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COUNCIL REGULATION (EC) No 194/1999

of 25 January 1999

imposing definitive anti-dumping duties on imports of hardboard originating in Bulgaria, Estonia, Latvia, Lithuania, Poland and Russia and definitively collecting the provisional duties imposed

(OJ L 22, 29.1.1999, p. 16)

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imposing definitive anti-dumping duties on imports of hardboard originating in Bulgaria, Estonia, Latvia, Lithuania, Poland and Russia and definitively collecting the provisional duties imposed

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], and in particular Article 9(4) thereof,

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

Whereas:

A. GENERAL INFORMATION

1. Provisional measures

(1) Provisional anti-dumping measures were imposed in the present proceeding on 6 August 1998 by Regulation (EC) No 1742/98 [2] (hereinafter referred to as the 'Provisional Regulation'). Undertakings were offered and accepted from the cooperating exporting producers in all the countries concerned except Russia.

2. Subsequent procedure

(2) Following the imposition of the provisional measures, certain exporting producers, importers and Community users of the product concerned submitted comments in writing. Those parties who so requested were granted an opportunity to be heard.

(3) Since the publication of the Provisional Regulation, investigations were carried out at the premises of the following companies which are users of the product concerned in the manufacture of doors:

— Svedex BV, Netherlands,

— Swedoor, a division of Nobia Nordisk Bygginteriör AB, Sweden (two production plants),

— Righini SA, France,

— Huet SA, France,

— Theuma Deurenindustrie NV, Belgium.

A non-complainant producer of eucalyptus hardboard was also visited, namely:

— Industria de Fibras de Madeira, Portugal,

as was the following unrelated importer of hardboard:

— Firma Christian Kröger GmbH & Co. KG, Germany.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(4) The product under consideration in this anti-dumping proceeding is hardboard. Hardboard is defined as fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances and with a density exceeding 0.8 g/cm^3, currently classifiable under CN codes ex 4411 11 00 and ex 4411 19 00.

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[1] OJ L 56, 6. 3. 1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30. 4. 1998, p. 18).

[2] OJ L 218, 6. 8. 1998, p. 16.

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Hardboard is exclusively obtained from a 'wet production process' (as opposed to dry-process fibreboards as described below) and normally has a density of 800 to 1050 kg/m^3 and is made in thicknesses between 1,8 to 6,0 mm.

Hardboard is typically used in the manufacture of furniture, in the construction and automotive industries, for door skins and for packaging, especially fruit and vegetable packaging.

2. **'Thin' dry-process fibreboards**

(5) After the imposition of the provisional anti-dumping measures, a number of importers and users continued to argue for an extension to the product scope of the proceeding. In particular, they argued that the so-called thin forms (less than 6 mm thickness) of dry-process fibreboards such as medium- and high-density fibreboard (thin MDF and HDF) and hardboard have essentially the same end uses, and therefore together form a single product. It was therefore alleged that the scope of the analysis of dumping, injury and Community interest should also include all these products.

(6) On the basis of the information submitted up to the provisional stage, a preliminary assessment of the extent to which the end uses of hardboard and thin dry-process fibreboards overlap was made. Based on the information submitted since the Provisional Regulation a definitive assessment has been made and it has become clear that, theoretically, such overlap is substantial and that only for some market segments are the two products not at all interchangeable.

(7) However, similarity of end uses does not alone determine the question of like product. The conclusions of the provisional investigation that hardboard and thin dry-process fibreboards were not a single product were based on differences of physical and chemical characteristics of the two products. Further investigation of the issues involved has allowed the following refinements of the analysis:

— it is confirmed that the thin HDF variant of dry-process fibreboards can be produced in densities comparable to or higher than the density of hardboard. With its density defined as being above 800 kg/m^3, it is thin HDF which can be considered the closest to hardboard,

— however, the average prices for thin HDF were higher than those for thin MDF (10 to 15 % on average) and for most hardboard of equivalent board thicknesses under 6 mm, so that over the period investigated it was mainly thin MDF (density lower than 800 kg/m^3) which competed on the market with hardboard over a large part of its final uses, particularly in the furniture sector, in part of the packaging sector, in the picture-frames sector and in a part of the doors sector,

— it was also pointed out that new, zero-emission, thin dry-process fibreboards are in production, i.e. thin dry-process fibreboards containing no formaldehyde. This development allows thin dry-process fibreboards to compete in the market of food packaging from which it has hitherto been excluded because of its formaldehyde content. However, these zero-emission products are a very recent innovation, and, although it is conceivable that thin dry-process fibreboards could in the future be used in the area of food packaging, their higher price would probably preclude this at the present time. As these developments relate to periods subsequent to the investigation period, they could not be investigated,

— the fact that thin dry-process fibreboards and hardboard share a number of end uses does not imply that the market considers them as a single product. Indeed, most operators in the sectors involved have confirmed that, in practice, they do not use the different board types indiscriminately because of the different physical characteristics and technical performances of the two products; rather, they choose between them according to

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which best suits their technical requirements. As an example, thin MDF has an advantage when it has to be laminated, due to its more porous and matte surface. Moreover, its internal structure is smooth and not layered like hardboard, and it does not have the tendency to split when submitted to tension. As a consequence, thin MDF is generally preferred to hardboard for the manufacture of laminated doors and furniture elements. On the other hand, hardboard generally has a distinct advantage in those uses where density and/or suppleness of the panel are required, such as in lacquered and pre-painted doors or automobile parts, or where it is thought that the resins contained in thin dry-process fibreboards would have, as explained above, a possible impact on health, such as in fruit and vegetable packaging.

(8) In conclusion, the definitive analysis confirms the provisional findings that hardboard and thin dry-process fibreboards, although they are theoretically interchangeable for many end uses, are not, in practice, a single product because of the differences in their physical and chemical characteristics.

(9) Nevertheless, although thin dry-process fibreboards do not form a single product with hardboard, it was claimed that the extent of the overlap in their end-uses has important implications for the analysis of the causes of any injury suffered by the Community industry. This issue is addressed below under causation.

3. **Plywood and chipboard**

(10) Submissions were received clarifying the arguments presented at the provisional stage of the investigation that plywood and chipboard panels were also interchangeable with hardboard in many of their applications. However, for the same reasons as were outlined for thin dry-process fibreboards above, theoretical similarity of end uses does not alone determine the question of single product. Since the physical and chemical characteristics of hardboard are different to chipboard and plywood panels, it cannot be considered to be a single product with them.

The provisional findings are therefore confirmed.

4. **Like product**

(11) The further investigation confirmed that there were no differences in the basic characteristics and uses of the hardboard imported into the Community from the countries concerned and the hardboard produced by the Community industry and sold on the Community market. The same is true with regard to hardboard produced and sold on the domestic markets of Brazil, Bulgaria, Estonia, Latvia, Lithuania and Poland (the last mentioned served also as an analogue country for imports from Russia). It was therefore concluded that both the hardboard produced and sold by the Community industry on the Community market and the hardboard produced and sold on the domestic markets of Brazil, Bulgaria, Estonia, Latvia, Lithuania and Poland were, within the meaning of Article 1(4) of Regulation (EC) No 384/96 (hereinafter referred to as 'the Basic Regulation'), alike to the hardboard imported into the Community from the seven countries subject to investigation.

(12) However, the Brazilian exporting producers, as well as a number of users of hardboard, in particular manufacturers of doorskins, repeated their claims made at the provisional stage that Brazilian eucalyptus hardboard is not a like product with the product produced by the Community industry and should be excluded from the scope of the investigation.

(13) Among the exporting producers concerned by this investigation, only the Brazilian exporting producers supply hardboard made from eucalyptus to the Community market. There are also two producers of eucalyptus hardboard in the Community, both

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situated in the Iberian peninsula, which did not participate in the complaint which led to the initiation of this proceeding.

(14) These claims in respect of eucalyptus hardboard have been extensively investigated. Following the imposition of provisional measures, a number of door manufacturers across the Community were visited. In addition, one non-complainant Community producer of eucalyptus hardboard in Portugal was visited. These visits were aimed at clarifying the issues concerning the inclusion of Brazilian hardboard within the scope of this proceeding.

From these visits, the following became clear:

(a) *The technical properties and uses of eucalyptus hardboard*

(15) Numerous technical submissions were received from the Brazilian exporting producers, Community door manufacturers, and the complainant concerning the properties of eucalyptus hardboard. The exporting producers and door manufacturers argue that eucalyptus hardboard has certain unique properties which set it apart from any other hardboard types, whether made from softwood or hardwood tree species other than eucalyptus. They claim further that no viable alternative product is produced by the Community industry. The door manufacturers in particular emphasise that the Community industry produces no eucalyptus hardboard for doorskins; indeed they point out that the only Community-based producer of eucalyptus hardboard which does make doorskin-quality boards, and is based in Portugal, is not one of the complainants.

(16) It was found that hardboard made from eucalyptus wood has a number of technical characteristics which make it particularly well-suited for doorskins for high quality, finished doors. First, its especially short fibres give the finished hardboard a very regular appearance, high density and stronger tensile properties than non-eucalyptus hardboard. Second, the eucalyptus tree has hardly any bark, a factor which ensures that blemishes in the pressed board are minimal.

(17) However, it should be borne in mind that the eucalyptus tree is not the only species to have short fibres. The complainants have submitted that there are 40 other species of tree growing in Western Europe which have fibres of about the same length as eucalyptus, and in some cases even shorter.

(18) It should also be noted that the high quality required by the door manufacturers is not limited to the type of wood of which the hardboard is made. Some of the characteristics required, such as a constant and reliable thickness of the board they use, a high density, a good resistance to high temperatures (doors are assembled at above 100 ºC) and humidity and the absence of surface defects are not necessarily linked to eucalyptus, but can also be obtained with other woods, with a strictly controlled production process. It can also be added that, as far as the suitability for lacquering is concerned, it was found that some hardboards made with wood other than eucalyptus can be lacquered with acceptable results, depending on the technique and the quantity of painting material used. The advantage of eucalyptus and in general of hardwood hardboard is mainly in the smaller quantities of paint needed to achieve a smooth result.

(19) Furthermore, the analysis of the door manufacturers' activities also confirmed that for unfinished doors, which are primed or pre-painted in white but which require finishing by the final customer, doorskins made with different types of wood are used. It was also found that some door producers used Community-produced hardboard, not made with eucalyptus wood, to make lacquered doors.

(20) It was also found that during the investigation period, eucalyptus hardboard was also used for certain applications in the furniture, roofing and automobile industries and, as far as offcuts of

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hardboard sheets are concerned, for fruit and vegetable containers.

(b) *Conclusion on eucalyptus hardboard as a like product*

(21) The examination of the interested parties' submissions confirms that the exceptional properties of eucalyptus hardboard do not technically rule out its use in those areas in which other hardboards are also used; indeed, the fact that it is not widely used outside the doorskin sector is simply a reflection of the relatively higher price at which this product is sold on the market, in comparison with other hardwood and softwood hardboards.

Although, therefore, the eucalyptus hardboard produced and exported by Brazilian exporting producers has certain special characteristics, these are not sufficient to lead to the conclusion that it is not a product alike to the hardboard produced by the Community industry with which it shares the same basic physical characteristics and uses within the meaning of Article 1(4) of the Basic Regulation.

C. DUMPING

1. Specific issues raised with regard to the establishment of dumping for each of the countries concerned

(a) BRAZIL

(22) In view of the findings on causation in recitals 53 to 56, it is not considered necessary to set out any findings in respect of dumping of imports of the product concerned from Brazil.

(b) BULGARIA

(23) The Bulgarian exporting producers made no comments following disclosure and the publication of the Provisional Regulation.

The dumping margins expressed as a percentage of the cif import price at the Community border established for the Bulgarian exporting producers remain unchanged, i.e.:

— Fazerles AD:	7,1 %
— Lessoplast AD:	7,2 %
— non-cooperating exporting producers:	7,2 %.

(c) ESTONIA

(24) The Estonian exporting producer made no comments following disclosure and the publication of the Provisional Regulation.

The dumping margins expressed as a percentage of the cif import price at the Community border established for the Estonian exporting producers remain unchanged, i.e.:

— AS Repo Vabrikud:	6,0 %
— non-cooperating exporting producers:	6,0 %.

(d) LATVIA

General

(i) *Product classification*

(25) Following the adoption of provisional measures, the Latvian exporting producer requested a revision of the classification of some of the company product codes into product control numbers.

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The claim was based on the grounds that some company product codes, which were originally incorrectly reported by the company as referring to standard products, should be considered as cut-to-size products.

This request has been granted, as the company product codes in question did indeed not cover standard dimensions.

Normal value

(i) *Profit margin in constructed normal values*

The Latvian exporting producer claimed that when constructing normal values, the profit earned on sales in the ordinary course of trade should be expressed as a percentage of the total domestic turnover of the like product of the company — including the turnover of non-profitable sales — instead of the turnover of the sales in the ordinary course of trade only. The approach adopted by the Commission in the Provisional Regulation inflates, according to the producer, the profit margin. The Latvian producer furthermore asserted that there was a discrepancy between the methods used by the Commission to calculate, on the one hand, the profit margins by excluding non-profitable transactions as well as the dumping amounts by excluding negative dumping and, on the other hand, the calculation of the dumping margins expressed as a percentage of the total cif value.

This claim had to be rejected. The methods used by the Commission to construct normal values and to determine which sales had been made in the ordinary course of trade are described in recitals 29 and 31 of the Provisional Regulation and are in conformity with the rules set out in Articles 2(4) and (6) of the Basic Regulation. In particular, it should be added that: first, Article 2(6) of the Basic Regulation clearly specifies that 'the amounts (…) for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade, of the like product …'; second, the aim is to establish a profit margin that could normally be attained for sales of a given product on the domestic market; third, Article 2(4) of the Basic Regulation provides as to when loss-making sales of a given product may be treated as being in the ordinary course of trade, i.e. if the quantity sold with a loss is below 20 % of the total quantity sold of that product. In that case, only the total turnover of a product including loss-making transactions is the basis of the profit margin calculation.

Comparison between normal value and export price

(i) *Allowance for currency conversion*

The Latvian exporting producer had claimed an allowance for currency conversion based on a comparison of the amount in lats the company would have obtained using the exchange rate applicable at the time of the conclusion of the respective contracts with their customers and the amount actually obtained. This claim is based on the assumption that the date of contract is the date of sale. In the Provisional Regulation, the Commission had rejected this claim on the basis that the contracts submitted did not reflect the material terms of sale and that the date of invoice more appropriately established these terms.

The exporting producer reintroduced this claim, adding that contracts could be amended. This confirms that the company could react to exchange rate variations by amending export prices. Therefore, it is confirmed that such contracts do not more appropriately establish the material terms of sale as compared to invoices, in particular with regard to the price. The claim could not, therefore, be accepted.

(ii) *Interest rates used for credit purposes*

(26) With regard to the credit cost allowance, the Latvian exporting producer claims that the deposit rate instead of the credit rate

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should be used on the grounds that, the company having sufficient liquidity, its credit costs are limited to the interest earnings not perceived on its bank deposit account.

Following the practice consistently applied by the Community institutions, it was not found appropriate to base the calculation of the credit cost allowance on the deposit rate on the grounds that these constitute opportunity costs as compared to actual costs.

In this context it is noted that the interests customers would have to pay in case of payment delays, as stated in the contracts submitted to the Commission, suggest that the company determined such interests on the basis of credit rates rather than deposit rates.

(iii) *Depreciation of the machinery of the related domestic producer*

(27) The Latvian exporting producer claims that the depreciation of the machinery of the related domestic producer should have been calculated on the basis of a ten-year depreciation period instead of a five-year depreciation period.

Pursuant to Article 2(5) of the Basic Regulation, this claim could not be accepted as the amount used is in line with the amount declared in the audited financial statements of the year 1997 and the application of the 20 % depreciation amount per year seems therefore to reasonably reflect the depreciation costs associated with the production of the product under consideration.

Dumping

(28) On the basis of the above, the following modified dumping margins expressed as a percentage of the cif import price at the Community border have been established for Latvian exporting producers:

— AS 'Bolderâja':	4,7 %
— non-cooperating exporting producers:	4,7 %.

(e) LITHUANIA

(29) The Lithuanian exporting producer made no comments following disclosure and the publication of the Provisional Regulation.

The dumping margins expressed as a percentage of the cif import price at the Community border established for Lithuanian exporting producers remain unchanged, i.e.:

— JSC Grigiskes:	11,4 %
— non-cooperating exporting producers:	11,4 %.

(f) POLAND

Normal value

(i) *Profit margin in constructed normal values*

(30) The Polish exporting producers made the same claim as the Latvian exporting producer with respect to the calculation of the profit margin when constructing normal value (see recital 25).

This request has been rejected for the reasons given in recital 25.

(ii) *Allocation of selling, general and administrative costs*

(31) One Polish exporting producer claimed that the turnover-based allocation method which the Commission has used to allocate

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selling, general and administrative expenses relating to domestic sales should be revised and instead the method normally applied by the company and used in its questionnaire response should be utilised. This method was based on sales volumes in tonnes to which conversion factors (i.e. the factors used to convert tonnes into m^2) relating to the thickness of a given hardboard type were applied.

The request was examined and it was concluded that the allocation method used in the questionnaire response is in line with the normal cost accounting practice of the company. Consequently, the allocation method for selling, general and administrative expenses has been changed in line with the request of the company.

(iii) *Exclusion of specific transactions*

(32) One Polish exporting producer questioned the methodology employed by the Commission to determine normal value by excluding transactions of low quality hardboard. According to this company, the exclusion of these transactions causes the artificial overstatement of sales profitability and consequently affects their dumping margin.

As stated in recital 27 of the Provisional Regulation, it was established that only hardboard panels with the same characteristics and the same quality are directly comparable. This is so because the quality of the hardboard determines to a substantial degree its price and the suitability for certain uses. Therefore, and since this low quality hardboard was not exported to the Community, the request made by the company could not be accepted.

(iv) *Cost of production*

(33) One Polish exporting producer proposed a different way of calculating the costs of cutting standard-size hardboard into cut-to-size boards as compared to this producer's questionnaire response. This new cost allocation also took into account the thickness of the panels cut and not only the number of square metres cut. This claim was justified on the grounds that the cutting machines can cut simultaneously up to 100 mm of panels. Therefore, it was claimed, in one cutting operation the company was able to cut a substantially different number of square metres depending on the thickness of the panels cut. Consequently, the claim was accepted.

Comparison of normal value and export price

(i) *Start-up costs*

(34) One Polish exporting producer referred to in recital 65 of the Provisional Regulation disagreed with the Commission rejection of the start-up cost adjustment to its worked hardboard operations. However, as no new evidence was submitted by this producer, the findings set out in recital 65 of the Provisional Regulation are confirmed.

Dumping

(35) One Polish exporting producer has put into question the methodology used by the Commission of calculating a single dumping margin for all hardboard product types instead of calculating a different dumping margin for raw hardboard and for worked hardboard.

This claim could not be accepted. It is the constant practice of the Community institutions, in accordance with the provisions of Articles 1 and 2 of the Basic Regulation, to establish a dumping margin for the product under consideration as a whole and not per category, type or model of the product concerned. The reason is

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that for a product like hardboard, which exists in a wide variety of types, the implementation of anti-dumping measures, in particular anti-dumping duties, on a per type basis is from a customs point of view impractical.

(36) On the basis of the above, the following modified dumping margins expressed as a percentage of the cif import price at the Community border duty unpaid have been established for Polish exporting producers:

— Ekopłyta SA:	20,6 %
— Zakłady Płyt Pilśniowych SA w Krosnie Odrzanskim:	11,0 %
— Czarna Woda Zakłady Płyt Pilśniowych:	34,8 %
— Alpex Karlino SA:	22,4 %
— Zakłady Płyt Pilśniowych SA, Przemysl:	9,1 %
— Koniecpolskie Zakłady Płyt Pilśniowych SA:	11,4 %
— non-cooperating exporting producers:	34,8 %.

With regard to Bulgaria, Estonia, Latvia, Lithuania and Poland, it was found that the overall level of cooperation was high. As mentioned in recital 35 of the Provisional Regulation, it was therefore considered appropriate to set the dumping margin for the non-cooperating companies in the countries with high cooperation at the level of the highest or the sole dumping margin established for a cooperating company in the country in question.

(g) RUSSIA

(37) No Russian exporting producer made any comments following disclosure and the publication of the Provisional Regulation.

Normal value for Russia was calculated on the basis of the weighted average of the normal values established for cooperating Polish companies.

The dumping margin for Russia has been recalculated taking into account the changes in the normal values established for the Polish companies as described in recitals 30 to 33.

On this basis, a new single dumping margin expressed as a percentage of the cif import price at the Community border, duty unpaid, of 30,6 % has been established for the Russian exporting producers.

D. INJURY

1. **Consumption**

(38) The provisional findings are confirmed.

2. **Dumped imports**

(a) *Cumulation*

(39) The Brazilian exporting producers reiterated the claim that imports into the Community from Brazil should not be cumulated with imports from the other countries concerned in the proceeding. They argued that hardboard produced in Brazil and exported to the Community does not compete with imports originating in the other countries concerned in that:

— the level of its export prices is higher, on average, than the level found for the other countries concerned, as shown by the lower provisional undercutting margin found at the provisional stage,

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— the volume and market share of imports showed, during the period under examination, a divergent trend from that of the other countries concerned,

— it is sold to different customers, mainly producers of lacquered doors.

(40) An examination of these claims resulted in the following findings.

Almost all the imports from Brazil were destined for particular end uses especially the manufacture of lacquered doors, a sector where high prices are obtained and to which the other countries concerned do not sell. In fact, the users of Brazilian hardboard considered imports from these other sources as being wholly unsuitable for their needs, on both technical and economic grounds.

The above findings on end use are supported by Brazilian price levels, which are substantially above those of other imports from the other countries concerned. Furthermore, Brazilian import volumes are falling while others are rising.

(41) In the light of the above, it is not unreasonable in this case to conclude that a cumulative assessment of the imports from Brazil with the effects of imports from other sources under investigation would be inappropriate.

The effects of imports from Brazil were therefore examined separately.

(b) *Volume and price development of the dumped imports*

(42) The provisional findings are confirmed.

However, in the light of the decision to analyse the effects of imports from Brazil separately from the effects of imports from the other countries, the analysis of import volumes and price trends is as follows:

Imports from Brazil

	1993	1994	1995	1996	Investigation period
Quantity (t)	62 193	61 605	69 783	58 514	54 890
Indexed	*100*	*99*	*112*	*94*	*88*
Value (thousand ecus)	18 117	17 724	20 767	16 772	15 715
Indexed	*100*	*98*	*115*	*93*	*87*
Market share in %	6,3	5,4	6,0	5,2	4,6
Indexed	*100*	*86*	*95*	*82*	*73*
Price per tonne	291	288	298	287	286
Indexed	*100*	*99*	*102*	*98*	*98*

(43) Import volumes and market share show a significant decrease between 1995 and the investigation period, while prices remained relatively stable throughout the period examined.

Imports from other countries concerned

	1993	1994	1995	1996	Investigation period
Quantity (t)	171 890	192 165	253 041	209 727	222 103
Indexed	*100*	*112*	*147*	*122*	*129*
Value (thousand ecus)	28 707	33 919	49 103	43 461	49 112

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	1993	1994	1995	1996	Investigation period
Indexed	*100*	*118*	*171*	*151*	*171*
Market share in %	17,4	16,9	21,7	18,5	18,7
Indexed	*100*	*97*	*125*	*107*	*108*
Price per tonne	167	177	194	207	221
Indexed	*100*	*106*	*116*	*124*	*132*

Import volumes and market shares substantially increased between 1993 and 1995, fell back in 1996, and increased again in the investigation period. Imports, both in absolute value and in terms of market share were higher in the investigation period than at the beginning of the period examined.

Although prices rose significantly over the period considered for the analysis of injury, imports from all these countries were still substantially undercutting the Community industry's prices in the investigation period.

(c) *Price comparison*

(44) Following the disclosure of the provisional findings, comments were made by the Brazilian exporting producers relating to the methodology used for the calculation of price undercutting.

It was pointed out that the price differential between the Brazilian export prices and Community industry's prices was mainly due to a small part of the transactions during the investigation period, accounting for less than 1 % of the Community production.

One of the Brazilian exporting producers requested that for the purpose of the comparison, where applicable, the price paid by the first independent customer in the Community to its related importer be used, as such a price was at the same level of trade as prices of the Community industry. Furthermore, it was requested that the margins found be expressed as a percentage of the total value of imports in the investigation period, including those omitted from the comparison where no matching models had been sold by the Community producers.

(45) The latter request was not accepted. It is standard practice of the Community institutions to use only the cif value of the imports during the investigation period for which an actual price-undercutting analysis has been performed and, consequently, for which matching Community-made product types existed when determining the margins found.

(46) Furthermore, the product control numbers provided by both exporting producers and Community producers were carefully examined and revised where necessary to ensure a fair comparison. The comparison was then made at the same level of trade between the ex works prices of the Community producers and either cif export prices, Community frontier duty paid, when the sale was made directly by the exporting producers to an independent customer, or the ex warehouse resale prices of the related importer to the first independent customer.

(47) The undercutting margin was calculated by weighting the type-by-type average undercutting rates by the quantities of the dumped imports times the average prices of the matching Community-produced products.

The same criteria were applied to the price comparisons for the other countries concerned.

(48) The export transactions used for the comparison represented at least 74 % of total exports for each country concerned.

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(49) The revised calculations confirmed the existence of price undercutting for all countries except Brazil, for which no price undercutting was found. The new levels of price undercutting are shown in the table below:

Summary of the undercutting margins

Country	Weighted average undercutting on a direct product type-to-type comparison
Brazil	—
Bulgaria	44 %
Estonia	65 %
Latvia	48 %
Lithuania	45 %
Poland	53 %
Russia	65 %

3. **Situation of the Community industry**

(50) The provisional findings are confirmed.

4. **Conclusion on injury**

(51) The Polish and Latvian exporting producers questioned the provisional conclusions on injury on the grounds that the developments of some injury factors, such as production, market share and sales turnover of the Community industry were not sufficiently negative to show the existence of material injury.

These contentions were examined, but could not be accepted. The overall analysis at the Community level of all indicators relating to the situation of the Community industry, in particular in the light of the substantial deterioration of its sales prices and of its increasing financial losses, confirms the existence of injury.

(52) Therefore the provisional findings on injury are confirmed.

E. CAUSATION OF INJURY

1. **Effect of the dumped imports from Brazil**

(53) The Brazilian exporting producers claimed that imports originating in Brazil could not have caused injury for the following reasons:

— the quantities imported from Brazil decreased by 20 % between 1995 and the investigation period,

— the Brazilian product does not compete with Community production since it is sold to specialised users, namely manufacturers of lacquered doors, table mats and the automotive industry which need Brazilian eucalyptus hardboard for their particular quality requirements, and cannot replace it, in spite of its higher prices, with other hardboard types,

— Brazilian exports do not undercut the Community industry's sales, particularly in the abovementioned specialised sectors.

(54) As to the first claim, the decrease in the quantities imported does not preclude that injury has been caused in the investigation period by those imports; indeed, the imports were still substantial and well above the *de minimis* limit as provided in Article 5(7) of the Basic Regulation.

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(55) As to the other claims, it was found that:

— around 68 % of the imports from Brazil during the investigation period were destined for production, in the Community, of lacquered doors. The Community lacquered door industry has stringent quality requirements for which Brazilian eucalyptus hardboard is particularly well-suited. However, as pointed out at recital 18, the high quality required by the door manufacturers is not strictly linked to the species of wood used, in this case eucalyptus. Brazilian hardboard is well-suited to lacquered door manufacture, not only because it is made with eucalyptus wood, but also because the Brazilian producers carry out very severe quality controls on their exports to the Community,

— in the investigation period only very small quantities of hardboard produced by the Community industry were used for the manufacture of lacquered doors; the demand was almost completely satisfied by eucalyptus hardboard either imported from Brazil or supplied by the Portuguese non-complainant producer. The door manufacturers explained their choice on the grounds of the high quality guaranteed by those suppliers,

— the above argument on the special end uses is supported by the fact that there is no undercutting by Brazilian exports destined for the manufacture of door skins; in fact their prices are significantly above those of the Community industry,

— the evidence, therefore, does not support the Community producers' claim that market prices were depressed by Brazilian exports, and that it is price depression which prevents them from producing doorskins of a quality equal to that of the Brazilian product and suitable for the production of lacquered doors,

— as to the imports from Brazil not sold to the lacquered doors segment, they did not undercut, on average, the prices of Community production.

(56) The foregoing leads to the conclusion that Brazilian exports were not a cause of material injury to the Community industry, and that, as a consequence, the proceeding with respect to Brazil should be terminated without measures.

2. **Effect of the dumped imports from the other countries subject to investigation**

(57) The volume of imports from the other countries subject to investigation increased by 29 % between 1993 and the investigation period. Although their prices increased, on average, by 32 % over the same period, they still undercut substantially the prices of the Community industry in the investigation period. As a result of this undercutting, which ranged from 44 % to 67 %, the Community industry experienced a 16 % fall in its selling prices and a serious deterioration of its financial situation.

The provisional findings that the dumped imports from Bulgaria, Estonia, Latvia, Lithuania, Poland and Russia caused material injury to the Community industry are therefore confirmed.

3. **Effect of imports from other third countries**

(58) Although certain exporting producers in the countries concerned reiterated claims that injury had been caused by the increase of imports from other third countries, no new information was made available in this respect which could alter the provisional findings.

The provisional findings are therefore confirmed.

4. **Competition from non-complainant Community producers**

(59) Some of the exporting producers concerned drew attention to the fact that, although not undercutting the Community industry's prices in the investigation period, non-complainant Community

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producers had been undercutting, on average, the Community industry's prices from 1993 to 1995, and that this may have been, in those years, a cause of injury.

(60) It should be noted that, although lower than those of the Community industry, non-complainant producers' prices were substantially higher than the average prices of imports from the countries concerned with the exception of Brazil: the average price of these imports was ECU 167 per tonne in 1993, while the average unit price for non-complainant producers was ECU 1,02 per m^2, corresponding to more than ECU 300 per tonne.

(61) In the light of these price relationships, it is considered unlikely that the pricing of non-complainant producers was a source of injury to the Community industry; in any event, such pricing effect was considered insufficient to break the causal link between the dumped imports from the six countries and the injury suffered.

5. **Effect of dry-process fibreboards**

(62) After the imposition of provisional measures, various exporting producers again argued that the injury suffered by the Community industry was not caused by the dumped imports, but by the competition from the thin dry-process fibreboards.

(63) The investigation has shown that thin dry-process fibreboard could be used in most areas where hardboard is employed. Nevertheless, despite the strong growth in the dry-process fibreboard market in recent years, as shown by the growth in consumption for hardboard, this has not occurred at the expense of the hardboard sector.

(64) Various interested parties have submitted estimates of the size of the thin dry-process fibreboards sector. On the basis of statistics provided by the European MDF industry, the volume of production of thin dry-process fibreboards is estimated at between 500 000 and 600 000 m^3 in 1997, with an increase of around 50 % between 1993 and 1997. Separate statistics on imports of thin dry-process fibreboards are not available, but imports of dry-process fibreboards of all thicknesses were reported to be minor until 1997.

(65) However, at the provisional stage it was shown that, since consumption of hardboard increased by 20 % between 1993 and the investigation period (it should be recalled that consumption was around 1,2 million tonnes in the investigation period, despite the rise of the thin dry-process fibreboards sector), it was unlikely that the increase in the demand of thin dry-process fibreboards was a major cause of injury. The injury to the Community industry did not consist of a loss in sales volumes, which might indicate that a substitution had occurred. Injury was mainly shown by financial losses, due to a strong downward pressure on prices exerted by the dumped imports.

(66) Indeed, the data available show that the average price of thin dry-process fibreboards was above that of Community-produced hardboard of equivalent thickness for all of the period 1993 to 1996. Only during the investigation period is there some indication that one type of thin dry-process fibreboard, namely thin MDF, may have reached the price level of Community-produced hardboard in parts of the Community. So even in this scenario, hardboard imported from the countries concerned during the investigation period was sold at significantly lower prices as outlined in recital 49.

(67) Given the interchangeability between all types of wood-based products, thin dry-process fibreboards have established a presence on all markets for wood-based panels, including the hardboard market. However, the general increase in the demand for wood panels, and of fibreboards in particular, has allowed the demand for hardboard to grow in spite of the presence of the competing products.

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(68) No new information has been made available which changes the provisional finding that, despite the growth in demand for thin dry-process fibreboards, the dumped imports of hardboard from the countries subject to investigation, with the exception of Brazil, in isolation caused material injury to the Community industry, in terms of price depression and financial losses.

6. **Conclusion on causation**

(69) In the light of the foregoing, the provisional findings on causation are confirmed, with the exception of those relating to imports from Brazil.

F. COMMUNITY INTEREST

1. **The definitive investigation**

(70) Following the imposition of provisional measures, the analysis of the impact of anti-dumping measures on the various sectors involved in the investigation continued. Users of hardboard were visited, as indicated in recital 3, as well as a non-complainant Community producer of eucalyptus hardboard.

2. **Impact on the Community industry**

(71) Subsequent to the imposition of provisional measures, several arguments were presented on the likely impact of any definitive measures on the Community industry.

These arguments concerned the relationship between hardboard and thin dry-process fibreboards, as follows.

(a) *Arguments presented by interested parties*

(72) It was claimed by certain interested parties that the Community industry could not benefit from any anti-dumping measures as a result of the substitutability between thin dry-process fibreboards and hardboard.

In support of this view, it was alleged that the price level of thin dry-process fibreboards has reached the level of hardboard of equivalent thickness. According to these claims, the imposition of anti-dumping measures, with the intention of increasing the price of hardboard in the Community, would have the effect of raising its price above that of competing thin dry-process fibreboards. Where the two products are interchangeable, the effect of the anti-dumping measures would be that customers will choose to use thin dry-process fibreboards instead of hardboard. In other words, the anti-dumping measures would merely serve to reduce the consumption of hardboard by encouraging a switch to the consumption of thin dry-process fibreboards.

(73) It was also claimed that thin dry-process fibreboards are a product in rising demand, with an increasing investment in production capacity and with the potential to replace hardboard in most end uses if a change in relative prices occurs.

(b) *The size of the thin dry-process fibreboards sector*

(74) As mentioned in recital 64, production of thin dry-process fibreboards was between 500 000 and 600 000 m^3 in 1997, with a growth of around 50 % between 1993 and 1997. However, the plants specialised in the production of these thin boards (that is, those equipped with the so-called calander press) are currently operating at near-full capacity, and most of the new investments in the sector of dry-process fibreboards relate to plants which are best employed in the production of ‘middle’ thicknesses, that is, between 6 and 30 mm, which are outside the scope of this investigation.

In the short run, therefore, an increase in output of thin dry-process fibreboards is unlikely.

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(c) *The competition between hardboard and thin dry-process fibreboards*

(75) As explained in recitals 5 to 9, hardboard and dry-process fibreboards are theoretically interchangeable in many end uses, but their different physical characteristics imply that each has its specific advantages and disadvantages for any particular end use.

(76) The exporting producers claimed that if there is a sufficient change in the relative prices of the two competing products, the extra costs incurred by any technical problems associated with switching to the use of thin dry-process fibreboards can be overcome if the price advantage in comparison with hardboard becomes large enough.

(77) The Community industry claimed, however, that the substitution of hardboard with dry-process fibreboards has already taken place in those end uses where they have a technical advantage, and that at present the competitive situation on the market has found an equilibrium, which is not going to be substantially altered by the proposed anti-dumping measures. Since consumption of hardboard continued to rise by 20 % over the period examined, the data suggest that hardboard has been able to compete effectively with thin dry-process fibreboards, lending weight to the arguments submitted by the Community industry. Continual technical progress in the manufacture of thin dry-process fibreboards, however, makes it difficult to assess the degree to which thin dry-process fibreboards might be used in fields hitherto dominated by hardboard in the future.

(78) Thin dry-process fibreboards have been priced above hardboard of equivalent thickness for most of the period examined, but as technological progress has brought about cost reductions, their prices have declined steadily throughout the period, reaching approximately the levels of Community-produced hardboard of equivalent thickness by 1997.

It is unclear whether this trend decrease in the price of thin dry-process fibreboards, as technological progress leads to continued cost-reductions, is set to continue into the near future. The complainant states that further substantial reductions in the prices of thin dry-process fibreboards in the Community are not to be expected. The product is, it is claimed, now beyond the phase of rapid growth experienced in the last few years, which led to declining unit costs, and the mills are approaching full capacity utilisation, with a cost structure which is similar to that of hardboard. Therefore, the price of thin dry-process fibreboards is expected to remain, if definitive anti-dumping measures are imposed, on the same level as the price of Community-produced hardboard.

(79) On the other hand, the continuous-line and calander-press production processes which are used to manufacture thin dry-process fibreboards are said, by the dry-processed fibreboard industry, to be more efficient than the multi-daylight presses used in the production of hardboard. In particular, the levels of waste and offcuts from these MDF production processes are allegedly far lower than with multi-daylight presses, whilst the speed of manufacture is greater. Thus, it is claimed that the prices of Community-produced thin dry-process fibreboards can continue their declining trend. The same prediction is made by some of the interested parties concerning the price trend of imports of thin dry-process fibreboards from outside the Community.

These developments have implications for the use of hardboard in those sectors where its end uses overlap with those of dry-process fibreboards, such as in the furniture industry. If prices of dry-process fibreboards continue to decline after the imposition of definitive anti-dumping measures, it is possible that a switch in consumption away from hardboard in favour of thin dry-process fibreboards could follow in those market segments where dry-process fibreboards are interchangeable with hardboard.

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(d) *Conclusion on the impact of measures on the Community industry*

(80) In view of the above analysis, it was found that the measures proposed will most likely have a beneficial impact on the situation of the Community industry. In case anti-dumping measures are not imposed, the dumped imports will continue undercutting substantially the Community industry's prices. Given the financial difficulties highlighted by the injury analysis, the continuation of the business activity of the Community industry would be seriously threatened and a large part of Community production of hardboard, which guarantees at present the coverage of a wide range of customers' demands, would be put at risk, forcing users to choose among less than optimal alternatives, such as the dumped imports and other wood panel products.

It should also be borne in mind that, although it is possible that some of the benefits of anti-dumping measures may accrue to industries other than the hardboard industry, it is highly unlikely that the Community industry would have sought protection against unfair trade had it not expected benefits from measures.

The effectiveness of the measures, however, may be reduced depending on the future price relationship between hardboard and the dry-process fibreboards, and a review under Article 11(3) of the Basic Regulation may be justified should developments in this context warrant such a review.

3. **Impact on upstream industries**

(81) As no further representations were received, the provisional findings are confirmed.

4. **Impact on importers**

(82) In the absence of further representations, the provisional findings are confirmed.

5. **Impact on users**

(83) All the users cooperating during the investigation were manufacturers of doors using only hardboard imported from Brazil. It was found that imports from Brazil have not caused injury to the Community industry and that no measures should be adopted in respect of that country.

The impact on other users is expected to be minor, given the rates of duty proposed and the small share of hardboard in the cost of production of most of such users.

6. **Conclusion on Community interest**

(84) In the light of the foregoing, it is concluded that there is no reason to consider that the imposition of definitive anti-dumping measures on imports of hardboard originating in the countries for whom definitive measures are to be adopted would be against the overall interest of the Community.

G. MEASURES PROPOSED

1. **Termination of the proceeding in respect of Brazil**

(85) Based on the conclusions of the definitive investigation, the proceeding concerning imports originating in Brazil is terminated by Commission Decision 1999/71/EC [1] without the imposition of measures. The amounts secured by way of a provisional anti-dumping duty shall therefore be released. The undertakings

[1] See page 71 of this Official Journal.

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provisionally accepted from the two exporting producers in Brazil will automatically lapse in accordance with Article 8(6) of the Basic Regulation.

2. **Definitive measures**

(a) *Injury elimination level*

(86) The injury elimination level was calculated using the same methodology as described in the Provisional Regulation at recital 113 with a level of trade adjustment to reflect sales made via traders.

(87) An injury margin was established for each of the exporting producers concerned as a result of these comparisons and this margin was expressed as a percentage of the cif value of their exports to the Community for product types for which there were Community-made matches.

(b) *Form and level of the definitive measures*

(88) Based on the above conclusions on dumping, injury, causal link and Community interest, it was considered what form and level of anti-dumping measures would have to be taken in order to remove the trade-distorting effects of injurious dumping and to restore effective competitive conditions on the Community market.

Definitive measures should take the form of ad valorem duties, which are deemed appropriate to remove the injury caused by the dumped imports.

In accordance with Article 9(4) of the Basic Regulation, as the injury margin was lower than the dumping margin found for one of the cooperating Polish exporting producers, the definitive anti-dumping duty for that company is set at the level of the former. For all other exporting producers, the injury margins are higher than the corresponding dumping margins and measures are therefore based on the latter margins. The same applies for the residual duties.

(c) *Undertakings*

(89) It will be recalled from recital 115 *et seq.* of the Provisional Regulation that undertakings had been offered by the cooperating exporting producers in Brazil, Bulgaria, Estonia, Latvia, Lithuania and Poland, and provisionally accepted by the Commission.

These undertakings, with the exception of those offered by the Brazilian companies, reflect the definitive findings of the investigation with respect to the minimum prices provided therein and have been definitively accepted by Commission Decision 1999/71/EC.

3. **Collection of the provisional duties**

(90) In the light of the seriousness of the injury suffered by the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty under the Provisional Regulation should be definitively collected to the extent of the amount of the definitive duties levied,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of hardboard, defined as wet-processed fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances and with a density exceeding 0,8 g/cm^3, falling under CN codes ex 4411 11 00 and ex 4411 19 00 (TARIC codes: 4411 11 00*10

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and 4411 19 00*10) originating in Bulgaria, Estonia, Latvia, Lithuania, Poland and Russia.

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

Country	Company	Rate of duty (%)	TARIC additional code
Bulgaria	Fazerles AD	7,1	8461
	All other companies	7,2	8900
Estonia	All companies	6,0	—
Latvia	All companies	4,7	—
Lithuania	All companies	11,4	—
Poland	Alpex-Karlino SA	22,4	8479
	Ekopłyta SA	7,0	8480
	Zakłady Płyt Pilśniowych SA, Przemysl	9,1	8481
	Koniecpolskie Zakłady Płyt Pilśniowych SA, Przemysl	11,4	8494
	Zakłady Płyt Pilśniowych SA w Krosnie Odrzanskim	11,0	8495
	All other companies	34,8	8900
Russia	All companies	30,6	—

Article 2

1. Notwithstanding Article 1, the definitive duty shall not apply to imports of hardboard produced and directly exported and invoiced to an importing company in the Community by the companies listed in paragraph 3, provided that the conditions of paragraph 2 are met.

2. When the declaration for release for free circulation is presented, exemption from the duty shall be conditional upon presentation to the competent Member State's customs services of a valid undertaking invoice issued by one of the companies listed in paragraph 3. The undertaking invoice, the essential elements of which are listed in the Annex, shall conform to the requirements for such invoices set out in the undertaking accepted by Commission Decision 1999/71/EC.

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3. Imports accompanied by an undertaking invoice shall be declared under the following TARIC additional codes:

Country	Company	TARIC Additional Code
Bulgaria	Fazerles AD	8496
Bulgaria	Lessoplast AD	8497
Estonia	AS Repo Vabrikud	8498
Lithuania	JSC Grigiskes	8510
Poland	Alpex-Karlino SA	8511
Poland	Czarna Woda Zaklady Plyt Pilśniowych	8600
Poland	Ekoplyta SA	8513
Poland	Zaklady Plyt Pilśniowych SA, Przemysl	8545
Poland	Koniecpolskie Zaklady Plyt Pilśniowych SA	8546
Poland	Zaklady Plyt Pilśniowych SA w Krosnie Odrzanskim	8547

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Article 3

1. The amount provisionally secured by the Provisional Regulation with respect to imports originating in the countries mentioned in Article 1 shall be definitively collected to the extent of the amount of the definitive duties levied.

2. The amounts provisionally secured by the Provisional Regulation with respect to imports originating in Brazil shall be released.

Article 4

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

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

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ANNEX

Elements to be indicated in the undertaking invoice referred to in Article 2(2)

1. The product reporting code (as established in the undertaking offered by the producing exporter in question).
2. The exact description of the goods, including:
   - the company product code (CPC); whether the hardboard is unworked or worked; the thickness and the precise measures of the panel, indicating in brackets whether it has standard measures (STA) or cut-to-size ones (CTS),
   - CN code,
   - the TARIC additional code under which the goods on the invoice may be customs cleared at Community borders (as specified in the Regulation),
   - quantity (to be given in m^2).
3. The description of the terms of the sale, including:
   - price per square metre [1],
   - the applicable payment terms,
   - the applicable delivery terms,
   - total discounts and rebates.
4. Name of the importer to which the invoice is issued directly by the Company.
5. The name of the official of the Company that has issued the undertaking invoice and the following signed declaration: 'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by the Company, and accepted by the European Commission through Decision 1999/71/EC [2]. I declare that the information provided in this invoice is complete and correct.'

[1] For undertaking invoices issued by the Latvian exporting producer AS 'Bolderâja', in the case of sales via sales agents established in the Community, the price per m^2 may appear on an additional invoice issued by the agent instead of on the undertaking invoice issued by AS 'Bolderâja'. In that event, the undertaking invoice should also mention the name of the agent.

[2] See page 71 of this Official Journal.