COMMISSION REGULATION (EC) No 2563/1999

of 3 December 1999

imposing a provisional anti-dumping duty on imports of compact discs boxes originating in the People's Republic of China

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 905/98 [2] and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 5 March 1999, the Commission announced, by a notice (hereinafter referred to as 'the notice of initiation') 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 compact discs boxes originating in the People's Republic of China.

(2) This proceeding was initiated following a complaint lodged in January 1999 by the 'European Plastics Converters' (EuPC), on behalf of Community producers representing a major proportion of Community production of compact discs boxes. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The Commission officially advised the complainant Community producers, exporting producers and importers, suppliers and users known to be concerned as well as associations concerned and representatives of the exporting country, of the opening of the proceeding. Interested parties were given an opportunity to make their views blown in writing and to request a hearing within the time limit set in the notice of initiation. All parties who so requested were granted a hearing.

(4) In order to allow exporting producers in the People's Republic of China to submit a claim for market economy status or individual treatment if they so wished, the Commission sent market economy status/individual treatment claim forms to the Chinese exporting producers known to be concerned.

Claims for market economy status were received from four exporting producers, and one exporting producer requested individual treatment only.

(5) The Commission sent questionnaires to all parties known to be concerned. Replies were received from eight Community producers, three Hong-Kong-based exporting producers with manufacturing facilities in the People's Republic of China and 10 unrelated importers in the Community.

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

(a) Community producers

— La Française des Plastiques, Louvigné-de-Bais, France

— La Vendéenne des Plastiques, Chantonnay, France

— NEPCO SA, Pont - L'Évêque, France

— Allainé, SA, Miribel, France

— Neoplastik Verpackungssysteme GmbH & Co., Braunschweig, Germany

— EPM BV, Helmond, Netherlands

— Estudios Gema SA, Barcelona, Spain

— White Knight Ltd, Eastbourne, United Kingdom

(b) Hong Kong exporting producers with manufacturing facilities in the People's Republic of China

— ACME Cassette Manufacturing Ltd, Hong Kong

— Golden Age A-V Products Ltd, Hong Kong

— Viva Magnetics Limited, Kong Kong

(c) Importers/users

— AVP Europe BV, Sittard, Netherlands

— EMI Compact Disc (Holland) BV, Beek, Netherlands

— H.V. T.R.S. BV, Uden, Netherlands

(7) The investigation of dumping covered the period from 1 March 1998 until 28 February 1999 (hereinafter referred to as 'the investigation period'). The examination of injury covered the period from January 1995 to the end of the investigation period.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 128, 30.4.1998, p. 18.
[3] OJ C 63, 5.3.1999, p. 5.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(8) The product under consideration is compact discs boxes (hereinafter also referred to as 'CD boxes'), i.e. the plastic boxes used for the conveyance or packing of all types of compact discs such as audio CDs, CD-Rs (CD-recordable), CD-ROMs (CD-read only memory) and DVDs (digital video disc). The boxes are made of polystyrene, and generally comprise a case (consisting of a base and a lid) and tray(s). They are made to contain one or more compact discs. The trays are placed in the base or in the lid of the cases and have a hub in the centre to hold the compact discs. Compact discs boxes are delivered either as cases and trays assembled together or as cases and trays separately, the latter due to requirements of industrial users. They are currently classifiable within CN code ex 3923 10 00. Separate trays, bases and lids are currently classifiable within CN code ex 3923 90 90.

2. Like product

(9) The product exported to the Community from the People's Republic of China as well as the one domestically sold in the analogue country (see recitals 17 and 18 below) and the one manufactured and sold in the Community by the Community producers were found to have basically the same physical and technical characteristics as well as the same uses and are therefore to be considered as like products within the meaning of Article 1(4) of Regulation (EC) No 384/96 (hereinafter referred, to as the 'basic Regulation').

C. DUMPING

1. Normal value

(i) Market economy status

(10) Article 2(7)(b) of the basic Regulation states that, in anti-dumping investigations concerning imports from the People's Republic of China, normal value shall be determined in accordance with Article 2(1) to (6) for those producers which can show they meet the criteria laid down in Article 2(7)(c), i.e. that market economy conditions prevail in respect of the manufacture and sale of the like product concerned.

(11) As mentioned in recital 4 above, claims for market economy status were received from four exporting producers. One of these claims had to be rejected because the company concerned was not involved in the production of the product concerned. Another company withdrew its claim. For the two remaining companies (hereinafter referred to as 'company A' and 'company B') which had submitted a properly substantiated claim form on behalf of their respective China-based subsidiaries, the Commission sought and verified all the information it deemed necessary for the purposes of a determination of market economy status and carried out verifications at their premises.

(12) Company A is a Hong-Kong-based exporter of CD boxes performing management, marketing and sales functions, as well as purchases of raw materials and production machinery, with a manufacturing facility in the People's Republic of China. Manufacturing is being carried out under an inward processing arrangement.

The manufacturing facility did not have legal status as a company in the People's Republic of China. It was not entitled to sell on the domestic market in the People's Republic of China and was under an obligation to export its entire production. Furthermore, it did not have separately audited accounts. Its accounts were incorporated into the accounts of the parent company.

For these reasons, the Commission determined that company A's manufacturing facility in the People's Republic of China did not fulfil the criteria to demonstrate that market economy conditions prevail in respect of the manufacture and sale of the like product, as set out in Article 2(7)(c) of the basic Regulation.

(13) Company B is a Hong-Kong-based exporter of CD boxes, with two manufacturing facilities (hereinafter referred to as 'factory (a)' and 'factory (b)') in the People's Republic of China. The findings of the Commission were that management, marketing and sales functions were performed by the Hong Kong parent company, manufacturing being carried out in both manufacturing facilities in the People's Republic of China under inward processing arrangements.

(14) Factory (a)

Factory (a) is a limited liability company incorporated in the People's Republic of China as a wholly owned foreign subsidiary of company B. All decisions, pertaining to prices, inputs, technology, sales and investment were made by the parent company in Hong Kong without any interference from the Chinese authorities. The company had a set of independently audited accounts in line with international standards. No significant distortions relating to the former non-market economy system were found to affect its business operations. It was subject to the bankruptcy and property laws of the People's Republic of China since it had company status in the People's Republic of China. The Commission had some doubts as to whether the bankruptcy law of the People's Republic of China applicable to the company guaranteed the necessary degree of legal certainty and stability for the operation of the company but the investigation showed that the position of the company in this regard could on balance be accepted, Exchange rate conversions were made at the rate determined by the Bank of China, as applied by the local banks.

For the reasons mentioned above, the Commission determined that factory (a) fulfilled the criteria set out in Article 2(7)(c) of the basic Regulation.

(15) Factory (b).

The Commission found that the, situation of factory (b) was similar to that of the manufacturing facility of company A. For this reason, since there would be a high risk that anti-dumping measures could be circumvented by channelling exports to the Community through the Chinese producer with the lower margin, the Commission services determined one dumping margin for factory (a) and factory (b).

(16) The exporting producers concerned and the Community industry were given an opportunity to comment on the above findings. No continents of substance were received.

(ii) **Analogue country**

(17) In view of the fact that normal value for the People's Republic of China has to be established pursuant to Article 2(7)(a) of the basic Regulation, in the notice of initiation of the proceeding, the Commission proposed Thailand as an appropriate market economy third country or analogue country for the purpose of establishing normal value. No objection to this proposal was raised by the exporting producers within the time limit specified in the notice of initiation. The only known Thai producer of the product concerned, however, declined to cooperate with the Commission.

(18) As an alternative, the Commission proposed Canada as an analogue country. A Canadian producer related to one of the Chinese exporters expressed his willingness to cooperate. Canada is one of the few countries outside the Community and the People's Republic of China where CD boxes are produced and sold. Canada is also an open market where CD boxes are imported as well as exported. Parties to the investigation were informed that the Commission envisaged selecting Canada and were given the opportunity to comment. None of the parties concerned contested the envisaged selection and the Commission decided to use Canada as an analogue country.

(iii) **Determination of normal value**

(19) For the producer (company B) which was granted market economy status in respect of one of its subsidiaries in the People's Republic of China (factory (a)), and in the absence of domestic sales in that country, normal value was constructed. Constructed normal value was calculated in accordance with Article 2(3) of the basic Regulation by adding to this subsidiary's cost of manufacturing a reasonable amount for selling, general and administrative (SG & A) expenses and for profit. The SG & A expenses and profit were calculated as a percentage of the cost of manufacturing in the analogue country on the basis of domestic sales made in Canada in the ordinary course of trade; this percentage was then applied to the cost of manufacturing of the subsidiary concerned.

(20) For the other exporting producers in the People's Republic of China, normal value was established on the basis of the domestic prices and costs of the Canadian producer for products comparable to those sold by the Chinese exporting producers to the Community. Sates of the like product were found to have been made in representative quantities since the total volume of the Canadian producer's overall domestic sales in the investigation period exceeded the threshold of 5 % of export sales to the Community laid down in Article 2(2) of the basic Regulation.

(21) Canadian domestic sales of each type of product which was exported to the Community by the exporting producers in the People's Republic of China were considered representative if they met the same criterion. Three product types out of four produced on the Canadian market were found to meet this criterion.

(22) In addition, in order to establish whether sales of these three types were made in sufficient quantities in the ordinary course of trade, the domestic selling price was compared to the full cost of production, i.e. the cost of manufacturing plus SG & A expenses. Where the weighted average sales price was equal to or higher than the weighted average unit cost of production, and where more than 80 % of sales for a particular product type were at or above unit cost, normal value was established as the weighted average price of all the transactions. It was found that this was the case for the three product types. Normal value for these three product types was therefore established on the basis of all domestic sales.

(23) For the fourth product type produced on the Canadian domestic market, sales were not representative, i.e. did not meet the 5 % criterion. Normal value for this type was consequently constructed in accordance with Article 2(3) of the basic Regulation by adding to the producer's cost of manufacturing a reasonable amount for SG & A expenses and for profits. In accordance with Article 2(6) of the basic Regulation, the SG & A expenses and the amounts for profit were determined.on the basis of data pertaining to sales of the like product made in the ordinary course of trade.

(24) Only the above four product types, which represented, however, 93 % by value of the Chinese exports to the Community in the investigation period, were produced and sold in Canada. All remaining product types exported by the Chinese exporting producers to the Community were not sold on the Canadian market. Some of these product types were themselves combinations of product types produced and sold in Canada. For these, normal value was calculated by combining the normal valves already obtained for the product types manufactured in Canada. For the remainder, the normal value of the closest resembling product type produced in Canada was used, adjusted as appropriate.

2. **Export price**

(25) The cooperating companies which were not granted market economy status and another cooperating exporting producer that requested individual treatment only were subsequently examined with a view to determining whether they could be granted individual treatment.

The Commission found that all of them were manufacturing facilities of Hong-Kong companies operating under inward processing arrangements. All inputs (capital, machinery and raw materials) were provided by their respective Hong Kong parent company and all management and operational decisions were made by the latter. No interference from the Chinese State was apparent in the running of these plants, which could be considered as the manufacturing arms of the Hong Kong parent companies. It was therefore decided to grant individual treatment to these companies in respect of their sales to the Community of the product concerned originating in the People's Republic of China.

(26) The export prices for all Chinese, exporting producers concerned were established on the basis of the prices paid or payable for the product concerned when sold to the fast independent customer in the Community in accordance with Article 2(8) of the basic Regulation.

(27) The company which was granted market economy status for one of its Chinese subsidiaries (company B), however, was partly selling the product concerned to the Community on a consignment basis, i.e. the goods were destined for a warehouse located in the Community and not invoiced until the customer took delivery of these at some later date. It was not possible to attribute these consignmentsales to one or the other China-based subsidiary of the exporting producer concerned. The Commission therefore decided not to take these sales into consideration for the determination of the export price. This was considered reasonable since these consignment sales only constituted 6,5 % by value of the exporting producer's total sales to the Community in the investigation period, and their exclusion does not affect the representativeness of the findings concerning the export price. All of this exporting producer's other export sales were taken into account in order to establish its export prices to the Community in accordance with Article 2(8) of the basic Regulation.

3. **Comparison**

(28) For the purposes of a fair comparison between the normal value and the export price at an ex-works level, due allowance in the form of adjustments was made for differences which were claimed and demonstrated to affect prices and price comparability. These adjustments were made, where appropriate, in respect of transport, handling, packing, commissions and credit costs in accordance with Article 2(10) of the basic Regulation.

(29) One exporting producer requested an allowance for the difference between the prices of the raw material in the People's Republic of China and in Canada The difference in raw material prices, however, could not be taken into account in the comparison, since the possibility of obtaining the raw materials at a cheaper price cannot be considered a natural comparative advantage: Such an advantage would be, for example, the easier access to raw materials due to the location of the exporting producer. Furthermore, Article 2(7)(a) of the basic Regulation explicitly states that normal value has to be determined on the basis of the price or the constructed value in a market economy third country which, for the purposes of this investigation, is Canada. This request was therefore rejected.

4. **Dumping margin**

(30) In accordance with Article 2(11) and (12) of the basic Regulation, the dumping margin for the exporting producers concerned was established on the basis of a comparison of weighted average nornnal values with weighted average export prices.

(31) These margins were expressed as a percentage of the cif Community frontier price for the exporting producers concerned.

The individual dumping margins are:

— Donggang Acme Cassette Manufacturing Fty (exports by ACME) 10,4 %

— Chang An Tang Golden Age Magnetic Factory (exports by Golden Age) 8,3 %

— Oscar Magnetics Media and Hwa Ying Plastic Manufacturing Factory (exports by Viva Magnetics) 6,6 %

The Commission determined one dumpinh margin for Oscar Magnetics Media and Hwa Ying Plastic Manufacturing Factory, calculated as the weighted average of the dumping margins established for each of the two Chinese producers. This was done to preclude the possibility of channelling of exports through the Chinese producer with the lower margin.

(32) For those Chinese exporters which failed to reply to the Commission's questionnaire, did not makethemselves known or otherwise did not cooperate with the investigation, dumping was determined on the basis of the facts available in accordance with Article 18(1) of the basic Regulation. This was done in order not to reward non-cooperation. The level of non-cooperation was difficult to establish because of the absence of Eurostat data due to CD boxes falling under 'ex' CN codes. but it is clear how ever that some exporting producers known to

the Commission deliberately did not cooperate with the investigation. A residual dumping margin was therefore based on the product type with the highest dumping margin produced by the company with the highest dumping margin, after ensuring that sales to the Community of this product type were representative for that company.

The residual dumping margin for the People's Republic of China, expressed as a percentage of the cif Community frontier price, is 20,1 %.

D. INJURY

1. Preliminary remark

(33) Throughout the following sections, figures are based on verified company. data from those companies cooperating with the Commission, statistics from Eurostat, as well as the estimations of market size contained in the complaint. It should be noted, in particular, that the. Eurostat figures used in the following analysis cover a basket category and should be considered as indicative only.

2. Definition of the Community industry

(34) The seven original complainant Community producers completed the Commission's questionnaire. They were joined by an eighth producer, Estudios Gema SA in Spain, which also submitted a questionnaire response. One further Community producer, Les Cartonneries de Thulin (Carthuplas) made itself known to the Commission and expressed its support of the complaint but did not provide a completed questionnaire response. Other Community producers neither supported nor opposed the complaint, and are therefore not considered part of the Community industry for the purposes of this investigation. Nevertheless, some of these other Community producers did provide information on their overall production and sales. On this basis, and taking into account the information in the complaint concerning other Community producers, the Community producers supporting the complaint and fully cooperating in the investigation represented 68 % of estimated total Community production of the product concerned in the investigation period. They therefore represent a major proportion of Community production, and thus constitute the Community industry, in accordance with Articles 4(1) and 5(4) of the basic Regulation.

Hereinafter, the expression 'Community industry' will refer only to the eight producers which actively cooperated by submitting completed questionnaire responses.

3. Community consumption

(35) The estimates of total Community apparent consumption are based on the estimations of market size contained in the complaint, verified production and sales figures from cooperating producers, sales and production information received from other producers supporting the complaint but not cooperating in the investigation, and estimates for non-cooperating producers.

On this basis, total consumption in the Community. increased from 1 716 million units in 1995 to 2 357 million units in 1997, before reaching 2 679 million units in the investigation period, en increase of 56 % over the whole period analysed.

4. Imports from the country concerned

(a) Development of volumes, values and market shares

(36) The volume of imports from the People's Republic of China increased by 385 % over the whole period analysed from 142 million units in 1995 to 313 million units in 1997, before rising again to 546 million units in the investigation period. The corresponding value increased from ECU 15 344 000 in 1995 to ECU 25 476 000 in 1997, before rising again to ECU 42 900 000 in the investigation period, an increase of 276 % in percentage terms over the whole period analysed.

The market share of those imports increased throughout the period analysed from 8 % in 1995 to 13 % in 1997, before rising again to 20 % in the investigation period.

(b) Development of prices

(37) Unit values, for imports from the People's Republic of China fell from ECU 0,073 in 1995 to ECU 0,058 in 1997, before falling again to ECU 0,054 in the investigation period. This represents a fall of 26 % in percentage terms over the whole period analysed.

(c) Prices comparison, price undercutting

(38) Price undercutting was established on the basis of a comparison of the ex-factory prices of the Community industry at the same Ievel of trade with prices of imports from the People's Republic of China at a cif level.

Throughout the comparison, to the greatest extent possible, the prices of the closest matching product types were compared. The export transactions used for the comparison represented a share of at least 96 % of the total exports of each exporting producer concerned, and the great majority of total exports from exporting producers in the People's Republic of China.

The weighted average level of price undercutting by Chinese exports on an average direct product type-to-type comparison was found to be 15 % during the investigation period.

5. **Situation of the Community industry**

(a) **Production and capacity utilisation**

(39) Production of CD boxes is very capital intensive and production facilities typically operate 24 hours daily all year round. In such industries, economies of scale require high levels of output.

(40) Production showed a 37 % increase over the whole period analysed, rising from 543 million units in 1995 to 697 million units in 1997, before reaching 751 million units in the investigation period. Production capacity increased from 653 million units in 1995 to 806 million units in 1997, before reaching 897 million units in the investigation period. The level of capacity utilisation remained relatively stable over the whole period examined, rising from 83 % in 1995 to 86 % in 1997, before falling to 84 % in the investigation period.

(b) **Sales of the product concerned in the Community: volume and market share**

(41) The sales volume by the Community industry to unrelated, customers increased by 50 % over the whole period examined, rising from 465 million in 1995 to 656 million in 1997 to 696 million in the investigation period.

The Community industry's market share fluctuated between throughout the period analysed rising from 27 % in 1995 to 28 % in 1997, before falling to 26 % in the investigation period.

The composition of this sales volume is analysed further in recital 53.

(c) **Sales of the product concerned in the Community: turnover and prices**

(42) The Community industry's sales values rose from ECU 56 639 000 in 1995 to ECU 60 972 000 in 1997 to ECU 63 677 000 in the investigation period. It will be noted that while sales volumes rose by 50 % over this period, sales values rose by only 12 %.

The unit values of the Community industry's sales on the Community market declined from ECU 0,1218 in 1995 to ECU 0,0928 in 1997, a fall of 24 percentage points and had fallen again, albeit by a smaller magnitude, to ECU 0,0915 in the investigation period, giving an overall decline over the period examined of 25 %.

(d) **Production costs**

(43) The information submitted by the Community industry shows that average production costs decreased by around 20-25 % between 1995 and the investigation period. These developments in unit costs are explained to a large extent by the worldwide fall in the price of raw materials (polystyrene) over the period. Polystyrene represented around 60 % of the cost of manufacturing during the investigation period and was by far the most important cost-driver in CD-box manufacture. In 1995, its price in the Community was ECU 1,081 per kg, whereas it had fallen to ECU 0,796 per kg in 1997 and had fallen further to 0,711 per kg in the investigation period, i.e. a fall of 34 % over the whole period analysed.

Apart from the fall in price of polystyrene, the Community industry also adopted measures to improve its productivity, which increased over the whole period concerned. Measures to improve productivity included, for example, improving the design of the boxes with the aim of reducing the weight of each box.

(e) **Profitability**

(44) Although the Community industry was profitable throughout the period under examination, overall profitability declined, from 6,1 % of turnover in 1996 to 3,8 % in the investigation period, giving an overall decline over the period examined of 37 %. This negative development was even more pronounced in the Community industry's sales of standard product types such as the jewel box over the period considered. These standard product types accounted for 93 % of the Community industry's total sales, and their profitability dropped steadily from + 3,85 % in 1996 to losses of 0,45 % in the investigation period. This development is analysed further in recital 53.

(f) **Employment**

(45) Levels of employment in the Community industry have remained stable at around 277 throughout the period examined. The relatively low number of employees is explained by the fact that the injection-moulding production process used by the Community industry is very much more capital intensive than labour intensive.

(g) **Labour productivity**

(46) The above employment levels were steady at a time when the Community industry was increasing its output. This implies that labour productivity was increasing throughout the period considered from 1,998 million units per employee in 1995 to 2,463 million units per employee in 1997 to 2,703 million units per employee in the investigation period, giving an overall increase over the period analysed of 35 %.

(h) **Investment**

(47) Investment was reduced from ECU 6 million in 1995 to ECU 4,7 million in 1997, before rising slightly to ECU 4,8 million in the investigation period, an overall fall of 19 % over the whole period analysed. In relative terms, investment per unit of output produced and per unit of output sold also fell over the period examined from ECU 0,1058 in 1995 to ECU 0,0772 in 1997 to ECU 0,0760 in the investigation period.. an overall fall of 28 % over the whole period analysed.

6. **Conclusion on injury**

(48) The development of certain injury indicators suggests a positive development over the period considered, but closer examination reveals the difficulties facing the Community industry. In an area where demand has been increasing steadily over the period considered (consumption within the Community grew by 56 % between 1995 and, the investigation period), the fact that certain injury indicators show a development favourable to the Community industry does not necessarily mean that the Community industry is not injured. In this context, it would not have been considered appropriate to place any emphasis on the positive developments of the Community industry's production capacity (+ 37 %), production volumes (+ 38 %), sates volume (+ 50 %) and sales value (+ 12 %) as well as the stable employment levels as they merely reflect the general development of the market overall and the fact that production capacity has to be used in this capital intensive industry.

What was considered relevant was a significant drop in the average prices of the Community industry's CD boxes, with the index dropping quickly from 100 in 1995 to 76 in 1997 and stabilising at 75 in the investigation period. Silmultaneously, the profitability of the Community industry declined significantly, droping by 37 % between 1996 and the investigation period. Moreover, at a level of 3,8 % on turnover, profitability falls far short of that considered reasonable for the Community industry to continue its production of the product concerned (see recital 71). This is also reflected in the almost 20 % decline in the level of investment between 1995 and the investigation period in a situation of strong growth in demand.

Although therefore the production and sales volumes remained constant or increased over the period analysed, this was achieved at the cost of a substantial deterioration in sales prices, causing a deterioration in financial performance to a level insufficient for investment in plant renewal and maintenance. Indeed, the Community industry made a remarkable effort, between 1995 and the investigation period, to improve its efficiency, increasing its output level roughly, in line with market growth with significant reductions in production costs helped by a drop in input prices. Despite these developments, however, the Community industry's market share fell between 1998 and the investigation period, and their financial situation continued to worsen.

In the light of the above findings, it is concluded that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

E. **CAUSATION**

1. **Effect of the dumped imports**

(a) **General**

(49) The volume of imports from the People's Republic of China increased significantly by 385 % between 1995 and the investigation period, reaching a volume of 546 million units (equivalent to more than 70 % of the Community industry's volume of production). The aforementioned development of sales volume corresponded to as increase in market share from 8 % to 20 %. This surge in imports occurred while their prices were dropping. The index of import prices from the People's Republic of China fell from 100 in 1995 to 74 in the investigation period. Even at that level, and although the Community industry's prices fell to the same extent over the same period, they still substantially undercut (by 15 %) the prices of the Community industry in the investigation period. This clearly indicated the presence of a strong downward pressure on the prices of the Community industry from the dumped imports.

(50) Between 1998 and the investigation period, there was a 2 percentage point drop to 26 % in the Community industry's market share. While this was happening, the industry's profits declined to 3,8 % on turnover during the investigation period.

(51) While the Community industry. managed to increase its production capacity, volume of production and sales volume broadly in line with the strong increase in demand, it should be noted that its profitability deteriorated significantly. In this connection, the sharp fall in the price of polystyrene on the Community market over the period considered (see recital 43) should have been beneficial to the Community industry. However, the price-depressive pressure of the dumped products forced the Community industry to reduce its prices, thus eroding any benefits it should have gained from the fall in input costs.

(52) All these factors indicate that the Community industry was forced to adopt a strategy of trying to match the price of the dumped imports so as to be able to maintain sales volumes. The result was the deterioration in profits to inadequate levels.

(b) **Standard product types**

(53) Further insight on the impact of the dumped imports can be gained by examining the development of sales and profitability of those products which form the market standard, i.e, jewel boxes, standard 2-CD boxes, standard multi-boxes and CD-singles boxes, and which represent the area of maximum competition between the Community industry and the dumped imports.

The table below shows the development of sales of:

— standard product types,

— all product types.

	1995	1996	1997	1998	Investigation period
Community industry's sales of standard product types in European Community (1 000 units)	462 495	518 761	633 649	668 002	650 080
Indexed (1995 — 100)	100	112	137	144	141
% of all sales which are standard product types	99	98	96	94	93
Community industry's sales of all types in European Community (1 000 units)	464 932	530 323	656 781	711 793	695 878
Indexed (1995 — 100)	100	114	141	153	150

The Community industry's volume of sales of standard products accounted for 93 % of their total CD-box sales volume in the investigation period. It should be noted that practically 100 % of the exports in the investigation period from the People's Republic of China were standard products.

In this context, the development of the Community industry's profitability of sales of these standard products types over time, compared with the Community industry's overall profitability was as follows.

(%)

Development of the Community industry's profitability of sales in the European Community	1995	1996	1997	1998	Investigation period
Standard product types	m/a	3,85	3,11	0,81	– 0,45
All types (from recital 44)	m/a	6,1	5,4	5,0	3,8

These figures show that although financial performance was in continuous decline for all CD boxes, the return on sales of standard product types was consistently lower than the return on all CD boxes. The trend of profitability was downwards throughout the period from 1996 to the investigation period.

Moreover, by the investigation period, sales of standard product types were loss-making. In other words, 93 % of the Community industry's sales were loss-making. The Community industry was therefore able to achieve its overall profitability of 3,8 % on just 7 % of its sales volume.

However, it is precisely the types of the product concerned which fall under this 7 % which the Chinese exporting producers did not export to the Community during the investigation period. The Community industry's losses are incurred only on standard product types, and the People's Republic of China's exports to the Community consist solely of these types.

(c) **Conclision on the effect of dumped imports**

(54) As discussed above, the Chinese exports to the Community are almost exclusively in standard product types. These ate the core business of the Community industry, accounting for 93 % of their sales in the Community during the investigation period. The Community industry's sales of these products were loss-making. In the face of the dumped imports from the People's Republic of China, the Community industry has been able to keep going as a viable business because of the profits it has been able to make on the 7 % of its business for which during the investigation. period them were no direct equivalent Chinese imports, namely the production of non-standard CD boxes.

The Commission concludes from this analysis that a causal link exists between the material injury suffered by the Community industry and the dumped imports from the People's Republic of China.

(55) The Community industry argues that the above situation is not a sustainable position in the longer run. Indeed, the only reason the Community industry is currently profitable in its non-standard CD-box manufacture is because it still has a significant output of standard products. The Commission considers that the Community industry needs the economies of scale which production of standard products brings in order to be able to make its non-standard products efficiently. If it is driven out of its core business of standard products by the dumped imports, it will lose these economies of scale and will therefore no longer be able to continue to produce non-standard products efficiently.

2. **Other factors**

(a) **Other sources of supply to the Community market**

(56) As was mentioned at recital 33, Eurostat import statistics can only be considered as indicative. Furthermore, the level of cooperation from non-complainant Community producers was minimal. The Commission therefore treated these two sources of supply as one category. For the purposes of this analysis, these 'other sources of supply to the Community market' comprise imports from third countries other than the People's Republic of China, and production of other Community producers who are not cooperating in the present investigation or supporting the complaint.

Estimates for these other sources of supply to the Community market are based on estimates of imports from other third countries and estimates of production of the product concerned by non-cooperating producers in the Community, some of which supplied the Commission with information on their production levels.

On this basis, the volumes from other sources of supply are estimated to have increased from 976 million units in 1995 to 1 183 million units in 1997 to 1 200 million units in the investigation period, an increase of 23 % over the whole period analysed. However, their share of the Community market fell from 57 % in 1995 to 50 % in 1997 to 45 % in the investigation period.

(57) Other information available to the Commission indicates that the unit values of these other sources of supply to the Community market were higher than those of the Community industry throughout the period considered. In fact, the prices of both the Community industry and other sources were undercut by the prices of imports from the People's Republic of China.

This, combined with the fact that their share of the Community market was declining, makes it unlikely that these other sources of supply caused material injury to the Community industry during the period analysed.

(b) **Community industry's sales outside the Community**

(58) Sales by the Community industry outside the Community were small in comparison with their sales on the Community market. Throughout the period, sales turnover outside the Community represented around 2 % of their total sales, and could not, therefore, have broken the causal link between the dumped imports subject to investigation and the injury of the Community industry.

(c) **Conclusion on causation**

(59) The above examination shows that the Community industry had to match the prices of the dumped imports in order to maintain production volumes, sales and capacity utilisation in an attempt to keep unit production costs at a low level. In doing so, the Community industry's profits situation worsened considerably, particularly in its sales of standard CD boxes. The Commission considers therefore that a causal link exists between the dumped imports from the People's Republic of China and the material injury to the Community industry.

F. **COMMUNITY INTEREST**

1. **General considerations**

(60) Pursuant to Article 21 of the basic Regulation, the Commission examined, first, the likely positive and negative effects of taking and of not taking measures, and second, whether it could be clearly concluded that it is not in the overall interest of the Community to apply measures in this particular case.

2. **Impact of anti-dumping measures on the Community industry**

(61) The Community industry is a well-established industry producing CD boxes since the early 1980s. The companies are typically of medium size, and some are involved in the production of a range of injection-moulded and extruded plastic products such that their CD-box production forms a part of a range of products.

(62) The Community industry has developed into an industrial sector servicing a growing demand for a product which continues to find applications in many varied fields, from the audio industry, the printed media industry to the computer industry. Throughout its history, the industry has invested in new technologies and manufacturing techniques which have increased its productive efficiency. The high quality of its output, produced efficiently, ensures its viability and competitiveness in the future in a market undistorted by unfair trading practices. The dramatic rise in labour efficiency outlined at recital 46 underlines the, commitment the Community industry has shown in pursuing more efficient production in. the face of unfair competition from the People's Republic of China.

The Community industry is almost fully utilising its productive capacity, providing a wide spectrum of high quality products with very rapid response times. Customer service is one area on which the Community industry has placed particular emphasis in order to compete with the dumped imports from the People's Republic of China.

(63) However, the main problem being faced by the Community industry is inadequate profitability, arising from the need to reduce prices to match those of the dumped imports in order to try to maintain market share and volume of output. Despite this defensive strategy, the prices of the Chinese exports to the Community continued to undercut those of the Community industry by 15 %. This price-depressive pressure led weighted average profits on turnover to fall to 3,8 % overall by the end of the investigation period, despite a drop in the cost of raw materials and efforts to improve productive efficiency. The effect of the dumped imports was particularly noticeable in the market for standard CD boxes, such as jewel boxes, where the Community industry's profitability worsened to such an extent that their sales of standard CD boxes were loss-making in the investigation period.

(64) Under these circumstances, it is considered that if prices were to rise again following the removal of the trade-distorting effects of the dumped imports, the Community industry would be able to achieve a satisfactory profit rate and be equipped to address other challenges it faces on the compact discs packaging market.

3. **Impact of anti-dumping measures on importers traders**

(65) The Commission sent questionnaires to ten importers in the Community. Seven questionnaire responses were returned within the deadline set.

In general, the importers argued that the imposition of anti-dumping measures would simply lead to price increases in the final compact discs product for the retail consumer. It was asserted that any cost increase brought about by the imposition of anti-dumping measures on imports from the People's Republic of China would simply be passed to the next downstream customer. It was also pointed out by some importers that the Community industry is unable to supply the needs of the major customers for optical media packaging.

(66) The Commission does not share the opinions of the importers/traders. While the Community industry supplied an estimated 28 % of Community demand for the product concerned (and the Community producers supporting the complaint supplied around 35 % in total) and imports from the People's Republic of China accounted for 20 %, supplies from other sources, which include third country imparts (see recital 56), accounted for a further 45 % of demand in the Community.

These figures indicate that, even if anti-dumping measures were to cause a fall in import volumes from the People's Republic of China, the Community's importers/traders will continue to have unrestricted access to third countries' supplies, or the Community industry's supplies, as well as supplies from other producers in the Community. Since sources of supply other than the People's Republic of China account for 80 % of demand for the product concerned in the Community, the Commission concludes that competition in supply from all sources will remain vigorous and effective after the imposition of anti-dumping measures. The inability of the Community industry to supply all of the Community users' needs is not expected to have a negative impact on importers/traders if anti-dumping measures are imposed on imports from the People's Republic of China.

4. **Impact of anti-dumping measures on users**

(67) One of the importers which received a questionnaire is more appropriately to be considered as a user of the product concerned. This company cooperated to a limited extent in the investigation and did not provide a complete questionnaire response within the deadline set.

This company's Community interest submission centred on the alleged detrimental effects which anti-dumping measures would have on users, distributors, importers and the consumer. In particular, it alleged that anti-dumping measures would have the effect of depriving users of high-quality product from the People's Republic of China, forcing them to turn to lower quality end more expensive Community-made products. Furthermore, contrary to the arguments of the importers/traders (see recital 65), users claimed that competitive pressures in the downstream sectors of the industry were such that any price increase on CD boxes could not be easily passed on to consumers, thus reducing profit margins and threatening the commercial viability of the downstream companies concerned.

(68) The Commission has examined these arguments.

The claim that Community-made CD boxes are of lower quality than those from the People's Republic of China is unfounded. The most important determinant of 'quality' for a CD-box is its suitability for use in the users' CD-packaging machinery without breaking and thus snagging the machinery. The Commission has received no evidence to support the allegation that the Community users' packaging machinery cannot use Community-made CD boxes. Indeed, around 60 % of this user's CD-box requirements are indeed supplied by Community-made CD-box manufacturers, and these boxes can be used in its packaging machinery interchangeably with Chinese products. In other words, as far as the user industry is concerned, there is, in general, no difference in quality between Chinese CD boxes exported to the Community and Community-made CD boxes.

In the absence of any figures on costs of production submitted by this user, the Commission had to base its conclusions on the information available which suggests that the proportion accounted for by CD boxes in the users' costs of production is estimated to be about 1 % on a weighted average basis. The CD boxes input, therefore, does not account for a major proportion of users' costs. Such proportions indicate that an average duty rate of approximately 10 % in respect of the People's Republic of China may have a maximum impact of a 0,1 % increase in the cost of production of Community CD-box users. It should also be borne in mind that the investigation showed that in value terms. roughly 20 % of these users' CD-box purchases were from the People's Republic of China. The final impact on the sales prices of CD boxes therefore is expected to be less than 0,02 %, even assuming that any increase in cost caused by the duty is fully passed on. Any cost and price increase, therefore, is not expected to be disproportionate to the benefits expected to accrue to the Community industry from the removal of the injury caused by dumping.

The Commission consequently concludes that imposing anti-dumping measures will not threaten the commercial viability of users, or have a noticeable impact on the profit margins of these companies which, as pointed out in recital 66 will continue to have unrestrieted access to other sources of supply.

5. **Conclusion on Community interest**

(69) The dumped imports from the People's Republic of China have been found to have caused injury to the Community industry, and the Commission considers that, for the foregoing reasons, it is not against the overall interest of the Community to impose provisional anti-dumping measures.

The Commission will however continue to examine the Community interest aspects of this proceeding at the definitive stage of the investigation.

G. **PROVISIONAL ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(70) In assessing the injury elimination level, the Commission took account of the fact that the weighted average Community producers' price in the Community declined significantly over the period 1995 to the investigation period, in order to match the price levels of the dumped imports. This worsened the Community industry's profit situation.

(71) When determining the profit margin, the Commission examined what amount the Community industry could reasonably be expected to make is the absence of injurious dumping. The investigation established that a profit margin of 6 % should provisionally be regarded as representing an appropriate minimum. This is a rather conservative estimate given the fact that this was the profit rate the Community industry achieved in 1996, i.e. during a period where the dumped imports from the People's Republic of China had not yet achieved the high market share held during the investigation period but were nevertheless already at significant levels (9 % market share).

(72) The weighted average injury elimination price level for the Community industry was established using the Community industry's weighted average cost of production per unit on an ex-works basis plus the 6 % profit margin mentioned, above. This price was compared, on a direct product type-to-type basis, with the cif prices of the dumped imports, duty paid at the Community frontier, at the appropriate level of trade. An injury margin was established for each of the exporting producers concerned as a result of the comparison and this margin was expressed as a percentage of the cif value of their exports to the Community.

On this basis, the injury margins were higher than the dumping margins.

2. **Provisional measures**

(73) In accordance with Article 7(2) of the basic Regulation, as the injury margins were higher than the dumping margins found for the cooperating Chinese exporters, the provisional anti-dumping duty should be set at the level of the latter.

(74) Since CD boxes are often exported in disassembled form, the anti-dumping duty should apply to the assembled product as well as to the disassembled one.

(75) The individual company provisional anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the 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'.

(76) Any claim requesting the application of these individual company provisional anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for exemple, 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.

[1] European Commission Directorate-General
Trade Directorate CDM 24 - 8/38
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

3. **Final provision**

(77) In the interest of sound administration. a period should be fixed within which the interested parties may make their views known in writing and request a hearing. Furthermore it should be stated that the findings made for the purpose of this Regulation are provisional and may have to be reconsidered for, the purpose of any definitive measures,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of compact discs boxes, including those for DVDs and similar products, of plastics, falling within CN code ex 3923 10 00 (TARIC code 3923 10 00*10) and originating in the People's Republic of China.

This duty also applies to imports of:

— compact-discs cases (consisting of a base and a lid assembled together), of plastics, falling within CN code ex 3923 10 00 (TARIC code 3923 10 00*10),

— trays, bases and lids of compact-discs boxes, of plastics, falling within CN code ex 3923 90 90 (TARIC code 3923 90 90*10), whether assembled or not.

2. The provisional rate of duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the following exporting companies shall be as follows.

Companies	Rate of duty %	Taric additional code
Viva Magnetics Ltd, Hong Kong	6,6	A046
Golden Age A-V Products Ltd, Hong Kong	8,3	A047
ACME Cassette Manufacturing Ltd, Hong Kong	10,4	A048
All other exporting producers in the People's Republic of China	20,1	A999

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.

Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, the interested parties may make known their views in writing and apply to be heard by the Commission within one month of the date of entry into force of this Regulation.

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

Article 3

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

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, 3 December 1999.

For the Commission

Pascal LAMY

Member of the Commission