I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 1184/2007

of 9 October 2007

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Article 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 390/2007 [2] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of peroxosulphates (persulphates), currently classifiable within CN codes 2833 40 00 and ex 2842 90 80, originating in the United States of America (USA), the People's Republic of China (PRC) and Taiwan.

(2) As set out in recital 12 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2005 to 30 June 2006 (IP). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2003 to the end of the IP (period considered).

B. SUBSEQUENT PROCEDURE

(3) Following the imposition of provisional anti-dumping duties on imports of persulphates originating in the USA, the PRC and Taiwan, some interested Parties submitted comments in writing. The Parties who so requested were also granted the opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(4) All Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of persulphates originating in the USA, the PRC and Taiwan and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.

(5) The Commission intensified the investigation with regard to Community interest aspects and carried out analysis of data within the questionnaire reply provided by a user in the Community after the imposition of the provisional anti-dumping measures.

(6) One additional verification visit was carried out at the premises of the following company:

— Antec International Ltd, Sudbury, UK — user in the Community.

(7) The oral and written comments submitted by the Parties were considered and, where appropriate, the findings have been modified accordingly.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ L 97, 12.4.2007, p. 6.

C. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(8) It is recalled that as mentioned in recital 14 of the provisional Regulation the product concerned consists of the following four main product types: ammonium persulphate $(NH_4)_2S_2O_8$ (APS), sodium persulphate $(Na_2S_2O_8)$ (SPS/NPS), potassium persulphate $(K_2S_2O_8)$ (PPS/KPS) and potassium monopersulphate ($2KHSO_5$ * $KHSO_4$ * K_2SO_4) (KMPS).

(9) One exporting producer in the USA reiterated its claim to exclude KMPS from the scope of the investigation on the grounds that KMPS had different chemical characteristics and was used in applications which differed from those of the other three product types. This exporting producer claimed that the interchangeability of all product types was limited to some niche applications. Thus, only a very small quantity of its exports of KMPS to the Community would be used in typical applications of the three remaining product types. To support its claim, the exporting producer reiterated that KMPS was sold at constantly higher price levels which showed that it would be sold to types of customers for applications which differed from those of the remaining three product types.

(10) The same exporting producer also referred to Council Regulation (EC) No 2961/95 [1] which imposed a definitive anti-dumping duty on imports of peroxodisulphates originating in the PRC. Since the product concerned by that investigation did not include KMPS, it was claimed that the provisional findings in the current investigation contradicted the findings in that prior investigation. In particular, the criteria listed in recital 7 of Regulation (EC) No 2961/95 to determine the product concerned would not apply to KMPS, which would show that it is a different product. This exporting producer referred further to an anti-dumping investigation conducted by the authorities of the USA covering persulphates but not KMPS [2].

(11) Subsequent to the provisional disclosure, the same exporting producer also claimed that KMPS was treated differently from the other types for transport purposes as well as in Directive 98/8/EC of the European Parliament and the Council of 16 February 1998 concerning the placing of biocidal products on the market [3] (the Biocide directive). This different treatment would indicate that they are different products.

(12) Finally, the abovementioned exporting producer argued that the only common criterion of KMPS and the other three product types was that they are 'strong oxidants', which is a broad definition applying to many other chemicals such as hydrogen peroxide and sodium hypochlorite which were also used as oxidising agents. Therefore, either KMPS should be excluded from the present product scope or other oxidising agents should be included.

(13) As far as the alleged differences in chemical characteristics are concerned, the abovementioned exporting producer did not bring forward any new information or evidence but mainly repeated the arguments it made prior to the imposition of provisional measures. It is underlined that recital 17 of the provisional Regulation recognises that each type, including KMPS, has a different chemical formula. However, it was also found that, despite these differences, all types have a common structure ($SO3$-O_2) and similar or comparable physical and chemical properties. Thus, all types have, for example, a comparable appearance (white, crystalline salt), a similar bulk density and comparable active oxygen content. All types were defined as salts of oxoacids of sulphur in the oxidation state number VI which measures the degree of oxidation of an atom in a substance. It was therefore concluded that all product types had similar chemical characteristics. None of the information put forward by the exporting producer concerned was such as to change these findings.

(14) The above characteristics were found to be unique to persulphates which differentiated them from other products. In particular, the investigation revealed that hydrogen peroxide is a colourless liquid with a chemical formula different from that of persulphates (H_2O_2). It does not contain any sulphur and its active oxidant content is around 10 times higher than the one of the product concerned. Hydrogen peroxide is moreover used in different applications to persulphates. Likewise, sodium hypochlorite has a chemical structure which is different from the product concerned (NA^+OCl^-) and does not contain any oxygen/oxygen bond or any sulphur. NA^+OCl^- is a solid compound, but usually commercially available as an aqueous solution. Since it has no active oxygen content at all, it is used in chlorine-based bleaching. It was therefore concluded that the aforementioned products had different properties and applications and were not comparable to persulphates. The argument that the product definition was too broad was therefore rejected.

(15) Regarding the claim that KMPS had end uses that differed significantly from those of the remaining three product types, the arguments brought forward before the imposition of provisional measures were mainly repeated. The exporting producer claimed in particular that KMPS would be largely used in the cleaning and disinfection of swimming pools, whereas other persulphates could allegedly not be used because they were skin-irritant. It was found, however, that not only KMPS but also other persulphate types were allowed by the relevant European standard to be used in the treatment of water intended for human consumption [4]. It was also found that whether or not they were a skin irritant, other

[1] OJ L 308, 21.12.1995, p. 61.
[2] United States International Trade Commission, Persulphates from China, Investigation No 731-TA-479 (Review); Determination and view of the Commission (USITC Publication No 3555, October 2002).
[3] OJ L 123, 24.4.1998, p. 1.
[4] EN 12678 and 12926.

persulphate types were indeed used in cleaning and disinfection applications. This argument had therefore to be rejected.

(16) The abovementioned exporting producer claimed further that KMPS cannot be used in polymerisation processes which are the main field of application of the other persulphate types. However, the investigation revealed that KMPS could be used in polymerisation processes and consequently this argument had also to be rejected. Finally, as mentioned in recital 17 of the provisional Regulation, despite partly distinct end uses, a number of overlapping applications existed such as metal treatment (micro-etching and pickling) and repulping of wet-strength paper. It was therefore concluded that all product types had largely overlapping applications with no clear dividing lines.

(17) As mentioned in recital 9, the exporting producer concerned argued that, while there was a certain overlap in applications, this did not concern a substantial part of its export sales and should therefore be considered as insignificant. In this regard, it should be noted that the precise consumption of each product type in a specific application during the IP could not be determined because of the low co-operation of the users concerned and the unavailability of appropriate data for such determination. The exporting producer concerned did not submit conclusive evidence in this respect, but only unsupported estimates. Furthermore, only two users cooperated in the present investigation, representing only a small part of total consumption (7 %). In any event, the exact extent to which a specific product type was used in a specific application during a specific time period was considered irrelevant. Indeed, whether a certain product type can be used in a specific application has to be determined on the basis of the physical, technical and chemical characteristics. Users may use a certain product type at a certain time but may also be able to switch easily from one product type to the other for one and the same application. This argument had therefore to be rejected.

(18) As regards the different price levels of the different product types, it is already set out in recital 17 of the provisional Regulation that it is considered that price differences between product types *per se* do not justify the conclusion that a certain product type should be considered as a different product. While it is true that sales prices of KMPS are higher than the ones of other types of persulphates, there are also price differences between the remaining three product types. It should be noted that these differences can be seen in all producing countries, including the Community. The different price levels are mainly explained by the limited number of producers of KMPS worldwide (in the Community, the USA and, to a certain extent, the PRC) and are not necessarily reflected in the cost of production. Consequently and given the above findings that no clear dividing lines existed between different applications of the different product types, this claim had also to be rejected.

(19) As far as the different treatment of KMPS and the other three product types with regard to packing for transport and under the Biocide Directive is concerned, it should be noted that these were new arguments provided after the imposition of the provisional measures and therefore outside the required deadlines. In any event, the investigation has shown that packing standards for all types were basically the same, albeit under different classifications. It was also considered that packing standards as such were not a decisive criterion in determining whether different product types were one single product. As described above, the main criteria to define the product concerned in an anti-dumping investigation are their basic chemical, technical and physical characteristics and end uses.

(20) As far as the Biocide Directive is concerned, it is noted that the different treatment lies in the fact that the Community industry initiated the registration procedures required under this Directive for KMPS but not for the other three product types. Registration procedures had not been started for these other types due to considerations unrelated to their chemical characteristics and end uses, as claimed by the exporting producer concerned. Thus, while for the product type KMPS registration costs were shared between the two main producers of this product type (one in the Community and the other one in the USA), registration procedures were considered very costly and time-consuming, and could be more efficiently handled in terms of cost and time in the wider context the new European Chemicals Regulation (REACH) which entered into force on 1 June 2007 ([1]). The different treatment under the Biocide Directive can therefore not be considered as an indication that the product types were different on the basis of their chemical properties and/or applications. It was therefore considered irrelevant in the definition of the product concerned and the exporting producer's claim in this regard was rejected.

([1]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1), corrected by OJ L 136, 29.5.2007, p. 3.
Directive 2006/121/EC of the European Parliament and of the Council of 18 December 2006 amending Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances in order to adapt it to Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency (OJ L 396, 30.12.2006, p. 850), corrected by OJ L 136, 29.5.2007, p. 281.

(21) As far as the findings with regard to the product concerned in the investigations mentioned in recital 10 are concerned, it should be noted that in none of these investigations was KMPS expressively excluded, i.e. there are no findings which would have established that KMPS and the other three product types had different chemical characteristics and end uses and should therefore not be considered as one single product. KMPS was not included in the above complaints (or petitions as applicable) either because it was not exported during the IP of that investigation (Community) or because the domestic complaining industry (USA) did not produce KMPS at that time.

(22) It is in particular noted that the criteria listed in recital 7 of Regulation (EC) No 2961/95 (imposing definitive measures on imports of peroxodisulphates from the PRC) did not aim at differentiating between KMPS on the one hand and the three other product types on the other hand, but rather at defining the main characteristics shared by the three types which formed the product concerned in that investigation. They are therefore tailored to the three product types concerned and not exhaustive. The main findings, however, also apply to KMPS, i.e. that the essential characteristics (persulphate anion) and end uses (initiator and oxidising agent) are the same, that they are interchangeable to a certain extent and that price differences are considered irrelevant. As for the last criterion, the importance in the production process of the downstream industry, the exporting producer claimed that KMPS constituted a high percentage of its users' production costs. In this respect, it was established during the investigation (recitals 112 to 120 below) that although KMPS constitutes a higher proportion of the cost, the impact on the users' profitability is negligible. In any event, it was considered that this should not prevent the Community institutions from considering KMPS as the product concerned given the abovementioned finding that all product types were interchangeable.

(23) It is finally noted that none of the other interested Parties, in particular none of the Chinese exporting producers of KMPS, challenged the product definition in the present proceeding or objected to the inclusion of KMPS in the product scope of the present investigation.

(24) On the basis of the above, the provisional conclusions set out in recital 17 of the provisional Regulation that all four types should be considered to constitute one single product for the purpose of this proceeding are hereby confirmed.

2. **Like product**

(25) In the absence of any comments concerning the like product, recitals 18 and 19 of the provisional Regulation are hereby confirmed.

D. **DUMPING**

(26) In the absence of any comments with regard to the general methodology, recitals 20 to 39 of the provisional Regulation are hereby confirmed.

1. **USA**

(27) Following the provisional disclosure, one exporting producer argued that the deduction made pursuant to Article 2(10)(i) as described in recital 47 of the provisional Regulation led to a double counting of the profit made by its related trader in Switzerland. However, the exporting producer failed to substantiate its claim and upon verification no double counting was found in the calculation.

(28) In the absence of any other comments concerning the determination of dumping with regard to the USA, recitals 40 to 50 of the provisional Regulation are hereby confirmed.

2. **PRC**

(29) Two exporting producers which were denied Market Economy Treatment (MET) disputed the Commission's conclusions. However, they did not put forward any new arguments and the conclusions made with regard to MET for those two exporting producers in the provisional Regulation have, as a result, remained unchanged.

(30) One of those two exporting producers further alleged that, if the decision to reject its MET claim was maintained, it should nevertheless be granted individual treatment (IT). However, that exporting producer was not able to demonstrate that its business decisions was taken in response to market signals, without significant State interference, as explained in recital 56 of the provisional Regulation. For the same reasons it cannot be excluded, and the exporting producer did not prove otherwise, that State interference would permit circumvention of measures if that exporting producer were given an individual rate of duty. It is therefore maintained that IT should be denied to that exporting producer, in accordance with Article 9(5) of the basic Regulation.

(31) Recital 53 of the provisional Regulation stated that for one of the three exporting producers granted MET, further examination of late information that could not be fully investigated at that stage was necessary. The information which had then been received, as well as further information received after the publication of the provisional Regulation, was examined and a verification visit at the premises of the exporting producer was carried out in order to check its validity. This resulted, based on new information which was brought to light during the latest steps of the investigation, in significant changes in the factual situation on the basis of which the evaluation of criteria 1 and 2 had been made.

(32) As regards criterion 1, the exporting producer was found to have previously concealed some essential information regarding its current managers and owners, and their role in the company prior to its privatisation. This voluntary omission casts doubts on all the information submitted with regard to privatisation. Furthermore, the company could not explain convincingly on which grounds it was granted two loans with a reduced interest rate by a bank controlled by the State, which points to State interference. These specific loans had not been investigated initially as they were granted after the end of the IP. However, this clearly has an impact on the present situation of the company, and it was considered appropriate, in accordance with the case law, to take it into account. For the reasons mentioned above, which are based on information that could not reasonably have been known to the Commission's services at the time of the initial investigation on MET, State interference in the running of the company can no longer be excluded, and the company did not prove otherwise.

(33) As to criterion 2, it was found that financial expenses had been understated in the exporting producer's accounts, in breach of general accruals accounting rules and more specifically International Accounting Standard (IAS) No 23. It should be noted that an inaccurate report of the loans held by the company in their MET claim form had seriously impeded the initial examination of this point, and that the discrepancy found could therefore not reasonably have been known to the Commission's services during the prior steps of the proceeding.

(34) In view of the above, it has been concluded that this exporting producer's claim for MET should be rejected. The exporting producer concerned has been informed and has been granted an opportunity to comment on these findings. As a result, the dumping margin for all exporting producers not granted MET had to be recalculated, following the same methodology as that described in recital 96 of the provisional Regulation.

(35) Finally, one exporting producer which was granted MET submitted two claims with regard to the calculation of its normal value and export prices, which were not found sufficient to justify an adjustment. One further claim by that exporting producer concerning the allocation of certain logistics expenses borne by its related importer on the total company turnover rather than on the turnover of the product concerned, on the grounds that they were linked to a general restructuring which took place in the company during the IP, was considered sufficiently substantiated and was accepted. In any event, this exporting producer's dumping margin had to be recalculated, following the corrections made by its related importer in the Community to the transaction-by-transaction listing provided in support of the resale prices for persulphates within the Community.

(36) Given the above, the dumping margins expressed as a percentage of the CIF import price at the Community border, duty unpaid, are the following:

Company	Definitive dumping margin
ABC Chemicals (Shanghai) Co., Ltd	*de minimis*
Degussa-AJ (Shanghai) Initiators Co., Ltd	24,5 %
All other companies	96,0 %

(37) In the absence of any other comments concerning the determination of dumping with regard to the PRC, the other provisions of recitals 51 to 97 of the provisional Regulation are hereby confirmed.

3. **Taiwan**

(38) Following the provisional disclosure, the cooperating exporting producer reiterated two claims for adjustments for level of trade and commissions, as already described in recitals 101 and 102 of the provisional Regulation respectively. However, the explanations provided by the exporting producer, which were not substantially different from the explanations that had been received earlier in the proceeding, were not found convincing. The exporting producer failed in particular to address some of the arguments supporting the decision to reject its claims as disclosed in the provisional Regulation and partly contradicted prior statements made during the verification visit at its premises.

(39) In the absence of any other comments concerning the determination of dumping with regard to Taiwan, recitals 98 to 105 of the provisional Regulation are hereby confirmed.

E. **INJURY**

1. **Community production and Community industry**

(40) One exporting producer in the USA reiterated that the Community producer importing the product concerned from its related company in the PRC should be excluded from the definition of the Community industry. It was claimed that the fact that production is outsourced to a third country concerned by an anti-dumping investigation would be in itself sufficient to conclude that the producer concerned would be shielded from the effects of the dumped imports. The exporting producer also claimed that the producer concerned behaved differently from an unrelated Community producer, which is in particular shown by its investment activity in the PRC.

(41) It is considered that the fact that a Community producer outsourced production is not *per se* sufficient reason to exclude this producer from the definition of the Community industry. Indeed, it should first be examined whether the Community producer concerned was shielded from the effects of the dumped imports. In this regard, as mentioned in recital 106 and 151 of the provisional Regulation, it was found that the quantities imported from the related company in the PRC were small and were only made to maintain global customers. These imports constituted less than 7 % of the total sales of this producer on the Community market. This indicated that the producer in question was committed to the production in the Community and that imports were rather an act of self-defence. As far as the investment by the Community producer in the PRC is concerned, the claimant exporting producer did not explain how these investments had indeed shielded the Community producer from the effects of the dumped imports, as claimed. The above arguments had therefore to be rejected.

(42) The same exporting producer alleged that one of the main criteria to conclude that the Community producer in question formed part of the Community industry was that the resale prices on the Community market were at a higher level than the import prices from the PRC. The exporting producer claimed that resale prices should have been compared to the average import price from all countries concerned, rather than only those from the PRC.

(43) However the level of the resale prices was only one additional element which had been considered (see also recital 106 of the provisional Regulation). The resale price indicated that the Community producer did not undercut its Chinese competitors, which would have harmed the Community industry.

(44) In the absence of any other comments concerning Community production and Community industry, recital 106 of the provisional Regulation is hereby confirmed.

2. **Community consumption**

(45) One exporting producer in the USA claimed that its export sales to its related user in the Community should be excluded from the determination of the total consumption in the Community on the basis that these sales were not made to the 'merchant market'.

(46) Consumption is defined as the total of all imports into the Community from all sources and all sales of the product concerned from the Community industry on the Community market. The fact that imports are made to related companies in the Community is irrelevant and does not prevent these sales from being taken into consideration when calculating the total Community consumption. The exporting producer's claim in this respect was therefore rejected.

(47) In the absence of any other comments concerning the Community consumption, recitals 107, 108 and 109 of the provisional Regulation are hereby confirmed.

3. **Cumulative assessment of the effects of the imports concerned**

(48) The two exporters in the USA claimed that for the purpose of assessing injury suffered by the Community industry, imports of persulphates originating in the USA should be decumulated. Both exporting producers submitted that import prices from the USA were at a higher level and showed trends which differed from import prices from the PRC and Taiwan. This would show that the product exported from the USA was sold under different market conditions. One of the exporting producers further argued that its sales made to its related user in the Community should be considered separately because they would be made under different market conditions and show different trends. Thus, this exporting producer alleged that the import volume from the USA to unrelated customers did not increase nor did so only insignificantly. Both exporting producers requested that import prices per country concerned be disclosed.

(49) As far as prices are concerned, and as already mentioned in recital 112 of the provisional Regulation, it was found that export prices from the PRC, Taiwan and the USA showed a similar trend (decreasing) during the period considered and were significantly undercutting the Community prices. It is noted that the provisional conclusions are based on verified actual export data supplied by the cooperating exporting producers. These data were considered as the most reliable source of information available. The average import price supplied by the exporting producers had therefore to be rejected.

(50) The following average import prices have been determined for each country concerned. The table below shows that the import prices from all countries concerned had a similar, i.e. decreasing trend.

Table 1

Average import prices per country concerned

Unit prices (EUR/tonne)	2003	2004	2005	IP
USA EUR/tonne	1 289	1 250	1 108	1 131
USA index	100	97	86	88
Taiwan EUR/tonne	633	583	565	590
Taiwan index	100	92	89	93
PRC EUR/tonne	719	688	649	684
PRC index	100	96	90	95
Total countries concerned (EUR/tonne)	902	812	759	784
Total countries concerned (index)	100	90	84	87

(51) As far as import volumes are concerned, the findings of recital 111 of the provisional Regulation are confirmed, i.e. the export volume from the USA was significant within the meaning of Article 3(4) of the basic Regulation and showed an increasing trend. Exports from the USA were also significantly dumped and showed substantial undercutting. All product types were exported from the USA by the two cooperating exporting producer and half of the exports of KMPS were also made to unrelated customers. Thus, it was concluded that the product exported from the USA was sold through the same sales channels and to the same type of customers in the Community as the product produced and sold by the Community industry on the Community market and the product imported from the other countries concerned.

(52) Nonetheless, even if KMPS sales of the exporting producer concerned made to the related user in the Community were excluded from the analysis, this would not change the overall picture. Market shares from the USA would still be above the *de minimis* threshold and would still show an increasing trend. Likewise, import prices would still show a decreasing trend.

(53) On the basis of the above, the two exporting producers' claim to decumulate imports from the USA when assessing the material injury suffered by the Community industry was not warranted and was rejected.

(54) One importer claimed that imports from its supplier in Taiwan decreased when considering a period longer than the period considered of this investigation. This importer did not, however, submit any figure in support of its claim, or any indication of the time period he was referring to. Furthermore, it is the Community institutions' long standing practice to consider a period including the IP plus the preceding three or four years in the trend analysis, which is considered a reasonable period to evaluate trends and there is no objective reason to deviate from this practice. It is also noted that, as shown in recital 114 of the provisional Regulation (Table 2), imports from Taiwan increased by almost 20 % during the period considered which translated also in a slight increase of market share (see recital 115 of the provisional Regulation) over the period considered. The importer did not put forward any other reason why Taiwan should be decumulated from the remaining countries concerned, nor did the investigation reveal any reason. The importer's claim in this respect has therefore to be rejected.

(55) In the absence of any further comments in this particular respect, the findings in recitals 110 to 113 of the provisional Regulation are hereby confirmed.

4. Imports into the Community from the countries concerned, market share and prices

(56) Given the findings in recitals 31 to 34, export sales of the Chinese exporting producer which were found to be dumped had to be included in the analyses of import volume, market share and prices from the PRC and the figures in Tables 2 to 4 (recitals 114 to 116 of the provisional Regulation had therefore to be adapted accordingly, as follows:

Table 2

Imports from the countries concerned

Imports (tonnes)	2003	2004	2005	IP
PRC	4 275	7 294	7 316	8 708
Index	*100*	*171*	*171*	*204*
Taiwan	2 080	2 760	2 700	2 480
Index	*100*	*133*	*130*	*119*
USA	3 484	3 499	3 818	3 878
Index	*100*	*100*	*110*	*111*
Total countries concerned	9 839	13 552	13 834	15 065
Index	*100*	*138*	*141*	*153*

(57) Imports from the countries concerned increased by 53 % between 2003 and the IP. While these imports amounted to 9 839 tonnes in 2003 they reached a level of 15 065 tonnes during the IP. The increase of imports was particularly marked between 2003 and 2004 since they rose by 38 %.

Table 3

Market shared of the countries concerned

Market shares	2003	2004	2005	IP
PRC	11,0 %	17,4 %	18,0 %	20,9 %
Taiwan	5,3 %	6,6 %	6,6 %	5,9 %
USA	9,0 %	8,3 %	9,4 %	9,3 %
Total countries concerned	25,3 %	32,3 %	33,9 %	36,1 %

(58) The market share held by the countries concerned increased between 2003 and the IP from 25,3 % to 36,1 %, i.e. by 10,8 percentage points. The increase was particularly marked between 2003 and 2004 when it went up by 7 percentage points.

Table 4

Prices of the imports concerned

Unit prices (EUR/tonne)	2003	2004	2005	IP
Total countries concerned	902	812	759	784
Index	*100*	*90*	*84*	*87*

(59) From 2003 to the IP, prices of the imports from the countries concerned decreased by 13 %. Thus, they decreased from EUR 902/tonne in 2003 to EUR 784/tonne in the IP.

(60) In the absence of any other comments in this particular regard the findings and conclusions set out in recitals 114 to 119 of the provisional Regulation, are confirmed.

5. Situation of the Community industry

(61) The two exporting producers in the USA claimed that the Community industry realised 'reasonable' profit margins during the IP, and in any case was not loss making, and it cannot therefore be concluded that it suffered material injury during the IP. One of the exporting producers in the USA further claimed that the high profit margins realised in 2003 would also be an indication that the Community industry did not suffer any material injury.

(62) In accordance with Article 3(5) of the basic Regulation, the impact of the dumped imports must include an evaluation of all relevant factors and indices having a bearing on the state of the Community industry. In this respect, none of the factors in isolation can give decisive guidance. The analysis of the situation of the Community industry is therefore not limited to the profitability of the Community industry alone, but must include all factors listed in that Article. Furthermore, as outlined in recital 131 of the provisional Regulation, profitability dropped substantially during the period considered, i.e. by 80 %, and as a result the Community industry's financial situation deteriorated dramatically. In this context, it was considered that it was irrelevant whether the Community industry did indeed realise losses during the IP. It is also noted that the profit margin that the Community industry could reasonably expect to achieve in the absence of dumped imports was determined in recital 169 of the provisional Regulation and confirmed in recital 154 with 12 %, i.e. significantly higher than the profit margin realised during the IP.

(63) With reference to the claim that the high profit margins realised in 2003 would be an indication that the Community industry did not suffer any material injury, it is noted that even if disregarding the profit margins realised in that year, the trend would still be significantly negative. Thus, profits fell between 2004 and the IP by almost 60 %. This would thus not change the overall conclusions that the Community industry suffered material injury during the IP.

(64) One exporting producer in the USA alleged that the profitability of Community industry may have decreased because of a EUR 830 million write-off of intangible assets linked to the acquisition of Laporte in 2005. It should be however noted that the downward trend of the profitability as set out in the provisional Regulation is constant over the period considered and not linked to a specific year. In addition, the investigation revealed that the cost for the acquisition of Laporte was taken by the holding company, not by Degussa Initiators Co. Ltd. This factor did therefore not have any impact on the profitability trends as shown in the provisional Regulation.

(65) Finally, one of the exporting producers in the USA claimed that the injury analysis was based on wrong expectations of the Community industry to obtain profit margins which are above the average of this industry. With regard to this argument, it should first be noted that, as it becomes apparent from recitals 120 to 139 of the provisional Regulation, the injury analysis was based on the developments of all injury indicators during the period considered and thus on the actual situation of the Community industry during that period, which gave an objective picture based on verified actual data. In other words, the Community expectations as such did not serve as a basis in the injury analysis and this argument was therefore rejected.

(66) One user alleged that there was no price depression on the Community market, but did not submit any evidence to support this claim. Since the verified information submitted by the exporting producers concerned and the Community industry clearly showed a downward trend in average selling prices during the period considered, this claim had to be rejected.

(67) In the absence of any other comments concerning the situation of the Community industry, recitals 120 to 139 of the provisional Regulation are hereby confirmed.

F. CAUSATION

1. Effects of dumped imports

(68) In the absence of any comments concerning the effects of dumped imports, the findings in recitals 141 to 143 of the provisional Regulation are hereby confirmed.

2. Effects of other factors

Imports originating in third countries other than the PRC, USA and Taiwan

(69) Both exporting producers in the USA alleged that imports from other countries, and in particular from Turkey, may have caused injury to the Community industry particularly in view of their prices which are allegedly lower than the prices from the USA. In particular, it was claimed that these imports were made in significant quantities and at dumped prices which undercut significantly the Community industry prices. Both exporting producers claimed that imports from Turkey had injured the Community industry at least to the same degree as imports from the USA, if not to a larger extent.

(70) First, it should be noted that Turkey was not included in the complaint because the complainants had not found any evidence of injurious dumping from Turkey. At the time of the initiation of this proceeding, the Commission did not have any evidence at its disposal that contradicted the complainants' statement. Secondly, the fact that Turkish export prices may appear to be lower than the prices from the USA when looking at average prices emanating from Eurostat trade statistics may be the result of a different product mix exported by the two countries. Indeed, on the basis of available information, the exports from the USA consist to a large extent of KMPS whereas, neither at initiation stage nor during the investigation, was any evidence available that Turkish exports to the Community show a similar product mix. Therefore, no meaningful conclusion could be drawn from differences in average Eurostat prices. Finally, it should be recalled that neither was any such evidence provided by the exporting producers concerned.

(71) When analysing the situation of the Community industry, the effects of the dumped imports from all three exporting countries concerned were assessed cumulatively for the reasons set out in recitals 48 to 55. On this basis, it was considered inappropriate to base the analysis with regard to causation on each country concerned separately. However, even if considering imports from the USA separately, import trends from the USA and Turkey are different. While import volumes of Turkey significantly decreased during the period considered (i.e. by 42 %), import volume and market share from the USA increased. As far as prices are concerned no evidence of dumping from Turkey was submitted by the exporting producer or was otherwise available. Likewise, as far as undercutting is concerned, on the basis of the evidence available, the product mix exported from Turkey was different from that from the USA; in particular in Turkey there was no production of KMPS. When comparing average prices from the USA excluding exports of KMPS and average export prices from Turkey, it was found that Turkish prices were higher than the prices from the USA.

(72) On the basis of the above, the conclusions as set out in recitals 144 to 148 of the provisional Regulation are hereby confirmed.

Imports of the Community industry

(73) It was reiterated by several interested Parties that the imports of one Community producer of the product concerned from its related company in PRC were dumped and undercut the Community industry sales prices causing the price depression on the Community market. Any injury would therefore be a consequence of these imports and thus self-inflicted.

(74) Imports of the Community industry from its related company in the PRC only represented a minor part of the Community consumption (less than 4 %) and less than 8 % of the sales of the Community producer in question and were only made to maintain the custom of global customers who would otherwise have purchased the product concerned from the Chinese suppliers at dumped prices. None of the abovementioned interested Parties submitted any evidence or explained how these relatively small quantities (in comparison to the dumped imports made to unrelated customers in the Community) could have been the main factor for the price depression in the Community market and this claim had therefore to be rejected.

Investments of the Community industry in the PRC

(75) One of the exporting producers in the USA claimed that the downward trend of the investment activities of the Community industry shown in Table 8 of the provisional Regulation was due to an increased investment activity of one of the Community producers in its related company in the PRC and thus not due to the dumped imports.

(76) It is noted that the spare capacity of the Community industry was high, i.e. reached almost 30 % during the IP. Under these circumstances, and taking into account that dumped imports increased significantly during the period considered and took over part of the Community industry's market shares, it was considered that it would have been unreasonable to invest in an increase of production capacity on the Community market. However, as mentioned in recital 129 of the provisional Regulation, investments were made to maintain existing production capacities. Under the given circumstances, this was considered as a reasonable business decision against the background of the dumped imports. It was therefore concluded that the decrease in investments in the Community market was not connected to the investment activities of this producer in the Chinese market and did therefore not indicate that the injury suffered was self-inflicted. This argument had therefore to be rejected.

Other activities of the Community industry in the PRC

(77) One unrelated importer claimed that the production, production capacity and utilisation decreased due to the relationship of one of the Community producers with one of the exporting producers in the PRC. This importer claimed that the related Chinese producer would serve the South Asian market with the lower priced persulphate produced by the related company in the PRC and as a consequence the Community producer decreased significantly its exports to this area, which would be the reason for the decrease of the production volume in the Community.

(78) It should be noted that the trends with regard to production volume, capacity and capacity utilisation as shown in recital 120 of the provisional Regulation (Table 5) are related to the production volume for products sold in the Community. The alleged decrease in exports of one of the Community producer had therefore no impact and the importer's claim had to be rejected.

Efficiency of the Community industry

(79) One of the exporting producers in the USA claimed that the increase in production cost as a plausible cause of the injury suffered by the Community industry was not addressed in the provisional Regulation.

(80) This claim had to be rejected. The reason for the Community industry's increase in the unit cost is outlined in recital 125 of the provisional Regulation. Thus, it is the result of the decrease in production volume due to the dumped imports at stable capacities. As a result, overhead costs were allocated to lower production volumes which increased the unit costs. Since there is a direct link to the dumped imports, the argument of the exporting producer concerned had to be rejected.

Profitability levels of the Community industry in 2003

(81) The same exporting producer in the USA claimed also that the reasons for the high levels in profitability in 2003 should have been analysed further and taken into consideration in the causality analysis.

(82) This exporting producer also failed to provide any explanation or evidence as to how the profit levels in 2003 could have broken the causal link between the dumped imports and the injury suffered by the Community industry. The question whether the profit margins realised in 2003 would indicate that the Community industry did not suffer material injury during the IP is addressed in recital 63.

Cost of the merger of one of the Community producers

(83) The other exporting producer in the USA claimed that the cost increase and consequently the decrease in the Community industry's profitability during the IP were due to the acquisition of a company by one of the Community producers and the consequent significant write-off of intangible assets in their accounting.

(84) However, the downward trend of the profitability as set out in Table 9 of recital 130 of the provisional Regulation is constant and not linked to a specific year during the period considered. In addition, the investigation revealed that the cost of the acquisition was not borne by the Community producer but by its holding company. This claim had therefore to be rejected.

Uncompetitive behaviour of the Community industry

(85) One user claimed that the Chinese producers related to the Community industry offered the product concerned on the Community market at levels that were largely above the market prices, while the same producers were able to offer the product at much lower prices in any other given market, and even below the price levels of their competitors in these third markets. This user claimed that the producers concerned should have known that such price offers would be unacceptable for any potential customer and alleged that the

Community industry through their links to these producers intentionally refrained to sell the product to certain customers in the Community. Therefore, the decrease in sales volume and market share on the Community market was due to this uncompetitive behaviour rather than the dumped imports.

(86) It was found that only one of the abovementioned producers was exporting the product concerned to the Community during the IP. The arguments with regard to the other producer were therefore considered irrelevant and rejected.

(87) As far as the producer in the PRC is concerned, it did indeed export the product concerned during the IP (see also recital 74). However, it was found that business decisions were taken completely independently from the Community producer concerned and in particular, price strategy in the Community market was not agreed. The user concerned did not submit any evidence to support its claim that the Community industry should be held responsible for business decisions of its related exporting producer in the PRC. Therefore, on the basis of the information available, this claim was rejected.

(88) It should also be noted that the evidence submitted with regard to prices by this user was anecdotal and could not be verified, given that it was submitted outside the deadlines required and at a very late stage of the proceeding. In any case, the price offers shown were offers before negotiation and were therefore not final. They also did not relate to the IP. Moreover, the actual verified average sales price of the Community industry was well below the levels of the offers shown. It is also noted that as in recitals 117 to 119 of the provisional Regulation, average undercutting levels were found to be significant. The dumped imports caused a price depression on the Community market and under these circumstances the 'market price' is built under unfair conditions and cannot necessarily be used as a benchmark. In any case, this is irrelevant because dumping is defined in Article 1(2) of the basic Regulation, which does not make reference to a 'reasonable' or 'market price'.

(89) As far as the price levels of this exporting producer to other third markets are concerned, the evidence submitted in this regard was anecdotal and also could not be verified. In addition, these prices were unrelated to the situation in the Community market and therefore irrelevant in the causality analysis. In any case, no evidence or information was available regarding the different market conditions in these markets. It was considered that, on the basis of the evidence submitted, no meaningful conclusions could be drawn as to the comparability of the prices charged in the different markets. Likewise, the conditions of production and price setting in the PRC, where the related company of one of the Community producer was located, cannot necessarily be compared to the one in the Community market, which, however, may justify difference in price levels. This claim had therefore to be rejected.

(90) In contrast, one of the exporting producers in the USA claimed that the Community industry was responsible for the price depression on the Community market since it pursued a policy of price undercutting with regard to its competitors on the Community market. The exporting producer supported this argument by submitting several examples where it had to lower its price in order to meet the level of the Community industry's price offer.

(91) The evidence submitted was considered anecdotal and no general conclusions could be drawn therefrom. As recitals 85 and 89 show, other examples of the opposite situation have been provided. While it shows that there is high degree of competition on the Community market, on the basis of the information available it could not be concluded that the Community industry was driving down the prices on the Community market and this argument had therefore to be rejected.

Situation on the world market

(92) One importer claimed that the loss of sales of the Community industry is due to the situation in the world market where international customers centralised their purchase strategies. This importer did, however, not show how this change in strategies could have an impact on the Community industry consumption and on the causal link between the dumped imports and the material injury suffered and this argument had therefore to be rejected.

Increase in costs of production of the Community industry

(93) One Chinese exporting producer claimed that it should have been considered whether the cost increase of the Community industry could have caused the material injury suffered by the Community industry.

(94) The development of unit costs during the period considered are not listed in Article 3(5) of the basic Regulation and therefore not systematically mentioned when assessing the situation of the Community industry. However, as part of the analysis of material injury, sales prices and profitability are systematically addressed, which implies that cost of production is also considered. In any case, as set out in recital 125 of the provisional Regulation, unit costs were considered in the provisional determinations.

(95) Thus, recital 125 of the provisional Regulation explains that unit costs of the Community industry increased by 5 % due to a decrease in production volume by stable capacities. The production volume decreased due to the loss of sales volume and market share as a consequence of the price pressure from the dumped imports. It was therefore concluded that the impact of the increase of production cost of the Community industry on the Community industry's negative developments was, if existent at all, only limited.

Conclusion on causation

(96) In conclusion, it is confirmed that the material injury of the Community industry, which is as mentioned in recital 137 of the provisional Regulation characterised by a downward trend of all injury indicators, was caused by the dumped imports concerned. Indeed, the effect of the non-dumped imports from other third countries, in particular, from Turkey, the Community industry's investments as well as other activities in the PRC, the acquisition cost of a third company, the increase in unit costs, the alleged non-efficiency and uncompetitive behaviour of the Community industry and the situation on the world market, on the Community industry's negative developments was, if existent at all, only limited.

(97) 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 dumped imports, it is hereby confirmed that these other factors as such do not reverse the fact that the injury assessed must be attributed to the dumped imports.

(98) Given the above, it is concluded that the dumped imports of persulphates from the PRC, USA and Taiwan have caused material injury within the meaning of Article 3(6) of the basic Regulation.

(99) In the absence of any other comments in this respect, the conclusions in recitals 140 to 153 of the provisional Regulation are hereby confirmed.

G. COMMUNITY INTEREST

1. Interest of the Community industry

(100) One of the users who did not fill in the questionnaire reply, but submitted comments further to the provisional disclosure, claimed that the Community industry was recovering from the dumped imports and that prices of persulphates in the Community had increased after the IP and prior to the imposition of provisional measures. Therefore, there would be no need to impose anti-dumping measures to improve the situation of the Community industry.

(101) This user also contested the conclusions in recital 158 of the provisional Regulation that the imposition of anti-dumping duties would allow the Community industry to, *inter alia*, regain market share and thereby generate better economies of scale. It was claimed that based on the findings of the Community industry's market shares it is one of the largest players in and outside the Community and there would therefore not be any further scope for substantial economies of scale. The same user questioned the Community industry's intention to invest in its production facilities in the Community and argued that the conclusions in recital 158 of the provisional Regulation in this respect were speculative.

(102) The same user claimed that anti-dumping duties would not result in restoring fair competition as concluded in recital 158 of the provisional Regulation. Rather, anti-dumping measures would enforce the already dominant position of the Community industry and therefore decrease competition on the Community market.

(103) As to the argument that the Community industry was already recovering, it should be noted that the information submitted by the user in this respect was anecdotal and related to events after the IP. It could not be verified given that it was submitted at a very late stage of the investigation, i.e. after the imposition of provisional measures. The evidence submitted was therefore considered insufficient. It is noted that movements in the market and in particular price increases during an anti-dumping investigation are not unusual. Indeed, as mentioned below in recital 126, price increases on the Community market are an expected affect of an anti-dumping duty. Furthermore, the alleged price increase may also have had other reasons such as an increase in cost. It is not *per se* considered as a reason to refrain from the imposition of definitive measures, if the conditions of the basic Regulation are fulfilled. This argument had therefore to be rejected.

(104) As far as the ability of the Community industry to realise economies of scale is concerned, likewise, the evidence submitted was considered insufficient. It will be recalled that it was established, on the basis of verified data submitted by the Community industry in their reply to the questionnaire, that the production volume decreased with a stable production capacity and that, as a consequence, unit costs increased. In view of this, by increasing production volume there is indeed room for economies of scale, at least in order to reach the unit cost level before the dumped imports. The market share of the Community industry inside or outside the Community was considered irrelevant in this context.

(105) As far as the allegations are concerned that the Community industry would not invest in its production facilities in the Community, even if its financial situation improved, the user argued that this conclusion can be drawn on the basis of the Community industry's behaviour further to the imposition of definitive anti-dumping duties on imports of peroxodisulphates originating in the PRC in 1995 by Regulation (EC) No 2961/95 (see recital 10). Thus, this user alleged, the Community industry did not invest in its production facilities even when anti-dumping measures were in place, otherwise, this user claimed further, the Community industry would not have suffered any injury during the IP.

(106) In this regard, it is noted that the user concerned did not submit any evidence to support these allegations. In particular, he could not provide any information to indicate a lack of investments after imposition of definitive anti-dumping duties in 1995 or that there was a link between this alleged lack of investments and the injury suffered during the IP of the current investigation. On the other hand, as outlined in the provisional Regulation in recitals 140 to 153 and as confirmed in recitals 68 to 99, the material injury suffered by the Community industry was indeed caused by the dumped imports from the countries concerned. Given in particular the conclusions in recitals 75 and 76, it was not unreasonable to assume that the Community industry is committed to the Community market and that it will continue its investment activities should the situation in the Community market allow to do so. None of the arguments brought forward could invalidate these conclusions and the claims in this respect had therefore to be rejected.

(107) Finally, as far as the competitive situation in the Community market is concerned, anti-dumping measures should under normal circumstances restore a fair level playing field between the Community industry's sales in the Community market and the imports form the countries concerned because measures should compensate for the dumping practised. As far as the alleged dominant position of the Community industry is concerned and as mentioned in recitals 124 to 130, there were no indications of an infringement of Article 82 of the Treaty and it was therefore concluded that competition within the Community was fair. The argument of the user concerned had therefore to be rejected.

(108) In the absence of any other comments in this particular regard, the findings set out in recitals 157 to 160 of the provisional Regulation are hereby confirmed.

2. **Interest of unrelated importers**

(109) Further to provisional disclosure, one cooperating importer claimed that in contrast to what was concluded in recital 163 of the provisional Regulation, anti-dumping duties would have a significant impact on its overall profitability, which may lead to the closure of the company.

(110) However, this importer did not submit any evidence which could have reversed the provisional conclusions, which are therefore confirmed.

(111) In the absence of any other comments in this particular regard, recitals 161 to 164 of the provisional Regulation are hereby confirmed.

3. **Interest of users**

(112) As mentioned in recital 6, after the imposition of provisional measures the Commission invited the related user of one of the exporting producers in the USA to complete a questionnaire. Despite the fact that this user had not cooperated in the investigation so far, this was considered appropriate because of the alleged substantial impact of the anti-dumping duty on the profitability of this user. In particular, it was claimed that the impact on the user's profitability of the anti-dumping duty would be significant.

(113) The user in question purchased KMPS from its related supplier in the USA and produced disinfectants used by farmers to protect their farms against viruses, e.g. for cases of avian influenza.

(114) The verification of the information submitted by the above user revealed that the company realised high profit margins on the Community market. Although it was claimed that KMPS constituted a substantial part of the user's cost of production, the maximum impact on the company's profitability was insignificant, i.e. 0,2 %. Given the high profit margin realised by this company, it was concluded that the minimal increase in cost could be easily absorbed. Given the lack of significant competition on the Community market for this product, it is also considered that the cost increase can be easily passed on to the customers of this company.

(115) This user claimed further that although realising high profit margins on the Community market, it sells the product also via other third country markets. For accounting purposes the profitability for all these operations are consolidated by eliminating transfer prices and overall profit margins are negative. However, in the current analysis only data in relation to the product concerned and to the Community market can be taken into consideration. The information on sales prices and costs to all third country markets and details of the consolidation for accounting purposes were furthermore not available and could therefore not be verified. This argument had therefore to be rejected.

(116) The other cooperating user in the Community claimed to be one of the largest users of the persulphate type APS in the Community and claimed to represent about 3,5 % of the total Community consumption. This user argued that any increase in its costs, even small, would have a significant impact on its overall financial situation. Although the user estimated the impact of the anti-dumping duty with 0,2 %, it claimed that since it used large quantities of the product concerned, it would be more appropriate to consider the absolute total amount of the duties payable in the analysis of the Community interest.

(117) This user produces latex binders, which it resells to the coated paper industry. They also produce products for water treatment. They claimed that they could not pass on any increase in cost to their customers because they had to compete with low-priced imports from Asia. Furthermore, they claimed that the paper industry had to face important difficulties and is shrinking, due to a large part, to the raise of the electronic media. Therefore, the demand of latex binders is also decreasing. The user claimed that its profit margin was already very low and close to break even.

(118) The user concerned did not submit any reply to the questionnaire but provided some information on sales and profitability. On the basis of this information, it was found that the maximum impact on this user's profitability of the business segment using the product concerned would amount to only 0,03 %. It was considered that this minimal impact could not be considered as significant which would trigger the relocation or any job losses in this specific downstream industry, as claimed.

(119) None of the information provided by this user with regard to the Community interest aspects could therefore be confirmed during the investigation. In any event, it was considered that, as a result of the anti-dumping duties, price levels in the Community would on a general basis increase. Furthermore, there was no indication nor did the user concerned submit any evidence that imports of the downstream product from third countries would significantly undercut the prices of the users' in the Community. This argument had therefore to be rejected.

(120) Furthermore, as admitted by the user concerned, the paper industry faced problems unrelated to the anti-dumping duties and it is therefore uncertain whether the anti-dumping duties will have an impact at all, given the negligible part it would represent in the cost of the user or whether other factors, such as the shrinking market for paper would be the cause for the decline of this industry. Therefore, it was considered that the imposition of the anti-dumping duties would not have a significant adverse effect on the downstream industry.

(121) Given the above, recitals 165 and 166 of the provisional Regulation are hereby confirmed.

4. **Shortage of supply**

(122) The other user in the Community claimed that the Community industry would not be able to supply the demand on the Community market due to a lack of sufficient capacities. This user furthermore claimed that the other sources of supply available such as Turkey and Japan cannot be real alternatives because the production volume in these countries is too small in comparison to the one in the PRC and moreover, in the case of Japan, would be intended almost exclusively for the Japanese domestic market.

(123) The above user did not support its claim with any evidence. Furthermore, on the basis of verified actual data, the Community production capacity was found to practically equal the demand on the Community market. It should also be noted that anti-dumping duties do not aim to cease imports of third countries in the Community market but to establish a level playing field. This argument had therefore to be rejected.

5. **Dominant position of the Community industry**

(124) The two exporting producers from the USA and one of the users raised their concern that the imposition of the definitive anti-dumping duties would reinforce the already dominant position of the Community industry because it would shelter the two Community producers from effective competition.

(125) The user argued that the fact that prices increased after the imposition of the provisional Regulation from suppliers not subject to any anti-dumping duty would show the distorting effect of the measures. It was claimed that such price increase was only based on the imposition of anti-dumping duties and otherwise unjustified.

(126) In this context, it is considered that the expected effect of an anti-dumping duty is to increase price levels in the Community market and thus to compensate for the price pressure suffered by the Community industry from the dumped imports. It is noted that non-dumped imports are in competition with the dumped imports and may also be affected by the same price pressure. It is therefore not unusual for an exporting producer with a *de minimis* dumping margin to increase its prices further to the imposition of an anti-dumping duty. This behaviour does not necessarily show any distortion of the market and the claims in this respect were rejected.

(127) The user alleged further that there were close links between the two Community producers. Thus, both producers shared the same production sites and one Community producer supplied the other with energy for its production process. Furthermore, it has been alleged by several of the interested Parties that the two Community producers had a history of controlling the prices in the Community market through anti-competitive practices.

(128) However, the investigation did not confirm these allegations. It did not reveal any evidence which would point to an uncompetitive behaviour of the Community industry, i.e. an abuse of the alleged dominant position. As far as the alleged links of the two Community producers are concerned, the investigation has shown that business decisions were taken independently from each other and that managements were completely separated. It was also considered that the Community industry did not enjoy abnormally high profits, but in contrast suffered from a significantly deteriorating profitability. It is noted that as shown in recitals 85 to 91, several suppliers of persulphate competed in the Community market and price negotiations with the customers were ongoing.

(129) Furthermore, as also mentioned in recital 107, anti-dumping measures should restore a level playing field between the Community industry's sales in the Community market and imports entering the Community market. Indeed, the purpose of the duties is merely to raise the import prices to a level which would allow the Community industry to achieve a normal profit. It is also noted that despite other possible sources of supply such as Turkey, Japan and India, there is also one exporting producer in the PRC for which dumping was found to be *de minimis* and these imports will therefore enter the Community market without payment of an anti-dumping duty.

(130) Considering the above, the interested Parties' claims in this respect had to be rejected.

6. **Relocation of the downstream industry**

(131) One exporting producer in the USA and the two cooperating users alleged that the imposition of the anti-dumping duties would accelerate the relocation process of the downstream industry.

(132) As far as the USA exporter is concerned, they alleged that the product type KMPS constituted a large share of the downstream industry's production cost and therefore any anti-dumping duty would have a significant impact on these industries' profitability.

(133) One of the users alleged that the number of employees in the downstream industry was substantially higher than the number of employees of the Community industry of persulphates, i.e. a much higher number of jobs was at stake.

(134) As mentioned in recitals 112 to 121, the impact of anti-dumping measures on the downstream industries' production cost was found to be negligible. This was true for all product types, including KMPS. On this basis, it could not be concluded that anti-dumping duties would be a trigger to outsource the production of the downstream industry to third countries. It is also noted that the amount of employment in the downstream industry is not directly comparable to the number of employees of the Community industry of persulphates. For instance, the user concerned did not submit any indication or evidence to show how much employment in the downstream industry was directly linked to the product concerned and thus potentially affected by the imposition of anti-dumping duties.

(135) Given the above considerations, these claims had to be rejected.

7. **Anti-dumping duties imposed in 1995**

(136) One of the users claimed that the material injury suffered by the Community industry during the current IP showed that the anti-dumping measures imposed on peroxodisulphates in 1995 were ineffective. It is therefore not in the interest of the Community to impose new anti-dumping measures on a similar product scope which can also be expected to be ineffective. In particular, it is not in the Community interest to impose measures which will not be beneficial to the Community industry but will be detrimental to the downstream industry.

(137) It should first be noted that the definitive anti-dumping measures to which reference was made were terminated in 2002 ([1]) due to the withdrawal of the request for an expiry review by the Community industry in accordance with Article 11(2) of the basic Regulation. It was found that the continuation of the investigation was not in the Community interest. Since the Community industry was not interested in the continuation of the investigation, it can be reasonably assumed that it was not in an injurious situation and that measures were indeed effective.

(138) Second, it was found during the present investigation that the material injury suffered by the Community industry was caused by the dumped imports after the termination of the abovementioned proceeding. It was therefore concluded that the assumptions made by this user with regard to the effectiveness of the anti-dumping measures were wrong and had to be rejected.

([1]) Council Regulation (EC) No 695/2002 of 22 April 2002 terminating the anti-dumping proceeding concerning imports of peroxodisulphates originating in the People's Republic of China (OJ L 109, 25.4.2002, p. 1).

(139) Furthermore, as concluded in recitals 157 to 160 of the provisional Regulation and as confirmed by the present investigation, the imposition of definitive anti-dumping measures was in the interest of the Community industry, which is expected to benefit from them and to improve its financial situation. On the other hand, as concluded above, the impact of anti-dumping measures on users and importers is expected to be negligible.

(140) The above arguments had therefore to be rejected.

8. **Supply chain of downstream product**

(141) One of the exporting producers in the USA claimed that since its related producer in the Community is likely to cease its production in the Community, the supply of the disinfectant used in cases of avian influenza could no longer be sufficiently guaranteed. Since this product would have to be sourced outside the Community, this would lengthen the supply chain and deteriorate the Community's capability to respond in the event of an outbreak of this disease.

(142) In this regard, reference is made to the findings in recitals 112 to 120, which show that the financial impact of the anti-dumping duties is estimated to be very low and that therefore it is not very likely that the downstream industry would relocate their production sites as a consequence of the anti-dumping duty, but rather as a consequence of the consolidated negative business result.

(143) It was also found that the disinfectant produced by this company was not the only one used for disinfection purposes and that therefore, even were the company to cease production in the Community, other products were largely available.

(144) The claims in this regard had therefore to be rejected.

9. **Conclusion on Community interest**

(145) Considering the above, the conclusions in recital 167 of the provisional Regulation are hereby confirmed, i.e. that there are no compelling reasons of Community interest to show that the imposition of anti-dumping measures is not in the Community interest.

H. **DEFINITIVE ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(146) Several interested Parties contested the provisional findings that 12 % profit margin would be the profit margin before tax that could be reasonably be achieved by an industry of this type in the sector under normal conditions of competition.

(147) One exporting producer of the USA claimed that persulphate would be a commodity chemical and that the Community Institutions have a long standing practice to consider 5 to 8 % as appropriate to determine the injury elimination level. This exporting producer also claimed that in the previous investigation concerning a similar product, the profit margin considered for this purpose was 5 % which should also be used in the present investigation for consistency reasons.

(148) The same exporting producer alleged that the profit margin of 12 % was not achieved under normal conditions of competition and, therefore, excessive. It should consequently not be considered. The exporting producer supported this claim by providing overall publicly available profitability figures of one of the Community producers, which amounted to 5,1 %.

(149) It was claimed that the profit margin necessary to ensure the viability of the Community industry should be considered or the profit margin which corresponded to a reasonable return on capital employed.

(150) It is first noted that the criteria mentioned in recital 149 are irrelevant when determining the injury elimination level. Indeed, the Community institutions have to base their determination on an evaluation as to the level of the profit margin which the Community industry can reasonably expect to achieve in the absence of dumped imports, on the sales of the like product in the Community market. In this respect, it is generally considered that the profit margin at the beginning of the period considered is the profit margin realised in the absence of dumped imports. It is noted that there is no practice, as claimed by one of the exporting producers in the USA, of the Community institutions to use the same profitability level for similar industries. Profit margins in order to determine the non-injurious price level in the Community industry are established on actual verified data collected during each investigation and are therefore case specific.

(151) For the reasons mentioned above, to use the overall profit margin of one of the Community producers is rejected because it does not relate to the product concerned or the Community market or to the entire Community industry.

(152) As far as the prior anti-dumping investigation concerning a similar product is concerned and to which reference was made, it is noted that the product type KMPS was not included in that investigation, which may have had an impact on the overall profitability of the Community industry.

(153) Finally, as far as the alleged uncompetitive behaviour of the Community industry is concerned, it is noted that as outlined in recitals 124 to 130, these allegations were not confirmed in the current investigation and the claims in this regard had to be rejected.

(154) It is therefore concluded that the profitability of 12 % was appropriate and was used in the definitive findings. In the absence of any other comments concerning the injury elimination level, recitals 168 to 171 of the provisional Regulation are hereby confirmed.

2. Form and level of the duties

(155) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level sufficient to eliminate the injury caused by the imports without exceeding the dumping margin found.

(156) On the basis of the above, the definitive duties are as follows:

Country	Company	Anti-dumping duty
USA	E.I. DuPont De Nemours	10,6 %
	FMC Corporation	39,0 %
	All other companies	39,0 %
PRC	ABC Chemicals (Shanghai) Co., Ltd	0 %
	Degussa-AJ (Shanghai) Initiators Co., Ltd	24,5 %
	All other companies	71,8 %
Taiwan	San Yuan Chemical Co., Ltd	22,6 %
	All other companies	22,6 %

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

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

(159) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporters, but also to those companies which did not have any exports during the IP. However, the latter companies are invited, when they fulfil the requirements of the second subparagraph Article 11(4) of the basic Regulation, to present a request for a review pursuant to that Article in order to have their situation examined individually.

3. Definitive collection of provisional duties and special monitoring

(160) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, i.e. Regulation (EC) No 390/2007, should be definitively collected to the extent of the amount of the definitive duties imposed. Where the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitely collected.

(161) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures, which only apply to companies for which an individual duty rate is introduced, include the presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.

[1] European Commission, Directorate-General for Trade, Directorate H, Office J-79 4/23, 1049 Brussels, Belgium.

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of peroxosulphates (persulphates), including potassium peroxymonosulphate sulphate, falling within CN codes 2833 40 00 and ex 2842 90 80 (TARIC code 2842 90 80 20) and originating in the USA, the PRC and Taiwan.

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

Country	Company	Anti-Dumping Duty	TARIC Additional Code
USA	E.I. DuPont De Nemours, Wilmington, Delaware	10,6 %	A818
	FMC Corporation, Tonawanda, New York	39,0 %	A819
	All other companies	39,0 %	A999
PRC	ABC Chemicals (Shanghai) Co., Ltd, Shanghai	0 %	A820
	Degussa-AJ (Shanghai) Initiators Co., Ltd, Shanghai	24,5 %	A821
	All other companies	71,8 %	A999
Taiwan	San Yuan Chemical Co., Ltd, Chiayi	22,6 %	A823
	All other companies	22,6 %	A999

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

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

Article 2

Amounts secured by way of provisional anti-dumping duties pursuant to Commission Regulation (EC) No 390/2007 on imports of peroxosulphates (persulphates), including potassium peroxymonosulphate sulphate, falling within CN codes 2833 40 00 and ex 2842 90 80 (TARIC code 2842 90 80 20) and originating in the USA, the PRC and Taiwan shall be definitively collected. The amounts secured in excess of the amount of the definitive anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitely collected.

Article 3

This Regulation shall enter into force on the day following 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, 9 October 2007.

For the Council
The President
F. TEIXEIRA DOS SANTOS

ANNEX

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

1. The name and function of the official of the company which has issued the commercial invoice.

2. The following declaration 'I, the undersigned, certify that the [volume] of peroxosulphates sold for export to the European Community covered by this invoice was manufactured by (company name and registered seat) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct'.

Date and signature