

**COMMISSION DECISION****of 3 November 2006****terminating the anti-dumping proceeding concerning imports of recordable compact discs (CD+/-R) originating in the People's Republic of China, Hong Kong and Malaysia**

(2006/753/EC)

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 Communities <sup>(1)</sup> ('the basic Regulation'), and in particular Article 9 thereof,

After consulting the Advisory Committee,

Whereas:

**1. PROCEDURE****1.1. Initiation**

- (1) The initiation of an anti-dumping proceeding concerning imports of recordable compact discs ('CD-R') originating in the People's Republic of China ('PRC'), Hong Kong and Malaysia was announced on 6 August 2005 in the *Official Journal of the European Union* <sup>(2)</sup> ('notice of initiation').
- (2) The initiation was made following a complaint lodged on 24 June 2005 by the Committee of European CD-Rs and DVD+/-R manufacturers — 'CECMA' (the complainant) on behalf of producers representing a major proportion, in this case more than 60 %, of the total Community production of CD-R. The complaint contained evidence of dumping of CD-Rs and of material injury resulting there from, which was considered sufficient to justify the initiation of the proceeding.

**1.2. Parties concerned by the proceeding**

- (3) The Commission officially advised the complainant, other Community producers, the exporting producers, importers, suppliers and users as well as user associations known to be concerned, and representatives of the PRC of the opening of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (4) The complainant producers, other cooperating Community producers, exporting producers, importers, suppliers, users and user associations made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (5) 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 MET and IT claim forms to the Chinese companies known to be concerned.

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

<sup>(2)</sup> OJ C 192, 6.8.2005, p. 3.

- (6) Thirteen groups of exporting producers ('exporting producers') requested MET pursuant to Article 2(7) of the basic Regulation or IT pursuant to Article 9(5) of the basic Regulation should the investigation establish that they did not meet the conditions for MET.
- (7) In view of the apparent high number of exporting producers in the PRC and Hong Kong, sampling was envisaged in the notice of initiation for the determination of dumping, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers 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 the product concerned during the investigation period (1 July 2004 to 30 June 2005).
- (8) After examination of the information submitted and given the high number of exporting producers in the PRC and Hong Kong which indicated their willingness to cooperate, it was decided that sampling was required.
- (9) The Commission sent questionnaires to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from all complainant producers, one other Community producer, eight unrelated importers, one distributor and seven retailers (one of whom is a combined wholesaler/retailer), six exporting producers in the PRC, six exporting producers in Hong Kong, four exporting producers in Malaysia, two traders related to Chinese exporting producers and one trader related to a Malaysian exporting producer located in Taiwan, one trader related to Hong Kong exporting producers, 12 importers related to Chinese or Malaysian exporting producers and located in the Community.
- (10) The Commission sought and verified all the information deemed necessary for a definitive determination of dumping, injury and Community interest and carried out verifications at the premises of the following companies:
- (a) Community producers:
- Computer Support Italcad s.r.l. (Milan, Italy)
  - Global Digital Disk GmbH & Co KG (Dresden, Germany)
  - Manufacturing Advanced Media S.A. (Mulhouse, France)
  - Sony DADC AG (Salzburg, Austria)
  - TDK Recording Media Europe SA (Luxembourg)
- (b) exporting producers in the PRC:
- Fortune (Jiangsu) Multimedia Co., Ltd, Nantong
  - Prodisc Technology. Inc. ('Prodisc China'), Ningbo
- (c) exporting producers in Hong Kong:
- Audio Distributor's/Artsome Ltd.
  - Lead Data Inc.
  - Mediastar Technology Ltd.
  - MDA Technology Ltd.

- (d) exporting producers in Malaysia:
- Daxon Technologies Sdn Bhd, Kuala Lumpur
  - Digital Data Technologies Sdn Bhd., Kuala Lumpur
  - Dragon Optical Media Technologies Sdn Bhd. Kuala Lumpur
  - Memory Tech Sdn Bhd., Kuala Lumpur
- (e) related traders:
- Daxon BenQ Inc. (Taiwan)
  - Prodisc Technology Inc. (Taipei, Taiwan)
  - Artsome Investment Ltd. (Hong Kong)
- (f) unrelated importers and distributors:
- Emtec International S.p.a. (Paris, France)
  - Ingram Micro Distribution GmbH (München, Germany)
  - Intenso GmbH (Vechta, Germany)
  - Maxell Europe Ltd (London, United Kingdom)
  - Philips Recordable Media (Wiesbaden, Germany)
  - Sony France S.A. (Paris, France)
  - Verbatim Ltd (London, United Kingdom)
- (g) related distributor:
- SK Kassetten GmbH & Co KG (Neuenrade, Germany)
- (h) wholesaler/Retailer:
- Metro Group Buying GmbH (Düsseldorf, Germany)
- (i) retailers:
- Carrefour Marchandises Internationales (Paris, France)
  - El Corte Inglés S.A.(Madrid, Spain)
  - FNAC S.A. (Paris, France)
- (j) other stakeholders:
- Philips Intellectual Property & Standards, Eindhoven, Netherlands

- (11) In light of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country took place at the premises of the following producer in Japan:

— Taiyo Yuden, Inc. (Takasaki, Japan)

### 1.3. Sampling

- (12) With regard to exporting producers in the PRC and Hong Kong, the Commission selected, in accordance with Article 17 of the basic Regulation, a sample based on the largest representative volume of exports to the Community which could reasonably be investigated within the time available.
- (13) The sample selected for the Chinese exporting producers consisted of four Chinese exporting producers, representing around 85 % of the export volume of the cooperating parties from the PRC to the Community. Additionally, two exporters were included on the reserve list.
- (14) The sample selected for the Hong Kong exporting producers also consisted of four companies, representing over 90 % of the volume of exports to the Community from the cooperating exporting producers from Hong Kong. Additionally, two companies were included on the reserve list.
- (15) The Commission received replies from the sampled exporters in China and Hong Kong as well as from the companies on the reserve list.
- (16) In accordance with Article 17(2) of the basic Regulation the Chinese and Hong Kong authorities were consulted on the samples and raised no objections.

### 1.4. Investigation period

- (17) The investigation of dumping and injury covered the period from 1 July 2004 to 30 June 2005 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2002 to the end of the investigation period ('period considered').

### 1.5. Provisional measures

- (18) It is recalled that given the need to further examine certain aspects of injury, causation and Community interest, no provisional measures were imposed in the current investigation. All parties were informed of the preliminary findings and of the facts and considerations on which the decision not to impose provisional measures was based. All parties were granted a period within which they could make comments.
- (19) Some interested parties submitted comments in writing. Those parties who requested were also granted an opportunity to be heard orally. The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

### 1.6. Measures in force on imports of CD-Rs from other countries

- (20) Definitive anti-dumping duties on imports of CD-Rs from Taiwan were imposed on 19 June 2002 <sup>(1)</sup>. They ranged from 17,7 % to 38,5 %.
- (21) Moreover, a definitive countervailing duty on imports of CD-Rs from India was imposed on 6 June 2003 <sup>(2)</sup>. It amounts to 7,3 %.

<sup>(1)</sup> OJ L 160, 18.6.2002, p. 2.

<sup>(2)</sup> OJ L 138, 5.6.2003, p. 1.

### 1.7. Product concerned and like product

#### 1.7.1. Product concerned

- (22) The product concerned is recordable compact disks (CD-Rs) originating in the PRC, Hong Kong and Malaysia, which was classifiable in 2005 within CN code ex 8523 90 00. Due to changes in the Combined Nomenclature and as no CD/Rs exists with a recording capacity exceeding 900 megabytes, from 2006 on, the product concerned falls within CN code ex 8523 90 10.
- (23) The product concerned is a polycarbonate disc, which is coated with a layer of dye, a layer of reflective material and a protective layer. Although recording on such discs can be done in several steps, the recorded information can not be erased. The disc is an optical storage medium for digital data or sound.
- (24) CD-Rs can be distinguished according to the type of data stored (data CD-Rs versus music CD-R), the storage capacity, the reflective metal layer and whether or not the CD-Rs are printed upon. The investigation has shown that all types of CD-Rs share the same basic physical and technical characteristics and are used for the same purposes. Therefore, they are considered to constitute one single product.

#### 1.7.2. Like product

- (25) No differences were found between the product concerned and the CD-Rs produced and sold on the domestic market in the PRC, Hong Kong, Malaysia and Japan, which served as an analogue country, as well as the CD-Rs produced and sold in the Community by the Community industry. They were all found to have the same basic physical and chemical characteristics and uses.
- (26) It is therefore concluded that all types of CD-Rs form one product and are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

## 2. DUMPING

- (27) The investigation established a level of dumping of more than *de minimis* for each of co-operating exporting producers from the countries concerned. However, given the conclusions as set out below, it is not necessary to detail these findings.

## 3. INJURY

### 3.1. Community Production

- (28) In the light of the definition of Community industry as set out in Article 4(1) of the basic Regulation, the output of the following Community manufacturers was considered for inclusion in the definition of the Community production at the initiation of the investigation:

- Five complainant Community manufacturers:
  - CDA Datenträger Albrechts GmbH ('CDA')
  - Computer Support Italcord s.r.l. ('CSI')
  - Global Digital Disc GmbH & Co KG ('GDD')
  - Manufacturing Advanced Media S.A. ('MAM-E')
  - TDK Recording Media Europe S.A. ('TDK')

- Two other Community producers who fully cooperated in the investigation, and who supported the proceeding:
  - BOC SA
  - Sony DADC Austria AG ('Sony DADC')
- Thirteen other manufacturers, as listed in the complaint, to whom questionnaires were sent but none of whom replied to the questionnaire.

3.1.1. *Exclusion of Community manufacturers from the definition of Community production for reasons of significant imports during or after the end of the IP*

3.1.1.1. *Company A*

- (29) In the questionnaire response by company A, it appeared that company A, in addition to its own Community manufacturing, also had imported the product concerned from the countries concerned. The proportion of the imported product sold on the Community market significantly exceeded the volumes of the like product manufactured and sold within the Community.
- (30) It was thereafter considered whether, despite the significant import volumes, the centre of interest for company A still was within the Community and/or whether the imported volumes could be of a temporary nature.
- (31) It appeared that the imports of company A were not of a temporary nature but rather based on a strategic decision to source its production from Original Design Manufacturers ('ODM') which are companies that design and manufacture products that are then sold under other brand names. It could therefore not be concluded that company A's centre of interest for the manufacturing of CD-Rs was still within the Community as it appeared likely that company A would continue to import significant volumes of its sales on the Community market from the countries concerned. It was also found that, during the IP, company A's sales on the Community market consisted to a large majority of imported CD-Rs. This casts company A more as an importer than a producer. It was also noted that company A's head office and main R&D centre for CD-Rs are located outside the Community.
- (32) Thus, it was concluded that company A should not be included in the definition of Community industry and that its production should therefore be excluded from the definition of Community production.
- (33) Furthermore, company A has meanwhile withdrawn its support for the complaint and decided to oppose the imposition of anti-dumping measures on imports from the countries concerned which confirms the above evaluation of company A's shift of interest.

3.1.1.2. *Company B*

- (34) In the questionnaire response by company B, it appeared that company B, in addition to its own Community manufacturing, had also imported the product concerned during the period considered. However, during the IP, these imports have decreased to less than 1 % of its total sales and were therefore deemed insignificant.
- (35) The Commission also received a questionnaire reply from another company ('B-Rel') that turned out to have the same mother company ('company B-corporation') as company B. Company B-Rel and company B are thus considered related within the meaning of Article 4(2) of the basic Regulation.

- (36) Being company B-corporation's distributor of CD-Rs for the retail market in the Community, company B-Rel has purchased all the CD-Rs that are destined for the retail market from company B. In addition, company B-Rel has also imported significant volumes from third countries including the countries concerned.
- (37) When comparing company B-Rel sales of CD-Rs originating in the countries concerned with those manufactured by company B (which subsequently were either sold directly by company B to business customers or sold via company B-Rel to retailers), it appeared that for company B-corporation the proportion of the imported product sold on the Community market significantly exceeded the volumes of the like product manufactured and sold within the Community.
- (38) It was thereafter considered whether, despite the significant import volumes, the centre of interest for company B-corporation was still within the Community and/or whether the imported volumes could be of a temporary nature.
- (39) The findings of the investigation indicate that the imports could not be considered as being done only on a temporary basis (as the volume of own manufactured CD-R would not increase considerably in the foreseeable future even taking into account possible extension of the production capacity of company B). Thus, it appeared likely that company B-corporation would also continue to source major parts of its sales on the Community market from the countries concerned. It was also noted that company B-corporation's head office and main R&D centre for CD-Rs are located outside the Community. It could therefore not be concluded that company B-corporation's centre of interest for the manufacturing of CD-Rs is within the Community.
- (40) Thus, it was concluded that company B should not be included in the definition of Community industry and that its production should therefore be excluded from the definition of Community production.

#### 3.1.1.3. Company C

- (41) The Commission received a questionnaire from the Community producer company C as well as from company C-Rel, a distributor of CD-Rs located in Germany. It appeared that company C and company C-Rel are related within the meaning of Article 4(2) of the basic Regulation, as they have the same owner.
- (42) During the investigation period, company C-Rel was distributing CD-Rs manufactured by company C. However, after the end of the investigation period, i.e. as from July 2005 onwards, on the basis of supplementary information requested from all Community producers for the period July 2005 to February 2006, company C-Rel has been found to have started to import significant (at a level equivalent to the production of company C in the IP) quantities of CD-Rs from third countries including significant volumes from the countries concerned.
- (43) In order to verify whether these imports were of a temporary nature, the Commission sent an additional request for supplementary information, this time for the period March 2006 to May 2006. On this basis, as significant volumes of imports continued, it had to be concluded that these imports were not of a temporary nature, but rather a strategic decision to source significant parts of its future sales from imports.
- (44) In accordance with the principles presented above and applied vis-à-vis companies A and B and given that company C-Rel/company C will be shielded from the effects of any dumped imports in the future, it was concluded that company C should not be included in the definition of the Community production.

3.1.2. *Exclusion of Community manufacturers from the definition of Community production for reasons of cessation of production during or after the end of the IP*

3.1.2.1. *Company D*

- (45) After the end of the IP, the complainant Community producer company D filed for liquidation. Several parties argued that, pursuant to Community practice, company D should be excluded from the definition of Community production.
- (46) In January 2006, the liquidator announced its intention to sell all the assets of company D, including all of its production lines. The complainant subsequently informed the Commission that a subsidiary of company D, the complainant Community producer company E, would acquire the production lines of its parent company and would re-install them and utilize them for continuous CD-Rs production at the premises of company E. For this purpose, company E would be re-capitalized and be sold to an external party.
- (47) Thus, at the time of the Interim Report, it could not be concluded that company D should be excluded from the definition of Community production as the production lines allegedly were to be reinstalled and re-utilized at the premises of its Community subsidiary, company E.
- (48) However, on the basis of supplementary information requested from Community producers for the period July 2005 to May 2006 (i.e. after the IP), this supplementary information showed that production lines indeed had *not* been reinstalled as production and capacity were in line with those *before* the acquisition of production lines. Furthermore, no valid business plan had been presented to the Commission's services that demonstrated that company D's production lines were being installed at the premises of company E.
- (49) It is Community practice that manufacturers that definitively cease their production during or after the end of the IP should not be included in the definition of Community industry within the meaning of Article 4 of the basic Regulation. Consequently, company D's production should be excluded from the definition of the Community production as company D's production lines closed definitively after the end of IP and it has not been demonstrated that these production lines are again being utilized.

3.1.2.2. *CDA & BOC SA*

- (50) Subsequent to the publication of the notice of initiation, two further companies, CDA and BOC SA, informed the Commission that they had ceased their production within the Community for the foreseeable future.
- (51) Consequently, CDA and BOC SA were excluded from the definition of the Community industry and their production was excluded from the definition of Community production.

3.1.3. *Other Community producers*

- (52) The complainant had provided a list of 13 other producers in the Community. With the exception of BOC SA, none of these producers have co-operated during the investigation. Nevertheless, they should be accounted for when defining Community production.
- (53) On the basis of information in the complaint, the production of these companies has been estimated to be around 264 Mio Units (for calendar year 2004).
- (54) Recent information by the complainant suggests that at least four of those other Community producers ceased their production during or after the end of the IP.

- (55) As stated above, manufacturers that definitively cease their production during or after the end of the IP should not be included in the definition of the Community industry. Consequently, also the production of these four companies should be excluded from the definition of Community production.
- (56) To conclude, Community production of CD-Rs within the meaning of Article 4(1) of the basic Regulation has been defined as:
- CD-Rs produced by the original 20 companies listed in recital (28), minus
    - the CD-Rs produced by the three companies which, as described in recitals (29) to (44), have been excluded for reasons of imports, and
    - the output of the three cooperating companies which, as described in recitals (45) to (51) have been excluded as their production within the Community ceased,
    - the output of the four non-cooperating companies which, as described in recitals (52) to (55) have been excluded as their production within the Community ceased.
- (57) The total production of those remaining 10 producers, which constitute Community production within the meaning of Article 4(1) of the basic Regulation, has been estimated to be 168 Mio units during the IP.

### 3.2. Definition of Community Industry

- (58) It follows from recital (57) above that Community production within the meaning of Article 4(1) of the basic Regulation was constituted by the 10 producers whose collective output was estimated to 168 Mio Units.
- (59) Moreover, it follows from recital (28) and the recitals thereafter that the sole Community producer which has cooperated with the Commission in the investigation was Manufacturing Advanced Media ('MAM-E').
- (60) The collective output of this company amounted to more than 50 % of the Community production. This company can therefore be considered to constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

### 3.3. Community consumption

#### 3.3.1. Preliminary remarks

##### 3.3.1.1. Import data

- (61) Statistics on imports of CD-Rs are included in Eurostat under CN Code 8523 90 00. However, included in the same CN Code are also other recordable media products such as DVD-R, CD-Rom etc. Moreover, imports under CN Code 8523 90 00 are recorded in kilos, whereas CD-Rs are recorded by all interested parties as being produced and sold in units. Thus, information statistics from Eurostat, without a further breakdown of the figures obtained, are not a reliable source of data.
- (62) Consequently, statistics were further broken down using a method suggested by the complainant and further corroborated by figures obtained during the investigation, i.e. exporters' data and other sources in order to ensure that the figures are as complete and accurate as possible.

##### 3.3.1.2. Data on Community production

- (63) Community industry data were obtained from the verified questionnaires of the sole cooperating Community producer that constitutes the Community industry. Further information on Community production was derived from the questionnaire responses from the companies which have been excluded from the definition of Community production, and also from data contained in the complaint.

### 3.3.2. Consumption

- (64) Thus, the consumption in the Community was established on the basis of:
- the total imports of the product concerned into the Community as reported by Eurostat and converted into units,
  - the total verified sales on the Community market by the Community industry,
  - the total sales on the Community market by other cooperating manufacturers in the Community,
  - the total estimated sales on the Community market by the other manufacturers in the Community in operation.
- (65) On this basis, Community consumption developed as follows:

Consumption	2002	2003	2004	IP
Mio Units	3 580	3 738	3 527	3 488
Index: (2002 = 100)	100	104	99	97

- (66) Over the period considered consumption in the Community decreased by 3 %. Consumption peaked in 2003. Since then, Community consumption has decreased by 7 percentage points.

## 3.4. Imports from the countries concerned

### 3.4.1. Cumulative assessment of the effects of the dumped imports from the countries concerned

- (67) The Commission considered whether the effects of the dumped imports from the countries concerned should be assessed cumulatively, on the basis of the criteria set out in Article 3(4) of the basic Regulation. This Article provides that the effects of imports from two or more countries simultaneously subject to anti-dumping investigations shall be assessed cumulatively if it is determined that:
- the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3) of the basic Regulation,
  - the volume of imports from each of the countries concerned is not negligible,
  - a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between imported products and the conditions of competition between the imported product and the like Community product.
- (68) It was first found that the dumping margins established for each of the countries concerned was more than *de minimis*. Second, the investigation showed that the conditions of competition between the product concerned and the Community like product sold were similar as demonstrated by the fact that the CD-Rs imported from the countries concerned were alike in all respects, they are interchangeable and are marketed in the Community through comparable sales channels and under similar commercial conditions, thus competing with each other and with the CD-Rs produced in the Community. The volume of imports from each country concerned was also found to be above the threshold of 1 % market share set by Article 5(7) of the basic Regulation. The import prices of the product concerned from all of the countries concerned had followed a similar decreasing trend throughout the period considered. Moreover, the users (distributors and retailers) were the same. Consequently, it was concluded that a cumulative assessment of the effects of the imports was appropriate and in accordance with Article 3(4) of the basic Regulation.

### 3.4.2. Import volumes and market shares from the countries concerned

- (69) On the basis of Eurostat statistics, the import volumes have developed as follows during the period considered:

Mio Units	2002	2003	2004	IP
Hong Kong	146	250	262	274
Index: (2002 = 100)	100	171	179	188
Market share	4 %	7 %	7 %	8 %
PRC	480	930	1 077	1 128
Index: (2002 = 100)	100	194	224	235
Market share	13 %	25 %	30 %	32 %
Malaysia	148	324	312	277
Index: (2002 = 100)	100	219	210	188
Market share	4 %	8 %	9 %	8 %
Countries concerned	774	1 504	1 651	1 679
Index: (2002 = 100)	100	194	213	217
Market share	21 %	40 %	46 %	48 %

- (70) The imports from the countries concerned as well as their market shares have steadily increased during the period considered. From a market share of 21 % during the first year in the period considered, the market share has more than doubled to 48 % during the IP.

### 3.4.3. Average prices and level of undercutting of imports from the countries concerned

- (71) The average price level and level of undercutting of the Community industry's sales prices for the IP has thus been calculated on the basis of information gathered from co-operating exporters.

	Average level of undercutting
Hong Kong	69,7 %
PRC	43,9 %
Malaysia	0 %

- (72) It follows from above that imports from Hong Kong and the PRC were found to undercut the Community industry's sales prices by 69,7 % and 43,9 %, whereas for Malaysia no undercutting was found.

## 3.5. Situation of the Community Industry

- (73) The investigation established the existence of material injury for the sole Community producer constituting the definition of the Community industry. However, given the conclusions as set out below, it is not necessary to detail these findings.

#### 4. CAUSATION

##### 4.1. Preliminary remarks

- (74) In accordance with Article 3(6) of the basic Regulation, it was examined whether the material injury suffered by the Community industry had been caused by the dumped imports from the countries concerned. In accordance with Article 3(7) of the basic Regulation, the Commission also examined other factors which might have injured the Community industry in order to ensure that any injury caused by those factors was not attributed to the dumped imports.

##### 4.2. Effects of the dumped imports from the countries concerned

- (75) It follows from recital (69) that the volume of imports from the PRC, Malaysia and Hong Kong has increased by 117 % during the period considered, representing an increase in market share from 21 % in 2002 to 48 % during the IP.
- (76) In recital (72), it was established that that the imports originating in the PRC and Hong Kong, have undercut the Community industry's prices by 43,9 % and 69,7 % respectively, whereas for Malaysia no undercutting was found.
- (77) It was further concluded in recital (73) that the Community industry has suffered material injury and it appears that the injurious situation coincides in time with the increase in volumes of dumped imports from the countries concerned.
- (78) Given this coincidence in time between the increased imports at dumped prices and the deterioration of the situation of the Community industry, it can be concluded that the dumped imports have had a direct effect on this situation.

##### 4.3. Effect of other factors

###### 4.3.1. Imports from other third countries

- (79) It has been alleged that some of the injury suffered by the Community industry has been caused by imports from other third countries. Based on this allegation, the overall volume of imports from other third countries below has been obtained from Eurostat using the breakdown method referred to in recital (62) above:

Mio Units	2002	2003	2004	IP
Third country: India	712	1 143	1 207	1 124
Index: (2002 = 100)	100	160	169	158
Market share	20 %	31 %	34 %	32 %
Third country: Taiwan	1 206	163	89	53
Index: (2002 = 100)	100	13	7	4
Market share	33 %	4 %	2 %	1 %
Other third countries	514	423	39	129
Index: (2002 = 100)	100	82	7	25
Market share	14 %	11 %	1 %	4 %
Total third countries	2 432	1 729	1 335	1 306
Index: (2002 = 100)	100	71	55	54
Market share	67 %	46 %	37 %	37 %

(80) It follows from the above that the overall volumes of imports from other third countries have decreased from 67 % of Community consumption to 37 % of Community consumption, or by 30 percentage points. However, among the different exporting third countries, divergent developments were found. These warranted a closer individual analysis of the largest amongst these, namely Taiwan and India.

(81) In this respect, the import statistics for Taiwan and India also have been cross-checked with information obtained from co-operating importers.

#### 4.3.1.1. Taiwan

(82) Following the introduction of anti-dumping measures, imports from Taiwan have almost disappeared from the Community market. Information in the complaint suggests that, following the introduction of these measures in December 2001, the Taiwanese exporting producers relocated some of their production lines to other countries, including the PRC.

(83) This can be an explanation of the drop in import volumes from Taiwan and the corresponding increase of import volumes from the PRC.

#### 4.3.1.2. India

(84) It is recalled that an anti-dumping investigation on imports of CD-Rs from India was terminated in May 2003 due to the absence of dumping. It is also recalled that following an anti-subsidy investigation, a countervailing duty of 7,3 % was imposed on imports of CD-Rs originating in India.

(85) Nevertheless, imports from India increased considerably between 2002 and 2004, increasing their market share from 20 % to 34 %. During the IP, the market share decreased slightly. Still, imports originating from India play a major role in the Community market of CD-Rs.

(86) Moreover, based on information from cooperating importers, the average import price from India is around 12,7 EUR-cents/unit (DDP). Comparing this price of Indian imports with the price at which the same co-operating importers purchased the product concerned from the PRC, this comparison shows that imports from India were at the same price level as imports from the PRC. Consequently, imports from India have undercut the Community industry with a percentage level equivalent to that of imports from the PRC (43,9 %). Thus, it cannot be excluded that imports from India have contributed to the difficult financial situation of the Community industry.

#### 4.3.2. Decrease in overall consumption

(87) It follows from recital (66) that consumption of CD-Rs has decreased by 7 % since 2003. It has been examined whether this decrease may have been a reason for the injury suffered by the Community industry. To this end, a comparison between the development of sales on the EC market by the Community industry and the overall development of Community consumption was made.

(88) It was found that the negative development of EC sales by the Community industry ties in with the overall decrease in consumption. It can therefore be concluded that the overall decrease of consumption has contributed to the injury suffered by the Community Industry.

#### 4.3.3. Special levies

(89) In many Member States, the sales of CD-Rs (as well as other recordable media) are taxed by way of a special levy included in the price when purchased at the retail level. It has been claimed that this special levy has contributed to the injury suffered by the Community industry. This special levy is however collected on an equal basis on sales of imported CD-Rs as well as CD-Rs manufactured in the Community, thus being neutral between imported products and Community-manufactured products.

- (90) However, the level of this special levy differs significantly between Member States, varying from no levy at all in countries such as the United Kingdom and Luxembourg to EUR 0,52/unit in France and EUR 0,29/unit in Italy. This should be set against the average import price (at DDP) of EUR 0,12/unit when imported from India as well as from the PRC during the period considered. Given the free movement of goods between Member States, this has allegedly led to a significant trade diversion to the detriment of the retailers located Member States with a high levy. Indeed, sales of CD-Rs, according to sales statistics from Community manufacturers, confirm the fact that sales to retailers/e-shops located in low-levy Member States are significant and appear to include significant border-trade.
- (91) Given that the Community industry is located in Member States with the highest levy, it has been alleged by some interested parties that the injury suffered by the Community industry has been caused by the negative effect on consumption that this levy has brought, assuming that the Community industry has not been able to compensate for this loss by gains in sales in other Member States.
- (92) It is noted that one of the complaining Community producers which was subsequently excluded from the definition thereof, in March 2005, has questioned the legality of these levies itself and indeed claimed that the levy has caused the sales price to 'collapse'. Thus, this confirms that the levies had an effect on the Community producers' sales.
- (93) It follows from recital (65) that the consumption of CD-Rs in the Community has decreased by 3 % during the period considered. Meanwhile, it is recalled that in recital (88), it was stated that the negative sales development of the Community industry coincides with the overall negative development of Community consumption. Thus, whereas it cannot be stated that the special levy has had a specific and measurable impact on the overall Community sales (i.e. in addition to its effect on the overall development of Community consumption), it cannot be excluded that the special levy has had a negative impact on consumption, particularly in those Member States where this levy makes up a significant part of the retail price.

#### 4.3.4. *Royalties*

- (94) It has been alleged that the injury suffered by the Community industry is due to the royalties payable to the licence holder, Royal Philips Electronics Corporation, per unit produced, since this leads to a cost increase with which the imported products are allegedly not burdened and which could not be passed on to the customers.
- (95) The technique to produce CD-Rs is patented. The patent-holders are Sony Corporation, Taiyo Yuden and Royal Philips Electronics Corporations. The latter is authorized by the former two companies to grant licenses ('CD-R Disc Patent License Agreement (Joint)') and to collect royalties due from any licensing agreement. The cost of royalties would typically be around 5 EUR-cents per unit produced (USD 0,06).
- (96) It should be noted that the cost of royalty payable indeed appears significant as compared to an average sales price during the investigation period, i.e. 30 %.
- (97) However, the investigation revealed, that although the Community industry had signed a licensing agreement with Philips, it had apparently refused to pay royalties to Philips at the level set in the licensing agreement. To this end, the Community industry was member of the Federation of Interested Parties in fair Competition in the Optical Media sector ('FIPCOM') which has in February 2006 reached an agreement with Royal Philips Electronics Corporations to pay a new lower rate of royalties. Still, it is noted that the Community industry has not yet paid (as of May 2006) the royalties due.

- (98) To conclude, it appeared that, should the Community industry had paid the royalties payable in accordance with the licensing agreement signed by it, this may well have contributed to the negative financial performance, assuming that it would not have been able to pass on these costs to its customers. However, since the Community industry was found not to pay, consequently royalties could not have played a part in the injury suffered by the Community industry.

#### 4.4. Conclusion on Causation

- (99) It was established above that there is a link between dumped imports and the injury suffered by the Community industry. It has also been concluded above that the injury suffered by the Community industry may, to a significant extent, be attributed to imports from other third countries (especially imports from India) and to the overall decrease of EC consumption.
- (100) These reasons appear not to be able to break the causal link between dumped imports and the injury suffered by the Community industry, but have significantly contributed to the injury suffered by the Community industry, thus severely weakening the causal link established above between the dumped imports and the injurious situation of the Community industry.

#### 5. COMMUNITY INTEREST

- (101) It has further been examined whether compelling reasons exist that could lead to the conclusion that it would not be in the Community interest to impose anti-dumping measures on the imports from the countries concerned. For this purpose and in accordance with Article 21(1) of the basic Regulation, the determination of Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers/traders, the distributors, the retailers and the end-users (associations as well as end-consumers).
- (102) The Commission contacted a significant number of interested parties to obtain their views. In addition to the Community industry, representatives of all the major sales brands on the market such as Verbatim, Maxell, Philips, TDK and Sony as well as some representative retailers such as Carrefour, Tesco, Metro-Group, including Media-Saturn, Fnac and El Corte Inglés have been heard. All importers, distributors, whole-sellers or retailers have expressed opposition to any imposition of measures.
- (103) Following the imposition of anti-dumping measures on imports of CD-Rs originating in Taiwan (and of the imposition of countervailing measures on imports of CD-Rs originating in India), the Community industry, as constituted in this proceeding, had a market share of 2 %. Given this remote market share, it is considered that even if measures were imposed, the Community industry would in all likelihood not be in a position to raise its prices to a sufficient level.
- (104) The complainant has argued that the negative prospects for the Community industry in the preceding recital would be inconsistent with the reasoning in the Council Regulation (EC) No 1050/2002 imposing definitive anti-dumping measures on imports of CD-Rs originating in Taiwan.
- (105) In comparison to the situation in 2000 (which was the investigation period for the anti-dumping investigation leading to the adoption of Council Regulation (EC) No 1050/2002), two important differences have emerged:
- whereas the market share of the Community industry in the previous investigation was 12,6 % (consisting of 9 companies), the market share of the Community industry in the present investigation was limited to 2 % (consisting of one sole company). In view of the fact that the market share of the Community industry is only one sixth of the market share it held in 2000, consisting only of one sole company (following the exclusion of a number of Community manufacturers which have been found to have imported themselves), the more negative assessment of the prospects for the Community industry in this investigation is fully reasonable,

- by the IP, the product concerned is considered to have reached a mature stage in its life cycle and is treated as a commodity at the retail level. This has been confirmed by the distributors and retailers that co-operated in the investigation. As seen in recital (65) above, consumption of CD-Rs have decreased by 7 percentage points since 2003 as alternative storage facilities (hard discs, USB-sticks, Mp3-players, etc.) have become more accessible and more attractive for end-consumers. The technological development in the market of media storage devices has been found to be fast and new media storage products have the advantage (in comparison to CD-Rs) of bigger storage capacity which, in the case of flash memory sticks, is combined with small sizes.
- (106) In view of the changed circumstances laid down in the preceding recital, it is considered fully consistent with the basic Regulation that the prospects for the Community industry in this investigation are assessed differently in comparison to the reasoning set out in Council Regulation (EC) No 1050/2002.
- (107) The complainant has further argued that some of the non-cooperating producers that have ceased their production during or after the end of the IP could resume their production should measures be introduced. However, in the absence of information directly from these non-cooperating producers that would confirm these alleged intentions, or other evidence substantiating the allegation, this argument has to be rejected. It is also noted that even if these companies were to resume production, their production would in all likelihood not be very substantial as compared to the volumes imported from the countries concerned.
- (108) A number of parties have further argued that, should measures be introduced, the resulting cost increase would have to be borne by one or several levels in the distribution chain (thereby significantly decreasing their respective margins), or passed on to the consumers (thereby perhaps affecting the overall consumption of CD-Rs negatively), or shared between both.
- (109) The likely reaction of importers, distributors or retailers to the cost increase following the imposition of measures would depend on the situation in each Member State. In some Member States, the demand for CD-Rs is indeed already under pressure from the mentioned 'special levies' on recordable media (a tax which increases the retail price significantly for the consumer). In this case, the consumers of CD-Rs would possibly not be ready to pay more as a result of anti-dumping duties as the retail price is already perceived as high. The full cost of measures would in all likelihood therefore have to be borne by the distribution chain in order to avoid that consumers turn even more increasingly to other means of media storages such as hard discs and flash memory sticks. As the mark-up of the importers/wholesalers in these countries can be estimated at around 4 %, the imposition of anti-dumping duties would significantly decrease the already small margin.
- (110) Conversely, in Member States with the lowest (or absence of) special levies, it is more likely that a substantial part of the cost increase will be passed on to consumers. Therefore, the relative effect of anti-dumping measures would be the greatest there, since the price increase would be relatively higher. As a result, consumption might further decrease, as consumers would have an incentive to turn to substitution products.
- (111) It follows from the above that the price strategy of the importers, distributors and retailers will vary depending on the situation in each Member State. Nonetheless, it is apparent that all of them will suffer from the introduction of anti-dumping measures, either by way of decreased margins or by way of decreased sales volumes. Similarly, to the extent that the cost increase of anti-dumping measures is passed on the consumers, the latter will also be negatively affected.

- (112) It has also been argued that the situation of the Community industry is the result of abusive price behaviour by certain dominant exporting producers, consisting in pursuing a strategy of below-cost prices which has prevented the Community industry from building up any significant market presence.
- (113) Firstly, it has to be noted that a corresponding decision or investigation concerning an abuse of dominance under the EC competition rules does not exist, nor has the complainant pointed to any respective decision under national competition rules. Secondly, the investigation has revealed a large number of operators in Europe and the world on the relevant product market. Within the context of this investigation, it has not been demonstrated that any of the operators, solely or jointly, holds a market share significant enough that this could likely be considered to constitute a dominant position. In addition, neither has it been demonstrated that any of the companies enjoys such economic strength as to impede effective competition.
- (114) Thirdly, there is no indication of any significant loss-making with the exporters concerned which would suggest that the exporters did pursue a strategy of selling below-cost prices. The argument was therefore rejected.
- (115) Moreover, while Article 21 of the basic Regulation indeed refers to the need to give special consideration to the need to remedy the trade distorting effects of injurious dumping and to restore effective competition, this particular provision has to be seen in the overall framework of the Community interest test as laid down in the aforementioned Article. Thus the effects of imposing measures or not imposing measures on all parties concerned have to be examined and balanced. In this respect, it is recalled that there are a number of other exporters and producers in competition on the world market and to a certain extent also on the Community market. Even in a medium term perspective the Community industry would be unlikely to take full benefit of possible measures given that it is to be expected that other third countries would considerably increase their part on the Community market.

#### 5.1. Conclusion on Community interest

- (116) On the basis of the above, it can be concluded that the imposition of measures would, on the one hand, have substantial negative effects on importers, distributors, retailers and consumers of the product concerned, while on the other hand, the Community industry is unlikely to obtain any significant benefits. It is therefore considered that the imposition of measures would be disproportionate and against the Community interest.

#### 6. TERMINATION OF THE PROCEEDING

- (117) In view of the conclusions on Community interest, the proceeding with regard to imports of CD-Rs from the countries concerned should be terminated.
- (118) The complainant and all other interested parties were informed of the essential facts and considerations on the basis of which the Commission intends to terminate this proceeding. Subsequently, the complainant made known its views which, however, were not of a nature to change the above conclusion,

HAS DECIDED AS FOLLOWS:

*Article 1*

The anti-dumping proceeding concerning imports of recordable compact discs ('CD-R') originating in the People's Republic of China, Hong Kong and Malaysia, falling within CN code ex 8523 90 10 (CN code since 1 January 2006) is hereby terminated.

*Article 2*

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

Done at Brussels, 3 November 2006.

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

---