concerned from Saudi Arabia to the Community were made by Sabic. Therefore, in the absence of any other reasonable method, this was considered an appropriate basis for the setting of the dumping margin for NPF. Furthermore, as stated above, there were no reasons to conclude that NPF dumped at a different level than the other exporting producer in Saudi Arabia. Regarding the different product types exported by the two companies it is noted that they all fall within the definition of the product concerned. In these circumstances, the approach set out in recital (106) is considered reasonable.

8.2.1. *Dumping margin*

(109) The dumping margin was established on the basis of a comparison of the company's weighted average normal value with its weighted average export prices per product type, as determined above. As explained in recital (106), the dumping margin for the other exporting producer in Saudi Arabia, namely NPF, was established at the same level as the margin found for the cooperating producer in Saudi Arabia (Sabic).

(110) The comparison between the normal value and the export price showed the existence of dumping. The dumping margins, expressed as a percentage of the CIF net free-at-Community-frontier price, before duty, are:

National Polyester Fibers Factory 31,7 %

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Saudi Basic Industries Corporation (Sabic) 31,7 %

(111) Since the aforementioned two companies represented all export sales from Saudi Arabia to the Community, as explained in recital (48), the residual duty was also set at the level of the cooperating company with the highest dumping margin. Thus, the residual duty expressed as a percentage of the CIF net free-at-Community-frontier price, before duty, is 31,7 %.

9. THE REPUBLIC OF KOREA

(112) Questionnaire replies were received from the three exporting producers selected in the sample.

(113) One exporting producer initially submitted data for all products containing polyester. However, since the present review concerns only synthetic staple fibres of polyester, not carded, combed or otherwise processed for spinning which are currently classifiable within CN code 5503 20 00 (i.e. with 50 % or more of polyester), all products that were declared by the exporting producer as containing less than 50 % of polyester were disregarded.

9.1. **Normal value**

(114) For the three exporting producers selected in the sample, sales of the like product were representative as defined in recitals (29) to (31). To a large extent, normal value was based on prices paid or payable, in the ordinary course of trade, by independent customers in the Republic of Korea, in accordance with Article 2(1) of the Basic Regulation. However, for those product types where the domestic sales were insufficient to be considered representative or not made in the ordinary course of trade, normal value was constructed in accordance with Article 2(3) of the basic Regulation, as explained in recital (34).

(115) One exporting producer in the Republic of Korea reported sales made to Korean manufacturing companies as domestic sales, although the product was ultimately destined for export. The exporting producer argued that these sales were intended for domestic consumption. However, these sales were subject to administrative arrangements specific to export sales as they were not subject to domestic sales tax, they were normally invoiced in US dollars and paid for by letters of credit, they were subject to duty drawback arrangements and normally classified as local export sales in the companies' accounting records. Under these circumstances, and in accordance with the approach taken in the investigation mentioned in recital (2) (the 'original investigation'), these sales were excluded for the purpose of calculating normal value for that company.

(116) The same exporting producer in the Republic of Korea benefited from a national programme designed to help Korean companies in financial difficulties, the so called 'work out programme'. Under this programme, the company was able to transform debts into equity, accounting for a significant amount booked as an income and offsetting thus artificially the company's SG&A expenses to a large extent. It was therefore considered that this amount should not be considered as an ordinary income to be taken into account in the calculation of the SG&A. The reported SG&A, including the artificial income, consequently did not reasonably reflect the costs incurred in the production and sales of the like product. Therefore, and in accordance with Article 2(5) of the basic Regulation, this amount was not taken into account in the calculation of the SG&A.

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(117) The company also claimed a gain resulting from reversal of bad debts in the SG&A calculation. Since these debts were not related to the product concerned and referred to benefits under the work out programme, they do not constitute an ordinary income to be taken into account in the calculation of the SG&A. The company claimed that reversal of bad debts occur every year and therefore should not be excluded from the calculation. This is in contradiction with the audited reports of the company, which show that no such reversal took place over the two last financial years and that it is specifically linked to the work out programme. Therefore, the exclusion of this gain from the SG&A calculation is maintained.

(118) The company claimed that the adjustments to the SG&A resulted from its normal business operations and should therefore not be disregarded. It submitted new information after the disclosure which indicated, however, that the two gains referred to in the previous recitals did not relate to the product concerned. Furthermore, the new unverified information contradicted the information collected during the on-spot investigation and could therefore not be accepted. On these grounds, the claims relating to the work out programme are rejected.

(119) The same exporting producer declared a high insurance income during the IP due to a fire in one of the production lines of the product concerned, which occurred before the IP. The company deducted this income from the SG&A expenses related to the domestic sales of the product concerned. On the other hand, it did not take into account the costs incurred during the IP as a result of that fire. SG&A expenses were therefore largely understated. The income from the insurance was used to install a new production line not producing the product concerned anymore. It was consequently considered that any costs and income resulting from the fire were either outside the IP or not related to the product concerned and should therefore be disregarded when calculating the SG&A for the purpose of the calculation of the normal value.

(120) After disclosure, this company objected to the above conclusions claiming that it had incurred costs because of a loss of business. However, this claim was already investigated during the on-spot verification visit where the company failed to submit any supporting evidence which could show the part of the insurance income which was allegedly destined for the loss of business. This claim had therefore to be rejected.

9.2. **Export price**

(121) One exporting producer notified that in the original investigation, the company had a related importer in the Community. The exporting producer claimed that this situation had changed, and that the importer in the Community, even if it was still existing, was not anymore related to them. It is to be noted that the importer accounted for a significant amount of the sales of the product concerned to the Community made by the Korean exporting producer. This issue was examined carefully in order to determine whether the application of the provisions set out in Article 2(9) of the basic Regulation was warranted in the present case.

(122) An analysis was carried out on the prices charged to the related importer by the Korean exporting producer. It was found that these prices were consistently sold at the same level as those charged to unrelated importers during the investigation period. Under these circumstances, it was considered that the prices between the related parties were at arms-length and reliable. Therefore, since export prices were reliable, there was no need

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to recur to the provisions set out in Article 2(9) of the Basic Regulation and to conclude on the relationship between the companies.

(123) Therefore, in the case of this exporting producer, the export price was based on the prices paid or payable by all customers in the Community.

(124) For the two other exporting producers, the export price was based on the prices paid or payable by unrelated customers in the Community.

9.3. **Comparison**

(125) To ensure a fair comparison, allowances were made for differences in import charges and indirect taxes, duties, transport, insurance, handling, loading and ancillary costs, packing costs, bank charges, credit costs and commissions where applicable and justified.

(126) All three exporting producers made a claim for duty drawback on the grounds that import charges were borne by the like product when intended for consumption in the exporting country but were refunded when the product was sold for export to the Community. In each case the amount claimed was found to be higher than the amount of duty borne by the like product in the domestic market and therefore, the allowances were adjusted accordingly.

(127) After disclosure two companies objected to the methodology applied concerning the adjustment for duty drawback, partly on the grounds that it was different to the one used in the original investigation. They claimed that the methodology used in their replies to the questionnaire should be applied instead.

(128) The calculation method used by the companies, similar to the one used in the original investigation, was found to not reflect the actual import level of duties borne by the like product. It was therefore not in line with the requirements of Article 2(10)(b) of the basic Regulation and had to be rejected. The methodology used in the present investigation was compatible with the conditions set out in Article 2(10)(b) insofar as it accurately reflected the actual import level of duties borne by the like product and was therefore considered as the most appropriate and thus maintained.

(129) In addition, all three exporting producers claimed credit costs on the basis of the actual credit period taken by customers under the ‘open account’ payment system used on the Korean domestic market. It was found that under such a system, generally, the exporting producers did not actually grant specific credit periods and furthermore, the credit periods taken could not be accurately determined, as receipts could not be linked to specific invoices. In these circumstances, these allowances could not be granted.

(130) After disclosure, two companies claimed that the fact that they use an open account system is not in itself a reason to refuse the adjustment for credit costs. However, the investigation has shown that there was no consistent relation between prices and the credit terms reported. The companies could not demonstrate that specific credit terms were agreed with the customer prior to the sale and that they had an effect on prices and price comparability. The exporting producers' claims had therefore to be rejected.

(131) One exporting producer requested an adjustment for differences in the level of trade either in accordance with Article 2(10)(k) (‘other factors’) or Article 2(10)(d)(ii) of the Basic Regulation.

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Indeed, it was claimed that domestic sales were done mainly to end users, while export sales to the Community were mainly done to distributors. Although there were sales to different levels of trade on the domestic market (end users and distributors), the company was not able to quantify the appropriate adjustment. The company claimed later that the adjustment should be based on the difference of prices charged on the domestic market to end users and to distributors. However, the company was not in a position to demonstrate the existence of any such consistent and distinct difference in prices. Therefore, it was not possible to conclude that the difference in the level of trade affected price comparability and consequently this claim had to be rejected.

(132) One exporting producer claimed that an adjustment for differences in physical characteristics was warranted on the basis of differences in the denier and lustre between product types. However, the company could not substantiate that the difference in the denier and lustre affected price or price comparability and this claim had consequently to be rejected.

9.4. **Dumping margin**

(133) The comparison of the weighted average normal value with the weighted average export price by product type on an ex-factory basis for two of the exporting producers showed the existence of dumping. Moreover, with regard to one exporting producer, it should be noted that export prices on the last month of the IP ('the second time period') were found to be in general and on average higher than those charged in the period before that month ('the first time period'). While export prices during the second time period were high and mostly at non-dumped levels, significant dumping was practised in the first period as export prices were lower. Thus, there was a pattern of export prices which differed significantly between the first and the second time period of the IP. Furthermore, it was found that a comparison made on an average-to-average basis would not reflect the significant dumping being practised in the first time period of the IP, as that method would not enable significant differences in the pattern of export prices between the first and the second time period of the IP to be taken appropriately into account. Therefore, and in view of the findings referred to under recital (134), it was concluded that the weighted average normal value should be compared to prices of all individual export transactions in accordance with Article 2(11) of the basic Regulation, in order to reflect the full degree of dumping being practised.

(134) For the reasons set out in recital (44) a comparison of individual normal values and individual export prices on a transaction-by-transaction basis was not possible. Indeed, since the exporting producer concerned only issued one invoice per month and per customer, it was not possible to find a reasonable matching between individual export transactions and individual domestic sales transactions. Thus, the comparison would have required making averages between prices for the same month (which would then not constitute a transaction-to-transaction comparison), or to proceed to arbitrary choices of the export price to be chosen for comparison.

(135) The exporting producer for which the weighted average normal value was compared to prices of all individual export transactions challenged this methodology. Indeed, the company claimed that there is an economic justification for these limited number of transactions made at non-dumped prices in the last month of the IP, and therefore it is not justified to consider that a pattern

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of export prices by time period existed. However, it is to be noted that the economic justification of these invoices — irrespective of whether or not such a justification is relevant in this context — could not be verified with the final customer which did not cooperate during the investigation. In addition, the claim by the exporting producer that there is an economic justification for this limited number of transactions is in contradiction with information provided by the company itself, which claimed during the investigation that price compensation had taken place after the IP. Moreover, the dumping margin for the company on a weighted average to weighted average basis for the eleven months of the IP (excluding December), and for the first semester of the IP, resulted in similar levels to the one found when using the weighted average to transaction methodology for the whole IP. Given the above, the methodology of comparing the weighted average normal value to the prices of all individual export transactions is appropriate in this case.

(136) For cooperating companies not included in the sample, the dumping margin was established on the basis of a weighted average dumping margin calculated for the companies selected in the sample. For this purpose, Sung Lim Co., Ltd., whose dumping margin is *de minimis*, was not considered, in accordance with Article 9(6) of the Basic Regulation.

(137) The dumping margins established, expressed as a percentage of the CIF import price at the Community frontier, duty unpaid, are the following:

— Huvis Corporation, Seoul 5,7 %,

— Saehan Industries Inc., Seoul 10,6 %,

— Sung Lim Co., Ltd., Kumi-si 0,9 % (*de minimis*),

— Cooperating companies not included in the sample 6,0 %,

— All other companies 10,6 %.

10. TAIWAN

(138) Questionnaire replies were received from the two exporting producers selected in the sample.

(139) Both exporting producers initially submitted data for all products containing polyester. However, since the present review concerns only synthetic staple fibres of polyester, not carded, combed or otherwise processed for spinning which are currently classifiable within CN code 5503 20 00 (i.e. with 50 % or more of polyester), all products that were declared by the exporting producers as containing less than 50 % of polyester were disregarded.

10.1. **Normal value**

(140) For both exporting producers, sales of the like product were representative. To a large extent, normal value was based on prices paid or payable, in the ordinary course of trade, by independent customers in Taiwan, in accordance with Article 2(1) of the Basic Regulation. However, for those product types where the domestic sales were insufficient or not made in the ordinary course of trade, normal value was constructed in accordance with Article 2(3) of the Basic Regulation, as explained in recital (34). SG&A and profit were based on actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation, in accordance with the chapeau of Article 2(6) of the Basic Regulation.

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10.2. **Export price**

(141) For both exporting producers export prices were established on the basis of the prices actually paid by unrelated customers in the Community in accordance with Article 2(8) of the Basic Regulation.

10.3. **Comparison**

(142) To ensure a fair comparison, allowances were made for differences in transport, insurance, handling, loading and ancillary costs, packing costs, bank charges, rebates, discounts, credit costs and commissions where applicable and justified.

10.4. **Dumping margin**

(143) The weighted average normal value per type of PSF was compared to the weighted average export price of the corresponding type, in accordance with Article 2(11) of the Basic Regulation, on an ex-work basis and at the same level of trade.

(144) The comparison showed the existence of dumping for the two Taiwanese exporting producers investigated, the dumping margin being equal to the amount by which normal value, so established, exceeded the price for export to the Community.

(145) The dumping margins established, expressed as a percentage of the CIF import price at the Community frontier duty unpaid are the following:

— Nan Ya Plastics Corporation, Taipei 1,7 %,

— Far Eastern Textile Ltd., Taipei 1,8 %.

(146) Since both dumping margins are *de minimis,* i.e. less than 2 %, and in accordance with the Commission's consistent practice, the proceeding against Taiwan should be terminated without the imposition of measures, should the circumstances that led to these results be considered as lasting.

D. **LASTING NATURE OF THE CHANGED CIRCUMSTANCES AND LIKELIHOOD OF CONTINUATION/RECURRENCE OF INJURIOUS DUMPING**

1. GENERAL

(147) In the framework of the interim review concerning Taiwan and the Republic of Korea, it was also examined whether the changed circumstances with respect to the original investigation regarding dumping and injury could reasonably be considered to be of a lasting nature in accordance with Article 11(3) of the Basic Regulation.

(148) Moreover, with regard to Taiwan and in accordance with Article 11(7) of the Basic Regulation, it was also examined whether it was likely that dumping would continue or recur should measures be repealed.

2. THE REPUBLIC OF KOREA

(149) As mentioned above, the current investigation showed the existence of dumping for two of the three exporting producers selected in the sample, albeit at a lower level than in the original investigation. With regard to the third exporting producer, as in the original investigation, dumping was found at a *de minimis* level.

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(150) The analysis concerning the lasting nature of the changed circumstances with regard to dumping took into account the production capacity, the evolution of the volume of sales on the domestic market, on the Community market and on the export to other third countries market, as well as the prices of the product concerned sold on each of the mentioned markets of the three exporting producers in the Republic of Korea selected in the sample, which represented more than 80 % of the exports of the product concerned to the Community during the IP.

2.1. **Production capacity**

(151) The production volume of the product concerned has increased slightly by 3,5 % since 2001 (measures were imposed in December 2000), while production capacity decreased by around 4 %. Therefore, the capacity utilisation reached high levels (89 % in 2001 and 95 % during the IP) and spare capacities are low. Exporting producers did not forecast any increase in production for the next years and one of the largest exporters of the product concerned to the Community during the IP even stopped producing the product concerned after the IP.

2.2. **Sales volume**

(152) The domestic market remained relatively stable during the last years. Although domestic consumption may decrease due to a possible shift of certain PSF users' production facilities outside Korea, no significant and immediate change of the domestic market is foreseeable. Even if PSF consumption in the domestic market would decrease, production may either be shifted to other polyester yarns, which is technically quite easily feasible, or the product concerned can be exported to other third countries without or with lower anti-dumping duties in place than the Community market, or both. Furthermore, Korean producers are rather export oriented companies selling over 70 % of their PSF production to third country markets. Given the relatively small dependency on the domestic market, a decrease of domestic consumption would not significantly affect the companies' profitability. Therefore, there would not necessarily be an urgent need to expand sales to other customers outside Korea by offering PSF at lower prices. On the basis of the information available, it can therefore not be concluded that a change in the size of the domestic market would automatically lead to an increase in exports of PSF to the Community at increasingly dumped prices.

(153) As far as export sales to other third countries are concerned, these have been stable over the last three financial years, representing around 68 % of the total sales of the product concerned. There is no reason to believe that third country markets cannot absorb further exports in future, in particular when PSF demand is increasing world-wide due to a wider application of the product concerned, not limited anymore to spinning or woven, but also increasingly to non-woven applications.

(154) Given the high capacity utilisation rate of the Korean producers, the low spare capacities as well as the rather stable situation on the domestic and other export markets, it is also unlikely that a decrease of the level of anti-dumping measures would lead to a significant increase of imports of the product concerned in the Community.

2.3. **Sales prices**

(155) It was examined whether a decreased dumping margin would likely lead to a decrease of export prices which may result in

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higher dumping. In this regard, since measures were in force and exports to the Community were done at a stable and substantial level despite these measures, there is no indication that lower dumping margins would entail lower export prices. On the contrary, it could be argued that lower dumping duties to be paid by the importers would create a possibility for the companies in Korea to increase their prices without changing the final price paid by the unrelated customer.

2.4. **Likely development of the normal value**

(156) No indications could be found that the normal value established during the present review could not be considered to be of a lasting nature.

(157) It could be argued that the evolution of the prices of the raw materials, highly correlated to the oil prices, could have a significant influence on the normal value. It was however considered that since the raw materials are commodities for which the price is internationally determined, the effect of the increase in prices of raw materials would have the same effect on the export price as on the normal value, since all actors on the market would be affected in the same way.

2.5. **Conclusions for the Republic of Korea**

(158) Given the above and in accordance with Article 11(3) of the basic Regulation, it was concluded that the changed circumstances that have led to the decrease of the dumping margin could be reasonably said to be of a lasting nature.

(159) As far as the company is concerned for which a *de minimis* dumping margin was found, it should be noted that this company was already subject to a 0 % anti-dumping duty since imposition of the definitive measures in 2000. Nevertheless, despite the low priced imports from in particular the PRC and Saudi Arabia, which were in competition with the Korean imports, no dumping could be found for this company in the present interim review. There is therefore no reason to believe that this company will change its export behaviour significantly in the future.

(160) In view of the finding of lower dumping margins for all companies concerned in Korea and that this situation is not considered to be of a short term nature, measures imposed by Regulation (EC) No 2852/2000 should be amended accordingly.

(161) For the same reasons, the de *minimis* dumping margin for Sung Lim Co., Ltd. should be confirmed.

3. TAIWAN

(162) The analysis took into account the production capacity, the evolution of the volume of sales on the domestic market, on the Community market and on the export to third countries (excluding the Community) market, as well as the prices of the product concerned sold on each of the mentioned markets of the two exporting producers in Taiwan selected in the sample, which represented more than 90 % of the exports of the product concerned to the Community during the IP.

3.1. **Production capacity**

(163) During the last four financial years the production capacity of the two exporting producers in Taiwan has decreased by around 6,5 %. Although the capacity utilisation is overall of only 73 %, this capacity utilisation has remained stable over time.

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On the basis of the information available, it appears that production is shifting to other countries (Vietnam, China) where productivity is better. Therefore, even if spare capacity is available, an increase of exports to the Community should measures be repealed is not very likely, because spare capacities will be rather transferred to other third countries.

3.2. **Sales volume**

(164) Over the three last financial years, the main market for the product concerned for the exporting producers has not been the Community, but other third countries. The sales volumes to the Community market were still substantial as they accounted for 24 % of the total sales quantity of the product concerned during the IP. Note, however, that this ratio has decreased over time (29 % in 2001). Despite the measures in force by other third countries (China and Japan), exports to third countries have increased by 14 % over three years, representing in the IP 62 % of the total sales quantity of the product concerned.

(165) Sales on the domestic market during the last three financial years remained stable, representing 13,4 % of total sales of the product concerned during the IP.

(166) Considering that the exporting producers, although being subject to anti-dumping measures in several third countries have continued to increase their exports to third countries other than the Community, and that they continued to maintain a substantial presence on the Community market, there is no clear indication that any spare capacity would be redirected towards the Community market should the proceeding against Taiwan be terminated. In this context, it is also concluded that the transfer of production capacity to third countries is unrelated to the existence of trade defence measures against imports originating in Taiwan.

3.3. **Sales prices on export markets**

(167) A price comparison was made between the prices of the product concerned sold for export to the Community and for export to third countries during the investigation period.

(168) It was found that for the global figures (including all types of the product concerned), the selling prices of the product concerned were significantly higher (more than 10 % for the last three financial years) in the Community than in third countries. However, this price difference noted between the Community market and other export markets might be explained to a large extent by the existence of high price dispersions between the product types exported by the exporting producers. Moreover, since the quantities exported to the Community despite the existence of anti-dumping measures are significant, the termination of the measures could even give the exporters a margin to increase their export price.

(169) On this basis, there is no indication that the possibility for the companies to decrease prices to the Community is shown by the price level practised on other export markets.

3.4. **Likely development of normal value**

(170) No indication had been found that could point to a change of normal value. The domestic market has remained stable and the cost situation relating to the domestic market has remained stable.

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(171) As far as the influence of raw material prices on the normal value is concerned, the conclusions of recital (157) apply also in the case of Taiwan.

3.5. **Conclusions for Taiwan**

(172) The above analysis shows no indication that dumping would recur should measures be repealed.

4. CONCLUSION ON THE LIKELIHOOD OF CONTINUATION/RECURRENCE OF (INJURIOUS) DUMPING

(173) The current measures in place regarding imports of PSF originating in the Republic of Korea are above what is necessary in order to remove the injurious effect of the dumped imports. Considering the likelihood that dumping would continue or recur if the measures were terminated and referring to the findings of dumping notwithstanding the measures currently in force against the Republic of Korea, it is concluded that the measures should be amended and set at the levels found in the current review.

(174) The current measures in place regarding imports of PSF originating in Taiwan are no longer warranted. Considering that no element was found that there was a likelihood that dumping would continue or recur if the measures were repealed and referring to the findings on dumping (*de minimis*) resulting from the current review, it is concluded that the proceeding against Taiwan should be terminated without the imposition of measures.

(175) The complainant Community industry objected to the proposed termination of the anti-dumping proceeding against imports from Taiwan. It was claimed that the Taiwanese market as a whole should be analysed instead of merely the situation of the sampled exporting producers because the non-sampled companies are more likely to resume exports at dumped prices should measures be repealed. It was argued that the non-sampled companies, due to their bad financial situation, would very likely seek to maximise their cash-flow by increasing their export volume (at dumped prices) which would also be confirmed by their price practices concerning exports to the USA. It was additionally claimed that, since the production capacity of these companies would represent about 66 % of the Community consumption, the impact of these exports would be significant.

(176) It is noted that the selected sample represented not only 95 % of Taiwanese exports to the EU, but also 43 % of the Taiwanese exports to other countries, 71 % of domestic sales and 57 % of the domestic production of PSF and was therefore largely representative in accordance with Article 17 of the basic Regulation. It is also noted that the complainant Community industry did not raise any objections to the sample at a prior stage of the proceeding.

(177) As far as the likelihood of recurrence of injurious dumping is concerned, the complainant Community industry based its arguments on mere allegations which were not supported by sufficient supporting evidence. Thus, in regard to the claim that non-sampled companies, due to their bad financial situation, would very likely seek to maximise their cash-flow by increasing their export volume to the EU at dumped prices, it is noted that cash may be generated through several different means, other

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than increased sales volumes, such as additional borrowings, selling unprofitable business sectors and increasing the capital by issuing shares. Likewise, no convincing evidence has been submitted concerning the allegedly dumped prices of exports to the USA. Finally, the analysis of the complainant Community industry with regard to the production capacity in Taiwan does not take into account any possible reduction of capacity in Taiwan due to dislocation of Taiwanese production facilities outside Taiwan and the bankruptcy of one of the Taiwanese producers.

(178) Given the above, the conclusion as far as the likelihood of recurrence of dumping for Taiwan is concerned is maintained.

E. **INJURY**

1. DEFINITION OF THE COMMUNITY INDUSTRY

(179) The following European Community producers have supported the complaint:

— Catalana de Polimers, S.A., Spain

— Dupont Sabanci Polyester GmbH, Germany

— Industrias Químicas Textiles, S.A., Spain

— Tergal Fibres, S.A., France

— Trevira GmbH, Germany

— Wellman International Limited, Ireland

(180) As these six complainant cooperating Community producers represent 49 % of the Community production of the product concerned, and since no non-complainant Community producer has expressly manifested its opposition against the initiation of the present proceeding, it is considered that the complainant producers constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the Basic Regulation. Two non-complainant producers provided general information to the Commission, but did not support the complaint.

2. COMMUNITY CONSUMPTION

(181) Community consumption was established on the basis of the volume of imports of the product concerned from the countries concerned and from all other third countries known to produce and export the product concerned to the Community, plus the volume of sales in the Community market of both the Community industry and other Community producers. As only two out of 10 non-complainant Community producers submitted information on their sales, the sales of the remaining eight non-complainant producers were calculated further to data reported in the complaint lodged by the Community industry. These data were corroborated by publications of an independent consultancy firm specialised in the fibres sector.

(182) For the sake of consistency, Eurostat was used in order to determine the volume of imports on the relevant CN codes in the present proceeding. Note that the volume of imports reported by producers in the exporting countries concerned was in line with the corresponding Eurostat figures.

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(183) On this basis, Community consumption has stagnated, passing from 712 773 tonnes in 2000 to 709 828 tonnes in the IP.

Table 1

	2000	2001	2002	IP
Community consumption (tonnes)	712 773	661 227	729 916	709 828
Index	100	94	102	99

3. IMPORTS OF PSF FROM THE COUNTRIES CONCERNED

3.1. **Cumulation**

(184) As regards Taiwan, the dumping margin found amounted to less than 2 % (see recitals (138) to (146)). Therefore, the conditions set out in Article 3(4) of the Basic Regulation to assess cumulatively imports of the product concerned from this country with imports of the product concerned from the remaining countries under consideration were not fulfilled.

(185) The Commission considered further whether the effects of imports of PSF originating in the PRC, Saudi Arabia and South Korea (hereinafter: the 'countries concerned') should be assessed cumulatively in accordance with Article 3(4) of the Basic Regulation.

(186) This Article provides that the effects of imports from two or more countries simultaneously subject to the same investigation shall be cumulatively assessed when (i) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3) of the Basic Regulation, (ii) the volume of imports of each country is not negligible and (iii) the conditions of competition between the imported products and the conditions of competition between the imported products and the like Community product make such an assessment appropriate.

3.1.1 *Margin of dumping and volume of imports*

(187) As indicated above, the present investigation has shown that the dumping margins established for the PRC, Saudi Arabia and South Korea are well above the *de minimis* level, and the volume of imports from said countries is not negligible in the sense of Article 5(7) of the Basic Regulation (their market shares attaining respectively 4,7 %, 3,1 % and 10 % in the IP).

3.1.2. *Conditions of competition*

(188) In order to determine the appropriateness of a cumulative assessment in view of the conditions of competition between imported products and the like Community product, the Commission has initially analysed the exporters' market behaviour in terms of export prices and volumes.

(189) Similar market behaviour of PRC, Saudi Arabian and South Korean producers in terms of export prices was found. In fact, said countries have decreased their respective average unit selling prices of PSF by 27 %, 23 % and 15 %, throughout the period under consideration. In addition, a very similar level of under-

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cutting has been determined for imports of all the three countries (see recital (200)).

(190) Likewise, all three countries hold significant market shares in the Community market although South Korea is by far the most important exporting country of the three countries concerned (in the IP, 4,7 % in the case of the PRC, 3,1 % in the case of Saudi Arabia and 10 % in the case of South Korea).

(191) The investigation also determined that imports from the PRC, Saudi Arabia and South Korea into the Community used the same sales channels, as in the vast majority, said imports are traded through distributors, rather than sold to final customers.

(192) Furthermore, as explained above (see recitals (22) and following) it has been found that the product concerned imported from the PRC, Saudi Arabia and South Korea and produced by the Community industry share the same basic technical, physical and chemical characteristics, and are to be considered alike in terms of interchangeability and substitutability, thus competing with each other on a type by type basis.

(193) One exporting producer from Saudi Arabia claimed that PSF imported from said country is not in competition with PSF as manufactured by other countries concerned, in particular the PRC, and by the Community industry. Pursuant to this producer's submissions, Saudi Arabian production of PSF is exclusively concentrated in the basic or regular PSF, namely those types of products which are not suitable for specific applications, but rather for general use while producers in the PRC and Community producers have the capacity or actually produce so called 'speciality' products. These speciality products of PSF are normally branded and tailored for particular applications or final uses, such as fire retardant, anti-bacterial or non-pilling fibres and require normally advanced R&D. Some users further alleged that the so-called 'hollow conjugate' type, which the mentioned users have considered as a 'speciality product', is only supplied in the Community by South Korean producers.

(194) These arguments were not borne out by the investigation. First of all, it was found that exports from the PRC consist of exclusively basic or regular PSF. Secondly, exports of PSF from South Korea are not concentrated in the 'hollow conjugate' type, as this latter represents only a 24 % of total exports to the European Community for the IP. In addition, according to the definition of 'speciality' types laid down above, 'hollow conjugate' PSF cannot be considered as a speciality type. Indeed, technical evidence has been obtained showing that all PSF producers are normally able to produce hollow conjugate PSF but most of them refrain from doing so because the production is no longer sustainable in view of the prevailing price levels. Finally, although the Community industry produced and sold 'speciality' products, its PSF business is mainly concentrated in the basic or regular PSF segment.

(195) Thus, it was established that exports of the product concerned from the countries concerned compete with each other and with PSF manufactured or susceptible of being produced by the Community industry.

(196) On the basis of the above, it was concluded that all conditions justifying the cumulation of imports of PSF originating in the PRC, Saudi Arabia and South Korea were met.

3.2. **Cumulated volume and market share**

(197) Cumulated dumped imports from the PRC, Saudi Arabia and South Korea have increased from 111 905 tonnes in 2000 to 125 633 tonnes in the IP, i.e. by 12 %.

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(198) Cumulated market shares have increased from 15,6 % in 2000 to 17,6 % during the IP.

Table 2

PRC, Saudi Arabia & South Korea	2000	2001	2002	IP
Imports (tonnes)	111 905	89 457	120 847	125 633
Index	100	79	107	112
Market Share	15,6 %	13,5 %	16,5 %	17,6 %

3.3. **Prices and Undercutting**

(199) The weighted average price of the dumped imports originating in the PRC, Saudi Arabia and South Korea has declined by 18 % between 2000 and the IP.

Table 3

PRC, Saudi Arabia & South Korea	2000	2001	2002	IP
Weighted average price (EUR/kg)	1,08	1,07	0,9689	0,89
Index	100	99	88	82

(200) For the determination of price undercutting, the Commission analysed data referring to the IP. The relevant sales prices of the Community industry were those to independent customers, adjusted where necessary to an ex-works level, i.e. excluding freight costs in the Community and after deduction of discounts and rebates. Prices for the different product types of PSF defined in the questionnaires were compared with the sales prices charged by the exporters, net of discounts, by applying the necessary and warranted adjustments to bring the prices to CIF Community frontier level.

(201) During the IP, the weighted average undercutting margin was 16 % for the PRC, 16,8 % for Saudi Arabia and 24 % for South Korea.

4. SITUATION OF THE COMMUNITY INDUSTRY

4.1. **Production**

(202) Production in volume by the Community industry has decreased by 5 % during the period under consideration.

Table 4

	2000	2001	2002	IP
Production (tonnes)	236 902	229 598	225 290	224 649
Index	100	97	95	95

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4.2. **Capacity of production and capacity utilisation rates**

(203) Capacity of production of PSF has been kept stable during the period under consideration. Indeed, capacity of production has only increased from 271 466 tonnes in 2000 to 277 561 tonnes in the period under consideration. During the IP, capacity of production of the Community industry amounts to 36 % of total Community consumption.

(204) Capacity utilisation rates have diminished by 6 percentage points from 87 % to 81 %. As capacity of production has not decreased itself, this decline in the capacity utilisation is merely due to the decrease in production volumes of the Community industry.

Table 5

	2000	2001	2002	IP
Capacity of production (tonnes)	271 466	272 561	277 561	277 561
Index	100	100	102	102
Capacity utilisation	87 %	84 %	81 %	81 %

4.3. **Stocks**

(205) Stocks have increased during the period under consideration by 13 %. However, this is not considered as an indication for injury as the stock levels reflect the Community industry's policy to keep stocks at a level basically equalling one month's production.

Table 6

	2000	2001	2002	IP
Stocks (tonnes)	20 560	22 301	21 592	23 317
Index	100	108	105	113

4.4. **Investments**

(206) Investments determination was based on information provided by 5 of the companies. The sixth company did not provide reliable information. During the period under consideration, the five companies providing reliable investment data have carried out investments for a value of EUR 34,5 million. As can be seen in table 7 below, investments have had an increasing trend except in 2002, when they declined with respect to the previous year. However, it was found that these investments almost exclusively consisted of replacements. Major part of the investments was directly related to the manufacture of the product concerned. Only one of the Community industry producers has carried out significant investments in a recycling plant which provides raw material (polyethylene terephthalate — PET — flakes) to the PSF production process.

(207) It is considered that the level and nature of the investments (mainly replacements) is low for a capital intensive industry.

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Table 7

	2000	2001	2002	IP
Investments (EUR) (5 out of 6 companies)	4 325 661	12 850 473	5 833 264	11 522 994
Index	100	297	132	238

4.5. **Sales and market share**

(208) PSF sales by the Community industry in the European Community have declined by 6 % from 2000 to the IP. As Community consumption increased by 11 % during the period under consideration, such decrease of sales has been translated in a loss of market shares. In particular, market share of the Community industry has passed from 31 % to 29 % in the IP.

Table 8

	2000	2001	2002	IP
Sales in the EC (tonnes)	220 695	213 322	211 609	206 926
Index	100	97	96	94
Market share	31 %	32 %	29 %	29 %

4.6. **Prices**

(209) The Community industry's unit selling price has decreased by 8 % during the period under consideration. As shown in table 9 below, such decrease took place after 2001, coinciding with the surge of imports from the countries concerned and the considerable decrease of prices of such imports.

Table 9

	2000	2001	2002	IP
Weighted average price (EUR/kg)	1,48	1,49	1,38	1,36
Index	100	101	93	92

4.7. **Profitability**

(210) The weighted average profitability on net turnover of the Community industry decreased from 4,4 % in 2000 to – 3,2 % in the IP.

Table 10

	2000	2001	2002	IP
Weighted average profitability on net turnover	4,4 %	1,2 %	– 2,9 %	– 3,2 %

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4.8. **Cash flow and return on net assets**

(211) Cash flow has diminished during the period under consideration from EUR 25 687 824 in 2000 to EUR 12 178 328 in the IP.

(212) Return on net assets was based on information provided by 5 of the companies. The sixth company did not provide reliable information. However its global return on net assets data followed the same trend as the one found for the product concerned in the other five companies. The information provided showed a dramatic decrease in return on net assets during the period under consideration. Indeed, it passed from 51,1 % in 2000 to – 8,5 % in the IP.

Table 11

	2000	2001	2002	IP
Cash flow (EUR)	25 687 824	17 843 711	14 511 142	12 178 328
Index	100	70	56	47
Weighted return on net assets (5 out of 6 companies)	51,1 %	19,9 %	47,4 %	– 8,5 %

4.9. **Ability to raise capital**

(213) Some companies finance their activities from within the financial group to which they belong either through cash pooling schemes or through intra-group loans granted by the mother companies. In other cases, cash flow generated by the company is used as a source of financing. Some others increased their equity by entering into capital venture structures with financial entities, which in certain instances further financed their participating companies by means of shareholder loans.

(214) On this basis, most Community industry companies have not shown any major difficulties to raise capital. However, one of the verified companies has found severe problems to finance its activities, both in debt and equity.

4.10. **Employment and wages**

(215) Employment in the Community industry decreased by 7 % during the period under consideration. Indeed, Community industry reduced staff by 84 workers. Concerning wages, for year 2000, one of the companies did not provide reliable information. For the rest of the years comprised in the period under consideration, total wages increased 5 % far below the average increase during the period under consideration of the harmonised index of consumer prices for the four countries where Community industry is located (i.e. 9,1 %).

Table 12

	2000	2001	2002	IP
Employees	1 270	1 223	1 227	1 186
Index	100	96	97	93

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	2000	2001	2002	IP
Weighted average salary (EUR/year) (5 out of 6 companies in 2000)	31 993	40 340	41 054	42 430
Index		100	102	105

4.11. **Productivity**

(216) Productivity for the total market was stable during the period under consideration, as it has only decreased by 2 % from 2000 until the IP. This stagnation in productivity mirrors the low level of investments carried out by the Community industry (in quality and in quantity, see recitals (206) and following).

Table 13

	2000	2001	2002	IP
Productivity (tonnes/employee)	195	195	190	192
Index	100	100	97	98

4.12. **Growth**

(217) Overall, it has to be noted that the Community industry's market shares fell by 2 percentage points, which shows that its growth lagged behind the decreasing level of consumption of the overall market (which decreased by 1 %).

4.13. **Magnitude of the dumping margin and recovery from past dumping**

(218) 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 PRC, Saudi Arabia and South Korea, this impact cannot be considered negligible.

(219) On the other hand, it is considered that the significant increase of dumped imports from the PRC and Saudi Arabia to the Community together with the unsatisfactory evolution in terms of prices of imports from South Korea have prevented the Community industry's expected recovery from the effects of past dumping.

5. CONCLUSION ON INJURY

(220) Imports volumes from the PRC, Saudi Arabia and South Korea have increased considerably, both in absolute terms and in terms of market share. Indeed, during the period under consideration, they gained 2 percentage points in market share. Moreover, the weighted average price of imports from these countries has decreased by 18 % over the period under consideration. This decrease is mirrored in the significant price undercutting found.

(221) Most of the Community industry injury indicators have shown a negative evolution during the period under consideration, which points to a situation of material injury: whereas total Community

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consumption of PSF has stagnated, the Community industry's total sales in volume have decreased by 6 %, with a corresponding loss in market shares of 2 percentage points; production in volume has decreased; capacity of production has stagnated and capacity utilisation has diminished by 6 %; average unit selling price has decreased by 8 %; profitability on net turnover has yielded negative results, being reduced by 7,6 percentage points during the period under consideration; other profitability related indicators as cash flow and return on net assets have also deteriorated during the period under consideration; employment and productivity decreased by 7 % and 2 % respectively. The positive developments in investments and wages do not put into question the overall injurious picture of the Community industry as the investment levels were low for such a capital-intensive industry and as the increase in wages essentially compensated for the inflation during the period under consideration.

(222) Based on the foregoing, it follows that the Community industry is in a difficult economic and financial situation and has suffered material injury within the meaning of Article 3 of the Basic Regulation.

F. **CAUSATION**

1. INTRODUCTION

(223) In accordance with Article 3(6) and (7) of the Basic Regulation, it was examined whether the material injury suffered by the Community industry had been caused by the dumped imports from the countries concerned. Furthermore, in accordance with Article 3(7) of the basic Regulation known factors other than the dumped imports, which might have injured the Community industry, were examined to ensure that any injury caused by those factors was not wrongly attributed to the dumped imports.

2. EFFECT OF THE DUMPED IMPORTS

(224) Imports from the countries concerned have increased during the period under consideration, by 12 % in terms of volume, and by 2 percentage points in terms of market share. Prices of imports originating in the PRC, Saudi Arabia and South Korea decreased by 18 % and considerably undercut Community industry prices by 16 %, 16,8 % and 24 % respectively.

(225) The increase in the volume of imports originating in the PRC, Saudi Arabia and South Korea and their gain in market share, at prices which remained well below those of the Community industry, coincided in time with the deterioration of the situation of the Community industry.

(226) The Community industry's sales in volume and market shares have fallen. Sales in volume have decreased by 6 % and market shares diminished by 2 percentage points. The Community industry's loss of market share was fully taken over by the dumped imports from the PRC, Saudi Arabia and South Korea.

(227) The decrease of Community industry prices occurred in parallel to the constantly decreasing trend of prices for the product concerned imported from the PRC, Saudi Arabia and South Korea. In particular, Community industry prices started to decline after 2001, at the same time when the average import prices from the PRC, Saudi Arabia and South Korea declined (see recitals (199) and (209), and tables 3 and 9 respectively). The price suppressing effect of the dumped imports could therefore be clearly established.

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(228) Profitability of the Community industry has dramatically deteriorated as from the beginning of the period under consideration and was negative in 2002 and during the IP. The losses of the Community industry from 2002 onwards coincided with the increase of the PSF imports from the countries concerned at particularly low prices. It should also be noted that one of the Community industry producers showed that its profitability on net turnover for so called basic or regular products, i.e. where the Community industry is exposed the most to competition from the countries concerned, deteriorated to a higher degree than the profitability including all types of PSF products manufactured by this producer.

(229) The progressive increase of import volumes from the countries concerned at dumped prices also coincided with the negative evolution of other indicators showing the injurious situation of the Community industry, such as the unfavourable development of employment, capacity of production and capacity utilisation.

(230) Based on the above considerations, it is concluded that that the dumped imports form the countries concerned had a determining role in the deterioration of the situation of the Community industry.

3. EFFECT OF OTHER FACTORS

3.1. **Development of consumption**

(231) As mentioned in recital (183), from 2000 to the IP, consumption in the Community market remained stable. Thus, this cannot be a source of injury.

3.2. **Lack of investments by the Community industry**

(232) The downstream industry argued repeatedly that the Community industry failed to invest in a modernised production process and would therefore be (at least partly) responsible for its injurious situation. Indeed, as indicated in recital (207), it is considered that the level and nature of the investments (mainly replacements and maintenance) is low for a capital intensive industry.

(233) However, given the circumstances described, in recitals (202) and following, the Community industry was not in a position to make substantial new investments. As can be seen from the analysis made in this section, no circumstances other than the dumped imports were found which had a significant negative impact on the Community industry. In these circumstances, insufficient levels of investment should not be seen as the cause of the injury but rather as a further effect of the dumped imports.

3.3. **Imports from other third countries**

(234) During the IP, PSF was also imported from the USA, Turkey, Japan, the Czech Republic, Poland, Nigeria and South Africa. In the analysis of whether imports from other countries might have injured the Community industry, the imports from Taiwan were also included. As mentioned in recital (145), imports from Taiwan were made at *de minimis* dumping levels during the IP.

(235) Import volumes from other third countries slightly increased from 133 798 tonnes in 2000 to 137 123 tonnes in the IP. This small increase, together with the stable consumption of PSF has been translated into stagnating market shares for imports of third countries other than the ones concerned (19 % in 2000 and in the IP).

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(236) Furthermore, according to Eurostat data and to data verified on spot, for the IP, weighted average prices of the product concerned originating in the rest of the main exporting countries (1,25 EUR/kg) were at a very similar level to the weighted average prices of the Community industry. Therefore, it is concluded that these imports cannot have caused any injury to the Community industry.

(237) Some exporting producers have alleged that Turkish exports into the Community are made at dumped prices which would have contributed to the injurious situation of the Community industry.

(238) The vast majority of Turkish imports of PSF into the Community are distributed by one of the complainant companies, which is related to the Turkish exporting producer. However, evidence has been obtained that purchases of PSF by the complainant company from its Turkish related company were made at arm's length and aimed at supplementing the product range of the Community producer in question in periods of intensive market demand. Furthermore, these imports were not caused by any abandoned or delayed investment projects susceptible of having provoked a reduction in the production capacity of the Community related company. It was further verified that the resale of PSF of Turkish origin by the related Community importer was made at the same price level as products manufactured and sold by such related company and did not undercut average prices of the other Community industry companies.

3.4. **Non complainant Community producers**

(239) Non-complainant Community producers of the product concerned held a market share of 31,5 % during the IP. During the period under consideration, their sales volume decreased by 7 % and their market share declined by 2 percentage points.

(240) In addition, pursuant to information available, there are indications that average prices of non complainant producers are at the same level as the complainant producers' average prices. This suggests that they are in a similar situation to the Community industry, i.e. that they have suffered injury from the dumped imports. Therefore, it cannot be concluded that other Community producers caused material injury to the Community industry.

3.5. **Fluctuation of raw material prices**

(241) The cost of raw materials is a substantial part of the total cost of production of PSF (about 60 % of total cost of production). As a result, PSF prices are highly dependant on the influence of raw material costs.

(242) The production of so called virgin PSF is made out of derivatives of petroleum (mainly mono ethylene glycol — MEG — and purified terephthalic acid — PTA —). To a lesser, but increasing extent, the Community industry manufactures so called regenerated PSF out of recycled materials (polyethylene terephthalate — PET — bottles and other waste). Finally, PSF can be made out of a combination of both kinds of raw materials, derivatives of petroleum and recycled PET waste.

(243) Prices of MEG and PTA, as derivatives of petroleum, depend on the price fluctuations of this latter. As found in the verification visits, the evolution of the price of recycled materials is usually linked to the fluctuation of MEG and PTA prices.

(244) Based on the above, some exporting producers have claimed that injury allegedly suffered by the Community industry has been

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caused by the fluctuations of raw material costs, in particular by the world-wide price increase of petroleum.

(245) In this respect, pursuant to information supplied by raw material producers, it was found that prices of MEG and PTA increased from 2002 until the end of the IP by 14 % and 13 % respectively. However, this increase in raw materials prices was not reflected in an increase of the average price of PSF sold by the Community industry (see above recital (209)), despite the fact that fibres are price sensitive products. On the contrary, EU producers' prices fell slightly over the same period. While third country producers of the product concerned can also be expected to have seen similar prices increases for the main petroleum-based inputs such as MEG and PTA, it was found that import prices of PSF from the countries concerned decreased significantly during the same period. It was found, that the Community producers were not able to pass on any increased raw material costs to their customers due to the competition from dumped imports.

(246) In addition, any possible impact of the fluctuations of raw material prices on PSF prices is susceptible to affect both the Community industry and the exporters located in the countries concerned, as petroleum is a commodity with homogeneous pricing all around the world. Accordingly, the above claim was rejected.

3.6. **Currency fluctuations**

(247) Attention was paid to currency fluctuations between the EURO and the USD. The vast majority of import transactions from the countries concerned into the European Community are negotiated in USD. The EURO has been appreciated in respect of the USD as from mid 2002, and significantly during the IP, thus favouring exports into the EURO area for that period. In view of this, some interested parties have claimed that in a ‘dollar driven’ business, the depreciation of this currency in respect of the EURO must have ‘inevitably’ favoured imports of PSF into the European Community.

(248) In the particular case of PSF, imports from countries other than those found to be dumping have also benefited from the appreciation of the Euro. However, their volumes stagnated during the period under consideration (even slightly decreasing from year 2002 to the IP), while imports from the dumping countries have increased throughout the same period by 12 %. Although prima facie it cannot be excluded that the appreciation of the EURO vis-à-vis the USD might have favoured the imports of PSF from the countries concerned, the fact that currency fluctuations did not have an effect on imports from other countries, indicates that it can not be considered as a causal factor for the surge of dumped imports from the countries concerned.

(249) In addition, any allegation of EURO appreciation in respect of USD as a cause of injury of the Community industry should be valid only for the period where said appreciation took place, i.e. from mid 2002 until the end of the IP, and in particular during this latter, when differences among both currencies have been more accentuated.

(250) Therefore, it was concluded that, although the appreciation of the EURO in respect of the USD might have favoured exports of PSF into the European Community, it does not explain the significant increase of import volumes from the countries concerned as compared to the rest of world importers.

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4. CONCLUSION ON CAUSATION

(251) The coincidence in time between, on the one hand, the increase of dumped imports from the countries concerned, the increase in market shares and the undercutting found and, on the other hand, the deterioration of the situation of the Community industry, lead to the conclusion that the dumped imports are a cause of the material injury suffered by the Community industry. In particular, a chronological parallel evolution of decreasing average prices of imports and Community industry suppressed average prices has been found. This has led to a diminishing profitability for the year 2002 and the IP, i.e. when imports from the countries concerned grew the most and prices decreased most dramatically, yielded negative results.

(252) After analysing some factors, such as development of consumption, imports from countries other than the concerned, the market behaviour of non-complainant producers and the low level of investments carried out by the Community industry, it is concluded that they cannot have caused material injury to the Community industry. On the other hand, although it cannot be excluded that other factors, such as the fluctuation of raw material prices and the currency fluctuations could have contributed to the injurious situation of the Community industry, the effect of said factors is not such as to alter the finding that there is genuine and substantial causal link between the dumped imports from the countries concerned and the material injury suffered by the Community industry.

G. **COMMUNITY INTEREST**

1. PRELIMINARY REMARK

(253) In accordance with Article 21 of the Basic Regulation, it was considered whether the imposition of anti-dumping measures would be contrary to the interests of the Community as a whole. The determination of the Community interest was based on an examination of all the various interests involved, i.e. those of the Community industry, the importers, traders and the users of the product concerned.

(254) In order to assess the likely impact of the imposition or non-imposition of measures it was requested information from all interested parties which were either known to be concerned or which made themselves known. On this basis, the Commission sent questionnaires to the Community industry, 10 other Community producers, 23 users and 3 suppliers of raw materials. The 6 complainant Community industry producers, 2 non-complainant producers, 5 related importers, 15 users and 2 providers of raw materials replied to the questionnaire ([1]).

(255) 31 unrelated importers were known at the initiation of the proceedings. In view of that large number of unrelated importers and in conformity with Article 17 of the Basic Regulation, the Commission decided to carry out its investigation on the basis of a sample of said unrelated importers. The sample was selected on the basis of the largest representative volume of imports concerned which could reasonably be investigated within the time available.

(256) To that purpose, five companies were initially selected for the sample, based on their volume of imports from the countries concerned. One of the five selected companies was subsequently

([1]) One of the cooperating non-complainant producers has manifested that its total PSF production is not sold to the open market but to related companies, as captive sales.

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considered as non cooperating given that it refrained to fill in the full questionnaire sent to it and then disregarded as part of the sample. The remaining four sampled companies covered 14,6 % of total imports concerned. The final sample consisted of the following companies:

— S.I.M.P., SpA., Italy

— Highams Group Ltd., United Kingdom

— Tob Herman Industries, N.V., Belgium

— Marubeni Europe plc, Hamburg Branch, Germany

(257) On this basis, it was examined whether, despite the conclusions on dumping, on the situation of the Community industry and on causation, compelling reasons existed which would lead to the conclusion that it was not in the Community interest to impose measures in this particular case.

2. COMMUNITY INDUSTRY

(258) The Community industry has suffered material injury, as set out in recitals (202) and following.

(259) The imposition of anti-dumping measures would allow the Community industry to reach the levels of profitability which it would have been able to achieve in the absence of dumped imports, and to take advantage of developments in the Community market. This would guarantee the viability of the Community industry PSF business.

(260) In fact, although the Community industry has managed to develop important niche markets in the segment of higher added value or speciality PSF, it must be underlined that the core business for the Community industry remains in regular fibres for both woven and non-woven applications, segments where imports from the countries concerned are increasingly present and Community industry production is exposed the most to unfair competition.

(261) Speciality fibres generate high margins but are only sold in limited quantities. In order to maximise the capacity utilisation and to cover the fixed costs of production, the Community industry needs sales of regular or basic fibres in big volumes. For this reason, the imposition of duties shall guarantee the viability of regular or basic PSF production, as well as the continuation of the production of higher added value PSF, which strongly depends on the viability of basic PSF. It is to be noted that the main supplier of specialities at a world level is the Community industry itself, and such high added value material cannot be sourced from the countries concerned in the present proceeding. It is considered, therefore, that the imposition of measures would be in the interest of the Community industry.

3. IMPACT ON USERS AND IMPORTERS

(262) As indicated in recitals (254) and (256), the Commission received 15 questionnaire replies from users, 4 full questionnaires from unrelated importers selected for the sample and 5 from related importers. In addition, three users associations have submitted information and allegations to the Commission requesting the termination of the present proceeding without the imposition of measures.

(263) Users of the product concerned belong to the textile sector. The PSF market is divided into the spinning consumption (i.e. the manufacturing of filaments for the production of textiles, after mixing or not with other fibres such as cotton or wool), the

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non-woven consumption (i.e. the manufacturing of sheets and webs that have not been converted into yarns and that are bonded to each other by friction, and/or cohesion, and/or adhesion, excluding paper), and the filling consumption (i.e. the stuffing or padding of certain textile goods, as for example cushions or car seats). Most of the cooperating users in this proceeding are producers of non-woven products. Said users are members of one of the three users associations cooperating in this proceeding, which represents the non-woven industry at a European level ([1]). Further to information on purchases reported in their responses to the questionnaires, cooperating users during the IP represent about 5 % of total Community consumption of PSF and about 13 % of total imports from the countries concerned. Users and importers have indicated a number of arguments against the imposition of duties.

(264) First, the downstream industry has alleged that the Community PSF market substantially depends on external suppliers of the product concerned (the European producers can at maximum satisfy about 60 % of the PSF market demand). In this context, in terms of capacity and market shares held in the Community, two of the countries under investigation, i.e. Taiwan and South Korea, are the most important suppliers of PSF worldwide. Therefore, the level of the anti-dumping duties necessarily affects essential Community interest aspects.

(265) PSF users have also claimed that they operate in a highly price sensitive market and that even a small increase in cost cannot be passed on to the final customer due to the already fierce competition in the end-product market (e.g. pillows, textiles, etc.), in particular from South East Asian countries and China. These countries already sell at very low prices and many European textile producers were forced to at least partly dislocate their production sites to third countries.

(266) In addition, a number of PSF users have claimed that certain types of the product concerned (the so-called hollow conjugate products) are not produced in the Community and will not be produced by the Community producers in the near future because of the lack of the necessary technical equipment. These types of PSF have therefore to be imported (the so-called hollow conjugated products, mainly manufactured in South Korea).

(267) Finally, the downstream industry is, as opposed to the PSF industry, labour intensive. As put forward by some interested parties, the number of employees in the downstream industry is much higher than in the capital intensive PSF industry. As an example, the European non-woven industry has a direct labour force of 16 000 persons, compared with 1 180 persons employed by the PSF industry. As reported by the non-woven producers, PSF represents on average 40 % of the total cost of production of the product manufactured by them. It has been alleged that the imposition of duties could lead to a loss of jobs or to moving manufacturing facilities overseas.

(268) Regarding the Community market's alleged dependence on external suppliers, it is considered that, whereas duties against imports from the PRC and Saudi Arabia would be at an average level of 27 %, these countries only held 7 % of the market share during the IP. On the other hand, it is proposed to repeal the existing measures on imports from Taiwan and to reduce the duties currently applicable on imports from South Korea. It is underlined that during the IP, with the current level of measures (see recital (3)), Taiwan and South Korea held 19 % of the market share. On the other hand, as reported by one

([1]) It is estimated that Community non-woven consumption of PSF represents about 25 % of total PSF market consumption for the IP.

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prestigious fibre market consultancy firm, major producers of PSF located in countries not subject to anti-dumping duties (mainly the USA, Mexico, Turkey and South Africa) held during the IP an excess capacity amounting to approximately 50 % of the total Community consumption. In addition, imports from these countries already hold an important share of the Community market, reaching 5,3 % in the IP.

(269) Therefore, in spite of the proposed introduction of duties against the PRC and Saudi Arabia, and taking into account the termination of the measures against Taiwan and the reduction of those applicable on South Korea, the Community users would still be able to rely on (or to switch to) important suppliers of the product concerned, such as South Korea or on other major providers located in countries not subject to anti-dumping duties, including Taiwan.

(270) Regarding PSF users alleged inability to pass on any increased costs arising from the imposition of anti-dumping duties, for the particular case of the cooperating users (who are almost exclusively producers of non-woven products) sourcing the product concerned from the PRC, Saudi Arabia, South Korea, and Taiwan, bearing in mind (i) that the average anti-dumping duty rate for the PRC and Saudi Arabia amounts to 34,6 %, whereas said countries held during the IP a 7,8 % of the market; (ii) that the average duty rate to be imposed on imports from South Korea decreases the average duty rate introduced against such country through Regulation (EC) No 2852/2000 by 2 percentage points and that the measures against Taiwan are to be terminated; (iii) that South Korea and Taiwan held together 19,3 % of the Community market share in the IP and (iv) that the importance of PSF in the cost of production of the finished products of the cooperating users (of non-woven products) has been established as, on average, 40 % of the costs, the increase on the cost of production on the cooperating downstream industry as a consequence of the measures to be introduced would be in the region of 0,40 %.

(271) If, as alleged by the users, they would not be able to pass on such an increase in their cost of production to their customers, the impact on their financial situation would not be significant. It is also deemed that this low impact on the financial situation of the downwards industry shall avoid any negative effect in the job force of such an industry.

(272) It has also been found that, despite the existence of anti-dumping and/or countervailing measures on about 50 % of imports of the product concerned from all third countries, market consumption in the non-woven segment of the market has increased during the period considered. Pursuant to information supplied by the association representing the European non-woven producers, this sector has increased its production by about 17 % for the period from 2000 to 2002.

(273) It has also been found that the hollow conjugate PSF can in fact also be produced by the Community industry which has the necessary technical know-how and machinery. As already mentioned, this product is currently not supplied by the Community industry due to the strong price pressures of the dumped imports. Anyhow, the current measures against the Republic of Korea, namely the main supplier of hollow conjugate material, are, on average, reduced.

(274) On the basis of the above, and taking into account the level of measures adopted and the termination of the proceeding against Taiwan, it is concluded that this would not imply a deterioration, if at all, of the situation of the users and importers of the product concerned.

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4. IMPACT ON SUPPLIERS OF RAW MATERIALS

(275) Two providers of raw materials have cooperated in the present proceeding by submitting a response to the questionnaire. They are petrochemical industries which supply the PSF industry with PTA and MEG. Both companies have expressly supported the imposition of duties. However, from a Community interest point of view, the position of these companies in this proceeding must be put into perspective with the fact that their sales of raw materials to the PSF industry represent a minimal part of their turnover and hence, the imposition or not of measures would not substantially alter their financial or commercial situation.

5. ENVIRONMENTAL CONSIDERATIONS

(276) As indicated above, PSF can be of virgin type, made out of derivatives of petrol (MEG and PTA), of a regenerated type, made out of PET bottles and other waste, or of a combination of both types, either derivatives of petrol or recycled ones. The Commission has found that during the IP, the Community industry employed about 60 % of virgin raw materials and 40 % of recycled raw materials for the production of PSF. The Community industry envisages to progressively increase the amount of recycled raw materials used for the production of PSF. In fact, two of the Community industry companies have incorporated recycling lines in their production premises. Another one envisages to incorporate such a recycling line during 2004 and 2005.

(277) Article 6 of the Treaty establishing the European Community ('the Treaty') considers environmental protection as a common policy or activity to achieve the objectives set forth in Article 2 of the Treaty, among them the sustainable development of economic activities. In this framework, the Community has considered waste prevention and waste management as one of its top priorities.

(278) In particular, the Community has enacted legislation concerning packaging and packaging waste ([1]). One of the principles underlying this legislation is the principle of recycling and reuse: if packaging waste cannot be prevented, as many of the materials as possible should be recovered, preferably by recycling methods. In this context, the European Community has recently established that not later than 31 December 2008, a minimum recycling target of 22,5 % of plastic material contained in packaging waste shall be attained ([2]).

(279) It has been found that Community PSF industry consumed 70 % of the recycling of PET bottles during the IP, being by a long way, the main end-user of such packaging waste ([3]). From this data, it appears that the recycling of PET packaging waste in Europe significantly depends on the PSF industry, as it is its most important customer.

(280) The Commission considers that the imposition of duties shall contribute to guarantee the viability of an industrial sector which, as its main customer, holds a central position in the recycling of PET packaging waste.

(281) The above conclusion is not modified by the fact that the Community recycling industry also exports PET waste to the

([1]) Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10). Directive as last amended by Directive 2004/12/EC (OJ L 47, 18.2.2004, p. 26).
([2]) See Article 6.1 of Directive 94/62/EC.
([3]) Other end uses are bottle-to-bottle recycling, using 11 % of PET bottles collected, polyester sheet, using 7,5 % and strapping, using 7,6 %.

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PRC, as put forward by some interested parties. Indeed, it has been found that the vast majority of PET packaging waste is consumed by Community PSF producers.

6. CONCLUSION ON COMMUNITY INTEREST

(282) Taking into account all of the above factors, it is provisionally concluded that there are no compelling reasons not to impose anti-dumping measures.

H. **TERMINATION OF THE PROCEEDING IN RESPECT OF TAIWAN**

(283) In view of the findings set out in recitals (143) and following, the anti-dumping measures currently in force against Taiwan are not longer warranted. In accordance with Article 11 in conjunction with Article 9 of the Basic Regulation, where, after consultation, protective measures are unnecessary and there is no objection raised within the advisory Committee, the investigation or proceeding shall be terminated.

(284) In the light of the above, the Commission has concluded that the continuation of protective measures currently in force against Taiwan is unnecessary and that the proceeding should be terminated.

I. **ANTI-DUMPING MEASURES**

1. INJURY ELIMINATION LEVEL

(285) The level of the anti-dumping measures should be sufficient to eliminate the injury caused to the Community industry by the dumped imports without exceeding the dumping margin 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 an overall profit before tax that could be reasonably achieved under normal conditions of competition, i. e. in the absence of dumped imports. It is considered that in the absence of dumped imports the Community industry should yield a profitability before taxes of 5 %, a level deemed appropriate in the complaint lodged by the Community industry. In the absence of any information to the contrary, this level of profit was again considered to be appropriate.

(286) The necessary price increase was then determined on the basis of a comparison, at the same level of trade, of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price for the like product sold by the Community industry in the Community market.

(287) The non-injurious price was obtained by adjusting the sales price of the Community industry to reflect the above mentioned profit margin of 5 %. Any difference resulting from this comparison was then expressed as a percentage of the total CIF import value.

2. DEFINITIVE MEASURES

(288) In the light of the foregoing, it is considered that, in accordance with Article 9(4) of the Basic Regulation, an anti-dumping duty should be imposed on imports of the product concerned from PRC, Saudi Arabia, and the Republic of Korea at the level of the lesser of the injury or dumping margins found.

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(289) On the basis of the above, the duty rates are as follows:

Country	Company	Basis for ad duty (%)
People's Republic of China	Cixi Jiangnan Chemical Fiber Co. Ltd. Sanbei Town Industry Area, Cixi City, Zhejiang Province	26,3
	Far Eastern Industries (Shanghai) Ltd. 31-33F, Baoan Tower, No 800, Dongfang Road, Pudong New District, 200122, Shanghai	4,9
	Hangzhou An Shun Pettechs Fibre Industry Co. Ltd. No.37, East Avenue, Fu-Yang Town, Hangzhou, Zhejiang Province	18,6
	Deqing An Shun Pettechs Fibre Industry Co. Ltd. No.9, Cangqian Road, Chengguan Town Deqing County	18,6
	Kunshan An Shun Pettechs Fibre Industry Co. Ltd. No.78, Huting Road, Bacheng Town, Kunshan, Jiangsu Province	18,6
	Jiangyin Changlong Chemical Fiber Co. Ltd. Houxiang Industrial Zone, Changjing, Jiangsu 214411	24,6
	Xiake Color Spinning Co. Ltd. No.39, East Street, Mazhen, Jiangyin, Jiangsu 214406	49,7
	All other companies	49,7
Saudi Arabia	National Polyester Fibers Factory P.O. Box 42185, Riyadh 11541	20,9
	Saudi Basic Industries Corporation (Sabic) P.O. Box 5101, Riyadh 11422	20,9
	Arabian Industrial Fibres Company (Ibn Rushd) P.O. Box 30701, Yanbu Al-Sinaiyah 21447	20,9
	All other companies	20,9
Republic of Korea	Huvis Corporation 151-7, Samsung-dong, Gangnam-gu, Seoul	5,7
	Saehan Industries Inc 254-8, Kongduk-dong, Mapo-ku, Seoul	10,6
	Sung Lim Co., Ltd. RM 911, Dae-Young Bldg, 44-1, Youido-Dong, Youngdungpo-ku, Seoul	0
	Dongwoo Industry Co. Ltd. 729, Geochon-Ri, Bongwha-up, Bongwha-Kun, Kyoungsangbuk-do	6,0
	East Young Co. Ltd. Bongwan #202, Gumi Techno Business Center, 267 Gongdan-Dong, Gumi-si, Kyungbuk, Korea	6,0

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Country	Company	Basis for ad duty (%)
	Estal Industrial Co. 845 Hokye-dong, Yangsan-City, Kyungnam	6,0
	Geum Poong Corporation 62-2, Gachun-Ri, Samnam-Myon, Ulju-Ku, Ulsan-shi	6,0
	Keon Baek Co. Ltd. 1188-3, Shinsang-Ri, Jinryang-Eup, Kyungsan-si, Kyungbuk-do	6,0
	Samheung Co. Ltd. 557-12, Dongkyu-Ri, Pochon-Eub Pochon-Kun, Kyungki-do	6,0
	All other companies	10,6

(290) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of findings of the present investigation. It therefore reflects the situation found during that investigation with respect to said companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus applicable exclusively to imports of the product originating in the countries concerned and produced by the corresponding 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 the one specifically mentioned, cannot benefit from this rate and shall be subject to the duty rate applicable to 'all other companies'.

(291) 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, for example, that name change or that change in the production and sales entities. If appropriate, the Commission will, after consultation of the Advisory Committee, propose the amendment of the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

3. UNDERTAKINGS

(292) One cooperating exporting producer in Saudi Arabia offered a price undertaking in accordance with Article 8(1) of the Basic Regulation. The minimum prices originally offered by this exporting producer did, however, not eliminate the injurious effect of dumping. The same is true for a revised offer received from that company. Furthermore, the sales structure of this company in the Community is such that it would not allow an effective monitoring of the undertaking. The offer had therefore to be rejected.

(293) Two Chinese exporting producers offered an undertaking, which was supported by a users' association. However, this offer could not be accepted because it would have meant exempting a certain

[1] European Commission, Directorate-General Trade, J-79 05/16, Rue de la Loi/Wetstraat 200, B-1049 Brussels.

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volume of imports from definitive measures and would not, therefore, have been adequate to remove the injury caused to the Community industry. Alternatively, these exporters also offered a minimum price applicable to all imports into the Community but at a level which did not eliminate the injurious effect of dumping. The offers had therefore to be rejected. Furthermore, it could not be accepted that different minimum prices would be established for different product types which are not easily distinguishable upon importation. This would render the commitment to respect the minimum prices easily to circumvent. In addition, the investigation revealed that the exporters' accounting was not kept in line with international accounting standards, which would render monitoring of an undertaking particularly difficult.

(294) Another Chinese exporting producer, which was granted neither MES nor IT, proposed an undertaking whereby its export prices to the Community would be increased. Beside the fact that the increase in price offered did not eliminate the injurious dumping established, it is the Commission's practice not to accept undertakings from companies which were neither granted MES nor IT since no individual determination of dumping can be established in such a case. On this basis, the undertaking offer from this exporting producer had to be rejected,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, falling within CN code 5503 20 00, originating in the People's Republic of China and Saudi Arabia.

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the following manufacturers shall be as follows:

Country	Manufacturer	Rate of duty (%)	Taric additional code
People's Republic of China	Cixi Jiangnan Chemical Fiber Co. Ltd. Sanbei Town Industry Area, Cixi City, Zhejiang Province	26,3	A590
	Far Eastern Industries (Shanghai) Ltd. 31-33F, Baoan Tower, No800, Dongfang Road, Pudong New District, 200122, Shanghai	4,9	A591
	Hangzhou An Shun Pettechs Fibre Industry Co. Ltd. No. 37, East Avenue, Fu-Yang Town, Hangzhou, Zhejiang Province	18,6	A592
	Deqing An Shun Pettechs Fibre Industry Co. Ltd. No. 9, Cangqian Road, Chengguan Town Deqing County		
	Kunshan An Shun Pettechs Fibre Industry Co. Ltd. No. 78, Huting Road, Bacheng Town, Kunshan, Jiangsu Province		
	Jiangyin Changlong Chemical Fiber Co. Ltd. Houxiang Industrial Zone, Changjing, Jiangsu 214411	24,6	A595

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Country	Manufacturer	Rate of duty (%)	Taric additional code
	All other companies	49,7	A999
Saudi Arabia	National Polyester Fibers Factory P.O. Box 42185, Riyadh 11541	20,9	A597
	Saudi Basic Industries Corporation (Sabic) P.O. Box 5101, Riyadh 11422	20,9	A598
	Arabian Industrial Fibres Company (Ibn Rushd) P.O. Box 30701, Yanbu Al-Sinaiyah 21447		
	All other companies	20,9	A999

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

▼M1

4. Imports declared for release into free circulation shall be exempt from the anti-dumping duties imposed by paragraphs 1 and 2, provided that they are manufactured, shipped and invoiced by companies from which undertakings are accepted by the Commission and the names of which are listed in the relevant Commission Decision or Regulation, as from time to time amended, and have been imported in accordance with the provisions of that Commission Decision or Regulation.

5. The imports mentioned in paragraph 4 shall be exempt from the anti-dumping duty provided that:

(a) the goods declared and presented to customs correspond precisely to the product described in paragraph 1;

(b) a commercial invoice containing at least the elements listed in the Annex is presented to Member States' customs authorities upon presentation of the declaration for release into free circulation; and

(c) the goods declared and presented to customs correspond precisely to the description on the commercial invoice.

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Article 2

The part of the table in Article 1(2) of Regulation (EC) No 2852/2000 concerning the definitive anti-dumping duty rates applicable on imports of synthetic staple fibres of polyesters, not carded, combed or otherwise processed for spinning, falling within CN code 5503 20 00 originating in the Republic of Korea, shall be replaced by the following:

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Company	Duty (%)	TARIC additional code
Huvis Corporation 151-7, Samsung-dong, Gangnam-gu, Seoul	3,9	A151
Woongjin Chemical Co., Ltd (formerly Saehen Industries Inc.) 254-8, Kongduk-dong, Mapo-ku, Seoul	10,6	A599
Sung Lim Co., Ltd RM 911, Dae-Young Bldg, 44-1; Youido-Dong Youngdungpo-ku, Seoul	0	A154

▼M2

Company	Duty (%)	TARIC additional code
Dongwoo Industry Co. Ltd 729, Geochon-Ri, Bongwha-up, Bongwha-Kun, Kyoungsangbuk-do	4,4	A608
East Young Co. Ltd Bongwan #202, Gumi Techno Business Center, 267 Gongdan-Dong, Gumi-si, Kyungbuk	4,4	A609
Estal Industrial Co. 845 Hokye-dong, Yangsan-City, Kyungnam	4,4	A610
Geum Poong Corporation 62-2, Gachun-Ri, Samnam-Myon, Ulju-Ku, Ulsan-shi	4,4	A611
Keon Baek Co. Ltd 1188-3, Shinsang-Ri, Jinryang-Eup, Kyungsan-si, Kyungbuk-do	4,4	A612
Samheung Co. Ltd 557-12, Dongkyu-Ri, Pochon-Eub Pochon-Kun, Kyungki-do	4,4	A613
All other companies	10,6	A999

▼B

Article 3

The anti-dumping proceeding concerning imports of synthetic fibres of polyesters originating in Taiwan is hereby terminated.

Article 4

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

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

▼**M1**

ANNEX

The following elements shall be indicated in the commercial invoice accompanying the company's sales of polyester staple fibres to the Community which are subject to an Undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
2. The name of the company mentioned in Article 1 of Commission Decision 2005/613/EC accepting the undertaking issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs cleared at the Community frontier.
6. The exact description of the goods, including:
   - product code number (PCN) used for the purposes of the investigation and the undertaking (e.g. PCN 1, PCN 2, etc.),
   - plain language description of the goods corresponding to the PCN concerned,
   - company product code (CPC) (if applicable),
   - CN code,
   - quantity (to be given in kilograms).
7. The description of the terms of the sale, including:
   - price per kilogram,
   - the payment terms applicable,
   - the delivery terms applicable,
   - total discounts and rebates.
8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.
9. The name of the official of the company that has issued the invoice, and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [company], and accepted by the European Commission through Decision 2005/613/EC. I declare that the information provided in this invoice is complete and correct.'