COMMISSION REGULATION (EC) No 1091/2000

of 24 May 2000

imposing a provisional anti-dumping duty on imports of styrene-butadiene-styrene thermoplastic rubber originating in Taiwan

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) In August 1999 the Commission announced by a notice (hereafter '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 styrene-butadiene-styrene thermoplastic rubber (hereinafter referred to as 'SBS'), originating in Taiwan and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged by the European Chemical Industry Council (CEFIC) on behalf of Community producers representing a major proportion of the Community production of SBS. 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) At the same time the Commission initiated a parallel anti-subsidy proceeding on the same product originating in Taiwan [4].

(4) The Commission officially advised the Community producers, exporting producers and importers known to be concerned, the representatives of the exporting country and the complainant of the initiation of the proceeding. It gave the parties concerned the opportunity to make their views known in writing and to request a hearing.

(5) A number of exporting producers as well as some Community producers, importers and suppliers in the Community made their views known in writing. All parties who so requested within the time limits set in the notice of initiation were granted a hearing.

(6) The Commission sent questionnaires to all parties known to be concerned and received replies from a number of companies in the Community and Taiwan.

(7) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination of dumping and injury, and carried out investigations at the premises of the following parties:

(8) *Exporting producers in Taiwan*

— Chi Mei Corporation, Tainan

— Lee Chang Yung Chemical Industry Corporation, Taipei.

(9) *Community producers*

— Dynasol SA, Madrid, Spain (new name of Repsol Química SA)

— Enichem SpA, Milan, Italy

— Fina Chemicals, Brussels, Belgium

— Shell Chemicals Ltd, London, United Kingdom.

(10) *Unrelated importers in the Community*

— Biesterfeld France SARL, Rueil, France

— Tecnopolimeri, Milan, Italy.

(11) *Users in the Community*

— Thermoplastiques Cousin-Teissier, Tiffauges, France.

(12) The investigation of dumping covered the period from 1 July 1998 to 30 June 1999 (hereinafter referred to as the 'investigation period' or 'IP'). The examination of trends in the context of the injury analysis covered the period from 1 January 1995 up to the end of the investigation period (hereinafter referred to as the 'injury investigation period' or 'IIP').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(13) The product under consideration is styrene-butadiene-styrene thermoplastic rubbers, which is currently classifiable within CN codes ex 4002 19 00 and ex 4002 99. The TARIC codes corresponding to the mentioned CN codes are: 4002 19 00 10; 4002 99 10 10 and 4002 99 90 91. A change to the Combined Nomenclature may be adopted during the period of validity of provisional measures.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 128, 30.4.1998, p. 18.
[3] OJ C 241, 26.8.1999, p. 5.
[4] OJ C 241, 26.8.1999, p. 4.

(14) This product is used in a variety of applications such as thermodification of bitumen for road asphalt and roofing membranes, for technical and footwear compounding (mixture of different types of polymers, fillers and plasticisers), plastic modification, and adhesives.

(15) SBS is a polymer made from styrene and butadiene. It can be either dry or, with the addition of oil at the manufacturing stage, oil-extended SBS. Furthermore, SBS can come in different types which can be identified through different specifications (e.g. the ratio of styrene to butadiene and the oil content). Although the potential range of various types of SBS is important, there are no significant differences in their basic physical characteristics and no clear dividing lines exist between the various types. They are therefore considered as one single product for the purpose of this investigation.

2. **Like product**

(16) The Commission found no differences between the basic physical characteristics and uses of the SBS originating in Taiwan and imported into the Community, the SBS sold on the domestic market in Taiwan, and the SBS produced by the Community industry and sold on the Community market. It was therefore concluded that all these products are alike 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**

(a) *Sufficient domestic sales*

(17) In accordance with Article 2(2) of the basic Regulation, the Commission services first examined whether the domestic sales of SBS to independent customers by each exporting producer were sufficient for the purpose of establishing normal value, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community. This assessment revealed that all investigated exporting producers had representative sales of SBS on their domestic markets during the investigation period.

(18) For each of the types sold by the exporting producers on their domestic market and found to be directly comparable to types sold for export to the Community, it was further considered whether domestic sales were sufficient. This was the case when the volume of that type sold on the domestic market to independent customers during the investigation period represented 5 % or more of the total volume of the comparable type sold for export to the Community.

(b) *Ordinary course of trade test*

(19) The Commission subsequently examined whether the domestic sales of each company could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of domestic sales to independent customers, of each type, sold at a profit (i.e. at a price equal to or higher than the weighted average cost of production) on the domestic market during the investigation period.

(20) For each product type which was profitable on a weighted average basis and for which more than 80 % of its sales, by volume, was profitable, the normal value was calculated as the weighted average price of all domestic sales.

(21) For each type where the volume of profitable sales made on the domestic market was 80 % or less and 10 % or more, normal value was calculated as the weighted average price of the profitable domestic sales.

(22) For those types where less than 10 %, by volume, was sold at a profit on the domestic market, it was considered that the type concerned was not sold in the ordinary course of trade and therefore, normal value was constructed.

(c) *Normal value based on actual domestic price*

(23) For those types which were sold in sufficient quantities and in the ordinary course of trade in the domestic market, normal value was based on the actual prices paid or payable by independent customers in the domestic market of the exporting country, during the investigation period, as set out in Article 2(1) of the basic Regulation.

(d) *Normal value based on constructed value*

(24) For product types which were not sold in sufficient quantities or not sold in the ordinary course of trade on the domestic market, normal value had to be constructed. Constructed normal value was established for each cooperating exporting producer by adding to the manufacturing cost of the product type the actual selling, general and administrative expenses (hereinafter 'SG & A') incurred and the average profit realised on domestic sales of the like product, in the ordinary course of trade, during the investigation period.

2. **Export price**

(25) As all exports of the product under consideration by all exporting producers were made directly to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable.

3. **Comparison**

(26) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Accordingly, allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, and commissions, have been granted where applicable and justified. The comparison between normal value and export price was made on an ex-factory basis.

4. **Dumping margin**

(27) For both exporting producers, it was found that the export prices varied significantly between time periods, so that the comparison of normal values with weighted average export prices by product type would not reflect the full degree of dumping, in the sense of Article 2(11) of the basic Regulation. As foreseen in that Article, the normal weighted average values were thus compared to the prices of individual export transactions.

(28) The two exporting companies who cooperated in these investigations were responsible for less than 30 % of the SBS imported into the European Community during the period of investigation and originating in Taiwan.

(29) Given this low level of cooperation, it was considered inappropriate to establish the duty rate for non-cooperating companies at the same rate as the highest rate that has been established for the cooperating companies, i.e. 9,1 %. Rather, in order not to reward non-cooperation, it is proposed to establish a residual dumping margin at a higher level, that is, on the basis of the highest dumping margins found for the two cooperating exporting producers with regard to product types sold in representative quantity, i.e. 20 %.

(30) The provisional dumping margins expressed as a percentage of the cif import price at the Community border duty unpaid are the following:

— Lee Chang Yung Chemical Industry Corporation, Taipei: 5,3 %

— Chi Mei Corporation, Tainan: 9,1 %

— Non-cooperating exporting producers: 20 %.

D. **INJURY**

1. **Definition of Community industry**

(31) Four companies produced SBS in the Community, all of them complainants in the present case.

(32) All four companies fully cooperated in the investigation and on this basis it was established that they represent 100 % of the Community production of SBS. They, therefore, constitute the Community industry within the meaning of Article 4(1) of the basic Regulation and will, hereafter, be referred to as 'the Community industry'.

2. **Consumption in the Community**

(33) The Community consumption of SBS was taken as the combined volume of sales made by the Community industry, the import volume from Taiwan and the imports from other third countries. Since no product-specific Eurostat statistics exist, and since cooperation was very low (30 %), actual export figures could not be used in the calculation and, therefore, the Commission used the best information available concerning the quantity of imports of the product concerned from Taiwan.

Consumption	1995	1996	1997	1998	IP
Tonnes	170 543	176 902	212 301	195 140	203 450
Index	*100*	*104*	*124*	*114*	*119*

Community consumption of SBS increased in volume by 19 % between 1995 and the investigation period.

3. **Imports of SBS from Taiwan to the Community**

(a) *Volume of imports* [1]

(34) Between 1995 and the investigation period, imports originating in Taiwan developed in volume as follows:

Imports	1995	1996	1997	1998	IP
Tonnes	3 541	8 681	15 429	15 893	12 380
Index	*100*	*245*	*436*	*449*	*350*

The volume of imports from Taiwan increased significantly over the period examined. Between 1995 and 1998 they increased 4,5 times, and by 3,5 times from 1995 to the end of the investigation period.

(b) *Market share of imports*

(35) The market share in volume held by imports from Taiwan confirms the sharp increase of these imports in the Community market. The market share almost quadrupled between 1995 and 1998, and increased threefold between 1995 and the investigation period.

(36) The market share has followed the same trend as the volume of imports. Indeed, import volumes from Taiwan have increased substantially over the period 1995-98, and show a certain reduction in the investigation period.

Market share	1995	1996	1997	1998	IP
Tonnes	2,1 %	5,0 %	7,4 %	8,0 %	6,1 %
Index	*100*	*236*	*350*	*392*	*293*

(c) *Average price of imports*

(37) The average import price from Taiwan decreased 17 % between 1997 and the investigation period.

Average import price	1997	1998	IP
Ecu/kg	0,92	0,85	0,76
Index	*100*	*93*	*83*

These figures were obtained from the cooperating exporters and were not available for 1995 and 1996 because the companies just set up at that time.

[1] The information concerning the volume of imports initially came from the Community producers of the product concerned, and was cross-checked with the Community importers' figures during the on-spot investigations.

(d) *Price undercutting*

(38) For the determination of price undercutting, the Commission compared export prices from Taiwan with prices charged by the Community industry to independent customers at the same level of trade, after excluding discounts and rebates.

(39) Prices were compared for similar product types of SBS. The results of the comparison showed price undercutting margins, expressed as a percentage of the Community industry's average selling prices, of 12,3 %.

4. **Economic situation of the Community industry**

(a) *Production, capacity and capacity utilisation*

(40) Annual production of the Community industry fluctuated, going trom 242 710 tonnes in 1995 to 235 926 tonnes in the investigation period. However, from 1997 to the investigation period production fell by 8 %.

(41) As regards capacity, this increased from 271 999 tonnes in 1995 to 328 000 tonnes in 1997 or by 22 %. It remained constant from 1997 onwards.

	1995	1996	1997	1998	IP
Production (tonnes)	242 710	222 139	257 808	226 880	235 926
Index	*100*	*92*	*106*	*93*	*97*
Capacity (tonnes)	271 999	310 011	328 000	328 000	333 008
Index	*100*	*114*	*120*	*120*	*122*
Capacity utilisation	89 %	72 %	79 %	69 %	71 %
Index	*100*	*80*	*88*	*78*	*79*

(b) *Sales volume*

(42) The volume of SBS sold by the Community industry on the Community market increased by 13 % during the period considered. It reached a peak in 1997 of 183 301 tonnes, falling to 167 877 in 1998, and recovering some of the lost ground to 180 920 tonnes during the investigation period.

Sales	1995	1996	1997	1998	IP
Tonnes	159 543	160 902	183 301	167 877	180 920
Index	*100*	*101*	*115*	*105*	*113*

(c) *Average sales price and price evolution*

(43) Prices have decreased year on year throughout the whole period, from 1995 up to and including the investigation period. Overall, the average price fell by 47 % during the period.

Average EC industry price	1995	1996	1997	1998	IP
Ecu/kg	1,766	1,272	1,172	1,089	0,954
Index	*100*	*72*	*66*	*62*	*53*

(d) *Market share*

(44) The development of sales volume compared to that of Community consumption shows that the market share held by the Community in industry decreased significantly during the period considered.

(45) The negative trend was reversed during the investigation period, without recovering to the level reached in 1995 and 1996.

	1995	1996	1997	1998	IP
Market share	94 %	91 %	86 %	86 %	89 %
Index	*100*	*97*	*92*	*92*	*95*

(e) *Stocks*

(46) Compared to 1996, stocks increased by 17 % in 1997 and then fell back in 1998 and the investigation period to level 11 % below the 1996 figure.

	1996	1997	1998	IP
Stocks (tonnes)	39 741	46 417	43 494	34 453
Index	*100*	*117*	*109*	*89*

The exact figures for 1995 could not be obtained accurately because of changes of accounting systems in one company and changes of the structure of an other company.

(f) *Profitability*

(47) In 1996, the Community industry showed a profit of 14,9 %, expressed as a percentage of net sales. In 1997 profits declined to 0,5 %, then turned into a loss of 1,5 % in 1998, followed by a loss of 9,8 % in the investigation period.

	1996	1997	1998	IP
Profitability (% of sales value)	14,9 %	0,5 %	– 1,5 %	– 9,8 %
Index	*100*	*4*	*(10)*	*(66)*

The exact figures for 1995 could not be obtained accurately because of changes of accounting systems in one company and changes of the structure of another company. This decrease in profitability reflects the fact that Community industry, in an apparent effort to hold on to market share, reduced its selling prices by almost 50 % between 1995 and the investigation period as mentioned above.

(g) *Investments*

(48) Yearly investments made by the Community industry are very important in view of the fact that the SBS industry is capital intensive. Investment fell by 35% between 1998 and the investigation period, reflecting that investments for machinery equipment have been made before 1995, and no important investments have been made since then. Only during 1998 was the decreasing trend halted, when investments were significantly higher than in either 1997 or the investigation period.

Investments	1995	1996	1997	1998	IP
Thousand ecu	12 687	9 555	8 550	14 428	8 304
Index	*100*	*75*	*67*	*114*	*65*

(h) *Employment*

(49) Employment of the sector in the product concerned declined steadily by a total of 5% between 1995 and the investigation period.

	1995	1996	1997	1998	IP
Employment	575	570	563	561	547
Index	*100*	*99*	*98*	*96*	*95*

5. **Conclusion on injury**

(50) From 1995 up to the investigation period negative trends were found in investments (– 35 %), employment (– 5 %), capacity utilisation (– 16 %), sales prices (– 47 %), market share (– 5 percentage points), and profitability (net loss of 9,8 %).

(51) The figures for the investigation period show that the Community industry is now in a very critical situation: – 9,8 % profitability.

(52) The 3 % increase of production between 1995 and the investigation period should be seen in the context that in both 1996 and 1998 production declined by 6 % and 2 % respectively and during the same period consumption in the Community market of the product concerned increased by 19 %.

(53) Between 1998 and the investigation period, a number of indicators showed modest rises. Capacity, volume of sales, market share and production levels were all up on the previous year. Employment continued its downward trend. More significant were the steep decline in sales prices, which fell 12 % from their 1998 level; and profit margin, deteriorating from a 1,5 % loss in 1998 into a 9,8 % loss during the investigation period.

(54) The investigation has shown that the Community industry has suffered continuous and significant price pressure, with price undercutting averaging 12,3 % for imports from Taiwan. In parallel, the market share of these imports developed from 2,1 % to 6,1 % between 1995 and the investigation period.

(55) In the light of this analysis, in particular price undercutting, sharply declining prices, and heavy financial losses, the Commission concluded that the Community industry has suffered material injury.

E. **CAUSATION**

1. **Introduction**

(56) It must first be noted that, since anti-dumping and anti-subsidy investigations are running in parallel, and provisional countervailing measures are being imposed by Regulation (EC) No 1092/2000 [1] relating to the same imports, the effect of the dumping and subsidisation cannot be considered in isolation. Consequently the reference to 'dumped' imports in this text should be read in the context of the fact that these imports are subsidised as well as dumped.

(57) In order to reach its conclusions on whether the dumped imports caused material injury, the Commission considered the impact of all known factors on the situation of the Community industry, and examined how far they could intervene in the explanation of the injury caused to the Community Industry.

2. **Effect of the dumped imports**

(58) The Commission found that imports of SBS from Taiwan to the Community increased significantly during the period examined, from 3 541 tonnes in 1995 to 12 380 tonnes during the investigation period. At the same time, the average sales prices decreased by 17 %.

(59) The market share held by Taiwan increased from 2,1 % in 1995 to 6,1 % during the investigation period, whilst during the same period the Community industry lost 5 percentage points of market share.

(60) During the investigation period, price undercutting averaged over 12 %.

(61) The Commission considers that, in the circumstances, it is clear that the low price of imports of SBS from Taiwan caused a pressure on prices in the market, and subsequently, the critical decrease of sales prices of the Community industry.

(62) The level of cooperation of exporters of the product concerned is extremely low (approximately 30 % in volume), leading to an uncertainty concerning the exact development of the prices practised by the non-cooperating exporters.

(63) A strong causal link between the increasing volume of dumped imports from Taiwan and the deteriorating situation of the Community industry, was highlighted by the fact that the major losses suffered by the Community industry occurred for those product types of SBS mainly imported from Taiwan.

(64) The Commission considers this to be particularly relevant as imported SBS and SBS produced in the Community have been found like products, as the market for these products is highly transparent, and as they have the same physical characteristics for each type, and are furthermore offered through similar sales channels in the Community market. Increasing volumes of SBS imported from Taiwan had a significant impact on that market overall and/or the situation of the Community industry. In the transparent SBS market, low-priced dumped SBS from Taiwan had a major impact on the level of prices in the Community.

[1] See page 26 of this Official Journal.

3. **Impact of other factors**

(a) *Development of consumption*

(65) From 1995 up to the investigation period, consumption in the Community market increased by 19 % in volume terms indicating a growing SBS market. Therefore, the injurious situation suffered by the Community industry cannot be explained by the development of consumption.

(b) *Imports of SBS from other third countries*

(66) Total imports of SBS onto the Community market from countries other than Taiwan, developed as follows:

Imports (tonnes)	1995	1996	1997	1998	IP
Brazil	1 500	1 500	2 500	2 000	1 500
Index	*100*	*100*	*167*	*133*	*100*
Mexico	2 000	2 500	3 000	3 500	3 500
Index	*100*	*125*	*150*	*175*	*175*
South Korea		300	1 000	1 600	1 300
Index		*100*	*333*	*533*	*433*
USA	3 000	2 705	6 328	3 963	3 500
Index	*100*	*90*	*211*	*132*	*116*
Other countries (excluding Taiwan)	959	314	743	307	350
Index	*100*	*33*	*77*	*32*	*36*
Total (excluding Taiwan)	7 549	7 319	13 571	11 370	10 150
Index	*100*	*97*	*180*	*151*	*136*
Year to year change		– 3 %	+ 83 %	– 29 %	– 10 %

(67) The imports from other third countries increased by 36 % in terms of volume. However, a peak was reached in 1997, since when import volumes have been falling back.

(68) In market share, the evolution is shown in the following table:

(%)

Market share	1995	1996	1997	1998	PI
Brazil	0,9	0,8	1,2	1,0	0,7
Mexico	1,2	1,4	1,4	1,8	1,7
South Korea	0,0	0,2	0,5	0,8	0,6
USA	1,8	1,5	3,0	2,0	1,7
Total	3,9	3,9	6,1	4,6	4,7

(69) That imports onto the Community market from other third countries did have an impact on the economic situation of the Community industry cannot be excluded. Nevertheless, the market share of Taiwan in the investigation period (6,1 %) is well above the total amount for all other countries taken together. Taking into account that the level of these imports has decreased since 1997, they cannot break the causal link between the imports from Taiwan and the injury suffered by the Community industry.

(c) *Export activity and other activities of the Community industry*

(70) Exports to third countries between 1995 and the investigation period represented between 26 % and 30 % of total sales.

Exports	1995	1996	1997	1998	IP
Tonnes	67 213	66 535	67 831	61 926	64 047
Index	*100*	*99*	*101*	*92*	*95*

(71) Considering the proportion of exports to total sales, this relatively small reduction of export volume cannot be considered as an important cause of injury.

(d) *Prices of raw materials*

(72) The product concerned is composed, on average, of 70 % butadiene and 30 % styrene. The average purchase price for these two components for the Community industry were:

Styrene	1996	1997	1998	IP
Price in ecu/tonne	449	495	429	416
Index	*100*	*110*	*95*	*93*

Butadiene	1996	1997	1998	IP
Price in ecu/tonne	370	413	356	325
Index	*100*	*112*	*96*	*88*

(73) Although there is a price decrease for raw materials during the investigation period, the price evolution does not show a constant trend over the period 1996 to the investigation period, and any decrease in the price of raw materials has been far less than the decrease in the SBS price in the Community.

4. **Conclusion**

(74) It cannot be excluded that factors other than dumped imports from Taiwan, in particular the imports from other third countries, contributed to the difficult state of the Community industry. However, in view of the substantial increase in import volume from Taiwan, and the considerable degree of price decreases and price undercutting for these imports, the Commission concluded that the dumped imports had material negative consequences on the situation of the Community industry. Therefore, dumped imports from Taiwan, taken in isolation, have caused material injury to the Community industry.

(75) One importer claimed that in fact only one exporting producer from Taiwan had been responsible for the significant price drop and only this exporter, consequently, should be subject to measures. However, the Commission found that the cooperating exporters from Taiwan to significantly undersold and undercut European Community industry prices, although in different degrees.

F. **COMMUNITY INTEREST**

1. **Introduction**

(76) The Commission examined whether, despite the conclusions on dumping and injury caused thereby, compelling reasons existed which would lead to the conclusion that it would not be in the Community interest to adopt measures in this particular case. For this purpose, and pursuant to Article 21 of the basic Regulation, the Commission services considered the impact of measures for all parties involved in the proceedings.

2. **Community industry**

(77) The Community industry has been suffering from low-priced and dumped imports of SBS. The objective of anti-dumping measures is to re-establish fair competition in the Community market.

(78) The Community industry has been making considerable efforts to improve its productivity in recent years, in an attempt to lower its cost of production and to enhance its competitiveness in this price sensitive market. The Community industry deployed particular efforts of rationalisation during the period examined

(79) In view of the nature of the injury suffered by the Community industry, the Commission considered that, in the absence of the imposition of anti-dumping measures, the further deterioration of the situation of the Community industry would be quite probable.

(80) The investigation showed that a capacity reduction may result in closure of certain production sites, which could not operate economically in view of the low-priced imports.

(81) Furthermore, the ongoing restructuring efforts made by the Community industry show that it is not ready to abandon this segment of production, particularly as the market is rapidly growing.

3. **Importers and users**

(82) The Commission sent questionnaires to 15 known importers unrelated to the exporting producers in Taiwan, as well as to 15 users of SBS in the Community. Five importers and three users submitted replies.

(83) Some importers claimed that the imposition of anti-dumping duties would diminish competition in the Community market and would affect negatively the price and availability of SBS.

(84) However, the imposition of anti-dumping measures, does not foreclose the Community to imports, it will merely establish fair trading conditions. As to the availability of SBS, there are a number of producers operating in the Community, these producers have unused production capacity, and there are other sources of imports which, under fair trading conditions, will find the Community market more appealing again.

(85) No evidence was provided by the users concerning any potential disadvantage that anti-dumping measures could bring to their business.

(86) On the basis of the above the Commission concluded that the imposition of provisional anti-dumping measures against imports of SBS from Taiwan would not cause any significant deterioration of the situation of importers and users.

4. **Conclusion on Community Interest**

(87) On the basis of the above facts and considerations, the Commission concluded, that there were no compelling reasons not to impose measures concerning imports from Taiwan, in order to ensure competitive conditions of fair pricing and to prevent the continuation of injury in the Community industry.

G. **PROVISIONAL DUTY**

(88) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional anti-dumping measures should be taken in order to prevent further injury being caused to the Community industry by the dumped imports from Taiwan.

(89) For the purpose of determining the level of these measures, the Commission took account of the dumping margins found and of the amount of duty necessary to eliminate the injury sustained by the Community industry. It also took account of the countervailing duties imposed in the parallel anti-subsidy investigation.

(90) In accordance with Article 14(1) of the basic Regulation, no product shall be subject to both anti-dumping and countervailing duties for the purposes of dealing with one and the same situation arising from dumping or from export subsidisation. The subsidy schemes investigated in the parallel anti-subsidy proceeding did not constitute export subsidies within the meaning of Article 3(4)(a) of Council Regulation (EC) No 2026/97 [1]. As such, the subsidies affect both the export prices and the domestic prices of the exporting producers, thus not affecting the margin of dumping and the provisional anti-dumping duty should not be adjusted to reflect the amount of subsidy found.

(91) In order to determine the injury margin, the Commission considered that the prices of dumped imports should be increased to a non-injurious level. The necessary price increase was determined on the basis of an appropriate comparison of the export price, as established for the undercutting calculations, with the non-injurious price of the different types sold by the Community industry on the Community market. The non-injurious price has been obtained by adding to the sales price of the Community industry its average actual loss and by further adding a profit margin of 8 %. Thls profit margin was considered a reasonable profit for this product that would be earned in absence of unfair trade; it has been used in previous cases for this type of industry and is well below the profit margin that was being achieved by the Community industry in the mid-1990s.

(92) In accordance with Article 7(1) of the Basic Regulation, the anti-dumping duty should correspond to the dumping margin, unless the injury margin is lower. Since all dumping including the residual margin, when combined with the provisional countervailing duty of 1,0 or 1,5 %, were found to be lower than the injury margins, the provisional duties to be imposed should correspond to the dumping margins established, in conformity with Article 7(2) of the basic anti-dumping Regulation. Accordingly, this leads to the following provisional anti-dumping duty rates for the exporting producers in Taiwan:

— Chi Mei Corporation:	9,1 %
— Lee Chang Yung Chemical Industry Corporation:	5,3 %
— Non-cooperating exporting producers:	20 %.

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

(94) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission [2] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the advisory committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

H. **FINAL PROVISION**

(95) In the interests of sound administration, periods 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 purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

[1] OJ L 288, 21.10.1997, p. 1.
[2] European Commission
Trade Directorate-General
Directorate C
DM 24-8/38
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of styrene-butadiene-styrene thermoplastic rubbers, falling within CN codes ex 4002 19 00 and ex 4002 99 and originating in Taiwan. These codes may change during the period of validity of this duty as set out in recital 13 of this Regulation.

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows:

Producer	Rate of duty (%)	TARIC additional code
Chi Mei Corporation 59-1 San Chia, Yen Te, Tainan County, Taiwan Republic of China	9,1	A127
Lee Chang Yung Chemical Industry Corporation 83 Pateh Road, Section 4, Taipei, Taiwan 105, Republic of China	5,3	A128
All other Taiwanese companies	20,0	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

1. The parties referred to in Article 20(1) of Regulation (EC) No 384/96 may make their views known in writing and apply to be heard orally by the Commission within 15 days of the date of entry into force of this Regulation.

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

Article 3

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

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.

Done at Brussels, 24 May 2000.

For the Commission
Pascal LAMY
Member of the Commission