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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1050/2002

of 13 June 2002

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of recordable compact disks originating in Taiwan

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], (hereinafter referred to as the 'basic Regulation'), and in particular Article 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 2479/2001 [2], (hereinafter referred to as the provisional Regulation), imposed a provisional anti-dumping duty on imports of recordable compact disks (CD-Rs) falling within CN code ex 8523 90 00 (TARIC code 8523 90 00*10) and originating in Taiwan.

(2) It is recalled that the investigation of dumping and injury covered the period from 1 January 2000 to 31 December 2000 (hereinafter referred to as the investigation period or IP). The examination of trends relevant for the injury analysis covered the period from 1 January 1997 to the end of the IP (hereinafter referred to as the period considered).

B. SUBSEQUENT PROCEDURE

(3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures, several interested parties submitted comments in writing. In accordance with the provisions of Article 6(5) of the basic Regulation, the parties who so requested were granted an opportunity to be heard orally.

(4) The Commission continued to seek and verify all information it deemed necessary for the establishment of definitive findings.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties.

(6) They were also granted a period within which they could make representations subsequent to this disclosure.

(7) The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings have been modified accordingly.

(8) Following the adoption of provisional measures, two companies, Nan Ya Plastics Corporation, Taipei and Rimma International Inc., Taipei in Taiwan, applied for new exporting producer status and requested not to be treated differently from the companies that cooperated in the investigation. However, since sampling has been used in the investigation of dumping, a new exporters' review pursuant to Article 11(4) of the basic Regulation with the objective of determining individual dumping margins cannot be initiated in this proceeding. The examination of these requests together with the additional evidence provided by these companies showed that only one of them, Nan Ya Plastics Corporation, fulfilled all the requirements of Article 11(4) of the basic Regulation, which would otherwise apply, i.e.:

— that it did not export the product concerned to the Community during the IP,

— that it is not related to any of the exporters or producers in Taiwan which are subject to the provisional anti-dumping measures, and

— that it has actually exported the product concerned to the Community after the IP on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Community.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).
[2] OJ L 334, 18.12.2001, p. 8.

In these circumstances, in order to ensure equal treatment for this new exporting producer and the cooperating companies not included in the sample, Nan Ya Plastics Corporation was added to the list of companies subject to the weighted average duty rate listed in Article 1(2) of the provisional Regulation.

C. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(9) Given the similar appearance of recordable compact disks (CD-Rs) and re-writable compact disks (CD-RWs) which are not covered by the investigation, the complainant, the Committee of European CD-R Manufacturers (CECMA), requested that the product under consideration (CD-Rs) should be distinguished from CD-RWs in order to ensure the proper application of the duties imposed.

(10) The nature of the disk is normally mentioned on the disk itself or on the packaging. Therefore, no particular additional specification appears to be necessary. In the unlikely event that such identification would be absent, the colour of the non-printed side of the disc gives an indication of the nature of the product. CD-Rs show on their non-printed sides either bright colours (such as cyanine light blue, phtalocyanine green, yellow, or green/yellow combined, silver and gold) or azo dark blue. CD-RWs show a dark grey colour with a low reflectivity compared to CD-Rs.

(11) CD-Rs, which have a size that is smaller than the standard diameter of 12 cm, fall under the description of the product concerned. The 8 cm CD-R holds a lower capacity or play duration than the standard 12 cm CD-R. Some 8 cm CD-Rs have been further adapted to match the size of a business card, but the characteristics of such a CD-R remain the same as of a 12 cm CD-R, despite the difference in the form of the disc. All mentioned types of smaller CD-R can be used by any personal computer in the same way as a 12 cm CD-R. Therefore, the 8 cm CD-R and the business card type CD-R are both covered by the investigation and by the measures adopted.

(12) The so-called minidisc, however, should be distinguished from CD-Rs. Although the minidisc is a recordable optical product, using the same laser technology as the CD-R, it is at the same time erasable and always encased in a fixed housing, comparable to that of 3,5 inch diskettes. To write/read on the minidisc requires specific equipment (minidisc recorder or player), which does not form part of a personal computer. In view of the differences in physical characteristics and as the targeted market is entirely different, the minidisc is not covered by the measures adopted.

(13) Some parties claimed that the definition of the product concerned in the provisional Regulation did not take account of the fact that various types of packaging for CD-Rs are encountered on the market. The issue of packaging, the related costs of production and the comparison of the Community industry's production with Taiwanese imports are dealt with under point 2(b) 'Price undercutting' and under point 3(a) 'Cost of production and profitability' of Section 'G. Injury' of this Regulation. It should be noted that packaging is only relevant in the context of the analysis of price comparison and not for the definition of the product concerned.

(14) In view of the above, the provisional findings as described in recitals 9 and 10 of the provisional Regulation are confirmed.

2. Like product

(15) In the absence of any further comments, the definition of the like product as described in recital 11 of the provisional Regulation is confirmed.

D. SAMPLING

(16) No comments concerning the sampling of Taiwanese exporting producers were received and, therefore, the conclusions set out in recitals (12) to (18) of the provisional Regulation are hereby confirmed.

E. DUMPING

1. Normal value

(17) Following the adoption of provisional measures, one exporting producer requested the exclusion of the selling, general and administrative expenses (SG and A) of its related company in the domestic market from the total SG and A expenses used in the ordinary course of trade test and in constructing normal value. The exporting producer argued that its related company was set up to conduct internet business, which incurs high SG and A costs and merely became involved, temporarily, with sales of the product concerned to help it improve its financial situation. The exporting producer claimed that almost all SG and A expenses of its related company were unrelated to the sales of the product concerned. It also requested the Commission to disregard completely, for the dumping calculations, the domestic sales of the related company for the same reasons.

(18) In this respect, the claim to disregard completely the domestic sales and the SG and A expenses of the related company was rejected as it could not be supported by any verified information. However, in determining normal value the Commission accepted to exclude certain amounts of SG and A expenses which were shown not to relate to domestic sales of the product concerned.

(19) Two exporting producers claimed that the Commission should not have allocated all interest expenses to the product concerned but only those related to the operational activities. They argued that long-term and short-term investments form part of total assets and require financing and hence, incur interest expenses that are not related to the production and sales of the product concerned.

(20) This claim was accepted because it was shown that certain financing expenses did not concern operational activities related to the production and sales of the product concerned. The SG and A expenses were therefore revised before being used in the ordinary course of trade test and in constructing normal value.

2. **Export price**

(21) No claims were made concerning the determination of the export price. The conclusions set out in recital 26 of the provisional Regulation are hereby confirmed.

3. **Comparison**

(22) Three exporting producers claimed that the Commission proceeded to a comparison between normal value and export price without treating packing costs consistently between constructed normal value and normal value based on actual prices. They argued that it was inappropriate for the Commission to consider packing costs to be an allowance in case of normal value based on prices but not to consider it as an allowance in case of constructed normal value.

(23) The three exporting producers also argued that packing cost was a mandatory allowance under Article 2(10)(f) of the basic Regulation, when differences exist between the directly related packing costs of the normal value and export price. They argued that in case of a comparison of the weighted average normal value with the prices of individual export transactions, the Commission compared individual export prices including individual packing costs per transaction, with a constructed normal value including a weighted average export packing cost for the same product type. The three exporting producers therefore requested the deduction of packing costs from all export prices and constructed normal value on the same basis.

(24) With regard to the alleged mandatory nature of the allowance for packing costs, it is considered that an allowance under Article 2(10) of the basic Regulation is granted only when there are differences in factors, such as packing, which do not allow a fair comparison between normal value and export price. In fact in this case, the constructed normal value was based on the cost of production of the exported type including its packing cost and, therefore, no difference in packing costs existed between export price and normal value.

(25) However, the claim concerning the comparison of individual export prices including individual packing costs with a constructed normal value including a weighted average export packing cost per product type was accepted. Therefore, for the four exporting producers that had exported product types for which normal value had to be constructed, the construction of normal value was revised in order to take account of an export packing cost per product type and packing type.

(26) One exporting producer claimed that the Commission had not taken into account in the dumping calculations certain changes in packing types of its export sales which were made during the verification visit.

(27) This claim was accepted and the packing types concerned were modified.

4. **Dumping margins**

(28) Two exporting producers claimed that the Commission should not have established the dumping margins on the basis of a comparison by product type of the weighted average normal value with the prices of all individual export transactions as they considered the Commission's reasoning for having recourse to this method insufficient. Although the two companies admitted that the export prices differed significantly among time periods during the investigation period, they argued that there was a parallel declining trend for world prices, including the normal values, and for export prices and that therefore the differences in export prices should not be taken into account. They also suggested that a transaction to transaction comparison of normal value and export price should have been used instead.

(29) These arguments were not accepted. Concerning the transaction to transaction comparison, it is noted that the Community does not use this methodology because the process of selecting individual transactions in order to make such a comparison is considered too impracticable and arbitrary, at least in cases such as this one, where thousands of export and domestic transactions existed. It was therefore concluded that a transaction to transaction comparison could not be an appropriate alternative comparison method.

(30) In order to use a comparison of a weighted average normal value to prices of all individual export transactions as opposed to a comparison of a weighted average normal value with a weighted average of export prices, there must be a finding that export prices differ significantly among different purchasers, regions or time periods and that the use of the other two comparison methods, specified in Article 2(11) of the basic Regulation, would not reflect the full degree of dumping. As to the first requirement, it has been found that export prices were significantly lower during the second half of the investigation period as compared to the first half and this finding was not disputed by the exporting producers concerned. They have contested however, whether the difference in prices constituted a pattern, which they alleged was the result of a worldwide fall in prices including normal values. It was considered that the decline in export prices constituted a pattern for two reasons: firstly, because the decline prevailed throughout the second half of the investigation period; and secondly, because of its extent, which was found to be very substantial and in some cases reached 50 %. As to the claim that the differences in export prices were because of worldwide trends in prices including normal values, this was considered irrelevant as the appropriate analysis has to be made on export prices to the Community. It is also noted that Article 2(11) of the basic Regulation requires a demonstration of a pattern of export prices and not an explanation of why such a pattern existed.

(31) In relation to the requirement to demonstrate that only a comparison of a weighted average normal value to prices of all individual export transactions will reflect the full degree of dumping, it is appropriate to note that the application of this methodology gave a significantly higher dumping margin than a comparison of a weighted average normal value with a weighted average of export prices, which would not take into account the effect of the significant decline of export prices into the Community during the second half of the IP. Hence, unless a comparison of a weighted average normal value to prices of all individual export transactions had been used, the significantly higher or targeted dumping which took place during the second half of the investigation period would have been inappropriately disguised by the use of a comparison of a weighted average normal value with a weighted average of export prices. It was also appropriate to reflect in the calculation of dumping, via a comparison of a weighted average normal value to prices of all individual export transactions, the fact that export prices in the second half of the investigation period were below cost of production and thus constituted a very predatory form of dumping.

(32) The same two exporting producers referred to the Panel and the Appellate Body reports in the Indian bedlinen case before the WTO's Dispute Settlement Body (DSB) and claimed that the so called 'zeroing of negative dumping margins' is not allowed when calculating dumping margins based on a comparison of a weighted average normal value to all individual export transactions.

(33) In respect to the DSB case quoted, it is noted that the methodology considered by the Panel and the Appellate Body was different from the methodology used in the present investigation. The DSB has not adopted any recommendation concerning a comparison of a weighted average normal value to all individual export transactions. In any event, as far as 'zeroing' is concerned, it is noted that if this practice was not used, a comparison of a weighted average normal value to all individual export transactions by product type and a comparison of a weighted average normal value with a weighted average of export prices by product type would give the same dumping margin. In such a case, the methodology set out in the last sentence of Article 2(11) of the basic Regulation, to compare a weighted average normal value to all individual export transactions would become redundant. Furthermore, in a case of targeted dumping, 'zeroing' allows to avoid that positive dumping margins on dumped sales are disguised by negative dumping margins. Therefore, the claim that 'zeroing' is not allowed when comparing a weighted average normal value to all individual export transactions cannot be accepted.

(34) Dumping margins were established as set out in recitals 28 to 33 of the provisional Regulation. The comparison of the weighted average normal value per product type, revised as appropriate, with the weighted average export price per product type on an ex-factory basis for two companies in the sample, and with the ex-factory export prices of all individual export transactions for the three other companies in the sample, showed the existence of dumping for all investigated exporting producers included in the sample.

(35) Following changes to the calculations in accordance with the findings noted above, the dumping margins of the investigated companies were revised slightly. This revision has not affected the choice of methodology set out in recitals 28 and 29 of the provisional Regulation which is hereby confirmed. Consequently, the weighted average dumping margin calculated for the cooperating companies not included in the sample pursuant to Article 9(6) of the basic Regulation was also revised. The revised calculations have also affected the dumping margin established for the non-cooperating companies. The definitive dumping margins as a percentage of the CIF import price duty unpaid are as follows:

— Auvistar Industry Co.	17,7 %
— Princo Corporation	29,9 %
— Prodisc Technology Inc.	17,7 %
— Ritek Corporation	17,7 %
— Unidisc Technology Co.	17,7 %
— Cooperating exporting producers not in the sample	19,2 %
— Non-cooperating exporting producers	38,5 %.

F. **COMMUNITY INDUSTRY**

(36) In the absence of any new information on the Community industry, the provisional findings as described in recitals 35 to 38 of the provisional Regulation are confirmed.

G. **INJURY**

1. **Community consumption**

(37) In the absence of any new information, the provisional findings concerning the Community consumption as described in recital 40 of the provisional Regulation are confirmed.

2. **Imports concerned**

(a) *Volume, price and market share of imports originating in Taiwan*

(38) In the absence of any new information on the volume, price and market share of imports of CD-Rs originating in Taiwan, the findings as described in recitals 41 to 43 of the provisional Regulation are confirmed.

(b) *Price undercutting*

(39) A number of parties questioned whether packaging had been properly taken into account for the price undercutting calculations. One specific claim, that the Taiwanese exporting producers offer a wider choice of packaging than the Community industry, is addressed under point 3(a) 'Cost of production and profitability' of the Section 'G. Injury' of this Regulation.

(40) In terms of price undercutting, it should be noted that the comparison between sales prices on the Community market of CD-Rs produced by the Community industry and those produced and imported from Taiwan was only made for CD-Rs having both the same basic characteristics (in terms of type of data stored, storage capacity, reflective layer and whether the CD-R was printed or not) as well as having identical packaging.

(41) It was claimed that CD-Rs imported into the Community originating in Taiwan and the CD-Rs produced by the Community industry could not be compared because of differences in branding. Under that claim a product of the Community industry, which was said to be typically branded, would attract a price premium compared to an unbranded Taiwanese product.

(42) The investigation showed that branding only influences consumers when the sales price is similar, so that whilst consumers are not willing to pay a premium for a branded product they may be inclined to choose it when prices are the same.

(43) Community producers sell both branded and 'unbranded' products, although even the latter are usually branded according to the specifications and with the name of the client retailer. The investigation did not reveal any price differential between branded and 'unbranded' sales to retailers. Moreover, the Taiwanese exporting producers acted in exactly the same way, selling under their own brand or to the client's specification. Products marketed under a brand name, which the consumer would consider as Community-based, were frequently found to be manufactured in Taiwan.

(44) In view of the above, the provisional findings on price undercutting and the average undercutting margin of 29 %, as described in recitals 44 to 47 of the provisional Regulation, are confirmed.

3. **Situation of the Community industry**

(a) *Cost of production and profitability*

(45) It was claimed that the Taiwanese exporting producers offer a wider choice of packaging than the Community industry and that the provisional Regulation did not provide sufficient explanation on the effect of packaging on the cost of production.

(46) Although the investigation has shown that there was a wide variety of packaging types which were updated regularly following marketing efforts, the following main categories could be distinguished. They are ranked according to increasing average cost of production during the IP with the figure between brackets indicating the cost differences in an indexed form. Contrary to the claim that the Taiwanese exporting producers offer a wider choice of packaging than the Community industry, it is confirmed that the same types of packaging are offered by both above categories of suppliers on the Community market, the choice being determined by the same category of unrelated customers, i.e. client retailers.

(47) CD-Rs sold in bulk (100) [1] are typically shipped on spindles, which are plastic devices on which a number of CD-Rs are stacked. The complete spindle with CD-Rs is in most cases cellophane wrapped. The bulk product can however also merely be a cellophane wrapped stack of CD-Rs, without the spindle.

(48) CD-Rs may also be sold in so-called cake-boxes (144), which can be described as spindles onto which a plastic lid is screwed so that a closed container-like product is obtained.

(49) The jewelbox, accompanied by a booklet (200), was the most widely spread means of packaging during the IP. This form was also most frequently encountered in case of sales of registered music-CD's. A more recent phenomenon is the slim case (174) which differs from the jewelbox in that the black inlay, where the CD-R is fixed, at the same time serves as the back of the case. The result is a box which is approximately half as thick as the original jewelbox.

(b) *Employment, productivity and wages*

(50) The average employment cost per employee and the productivity were recalculated in order to take account of the correction of the employment figures for 1997 for one producer of the Community industry. That producer had submitted year-end figures including trainees for upcoming production capacity instead of a yearly average full-time equivalent.

	1997	1998	1999	2000 (= IP)
Employment	427	623	877	1 037
Index	100	146	205	243
Average employment cost per employee in EUR '000	25,0	27,7	31,5	30,7
Index	100	111	126	123
Productivity CD's per employee	45 300	137 500	240 000	311 200
Index	100	304	530	687

(51) The average wage cost per employee increased by 23 % over the period considered, in line with normal indexation of wages to the cost of living as well as the cost of training and employing specialised new personnel to operate additional machinery. The decrease between 1999 and 2000 can be attributed to the fact that new personnel were mainly employed in the packaging departments, where lower average wages and temporary labour prevail, since this activity requires less technically qualified personnel.

(52) The definitive determination of the increase of average employment cost per employee at 23 % replaces the figure of 39 % mentioned in recital 64 of the provisional Regulation.

4. **Conclusion on injury**

(53) Referring to the provisional Regulation, it is recalled that the volume of low-priced imports from Taiwan increased significantly during the period considered. Their market share increased from 6,3 % to 60,1 % and their import price was reduced by 73 % on average. The Community market was dominated by Taiwanese imports, which benefited considerably more from the favourable evolution of Community demand for CD-Rs than the Community industry in terms of volume of sales and market share.

(54) The increase of import volumes and the decline of the sales price were particularly pronounced between 1999 and the IP. These imports undercut the Community industry's sales prices by 29 % on average during the IP and exercised a downward pressure on the sales prices on the Community market. The magnitude of dumping by the Taiwanese exporting producers was found to be significant. No other factors were found to affect domestic prices.

(55) Some economic indicators pertaining to the situation of the Community industry, such as production of CD-Rs, production capacity installed, sales volume, cash flow, employment and productivity, showed positive developments over the period considered. However, these developments in relative terms, i.e. with reference to the rapidly expanding market, were less pronounced than could be expected. The rate of capacity utilisation increased until 1999, but decreased during the IP to 86 %. Over the period considered, the average sales prices of the Community industry dropped considerably.

(56) The Community industry originally built up a market share of 16,8 % in 1998, but subsequently lost part of that market share to the Taiwanese importers, achieving 12,6 % during the IP. Difficulties encountered by the Community industry to obtain projected sales in an expanding market led to considerable stock building during the IP. Negative return on investments during the IP led the Community industry to postpone or cancel new investment decisions to a large extent.

[1] Basic index = 100

(57) Notwithstanding the increase of the average wage cost per employee, the Community industry achieved profitability in 1999 as a consequence of the reduction of the full cost of production. However, further cost reductions were insufficient to compensate for the significant decrease of the sales prices, leading to financial losses during the IP.

(58) The investigation revealed that the Community industry was prevented from participating in the growth of the Community market, that its investment programmes for CD-Rs were significantly reduced due to declining sales prices, that its sales prices were undercut by Taiwanese exporting producers by 29 % on average, that it suffered financial losses during the IP and encountered difficulties in raising additional funding.

(59) In view of the above, the conclusions as stated in recitals 66 to 71 of the provisional Regulation are confirmed.

H. **CAUSATION**

1. **Effect of the dumped imports**

(60) It was alleged that the absence of sufficient growth in terms of production, sales and market share of the Community industry should not be attributed to Taiwanese imports, but to its high capacity utilisation during 1999 and the IP, which did not allow the Community industry to make extra sales or to obtain additional market share.

(61) It should be recalled that the Community industry's capacity utilisation declined from 91,8 % in 1999 to 86,3 % in the IP. Furthermore, as mentioned in recital 55 of the provisional Regulation, stocks increased significantly towards the end of 1999 and to an even greater extent towards the end of the IP. During the IP, production of CD-Rs exceeded sales by approximately 40 million units, leading to stocks at the end of the year which represented more than 20 % of yearly production of CD-Rs. This clearly indicates that the capacity utilisation rate cannot have caused the lack of growth of the Community industry.

(62) It was further claimed that any injury suffered by the Community industry was a consequence of its failure to adapt to world market prices. It was also argued that the downward pressure on prices was the result of the existing world-wide production over-capacity. In this context it was claimed that virtually no recent additional investments in CD-R production capacity were made, given the extremely low price levels.

(63) Interested parties did not provide any evidence supporting the allegation that there were one or more reference worldwide sales prices for CD-Rs. In assessing this allegation, it should also be noted that the investigation showed that depending on the export market CD-Rs could be sold under one form of packaging rather than another. As stated under recitals 39 to 44 of this Regulation, such packaging has a serious impact on the cost of production and may thus explain why overall price levels can vary significantly depending on the type of packaging and on the destination market. It follows that without details concerning the mix of product types of CD-Rs per destination market, no meaningful price analysis can be made worldwide. Moreover, the import price setting by Taiwanese exporting producers on the Community market at a level below their own cost of production caused a downward pressure on the Community price level which the Community industry could only follow by selling at a loss during the IP.

(64) As mentioned in recital 58 of this Regulation, the Community industry significantly reduced its investments due to the deterioration of sales prices on the Community market. In contrast, Taiwanese exporting producers which operated on a worldwide basis continued to expand their production facilities notwithstanding the unfavourable market price outlook. Based on information available, Taiwanese-owned production capacity in the IP more than covered estimated total world market demand, that increased by 84 % compared to 1999. This increase in capacity by Taiwanese producers suggests, that, if anything they have themselves contributed to any over-capacity. Furthermore, the increase in Taiwanese capacity implies that the claim concerning the absence of investments in CD-Rs production capacity is not founded.

(65) Based on these facts and considerations, the above claims are rejected.

2. **Imports of CD-Rs from other countries**

(66) The market share of imports from other countries decreased from 78,8 % to 21,3 % over the period considered. Japan and Singapore are the largest exporters to the Community with market shares of 9,5 % and 2,7 % respectively during the IP.

(67) It was observed that the Japanese import price into the Community decreased more sharply over the period considered than the Taiwanese price. The Japanese import price, which was up to 53 % above the Taiwanese import price in the period 1997 to 1999, was only 26 % higher during the IP. It was thus alleged that the sharper decrease of Japanese import prices into the Community over the period considered had contributed to the downward pressure on prices in the Community market.

(68) It is recalled that Japanese prices have always been significantly higher than those of Taiwanese exporting producers over the period considered. Although the quantities imported from Japan increased from 53 million CD-Rs to 192 million CD-Rs over the period considered, the Japanese market share on the Community market dropped from 33 % to 9,5 %. Their impact on the market was therefore much more limited than that of low-proceed dumped Taiwanese CD-Rs.

(69) Exports from Taiwan to Japan reached 87 million CD-Rs during the IP and were made at an average price of EUR 0,42 per CD-R, which is 26 % above the average Taiwanese export price to the Community. This price corresponds exactly to the average import price of CD-Rs of Japanese origin into the Community. It seems therefore that the level of the Taiwanese price on the Community market is particularly low.

(70) CD-R's imported from Singapore entered the Community at prices lower than the Taiwanese imports, however their market share dropped from 14,2 % to 2,7 % over the period considered. The information available also indicates that one CD-R producer dominates the Singaporean market in terms of domestic output and exports to the Community and that this company is related to another CD-R producer located in the Community. During the period considered, they both sold CD-Rs to a third sister sales company in the Community, which marketed the CD-Rs under a brand name. On this basis, it cannot be considered that the sales transactions made by the main Singaporean exporting producer to the Community were made at arm's length conditions.

(71) It is recalled that low-priced dumped Taiwanese imports held 60 % of the Community market during the IP. In the light of both the reduction of Japanese market share and the price level of Japanese imports on the Community market, it is considered that Japanese imports cannot have contributed more than insignificantly to the downward pressure on the Community market.

3. **Economies of scale**

(72) Further clarification was asked concerning the economies of scale, mentioned in recital 56 of the provisional Regulation, and more specifically it was alleged that the Taiwanese exporting producers could obtain a lower cost of production per CD-R than the Community industry because of the larger average size of their companies. The economies of scale realised by Taiwanese exporting producers were thus relevant to explain the price differential between Taiwanese and Community produced CD-Rs.

(73) It was indeed established that the average factory size of the sampled Taiwanese exporting producers during the IP was 530 million CD-Rs per year, compared to an average of 40 million CD-Rs per year for the Community industry. However, the production lines installed in all companies are manufactured by the same companies in either Germany, Switzerland or Japan and are of a comparable size. Taiwanese exporting producers on average have simply installed more production lines than Community producers. It is therefore considered that no economy of scale could have been achieved on these fixed costs.

(74) It is, however, worth mentioning that the determining factor for the cost of production is the number of CD-Rs that can be produced by a given production line within a certain time period. The acquisition cost of the machinery remained fairly stable over the period considered, but the performance increased on average from 10 CD-Rs per minute in 1997 to 25 CD-Rs per minute in 2000. This gain in efficiency allowed the Community industry to reduce costs of production.

(75) Within a given company it was typical to encounter different generations of machinery with the new investments representing the best performance whereas, older investments had already been partially or completely scrapped. The theoretical maximum economic lifetime of the machinery is five years, although this is probably even shorter in practice. This pattern is not different for the Taiwanese exporting producers than for the Community industry. A production line purchased in the year 2000 would on average allow an output of approximately 1 million CD-Rs per month, compared to 400 000 CD-Rs per month for a production line installed in 1997.

(76) No evidence was provided by the Taiwanese exporting producers which would demonstrate and quantify any alleged economies of scale i.e. that a larger factory size with more lines installed, would deliver a lower manufacturing cost per CD-R. The Taiwanese exporting producers were not found for instance to benefit from any specific advantages regarding the purchase costs of raw materials, nor did they claim the existence of such advantages.

(77) In any case, it should be underlined that even if such a lower manufacturing cost per CD-R would exist, this could not justify the dumping behaviour of the Taiwanese exporters. The alleged economies of scales therefore do not alter the causal link between dumped imported Taiwanese CD-R's and the injury suffered by the Community industry.

4. Conclusion on causation

(78) In conclusion, it is confirmed that the material injury of the Community industry was caused by the dumped imports concerned. The material injury is characterised by the fact that the Community industry was prevented from participating in the market growth, that the investment programmes for CD-Rs had to be significantly reduced due to the declining trend of sales prices, that the Community industry's sales prices were undercut on average by 29 % by Taiwanese low-priced dumped imports, that it suffered financial losses during the IP and had difficulties in raising additional funding.

(79) No further claims were made with respect to the impact of the factors discussed in recitals 77 to 94 of the provisional Regulation. Therefore, it is concluded that the effect of the development of Community consumption, the imports from other third countries, the export activity of the Community industry, the purchases of CD-Rs from third countries by the Community industry and the adaptation of high speed technology, on the Community industry's negative developments in terms of capacity utilisation, stock building, sales prices, market share, profitability, investments, return on investment and the ability to raise capital was practically non-existent.

Given the analysis, which has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is hereby confirmed that these other factors as such do not reverse the fact that the injury assessed must be attributed to the dumped imports. It is also considered that imports of CD-Rs originating in Taiwan had a significant negative impact on the situation of the Community industry and that the effect of other factors, notably imports from third countries including Japan was not such as to alter the finding of a genuine and substantial relationship of cause of and effect between the dumped imports from Taiwan and the material injury suffered by the Community industry.

I. COMMUNITY INTEREST

1. Interest of the Community industry

(80) In the absence of any new information on the interest of the Community industry, the provisional findings as described in recitals 98 to 100 of the provisional Regulation are confirmed.

2. Interest of importers

(81) It has been claimed that the fact that the cooperating importers of Taiwanese CD-Rs were unable to cover their overhead costs on the basis of a normal trading contribution margin applied to the low market prices during the IP is an indication that Taiwanese imports are not responsible for the downward pressure on prices. This also indicates that the imposition of anti-dumping duties will not be in the interest of importers.

(82) However, no evidence substantiating this claim was provided and the re-examination of the data available confirmed that the increasing volume and decreasing prices of imports of CD-Rs originating in Taiwan caused a downward effect on the Community market prices. The investigation showed that the normal trading margin made by the cooperating importers based on lower prices of CD-Rs did not yield sufficient coverage of overhead costs, leading to losses during the IP. Moreover, the decrease of market prices occurred at such a pace that importers were faced with rapid value deterioration of goods in transit, creating a situation in which the purchase price occasionally exceeded the eventual sales price.

(83) It should also be noted that no importers came forward to contradict the Commission's provisional findings. It is considered that effective trade conditions on the Community market will serve the interest of importers by restoring an adequate sales price level on the Community market.

(84) In view of the above, the provisional findings as described in recitals 101 and 102 of the provisional Regulation are confirmed.

3. Interest of users and consumers

(85) In the absence of any new information on the interest of users and consumers, the provisional findings as described in recitals 103 to 105 of the provisional Regulation are confirmed.

4. Conclusion on Community interest

(86) In view of the above, the provisional conclusion as described in recital 107 of the provisional Regulation is confirmed, i.e. that there are no compelling reasons on the grounds of Community interest not to impose definitive anti-dumping measures.

J. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level

(87) It was claimed that the pre-tax profit margin of 8 % mentioned in recital 110 of the provisional Regulation and used in the determination of the non-injurious price was unreasonably high.

(88) This margin that could reasonably be achieved under normal conditions of competition was based on an assessment of the impact on the Community industry's sales prices of the degree to which the Taiwanese exporters dumped CD-Rs on the Community market, the import price levels of the non-dumped imports from third countries and the profitability required to cover the financial costs of the investments made by the Community industry. The analysis allowed to conclude that 8 % was a reasonable level of pre-tax profit margin.

(89) In any event, it should be noted that the definitive anti-dumping measures are based on the dumping margins in application of the lesser duty rule.

2. **Definitive anti-dumping measures**

Country	Company	Rate of duty
Taiwan	Acer Media Technology Inc.	19,2 %
	Auvistar Industry Co. Ltd	17,7 %
	Digital Storage Technology Co.	19,2 %
	Gigastore Corporation	19,2 %
	Lead Data Inc.	19,2 %
	Megamedia Corporation	19,2 %
	Nan Ya Plastics Corporation	19,2 %
	Postech Corporation	19,2 %
	Princo Corporation	29,9 %
	Prodisc Technology Inc.	17,7 %
	Ritek Corporation	17,7 %
	Unidisc Technology Inc.	17,7 %
	All other companies	38,5 %

(90) The individual company anti-dumping rates specified in this Regulation were established on the basis of findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to all other companies) are thus exclusively applicable to imports of product originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. The imported product produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(91) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consulting the Advisory Committee, amend this Regulation accordingly by updating the list of companies benefiting from individual duty rates.

[1] European Commission
Directorate-General Trade
Directorate B
B-1049 Brussels.

(92) Since sampling has been used in the investigation of dumping, a new exporters' review pursuant to Article 11(4) of the basic Regulation with the objective of determining individual dumping margins cannot be initiated in this proceeding. However, in order to ensure equal treatment for any genuine new Taiwanese exporting producer and the cooperating companies not included in the sample, it is considered that provision should be made for the weighted average duty imposed on the latter companies to be applied to any new Taiwanese exporting producer to whom Article 11(4) of the basic Regulation would otherwise apply.

3. **Collection of provisional duties**

(93) In view of the magnitude of the dumping margins found for the exporting producers, and in the light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty under the provisional Regulation be definitively collected to the extent of the amount of definitive duties imposed if this amount is equal or lower than the amount of the provisional duty. Otherwise, only the amount of the provisional duty should be definitively collected,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of recordable compact disks (CD-Rs), currently classifiable within CN code ex 8523 90 00 (TARIC code 8523 90 00*10), originating in Taiwan.

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

Country	Company	Rate of duty	TARIC additional code
Taiwan	Acer Media Technology Inc., 29 Jianguo E. Road, Gueishan, Taoyuan 333, Taiwan, R.O.C.	19,2 %	A298
	Auvistar Industry Co. Ltd, 21, Tung-Yuan Road, Chung-Li Industrial Park, Taiwan R.O.C.	17,7 %	A299
	Digital Storage Technology Co., Ltd, No 42, Kung 4 Rd, Linkou 2nd Industrial Park, Taipei Hsien, Taiwan R.O.C.	19,2 %	A300
	Gigastore Corporation, 2, Kuang Fu South Rd, Hsinchu Industrial Park, Hsinchu, Taiwan R.O.C.	19,2 %	A301
	Lead Data Inc., No 23, Kon Yeh 5th Rd, Hsinchu Industrial Park Fu Kou Hsiang, Hsinchu Hsien, Taiwan R.O.C.	19,2 %	A302
	Megamedia Corporation, No 13, Kung Chien Rd, Chi-Tu District, Keelung, Taiwan R.O.C.	19,2 %	A303
	Nan Ya Plastics Corporation, 201, Tung Hwa N. Road, Taipei, Taiwan R.O.C.	19,2 %	A361
	Postech Corporation, No 42, Kuang Fu South Road, Hsinchu Industrial Park, Hsinchu Hsien, Taiwan R.O.C.	19,2 %	A304
	Princo Corporation, No 6, Creation 4th Rd, Science-based Industrial Park, Hsinchu, Taiwan R.O.C.	29,9 %	A305
	Prodisc Technology Inc., No 13, Wu-Chuan 7th Rd, Wu-Ku Industrial District, Wu-Ku County, Taipei, Taiwan R.O.C.	17,7 %	A306
	Ritek Corporation, No 42, Kuanfu N. Road, Hsinchu Industrial Park, Taiwan 30316 R.O.C.	17,7 %	A307
	Unidisc Technology Co., Ltd, 4F, No 543, Chung-Cheng Rd., Hsin-Tien, Taipei, Taiwan, R.O.C.	17,7 %	A308
	All other companies	38,5 %	A999

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

Article 2

Where any new exporting producer in Taiwan provides sufficient evidence to the Commission that:

— it did not export to the Community the products described in Article 1(1) during the investigation period (1 January 2000 to 31 December 2000),

— it is not related to any of the exporters or producers in Taiwan which are subject to the anti-dumping measures imposed by this Regulation,

— it has actually exported to the Community the products concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Community,

the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend Article 1(2) by adding the new exporting producer to the companies subject to the weighted average duty rate listed in that Article.

Article 3

The amounts secured by way of the provisional anti-dumping duty on imports originating in Taiwan under the provisional Regulation shall be collected at the rate of the duty definitively imposed by this Regulation. Amounts secured in excess of the rate of definitive anti-dumping duty shall be released.

Article 4

This Regulation shall enter into force on the day of 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, 13 June 2002.

For the Council

The President

M. RAJOY BREY