

**COMMISSION REGULATION (EC) No 862/2005****of 7 June 2005****imposing provisional anti-dumping duties on imports of granular polytetrafluoroethylene (PTFE) originating in Russia and the People's Republic of China**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup> (basic Regulation), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

**A. PROCEDURE****1. Initiation**

- (1) On 9 September 2004, the Commission announced by a notice (notice of initiation) published in the *Official Journal of the European Union* <sup>(2)</sup>, the initiation of an anti-dumping proceeding with regard to imports into the Community of granular polytetrafluoroethylene resin (PTFE) originating in Russia and the People's Republic of China (PRC).
- (2) The anti-dumping proceeding was initiated following a complaint lodged on 26 July 2004 by the European Chemical Industry Council (CEFIC or the complainant) on behalf of producers representing a major proportion, in this case more than 80 %, of the total Community production of PTFE. 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 a proceeding.

**2. Parties concerned by the proceeding**

- (3) The Commission officially advised the exporting producers in Russia and in the PRC, importers/traders and their associations, suppliers and users known to be concerned, the representatives of the exporting countries concerned and the complainant and all 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 notice of initiation.
- (4) In view of the apparent large number of Chinese exporting producers listed in the complaint, sampling was envisaged in the notice of initiation for the determination of dumping, in accordance with Article 17 of the basic Regulation.
- (5) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers from the PRC were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to PTFE during the investigation period (1 July 2003 to 30 June 2004).

<sup>(1)</sup> 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).

<sup>(2)</sup> OJ C 225, 9.9.2004, p. 18.

- (6) After examination of the information submitted by exporting producers and due to the low number of replies to the sampling questions, it was decided that sampling was not necessary with regard to the exporters in the PRC.
- (7) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the Chinese exporting producers known to be concerned. Claims for MET, or for IT in case the investigation establishes that they do not meet the conditions for MET, were received from three exporting producers.
- (8) 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 notice of initiation. Replies were received from three Chinese exporting producers, from two Russian exporting producers, from three Community producers, and from one unrelated importer.
- (9) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:
- (a) Community producers:
    - Dupont de Nemours BV, the Netherlands,
    - Dyneon, Germany,
    - Solvay Solexys, Italy.
  - (b) Unrelated importer:
    - Resyncom, Germany.
  - (c) Exporting producers in the PRC:
    - Shandong Dongyue Polymer Material Co. Ltd,
    - Shanghai 3F New Material Company Co. Ltd,
    - Zhejiang Jusheng Fluorochemicals Co. Ltd and its related company Zhejiang Juhua Group Imp. & Exp. Co. Ltd.
  - (d) Exporting producers in Russia:
    - Kirovo-Chepetsky Khimichesky Kombinat and its related company Priborlab Ltd,
    - Open Joint Stock Company 'Halogen'.
  - (e) Related importers
    - Chemical Goods Ltd, United Kingdom.
- (10) 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 United States of America (USA), took place at the premises of the following companies:
- AGC Chemicals Americas, Inc., USA,
  - E. I. DuPont de Nemours & Company, Inc., USA.

### 3. Investigation period

- (11) The investigation of dumping and injury covered the period from 1 July 2003 to 30 June 2004 (investigation period or IP). The examination of trends in the context of the injury analysis covered the period from 1 January 2001 to the end of the IP (period under consideration or period considered).

## B. PRODUCT CONCERNED AND LIKE PRODUCT

### 1. General

- (12) Fluoropolymers are a group of high performance plastics, of which polytetrafluoroethylene (PTFE) is the best known and most widely used.
- (13) Granular PTFE is a chemical product (a fluoropolymer) which bears a number of high resistance properties (such as high melting point, high thermal stability, insolubility, non-inflammability, low dielectric constant). It is used as a component in a wide number of industrial sectors, e.g. the chemical, mechanical, electrical (inner shield of cables), automotive, construction (as isolation agent), cookware (pans), textile, or biomedical (surgery instruments) sectors. The most known trade mark under which this product is commercialised is Teflon.

### 2. Product concerned

- (14) The product concerned is so called granular polytetrafluoroethylene (PTFE), containing not more than 3 % of other monomer unit than tetrafluoroethylene, without fillers, in the form of powder or pellets, with the exclusion of micronised materials, and its raw polymer (reactor bead). The latter can be in wet or dry form. Notwithstanding the different possible product types due to different form, average particle size, thermo treatment or co-monomer content, all of them constitute one product for the purpose of this proceeding because they have the same physical characteristics and essentially the same basic uses. The product concerned is currently classifiable within CN code ex 3904 61 00.

### 3. Like product

- (15) The product concerned, and the PTFE produced and sold in the Community by the Community industry, the PTFE produced and sold on the domestic market of both exporting countries and the PTFE produced and sold on the domestic market of the analogue country were found to have essentially the same physical and technical characteristics and the same basic uses. They are therefore provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.
- (16) The two importers claimed that for certain applications, the product imported from Russia and China is not in competition at all with the PTFE produced and sold in the Community market. This concerns mainly PTFE scrap or 'off-spec' which is used to produce fine particle size PTFE. This fine particle size product is used e.g. as an additive in processing plastics or in printing inks as well as in coatings for metals. This had to be rejected, as it was found that the Community industry also produces scrap or 'off-spec' material which is sold to the same customers.

## C. DUMPING

### 1. General methodology

- (17) Below, the general methodology is described. The subsequent presentation of the findings on dumping for the countries concerned therefore only describes issues specific to each exporting country.

### 1.1. *Normal value*

- (18) In accordance with Article 2(2) of the Basic Regulation, it was first examined for each cooperating exporting producer whether its domestic sales of PTFE 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.
- (19) The Commission subsequently identified those types of PTFE 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, the Commission considered as identical or directly comparable the product types sold domestically and exported, which were of similar average particle size, thermo treatment and co-monomer content.
- (20) For each type sold by the exporting producers on their domestic markets and found to be directly comparable with the type of PTFE 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 PTFE 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 PTFE exported to the Community.
- (21) The Commission subsequently examined whether the domestic sales of each type of PTFE, 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 PTFE type in question. Since the sales volume of each PTFE 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 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.

### 1.2. *Export price*

- (22) In all cases 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.

### 1.3. *Comparison*

- (23) The normal value and export prices 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.

### 1.4. *Dumping margin*

- (24) According to Article 2(11) of the basic Regulation 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.

### 1.5. *People's Republic of China*

#### 1.5.1. *Market Economy Treatment (MET)*

- (25) 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) of the basic Regulation.

- (26) 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.
- (27) Three 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.
- (28) The investigation showed that none of the three companies mentioned above fulfilled the criteria required and their claims had to be rejected. The following table summarises the determination for the three companies 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	Not met	Not met	Not met	Met	Met
3	Not met	Not met	Not met	Not met	Met

*Source:* Verified questionnaire replies of cooperating Chinese exporters.

- (29) The companies concerned were given an opportunity to comment on the above findings. All three companies disagreed with the determinations made and claimed that they should be granted MET.
- (30) One company questioned whether the Commission's practice of assessing MET on the basis of the five criteria laid by Article 2(7)(c) of the basic Regulation could be regarded in line with GATT/WTO provisions. It was further argued that the Commission based its decisions on indications and presumptions, and that Article 2(7) of the basic Regulation was not applied in an objective way.
- (31) In this respect it should be noted that the current investigation, including the assessment of whether an exporting producer operates under market economy conditions, is made in accordance with the applicable provisions of the basic Regulation, which are fully in line with WTO obligations.

- (32) As acknowledged by the Court of First Instance, the burden of proof is on the exporting producer to demonstrate that it fulfils the conditions laid down in Article 2(7)(c) of the basic Regulation. If no such evidence has been provided the claim for MET must be rejected. Such conclusion is made on the basis of an objective analysis of substantiated evidence, as disclosed to the companies concerned, and subject to judicial review.
- (33) 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, it was concluded that there was no evidence that the Articles of Association of one company were adhered to. Therefore, no evidence was available that this company's decisions could not be significantly influenced by the State, including through the State-owned shareholder. The company objected to the Commission's conclusions arguing that its Articles of Association offer a reliable guarantee that the State may not exert a significant influence in its decisions and that, in any event, the State-owned shareholder is a trustee acting on behalf of a private company. However, the Articles of Association of the company stipulate its organisation and decision-making procedures. Since the investigation revealed that such Articles of Association were not respected and could be easily changed by the company itself, it can reasonably be concluded that eventual provisions of such Articles of Association, seeking to ensure that the State cannot significantly influence the company's decision, are unreliable and cannot provide any guarantee in that respect. In addition, the company did not provide any explanation, other than 'visibility', as to why the State-owned trust fund was its actual shareholder. On the contrary, it was argued during the on-the-spot verification that this would allow the company, *inter alia*, a better access to financing in the future. The risk of State interference was therefore deemed significant.

The company further argued that, contrary to the Commission services' conclusions, prices of its raw materials did reflect market values. Besides the fact that no evidence was submitted that this was the case, comparable purchases of raw materials were made at different prices, without the company being able to give any reasonable explanation as to these important differences.

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.

- (34) One company argued that the absence of a minimum quorum in the shareholders meeting, which allows the State-owned shareholder to significantly influence the company's decisions, was not relevant as such meeting was not responsible for operational decisions. Nevertheless, State influence is relevant not only when it relates to operational decisions. In addition, according to the company's Articles of Association, the shareholders meeting is competent, *inter alia*, to decide on business operation and investment plans, to examine and approve the financial budget and final accounts, as well as the plan for the company's profit distribution. Hence, the State can significantly influence the company's decisions on such important matters. It was also argued that the fact that export sales were made via a partly State-owned trader during half of the IP, did not constitute a reason to conclude that there was State interference. In this respect, it should be noted that this trader was involved in sales of the product concerned (including signing contracts, receiving payments and invoicing to customers), but did not submit a MET claim. Therefore, the company was not able to demonstrate that it operated without significant State interference.
- (35) It was also argued by one company that the State-owned shareholder owning the majority of the company's shares, and which consequently nominated the majority of the members of the board, could not significantly influence the company's decisions. In this respect, it is recalled that, in accordance with a consistent Commission practice, where the State has the possibility to exert significant influence on the company's decisions, whether legally or *de facto*, it is considered that the first criterion of Article 2(7)(c) of the basic Regulation is not met. Therefore, the claim had to be rejected.

- (36) 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, all three companies submitted that they are fulfilling the criterion because their accounting records are independently audited. However, it was found that the auditors' reports of the companies contained significant discrepancies with the company's accounts, or that changes in the accounting policy of the companies concerned were not addressed, as required by international accounting standards. In one case, it was also found that the amounts mentioned in the auditor's notes to the accounts did not coincide with the company's accounts. Another company did not submit an English version of the complete financial statements including the auditor's notes thereto, which prevented a proper examination. Therefore, it had to be concluded that the accounting records of all three 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.
- (37) Regarding the third criterion, the three companies submitted that contrary to the Commission's findings, there were no significant distortions carried over from the former non-market economy system. One company disagreed that no evidence was available showing that its land use rights reflected market values and submitted public information concerning land prices. This information was provided significantly after the deadline to submit a properly documented claim for MET and it could no longer be verified; it had therefore to be rejected. As far as the second company is concerned, this was found to have bought its production facilities of the product concerned from a State-owned company, however, at a substantial discount in comparison to the value determined by independent evaluators. Its depreciation of fixed assets was also found to be inconsistent. The third company was found to receive bank loan guarantees from its State-owned shareholder and to operate a settlement account in such a way that it was not possible to link invoices and payments. This means that there are significant distortions carried over from the former non-market economy system.
- (38) 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.
- (39) The company which did not fulfil the fourth criterion argued that, contrary to the Commission's findings, bankruptcy law did guarantee stability and legal certainty. However, it was found that this company faced significant financial difficulties having been loss-making for a number of consecutive years, and was bailed out by its State-owned shareholder. Although, as argued by the company, such significant financial difficulties may not necessarily result in bankruptcy, the fact that the State-owned shareholder rescued the company (including through debt write-off), in a situation where under normal market conditions a shareholder would not have done this, indicates that the application of such law to this particular case is doubtful. It had therefore to be concluded that there was no evidence that the bankruptcy law applied in practice to the company. In the absence of such evidence this criterion was considered as not being fulfilled.
- (40) The Advisory Committee was consulted and the parties directly concerned were informed accordingly. The main arguments raised by exporters have already been addressed above. The Community industry was also given the opportunity to comment, and agreed with the MET determination.

#### 1.5.2. Individual Treatment (IT)

- (41) Further to Article 2(7)(a) of the Basic Regulation, a countrywide 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 that they meet all criteria set out in Article 9(5) of the basic Regulation for receiving individual treatment.

- (42) The three exporting producers, as well as requesting MET, also claimed individual treatment in the event of not being granted MET.
- (43) Since none of the three companies was able to demonstrate that State interference, whether actual or potential, was not such as to also influence their export prices and quantities, as well as their conditions and terms of the sales, it had to be concluded that they did not meet the conditions set in Article 9(5)(b) of the basic Regulation.
- (44) Equally, for all three companies it was found that the risk of circumvention of the measures could not be excluded, if these exporters were to be given an individual duty rate. This risk results from the abovementioned actual or potential State influence in the operation of the companies. Moreover, given the nature and presentation of PTFE, it is usually very difficult, in particular for customs authorities, to identify the producer of the PTFE being imported. Therefore, the risk of circumvention of measures by way of exporting via a company with a lower level of duty, which is aggravated by the fact that there is significant risk of State interference, was also deemed significant. Therefore, the conditions set in Article 9(5)(e) of the basic Regulation were not met.
- (45) Since none of the companies meets all the criteria set out in Article 9(5) of the basic Regulation, it is provisionally decided not to grant them IT.

### 1.5.3. Normal value

#### 1.5.3.1. *Determination of normal value for exporting producers not granted MET*

##### **Analogue country**

- (46) 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).
- (47) 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. Two exporting producers in the PRC argued that the USA was not an appropriate choice and proposed Russia instead. It was submitted that the USA market of PTFE is not sufficiently competitive since there are anti-dumping duties imposed on imports from Italy and Japan since 1988. It was also argued that the biggest US producer is related to one of the EU complainants. In addition, it was submitted that there are differences in technical levels, quality and end-uses between the PTFE sold in the USA market and that exported by Chinese producers into the Community. Furthermore, it was argued that there are differences in access to raw materials since USA producers must import fluorspar, facing export quotas imposed by the PRC which represents 50 % of that product's world production. On the other side, Chinese exporters would have direct access to fluorspar produced in China. Finally, it was submitted that China's economic development (with lower labour costs than USA), is closer to Russia, which is also subject to the same investigation.
- (48) It should be noted that production of PTFE is made in a limited number of countries. One Indian producer came forward supporting the allegations of dumping against Chinese exporting producers and was asked to cooperate as a producer in a potential analogue country. However, the Indian producer did not agree to cooperate.
- (49) As regards the suggested choice of Russia, for the reasons explained under recitals 70 to 75, data regarding normal value submitted by the Russian exporting producers was found to be unreliable and could not, therefore, be used. Consequently, the use of such data for the determination of normal value for Chinese exporting producers not granted market economy treatment could not be accepted. Moreover, a country also subject to investigation is not normally considered to be an appropriate analogue country, since its domestic market could be distorted.

- (50) Concerning the choice of the USA, the analysis of all of the information available showed that the USA appeared to be the most appropriate analogue country. The USA has a large and highly competitive market for the product concerned, with three producers and, despite anti-dumping duties, significant imports (above 20 % of the domestic market) including from the PRC and Russia. Customs duties on imports of PTFE are lower in the USA (5,8 %) than in Russia (10 %).
- (51) Regarding the relationship between a producer in the analogue country and in the Community this is not *per se* a reason to consider the choice of the USA as unreasonable. Data reported by USA producers was verified by the Commission services, which were fully satisfied with regard to its appropriateness and reliability.
- (52) The argument on differences in access to raw materials (fluorspar) was found not to prevent the choice of the USA either. No evidence was provided regarding the effect of the Chinese export quotas on the USA market so as to allow a quantification of such possible effect. It was found however, that fluorspar is the fourth upstream raw material of PTFE and should therefore represent only a very small part of its cost of manufacturing (roughly estimated at less than 5 %). In these circumstances, the effect of the Chinese export quotas on the USA market for PTFE would be minimal. Moreover, chloroform is a much more important input of PTFE, in which the PRC has a disadvantage due to its dependence on imports and the high AD duties in force against several exporting countries. It is therefore concluded that any difference in access to raw materials between USA and the PRC is not such as to render the choice of the former as analogue country unreasonable.
- (53) Regarding physical and technical differences and end-uses, the information available indicates that the product exported by Chinese producers, although normally of a lower quality due to different levels of contamination than the PTFE produced in the USA, still follows industry standards and is generally used for the same applications. Nevertheless, in order to take into account the possibility of different levels of contamination between the product concerned and the like product, and in the absence of any other basis, an adjustment was provisionally established at 10 %, based on estimations provided by the USA producers.
- (54) Finally, as far as the different level of economic development of the USA and the PRC is concerned, no evidence was submitted which could demonstrate whether and to what extent normal value was affected by such difference. Moreover, such difference 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 may well result in a lower normal value than if the analogue country has a comparable economic development to the non market economy country.
- (55) 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.
- (56) The Commission sent a more detailed questionnaire to the producers in the USA requesting information on domestic sales prices and cost of production of the like product. The reply of the producers was verified on the spot.

***Determination of normal value in the analogue country***

- (57) Pursuant to Article 2(7) of the basic Regulation, normal value for the Chinese exporting producers was established on the basis of verified information received from two producers in the analogue country, i.e. on the basis of 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.

- (58) As far as the determination of normal value is concerned, the Commission followed the same methodology as the one explained in recitals 18 to 28.

#### 1.5.4. Export price

- (59) All export sales to the Community by the Chinese exporting producers 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.

#### 1.5.5. Comparison

- (60) Adjustments were made in respect of discounts and rebates, commissions, transport, insurance, packing, credit costs, after sales costs and bank charges where applicable and justified.
- (61) As mentioned in recital 53 an adjustment pursuant to Article 2(10)(a) of the basic Regulation was made to the normal value for differences in degrees of contamination between the product sold by the Chinese producers to the Community and that sold in the domestic market in the USA.
- (62) Furthermore, one product type exported by the Chinese exporting producers had a different thermo treatment when compared to the comparable type sold in the analogue country. 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 established on the basis of the price difference related to that specific characteristic found in the analogue country.
- (63) For one product type exported by the Chinese producers, with an average particle size between 100 microns and 400 micros, no direct matching product type was produced during the IP by the cooperating producers in the USA, and no estimation of the market difference could be established. Nevertheless, on the basis of the information provided by one producer in the USA, it was provisionally concluded that this product type sold by the Chinese exporters, with inconsistent particle sizes, had characteristics closely resembling those of low flow PTFE (or less than 100 micron). It was therefore considered appropriate to provisionally base the normal value of that type on the normal value found for low flow PTFE sold in the USA market.
- (64) An adjustment was also made with regard to claimed differences in Chinese VAT reimbursement.

#### 1.5.6. Dumping margin

- (65) For each Chinese exporting producer, 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.
- (66) As explained in recitals 41 to 43, none of the three cooperating Chinese companies was granted IT. Consequently, a single countrywide dumping margin was established on the basis of the weighted average of the dumping margins found for each of the three Chinese producers.
- (67) The countrywide dumping margin expressed as a percentage of the CIF net free-at-Community-frontier price, before duty, is 99,7 %.
- (68) Since the three known exporting producers appeared to account for all Chinese exports of the product concerned to the Community, there was no reason to believe that any exporting producer abstained from cooperating. Therefore, it is provisionally considered that the countrywide dumping margin should be set at the same level.

#### 1.6. *Russia*

- (69) Questionnaire replies were received from the two known exporting producers and from the related companies of one of the exporters (one trader in Russia and one importer in the Community).

##### 1.6.1. *Non-cooperation*

- (70) The questionnaire replies of both companies were significantly deficient. Furthermore, in both cases, the on-the-spot verification showed that these companies had submitted incomplete, incorrect and misleading information.
- (71) Thus, in one of the companies, the accounting had significant shortcomings and was found to be unreliable. Therefore, the completeness and accuracy of the data submitted could not be verified. Furthermore, significant parts of the questionnaire reply could not be verified at all (since no reconciliation with its accounts was provided by the company) and in some instances the company even refused to submit some information necessary for the calculation of the dumping margin, or did not provide such information in a timely manner so that it could not be verified anymore.
- (72) The reply of the second company was also deficient, and it was found on-the-spot that the company had given misleading information of an essential nature concerning its organisational structure. Thus, it was only found during the on-the-spot investigation that the company actually split into two entities at the beginning of the IP (one of them producing the product concerned). The fact that the complex company structure was not declared before the verification visit significantly impeded the investigation because of its far-reaching consequences in terms of accounting and determinations of costs.
- (73) Moreover, the company did not submit essential elements of the reply, including audited financial statements, claiming these were not available. However, this proved to be wrong during the verification visit. In addition, the company re-submitted at the beginning of the investigation verification significant parts of its questionnaire reply, impeding the verification of the questionnaire reply.
- (74) The related trader in Russia of the company mentioned in the previous recital did not cooperate. Indeed, the company impeded the verification, by refusing access to information pertaining to organisation, sales of the product concerned, and payments, in such a way that this party could not be considered to be a cooperating party. Finally, the related trader in the United Kingdom could not provide any financial figure for the IP.
- (75) In view of the above, it was considered that the dumping margins for both exporting producers could not be established on the basis of their own data. The dumping margin was therefore provisionally determined on the basis of facts available, in accordance with Article 18 of the basic Regulation.

##### 1.6.2. *Normal value*

- (76) In the absence of any other information, the normal value was provisionally calculated on the basis of the information in the complaint. An average normal value was calculated from the prices indicated in the price lists of the domestic market during the IP of both exporting producers. In the absence of any more appropriate basis, one single normal value was calculated for the product concerned as a whole.

### 1.6.3. Export price

- (77) Export price was provisionally calculated on the basis of Eurostat data for the IP.

### 1.6.4. Comparison

- (78) Pursuant to Article 2(10)(e) of the basic Regulation, adjustments were made to the normal value, to take into account the fact that the prices in the price-lists included terms of delivery other than ex-works, and to the export price to take into account the differences in terms of delivery and other charges incurred between ex-works and CIF incoterms.

- (79) All adjustments were made on the basis of information provided in the complaint.

### 1.6.5. Dumping margin

- (80) The provisional dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export price, as determined above.

- (81) The comparison between the normal value and the export price showed the existence of dumping. The provisional dumping margins, expressed as a percentage of the cif net free-at-Community-frontier price, before duty, is 36,6 %.

- (82) Since the aforementioned two companies represented all export sales from Russia to the Community, and since there was no reason to believe that any exporting producer abstained from cooperating, the residual duty was also set at the same level.

## D. INJURY

### 1. Community production

- (83) Within the Community, the product concerned is known to be manufactured in Germany, Italy, the Netherlands, the United Kingdom and Poland by:

— three producers on behalf of which the complaint was lodged, representing more than 80 % of the Community production, and

— two other Community producers which were not complainants. Only one has submitted general information to the Commission. Neither of these two producers opposed the present proceeding.

- (84) The Commission has found that all the above companies could be considered as Community producers within the meaning of Article 4(1) of the basic Regulation. The output of all the above companies constitutes the Community production, established by adding to the volume of production reported by the three producers supporting the complaint, the estimated production of the two non-complaining producers, as contained in the complaint.

## 2. Community industry

- (85) The accumulated production of the three Community producers which cooperated with the Commission represents 81 % of the total production of granular PTFE resin in the Community. They are therefore deemed to constitute 'the Community industry' within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

## 3. Community consumption

- (86) Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, plus the estimated sales of the other Community producers, plus the imports from Russia, the PRC and the other third countries under CN code ex 3904 61 00. It is noted that imports from Russia under CN code 3904 61 00 cover the product concerned and other products. The total import volume from Russia of PTFE was therefore estimated based on the methodology followed in the complaint. For the other countries no information indicated that imports under such CN code would contain PTFE not in granular form.
- (87) Between 2001 and the IP, the apparent Community consumption decreased from 16 185 tonnes to 14 725 tonnes, i.e. by 9 %. This decrease in consumption was caused to a large extent by the general economic downturn in the period since 2002.

	2001	2002	2003	IP
Community consumption (tonnes)	16 185	14 301	14 736	14 725
<i>Index (2001 = 100)</i>	100	88	91	91

## 4. Cumulative assessment of the effects of the imports concerned

- (88) The Commission examined whether imports of granular PTFE resin originating in Russia and the PRC should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.
- (89) The margin of dumping established in relation to the imports from each of the countries concerned was above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation and the volume of imports from each of these countries was not negligible in the sense of Article 5(7) of the basic Regulation (i.e. their market shares attaining 10,8 % and 23,7 % respectively in the IP).
- (90) As regards the conditions of competition, the investigation showed that granular PTFE resin imported from the countries concerned and that of the Community industry were alike in all their basic physical and technical characteristics. On that basis, PTFE originating in Russia and the PRC on the one hand and PTFE produced and sold in the Community on the other hand were interchangeable. Likewise, they were marketed in the Community through comparable sales channels and under similar commercial conditions. It was also found that export prices from Russia and China had a similar trend during the period considered and both were significantly undercutting the Community prices.
- (91) The Russian exporting producers argued that PTFE imported from Russia on the one hand and the one imported from the PRC on the other hand were subject to different conditions of competition and that imports originating in Russia should therefore be decumulated. In this regard, it was argued that import trends from Russia were declining over the period considered, while imports from China showed an increasing trend. Secondly, it was pointed out that imports from China and Russia were mainly concentrated in one Member State (Italy). Therefore, Russian and Chinese PTFE products were not in competition in the other 24 Member States.

- (92) However, despite the decreasing trend, the volume of imports originating in Russia remains far from negligible, with a market share of 23,7 % of the Community consumption during the IP. Furthermore, PTFE exported from Russia was of a similar quality to PTFE exported from the PRC and destined for similar-end uses and applications. In addition, as mentioned above, export prices from Russia and China had a similar trend during the period considered and both were significantly undercutting the Community prices. Finally, it should be noted that the Community industry sales were also concentrated mainly in Italy and therefore in direct competition with the imports originating in Russia and the PRC. PTFE produced by the Community industry was sold through the same type of distribution channels in Italy as PTFE from Russia and China. It is also noted that there was no indication that Russian and Chinese imports into Italy were not further resold to other parts of the Community market and entered therefore into competition with Community products also outside Italy. On this basis, the argument that the product imported from Russia on the one hand and the one imported from the PRC on the other hand were subject to different conditions of competition had to be rejected.
- (93) In the light of the above, it is provisionally considered that all the criteria set out in Article 3(4) of the basic Regulation were met and that imports from the countries concerned should be examined cumulatively.

#### 5. Imports from the countries concerned

##### 5.1. Volume and market share of the imports concerned

- (94) Although imports of the product concerned from Russia and the PRC into the Community decreased from 6 281 tonnes in 2001 to 4 838 tonnes in 2002, they increased since 2002 and reached 5 079 tonnes in the IP.

	2001	2002	2003	IP
Imports from Russia and the PRC (tonnes)	6 281	4 838	5 069	5 079
<i>Index (2001 = 100)</i>	100	77	81	81

- (95) The corresponding market share decreased from 38,8 % in 2001 to 34,5 % in the IP, but remained very significant. It is noted that the market share has shown a continuous gradual increase since 2002, i.e. from 33,8 % to 34,5 % in the IP.

	2001	2002	2003	IP
Market share of imports from Russia and the PRC	38,8 %	33,8 %	34,4 %	34,5 %

##### 5.2. Prices

- (96) The average price of the imports concerned decreased significantly. Thus, they shrank from EUR 7 236/tonne in 2001 to EUR 4 092/tonne in the IP, i.e. a decrease of 43 % over the period considered.

	2001	2002	2003	IP
Average price of imports from Russia and the PRC (EUR/tonnes)	7 236	5 949	4 499	4 092
<i>Index (2001 = 100)</i>	100	83	63	57

### 5.3. Price undercutting

- (97) For the purposes of analysing price undercutting, the weighted average sales prices per product type of the Community industry to unrelated customers on the Community market were compared with the corresponding weighted average export prices of the product concerned. The comparison was made after deduction of rebates and discounts. The prices of the Community industry were adjusted to an ex-works basis. The prices of the imports concerned were on a CIF basis adjusted by customs duties and post-importation costs.
- (98) Some interested parties argued that the quality of the products manufactured by the Community industry is generally higher than that of the product concerned imported from the PRC and Russia. Based on the evidence found during the investigation, it was provisionally considered that an adjustment was warranted for quality differences which are mainly determined by lower physical properties and inconsistency of the material, i.e. significant variations of the particle size within one product type and impurities. The Russian exporting producers claimed that as a consequence, the PTFE produced and exported by them can only be used when further processed which involves additional costs. However, none of the interested parties was able to precisely quantify the market value of these differences in quality, nor the processing costs of the imported PTFE. A number of parties estimated the adjustment at 30 %, based on the alleged price difference between the different qualities. This estimate corresponded to the one made by the Russian exporting producers. On this basis, and given that no other more reliable information was available in this regard, an adjustment of 30 % was provisionally added to the CIF Community frontier price of the cooperating exporting producers from both countries. It is noted that this issue will be further investigated in order to reach definitive conclusions.
- (99) A comparison showed that the products concerned originating in the PRC and Russia were sold in the Community at prices which undercut the Community industry's prices by 24 % and 17 % respectively during the IP when expressed as a percentage of the Community industry's prices.

## 6. Situation of the Community industry

- (100) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the Community industry from 2001 to the IP.

### 6.1. Production, capacity and capacity utilisation

- (101) The production volume of the Community industry increased by 8 % between 2001 and the IP, from 6 798 tonnes to 7 326 tonnes. Despite a fall in Community consumption during the same period, it should be noted that the Community industry had to decrease its sales prices as a consequence of the dumped imports in order to compete with the imports under consideration. This led to an increase in production to cater for the increased demand for its products.

	2001	2002	2003	IP
Production (tonnes)	6 798	5 885	7 066	7 326
Index (2001 = 100)	100	87	104	108

- (102) The production capacity slightly increased, by 8 % over the period considered. During the same period, the capacity utilisation of the Community industry remained stable at 80 %. The drop in the capacity utilisation between 2001 and 2002 is a consequence of the decrease in consumption and the general economic downturn during this period. Subsequently, as stated above, the Community industry had to lower its prices, thereby increasing its sales, in order to compete with the imports of the countries concerned whose prices had fallen by almost 40 % in 2004 (see recital 96). Thus, capacity utilisation of the Community industry recovered, while profitability went down dramatically (see recital 110w).

	2001	2002	2003	IP
Production capacity (tonnes)	8 480	9 050	9 100	9 200
<i>Index (2001 = 100)</i>	100	107	107	108
Capacity utilisation	80 %	65 %	78 %	80 %

### 6.2. Sales volume and market share

- (103) Over the period under consideration, the EC sales volume of the Community industry increased by 15 %, from 4 223 tonnes in 2001 to 4 845 tonnes during the IP. This development should be seen in the light of the fact that the Community industry, when faced with low-priced imports originating in Russia and the PRC, had the choice of either maintaining its sales prices at the expense of a negative development of its sales volume and market share, or to lower its sales prices in order to preserve as far as possible economies of scale. All Community producers lowered their sales prices as from 2001 in an effort to maintain or even increase their volume of sales in order to reach the critical mass of production needed to cover their fixed costs.

	2001	2002	2003	IP
EC sales (tonnes)	4 223	4 058	4 522	4 845
<i>Index (2001 = 100)</i>	100	96	107	115

- (104) The Community industry's market share increased in volume from 26,1 % in 2001 to 32,9 % in the IP.

	2001	2002	2003	IP
EC market share	26,1 %	28,4 %	30,7 %	32,9 %

### 6.3. Stocks

- (105) It is noted that the stock levels of the Community industry slightly declined during the period under consideration, but shall be nevertheless considered as globally stable. This is in line with the Community industry's policy to maintain stock levels at a minimum. Consequently, the level of stocks was found not to be a significant indicator in the assessment of the situation of the Community industry. It is also noted that stocks were at levels considered normal in this industry.

	2001	2002	2003	IP
Stock (tonnes)	1 232	1 078	1 361	1 145
<i>Index (2001 = 100)</i>	100	87	110	93

#### 6.4. Prices and factors affecting domestic prices

- (106) Average prices per tonne of the Community industry have dropped significantly between 2001 and the IP, by 22 %. This constant price decline over the period under consideration is a key factor in the assessment of the case. It is noted that the price decline of Russian and Chinese imports was even considerably higher than that of the Community industry.

	2001	2002	2003	IP
Average selling price (EUR/tonnes)	9 521	9 182	7 649	7 431
Index (2001 = 100)	100	96	80	78

#### 6.5. Growth

- (107) While Community consumption declined by 9 % between 2001 and the IP, the market share of the Community industry grew by 6,8 percentage points from 26,1 % in 2001 to 32,9 % in the IP.

#### 6.6. Investments and ability to raise capital

- (108) During the year 2001, when the return on investment was significant, the Community industry made big investments, i.e. EUR 8,3 million. After 2001, investments decreased sharply and then further decreased from EUR 4,7 million in 2002 to EUR 3,4 million in the IP.

	2001	2002	2003	IP
Investments (in EUR 1 000)	8 331	4 730	3 833	3 387
Index (2001 = 100)	100	57	46	41

- (109) As to ability to raise capital, all of the cooperating Community producers are part of larger groups and are financed via intra group cash pooling systems. Therefore, whilst none of the companies reported any difficulties in raising capital for their activities during the period considered, this indicator is not considered to be a good reflection of the situation of the Community industry.

#### 6.7. Profitability, return on investment and cash flow

- (110) Over the period under consideration, the profitability of the Community producers dropped significantly from 9,3 % in 2001 to 0,1 % in the IP. The return on investment followed a similar downward trend as that seen for profitability. This dramatic trend in profitability and return on investment would certainly be worse should the Community industry have maintained its prices, in which case it would have suffered loss of market share and sales volume, and the consequent declining economies of scale.

	2001	2002	2003	IP
Profitability	9,3 %	3,5 %	- 3,2 %	0,1 %
Return on investment	9,2 %	3,3 %	- 2,9 %	0,1 %

- (111) The cash flow generated by the like product diminished considerably from EUR 10 million in 2001 to EUR 4,2 million during the IP, i.e. by 58 %.

	2001	2002	2003	IP
Cash flow (in EUR 1 000)	9 988	6 711	1 281	4 200
<i>Index (2001 = 100)</i>	100	67	13	42

#### 6.8. Employment and productivity

- (112) Employment decreased by 10 % between 2001 and the IP. Productivity increased between 2001 and the IP, by 17 %, due to the important measures put into place to improve cost efficiency, such as the reduction of personnel and removal of bottlenecks in production.

	2001	2002	2003	IP
Employment	123	111	117	111
<i>Index (2001 = 100)</i>	100	90	95	90
Production per employee (tonnes/employee)	55	53	61	66
<i>Index (2001 = 100)</i>	100	96	110	119

#### 6.9. Wages

- (113) Labour costs increased by 6 % over the period under consideration, from EUR 6,2 million in 2001 to EUR 6,5 million during the IP. This development is merely in line with the cost of living increase. Due to the reduction in the number of people employed, average labour costs per employee actually increased by 17 %, from EUR 50 239 to EUR 58 842.

	2001	2002	2003	IP
Labour costs per employee (EUR)	50 239	55 538	57 920	58 842
<i>Index (2001 = 100)</i>	100	111	115	117

#### 6.10. Magnitude of the dumping margin

- (114) Given the volume and the price of the dumped imports, the impact of the actual margins of dumping, which are also significant, cannot be considered negligible.

#### 6.11. Recovery from past dumping

- (115) The Community industry was not in a situation where it had to recover from the past effects of injurious dumping.

### 7. Conclusion on injury

- (116) Although the volume of dumped imports of the product concerned originating in Russia and the PRC decreased from 6 281 tonnes to 5 079 tonnes between 2001 and the IP, it remained constantly high during the whole period considered. The corresponding market share decreased from 38,8 % in 2001 to 34,5 % during the IP but remained also at a very high level. The average prices of the dumped imports decreased dramatically over the period under consideration, i.e. by 43 % and were consistently lower than those of the Community industry, resulting in substantial price undercutting by 17,4 % for Russia and 24,5 % for China during the IP.

- (117) An examination of the situation of the Community industry as outlined above shows that between 2001 and the IP, the situation of the Community industry overall deteriorated. While it is true that market share and sales volume developed positively, this does not detract from the overall negative picture. Thus, major injury indicators, such as sales value, profitability, investments, return on investments, ability to raise capital, cash flow and employment, showed negative developments during the period under consideration. As explained in recitals 101, 102 and 103 above, the Community industry's increase in production and sales volume as well as market share has to be seen in the context of the significant price decline in the Community and the Community industry's consequent decision to lower its sales prices to thus maintain or increase its sales volume and to reach the critical mass of production volume needed to cover fixed costs. This had a dramatic impact on the Community industry's profitability which declined substantially from 9,3 % in 2001 to 0,1 % in the IP and with substantial losses in 2003 (- 3,2 %). It should furthermore be noted that consumption only decreased between 2001 and 2002, but remained stable between 2002 and the IP, or even increased slightly. It is therefore concluded that the Community industry could at least take partly advantage of this slight increase in consumption by increasing their sales volume.
- (118) Finally as explained in recital 105, the slight decrease in stock volumes was found not to be a significant factor since this was in line with the Community industry's policy to maintain stock levels at a minimum.
- (119) This decline in profitability coincided with a sharp decrease in prices. The industry compensated to some extent for the fall in prices through increased production and sales, leading to an increase in market share. These positive effects have not prevented the Community industry from seeing a sharp decrease in its profitability. It was therefore concluded that the positive trends of injury indicators such as sales volume and market share did not outweigh the overall deteriorated situation of the Community industry because it did not change the fact that the financial situation of the Community industry was indeed critical. The increase in sales volume and market share was therefore not considered as decisive for the assessment of the Community industry's situation during the period considered.
- (120) In the light of the foregoing, it is provisionally concluded that the Community industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

## E. CAUSATION

### 1. Introduction

- (121) In accordance with Article 3(6) and (7) of the basic Regulation, it was examined whether the dumped imports originating in Russia and the PRC have caused injury to the Community industry to a degree that may be considered as material. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.

### 2. Effect of the dumped imports

- (122) It has to be noted that although imports from Russia and China decreased overall between 2001 and the IP, they showed an increasing trend since 2002. Thus, imports fell from 2001 to 2002 from 6 281 tonnes to 4 838 tonnes. Between 2002 and the IP, however, the volume of imports of the product concerned from Russia and the PRC into the Community increased from 4 838 tonnes to 5 079 tonnes. The corresponding share of the Community market went from 33,8 % in 2002 to reach 34,5 % during the IP.
- (123) More importantly, the overall decrease of imported volumes (which still remained at very high levels and held a higher market share than that of the Community industry) was accompanied by a substantial decrease of import prices. The latter basically collapsed. This coincided with the deterioration of the situation of the Community industry during the same period. This deterioration is seen, in particular, in terms of sales prices, profitability, return on investment, cash flow and employment. As mentioned above, the imports originating in Russia and the PRC undercut the average sales price of the Community industry by significant amounts, with undercutting margins of 17,4 % and 24,5 %.

- (124) In the analysis of the effect of the dumped imports, it was found that price is an important element of competition. Moreover, even taking into account the differences in quality, the prices of dumped imports were considerably below both those of the Community industry as well as those of other third country exporters.
- (125) It was verified with one of the Community producers, that for so called 'modified' grades which are not produced by Russian nor Chinese exporters, the injury situation was inexistent as demonstrated by a positive evolution of the profitability. However, in those instances of the market where this same producer was exposed to competition from the dumped imports from Russia and the PRC, its financial situation was significantly negative.
- (126) It is therefore provisionally concluded that the pressure exerted by the imports concerned, which increased their volume and market share from 2002 onwards, and which were made at very low and dumped prices, played a determining role in the deterioration of the Community industry's financial situation.

### 3. Effects of other factors

#### 3.1. Development of consumption

- (127) The Community consumption, although having decreased by 12 % between 2001 and 2002, remained stable afterwards up to the IP at the level of 2002 and increased even slightly. This drop in consumption is, however, not in line with the decrease of the total Community market value, which fell by 39 % during the same period, i.e. substantially more than consumption. This significant decline of the market value is due to a substantial drop in prices of the imports under consideration which the Community industry was obliged to follow in order to keep its market share and capacity utilisation. It is noted that the overall decrease of the Community consumption did not prevent the Community industry to increase its sales volume (by 15 % over the period considered), while the increase in sales volume was accompanied by a dramatic decrease in sales value which caused significant financial losses to the Community industry. This shows that the material injury suffered by the Community industry is rather a consequence of the decline in sales value than the fall in consumption.
- (128) As mentioned in recital 87, the reason for the decline in the Community consumption was the general economic downturn worldwide. In this regard, it should be noted that the PTFE market is cyclical and depends strongly on global economic developments. This linkage also explains the decrease in consumption despite the decline in sales prices.
- (129) It should also be noted that import prices decreased to a significantly higher degree than Community consumption during the same period. Thus, consumption fell by 9 %, while import prices declined by 43 % during the period under consideration. Import prices undercut substantially the Community industry prices throughout the whole period under consideration and were moreover significantly dumped during the IP. Given this sharp and constant price decline, whereas consumption although decreasing between 2001 and 2002 remained relatively stable subsequently, it was concluded that the material injury suffered is not caused by a decrease in consumption but rather by the dumped imports from the countries concerned which as a consequence forced the Community industry to lower its sales prices.

#### 3.2. Imports originating in third countries other than Russia and the PRC

- (130) It should be recalled that the product concerned forms only a part of CN code 3904 61 00. However, since no information indicates that imports under this CN heading are other than granular PTFE, Eurostat import figures for the full CN heading are considered to relate only to the product concerned. Imports originating in third countries other than Russia and the PRC decreased slightly, from 4 270 tonnes in 2001 to 3 699 tonnes during the IP. Consequently, their market share decreased overall from 26,4 % in 2001 to 25,1 % in the IP. The main individual countries exporting the product concerned to the Community are Japan and the USA. The USA increased its market share from 13 % in 2001 to 23 % in the IP, while Japan's market share decreased from 15 % to 11 % during the same period.

- (131) According to Eurostat, the average price of imports originating in countries other than Russia and the PRC remained virtually unchanged or slightly diminished between 2001 and the IP. Throughout this period, prices of imports from other countries were nearly 50 % higher than the prices of imports from Russia and the PRC. They were also higher than prices charged by the Community industry. Consequently, imports from other third countries did not exert a competitive pressure on the Community industry to the extent that imports from Russia and the PRC did.
- (132) It is therefore provisionally concluded that imports from other third countries could not be a determining reason for the injurious situation of the Community industry.

### *3.3. Performance of non-complainant Community producers (other Community producers)*

- (133) Two Community producers, representing approximately 19 % of the total Community production, did not expressly oppose or support the complaint. Determinations with regard to other Community producers were largely based on estimates provided by the complainant, but also some information provided by one of these producers. As regards the sales volume of other Community producers, it declined from an estimated 1 411 tonnes in 2001 to 1 102 tonnes in the IP. Their share of the Community market fell from 25 % to 19 % over the same period. According to the information submitted by one of the non-complaining producers, average unit prices were slightly lower than those of the cooperating Community industry during the period considered, but far higher than those of Russia and the PRC. On the basis of this information, it can be reasonably presumed that other Community producers also suffered injury from the dumped imports, which is mainly translated in a loss of market share. Therefore, it is provisionally concluded that the products produced and sold by the other Community producers did not contribute to the material injury suffered by the Community industry.

### *3.4. Exports by the Community industry*

- (134) Exports of PTFE by the Community industry outside the Community were slightly increasing during the period considered (by 3 %) and represented 12,7 % of the Community industry's total sales during the IP. Profitability of these exports was, however, higher than the profit made for sales in the Community market over the period considered. Therefore, exports of the Community industry could not be said to have any negative impact on the situation of the Community industry.

### *3.5. Efficiency of the Community industry*

- (135) Over the period considered, the Community industry made a constant effort to rationalise its production process. Thus, production costs of the Community industry decreased constantly over the period considered and fell by 13 % between 2001 and the IP. Despite the significant reduction of production costs, the Community industry could not benefit from its increased efficiency but was forced to sell its products either below costs or at break even. The Community industry's profitability decreased therefore substantially. On this basis, it was concluded that the Community industry was a viable, efficient industry and that the injury suffered was not caused by inefficient production processes but by the dumped imports from the countries concerned.

## **4. Conclusion**

- (136) The substantial market share of the imports originating in Russia and the PRC, as well as the considerable decrease in their sales prices and the level of price undercutting found during the IP coincided with the material injury suffered by the Community industry.
- (137) The development of the Community consumption, imports from other third countries, exports of the Community industry, the performance of other Community producers and the development of costs were analysed but found not to be a determining reason for the injury suffered by the Community industry.

- (138) Based on the above analysis, which has properly distinguished and separated the effects of all known factors having an effect on the situation of the Community industry from the injurious effect of the dumped imports, it is therefore provisionally concluded that the imports from Russia and the PRC have caused material injury to the Community within the meaning of Article 3(6) of the basic Regulation.

#### F. COMMUNITY INTEREST

- (139) In accordance with Article 21 of the basic Regulation, it was examined whether, despite the conclusion on injurious dumping, compelling reasons existed for concluding that it is not in the Community interest to adopt measures in this particular case. The impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered.

##### 1. Interests of the Community industry

- (140) Fluoropolymers are a group of high performance plastics, of which PTFE is the best known and most widely used. All of the Community producers investigated are totally or partially specialised in PTFE, which has distinct characteristics in terms of its production process, quality, applications, marketing channels etc.
- (141) The imposition of measures is expected to prevent further distortions and restore fair competition on the market. The Community industry should then be able to increase its sales prices, and thereby reach reasonable profit levels necessary to improve the industry's financial situation and to allow it continued investments in its production facilities, thus guaranteeing the Community industry's survival.
- (142) On the other hand, should anti-dumping measures not be imposed, it is likely that the deterioration of the already poor situation of the Community industry would continue. It would not be able to carry out the necessary investments in order to compete effectively with the dumped imports from the third countries concerned. This would also in all likelihood force some companies to cease production and lay off their employees in the near future. With the closure of the Community production the PTFE users would become more dependent on suppliers outside the Community.
- (143) Accordingly, it is provisionally concluded that the imposition of anti-dumping measures would allow the Community industry to recover from the effects of injurious dumping suffered and that it therefore is in the interest of the Community industry.

##### 2. Interest of unrelated importers/traders and users in the Community

- (144) The Commission sent questionnaires to all known importers/traders. Only two importers/traders, representing almost 30 % of total imports from Russia and the PRC, replied to the questionnaire. The Commission also sent questionnaires to all known users in the Community (a total of nine) and received three (partial) replies to the questionnaire. The users represented only 14 % of Community consumption.
- (145) PTFE is used as a component in a wide number of industrial sectors including chemical, mechanical, electrical (inner shield of cables), automotive, construction (as isolation agent), cookware (pans), textile, biomedical (surgery instruments), semi-conductors, and aerospace. The most known trade mark under which this product is commercialised is Teflon.

- (146) The cooperating users were producers of semi-finished products which were further used in various industry sectors, such as automotive and electronics. These users claimed that they could not pass on any cost increase of PTFE (used as a raw material) to their customers because of the price sensitive market of the semi-finished products. They argued that any price increase would put them in a non-competitive position vis-à-vis producers outside the Community which would not be subject to an anti-dumping duty on PTFE.
- (147) The cooperating users did not submit any information with regard to the proportion of the imported PTFE in their total cost of production. Thus, it was not possible to calculate any potential impact of an anti-dumping duty for these users. In any case, it is noted that granular PTFE constitutes a rather low proportion of the overall cost in sectors such as the chemical industry, domestic and leisure, electrical industry or mechanical and automotive engineering, as PTFE is commonly used in the form of miniature components. PTFE is also used in very small quantities in consumer applications, i.e. an anorak would contain around 20 grams of PTFE inlays. On this basis it was provisionally concluded that the financial impact for final users shall be considered as negligible. It was also noted that, on the basis of the information submitted by these users, their profitability was substantial during the IP. On this basis, it was provisionally concluded that the impact of any anti-dumping duties would be negligible.
- (148) Finally, the downstream industry claimed that the Community industry did not have sufficient capacity to meet the Community market demand of PTFE.
- (149) It should be noted that measures are not intended to prevent imports into the Community but to ensure that they are not made at injuriously dumped prices. Furthermore, as mentioned in recital 147, the impact of the anti-dumping duty on the users' industry is expected to be negligible and therefore, will not necessarily prevent the final users to source PTFE from the same suppliers even at a higher price.
- (150) It should also be noted that Community consumption dropped from 2001 to 2002 by 12 % and then remained practically stable until the IP with a small growth of 3 % since 2002. It should also be pointed out that the Community producers still have unused production capacity. This together with exports from other third countries provides alternative sources of supply for the downstream industry. It is therefore unlikely that anti-dumping measures would lead to a shortage of supply.

### **3. Interest of raw material suppliers in the Community**

- (151) The Commission sent questionnaires to all known Community suppliers of the main raw materials (including Chlorodifluoromethane (R22) and Anhydrous Hydrofluoric Acid) to the Community industry. The cooperation was very high as five replies were received, of which three suppliers are related to each other. The majority of these suppliers worked closely with the Community industry and other producers of granular PTFE located in the Community. A large part of their turnover (75 %) was derived from sales made to granular PTFE producers. Therefore any reduction in the Community industry's purchases would have a significant effect on the situation of these companies, which together employed 176 people directly dedicated to the production of the raw material concerned.
- (152) Another supplier stated that, without the imposition of measures, there would be a risk of migration of the Community PTFE production to third countries outside the Community. This company claimed that, as a consequence, the raw material suppliers would be forced to search for clients outside the Community, in third markets where they would be in competition with the traditional indigenous raw material suppliers. Exports of raw material would, moreover, invoke additional costs which would erode the already low margins of the upstream industry. It was therefore provisionally concluded that the imposition of anti-dumping is in the interest of upstream industries.

#### 4. Conclusion on Community interest

- (153) On the basis of the above, it is provisionally concluded that no compelling reasons exist for not imposing measures and that the application of measures would be in the interest of the Community.

### G. PROVISIONAL ANTI-DUMPING MEASURES

#### 1. Injury elimination level

- (154) In view of the conclusions reached with regard to dumping, injury and Community interest, provisional measures should be imposed in order to prevent further injury being caused by the dumped imports.
- (155) For the purpose of determining the level of these duties, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Community industry.
- (156) 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 of production and to obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, on the sales of the like product in the Community. The pre-tax profit margin used for this calculation was 9,3 % of turnover which the Community industry realised before the sharp decline of the import prices from the countries concerned in 2001. This was regarded as an appropriate minimum which the Community industry could have expected to obtain in the absence of injurious dumping.
- (157) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of products sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community producers by the actual profit/loss made during the IP and by adding the abovementioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total CIF import value.
- (158) As far as Russia is concerned and due to the non-cooperation of Russian exporters as mentioned in recitals 70 to 75, the injury margin was determined on the basis of export figures as recorded in Eurostat. It is noted that as mentioned in recital 98 above, the cif export price was adjusted taking into consideration the quality difference between the PTFE produced in the Community and that imported from Russia and the PRC. Secondly, since all export sales of PTFE from Russia were made to traders, while the Community industry sold mainly to users, an adjustment was also made for differences in the level of trade. In the absence of any other more reliable information, this adjustment was provisionally estimated with 5 % which was considered as a reasonable profit margin of an unrelated importer.
- (159) With regard to China and given that none of the cooperating Chinese producers was granted MES or IT, the provisional single countrywide injury elimination level was calculated as a weighted average of the injury margins of all three cooperating Chinese exporting producers.

#### 2. Provisional measures

- (160) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping duties should be imposed in respect of imports originating in Russia and the PRC at the level of the lowest of the dumping and the injury margins, in accordance with the lesser duty rule.

(161) The proposed provisional anti-dumping duties are as follows:

Exporting country	Injury elimination margin	Dumping margin	Proposed anti-dumping duty
People's Republic of China	62,7 %	99,7 %	62,7 %
Russia	46,7 %	36,6 %	36,6 %

#### H. FINAL PROVISION

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

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A provisional anti-dumping duty is hereby imposed on so called granular polytetrafluoroethylene (PTFE), containing not more than 3 % of other monomer unit than tetrafluoroethylene, without fillers, in the form of powder or pellets, with the exclusion of micronised materials, and its raw polymer (reactor bead), the latter in wet or dry form, falling within CN code ex 3904 61 00 (Taric code 3904 61 00 50) and originating in Russia and the People's Republic of China.

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products described in paragraph 1, shall be as follows:

Country	Rate of duty
People's Republic of China	62,7 %
Russia	36,6 %

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

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

#### Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, the interested parties may make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

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

*Article 3*

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

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

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

Done at Brussels, 7 June 2005.

*For the Commission*  
Peter MANDELSON  
*Member of the Commission*

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