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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2263/2000
of 9 October 2000
imposing a definitive anti-dumping duty on imports of black colorformers originating in Japan

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 thereof,

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

Whereas:

A. PROCEDURE

1. Initiation

(1) On 24 July 1999, the Commission announced by two notices (the 'notices of initiation') published in the *Official Journal of the European Communities* [2] the initiation of two anti-dumping proceedings with regard to imports into the Community of, respectively, One Dye Black 1 ('ODB-1') and One Dye Black 2 ('ODB-2') originating in Japan.

(2) The proceedings were initiated following two complaints lodged in June 1999 by CEFIC (European Chemical Industry Council) on behalf of Ciba Specialty Chemicals plc, representing the totality of the Community production of respectively ODB-1 and ODB-2, two black colorformers. The complaints contained evidence of dumping of the said products and of material injury resulting therefrom, which was considered sufficient to justify the initiation of the proceedings.

2. Investigation

(3) The Commission officially advised the complainant Community producer and its representative association in the Community, the exporters, the producers, the importers, and the users known to be concerned and the representatives of the exporting country concerned of the initiation of the proceedings. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notices of initiation.

(4) One exporting producer in the country concerned, as well as the Community producer, made their views known in writing. All parties who so requested within the set time limit and who indicated that there were particular reasons why they should be heard were granted the opportunity to be heard.

(5) The Commission sent questionnaires to parties known to be concerned and to all other parties that made themselves known within the time limits set out in the notices of initiation. Replies were received from the sole Community producer, six users of ODB-1 and/or ODB-2, a group of importers related to a Japanese exporter and two companies located in Japan.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.4.1998, p.18).
[2] OJ C 213, 24.7.1999, pp. 2 and 3.

(6) None of the exporting producers cooperated in the investigation. Therefore, and pursuant to Article 18(1) of Council Regulation (EC) No 384/96 (the 'basic Regulation'), findings were made on the basis of the facts available. In the absence of a proper reply and in accordance with Article 16(1) of the basic Regulation, no verification visits were carried out at the premises of any exporting producers or related importers.

(7) The Commission sought and verified all the information it deemed necessary for the purpose of a determination of injury and Community interest. Verification visits were carried out at the premises of the following companies:

(a) *Community producer*

— Ciba Specialty Chemicals plc, Macclesfield (United Kingdom)

(b) *Users in the Community*

— Jujo Thermal Ltd, Eura (Finland)

— Torraspapel SA, Barcelona (Spain)

— Zanders Feinpapiere AG, Bergisch Gladbach (Germany).

(8) The investigation of dumping and injury covered the period from 1 July 1998 to 30 June 1999 ('investigation period' or 'IP'). The examination of trends relevant for the determination of injury covered the period from 1 January 1996 to the end of the investigation period ('period considered').

3. **Clarification/extension of the product scope**

(9) During the preliminary investigations it was found that there were black colorformers other than ODB-1 and ODB-2 which appeared to share the same basic chemical and physical characteristics and appeared to overlap in their use (namely coating paper for use as carbonless copy paper ('carbonless paper') or paper for thermal image applications ('thermal paper')).

(10) Therefore, after consulting the Anti-Dumping Committee, the Commission deemed it necessary to publish on 1 April 2000, a notice in the *Official Journal of the European Communities* [1] relating to the product scope of the anti-dumping proceedings, to cover all black colorformers for use in paper coating applications ('black colorformers'), in order to investigate this matter further.

(11) The complainant Community producer and its representative association, the exporters, the producers, the importers, the users known to be concerned as well as the representatives of the exporting country were officially informed of the clarification/extension of the product scope of the proceedings. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in this notice.

(12) The Commission sent further questionnaires to all parties known to be concerned and to all other parties who made themselves known within the time limit set out in the notice. Replies to these questionnaires were received from the sole Community producer, one importer related to an exporter, three Japanese companies and six users of black colorformers.

(13) At this stage again, none of the Japanese exporting producers cooperated in the investigation. Consequently, pursuant to Article 18(1) of the basic Regulation, findings were made on the basis of the facts available for Japan as a whole and no verification visits were carried out at the premises of the exporting producers or related importers in accordance with Article 16(1) of the basic Regulation.

(14) The Commission further sought and verified all the information it deemed necessary for the purpose of a determination of injury and Community interest, including carrying out a verification visit at the premises of the following user in the Community:

— Papierfabrik August Koehler AG, Oberkirch (Germany).

(15) One interested party argued that the proceedings could not be extended to cover all black colorformers originating in Japan because complaints were filed only in respect of ODB-1 and ODB-2 without mentioning other colorformers although the Community industry could not have been ignorant of their existence.

[1] OJ C 94, 1.4.2000, p. 5.

(16) The definition of the product scope of an anti-dumping proceeding is not the prerogative of the complainant. Rather, the product has to be defined in accordance with the applicable law, as embodied in the practice of the Commission and the Council and confirmed by the case-law of the European Court of Justice. In the present case, complaints were lodged respectively for ODB-1 and ODB-2 originating in Japan, providing prima facie evidence of dumping and resulting injury to the Community industry. However, the information gathered in the course of the investigations, which were initiated on the basis of these complaints, showed that both proceedings should be merged and the product scope of the resulting single proceeding extended to cover all black colorformers for use in paper-coating applications. This was due to the fact that all these black colorformers appeared to share the same basic physical and chemical characteristics and overlap in their use. Furthermore, the prima facie evidence on dumping and resulting injury contained in the original complaints and relating to only two types of black colorformers was considered sufficiently representative for all black colorformers, in view of the significant share of the Community market held by these two types. In terms of due process, the rights of the parties concerned were respected since they were informed by means of a notice published in the *Official Journal of the European Communities* and had all the opportunities to make themselves known and to provide comments or request hearings.

B. **PRODUCT**

1. **General**

(17) Black colorformers constitute a specific group of fluoran colorformers which, when used to coat paper for the production of carbonless paper or thermal paper generate by their own properties a black image on the paper without having to be mixed with other colorformers.

(18) On the basis of the information submitted by all parties, different types of black colorformers exist, such as Black 15, Black 100, Black 303, Black 305, Black 500, CF 51, ETAC, Fuji Black, ODB-1, ODB-2, ODB-7, PSD 150, PSD 184, PSD 300A, S-205 and TH 107. This list of product types is not exhaustive since new product types appear on the market regularly. However, it should be noted that the main types representing over 90 % of total Community consumption in the IP are ODB-1, ODB-2, Black 15 and S-205.

(19) The investigation has shown that all black colorformers share the same basic chemical characteristics, i.e. the same basic molecule ($C_{26}H_{16}N_2O_3$). The basic molecule is the result of condensing a benzophenone keto type acid in sulphuric acid with a substituted diphenylamine. The resulting phtalide product is then washed, isolated and purified. Next to the basic molecule, different substituents are attached on the ring system (R1-R5). The colorforming reaction is conferred on the paper by the basic chemical molecule, in a reaction where, the application of heat or pressure opens up the ring in the basic molecule. This leaves a residual positive charge which is delocalised around the ring system. The energy required to allow this delocalisation is absorbed from incident visible radiation giving the compound its black colour. In this respect, the nature of the colorforming reaction is unaffected by the substituents on the ring system. These substituents only lead to a variety of minor differences and specific properties of the final paper product (background whiteness, resistance to temperature changes, image stability).

(20) Furthermore, all black colorformers share the same basic physical characteristics, in that they are a white or lightly coloured, free-flowing powder.

(21) Finally, all black colorformers have the same basic use. Black colorformers are used to coat paper in order to produce carbonless paper and/or thermal paper. In order to coat paper the black colorformers are mixed with other chemicals into a 'recipe' which is particular to each paper producer and varies according to each type of colorformer used. The information provided by cooperating users shows that there is a large interchangeability between the different types of black colorformers to produce either carbonless paper and/or thermal paper. Furthermore, users have also switched black colorformers within a short period of time to produce the same end paper product.

2. **Product under consideration**

(22) The product under consideration is black colorformers originating in Japan. As described above, all types of the product concerned share the same basic physical and chemical characteristics and overlap in their use to coat paper to produce carbonless paper and/or thermal paper. Consequently, they are to be considered as one single product for the purpose of this investigation, i.e. the product under consideration.

(23) One interested party argued that ODB-1/ODB-2 and S-205 do not share the same basic chemical characteristics. It was argued that the substituents R1 and R2 are different between ODB-1/ODB-2 and S-205 and that this alters significantly the characteristics of S-205 as compared to ODB-1/ODB-2. It should be noted that this party did not specify which characteristics were meant.

(24) The investigation has shown that S-205 and ODB-1/ODB-2 share the same basic chemical characteristics, i.e. the same basic molecule (see recital 19) and generate without having to be mixed with other colorformers a black image on the coated paper. As to specific characteristics conferred by different substituents R1 and R2, it should be noted that users have been found to produce the same paper product by using indifferently ODB-1/ODB-2 or S-205, suggesting therefore that the different characteristics conferred on the paper by the use of different types of black colorformers, if any, are generally minor. In addition, another interested party while stating that each type of black colorformer contains different additional features did not however dispute the fact that the basic chemical characteristics are the same.

(25) As to the interchangeability, the same interested party stated that ODB-1 is in general not used for the production of thermal paper.

(26) The investigation, however, revealed that at least two users in the Community use ODB-1 for the production of thermal paper. The same user also stated that in the production of carbonless paper, ODB-1, ODB-2 and S-205 are interchangeable. Furthermore, one user switched from ODB-1 to ODB-2 in 1998 and then to Black 15 in the IP for the production of carbonless paper.

(27) The same interested party also argued that thermal paper could be produced on the basis of either ODB-2 or S-205. However, the characteristics and quality of the finished product varied. It was further stated that for end customers, paper products manufactured using S-205 were not interchangeable with paper manufactured with other types of black colorformers, which, it was claimed were of lesser quality, less resistant to ageing and providing for less stable printing.

(28) Given the fact that at least six users are producing thermal paper using types of black colorformers other than S-205 and that within thermal paper production there are standard products such as fax paper, this argument cannot be accepted. Furthermore, one exporting producer and its related importer stated that if the price of ODB-2 were to increase, a change from ODB-2 to S-205 would take place and that S-205 was interchangeable with ODB-2.

(29) Two interested parties argued that a change in black colorformer would require users to make a change in the technology employed, in particular a change in the recipe or formulation. Therefore, it was argued that it was not possible to immediately switch types of black colorformer without significant technical and economic costs. It was therefore argued that each type of black colorformer was one single product.

(30) It should be noted that the notion of the same or a similar end use of the product covered by the proceeding does not necessarily entail that every user should be able to switch from the use of one type of the product in question to another without carrying out certain adaptations. In this case it is clear that the change of type of black colorformer entails a change in the recipe. It should be noted, however, that the need to change the recipe does not constitute an economic or technical deterrent to the substitution, as evidenced by past switches from one type to another by users. In any event, users themselves have indicated that the production line, production procedure and know-how do not have to be changed substantially when switching types of black colorformers.

(31) In view of the above, it is concluded that all types of black colorformers originating in Japan should be considered as one product, i.e. the product under consideration.

3. **Like product**

(32) It was found that the product under consideration and the black colorformers manufactured and sold in the Community by the Community industry (as defined at recital 61) shared the same basic chemical and physical characteristics and the same uses as those originating in Japan and exported to the Community. The same was found to be the case for the black colorformers produced and sold on the domestic market of Japan, which were alike to the product under consideration.

(33) It was argued that since the Community industry only produces two types of black colorformers, i.e. ODB-1 and ODB-2, the product under consideration should be limited only to those types produced by the Community industry.

(34) It should firstly be noted that, in anti-dumping proceedings, the product under consideration and the like product are defined by reference to its basic physical, chemical and/or technical characteristics and its basic use. Once the product under consideration is defined, i.e. the product exported from Japan, it has to be examined whether the product produced and sold domestically, and the product produced and sold by the Community industry in the Community are like products to the product under consideration. In this respect, the fact that a certain product type is not produced in the Community is irrelevant.

(35) Furthermore, a limitation of the product coverage and eventually of anti-dumping measures to only the types produced by the Community industry in the present case, would ignore the fact that the behaviour of exporters of non-Community produced types have an influence on the Community industry because their respective products are alike. Indeed, such a limitation could ultimately lead users to switch to such types of colorformers not covered by the investigation, and would thus render any anti-dumping measure inefficient. Users have quoted price differences between 5 % and 15 % as sufficient to motivate a switch of type of black colorformer.

(36) It is therefore concluded that the black colorformers produced and sold by the Community industry on the Community market and those sold on the domestic market of Japan are like products to the product under consideration within the meaning of Article 1(4) of the basic Regulation.

(37) In view of the conclusion that all black colorformers are one single product, the original proceedings concerning respectively ODB-1 and ODB-2 are merged and it is confirmed that the product scope of the resulting proceeding covers all black colorformers. A single analysis of dumping and resulting injury as well as Community interest has therefore been undertaken.

C. **DUMPING**

1. **Cooperation**

(38) The complaints identified three Japanese producers of ODB-1 and ODB-2. A fourth company was identified in the preliminary investigations as exporting S-205. None of the four companies cooperated in the investigation.

(39) Nippon Soda Co. Ltd declared, upon initiation and after extension/clarification of the product scope, that it would not reply to the questionnaires.

(40) Hodogaya Chemical Co. Ltd ('Hodogaya') completed both questionnaires for producers/exporters of ODB-1 and ODB-2 and the questionnaire for producers/exporters of black colorformers. The information submitted did however not allow individual determinations in respect of this company. Hodogaya was given disclosure of this issue and did not raise any comment.

(41) Yamamoto Chemicals Inc. ('Yamamoto') did not reply to the main part of the questionnaires intended for producers/exporters of ODB-1 and ODB-2. Replies were only received for the part of the questionnaires labelled 'questionnaire intended for related companies involved in sales of the product concerned' from a group of trading companies (the 'Mitsui group') [1]. Indeed, Yamamoto declared that all its sales on the Community market were handled by the Mitsui group and only claimed for an individual determination in respect of export prices and injury margin. In response to the questionnaire regarding black colorformers, Yamamoto only presented a supplementary submission on injury and Community interest. In view of the above, no individual determination of dumping could be reached for this company.

(42) Yamada Chemical Co. Ltd ('Yamada') and its related company Fukui Yamada Chemical Co. Ltd ('Fukui Yamada') submitted materially incomplete replies to the questionnaire for producers/exporters of black colorformers. The companies were duly informed and given an opportunity to provide further explanations in accordance with Article 18(4) of the basic Regulation. The companies were informed that, in the absence of a satisfactory response, the information submitted was insufficient to make any individual determination. Notably, the corporate structure of these companies could not be ascertained as the companies accepted disclosure of the identity of one of their shareholders only; no information was submitted on the production process and cost of production; access to the audited accounts or other financial statements was refused to the Commission on the grounds of company business secrets. On 13 and 17 July 2000, more than two months after the deadline for replying to the questionnaire, Yamada/Fukui Yamada submitted information on the costs of production of S-205 and their financial statements for three financial years. These submissions, which were made well beyond any prescribed time limit, could not change the legal assessment that these companies were not cooperating in the investigation. The submissions were equally not capable of being used as information available within the meaning of Article 18 of the basic Regulation as they were received at an advanced stage of the investigation and could not reasonably be given due consideration.

(43) No other producer exporting the product concerned to the Community made itself known within the relevant time limits.

(44) On 17 and 18 July 2000, a Japanese exporter, Nagase & Co. Ltd, made for the first time two submissions. These submissions, made well beyond any prescribed time limit, could, however, not compensate for the initial non-cooperation of the company. Neither could the cooperation of its related company in Germany, which made itself known and cooperated in the investigation as an independent importer. The submissions of Nagase & Co. Ltd could equally not be used as information available within the meaning of Article 18 of the basic Regulation as they were received at an advanced stage of the investigation and could not reasonably be given due consideration.

(45) In the absence of cooperation from the exporting producers, findings in respect of dumping were made on the basis of the facts available for Japan as a whole pursuant to Article 18(1) of the basic Regulation. According to the information available, the vast majority of imports of black colorformers originating in Japan consist of ODB-1, ODB-2 and S-205. It was therefore concluded that any finding of dumping based on these three product types would be reasonably representative for the imports of the product concerned.

2. **Normal value**

(46) In respect of ODB-1 and ODB-2, given the absence of any cooperation, the complaints were the only source of information available. The complaints estimated the normal values on the basis of domestic prices. The incomplete questionnaire responses did not contain any information either on domestic sales or on costs of production.

[1] These answers were submitted by Mitsui & Co. Ltd in Japan and its related importers (Mitsui & Co. Deutschland GmbH, Mitsui & Co. UK plc, Mitsui & Co. España SA, Mitsui & Co. Scandinavia AB (Sweden) and Mitsui & Co. France SA (the 'Mitsui group'). It was declared that Mitsui & Co. Ltd purchased from Yamamoto.

(47) In respect of S-205, the only information available was the questionnaire reply submitted by Yamada/Fukui Yamada. These domestic sales were considered representative because they accounted for more than 5 % of the sales volume to the Community. In the absence of information on the cost of production of S-205, this latter was estimated on the basis of the information submitted in the complaints in respect of ODB-1 and ODB-2. On this basis, the transactions reported by Yamada appeared profitable. Accordingly, normal value for S-205 was established as the weighted average price of all domestic sales to independent customers declared by Yamada for the IP.

3. **Export price**

(48) The export prices for the three product types were determined as follows:

3.1. *ODB-1*

(49) The export price was determined on the basis of the information provided by the Mitsui group and Eurostat.

(50) As far as information from the Mitsui group is concerned, it should be noted that all companies belonging to the group were found to be related. Pursuant to Article 2(9) of the basic Regulation, prices of sales between them were disregarded for not being reliable and use was made of the prices at which the imported ODB-1 was first resold to an independent buyer. These prices were adjusted to take into account all costs incurred between importation and resale, including taxes, customs duties, the selling, general and administrative expenses of each related company, which intervened between the importation and the resale to the independent customer and a 5 % profit on turnover. In the absence of any cooperation from an independent importer in the Community, the 5 % profit corresponds to the profit margin considered as reasonable in a previous case dealing with a chemical product ([1]).

(51) As ODB-1 fell under a specific TARIC code during the IP, the value and quantity of the remaining sales on the Community market were established by deducting the quantity and cif values of the exports declared by Mitsui & Co. Ltd (Japan) for the IP from the respective totals as established by Eurostat statistics.

3.2. *ODB-2*

(52) The export price was determined on the basis of the information provided by the Mitsui group and in the complaint.

(53) As regards prices of the ODB-2 exports declared by the Mitsui group, the methodology set out in recital 50 was followed.

(54) For the remaining sales, Eurostat data were not a reliable source of information as the TARIC code under which imports of ODB-2 are declared also includes other chemicals and ODB-2 represents only a fraction of the import volume declared under this heading. This is confirmed by the fact that the average unit cif value was considerably lower compared to the average cif export price estimated in the complaint and to the data submitted by the companies of the Mitsui group. Therefore the quantity and value of the remaining imports of ODB-2 were established by deducting the quantity and cif value of the exports declared by Mitsui & Co. Ltd (Japan) for the IP from the respective totals as estimated in the complaint since there was no other information available.

3.3. *S-205*

(55) Fukui Yamada declared that it supplied all products to Yamada, which in turn used a Japanese independent trader to export S-205 to the Community. The export prices submitted corresponded to the cif prices invoiced by this trader to a related company in the Community. These prices were consequently disregarded for not being reliable and use was made of the purchase prices submitted by the first independent buyers in the Community. These prices were adjusted to take into account all costs incurred between importation and resale and the 5 % profit margin on turnover.

([1]) See Commission Regulation (EEC) No 2172/93 of 30 July 1993 imposing provisional anti-dumping duties on imports of ethanolamine originating in the United States of America (OJ L 195, 4.8.1993, p. 5) and Council Regulation (EC) No 229/94 (OJ L 28, 2.2.1994, p. 40).

4. **Comparison**

(56) For the purpose of a fair comparison between the normal values and the export prices at an ex-works level, due allowances in the form of adjustments were made for differences that affected price comparability. These adjustments were made by reference to Article 2(10) of the basic Regulation in respect of commissions, transport, insurance, handling, loading and ancillary costs using information submitted in the complaints (for ODB-1 and ODB-2) and by Yamada (for S-205).

5. **Dumping margin**

(57) According to Article 2(11) of the basic Regulation the weighted average normal values were compared to the weighted average export prices for each of the three product types.

(58) Pursuant to Article 2(12) of the basic Regulation, a weighted average of the dumping margins per type was established and considered representative of the level of dumping on all black colorformers originating in Japan.

(59) Expressed as a percentage of the cif Community frontier value of the imports, the dumping margin so established is 49,8 %.

D. **COMMUNITY INDUSTRY**

(60) Ciba Specialty Chemicals plc was the sole Community producer of black colorformers in the Community during the IP.

(61) Therefore, this company constitutes the 'Community industry' pursuant to Article 4(1) of the basic Regulation.

E. **INJURY**

1. **Preliminary remarks**

(62) As indicated above, the examination of trends relevant for the determination of injury covered the period from 1 January 1996 to the end of the investigation period.

(63) One interested party argued that the time period chosen was unrepresentative and disproportionate and that the analysis should start in 1992, the year when the complainant started its production of black colorformers in the Community.

(64) Firstly, it should be noted that it is normal practice in anti-dumping proceedings to use a time period of between three and five years to examine the evolution of the situation of the Community industry.

(65) Secondly, it should be noted that injury as well as dumping has to be ascertained for the IP. The time period prior to the IP merely serves as an indicator of the evolution of the situation of the Community industry to determine whether the situation during the IP can be classified as injurious. In this respect, the finding of injury suffered by the Community industry during the IP would have been reached regardless of the starting point taken.

(66) In view of the above, it is not considered justified to extend the period used for the analysis of trends in the context of injury.

2. **Community consumption**

(67) In the absence of any cooperation from exporting producers and in view of the imprecise nature of Eurostat information on imports, Community consumption was determined on the basis of the volume of sales reported by the Community industry on the Community market, imports originating in Japan and in the USA as provided by cooperating users and information provided by the Community industry in the complaints.

(68) Between 1996 and 1998 consumption increased by 18 % as a result of the increase in the production of thermal paper. Between 1998 and the IP consumption decreased slightly by 1 %. This decrease is explained by the withdrawal of two Community users from paper production.

3. **Imports originating in Japan**

3.1. *Volume and market shares of the imports concerned*

(69) Given the lack of cooperation from exporting producers and the imprecise nature of Eurostat information on imports, these have been based on the information available, i.e. the information provided by cooperating users and information given by the Community industry in the complaints.

(70) On this basis, the volume of imports of the product under consideration has risen continuously from (index) 100 in 1996 to 123 in 1997, 131 in 1998 and 141 in the IP, i.e. an increase of over 40 %. This increase is also reflected in the market share of the product under consideration which went from 36,0 % in 1996, to 41,7 % in 1997, to 40,0 % in 1998 and to 43,4 % in the IP.

3.2. *Prices of the imports concerned*

(a) Evolution of the prices of the imports concerned

(71) The average unit prices of all black colorformers imported from Japan, based on the information provided by co-operating users and one importer, expressed in ECU/EURO per kg decreased by 19 % over the period considered. Prices decreased from ECU 24,9 per kg in 1996 to ECU 22,1 per kg in 1997 and then to ECU 21,6 per kg in 1998 and further decreased to ECU/EUR 20,2 per kg in the IP ([1]). Prices of various types of black colorformers have continuously decreased over the period considered albeit to a different extent: average ODB-1 prices decreased by 13 % over the period concerned whereas average ODB-2 prices decreased by 19 % and average S-205 prices by 15 % over the same period ([2]).

(b) Price undercutting

(72) The Community market for black colorformers is characterised by a reduced number of suppliers and a limited number of users. In this market, the price setting takes place via a system of price quotations whereby the users ask for prices from all suppliers and further negotiations are based on the prices offered by the suppliers.

([1]) Prices between 1996 and 1998 do not include Black 15, since no user has reported imports of that type. In any event, even if prices of Black 15 are excluded for the IP, the average price for the IP amounts to 20,28 EUR/kg.
([2]) No user has provided information on imports of Black 15 originating in Japan between 1996 and 1998, but only for the IP. Therefore no price evolution could be established for this type.

(73) Given the above, price undercutting has been examined on the basis of the price negotiations between the suppliers and the Community users. In the absence of cooperation from the Japanese exporting producers, the analyses of the price undercutting has been based on the information provided by the Community industry with reference to price negotiations representing around 50 % of the total sales of the Community industry. Where possible, this information has been verified by reference to cooperating users.

(74) As regards ODB-1, price negotiations have been examined for transactions representing around 45 % of the Community sales of ODB-1 in the IP. On that basis, it was found that the price initially offered by the Community industry was subsequently undercut by a Japanese offers in a range of 5 % to 8 % when comparing the initial offer with the final price agreed.

(75) Regarding ODB-2, price negotiations have been examined for transactions representing around 70 % of the Community sales of ODB-2 in the IP. The same pattern was observed as regards this type of black colorformer, with undercutting margins ranging between 1 % to 5 %.

(76) This situation clearly reflects not only the extent to which Community industry's sales prices have been undercut by the prices of the product under consideration within the process of price quotations, but also the depressive effect of the dumped imports on the sales prices of the Community industry, as it has been established that the low prices of the quotations necessarily influence all prices negotiated in follow-up transactions for the same customer.

(77) In conclusion, the price pressure exerted by the Japanese offers and transactions on the Community market has forced the Community industry to align its prices thereto. This caused a price depression of around 3 % to the Community industry between 1998 and the IP.

(78) One interested party argued that the methodology used to examine price undercutting was erroneous. It alleged that the initial bid in a commercial negotiation rarely represents a commercial price level, rather such bid is often set too high since the party making the bid knows that it will be reduced in the negotiation process.

(79) According to the information provided by the Community industry, the initial bids quoted by the Community industry corresponded to the price level agreed with the respective customers in the previous price negotiations. It should furthermore be noted that this price was already one which yielded an insufficient return for the Community industry. It is therefore concluded that the initial bid used to examine price undercutting is not erroneous.

4. **Situation of the Community industry**

4.1. *General considerations*

(80) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all relevant economic factors and indices having a bearing on the state of the industry including a decline of sales, profits, production, market share, productivity, return on investments, capacity utilisation, factors affecting Community prices, cash flow, inventories, employment, wages, growth, ability to raise capital or investments. It should be noted that not any one or more of these factors necessarily gives decisive guidance.

4.2. *Production, capacity, capacity utilisation and inventories*

(81) Production increased by 19 % between 1996 and 1997, coinciding with an increase in consumption. It decreased by 2 % between 1997 and 1998 and further decreased by 18 % between 1998 and the IP. This decrease coincided with a small decrease in consumption and a severe drop in sales in the same period.

(82) Production capacity should be seen in the light of the fact that the same production facilities are used to produce both black colorformers and colour colorformers. Therefore, production capacity for black colorformers has been estimated by deducting from the demonstrated capacity of that production line the production of colour colorformers.

(83) Accordingly, the capacity utilisation rate evolved from 72 % in 1996 to a peak of 79 % in 1997 before dropping to a level of 69 % in 1998 which was maintained during the IP.

(84) When analysing inventories, it should be noted that black colorformers are produced to order and that therefore inventories are goods awaiting despatch to customers. In this context, therefore, the evaluation of inventories does not appear to be relevant for the examination of the economic situation of the Community industry. However, for the sake of completeness the evolution of inventories is analysed below.

(85) The Community industry's closing inventories decreased by 58 % between 1996 and the IP, reaching a peak in 1997 and returning to the 1996 level in 1998. In relation to the total production volume of the Community industry, closing inventories have decreased by 58 % over the period considered as well, namely inventories represented 20,7 % of total production volume in 1996 and 8,7 % in the IP.

(86) The decrease in inventories in the IP was due to the introduction of an inventory reduction project. Furthermore, three factors contributed to the decrease in the inventory of finished goods: actual orders were better in line with sales forecasts; milling of products created a bottleneck in 1999 which led to a build up of inventories of semi-finished products (unpacked black colorformers) and therefore lower inventories of finished goods and finally in June 1999 the American sales organisation of the Community industry started to build up inventories in the United States of America and therefore the dispatches to the United States of America led to a reduction in Community inventories.

4.3. *Sales volume, market share and growth*

(87) Sales of the Community industry to unrelated parties in the Community decreased by 5 % over the period considered. Sales volume decreased by 2 % between 1996 and 1997. Between 1997 and 1998 sales increased by 15 %, in line with the evolution of consumption. Sales decreased sharply between 1998 and the IP, whereas consumption dropped only slightly (decrease of 1 %).

(88) The resulting market share of the Community industry decreased from 45,0 % in 1996, to 41,6 % in 1997 then slightly increased to 43,1 % in 1998 and decreased again to 36,5 % in the IP. Therefore, despite a significant growth in the consumption of black colorformers in the Community, the Community industry has not been able to benefit from it. This overall decrease in market share for the Community industry is matched by a similar increase of market share by the product under consideration. It is important to note that despite a growth in the overall consumption of black colorformers of 17 % over the period considered, the Community industry did not benefit from increased sales. To the contrary, the Community industry lost sales volume (5 % decline) and market share over the same period.

4.4. *Sales prices and factors affecting sales prices*

(89) Unit prices of the product concerned sold by the Community industry on the Community market decreased by 16 % in total over the period considered. After a decrease of 6 % between 1996 and 1997 prices decreased by a further 7 % between 1997 and 1998, followed by a further decrease of 3 % between 1998 and the IP.

(90) Regarding factors affecting sales prices, cost of production has been examined. The cost of manufacturing decreased by 8 % between 1996 and the IP, mostly due to the decrease in the price of raw materials which account for [between 60 % and 75 %] [1] of the total cost of production. The total cost of production decreased by 7 %.

[1] Actual figures indexed for reasons of confidentiality.

(91) Regarding more specifically wages, according to the data available for Ciba Specialty Chemicals plc, wages rose by 26 % over the period concerned. Taking into account the 15 % rise in the estimated employment in black colorformers, the raise in wages amounted to 10 % over the period concerned, i.e. a 2,8 % yearly average increase in wages and salaries. It should be noted, however, that the cost of labour accounts for a small percentage of the total cost of production. The moderate increase in wages, however, coincided with increased efficiencies of the Community industry in terms of a reduction in the time necessary to complete a production cycle ('batch time') and increased yields per batch.

(92) It is therefore concluded that over the period considered, the prices of the Community industry decreased well over the decrease in the cost (– 7 %). This severe price depression (– 16 %) led to important losses to the Community industry as described below.

4.5. *Profitability, cash flow and return on investments*

(93) Profitability of the Community industry in terms of return on net sales in the Community market before any extraordinary items and taxes went from around break even in 1996, to [between – 5 % to – 7 %] in 1997, to [between – 7 % to – 9 %] in 1998 and to [between – 8 % to 10 %] in the IP (*).

(94) Between 1996 and 1997 the profitability of the Community industry deteriorated going from around break even to a negative result. This coincided with a decrease in the sales volume of the Community industry (– 2 %) and a sharp decrease in the sales prices (– 7 %), whereas the costs of the Community industry remained stable. Between 1997 and 1998 the Community industry tried to regain volume of sales and market share by lowering its prices (– 7 %) but, since its costs only decreased by 6 %, this decrease in the prices resulted in higher losses. Between 1998 and the IP the losses increased since the sales prices decreased by 3 %, whereas the costs only decreased by 1 %.

(95) One interested party argued that the Community industry has not suffered material injury since the total colorformer sector was profitable throughout the period and even after the IP.

(96) It should be noted that the product scope in the present proceeding is black colorformers and not colorformers in general. The investigation has showed that the Community industry has suffered significant losses on the sales of black colorformer in the Community in the IP. Therefore, the fact that the Community industry is profitable on other products, i.e. colour colorformers is not an indication that it is not suffering injury in the context of the present proceeding.

(97) As regards cash flow, this indicator could only be established for Ciba Specialty Chemicals Inc., the Swiss parent company of Ciba Specialty Chemicals plc, and that only as from 1997 onwards, the year in which the parent company was founded. However, it should be noted that black colorformers only represent around 0,4 % of the total turnover of the parent company. In view of the above, it is considered that this factor would not provide guidance as to the specific situation of the Community industry of black colorformers.

(98) As regards return on investments, this indicator was only available at the level of Ciba Specialty Chemicals plc, whereas black colorformers constitute only around 3,5 % of total turnover of Ciba Specialty Chemicals plc. In view of the above, it is considered that this factor would therefore not provide guidance as to the specific situation of the Community industry of black colorformers.

4.6. *Investments and ability to raise capital*

(99) Investments made throughout the period considered dropped from 100 in 1996 to 71 in the IP. They represented around 9 % of the Community industry's turnover throughout the period considered.

(*) Actual data is given in a range for reasons of confidentiality.

(100) As regards the ability to raise capital, this indicator was only available for Ciba Specialty Chemicals plc. However, as stated above, since black colorformers only constitute around 3,5 % of the total turnover of Ciba Specialty Chemicals plc, it is considered that this factor would therefore not provide guidance as to the specific situation of the Community industry of black colorformers.

4.7. *Employment and Productivity*

(101) The Community industry's employment related to the production of black colorformers rose by 15 %, from 48 persons employed in 1996 to 55 employed in the IP. It should be noted that since employees work both in the production of black colorformer and colour colorformers, employment has been allocated on the basis of the proportion that the production volume of black colorformers represents on the total production volume of all colorformers.

(102) Productivity of the Community industry, measured as output per person employed, decreased by 14 % over the period considered. The figures on productivity largely reflect the allocations made to determine the employment.

5. **Conclusion on injury**

(103) Between 1996 and the IP, the volume of imports of black colorformers originating in Japan increased substantially (41 %) at prices which continuously decreased over the same period (– 19 %) and which significantly depressed the Community industry's prices by undercutting the prices quoted by the Community industry in price negotiations.

(104) Over the same period the situation of the Community industry deteriorated in terms of production (– 1 %), sales (– 5 %) and market share (–8,5 % percentage points). Despite an important decrease in its overall costs (– 7 %), the sharp price depression (– 16 %) led to severe losses. During the period considered, despite an increase in Community consumption, i.e. by 17 %, the Community industry's market share decreased sharply, from 45,0 % to 36,5 %.

(105) In particular, between 1996 and 1997 the Community industry's market share decreased from 45,0 % to 41,6 %. It tried to remedy this situation by reducing its sales prices in 1998 in order to maintain market share, i.e. the Community industry decreased its prices by 6 % and it increased its market share (from 41,6 % in 1997 to 43,1 % in 1998) but at the expense of profitability, which decreased from [between – 5 % and – 7 %] to [between – 7 % and – 9 %] (*). Between 1998 and the IP the Community industry could only decrease its prices by (– 3 %) with the result that the Community industry lost sales volume (– 18 %) and market share which dropped to 36,5 %. Since the prices of the Community industry decreased more than its costs, the Community industry suffered increased losses.

(106) In view of the above, it is concluded that in the IP the Community industry suffered material injury within the meaning of Article 3(1) of the basic Regulation in the form of decreased production and sales, loss of market share and decreasing prices leading to severe losses.

F. **CAUSATION**

1. **Preliminary remarks**

(107) In accordance with Article 3 of the basic Regulation, it was examined whether the volume and prices of the dumped imports concerned were responsible for an impact on the Community industry to a degree which enables it to be classified as material within the meaning of Article 3(6) of the basic Regulation. In carrying out this investigation, care was taken to ensure that known factors other than the dumped imports which at the same time are injuring the Community industry were not attributed to the dumped imports concerned.

(*) Actual data is given in a range for reasons of confidentiality.

2. **Effects of the dumped imports**

(108) During the period considered, dumped imports of the product under consideration increased significantly in terms of volume and market share. This coincided with the deterioration of the situation of the Community industry which lost sales volume and market share. In this respect, the market share lost by the Community industry has been basically gained by the imports of the product under consideration.

(109) It should be noted that in the market for black colorformers, competition is in the form of prices. This is due to the fact that there are few market players and that the different product types are highly interchangeable.

(110) In this respect the investigation showed that, the Community industry was forced to decrease its sales prices in order to maintain its market share. This is evidenced by the findings that the prices of the product under consideration were undercutting the Community industry's prices. Between 1996 and 1997 the Community industry's prices decreased by 7 % while prices of the product under consideration decreased by 10 %. This coincided with a loss of market share by the Community industry and an increase in market share of 5,7 percentage points by the product under consideration. In an effort to regain market share, the Community industry decreased its prices by a further 6 % between 1997 and 1998 with the resulting increase in market share and a slight loss of market share by the product under consideration. However, in view of the losses incurred, between 1998 and the IP the Community industry reduced its prices only by a further 3 % whereas Japanese exporters decreased their prices by 5 %. Thus, the Community industry lost market share while the product under consideration gained significant market share. The combined effect of depressed prices and a decrease in sales volumes and thus a decrease in the production volume negatively affected the profitability of the Community industry.

3. **Impact of other factors**

3.1. *Other imports*

(111) Imports from other third countries amounted to slightly over 20 % of Community consumption in the IP.

(112) Besides Japan, exports of black colorformers to the Community basically take place from the United States of America. There is one indigenous American producer of black colorformers and two other producers which are related to Japanese exporting producers.

(113) Imports of black colorformers originating in the United States of America, based on the information provided by cooperating users and estimates by the Community industry, went from an index 100 in 1996 to 93 in 1997. In 1998 imports from the United States of America increased to 105 and further increased to 124 in the IP. The market share of these imports went from 19,0 % in 1996, to 16,7 % in 1997, to 16,9 % in 1998 and to 20,1 % in the IP.

(114) As far as prices are concerned, it should be noted that there is no information available on the 1996 price level, but from 1997 onwards the price level has decreased substantially from 100 in 1997 to 82 in 1998 and to 76 in the IP.

(115) It should be noted that the price level of import of black colorformers originating in the United States of America are, with the exception of 1997, below those of the imports originating in Japan.

(116) In view of the low price level of the imports originating in the United States of America, it has been found that the imports of black colorformers originating in the United States of America may have contributed to the injury suffered by the Community industry in the IP. However, despite the low level of the prices of American imports, the market share of the imports originating in the United States of America has remained stable and can therefore not be the cause of the loss of market share by the Community industry.

3.2. *Evolution of the cost of production of the Community industry*

(117) It has been examined whether the deterioration of the situation of the Community industry, namely in terms of profitability, was materially caused by an increase in its cost of production.

(118) As already explained above, the cost of production of the Community industry decreased (– 7 %) over the period considered, mostly due to a decrease in the cost of raw materials.

(119) It is therefore concluded that the deterioration of the situation of the Community industry over the period considered cannot be due to any increase in its cost of production.

4. **Conclusion on causation**

(120) The above findings clearly indicate the existence of a causal link between the dumped imports and the material injury found. This is proven, in particular, by the loss of market share of the Community industry, which was almost entirely gained by Japanese imports, combined with the deterioration of the prices and the profitability of the Community industry. This coincided with the increase in the volume of imports originating in Japan at prices which undercut and significantly depressed the Community industry's prices.

(121) Any other factors, in particular imports originating in the United States of America, may have contributed to the injurious situation of the Community industry, but they are not such as to break the link between the dumped imports from Japan and the injury suffered by the Community industry, in particular in view of the market share gained by Japanese low-priced imports.

(122) It is therefore concluded that the dumped imports originating in Japan have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

G. **COMMUNITY INTEREST**

1. **Preliminary remarks**

(123) According to Article 21 of the basic Regulation and on the basis of all the evidence submitted, it was examined whether, despite the injurious effect of the dumped imports, compelling reasons existed against the imposition of anti-dumping measures in this case. This determination was based on an appreciation of all the various interests taken as a whole.

(124) In order to determine whether or not the imposition of measures was against the Community interest, information was requested from all interested parties, including the domestic industry, importers/traders and users.

2. **Interest of the Community industry**

2.1. *Viability of the Community industry*

(125) The investigation has shown that the Community industry's global profitability for all colorformers produced in the same production facilities where black colorformers are produced was positive during the period considered. The negative situation of the Community industry's black colorformer business is therefore attributable to the unfair trading practices by Japanese exporting producers which have had an injurious effect on the Community industry.

(126) In line with the development observed during the period considered, the Community market for black colorformers is expected to continue to grow in the next years. Although the production of carbonless paper will probably decline, this decline will be largely compensated by the increase in thermal paper production. In this respect, the investments made by the Community industry throughout the period and its constant efforts in R & D (increase of 44 % over the period considered) shows that the Community industry is not ready to abandon this market and that if fair market conditions are restored, the Community industry could benefit from the expected growth in this market.

(127) Finally, it should be noted that the Community industry has considerably increased efficiency. Significant efforts have been made by the Community industry in the form of reductions in batch time and increased yields per batch, which have contributed to a reduction of costs.

2.2. *Likely effects of the imposition of measures*

(128) As to the likely effects of the imposition of an anti-dumping measure on the Community industry, these can generally result in an increase in the volumes sold on the Community market by the Community industry and/or they can result in an increase in the level of the prices this industry can obtain.

(129) As far as an increase in the prices in the Community market is concerned, it is likely that the imposition of an anti-dumping measures on the product under consideration will have the effect of increasing its prices and consequently the price level in the Community.

(130) Since the most severe injurious factor has been the price depression resulting in financial losses, it is expected that the Community industry will be likely to benefit from the measures in the form of an increase in its prices.

(131) The imposition of measures is also likely to result in a moderate increase in the sales volume. In this respect, the increase in its volume of sales in the Community and thus its production, will allow the Community industry to decrease its unit costs, thus improving profitability.

(132) It is therefore concluded that the imposition of anti-dumping measures will allow the Community industry to increase both its prices and its volume of sales, thus improving its financial situation.

2.3. *Likely effects of the non-imposition of measures on the Community industry*

(133) Should measures not be imposed, it is likely that the negative trends as regards prices, profitability and market share will continue, if not aggravated further.

(134) In the absence of an improvement in the price level in the Community, it is not expected that the Community industry would regain profitability through rationalisation, given the efforts already undertaken in increasing efficiency. Furthermore the current level of financial losses does not allow this industry to remain operational. It is therefore expected that, should the price level remain stable or continue to decrease, the Community industry could ultimately be forced to withdraw from this market, with the consequent loss of investments, know-how and employment and with the result that the number of suppliers in the Community market would be substantially reduced, with negative effects for competition in the Community. Should the Community industry withdraw from this market, it is unlikely that it will reenter it. Firstly, the Community industry would have lost credibility with its customers, with whom it closely cooperates in R & D. Secondly, between two to three years are required before a production plant is commissioned and an additional year is required before the required stability per batch is attained. Finally, skilled labour as well as R & D acquired through the years would be lost.

2.4. *Conclusion*

(135) In view of the above, it is concluded that the imposition of an anti-dumping measure would benefit the Community industry in terms of an increase in its prices and a certain increase in the sales and production volume and therefore an improved financial situation. In turn, the non-imposition of measures could result in the medium term in the Community industry's withdrawal from this market.

3. **Interest of importers/traders**

(136) Three out of the four importers/traders concerned, representing around 60 % of the total import volume of the product under consideration, did not respond to the Commission's questionnaire but submitted general information.

(137) One of them argued that the imposition of an anti-dumping duty would result in the possible elimination of the product under consideration from the Community market without, however, substantiating this claim nor any effects on this company's operations.

(138) It should be noted that, although the Community industry has significant spare capacity, this capacity is not sufficient to supply the entirety of the demand in the Community market. Therefore imports are necessary to fulfil the demand. In view of the above, it is not expected that the imposition of measures will result in the total exclusion of the product under consideration from the Community market, but rather that those imports will be made at fair prices.

(139) On the basis of the information provided by the sole cooperating importer/trader, it has been found that importers/traders generally trade also in products other than black colorformer, the latter being of a proportion [between 8 % and 12 %] (*). Since the main effect of the anti-dumping measures is expected to be principally a price increase and only a certain increase in the sales volume by the Community industry, it is unlikely that importers/traders will be negatively affected in the form of a significant reduction in the volume of sales.

(140) In conclusion, the imposition of an anti-dumping measure on imports of black colorformers originating in Japan is unlikely to significantly affect the economic situation of importers/traders.

4. **Interest of users**

4.1. *Preliminary remarks on the structure of the user industry*

(141) Black colorformers are used as coating in the production of carbonless paper and thermal paper. The black colorformers are mixed with other chemicals in a 'recipe' and this is then applied on the base paper.

(142) According to the information available there are 15 users in the Community which are producers of either carbonless paper and/or thermal paper, out of which eight cooperated in the proceeding. Two of these users produce both types of paper, three are active only in carbonless paper and three are active only in thermal paper. In terms of company size, the coating paper industry is not homogeneous and is composed of large companies and medium-size companies. Furthermore, there are companies that are active only in the coated paper business as well as companies that produce other types of paper (non-coated). Finally, it should be noted that most companies produce the base paper themselves, while one cooperating user purchases the base paper which it then coats.

(143) Around 40 % of total Community consumption of black colorformers is used as coating for the production of carbonless paper. Community production of this type of paper amounted to around 1 000 000 tonnes in 1998.

(144) Five cooperating users are active in this sector. The most important producer represents over 30 % of Community production. The second and third biggest company together have a share of about 25 % of Community production and there are two more companies which represent around 10 % of Community production each.

(145) Import penetration of carbonless paper is very low (between 1 % and 2 %). This sector is reported to be declining due to the introduction of new technologies such as electronic mail and ink-jet and laser printers, which minimise the use of multi-copy forms, which is the most important application of carbonless paper.

(146) Around 60 % of total Community consumption of black colorformers is used as coating for the production of thermal paper. Community production of this type of paper amounted to around 200 000 in the IP.

(147) There are five cooperating users who are active in this sector. The most important holds [between 35 % and 45 %] (*). The second and third biggest companies are about one third of the size of the biggest and the rest of the market is divided between about five companies.

(148) Import penetration is very low, less than 7 %. This sector has been reported to be growing by 4 % to 5 % per annum due to the use of thermal paper in ticketing and labelling applications.

4.2. *Data gathered from cooperating parties*

(149) The cooperating companies represent a turnover of around EUR 2 000 million out of which coated papers accounted for half. Total employment of the cooperating users was around 10 000 in the IP.

(*) Actual data is given in a range for reasons of confidentiality.

(150) As regards profitability, the weighted average profitability for thermal paper producers in the IP amounted to [between 5 % and 7 %] (*), whereas the weighted average profitability for carbonless paper producers in the IP amounted to [between 0,5 % and 2 %] in the IP.

(151) In the IP, cooperating users reported purchases from importers/traders representing 77 % of the total volume of imports of the product under consideration. They have also purchased around 72 % of black colorformers produced by the Community industry.

(152) The investigation has shown that black colorformers represent on average 1,1 % of the total cost of production of carbonless paper producers. For thermal paper producers, black colorformers represent on average 7,9 % of the total cost of production. For the total user industry the weighted average amounts to 4,2 %.

4.3. *Impact in terms of costs of the anti-dumping measures*

(153) Given the above, the imposition of an anti-dumping duty at the level considered would result in a hypothetical maximum increase in the cost of production of carbonless paper producers of 0,21 %. For thermal paper producers the maximum hypothetical increase in the cost of production would amount to 1,49 %.

(154) However, this is a hypothetical maximum impact of the measure if the whole impact were to be passed on to the user. It does not take into account that users have a substantial buying power, that alternative sources of supply exist (United States of America) which are not subject to the measures and that although a certain price increase is expected, it is unlikely that this will be of the same amount as the duty proposed, since the Community industry will also benefit from a moderate increase in its volume of sales.

4.4. *User arguments on the imposition of anti-dumping measures*

a) Impossibility of tolerating increases in the cost of black colorformers

(155) Given the fierce competition amongst paper producers and the actual low level of prices for their final product, some users claimed that the prices of black colorformers could not be increased.

(156) The investigation showed that black colorformers are but a small part of the total cost of production of paper producers, the most important factor affecting cost of paper producers being paper pulp prices which represents 50 % or more of the production costs for coated paper and whose prices are very volatile. The monthly evolution of paper pulp prices between 1996 and the end of the IP shows that paper pulp prices can fluctuate up to 28 % on a monthly basis.

(157) Given the fact that pulp can represent 50 % or more of the production costs for coated paper, any fluctuation in the price of pulp has a profound impact on the overall cost of production for both carbonless paper and thermal paper.

(158) In this respect, information provided by cooperating users shows that the fluctuation in the prices of the main raw material are reflected on the prices of the coated paper. The information available showed that price fluctuations of even 12 % could be passed on to customers to a large extent.

(159) It is therefore concluded that moderate price increases which could result from the imposition of the anti-dumping measures proposed are not likely to endanger the economic activities of users concerned.

b) Limitation of the sources of supply

(160) One user has claimed that the imposition of anti-dumping duties would limit sources of supply available to Community users thus eliminating or reducing competition in the Community.

(*) Actual data is given in a range for reasons of confidentiality.

(161) The investigation has shown that the most likely effect of the imposition of anti-dumping measures would be a moderate rise in the price level of black colorformers in the Community, rather than the total exclusion of the Japanese imports from the Community market, notably in view of the fact that the Community industry would not be able to supply the entirety of the Community market. Furthermore, the USA is an alternative source of supply to the Community industry and to Japan.

(162) It is therefore concluded that the imposition of anti-dumping measures is not likely to result in the reduction of the sources of supply available to Community users. On the contrary, the non-imposition of anti-dumping measures could lead in the medium term to the disappearance of the sole Community producer of black colorformers, namely in view of the significant losses incurred as a result of the dumping of the product under consideration, which would reduce sources of supply in the Community.

c) Loss of competitiveness for exports outside the Community

(163) One user has claimed that imposition of anti-dumping duties would jeopardise its exports outside the Community given the increase in its costs compared to its competitors located outside the Community.

(164) Firstly, it has been found that due to the fierce competition on the Community market of black colorformers, the price in the Community is substantially lower than that of the other main paper-producing markets, i.e. the United States of America and Japan. As a result carbonless and thermal paper producers outside the Community source black colorformers at prices which can be even 20 % higher than those paid by Community users. Secondly, it should be noted that anti-dumping duties are either not due when the product under consideration is imported under the inward-processing regime or are reimbursed when it is re-exported as such or incorporated into another product.

(165) In view of the above, it is not expected that the imposition of an anti-dumping duty will result in a loss of competitiveness of Community users on export markets.

5. **Consequences for competition in the Community market**

(166) According to Article 21(1) of the basic Regulation, the need to eliminate the trade-distorting effects of injurious dumping and restore effective competition in the Community has been given special consideration.

(167) As regards the structure of the world market for black colorformers, it has been found that there are the three main producing countries worldwide: the European Community, where Ciba is the sole producer; Japan, where four known producers manufacture black colorformers; and the United States of America, where three known producers manufacture the product concerned (two of them are subsidiaries of the main two Japanese exporting producers and one is an independent producer).

(168) In the Community, Ciba produces both black and colour colorformers. Its market share amounted to 36,5 % in the IP, whereas that of the imports of the product under consideration amounted to 43,4 % and that of imports originating in the United States of America amounted to 20,1 %. It should be noted that an estimated 15 % of the imports originating in the United States of America are produced by the American subsidiaries of the main two Japanese exporting producers. The Community, which is the world's largest market for black colorformers (38 % of the total estimated world consumption of black colorformers) is largely open to import penetration (around 64 % of total consumption).

(169) In Japan, two producers, who are the main exporters to the Community market, hold over 70 % of production capacity. In Japan, the market for black colorformers is largely closed to Community exports since carbonless copy paper is not produced with black colorformers but with colour colorformers and ODB-2 cannot be exported by the Community industry due to patent restrictions. As a result there are no imports of black colorformers in Japan.

(170) In the United States of America, the subsidiaries of the two main Japanese producers have the largest production capacity (over 50 %). The American market is characterised by its high level of customs duty applicable to imports of black colorformers (11,6 %). Furthermore, in the United States of America through the acquisition of a local producer, the subsidiary of a Japanese exporter is bound by a long-term supply contract with the biggest American user which represents between 40 % and 50 % of the market for black colorformers in the United States of America. As a result import penetration in the United States of America amounts to only 17 %.

(171) In conclusion, the Community is the market with the highest import penetration and where prices are the lowest in the world. According to the information supplied by interested parties prices in the United States of America and Japan were reported to be over 20 % higher than in the Community in the IP.

(172) Regarding the competition situation in the Community market, the investigation has shown that during the period considered the Community industry lost significant market share and suffered increasing losses as a result of the dumped imports of the product under consideration. This loss of market share was basically gained by the product under consideration through unfair trade practices. This is all the more serious in view of the share of the Community market held by Japanese exporting producers whether through their exports originating in Japan or those originating in the United States of America.

(173) The adoption of anti-dumping measures is likely to ensure that the Community industry remains in this market, thus contributing to fostering competition. On the other hand, it is not expected that the imposition of anti-dumping measures forecloses the Community market to imports of the product under consideration, in view of the limited capacity of the Community industry and the purchasing power of users.

(174) It is not unlikely that, without anti-dumping measures, the Community industry would withdraw from this market thus reducing competition in the Community. As mentioned above at recital 134, should this withdrawal take place, it is unlikely that the Community industry would re-enter this market, in view of the high entry costs in this market.

(175) It is therefore concluded that the imposition of anti-dumping measures is likely to restore effective competition by establishing a level playing flied and ensuring equal competitive opportunities for all economic operators.

6. **Conclusion on Community interest**

(176) As regards the Community industry, it was found that the imposition of an anti-dumping duty would have a beneficial effect on its situation in the form of an expected increase in its prices and restored profitability. The non-imposition of measures is likely to lead to the closure of the Community industry's activities in the medium term considering its negative profitability.

(177) As regards importers/traders, the imposition of duties is unlikely to have a significant negative effect on them given the limited impact of black colorformers on their overall trading activities.

(178) As regards users, the imposition of an anti-dumping duty on the product under consideration would only marginally affect their situation in view of the low impact of black colorformers on their overall costs, the possibility of passing on fluctuations in the raw materials to the prices of the paper products and the existence of an alternative source of supply, i.e. the United States of America. The imposition of anti-dumping measures is also considered to foster enhanced competition in the Community market for black colorformers by restoring fair trade.

(179) In view of the above, the Commission has concluded that, in these circumstances no compelling reasons exist on grounds of Community interest not to adopt anti-dumping measures in the present case.

H. **ANTI-DUMPING MEASURES**

(180) For the purpose of establishing the level of the definitive duty, account was taken of the level of dumping found and the amount of duty necessary to eliminate the injury suffered by the Community industry.

1. **Injury elimination level**

(181) It was considered that the amount of duty necessary to remove the effects of injurious dumping should allow the Community industry to cover its cost of production and obtain a reasonable profit on sales. In this respect it was found that a profit margin of 7 % on turnover could be considered to be an appropriate basis, due regard being given to a rate of return which the Community industry could reasonably expect in the absence of injurious dumping. This rate was established by reference to the profit margin publicly available for a number of European companies in the specialty chemical sector, as defined in a report by an independent party.

(182) Yamamoto argued that the information submitted by the Mitsui group was sufficient to allow an individual determination with respect to the injury margin. The information provided by the Mitsui group included general information on their companies, their purchase prices and resales on the Community market. Yamamoto argued that this was sufficient to establish an individual export price and an individual injury margin in its respect as all its sales to the Community were handled by the Mitsui group. Pursuant to Article 18(4) of the basic Regulation, Yamamoto and the abovementioned companies were duly informed that the information submitted was insufficient and given an opportunity to provide further explanations. Yamamoto and the Mitsui group provided corrections to deficiencies noted in the replies of the Mitsui group and declarations stating the relation between Yamamoto and Mitsui & Co. Ltd ('Mitsui (Japan)'), as well as the role of Mitsui (Japan) as sole exporter of Yamamoto's products. However, Yamamoto refused to reply to the main body of the questionnaires requesting information on the corporate structure of the exporting producer, its production, its export sales to the Community, its domestic sales and costs of production.

(183) It is considered that the non-cooperation of the producer made it impossible to carry out any individual determination in its respect. Thus, if it was possible to verify that the companies of the Mitsui group had reported completely and accurately their sales of black colorformers on the Community market, the absence of information notably on production, corporate structure and sales made it impossible to determine whether the sales reported by the Mitsui group represented all the sales of Yamamoto to the Community. Black colorformers produced by Yamamoto in Japan could be exported to the Community via other channels whether directly through related parties. Other producers and/or traders could be related to Yamamoto and exporting Japanese black colorformers to the Community, which would require the determination of a single export price and individual injury margin for the group. The lack of data relevant to make an individual determination applies therefore not only to the dumping margin but equally to the injury margin.

(184) In view of the above, Yamamoto is considered as a non-cooperating exporting producer for the purpose of the present anti-dumping proceeding and therefore, no individual injury-margin determination has been carried out for this company.

(185) Accordingly, injury elimination levels were determined on the basis of ODB-1 and ODB-2 respectively by comparing the cost of production plus a reasonable profit margin for each of these types of black colorformer produced by the Community industry with the selling price of the same types of the product under consideration at user level. The injury margin, i.e. this difference expressed as a percentage of the cif value of the imports concerned, was 18,9 % on average.

2. **Form and level of the definitive anti-dumping measures**

(186) Since the injury margin was found to be lower than the dumping margin, the definitive duty to be imposed should correspond to the injury margin established, in conformity with Article 9(4) of the basic Regulation.

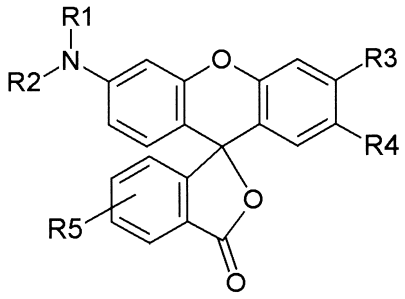
(187) Based on the determination of dumping and the injury resulting therefrom, a definitive *ad valorem* duty of 18,9 % should be imposed on imports of black colorformers originating in Japan,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of black colorformers falling within CN code ex 2932 29 80 (TARIC code: see Annex) and originating in Japan.

2. For the purpose of the present proceeding, a black colorformer is a chemical colorformer which, when used to coat paper for the production of carbonless copy paper or thermal paper generates by its own properties a black image on the paper without having to be mixed with other colorformers and has the following fluoran structure:



R1 and R2 may be identical or different and must be chosen from substituted or unsubstituted alkyl or aryl groups. They may also form part of a ring system. R3 must be chosen from hydrogen, substituted or unsubstituted alkyl, aryl, alkoxy groups or halogens. R3 is typically a methyl or chloro group. R4 must be chosen from substituted or unsubstituted monoarylamino groups. If R3 is hydrogen then R4 must be a substituted monoarylamino group. R1, R2 and R4 may not be hydrogen. R5 is hydrogen or halogen, typically hydrogen. A list of identified black colorformers is provided in the Annex.

3. For the product referred to in paragraph 1, the rate of anti-dumping duty applicable to the net free-at-Community-frontier price, before duty, is 18,9 %.

4. Unless otherwise specified, the provisions in force concerning customs duties apply.

Article 2

This Regulation enters 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 Luxembourg, 9 October 2000.

For the Council

The President

H. VÉDRINE

ANNEX

Commercial description	Chemical abstract registry number (CAS No)	Chemical description	TARIC codes
Black 15	36431-22-8	3-(Diethylamino)-6-methyl-7-(2,4-dimethylphenylamino) fluoran	2932 29 80 35
Black 100	68134-61-2	3-(Diethylamino)-7-(3-trifluoromethylphenylamino) fluoran	2932 29 80 60
Black 303	92814-52-3	3-(N-ethyl-N-isopentylamino)-7-(2-chlorophenylamino) fluoran	2932 29 80 60
Black 305	129437-78-5	3-(Dipentylamino)-6-methyl-7-anilinofluoran	2932 29 80 60
Black 500	93071-94-4	3-[N-ethyl N-(3-ethoxypropyl)amino]-6-methyl-7-anilinofluoran	2932 29 80 60
CF-51	102232-11-1	3-(N-tetrahydrofurfuryl-N-ethylamino)-6-methyl-7-anilinofluoran	2932 29 80 60
ETAC	59129-79-2	3-(N-ethyl-N-p-tolylamino)-6-methyl-7-anilinofluoran	2932 29 80 40
Fuji Black	85443-45-4	3-(Diethylamino)-6-chloro-7-anilinofluoran	2932 29 80 60
ODB	29512-49-0	3-(Diethylamino)-6-methyl-7-anilinofluoran	2932 29 80 60
ODB-2	89331-94-2	3-(Dibutylamino)-6-methyl-7-anilinofluoran	2932 29 80 60
ODB-7	151019-95-3	3-(Diethylamino)-6-methyl-7-(3-methylphenylamino) fluoran	2932 29 80 60
PSD 150	55250-84-5	3-(N-methyl-N-cyclohexylamino)-6-methyl-7-anilinofluoran	2932 29 80 50
PSD 300A	92409-09-1	3-(N-methyl-N-propylamino)-6-methyl-7-anilinofluoran	2932 29 80 30
PSD 184	95235-29-3	3-(N-ethyl-N-isobutylamino)-6-methyl-7-anilinofluoran	2932 29 80 45
S 205	70516-41-5	3-(N-ethyl-N-isopentylamino)-6-methyl-7-anilinofluoran	2932 29 80 10
TH 107	82137-81-3	3-(Dibutylamino)-7-(2-chlorophenylamino) fluoran	2932 29 80 25
Other black colorformers			2932 29 80 60