COUNCIL REGULATION (EC) No 1372/2005

of 19 August 2005

terminating the anti-dumping proceeding concerning imports of styrene-butadiene-styrene thermoplastic rubber originating in the Republic of Korea and Russia, terminating the interim review of the anti-dumping measures applicable to imports of styrene-butadiene-styrene thermoplastic rubber originating in Taiwan and repealing these measures

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]('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. PROCEDURE

1. Measures in force

(1) In September 2000, by Regulations (EC) No 1994/2000 [2] and No 1993/2000 [3], the Council imposed definitive countervailing duties ranging from 1 % to 8,2 % and definitive anti-dumping duties on imports of styrene-butadiene-styrene thermoplastic rubber ('SBS') originating in Taiwan.

(2) The level of definitive anti-dumping duties established for the exporting producers in Taiwan, expressed as a percentage of the CIF frontier value, was as follows:

— Lee Chang Yung Chemical Industry Corp., Taipei 5,3 %

— Chi Mei Corp., Tainan 9,1 %

— Non cooperating exporting producers 20,0 %

2. Present investigations

(3) On 28 May 2004, pursuant to Article 5 of the basic Regulation, the Commission announced by a notice ('notice of initiation') published in the *Official Journal of the European Union* [4], the initiation of an anti-dumping proceeding with regard to imports into the Community of SBS originating in the Republic of Korea ('Korea') and Russia.

(4) On the same day, the Commission announced by a notice published in the *Official Journal of the European Union* [5], the initiation of an interim review, pursuant to Article 11(3) of the basic Regulation, of the definitive anti-dumping duties imposed by Council Regulation (EC) No 1993/2000 on imports of SBS originating in Taiwan.

(5) The anti-dumping investigation was initiated following a complaint lodged on 13 April 2004 by the European Chemical Industry Council ('CEFIC' or 'the complainant') on behalf of producers representing 100 % of the Community production of SBS. The complaint contained evidence of dumping of the said product and of material injury resulting there from, which was considered sufficient to justify the initiation of a proceeding.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

[2] OJ L 238, 22.9.2000, p. 8.

[3] OJ L 238, 22.9.2000, p. 4.

[4] OJ C 144, 28.5.2004, p. 5.

[5] OJ C 144, 28.5.2004, p. 9.

(6) The interim review was based on a request lodged by CEFIC and contained evidence that dumping and injury had recurred and that the existing measures were no longer sufficient to counteract the injurious dumping.

3. **Parties concerned by the proceeding**

(7) The Commission's services officially advised the exporting producers in Korea, Russia and Taiwan, importers/traders and their associations, suppliers and users known to be concerned, the representatives of the exporting countries concerned, and the complainant Community producers 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 in the notices of initiation.

(8) In view of the large number of importers of SBS into the Community listed in the complaint and the request, the notices of initiation envisaged the use of sampling for importers for the determination of injury, in accordance with Article 17 of the basic Regulation.

(9) In order to enable the Commission's services to decide whether sampling would be necessary and, if so, to select a sample, all importers were asked to make themselves known to the Commission and to provide, as specified in the notices of initiation, basic information on their activities related to SBS during the sampling period (1 April 2003 to 31 March 2004). After examination of the information submitted by the importers and due to the small number of replies to the sampling questions, it was decided that sampling was not necessary.

(10) Questionnaires were sent to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notices of initiation.

(11) Replies were received from one Korean exporting producer, one Russian producer, together with its two related Russian companies, four Taiwanese producers, four Community producers and four unrelated importers. No replies were received from users.

(12) The Commission's services sought and verified all the information deemed necessary for the purpose of a determination of dumping, resulting injury and Community interest. In accordance with Article 16(1) of the basic Regulation, verification visits were carried out at the premises of the following companies:

(a) Community industry producers

— Dynasol Elastomeros S.A., Madrid, Spain

— Kraton Polymers International Ltd., London, United Kingdom

— Polimeri Europa S.p.A., Milan, Italy

— SA Petrofina NV Brussels, Belgium (formerly Atofina Elastomers N.V.)

(b) Exporting producer in Korea

— Korea Kumho Petrochemicals Co., Ltd., Seoul

(c) Exporting producer in Russia

— SIBUR group:

— Public Joint Stock Company 'Sibirsko-Uralskaya Neftegazohimicheskaya Companiya' ('SIBUR'), Moscow

— Gazexport, Limited Liability Company, Moscow

— Joint Stock Company Voronezhsyntezkauchuk, Voronezh

(13) The investigation showed that only one Russian company, JSC Voronezhsyntezkauchuk, produced the product concerned, while JSC SIBUR was mainly responsible for the domestic sales and the delivery of raw materials. Gazexport was responsible for the export sales during most of the investigation period. Thus, for the purposes of this investigation, the three related Russian companies will be considered as one company, namely the 'SIBUR group'.

(d) Exporting producers in Taiwan

— Chi Mei Corp., Tainan

— Lee Chang Yung Chemical Industry Corp., Taipei

(e) Unrelated importers

— Guzman Cauchos S.L., Valencia, Spain

— Monumenta Import Export GmbH, Troisdorf, Germany

— Tecnopolimeri S.p.A., Seregno, Italy

4. **Provisional measures**

(14) Given the need to further examine certain aspects of injury, causality and Community interest, in particular in view of the interrelation with the parallel interim review of the anti-dumping duties applicable to imports of SBS originating in Taiwan, no provisional anti-dumping measures were imposed on imports of SBS originating in Korea and Russia. All parties were nevertheless informed of the preliminary findings of the investigation and were granted a period within which they could submit representations subsequent to the disclosure and the oral and written comments submitted by the parties were taken into consideration.

5. **Subsequent procedure**

(15) The Commission's services continued to seek and verify all information deemed necessary for definitive findings, in particular with regard to imports of SBS from Taiwan.

(16) Subsequently, all parties were informed about the essential facts and considerations on the basis of which it was intended to recommend:

— the termination of the proceeding against imports of SBS originating in Korea and Russia; and

— the repeal of Regulation (EC) No 1993/2000 imposing definitive anti-dumping duties on imports of SBS originating in Taiwan.

(17) They were also granted a period within which they could make representations subsequent to this disclosure. The oral and written comments submitted by the parties were considered, and where appropriate, the findings have been modified accordingly.

6. **Investigation period**

(18) The investigation of dumping and injury covered the period from 1 April 2003 to 31 March 2004 ('investigation period' or 'IP'). The examination of trends in the context of the injury analysis covered the period from 1 January 2000 to the end of the IP ('period considered').

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(19) The product concerned is styrene-butadiene-styrene thermoplastic rubber, currently classifiable within CN codes ex 4002 19 00, ex 4002 99 10 and ex 4002 99 90.

(20) SBS is a triblock copolymer mainly made from monomer styrene and butadiene. It can be either dry or, with the addition of oil at the manufacturing stage, oil-extended. Furthermore, it can be produced in different types which can be identified through different specifications, such as the ratio of styrene to butadiene, the oil content or the chemical symmetry. Although the potential range of types of SBS is considerable, they share the same basic physical characteristics and no clear dividing lines exist between the various types. Moreover, all types of SBS are used for the same purposes, such as the thermo-modification of bitumen for road asphalt and roofing membranes, for technical and footwear compounding, plastic modification, and adhesives. Therefore, they are considered as one single product for the purpose of this investigation.

(21) During the verification visits it was found that one company exported styrene-isoprene-styrene block polymer ('SIS') to the Community during the IP. It was considered that this product cannot be regarded as the product concerned. Indeed, SIS has a different physical composition to SBS as the monomer in the mid-block of the polymer is isoprene instead of butadiene. It therefore did not share the same physical characteristics and is consequently not covered by the present proceeding.

2. **Like product**

(22) The product concerned and the SBS manufactured and sold domestically in Korea, Russia and Taiwan, as well as the SBS manufactured and sold in the Community by the Community industry were found to have the same basic physical and chemical characteristics and the same basic uses. Therefore, these products are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. General methodology

(23) The general methodology set out below was applied to all exporting producers in Korea, Russia and Taiwan. The subsequent presentation of findings on dumping for the countries concerned therefore only describes issues specific to each exporting country.

2. Normal value

(24) In accordance with Article 2(2) of the basic Regulation, the Commission's services first examined for each cooperating exporting producer whether its total domestic sales of SBS were representative, i.e. whether the total volume of such sales represented at least 5 % of the total export sales volume of the producer to the Community. The Commission's services subsequently identified those types of SBS sold on the domestic market by the companies having overall representative domestic sales and that were identical to or directly comparable with the types sold for export to the Community.

(25) For each type sold by the exporting producers on their domestic markets and found to be directly comparable with the types of SBS sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of SBS were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable type of SBS exported to the Community.

(26) The Commission's services subsequently examined whether each type of SBS sold domestically in representative quantities could be considered as being sold in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation, by establishing the proportion of profitable sales to independent customers of the SBS type in question. In cases where the sales volume of the relevant SBS type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of the SBS type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.

(27) In cases where the volume of profitable sales of any product type represented less than 10 % of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value. Whenever domestic prices of a particular product type sold by an exporting producer could not be used in order to establish normal value, it was considered that constructed value of that particular type of SBS formed an appropriate basis to establish normal value.

(28) Consequently, in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit. To this end, the Commission examined whether the SG&A incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data.

(29) Actual domestic SG&A expenses were considered reliable when the total domestic sales volume of the company concerned could be regarded as representative when compared to the volume of export sales to the Community. The domestic profit margin was determined on the basis of domestic sales of those types which were sold in the ordinary course of trade. For this purpose, the methodology as set out above was applied.

3. Export price

(30) In all cases where the product concerned was exported directly to independent customers in the Community, the export price was established in accordance with Article 2 (8) of the basic Regulation, i.e. on the basis of export prices actually paid or payable.

4. Comparison

(31) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

5. Dumping margin

(32) According to Article 2(11) of the basic Regulation, for each exporting producer the weighted average normal value was compared with the weighted average export price.

6. **Korea**

(33) A questionnaire reply was received from one Korean exporting producer. The investigation showed that the total domestic sales of the Korean company were representative. Furthermore, the total domestic sales volume of each type of SBS sold by the company represented 5 % or more of the total sales volume of comparable types of SBS exported to the Community and could therefore be considered as representative.

6.1. *Normal value*

(34) To determine the normal value, domestic prices could be used for two product types. For three product types, normal value was based on profitable sales only. For five product types, less than 10 % of the domestic sales were profitable during the IP. Therefore, in these cases, the Commission constructed the normal value in accordance with Article 2(3) of the basic Regulation on the basis of the exporting producer's own cost of manufacturing plus a reasonable amount for selling, general and administrative ('SG&A') costs and for profit. In this regard, SG&A costs were based on the SG&A costs of the company as its domestic sales of the like product were representative as defined in Article 2(2) of the basic Regulation. For the profit margin, in accordance with the first sentence of Article 2(6) of the basic Regulation, the profit on domestic sales in the ordinary course of trade was used.

6.2. *Export price*

(35) As exports of the product concerned were made directly to independent customers in the Community, the export prices were established on the basis of the prices paid or payable for the product concerned when sold for export to the Community in accordance with Article 2(8) of the basic Regulation.

6.3. *Comparison*

(36) Adjustments were made in respect of transport, insurance, handling and credit costs where applicable and justified. In accordance with Article 2(10)(b) of the basic Regulation, the company claimed and was granted a duty drawback adjustment on the normal value on the grounds that import charges were borne by the like product when consumed in the exporting country but were refunded when SBS was sold for export.

(37) The company also claimed an adjustment for quantity discounts. During the verification visit, the company had the opportunity to demonstrate that quantity discounts affected prices. However, they were unable to properly quantify the alleged discounts and to demonstrate that they were directly linked to the sales under consideration. Therefore, in accordance with Article 2(10) of the basic Regulation, the claim was rejected.

6.4. *Dumping margin*

(38) The dumping margin established, expressed as a percentage of the CIF import price at the Community frontier, duty unpaid is the following:

— Korea Kumho Petrochemicals Co., Ltd., Seoul: 0,95 %

(39) Since the dumping margin for Korea Kumho Petrochemicals is *de minimis*, i.e. less than 2 %, the proceeding against Korea should be terminated without the imposition of measures in accordance with Article 9(3) of the basic Regulation.

7. **Russia**

(40) Questionnaire replies were received from three related companies and were considered together.

7.1. *Normal value*

(41) The investigation showed that all Russian domestic sales were representative and that only one specific product type was sold to the EU. It was found that there were sufficient domestic sales of the relevant type of SBS and that these sales could be considered as representative. Moreover, the product type exported to the EC was found to be sold in the ordinary course of trade. Therefore, actual domestic prices could be used to determine the normal value.

(42) One of the companies of the SIBUR group produced the main raw materials, butadiene and styrene, on its own and only purchased these materials in the event of a shortage. As conflicting information about the quantity of certain raw materials purchased in relation to the quantity of raw materials produced in the IP were reported, in accordance with the provisions of Article 2 (5) and Article 18 of the basic Regulation, the Commission's services used facts available, in this case the highest quantity of purchased raw material reported by the companies, to establish the cost of raw materials for the determination of the cost of production. However, the total revised cost of production did not alter the finding that domestic prices were the appropriate basis for establishing the normal value.

(43) Considering the division of tasks between the companies concerned, the cost of production had to be determined by summing up the relevant costs of the producing company, *JSC Voronezhsyntezkauchuk*, with the relevant costs of *JSC SIBUR*.

(44) After the companies were informed of the decision not to impose provisional measures, they claimed a correction of the established normal value on the grounds that they had reported their domestic sales prices including Russian VAT by mistake. During the verification visit, the domestic sales prices for one company were verified and found to be reported net, free of taxes. With regard to the second company selling on the domestic market, domestic sales prices could not be properly verified during the verification visit as the company was unable to list completely their transactions of domestic sales at that time. However, the complete domestic prices reported later on were verified by randomly chosen invoices. Based on these invoices, the Commission's services came to the conclusion that the company had reported their relevant domestic sales prices net, free of taxes. For the remaining domestic sales, the Commission's services were unable to carry out any further verification with regard to VAT in due time. In the light of the foregoing, the claim was rejected.

7.2. *Export price*

(45) As exports of the product concerned were made directly to independent customers in the Community, the export price was established on the basis of the prices paid or payable for the product concerned when sold for export to the Community in accordance with Article 2(8) of the basic Regulation.

7.3. *Comparison*

(46) As all sales were made ex-works, adjustments were only made in respect of handling and credit costs where applicable and justified.

(47) After the companies were informed of the decision not to impose provisional measures, they claimed an adjustment for differences in physical characteristics according to Article 2(10)(a) of the basic Regulation stating that the SBS produced by them was of a lower quality compared to the product manufactured by the Community industry. During the verification visit, it was verified and confirmed that the SBS produced and sold on the Russian domestic market was the same as the SBS sold to the EC. Therefore, the claim was rejected under Article 2(10)(a) of the basic Regulation.

7.4. *Dumping margins*

(48) The dumping margin established, expressed as a percentage of the CIF import price at the Community frontier, duty unpaid is the following:

— SIBUR group, Russia: 31,7 %

8. **Taiwan**

(49) Questionnaire replies were received from four producers of SBS in Taiwan. The replies showed that only those two companies subject to individual dumping duties exported the product concerned to the EC during the IP.

8.1. *Normal value*

(50) For one company, the investigation showed that all domestic sales were representative and that only one specific product type was sold to the EU. It was found that there were sufficient domestic sales of the relevant type of SBS and that these sales could be considered as representative. Moreover, the product type exported to the EC was found to be sold in the ordinary course of trade. Therefore, actual domestic prices could be used to determine the normal value.

(51) For the other cooperating company, the investigation showed that total domestic sales were representative. Furthermore, the total domestic sales volume of eight types of SBS sold by the company represented 5 % or more of the total sales volume of comparable types of SBS exported to the Community and could therefore be considered as representative. However, one type of SBS sold to the EU was not sold on the domestic market.

(52) To determine the normal value, domestic prices could be used for eight product types. For the product type for which no domestic sales could be found, the Commission's services constructed the normal value in accordance with Article 2(3) of the basic Regulation on the basis of the exporting producer's own cost of manufacturing plus a reasonable amount for selling, general and administrative ('SG&A') costs and for profit. In this regard, SG&A costs were based on the SG&A costs of this company for those domestic sales of the like product which were representative as defined in Article 2(2) of the basic Regulation. For the profit margin, in accordance with the Article 2(6) of the basic Regulation, the profit on domestic sales in the ordinary course of trade was used.

8.2. *Export price*

(53) As exports of the product concerned were made directly to independent customers in the Community, the export prices were established on the basis of the prices paid or payable for the product concerned when sold for export to the Community in accordance with Article 2(8) of the basic Regulation.

8.3. *Comparison*

(54) For one company, adjustments were made in respect of transport, insurance, handling, credit and commission where applicable and justified.

(55) This company then claimed an adjustment for after-sales costs pursuant to Article 2(10)(h) of the basic Regulation, stating that a special after-sales service was only offered for sales on the domestic market. This company was given the opportunity during the verification visit to substantiate this claim, but could not demonstrate that any after-sales services were provided. The claim was therefore rejected in accordance with Article 2(10) of the basic Regulation.

(56) Furthermore, this company claimed an adjustment for currency conversions in accordance with Article 2(10)(j) of the basic Regulation. The claim was based on the fact that the company kept the sales amount for some export sales in the invoiced currency and only exchanged it when the rate was favourable. However, since the exchange rate used in the accounting system was equal to the daily rate of the individual export sale, and therefore reflected the sales amount in the domestic currency, no adjustment for speculative currency gains could be granted. This company did not demonstrate that the conditions of Article 2(10)(j) of the basic Regulation were fulfilled and therefore the claim was rejected.

(57) For the other company, adjustments were made in respect of transport, insurance, handling, loading, packing and credit costs where applicable and justified.

(58) That company also claimed an adjustment for differences in physical characteristics according to Article 2(10)(a) of the basic Regulation, on the grounds that some sales to the EU of a lower quality type of the product concerned had no equivalent on the domestic market. During the verification visit, that company had the opportunity to demonstrate that the alleged differences in physical characteristics affected prices and price comparability. However, they were unable to demonstrate that the alleged physical differences had a consistent impact on the price or on the use of the product concerned in comparison to the relevant type of SBS of a higher quality sold on the domestic market. Therefore, the claim was rejected.

8.4. *Dumping margins*

(59) The dumping margins established, expressed as a percentage of the CIF import price at the Community frontier, duty unpaid are the following:

— Lee Chang Yung Chemical Industry Corp., Taipei: – 1,8 %

— Chi Mei Corp., Tainan: 16,2 %

D. **INJURY**

1. **Definition of the Community industry**

(60) The following Community producers supported the complaint:

— Dynasol Elastomeros S.A., Madrid, Spain;

— Kraton Polymers International Ltd., London, United Kingdom;

— Polimeri Europa S.p.A., Milan, Italy;

— SA Petrofina NV Brussels, Belgium (formerly Atofina Elastomers N.V.);

(61) As these four complainant cooperating Community producers represent 100 % of the Community production of the product concerned, it is considered that the complainant producers constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

2. **Community consumption**

(62) Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, plus all imports from Korea, Russia and Taiwan, plus an estimated proportion of imports of SBS from other third countries under the relevant CN codes, as SBS only represents a part of these customs codes. This proportion was based on the methodology followed in the complaint in the absence of any other source of information. The imports from Korea, Russia

and Taiwan were determined on the basis of the figures submitted by the cooperating exporting producers in these three countries, since it was established during the investigation that they represented 100 % of the exports of the product concerned from the countries concerned to the Community.

(63) Between 2000 and the IP Community consumption decreased from 193 756 tonnes to 180 195 tonnes, i.e. by 7 %. However, the Community consumption reached a peak in 2002 and then sharply decreased by 9 %.

	2000	2001	2002	2003	IP
Community consumption (tonnes)	193 756	191 827	198 741	188 562	180 195
Index	100	99	103	97	93

3. **Imports of SBS from the countries concerned**

3.1. *Cumulation*

(64) The Commission considered whether the effects of imports of SBS originating in Korea, Russia and Taiwan should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.

(65) This Article provides that the effects of imports from two or more countries simultaneously subject to anti-dumping investigations are to be assessed cumulatively only if it is determined that (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3) of the basic Regulation and that the volume of imports of each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Community product.

(66) With regard to Korea and one Taiwanese exporting producer, the investigation has shown that either *de minimis* or no dumping was found. Therefore, in accordance with Article 3(4) of the basic Regulation, those imports concerned could not be cumulatively assessed. On the contrary, as indicated above, the dumping margins established for Russia and the other cooperating Taiwanese exporter are well above *de minimis* level, and the volume of imports from said countries is not negligible in the sense of Article 5(7) of the basic Regulation, the cumulated market share attaining 5,3 %.

(67) In order to determine the appropriateness of a cumulative assessment in view of the conditions of competition between imported products from the two companies and between imported products and the like Community product, the Commission's services analysed the 'exporters' market behaviour in terms of trends of export volumes and prices.

(68) Similar trends in export volumes were identified for Taiwan and Russia, with an increase of 77 % for Russia and 151 % for Taiwan between 2001, the year following the imposition of measures on Taiwan, and the IP. Given the above, it was concluded that there was no significant difference in the market behaviour of the Russian and Taiwanese exporters found to dump in terms of trends of export volumes to the Community.

(69) Similar market behaviour on the part of Russian and Taiwanese producers in terms of export prices was also found. In fact, these countries decreased their respective average unit selling prices of SBS by 18 % and 6 % from 2001, after measures were imposed on Taiwanese imports and import volumes from Russia started to become significant, until the end of the IP. In addition, a similar level of undercutting was determined for imports from both countries.

(70) The investigation also showed that imports from the countries concerned into the Community used the same sales channels, as in the vast majority, said imports are traded through distributors, rather than sold to final customers.

(71) Furthermore, as explained above, it was found that the product concerned imported from the countries concerned and produced by the Community industry share the same basic physical and chemical characteristics, and are to be considered alike in terms of interchangeability and substitutability. Thus, it was established that exports of the product concerned from the countries concerned compete with each other and with SBS manufactured by the Community industry.

(72) On the basis of the above, it was concluded that all conditions justifying the cumulation of imports of SBS originating in Russia and Taiwan were met.

3.2. *Import volume and market share*

(73) Dumped imports of SBS from Russia and Taiwan increased sharply from 2 834 tonnes in 2000 to 9 523 tonnes during the IP. The corresponding market share increased from 1,5 % in 2000 to 5,3 % during the IP.

	2000	2001	2002	2003	IP
Imports (tonnes)	2 834	4 979	4 966	8 919	9 523
Index	100	176	175	315	336
Market share	1,5 %	2,6 %	2,5 %	4,7 %	5,3 %

3.3. *Prices*

(74) The weighted average price of dumped imports of SBS originating in Russia and Taiwan declined by 12 % between 2000 and the IP.

	2000	2001	2002	2003	IP
Weighted average CIF Community frontier price (EUR/tonne)	1 145	1 179	1 086	1 023	1 004
Index	100	103	95	89	88

3.4. *Undercutting*

(75) For the determination of price undercutting the Commission analysed data referring to the IP. The relevant sales prices of the Community industry were those to independent customers, adjusted where necessary to an ex-works level, i.e. excluding freight costs in the Community and after deduction of discounts and rebates. Prices for the different types of SBS defined in the questionnaires were compared with the sales prices charged by the exporters net of discounts and adjusted where necessary to CIF Community frontier with an appropriate adjustment for the customs clearance costs and post-importation costs.

(76) It was claimed by importers and the Russian producer and also confirmed by the Community industry that the quality of the like product manufactured by the Community industry is generally higher than that of the product concerned imported from Russia. Based on the evidence found, it was considered that this quality difference justified an estimated adjustment of 5 %, which was added to the CIF Community frontier price of the cooperating exporting producers.

(77) During the IP, the weighted average undercutting margin was around 15 % for Russia and for the Taiwanese producer found to dump.

(78) When assessing the above figures, it should be borne in mind that — despite the quality adjustment made — SBS from various sources is largely interchangeable and, consequently, price is an important criteria for selecting a source of supply. This reinforces the effect of any price undercutting found.

4. **Situation of the Community industry**

4.1. *Production*

(79) Production in volume by the Community industry decreased by 4 % during the period considered. After an increase in 2002, the production decreased in 2003 and during the IP.

	2000	2001	2002	2003	IP
Production (tonnes)	259 698	253 113	271 964	253 679	249 566
Index	100	97	105	98	96

4.2. *Capacity of production and capacity utilisation rates*

(80) The production capacity was established on the basis of the nominal capacity of the production units owned by the Community industry, taking into account technical interruptions in production as well as the fact that in certain cases part of the capacity had been used for other products manufactured with the same production lines.

(81) SBS production capacity remained stable during the period considered. Indeed, after a slight increase in 2001 and 2002, it decreased in 2003 to the same level as in 2000 and remained at that level in the IP.

(82) Capacity utilisation rates diminished by 4 percentage points from 79 % to 75 %. As production capacity itself remained stable, this decline in capacity utilisation is merely due to the decrease in the production volumes of the Community industry.

	2000	2001	2002	2003	IP
Capacity of production (tonnes)	329 574	337 524	338 014	329 173	330 774
Index	100	102	103	100	100
Capacity utilisation	79 %	75 %	80 %	77 %	75 %

4.3. *Stocks*

(83) During the period considered stocks increased by 60 %. The stock increase seems to have two reasons, one being the decrease in sales and the other being a variety of new types of SBS produced which needed more time to be marketable.

	2000	2001	2002	2003	IP
Stocks (tonnes)	44 971	44 325	59 077	63 997	71 875
Index	100	99	131	142	160

4.4. *Investments*

(84) In the period considered the Community industry invested around EUR 60 million, mainly consisting of plant and machinery (around 48 %) and research and development projects (23 %). These investments were necessary mainly to maintain production capacity at its current level. After a sharp decrease in the years 2001 and 2002, investments increased again in 2003 and the IP, but still remained below that of the year 2000. The increase in 2003 and the IP was due to maintenance and modernisation required for the development and introduction of new types of SBS, which was necessary for the Community industry in order to remain competitive. Furthermore, the fluctuation of investments can be explained by the cyclical lifespan of certain machinery. Over the period considered the annual investments decreased overall by 11 %.

	2000	2001	2002	2003	IP
Investments (EUR '000)	16 464	12 969	8 914	11 760	14 698
Index	100	79	54	71	89

4.5. *Sales and market share*

(85) SBS sales by the Community industry on the Community market declined by 15 % from 2000 to the IP. As Community consumption only decreased by 7 % during the period considered, the sharp decrease in sales by the Community industry resulted in a significant loss of market share, which indeed passed from 89 % to 82 %.

	2000	2001	2002	2003	IP
Sales in the EU (tonnes)	172 080	166 680	161 486	155 050	146 907
Index	100	97	94	90	85
Market share	89 %	87 %	81 %	82 %	82 %

4.6. *Prices*

(86) The Community industry's average unit selling price was more or less at the same level during the IP compared to 2000, decreasing by only 1 %. Indeed the Community industry's unit selling price first increased by 6 % between 2000 and 2001 and subsequently decreased by 7 % from 2001 to the IP.

	2000	2001	2002	2003	IP
Weighted average price (EUR/tonne)	1 350	1 434	1 363	1 348	1 330
Index	100	106	101	100	99

4.7. *Profitability and cash flow*

(87) During the period considered the weighted average profitability on net turnover of the Community industry for its sales of the like product on the Community market decreased from 2,2 % to 1,2 %. It first sharply increased from 2,2 % in 2000 to 9,3 % in 2001 which coincided with the imposition of anti-dumping and countervailing measures on imports of SBS from Taiwan and subsequently constantly decreased from 2001 onwards.

	2000	2001	2002	2003	IP
Weighted average profitability on net turnover	2,2 %	9,3 %	8,9 %	1,5 %	1,2 %

(88) The cash flow generated was EUR −0,7 million during the IP. The situation was difficult in 2000 mainly because of the high level of investments. However the Community industry could generate positive cash flow for the years 2001, 2002 and 2003. However, the cash flow situation deteriorated sharply from 2002 to the IP.

	2000	2001	2002	2003	IP
Cash flow (in EUR '000)	−7 362	10 005	33 050	4 639	−714

4.8. *Return on net assets*

(89) Return on net assets for the product concerned decreased by 5 % during the period considered. After a first increase to 0,3 % in 2001 and 2,8 % in 2002, it sharply decreased to −8,5 % in 2003 and −11,2 % in the IP.

	2000	2001	2002	2003	IP
Weighted return on net assets	−6,2 %	0,3 %	2,8 %	−8,5 %	−11,2 %

4.9. *Ability to raise capital*

(90) Three of the four Community producers belong to large oil groups, whereas the fourth is 100 % owned by an investment fund. As to the ability to raise capital, there was no claim from the Community industry, or indication, that the Community industry encountered problems in raising capital for its activities.

4.10. *Employment and wages*

(91) Employment in the Community industry decreased by 7 % during the period considered. Wages remained stable over the period considered: total wages slightly increased by 1 %, which is considerably less than the European inflation rates during that period.

	2000	2001	2002	2003	IP
Employees	627	642	596	614	581
Index	100	102	95	98	93
Weighted average salary (EUR '000/ year)	75	75	73	73	76
Index	100	100	97	97	101

4.11. *Productivity*

(92) Productivity of the Community industry increased by 4 % during the period considered. The slight fluctuations over the period considered are directly linked to the evolution of employment. This increase shows that the Community producers not only adapted the number of people employed in relation to the decrease in sales but also managed to improve their efficiency.

	2000	2001	2002	2003	IP
Productivity (tonnes/ employee)	414	394	456	413	430
Index	100	95	110	100	104

4.12. *Growth*

(93) While Community consumption decreased by 6 % between 2000 and the IP, the sales volume of the Community industry to unrelated customers decreased by 15 %. Thus, sales by the Community industry went down much more sharply than the demand during the period considered. Consequently, the market share of the Community industry fell by 8 percentage points.

4.13. *Magnitude of the dumping margin*

(94) As regards the impact on the Community industry of the magnitude of the actual margins of dumping, given the volume and the prices of the dumped imports from Russia and Taiwan this impact cannot be considered negligible.

4.14. *Recovery from past dumping and subsidisation*

(95) It should be recalled that during part of the period considered the Community industry was suffering from dumped and subsidised imports from Taiwan. The Community industry recovered to some extent after the imposition of anti-dumping and countervailing measures in 2000 on imports from Taiwan. However, the situation of the Community industry deteriorated again after 2002 when imports from Taiwan, Russia and Korea increased significantly with prices undercutting the Community prices.

5. **Conclusion on injury**

(96) The cumulated volumes of dumped imports from Russia and Taiwan have increased, both in absolute terms and in terms of market share, representing a cumulated market share of 5,3 % in the IP. Moreover, the weighted average price of dumped imports from Russia and Taiwan decreased by 12 % over the period considered. This decrease is reflected in the price undercutting found.

(97) Most of the Community industry injury indicators have shown a negative evolution during the period considered, which points to a situation of injury. While total Community consumption of SBS decreased by 7 %, the volume of the Community industry's sales decreased by 15 %, with a corresponding loss in market share of 7 percentage points. Production volume decreased by 4 %; production capacity stagnated and capacity utilisation diminished by 4 percentage points. The average unit selling price decreased by 1 % and profitability on net turnover by 1,1 percentage point during the period considered. Other profitability-related indicators such as return on net assets also deteriorated during the period considered. Employment decreased by 7 % whereas productivity increased by 4 %. Finally, average salaries increased by 1 %, less than the European inflation rates during the period considered.

(98) Based on the above, it is considered that the Community industry is in a difficult economic and financial situation and has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

E. **CAUSATION**

1. **Introduction**

(99) In accordance with Articles 3(6) and 3(7) of the basic Regulation, it was examined whether the material injury suffered by the Community industry had been caused by dumped imports of the product concerned originating in the countries concerned. Furthermore, in accordance with Article 3(7) of the basic Regulation, known factors other than the dumped imports, which might have injured the Community industry, were also examined to ensure that any injury caused by those factors was not wrongly attributed to the dumped imports.

2. **Effect of the dumped imports**

(100) Dumped imports from the countries concerned increased by 3,8 % in market share during the period considered while the price of those imports decreased by 12 % and undercut the prices of the Community industry by 15,3 % during the IP. The Community industry managed to keep its sales prices largely stable during the period considered, but this was at the expense of sales volume and market share, which in turn had an impact on its profitability.

(101) However, while a first analysis of the aforementioned data would suggest a significant impact of the dumped imports on the situation of the Community industry, a more in depth examination does not confirm this. First, there is only a partial coincidence in time between the deterioration of the situation of the Community industry and the moment when the presence of the dumped imports was most strongly felt. While the volume of dumped imports slightly decreased between 2001 and 2002, and then massively increased in 2003 (+ 80 %), the sales of the Community industry showed a gradual decrease over the whole period considered. Moreover, the loss of market share of the Community industry took place only during the period 2000-2002, while the dumped imports increased their market share over the whole period considered. This increase was particularly strong in 2003 and the IP, as the market share of the dumped imports went from 2,5 % in 2002 to 4,7 % in 2003 and 5,3 % in the IP. During the same period, the Community industry slightly increased its market share from 81 % in 2002 to 82 % in 2003 and the IP. Furthermore it is also noted that the Community industry reached its highest profitability in 2001 and 2002, at the time when its loss of market share took place. Profitability went only down thereafter. The Community industry's sales prices remained stable throughout the period. It is acknowledged that these prices were somewhat depressed from 2003 onwards as the Community industry could not pass on some cost increases. However, the impossibility to pass on these cost increases cannot or only to a very limited extent be attributed to the dumped imports, in particular since it should be noted that non-dumped imports showed a higher undercutting than the dumped imports. Moreover, the market share of the dumped imports remained always below 5,3 %, while the non-dumped imports had

a market share of around 12 %. All this suggests that any price pressure from imports results mostly from the non-dumped imports.

(102) Given the above, it was found that the dumped imports may have exerted a certain pressure on the Community industry's prices and had some negative impact on the situation of the Community industry. However, in the absence of a clearer coincidence in time between the development of volumes, market share and prices of the dumped imports on the one hand, and of the Community industry on the other, it was difficult to establish the impact of the dumped imports on the injurious situation of the Community industry. Therefore, it could not be concluded that the dumped imports had played a determining role in the injurious situation of the Community industry.

3. **Effects of other factors**

3.1. *Development of consumption*

(103) The consumption of SBS in the Community decreased by 7 % during the period considered. This may have partially affected the situation in the Community industry, as the production of SBS is a capital intensive activity for which the volume of sales has a direct influence on profitability.

(104) However, the decrease in consumption can only be considered as one of a number of causes of the injurious situation of the Community industry as it was shown that imports from Korea, Russia and Taiwan increased in the period considered, thus taking over part of the Community industry's market share.

3.2. *Currency fluctuations*

(105) Currency fluctuations between the Euro and the USD were also examined, as the majority of import transactions from the countries concerned into the EC are negotiated in USD. The Euro has appreciated in value vis-à-vis the USD as from mid 2002, and significantly during the IP, thus favouring exports into the Euro area for that period. In the light of this, one exporter and an interested party claimed that in a 'dollar oriented' business, the depreciation of this currency in comparison to the Euro must have substantially contributed to the injury suffered by the Community industry and should therefore be taken into account.

(106) However, it should be noted that the revaluation of the Euro at the same time reduced the injury suffered by the Community industry as the prices for raw materials, which represent about 40 % of the cost of production, are quoted on international commodities markets in USD.

(107) Moreover, exports of Community producers to unrelated parties increased during the period considered, whereas imports of the product concerned from the United States into the Community decreased, showing that the appreciation of the Euro vs. USD is not in itself a determining factor for the loss in market share of the Community producers on the EC market.

(108) In conclusion, although *prima facie* it cannot be excluded that the appreciation of the Euro vis-à-vis the USD might have favoured the imports of SBS from the countries concerned, currency fluctuations also counterbalanced the injury suffered by the Community industry. Moreover, this appreciation neither favoured the imports of other dollar driven countries than the countries concerned nor prevented the Community producers from increasing their exports outside the Community. It was therefore not considered that currency fluctuations had a material effect on the injury suffered by the Community producers. More importantly, the injury analysis is concerned with the prices and quantities of the dumped imports but certainly not with the question as to why the dumped imports were made at any given price level. Thus, it seems that the effect of exchange rate fluctuations on the prices of dumped imports can by definition not normally be another factor of injury.

3.3. *Non-dumped imports*

(109) The effects of non-dumped imports from Korea and Taiwan on the situation of the Community industry were assessed. In order to respect the confidentiality of the information provided by individual companies, the data are presented on a cumulated basis.

(110) The non-dumped imports from Korea and Taiwan showed an identical trend. On a cumulated basis, they increased by 56 % in terms of volume and 5,2 percentage points in terms of market share during the period considered, reaching a market share of 12,8 % in the IP. The volume of those non-dumped imports thus represented 2,4 times the volume of dumped imports during the IP. Moreover, the undercutting margin that could be calculated for non-dumped Korean and Taiwanese imports was higher (17,4 %) than for dumped imports (15,3 %). This substantial undercutting together with the significant volumes of non-dumped imports strongly contributed to the pressure on prices observed on the EC market.

(111) On this basis, it was concluded that the volume and price effect of the non-dumped imports from Korea and Taiwan were such that they can be considered to have substantially contributed to the injury suffered by the Community industry, and that the dumped imports from Russia and Taiwan played a less important role than the non-dumped imports.

3.4. *Imports from other third countries*

(112) Imports from all other third countries had a market share of 0,4 % in the Community during the IP and it was concluded that their impact on the injurious situation suffered by the Community industry was not significant.

3.5. *Costs of raw materials*

(113) It was noted that the costs of raw materials have increased during the period considered. This contributed to the declining profitability of the Community industry. However, the Community industry would normally seek to pass on those cost increases to their customers. Due to the existence of large price pressure exerted by the non-dumped imports and probably to a much lesser extent by the dumped imports, this was not possible. Moreover, the Korean and Taiwanese exporting producers also faced an increase in their raw material costs, of a similar level to the Community producers. It was therefore not the increase of raw material costs in the Community as such but rather the coincidence between the pressure on price exerted by imports and the increase of the costs which had a negative effect on the profitability of the Community industry.

(114) Given the above, it was concluded that the variations in the costs of raw materials in the Community were not, as such, a factor which caused injury to the Community industry.

4. **Conclusion on causation**

(115) The data suggest that the dumped imports had exerted a certain price pressure on the Community industry's prices and had contributed to its injurious situation. However, a more detailed analysis, in particular based on the development of trends over the period considered did not allow a causal link to be established as there was no clear coincidence in time between the deterioration of the situation of the Community industry and the effects of the dumped imports.

(116) It was also found that, to the extent that a coincidence in time existed between, on the one hand, the increase of dumped imports from Russia and Taiwan, in terms of volumes and market share, and, on the other hand, the deterioration of the situation of the Community industry, which materialised in a loss in market share and a decrease in profitability, such a coincidence in time also existed for non-dumped imports, which had a steeper increase in volume than the dumped imports during the period considered.

(117) Moreover, the non-dumped imports from Korea and Taiwan had during the IP a significantly higher volume than the dumped imports, leading to a significantly higher market share (12,8 % vs. 5,3 %). In addition, both the dumped and the non-dumped imports undercut the Community prices, with non-dumped imports showing even higher levels of undercutting. The Community industry therefore faced more intense competition, at fair prices, from imports from non-dumping producers/countries. The non-dumped imports were thus a prevailing factor in the injurious situation of the Community industry.

(118) It was also found that the decrease in consumption in the EC contributed to the injury suffered by the Community industry.

(119) The Community industry contested these conclusions, arguing that the impact of other factors was not such as to break the causal link between the dumped imports from Russia and Taiwan and the injury suffered by the Community industry. However, as they did not present any arguments which could invalidate the appreciation and conclusions made under recitals (100) to (102), (103), (109) to (111) and (115) to (118), it was considered that the arguments put forward were not sufficient to conclude differently.

(120) In conclusion, although the dumped imports may have contributed to the injury, it could not be established that, taken in isolation, they have caused material injury. Indeed, other factors were examined pursuant to Article 3(7) of the basic Regulation and the injury could be significantly attributed to the effects of non-dumped prices and contraction in demand.

F. LASTING NATURE OF THE CHANGED CIRCUMSTANCES

(121) Within the framework of the interim review concerning Taiwan, it was also examined whether the changed circumstances with respect to the original investigation regarding dumping could reasonably be considered to be of a lasting nature in accordance with Article 11(3) of the basic Regulation.

(122) The likely development of domestic prices on the Taiwanese market and of export prices of SBS from Taiwan was examined. In this respect, it was found that Taiwan had a substantial domestic market for the product concerned, and that domestic prices had increased in comparison with the original investigation, in an even higher proportion than the costs of raw materials.

(123) With regard to exports of SBS from Taiwan to other markets, it should first be noted that the EU market represents a small proportion of total exports. Indeed, the investigation showed that the cooperating companies sold 75 % of their production of SBS to well-established third country markets. In addition, it was noted that export prices had steadily increased from 2002 until the IP, by about 10 % and 15 %. Therefore it is not expected that the termination of measures vis-à-vis Taiwan will lead to a significant risk of renewed dumping.

(124) In accordance with Article 11(3) of the basic Regulation, it was therefore concluded that the changed circumstances with respect to the original investigation regarding dumping could reasonably be considered to be of a lasting nature.

G. CONCLUSION

(125) In view of the fact that no dumping was found for imports of SBS originating in Korea and for one company in Taiwan and that the injury suffered by the Community industry could be significantly attributed to other factors, such as the volumes and prices of imports not sold at dumped prices and a contraction in demand, the causal link between dumping and injury insofar as dumped imports originating in Russia and Taiwan are concerned could not be sufficiently established. The anti-dumping proceedings regarding SBS originating in Korea, Russia and Taiwan should therefore be terminated in accordance with Article 9(2) and 9(3) of the basic Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping proceeding concerning imports of styrene-butadiene-styrene thermoplastic rubber originating in the Republic of Korea and Russia is hereby terminated.

Article 2

Regulation (EC) No 1993/2000 imposing a definitive anti-dumping duty on imports of SBS originating in Taiwan is hereby repealed.

Article 3

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19 August 2005.

For the Council

The President

J. STRAW