

**COMMISSION REGULATION (EC) No 1627/2003
of 17 September 2003**

**imposing a provisional anti-dumping duty on imports of sodium cyclamate originating in the
People's Republic of China and Indonesia**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, as last amended by Regulation (EC) No 1972/2002 ⁽²⁾, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) On 19 December 2002, the Commission announced, by a notice published in the *Official Journal of the European Communities* ⁽³⁾, the initiation of an anti-dumping proceeding with regard to imports into the Community of sodium cyclamate originating in the People's Republic of China ('PRC') and Indonesia.
- (2) The proceeding was initiated as a result of a complaint lodged in November 2002 by a Spanish producer, Productos aditivos SA, representing the total Community production. The complaint contained evidence of dumping of the product concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.
- (3) The Commission officially advised the applicant Community producer, the exporting producers, importers and users known to be concerned and the representatives of the PRC and Indonesia of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (4) A number of exporting producers in the PRC and Indonesia, as well as the sole Community producer, importers, users 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.
- (5) The Commission sought, by means of questionnaires sent to all known parties, and verified to the possible extent the information it deemed necessary for the purpose of a preliminary determination of dumping, injury and Community interest. In this regard, the Commission received questionnaire responses from the following companies:
 - (a) *producer in the Community*
 - Productos aditivos SA, Barcelona, Spain;
 - (b) *importers/traders and users in the Community*
 - La Casera, SA (Cadbury Schweppes), Madrid
 - Palatinit GmbH, MannheimVerification visits were also carried out at the premises of the abovementioned companies;
 - (c) *exporting producers in the People's Republic of China*
 - Fang Da Food Additive (Shen Zhen) Limited
 - Fang Da Food Additive (Yang Quan) Limited

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 305, 7.11.2002, p. 1.

⁽³⁾ OJ C 318, 19.12.2002, p. 7.

- Zhong Hua Fang Da (HK) Ltd (related exporter in Hong Kong)
- Golden Time Enterprise (Shenzhen) Co. Ltd
- Rainbow Rich Industrial Ltd (related exporter in Hong Kong);

(d) *exporting producer in Indonesia*

- PT. Golden Sari, Bandar Lampung

The dumping verification visits to the PRC and Indonesia which normally take place before provisional findings are made, were cancelled due to the introduction of travel restrictions because of SARS. A notice concerning the consequences of SARS on anti-dumping and anti-subsidy investigations has been published in the *Official Journal of the European Union* ⁽¹⁾. Verification visits were, however, carried out in respect of those exporting producers which requested market economy treatment ('MET') before those travel restrictions had been adopted.

- (6) The investigation of dumping and injury covered the period from 1 October 2001 to 30 September 2002 ('IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 1999 to the end of the investigation period ('period considered').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. General

- (7) Sodium cyclamate is a commodity product used as a food additive, permitted in the European Community and in many other countries as a sweetener for low-caloric and dietetic food and beverages. It is widely used as an additive by the food industry, as well as by the producers of low-caloric and dietetic table-top sweeteners. Small volumes are also used by the pharmaceutical industry.
- (8) Sodium cyclamate is a chemically pure substance. However, as is the case for any pure chemical, it may contain a small proportion of impurities in amounts of mg/kg of the product. This content, limited by legislation (Directive 94/35/EC), defines the quality of the cyclamate. Cyclamate can be found in two different forms: hydrated (HC), with 15 % of water of crystallisation; and anhydrous (AC), with a content of up to 1 % of moisture. These two degrees of moisture do not modify the main characteristics and uses of cyclamate; it only varies in degree of sweetening power; the HC is less sweet due to the water content. Prices vary due to the same reason. The anhydrous is approximately 15 % more expensive than the hydrated form. Both forms should be therefore considered as one product for the purposes of this proceeding.

2. The product concerned

- (9) The product under consideration is sodium cyclamate originating in the PRC and Indonesia, currently classifiable under CN code ex 2929 90 00.
- (10) The investigation has shown that all types of the product concerned, despite differences in the form of presentation, have the same physical, and chemical characteristics and are used for the same purposes. Therefore and for the purpose of the present anti-dumping proceeding all types of the product concerned are regarded as one product concerned.

3. Like product

- (11) No differences were found between the product concerned and the sodium cyclamate produced and sold on the domestic market in the PRC and Indonesia, which also served as an analogue country for the purpose of establishing the normal value with respect of the PRC. Indeed, that cyclamate has the same basic physical and chemical characteristics and uses compared with that exported from these countries to the Community.
- (12) Likewise, no differences were found between the product concerned and the sodium cyclamate produced by the applicant and sold on the Community market. They both share the same physical and chemical characteristics and uses.
- (13) Consequently, sodium cyclamate sold on the domestic market of the PRC and Indonesia and exported to the Community as well as sodium cyclamate produced and sold in the Community are considered as alike to the product concerned within the meaning of Article 1(4) of Regulation (EC) No 384/96 ('the basic Regulation').

⁽¹⁾ OJ C 191, 13.8.2003, p. 2.

C. DUMPING

1. Indonesia

1.1. Normal value

- (14) One exporting producer in Indonesia responded to the Commission's questionnaire. The dumping verification visits, which were planned for May 2003, had to be cancelled due to the introduction of travel restrictions because of SARS.
- (15) In these circumstances, it was examined whether the information provided in the questionnaire response concerning domestic prices and costs could form a basis for a provisional calculation of the normal value. It was found that the information provided in this regard by this exporting producer was deficient and unclear to an extent that could not allow a reasonably accurate finding to be made. The replies of the exporting producer to the deficiency letters of the Commission have not clarified the situation. There were no other reliable sources of information available which the Commission services could have had recourse to enabling them to verify and complete the data submitted by the exporting producer. It was therefore concluded that, failing any other alternative, the facts available to the Commission had to be used for the provisional determination of the normal value. In this respect, the information submitted in the complaint was considered the most appropriate basis to provisionally establish the normal value.
- (16) The average Indonesian price reported in the complaint has therefore been used to establish the provisional normal value. The cooperating exporting producer was informed and was given an opportunity to comment. Furthermore, the investigation continues and therefore, should the information provided by the exporting producer be completed and clarified, the Commission will calculate a revised normal value based on the questionnaire reply.

1.2. Export price

- (17) Due to the introduction of travel restrictions because of SARS, the details provided by the cooperating exporting producer could not be verified. It was examined whether the information provided in the questionnaire response concerning export prices could form a basis for a provisional dumping calculation. It was found that the information provided in this regard by this exporting producer was deficient to an extent that could not allow a reasonably accurate finding to be made. The replies of the exporting producer to the deficiency letters of the Commission have not clarified the situation. There were no other reliable sources of information available to the Commission services which could have enable the Commission's services to verify and complete the data submitted by the exporting producer. It was therefore concluded that, failing any other alternative, facts available had also to be used for the provisional determination of the export price. In this respect, the average import price for Indonesia as reported in Eurostat statistics was used to establish export price. Furthermore, the investigation continues and therefore, should the information provided by the exporting producer be completed and clarified, the Commission will calculate an individual export price based on the questionnaire reply.

1.3. Comparison

- (18) The comparison between normal value and export price was made on an ex-factory basis and at the same level of trade. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which could affect prices and price comparability. Given that no reliable or verified information concerning costs and expenses was available at this stage of the investigation, and failing any other available more reliable data being available, the relevant costs reported in the complaint had to be used as facts available in order to make the necessary adjustments for differences in transport and insurance costs.

1.4. Dumping margin

- (19) The normal value and export price established as explained above were compared in accordance with Article 2(11) of the basic Regulation on an weighted average to weighted average basis.

- (20) The provisional dumping margin expressed as a percentage of the cif Community frontier price duty unpaid is for Indonesia 25,5 %.

2. The People's Republic of China

2.1. Market economy treatment ('MET')

- (21) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c), i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in summarised form below:
1. business decisions and costs are made in response to market conditions;
 2. accounting records are independently audited and applied for all purposes;
 3. there are no significant distortions carried over from former non-market economy system;
 4. legal environment and stability is provided by bankruptcy and property law;
 5. currency exchanges are carried out at the market rate.
- (22) Three Chinese producers requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadlines. Two of them were related companies.
- (23) The Commission sought all information deemed necessary and verified all information submitted in the MET applications at the premises of the companies in question.
- (24) For all three companies it was established that, overall, their decisions regarding prices and costs were made without significant State interference within the meaning of Article 2(7)(c) and that costs and prices reflected market values. These companies had accounts independently audited in line with international accounting standards and their production costs and financial situation was not subject to significant distortions carried over from the former non-market economy system. Finally, there were bankruptcy and property laws guaranteeing legal certainty and stability and the exchange rate conversions were carried out at the market rate. Consequently, it was concluded that the following three companies fulfilled the conditions set out in Article 2(7)(c) of the basic Regulation:
- Fang Da Food Additive (Shen Zhen) Limited
 - Fang Da Food Additive (Yang Quan) Limited
 - Golden Time Enterprise (Shenzhen) Co. Ltd.
- (25) It was therefore decided to grant MET to all three companies. The Advisory Committee was consulted and the parties directly concerned were informed accordingly. The Community industry has been given an opportunity to comment. However, no comments were received concerning the MET decision.

2.2. Normal value for MET companies

- (26) Following the decision to grant MET, the companies were requested to submit a full questionnaire reply including domestic sales information and information on cost of production of the product concerned and the like product. The verification visits, which were planned for May 2003, had to be cancelled due to the introduction of travel restrictions because of SARS.

- (27) In these circumstances, it was examined whether the information provided in the questionnaire responses concerning domestic prices and costs could form a basis for a provisional calculation of the normal value. It was found that the information provided in this regard by all Chinese producers was deficient to an extent that could not allow a reasonably accurate finding to be made. The replies of the exporting producers to the deficiency letters of the Commission have not clarified the situation. There were no other reliable sources of information available which the Commission services could have had recourse to enabling them to verify and complete the data submitted by the exporting producers. It was therefore concluded that, failing any other alternative, the facts available to the Commission had to be used for the provisional determination of the normal value. In this respect, the information submitted in the complaint was considered the most appropriate basis to provisionally establish the normal value.
- (28) Therefore, in line with the usual practice with regard to economies in transition, like the PRC, an analogue country was selected. Prices in Indonesia were considered a reasonable surrogate for prices in the PRC because Indonesia has a competitive domestic market where at least three producers operate. Since the product under investigation is only produced in the Community, the PRC and Indonesia, the Commission concluded that Indonesia can provisionally be used as an analogue country in this case.
- (29) The average Indonesian price reported in the complaint has therefore been used to establish provisional normal values for all Chinese exporting producers. The cooperating exporting producers were informed and were given an opportunity to comment. However, the investigation continues and should the information they provided be completed and clarified, the Commission will calculate individual normal values for each exporting producer for which market economy treatment has been granted.

2.3. Export prices for MET companies

- (30) Due to the introduction of travel restrictions because of SARS, the details provided by the cooperating exporting producers could not be verified on spot. However, it was found that all cooperating exporting producers sold the product concerned to independent customers in the Community via related companies in Hong Kong. Furthermore, the Commission established that the average export price as reported in their questionnaire responses was in line with the average import price obtained from Eurostat statistics.
- (31) It was therefore considered appropriate to establish export price on the basis of the average price reported by each one of the cooperating exporting producers for which market economy treatment was granted. Thus, an individual dumping margin for each one of these exporting producers could be provisionally calculated.

2.4. Comparison for MET companies

- (32) The comparison between normal value and export price was made on an ex-factory basis and at the same level of trade. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which could affect prices and price comparability. Given that no verified or other reliable information concerning costs and expenses was available at this stage of the investigation, the relevant costs reported in the complaint had to be considered to be the best facts available and they were used to make the necessary adjustments for differences in transport and insurance costs.

2.5. Dumping margin for MET companies

- (33) For the three exporting producers which were granted MET, the normal value as established above, was compared with the export price of the product concerned on an average to average basis for each company, as provided for under Article 2(11) of the basic Regulation. Given that two of the three exporting producers were related companies, an average dumping margin was calculated in accordance with the standard practise of the Commission for these related exporting producers.

2.6. Dumping margin for exporting producers without MET

- (34) Given that the total export volumes as reported by the cooperating exporting producers were significantly lower than the import volume reported in Eurostat statistics during the IP, it was provisionally concluded that there was significant non-cooperation (around 47 % of total imports of the product concerned in the Community). The export price for any non-cooperating exporting producer was therefore established on the basis of the average Eurostat import price for the PRC during the IP.
- (35) For all non-cooperating companies, a countrywide dumping margin was calculated by comparing the normal value in the complaint with the export price calculated on the basis of the average Eurostat import price (see recital 34).

2.7. Provisional dumping margins for PRC

- (36) The provisional dumping margins expressed as a percentage of the cif Community frontier price duty unpaid are:

Fang Da Food Additive (Shen Zhen) Limited	5,8 %
Fang Da Food Additive (Yang Quan) Limited	5,8 %
Golden Time Enterprise (Shenzhen) Co. Ltd	23,4 %
All other companies	29,5 %

D. COMMUNITY INDUSTRY

- (37) Sodium cyclamate is manufactured in the Community by a sole company, the complainant, Productos aditivos SA. It is deemed to constitute the 'Community industry' within the meaning of Article 4(1) of the basic Regulation and will hereinafter be referred to as such.

E. INJURY

1. Community consumption

- (38) Community consumption was based on the combined volume of imports of the product concerned into the Community based on Eurostat statistics and the total verified sales of the Community industry on the Community market.
- (39) Community consumption of sodium cyclamate was approximately 7 640 tonnes during the IP. This figure is some 50 % higher than at the start of the period considered. The increase between 2000 and 2001 was 12,7 % and 27,4 % between 2001 and the IP.

Community consumption

	1999	2000	2001	IP
Sodium cyclamate (in tonnes)	5 093	5 317	5 996	7 641
<i>Index</i>	100	104	118	150

2. Imports of sodium cyclamate into the Community

(a) Cumulative assessment of the effects of the imports concerned

- (40) The Commission examined whether imports from all countries concerned should be assessed cumulatively pursuant to Article 3(4) of the basic Regulation. According to that Article the effects of imports: 'shall be cumulatively assessed only if it is determined that (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3) and that the volume of imports from each country is not negligible; and (b) a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between imported products and the conditions between the imported products and the like Community product'.
- (41) Taking into account the conditions laid down in Article 3(4) of the basic Regulation, the Commission recalls that the dumping margins found ranged from 5,7 % to 29,5 % for the PRC and was 25,5 % for Indonesia, i.e. well above the *de minimis* level.
- (42) In addition, between 1999 and the IP, imports from the two countries concerned showed an upward trend, and, above all, hold a significant share of the Community market. Indeed, despite a slight decrease in the course of the IP for Indonesia, the volume of imports from each of the two countries and corresponding market shares were found during the IP significantly above the *de minimis* level. Furthermore, the prices of these imports were all in the same range.
- (43) Finally, the Commission's analysis revealed that the products concerned imported from the countries under investigation were entirely interchangeable between themselves as well as with the like product produced and sold by the Community industry. All products were also sold with similar pricing policies to the same type of customers.
- (44) It was therefore provisionally concluded that a cumulative assessment of the effects of the imports from the PRC and Indonesia was appropriate, in accordance with Article 3(4) of the basic Regulation.

(b) Volume and market share of imports

- (45) The Chinese cooperating exporting producers sold for export to the Community the product concerned via related companies in Hong Kong. The investigation found that there was no production of sodium cyclamate in Hong Kong, no indeed anywhere else other than in the PRC, Indonesia, and the Community. Therefore, the Eurostat data concerning the volume of imports from Hong Kong were considered together with the relevant data concerning the PRC. On the basis of Eurostat data, the volume of imports from the PRC and Indonesia increased over the period considered. The increase of imports was particularly marked between 2000 and the IP when they more than doubled.

Total dumped imports (tonnes)

	1999	2000	2001	IP
<i>Index</i>	100	104	155	235

- (46) The market share of the dumped imports increased by 56 % during the period considered. This increased market share was wholly taken from the share previously held by the Community industry.

Market share of dumped imports

	1999	2000	2001	IP
<i>Index</i>	100	99	131	156

(c) *Effect of the dumped imports on prices in the Community market*

- (47) According to Eurostat data, the average price of the dumped imports from the countries concerned fluctuated between 1999 and the IP. The prices for the PRC have been established on the basis of average Eurostat data reported for both the PRC and Hong Kong. Though this showed an increase of 20 % between 1999 and 2000, the overall trend for the whole period considered is a fall of 8 %.

Dumped imports price per kg

	1999	2000	2001	IP
<i>Index</i>	100	120	102	92

(d) *Price undercutting*

- (48) For the determination of price undercutting the Commission analysed price data for the IP. The sales prices of the Community industry is the average net ex works sales price to unrelated customers provided in the questionnaire replies and verified on the spot after deduction of discounts, rebates and levies. This was compared to the average import price of the cooperating Chinese exporting producers and the Eurostat import price for the PRC and Indonesia. These prices were at cif level and an appropriate adjustment was made to include any customs duties normally paid on importation.
- (49) On that basis, the existence of price undercutting was provisionally established for imports from the PRC and Indonesia. The level of undercutting, expressed as a percentage of the Community industry's average selling price was up to 18 % for the PRC and around 20 % for Indonesia.

3. Situation of the Community industry(a) *Preliminary remark*

- (50) In order to respect confidential business information, it has been necessary to present information concerning the Community industry in indexed form.
- (51) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry from 1999 (the base year) to the IP.

(b) *Production, capacity and capacity utilisation*

<i>Index</i>	1999	2000	2001	IP
Production (in tonnes)	100	93	95	90
Capacity (in tonnes)	100	100	100	100
Capacity utilisation	100	92	95	90

- (52) During the period considered, the Community industry production decreased by 10 %. As production capacity remained unchanged during the same period the capacity utilisation decreased by 10 % in line with the development of production.

(c) *Sales volume, sales price, market share and growth***Sales in the Community**

	1999	2000	2001	IP
Volume (in tonnes) Index	100	105	96	101
Market share Index	100	100	82	67
Sales price (euro/kg) Index	100	100	103	97

- (53) Although Community consumption increased sharply between 2000 and the IP, the volume of sales of the Community industry has not risen. Consequently, its market share fell sharply as shown above. This is to be seen in contrast with the development of imports from Indonesia and the PRC whose combined market share increased considerably over the period considered.
- (54) The Community industry lost 33 % of its market share between 1999/2000 and the IP.
- (55) Average sales prices of the Community industry decreased during the period considered. The decrease was particularly marked between 2001 and the IP when sales prices decreased by 5,8 %.

(d) *Stocks*

- (56) As a result of falling sales, stocks of own produced sodium cyclamate increased significantly between 2000 and the IP. The figure for the IP, which represents only nine months of 2002, has been annualised.

Stocks (tonnes)

	1999	2000	2001	IP (2002)
<i>Index</i>	100	68	101	130

(e) *Profitability*

- (57) The Community industry's profitability has fallen sharply over the period, leading to considerable losses being incurred during the IP.

Profitability

	1999	2000	2001	IP
<i>Index</i>	100	34	36	- 11

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

	1999	2000	2001	IP
Investments (in EUR) Index	100	199	483	38
Return on investment Index	100	36	37	- 11
Cash flow (in EUR) Index	100	47	47	9

- (58) Major investments, were made during the period considered, particularly in 2001. It should be noted that the Community producer is a well-established company having a long tradition in the sodium cyclamate production, which dates from around 1960. Therefore, new investments were necessary in order to be able to maintain the state of the art facilities and to remain competitive. The investments made during the analysis period were mainly replacement investments. A substantial amount was also invested because of environmental regulations introduced by the Spanish authorities.
- (59) Due to the change of market conditions and more specifically the decline of market sales prices, new investments during the IP were to a large extent postponed or cancelled, in spite of the further expansion of Community consumption.
- (60) 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 by 111 % during the analysis period.
- (61) The Community industry's cash flow deteriorated by 91 % during the period considered, in line with the trend of profitability.
- (62) The investigation established that it became more difficult for the Community industry to raise capital during the analysis period in particular because of the losses suffered during the IP.

(g) *Employment, productivity and wages*

	1999	2000	2001	IP
Employment Index	100	107	107	107
Average employment cost per employee (in '000 EUR) Index	100	105	102	110
Productivity (per employee) Index	100	86	89	84

- (63) Employment for the product under consideration was stable over the period considered. The productivity per employee (established on the basis of the number of tonnes produced divided by the number of employees) decreased between 1999 and the IP. The average employment cost per employee increased by 10 % over the period considered.

(h) *Magnitude of dumping, past dumping or subsidisation*

- (64) The impact on the Community industry of the magnitude of the actual margin of dumping cannot be considered negligible given the volume and the prices of the imports concerned.
- (65) Indeed, the investigation has shown that overall the imports originating in the PRC and Indonesia were sold at dumped prices on the Community market during the IP. Price pressure on Community prices would have been lower or even non-existent without dumping.
- (66) Furthermore, there were no indications that the Community industry was recovering, during the IP, from the effects of any past dumping or subsidisation.

4. Conclusion on injury

- (67) During the period considered the presence of low-priced dumped imports from the PRC and Indonesia significantly increased on the Community market and the main relevant injury indicators for the Community industry showed a negative development.
- (68) Some economic indicators pertaining to the situation of the Community industry, such as sales and employment, showed slight positive developments over the period considered, but this was because of rising consumption. Most indicators, however, worsened substantially during the same period, for example, prices, market share, stocks, profitability, return on investments and cash flow.

- (69) Taking into account all factors, in particular the fall in sales prices of the Community industry at a time of rising consumption and the consequent financial losses and falling levels of investment during the IP, it is provisionally considered that the Community industry has suffered material injury.

F. CAUSATION OF INJURY

1. Introduction

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

2. Effect of the dumped imports

- (71) Dumped imports from the PRC and Indonesia increased by 135 % over the period considered. This increase took place at a faster pace than that of the Community consumption, which increased by 50 % during the same period. These increased imports and rising consumption coincided with a period of rather stable sales for the Community industry. The market share of the dumped imports from the two countries concerned increased by 56 % during the period considered. This increased market share of imports coincided with a commensurate fall in the market share of the Community industry in the IP. It is therefore clear that the imports took over the part of the market share lost by the Community producer.
- (72) These increased imports also coincided with falling prices and losses for the Community industry. With consumption rising fast and significant undercutting taking place it can be seen that the rising level of imports will have caused this price pressure. The low price levels of the dumped imports also caused price suppression and the Community industry could not increase prices to cover costs increases. In addition, the Community could not increase its capacity utilisation, as should have been the case given the increase in consumption observed over the period considered, and thus benefit from lower costs.

3. The effects of other factors

(a) *The export performance of the Community industry*

- (73) The volume of exports outside the EC fluctuated during the period considered, but represented only between 15 % to 18 % of the total sales volume of the Community industry during that period. The average export prices were always higher than the sales prices on the Community market. The presence of Chinese and Indonesian producers on the export markets has led to reduced profits on the exports of the Community industry. It was noted that on markets where these producers were not present, the price levels could be maintained and profits made. Nevertheless, contrary to sales in the Community, exports were still earning profits during the IP and therefore could not have contributed significantly to the injury suffered by the Community industry.

(b) *Investments of the Community industry*

- (74) Large investments have been made during the period considered. New investments were necessary in order to be able to maintain the state of the art facilities and to remain competitive. The investments made during the period considered were mainly replacement investments. Though a substantial amount of investment was also made because of environmental regulations introduced by the Spanish authorities. It is noted that these investments have not increased the capacity. They did not, therefore, negatively affect the situation of the Community industry.

(c) *Any other factors*

- (75) Injury cannot result from other imports as there are only imports into the Community from Indonesia and the PRC. Moreover, injury cannot be the result of a change in the pattern of consumption as demand increased during the period considered significantly. The Commission's services are not aware of any other factors that may have significantly contributed to injury.

4. Conclusion on causation

- (76) The investigation has shown that large quantities of the dumped imports caused the prices of the Community industry to fall significantly as it fought unsuccessfully to maintain market share and a satisfactory capacity utilisation. Moreover, there was price undercutting and price suppression, as price increases, which would normally have occurred to cover increased costs, could not be implemented. Over the same period, the volume of imports from the countries concerned and their market share continued to increase sharply.
- (77) Given the above analysis, which has properly distinguished and separated the effects of all known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is provisionally concluded that these other factors did not contribute significantly to the material injury suffered by the Community industry. Therefore, it is provisionally concluded that the material injury suffered by the Community industry, as evidenced by its loss-making situation, negative returns on sales and investments and difficulties in raising capital, was caused by dumped imports.

G. COMMUNITY INTEREST

1. General remarks

- (78) The Commission examined whether, despite the provisional conclusion on the existence of injurious dumping, 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 21(1) of the basic Regulation, the impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered on the basis of all evidence submitted.

2. The investigation

- (79) The Commission sent questionnaires to importers; industrial users of the product concerned as well as other interested parties who made themselves known within the time limit set in the notice of initiation.
- (80) In total 26 questionnaires were sent out, but only three replies, from one user and two importers/traders, of the product concerned were received. However, several companies chose to submit comments in preference to completing the Commission's questionnaires. These comments have been taken into account where appropriate, i.e. where supported by actual evidence.
- (81) The cooperating companies which replied to the Commission's questionnaires are the following:
- user:*
- La Casera, SA (Cadbury Schweppes), Madrid
- importers/traders:*
- Palatinit GmbH, Mannheim
 - Brenntag Nordic Food, Glostrup.
- (82) These replies and submissions formed the basis for the Community interest analysis.

3. Interests of Community suppliers

- (83) As already explained above, no supplier replied to the questionnaire. However, the two main suppliers of raw material (cyclohexylamine) sent letters to the Commission and argued that measures would be in their interest.
- (84) They commented that any further shrinking and/or deterioration of the Community industry would not only have negative implications for employment and investment in the industry itself but may have some negative knock-on effect for the industry's suppliers of raw materials.

4. Interest of importers

- (85) Two unrelated importers/traders replied to the questionnaire within the time limit and cooperated with the investigation. One of them was positive on a possible adoption of anti-dumping measures, whilst the other one was rather reluctant.
- (86) The absence of further cooperation of importers in this case leads to the provisional conclusion that should any measures be imposed, they will not have any significant impact on the situation of unrelated importers and traders of sodium cyclamate in the Community. Clearly, however, any duty that reduces imports will have some impact on importers as quantities imported are likely to fall to a certain degree.
- (87) Some other importers made the point that Community production is insufficient to meet demand and that imports were therefore necessary. It is clear that Community production cannot meet consumption needs in the Community, but it is not considered that the proposed measures will substantially reduce supply from the countries under investigation, since sodium cyclamate is the cheapest sweetener used by the soft drinks industry and its contribution to their cost minor (see recital 90).

5. Interest of users

- (88) Major users of sodium cyclamate include producers of soft drinks, tabletop tablets and the pharmaceutical industry. Thirteen of these users were sent questionnaires but only one, a producer of soft drinks, chose to reply. Although this user was against the imposition of measures, no element as to the likely impact of anti-dumping measures on the users has been shown. In any event, given the decrease in price on the Community market since 1999 and the level of the measures proposed, no significant impact is foreseen for final consumers.
- (89) Concerning the beverage industry, the effect of the imposition of any anti-dumping measure would not be significant. The level of sodium cyclamate used in the production of soft drinks is exceedingly small. In fact, it is considerably less than 0,5 % of the cost of production.
- (90) The Commission sought to quantify the possible financial impact of measures on the operations of the cooperating user by taking into account both the origins of their sodium cyclamate purchases and its share in their overall manufacturing costs in the IP. As the proposed measures are based on the dumping margins found, it was considered for the purposes of this exercise that the prices of imports from the countries concerned would increase by the proposed duty rates. The impact would be significantly below 1 % of the overall manufacturing costs.
- (91) The table-top tablet producers and the pharmaceutical industry have not made representations in this investigation. The Commission, therefore, considers that an increase in costs, if any, applicable to this sector when compared to overall costs can be considered as negligible.
- (92) Some other users also made the point that Community production is insufficient to meet demand and that imports were therefore necessary. It is clear that Community production cannot meet consumption needs in the Community, but it is not considered that the proposed measures will substantially reduce supply from the countries under investigation.

6. Interest of the Community industry

- (93) It should be noted that the Community industry's loss making situation has resulted from its difficulty to compete with the low-priced dumped imports, which already held a significant market share at the beginning of the period considered and which have increased their market share considerably during that period.
- (94) It is considered that the imposition of measures will restore fair competition on the market. The Community industry should then at least be able to increase the volume and, perhaps to a limited extent, prices of its sales, thereby generating the necessary level of return to justify continued investment in its production facilities. It should be noted in this respect that the potential for price increases is, if any, fairly limited in view of the substantial undercutting margins found and the level of the measures proposed. The non-imposition of measures would seriously threaten the viability of the Community industry, the disappearance of which would reduce supply and competition to consumers.
- (95) It is therefore provisionally concluded that the imposition of provisional anti-dumping measures is in the interest of the Community industry.

7. Competition and trade distorting effects

- (96) The Commission considered the possible competition and trade distorting effects of measures in the light of the investigation and comments made by interested parties. These comments merely focused on the continued need for imports of the product concerned into the Community because of the inability of the Community industry to fully satisfy demand.
- (97) While it is true that production in the Community is, at present, insufficient to meet demand for sodium cyclamate, it should also be 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. Anti-dumping measures would merely remove the distortion of competition arising from dumping. Indeed, where the level of the anti-dumping measures is equal to the dumping 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. In such a situation, the exporters can fully compete on the basis of their actual competitive advantage.
- (98) It was also found that neither importers, nor users would not be unduly affected by the imposition of measures. It is therefore in the interest of users and consumers that the Community industry is allowed to operate under conditions of fair competition so that domestic supplies continue to be available.
- (99) In view of the above, it is concluded that the imposition of provisional measures would help to maintain competition on the Community market.

8. Conclusion on Community interest

- (100) On the basis of the above, it is provisionally concluded that the imposition of provisional anti-dumping measures would not be against the Community interest.

H. PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

- (101) In view of the provisional conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.
- (102) For the purpose of establishing the level of the provisional measures, account has been taken of both the dumping margin found and the amount of duty necessary to eliminate the injury sustained by the Community industry.

- (103) The provisional measures should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs of production and obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community. The pre-tax profit margin used for this calculation was 10 % of turnover. It should be noted that this figure was selected in view of the profit levels achieved in 1999; i.e. before the substantial leap in market share of the dumped imports. On this basis a non-injurious price was calculated for the Community industry of the like product. The non-injurious price has been obtained by adding the above mentioned profit margin of 10 % to the cost of production.
- (104) 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 average non-injurious price. Any difference resulting from this comparison was then expressed as a percentage of the average import cif value. These differences were in all cases above the dumping margin found.

2. Provisional measures

- (105) As the injury elimination level is higher than the dumping margin established, the provisional measures should be based on the latter. The rate of the provisional anti-dumping duty for the PRC and Indonesia should be as follows:

	AD duty rate
The People's Republic of China	
Fang Da Food Additive (Shen Zhen) Limited Gong Le Industrial Estate Xixian County, Bao An Shenzhen 518102 PRC	5,8 %
Fang Da Food Additive (Yang Quan) Limited Da Lian Dong Lu, Economic and Technology Zone Yangquan City Shanxi 045000 PRC	5,8 %
Golden Time Enterprise (Shenzhen) Co. Ltd Shanglilang, Cha Shan Industrial Area, Buji Town Shenzhen City Guangdong Province PRC	23,4 %
All other companies	29,5 %
Indonesia	
All companies	25,5 %

- (106) 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 countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

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

I. FINAL PROVISION

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of sodium cyclamate, currently classifiable within CN code ex 2929 90 00 (TARIC code 2929 90 00 10), originating in the People's Republic of China and Indonesia.

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

	Rate of duty %	TARIC additional code
The People's Republic of China		
Fang Da Food Additive (Shen Zhen) Limited Gong Le Industrial Estate Xixian County, Bao An Shenzhen 518102 PRC	5,8 %	A471
Fang Da Food Additive (Yang Quan) Limited Da Lian Dong Lu, Economic and Technology Zone Yangquan City Shanxi 045000 PRC	5,8 %	A472
Golden Time Enterprise (Shenzhen) Co. Ltd Shanglilang, Cha Shan Industrial Area, Buji Town Shenzhen City Guangdong Province PRC	23,4 %	A473
All other companies	29,5 %	A499
Indonesia		
All companies	25,5 %	

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

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

⁽¹⁾ European Commission
Directorate-General for Trade
Directorate B
J-79 5/17
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 30 days of the date of entry into force of this Regulation.

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

Article 3

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

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

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

Done at Brussels, 17 September 2003.

For the Commission
Pascal LAMY
Member of the Commission
