

COMMISSION REGULATION (EC) No 390/2007

of 11 April 2007

imposing a provisional anti-dumping duty on imports of peroxosulphates (persulphates) originating in the United States of America, the People's Republic of China and Taiwan

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⁾ (the basic Regulation), and in particular Article 7 thereof,

Whereas:

A. PROCEDURE

1. Initiation

- (1) On 31 May 2006, the Commission received a complaint concerning peroxosulphates (persulphates) originating in the United States of America (USA), the People's Republic of China (PRC) and Taiwan lodged pursuant to Article 5 of the basic Regulation by CEFIC (the complainant) on behalf of producers representing 100 % of the total Community production of persulphates.
- (2) This complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.
- (3) On 13 July 2006, the proceeding was initiated by the publication of a notice of initiation in the *Official Journal of the European Union*⁽²⁾.

2. Parties concerned by the proceeding

- (4) The Commission officially advised the complainant Community producers, the exporting producers in the USA, the PRC and Taiwan, importers, traders, users, suppliers and associations known to be concerned, and the representatives of the USA, the PRC and Taiwan 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.

- (5) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the Chinese exporting producers known to be concerned and to other Chinese exporting producers that made themselves known within the deadlines set out in the notice of initiation. Six exporting producers together with their related sales companies, where appropriate, requested MET pursuant to Article 2(7) of the basic Regulation, or IT should the investigation establish that they did not meet the conditions for MET.
- (6) In view of the apparent high number of exporting producers in the PRC the Commission indicated in the notice of initiation that sampling might be applied in this investigation for the determination of dumping and injury in accordance with Article 17 of the basic Regulation.
- (7) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in the PRC were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the calendar year 2005.
- (8) Given that only six exporting producers cooperated in the investigation, it was decided that sampling was not required.
- (9) 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 six exporting producers in the PRC, two in the USA and one in Taiwan, and one producer in the analogue country, Turkey. Full questionnaire replies were also received from two Community producers and two importers cooperated by submitting a questionnaire reply. Furthermore, none of the users replied to the questionnaire and no other users supplied the Commission with any information or made themselves known in the course of this investigation.

⁽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 162, 13.7.2006, p. 5.

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

(a) *Community producers*

- Degussa Initiators GmbH&Co. KG, Pullach, Germany
- RheinPerChemie GmbH, Hamburg, Germany

(b) *Exporting producers in the PRC*

- Degussa-AJ (Shanghai) Initiators Co., Ltd, Shanghai and its related trading company Shanghai AJ Import and Export Co., Ltd, Shanghai
- ABC Chemicals (Shanghai) Co., Ltd, Shanghai and its related trading company Siancity Xiamen Co., Ltd, Xiamen
- Hebei Jiheng Group Co., Ltd, Hengshui
- Hebei Yatai Electrochemistry Co., Ltd, Wang Jia Jing
- Shaanxi Baohua Technologies Co., Ltd, Baoji
- Shangyu Jiehua Chemical Co., Ltd, Shangyu

(c) *Exporting producers in the USA*

- E.I. DuPont De Nemours, Wilmington, Delaware
- FMC Corporation, Tonawanda, New York

(d) *Related trader in Switzerland*

- DuPont De Nemours International S.A., Geneva

(e) *Exporting producers in Taiwan*

- San Yuan Chemical Co., Ltd, Chiayi.

(11) In view of the need to establish a normal value for exporting producers to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country, Turkey in this case, took place at the premises of the following company:

Producer in Turkey

- Ak-kim Kimya Sanayi Ve Ticaret A.Ş., Istanbul.

3. Investigation period and period considered

(12) The investigation of dumping and injury covered the period from 1 July 2005 to 30 June 2006 (investigation period or IP). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2003 to the end of the investigation period (period considered).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(13) The product concerned is peroxosulphates (persulphates) originating in the USA, the PRC and Taiwan (the product concerned). The product concerned is normally declared within CN codes 2833 40 00 and ex 2842 90 80 (CN codes since 1 January 2007).

(14) Persulphates are white, crystalline, odourless salts, which comprise four main types: ammonium persulphate ($(\text{NH}_4)_2\text{S}_2\text{O}_8$), sodium persulphate ($\text{Na}_2\text{S}_2\text{O}_8$), potassium persulphate ($\text{K}_2\text{S}_2\text{O}_8$) and potassium monopersulphate ($2\text{KHSO}_5 \cdot \text{KHSO}_4 \cdot \text{K}_2\text{SO}_4$).

(15) The product concerned is used as an initiator or as an oxidising agent in a number of applications. Some examples include its use as a polymerisation initiator in the production of polymers, as an etching agent in the production of printed circuit boards, in hair cosmetics, in textile desizing, in paper manufacturing, as a denture cleanser and as a disinfectant.

(16) One US exporting producer claimed that potassium monopersulphate (KMPS) should not be considered part of the same product on the grounds that it has a different chemical composition and structure, different end-uses and different customers. It was also claimed that KMPS would be sold at different price levels from the other product types.

- (17) The investigation has however shown that, despite differences in chemical formula, and partially distinct uses, the different types of the product concerned all share the same basic chemical and technical characteristics and can be used for the same basic purposes. It is acknowledged that not all types are used for all applications, but they were all found to be interchangeable for at least some significant applications. As far as the different price levels are concerned, it is recalled that this alone is not determinant as to whether several product types constitute one single product. As it has been found that all four types had similar characteristics and common end-uses this argument had to be rejected. Consequently, all four types are provisionally considered to constitute a single product for the purpose of this proceeding.
- (22) The Commission subsequently identified those product types sold domestically by the companies having overall representative domestic sales, which were identical or directly comparable with the types sold for export to the Community.
- (23) Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.

2. Like product

- (18) The investigation showed that the basic physical and technical characteristics of the persulphates produced and sold by the Community industry in the Community, persulphates produced and sold on the domestic markets of the USA, the PRC and Taiwan and persulphates imported into the Community from these countries, as well as those produced and sold in Turkey, the analogue country, are the same and that these products have the same uses.
- (19) It is therefore provisionally concluded that these products are alike within the meaning of Article 1(4) of the basic Regulation.
- (24) The Commission subsequently examined whether the domestic sales of each type of persulphates sold domestically in representative quantities by each company in each exporting country could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable domestic sales to independent customers, of each exported product type, on the domestic market during the investigation period, as follows:
- (25) Where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.

C. DUMPING

1. General methodology

- (20) The general methodology set out below has been applied to all cooperating exporting producers in the USA and Taiwan, as well as for the cooperating Chinese exporting producers for which MET was granted. The presentation of the findings on dumping for each of the countries concerned therefore only describes matters specific to each exporting country.
- (26) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.
- 1.1. *Normal value*
- (21) In accordance with Article 2(2) of the basic Regulation, the Commission first examined for each exporting producer whether the domestic sales of the product concerned to independent customers were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community.
- (27) Where the volume of profitable sales of any product type represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(28) Wherever domestic prices of a particular product type sold by an exporting producer could not be used in order to establish normal value, another method had to be applied. In accordance with Article 2(3) of the basic Regulation the Commission instead calculated a constructed normal value, as follows.

(29) Normal value was constructed by adding to each exporter's manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit.

(30) In all cases SG&A and profit were established pursuant to the methods set out in Article 2(6) of the basic Regulation. To this end, the Commission examined whether the SG&A incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data.

1.2. Export price

(31) In all cases where the product concerned was 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.

(32) Where the export sale was made via related importers based in the Community, the export price was constructed, pursuant to Article 2(9) of the basic Regulation, on the basis of the price at which the imported products were first resold to an independent buyer, duly adjusted for all costs incurred between importation and resale, as well as a reasonable margin for SG&A and profits. In this regard, the related importers' own SG&A costs were used. The profit margin was established on the basis of the information available from cooperating unrelated importers.

(33) Where the export sale was made via a related trader located outside the Community, the export price was established on the basis of the first resale price to independent customers in the Community.

1.3. Comparison

(34) The comparison between normal value and export price was made on an ex-factory basis.

(35) 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.

1.4. Dumping margins

(36) Pursuant to Articles 2(11) and (12) of the basic Regulation dumping margins were established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type as established above.

(37) In order to determine the dumping margin for non-cooperating exporting producers, the level of non-cooperation was first established. To this end, the volume of exports to the Community reported by the cooperating exporting producers was compared with the equivalent Eurostat import statistics.

(38) As the level of cooperation in the USA and Taiwan was high (effectively 100 %), and since there was no reason to believe that any exporting producer in these countries deliberately abstained from cooperating, it was considered appropriate to set the residual dumping margin for any non-cooperating exporting producers in each of the countries concerned at the level of the highest margin imposed on a cooperating exporter.

(39) As regards the PRC, the level of cooperation assessed at the level of the country was also very high (above 85 %). The specific methodology applied to determine the country-wide dumping margin for the PRC is explained below.

2. USA

2.1. Normal value

(40) For both cooperating exporting producers, the total volume of domestic sales of the like product was representative as defined in recital 21 above. For all product types normal value was thus based on prices paid or payable, in the ordinary course of trade, by independent customers in the USA, as explained in recitals 25 and 26, since these sales represented in all cases 10 % or more of the total sales volume of that type.

2.2. Export price

(41) The exports of the one of the cooperating exporting producers were made directly to independent customers in the Community. The export price was therefore based, for that exporter, on the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

- (42) For the other exporter, all its sales to the Community are through a related trading company in Switzerland. The export price was therefore established as described in recital 33.
- (43) Furthermore, a significant part of the export sales of this exporting producer in the USA to the Community via its related company in Switzerland were to a related company which used the product concerned as a raw material to produce another product which is not considered to be a like product within the meaning of Article 1(4) of the basic Regulation.
- (44) Since the prices set for the transactions between the exporting producer and its related company in the Community via their related trading company in Switzerland was found to have been affected by the relationship between the three companies, these prices could not be relied upon to determine an export price for those transactions.
- (45) Since furthermore no export price could be constructed based on the resale price of the related company to independent customers, as the product concerned goes under substantial transformation to get the final product manufactured by the related company, all those transactions corresponding to captive use were ignored in the determination of the export price.

2.3. Comparison

- (46) The normal value and export prices were compared on an ex-works basis, as described above, with adjustments, where appropriate, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for discounts, rebates, transport, insurance, handling, loading and ancillary costs, packing, credit and import duties.
- (47) For the sales channelled by one exporting producer through its related trader in Switzerland, an adjustment was made in accordance with Article 2(10)(i) of the basic Regulation. The adjustment was based on the markup received by the related trader in Switzerland, but in this calculation the actual profit of the related trader could not be used since the relationship between the exporting producer and the related trader significantly affected transfer prices. The markup was thus calculated as the sum of the SG&A expenses borne by the related trading company during the IP and a reasonable margin for profit, which was set at 5 % at this stage, in the absence of any meaningful information from cooperating unrelated companies assuming comparable functions.

- (48) One exporting producer in the USA claimed a level of trade adjustment under Article 2(10)(d) of the basic Regulation on the grounds that certain of its domestic sales were allegedly not comparable to its export sales due to the existence of categories of customers on the domestic market for which different functions are assumed by the exporting producer. However, the investigation established that this claim was unwarranted, insofar as the company did not provide evidence in support of the alleged differences in functions. Moreover, the alleged differences in prices between the categories claimed were not found consistent across product types. Therefore, the claim was rejected.

2.4. Dumping margins

- (49) Since the level of cooperation was high, and there was no reason to believe that any exporting producer deliberately abstained from cooperation, the residual margin applicable to all other exporters in the USA was set at the same level as the one established for the cooperating exporting producer with the highest dumping margin.
- (50) The dumping margins, expressed as a percentage of the cif import price at the Community border, duty unpaid, are provisionally the following:

E.I. DuPont De Nemours	28,3 %
FMC Corporation	84,1 %
All other companies	84,1 %

3. China

3.1. Market economy treatment (MET)

- (51) 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 producers which are found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.
- (52) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:
1. Business decisions and costs are made in response to market signals and without significant State interference and costs of major inputs substantially reflect market values;

2. Firms have one clear set of basic accounting records which are independently audited, in line with international accounting standards (IAS) and are applied for all purposes;
3. There are no significant distortions carried over from the former non-market economy system;
4. Bankruptcy and property laws guarantee legal certainty and stability; and
5. Exchange rate conversions are carried out at market rates.
- (53) Six exporting producers 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 these companies all information submitted in the MET applications as deemed necessary. The investigation revealed that the MET could only be granted to three exporting producers, whereas the claim had to be rejected for the other three exporting producers. It is noted that for one of the three exporting producers granted MET, this decision is subject to further examination of late information that could not be fully investigated at this stage, as described below. This information, if confirmed by the further investigation, could lead to a significant change in the factual situation on the basis of which MET was granted to that company, insofar as it may affect the fulfilment of criterion 1. The following table summarises the determination for the three companies for which MET was not granted against each of the five above-mentioned criteria:

Company	Criterion				
	(1)	(2)	(3)	(4)	(5)
1	Not fulfilled	Not fulfilled	Not fulfilled	Fulfilled	Fulfilled
2	Not fulfilled	Not fulfilled	Not fulfilled	Fulfilled	Fulfilled
3	Not fulfilled	Not fulfilled	Not fulfilled	Fulfilled	Fulfilled

- (54) The investigation showed for companies 1, 2 and 3 above that they did not meet the requirements of the aforementioned criteria 1, 2 and 3.

used to start the company was obtained from the village-owned and collectively-owned enterprises managed by the current Chairman of the company and the company was not able to explain and demonstrate the origin of the capital.

- (55) Namely, all three companies could not demonstrate that their business decisions were taken in response to market signals, without significant State interference.

- (57) Moreover, all three companies' accounts were not kept in line with IAS, and signs of serious negligence in the audit of those accounts were found.

- (56) Indeed for company 1 it was found that the majority of the Directors on the Board, including the Chairman, who owns a significant share in the company, were the same as before privatisation and had been appointed by the State. They were also found to be members of the Communist Party. Moreover, the company was unable to prove payment for the shares during the privatisation process. In company 2, which was founded as a State-owned enterprise and privatised in 2000, the investigation showed that three members of the management staff that were in post prior to the privatisation conducted the privatisation and still had control over the main decision-making bodies of the company. Those three persons were found to be members of the Communist Party. Furthermore, company 2 was found to have provided false information with regard to the ownership of its shares and the privatisation process, thereby hiding significant State interference. As to company 3, there were strong indications that capital

- (58) Finally, distortions carried over from the non-market economy system were found to affect the costs for both companies, in particular with regard to cost of the land-use rights acquired (companies 1 and 3) or assets transferred during the privatisation (company 2).

- (59) With regard to the three other cooperating exporting producers it was initially concluded that the companies met all five criteria.

- (60) However, after the disclosure to the interested parties, which were given an opportunity to comment on the above findings, the Community industry claimed that two of the three exporting producers for which it was proposed to grant MET should be denied MET (hereunder referred to as company 4 and company 5).

- (61) They alleged for company 4 that there was State interference in the management as well as in the financing of the company.
- (62) For company 5 the Community industry stated that they had understated their number of employees, and queried the payment of the original capital. They also queried the losses made by a related trading company.
- (63) With regard to company 4, it was not possible to conclude at this stage whether the allegations constituted sufficient grounds to deny MET. Whereas the allegations are considered to be serious, there is at present uncertainty about the facts underlying these allegations. Further analyses of the information submitted by the company as well as additional investigations are necessary before a final decision is reached. In these particular circumstances, in order not to impede the rights of defence of interested parties, it was therefore considered appropriate to grant MET to company 4 at this stage and to continue the investigation regarding its MET claim.
- (64) As regards the allegations made against company 5, these were merely assumptions. The Commission verified the information submitted by this exporting producer and concluded that the allegations were not substantiated. The Commission's findings as regards this company are thus maintained.
- (65) Following disclosure of the Commission's findings, all three companies denied MET submitted that the determination was incorrect, that they met all five MET criteria and that they should be granted MET as a consequence.
- (66) In particular, company 1 contended that it had submitted the proof of the payment in cash for the shares to the Commission and denied any State influence on its decision-making process. It also argued that its accounts were kept in line with IAS and that the cost of the land-use right was in line with market values.
- (67) Company 2 contested that membership in the Communist Party of its top management should lead to the conclusion that there is State interference in the company's decision process, and said that it submitted supporting evidence for the payment of the shares during its privatisation process. The company further argued that, despite breaching some of the IAS, its accounts were in line with the Chinese Accounting Standards.
- (68) Company 3 stated that the capital used to start the company was sourced from other companies owned by the same shareholder, that the accounts were in line with IAS, and that their land-use right prices were similar to other companies in the same area and at market prices.
- (69) Those comments were taken into consideration by the Commission. However they did not change the finding that these three companies should be denied MET.
- (70) Indeed, company 1 merely alleged that bank statements were not commonly used in China, but it could not give any supporting evidence that the shares for its privatisation were effectively paid for. The company did not either contest the fact that the management structure of the company was the same as prior to privatisation nor that the Chairman was a member of the Communist Party. The fact that the main shareholders were not represented in the Board of Directors was also not contested. Therefore it was found that the company had not sufficiently demonstrated that it was not subject to significant State interference.
- (71) Furthermore, no new elements were provided to reject the findings and support the claim that accounts complied with IAS and that land-use rights costs were within market conditions.
- (72) Company 2 disputed the conclusion reached by the Commission but did not deny the facts on which they were based. Concerning the privatisation process and the payment of the shares, the company argued that it provided supporting evidence but did not address the fact that these documents were false, as admitted by the General Manager during the verification visit. The company also confirmed that the key management positions were occupied by members of the Communist Party.
- (73) Moreover, no new elements were provided to support the claim that accounts complied with IAS, the company's statement only being that they were in line with the Chinese Accounting Standards.
- (74) For company 3, the Commission continued to doubt the origin of the capital of the company. Indeed, company 3 merely stated that the capital was sourced from related companies belonging to the Chairman of company 3 through loans which were repaid within a few months. This new information was not only found to contradict the statements made by representatives of company 3 during the verification at the premises of the company, where no documented evidence was made available for inspection, but is also clearly deficient as it does not provide any indication of the origin of the funds used to repay those loans.

(75) The company furthermore restated that its accounts were kept in line with IAS and that the discrepancies identified during the investigation were in fact reconcilable. However, it provided only partial information to document the alleged reconciliation, accounting merely for a minor part of the differences found. In any case, this new information was submitted only after the investigation and at such a late stage that it would be impractical to verify it. Furthermore, the company also did not demonstrate that their low land-use right price was actually a market price.

(76) On this basis, MET is granted to three exporting producers:

— Degussa-AJ (Shanghai) Initiators Co., Ltd

— ABC Chemicals (Shanghai) Co., Ltd

— Hebei Yatai Electrochemistry Co., Ltd

3.2. Individual treatment ('IT')

(77) Pursuant to Article 2(7)(a) of the basic Regulation, a countrywide duty, if any, is to be 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 and are therefore granted individual treatment ('IT').

(78) The exporting producers to which MET could not be granted also claimed IT in the event that they were not granted MET. However, the companies' claim for individual treatment was also rejected as they failed to meet the criteria set out in Article 9(5)(b), namely that export prices and quantities were freely determined and that State interference would not be such as to permit circumvention of measures if individual exporters are given different rates of duty.

3.3. Normal value

(a) Determination of normal value for the exporting producers granted MET

(79) For the three cooperating exporting producers granted MET, the total volume of domestic sales of the like product was representative as defined in recital 21 above. For some of the product types normal value was based on prices paid or payable, in the ordinary course of trade, by independent customers in the PRC,

as explained in recitals 25 and 26, and for the product types for which the domestic sales were insufficient to be considered representative or they were not made in the ordinary course of trade, normal value was constructed as described in recitals 27 to 30.

(80) In the cases where the normal value had to be constructed, the margins for SG&A expenses and profit referred to in recitals 29 and 30 were based on the actual SG&A and profit made by the exporting producer for its domestic sales, in the ordinary course of trade, of the like product on the domestic market, in accordance with the first sub-paragraph of Article 2(6) of the basic Regulation.

(b) Determination of normal value for the exporting producers not granted MET

(i) Analogue country

(81) 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 domestic prices or constructed normal value in an analogue country.

(82) 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 and interested parties were invited to comment on this. However, no comment was received.

(83) All known producers of persulphates in Japan were contacted, but none agreed to cooperate.

(84) The Commission then contacted and sent questionnaires to all known producers of persulphates in the other countries where the Commission was aware that such producers existed, namely India and Turkey. No response was received from the Indian companies contacted but one producer in Turkey replied to the questionnaire.

(85) The Commission then examined whether Turkey was a reasonable choice of analogue country. It was concluded that Turkey, despite having only one producer of the product concerned, was an open market with a low import duty and significant imports from third countries. Furthermore, the investigation showed no reason, such as excessively high cost of raw materials or energy, to consider that Turkey was not adequate for the purpose of establishing normal value.

(86) The data submitted in the cooperating Turkish producer's reply was verified on the spot and was found to be reliable information on which a normal value could be based.

(87) It is therefore provisionally concluded that Turkey is an appropriate and reasonable analogue country in accordance with Article 2(7) of the basic Regulation.

(ii) Normal value

(88) 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, i.e. on the basis of prices paid or payable on the Turkish market for comparable product types, in accordance with the methodology set out above.

(89) Since sales on the domestic market to unrelated customers were representative and overall profitable, normal value was established on the basis of all prices paid or payable on the Turkish market for comparable product types, for sales in the ordinary course of trade as described in recitals 25 and 26.

3.4. Export prices

(90) All cooperating exporting producers made export sales to the Community either directly to independent customers in the Community; or through related or unrelated companies located in the PRC, in Hong Kong or in the Community.

(91) Where the product concerned was directly exported to independent customers in the Community, the export prices were based on the prices actually paid or payable for the product concerned, in accordance with Article 2(8) of the basic Regulation.

(92) Where sales were made via a related company in the Community the export price was established in accordance with Article 2(9) of the basic Regulation. Where sales were made via a related company outside the Community the export price was established on the basis of the method set out in recital 33.

3.5. Comparison

(93) Adjustments were made, where appropriate, in accordance with Article 2(10) of the basic Regulation, in respect of transport, insurance, handling and ancillary costs, packing, credit, bank charges and

commissions were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

(94) For the sales channelled through related trading companies, an adjustment was applied in accordance with Article 2(10)(i) of the basic Regulation, where these companies have been shown to perform functions similar to those of an agent working on a commission basis. In this respect, the allocation of SG&A expenditure provided by the related company was found to be reliable and this adjustment was based on that amount of SG&A expenses plus a profit margin of 5 %, being a reasonable profit margin in the absence of any meaningful data from cooperating unrelated importers or traders in the Community.

3.6. Dumping margins

(a) For the cooperating exporting producers granted MET

(95) The comparison between the normal value and the export price showed that for two of the three exporters concerned the dumping margin was below 2 %, i.e. *de minimis*. The dumping margins expressed as a percentage of the cif import price at the Community border, duty unpaid, are thus provisionally the following:

Company	Provisional dumping margin
ABC Chemicals (Shanghai) Co., Ltd	<i>de minimis</i>
Degussa-AJ (Shanghai) Initiators Co., Ltd	14,4 %
Hebei Yatai Electrochemistry Co., Ltd	<i>de minimis</i>

(b) For all other exporting producers

(96) In order to calculate the countrywide dumping margin applicable to all other exporters in the PRC, since the level of cooperation found was high as explained above a comparison was made, on an ex-works basis, between the weighted average export price of the three cooperating exporters that were not granted MET and the normal value calculated based on the data in the analogue country.

(97) On this basis the countrywide level of dumping was provisionally established at 102,7 % of the Cif Community frontier price, duty unpaid.

4. Taiwan

4.1. Normal value

- (98) For the only cooperating exporting producer, the total volume of domestic sales of the like product was representative as defined in recital 21 above. For all product types normal value was thus based on prices paid or payable, in the ordinary course of trade, by independent customers in Taiwan, as explained in recitals 25 and 26, since these sales represented in all cases 10 % or more of the total sales volume of that type.

4.2. Export price

- (99) The exports of the only cooperating exporting producer were made directly to independent customers in the Community. The export price was therefore based on the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

4.3. Comparison

- (100) The normal value and export prices were compared on an ex-works basis, as described above, with adjustments, where appropriate, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for rebates, transport, insurance, handling, loading and ancillary costs, packing and credit costs.

- (101) The cooperating exporting producer claimed a level of trade adjustment on the grounds that certain of its domestic sales were allegedly made at a level of trade not comparable with its export sales. In the course of the investigation, it was found that the level of trade declared for one of the main domestic customers was erroneous, which cast serious doubts on the reliability of the classification of customers submitted to support this level of trade adjustment. In any case, the alleged differences in prices between the categories claimed were not found consistent across product types during the IP and the claim had therefore to be rejected.

- (102) The cooperating exporting producer claimed an adjustment for differences in commissions paid, referring in particular to commissions paid to an agent in Taiwan for sales on the Taiwanese market. However, it was found during the investigation that, based on the information submitted by the exporting producer, the agent was performing similar functions to the ones exerted by the sales department of the exporting producer for export sales. Whereas fees were found to have been effectively paid to that agent, they were thus not found to affect the price comparability of domestic prices and export prices. The claim was therefore rejected, since the conditions set out in the first subparagraph of Article 2(10) of the basic Regulation were not met.

- (103) Furthermore, the exporting producer claimed an adjustment for transport costs incurred on its domestic market. However, the company could not properly substantiate its claim and the documents submitted were partially misleading. It was consequently informed that in the light of Article 18 of the basic Regulation the provisions on partial cooperation would apply. In the absence of a satisfying explanation from the company with regard to the submitted documents, recourse was made in the dumping calculation to facts available as regards the transport costs on the domestic market. The adjustment was based on the amounts that could be justified by invoices received from freight forwarding agents.

4.4. Dumping margins

- (104) Since the level of cooperation was high, and there was no reason to believe that any exporting producer deliberately abstained from cooperation, the residual margin applicable to all other exporters in Taiwan was set at the same level as the one established for the cooperating exporting producer.

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

San Yuan Chemical Co., Ltd	22,6 %
All other companies	22,6 %

D. INJURY

1. Community production and Community industry

- (106) Within the Community the like product is manufactured by two producers located in Germany, on behalf of which the complaint was lodged and which cooperated in the investigation. During the IP, their output which was in the range 24 000 and 29 000 tonnes represented 100 % of the Community production. Moreover, both producers are deemed to constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation. One exporting producer claimed that one of the Community producers imported the product concerned from China during the IP and should therefore be excluded from the definition of the Community industry. However, and as also mentioned below in recital 151, the import levels were low and were only made to maintain global customers. Since, in addition, the average resale price levels were significantly higher than the Chinese import prices, it was considered that imports of this Community producer were rather an act of self-defence against the dumped imports than self-inflicted injury. Therefore, the two Community producers were considered as being the Community industry within the meaning of Article 4(1)(a) of the basic Regulation.

2. Community consumption

(107) Community consumption was established on the basis of the sales volumes on the Community market by the two Community producers, the imports from the countries concerned and from other third countries under the relevant CN codes according to Eurostat and in the case of Taiwan and USA on the basis of actual verified data. As far as the PRC is concerned, the reported import volume by the cooperating Chinese exporting producers did not represent the total imports from the PRC. Therefore, as regards imports from the PRC are concerned, it was considered that in the purpose of determining total Community consumption Eurostat data were the most reliable source of information.

ex 2842 90 80. The Eurostat data concerning CN code ex 2842 90 80 comprises one particular type of persulphates (monopersulphate) mainly imported from the USA and other products such as salts of inorganic acids or peroxyacids, which are not product concerned. As it was not possible to retrieve from this broader category of products the data for persulphates only, it was considered that import data from Eurostat concerning this particular CN code would not reflect a reliable picture of the situation and should therefore not be used. In any case, and as mentioned above in recital 107, as regards the USA and Taiwan actual verified import data were used.

(108) As mentioned in recital 13 the product concerned is presently declared within CN codes 2833 40 00 and

(109) On the basis of these data, it was found that over the period considered, consumption increased by 7 %.

Table 1

Consumption in the EU (volume)

	2003	2004	2005	IP
Consumption in tonnes (ranges)	37 000-42 000	40 000-45 000	39 000-44 000	40 000-45 000
Consumption (Index)	100	108	105	107

3. Cumulative assessment of the effects of the imports concerned

(110) The Commission examined whether imports of persulphates originating in the PRC, Taiwan and the USA should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.

(111) The dumping margin established in relation to the imports of each of the countries concerned was above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation and the volume of imports from each of these countries was not negligible in the sense of Article 5(7) of the basic Regulation, i.e. their market shares attaining 14,9 %, 5,9 % and 9,3 % respectively in the IP. As mentioned in recital 95 for two exporting producers in the PRC the dumping margin established was below the *de minimis* threshold. Therefore, imports of these companies were not considered.

(112) As regards the conditions of competition, the investigation showed, as outlined in recital 18 above that persulphates imported from the countries concerned and that of the Community industry were alike in all their basic physical and technical characteristics. Also, persulphates originating in these countries on the one hand and persulphates produced and sold in the Community on the other hand were sold through comparable sales channels and under similar commercial conditions; thus competing with each other. It was also found that export prices from the PRC, Taiwan and the USA showed a similar trend during the period considered and were significantly undercutting the Community prices.

(113) In the light of the above, it is provisionally considered that all the criteria set out in Article 3(4) of the basic Regulation were met and that imports from the countries concerned should be examined cumulatively.

4. Imports from the countries concerned

4.1. Volume and market share of the imports concerned

- (114) Imports from the countries concerned increased by 43 % between 2003 and the IP. While these imports amounted to 8 778 tonnes in 2003 they reached a level of 12 593 tonnes during the IP. The increase of imports was particularly marked between 2003 and 2004 since they rose by 31 %.

Table 2

Imports from the countries concerned

Imports (tonnes)	2003	2004	2005	IP
PRC	3 214	5 228	5 811	6 235
Index	100	163	181	194
Taiwan	2 080	2 760	2 700	2 480
Index	100	133	130	119
USA	3 484	3 499	3 818	3 878
Index	100	100	110	111
Total countries concerned	8 778	11 487	12 329	12 593
Index	100	131	140	143

- (115) The market share held by the countries concerned increased between 2003 and the IP from 22,6 % to 30,2 % i.e. by 7,6 percentage points. The increase was particularly marked between 2003 and 2004 when it went up by 4,8 percentage points.

Table 3

Market share of the countries concerned

Market shares	2003	2004	2005	IP
PRC	8,3 %	12,5 %	14,3 %	14,9 %
Taiwan	5,3 %	6,6 %	6,6 %	5,9 %
USA	9,0 %	8,3 %	9,4 %	9,3 %
Total countries concerned	22,6 %	27,4 %	30,3 %	30,2 %

4.2. Prices

- (116) From 2003 to the IP, prices of the imports from the countries concerned decreased by 12 %. Thus, they decreased from EUR 946/tonne in 2003 to EUR 828/tonne in the IP.

Table 4

Prices of the imports concerned

Unit prices (EUR/tonne)	2003	2004	2005	IP
Total countries concerned	946	852	779	828
Index	100	90	82	88

4.3. Price undercutting

- (117) For the determination of price undercutting the price data referring to the IP was analysed. The relevant sales prices of the Community industry were net prices after deduction of discounts and rebates. Where necessary, these prices were adjusted to an ex-works level, i.e. excluding freight cost in the Community. The import prices of the countries concerned were also net of discounts and rebates and were adjusted where necessary to Cif Community frontier.
- (118) The Community industry's sales prices and the import prices of the countries concerned were compared at the same level of trade, namely to independent customers within the Community market.
- (119) During the IP, the weighted average price undercutting margins, expressed as a percentage of the Community industry's sales prices, was 30,2 % for the Taiwanese exporter, 30,3 % for the PRC, and 7,4 % for the USA. The total weighted average undercutting margin for all countries concerned was 22,7 % during the IP.

5. Situation of the Community industry

- (120) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors having a bearing on the state of the Community industry during the period considered. For confidentiality reasons, given that the analysis concerns only two companies, most indicators are presented in indexed form or ranges are given.

5.1. Production, capacity and capacity utilisation

Table 5

Production, capacity and capacity utilisation

	2003	2004	2005	IP
Production in tonnes (ranges)	29 000-34 000	29 000-34 000	26 000-31 000	24 000-29 000
Production (index)	100	100	90	86
Production capacity in tonnes (ranges)	37 000-42 000	37 000-42 000	37 000-42 000	37 000-42 000
Production capacity (index)	100	100	100	100
Capacity utilisation	83 %	83 %	75 %	71 %

- (121) The production volume of the Community industry showed a clear negative trend between 2003 and the IP. Whereas between 2003 and 2004 the production volume was stable, it suddenly diminished by 10 % in 2005 and this trend continued during the IP. Although the capacity utilisation was above 70 % during the IP, the Community industry's production overall decreased by 14 % during the period considered.

- (122) The production capacity remained stable between 2003 and the IP.

5.2. *Sales volume, market shares, growth and average unit price in the EC*

- (123) The table below shows the Community industry's performances in relation to its sales to independent customers in the Community.

Table 6

Sales volume, market share, prices and average unit prices in the Community

	2003	2004	2005	IP
Sales volume (index)	100	96	91	90
Market Share (index)	100	89	87	84
Unit prices in EUR (ranges)	1 000-1 400	900-1 300	900-1 300	850-1 250
Unit prices (index)	100	93	93	92

- (124) The Community industry's sales volume decreased gradually by 10 % during the period considered. This has to be seen in the light of an increasing consumption in the EC.
- (125) Overall, the market share of the Community industry continuously decreased by 11 percentage points between 2003 and the IP. The decrease was particularly pronounced between 2003 and 2004 where 7,6 percentage points were lost. Both the decrease in sales volume and market shares should be seen in the light of the evolution of the Community consumption which rose by 7 % and the increasing imports from the countries concerned during the period considered. During the same period, unit costs of the Community industry increased by 5 %. Indeed, the decrease of production volume when capacities remained stable and resulted in a higher allocation of overhead costs by unit.
- (126) The Community industry's unit sales prices also continuously decreased by 8 % during the period considered. This decrease in prices shows that the Community industry was not able to pass on the overall cost increase to their customers. On the contrary, the Community industry had to decrease prices in order not to lose more clients or orders.

5.3. *Stocks*

- (127) The figures below represent the volume of stocks at the end of each period.

Table 7

Stocks

	2003	2004	2005	IP
Stocks in tonnes (ranges)	2 000-2 500	1 800-2 300	2 700-3 200	2 100-2 600
Stocks (index)	100	83	124	103

- (128) The investigation revealed that stocks cannot be considered as a meaningful injury factor since the vast majority of production is made in response to orders. Therefore, the trends on stocks are given for information. In any case, the level of stocks remained rather stable overall. It decreased by 17 % between 2003 and 2004, then increased by 41 % until the end of 2005 and then decreased again by 21 % to reach almost the same level as in 2003.

5.4. *Investments and ability to raise capital*

Table 8

Investments

	2003	2004	2005	IP
Investments (index)	100	21	28	55

- (129) Between 2003 and the IP, investments for the production of the like product diminished by 45 %. Following a sharp decline of 79 % between 2003 and 2004, it remained at a low level in 2004. During the IP, the value of the investments increased by 27 % but in comparison to 2003, it remained at a low level. During the investigation it was found that investments in buildings, plants and machinery were mainly made to maintain the production capacity. In view of the low capacity utilisation mentioned before, investments were in any case not made with the purpose to increase the overall production capacity.
- (130) The investigation showed that the financial performances of the Community industry deteriorated but it did not reveal that its ability to raise capital was seriously affected yet during the period considered.

5.5. *Profitability, return on investment and cash flow*

Table 9

Profitability, return on investment and cash flow

	2003	2004	2005	IP
Profitability on EC sales (range)	15-25 %	10-20 %	2-11 %	1-10 %
Profitability on EC sales (index)	100	79	26	20
Return on total investments (range)	30-40 %	20-30 %	5-15 %	1-10 %
Return on total investments (index)	100	77	26	19
Cash flow (index)	100	88	41	28

- (131) The decline in sales volume combined with decreasing sales prices between 2003 and the IP, significantly affected the profitability achieved by the Community industry, i.e. it declined by 15,5 percentage points between 2003 and the IP. The negative trend was in particular pronounced between 2004 and 2005, when profitability dropped by more than 10 % points. The return on total investments was calculated by expressing the pre-tax net profit of the like product as a percentage of the net book value of fixed assets allocated to the like product. This indicator followed a similar trend as profitability, decreasing significantly over the period considered, particularly pronounced between 2004 and 2005, where the return on investment dropped by 17 percentage points. With regard to the cash flow generated by the Community industry, a similar negative trend was found, resulting in a dramatic overall deterioration of the Community industry's financial situation in the IP.

5.6. *Employment, productivity and wages*

Table 10

Employment, productivity and wages

	2003	2004	2005	IP
Number of employees (index)	100	95	89	87
Employment cost (index)	100	93	88	86
Average labour costs	100	98	99	99
Productivity (index)	100	105	101	99

- (132) The number of personnel employed by the Community industry decreased overall by 13 % partly due to the restructuring process at the beginning of the period considered. Thus, although overall employment costs decreased considerably, average wages remained stable. The decrease in the number of employment was similar to the decrease in production. As a consequence the Community industry was able to maintain the same level of productivity as in 2003.

5.7. *Magnitude of the dumping margin*

- (133) Given the volume and the price of the dumped imports, the impact of the actual margins of dumping cannot be considered negligible.

5.8. *Recovery from past dumping*

- (134) In December 1995, the Council imposed a definitive anti-dumping duty on peroxodisulphates (persulphates) originating in the PRC ⁽¹⁾. These measures were terminated in April 2002 ⁽²⁾. The figures collected during the present investigation suggest that although having recovered from past dumping practices, the situation of the Community industry deteriorated significantly after 2002 when anti-dumping duties were repealed and dumped imports re-entered the Community market.

5.9. *Growth*

- (135) The investigation showed that despite an increase in consumption by 7 %, the Community industry lost sales volume (- 10 %) and market share (- 11 percentage points) during the period considered. It thus did not benefit from any growth during the period considered.

6. Conclusion on injury

- (136) During the period considered, the volume of dumped imports of persulphates from the countries concerned increased significantly, i.e. by 43 % and likewise their market shares increased by 7,6 percentage points to reach 30,2 % of the Community market in the IP. At the same time, prices of these imports decreased significantly, undercutting the Community industry's sales prices on average by 22,7 %.

⁽¹⁾ Council Regulation (EC) No 2961/95 (OJ L 308, 21.12.1995, p. 61).

⁽²⁾ Council Regulation (EC) No 695/2002 (OJ L 109, 25.4.2002, p. 1).

- (137) The analysis of the injury indicators revealed that the situation of the Community industry deteriorated significantly over the period considered. All injury indicators follow a negative trend over the period considered. In particular, in order not to lose more market share and to keep the production at a reasonable level, the Community industry had no other option than to follow the price levels set by the dumped imports, i.e. to decrease its prices by 8 % between 2003 and the IP. This resulted in the significant drop in profitability over the period considered. Moreover, the Community industry was not able to pass on any cost increase to their customers and their financial situation deteriorated significantly during the period considered.
- (138) The decrease of sales volume also implied that the Community industry could not benefit from the increase of demand in the persulphates market.
- (139) In light of the foregoing, it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

E. CAUSATION

1. Introduction

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

2. Effect of the dumped imports

- (141) Imports from the countries concerned increased significantly by 43 % in terms of volume, and by 7,6 percentage points in terms of market share. At the same time the market share of the Community industry decreased by roughly 11 percentage points. The average unit selling price per tonne of the imports from the countries concerned diminished by 12 %, undercutting the average Community industry prices by 22,7 % on average in the IP. The substantial increase in the volume of imports from the countries concerned and their gain in market share during the period considered, at prices which were significantly lower than those of the Community industry, coincided with the evident deterioration of the overall financial situation of the Community industry during the same period. This deterioration is seen, in particular, in terms of sales prices, profitability, return on investment, cash flow and employment.
- (142) In the analysis of the effect of the dumped imports, it was found that price is an important element of competition because quality issues do not play a significant role. It should be noted that the prices of dumped imports were considerably below both, those of the Community industry as well as those of other third country exporters.
- (143) It is therefore provisionally concluded that the pressure exerted by the imports concerned, which increased their volume and market share from 2003 onwards, and which were made at very low and dumped prices, played a determining role in the deterioration of the Community industry's financial situation.

3. Effect of other factors

(a) Imports originating in third countries other than the PRC, US and Taiwan

Table 11

Imports originating in other third countries (quantity)

Imports (tonnes)	2003	2004	2005	IP
Turkey	2 161	2 327	1 198	1 247
Index	100	108	55	58
Japan	146	0	24	10
Index	100	0	16	7
Others	158	260	976	1 005
Index	100	165	618	636
Total other countries	2 466	2 587	2 198	2 262
Index	100	105	89	92

Table 12

Imports originating in other third countries (average price)

Average prices (EUR)	2003	2004	2005	IP
Turkey	1 022	974	977	900
Index	100	95	96	88
Japan	856	0	827	1 635
Index	100	0	97	191
Others	2 202	1 277	805	839
Index	100	58	37	38
Total other countries	1 088	1 004	899	876
Index	100	92	83	80

Table 13

Market shares

Market shares (%)	2003	2004	2005	IP
Turkey	5,6	5,5	2,9	3,0
Japan	0,4	0,0	0,1	0,0
Others	0,4	0,6	2,4	2,4
Total other countries	6,3	6,2	5,4	5,4

- (144) According to Eurostat data and to the information collected during the investigation, the main third country from which persulphates are imported is Turkey with a market share of 3 % during the IP. Another, however minor exporting country is Japan although it represents import volumes close to 0 %.
- (145) Imports originating in third countries other than the PRC, US and Taiwan decreased by 8 %, from 2 466 tonnes in 2003 to 2 262 tonnes during the IP. Consequently, their market share decreased overall from 6,3 % in 2003 to 5,4 % in the IP.
- (146) Imports from Turkey amounted to 2 161 tonnes in 2003 and decreased over the period considered by 42 % to 1 247 tonnes in the IP, attaining a market share of 3 %. Although Turkish imports were made at lower prices than those of the Community industry sales price, their limited and even gradually shrinking market share were not considered as having had a negative effect on the situation of the Community industry.
- (147) As to imports from the remaining third countries Eurostat statistics show very low import levels; i.e. 304 tonnes in 2003 which augmented to 1 015 tonnes in the IP. In spite of this growth, the level of these imports remains close to *de minimis*, representing only 2,4 % of the Community consumption in the IP. Furthermore, prices of these imports were significantly higher than prices from the countries concerned and Turkey. Thus, it is concluded that these imports have not had a significant impact on the state of the Community industry.
- (148) It can thus provisionally be concluded that imports other than from the PRC, the US and Taiwan did not contribute to the material injury suffered by the Community industry.

(b) *Exports by the Community industry*

- (149) Exports of persulphates by the Community industry outside the Community were decreasing during the period considered (by 13 %). Likewise, export prices of the Community industry decreased during the period considered by 9 %. However, these exports represented only 6 % of the Community industry's total sales to unrelated parties in the IP and thus it was concluded that they did not have a significant impact on the material injury suffered by the Community industry.

(c) *Non-dumped imports originating in the PRC*

- (150) As mentioned in recital 95 for two exporting producers the dumping margin established was below the *de minimis* threshold. Therefore, imports of these companies were not considered in the injury analysis above. Instead it was examined whether these imports could have caused the material injury suffered by the Community industry. However, given the limited volume of these imports, attaining a market share of 6,9 % during the IP, it was considered that the non-dumped imports could not break the causal link between the dumped imports and the material injury suffered by the Community industry.

(d) *Imports of the Community industry*

- (151) One Community producer imported the product concerned from its related company in the PRC and resold it on the Community market. Although the resale prices were indeed undercutting the Community industry prices, it should be noted that the volume of the Chinese imports only represented a minor part of the total imports from the PRC (less than 4 %). Furthermore, these imports were only made to maintain global customers who would have otherwise purchased the product concerned from the Chinese suppliers at dumped prices. Moreover, the resale price on the Community market was on average significantly higher than the import prices of the other Chinese exporting producers. Therefore, it was concluded that the imports of the Community industry of the product concerned from the PRC did not break the causal link between the dumped imports and the material injury suffered by the Community industry.

4. Conclusion on causation

- (152) The coincidence in time between, on the one hand, the increase in dumped imports from the PRC, the US and Taiwan, their increase in market shares and the undercutting found and, on the other hand, the evident deterioration in the situation of the Community industry, leads to the conclusion that the dumped imports caused the material injury suffered by the Community industry within the meaning of Article 3(6) of the basic Regulation. In particular, the Community industry had to lower its selling prices on the Community market due to the price pressure of the dumped imports. Thus, the overall cost increase could not be passed on to the customers and profit margins decreased significantly with a drastic impact on the Community industry's overall financial situation. The possible effect of other factors mainly imports from other third countries, non-dumped imports originating from the PRC exports of the Community industry and the development of costs were analysed but found not to be a determining reason for the injury suffered by the Community industry.

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

F. COMMUNITY INTEREST

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

(155) In order to assess the likely impact of the imposition or non-imposition of measures information was requested from all interested parties which were either known to be concerned or which made themselves known. On this basis, the Commission sent questionnaires to the Community industry, 12 unrelated importers and 11 users.

(156) As explained in recital 9, the two complainant Community industry producers, two unrelated importers replied to the questionnaire.

1. Interests of the Community industry

(157) The injurious situation of the Community industry resulted from its difficulty to compete with the low-priced, dumped imports.

(158) The imposition of measures is expected to prevent further distortions of the market, suppression of prices and restore fair competition. The Community industry should then be able to increase the volume of its sales and to regain market share and thereby generating better economies of scale, thus achieving the necessary profit level to improve the industry's financial situation and to allow it continued investments in its production facilities, thus guaranteeing the Community industry's survival.

(159) Otherwise, should anti-dumping measures not be imposed, the deterioration of the situation of the Community industry would continue. The Community industry is particularly marked by a loss of revenue due to depressed prices, falling market share and significant decrease in profit. Indeed, in view of the

decreasing revenue and the significantly worsening trend in the IP, it is most likely that the financial situation of the Community industry will deteriorate further in the absence of any measures. This would ultimately lead to cuts in production, which would therefore threaten employment and investments in the Community. This is particularly true since the European market is now one of the few export markets left to the countries concerned after the imposition of anti-dumping duties on persulphates from China in the United States of America. With the closure of the Community production, the persulphates users would become more dependent on suppliers outside the Community.

(160) Accordingly, it is provisionally concluded that the imposition of anti-dumping measures would allow the Community industry to recover from the injurious dumping suffered and would thus be in the interest of the Community industry.

2. Interest of unrelated importers

(161) The Commission sent questionnaires to all known importers/traders. As far as importers are concerned, only two importers submitted a questionnaire reply. However, the volumes of the product concerned imported by these two importers represented 18,9 % of the total imports in the Community and 6,7 % of the Community consumption.

(162) It should be noted that these importers' only source of supply during the IP were the countries concerned (US and Taiwan) and these importers thus claimed that the imposition of an anti-dumping duty would have a significant impact on their financial situation.

(163) However, on the basis of information submitted by the importers concerned, it was established that the proportion of persulphates imports in the company's total turnover represented only a negligible part (i.e. between 0,03 % and 1,3 %) during the IP. Therefore, although it is not denied that the imposition of an anti-dumping duty may have a certain impact on these companies; this impact would be overall negligible.

(164) Furthermore, it can be reasonably expected that any price increase could at least be partly passed on to the customers due to the fact that, as mentioned below in recital 166, persulphates constitute in most of the cases only a fraction of these customers total cost. Finally, it should be noted that other sources of supply are available such as Turkey, Japan as well as those parts of Chinese exports which are not subject to any anti-dumping duty.

3. Interest of users

- (165) The Commission sent questionnaires to all eleven known users in the Community. None of these users replied to the questionnaire. No other users supplied the Commission with any information or made themselves known in the course of this investigation.
- (166) There was no indication that users' interests will be significantly affected. Indeed, on the basis of the information available, persulphates, in most of the cases, only constitutes a minor part of the total production cost and the effect of antidumping duties would be negligible.

4. Conclusion on Community interest

- (167) Taking into account all of the above factors, it is concluded that the imposition of measures would not have a significantly negative effect, if any at all, on the situation of the users and importers of the product concerned. On this basis, it is provisionally concluded that there are no compelling reasons not to impose anti-dumping measures.

G. PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

- (168) In view of the conclusions reached with regard to dumping, resulting injury, causation and Community interest, provisional measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.
- (169) The measures should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production and to obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community. The pre-tax profit margin for producers used for this calculation was 12 %, based on the complaint and confirmed during this investigation. The actual profits made by the Community industry in 2003 and 2004, as well as during the years prior to the period under consideration, were never below this reference level.

(170) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the price undercutting calculations (see recitals 117 to 119 above), with the non-injurious price of products sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry by the actual loss/profit made during the IP and by adding the above mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.

(171) These differences were for the Chinese cooperating exporting producers to whom MET was granted above the dumping margins found. In order to calculate the countrywide injury elimination level for all other exporters in the PRC, it should be recalled that the level of cooperation was high. Therefore, the injury margin was calculated as the difference of the weighted average cif import prices of the companies to which MET was not granted and the non-injurious price as calculated above. In the case of USA, the injury elimination level was below the dumping margin found for the exporting producers, whereas for Taiwan the injury elimination level was above the dumping margin found.

2. Provisional measures

- (172) In light of the foregoing, it is considered that a provisional anti-dumping duty should be imposed at the level of the dumping margin found, but should not, in accordance with Article 7(2) of the basic Regulation, be higher than the injury margin calculated above.
- (173) 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 this investigation with respect to these companies. These duty rates (as opposed to residual duties applicable to 'all other companies' in the USA and in Taiwan and the countrywide duty applicable to 'all other companies' in the PRC) 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 document 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'.

(174) Any claim regarding 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, for example, 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.

concerned. These special measures, which only apply to companies in the PRC for which an individual duty rate is introduced, include the following:

(175) On the basis of the above, the provisional duty rates are:

Country	Exporting producer	AD duty rate
USA	E.I. DuPont De Nemours	10,6 %
	FMC Corporation	39,0 %
	All other companies	39,0 %
PRC	ABC Chemicals (Shanghai) Co., Ltd	0 %
	Degussa-AJ (Shanghai) Initiators Co., Ltd	14,4 %
	Hebei Yatai Electrochemistry Co., Ltd	0 %
	All other companies	67,4 %
Taiwan	San Yuan Chemical Co., Ltd	22,6 %
	All other companies	22,6 %

(177) The presentation to the customs authorities of the Member States of a valid commercial invoice which must conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice must be made subject to the residual anti-dumping duty applicable to all other companies in the PRC.

(178) Should the exports by the companies in the PRC benefiting from lower individual duty rates increase significantly in volume after the imposition of the anti-dumping measures, this increase in volume could be considered as constituting, in itself, a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, and provided the conditions are met, an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rates and the consequent imposition of a countrywide or residual duty.

H. FINAL PROVISION

(179) 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 anti-dumping duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty,

3. Special monitoring

(176) In order to minimise the risks of circumvention due to the high difference in the duty rates as regards exporting producers in the PRC, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. Only the imports of the product concerned manufactured by the respective exporting producer in the PRC can benefit from the specific dumping margin calculated for the producer

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of peroxosulphates (persulphates), including potassium peroxymonosulphate sulphate, falling within CN codes 2833 40 00 and ex 2842 90 80 (TARIC code 2842 90 80 20) and originating in the United States of America, the People's Republic of China and Taiwan.

⁽¹⁾ European Commission, Directorate-General for Trade, Direction B-1049 Brussels, Belgium.

2. The rate of the provisional anti-dumping duty applicable to the net free-at-Community-frontier price, before duty, of the products manufactured by the companies below shall be:

Country	Company	Anti-dumping duty	TARIC Additional code
The United States of America	E.I. DuPont De Nemours, Wilmington, Delaware	10,6 %	A818
	FMC Corporation, Tonawanda, New York	39,0 %	A819
	All other companies	39,0 %	A999
The People's Republic of China	ABC Chemicals (Shanghai) Co., Ltd, Shanghai	0 %	A820
	Degussa-AJ (Shanghai) Initiators Co., Ltd, Shanghai	14,4 %	A821
	Hebei Yatai Electrochemistry Co., Ltd, Wang Jia Jing	0 %	A822
	All other companies	67,4 %	A999
Taiwan	San Yuan Chemical Co., Ltd, Chiayi	22,6 %	A823
	All other companies	22,6 %	A999

3. The application of the individual duty rates specified for the companies in the People's Republic of China mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

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

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

Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts

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

Done at Brussels, 11 April 2007.

and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

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

Article 3

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

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

For the Commission
Peter MANDELSON
Member of the Commission

ANNEX

The valid commercial invoice referred to in Article 1(3) of this Regulation must include a declaration signed by an official of the company and bearing the company's official stamp, in the following format:

- (1) The name and function of the official of the company which has issued the commercial invoice.
- (2) The following declaration: 'I, the undersigned, certify that the [volume] of persulphates sold for export to the European Community covered by this invoice was manufactured by [company name and address] [TARIC additional code] in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.'
