

COUNCIL REGULATION (EC) No 1993/2000**of 18 September 2000****imposing a definitive anti-dumping duty and definitively collecting the provisional anti-dumping duty imposed on imports of styrene-butadiene-styrene thermoplastic rubber originating in Taiwan**

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⁾), and in particular Articles 9 and 10 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

- (1) By Commission Regulation (EC) No 1091/2000 (⁽²⁾) (hereinafter referred to as 'the provisional duty Regulation') provisional anti-dumping duties were imposed on imports into the Community of styrene-butadiene-styrene thermoplastic rubber (hereinafter referred to as 'SBS') falling within CN codes ex 4002 19 00 and ex 4002 99 and originating in Taiwan.
- (2) As a result of a parallel anti-subsidy investigation, provisional countervailing duties were imposed under Commission Regulation (EC) No 1092/2000 (⁽³⁾) on imports into the Community of SBS originating in Taiwan.

B. SUBSEQUENT PROCEDURE

- (3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional measures, several interested parties submitted comments in writing. In accordance with the provisions of Article 20(1) of Regulation (EC) No 384/96 (hereinafter referred to as the 'basic Regulation'), all interested parties who requested a hearing were granted an opportunity to be heard by the Commission.
- (4) The Commission continued to seek and verify all information deemed necessary for its definitive findings.
- (5) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definite anti-dumping duties on imports of SBS originating in Taiwan and the definite collection of amounts secured by way of provisional duties on these imports.

They were also granted a period within which they could make representations subsequent to this disclosure.

- (6) The oral and written comments submitted by the interested parties were considered and, where deemed appropriate, taken into account for the definitive findings.
- (7) Having reviewed the provisional findings on the basis of the information gathered since then, it is concluded that the main findings as set out in the provisional Regulation should be hereby confirmed.

C. PRODUCT CONCERNED AND LIKE PRODUCT

- (8) The product concerned is styrene-butadiene-styrene thermoplastic rubber, which is currently classifiable within CN codes ex 4002 19 00 and ex 4002 99.
- (9) One Community importer claimed that SBS imported from Taiwan has a different fluidity and resistance than SBS produced in the Community. However, the Commission investigation revealed that producers in Taiwan produce different types of SBS with exactly the same composition as those types produced in the Community. The investigation also showed that, although the quality of imports of SBS from Taiwan may have been lower for one company during the years 1995 and 1996 when this company started its production of SBS, the quality quickly attained a level comparable to the quality of SBS produced in the Community. Finally, the investigation showed that Community users do not make any quality differentiation between SBS from Taiwan and from the Community. The Commission concluded that SBS imported from Taiwan and SBS produced in the Community share the same characteristics and the same level of quality.
- (10) Another Community importer claimed that dry and oil-extended SBS should be considered as two different products, arguing that dry and oil-extended SBS are used by different industries. However, different producers and users of SBS confirmed to the Commission that many Community users, especially in the footwear industry, do not differentiate dry and oil-extended SBS. It is therefore concluded that the markets of dry and oil-extended SBS cannot be distinguished.
- (11) The same company also argued that dry and oil-extended SBS are close to other types of products, such as SIS (styrene-isoprene-styrene), which are also produced by the Community producers of SBS. The company claimed that there is no justification for distinguishing SBS from these other products. However, the

(¹) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p. 18).

(²) OJ L 124, 25.5.2000, p. 12.

(³) OJ L 124, 25.5.2000, p. 26.

investigation showed that dry and oil-extended SBS have exactly the same physical composition of butadiene and styrene, the only difference being the addition of oil at the end of the production process. This physical composition clearly distinguishes SBS from other products such as SIS. It is therefore concluded that dry and oil-extended SBS should be considered as one distinct product for the purpose of this investigation.

- (12) As no other arguments were presented, the findings set out in recitals 13 to 16 of the provisional duty Regulation are hereby confirmed.

D. DUMPING

- (13) One producing exporter from Taiwan contested the method of calculation of the dumping margin, whereby normal values were compared to the prices of individual export transactions.
- (14) An examination of the time pattern of export prices during the investigation period, however, makes clear that most of the dumping took place during the latter half of that period. An average calculation would thus not reflect the full degree of dumping, in the sense of Article 2(11) of the basic Regulation.
- (15) The provisional findings as described in recital 25 of the provisional duty Regulation are therefore confirmed.
- (16) The definitive dumping margins expressed as a percentage of the cif import price at the Community border duty unpaid are the following:
- | | |
|--|--------|
| — Lee Chang Yung Chemical Industry Corp.,
Taipei: | 5,3 % |
| — Chi Mei Corp., Tainan: | 9,1 % |
| — Non cooperating exporting producer: | 20,0 % |

E. INJURY

1. Definition of the Community industry

- (17) Since no comments were received regarding the definition of the Community industry, the conclusions of recitals 31 and 32 of the provisional duty Regulation are hereby confirmed.

2. Consumption in the Community

- (18) Since no comments were received on consumption in the Community, its assessment as indicated in recital 33 of the provisional duty Regulation is hereby confirmed.

3. Imports of SBS from Taiwan to the Community

- (a) *Volume of imports, market share, and average import price*
- (19) Since no comments were received concerning the volume of imports from Taiwan in the Community, the market share, and the average price of imports, the assessments indicated in recitals 34 to 37 of the provisional duty Regulation are hereby confirmed.

(b) *Price undercutting*

- (20) It is recalled that price undercutting was provisionally established on the basis of a comparison between the export price (cif Community frontier, duties paid) and prices charged by the Community industry (ex-works). The sales prices considered for similar product types were those to independent customers after deduction of discounts and rebates.
- (21) As mentioned in recital 9, some comments were received concerning the comparability of different product types but it was found that SBS imported from Taiwan and SBS produced in the Community share the same characteristics.
- (22) These comments did not affect the conclusions of the provisional Regulation, which led to an average price-undercutting margin, expressed as a percentage of the Community industry's average selling prices, of 12,3 %.

4. Economic situation of the Community industry

- (23) One Community importer pointed out that stocks and profitability have not been calculated for 1995. As stated in recitals 46 and 47 of the provisional duty Regulation, the exact figures of stocks and profitability could not be obtained accurately because of changes of accounting systems in one company and changes of structure in another company. In any event, the investigation showed that the profitability was higher in 1995 than in 1996. This reinforces the injury determination.
- (24) Since no other comments were received regarding the figures for production, capacity, sales volume, sales price, market share, stocks, profitability, investments and employment of the Community industry, the conclusions of recitals 40 to 49 of the provisional duty Regulation are hereby confirmed.

5. Conclusion

- (25) On the basis of the above it was concluded that the Community industry is suffering material injury as set out in recital 55 of the provisional duty Regulation.

F. CAUSATION

1. Effect of the dumped imports

- (26) The Government of Taiwan (GOT) and one Community importer claimed that the high level of market share of the Community industry (89 % during the investigation period) showed that the Community industry could not suffer injury caused by imports from Taiwan, with a much smaller market share (6,1 %). In the present case it has been determined that the imports from Taiwan, with a strong pressure on prices on a competitive and transparent market (12,3 % undercutting during the investigation period), represented a considerable pressure on the Community industry. In order to maintain its market share, the Community industry had to follow the downward price trend (- 47 % price reduction from 1995 to

the investigation period). As a result, the Community industry suffered heavy losses (profitability shifted from + 14,9 % to - 9,8 % from 1996 to the investigation period). Finally, it is considered that the high market share of the overall Community industry did not protect it from the unfair dumped competition of Taiwan, and that the price pressure due to Taiwanese imports is a major cause of the injury suffered by this industry.

(27) The GOT claimed that the increased investments made by Community producers has created a stronger competition amongst those producers and resulted in injury caused by such competitive forces. However, the investigation revealed that investments, as stated in recital 48 of the provisional duty Regulation, have fluctuated since 1995 and do not show an upward trend as claimed by the GOT. The investments remained at a rather low level, which would correspond to normal upgrading of machinery. The most important investments were made by the producers prior to 1995 at the time they were establishing their production units.

(28) The GOT also claimed that the injury suffered by the Community industry could be caused by an increase in the prices of raw materials. However, the prices of raw materials, as stated in recital 73 of the provisional duty Regulation, have been fluctuating since 1995 and do not show any particular trend. It is more likely that their variation is cyclical, and therefore they cannot reasonably explain the constant depreciation of SBS prices since 1995.

(29) One Community importer argued that the injury suffered by the Community industry could be caused by an increase of costs of production and selling and general administration costs. However, the investigation revealed that, while these costs remained roughly at the same level over the period 1995 to 1999, the Community producers sales value decreased dramatically (by 39 %), due to the price decrease.

2. Conclusion

(30) Given that no other arguments were received regarding the cause of the injury suffered by the Community industry, the conclusion that imports of SBS from Taiwan have caused injury to the Community industry, as stated in recitals 74 and 75 of the provisional duty Regulation, is hereby confirmed.

G. COMMUNITY INTEREST

1. Interest of the Community industry

(31) Since no comments were received regarding the interest of the Community industry, the conclusions of recitals 77 to 81 of the provisional duty Regulation are hereby confirmed.

2. Impact on users

(32) Following the adoption of the Regulation imposing provisional measures, two Community importers expressed concerns about the impact of measures on their customers. It should be noted that one of these companies imported from a Taiwanese producer which did not cooperate in this proceeding, and this importer was subject to a provisional cumulated subsidy and dumping duty rate of 28,2 %. However, if definitive measures are imposed, all importers will have the option to purchase SBS from Community producers, from one of the cooperating producers in Taiwan, or from another source not subject to measures.

(33) As a result, it is estimated that the average price increase caused by definitive measures should be 1,1 %. It was confirmed during the investigation that such an increase in prices would be likely to have a limited impact on users. The impact of duties on several typical users was examined, where SBS accounted for 40 % of their cost of production. It was found that the imposition of measures would bring down the profitability by 0,3 % in average for that part of their business relating to SBS.

(34) Furthermore, as most Community users purchase the main part of their SBS from Community producers, they would not experience any price increase for the greater part of their purchases.

(35) Finally, since no further evidence was provided by the Community importers, and since the Community users did not make any comments, the conclusion of recital 86 of the provisional duty Regulation is hereby confirmed.

3. Conclusion

(36) The new arguments received regarding the determination of the Community interest, are not considered to be such as to reverse the conclusion that no compelling reasons exist against the imposition of anti-dumping measures. The provisional findings are therefore confirmed.

H. DEFINITIVE COURSE OF ACTION

(37) In view of the conclusions reached regarding dumping, injury, causation and Community interest, it is considered that definitive anti-dumping measures should be taken in order to prevent further injury being caused to the Community industry by dumped imports from Taiwan.

1. Injury elimination level

- (38) As explained in recital 91 of the provisional duty Regulation, a non-injurious level of prices was determined by adding to the sales price of the Community industry its average actual loss and by further adding a profit margin of 8 % which would cover the Community industry's cost of production and allow a reasonable profit to be obtained in the absence of dumped imports from the country concerned.

2. Form and level of the duty

- (39) In accordance with Article 7(2) of the basic Regulation the anti-dumping duty rate should correspond to the dumping margin, unless the injury margin is lower.

- (40) This led to the following anti-dumping duty rates for the cooperating producers in Taiwan:

— Chi Mei Corporation:	9,1 %
— Lee Chang Yung Chemical Industry Corporation:	5,3 %

- (41) For those exporting producers which did not reply to the Commission's questionnaire or did not otherwise make themselves known, the dumping margin was established on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation.

- (42) These producers represent around 70 % of the exports of the product under consideration from Taiwan to the Community. Therefore, it was considered appropriate to establish a residual dumping margin at a level higher than the highest dumping margin determined for a cooperating company. Accordingly, the residual dumping margin was established on the basis of the product types with the highest specific dumping margins, i.e. 20 %.

I. COLLECTION OF THE PROVISIONAL DUTY

- (43) In view of the magnitude of the dumping found for the exporting producers, and in light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty under Regulation (EC)

No 1091/2000 be definitively collected to the extent of the amount of definitive duties imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of styrene-butadiene-styrene thermoplastic rubber, falling within CN codes ex 4002 19 00 and ex 4002 99 (TARIC codes: 4002 19 00 10, 4002 99 10 10 and 4002 99 90 91) and originating in Taiwan.

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

Company	Rate of duty	TARIC additional code
Chi Mei Corporation, Tainan, Taiwan	9,1 %	A127
Lee Chang Yung Chemical Industry Corporation, Taipei, Taiwan	5,3 %	A128
All other Taiwanese companies	20 %	A999

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

Article 2

The amounts secured by way of the provisional anti-dumping duties on imports originating in Taiwan under Regulation (EC) No 1091/2000 shall be collected at the rate of the duty definitively imposed. Amounts secured in excess of the definitive rate of anti-dumping duties shall be released.

Article 3

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

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

Done at Brussels, 18 September 2000.

For the Council

The President

H. VÉDRINE