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COUNCIL REGULATION (EC) No 603/1999

of 15 March 1999

imposing a definitive anti-dumping duty on imports of polypropylene binder or baler twine originating in Poland, the Czech Republic and Hungary, and collecting definitively the provisional duty imposed

(OJ L 75, 20.3.1999, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EC) No 968/2000 of 8 May 2000	L 112	1	11.5.2000
►**M2**	Council Regulation (EC) No 1657/2001 of 10 August 2001	L 221	1	17.8.2001
►**M3**	Council Regulation (EC) No 2011/2002 of 11 November 2002	L 311	1	14.11.2002

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imposing a definitive anti-dumping duty on imports of polypropylene binder or baler twine originating in Poland, the Czech Republic and Hungary, and collecting definitively the provisional duty 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. PROVISIONAL MEASURES

(1) By Commission Regulation (EC) No 2107/98 [2] (hereinafter referred to as 'the provisional duty Regulation') provisional duties were imposed on imports of polypropylene binder or baler twine originating in Poland, the Czech Republic, Hungary and Saudi Arabia. All cooperating Hungarian exporting producers and one cooperating Czech exporting producer offered price undertakings, which were accepted by the provisional duty Regulation and by Commission Regulation (EC) No 2649/98.

B. SUBSEQUENT PROCEDURE

(2) Following the imposition of the provisional measures, certain exporting producers and importers 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 duty Regulation, the Commission continued to seek and verify all information deemed necessary for its definitive findings and carried out investigations of the following companies:

(a) *Complainant Community producers*

— Pippo Tuote Oy, Outokumpu, Finland,

— Irish Ropes, Kildare, Ireland;

(b) *Exporting producer*

WKI Isoliertechnik Spolska z.o.o., Weltyn, Poland.

(4) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duty. They were also granted a period within which to make representations subsequent to this disclosure.

(5) The oral and written comments submitted by the interested parties were considered and, where deemed appropriate, taken into account in the definitive findings.

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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] JO L 267, 2. 10. 1998, p. 7. Regulation as amended by Commission Regulation (CE) No 2649/98 (JO L 335, 10. 12. 1998, p. 41).

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C. PRODUCT CONCERNED AND LIKE PRODUCT

(6) In the absence of any new information, the provisional findings, as set out in recitals 6 to 8 of the provisional duty Regulation, are confirmed.

D. DUMPING

1. Poland

(a) *Cooperation*

(7) As described in recital 9 of the provisional duty Regulation, two companies' replies to the questionnaire had been considered inadequate for the purposes of the investigation, as the information provided did not permit an accurate determination either of normal values or of export prices. Subsequent to the adoption of provisional measures, these two companies requested to be allowed to rectify the deficiencies contained in their previous submissions, and to be granted the opportunity of a late verification.

(8) One of the two companies claimed that it was a small company, with only limited export activity during the investigation period and limited resources for dealing with the requirements of the investigation. This request for a late verification could not, however, be accepted since, as had already been made clear when informing the company of its insufficient cooperation, it would mean discriminating against other companies which had made the effort to cooperate properly. Moreover, the company had been duly informed of the consequences of its non-cooperation and had previously been granted more than one opportunity to rectify the deficiencies contained in its reply to the questionnaire.

(9) The other company justified its request on the grounds that it had wrongly considered itself to be operating on a different level to all the other Polish firms concerned by the investigation, because it primarily produced baler twine under an outward processing regime, whereby raw materials acquired in the Community market were processed into finished products in Poland, before being returned to the Community for sale. This particular situation had caused the company to believe — erroneously — that it would not be affected by the anti-dumping investigation as such and consequently it had originally not submitted a complete reply to the questionnaire. The Commission considered that, because of the special situation of the company compared to the other Polish producers, the fact of allowing it to submit additional information would not constitute discrimination against other cooperating companies. The company was therefore given a further opportunity to submit the necessary information, which was duly verified. The results of the verification are set out in recitals 13 and 15 hereto.

(10) A third company, which came forward only after the provisional duty Regulation had been published, asked to be allowed to cooperate in the proceeding. This request was rejected as the deadline for a reply to the questionnaire had long since expired.

(b) *Normal value*

(11) Two companies questioned the profit margin which had been used by the Commission in constructing normal values and proposed that a lower rate of profit be used. One company claimed that the profit margin used in constructing the normal value did not reflect the fact that profit margins in the baler twine business are rather low and tend to be strongly influenced by seasonal and climatic fluctuations. The alternative margin suggested by this company was that achieved from all company operations, including products different from those under investigation. The other company claimed that, because of its position

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as a relatively new producer of baler twine, it actually had no means of influencing the existing level of selling prices in the market, and thus of obtaining the higher margin relied upon by the Commission.

The Commission considers that the profit margin used in constructing the normal value was correctly determined in accordance with Article 2(6) of the Basic Regulation, i.e. the weighted average profit realised on domestic sales by the sole cooperating Polish exporting producer which had sufficient quantities of domestic sales of the like product in the ordinary course of trade. These claims could not, therefore, be accepted.

(12) In the course of reviewing the calculations, it was decided that an adjustment for technical characteristics made when constructing the normal value for three Polish exporting producers was not required (see recital 8 below).

(13) As far as the company WKI Isoliertechnik Spolska z.o.o. (hereinafter 'WKI') is concerned, its sales of baler twine on the Polish domestic market were, overall, made in representative quantities, i.e. they constituted 5 % or more of the quantity exported to the Community. However, the individual types of baler twine sold for export to the Community did not correspond to those sold on the domestic market. Normal value was therefore constructed, in accordance with Article 2(3) of the Basic Regulation. As for all other cooperating Polish producers, constructed normal value was calculated on the basis of the cost of production in Poland (including selling, general and administrative (SG&A) expenses) plus a reasonable amount of profit. The company's own SG&A expenses were used. The rate of profit was calculated, in accordance with Article 2(6)(a) of the Basic Regulation, using the actual rate of profit established for the sole cooperating producer located in Poland which had sufficient quantities of domestic sales of the like product in the ordinary course of trade.

(c) *Export price, comparison and dumping margin*

(14) Following the disclosure of the Commission's definitive findings, one company pointed out a clerical error in the calculation of its dumping margin. The calculation has been rechecked and the error rectified. No other comments were received in this respect from the Polish exporting producers. After revision of the calculations, the dumping margins are as follows:

— BZLP Bezalin:	17,2 %
— CZWC Chemitex:	20,3 %
— PAT Defalin SA:	16,3 %
— Industrial Chemistry Research Institute:	28,4 %
— Terplast sp z.o.o.:	23,0 %.

(15) In the case of WKI, all sales of the product concerned on the Community market were made to related customers in the Community. Export prices were therefore constructed in accordance with Article 2(9) of the Basic Regulation, on the basis of the price at which the imported products were first resold to an independent buyer within the Community. For this company, the weighted average normal value per type of the product concerned was compared with the weighted average export price, in accordance with Article 2(11) of the Basic Regulation. The weighted average dumping margin determined, expressed as a percentage of the cif import price at the Community frontier duty unpaid, is as follows:

— WKI Isoliertechnik Spolska z.o.o., Weltyn:	46 %.

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(16) In view of the fact that the import volume represented by cooperating Polish exporting producers, after the inclusion of WKI, has increased from less than 70 % to more than 90 %, the residual dumping margin for Poland has been revised. The revised residual dumping margin, now set at the level of the highest dumping margin found for a cooperating company located in Poland, and expressed as a percentage of the cif import price at the Community border, duty unpaid, is 46 %.

2. **Czech Republic**

(a) *Normal value*

(17) One of the two Czech exporting producers claimed that normal value had been constructed for several types of baler twine, for which there had been sales on the domestic market. According to the company, normal value for these types should therefore have been based on the corresponding domestic sales prices. However, this request could not be accepted since the products sold on the domestic market largely did not correspond to those sold on the export market and, in the very small number of cases where they allegedly did, such sales were not in the ordinary course of trade.

(18) The same company questioned a small adjustment for technical characteristics made by the Commission in the provisional duty Regulation when constructing the normal value. After careful consideration of the arguments presented, it was concluded that the adjustment could not in the final analysis be justified, and the calculations were corrected accordingly.

(19) Finally, the same company also claimed that the rate of profit used by the Commission in constructing the normal value was too high and did not correspond to the actual profitability of the baler twine business, which was in reality lower. In this connection it should be pointed out that the profit margin was calculated in accordance with Article 2(6) of the Basic Regulation on the basis of the profits obtained on domestic sales of the like product by the producer concerned. The claim was therefore rejected, and the provisional findings are confirmed in this respect.

(b) *Export price*

(20) No comments were received in this respect.

(c) *Comparison*

(21) Both Czech companies asked for a level of trade adjustment, arguing that while domestic sales were to end-users, export sales were to dealers. However, no reliable evidence was produced in support of this assertion. Indeed, in the case of one company it was established that export sales as well as domestic sales had been made to end-users; in the case of the other company, a significant proportion of domestic sales were found to have been made to dealers and the company failed to demonstrate that there were consistent and distinct differences in functions and prices of the seller for different levels of trade in that market. Consequently, these claims could not be accepted.

(22) One company claimed that export transactions had been compared with domestic transactions of a substantially lower volume, for which a higher selling price would therefore be normal. However, the domestic sales were found to be sufficiently representative and in the ordinary course of trade and they therefore allowed a fair comparison, which has been made in accordance with Article 2(10) of the Basic Regulation. In any event, the simple fact that the quantity sold on average per transaction on the domestic market was smaller than the average

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quantity sold per transaction on the export market is not considered sufficient for an adjustment to normal value.

(d) *Dumping margin*

(23) After revision of the calculations, the dumping margins are as follows:

— Lanex a.s.:	24,8 %
— Juta a.s.:	21,8 %

The residual dumping margin is set at 24,8 %.

3. **Hungary**

(a) *Normal value*

(24) One company objected to the method used by the Commission in determining the constructed normal value. It claimed that the SG&A expenses relating to the company's wholly owned subsidiary should not have been included in the constructed normal value due to the fact that the subsidiary was concerned with a different selling activity. However, the verification established that the vast majority of sales of baler twine on the domestic market had been made via this subsidiary. As the SG&A expenses had evidently been incurred in the sale of baler twine on the domestic market, they should consequently have been accounted for in the cost calculation of the subsidiary. These expenses have therefore to be taken into account in establishing the SG&A expenses of the parent company. Therefore, the provisional findings in this respect are confirmed.

(25) Another company claimed that the cost of production it had submitted for one specific type of baler twine for one month was higher than in other months and should therefore be disregarded. The company, however failed to provide any satisfactory explanation as to why this anomaly had occurred and the claim was therefore rejected.

(b) *Export price, comparison and dumping margin*

(26) No comments were received with regard to the determination of export price, the comparison and the dumping margin as set out in the provisional duty Regulation. The provisional findings on the dumping margins are therefore confirmed at the following rates:

— Elso Magyar Kenderfono Rt:	33,3 %
— Partium '70 Rt:	12,1 %
— Tiszai Vegyi Kombinat Rt:	26,4 %

The residual dumping margin remains at 33,3 %.

4. **Saudi Arabia**

(27) In view of the findings on the injury threshold (see recital 71 hereto) no definitive determination of dumping has been made in respect of the sole cooperating exporting producer.

E. COMMUNITY INDUSTRY

(28) In the absence of any new information, the provisional findings as stated in recital 35 of the provisional duty Regulation, are hereby confirmed.

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F. **INJURY**

1. **General**

(29) In view of the findings on the injury threshold (see recital 71 hereto) the Saudi Arabian imports have been excluded from the injury analysis.

2. **Community consumption**

(30) In determining total apparent consumption on the Community market, the total sales of the Community industry plus the sales by the remaining non-cooperating Community producers on the Community market, were added to the imports into the same market.

The volume of imports was, for the purposes of the definitive findings, determined on the basis of adjusted Eurostat figures as stated in recital 36 of the provisional duty Regulation. The Commission continued to investigate after the imposition of the provisional duty and obtained and verified new data. This resulted in a change in the apparent consumption for the period considered (i.e. the period between 1994 and the investigation period) due to adjusted import figures concerning mainly Poland. On this basis, Community consumption increased from 40 231 tonnes in 1994 to 51 788 tonnes in 1996 and remained relatively stable thereafter, reaching 51 288 tonnes in the investigation period, which represents an overall increase of 27 % over the period considered.

3. **Allegation of anti-competitive behaviour**

(31) In their comments following the disclosure, the Polish exporting producers continued to argue that the calculation of price-undercutting margins as well as the findings on other injury factors, causation and Community interest were vitiated on account of two investigations, allegedly initiated by the Commission against anti-competitive practices by the Community producers of polypropylene granulates and the Community producers of baler twine.

(32) The Polish exporting producers were unable to substantiate their allegation that a concerted practice existed for the raw material and for baler twine. Although investigation into olefins and polyolefins, such as polypropylene, was started in 1995 (Case No IV/E-2/35.765) the findings were negative and the case was closed. As for baler twine, the Commission established that no official complaint had been lodged and that none was pending.

(33) Some interested parties argued that discussions had taken place between the Community producers and the Polish exporting producers which is, *per se*, anti-competitive behaviour. It should, however, be noted that those consultations were held in the framework of the textile agreement as provided for by that agreement.

(34) In the light of the above it was concluded that the abovementioned allegations were groundless.

4. **Volume and market share of the dumped imports**

(a) *Cumulation*

(35) Since for the remaining three countries, i.e. the Czech Republic, Hungary and Poland, no new information was received, the conclusions reached in recital 37 of the provisional duty Regulation are confirmed.

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(b) *Volume, value and market share of imports from the exporting countries concerned*

(36) The volume of imports from the three remaining countries concerned increased from 5 264 tonnes in 1994 to 14 147 tonnes during the investigation period, representing an increase of 169 %.

(37) In terms of market share based on total Community consumption, the market penetration of the dumped imports from the three countries concerned rose from 13 % in 1994 to 27,6 % during the investigation period in volume terms — an increase of 111 %.

(c) *Prices of the dumped imports*

(38) The results of the comparison showed that price-undercutting margins (calculated on a weighted-average to weighted-average basis), expressed as a percentage of the Community industry's average selling prices, ranged as follows: for Poland from 4,7 to 16,3 % with an overall weighted average of 11,9 %; for the Czech Republic from 16,1 % to 19,2 % with an overall weighted average of 16,1 % and for Hungary from 16,9 % to 21,4 % with an overall weighted average of 18,2 %.

(39) A Hungarian exporting producer claimed that the Commission in its calculation of undercutting should take into consideration the price at which this company purchased polypropylene granulates in Hungary. This argument has to be rejected as in a price-undercutting analysis actual import prices to the Community from the countries concerned are compared with actual prices of the Community industry.

5. **Situation of the Community industry**

(40) As mentioned in recital 3 hereto, following the publication of the provisional duty Regulation the Commission continued to seek and verify all information deemed necessary for their definitive findings and carried out investigations at the premises of Community producers of the product concerned. This led to the findings on injury indicators for the Community industry, which varied insignificantly from those, stated in the provisional duty Regulation. For the sake of completeness the injury indicators are set out below.

(a) *Production, capacity and capacity utilisation*

(41) Production of the Community industry increased during the period considered, rising from 28 877 tonnes in 1994 to 33 557 tonnes in the investigation period. This represents an overall increase of 16 %. Production increased at a lower rate than Community consumption, which increased by 27 % during the period considered.

(42) On the basis of the methodology described in recital 43 of the provisional duty Regulation, capacity increased from 42 232 tonnes in 1994 to 46 484 tonnes during the investigation period, which represents an increase of 10 %. This increase was in line with expectations of market growth. The rate of capacity utilisation increased slightly during the period considered, rising from 68,4 % in 1994 to 72,2 % in the investigation period.

(b) *Sales volume*

(43) The volume of sales of the Community industry on the Community market increased during the period considered, from 24 840 tonnes in 1994 to 26 796 tonnes in the investigation period. This represents an overall increase of 8 %.

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(c) *Market share*

(44) The Community industry's market share decreased from 61,7 % in 1994 to 58,3 % in 1995, 57,7 % in 1996 and 52,2 % during the investigation period. The overall loss of market share was 9,5 percentage points between 1994 and the investigation period.

(d) *Stocks*

(45) Stocks significantly increased between 1994 and the investigation period by 42 %.

(e) *Average sales price and price evolution*

(46) The weighted average prices of the product concerned sold by the Community industry on the Community market fluctuated over the period considered, increasing by 11 % overall.

(f) *Profitability*

(47) The profitability of the Community industry, expressed as a percentage of net sales, decreased from a weighted average profit of 3,5 % in 1994 to 1,3 % in the investigation period. It should be noted, however, that the financial situation deteriorated particularly from 1995 onwards, falling from a profit of 13,4 % to a profit of 1,3 % in the investigation period.

(g) *Investment*

(48) Yearly investments made by the Community industry increased overall, rising from ECU 1,17 million in 1994 to ECU 1,29 million in the investigation period, with a peak in 1996 of ECU 3,26 million. This represents an overall increase of 11 % over the period considered.

(h) *Employment*

(49) Employment rose from 590 in 1994 to 722 in 1995. Since 1995 employment in the Community industry decreased to 669, i.e. by 7,3 %.

(i) *Comments on injury*

(50) Interested parties argued that the situation of the Community industry can be considered as stable or good. The decline in market share and profitability observed during the period considered could not be an indicator of injury because it was compensated for by an improvement in other injury indicators.

In this respect, it should be recalled that, in accordance with Article 3(5) of the Basic Regulation, no single injury factor can necessarily give decisive guidance as to the situation of the Community industry. In the present case, it is accepted that the following of the injury indicators as Community production, capacity utilisation, sales, sales price, investment, employment were not in a negative trend during the period under investigation.

It should be noted that the above situation has to be seen in the light of a long expansion of Community consumption. Indeed, during the period under investigation production increased at a lower rate than Community consumption. Moreover, in spite of the increase in productivity over the same period, the Community industry suffered a significant loss in market share at a time when Community consumption had increased by 27 %. Furthermore, the Community industry showed a significant deterioration in its financial results from 1995 onwards, profits falling from 13,4 % to 1,3 % of net sales in the investigation period, and suffered significant price pressure from the dumped imports throughout the period considered, with price undercutting of up to 21,4 % during the investigation period.

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(51) The exporting producers argued that employment increased during the period under investigation. However, it should also be noted that after an increase in 1996, employment levels were again on the decline in the investigation period. As regards investment, it should be noted that one Community producer suffered from a factory fire and had to replace its production machinery in 1996. This is one of the reasons for the increased investment noted during the period under investigation.

6. **Conclusion on injury**

(52) In the absence of any other arguments concerning the situation of the Community industry and in the light of the above, the conclusion that the Community industry has suffered material injury within the meaning of Article 3(1) of the Basic Regulation, as stated in recitals 36 to 51 of the provisional duty Regulation, is hereby confirmed.

G. **CAUSATION OF INJURY**

1. **Effects of the dumped imports**

(53) In view of conclusions on cumulation as set out in recital 35 hereto, the findings on the volume and market share of the dumped imports from the countries concerned were changed accordingly. It was found that the volume of dumped imports from Poland, the Czech Republic and Hungary increased substantially between 1994 and the investigation period (169 %). It should be noted that, between 1994 and 1995, the volume of the dumped imports into the Community increased by 62 % and a further significant increase occurred between 1996 and the investigation period. This had the effect that the cumulated total market share of imports from the three exporting countries concerned increased from 13,1 % in 1994 to 27,6 % in the investigation period, i.e. by 14,5 percentage points. In contrast, the Community industry's market share decreased by 9,5 percentage points between 1994 and the investigation period. Moreover, it should be noted that the Community industry lost 5,4 percentage points in market share between 1996 and 1997 alone, which is the period during which the increase in imports from the exporting countries concerned became particularly relevant.

(54) Moreover, it was found that the prices of the dumped imports undercut the Community industry's prices significantly throughout the whole period considered, including the period from 1995 onwards, thus exerting downward pressure on the sales prices of the Community industry.

The decline in profitability experienced by the Community industry between 1995 and the investigation period was therefore clearly linked to the depressed sales prices over that period, which in turn occurred at a time of significant price undercutting by the dumped imports.

(55) One exporting producer claimed that its volume of exports to the Community had been so small in comparison with Community consumption of the product concerned during the investigation period that it could hardly have caused any injury to the Community industry. This argument has to be dismissed because the export volume of an individual company is not relevant in determining the extent of the injury caused to the Community industry, injury being assessed for countries as a whole, and not in relation to single companies.

2. **Effects of other factors**

(a) *General*

(56) The cooperating exporting producers argued that any material injury suffered by the Community industry could not be attributable to imports originating in the three countries concerned.

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They argued that the Community industry's profitability between 1995 and the investigation period had fallen due to the inflated prices of raw material paid by the Community industry. Furthermore, they claimed that any decline in profitability in this period was also due to increased overheads, in particular depreciation charges and interest expenses, as a result of the substantial investment made by the Community industry.

The Commission, in recital 58 of the provisional duty Regulation, has already addressed the argument concerning the price of raw material, establishing that the Community industry could not raise its prices sufficiently due to the significant price undercutting found for imports from the exporting countries concerned.

(57) Furthermore, as regards the impact of the investments made by the Community industry on profitability, it was found that these had a marginal impact on the Community industry's costs of production during the period considered, mainly because any costs related to these new investments were compensated for by gains in productivity and by an overall reduction in other general and administrative expenses.

(b) *Other imports*

(58) No new comments were received relating to the effect of imports from other countries. Therefore, the findings and conclusions on the effect of imports from countries other than Poland, the Czech Republic and Hungary on the injurious situation of the Community industry, as stated in recital 54 of the provisional duty Regulation, are hereby confirmed.

(c) *Europe Agreements*

(59) The Hungarian exporting producers argued that in its preliminary findings the Commission had not distinguished between the growth of imports caused by dumping and the growth of imports foreseeable due to the implementation of the Europe Agreement resulting in improved access to the Community market.

The Europe Agreement, although clearly aimed at establishing preferential trade relationships with Hungary, by phasing out the duty on imports of baler twine from 9 % to 0 %, does not prevent the Community from taking action if unfair trade practices have been established. Furthermore, the levels of undercutting and dumping found for the three countries concerned by this investigation cannot be explained by the reduction of the duty previously in force. In these circumstances the phasing out of the duty is not considered sufficient to break the causal link between the dumped imports and the material injury suffered by the Community industry.

This argument has therefore to be rejected.

(d) *Effects of the dismantling of the MFA*

(60) The Polish exporting producers argued that in its preliminary findings the Commission did not take into consideration the fact that the dismantling of the MFA would result in loss of market share and account, to a certain extent, for the price suppression experienced by the Community industry.

It should be noted that during the investigated period imports from Poland were under a quota system in accordance with the textile agreement between the Community and Poland. The relevant quotas for 1995, 1996 and 1997 were 5 281, 5 545 and 5 823 tonnes respectively. Polish exporting producers did not fully use the quota allocated to them in 1995 and 1996. Only during the investigation period did the exporting producers from Poland fully use their quota. The increasing trend of the imports originating in Poland coincided with the presence of dumping.

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In this respect it was concluded that the increase in exports to the Community as such did not cause injury to the Community industry, but the fact that those exports were made, as established in the investigation, at dumped injurious prices. Furthermore, the dismantling of the quota system, provided for by the MFA, happened in 1998 which is after the period under investigation.

Thus, the dismantling of the MFA in this case appears to be irrelevant.

(e) *Effects of bad weather conditions*

(61) Some exporting producers argued that the injury suffered by the Community industry was not due to the dumped imports from the countries concerned, but to the increased costs resulting from allegedly reduced consumption, due to the adverse weather conditions.

It was found that consumption in the Community market increased during the period under investigation, when dumped imports from the countries concerned increased by 169 % despite the weather conditions. It is clear that the Community industry mainly lost market share due to the increased presence of dumped imports, rather than the adverse weather conditions.

(f) *Overcapacity of the Community industry*

(62) Some interested parties argued that the injury suffered by the Community industry was not due to the dumped imports, but to overcapacity.

It was established during the investigation that Community production was not sufficient to supply the Community baler twine market. Thus, the argument concerning the alleged overcapacity has to be rejected.

(g) *Structural changes in the baler twine market*

(63) Furthermore, the same interested parties argued that the Community industry failed to recognise the gradual market trends from fine baler twine to nets and from medium to heavy baler twine. Moreover, they argued that the shift from medium baler twine to heavy baler twine had had a direct impact on the total tonnage sold, as less heavy baler twine than medium baler twine is needed to produce the same weight of bales.

It is indeed true that during the period under investigation these shifts occurred in the Community baler twine market. Nevertheless, it was found that the Community industry, especially with the investment on replacing old machinery, kept up with these changes by increasing its presence in the heavy baler twine market. Moreover, it should be noted that consumption increased during the investigated period, thus the argument concerning the impact on the tonnage from the shift from medium baler twine to heavy baler twine has to be rejected.

3. **Conclusion on causation**

(64) In the light of the above, although it cannot be excluded that some other factors may have had a negative impact on the situation of the Community industry, this impact was not such as to break the causal link between the injury suffered by the Community industry and the dumped imports originating in the countries concerned. Therefore and in the absence of any new information, the conclusion that the combined effect of the imports of baler twine originating in Poland, the Czech Republic and Hungary, taken in isolation, have caused material injury to the Community industry is confirmed.

This conclusion is drawn in particular given the loss in market share of the Community industry, combined with a deterioration

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in profitability, which coincided with an increase in the volume and market share of the dumped imports, at prices which constantly undercut those of the Community industry.

H. COMMUNITY INTEREST

(65) It was claimed that the conclusion on the Community interest in the provisional duty Regulation was not supported by factual evidence. In particular, it was argued that the Commission had not taken into consideration the impact of anti-dumping measures on the importers, in order to support its conclusions concerning the Community interest.

It should be noted that the Commission contacted all known importers. Only limited and general replies were received. Moreover, no additional substantiated comments were submitted from the abovementioned parties after the adoption of provisional measures.

(66) In the absence of a reaction from users, it has been assumed that the impact of any expected price increase would be limited, taking into account the level of the duty proposed. It is also thought that the imposition of measures will lead to a reinstatement of effective competition that will enable the Community industry to regain the lost market share and improve its profitability.

(67) It was therefore concluded that the findings set out in recitals 66 to 67 of the provisional duty Regulation could be confirmed.

I. DEFINITIVE MEASURES

1. Definitive measures

(a) *Injury elimination level*

(68) A Hungarian exporting producer argued that its export prices had to be adjusted for the purposes of the injury elimination level assessment, to take account of the difference in raw material prices between the Hungarian and the Community industry.

However, as stated in recital 70 of the provisional duty Regulation, the injury elimination level was determined on the basis of the costs of production of the Community industry plus a reasonable amount of profit. Any considerations of differences in costs of production between the Hungarian and the Community industry are therefore irrelevant in this respect.

(69) For the purpose of establishing the level of the measures definitively to be imposed, it was considered that the prices of the dumped imports should be increased to a non-injurious level. The necessary price increase or injury margin was determined on the basis of a comparison of the weighted-average export prices for those types of baler twine used in the determination of price undercutting at a cif Community frontier level, with the actual weighted-average cost of production of the Community industry plus a profit margin of 5 %. This profit margin was considered to be the profitability likely to be achieved in the absence of injurious dumping and takes account of the fact that the product concerned is considered by the interested parties as a commodity.

(70) An injury margin was established for each of the cooperating exporting producers concerned and expressed as a percentage of the cif value of their exports to the Community.

(71) Following the disclosure of the provisional findings, comments were submitted with regard to the method used in the determination of the injury margin for the Saudi Arabian exporting producer.

It was argued that the Commission should include in its calculations one specific type of baler twine, which represented the

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majority of Saudi Arabian sales to the UK market. The Commission considered this argument and found that the inclusion of these sales by the Saudi Arabian exporting producer to the UK market would make the calculations more representative. The Commission revised its calculations accordingly, using the same methodology as explained in recital 70 of the provisional duty Regulation.

On the basis of this methodology the revised injury margin for the sole Saudi exporting producer (Synthec) was found to be at a '*de minimus*' level and for two Polish exporting producers PAT Defalin s.a. and Terplast sp z.o.o. 27 % and 6,1 % accordingly. The injury elimination level for WKI Isoliertechnik Spolska z.o.o., Weltyn is 15,7 %. The injury margins concerning the other exporting producers remain unchanged.

(72) In view of the findings set out above, it is proposed that definitive anti-dumping duties be imposed on imports of binder or baler twine originating in the Czech Republic, Hungary, and Poland. As to imports from Saudi Arabia, it is proposed, in application by analogy of Article 9(3) of the Basic Regulation, to terminate the proceeding without measures.

(73) In accordance with Article 9(4) of the Basic Regulation, for all exporting producers the proposed duty is based on the lower of the injury or the dumping margin. The same applies for the residual duties. It should be noted that for the definitive findings Polish cooperating producers now account for more than 90 % of total Polish exports. Therefore, a residual duty was calculated using the highest duty found for an individual cooperating exporting producer located in Poland.

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

(74) Based on the above conclusions on dumping, injury, causation and Community interest, it was considered what the form and level of anti-dumping measures should be to remove the trade-distorting effects of injurious dumping and to restore effective competitive conditions on the Community market.

(75) Definitive measures should take the form of *ad-valorem* duties, the rates of which have been fixed individually for cooperating companies. However, for those companies which have offered price undertakings, this form of measure is acceptable. These undertakings reflect the definitive findings of the investigation with respect to the minimum prices provided therein and have been accepted by Commission Decision 1999/215/EC [1].

(c) *Undertakings*

(76) It will be recalled from recital 72 *et seq*. of the provisional duty Regulation that undertakings had been offered by the cooperating exporting producers in Hungary, and accepted by the Commission.

(77) After the adoption of the provisional anti-dumping measures, one cooperating Czech exporting producer (Juta a.s.) offered a price undertaking to the Commission, in accordance with Article 8(1) of the Basic Regulation. The Commission considered that the undertaking offered by the exporting producer concerned was acceptable, and, after consulting the Advisory Committee, an amendment to the provisional duty Regulation was accordingly made by Commission Regulation (EC) No 2649/98 [2]. Following the Commission's disclosure of its definitive findings, the other cooperating Czech company and a Polish company also offered undertakings which were judged acceptable. The Commission's acceptance of the undertakings is now consolidated in Decision 1999/215/EC.

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[1] See page 34 of this Official Journal.
[2] OJ L 335, 10. 12. 1998, p. 41.

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2. **Collection of the provisional duties**

(78) Five other Polish producers also offered an undertaking which, in contrast to those accepted from other producers in the present proceedings, would have given the companies concerned a free choice in deciding whether to export under the undertaking or not. The Commission rejected these offers on the grounds that the companies would have had the option of exporting higher-priced products under the undertaking, while lower-priced products bore the duty. It should be noted that the minimum price which has to be respected for each product group on a quarterly weighted average basis is intended to ensure that all sales are made at a non-injurious price. Allowing some sales to be made outside the undertaking would have prevented this aim from being achieved.

(79) In the light of the seriousness of the injury suffered by the Community industry, it is considered necessary that the amounts securd by way of the provisional anti-dumping duties imposed by Regulation (EC) No 2107/98 should be definitively collected at the rate of the definitive duties imposed.

J. **TERMINATION OF THE PROCEEDING IN RESPECT OF SAUDI ARABIA**

(80) In view of the conclusions of the definitive investigation, the proceeding concerning imports originating in Saudi Arabia is terminated by Commission Decision 1999/215/EC without the imposition of measures. The amounts secured by way of a provisional anti-dumping duty should therefore be released.

HAS ADOPTED THIS REGULATION:

Article 1

1. As definitive anti-dumping duty is hereby imposed on imports of polypropylene binder or baler twine, currently classifiable within CN code ex 5607 41 00 (TARIC code 5607 41 00*10), originating in Poland, the Czech Republic and Hungary.

▼M3

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

Country	Company	Rate of duty (%)	TARIC additional code
Poland	BZLP Bezalin	19,4	8450
	PAT Defalin s.a.	16,3	8569
	Industrial Chemistry Research Institute	12,8	8578
	Terplast sp z.o.o.	6,1	8579
	WKI Isoliertechnik Spolka z.o.o.	15,7	A091
	All other companies	20,3	8900
Czech Republic	All companies	24,8	8900
Hungary	Tiszai Vegyi Kombinat Rt	26,4	8582
	All other companies	32,9	8900

▼B

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

▼B

Article 2

1. Notwithstanding Article 1, the definitive duty shall not apply to imports of polypropylene binder or baler twine produced and directly exported and invoiced to an importing company in the Community by the companies listed in paragraph 2, which have offered price undertakings accepted by the Commission.

▼M3

2. Imports made within the context of the undertakings offered and accepted shall be declared under the following TARIC additional codes:

Country	Company	TARIC additional code
Czech Republic	Juta a.s.	8596
	Lanex a.s.	8580
Hungary	Partium '70 Rt	8581
	Elso Magyar Kenderfono Rt	8583

▼B

Article 3

1. The amounts provisionally secured by Regulation (EC) No 2107/98 with respect to imports originating in the countries mentioned in Article 1 shall be collected at the duty rate definitively imposed.

2. The amounts provisionally secured by Regulation (EC) No 2107/98 with respect to imports originating in Saudi Arabia shall be released.

3. Article 2(2) of Regulation (EC) No 2107/98 shall be repealed.

Article 4

This Regulation shall enter into force on the day following 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.