COMMISSION REGULATION (EC) No 1092/2000

of 24 May 2000

imposing a provisional countervailing 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 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1] and in particular Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) In August 1999 the Commission announced by a notice (here-in-after referred to as 'notice of initiation') published in the *Official Journal of the European Communities* [2] the initiation of an anti-subsidy proceeding with regard to imports into the Community of styrene-butadiene-styrne 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 Community production of SBS. The complaint contained evidence of subsidisation 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-dumping proceedng on the same product from Taiwan [3].

(4) Prior to the initiation of the proceeding and in accordance with Article 10(9) of Regulation (EC) No 2026/97 (hereinafter referred to as the 'basic Regulation'), the Commission notified the Government of Taiwan (hereinafter referred to as GOT) that it had received a properly documented complaint alleging that subsidised imports of SBS originating in Taiwan are causing material injury to the Community industry.

(5) 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.

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

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

(8) The Commission sought and verified all the information it deemed necessary for the prupose of a preliminary determination of subsidisation and injury, and carried out investigations at the premises of the following competent government agencies, exporting producers, Community producers, as well as unrelated importers and users in the Community:

(9) *Government of Taiwan*

— Ministry of Economic Affairs — Board of Foreign Trade (BOFT), Taipei

— Ministry of Economic Affairs — Industrial Development Bureau (IDB), Taipei

— Ministry of Finance — Department of Taxation, Taipei

— Ministry of Finance — Directorate-General of Customs, Taipei

— Development Fund of the Executive Yuan, Taipei

— Chiao Tung Bank, Taipei

— Business Bank of Taiwan, Taipei.

(10) *Exporting producers in Taiwan*

— Chi Mei Corporation, Taiwan

— Lee Chang Yung Chemical Industry Corporation, Taipei.

(11) *Community Producers*

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

— Enichem SpA, Milan, Italy

— Fina Chemicals, Brussels, Belgium

— Shell Chemicals Ltd, London, UK.

(12) *Unrelated Importers in the Community*

— Biesterfeld France SARL, Rueil, France

— Tecnopolimeri, Milan, Italy.

(13) *Users in the Community*

— Thermoplastiques Cousin-Teissier, Tiffauges, France.

[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ C 241, 26.8.1999, p. 4.
[3] OJ C 241, 26.8.1999, p. 5.

(14) The investigation of subsidisation 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

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

(16) 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.

(17) SBS is a polymer made from styrene and butadiene. It can be either dry or, with the addition of oil at the maufacturing stage, oil-extended SBS. Furthermore, SBS can come in different types which can be identified through different specifications (e. g. the ratio lof 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. They are therefore considered as one product for the purpose of this investigation.

2. Like product

(18) The Commission found no differences between the basic physical characteristics and uses of the SBS originating in Taiwan and imported into the Community, that sold on the domestic market in Taiwan, and that 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 the basic Regulation.

C. SUBSIDERS

1. Introduction

(19) On the basis of the information contained in the complaint and the replies to the Commission's questionnaires, the Commission investigated the following four schemes, which allegedly granted subsidies:

(i) Tax credits and tax exemptions;

(ii) Loans at preferential interest rates;

(iii) Accelerated depreciation;

(iv) Import duty exemption.

(20) Schemes (i) to (iii) are based on the Statute for upgrading industries which entered into force on 1 January 1991, and which was last amended on 27 January 1995. These programmes are designed to promote a general upgrading of the industry by creating an advantageous tax environment backed by appropriate financial measures. The implementation of these programmes is regulated by the enforcement rules of the Statute for upgrading industries as last amended on 21 July 1999. Finally, the practical implementation of these programmes is regulated by measures enacted by the GOT.

(21) Scheme (iv) is based on additional note 6 to Chapter 29 of the Customs import tariff and classification of import and export commodities of the Republic of China.

2. Tax credits and tax exemptions

(22) The complainant made a number of allegations concerning tax incentives granted to SBS producers in Taiwan. However, the Commission found that only the tax credits for the purchase of automation equipment and pollution control equipment scheme was used.

(23) Tax credits are available to private manufacturing and technical-service-rendering Taiwanese companies. There is no specific export requirement nor is availability dependent on certain product types or minimum production quantity or turnover. However, tax exemptions are only granted for investments exceeding 600 000 TWD in the following limited areas:

— equipment for automation of production,

— equipment for pollution control,

— technology for automation of production or for pollution control.

(a) *Practical implementation*

(24) Any eligible company, which invests in the abovementioned equipment types, may credit 10 % to 20 % of the purchase amount against the corporate income tax payable for the current year. Where the amount of income tax payable is less than the deductible amount, the benefit may be carried over during the next four years.

(25) The amount of tax credit is determined as follows:

— for the purchase of domestically manufactured automated equipment or pollution control equipment, the credit rate is 20 %,

— for the purchase of foreign-made automated or pollution control equipment, the credit rate is 10 %,

— for the purchase of technology for automation production, the permissible credit rate is 10 %,

— for the purchase of technology for pollution control, the permissible credit rate is 5 %.

(26) In order to obtain the tax credits, a company makes an application for the issuance of a tax-deduction certificate to the Industrial Development Bureau (IDB) of the Ministry of Economic Affairs within six months of the date of delivery of the equipment or the date of completion of the project. Prior to issuing the tax-deduction certificate, the local tax authorities will verify whether the equipment falls within the laid-down criteria and has been installed. Once the certificte is issued, the tax credit can be deducted in the tax declaration for the current year.

(b) *Countervailability*

(27) Under the purchase of automation equipment tax credit and the pollution control tax credit, there is a financial contribution by the GOT in the form of taxes foregone and a benefit accrues to the recipient (i.e. the producer concerned) by not having to pay a certain amount of taxes.

(28) The tax credits for domestically manufactured automated or pollution control equipment, constitute countervailable subsidies which are contingent upon the use of domestic over imported goods.

(29) Since this credit rate is only available for domestically produced equipment and not for imported equipment, it is contingent upon the use of domestic over imported goods. This tax credit is therefore a specific and therefore countervailable import substitution subsidy in the meaning of Article 3(4)(b) of the basic Regulation.

(c) *Calculation of the subsidy amount*

(30) The amount of subsidy has been calculated on the basis of the amount of taxes unpaid during the investigation period. In order to encompass the full benefit to the recipient, this amount has been adjusted by adding the average commercial interest during the investigation period (9 %). The total amount of subsidy so attributed to the investigation period should be allocated over total sales since this subsidy benefits both domestic and export sales.

(31) Both cooperating companies, Chi Mei Corporation and Lee Chang Yung Chemical Industry Corporation, availed themselves of these schemes, obtaining a benefit of 0,32 % and 0,42 % respectively.

3. **Loans at preferential interest rates**

(32) It was alleged that there are several programmes regarding preferential loans available to the companies under investigation. The Commission established that only loans for automation and loans for anti-pollution incentives were used by the producers of the product concerned.

(a) *Eligibility*

(33) These schemes are covered by Article 21(1)(3), item 3 of the Statute for upgrading industries. The GOT has established a development fund and makes use of it for providing loans in line with the government industrial policy for assisting the sound development of industries.

(b) *Practical implementation*

(34) A company has to file an application with the Chiao Tung Bank (which is partly State owned), or with certain other designated banks. The bank will verify whether the application falls within the criteria laid down. Based on the financial situation of the applicant, the Chiao Tung Bank will decide on the amount of the loan. 25 % of the Fund is financed through the Development Fund, the remaining 75 % through the commercial banks. The Chiao Tung Bank takes care of channelling the loans to the benefiting companies.

(c) *Countervailability*

(35) The Commission established that there is a financial contribution by the GOT since the executive Yuan of the Development Fund, which is responsible for drafting and amending the rules relating to these types of loans is State controlled. Furthermore, the Chiao Tung Bank, which is also State-controlled, channels the loans to the companies.

(36) In addition, a benefit is conferred on the recipient of the loan since the interest rates of these loans are generally lower than comparable commercial loans.

(37) Low-interest loans are only available to companies which purchase specific equipment under specific conditions set by the Executive Yuan of the Development Fund. These criteria are not considered to be objective since it is established at the time of granting the loan that only companies investing in certain equipment will be in a position to benefit from this programme. Since the eligibility is expressly limited to certain enterprises and not based on neutral criteria within the meaning of Article 3(2)(b) of the basic Regulation, the scheme is considered specific in accordance with Article 3(2)(a) of the basic Regulation.

(d) *Calculation of the subsidy amount*

(38) The subsidy is the difference between the amount of interest paid on the loan during the investigation period and the interest normally payable on a comparable commercial loan during the investigation period.

(39) The comparable loan should be a loan of a similar amount with a similar repayment period actually obtained by the recipient from a representative private bank operating on the domestic market. In this investigation there were no such comparable commercial loans granted to the respective companies. Therefore the Commission considered that the appropriate benchmark would be the average commercial interest rate during the investigation period (9 %).

(40) In order to encompass the full benefit to the company, for any amount as calculated above, interest was added at a rate which corresponds to the average commercial interest rate described above. The full subsidy amount so obtained was allocated over the total turnover of the company during the investigation period.

(41) Both cooperating companies, Chi Mei Corporation and Lee Chang Yung Chemical Industry Corporation availed themselves of these schemes and each obtained a benefit of 0,07 %.

4. **Accelerated depreciation**

(42) It was alleged that the GOT allows accelerated depreciation under a number of programmes. Whilst the Commission established that these programmes exist and that one company had made use of them, the amount of benefit was found to be negligible.

5. **Import duty exemption**

(43) It was alleged that the GOT granted import duty exemption for equipment and raw materials.

PURCHASES OF NEW EQUIPMENT AND ANTI-POLLUTION EQUIPMENT

(44) The purchase of some specific new manufacturing machinery and equipment which is not manufactured locally and which is used by companies for the purposes of development of new products, improvement of product quality, enhancement of productivity, saving of energy resources, promotion of waste reclamation, improvement in manufacturing processes are, following approval of the GOT, exempted from import duties.

(45) This exemption of import duty also exists for manufacturers who purchase equipment designed specifically for prevention and control of air, noise, or water pollution, vibration control, environmental monitoring or waste processing.

(a) *Eligibility*

(46) This scheme is governed by the additional notes 3 and 9 to Chapter 84; additional notes 4 and 5 to Chapter 85; and additional notes 1 and 2 to Chapter 90 of the Customs import tariff and classification of import and export commodities of the Republic of China (hereinafter referred to as the 'Customs Code').

(47) A manufacturing company which imports equipment and machinery solely for the purposes outlined in recital 44, and which are not yet manufactured locally, is exempted from paying imports duties on those imports.

(48) Furthermore, a company importing equipment as outlined in recital 45 is exempted from paying import duties.

(b) *Practical implementation*

(49) A company which intends to import the abovementioned machinery or equipment files an application which the Industrial Development Board (IDB) prior to importation. If the IDB establishes that the machinery to be purchased falls within the criteria outlined in recitals 44 and 45, it will issue a certificate. This certificate enables the company to import the specified machinery without paying import duties. Random checks are made by the customs services to ensure that the imported machinery corresponds with the IDB certificate.

(c) *Countervailability*

(50) There is a financial contribution by the GOT in the form of import duties foregone. Consequently this scheme confers a direct benefit to the recipient in the form of unpaid import duty.

(51) The import-duty exemption constitutes a specific subsidy, as, de facto, it can only be used by limited sectors of the Taiwanese industry investing in specific equipment. Eligibility for the import-duty exemption on purchases of new equipment is limited to only those companies who import machinery which is not available on the local market. With regard to anti-pollution equipment, it is a fact that only certain sectors will be in a position to use this specific equipment and therefore eligibility for this scheme is de facto limited to such sectors.

(52) The Commission considers that access to this programme is limited to certain companies and that this scheme therefore is specific within the meaning of Article 3(2)(a) of the basic Regulation. Therefore, this subsidy is coutervailable.

(d) *Calculation of the subsidy amount*

(53) The benefit to the companies represents the amount of import duties normally payable without the benefit of the exemption. The normal import-duty rate for machinery lies between 2 % and 20 %. For the purchase of imported machinery, this amount should be allocated over the normal service life of the machinery in this industry, i.e. eight years. In order to encompass the full benefit to the recipient, this amount has been adjusted by adding the average commercial interest during the investigation period (9 %). The total amount of subsidy so attributed to the investigation period was allocated over total sales since this subsidy benefits both domestic and export sales.

(54) Both cooperating companies, Chi Mei Corporation and Lee Chang Yung Chemical Industry Corporation availed themselves of this scheme and obtained a benefit of 0,05 % and 0,04 % respectively.

IMPORTS OF RAW MATERIAL

(55) The customs import tariff offers tax-exemptions for imports of main raw materials of chemicals and submaterial, and that access to the tax exemption is explicitly limited to certain enterprises, including the producers of SBS.

(a) *Eligibility*

(56) Manufacturing companies which import certain specific raw materials exhaustively described in the Customs Code and which are not yet produced or sufficiently available on the local market are exempted from paying import duties on the purchases of those raw materials.

(b) *Practical implementation*

(57) A company which intends to import the specified raw material files an application with the IDB prior to importation. If the IDB has established that the raw material to be purchased is not produced in Taiwan or is not supplied sufficiently in Taiwan, it will issue a certificate enabling the company to import the raw material without payment of import duties. The customs services randomly check that the imported raw material is as described on the certificate.

(c) *Countervailability*

(58) There is a financial contribution by the GOT in the form of import duties foregone. Consequently this scheme confers a direct benefit to the recipient in the form of unpaid import duties.

(59) The import duty exemption pursuant to the Customs Code constitutes a subsidy. Due to its nature, it can clearly be demonstrated that the programme can only be used by limited sectors of the Taiwanese industry importing specific raw materials, as those industry sectors whose raw material is produced in Taiwan will not be able to use this programme.

(60) The scheme is not a general duty suspension scheme. Utilisation of the scheme is dependant upon individual applications from each company, for each product manufactured, and for each raw material to be improved duty free. The GOT has discretion in the granting of certificates. Further, it is considered that access to this scheme is limited to certain companies. Therefore, this scheme is specific within the meaning of Article 3(2)(a) of the basic Regulation and the subsidy is countervailable.

(d) *Calculation of the subsidy amount*

(61) The benefit to the companies was calculated as the amout of import duties normally payable without the benefit of the exemption for the production of the product concerned. The normal import duty rate for raw material needed for the manufacturing of SBS lies between 1,25 % and 5,00 %.

(62) In order to encompass the full benefit to the recipient, this amount has been adjusted by adding interest. In this case, since the companies obtained subsidies equivalent to a series of grants during the investigation period, it is considered appropriate to assume that an average grant would have been received at the mid-point of the investigation period, and therefore the interest should cover a period of six months. Therefore, half the average commercial rate (4,5 %) was added. The total amount of subsidy so attributed to the investigation period was allocated over the total sales turnover for the product concerned since this subsidy benefits both domestic and export sales.

(63) Both cooperating companies, Chi Mei Corporation and Lee Chang Yung Chemical Industry Corporation availed themselves of this scheme and obtained a benefit of 0,97 % and 0,61 % respectively.

6. **Other subsidies**

(64) The Commission determined that there were no other subsidy programmes used by the exporting producers.

7. **Amount of countervailable subsidies**

(65) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed *ad valorem*, for the investigated exporting producers is as follows:

(in %)

	Chi Mei Corporation	Lee Chang Yung Chemical Industry Corporation
Tax credits	0,42	0,32
Loans at preferential interest rates	0,07	0,07
Accelerated depreciation	0,00	0,00
Import-duty exemption	1,02	0,65
Total amount of subsidy	1,51	1,04

D. **INJURY**

1. **Definition of Community industry**

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

(67) 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**

(68) 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 no 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 19 % between 1995 and the investigation period.

3. **Imports of SBS from Taiwan to the Community** [1]

(a) *Volume of imports*

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

[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 on-the-spot investigations.

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 increase 4,5 times, and by 3,5 times from 1995 to the end of the investigation period.

(b) *Market share of imports*

(70) 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.

(71) The market share has followed the same trend as the volume of imports. Indeed, import volumes from Taiwan increased substantially over the period 1995 to 1998, and show a certain reduction in the investigation period:

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

(c) *Average price of imports*

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

Average import price	1997	1998	IP
In 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 had just set up at that time.

(d) *Price undercutting*

(73) 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.

(74) 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*

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

(76) As regards capacity, this increased from 271 999 tons in 1995 to 328 000 tons 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*

(77) 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*

(78) 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*

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

(80) The negative trend was reserved 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*

(81) Compared to 1996, stocks increased by 17 % in 1997 and the 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 system in one company and changes of the structure of an other company.

(f) *Profitability*

(82) 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 an other company. Thiy 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*

(83) 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 1995 and the investigation period, reflecting that investments for machinery equipment were 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 ecus	12 687	9 555	8 550	14 428	8 304
Index	*100*	*75*	*67*	*114*	*65*

(h) *Employment*

(84) Employment in 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**

(85) 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 %), and profitability (net loss of 9,8 %).

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

(87) The 3 % increase in 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 %.

(88) 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 in the profit margin, deteriorating from a 1,5 % loss in 1998 into a 9,8 % loss during the investigation period.

(89) 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.

(90) 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**

(91) It must first be noted that, since anti-dumping and anti-subsidy investigations are running in parallel, and provisional anti-dumping measures are being imposed by Regulation (EC) No 1091/2000 [1] relating to the same imports, the effect of the dumping and subsidisation cannot be considered in isolation. Consequently the reference to 'subsidised' imports in this text should be read in the context of the fact that these imports are subsidised as well as dumped.

(92) In order to reach its conclusions on whether the subsidised imports caused material injury, the Commission considered the impact of all known factors on the situation of the Community industry.

2. **Effect of the subsidised imports**

(93) The Commission found that imports of SBS from Taiwan to the Community increased significantly during the period examined, from 3 541 tons in 1995 to 12 380 tons during the investigation period. At the same time, the value of these imports decreased from ECU 14 122 000 to ECU 9 430 000, resulting in average sales prices falling 17 %.

(94) 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 five percentage points of market share.

(95) During the investigation period, the level of underselling of imports from Taiwan was between 27 % and 37 %, and price undercutting averaged over 12 %.

(96) The Commission considers that these figures show that the price of imports of SBS from Taiwan were responsible for pressure on prices in the market, and subsequently, for the critical decrease of sales prices of the Community industry. Whilst other factors, (as outlined in recitals 101 to 109), could have contributed to the losses of the Community industry, these are not as significant as the price of imports from Taiwan.

(97) 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.

(98) A strong causal link between the increasing volume of subsidised 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.

(99) The Commission considers this to be particularly relevant as imported SBS and SBS produced in the Community are like products, offered through similar sales channels in the Community market. Increasing volumes of SBS imported from Taiwan had a significant impact on that market overall. In the transparent SBS market, low-priced subsidised SBS from Taiwan had a major impact on the level of prices in the Community.

(100) For these reasons, the Commission concluded that low-priced dumped and subsidised imports had a significant negative impact on the situation of the Community industry.

[1] See page 12 of this Official Journal.

3. **Impact of other factors**

(a) *Development of consumption*

(101) 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*

(102) Total imports of SBS on to the Community market from countries other than Taiwan, developed as follows:

Import (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 %

(103) 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.

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

(in %)

Market share	1995	1996	1997	1998	IP
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

(105) That imports on to the Community market from other third countries did have an impact on the economic situation of the Community industry cannot be discounted. 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*

(106) 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*

(107) 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*

(108) 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/t	449	495	429	416
Index	*100*	*110*	*95*	*93*

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

(109) 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 sales price of the final product in the Community. Therefore, this cannot explain the decrease of sales prices or the decrease in profitability of SBS.

4. **Conclusion on causation**

(110) It cannot be excluded that factors other than subsidised 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 they had material negative consequences on the situation of the Community industry. It was therefore concluded that the subsidised imports from Taiwan, taken in isolation, have caused material injury to the Community industry.

(111) One importer claimed that in fact only one exporter 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 both cooperating exporters from Taiwan did significantly undersell and undercut European Community industry prices, although in different degrees.

F. COMMUNITY INTEREST

1. Introduction

(112) In order to reach its final conclusions the Commission examined; whether, despite the conclusions on subsidisation and injury caused thereby, compelling reasons existed which would lead to the conclusion that it is not in the Community's interest to adopt measures in this particular case. For this purpose, and pursuant to Article 31 of the basic Regulation, the Commission services considered the impact of measures for all parties involved in the proceedings.

2. Interest of the Community industry

(113) The Community industry has been suffering from low priced imports of SBS. The objective of provisional countervailing measures is to re-establish fair competition in the Community market between the Community producers and their exporting counterparts in third countries.

(114) 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.

(115) In view of the nature of the injury suffered by the Community industry, the Commission considers that, in the absence of the imposition of countervailing measures, further deterioration of the situation of the Community industry is quite probable.

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

(117) 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. The adoption of countervailing measures would therefore be in the interest of the Community industry.

3. Impact on importers and users

(118) 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 their replies.

(119) Some importers claimed that the imposition of countervailing duties would diminish competition in the Community market and would negatively affect the price and availability of SBS.

(120) However, the imposition of provisional countervailing 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.

(121) No further evidence was provided by the users concerning any potential disadvantage that countervailing measures could bring to their business.

(122) On the basis of the above the Commission concluded that the imposition of provisional countervailing measures against imports of SBS from Taiwan would not cause any significant deterioration of the situation of the users.

4. **Conclusion on Community interest**

(123) On the basis of the above facts and considerations in particular, and having examined the arguments submitted by the Community industry, importers, and Community users of the product concerned, the Commission concluded that there were no compelling reasons not to impose, measures concerning imports from Taiwan. Rather, the Commission concluded that measures should be imposed in order to ensure competitive conditions of fair pricing and to prevent the continuation of injury to the Community industry.

G. **PROVISIONAL DUTY**

(124) In view of the conclusions reached with regard to subsidies, injury, causation and Community interest, provisional countervailing measures should be taken in order to prevent further injury being caused to the Community industry by the subsidised imports from Taiwan.

(125) For the purpose of determining the level of these measures, the Commission took account of the subsidy margins found and of the amount of duty necessary to eliminate the injury sustained by the Community industry.

(126) In accordance with Article 24(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 concerned by this proceeding did not constitute export subsidies within the meaning of Article 3(4)(a) of the basic Regulation. As such, the subsidies affect both the export prices and the domestic prices of the exporting producers, thus not affecting the margin of dumping.

(127) To that effect, the Commission considered that the prices of subsidised imports should be increased to a non-injurious level. The necessary price increase was determined on the basis of a comparison of the import price, as established for the undercutting calculations, with the non-injurious price of the different models 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 %. This profit margin is a reasonable profit for this product that would be earned in absence of unfair trade; it has been used in previous cases før this type of industry and is well below the profit margin that was being achieved by the Community industry in the mid-1990s.

(128) In accordance with Article 12(1) of the basic Regulation, the countervailing duty should correspond to the amount of subsidy, unless the injury margin is lower. Accordingly, this would lead to the following provisional countervailing duty rates for the cooperating exporting producers in Taiwan:

— Chi Mei Corporation	1,5 %
— Lee Chang Yung Chemical Industry Corporation	1,0 %

(129) 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.

(130) 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. 1,5 %. Rather, in order not to reward non-cooperation nor to disadvantage those companies which did cooperate with the Commission in this proceeding, it is proposed to set a countrywide residual duty at a level equivalent to the mid- point of the highest duty rate found (1,5 %) and the level of subsidisation alleged in the complaint (15,0 %). The mid-point figure was used because the Commission, on the basis of this and other countervailing duty investigations in Taiwan, found the 15 % figure in the complaint to be unrealistically high. The resulting provisional residual duty rate is 8,2 %. This is lower than the residual underselling margin of 44,0 %, which was established on the basis of the highest margin found for an individual subproduct type.

H. **FINAL PROVISION**

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional countervailing duty is hereby imposed on imports of styrene-butadienestyrene 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 15 of this Regulation.

2. The rate of the provisional countervailing 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, Tainan, Taiwan	1,5 %	A127
Lee Chang Yung Chemical Industry Corporation, Taipei, Taiwan	1,0 %	A128
All other Taiwanese companies	8,2 %	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. Without prejudice to Article 30 of Regulation (EC) No 2026/97, the interested parties which made themselves known within the time limit specified in the notice of initiation may make known their views 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. Pursuant to Article 31(4) of Regulation (EC) No 2026/97, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

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

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