

COMMISSION DECISION**of 3 April 2007****terminating the anti-dumping proceeding concerning imports of pentaerythritol originating in the People's Republic of China, Russia, Turkey, Ukraine and the United States of America**

(2007/214/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 on protection against dumped imports from countries not members of the European Communities ⁽¹⁾ (the basic Regulation), and in particular Article 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE**1. Initiation**

(1) On 2 December 2005, the Commission received a complaint lodged pursuant to Article 5 of the basic Regulation by CEFIC (European Chemical Industry Council) (the complainant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of pentaerythritol.

(2) This complaint contained evidence of dumping of pentaerythritol from the People's Republic of China (PRC), Ukraine, Russia, Turkey and the United States of America (USA) and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.

(3) On 17 January 2006, the proceeding was initiated by the publication of a notice of initiation ⁽²⁾ in the *Official Journal of the European Union*.

⁽¹⁾ 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).

⁽²⁾ OJ C 11, 17.1.2006, p. 4.

2. Parties concerned by the proceeding

(4) The Commission officially advised the complainant, the Community producers, the exporting producers, importers, users, suppliers and associations known to be concerned and the representatives of the exporting countries concerned of the initiation 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.

(5) The complainant producers, other Community producers, exporting producers, importers, users and suppliers 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.

(6) In order to allow exporting producers in the PRC and Ukraine 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 and Ukrainian authorities and to the exporting producers in those two countries known to be concerned. One company in the PRC requested MET pursuant to Article 2(7) of the basic Regulation or IT should the investigation establish that they do not meet the conditions for MET. The sole Ukrainian producer requested only IT.

(7) In the notice of initiation, the Commission indicated that sampling may be applied in this investigation for exporters/producers in the PRC. However, since only one company cooperated and indicated its willingness to be included in the sample, sampling was not required.

(8) Questionnaires were sent 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 three Community producers, one of them having two production plants, three unrelated importers, five users, one supplier, one exporting producers in the PRC, one exporting producer in Turkey, one exporting producer in Ukraine and one producer which accepted to cooperate in a possible analogue country, Chile.

- (9) The Commission sought and verified all the information deemed necessary for a determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:

(a) *Community producers*

- Perstorp Specialty Chemicals AB, Perstorp, Sweden,
- Perstorp Chemicals GmbH, Arnsberg, Germany,
- Chemza AS Strazske, Strazske, Slovakia,
- S.A. Polialco, Barcelona, Spain;

(b) *Exporting producers in the PRC*

- Hubei Yihua Chemical Industry Co., Ltd., Yichang;

(c) *Exporting producers in Ukraine*

- Rubezhnoye State Chemical Plant (Zarja), Rubezhnoye;

(d) *Exporting producers in Turkey*

- MKS Marmara Entegre Kimya Sanayi A.Ş., Beşiktaş.

- (10) In view of the need to establish a normal value for exporting producers in the PRC and Ukraine to which MET might not be granted, a verification to establish normal value on the basis of data from a possible analogue country, Chile in this case, took place at the premises of the following company:

- Oxiquim, Viña del Mar;

(e) *Industrial user in the Community*

- Nuplex Resins BV, Bergen op Zoom, The Netherlands.

3. Investigation period

- (11) The investigation of dumping and injury covered the period from 1 January 2005 to 31 December 2005 (investigation period or IP). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2002 to the end of the investigation period (period considered).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (12) The product concerned is pentaerythritol (penta), classified under CN code 2905 42 00. It is an odourless, white, crystalline, solid compound, produced from formaldehyde and acetaldehyde, and the most widely used polyol for production of alkyd resins around the world. Main raw materials used are methanol, which is used for the production of formaldehyde, acetaldehyde and sodium hydroxide.
- (13) Alkyd resins, used mainly in coatings account for approximately 60 to 70 % of the end use of the product concerned. Other applications include synthetic lubricants for refrigeration compressors, rosin esters used in adhesives as tackifiers and pentaerythritol tetranitrate (PETN).
- (14) There are three main grades produced worldwide, the most commonly produced being penta mono grade. The other two grades are technical and nitration grade. The grade depends on the degree of purity, which is defined by the content of mono- and di-pentaerythritol. For example penta mono grade has a monopentaerythritol content of 98 % compared to 87 % in the technical grade. The investigation has shown that the production process is largely the same for the most common grades of penta and thus also the cost of production was found to be identical for all different grades. Moreover, it was found that all grades share the same basic chemical and physical characteristics and are basically used for the same purposes.
- (15) Penta mono and penta technical grades are in a few cases also supplied in a micronized form, which means that the product is submitted to milling after the production process. Chemically speaking micronized penta is exactly the same product but due to the milling, it has a slightly higher cost and sales price.
- (16) The Turkish exporting producer argued against the use of only one type of penta, which combines the three different grades: mono, technical and nitration grade. It claimed that in particular the micronized penta should be considered as a different type. The latter claim could be accepted and micronized penta, which represents a very small part of the Community industry's production and which was not found to be exported to the Community from any of the countries concerned, was disregarded from the product scope in the framework of this investigation. However, it was considered that there was no reason to separate the three different grades produced into different types, since their cost and price levels are identical. It should also be stressed that penta is to a large extent a commodity, perceived by the end-customer as one and the same product. Therefore this claim was rejected and one single type was maintained.

- (17) Based on the physical, chemical and technical characteristics, the production process and the substitutability of the different types of the product from the perspective of the user, all grades of penta is considered to constitute a single product for the purpose of the proceeding.

2. Like product

- (18) The product concerned and the penta produced and sold on the domestic market of the countries concerned, and on the domestic market of Japan, which was initially considered to serve as analogue country, as well as the penta produced and sold in the Community by the Community industry were found to have the same basic chemical and physical characteristics and uses.

- (19) It was therefore provisionally concluded that these products are alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. General methodology

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

2. Normal value

- (21) In accordance with Article 2(2) of the basic Regulation, it was first examined for each cooperating exporting producer whether its domestic sales of penta 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.

- (22) The Commission subsequently examined whether the domestic sales of penta, 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 this product. In cases where the sales volume of penta, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume, and where the weighted average price 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 made during the IP, irrespective of whether these sales were profitable or not.

In cases where the volume of profitable sales of penta represented 80 % or less of the total sales volume of that product, or where the weighted average price was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only, provided that these sales represented 10 % or more of the total sales volume of penta.

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

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

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

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

- (27) In all cases where these conditions were not met, the Commission examined whether data of other exporters or producers in the domestic market of the country of origin could be used in accordance with Article 2(6)(a) of the basic Regulation. Where reliable data were only available for one exporting producer, no average as set out in Article 2(6)(a) of the basic Regulation could be established and it was examined whether the conditions of Article 2(6)(b) were fulfilled, i.e. the use of data with regard to the production and sales of the same general category of products for the exporter or producer in question. Where these data were not available or were not provided by the producer, SG&A and profits were established in accordance with Article 2(6)(c) of the basic Regulation, i.e. on the basis of any other reasonable method.

3. Export price

- (28) In all cases when sales of the product concerned were exported to independent customers in the Community the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

(a) Comparison

- (29) 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.

(b) Dumping margin

- (30) According to Article 2(11) and (12) 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.

4. Turkey

- (31) A questionnaire reply was received from the sole known exporting producer.

(a) Normal value

- (32) The producer had overall representative sales of the like product on the domestic market and all sales could be regarded as having been made in the ordinary course of trade.
- (33) Moreover, it was found that the domestic prices varied significantly according to the month of sale.
- (34) Given the above, and in order to properly reflect the normal value of the product concerned during the IP, it was considered appropriate in this particular case to determine a monthly normal value for the product concerned.
- (35) For each month, domestic prices were considered as an appropriate basis for the establishment of the normal value. Therefore, normal value was based on the actual prices paid or payable, by independent customers in the Turkish domestic market during each month of the IP.

(b) Export price

- (36) In all cases the product concerned was sold to independent customers in the Community. Consequently 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.

- (37) In order to ensure a proper comparison given the variations of normal value during the IP, it was considered appropriate to establish a weighted average export price per month during the IP.

(c) Comparison

- (38) Adjustments were made in respect of differences in transportation, insurance, loading and credit costs, as well as for discounts, commissions and rebates.
- (39) It was found that the reported insurance costs, rebates granted and packing charges slightly deviated from the data as contained in the bookkeeping of the exporting producer. The amounts of the adjustments were therefore corrected accordingly.

- (40) The investigation further revealed that the exporting producer paid a significant amount for consultancy services. The company claimed that such fees do not justify for an adjustment and should therefore neither be deducted from the export price nor from the domestic sales price. However, it was found that this expense had an impact on costs and prices of the product concerned and therefore affected price comparability. Therefore the respective amount was allocated on basis of quantity to the sales in question (domestic sales, EC sales and sales to third countries) and deducted from the sales prices as an adjustment within the meaning of Article 2(10)(i) of the basic Regulation.

- (41) Regarding credit costs it was found that the reported interest rate for the IP did not reflect the actual short term financing cost incurred by the company. Therefore, credit costs were adjusted accordingly.

(d) Dumping margin

- (42) Given the existence of a clear pattern of export prices differing by time period, it was considered that such element should be taken into account in the calculation of the dumping margin. Therefore, the comparison was made on a monthly basis between the weighted average export price and the weighted average normal value for the product concerned.

- (43) On the basis of the above, the dumping margin found for the cooperating exporting producer, expressed as a percentage of the cif net free-at-Community-frontier price, was below the *de minimis* threshold set out in Article 9(3) of the basic Regulation.
- (44) It is noted that the dumping margin would also be *de minimis*, if the comparison had been carried out between a weighted average normal value and individual export transactions. However, such a comparison was not found to be appropriate. While there was indeed a pattern of export prices which differed significantly per month (a difference up to 20 % of the export price could be observed between different months of the IP — with significant lower levels from May to October 2005), monthly normal values followed the same trend. This development was due to the fact that the main raw materials, accounting for a significant proportion of the cost of production of the product concerned, followed the same evolution. Thus, the method described in recital 42 reflects the full amount of dumping taking place.
- (45) Since the cooperating exporting producer appeared to account for all Turkish exports of the product concerned to the Community, there was no reason to believe that any exporting producer abstained from cooperating.
- (46) Consequently, the proceeding should be terminated with regard to Turkey, as determined by Article 9(3) of the basic Regulation.
- (ii) firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes;
- (iii) there are no significant distortions carried over from the former non-market economy system;
- (iv) bankruptcy and property laws guarantee legal certainty and stability;
- (v) exchange rate conversions are carried out at market rates.
- (49) One exporting producer 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 within the given deadline. The Commission sought and verified at the premises of this company all necessary information submitted in its MET application as deemed necessary.
- (50) The investigation revealed that the MET claim had to be rejected for this company as the company did not meet the requirements of the above-mentioned criteria one, two and three.

5. People's Republic of China (PRC) and Ukraine

(a) Market economy treatment (MET)

- (47) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC and Ukraine, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.
- (48) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:
- (i) business decisions and costs are made in response to market conditions and without significant State interference;
- (51) Due to the fact that the main shareholders are State-owned enterprises and that the directors appointed by these shareholders hold a disproportionate and controlling number of positions in the Board of Directors, it was found that the State could exert significant influence on the company's business decisions regarding day to day management as well as on profit distribution, issuing of new shares, capital increases, amendment of the Articles of Association and the dissolution of the company, and that therefore, such decisions were not made in response to market signals.
- (52) In addition, the company's accounts did not reflect the true financial situation since the company made some reallocations for the depreciation of fixed assets without justification, which constitutes a violation of IAS 1-13. This, together with the fact that the auditors of the company did not express any reservations or explanations about the practices found, constituted a clear violation of international accounting standards.

- (53) With regard to the valuation of initial assets, the company was not able to provide any explanation as to the basis on which such a valuation was made. Finally, the company could not provide any proof of payment of the rent of the office building. Both deficiencies indicated that there were significant distortions carried over from the former non-market economy system.
- (54) The Advisory Committee was consulted and the parties directly concerned were given an opportunity to comment on the above findings. However, no comments were received. The Community industry was also given the opportunity to comment, and agreed with the MET determination.
- (55) Following the above, it was concluded that MET should not be granted to the Chinese exporting producer.
- (b) *Individual treatment (IT)*
- (56) Pursuant to Article 2(7)(a) of the basic Regulation a country-wide duty, if any, is established for countries falling under that Article, 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.
- (57) The Chinese exporting producer to which MET could not be granted also claimed IT in the event it was not granted MET. However, as described in recital 51, the State was found to exert, via its representatives in the company's Board of Directors, significant influence with regard to export prices and quantities, as well as conditions and terms of sale, in such a way that these could not be considered to be freely determined. In addition, such State interference, relating to the day-to-day management of the company, meant that the risk of circumvention could not be excluded, if this exporter was to be given an individual duty rate.
- (58) Consequently, and since it was found that the Chinese exporting producer did not meet all of the requirements to be granted IT in accordance with Article 9(5) of the basic Regulation, IT had to be rejected.
- (59) The sole cooperating exporting producer in Ukraine, not having claimed MET, requested only IT. However, there is no other known producer of penta in Ukraine, which is confirmed by the fact that exports of penta from Ukraine to the Community reported by the cooperating exporting producer were equivalent to the quantities indicated by Eurostat. Therefore, it was considered unnecessary to make a determination whether this exporting producer should be granted IT since a single country-wide duty would be imposed in any event.
- (c) *Normal value*
- (i) *Analogue country*
- (60) According to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET has to be established on the basis of the prices or a constructed normal value in an analogue country.
- (61) In the notice of initiation, the Commission indicated its intention to use Japan as an appropriate analogue country for the purpose of establishing normal value for the PRC and Ukraine and interested parties were invited to comment on this. No interested parties objected to this proposal.
- (62) The Commission contacted the known producer of penta in Japan and asked for its cooperation in the present proceeding. However, no cooperation could be obtained.
- (63) Initially, countries concerned by the present proceeding were not selected because there was either no cooperation or because their domestic market could be distorted because of the dumping being practised. Therefore the Commission sought cooperation from all other known producers in Chile, Taiwan, Brazil and the Republic of Korea, the other countries where production of penta takes place.
- (64) Only the producer in Chile agreed to cooperate. Although there was just one producer in Chile, the Chilean domestic market of penta was subject to significant competition during the IP due to imports from China, Taiwan, USA, Sweden and the Republic of Korea, as there are neither quotas nor any other quantitative import restrictions in place.
- (65) In view of the foregoing it was provisionally concluded that Chile was the most appropriate and reasonable analogue country in accordance with Article 2(7) of the basic Regulation.

(66) A questionnaire was therefore sent to this producer requesting information on domestic sales prices and cost of production of the like product and the data submitted in its reply were verified on the spot.

(67) However, the investigation revealed that no dumping was practised by the cooperating Turkish exporting producer. There were no apparent distortions of the Turkish market of penta and the production process and raw materials used by the Turkish producer are more similar to those of the Chinese and Ukrainian exporting producers.

(68) Therefore, it was concluded that Turkey could be regarded as a reasonable analogue country for the purpose of this proceeding.

(ii) Determination of normal value in the analogue country

(69) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET was established on the basis of verified information received from the producer in the analogue country.

(70) Normal value was determined as described above in recitals 32 to 35.

(d) Export prices

(71) All export sales to the Community by the Chinese and Ukrainian 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.

(72) Since an average normal value for the whole IP was found not to be representative, for the reasons explained above in recitals 33 to 37, monthly average export prices were established.

(e) Comparison

(73) Adjustments were made in respect of transport, insurance, handling and ancillary costs, packing, credit and bank charges where applicable and justified.

(f) Dumping margins

(74) For each of the exporting producers not granted MET, the monthly weighted average normal value established for the analogue country was compared with the

monthly weighted average export price to the Community, as provided under Article 2(11) of the basic Regulation.

(75) In the case of PRC, the volume of penta exported by the cooperating exporting producer represented significantly less than 70 % of the total volume of penta imported during the IP from that country, according to Eurostat data. Thus, for non-cooperating exporting producers in the PRC, the dumping margin had to be established on the basis of facts available, pursuant to Article 18 of the basic Regulation. Hence, it was considered necessary that the dumping margin be determined on the basis of the highest dumped transactions for the cooperating producer. This approach was also considered necessary in order to avoid giving a bonus for non-cooperation and in view of the fact that there were no indications that a non-cooperating party had dumped at a lower level.

(76) Therefore a countrywide average dumping margin was calculated using as a weighing factor the cif-value of both group of exporters, i.e. cooperators and non-cooperators.

(77) In the case of Ukraine, as explained above in recital 59, due to the high level of cooperation it was considered appropriate to establish the country-wide dumping margin at the same level as the one found for the cooperating exporting producer.

(78) The dumping margin, expressed as a percentage of the cif import price at the Community border, duty unpaid, is as follows:

Country	Dumping margin
PRC	18,7 %
Ukraine	10,3 %

6. Russia and the United States of America (USA)

(79) None of the producers in Russia and the United States of America cooperated in this investigation. Consequently, and in the absence of any other more appropriate basis, the country-wide dumping margin was provisionally established on the basis of facts available in accordance with Article 18 of the basic Regulation, i.e. data derived from the complaint.

- (80) The dumping margins, expressed as a percentage of the cif import price at the Community border, duty unpaid, are as follows:

Country	Dumping margin
Russia	25 %
USA	54 %

D. INJURY

1. Community production

- (81) The investigation established that the like product is manufactured by five producers in the Community, one of which has two production sites. The complaint was lodged on behalf of two of these producers. After the initiation, a third producer decided to support the proceeding by cooperating fully in the investigation. Of the remaining two producers, both of which supplied general data on production and sales, both expressed their support for the proceeding.
- (82) Hence, the volume of Community production for the purpose of Article 4(1) of the basic Regulation has been provisionally calculated by adding together the production volume of the three cooperating Community producers and the production volume of the two other producers, according to the data supplied by them. On this basis, the total Community production of the like product amounted to 115 609 tonnes in the IP.

2. Definition of the Community industry

- (83) The production of the three Community producers that fully cooperated in the investigation represents 94 % of the like product produced in the Community. They are therefore considered to constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

3. Community consumption

- (84) Community consumption was established on the basis of the sales volumes of the known producers in the Community plus imports from all third countries under the relevant CN code according to Eurostat. In this respect it should be noted that only one of the two non-complainant Community producers provided sales figures for the whole period considered. Therefore sales of the other producer were not taken into account, as they were only provided for the IP. Since these sales volumes were low, excluding them does not affect the

overall picture. As shown in the table below, the Community consumption of the product concerned and the like product decreased by 12 % over the period considered. The demand was stable between 2003 and 2004 whereas in the IP it dropped by 9 % compared to the previous year.

	2002	2003	2004	IP
Community consumption (tonnes)	83 195	80 697	80 403	73 025
Index	100	97	97	88

4. Imports into the Community from the countries concerned

(a) Cumulation

- (85) The Commission considered whether the effects of imports of penta originating in the PRC, USA, Turkey, Russia and Ukraine should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation. It is recalled that imports from Turkey were not found to be made at dumped prices and therefore the proceeding should be terminated as regards imports from that country.

(b) Margin of dumping and volume of imports

- (86) The average dumping margins established for each of the four remaining countries, after excluding Turkey, are above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation, and the volume of imports from each country is not negligible in the sense of Article 5(7) of the basic Regulation, their respective market shares attaining 1,8 % for the PRC, 1,5 % for Russia, 3,7 % for Ukraine and 1,9 % for the USA in the IP.

(c) Conditions of competition

- (87) Import volumes from the PRC, Russia and Ukraine increased significantly over the period considered and price trends are similar, clearly undercutting the prices of the Community industry.
- (88) As mentioned above, it has been established that the product concerned imported from the countries concerned and the like product produced and sold by the Community industry share the same basic technical, physical and chemical characteristics and end-uses. In addition, all products are sold via similar sales channels to the same customers, thus competing with each other.

(89) It was found that imports from the USA did not undercut the prices of the Community industry (see recital 141 below). In fact the pricing behaviour of the US exporters appeared to be completely different from that of the exporters in the other countries concerned. Indeed, USA managed to increase its market share on the Community market at prices above those of the other three countries. This can be explained by the fact that one US exporting producer has been very successful in a different market segment, where higher prices can be obtained. In these circumstances, it was considered that a cumulative assessment of imports from the USA with the dumped imports from the PRC, Russia and Ukraine was not appropriate in light of the conditions of competition between the imports from the USA and, on the one hand, the dumped imports from the three countries concerned and, on the other hand, the like Community product.

(90) On the basis of the above, it was concluded that the conditions justifying the cumulation of imports of penta originating in the PRC, Russia and Ukraine were met.

(d) *Cumulated volume and market share*

(91) Import volumes from the PRC, Russia and Ukraine, derived from Eurostat, increased significantly from 1 235 tonnes in 2002 to 5 136 tonnes in the IP. Their combined market share increased continually from 1 % to 7 % during the same period. This has to be seen against the background of a declining consumption.

	2002	2003	2004	IP
Import volumes (tonnes)	1 235	3 397	4 752	5 136
Index	100	275	385	416
Market share	1 %	4 %	6 %	7 %

(e) *Prices of imports and undercutting*

(92) Price information with regard to the total imports from the three countries concerned was derived from Eurostat. The following table shows the development of average import prices from the PRC, Russia and Ukraine. Over the period considered these prices dropped by 13 %.

	2002	2003	2004	IP
Import prices (EUR/tonne)	1 131	1 032	1 030	988
Index	100	91	91	87

(93) For the determination of price undercutting, the Commission analysed data referring to the IP. The relevant sales prices of the Community industry were those to independent customers, adjusted where necessary to an ex-works level, i.e. excluding freight costs in the Community and after deduction of discounts and rebates. These prices were compared with the prices of imports from the three countries concerned. With regard to Russia, given that there was no cooperation, the weighted average export price was derived from Eurostat. As for the PRC and Ukraine the comparison was made against the export prices charged by the cooperating producers, net of discounts and adjusted, where necessary, to cif Community frontier prices with an appropriate adjustment for the customs clearance costs and post-importation costs. Prices were considered representative in both cases since in Ukraine there is only one producer of penta and with regard to the PRC, exports by the cooperating producer represent around half of all penta exported from the PRC to the EC.

(94) This comparison showed that during the IP, the weighted average undercutting margins were 11,3 % for the PRC, 6,2 % for Ukraine and 11,9 % for Russia.

5. Situation of the Community industry

(95) 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 analysis of all economic factors and indices having a bearing on the state of the industry during the period considered.

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

(96) Production decreased by 3 % between 2002 and the IP. The increase in 2004 resulted from the increase of production capacity by one producer. The evolution of production volumes was as follows:

	2002	2003	2004	IP
Production (tonnes)	111 665	103 913	115 204	108 309
Index	100	93	103	97

(97) The production capacity was established on the basis of the nominal capacity of the production units of the Community industry, taking into account interruptions in production. Production capacity increased by 6 % during the period considered. The increase occurred mainly in 2004 and was the result of successful de-bottlenecking at one producer on the one hand and the reorganisation of the same producer's second production plant on the other hand.

- (98) As a result of the decrease in production volumes and the slight increase in capacity, capacity utilisation decreased from 95 % in 2002 to 87 % in the IP.

	2002	2003	2004	IP
Production capacity (tonnes)	117 020	119 020	123 987	123 987
Index	100	102	106	106
Capacity utilisation	95 %	87 %	93 %	87 %

(b) *Stocks*

- (99) Stocks more than doubled during the period considered, reflecting the Community industry's increasing difficulty in selling its products on the Community market.

	2002	2003	2004	IP
Stocks (tonnes)	3 178	6 598	6 910	7 122
Index	100	208	217	224

(c) *Sales volume, market shares and average unit prices in the Community*

- (100) Sales of penta by the Community industry to independent customers on the Community market decreased steadily from 64 663 tonnes in 2002 to 54 543 tonnes in the IP, i.e. by 16 %. The decrease in sales volumes was therefore sharper than the decrease in the Community consumption which, as mentioned above, decreased by 12 % during the same period. Hence the industry experienced a loss of market share amounting to 3 percentage points. The market share dropped from 78 % in 2002 to 75 % in the IP.

	2002	2003	2004	IP
Sales volume in the EC (tonnes)	64 663	61 308	58 681	54 543
Index	100	95	91	84
Market share	78 %	76 %	73 %	75 %

- (101) Average sales prices to unrelated customers in the Community market decreased by 11 % over the period

considered. There was a slight price increase between 2002 and 2003 after which prices decreased again and hit a record-low level during the IP, when they stood at 1 040 EUR/tonne.

- (102) The price decreases over the period considered should be seen in the light of the Community industry's attempts to compete with the dumped imports. Current price levels however are unsustainable since the Community industry is forced to sell below cost in order to stay on the market.

	2002	2003	2004	IP
Weighted average price (EUR/tonne)	1 163	1 203	1 151	1 040
Index	100	103	99	89

(d) *Profitability and cash flow*

- (103) During the period considered profitability of the Community industry decreased sharply from 12,6 % in 2002 to – 11,5 % in the IP. In 2004 the Community industry still managed to make a small profit but the situation changed dramatically in the IP, when the industry started to make losses. The main reason for this development is that the increase in raw material prices, in particular methanol, which accounts for approximately 25 % of the cost of production could not be passed on to the end-customers due to the low price levels of imports from the countries concerned.

	2002	2003	2004	IP
Pre-tax profit margin	12,6 %	7,5 %	5,7 %	– 11,5 %

- (104) Cash flow also deteriorated over the period considered, in line with the decrease in profitability and turned negative in the IP. The decrease in the absolute level of negative cash flow at the end of the period is due to the decrease in the production and sales volumes.

	2002	2003	2004	IP
Cash Flow (EUR)	16 189 720	9 427 189	4 441 120	– 3 012 661
Index	100	58	27	– 19

(e) *Investments, return on investments, and ability to raise capital*

- (105) Investments showed a positive trend over the period considered. However, main investments were made in 2003 when the Community industry was still profitable. The investments in the IP concerned de-bottlenecking at one producer and upgrading of production equipment to conform to environmental requirements at another producer.

	2002	2003	2004	IP
Investments (EUR)	3 756 302	8 483 655	2 956 275	4 394 137
Index	100	226	79	117

- (106) The return on investment from the production and sales of the like product was negative in the IP and decreased substantially during the period considered, reflecting the abovementioned negative trend in profitability.

	2002	2003	2004	IP
Return on investment	18,5 %	10,5 %	7,9 %	- 13,5 %
Index	100	57	43	- 73

- (107) There were no indications that the Community industry, which consists of large companies also involved in the production of other products, encountered problems to raise capital for its activities and it was therefore concluded that the Community industry was in a position to raise capital for its activities throughout the period considered.

(f) *Employment, productivity and wages*

- (108) The evolution of employment, productivity and wages was as follows:

	2002	2003	2004	IP
Number of employees	290	296	293	299
Index	100	102	101	103
Productivity (tonnes/employee)	385	351	393	362
Index	100	91	102	94
Labour costs per employee (EUR)	43 379	44 469	46 899	44 921
Index	100	103	108	104

- (109) The number of employees increased by 3 % during the period considered. This was the result of the reorganisation at one Community producer, which resulted in an internal re-allocation of staff employed on penta, even if the total number of people employed by the company as a whole remained stable. As a result of the slight increase in the number of employees and the decreasing production volumes, productivity shows a negative trend during the period considered.

- (110) Average wage levels per employee increased by 4 % during the period considered which was less than the increase in inflation during the same period.

(g) *Growth*

- (111) While the Community consumption decreased by 12 % over the period considered, the sales volume of the Community industry decreased by 16 % and in parallel the import volumes from the PRC, Russia and Ukraine increased by more than 300 % and those from the USA by over 700 %. This led to the loss of market share by the Community industry, whereas the imports concerned managed to increase theirs.

(h) *Magnitude of the actual margin of dumping and recovery from past dumping*

- (112) The dumping margins for the PRC, Russia, Ukraine and the USA are specified above in the dumping section. These margins are clearly above *de minimis*. Furthermore, given the volumes and the prices of the dumped imports, the impact of the actual margin of dumping cannot be considered to be negligible.
- (113) The Community is not recovering from the effects of past dumping or subsidisation since no investigations have been made before.

6. Conclusion on injury

- (114) The analysis of the injury indicators shows that the situation of the Community industry deteriorated significantly after 2002 and reached its lowest point in the IP, when the industry made a loss of 11,5 %.
- (115) In the context of a decreasing consumption during the period considered, the Community production decreased by 3 % and capacity utilisation by 8 % during the same period. Sales on the Community market decreased by 16 % in terms of volume and 25 % in terms of value. This development is also reflected by the increased stocks which almost doubled in the period considered. This led to a decrease in market share from 78 % in 2002 to

75 % in the IP. Average unit prices decreased by 11 % during the period considered, which did not reflect the increase in raw material costs during the same period. In order not to lose more market share and to keep the production running, the Community industry had no other option than to follow the price levels set by the dumped imports. This resulted in the significant drop in profitability in the IP.

- (116) Most of the other injury indicators also confirm the negative situation of the Community industry. Return on investments and cash flows were negative and productivity decreased. Investments, however, showed a positive trend. Nevertheless, the investments made in the IP, which was the year of losses for the Community industry, were in fact de-bottlenecking and upgrading of machinery to correspond to environmental requirements rather than investments into new production equipment. The slight increase in the number of employees resulted from the reorganisation at one producer and did not involve recruiting any new staff by this producer at times when the economic situation was deteriorating.
- (117) In the light of the foregoing, it can be concluded that the Community industry suffered material injury within the meaning of Article 3(6) of the basic Regulation.

E. CAUSATION

1. Preliminary remark

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

2. Effect of the dumped imports

- (119) It is recalled that with regard to Turkey, whose market share amounted to 8,6 % during the IP, the dumping margin established was below the *de minimis* threshold. Therefore imports from Turkey were not considered for the analysis of the effect of dumped imports on the injury suffered by the Community industry. The combined market share of the remaining four countries amounted to 9 % in the IP.

- (120) Import volumes from the PRC, Russia and Ukraine increased significantly over the period considered, both in absolute terms and in terms of market share. Indeed, in 2002 volumes were almost negligible, amounting to a mere 1 235 tonnes, whereas during the period considered they increased by 316 % to 5 136 tonnes in the IP. Their combined market share during the same period increased from 1 % to 7 %. The weighted average import prices decreased by 13 %, resulting in clear undercutting during the IP. Thus the substantial increase in the import volumes from the three countries concerned and their gain in market share during the period considered, at prices which remained well below those of the Community industry, coincided with the evident deterioration of the overall financial situation of the Community industry during the same period.

- (121) The Community industry has argued that even with a low market share the dumped imports managed to cause severe disruption on the market, due to the nature of the business. Penta is a commodity and the lowest price quoted on the market determines to a large extent the market price, which other producers have to adapt to, if they wish to keep their orders. This is demonstrated by the decreasing trend in the Community industry's sales prices over the period considered, while prices of the main raw material, methanol, soared. The Community industry maintains that it was not in a position to pass on the increase in raw material prices to its customers due to the strong price pressure of the dumped imports. This led to a sharp decrease in profitability, return on investments and cash flow.

- (122) Nevertheless, when looking at the development in more detail, it appears that the considerable deterioration of the Community industry's financial situation occurred during the IP. In the years prior to the IP, imports from the PRC, Russia and Ukraine increased massively from 1 235 tonnes in 2002 to 4 752 tonnes in 2004, i.e. by 285 %, while prices from these countries decreased by 9 % over the same period. However, the effect of this surge in imports on the situation of the Community industry was not dramatic, i.e. while sales volumes decreased by 9 % and prices by 1 %, the profit level achieved in 2004 remained at a reasonable level (5,7 %). In the IP, the decrease in sales by the Community industry of 7 % coincided with a further increase in imports from the countries concerned of 8 %, which was a relatively small increase compared to that achieved during the previous two years. However, it was only in the IP that the Community industry saw a huge decline in its profitability when it fell to -11,5 % and a dramatic deterioration of its financial situation occurred.

- (123) Based on the above considerations, it appears that when looking at all of period considered, there is some correlation between the development of the dumped imports and the injury suffered by the Community industry. However, the dumped imports alone do not seem to explain the sharp drop in the Community industry's profitability during the IP. Therefore, it cannot be concluded that the dumped imports would have played a determining role in the injurious situation of the Community industry, which culminated in the IP.

3. Effect of other factors

(a) Decrease in EC consumption

- (124) Consumption of penta in the Community decreased by 12 % during the period considered. This decreasing trend appears be linked to the reduced demand of alkyd resins in the paint industry, which accounts for about 70 % of the end-use of penta on the Community market. A visit to an industrial user of penta, which produces alkyd resins for the paint industry, revealed that the demand for alkyds is expected to decline even sharper in the future due to the forthcoming changes in environmental legislation, which will impose restrictions on emissions of volatile organic compounds (VOC) from paint used for both architectural and industrial applications. Since alkyd resins are not as VOC friendly as other technologies, their use in paints is expected to decline.
- (125) The Community industry's sales declined by 16 % in terms of volume and three percentage points in terms of market share, from 78 % in 2002 to 75 % in the IP. Import volumes from the PRC, Russia and Ukraine increased by 316 % during the period considered leading to an increase in their market share from 1 % to 7 %, thus taking over the Community industry's lost market share. Therefore, the declining demand of penta in the Community as such does not explain the deterioration of the situation of the Community industry over the period considered.
- (126) However, the annual development of consumption shows that the decrease in consumption was much sharper between 2004 and the IP, when it went down by 9 %, compared to the previous years. Indeed, consumption remained stable between 2003 and 2004 whereas it increased by 3 % between 2002 and 2003. Therefore, given that the decrease in consumption coincides with the period when the Community industry turned loss-making, it cannot be excluded that the decreasing demand of penta on the Community market has had an impact on the injurious situation of the Community industry.

(b) Imports from other third countries

- (127) Imports from other third countries (five largest) were as follows:

	2002	2003	2004	IP
Chile				
Volume (tonnes)	1 600	536	1 032	1 384
Index	100	34	65	87
Prices (EUR/tonne)	1 141	1 245	1 128	981
Index	100	109	99	86
India				
Volume (tonnes)	0	119	390	551
Index	0	100	328	141
Prices (EUR/tonne)	0	1 167	1 085	1 253
Index	0	100	87	84
Taiwan				
Volume (tonnes)	343	657	1 840	863
Index	100	192	536	252
Prices (EUR/tonne)	1 071	1 060	1 003	1 004
Index	100	99	94	94
Turkey				
Volume (tonnes)	6 300	7 065	8 957	6 730
Index	100	112	142	107
Prices (EUR/tonne)	1 292	1 339	1 277	1 097
Index	100	104	99	85
Japan				
Volume (tonnes)	0	20	58	65
Index	0	100	290	112
Prices (EUR/tonne)	0	3 905	3 334	2 731
Index	0	100	85	82

- (128) According to Eurostat and the information collected during the investigation, the main third countries from which penta is imported are Chile, India and Taiwan. When adding imports from Turkey into imports from other third countries, the total volume imported from other third countries increased by 12 % from 8 586 tonnes in 2002 to 9 636 tonnes in the IP. This corresponds to an increase of their combined market share from 10 % to 13 %. The price levels of third country imports remained well above those of the Community industry throughout the period considered. Thus, imports from other third countries, competing with the dumped imports, managed to increase their market share by three percentage points, at prices which were above those of the Community industry.

- (129) It should be noted, however, that imports from other third countries followed a different trend compared to that of the dumped imports in the sense that the peak in imports from other third countries occurred in 2004, whereas in the IP, which was the year of losses for the Community industry, third country imports dropped again by 22 % compared to the previous year. Also their average prices decreased by 11 % during the same period and their market share dropped by two percentage points. This would seem to indicate that as of 2004, also producers in other third countries were affected by the low market prices. Nevertheless, their prices remained above those of the Community industry also during the IP.

(c) Export performance of the Community industry

- (130) It was also examined whether exports by the Community industry to non-EC countries may have contributed to the injury suffered during the period considered. Exports to unrelated customers in non-EC countries represented almost half of the Community industry's sales of the like product during the period considered. Export volumes increased by 3 %, between 2002 and the IP whereas average export prices decreased by 7 %.

	2002	2003	2004	IP
Sales volume in non-EC markets (tonnes)	44 333	35 376	46 460	45 587
Index	100	80	105	103
Average sales prices in non-EC markets (EUR/tonne)	1 034	1 090	1 001	958
Index	100	105	97	93

- (131) Even if export sales increased slightly in terms of volume, the fact that the average export prices were lower than the average sales prices on the Community market throughout the period considered and moreover, below the unit cost of production has certainly had a negative effect on the overall financial situation of the Community industry, even if it does not directly affect the profitability on the Community market. Therefore it cannot be ruled out, that the injury suffered by the Community industry has also been indirectly caused by the negative development in profitability on export markets, since this would have an effect for example on the Community industry's ability to make new investments or hire new staff.

(d) Other Community producers

- (132) Sales volumes by the non-complainant Community producer who provided data for the whole period concerned decreased even sharper than that of the Community industry. Therefore it seems that this

producer is in a similar situation as the complaining Community producers. It is thus clear that this producer has not contributed to the injury suffered by the Community industry.

(e) Increase in raw material prices

- (133) Prices of the main raw material methanol have increased considerably over the period considered. According to statistics published on the web-site of Methanex, the world's largest producer and marketer of methanol, the European contract price increased from 125 EUR/tonne in January 2002 to 235 EUR/tonne in December 2005. This has contributed to the increase of 10 % in the unit cost of production during the period considered and consequently to the drop in profitability, given that unit sales prices decreased by 13 % during the same period.
- (134) Soaring raw material prices as such cannot be considered as having had an injurious effect on the Community industry. The negative development in profitability was rather due to the fact that the Community producers were not able to pass on these higher raw material costs to their customers by increasing their sales prices because of the low price level on the Community market. However, while methanol prices increased by 88 % over the period considered, the increase was only 2 % during the IP. Therefore, even if the market price of penta was low in the IP, the simultaneous price development of the main raw material methanol does not explain why the Community industry turned loss-making with such a magnitude in the IP.

4. Conclusion on causation

- (135) The data available suggests that even with a low market share the dumped imports from the PRC, Russia, and Ukraine have exerted a price pressure on the Community industry's prices. However, a more detailed analysis does not allow for the establishment of a material causal link between the deterioration of the Community industry's financial situation and the development of the dumped imports.
- (136) The significant drop in the Community industry's profitability and its overall financial situation occurred between 2004 and the IP, when volumes of the dumped imports increased by only 8 % compared to an increase of 285 % over the previous three years, when the Community industry was still making profits. Moreover the drop in the demand of penta on the Community market coincided with the deterioration of the Community industry's financial situation. It also appears that the price increase of the main raw material methanol was far less marked in the IP compared to the previous years and therefore does not explain the sudden and dramatic drop in profitability in the IP.

- (137) The fact that the Community industry exports almost half of its production at prices below cost, has to be seen as a factor which has further contributed to the overall negative situation of the Community industry, even if it does not directly affect the profitability on the Community market.
- (138) Therefore, it cannot be concluded that the dumped imports taken in isolation have caused material injury. Indeed, the examination of other factors in accordance with Article 3(7) of the basic Regulation revealed that the injury could be attributed also to the decrease in consumption, the export performance of the Community industry as well as imports from other third countries.

5. Imports from the USA

- (139) Import volumes from the USA increased from 169 tonnes in 2002 to 1 355 tonnes in the IP. This led to an increase in market share from 0,2 % to 1,9 % during the same period.
- (140) Average import prices from the USA decreased over the period considered but were above those charged by producers in the PRC, Russia and Ukraine:

	2002	2003	2004	IP
Import prices (EUR/tonne)	1 935	2 212	1 251	1 244
Index	100	114	65	64

- (141) Price undercutting was determined as described in recital 93 above. The weighted average undercutting margin for the USA was – 19,5 % in the IP, i.e. the average import price was significantly higher than the price charged by the Community industry on the Community market. As explained below, there was also no price depression by US imports.
- (142) In parallel to the growth in imports from the USA, the Community industry saw, *inter alia*, its sales, market share and prices decrease over the period considered, leading to the conclusion as set out in recital 117 above that the Community industry had suffered material injury. However, it is noted that the prices of imports from the USA did not undercut those of the Community industry but were, in fact, sold at significantly higher

prices than those of the Community industry. Furthermore, an additional comparison was made of the import prices from the USA with the non-injurious price of the like product sold by the Community industry on the Community market. The non-injurious price was obtained by adjusting the sales price of the Community industry in order to reflect a profit margin which the Community industry could be expected to obtain in the absence of injurious dumping. This comparison showed that the level of underselling was *de minimis*. On this basis, it is concluded that these imports did not contribute to the injury suffered by the Community industry.

F. TERMINATION OF THE PROCEEDING

- (143) In the absence of a significant causal link between the dumped imports and the injury suffered by the Community industry, the present anti-dumping proceeding should be terminated in accordance with Articles 9(2) and 9(3) of the basic Regulation.
- (144) 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 complainants made known their views which, however, were not of a nature to change the above conclusions,

HAS DECIDED AS FOLLOWS:

Article 1

The anti-dumping proceeding concerning imports of pentaerythritol, falling within CN code 2905 42 00, originating in the People's Republic of China, Russia, Turkey, Ukraine and the USA, is hereby terminated.

Article 2

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

Done at Brussels, 3 April 2007.

For the Commission
Peter MANDELSON
Member of the Commission