COMMISSION REGULATION (EC) No 255/2001

of 7 February 2001

imposing a provisional anti-dumping duty on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 2238/2000 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 17 May 2000, the Commission announced by a notice ('notice of initiation') published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding with regard to imports into the Community of integrated electronic compact fluorescent lamps originating in the People's Republic of China ('PRC').

(2) The proceeding was initiated following a complaint lodged on 4 April 2000 by the European Lighting Companies Federation ('the complainant') on behalf of Community producers representing a major proportion of Community production of compact fluorescent lamps (integrated). The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient, after consultation, to justify the initiation of a proceeding.

(3) The Commission officially advised the exporting producers and importers/traders known to be concerned as well as their associations, the representatives of the exporting countries concerned, users, suppliers and the complainant Community producers, of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(4) A number of parties made their views known in writing. All parties who so requested within the above time limit and showed that there were particular reasons why they should be heard were granted the opportunity to be heard orally.

(5) In view of the large number of Chinese exporting producers and Community importers listed in the complaint, the Commission decided to apply sampling in accordance with Article 17 of Regulation (EC) No 384/96 ('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, as well as related and unrelated importers were requested 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.

(6) After examination of the information submitted by exporting producers and by unrelated importers in the Community, and due to the low level of cooperation from the Chinese exporting producers and the unrelated importers in the Community, it was decided that sampling was not necessary.

(7) In order to allow exporting producers in the PRC to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission services sent claim forms to the Chinese exporting producers known to be concerned. Claims for MET and IT were received from 10 exporting producers and two others claimed only IT.

(8) The Commission sent questionnaires to parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from the three complaining Community producers, five unrelated importers in the Community, 12 exporting producers with manufacturing facilities in the PRC, one related importer in the Community and one producer in the analogue country. The Commission sought and verified all the information it deemed necessary for the purposes of a preliminary determination of dumping, injury and Community interest. Verification visits were carried out at the premises of the following companies:

A. Exporting producers

— Changzhou Hailong Electronics & Light Fixtures Co. Ltd, Changzhou

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 257, 11.10.2000, p. 2.
[3] OJ C 138, 17.5.2000, p. 8.

— City Bright Lighting (Shenzhen) Ltd, Shenzhen

with the related exporter

Everbright Lighting (HK) Ltd, Hong Kong

— Deluxe Well Enterprises Ltd, Shenzhen

with the related exporter

Full Lam Development Ltd, Hong Kong

— Firefly Lighting Corporation Ltd, Xiamen

— Lisheng Electronic & Lighting (Xiamen) Co. Ltd, Xiamen

with the related exporter

Neonlite Electronic & Lighting (HK) Ltd, Hong Kong

— Ningbo Super Trend Electron Co. Ltd, Ningbo

— Philips & Yaming Lighting Co. Ltd, Shanghai

with the related importer in the Community

Philips Lighting BV, the Netherlands

— Sanex Electronics Co. Ltd, Suzhou

— Shenzhen Zuoming Electronic Co. Ltd, Shenzhen

with the related exporter

Super Trend Lighting Ltd, Hong Kong

— Zhejiang Sunlight Group Co. Ltd, Shangyu

B. Analogue country producer

— Philips Mexicana SA de CV

C. Community producers

— Osram GmbH, München, Germany

— Philips Lighting BV, Eindhoven, Netherlands

— SLI Lighting Ltd, Shipley, United Kingdom

D. Unrelated importers/traders

— IDV GmbH, Langenselbold, Germany

— IKEA, Werne, Germany

— Omicron Lamps Ltd, Arlesey, United Kingdom

— Panda Trade SA, Gonesse, France

— SML Europa-Contact, Buchholz, Germany.

(9) The investigation of dumping and injury covered the period from 1 January 1999 to 31 March 2000 ('investigation period' or 'IP'). The examination of trends in the context of the injury analysis covered the period from 1 January 1996 to the end of the IP ('period under consideration').

2. **Product concerned and like product**

(a) *Product concerned*

(10) The product concerned is electronic compact fluorescent discharge lamps with one or more glass tubes, with all lighting elements and electronic components fixed to the lamp foot or integrated in the lamp foot ('the product concerned'). The product concerned is currently classifiable within CN code ex 8539 31 90.

(11) The industry usually refers to this product as 'compact fluorescent lamps (integrated)' or 'CFL-i'. They are designed to replace normal incandescent lamps and fit into the same lamp sockets as the incandescent lamps. The product concerned is produced in different types, depending on, *inter alia*, the lifetime, the wattage and the cover of the lamp. Despite these differences, all the types have the same basic physical and technical characteristics as well as the same uses. They are, therefore, considered as a single product for the purpose of this proceeding.

(b) *Like product*

(12) The Commission found that CFL-i manufactured in the PRC and sold domestically as well as those exported to the Community and the product sold on the domestic market of the analogue country (Mexico), and the one manufactured and sold in the Community by the Community industry have basically the same physical and technical characteristics as well as the same uses. Therefore, these products are alike within the meaning of Article 1(4) of the basic Regulation.

(13) Several exporting producers submitted that CFL-i produced in the Community could not be considered comparable to that produced and exported to the Community from the PRC on the grounds of the difference in the lifetime between these two products. It was alleged that the Community industry produce 'longlife' products with a lifetime above 8 000 hours while exports to the Community from China concerned only products with lifetimes up to 6 000 hours. However, the investigation has shown that all CFL-i are alike, as they have the same basic physical and technical characteristics and essentially the same uses. The detailed calculations of injury and undercutting margins were based on lamps with comparable lifetimes.

B. **DUMPING**

1. **Normal value**

(a) *Market economy treatment*

(14) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal, value shall be determined in accordance with paragraphs 1 to 6 of the said article for those exporting producers, which can show that they meet the criteria laid down in Article 2(7)(c) of that Regulation, i.e. that market economy conditions prevail in respect of the manufacture and sale of the product concerned.

(15) Claims for MET were received from 10 exporting producers. One of these companies later failed to submit its reply to the Commission's questionnaire and was considered as non-cooperating. The remaining nine MET claims were analysed on the basis of the five criteria required by Article 2(7)(c) of the basic Regulation. Two exporting producers fulfilled the required criteria:

— Lisheng Electronic & Lighting (Xiamen) Co. Ltd, Xiamen, a wholly foreign owned company,

— Philips & Yaming Lighting Co. Ltd, Shanghai, a joint venture between Philips Lighting BV (60 %) and a Chinese state-owned company (40 %). Despite the 40 % share holding by the state-owned company, it was found that sufficient safeguards existed which ensured that this company could not unduly influence the operation of the joint venture.

(16) It was found that five exporting producers were operating under significant state influence either through direct management by state representatives or through constraints on business decisions such as limitations in selling on the domestic market. These companies were consequently unable to demonstrate that decisions regarding sales were made in response to market signals reflecting supply and demand and without significant State interference in this regard. The criterion set out in the first indent of Article 2(7)(c) of the basic Regulation was therefore not met and these exporters could not be granted market economy treatment.

(17) Two other exporting producers did not have a clear set of basic accounting records, neither did they comply with international accounting standards and rules. These companies did not meet the criterion of accounting standards set out in the second indent of Article 2(7)(c) of the basic Regulation and therefore could not be granted market economy treatment.

(18) In addition, the financial situation and production costs of two of these exporting producers, were significantly distorted due to the arbitrary valuation of assets. These companies did not therefore meet the criterion of absence of distortions from the former market economy system set out in the third indent of Article 2(7)(c) of the basic Regulation.

(19) The exporting producers concerned and the Community industry were given an opportunity to comment on the above findings. Some exporting producers requested more details on the basis of which they were not granted MET. This information was provided and no further comments were received. The Advisory Committee was consulted and did not object to the Commission's conclusions.

(b) *Determination of normal value for cooperating exporting producers granted MET*

(20) For one exporting producer that was granted MET, which did have domestic sales, the Commission first determined whether the total volume of the domestic sales of the product concerned was representative in accordance with Article 2(2) of the basic Regulation, i.e. whether these sales represented 5 % or more of the sales volume of the product concerned exported to the Community.

(21) The Commission then examined for this exporting producer whether total domestic sales of each product type constituted 5 % or more of the sales volume of the same type exported to the Community.

(22) For those product types meeting the 5 % test, it was established whether sufficient sales had been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation.

(23) Where, per product type, the volume of domestic sales above unit cost represented at least 80 % of sales and where the weighted average price was equal to or higher than the weighted average cost, normal value was established on the basis of the weighted average prices actually paid for all domestic sales. All product types sold on the domestic market by this exporting producer were found to fall within this category.

(24) As a result, normal value for this cooperating exporting producer was established on the basis of the domestic sales prices in accordance with Article 2(1) of the basic Regulation.

(25) For the second exporting producer that was granted MET it was established that it did not have representative domestic sales of the product concerned. In the absence of domestic sales prices of the same product type by the other producer also granted MET, normal value was constructed. Constructed normal value was calculated in accordance with Article 2(3) of the basic Regulation by adding to this producer's cost of manufacturing a reasonable amount for selling, general and administration expenses ('SG & A') and for profit. The SG & A and profit were calculated on the basis of the

figures of the other exporting producer that was granted MET and had domestic sales in the ordinary course of trade, pursuant to Article 2(6)(a) of the basic Regulation. The SG & A figure was based on this producer's domestic sales made in representative quantities, while the profit figure was based on its domestic sales in the ordinary course of trade.

(c) *Determination of normal value for exporting producers not granted MET*

(26) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers that were not granted market economy treatment was established on the basis of the prices of the analogue country for products comparable to those sold by the Chinese exporting producers to the Community, per product type.

(27) In the notice of initiation of this proceeding, the Commission proposed Mexico as an appropriate market economy third country for the purpose of establishing normal value for the PRC.

(28) Objections to this proposal were raised by some of the exporting producers. The alternatives proposed were Brazil, China, Indonesia, Korea, Poland, Thailand, and the United Arab Emirates. The Commission contacted producers and their associations in Brazil, Indonesia, Korea and Thailand. The United Arab Emirates did not have domestic production of the product concerned during the IP. Only one producer in Korea initially agreed to cooperate, but then failed to provide the necessary information requested by the Commission.

(29) One objection to the choice of Mexico, concerned the different voltage of operation of the products sold on the Mexican market when compared to those exported by the Chinese producers to the Community. In this respect the Commission's investigation confirmed that the voltage of the lamps sold on the Mexican and Community markets was different. Although the production process is the same, the electronic circuit and components of the ballast of the CFL-i were designed according to the voltage at which they need to operate. Moreover, the CFL-i sold on the Mexican market were more expensive to produce. However, it was possible for the Commission to quantify the impact of these differences in costs of production and sales prices because most of the exporting producers investigated produce the same product type of CFL-i to operate at different voltage levels. Therefore, it was provisionally concluded that this difference could adequately be accounted for by adjusting the Mexican domestic sales prices downwards.

(30) Another objection raised against the choice of Mexico, concerned the alleged lack of competition on the local market. However, the Commission found that Mexico had a strong competitive environment with almost 70 % of sales quantities being imported from various origins including from the PRC. Although the cooperating company is the sole local producer, other major world producers of the product concerned also sell directly on the Mexican market. Mexico's membership of NAFTA also contributes to create a competitive environment, which allows the cooperating producer to achieve reasonable but not excessive profits.

(31) The cooperating Mexican producer was found to be related to a Community producer. In this respect it should be noted that this relationship does not, *per se*, render the information provided by the Mexican producer unreliable. It was found that the Mexican producer sold substantial quantities of the product concerned on the domestic market and that these sales were made in the ordinary' course of trade. It was carefully checked whether the relationship in question had any distorting impact on costs of production and, consequently, on profitability of the Mexican producer concerned. No indication was found that this was the case.

(32) In the light of the above, the Commission confirmed the choice of Mexico as an appropriate analogue country.

(33) In order to establish whether sales in the Mexican market of the products comparable to those sold by the Chinese exporting producers to the Community were made in the ordinary course of trade, the domestic selling price was compared to the full cost of production (i.e. the cost of manufacturing plus SG & A expenses). Where the weighted average sales price was equal to or higher than the weighted average unit cost, and where 80 % or more of the volume of sales for a particular product type were at or above unit cost, normal value was established as the weighted average price of all the transactions. All types sold on the domestic market in the analogue country were found to fall within this category.

(34) As a result, normal value was established as the weighted average domestic sales price to unrelated customers by the cooperating Mexican producer.

2. **Export price**

(a) *Individual treatment*

(35) It is recalled that the abovementioned seven companies not fulfilling the MET criteria alternatively requested IT. Two other exporting producers claimed only IT. One of these companies later withdrew its claim for IT. The Commission sought and verified all the information they deemed necessary for the purposes of a determination of IT with regard to the eight companies in question. Six out of these eight exporting producers fulfilled the criteria on IT:

— Changzhou Hailong Electronics & Light Fixtures Co. Ltd, Changzhou

— City Bright Lighting (Shenzhen) Ltd, in Shenzhen

— Deluxe Well Enterprises Ltd, Shenzhen

— Sanex Electronics Co. Ltd, Suzhou

— Shenzhen Zuoming Electronic Co. Ltd, Shenzhen

— Zhejiang Sunlight Group Co. Ltd, Shangyu.

(36) The remaining two exporting producers did not fulfil the IT criteria. One was subject to constraints on its business decisions due to limitations on direct export sales, while the other faced excessive state intervention due to the exclusive management of the business by state representatives, thus presenting a high risk of circumvention. The exporting producers in this situation were:

— Firefly Lighting Corporation Ltd, Xiamen

— Ningbo Super Trend Electron Co. Ltd, Ningbo.

(b) *Determination of the export price*

(37) The export prices for the cooperating exporting producers were established on the basis of the prices paid or payable for the product concerned when sold to the first independent customer in the Community in accordance with Article 2(8) of the basic Regulation.

(38) However, one exporting producer made all Community sales through a related company in the Community. For this company the export prices were constructed on the basis of the prices at which the imported products were first resold to independent customers in the Community, in accordance with Article 2(9) of the basic Regulation. Adjustments were made for all costs incurred between importation and resale, including a reasonable margin for SG & A plus profit. A profit level of 5 % was determined on the basis of information on profits identified for the cooperating unrelated importers of the product concerned in the Community,

3. **Comparison**

(39) For the purposes of a fair comparison between the normal value and the export price at an ex-works level due allowance in the form of adjustments was made for differences that were claimed and demonstrated to affect prices and price comparability. These adjustments were made, where appropriate, in respect of physical characteristics, level of trade, discounts and rebates, transport, insurance, handling, loading and ancillary costs, commissions and credit costs in accordance with Article 2(10) of the basic Regulation.

(40) With regard to adjustments for differences in physical characteristics, it should be noted that Mexican production covered 17 product types, all of which were sold in the ordinary course of trade. For those product types exported by the Chinese exporting producers to the Community but not sold on the Mexican domestic market, normal values were determined by applying adjustments to the normal value of the closest-resembling product type sold on the Mexican market. Adjustments were made for differences in voltage, lifetime wattage and type of cover. To quantify these adjustments the Commission took into account information supplied not only by the producer in the analogue country but also by the exporting producers in the PRC. Cooperating exporting producers were invited to assess and comment on the impact of these differences both in terms of prices and costs.

(41) One exporting producer that was granted market economy treatment claimed an adjustment for expenses incurred on domestic sales, such as provisions for bad debts and selling expenses. The exporting producer claimed that these expenses were not incurred when exporting to the Community. The claim was rejected because no evidence was found of how this alleged difference affected price comparability, as required by the basic Regulation.

4. **Dumping margin**

(a) *General*

(42) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal values with the weighted average export prices, at the same level of trade. The provisional dumping margin was expressed as a percentage of the cif Community frontier price for the exporting producers concerned.

(b) *Dumping margins for the cooperating exporting producers granted MET/IT*

(43) The individual dumping margins are:

Changzhou Hailong Electronics & Light Fixtures Co. Ltd, Changzhou	59,6 %
City Bright Lighting (Shenzhen) Ltd, Shenzhen	17,2 %
Deluxe Well Enterprises Ltd, Shenzhen	37,3 %
Lisheng Electronic & Lighting (Xiamen) Co. Ltd, Xiamen	*de minimis*
Philips & Yaming Lighting Co. Ltd, Shanghai	61,8 %
Sanex Electronics Co. Ltd, Suzhou	21,2 %
Shenzhen Zuoming Electronic Co. Ltd, Shenzhen	6,0 %
Zhejiang Sunlight Group Co. Ltd, Shangyu	35,4 %

(c) *Country-wide dumping margin for other exporting producers*

(44) The investigation showed that the product concerned accounted for approximately 98 % of imports from the PRC into the Community under CN code 8539 31 90. This calculation was based on information supplied by the complainant and data collected during the on-spot verifications at the premises of the exporting producers in the PRC. It was thus estimated that the cooperation level was only about 30 %.

(45) The Commission calculated the country-wide dumping margin, on the basis of the export sales to the Community, made by the cooperating exporting producers not granted MET or IT. The Commission first established the weighted average of the dumping margins determined for these cooperating companies. With regard to the exporting producers that failed to reply to the Commission's questionnaire, that did not make themselves known or otherwise did not cooperate with the investigation, the determinations had to be based on facts available, in accordance with Article 18 of the basic Regulation. In view of the low level of cooperation and in order not to give a bonus for non-cooperation, it was concluded that the most appropriate information would be to use data relating to the most representative product types exported by the co-operating exporting producers not granted MET or IT. It was considered that none of the non-cooperating exporting producers dumped at a lower level. The country-wide dumping margin was established as the weighted average of the margins determined for these two groups of companies.

(46) In this respect it should be noted that the country-wide dumping margin was positively affected by the weighted average dumping margin established for the cooperating exporting producers that were not granted MET or IT but nevertheless replied to the Commission's questionnaire.

(47) The country-wide dumping margin for the PRC established on this basis is 74,4 %.

C. **INJURY**

(48) For the assessment of injury trends, the IP has been annualised (i.e. the data related to the 15-month period between January 1999 and March 2000 have been divided by 15 and multiplied by 12) where appropriate, in order to allow for comparisons with preceding calendar years.

1. **Definition of the Community industry**

(49) In the course of the proceeding Philips Lighting BV informed the Commission that it no longer wished to be treated as a member of the group of complainants. Therefore, data relating to Philips Lighting BV were not taken into account for the purpose of determining the Community industry and injury to the Community industry. It should be noted that the provisional conclusions concerning injury and causal link would not have been different had the data relating to Philips Lighting BV been taken into consideration.

(50) The two remaining cooperating Community producers account for more than 85 % of the Community production of CFL-i during the IP.

(51) Several exporting producers submitted that the complainants are themselves importing the product concerned from the PRC. In this respect, it emerged that the two remaining cooperating Community producers had indeed imported CFL-i from the country concerned and resold those imports. According to Article 4(1)(a) of the basic Regulation '[...] when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "the Community industry" may be interpreted as referring to the rest of the producers'. During the IP, on average 14,6 % of the total sales of CFL-i by these producers in the Community originated in the country concerned. However, despite these sales of imported CFL-i, the primary activity of these companies remained in the Community. Furthermore, the sales are explained by the need for the complainants to complete their product range so as to be able to satisfy demand, as well as by the attempt to defend themselves against low priced imports due to dumping. Consequently, the described trading activity of these producers did not affect their status as Community producers.

(52) The two remaining Community producers are therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

(53) As the Community industry is thus constituted of only two producers, all figures relating to the latter had to be indexed for confidentiality reasons.

2. **Community consumption**

(54) Community consumption was established on the basis of the sales volumes of the Community industry and of Philips Lighting BV on the Community market, Eurostat import figures concerning the volume of imports from the country concerned and from other third countries, duly adjusted where appropriate.

(55) In this respect it was found that, as mentioned above, not only CFL-i are imported into the Community under CN code 8539 31 90, but other products as well. As a consequence, an estimate of the percentage of CFL-i in all products imported under this code was made for each country exporting CFL-i to the Community. These estimates were based on the questionnaire replies by cooperating importers that were found to trade the totality of the imports of CFL-i from certain countries, information provided by the complainant as well as by the Chinese exporting producers as verified by the Commission.

(56) On this basis, Community consumption increased by 117 % between 1996 and the IP from 56,9 million units to 123,3 million units. Steep increases occurred in particular between 1997 and 1998 and between 1998 and 1999/IP.

3. **Imports from the country concerned**

(a) *Volume and market share*

(57) The import volume of CFL-i originating in the country concerned increased by 261 % between 1996 and the IP, from 22,4 million units to 81,1 million units.

(58) The market share of the imports originating in the country concerned increased from 39,5 % in 1996 to 65,8 % in the IP, an increase of 26,3 percentage points.

(b) *Prices*

(i) Price evolution

(59) According to Eurostat data, the weighted average prices of imports originating in the country concerned decreased by 40 % between 1996 and the IP. More specifically, prices remained stable at EUR 1,5 in 1996 and 1997, but then fell sharply in 1998 and stayed at just below EUR 1 until the IP.

(ii) Undercutting

(60) The Commission has examined whether the exporting producers of the country concerned undercut the prices of the Community industry during the IP. For this purpose, the exporting producers' prices have been duly adjusted to a cif level, whereas the Community producers' prices have been adjusted to an ex-works level. For the analysis of the price undercutting, the exported CFL-i as well as those manufactured in the Community by the Community industry, were grouped according to the lifetime, wattage and the type of cover of the lamp. Within each group, the weighted average ex-works prices charged by the Community producers were compared, at the same level of trade, to the weighted average export prices. Adjustments for differences in physical characteristics were made where appropriate.

(61) One interested party claimed that the range of the product concerned has widened recently and that this fact would render a price comparison impossible.

(62) In this respect it should be noted that, on the basis of the information gathered and verified, for most types exported to the Community from the country concerned comparable types produced in the Community were found.

(63) The undercutting margins found on this basis expressed as a percentage of the Community producers' prices, are as follows:

Country: PRC	Price undercutting
Average undercutting margin	40,1 %
Undercutting margins of cooperating exporting producers only	Between 18,4 % and 49,6 %

4. **Situation of the Community industry**

(a) *Production*

(64) The Community industry's production increased by 49 % between 1996 and the IP. The increase occurred steadily over the period under consideration.

(b) *Capacity and capacity utilisation rates*

(65) The total production capacity of the Community industry also increased between 1996 and the IP, by 40 %. This was due to the installation of new production lines. The capacity utilisation increased by only 6 % during the same period and was at a low in 1998. At all times it remained below 70 %.

(c) *Inventories*

(66) The stocks increased considerably between 1996 and the IP, by 52 %. Most of this increase was seen in 1999/IP. In the IP, stocks represented around 25 % of all sales.

(d) *Sales*

(67) Between 1996 and the IP, the sales volume on the Community market of the product concerned produced in the Community increased by 16 %. It should be noted that in the same period the Community consumption increased by 117 %.

(e) *Market share*

(68) Between 1996 and the IP, the Community industry lost almost half of its market share on the Community market (it was about 20 % in the IP), while in the same period overall consumption rose by 117 % and the market share of the imports originating in the country concerned increased by more than about 67 %, which represented a gain in market share of around 26 percentage points.

(f) *Growth*

(69) While Community consumption increased by 117 % between 1996 and the investigation period, the sales volume of the Community industry increased by around 16 % and the volume of imports concerned by 261 %. The growing trend of the market was not followed by an increase of the Community industry's share of the market. On the contrary, its market share decreased by almost 50 % between 1996 and the investigation period, whereas the market share of imports concerned increased by 67 % during the same period.

(g) *Prices*

(70) The Community producers' average net sales price of the product concerned produced and sold in the Community decreased by 30 % between 1996 and the IP. The fall was particularly marked as from in 1998.

(h) *Profitability, return on investment, cash flow and ability to raise capital*

(71) The weighted average profitability, expressed as profits/losses in relation to the net sales value of the products produced and sold in the Community deteriorated between 1996 and the IP. Profitability was highest in 1997 and decreased sharply to almost zero in the IP. The same deterioration occurred in the return on investment, expressed as profits/losses in relation to the net book value of investments.

(72) The cash flow generated by the product produced and sold in the Community decreased sharply between 1997 and 1999. During the IP, it was still below a third of the 1996 level.

(73) The Community industry was not found to be experiencing difficulties in their ability to raise capital on the basis of bank loans and financing from a mother company.

(i) *Employment, productivity and wages*

(74) Employment of the Community industry increased between 1996 and 1998, however returned thereafter to the 1996 level (around 900), in an effort to reduce costs. Wages also increased in 1997 and then decreased in 1999/IP. Average productivity increased steadily over the period under consideration.

(j) *Investment*

(75) The Community industry increased its investments between 1996 and the 1998, but reduced them subsequently. This development mainly relates to investments in new machinery and equipment carried out in order to increase capacity and to improve the efficiency and the productivity.

(k) *Magnitude of dumping margin*

(76) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, this impact is substantial.

5. **Conclusion on injury**

(77) A deterioration of the situation of the Community industry during the period 1996-IP has been found, in particular in terms of reduced market shares, significant price undercutting, price depression and deterioration of profitability.

(78) While the Community consumption expanded by 117 %, the Community industry could not benefit from this development. While its sales increased by only 16 % between 1996 and the IP, imports originating in the country concerned increased by 261 % during the same period.

(79) In terms of the price development, the Community industry had to lower its sales prices continuously and significantly between 1996 and the IP. In addition, the investigation has shown that during the IP the imports concerned were made at prices clearly undercutting those of the Community industry. This development had a negative impact on the profitability of the Community industry, which substantially deteriorated as from 1997 to reach a very low level during the IP.

(80) Several exporting producers submitted that the Community industry did not suffer injury. This argument was based on the situation shown by annual accounts and on the increase in production, sales and capacity utilisation experienced by the Community industry.

(81) In respect of the first point, it should be noted that the annual accounts refer to all the activities of the companies concerned which includes products other than the product concerned. However, the investigation is focused on the activity related to CFL-i only, which represents less than 5 % of the total activity, and, as shown above, the Community industry suffered material injury as far as CFL-i are concerned.

(82) As far as the second point is concerned, following the sharp increase in demand of the product concerned, between 1996 and the IP the Community industry indeed increased its production and the capacity utilisation. Although sales have risen, they did not increase to the extent that was expected given the growth in the market with the result of increasing inventories. Moreover other injury indicators such as prices, profitability, return on investment and cash flow have clearly deteriorated

(83) The situation of the Community industry is thus found to have deteriorated to such an extent that it is provisionally concluded that the Community industry has suffered material injury in the IP.

D. **CAUSATION**

1. **Introduction**

(84) According to Article 3(6) and (7) of the basic Regulation, the Commission has examined whether the dumped imports of CFL-i originating in the country 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**

(85) Between 1996 and the IP, dumped imports from the country concerned significantly increased in terms of volume (261 %) and market share (from 39,5 % to 65,8 %). As regards the export prices, they decreased substantially between 1997 and 1998 and continued to remain at these low levels. The increase of the imports from the PRC coincided with this significant price drop. Moreover, the prices of the Community industry were, during the IP, significantly undercut by those of the dumped imports. All this coincided with the deterioration of the situation of the Community industry in terms of price reductions, reduced market shares as well as a deteriorating profitability.

(86) The above should be seen in the light of the fact that price is one of the main criteria for customers when purchasing CFL-i.

3. **Effect of other factors**

(a) *Imports from other third countries*

(87) The investigation showed that Poland and Hungary were the only other third countries from which the product concerned was imported at a level exceeding *de minimis* into the Community. The import volume of CFL-i from these third countries, as well as their market share, indeed increased substantially, by 291 % and by around 6 percentage points, to around 15 % in the IP, respectively.

(88) However, these imports were wholly undertaken by two companies that formerly manufactured the product concerned in the Community, but recently decided to relocate their production activities to other third countries. The investigation showed that, at least for one of the two companies that fully cooperated in the proceeding this decision was partly due to the aggressive price policy of the Chinese exporting producers.

(89) One exporting producer claimed that one cause of the material injury suffered by the Community industry is that imports originating in Poland and Hungary undercut the prices of the Community industry.

(90) However, on the basis of Eurostat data, the average prices of those imports were significantly higher than the prices of CFL-i originating in the PRC. Moreover, it emerged from the investigation that since the prices reported by Eurostat relate to all products imported under the relevant CN code, some of which are significantly cheaper than CFL-i (for instance, magnetic CFL), the actual prices for CFL-i would be even higher. For instance, during the IP, non-CFL-i items under the relevant CN code represented between 56 % and 79 % in volume.

(91) Given the above, it was provisionally concluded that these imports did not break the causal link between dumping and injury.

(b) *Further factors*

(92) The Commission also examined whether any other factors might have contributed to the injury suffered by the Community industry, having regard to, in particular, a possible contraction in demand, developments in technology and productivity of the Community industry, its export performance and its imports of the product concerned.

(93) As to the development of demand given that the apparent consumption of CFL-i increased considerably during the period under consideration, the material injury suffered by the Community industry cannot be attributed to a contraction of demand on the Community market.

(94) In relation to the developments in technology and the productivity of the Community industry, the Community industry has maintained and even increased sales levels between 1996 and the IP. It also carried out considerable investments and installed new production lines, thereby increasing its productivity in order to limit its losses in market shares and competitiveness. It was therefore provisionally concluded that these developments did not represent a cause of material injury.

(95) Concerning the export performance, the Community industry has increased its sales in export markets, where it was likewise in competition with the exporting producers concerned, by 136 % between 1996 and the IP. It should be noted that export sales accounted for between 30 % to 40 % of the total sales of the Community industry during the IP. On this basis, the Community industry has shown itself to be competitive. The export activity cannot therefore have contributed to the injury suffered by the Community industry.

(96) Several exporting producers submitted that the complainants are themselves importing the product concerned from the PRC thereby contributing to the injury suffered.

(97) In this respect, these imports are explained by the need for the complainants to complete their product range so as to be able to satisfy demand. In addition, the volume of imports carried out by the Community industry represents only 4 % of the total volume of imports of the product concerned originating in the country concerned. It was therefore provisionally concluded that the imports of the product concerned originating in the country concerned and carried out by the Community industry are unlikely to have caused the injury and in any event were not such as to break the causal link between dumping and injury.

4. **Conclusion on causation**

(98) The substantial increase in volume and market share of the imports originating in the country concerned as well as the considerable decrease in their sales prices and the level of price undercutting found during the IP coincided in time with the material injury suffered by the Community industry. In addition, no other factors were found which were such to break the causal link between the dumped imports from the country concerned and the material injury suffered by the Community industry.

(99) In view of the above, it is provisionally concluded that the dumped imports caused the material injury suffered by the Community industry.

E. **COMMUNITY INTEREST**

1. **Preliminary remark**

(100) In accordance with Article 21 of the basic Regulation, the Commission examined the issue of Community interest. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the Community industry, the importers/traders and the users/consumers of the product concerned to the extent that the relevant parties submitted the information requested in this respect.

(101) In order to assess the likely impact of the imposition or non-imposition of measures, the Commission requested information from all interested parties. The Commission sent questionnaires to the Community industry, 38 importers/traders, one association of consumers of the product concerned (Bureau Européen des Unions de Consommateurs (BEUC)), two associations of traders and one association of producers. The Community producers and six importers/traders replied. BEUC did not reply to the questionnaires nor did it submit any other information.

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

2. **Community industry**

(103) If measures are taken, the Community industry will be able to regain at least part of its lost market share with a consequent positive impact on profitability.

(104) The Community industry has proven to be a structurally viable industry, able to adapt to the changing conditions of the market. It obtained profit margins around 5 % to 8 % in 1996 and 1997, when the impact of dumped imports was less felt on the market, it made considerable investments and it had a good export performance.

(105) The Community industry suffered material injury caused by dumped imports originating in the country concerned. If measures are not imposed, a further deterioration of the situation of the Community industry is probable. It is also likely that the remaining Community producers may decide to relocate the production outside the Community or to shut dowm plants in order to react to competition from dumped imports. This would entail a further loss of employment, including highly qualified research and development ('R & D') staff. Indeed, CFL-i are high-tech products which necessitate important R & D efforts. The price-depressive effect of the dumped imports would continue to frustrate all efforts of the Community industry to regain market shares and to reach a satisfactory margin of profitability. Not taking measures would jeopardise the new investments carried out, including in R & D, which are necessary in order to fully benefit from the expansion of the market and ensure the long-term presence of the industry.

3. **Importers/traders**

(106) Questionnaire replies were received from six importers. After having sent its questionnaire reply, one importer decided not to cooperate further. Therefore five verification visits were carried out. The five co-operating unrelated importers represented 14,1 % of total imports of CFL-i from the country concerned during the IP. The number of effective staff in these companies related to the CFL-i business was less than one hundred.

(107) In respect of two of these importers, representing together less than 1 % of total imports from the PRC and having around 25 employees, their business is very much dominated by CFL-i and therefore negative effects of the imposition of duties on these importers cannot be excluded. However, two other of these five importers also deal with a wide range of other products, while the fifth exclusively trades with an exporting producer for which no duties are imposed and they will therefore not be significantly affected by the duties.

(108) In addition, it should be noted that, as mentioned, one Chinese exporting producer did not sell at dumped prices. Some importers also purchase CFL-i from Community producers and there are additional sources of supply from other third countries. Importers thus will be able to purchase from sources not dumping the product concerned.

(109) On the basis of the above and given the large number of importers not cooperating in the proceeding, it is provisionally concluded that anti-dumping measures will not have such a negative impact on importers as a whole as to outweigh the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition.

4. **Users/consumers**

(110) Users of the product concerned are private households, industry and a large number of commercial establishments such as shops, restaurants etc. On average, users tend to buy from the cheapest source available and have therefore benefited from low prices for CFL-i in recent years.

(111) With respect to possible consequences for users it has to be noted that BEUC did not reply to the questionnaire nor did it submit any other information.

(112) Any significant price increase appears indeed unlikely as no or low duties are imposed for some Chinese exporting producers. Importers have so far practised considerable mark-ups, and alternative sources of supply from other third countries with no duties are available. Therefore it is unlikely that importers would pass on the duties or any significant part thereof to their customers.

(113) Rather, the imposition of anti-dumping measures does not rule out the possibility of a general price decrease in the medium term, as the market is expanding and as all producers will benefit from growing economies of scale, the benefits of which they can pass on to consumers.

(114) On the basis of the above, it was provisionally concluded that the effect of the anti-dumping measures, if any, will most likely not have a decisive impact on users.

(115) Several interested parties submitted that anti-dumping duties would run counter to the principles of the European energy policy, as they would increase the price and thus reduce the sales of energy saving lamps and incite users to buy more incandescent lamps that consume more energy.

(116) In this respect, the Community interest analysis focuses on the economic impact on the economic operators concerned. It should be noted that, as pointed out above, it is unlikely that the price for CFL-i will increase significantly. Even if it would increase (in the unlikely event that the duties are fully passed on to the consumers), it is unlikely that consumers would be discouraged from buying CFL-i, as, given the economic benefits due to the energy saving effect, it would still be economically viable to buy CFL-i.

5. **Competition and trade distorting effects**

(117) With respect to the effects of possible measures on competition in the Community, most of the exporting producers concerned, given their strong market positions, will probably continue to sell their products albeit at non-injurious prices. Indeed, the fact that for some of them no or very low duties are imposed shows that Chinese exporting producers are able to operate under fair market conditions. The imposition of anti-dumping duties on those exporting producers for which higher dumping and injury margins were established, is indeed likely to lead to a decrease in their sales volume and market share. However, given the overall range of duties imposed, it is likely that there will still be a significant number of major competitors on the Community market, including producers in Poland and Hungary. Users and consumers will continue to have the choice of different suppliers of the product concerned.

6. **Conclusion on Community interest**

(118) Given the above reasons, it is provisionally concluded that there are no compelling reasons against the imposition of anti-dumping duties.

F. **PROVISIONAL ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(119) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional anti-dumping measures should be taken in order to prevent further injury being caused to the Community industry by the dumped imports.

(120) In order to establish the level of duty, account has been taken of the level of the dumping margins found and of the amount of duty necessary to eliminate the injury suffered by the Community industry.

(121) In order to establish the level of duty needed to remove the injury caused by dumping, injury margins have been calculated. The necessary price increase was determined on the basis of comparisons, per product type, at the same level of trade, of the weighted average export price, with the corresponding non-injurious price of CFL-i sold by the Community industry on the Community market.

(122) The non-injurious price has been obtained by deducting from the sales price of the Community industry its average actual profit and by adding a profit margin that may reasonably be reached in the absence of injurious dumping. In view of the financial situation of the Community industry in previous years (1996/97) and taking into account the need for long-term investments, a profit margin of 8 % has been found appropriate.

(123) The difference resulting from the comparison between the weighted average export price, as established for the undercutting calculations, and the non-injurious price of the Community industry was then expressed as a percentage of the total cif import value. As for the calculation of the undercutting margins, this comparison was carried out by appropriate groups of types.

2. **Provisional measures**

(124) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping duties should be imposed in respect of imports originating in the PRC at the level of the lowest margins in accordance with the lesser duty rule. The duty should accordingly be set at the level of the injury margins found for Philips & Yaming, and the dumping margins found for the remaining exporting producers.

(125) As regards the country-wide duty to be applied to the remaining exporting producers, it was determined at the level of the country-wide dumping margin because that was lower than the residual injury margin.

(126) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(127) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

G. **FINAL PROVISION**

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

[1] European Commission
Directorate-General Trade
Directorates B and C
TERV 00/13
Rue de la Loi/Wetstraat 200
B-1049 Brussels

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of electronic compact fluorescent discharge lamps with one or more glass tubes, with all lighting elements and electronic components fixed to the lamp foot or integrated in the lamp foot falling within CN code ex 8539 31 90 (TARIC code 8539 31 90 91), and originating in the People's Republic of China.

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

Manufacturer	Rate of duty (%)	TARIC additional code
Changzhou Hailong Electronics & Light Fixtures Co., Ltd Luoyang, Changzhou, Jiangsu Changzhou 213104 People's Republic of China	59,6	A234
City Bright Lighting (Shenzhen) Ltd Shenzhen People's Republic of China	17,2	A235
Deluxe Well Enterprises Ltd Block 17-18, Hong Qiao Tao Industrial Zone Bao An Yuan, Shenzhen People's Republic of China	37,3	A236
Lisheng Electronic & Lighting (Xiamen) Co., Ltd, Xiamen People's Republic of China	0,0	A237
Philips & Yaming Lighting Co., Ltd 1805 Hu Yi Highway Malu Jia Ding District Shanghai 201801 People's Republic of China	39,2	A238
Sanex Electronics Co., Ltd Xin Su Industrial Area, Jiangsu Suzhou 215001 People's Republic of China	21,2	A239
Shenzhen Zuoming Electronic Co. Ltd Shenzhen, Guangdong People's Republic of China	6,0	A240
Zhejiang Sunlight Group Co., Ltd 129 Fengshan Road, Zhejiang Shangyu 213104 People's Republic of China	35,4	A241
All other companies	74,4	A999

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

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

Article 2

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

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

Article 3

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

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

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

Done at Brussels, 7 February 2001.

For the Commission

Pascal LAMY

Member of the Commission