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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 960/2003

of 2 June 2003

imposing a definitive countervailing duty on imports of recordable compact disks originating in India

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community⁽¹⁾ and in particular Article 15 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Present proceeding

- (1) On 17 May 2002, the Commission announced, by notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-subsidy proceeding with regard to imports into the Community of recordable compact disks ('CD-Rs') originating in India and commenced an investigation.
- (2) The initiation of a parallel anti-dumping proceeding concerning imports of the same product originating in the same country was announced by a notice published in the *Official Journal of the European Communities*⁽³⁾, on the same date.
- (3) The proceeding was initiated as a result of a complaint lodged in April 2002 by the Committee of European CD-Rs Manufacturers ('CECMA'), acting on behalf of producers representing a major proportion of the total Community production of CD-Rs. The complaint contained evidence of subsidisation of the product concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (4) The Commission officially advised the complainant Community producers, as well as the other known Community producers, the exporting producer, importers and users association known to be concerned and

the representatives of India 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) The Government of India, the sole exporting producer in India during the IP, as well as the complainant and other Community producers, importers, consumers association and suppliers, made their views known in writing. All parties who so requested within the above time limit and indicated that there were particular reasons why they should be heard were granted a hearing.
- (6) Certain parties contended that the applicant Community producers did not fulfil the requirements of Article 10(8) of Council Regulation (EC) No 2026/97 ('basic Regulation') and that the initiation of the investigation was not warranted. In this respect, it should be noted that the conditions for initiation, and in particular the 25 % and 50 % thresholds of Article 10(8), were met and, therefore, the initiation of the investigation was warranted.
- (7) It has been claimed that one of the complainant Community producers should not have been taken into account for the purpose of determining the representativity of the applicants since this company allegedly lost its right to produce the product concerned for reasons of intellectual property rights.
- (8) It should be noted that the company in question was de facto producing and selling the product concerned on the Community market during the IP and that it cooperated in this investigation. The mere fact that this producer was involved in a legal proceeding does not imply automatically its exclusion from the definition of the Community industry. In addition, it was found that the company appealed the Court decision according to which it would have lost its licence. Given that no final decision has been taken it was in any event not possible to conclude that the producer had definitely lost its right to produce CD-Rs. The argument was therefore rejected.

⁽¹⁾ OJ L 288, 21.10.1997, p. 1. Regulation as amended by Regulation (EC) No 1973/2002 (OJ L 305, 7.11.2002, p. 4).

⁽²⁾ OJ C 116, 17.5.2002, p. 4.

⁽³⁾ OJ C 116, 17.5.2002, p. 2.

(9) The Commission sought, by means of questionnaires sent to all known parties, and verified all the information it deemed necessary for the purpose of a determination of subsidy, injury and Community interest. In this regard, the Commission carried out verification visits at the premises of the Government of India in New Delhi ('GOI') and the following companies:

(a) *Exporting producer in India*

— Moser Baer India Ltd, New Delhi, India;

(b) *Producers in the Community*

— Computer Support Italcad S.R.L., Milan, Italy

— C.D.A Datenträger Albrechts GmbH, Albrechts, Germany

— CPO Magnetic Products B.V., Oosterhout, The Netherlands

— Fuji Magnetics G.m.b.H., Kleve, Germany

— Mitsui Advanced Media S.A., Ensisheim, France

— MPO Media S.A.S, Averton, France

— TDK Recording Media Europe S.A., Bascharage, Luxembourg

— Prime Disc Technologies GmbH, Wiesbaden, Germany

— IMAG Optical Storage Ltd, Limerick, Ireland

— Multimedia Info-Tech Ltd, Belfast, Northern Ireland;

(c) *Suppliers in the Community*

— Bayer AG, Leverkusen, Germany

— Steag Hamatech, Sternenfels, Germany.

(10) The investigation of subsidy and injury covered the period from 1 April 2001 to 31 March 2002 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 1998 to the end of the investigation period ('period considered' or 'IIP').

2. Provisional measures

(11) Given the need to further examine certain aspects of subsidy, no provisional countervailing duties were imposed on CD-Rs originating in India.

3. Subsequent procedure

(12) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive countervailing duties. They were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, the findings have been modified accordingly.

4. Measures in force on imports of CD-Rs originating in Taiwan

(13) In June 2002, by Regulation (EC) No 1050/2002 ⁽¹⁾ the Council imposed a definitive anti-dumping duty on imports of CD-Rs originating in Taiwan.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(14) The product under consideration is the same as in the anti-dumping proceeding against Taiwan i.e. CD-Rs currently classifiable under CN code ex 8523 90 00.

(15) A CD-R is a polycarbonate disk, which is coated with a layer of dye, a layer of reflective material such as gold or silver and a protective layer. Recording on such a disk can be done only once and therefore the disk is said to be of the type 'WORM' (Write Once Read Many). The disk is an optical storage medium for digital data or music. Recording is realised by exposing the dye-layer to an infrared laser beam in a CD-R recorder.

CD-Rs can be distinguished according to the type of data stored (data CD-R versus music CD-R), the storage capacity, the reflective metal layer (mainly silver) and whether or not the CD-R is printed upon.

The product is also sold in different qualities and comes on the market in different types of packaging of which the most frequently encountered are regular or slim jewel cases containing one CD-R, shrink-wrapped spindles of 10 to 100 CD-Rs, cake-boxes of 10 to 100 CD-Rs, envelopes containing one CD-R packed in cellophane, or in a carton or paper sleeve, etc.

Although the use and the quality of the various types of CD-Rs sold may differ, this does not entail any significant differences in the basic physical and technical characteristics of the different types. They are therefore considered as one product for the purpose of this investigation.

2. Like product

(16) The investigation showed that CD-Rs produced and sold on the domestic market of India have similar basic physical and technical characteristics and uses compared with that exported from this country to the Community. Similarly, CD-Rs manufactured by the applicant and other Community producers and sold on the Community market have similar basic physical and technical characteristics and uses as compared to those exported to the Community from the country in question.

⁽¹⁾ OJ L 160, 18.6.2002, p. 2.

(17) Consequently, CD-Rs sold on the domestic market of India and exported to the Community as well as CD-Rs produced and sold in the Community are considered as a like product within the meaning of Article 1(5) of the basic Regulation.

C. SUBSIDIES

1. Introduction

(18) On the basis of the information contained in the complaint and the replies to the Commission's questionnaires, the following schemes, which allegedly involved the granting of export subsidies, were investigated:

- (i) — Income Tax Exemption Scheme;
- (ii) — Export Processing Zones/Export Oriented Units (EPZ/EOU) scheme.

(19) In addition to these two schemes, the complaint lists three other schemes: Duty Entitlement Passbook scheme (DEPB), Export Promotion Capital Goods scheme (EPCG) and Advance License scheme as possible source of subsidies for the Indian exporting producers of CD-Rs. However, the investigation has shown that there is only one exporting producer of CD-Rs in India operating an EOU. This exporting producer has fully cooperated with the investigation and has not availed itself of any schemes other than those listed in recital 16. Practically, it does not need to use other schemes because it obtains the same benefits under the EOU scheme. These schemes were, therefore, not considered further in the context of this investigation.

The Income Tax Exemption Scheme is based on the Income Tax Act of 1961 which is amended yearly by the Finance Act.

The current EPZ/EOU scheme is based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act (Section 5) authorises the GOI to issue notifications regarding the export and import policy. These are summarised in the 'Export and Import Policy' documents which are issued by the Ministry of Commerce every five years and updated annually. One Export and Import Policy document is relevant to the investigation period of this case i.e. the five-year plan relating to the period 1.4.1997-31.3.2002. In addition, the GOI also sets out the proce-

dures governing India's foreign trade policy in the 'Handbook of Procedures for Exports and Imports 1.4.1997-31.3.2002' (Volume 1).

Income Tax Exemption Scheme (ITES)

(a) Legal basis

(20) The Income Tax Act 1961 is the legal basis under which ITES operates. The Act, which is amended yearly by the annual Finance Act, sets out the basis for the collection of taxes as well as for the various exemptions/deductions which can be claimed. Among the exemptions which can be claimed by firms are those covered by sections 10A, 10B and 80HHC of the Act, which provide an income tax exemption on profits from export sales.

(b) Eligibility

(21) Exemption under Section 10A can be claimed by firms located in Export Processing Zones (EPZ). Exemption under Section 10B can be claimed by Export Oriented Units (EOU). Exemption under Section 80HHC can be claimed by any firm which exports goods.

(c) Practical implementation

(22) To benefit from the abovementioned tax deductions/exemptions, a company must make the deduction/exemption claim when submitting its tax return to the Tax Authorities at the end of the tax year. The tax year runs from 1 April to 31 March. The tax return must be submitted to the authorities by the following 30 November at the latest. The final assessment by the authorities can take up to three years following the submission of the tax return. A company may only claim one of the deductions available under the three sections mentioned above.

(d) Conclusion on ITES

(23) Item (e) of the Illustrative List of export subsidies (Annex I to the basic Regulation) refers to the 'full or partial exemption ... specifically related to exports, of direct taxes' as constituting an export subsidy. Under the ITES, the GOI confers a financial contribution to the company by forgoing government revenue in the form of direct taxes which would be due if the income tax exemptions were not claimed by the company. This financial contribution would confer a benefit on the recipient by reducing its income tax liability.

- (24) The subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, since it exempts profits from export sales only, and is therefore deemed to be specific.
- (e) *Calculation of the subsidy amount*
- (25) The investigated company manufactures CD-Rs in an EOU. Thus it can claim income tax exemption under Section 10B on profits from the export sales of the EOU. The company, although it has incorporated a computation for the 10B exemption in its tax return, did not finally claim an income tax exemption under 10B, because its income tax return did not show any taxable profits for the company as a whole during the IP. It is noted that the company operates other units for different products outside the EOU. However, the computations of the income tax in the tax return made by the company and the attached specifications showed that the company increased its depreciation of fixed assets significantly by changing assets from a category (machines) with a lower depreciation rate in the previous year's tax calculation to a category (moulds) with a significantly higher depreciation rate in the IP's tax calculation.
- (26) The Commission considered the reclassification of assets for taxation purposes to be legally questionable, in particular since the company reclassified the assets only for taxation purposes and not in its accounting records, as would appear to be required by law. Indeed, both the Indian Companies Act (applicable for accounting purposes) and the Indian Income Tax Act (applicable for taxation) provide the same depreciation rate for the category in which the assets were reclassified for taxation purposes. For this reason, the Commission requested explanations from the Indian tax authorities and the company. The Indian tax authorities failed to provide any reply which could clarify the situation. The company originally claimed that this change was necessary to correct a mistake in the classification of certain assets for taxation purposes in previous years. But, following the disclosure of the findings of the investigation, it claimed that this change of category of the assets was advised by tax consultants and that the purpose of this change was to reduce the taxable profits in order to avoid paying income tax.
- (27) However, it appears that the cash benefit the company obtained through this reclassification of assets was already available to it through the provisions of Section 10B of the Indian Income Tax Act. Moreover, the benefit that the company could have obtained under Section 10B without the questionable reclassification of assets equals the income tax benefit from the same questionable reclassification of assets.
- (28) The situation outlined above has shown that the company did not, at this stage, directly benefit from a countervailable subsidy under Section 10B during the IP. This is decided on the basis that for a subsidy to be countervailable it must have been actually received by the company or a decision must have been made to grant it.
- (29) Export Processing Zones (EPZ)/Export Oriented Units (EOU)
- (a) *Legal basis*
- (30) The EPZ/EOU scheme, which was introduced in 1965, is an instrument under the 'Export Import Policy' involving export related incentives. During the IP the scheme was regulated by Customs Notifications No 53/97 and 133/94. Details of the schemes are contained in Chapter 9 and Appendix I of the 1997/2002 'Export and Import Policy' document, as well as the relevant Handbook of Procedures.
- (b) *Eligibility*
- (31) In principle, companies undertaking to export their entire production of goods and services may be set up under the EPZ/EOU scheme. Once the EPZ/EOU status is granted, those companies can avail themselves of certain benefits. There are four identified EPZs in India. EOUs can be located anywhere in India. They are bonded units under the surveillance of Customs officials in accordance with Section 65 of the Customs Act. The investigated exporting producer has been granted the status of EOU for the production unit manufacturing CD-Rs. Although companies operating within the EOU/EPZ scheme are normally expected to export their entire production, the GOI does allow these units to sell a part of their production on the domestic market under certain conditions.
- (c) *Practical implementation*
- (32) Companies requesting treatment as EOUs or located in an EPZ must apply to the competent authorities. Such application must include details for a period of the next five years, on, *inter alia*, planned production quantities, projected value of exports, import requirements and indigenous requirements. If the authorities accept the company's application, the terms and conditions attached to the acceptance will be communicated to the company. Companies in EPZs and EOUs can be involved in the production of any product. The agreement to be recognised as a company in an EPZ/EOU is valid for a five-year period. The agreement may be renewed for further periods.

EPZ/EOU units are entitled to the following benefits:

- (i) exemption from import duties on all types of goods (including capital goods, raw materials and consumables) required for the manufacture, production, processing, or in connection therewith;
 - (ii) exemption from excise duty on goods procured from indigenous sources;
 - (iii) exemption from income tax normally due on profits realised on export sales in accordance with Section 10A or 10B of the Income Tax Act, up to 2010 (see ITES above);
 - (iv) reimbursement of central sales tax paid on goods procured locally;
 - (v) possibility of 100 % foreign equity ownership;
 - (vi) facility to sell a part of production in the domestic market on payment of applicable duties, as an exception to the general requirement to export the entire production.
- (33) EOUs or companies located in an EPZ should maintain, in the specified format, a proper account of all imports concerned and of the consumption and utilisation of all imported materials and of all exports made. These should be submitted periodically, as may be required, to the competent authorities.
- (34) They must also ensure minimum foreign exchange earnings as a percentage of exports and export performance as stipulated in the Export Import Policy. The entire operations of an EOU/EPZ must take place in customs bonded premises.

(d) *Conclusions on EPZ/EOU*

- (35) In the present investigation, the EPZ/EOU scheme was used for the import of raw materials, capital goods and for the procurement of goods in the domestic market. It was found that concessions related to the exemption from customs duties on raw materials and capital goods, as well as the exemption from excise duty on goods procured from indigenous sources, were used by the exporting producer. Therefore, the Commission examined the countervailability of these concessions. In this regard, the exemption from customs duties on raw materials and capital goods involves the granting of subsidies as these concessions constitute financial contributions by the GOI, since government revenues otherwise due are forgone and a benefit is conferred on the recipient. As the granting of this subsidy is contingent according to

Indian law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, it is therefore deemed to be specific and thus countervailable. In the case of the excise duty exemption, it was found that the duty paid on purchases by a non-EOU unit is credited as a drawback (CENVAT) and is utilised towards payment of excise duty on domestic sales. Thus, by exempting excise duty on purchases by an EOU unit, no additional government revenue is forgone and consequently no additional benefit accrues to the EOU.

(e) *Calculation of the subsidy amount*

Exemption from import duties on raw materials

- (36) Although the company operating within the scheme is normally expected to export its entire production, the scheme allows the company to sell a part of its production on the domestic market under certain conditions. During the verification visit, the company was able to show that all imported raw materials, which were exempted from import duties, were either used in the production of exported goods, or, when selling goods incorporating such raw materials on the domestic market, the relevant conditions were met. In particular, it was established that the applicable duties paid by the company on domestic sales covered all duties forgone on imported raw materials used for the productions of goods sold on the domestic market.
- (37) In view of the above, it was concluded that the exemption from import duties on raw materials granted to the company concerned fulfils the criteria of Annexes I and II of the basic Regulation, especially since no excess remissions of import duty have occurred in this case. Therefore, it is considered that the investigated company did not obtain any countervailable benefit when importing raw materials during the IP in this case.

Exemption from import duties on capital goods

- (38) Unlike raw materials, capital goods are not physically incorporated into the finished goods. For calculation purposes, the amount of duty forgone is equivalent to a grant on each import of capital good. Consequently, the benefit to the investigated company has been calculated on the basis of the amount of unpaid customs duty on imported capital goods by spreading this amount across a depreciation period applicable for accounting purposes.

- (39) The exporting producer claimed that the depreciation period of 13 years as set out in its accounting records better reflects the real situation of the company, because it is in accordance with the Indian Companies Act and is determined by its management and its auditors. In addition, it commented that in other anti-subsidy investigations the depreciation method as set in accounting records was used as the allocation basis for such benefits. It also referred to a report of the WTO informal group of experts on subsidies, which indicated that 'there should be a preference for using accounting data rather than tax related depreciation periods for determining the useful life of assets, as accounting data are more likely to reflect the actual useful lives of assets'. The exporting producer also argued that it is incorrect to establish the depreciation period on the basis of that used for taxation purposes, because that is based on the declining balance method and not the straight-line method which is normally used for this purpose.
- (40) The investigation has, however, shown that there is conflicting information from the company concerning the depreciation of the assets in question. The company has changed the classification of these assets for taxation purposes, i.e. for taxation purposes they were considered moulds rather than machines, and depreciated according to the declining balance method. However, the company continued to consider these as machines for accounting purposes despite the fact that the Indian Companies Act and the Indian Income Tax Act provide for the same classification to be used for both taxation and accounting purposes. If the company had classified the assets as moulds also for accounting purposes, the existing period of depreciation for machines, i.e. 13 years, could not have been applied. In fact, the period would have been either six years, if a straight-line method had been applied, or, if a declining balance method had been applied as it was in the tax return for the moulds, approximately 80 % of the value of the assets would have been depreciated in the first three years.
- (41) Although it is understood that different depreciation periods can be used for taxation and accounting purposes, it is not considered acceptable to classify assets as moulds for taxation purposes and as machines for accounting purposes. It would appear that the assets in question could only be either machines or moulds, but not both at the same time. This logic is followed by the relevant Indian legislation which provides consistent classification for both taxation and accounting purposes.
- (42) In this case, the company applied for taxation a declining balance method which resulted in approximately 80 % of the assets being depreciated in the first three years. Therefore, the remaining question is to assess what the appropriate period of depreciation would have been, had the company followed the consequences of its reclassification of assets for taxation purposes with a similar reclassification for accounting purposes.
- (43) In this respect, two choices were considered both of which are specified as possible options under the Indian Companies Act, i.e. a six year depreciation period with a straight-line depreciation method or a declining balance method where the value of the assets is depreciated, on a remaining value basis, by 40 % each year. The company did not indicate any preference but continued to argue for the application of the 13 year depreciation period they had applied for machines.
- (44) In this respect, it was concluded that the most reasonable method of deciding on an appropriate period of depreciation was to take account of what is normal for the industry, and to consider the special circumstances of this company which is very profitable and is investing constantly and heavily in the product concerned. From the information gathered during the course of this investigation it appears that most companies are making losses, and have been making losses for a significant period of time. This slows investment and tends to result in longer depreciation periods. The average period for these loss making companies is approximately six years.
- (45) However, the position of the exporting producer is very different to the average company. It is very profitable, it is investing constantly and heavily and it is therefore reasonable to assume that its depreciation period would be significantly lower than the abovementioned average. Therefore, it was considered appropriate to apply a declining balance method which takes account of the fact that it allows swifter depreciation than the straight-line method. It is noted that in circumstances of ongoing regular investments, the declining balance method of depreciation provided by the Indian Companies Act set out in recital 43 allows 30 % faster depreciation than the equivalent straight-line method over a representative period of six years applicable when using the straight-line method. This corresponds to a period of 4,2 years as compared to six years for the straight-line method and this shorter period was used to allocate the benefit obtained.
- (46) The amount so calculated which was then attributable to the IP has been adjusted by adding interest during the IP in order to establish the full benefit of this scheme to the recipient. Given the nature of this subsidy, which is equivalent to a one-time grant, the long-term commercial interest rate during the IP in India was considered appropriate. The amount of subsidy has then been allocated over the total export turnover of the EOU.

- (47) The definitive *ad valorem* subsidy amount established for the exemption from import duties on capital goods for the investigated company during the IP was 7,3 %.

2. Amount of countervailable subsidies

- (48) The definitive amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producer was 7,3 %. Given that there is only one exporting producer in India, this finding applies to all Indian exports.

Type of subsidy	EOU/EPZ	ITES	Total
	7,3 %	0 %	7,3 %

D. DEFINITION OF THE COMMUNITY INDUSTRY

1. Community production

- (49) During the IP CD-Rs were manufactured in the Community by the following companies:
- five complainant producers who cooperated in the proceeding,
 - four non-complainant producers who supported the complaint and who cooperated in the proceeding,
 - two non-complainant producers who supported the complaint but who failed to sufficiently cooperate in the investigation,
 - one non-complainant producer who supported the complaint and provided some general information to the Commission,
 - other non-complainant producers who did not cooperate in the proceeding.
- (50) The fact that several non-complainant Community producers have cooperated in the framework of the investigation provided the Commission with the opportunity to examine their status in relation to Article 9(1) of the basic Regulation in more detail. Some of the cooperating producers (including some who originally were not applicants) were found to have imported CD-Rs but none of them from India. Furthermore, a substantial part of those purchases was only made in order to satisfy short term market demand while new or additional capacity was being installed, and represented a relatively low percentage of purchases compared to total sales and own production in the IP. Therefore, there were no reasons to exclude those companies from the definition of Community production.
- (51) On the above basis, it was considered that the CD-Rs produced by all the abovementioned companies constitute the Community production within the meaning of Article 9(1) of the basic Regulation.

2. Definition of the Community industry

- (52) As mentioned in recital 49, nine Community producers, who supported the complaint fully cooperated in the investigation. These producers represented a major proportion of the total Community production of CD-Rs during the IP, in this case more than 60 %. On this basis, they were deemed to constitute the Community industry within the meaning of Article 9(1) and Article 10(8) of the basic Regulation. They are referred to as the 'Community industry' hereafter.

E. INJURY

1. Community consumption

- (53) Community consumption was calculated on the volume of sales of own-produced CD-Rs by the Community industry, the sales volume of the two companies which failed to cooperate sufficiently and therefore were not part of the Community industry, the sales volume of the company which supplied only general information, information provided by the cooperating exporting producer, Eurostat import data concerning the import volumes originating in other third countries and on an estimate of the sales of the remaining non-cooperating Community producers based on information collected by the Commission when considering the acceptability of the complaint.

- (54) On this basis, it was found that Community consumption significantly increased between 1998 and the IP (+ 1 759 000 thousand units). In more detail, it hugely increased between 1998 and 2000 to reach its peak in 2001. It then slightly decreased between 2001 and the IP. The development of consumption should be seen in the light of the fact that CD-Rs are relatively recent products. They became available to the general public only recently and their breakthrough mainly occurred during 1997-1998. Since then, the growth of demand for this new storage medium has been spectacular. This explains why a number of indicators, such as *inter alia* consumption show a high growth.

Community consumption	1998	1999	2000	2001	IP
CD-Rs (in '000 units)	459 166	1 172 950	2 017 557	2 461 271	2 218 563
Index	100	255	439	536	483

2. Imports of CD-Rs into the Community

(a) Volume and market share of imports originating in India

- (55) On the basis of Eurostat figures, the volume of imports from India drastically increased over the period considered. While these imports were insignificant in 1998 and 1999, they amounted to almost 200 million units during the IP. The increase of imports was particularly marked between 1999 and 2000 (imports multiplied by 26), although it should be noted that the market share of Indian imports was still at a *de minimis* level at that time, and between 2000 and 2001, when volumes multiplied by 10. As a consequence, according to Eurostat, India became in 2001 and during the IP, the second most important exporting country of the product concerned into the Community.

Imports	1998	1999	2000	2001	IP
CD-Rs (in '000 units)	1 184	712	18 462	179 904	196 091
Index	100	60	1 559	15 196	16 563

- (56) The market share held by the country concerned went from zero to 9 % between 1998 and the IP. The increase was particularly marked between 2000 and 2001 when it went up by 6 percentage points.
- (57) The growth of the Indian market share should be seen in the light of the development of the growth of the market share of the Community industry during the period from 1998 to the IP. While the Indian market share increased by 9 percentage points during the period considered, the Community industry's only increased by 3,7 percentage points over the same period.

Market shares	1998	1999	2000	2001	IP
CD-Rs	0 %	0 %	1 %	7 %	9 %

(b) Price evolution

- (58) The average import price of CD-Rs from India first significantly increased between 1998 and 1999. However, these price increases were probably not very representative in view of the small quantities exported.
- (59) From 1999, prices constantly decreased until 2001 (by a total of 77 % over this period) before increasing again, even if only by 17 %, between 2001 and the IP where they were found to be around 0,33 euro per unit. Subsequently, from 2000 to 2001, the import prices decreased massively again. This was accompanied by an equally massive increase in the volumes of imports from India. The price decrease from 2000 until the end of the IP amounted to 59 % overall.

Unit prices	1998	1999	2000	2001	IP
CD-Rs (EUR/'000 units)	126	1 227	823	285	334
Index	100	975	654	226	265
Index base 100 in 2000			100	35	41

- (60) The cooperating exporting producer claimed that he was the sole exporting producer in India during the IP, and that he only started CD-Rs production in 1999. Accordingly the Eurostat figures used by the Commission were misleading and were not the appropriate basis to assess Indian price development. Finally, it claimed that this approach leads to an artificially inflated decline in import price of 59 % between 2000 and the IP.
- (61) However, as already mentioned in recital 10, the analysis of trends relevant for the injury covers a longer period of time than the IP (i.e. the IIP). In addition, as will be seen below, the Eurostat figures lead to a similar trend than the one showed by the figures provided by the exporting producer itself.
- (62) Indeed for the avoidance of any doubt as to the approach followed, the figures provided by the exporting producer were nevertheless examined and are presented below in indexed form, bearing in mind that these figures are based on the fiscal year i.e. April to March, as opposed to the calendar year i.e. January to December.

Index	April 1997 March 1998	April 1998 March 1999	April 1999 March 2000 Financial year 2000	April 2000 March 2001 Financial year 2001	IP
Volumes			100	711	2 829
Market shares	0 %	0 %	0 %	5 %-10 %	10 %-15 %
Unit price			100	38	46

- (63) On this basis, the volume of imports from the Indian exporting producer increased drastically since they multiplied by 28 between the start of the production by this particular exporting producer in 1999 and the IP, its market share went from zero to more than 10 % between 2000 and the IP and its sales price decreased by 54 % between 2000 and the IP.
- (64) The above trends for the period from 2000 to the IP are similar to those found on the basis of Eurostat figures for a similar period. Furthermore, the injury analysis is made on a country-wide basis and should not be restricted to the analysis of an individual company. Since it could not be excluded that other unknown Indian manufacturers have produced and exported CD-Rs to the Community during the IIP, it was decided to use Eurostat for the trend relevant for the injury analysis. Nevertheless, the conclusions with regard to injury have focused on the period 2000 to the IP, i.e. the period during which the producer concerned actually exported. Under these circumstances, and for the reasons explained above, the Commission decided to do the injury analysis on the basis of Eurostat.

(c) *Price undercutting*

- (65) For the determination of price undercutting the verified price data referring to the IP were analysed. The relevant sales prices of the Community industry are net prices after deduction of discounts, rebates and levies. Where necessary these prices were adjusted to an ex-works level, i.e. excluding freight costs within the Community. Indian import prices compared are also net of discounts and rebates and are adjusted where necessary to cif Community frontier.
- (66) Following clarification requested by the Indian exporting producer it is confirmed as mentioned above (see recital 65), that when appropriate, an adjustment has been made to the Community sales prices in order to deduct the copyright levies.

- (67) Based on the questionnaire replies, different product families of CD-Rs could be defined for comparison purposes based on the following criteria: storage capacity, type of data recorded, nature of the reflective layer, printing and packaging. As in the preceding case of Taiwan, the physical characteristics of CD-Rs however were found to be of a less decisive influence on the sales price of CD-Rs, whereas the packaging proved to be a particularly influential criterion for comparison purposes.
- (68) The Community industry's sales prices and the import prices of the Indian exporting producers were compared at an ex-works level and Community frontier respectively and to independent customers within the Community market, duly adjusted where appropriate.
- (69) On that basis, the existence of price undercutting was established for imports from India. The level of undercutting, expressed as a percentage of the Community industry's average selling price, ranged from 3,47 % to 66,25 %. The weighted average price undercutting margin was 17,69 %. In addition, owing to the losses incurred by the Community industry and the depressed prices, significant under-selling has also been found.
- (70) The Indian exporting producer claimed that the comparison was not made at the proper level of trade, since the vast majority of its exports to the Community concerned sales to Original Equipment Manufacturers ('OEM'), whereas the Community industry is allegedly mainly oriented towards end users and retail outlets.
- (71) At the outset, it should be noted that the Indian company defined the term OEM in a fairly wide sense. For instance, it also included sales to companies which manufacture products other than CD-Rs and which resell these CD-Rs under their own trademark. The definition of the OEM used by the Indian company does not correspond to the one usually used by the Institutions. However, even if sales to OEM are taken to have the wide meaning given to it by the Indian company, the weighted average price undercutting margin found would still be significant, i.e. around 12 %.

3. Situation of the Community industry

(a) Preliminary remark

(i) Effect of past dumping

The Community industry is still in the process of recovering from the effects of the past dumping of imports of CD-Rs originating in Taiwan. Indeed, since Regulation (EC) No 1050/2002 ⁽¹⁾ imposing definitive measures against imports from Taiwan has only recently entered into force (in June 2002), the Community industry has not yet been able to recover fully.

(ii) Beginning of the CD-Rs' production in the Community

- (72) As mentioned in Commission Regulation (EC) No 2479/2001 of 17 December 2001 imposing a provisional anti-dumping duty on imports of recordable compact disks originating in Taiwan ⁽²⁾ dealing with CD-Rs from Taiwan, the first wave of installation of new European facilities can be situated around 1997, which therefore must be considered as a start-up year with inevitably high per unit cost of production and low capacity utilisation. After having obtained a reasonable scale of production and having reduced the cost of production considerably, the outlook for this industry was favourable in 1999. This attracted further investments and new entrants into the market. Moreover, the extraordinary market condition already mentioned in recital 54 should be recalled. The increase of the Community consumption has been spectacular during the period considered and this explains why a number of indicators, such as *inter alia* production or sales volume show a high growth.

⁽¹⁾ OJ L 160, 18.6.2002, p. 2.

⁽²⁾ OJ L 334, 18.12.2001, p. 8.

(b) *Production, capacity and capacity utilisation*

	1998	1999	2000	2001	IP
Production (in '000 units)	75 765	172 113	298 792	389 467	403 127
Index	100	227	394	514	532
Capacity (in '000 units)	89 871	187 628	352 962	438 015	462 680
Index	100	209	393	487	515
Capacity utilisation	84,3 %	91,7 %	84,7 %	88,9 %	87,1 %

- (73) In view of the expansion of Community consumption, the Community industry's production of CD-Rs grew continuously over the period considered since it increased by an average of 80 million units per year between 1998 and the IP. The increase was particularly high between 1999 and 2000 (+ 74 %) and between 2000 and 2001 (+ 30 %), but slowed down during the IP (+ 4 %).
- (74) The production capacity followed a trend similar to the production. It was multiplied by 5 between 1998 and the IP. From 1998 to the end of 1999, the increase in capacity was mainly due to important investments in machinery and equipment, which were made following the start-up period and which were in line with the exponential increase in consumption. As from 2001 however, the increase in capacity was limited and can mainly be explained by investments to replace machinery of the first generation by new and more efficient equipment.
- (75) As a consequence of the parallel evolution of the production and of the capacity, the capacity utilisation increased by less than 3 percentage points between 1998 and the IP.

(c) *Sales volume, sales price and factors affecting prices, market share and growth*

Sales in the Community	1998	1999	2000	2001	IP
Volume (in '000 units)	44 621	124 041	168 594	279 445	296 743
Index	100	278	378	626	665
Market shares	9,7 %	10,6 %	8,4 %	11,4 %	13,4 %
Index	100	109	86	117	138
Sales price (EUR/'000 units)	997	941	633	417	406
Index	100	94	63	42	41

- (76) The volume of sales of the Community industry significantly expanded over the period considered. From 1998 to the IP, the Community industry's sales in volume were multiplied by 6,6 namely an increase by around 250 million units. This growth in sales volume should however be seen in the light of the evolution of Community consumption which increased by 1 759 million units over the period considered. It should be noted, however, that while volumes increased by 66 % between 2000 and 2001, they increased only by 6 % in the IP as compared to 2001.
- (77) Average sales prices of the Community industry decreased by 59 % during the period considered. The decrease was particularly marked between 2000 and the IP when sales prices decreased by 36 %.

- (78) When evaluating factors affecting domestic prices the analysis focussed primarily on the contraction of demand between 2001 and the IP and cost of production. Given that the prices of the subsidised imports were very low on the Community market it is considered that the contraction of demand in itself did not have an overriding impact on prices since it is mainly due to the decrease of low price imports from Taiwan following the imposition of the anti-dumping measures. As explained below (see recital 90) the cost of production constantly decreased between 1998 and the IP. Normally, in fair market condition, such a cost decrease should have direct impact on the profitability. However, this was not the case since as shown in recital 91 the profitability was positive only once in 1999 and remained negative until the IP.
- (79) The Community industry gained 3,7 percentage points of market share between 1998 and the IP when their sales were found to represent 13,4 % of the Community consumption.

(d) *Stocks*

- (80) Stocks of own-produced CD-Rs increased significantly towards the end of 1999 and to an even higher degree towards the end of 2001. This is due to the fact that the sales volume increased less than foreseen. Stocks, expressed as a percentage of production of CD-Rs, were as high as 15 % during the IP.

Stocks	1998	1999	2000	2001	IP
in '000 units	6 976	18 763	64 724	66 956	58 817
Index	100	269	928	960	843

- (81) The exporting producer argued that the stock evaluation made by the Commission is incorrect since the figures would include the stock level of three companies linked with Taiwanese manufacturers and that these companies would have increased their stock of own-produced CD-Rs to absorb huge quantities of CD-Rs imported from Taiwan before the imposition of the anti-dumping measures.
- (82) Firstly, it is recalled that one of the companies mentioned by the Indian exporting producer was not included in the definition of the Community industry because it failed to sufficiently cooperate in the investigation.
- (83) For one of the two other companies mentioned by the Indian exporting producer, the stock of its own-produced CD-Rs when it started to purchase the product concerned, was the lowest of the whole period 1998 to the IP and its part in the total stock figures of the Community industry is negligible. Therefore, its stocks of own-produced CD-Rs have not been artificially increased by its purchases and in addition, they have not influenced significantly the stock evolution figures of the Community industry.
- (84) For the third company, it should be noted that this latter entered the CD-Rs market only in 2000 and had to fulfil the demand with purchased products prior to its production facilities being fully operational. This is confirmed by the fact that its production capacity utilisation was the highest of the whole period considered when it started to purchase, thus it had no choice but to satisfy any additional demand through purchases.
- (85) It was also argued that one of these two companies would have deliberately decreased its production to absorb its purchases of Taiwanese CD-Rs made before the imposition of the anti-dumping measures.

- (86) However, it should be noted that the purchases of this company started well before the initiation of the anti-dumping investigation on Taiwan (i.e. in 2000 while initiation was published in 2001). It is therefore unlikely that these purchases were made to avoid the payment of the anti-dumping duties and should rather be seen as a way for this company to complete the product range of the like product. In addition, these purchases decreased by more than 25 % between 2000 and 2001.
- (87) Finally, the Indian exporting producer claimed that although stocks of the Community industry expressed as a percentage of its production of CD-Rs, were as high as 15 % during the IP, a figure of 20 % was mentioned for 2000 in the Commission Regulation (EC) 2479/2001 imposing measures on Taiwan, thus leading to an improvement of 25 % in the level of stocks between 2000 and the IP.
- (88) In this respect, although a slight improvement occurred between 2000 and the IP, it is far from a 25 % improvement as claimed by the exporting producer and in addition it should be pointed out that the figures from both investigations are not comparable, since the definition of the Community industry is not the same in these investigations.
- (89) For all the reasons given above, the arguments were rejected.

(e) *Cost of production and profitability*

- (90) The total unit cost of production significantly decreased (i.e. by 55 %) between 1998 and the IP. As a result of improvements and the fine-tuning of the production process, the Community industry managed to continuously reduce its manufacturing cost, which represented during the IP around 80 % of the full cost of production of CD-Rs.
- (91) Notwithstanding its efforts to improve its competitiveness by reducing the costs, the Community industry's profitability went down by 9 percentage points between 1998 and the IP. It first improved between 1998 and 1999 when it was found to be positive. Then it fell back in 2000 to the same level of loss as in 1998 (i.e. - 1 %), fell by a further 11 percentage points in 2001 and was found to be at a 11 % loss in the IP. The significant cost reduction that occurred between 2000 and the IP (i.e. - 30 %), was therefore not sufficient to compensate for the price decrease of 36 % that occurred during the same period.

	1998	1999	2000	2001	IP
Cost of production (in ECU/ EUR per CD)	1,01	0,75	0,64	0,47	0,45
Index	100	75	63	47	45
Profitability	- 1,11 %	19,93 %	- 1,03 %	- 12,59 %	- 10,93 %

(f) *Investments, return on investment, cash flow and the ability to raise capital*

	1998	1999	2000	2001	IP
Investments (in '000 ECU/ EUR)	29 410	58 666	34 586	12 710	14 317
Index	100	199	118	43	49
Return on investment	- 1 %	27 %	- 1 %	- 19 %	- 18 %
Cash flow (in '000 ECU/ EUR)	8 983	38 643	20 510	6 667	6 472

- (92) Major investments were made during 1998, when the Community industry was still in a start-up phase and during 1999 and part of 2000 when a second wave of investments took place, inspired by the favourable market conditions existing at the time when investment appraisals were made.

- (93) Due to the dramatic change of market conditions and more specifically the decline of market sales prices, new investment decisions in 2000 were to a large extent postponed or cancelled, in spite of the further expansion of Community consumption.
- (94) The Indian exporting producer claimed that investment figures are not consistent with those related to production and capacity which show an increasing trend. Moreover it argued that investment figures are only EUR 14 million for the IP whereas according to the non-confidential questionnaire reply of a machinery supplier, this latter would have, on its own, sold equipment to European CD-Rs producers for a total of EUR 17 million during the IP.
- (95) Firstly, it is recalled that a difference exists between investment and production evolution since a time-span of several months elapses between the purchase of the equipment and the start of the production. In addition, production increase also results from tuning and improvements to the production process and not necessarily only from new equipment. Regarding the capacity, it should be noted that the capacity used as injury indicator is the technical capacity which also differs from one year to another due to technical problems and/or management decisions based on market projections, without having any impact on the number of machinery.
- (96) Secondly, as regards the supplier, the verification visit on its premises showed that the figures reported in its questionnaire reply could not directly be compared with the investment figures of the Community industry and were erroneous since, firstly, they included European customers and not only Community industry producers and, secondly, they included not only sales to CD-Rs manufacturers but also to other types of producers of optical disks customers.
- (97) The return on investment, expressed as the relation between the net profits of the Community industry and the net book value of its investments, followed the profitability trend and decreased from - 1 % in 1998 to - 18 % during the IP.
- (98) The Community industry's cash flow although remaining positive was, however, not sufficient to support depreciations, value adjustments and provisions. The cash flow has been in constant decline since 1999.
- (99) The investigation established that it became increasingly difficult for the Community industry to raise capital during the period considered owing to its financial situation, and in particular to its deteriorated profitability.

(g) *Employment, productivity and wages*

	1998	1999	2000	2001	IP
Employment	409	658	885	967	984
Index	100	161	216	236	241
Average employment cost per employee (in '000 ECU/EUR)	30	33	34	34	39
Index	100	108	114	114	129
Productivity (CDs per employee)	185	262	338	403	410
Index	100	141	182	217	221

- (100) Employment for the product under consideration more than doubled over the period considered. The increase went along with the installation of new capacity. The productivity per employee also increased continuously between 1998 and the IP when it was found to be twice as important as in 1998. The average wage per employee increased by 29 % over the period considered.

(h) *Magnitude of subsidy*

- (101) Considering both the high volume and the low prices of imports from India, the impact of the subsidy on the Community industry cannot be considered negligible.

4. Conclusion on injury

- (102) During the period considered the volume of low-priced imports from India increased significantly. Their market share increased from zero to 9 %, although the Indian import prices increased during the years 1998-1999, they subsequently decreased albeit not to their 1998 levels. It is noteworthy that the increase of the Indian imports and the decline of the sales price were particularly pronounced between 2000 and the IP. Import volumes during that period were multiplied by 10 and import prices decreased by 59 %, undercutting the Community industry's sales prices (which were loss-making) by around 17,7 % on average during the IP.
- (103) Some economic indicators pertaining to the situation of the Community industry, such as production of CD-Rs, production capacity installed and capacity utilisation, sales volume, market share, cost of production, employment and productivity, showed positive developments over the period considered. Nevertheless, these positive developments were more than offset by a number of other indicators which dramatically worsened during the same period such as, the average sales prices, stocks, investments, profitability, return on investments and cash flow.
- (104) The reduction of cost of production linked to the increased productivity, allowed the Community industry to achieve profitability in 1999, but further cost reductions were not sufficient to compensate for the significant decrease of the sales prices leading to substantial financial losses during the IP.
- (105) Taking into account all factors mentioned above, in particular the fact that the Community industry was prevented from benefiting from its costs reductions, that the investment programmes for CD-Rs were significantly reduced due to the declining trend of sales prices, that the Community industry's depressed sales prices were undercut by Indian imports and the financial losses during the IP, it is considered that the Community industry has suffered material injury.

F. CAUSATION OF INJURY

1. Introduction

- (106) In accordance with Article 8(6) and (7) of the basic Regulation, it was examined whether the subsidised imports of CD-Rs originating in India have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the subsidised 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 subsidised imports.
- (107) When analysing the causal link, it has to be borne in mind that it has previously been concluded that imports originating in Taiwan had caused material injury to the Community industry. The investigation period concerning the Taiwan investigation was the calendar year 2000 and provisional measures on imports originating in Taiwan were imposed in December 2001. Imports from India, however, were present on the Community market in significant volumes in 2001 and the IP, in other words just after the IP for the Taiwan proceeding. Given this development over time, the conclusions in the present case have to be seen in conjunction with the findings in the Taiwan proceeding.

2. Effect of the subsidised imports

- (108) Community consumption of CD-Rs increased dramatically over the period considered from 459 million CD-Rs in 1998 to 2 218 million CD-Rs during the IP. Sales of the Community industry increased at a similar pace, whereas subsidised imports originating in India increased significantly more over the same period, reaching 196 million units in the IP, which corresponds to an increase of market share from 0 % to 9 %. During the same period, the Community industry increased its market share by only 3,7 percentage points i.e. from 9,7 % to 13,4 %, corresponding with sales of 297 million units in the IP. In addition, imports from India took over part of the market share lost by Taiwan, after provisional duties were imposed in December 2001.
- (109) Although the Indian import prices increased over the period considered, it should be borne in mind that volumes imported from India were not significant until the end of the year 2000 when import volume started to considerably increase. Between the year 2000 when Indian imports reached for the first time 1 % of the Community consumption and the IP when they represented 9 % of the Community consumption, Indian import prices decreased by 59 %. According to Eurostat figures, the Indian import prices were, in 2001, 32 % below the Community industry's sales prices. In the IP, they were still 18 % below the Community industry's sales prices and the weighted average price-undercutting margin found was around 17,7 %.
- (110) In addition, although the Indian import prices increased by 17 % between 2001 and the IP, it should be borne in mind that this increase was not sufficient to compensate for the huge price decrease of 65 % that had occurred between 2000 and 2001. The resulting overall price trend shows a considerable reduction, which even taking into account the significant expansion of the Community consumption, indicates a negative effect on the market. Moreover, this price increase is negligible compared to the increase in volume (multiplied by 10 between 2000 and the IP) that the prices of the year 2000 permitted the Indian imports to obtain. Finally, this pricing behaviour permitted the Indian imports to gain a 9 % share of the Community market within two years.
- (111) The Indian exporting producer disagreed with this analysis and underlined that Indian imports became significant only after 2000 and that between 2000 and the IP, the Community industry gained 5 percentage points of market share. It also contested the fact that the Indian prices decreased by 59 % between 2000 and the IP, and alleged that the decrease was artificially underestimated due to the use of Eurostat figures. For the same reasons, it disputed the 65 % decrease in Indian sales price between 2000 and 2001.
- (112) Although it is true that between 2000 and the IP, the Community industry's market share gained 5 percentage points, the Indian market share during the same period increased more, namely by 8 percentage points. As regards the price, it was found in recital 63 that even when considering the figures of the exporting producer itself, its price decrease between 2000 and 2001 and between 2000 and the IP were very close to the results obtained on the basis of Eurostat figures. As using the producer's own figures would not materially alter the price trend, its claim was therefore rejected.
- (113) It was therefore concluded that a significant downward price pressure was exerted by the imports from India into the Community market as from 2000, and that these low-priced subsidised imports had a significant negative impact on the situation of the Community industry marked by losses and a consequential slowdown of investment.

3. Impact of other factors

(a) *Development of consumption*

- (114) Over the period considered Community consumption increased by around 1 759 million units. The development of consumption thus has not contributed to the injury suffered by the Community industry.

(b) *Imports from other third countries*

- (115) Consideration was given to whether factors, other than the subsidised imports from India, might have led to or contributed to the injury suffered by the Community industry and especially whether imports from countries other than India may have contributed to the injurious situation.

(i) *Taiwan*

- (116) As regards imports from other countries, it has already been determined by Regulation (EC) No 1050/2002, that imports of the like product from Taiwan were dumped and had caused material injury to the Community industry between 1997 and 2000. Imports from Taiwan still increased between 2000 and 2001 and slightly decreased between 2001 and the IP. Although the period of investigation of the anti-dumping proceeding which led to the imposition of the anti-dumping measures on imports of CD-Rs originating in Taiwan was the year 2000, given that the provisional anti-dumping duties were only imposed in December 2001, it cannot be excluded that imports from Taiwan were also dumped in 2001 until December and therefore caused part of the injury suffered by the Community industry between 2000 and part of the IP.
- (117) It has been alleged by the Indian cooperating exporting producer that the price on the Community market is set by the Taiwanese producers, and that the Indian company is forced to follow. However, Indian import prices decreased to such an extent that Indian imports were not only able to face the Taiwanese competition but also to gain more than 8 % market share between 2000 and the IP and to take over part of the market share lost by Taiwan between 2001 and the IP. In a market characterised by transparency and price elasticity, low prices of Indian imports had a significant influence on the price setting in the Community. Therefore, although imports from Taiwan have influenced the Community market during the period considered, at least until December 2001, they were not such as to break the causal link between the subsidised imports from India and the resulting injury suffered by the Community industry.
- (118) The same company also claimed that the price decrease in 2001 would be the effect of imports of huge volumes of Taiwanese CD-Rs in the last quarter of 2001, on the one hand because of the prospect of likely imposition of anti-dumping duties on Taiwanese imports, and on the other hand because the Taiwanese exporters would have shipped big volumes of CD-Rs which due to their low technical characteristics were about to become obsolete.

This issue was examined and the Eurostat monthly statistics were used as a basis.

On the basis of Eurostat figures in tonnes, the volumes imported each month from Taiwan between September and December 2001 were twice as large as the monthly volumes imported during the five prior months, i.e. from April to August 2001. On the basis of Eurostat figures converted into numbers of units, the number of CD-Rs imported into the Community from Taiwan per month was 72 % higher between September and December 2001 than between April and August 2001. However, the unit price per piece was found to be on average 15 % higher during the last four months of 2001 than between April and August 2001. Therefore, although the volumes increased from September to December 2001, these imports were also made at higher prices. This particular increase in volume between September and December 2001 is therefore not such as to break the causal link between the subsidised imports from India and the injury suffered by the Community industry.

The Indian cooperating producer also alleged that the product mix of the Taiwanese imports had suddenly changed as from September 2001 and that the proportion of bulk product had more than doubled to the detriment of packed products, thus leading to even higher volumes and lower unit prices. However, this assumption is unsubstantiated since it has been alleged by the same company that this increase in Taiwanese imports has been made in order to liquidate stocks of product likely to become obsolete. Consequently these products must have been produced, and accordingly sold, before September 2001 and if a change in the pattern of packaging really occurred, this is therefore likely to have started few months before September 2001. Most importantly, however, no proof has been provided to confirm this change in the export pattern. The argument was therefore rejected.

(ii) *Other third countries*

- (119) As to countries other than Taiwan and India, their import volume only slightly increased between 1998 and the IP (+ 3 %). Apart from India and Taiwan, the other main exporting countries are Japan, Hong Kong, Switzerland, China and Singapore which all together held only a 10 % market share during the IP.
- (120) In particular, imports from Japan, which traditionally have been important given the fact that two Japanese companies (Sony and Tai Yuden) invented the production process of CD-Rs (together with Philips), decreased by 20 % and became only the third most important origin of imports into the Community market during the IP. They were far below the level of Taiwanese and Indian imports.

Imports (in '000 units)	1998	1999	2000	2001	IP
Taiwan (covered by Regulation (EC) No 1050/2002)	111 447	612 539	1 248 133	1 545 258	1 262 327
Index	100	550	1 120	1 387	1 133
Other third countries	227 330	296 673	702 865	220 675	233 546
Index	100	131	309	97	103
Of which					
Japan	80 089	128 640	195 903	59 549	63 916
Index	100	161	245	74	80
Hong Kong	2 414	6 536	8 678	29 457	42 210
Index	100	271	359	1 220	1 748
Switzerland	5 086	8 204	18 139	40 874	39 316
Index	100	161	357	804	773
China	845	3 746	12 352	25 208	33 793
Index	100	443	1 461	2 982	3 998
Singapore	53 267	71 220	56 863	29 587	20 248
Index	100	134	107	56	38

- (121) The market share of imports originating in third countries other than Taiwan and India decreased by 39 percentage points between 1998 and the IP where they were found to be 11 %. Therefore, imports from these countries could not break the causal link between the subsidised imports and the injury suffered by the Community industry.

Market shares	1998	1999	2000	2001	IP
Taiwan (covered by Regulation (EC) No 1050/2002)	24 %	52 %	62 %	63 %	57 %
Index	100	215	255	259	234
Other third countries	50 %	25 %	35 %	9 %	11 %
Index	100	51	70	18	21
Of which					
Japan	17 %	11 %	10 %	2 %	3 %
Index	100	63	56	14	17
Hong Kong	1 %	1 %	0 %	1 %	2 %
Index	100	106	82	228	362
Switzerland	1 %	1 %	1 %	2 %	2 %
Index	100	63	81	150	160
China	0 %	0 %	1 %	1 %	2 %
Index	100	173	333	556	827
Singapore	12 %	6 %	3 %	1 %	1 %
Index	100	52	24	10	8

The prices of imports originating in third countries not covered by anti-dumping measures decreased by 22 % between 1998 and the IP even if the trend is different from one country to another. Although the average price of certain third countries appears to be lower than the Indian prices, Indian import prices are on average 34 % below the average price of imports originating in third countries other than Taiwan. Regarding more particularly the average prices of imports originating in Hong Kong, Switzerland and China which were found to be lower than Indian prices during the IP, it should be noted that Indian imports are 5 to 6 times larger in volume than imports from each of these three countries. In addition, it is recalled that those latter countries had small market share during the whole period considered and individually held a market share of 2 % during the IP, which is in view of the import volumes from Taiwan and India not significant enough to influence the Community market.

Average import price (EUR/ '000 units)	1998	1999	2000	2001	IP
Taiwan (covered by Regulation (EC) No 1050/2002)	563	436	312	246	258
Index	100	78	55	44	46
Other third countries	653	623	210	544	507
Index	100	95	32	83	78
Of which					
Japan	1 196	886	421	1 149	999
Index	100	74	35	96	84

Average import price (EUR/ '000 units)	1998	1999	2000	2001	IP
Hong Kong	387	606	528	132	146
Index	100	157	137	34	38
Switzerland	643	538	261	205	212
Index	100	84	41	32	33
China	928	694	296	205	218
Index	100	75	32	22	23
Singapore	388	353	278	378	511
Index	100	91	72	98	132

(c) *Export activity of the Community industry*

	1998	1999	2000	2001	Index
Exports (in '000 units)	5 246	15 332	27 739	28 678	28 180
Index	100	292	529	547	537

- (122) The volume of exports increased over the period considered. However, since 2000 it remained stable. Since exports of CD-Rs to third countries remained a relatively minor activity for the Community industry (during the IP it represented 9 % of its sales to unrelated customers in the Community of own produced CD-Rs), it is considered that the export activity is unlikely to have contributed to the injury suffered by the Community industry.

(d) *Purchases from other third countries*

- (123) It is recalled that the Community industry did not import the product concerned from India during the period considered.
- (124) The investigation showed that during the period considered the Community industry purchased CD-Rs from other sources in order to respond to market demand. Total purchases represented 40 % of total sales in 1998 but decreased to represent only 31 % in the IP.
- (125) It was also found that the volume of purchased CD-Rs decreased when compared to the Community industry's own production. In addition, both self-produced and purchased CD-Rs being sold at the same price by the Community industry, and given that there was no indication that the purchase price to the Community Industry was higher than the costs of production, the fact that some CD-R had previously been purchased as opposed to own-produced could not have materially contributed to the injury suffered by the Community industry.
- (126) The purchases were mainly made to face gaps in production capacity at particular periods of time especially because one of the company included in the definition of the Community industry entered on the CD-Rs market only in 2000 and had to fulfil the demand with purchased products prior to the production facilities being fully operational. Purchases should also be seen as the consequence of the shareholdings relationships between some of the Community industry companies and companies in third countries.

(127) In view of the above, purchases by the Community industry from countries other than India were not such as to not break the causal link between the subsidised imports from India and the injury suffered by the Community industry.

(128) The Indian exporting producer argued that the fact that the Community industry purchased 31 % of total sales is inconsistent with the claim that the Community industry is viable. He recalled that in the anti-dumping investigation on Taiwan, this proportion was found to be only 22,1 % in 2000.

(129) However, it is recalled that the scope of the Community industry is not the same in this investigation than it was in the investigation on Taiwan. Two companies having shareholdings relationships with foreign companies belong to the Community industry whereas they did not during the investigation on Taiwan. Moreover, it is also recalled that in the investigation on Taiwan, this proportion rose to 44 % in 1998 and was 33 % as an average between 1997 and 2000. Therefore, the level of the purchases in the current investigation is of the same magnitude as the one found in the investigation on Taiwan.

(130) In any case, as already explained above, purchased products are sold at the same price as own-produced CD-Rs and cannot have contributed to the injury suffered by the Community industry.

(e) *Competition of other data storage media*

(131) The investigation has shown that the competition of other data media storage such as DVD and/or CD-RW was still very limited during the IP and thus had no significant influence on the sales prices of the product concerned.

(f) *Worldwide overcapacity*

(132) It was also analysed whether the worldwide overcapacity could have caused injury to the Community industry. Although it is recognised that the supply of CD-Rs over the period considered exceeded the demand on a worldwide basis, it is recalled that the Community industry was still mainly oriented to the Community market where the capacity was still below demand. Hence, worldwide overcapacity is unlikely to have caused injury to the Community industry. However, should it nevertheless be considered as a cause of the injury suffered by the Community industry, the investigation has also shown that the worldwide overcapacity existed already in 1999, 2000 and 2001 when the Indian company entered the market by installing huge

capacity and starting production. Therefore, the impact of huge additional Indian imports on the Community market in such circumstances worsened the situation on the Community market.

(g) *State aid repayment*

(133) It has been alleged by the Indian exporting producer that the lack of profitability for one applicant could stem from its obligation to repay state aid following the Commission's Decision 2000/796/EC of 21 June 2000 on State aid granted by Germany to CDA Compact Disc Albrechts GmbH, Thuringia ⁽¹⁾. However, it should be noted that the figures provided in recital 91 and used for the analysis, are not influenced by this Commission decision. Should the state aid repayment be taken into account, the financial situation of the company concerned would have been worse.

(h) *Royalties*

(134) Being an element of the cost of production, royalties have accordingly an influence on the profitability of all producers of CD-Rs. However, first of all it should be noted that both the exporting producer and the producers of the Community industry are duly licensed by the patent owners and have to pay the royalties. Therefore, this cannot in itself explain the difference in price between the Indian CD-Rs and those produced by the Community industry, nor the financial losses incurred by the Community industry. Secondly, the Community industry's profitability was around 20 % in 1999, at a period of time when the royalties were already payable, but before the exporting producer commenced its exports to the Community. Accordingly, the royalties cannot have caused injury as such. Finally, like any other costs associated with the CD-R production, the fact that subsidised imports were putting a downward pressure on prices could have prevented the Community industry from passing on the costs of royalties to consumers. But in this case, this was an effect of injury and not a cause of it. As a result, the payment of royalties could not be considered to break that causal link between the subsidised imports and the injury suffered by the Community industry.

(i) *Other factors*

(135) Some parties claimed that injury could stem from an alleged abuse of a dominant position. However, this allegation has not been confirmed by any formal decision further to an investigation led by the competition authorities and can therefore not be accepted.

⁽¹⁾ OJ L 318, 16.12.2000, p. 62.

- (136) It has been argued by the Indian exporting producer that CD-R production is not viable in the Community because of high cost of production and especially because of higher labour costs. It is recalled that the unit cost of production of the Community industry decreased by 59 % between 1998 and the IP and that the Community industry was profitable in 1999 at a time when the Indian company was not yet on the Community market and despite the Community industry cost of production still being 68 % higher at that time than during the IP.

Moreover, it is recalled that the production process is the same in the Community and in India especially since the Indian producer uses European machinery and also some raw materials imported from the Community.

As concerns the difference in labour costs, the investigation showed that CD-Rs production is capital intensive and, being fully automated, not very labour intensive. Indeed only the very last stage of the production process i.e. the packaging requires labour, but only to a limited extent. Moreover, it is recalled that the productivity of the Community industry employees doubled during the period under consideration.

Finally, it should be noted that some Taiwanese companies started to produce CD-Rs in the Community recently, which tends to demonstrate that such production in the Community is likely to be viable and profitable notwithstanding the labour cost, should a fair competition be restored on the Community market. Therefore the argument was rejected.

It was also alleged by the same company that the price decrease on the Community market is due to the fact that the CD-R life cycle reached a mature stage characterised by decreasing prices and the decreasing cost of production and additional competitors on the market.

Although the life cycle of CD-Rs may explain part of the price decrease, it appeared during the investigation that low prices of Indian imports have had a significant influence in a market characterised by transparency and price elasticity.

- (137) The Indian cooperating exporting producer also claimed that the Community industry entered the CD-Rs market too late at a time when sales prices already declined.

It is recalled that the Indian exporting producer itself started the CD-Rs production far later than the Community industry and should logically have encountered even worse difficulties to enter the market during a period

when prices were already low and when all competitors had finished their start-up period. The argument was therefore rejected.

- (138) The same Indian company argued that the Community industry is too fragmented and is not able to achieve economies of scale because of small production units. It is however noteworthy that one of the two companies considered by the Indian producer in its submission as being the largest companies and thus able to reach sufficient economies of scale on their own, supported the complaint, cooperated in the investigation and was found to suffer injury like the other producers which are part of the Community industry. As regards more particularly economies of scale and/or the better conditions which the Indian exporting producer would allegedly be able to obtain for their purchases of raw material, this could not be confirmed by the information provided by the suppliers of raw material and/or machinery during the verification visits. The argument of economies of scale was therefore rejected.

- (139) In addition, it is recalled that the Community industry is recent since, as already established in Regulation (EC) No 2479/2001, it only started production in 1997. Since the beginning, it has suffered injury caused first, by the dumped imports from Taiwan as stated in the Regulation mentioned above, and more recently it had to face price pressure exerted by Indian imports.

4. Conclusion on causation

- (140) In view of the above it is concluded that the material injury of the Community industry, which is characterised by a decrease of sales prices, investments, return on investments and cash flow as well as by significant losses was caused by the subsidised imports concerned. Indeed, the effect of other factors such as imports from Taiwan or of the life cycle of the product concerned, on the Community industry's negative developments in terms of sales prices was only partial and not such as to break the causal link between the subsidised imports from India and the injury suffered by the Community industry thereof.

- (141) Given the above analysis which has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the subsidised imports, it is hereby concluded that these other factors as such do not reverse the fact that the injury assessed must be attributed to the subsidised imports.

G. COMMUNITY INTEREST

1. Preliminary remark

(142) It was examined whether, despite the conclusion on the existence of injurious subsidisation, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and in accordance with Article 31(1) of the basic Regulation, the impact of possible measures on all interests concerned by this proceeding and also the consequences of not taking measures were considered on the basis of all evidence submitted.

(143) In order to assess the likely impact of the imposition or non-imposition of measures, information was requested from all interested parties. Questionnaires were sent to the five applicant Community producers, 18 other companies known as producers in the Community, one consumers association and nine companies belonging to the upstream industry ('suppliers'). In addition to the five applicant Community producers, four other producers submitted satisfactory replies. Four suppliers replied to the questionnaire and the consumers association sent a submission.

(144) In view of the large number of importers in the Community and in order to enable the Commission to decide whether sampling is necessary, all unrelated importers, or representatives acting on their behalf, were requested to make themselves known within 15 days of the initiation of the proceeding and provide basic information on their imports into and resales made in the Community market. Two companies came forward and provided the requested information. Questionnaires were sent for completion to these two companies. However, none of them submitted a response to the questionnaire.

(145) These replies and submissions formed the basis for the Community interest analysis.

2. Interest of the Community industry

(146) It should be recalled that the Community producers were materially injured already in the past by imports of CD-Rs originating in Taiwan, as described in Regulation (EC) No 1050/2002. In 2000, five European producers completely abandoned CD-Rs production, and two others did the same in 2001.

(147) The Community industry used to be viable and is capable of supplying a larger part of the market for a product which constitutes the basic storage device for a large number of computer users.

(148) It is also to be noted that the production of data storage media is an area of technological importance for the Community as a whole. The production technology and experience gained by the Community industry in CD-Rs production has provided, and will continue to provide, a basis for further innovation in the manufacture of other related data storage media products. For the Community industry, remaining viable in the CD-Rs sector is the economic basis for participating in the growing market of other storage media. There are indeed important synergies in terms of sales between the product concerned and other data storage media products such as CD-RW and DVD. Therefore it is very important for the Community industry to propose the product concerned to its customers and to widen the range of its products.

(149) In view of the conclusions on the situation of the Community industry set out at recitals 102 to 105, especially in terms of its losses incurred, it is considered that, in the absence of measures against injurious subsidisation, the Community industry is likely to experience a worsening of its financial situation and it is likely that the production in the Community will decrease and that the users/consumers will be significantly and increasingly dependant upon imports.

(150) Failure to take definitive measures in the present proceeding would aggravate the already deteriorating situation of the Community industry, marked by losses and a consequential slowdown of investment. It would also undermine the effectiveness of the anti-dumping measures imposed on imports of the same product originating in Taiwan. This has put the continued existence of this industry at considerable risk. Should this industry be forced to cease production, the Community would become almost wholly dependent on third-country sources of supply in a rapidly developing area of increasing technological significance. Since the objective of the adoption of countervailing measures is to re-establish fair competition in the Community market, it would be in the interest of the Community industry, since it has, in spite of the injury suffered, proved to be viable in principle.

(151) Finally, the countervailing duties associated with its continuing effort to reduce its cost of production, can only help the Community industry to recover from the financial losses, a prerequisite for participating in the growing market of other storage media.

3. Interests of other Community producers

(152) The three Community producers, who were not considered to belong to the Community industry, were nevertheless in favour of countervailing duties.

4. Interests of Community suppliers

- (153) As already explained in recital 143, nine companies which supplied an Indian exporting producer and/or the Community industry sent letters to the Commission and argued that any measures would be against their own interest. They were sent a questionnaire in order to assess deeper the likely impact of the measures on their business. Only four companies replied and argued against the imposition of countervailing duties.
- (154) However, the investigation showed that the proportion of the European CD-Rs manufacturers in the turnover of the cooperating suppliers was nevertheless significant. Therefore, it is likely that any further shrinking and/or deterioration of the Community industry would not only have negative implications for employment and investment in the Community industry itself but may have a knock-on effect among the industry's suppliers of raw materials and machinery. In addition, the investigation has shown that the impact of the anti-dumping measures imposed on the product concerned originating in Taiwan and which were around twice higher than the proposed countervailing duties in the present investigation, have not had a significant impact on the suppliers.
- (155) It was also argued by the exporting producer that the subsidy targeted by this Regulation benefited the European suppliers of capital goods. According to this company, should countervailing measures be imposed, orders would be cancelled with serious consequences on the European suppliers of machinery.
- (156) In this respect, it is recalled that when final findings were disclosed to all parties concerned none of the cooperating suppliers contested the conclusion explained above i.e. that the proportion of the European CD-Rs manufacturers in the turnover of the cooperating suppliers was significant, and that it is likely that any further shrinking and/or deterioration of the Community industry may have a knock-on effect among the industry's suppliers of raw materials and machinery. As explained above on the other hand, the impact of a countervailing duty is not likely to have a significant direct effect on the suppliers' activities.

5. Interest of importers

- (157) No unrelated importer cooperated with the investigation.
- (158) The absence of cooperation of importers in this case leads to the conclusion that should any measures be imposed, they will not have any significant impact on the situation of unrelated importers and traders of CD-Rs in the Community.

6. Interest of users and consumers

- (159) Major users of CD-Rs include duplicators and final consumers. Duplicators have not made representations in this investigation. It is therefore, considered that an increase in costs, if any, applicable to this sector when compared to overall costs can be considered as negligible.
- (160) Moreover the non-imposition of the measures would seriously threaten the viability of the Community industry, the disappearance of which would reduce supply and competition, to the detriment of duplicators and consumers.
- (161) As to consumers, the European Consumers' organisation ('BEUC') was contacted and sent a submission. Although this organisation was against the imposition of duties, no element showing that the anti-dumping duties imposed on CD-Rs originating in Taiwan had a major effect on consumers was provided. Even based on the worst case assumption that the countervailing duties will be passed on in full to the consumers, this would lead to an increase of less than 3 euro cents per CD-R originating in India. Even under this scenario, given the decrease in price on the Community market since 1998 and the level of the measures proposed, no major effects on the final consumer are foreseen.
- (162) It should be also noted that there is no indication that the re-establishment of open and fair market conditions will prevent producers in third countries from competing in the Community market or, consequently, reduce quality and diversity of supply. While it is true that production in the Community is, at present, insufficient to meet demand for the product concerned, countervailing measures would merely remove the distortion of competition arising from subsidies and not, therefore, represent an obstacle to satisfying the gap in demand with supplies from third countries at fair prices. Indeed, where the level of the countervailing measures is equal to the subsidy margin, but lower than the amount required to remove fully the injury, it is only the unfair element of the exporters' price advantage which will be eliminated.
- (163) In addition, the product concerned can still be imported from other countries. It should also be noted that the market share held by countries not covered by countervailing measures could increase in future due to the fact that the supply of CD-Rs to the Community market by non subsidising countries was in the past less attractive owing to the strong price pressure exerted by India and Taiwan. It is therefore highly likely that, should fair competition be re-established, non-subsidising countries will increase their presence on the Community market.
- (164) This seems to indicate that neither users nor consumers would be unduly affected by the imposition of measures.

7. Conclusion on Community interest

- (165) On the basis of the above, it is concluded that the imposition of definitive countervailing measures would not be against the Community interest.

H. DEFINITIVE COUNTERVAILING MEASURES

1. Injury elimination level

- (166) In view of the conclusions reached with regard to subsidy, injury, causation and Community interest, definitive measures should be taken in order to prevent further injury being caused to the Community industry by the subsidised imports.
- (167) For the purpose of establishing the level of the definitive measures, account has been taken of both the subsidy margin found and the amount of injury sustained by the Community industry.
- (168) The definitive measures should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the subsidy margin found. When calculating the amount of duty necessary to remove the effects of the injurious subsidies, it was considered that any measures should allow the Community industry to cover its costs and obtain overall a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of subsidised imports, on the sales of the like product in the Community. The pre-tax profit margin used for this calculation was the same as in the anti-dumping proceeding against Taiwan, i.e. 8 % of turnover.
- (169) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the non-injurious price of the different models sold by the Community industry on the Community market.

The non-injurious price per model has been obtained by adding the above mentioned profit margin of 8 % to the cost of production per model. The cost of production has been reconstructed model by model, on the basis of the sales price to which the losses have been added. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value. These differences were in all cases above the subsidy margin found.

2. Definitive measures

- (170) As the injury elimination level is higher than the subsidy margin established, the definitive measures should be based on the latter. As cooperation was high, and in order not to undermine the effectiveness of the measure, the rate of the definitive countervailing duty for India should be set at 7,3 %,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of recordable compact disks (CD-Rs), currently classifiable within CN code ex 8523 90 00 (TARIC code 8523 90 00 10), originating in India.
2. The rate of the definitive duty applicable to the net free-at-Community-frontier price, before duty, shall be 7,3 %.
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

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

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

Done at Luxembourg, 2 June 2003.

For the Council

The President

K. STEFANIS