COMMISSION REGULATION (EC) No 1888/2006

of 19 December 2006

imposing a provisional anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation) and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. **Initiation**

(1) On 13 February 2006, a complaint concerning imports of certain prepared and preserved sweetcorn in kernels originating in Thailand was lodged by the Association Européenne des Transformateurs de Maïs Doux (AETMD) (the complainant) on behalf of producers representing a major proportion of the total Community production of prepared or preserved sweetcorn, in this case around 70 %.

(2) This complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) On 28 March 2006, the proceeding was initiated by the publication of a notice of initiation in the *Official Journal of the European Union* [2].

2. **Parties concerned by the proceeding**

(4) The Commission officially advised the exporting producers, importers, users known to be concerned and their associations, consumers associations, the representatives of the exporting country and the Community producers of the initiation of the anti-dumping proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(5) In view of the large number of exporting producers, Community producers and importers involved in this investigation, sampling was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation.

(6) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers, Community producers and importers and representatives acting on their behalf were requested to make themselves known and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned within 15 days of the date of publication of the notice of initiation.

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[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

[2] OJ C 75, 28.3.2006, p. 6.

(7) After examination of the information submitted, and given the relatively low number of positive replies for further cooperation from both Community producers and importers, it was decided that sampling was only necessary with regard to exporters. The Commission selected a sample of four exporting producers.

(8) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest. To this end, the Commission sent questionnaires to the exporting producers selected in the sample. For the Community producers and the importers, the Commission sent questionnaires to all the companies that made themselves known within the deadlines set out in the notice of initiation, as sampling was finally found unnecessary. The Commission also sent questionnaires to all Community retailers mentioned in the complaint and to consumers' associations.

(9) Replies were received from five Thai exporting producers, from six Community producers, from one unrelated importer in the Community and from one retailer in the Community. The Thai authorities made also their views known.

(10) Verification visits were carried out at the premises of the following companies:

(a) *Producers in the Community:*

— Bonduelle Conserve International SAS, Renescure, France,

— Bonduelle Nagykoros Kft., Nagykoros, Hungary,

— Compagnie Générale de Conserve SICA SA, Theix, France,

— Conserve Italia SCA, San Lazzaro di Savena, Italy;

(b) *Exporting producers in Thailand:*

— Malee Sampran Public Co., Ltd, Pathumthani,

— Karn Corn Co., Ltd, Bangkok,

— River Kwai International Food Industry Co., Ltd, Bangkok,

— Sun Sweet Co., Ltd, Chiangmai.

(11) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

3. **Investigation period**

(12) The investigation of dumping and injury covered the period from 1 January 2005 to 31 December 2005 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2002 to 31 December 2005 (period considered).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(13) The product concerned is sweetcorn (*Zea mays* var. *saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen, normally declared within CN code ex 2001 90 30, and sweetcorn (*Zea mays* var. *saccharata*) in kernels prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006, normally declared within CN code ex 2005 80 00, originating in Thailand.

(14) The investigation has shown that, despite differences in the preservations, the different types of the product concerned all share the same basic biological and chemical characteristics and are basically used for the same purposes.

2. Like product

(15) The sweetcorn produced and sold in the Community by the Community industry and the sweetcorns produced and sold in Thailand were found to have essentially the same physical and chemical characteristics and the same basic uses of the sweetcorn produced in Thailand and sold for export to the Community. They are therefore provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Sampling

(16) As stated in recital 5 above, sampling was envisaged for exporting producers in Thailand in the notice of initiation. In total, 20 companies replied to the sampling questionnaire within the time limits and provided the requested information. However, one of these companies neither produced nor exported the product concerned since it was a domestic trader and not an exporting producer and therefore could not be considered when drawing up the sample. Furthermore, three companies did not export the product concerned to the Community during the IP. In total, 16 companies were considered as cooperating parties.

(17) The sample of exporters was selected in accordance with Article 17(1) of the basic Regulation, on the basis of the largest representative volume of exports from Thailand into the Community that could reasonably be investigated within the time available.

(18) In accordance with Article 17(2) of the basic Regulation, the Commission consulted the Thai authorities and the exporters on its intention to select a sample of four companies representing 52 % of Thai exports of the product concerned to the Community. The Thai authorities and some exporters objected to the sample chosen and requested that it included more companies. The Commission however considered that in order to reach the highest possible representativity of the sample taking into account the time limits of the investigation, it was appropriate to include only these four companies in the sample since (i) this allowed to cover a larger volume of exports and (ii) it was feasible to investigate these four companies within the time available.

2. Individual examination

(19) Requests for the determination of an individual dumping margin were submitted by the companies not selected in the sample. However, in view of the large number of requests and the large number of companies selected in the sample, it was considered that such individual examinations would be unduly burdensome within the meaning of Article 17(3) of the basic Regulation and would have prevented completion of the investigation in good time. The claims for determination of individual margins are therefore rejected.

(20) One of the non-sampled companies which had requested an individual margin contested the decision to not grant an individual examination. They argued that the sampled companies were not representative considering that small companies were not included in the sample and furthermore the sample did not reflect the geographical spread of the companies in Thailand. This company even submitted a complete questionnaire response within the deadline indicated in the notice of initiation. As set out in recital 18 above, the sample was considered representative based on the export volumes. In this respect, it should be noted that the fundamental criterion which was applied when selecting the sample in this investigation was the one related to volume (i.e. volume of exports to the Community in the case of exporting producers), rather than being based on the alternative criterion in Article 17(1) of the basic Regulation, i.e. using a sample which is statistically valid on the basis of information available at the time of selection. Furthermore, as stated in recital (18), it was not possible to investigate more companies since this would have rendered the investigation unduly burdensome and would have prevented completion of the investigation in good time. In these circumstances, the company's request to have an individual examination was rejected.

3. **Normal value**

(21) For the determination of normal value the Commission first established, for each of the exporting producers, whether their total domestic sales of the like product were representative in comparison with their total export sales to the Community. In accordance with Article 2(2), first sentence, of the basic Regulation, the domestic sales of the like product were found to be representative for only one of the sampled companies since the domestic sales volume of this company exceeded 5 % of its total export sales to the Community.

(22) The Commission subsequently identified for this company the types of the like product sold domestically which were identical or directly comparable to the types sold for export to the Community. For each of those types, 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 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 exported to the Community.

(23) The Commission subsequently examined whether the domestic sales of each type of the product concerned, sold domestically in representative quantities, could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable domestic sales to independent customers, of each exported product type.

(24) For those product types where more than 80 % by volume of sales on the domestic market were sold at a net sales price equal to or above the calculated cost of production, and where the weighted average sales price was equal to or higher than the cost of production, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question, irrespective of whether these sales were profitable or not.

(25) For those product types where at least 10 %, but no more than 80 %, by volume of sales on the domestic market were not below cost of production, normal value, by product type, was calculated as the weighted average of domestic sales prices which were found to be equal to or above cost of production only, of the type in question.

(26) For those product types where less than 10 %, by volume of sales, on the domestic market, were not below cost of production, it was considered that the product type concerned was not sold in the ordinary course of trade.

(27) For sales of product types not made in the ordinary course of trade, as well as for those product types which were not sold in representative quantities on the domestic market, normal value had to be constructed. For this company normal value was constructed in respect of around 80 % of the volume of sales to the Community.

(28) For these product types mentioned in recital 27, the normal value was constructed pursuant to Article 2(3) of the basic Regulation, by adding to the manufacturing cost of each product type exported to the Community a reasonable amount for selling, general and administrative (SG&A) costs and for profits. Pursuant to the chapeau of Article 2(6) of the basic Regulation, the amount of SG&A was established on the basis of the SG&A expenses incurred and profit realised by the company for domestic sales of the like product in the ordinary course of trade.

(29) For the other three sampled exporting producers, normal value had to be constructed pursuant to Article 2(3) of the basic Regulation since none of them had representative domestic sales. For all these exporting producers, normal value was constructed by adding to the cost of manufacturing of each type exported to the Community, corrected where appropriate as further explained in recital 32, a reasonable amount for selling, general and administrative (SG&A) expenses and profit. The SG&A expenses and profit could not be established on the basis of Article 2(6)(a) of the basic Regulation since only one company had representative domestic sales.

(30) For two companies, the SG&A expenses and profit were determined in accordance with Article 2(6)(b) as these exporters had representative sales, in the ordinary course of trade, of the same general category of products (i.e. other canned products including canned fruit products and canned baby corn).

(31) For the remaining company, the SG&A expenses and profit were determined in accordance with Article 2(6)(c) of the basic Regulation, on the basis of the weighted average of the SG&A expenses incurred and profit realised on sales of the same general category of products of the two companies with domestic sales of those products in the ordinary course of trade.

(32) Where appropriate, the costs of manufacturing and SG&A expenses reported were corrected before being used in the ordinary course of trade test and in constructing normal values.

4. **Export price**

(33) All sales of the exporting producers concerned were made directly to unrelated customers in the Community. For those sales, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of prices actually paid or payable by these independent customers in the Community.

(34) One exporter purchased a substantial part of the product concerned sold to the Community. It was claimed that these purchases should be regarded as part of a tolling system set in place by the company. However, the purchased finished goods were in fact produced entirely by other independent producers of the product concerned. Accordingly, only sales of the company's own production to the Community were taken into account when determining its dumping margin.

5. **Comparison**

(35) The comparison between normal value and export price was made on an ex-works basis. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which affect price comparability. Allowances for differences in, transport costs, ocean freight and insurance costs, handling costs, loading and ancillary costs, commissions, credit costs and bank charges relating to currency conversions were granted where applicable and justified, and duly adjusted where necessary.

(36) The two exporting producers referred to in recital (30) above claimed an adjustment for differences in the level of trade, pursuant to Article 2(10)(d)(i) and (ii) or, alternatively, Article 2(10)(k) of the basic Regulation. These exporting producers claimed that prices of own branded products are different from retailer branded products. Given that the exports to the Community were only of retailer branded products while the domestic sales of the general category of products included both own branded and retailer branded, an adjustment was therefore made under Article 2(10)(d) of the basic Regulation. The adjustment level has been estimated on the basis of the relationship of the profit margins obtained by the Community industry on their own branded products and on all products.

6. **Dumping margin**

(37) For the sampled exporting producers, individual dumping margins were established on the basis of a comparison of a weighted average normal value with a weighted average export price, in accordance with Article 2(11) and (12) of the basic Regulation.

(38) On this basis, the provisional dumping margins expressed as a percentage of the cif Community frontier price, duty unpaid, are:

Company	Provisional dumping margin
Karn Corn	4,3 %
Malee Sampran	17,5 %
River Kwai	15,0 %
Sun Sweet	11,2 %

(39) For the cooperating companies not selected in the sample, the dumping margin was established on the basis of the weighted average dumping margin of the companies selected in the sample, pursuant to Article 9(6) of the basic Regulation. This weighted average dumping margin, expressed as a percentage of the cif Community frontier price, duty unpaid, is 13,2 %.

(40) For those exporting producers which did not cooperate, the dumping margin was established on the basis of facts available in accordance with Article 18 of the basic Regulation. To this end, the level of cooperation was first established. A comparison between Eurostat data concerning imports originating in Thailand and sampling replies showed that the level of cooperation was high (more than 92 %). Therefore, and since there were no indications that the non-cooperating companies were dumping at a lower level, it was considered appropriate to set the dumping margin for the remaining companies, which had not cooperated in the investigation, at the level of the highest dumping margin found for the companies included in the sample. This approach is in accordance with the standing practice of the Community institutions and was also considered necessary in order not to provide an incentive to non-cooperation. Therefore, the residual dumping margin was calculated at the rate of 17,5 %.

D. **INJURY**

1. **Community production and Community industry**

(41) Within the Community, the like product is manufactured by 18 producers. The output of these 18 Community producers is therefore deemed to constitute the Community production within the meaning of Article 4(1) of the basic Regulation.

(42) Of these 18 producers, a total of six, being members of the complaining association, declared their interest in cooperating in the proceeding within the time limit set out in the notice of initiation and properly cooperated with the investigation. These six producers were found to account for a major proportion of the total Community production of the like product, in this case around 70 %. The six cooperating producers therefore constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will be hereafter referred to as the 'Community industry'. The remaining 12 Community producers will be hereafter referred to as the 'other Community producers'. None of these 12 other Community producers opposed the complaint.

2. **Community consumption**

(43) Community consumption was established on the basis of the sales volumes of the Community industry's own production destined for the Community market, the import volumes data on the Community market obtained from Eurostat and, concerning the other Community producers, from information available from the mini-questionnaire intended for sampling or from the complaint.

(44) In the IP, the Community market for the product concerned and the like product was approximately at the same level as in 2002, i.e. around 330 000 tonnes. Consumption remained relatively stable throughout the period considered except for 2004, when it was 5 % higher than in 2002 and 2003.

	2002	2003	2004	IP
Total EC consumption (tonnes)	330 842	331 945	347 752	330 331
Index (2002 = 100)	*100*	*100*	*105*	*100*

Source: Investigation, Eurostat, complaint.

3. **Imports from the country concerned**

(a) *Volume*

(45) The volume of imports of the product concerned from the country concerned into the Community rose by 87 %, from around 22 000 tonnes in 2002 to around 42 000 tonnes in the IP. It rose by 58 % in 2003, by a further 40 percentage points in 2004, before declining by 11 percentage points in the IP.

	2002	2003	2004	IP
Volume of imports from Thailand (tonnes)	22 465	35 483	44 435	41 973
Index (2002 = 100)	*100*	*158*	*198*	*187*
Market share of imports from Thailand	6,8 %	10,7 %	12,8 %	12,7 %
Price of imports from Thailand (EUR/tonnes)	797	720	690	691
Index (2002 = 100)	*100*	*90*	*87*	*87*

Source: Eurostat.

(b) *Market share*

(46) The market share held by exporters in the country concerned increased by around 6 percentage points during the period considered, from 6,8 % in 2002 to 12,7 % in the IP. In detail, Thai exporters gained almost 4 percentage points in 2003, a further 2 percentage points in 2004 and practically stabilised at that level in the IP.

(c) *Prices*

(i) Price evolution

(47) Between 2002 and the IP, the average price of imports of the product concerned originating in the country concerned declined by 13 %. Specifically, prices declined by 10 % in 2003 and by a further 3 % in 2004, before stabilising at that price (i.e. around 690 EUR/tonne) in the IP.

(ii) Price undercutting

(48) A price comparison for similar product types was made between the exporting producers' and the Community industry's selling prices in the Community. To this end, Community industry's ex-works prices, net of all rebates and taxes have been compared with the cif Community frontier prices of exporting producers of the country concerned, duly adjusted for conventional duties, unloading and customs clearance costs. The comparison showed that during the IP the product concerned originating in the country concerned sold in the Community undercut the Community industry's prices by between 2 % and 10 %, depending on the exporting producer concerned, with the exception of two sampled exporting producers for which no undercutting was found. However, on a type-by-type basis it was found that in some instances, prices offered by the exporting producers concerned were significantly lower than the above average undercutting margins.

4. **Situation of the Community industry**

(49) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

(50) This market is inter alia characterised by the existence of two sales channels, i.e. sales under the producer's own brand and sales under retailer's brand. Sales under the first channel will usually trigger higher selling costs intended notably for marketing and advertising, and will also command higher selling prices.

(51) The investigation evidenced that all imports from the cooperating Thai exporters pertained to the retailer's brand channel. It was considered appropriate to distinguish in the injury analysis between Community industry's sales under its own brand and under the retailer's brand wherever relevant, as competition from dumped imports is faced in the first place by Community industry's like products sold under the retailer's brand. This distinction was done in particular for the determination of sales volumes, sales prices and profitability. However, for the sake of completeness, totals (including both own brand and retailer's brand) are also shown and commented. During the IP, Community industry's sales under the retailer's brand accounted for around 63 % of the total Community industry's sales (own and retailer's brand).

(a) *Production*

(52) From a level of around 257 000 tonnes in 2002, the Community industry's production decreased almost steadily during the period considered. In the IP, it was 16 % lower than in 2002. Specifically, it declined by 6 % in 2003, increased slightly by 3 percentage points in 2004, before decreasing again sharply by 13 percentage points in the IP.

	2002	2003	2004	IP
Production (tonnes)	257 281	242 341	249 350	216 129
Index (2002 = 100)	*100*	*94*	*97*	*84*

Source: Investigation.

(b) *Capacity and capacity utilisation rates*

(53) Production capacity was around 276 000 tonnes in 2002, and around 293 000 in the IP. In detail, the production capacity first increased by 9 % in 2003, before declining by 3 percentage points in 2004. It stayed at this level in the IP. Between 2002 and the IP, it rose by 6 %. The increase of 2003 was due essentially to an increase in capacity of one particular producer, intended to serve non-EU markets. This increase was somewhat offset in 2004 by closures implemented by other Community producers.

	2002	2003	2004	IP
Production capacity (tonnes)	276 360	300 869	293 424	293 424
Index (2002 = 100)	*100*	*109*	*106*	*106*
Capacity utilisation	93 %	81 %	85 %	74 %
Index (2002 = 100)	*100*	*87*	*91*	*79*

Source: Investigation.

(54) Capacity utilisation was 93 % in 2002. It declined to 81 % in 2003, increased again to 85 % in 2004, before declining markedly to 74 % in the IP. This reflects the decreasing production and sales volume as described in recitals 52, 56 and 57.

(c) *Stocks*

(55) The level of closing stocks of the Community industry increased by 2 % in 2003, by a further 10 percentage points in 2004, before declining by 14 percentage points the IP. During the IP, the Community industry's stocks stood at around 170 000 tonnes. All in all, the inventory level in the IP was very close to that of 2002. It should be noted however, that the level of inventories is not a meaningful indicator of injury for this particular industry, as it produces to order. The high level of inventories at the end of each year (around 75 % of the annual production volume) is linked to the fact that the harvest and the canning typically end in October each year. Stocks are therefore goods awaiting dispatching during the period November to July.

	2002	2003	2004	IP
Closing stock (tonnes)	173 653	177 124	194 576	169 693
Index (2002 = 100)	*100*	*102*	*112*	*98*

Source: Investigation.

(d) *Sales volume*

(56) The sales volume by the Community industry of its own production intended for the retailer's brand on the Community market to unrelated customers first increased by 4 % in 2003, declined by 11 percentage points in 2004, and stayed at this level in the IP. Between 2002 and the IP, these sales declined by around 7 %, starting from a level of around 125 000 tonnes in 2002.

	2002	2003	2004	IP
EC Sales volume (retailer's brand) to unrelated customers (tonnes)	124 878	130 145	116 703	116 452
Index (2002 = 100)	*100*	*104*	*93*	*93*
EC Sales volume (own and retailer's brand) to unrelated customers (tonnes)	193 657	198 147	189 090	184 645
Index (2002 = 100)	*100*	*102*	*98*	*95*

Source: Investigation.

(57) Total (both own and retailer's brand) Community industry's sales volumes of its own production on the Community market to unrelated customers followed more or less a similar pattern, although slightly less pronounced. From a starting level of around 194 000 tonnes in 2002, they first increased by 2 % in 2003, declined by 4 percentage points in 2004, and declined further by 3 percentage points in the IP. Between 2002 and the IP, these sales declined by around 5 %.

(e) *Market share*

(58) The market share held by the Community industry rose from 58,5 % in 2002 to 59,7 % in 2003, before declining suddenly to 54,4 % in 2004. During the IP, it somewhat recovered to 55,9 %. Over the period considered, the Community industry lost 2,6 percentage points of market share.

	2002	2003	2004	IP
Market share of the Community industry (own and retailer's brand)	58,5 %	59,7 %	54,4 %	55,9 %
Index (2002 = 100)	*100*	*102*	*93*	*95*

Source: Investigation.

(f) *Growth*

(59) Between 2002 and the IP, when the Community consumption remained flat, the volume of sales intended for the retailer's brand of the Community industry on the Community market decreased by around 7 %, whilst the volume of Community industry's sales intended for both own and retailer's brand on the Community market decreased by around 5 %. Between 2002 and the IP, the Community industry lost around 2,6 percentage points of market share, whereas dumped imports gained around 6 percentage points of market share, corresponding to an increase of approximately 20 000 tonnes sold on the Community market. It is thus concluded that the Community industry could not benefit from any growth.

(g) *Employment*

(60) The employment level of the Community industry first increased by 9 % between 2002 and 2003, declined by 11 percentage points in 2004, and declined further by 4 percentage points in the IP. Overall, employment of the Community industry declined by 6 % between 2002 and the IP, i.e. from around 1 520 persons to 1 420 persons. Confronted to the drop of the sales volume as seen under recitals 56 and 57 above, the Community industry had no option but to lay off part of its workforce to remain competitive.

	2002	2003	2004	IP
Employment (persons)	1 518	1 649	1 482	1 420
Index (2002 = 100)	*100*	*109*	*98*	*94*

Source: Investigation.

(h) *Productivity*

(61) Productivity of the Community industry's workforce, measured as output (tonnes) per person employed per year, starting from a level of 169 tonnes per employee, first decreased by 13 % in 2003, subsequently increased by 12 percentage points in 2004, and then finally declined by 9 percentage points in the IP. This development reflects the fact that the drop in production was sharper than that of the workforce.

	2002	2003	2004	IP
Productivity (tonnes per employee)	169	147	168	152
Index (2002 = 100)	*100*	*87*	*99*	*90*

Source: Investigation.

(i) *Wages*

(62) Between 2002 and the IP, the average wage per employee increased by 19 %. Specifically, it increased by 4 % in 2003, by a further 9 percentage points in 2004 and finally by 6 percentage points in the IP. The increase of 2004 and the IP appears more rapid than average. This is due to the following. The data of two of the largest cooperating producers have been affected by the phasing out of a national scheme aimed at subsidising social security contributions. As a consequence, social security costs were artificially understated in 2002 and 2003.

	2002	2003	2004	IP
Annual labour cost per employee (EUR)	22 283	23 141	25 152	26 585
Index (2002 = 100)	*100*	*104*	*113*	*119*

Source: Investigation.

(j) *Factors affecting sales prices*

(63) Unit prices for Community industry's sales of retailer's brand products to unrelated customers declined almost steadily throughout the period considered. From a level of around 1 050 EUR/tonne in 2002, they declined by 4 % in 2003, by a further 9 percentage points in 2004, before increasing marginally by 2 percentage points in the IP, when they reached a level of 928 EUR/tonne. Overall, the decline was of 11 % between 2002 and the IP.

	2002	2003	2004	IP
Unit price EC market (retailer's brand) (EUR/tonnes)	1 047	1 010	914	928
Index (2002 = 100)	*100*	*96*	*87*	*89*
Unit price EC market (own and retailer's brand) (EUR/tonnes)	1 151	1 126	1 060	1 064
Index (2002 = 100)	*100*	*98*	*92*	*92*

Source: Investigation.

(64) Total (both own and retailer's brand) Community industry's sales prices on the Community market to unrelated customers followed more or less a similar pattern. From a level of around 1 150 EUR/tonne in 2002, they first decreased by 2 % in 2003, declined by a further 6 percentage points in 2004, and stayed approximately at this level in the IP. At a level of around 1 060 EUR/tonne, these sales prices were 8 % lower than the ones observed in 2002.

(65) Given the volume and the level of price undercutting of the imports concerned, these imports were certainly a factor affecting prices.

(k) *Profitability and return on investments*

(66) During the period considered, the profitability of the Community industry's sales of products intended for retailer's brand, expressed as a percentage of net sales, declined from 17 % in 2002 to around 11 % in 2003, to around 5 % in 2004 and to around 3 % in the IP.

	2002	2003	2004	IP
Profitability of EC sales to unrelated (retailer's brand) (% of net sales)	17,0 %	11,1 %	4,6 %	2,9 %
Index (2002 = 100)	*100*	*66*	*27*	*17*
Profitability of EC sales to unrelated (own and retailer's brand) (% of net sales)	21,4 %	17,3 %	13,6 %	10,7 %
Index (2002 = 100)	*100*	*81*	*64*	*50*
ROI (own and retailer's brand) (profit in % of net book value of investments)	59,8 %	43,2 %	32,3 %	25,1 %
Index (2002 = 100)	*100*	*72*	*54*	*42*

Source: Investigation.

(67) The profitability of the Community industry's sales of products intended for both own brand and retailer's brand declined as well from around 21 % in 2002 to around 17 % in 2003, to around 14 % in 2004 and to around 11 % in the IP. The decline is thus less steep than for sales under retailer's brand alone.

(68) The return on investments (ROI), expressed as the profit (for both own and retailer's brand) in percent of the net book value of investments, broadly followed the latter profitability trend. It declined from a level of around 60 % in 2002 to around 43 % in 2003, to around 32 % in 2004, before reaching finally a level of around 25 % in the IP, thus decreasing by 58 percentage points over the period considered.

(l) *Cash flow and ability to raise capital*

(69) The net cash flow from operating activities stood at around 46 million EUR in 2002. It declined to around EUR 32 million in 2003, to EUR 17 million, before recovering slightly to around EUR 22 million in the IP. None of the cooperating Community producers indicated that they experienced difficulties to raise capital.

	2002	2003	2004	IP
Cash flow (own and retailer's brand) (000 EUR)	46 113	31 750	17 057	22 051
Index (2002 = 100)	*100*	*69*	*37*	*48*

Source: Investigation.

(m) *Investments*

(70) The Community industry's annual investments in the production of the like product declined by 55 % from 2002 to 2003, before increasing by 18 % in 2004 and by a further 13 % in the IP. All in all, over the period considered, investment declined by 24 %. With the exception of one cooperating Community producer, as indicated under recital 53 above, Community industry's investments were intended for the maintenance and renewal of existing equipment, and not for capacity increase purposes.

	2002	2003	2004	IP
Net investments (000 EUR)	12 956	5 864	8 101	9 858
Index (2002 = 100)	*100*	*45*	*63*	*76*

Source: Investigation.

(n) *Magnitude of dumping margin*

(71) Given the volume, the market share and the prices of the imports from the country concerned, the impact on the Community industry of the magnitude of the actual margins of dumping cannot be considered to be negligible.

(o) *Recovery from past dumping*

(72) In the absence of any information on the existence of dumping prior to the situation assessed in the present proceeding, this factor is considered irrelevant.

5. **Conclusion on injury**

(73) Between 2002 and the IP, the volume of the dumped imports of the product concerned originating in the country concerned almost doubled and their share of the Community market increased by around 6 percentage points. The average prices of dumped imports were consistently lower than those of the Community industry during the period considered. Moreover, during the IP, the prices of the imports from the country concerned significantly undercut those of the Community industry. Indeed, with the exception of two cooperating exporting producers, model-to-model price comparisons have evidenced undercutting margins of 2 to 10 % in the IP.

(74) Very few indicators experienced a positive development between 2002 and the IP. Production capacity increased by 6 percentage points and annual labour costs increased by around 19 %. However, it has been seen under recitals 53 and 62 above that particular reasons explain these atypical developments.

(75) Conversely, a clear deterioration in the situation of the Community industry has been evidenced over the period considered. Most of the injury indicators developed negatively between 2002 and the IP: production volume declined by 16 %, capacity utilisation lost 19 percentage points, Community industry's sales volume of retailer's brand products declined by 7 %, Community industry's sales volume of both own and retailer's brand products declined by 5 %, the Community industry lost 2,6 percentage points of market share, employment declined by 6 %, Community industry's sales price (whether considering retailer's brand or all brands) declined by around 10 %, investment declined by 24 %, profitability on sales of retailer's brand products declined from 17 % to around 3 % whilst profitability on sales of both own and retailer's brand products declined from 21 % to around 11 % and return on investment and cash flow declined as well.

(76) In the light of the foregoing, it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

E. **CAUSATION**

1. **Introduction**

(77) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission examined whether dumped imports have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

2. **Effect of the dumped imports**

(78) The significant increase in the volume of the dumped imports by 87 % between 2002 and the IP, and of its corresponding share of the Community market, i.e. by around 6 percentage points, as well as the undercutting found (between 2 % and 10 % depending on the exporter, with the exception of two sampled exporting producers for which no undercutting was found) coincided with the deterioration of the economic situation of the Community industry. Between 2002 and the IP, production declined by 16 %, capacity utilisation lost around 20 percentage points, the sales volume of retailer's brand products which in the first place competed with dumped imports, declined by 7 %, the Community lost 2,6 percentage points of market share, employment declined by 6 %, the unit sales price for retailer's brand products declined by 11 %, investments declined by 24 %, profitability of sales declined considerably and the cash flow was halved. It is therefore provisionally concluded that the dumped imports had a significant negative impact on the situation of the Community industry.

3. **Effect of other factors**

(a) *Export performance of the Community industry*

(79) Several interested parties claimed that any injury suffered by the Community industry was due to its poor export performance.

(80) As can be seen from the table below, the volume of export sales (both own and retailer's brand) increased by 17 % during the period considered. The unit price of these sales increased by 7 % during the period considered, to reach a level above 1 000 EUR in the IP. Both developments in terms of quantities and prices contrast markedly with the negative developments described under recitals 63, 64, 66 and 67 above concerning the Community's industry's sales on the Community market.

	2002	2003	2004	IP
Export sales volume (own and retailer's brand) (tonnes)	48 478	48 170	51 062	56 821
Index (2002 = 100)	*100*	*99*	*105*	*117*

Source: Investigation.

(81) In addition, it should be noted that the profitability trend described under recitals 66 and 67 above refers exclusively to Community industry's sales in the Community. This profitability thus does not concern export sales. It is therefore considered that the export activity cannot have contributed in any way to the injury suffered by the Community industry.

(b) *Decline of consumption on the Community market*

(82) Several interested parties claimed that any injury suffered by the Community industry was due to the decline of consumption on the Community market.

(83) As seen under recital 44 above, consumption has remained stable during the period considered. The argument is therefore dismissed.

(c) *Increase in the production costs of the Community industry*

(84) Several interested parties claimed that any injury suffered by the Community industry was linked to the increase of its production costs, and notably to the rise of fixed capital costs and labour costs.

(85) As seen under recital 62 above, unit labour costs indeed rose by 19 % during the period considered. The explanation for this development has been given under recital 62 above.

(86) As can be seen from the table below, the annual amount of depreciation of the fixed assets of the Community industry directly involved in the production of the like product decreased by around 10 % during the period considered. Total unit production costs increased by only 5 % during the period considered. This increase appears moderate in the light of the following. An important cost element is the can, which accounts for around 40 % of the manufacturing costs of Community producers. The price of the can has increased by around 15 % over the period considered. However, steel is an internationally quoted commodity and both the Community industry and its Thai competitors procure their empty cans at similar prices. It is therefore very likely that Thai producers have been similarly affected by this development, which should have been passed on in the selling prices of both Thai and Community producers, in the absence of dumping and price suppression. However, as shown in recital 47 above, the Thai exporting producers did not increase their export sales prices accordingly, but even decreased them by 13 % over the period considered. It should be further noted that the investigation showed that the total cost of exports plus transport was very close to the total production cost of the Community industry. Dumped imports are therefore not more cost-efficient than the Community industry.

	2002	2003	2004	IP
Depreciation of fixed assets (000 EUR)	10 356	11 501	10 953	9 286
Index (2002 = 100)	*100*	*111*	*106*	*90*
Unit cost of production (EUR/tonne)	904	930	916	950
Index (2002 = 100)	*100*	*103*	*101*	*105*

Source: Investigation.

(87) The sharp deterioration of profitability observed between 2002 and the IP is therefore not attributable to any slippage of the costs of production, but rather to the decline in sales prices. Indeed, the Community industry's sales prices dropped by 11 % between 2002 and the IP, as a consequence of price depression and price suppression caused by dumped imports. The rise in production costs therefore only played a limited role in the injury suffered by the Community industry, if any, and to an extent that is not such as to break the causal link between the dumped imports and the material injury suffered by the Community industry.

(d) *Currency fluctuations*

(88) One interested party claimed that any injury suffered by the Community industry was due to unfavourable exchange rate variations.

(89) It is recalled that the investigation has to establish whether the dumped imports (in terms of prices and volumes) have caused material injury to the Community industry or whether such material injury was due to other factors. In this respect, Article 3(6) of the basic Regulation refers to a demonstration that the price level of the dumped imports causes injury. It therefore merely refers to a difference between price levels, and there is thus no requirement to analyse the factors affecting the level of those prices.

(90) In practical terms, the effect of the dumped imports on the Community industry's prices is essentially examined by establishing price undercutting, price depression and price suppression. For this purpose, the dumped export prices and the Community industry's sales prices are compared, and export prices used for the injury calculations may sometimes require to be converted into another currency in order to have a comparable basis. Consequently, the use of exchange rates in this context only ensures that the price difference is established on a comparable basis. From this, it becomes obvious that the exchange rate can in principle not be another factor of the injury.

(91) The above is in accordance with the wording of Article 3(7) of the basic Regulation, which refers to known factors other than dumped imports. Indeed, the list of the other known factors in this Article does not make reference to any factor affecting the price level of the dumped imports. In sum, if the exports are dumped, and even if they benefited from a favourable development of exchange rates, it is difficult to see how the development of such exchange rate could be another factor causing injury.

(92) Thus, the analysis of the factors affecting the level of the prices of the dumped imports, be it exchange rate fluctuations or something else, cannot be conclusive and such analysis would go beyond the requirements of the basic Regulation. The argument is therefore rejected.

(e) *Imports from other third countries*

(93) Imports from third countries other than Thailand decreased over the period considered by around 44 %, i.e. from around 23 000 tonnes in 2002 to around 13 000 tonnes in the IP. The corresponding market share also declined from around 7 % to around 3,8 %. Based on Eurostat data, average prices for imports from other third countries were substantially higher than either prices from the country concerned and the Community industry's prices. Prices were around 1 100 EUR/tonne in 2002 and increased by 2 % between 2002 and the IP. None of the third countries, taken individually, had a market share above 2 % during the IP, and none of them had an import price during the IP lower than the prices of the country concerned and the prices of the Community industry. Finally, no evidence was provided that any of the third countries had practised dumping of the like product on the Community market.

(94) Given the decline in volumes and market shares of the above third countries, and the fact that their average price was significantly higher than the ones of both the countries concerned and the Community industry, it is concluded that the imports from the other third countries did not contribute to the material injury suffered by the Community industry. Conversely, these imports have probably been negatively affected by the dumped imports.

	2002	2003	2004	IP
Volume of imports from the rest of the world (tonnes)	22 698	15 764	19 683	12 643
Index (2002 = 100)	*100*	*69*	*87*	*56*
Market share of imports from the rest of the world	6,9 %	4,7 %	5,7 %	3,8 %
Price of imports from the rest of the world (EUR/tonne)	1 098	1 084	1 020	1 125
Index (2002 = 100)	*100*	*99*	*93*	*102*

Source: Eurostat.

(f) *Competition from the other Community producers*

(95) As indicated under recital 42 above, the other Community producers did not cooperate with the investigation. Based on information obtained in the course of the investigation, it is estimated that their sales volume in the Community was around 92 000 tonnes in 2002, that it declined by around 10 % in 2003, increased by 13 percentage points in 2004 and finally declined by 4 percentage points in the IP, to reach a level very close to that of 2002. Similarly, the corresponding market share was in the IP very close to its level of 2002, i.e. just below 28 %. The other producers therefore did not gain any sales volume and market share at the expense of the Community industry. No information was available concerning the prices of these other Community producers.

(96) Given the above, and given the absence of information to the contrary, it is provisionally concluded that the other Community producers have not contributed to the injury suffered by the Community industry.

	2002	2003	2004	IP
EC Sales volume of the other Community producers (tonnes)	92 022	82 552	94 544	91 070
Index (2002 = 100)	*100*	*90*	*103*	*99*
Market share of the other Community producers	27,8 %	24,9 %	27,2 %	27,6 %
Index (2002 = 100)	*100*	*89*	*98*	*99*

Source: Investigation, complaint.

4. **Conclusion on causation**

(97) In conclusion, the above analysis has demonstrated that there was a substantial increase in volume and market share of the imports originating in Thailand between 2002 and the IP, together with a considerable decrease in their sales prices and a high level of price undercutting during the IP. This increase in market share of the low-priced Thai imports coincided with a decline in the Community industry's market share and in unit sales price, and with a drop in profitability, in return on investments and cash flow from operating activities.

(98) On the other hand, the examination of the other factors which could have injured the Community industry revealed that none of these could have had a significant negative impact.

(99) Based on the above analysis which has properly distinguished and separated the effects of all known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is therefore provisionally concluded that the dumped imports originating in the country concerned have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

F. **COMMUNITY INTEREST**

(100) The Commission examined whether, despite the conclusions on dumping, injury and causation, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and pursuant to Article 21(1) of the basic Regulation, the Commission considered the likely impact of measures on all parties involved as well as the likely consequences of not taking measures.

1. **Interest of the Community industry**

(101) As indicated under recital 42 above, the Community industry is composed of six companies. It employs around 1 400 persons directly involved in the production, sales and administration of the like product. If measures are imposed, it is expected that the sales volumes and the corresponding market share of the Community industry on the Community market would rise and that the Community industry could thereby also benefit from economies of scale. It is considered that the Community industry will utilise the relief in price suppression imposed by dumped imports to raise moderately its own selling prices, given particularly that the measures proposed will eliminate the undercutting found in the IP. Altogether, these expected positive developments will allow the Community industry to improve its financial situation.

(102) On the other hand, should anti-dumping measures not be imposed, it is likely that the negative trend of the Community industry will continue. The Community industry will likely continue to lose market share and to experience a deterioration of its profitability. This will in all likelihood lead to cuts in production and investments, the further closure of certain production facilities and further job reduction in the Community.

(103) In conclusion, the imposition of anti-dumping measures would allow the Community industry to recover from the effects of injurious dumping found.

2. **Interest of the other Community producers**

(104) In the absence of cooperation from these producers, and thus of precise data concerning their activity, the Commission can only estimate from the complaint and from the returned mini-questionnaires intended for sampling that for an estimated production volume of around 100 000 tonnes in the IP, the other producers employed a workforce of approximately 640 persons. Should anti-dumping measures be imposed, the same type of positive developments in terms of sales volumes, prices, and profitability expected as under recital 101 above for the Community industry can be expected for the other Community producers as well.

(105) In conclusion, the other Community producers would certainly benefit from the imposition of anti-dumping measures.

3. **Interest of unrelated importers in the Community**

(106) It is firstly noted that one association representing the interests of German importers expressed its opposition to any possible anti-dumping measures without further substantiating its point.

(107) As indicated under recital 9 above, only one importing company properly cooperated with the investigation. During the IP, this company imported around 4 % of the Community's total import volume of the product concerned originating in Thailand. This cooperating party did not clearly express its stance vis-à-vis the complaint lodged by the complainant. The activity of resale of the product concerned originating in Thailand accounts for a negligible amount (less than 1 %) of its total company turnover. In terms of workforce, less than one person can be allocated to the trading and resale activity of the product concerned.

(108) Given (i) the low cooperation, (ii) the undetermined position of this unrelated importer in the present proceeding and (iii) the negligible share of its turnover and of its workforce concerned by the activity of resale of the product concerned in the Community, it is provisionally concluded that the imposition of anti-dumping measures is unlikely to have a substantial effect, in general, on the situation of unrelated importers in the Community.

4. **Interest of the retailers and of consumers**

(109) Given the specificity of the market at stake in this proceeding, cooperation was sought from retailers and from consumer associations. However, very little cooperation was obtained. Only one retailer offered cooperation. It did not express its stance vis-à-vis the complaint lodged by the complainant. During the IP, its volume of resale of the product concerned originating in Thailand amounted to less than 2 % of the Community's total import volume of the product concerned originating in the country concerned. The turnover generated by the resale of the product concerned was negligible, namely less than 0,01 % of the total turnover of this retailer. The same remains true if one considers not only resales of the product concerned but also resales of the like product, as a percentage of the company turnover. Based on relative turnovers, the number of jobs of the cooperating retailer that can be allocated to the product concerned was estimated to around five during the IP.

(110) At a consumer level, the price effect would likely be as follows: Thai cif export prices at Community frontier would be liable to a weighted average anti-dumping duty of around 10 %, in addition to a conventional customs duty (including a special agricultural element) of around 16 %. Between the cif level of delivery and the final consumer price, various costs including, inter alia, the delivery costs to and the mark up of the importers and the delivery costs to and the markup of the retailers, will also have to be added, which will dilute the impact of the proposed measures in the resulting final retail price.

(111) In view of the spare production capacities and the competitive situation, it is expected that the Community industry will primarily benefit from any anti-dumping measures through an increase in sales volume. On this basis, and given the low weight of sweetcorn consumption in the average consumer basket, any impact from the imposition of an anti-dumping duty on the financial situation of an average consumer is likely to be negligible.

(112) In light of the above and given the overall low degree of cooperation, it is therefore considered that the situation of retailers and of consumers in the Community is unlikely to be substantially affected by the proposed measures.

5. **Reduction of competition on the Community market and risk of supply shortages**

(113) Several interested parties claimed that any anti-dumping measures would reduce competition on the Community market that is, allegedly, already characterised by an oligopolistic supply situation due to the market dominance of two French producers. It was further claimed that excluding Thai producers from the Community would be conducive to supply shortages for retailers and consumers.

(114) It should first be recalled that the aim of anti-dumping measures is not to stop access into the Community for imports on which the measures are imposed, but to eliminate the impact of distorted market conditions arising from the presence of dumped imports.

(115) Although it is possible that, following the imposition of measures, the sales volume and the market share of the imports concerned might decrease, imports from other third countries would still represent an important alternative source of supply. In addition, the return to normal market conditions should make the Community market more attractive to these other sources of supply.

(116) During the IP, the Community industry held a market share of around 60 %, other Community producers held a market share of around 28 %, dumped imports from Thailand around 13 %, and imports from the rest of the world held a market share of around 4 %. As indicated under recital 41 above, there are in total 18 known producers of the like product operating in the Community. In addition, as shown under recital 54 above, the Community industry operated during the IP well below full capacity. Other Community producers also probably have spare capacities. There is thus ample room to increase substantially production volumes in the Community before reaching any capacity constraint.

(117) Given the above considerations, the above market shares, and the above number of independent suppliers of the product concerned and like product, the above claims concerning the issues of competition and supply shortages are rejected.

6. **Conclusion on Community interest**

(118) To conclude, it is expected that the Community industry as well as other Community producers will benefit from the imposition of measures by regaining lost sales and market shares and improving their profitability. Whilst some negative effects may occur in the form of a limited price increase for final consumers, the extent of these is outweighed by the expected beneficial outcome for the Community industry. In light of the above, it is provisionally concluded that no compelling reasons exist for not imposing provisional measures in the present case and that the application of such measures would be in the interest of the Community.

G. **PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES**

(119) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be imposed in order to prevent further injury to the Community industry by the dumped imports.

1. **Injury elimination level**

(120) The level of the provisional anti-dumping measures should be sufficient to eliminate the injury to the Community industry caused by the dumped imports, without exceeding the dumping margins found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.

(121) On the basis of the information available, it was preliminarily found that a profit margin of 14 % of turnover could be regarded as an appropriate level that the Community industry could be expected to obtain in the absence of injurious dumping. As seen under recital 67 above, in 2002, when the volume of dumped imports from Thailand was the lowest, the Community industry achieved a profit of 21,4 % for its sales of both own and retailer's brand products. However, as indicated under recital 51 above, dumped imports from Thailand are made exclusively under the retailer's brand channel. It was therefore deemed appropriate to adjust the above profitability of 21,4 % in order to reflect this difference in the labelling mix of the Community industry vis-à-vis imports from Thailand. This resulted in a profit in the absence of dumped imports of 14 %.

(122) The necessary price increase was then determined on the basis of a comparison, per product type, of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of the like product sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry in order to reflect the above mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.

(123) The above mentioned price comparison showed the following injury margins:

Karn Corn	31,3 %
Malee Sampran	12,8 %
River Kwai	12,8 %
Sun Sweet	18,6 %
Cooperating exporters not sampled	17,7 %
All other companies	31,3 %

(124) For two companies (Malee Sampran and River Kwai) the injury elimination level was lower than the dumping margin established and the provisional measures should therefore be based on the first mentioned. As the injury elimination level was higher than the dumping margin established for the two other companies, the provisional measures should be based on the latter.

2. **Provisional measures**

(125) In the light of the foregoing and pursuant to Article 7(2) of the basic Regulation, it is considered that a provisional anti-dumping duty should be imposed at the level of the lowest of the dumping and injury margins found, in accordance with the lesser duty rule.

(126) The level of cooperation was very high, it was therefore considered appropriate to set the duty for the remaining companies, which had not cooperated in the investigation, at the level of the highest duty to be imposed on the companies cooperating in the investigation. Therefore, the residual duty set at the rate of 13,2 %.

(127) Consequently, the provisional anti-dumping duties should be as follows:

Sampled exporters	Proposed anti-dumping duty
Karn Corn	4,3 %
Malee Sampran	12,8 %
River Kwai	12,8 %
Sun Sweet	11,2 %
Cooperating exporters not sampled	13,2 %
All other companies	13,2 %

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

(129) In this respect it should be noted that one of the sampled companies purchase substantial quantities of the finished products from other producers in Thailand for further resale to the Community (as indicated at recital 34 above). For this company an individual duty is only granted for the goods of its own production and under the conditions that the company undertakes to submit production certificates when exporting to the Community in order to establish the manufacturing of the product at customs level.

(130) Any claim requesting the application of an individual company anti-dumping duty rate (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 forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, the name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.

(131) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporting producers, but also to those producers which did not have any exports to the Community during the IP.

3. **Final Provision**

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of sweetcorn (*Zea mays* var. *saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen, falling within CN code ex 2001 90 30 (TARIC code 2001 90 30 10) and sweetcorn (*Zea mays* var. *saccharata*) in kernels prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006, falling within CN code ex 2005 80 00 (TARIC code 2005 80 00 10), originating in Thailand.

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products described in paragraph 1 and produced by the companies below shall be as follows:

Company	Anti-Dumping duty (%)	TARIC Additional Code
Karn Corn Co., Ltd, 278 Krungthonmuangkeaw, Sirinthon Rd., Bangplad, Bangkok, Thailand	4,3	A789
Malee Sampran Public Co., Ltd, Abico Bldg. 401/1 Phaholyothin Rd., Lumlookka, Pathumthani 12130, Thailand	12,8	A790
River Kwai International Food Industry Co., Ltd, 52 Thaniya Plaza, 21st. Floor, Silom Rd., Bangrak, Bangkok 10500, Thailand	12,8	A791
Sun Sweet Co., Ltd, 9 M 1, Sanpatong-Bankad Rd., T. Toongsatok, Sanpatong, Chiangmai, Thailand	11,2	A792
Manufacturers listed in the Annex I	13,2	A793
All other companies	13,2	A999

3. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

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

Article 2

The application of the individual duty rates specified for the company River Kwai mentioned in Article 1(2) shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex II. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

Article 3

Without prejudice to Article 20 of Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

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

Article 4

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

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

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

Done at Brussels, 19 December 2006.

For the Commission
Peter MANDELSON
Member of the Commission

ANNEX I

List of the cooperating manufacturers referred to in Article 1(2) under TARIC additional code A793:

Name	Address
Agro-On (Thailand) Co., Ltd	50/499-500 Moo 6, Baan Mai, Pakkret, Monthaburi 11120, Thailand
B.N.H. Canning Co., Ltd	425/6-7 Sathorn Place Bldg., Klongtonsai, Klongsan, Bangkok 10600, Thailand
Boonsith Enterprise Co., Ltd	7/4 M.2, Soi Chomthong 13, Chomthong Rd., Chomthong, Bangkok 10150, Thailand
Erawan Food Public Company Limited	Panjathani Tower 16th floor, 127/21 Nonsee Rd., Chongnonsee, Yannawa, Bangkok 10120, Thailand
Great Oriental Food Products Co., Ltd	888/127 Panuch Village, Soi Thanaphol 2, Samsen-Nok, Huaykwang, Bangkok 10310, Thailand
Kuiburi Fruit Canning Co., Ltd	236 Krung Thon Muang Kaew Bldg., Sirindhorn Rd., Bangplad, Bangkok 10700, Thailand
Lampang Food Products Co., Ltd	22K Building, Soi Sukhumvit 35, Klongton Nua, Wattana, Bangkok 10110, Thailand
O.V. International Import-Export Co., Ltd	121/320 Soi Ekachai 66/6, Bangborn, Bangkok 10500, Thailand
Pan Inter Foods Co., Ltd	400 Sunphavuth Rd., Bangna, Bangkok 10260, Thailand
Siam Food Products Public Co., Ltd	3195/14 Rama IV Rd., Vibulthani Tower 1, 9th Fl., Klong Toey, Bangkok 10110, Thailand
Viriyah Food Processing Co., Ltd	100/48 Vongvanij B Bldg, 18th Fl, Praram 9 Rd., Huay Kwang, Bangkok 10310, Thailand
Vita Food Factory (1989) Ltd	89 Arunammarin Rd., Banyikhan, Bangplad, Bangkok 10700, Thailand

ANNEX II

The valid commercial invoice referred to in Article 3 of this Regulation must include a declaration signed by an official of the company, in the following format:

The name and function of the official of the company which has issued the commercial invoice.

The following declaration: 'I, the undersigned, certify that the "volume" of [product concerned] sold for export to the European Community covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.'

Date and signature