I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 1331/2007

of 13 November 2007

imposing a definitive anti-dumping duty on imports of dicyandiamide originating in the People's Republic of China

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:

1. PROCEDURE

1.1. Initiation

(1) On 3 July 2006 the Commission received a complaint lodged pursuant to Article 5 of the basic Regulation by AlzChem GmbH ('the complainant') representing 100 % of the Community production of 1-cyanoguanidine (dicyandiamide) ('DCD').

(2) This complaint contained evidence of dumping of DCD from the People's Republic of China ('PRC') and of material injury resulting there from which was considered sufficient to justify the opening of a proceeding.

(3) On 17 August 2006 the proceeding was opened by the publication of a notice of initiation [2] in the *Official Journal of the European Union*.

1.2. Parties concerned by the proceeding and verification visits

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

(5) The complainant Community producer, exporting producers, importers and users made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(6) In order to allow exporting producers in the PRC to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent claim forms to the Chinese exporting producers known to be concerned. Three exporting producers in the PRC requested MET pursuant to Article 2(7) of the basic Regulation and IT, should the investigation establish that they do not meet the conditions for MET.

(7) In view of the apparent high number of exporting producers in the PRC, in the notice of initiation the Commission indicated that sampling might be applied in this investigation for the determination of dumping in accordance with Article 17 of the basic Regulation.

[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 193, 17.8.2006, p. 3.

(8) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in the PRC were asked to make themselves known to the Commission and provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the investigation period (1 July 2005 to 30 June 2006).

(9) However, given that only three exporting producers cooperated in the investigation, it was decided that sampling was not required.

(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 notice of initiation. Replies were received from the three cooperating exporting producers in the PRC and from the sole Community producer, as well as from two users and four importers.

(11) The Commission sought and verified all the information deemed necessary for the determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:

(a) *Community producer*

— AlzChem GmbH, Germany,

(b) *Exporting producers in the PRC*

— Ningxia Darong Chemical & Metallurgy Co., Ltd., PRC,

— Ningxia Xingping Fine Chemical Co., Ltd., PRC,

— Ningxia Yinglite Chemicals Co., Ltd, PRC,

(c) *Unrelated importers*

— Lanxess GmbH, Germany,

— Helm AG, Germany,

(d) *Community users*

— Merck Santé, France,

— Lanxess GmbH, Germany.

1.3. **Investigation period**

(12) The investigation of dumping and injury covered the period from 1 July 2005 to 30 June 2006 ('investigation period' or 'IP'). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2002 to the end of the investigation period ('period considered').

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(13) The product concerned is 1-cyanoguanidine (dicyandiamide) ('DCD'), falling within CN code 2926 20 00. It is a solid substance in the form of a fine, white, crystalline powder, usually odourless. It is produced from quick lime and carbon black, and appears after several production steps.

(14) DCD is usually used as an intermediate to produce a broad range of other chemical intermediates, such as pharmaceuticals, various industrial applications — water, pulp and paper, textile, leather — and diverse fields of epoxy applications. It is a key element of the nitrogen — carbon — nitrogen (NCN) chain, with niche end-products such as guanidine nitrate and other NCN derivatives.

(15) More than 90 % of the DCD sold on the Community market is standard. The rest, so-called micro DCD, is of a smaller particle size. The Chinese exporting producers provided data for the standard type only.

2.2. **Like product**

(16) One importer argued that the standard type of DCD produced by the Community industry is of higher quality than that produced by the Chinese exporting producers, since the water content of the Chinese DCD is significantly higher and more volatile compared to the water content of the DCD produced in the Community. Allegedly, the Chinese DCD also has a higher content of impurities.

(17) The investigation showed, however, that while there may be certain quality differences, these cannot be quantified and moreover, do not affect the basic chemical, physical and technical characteristics of DCD produced and sold by the Community industry in the Community, and DCD imported into the Community from the PRC, which were found to be the same and to have the same end-uses.

(18) It was therefore concluded that these products are alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Market economy treatment ('MET')

(19) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

(20) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:

1. business decisions and costs are made in response to market conditions and without significant State interference;

2. firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes;

3. there are no significant distortions carried over from the former non-market economy system;

4. bankruptcy and property laws guarantee legal certainty and stability;

5. exchange rate conversions are carried out at market rates.

(21) Three exporting producers in the PRC requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadline. The Commission sought and verified at the premises of these companies all necessary information submitted in the MET applications as deemed necessary.

(22) The investigation revealed that the MET claim had to be rejected for all three exporting producers. The determination for the companies against each of the five criteria set out in Article 2(7)(c) of the basic Regulation showed that the companies did not meet the requirements of criteria one, two and three.

(23) As the main shareholder is in one case a State-owned enterprise and in the second a member of the People's Congress, it was found that the State could exert significant influence over the companies' business decisions relating to management decisions such as profit distribution, the issuing of new shares, capital increases and the amendment of the Articles of Association, therefore such decisions were not made in response to market signals. Significant differences in the electricity unit consumption and unit price between the three companies were found and none of the three companies could demonstrate that its electricity costs are the result of supply and demand, and that they substantially reflect market values.

(24) Furthermore, in all three cases, the companies' accounts failed to reflect the true financial situation. In particular, there were numerous breaches of basic accounting principles which are part of the International Accounting Standards (IAS) and as none of these issues were mentioned in the auditor's report, the companies cannot be considered to have one clear set of accounts in line with IAS and to be independently audited in line with IAS.

(25) As to the valuation of initial assets, the three companies were unable to provide any explanation of the basis on which such valuation was made. Finally, in two cases, the companies were unable to provide proof of all payments for land-use rights. Both deficiencies indicated that there were significant distortions carried over from the non-market economy system.

(26) The Advisory Committee was consulted and the parties directly concerned were given an opportunity to comment on the above findings. The Community industry and the three exporting producers all received disclosure of the MET assessment and were given the opportunity to comment. The exporting producers made a number of comments against the findings and the Commission replied to them without, however, amending the overall assessment. The exporting producers claimed in particular that their business decisions were free of State intervention. Furthermore, they objected to specific findings concerning costs and evaluation of assets. However, no evidence was submitted to substantiate the claims, which had therefore to be rejected.

(27) Following the above, it was concluded that MET should not be granted to the PRC producers.

3.2. **Individual treatment ('IT')**

(28) Article 9(5) of the basic Regulation provides that, where Article 2(7)(a) of the basic Regulation applies, an individual duty shall be specified for companies that are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation for receiving individual treatment.

(29) The PRC producers to which MET could not be granted also claimed IT in the event that they were not granted MET. However, the State was found to exert significant influence in such a way that, in two cases, company decisions could not be considered to be taken freely and State interference could be such that there would be a high risk of circumvention. As far as the third, collectively-owned, former State-owned company is concerned, there are strong indications that there is still substantial potential interference from the State leading to possible risks of circumvention.

(30) The latter exporting producer claimed that potential State interference would not be sufficient reason to reject individual treatment because such conclusion would be merely based on assumptions.

(31) In accordance with Article 9(5)(e) of the basic Regulation, where Article 2(7)(a) applies, an individual duty can only be specified where an exporter can demonstrate, on the basis of properly substantiated claims, that State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty. First, the company in question could not clarify the precise role and responsibilities of its General Manager. It could neither clarify whether the current shareholders indeed paid for the shares that they own in the former State-owned company. On this basis, it was a reasonable conclusion that significant State interference could not be sufficiently excluded. The risk of circumvention was therefore considered too high and the exporting producer's claims in this regard had to be rejected.

(32) Consequently, since it was found that the PRC producers did not meet all of the requirements for being granted IT in accordance with Article 9(5) of the basic Regulation, IT had to be rejected and a single country-wide duty imposed.

3.3. **Normal value**

3.3.1. *Analogue country*

(33) According to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET has to be established on the basis of the prices or constructed value in an analogue country or the price from such a third country to other countries, including the Community, or where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Community for the like product, duly adjusted if necessary to include a reasonable profit margin.

(34) In the absence of production of the product concerned outside the Community and the PRC, the Commission indicated in the notice of initiation its intention to base the normal value, in accordance with Article 2(7)(a) of the basic Regulation, on the prices actually paid or payable in the Community for the like product.

(35) The three PRC producers objected to this proposal, arguing that there was not sufficient competition within the Community and that the production process in the Community was not comparable with that in the PRC. They claimed that normal value should be based on the export price of the complainant to the PRC or on the cost of production of DCD in the PRC.

(36) The export price of the Community industry to third countries could not be taken as it could not be excluded that these prices were equally dumped. Thus, the exporting producers in question could not demonstrate that this methodology would be more reasonable than the one used by the Community institutions. In particular, it could not be demonstrated nor was there otherwise any evidence available that the competition in the Community market was insufficient and that, as a consequence, data relating to the Community industry would be unreliable. As far as differences in the production process are concerned, they were not considered significant.

(37) Furthermore, none of the three companies was granted MET and therefore costs of manufacturing of the Chinese exporting producers were not considered reliable.

(38) On this basis, it was considered that the most reasonable basis for determining normal value was to use the Community industry's cost of manufacturing of the like product adjusted where necessary, in particular to take into account differences in production processes and access to raw materials.

(39) The exporting producers claimed that the determination of the normal value was based on facts available and thus on Article 18 of the basic Regulation. It was further claimed that since they fully cooperated in the present investigation, such approach was not justified.

(40) These exporting producers' allegation that normal value was determined in accordance with Article 18 of the basic Regulation is incorrect. Indeed, as mentioned above, normal value was established in accordance with Article 2(7)(a) of the basic Regulation, which allows to use any other reasonable basis should it not be possible to base normal value on costs and prices from an analogue country or on export prices from such a country to other third countries. This claim was therefore rejected.

3.3.2. *Determination of normal value*

(41) The like product was sold by the Community industry in representative quantities. However, the Community industry's domestic sales were loss-making. Therefore, the normal value was based on the Community industry's manufacturing costs plus a reasonable amount for selling, general and administrative costs and profit. Adjustments were made on the Community industry's manufacturing costs so as to offset the additional transport costs due to the physical separation between production units, no direct access to raw materials, which must be transported from remote production sites and disposal of the by-product (black lime). Furthermore, an estimated profit corresponding to the profit achieved by the Community industry in 2001, was added, together with 4,3 % for SG&A based on information provided by the Community industry.

3.4. **Export prices**

(42) All export sales to the Community by the PRC producers were made directly to independent customers in the Community and therefore the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable.

3.5. **Comparison**

(43) The weighted average normal value as established above was compared with the weighted average export price of sales to the Community of the cooperating companies not granted MET, as provided under Article 2(11) of the basic Regulation.

3.6. **Dumping margin**

(44) On this basis, the country-wide dumping margin, expressed as a percentage of the CIF import price at the Community border, duty unpaid, is 91,8 %.

4. INJURY

4.1. **Preliminary remark**

(45) As the analysis concerns only one company, for reasons of confidentiality most indicators are given in indexed form or ranges.

4.2. **Community production**

(46) Total Community production in the IP ranged between 15 000 and 20 000 tonnes.

4.3. **Definition of the Community industry**

(47) The production of the Community producer AlzChem GmbH represents 100 % of the DCD produced in the Community. It is therefore considered that it constitutes the Community industry ('CI') within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

4.4. **Community consumption**

(48) Community consumption was established on the basis of the sales volume of the CI on the Community market plus imports from the PRC and other third countries under the relevant CN code according to Eurostat. As shown in the table below, the Community consumption of the product concerned remained stable (+ 1 %) over the period considered. In this context, it has to be noted that the data concerning 2002 also include imports for the Norwegian producer, ODDA, which ceased activity the same year.

(49) According to an importer, ODDA's closure led some of its larger customers to stock-pile in 2003, which may also explain why consumption peaked that year.

	2002	2003	2004	2005	IP
Community consumption (tonnes)	13 258	15 594	13 119	12 469	13 417
Index 2002 = 100	100	118	99	94	101

4.5. **Imports into the Community from the PRC**

4.5.1. *Volume and market share of imports from the PRC*

(50) Imports from the PRC according to Eurostat increased from 2 476 tonnes in 2002 to 6 002 tonnes in the IP. The market share increased from 15-25 % to 40-50 % during the same period, as the Chinese producers took over a major part of the market share previously held by the Norwegian producer ODDA. The increase in imports was particularly marked in 2003.

	2002	2003	2004	2005	IP
Import volumes (tonnes)	2 476	6 173	4 283	5 218	6 002
Index 2002 = 100	100	249	173	211	241
Market share	15-25 %	35-45 %	30-40 %	35-45 %	40-50 %

4.5.2. *Prices of imports and undercutting*

(51) Based on Eurostat, the prices of imports decreased by 11 % over the period considered, from EUR 1 149/tonne in 2002 to EUR 1 022/tonne in the IP.

	2002	2003	2004	2005	IP
Import prices from the PRC (EUR/tonne)	1 149	1 071	1 338	980	1 022
Index 2002 = 100	100	93	116	85	89

(52) To determine price undercutting, a comparison was made between the sales prices of the CI on the Community market during the IP and those charged by the Chinese exporting producers. Since the Chinese producers did not export the so-called micro DCD, this type was excluded from the calculation of the price undercutting.

(53) The relevant sales prices of the CI were those to independent customers, adjusted where necessary to an ex-works level. These prices were compared with the sales prices charged by the exporting producers net of discounts and adjusted where necessary to CIF Community frontier prices with an appropriate adjustment for the customs clearance costs and post-importation costs. The applicable conventional third country duty of 6,5 % was added to the CIF price to obtain the free-circulation unit price.

(54) During the IP the weighted average undercutting margin expressed as a percentage of the CI's average ex-works sales price, was between 25 % and 35 % for the cooperating Chinese producers.

4.6. **Situation of the Community industry**

(55) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the CI included an analysis of all economic factors having a bearing on the state of the industry from 2002 to the IP.

(56) The injury factors presented below only concern sales on the free market, which represent 85 % of the production of DCD of the CI. It has to be noted that the remaining 15 % of the production of DCD is internally used as captive transfer. The CI is an integrated producer using DCD for further processing and transforming DCD for the production of downstream products, without issuing any commercial invoices. The captive consumption remained rather stable over the period considered and could therefore not have impacted on the situation of the Community industry.

4.6.1. *Production, production capacity and capacity utilisation*

(57) The production capacity increased by 33 % between 2002 and the IP. The capacity increase occurred during 2003 and 2004, after the closure of the Norwegian producer, ODDA, in late 2002. The additional production capacity should be viewed in the light of the fact that ODDA ceased production and that this company had already a share of around 25 % on the Community market and sold also to other markets. The increased production capacity was achieved through investments and technical improvements.

(58) As a result of increased capacity and sales, production volumes increased by 37 % between 2002 and the IP. The largest increase occurred between 2002 and 2003. Production volumes peaked in 2004 after which they decreased sharply in 2005 followed by an increase in the IP.

(59) Capacity utilisation increased by 3 percentage points over the period considered.

	2002	2003	2004	2005	IP
Production (Index)	100	133	143	124	137
Production capacity (Index)	100	120	133	133	133
Capacity utilisation	84 %	93 %	91 %	78 %	87 %

4.6.2. *Stocks*

(60) Stocks increased significantly during the period considered. This was due to the fact that, because of the dumped imports, the CI could not increase its sales volume as much as it anticipated following the closure of ODDA, as explained further below.

	2002	2003	2004	2005	IP
Stocks (Index)	100	151	187	91	178

4.6.3. *Sales volume, market shares and average unit prices in the Community*

(61) While Community consumption remained stable, sales of DCD by the CI to independent customers on the Community market increased by 6 % over the period considered. They reached a peak in 2003 and decreased steadily in 2004 and 2005 to increase slightly again during the IP. However, these sales were made constantly at prices significantly below the costs of production, with the exception of sales of micro DCD, which represent between 0 % and 10 % of the total sales [no precise figure given for reasons of confidentiality] on the Community market, and which were very profitable.

(62) In addition, it is worth recalling that the CI uses its own-produced DCD for the production of other downstream chemical products, e.g. NCN derivates. This captive use represents approximately 15 % of the CI's production of DCD.

(63) Sales volumes and market shares were as follows:

	2002	2003	2004	2005	IP
Sales volumes in the EC (Index)	100	123	118	104	106
Market share (%)	50-60 %	50-60 %	60-70 %	50-60 %	50-60 %

(64) The CI's market share increased by 3 percentage points over the period considered. This, however, should be viewed in the light of the gap left on the market by the closure of ODDA in late 2002, which held a market share of around 25 % prior to its closure.

(65) Despite the competition from Chinese DCD and price fluctuation between 2002 and the end of the IP, the CI managed to increase its average unit sales prices to unrelated customers on the Community market by 2 % over the period considered. It should be noted, however, that these prices also include micro DCD, for which there is no competition from the Chinese exporting producers and for which higher prices can be obtained.

	2002	2003	2004	2005	IP
Sales price in the EC (Index)	100	109	105	108	102

4.6.4. *Profitability and cash flow*

(66) During the period considered the profitability of the CI was always negative. Losses peaked in the IP when they were in the range of – 20 % to – 30 %. According to the CI, the reference year, 2002, has to be considered exceptional due to the particular market situation following ODDA's closure. In 2003 the CI managed to reduce its losses despite the fact that imports from the PRC reached their peak.

	2002	2003	2004	2005	IP
Profitability	– 20 % to – 30 %	0 % to – 10 %	– 10 % to – 20 %	– 10 % to – 20 %	– 20 % to – 30 %

(67) Cash flow was always negative over the period considered with the exception of 2003, in line with the reduction of the CI's losses in that year.

	2002	2003	2004	2005	IP
Cash flow (Index)	– 100	82	– 136	– 208	– 244

4.6.5. *Investments, return on investments, and ability to raise capital*

(68) The CI recorded significant levels of investment in particular in 2003. Those investments were mainly linked to the increase in production capacity, as stated above.

	2002	2003	2004	2005	IP
Investments (Index)	100	171	69	44	54

(69) The return on investment from the production and sales of the like product was negative and decreased substantially during the period considered, reflecting the abovementioned negative trend for the profitability.

	2002	2003	2004	2005	IP
Return on investments	– 10 % to – 20 %	0 % to – 10 %	– 20 % to – 30 %	– 20 % to – 30 %	– 20 % to – 30 %

(70) The CI's ability to raise capital was not found to be significantly affected during the period considered given that DCD represented only a small fraction of the CI's total business.

4.6.6. *Employment, productivity, growth and wages*

(71) The evolution of employment, productivity and labour costs of the CI were as follows:

	2002	2003	2004	2005	IP
Number of employees (Index)	100	128	122	117	114
Productivity (tonnes/employee) (Index)	100	104	118	106	121
Labour costs per employee (Index)	100	100	103	103	106

(72) The CI increased its number of employees between 2002 and the IP by 14 %. In parallel, productivity increased as a result of the rationalisation process and increased output.

(73) Average wage levels increased by 6 % during the period considered.

4.6.7. *Magnitude of the dumping margin and recovery from past dumping*

(74) As concerns the impact on the Community industry of the magnitude of the actual dumping margin, given the volume and prices of the dumped imports from the PRC, this impact cannot be considered negligible.

(75) Furthermore, there were no indications that the Community industry was recovering from the effects of any past dumping.

4.7. **Conclusion on injury**

(76) Apart from a peak in 2003, consumption remained stable over the period considered. During the same period the volume of dumped imports of the product concerned increased dramatically and likewise their market share rose from between 15 % and 25 % in 2002 to between 40 % and 50 % in the IP. The average prices of the dumped imports were significantly lower than those of the CI throughout the period considered. On a weighted average basis, the prices of these imports undercut those of the CI by 25-35 % in the IP.

(77) During the same period the Community industry suffered severe losses, reaching their peak in the IP when they ranged between – 20 % and – 30 %. In line with the negative development in profitability, the related indicators such as return on investments and cash flow showed a negative trend.

(78) Certain injury indicators, such as the production volumes, production capacity, sales volumes, market share and selling prices on the Community market showed a positive trend during the period considered. In this assessment the captive use was not taken into account as it remained stable throughout the period considered, hence not having any impact on the injury analysis.

(79) However, the positive development of certain injury indicators should be viewed in the light of the closure of the Norwegian producer, ODDA, in late 2002 and the subsequent competition between the CI and the Chinese exporting producers to take over the market share held by ODDA. In fact, it is noteworthy that the Chinese imports filled most of the gap left by ODDA's closure: Initially, in 2003, the CI managed to capture around 1/3 of the market share held by ODDA. This diminished considerably to about 1/7 in the IP. Thus, even though some indicators showed a slightly positive trend, in reality they could have been expected to develop much more favourably, had they not been affected by the dumped imports from the PRC. In any event, the indicators related to the financial performance of the Community industry (profit, ROI, cash flow) showed such a negative trend that they outweigh largely any positive developments. Indeed, as its financial situation shows, the Community industry could not benefit at all from ODDA's cessation of production and is now in a state where its viability is at stake in the absence of any measures.

(80) In the light of the foregoing, it is concluded that the CI suffered material injury within the meaning of Article 3 of the basic Regulation.

5. **CAUSATION**

5.1. **Introduction**

(81) In accordance with Article 3(6) and (7) of the basic Regulation, it was examined whether there was a causal link between the dumped imports of the product concerned originating in the PRC and the injury suffered by the CI. Known factors other than the dumped imports, which could at the same time have injured the CI, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.

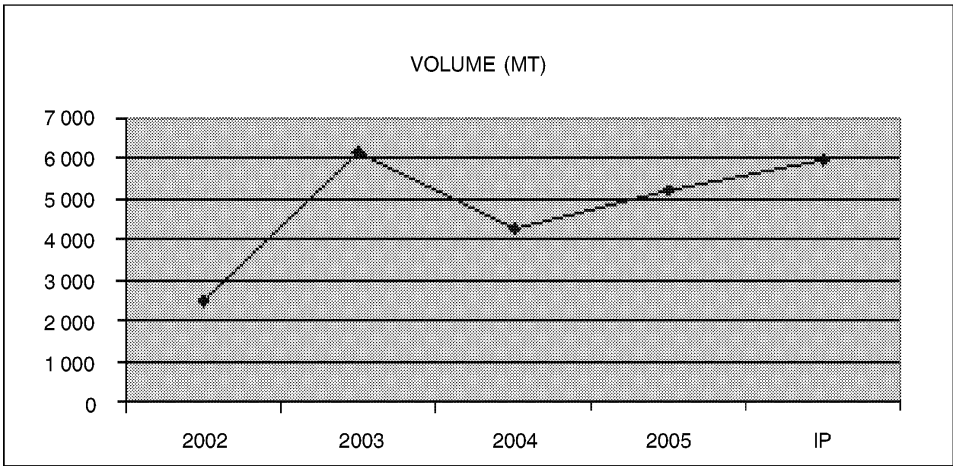
5.2. **Effect of the dumped imports**

(82) It is recalled that all imports of the product concerned from the PRC refer to the standard type of DCD, which also accounts for the majority of the CI's sales on the Community market. CI's sales of the so-called micro DCD, not exported by the Chinese producers, had to be excluded when calculating the undercutting.

(83) Imports from the PRC increased by 141 % over the period considered. As a result, their market share increased from 15-25 % in 2002 to 40-50 % in the IP. It is worth noting that the volume of dumped imports peaked in 2003, at 6 173 tonnes, reflecting the effects of the closure of the Norwegian producer, then fell in 2004 to steadily increase again in 2005 and in the IP, when they reached 6 002 tonnes.

Table 1

Imports from the PRC

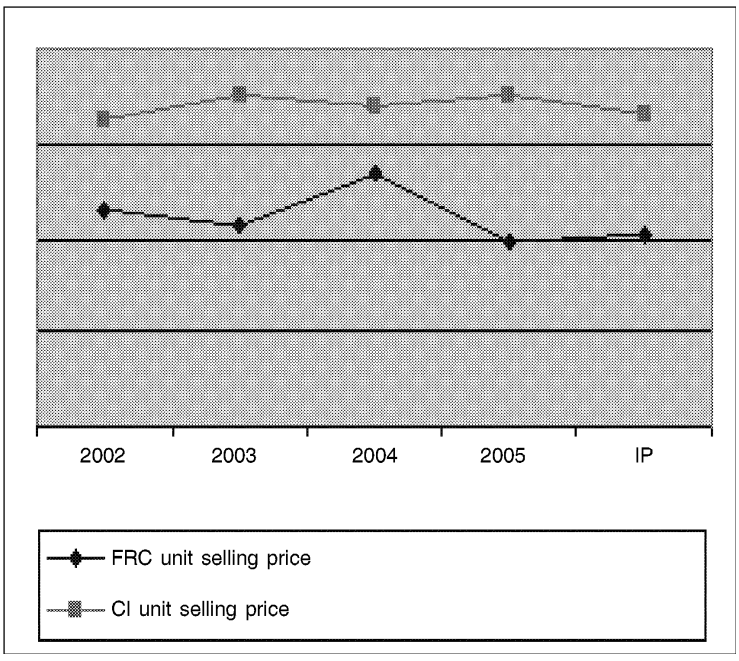


(84) The average prices of the dumped imports were significantly lower than those of the Community industry, undercutting them by 25-35 % in the IP. The Chinese export prices decreased by 11 % during the period considered but did not follow a clear downward trend. Indeed, the Chinese exporting producers decreased their prices by 7 % in 2003, in their effort to take over the market share held by ODDA. Having obtained the majority of it, they increased their prices by 25 % in 2004, decreased them by 27 % in 2005 and then increased them again by 4 % in the IP.

(85) At the same time, while the prices of the dumped imports decreased by 11 % over the period considered, the CI managed to keep its overall prices relatively stable (increase of 2 %). However, it should be borne in mind that these prices include micro DCD for which there is no competition from the PRC and which has a much higher price. Thus, the average annual CI sales prices are affected by the variation in sales volume and prices of standard and micro DCD respectively.

Table 2

Evolution of unit prices



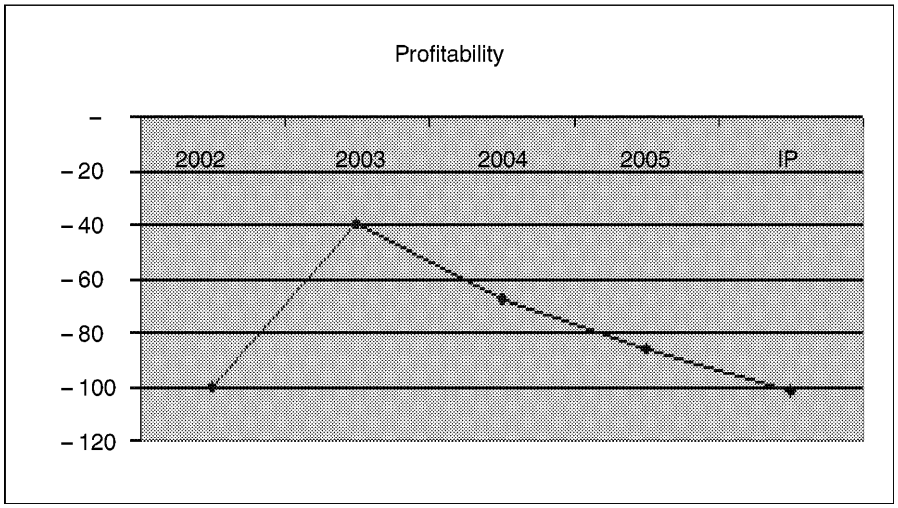
(86) In view of the significant undercutting established for the standard DCD, which amounted to 25-35 % in the IP, it is clear, that the dumped imports have exerted a strong downward pressure on the CI's sales prices for the standard DCD, which accounts for the majority of its sales, and have thus prevented the CI from setting its prices at levels which would cover its production costs. This in turn has had a negative impact on the CI's profitability, causing a substantial part of the significant losses throughout the period considered.

(87) Since the CI made losses on sales of DCD already in 2002, it was examined whether the losses are structural in nature rather than caused solely by the dumped imports. In this respect, it has to be borne in mind that the dumped imports had a strong presence on the Community market already in 2002, with a market share of 15-25 %. Furthermore, the CI provided evidence which showed that due to a cost-cutting programme it managed to keep its unit costs stable over the period considered, despite the increase in raw material prices. However, because of the price depression caused by the Chinese imports this did not have the desired impact of reducing losses but only prevented them from increasing.

(88) Thanks to the cost cutting efforts and ODDA's exit from the market in late 2002, the CI was in the process of recovering prior to the peak in the Chinese imports in 2003. Following this peak, which allowed the Chinese to take over the majority of ODDA's market share, the CI's losses increased to between – 10 % and – 20 % in 2004 and continued to increase steadily in 2005 and in the IP, in line with the increase in dumped import volumes and the decrease in the average import prices.

Table 3

Profitability of CI



(89) The causal link between the dumped imports and the deterioration of the CI's economic situation appears to be further reinforced by the fact that the CI is profitable on the type (micro DCD) where there are no Chinese imports whereas it makes heavy losses on the standard type of DCD where it faces unfair competition from the PRC.

(90) In view of the above, and in particular the development of the market share of the dumped imports, as demonstrated below, at prices which significantly undercut the prices of the CI, it is concluded that the dumped imports played a determining role in the injurious situation of the Community industry.

Table 4

Development of market shares

	2002	2003	2004	2005	IP
Dumped imports from PRC	15-25 %	35-45 %	30-40 %	35-45 %	40-50 %
Community industry	50-60 %	50-60 %	60-70 %	50-60 %	50-60 %

5.3. **Effect of other factors**

5.3.1. *Preliminary remark*

(91) In view of a stable Community consumption over the period considered and the absence of imports from any other third countries, the only known producers of DCD being the CI and a few Chinese producers, there are very few other known factors that could have contributed to the injurious situation of the CI.

5.3.2. *Export performance of the Community industry*

(92) It was examined whether exports by the CI to non-EU countries may have contributed to the injury suffered during the period considered. Exports to non-EU countries accounted for a significant proportion, between 30 % and 50 % of the CI's sales of the product concerned during the period considered. Exports increased substantially by 58 % in volume between 2002 and the IP whereas the average unit price decreased by 2 %. This shows that despite the fierce competition from the Chinese exporters also on markets outside the Community, there is a strong demand for DCD produced by the Community industry, even at prices well above those of the Chinese exporters, although, as explained above, the higher average prices can be explained by the higher prices obtained for micro DCD.

(93) In order to be able to compete with the low-priced Chinese standard DCD also on non-EU markets, the CI's export sales were made at prices well below cost of production, thus undermining its overall profitability. However, these exports did not directly affect profitability on the Community market.

5.3.3. *Alleged self-inflicted injury*

(94) Given that the Community industry has made losses on the product concerned for several years, and nevertheless decided to invest in additional capacity in 2003 and 2004 leading to increased production volumes and stocks, it was examined whether (i) the losses are structural in nature and (ii) the decision to invest in additional capacity has contributed to the injurious situation of the CI. The latter argument was also brought forward by one importer, who claimed that the CI's decision to increase its production capacity by one third with the knowledge of already existing imports from China has added significant pressure on the market.

(95) With regard to the levels of losses, data obtained from the CI demonstrates that due to its cost-cutting programme the CI has managed to keep its unit costs stable over the period considered, despite the rise in raw material prices. However, the CI is suffering from some cost disadvantages, such as three different production sites, no proximity to coal mines and expensive production process, even though it is not possible to compare the CI's cost structure with that of any other DCD producer, since none of the Chinese exporting producers obtained MET. Nevertheless, the fact that the CI made a small profit in 2001 and also that it is profitable on the product type (micro DCD) not exported by the Chinese producers clearly shows that in normal conditions of competition, the CI might be in a much better shape, and therefore that the amount of losses is not purely structural.

(96) With regard to the CI's decision to increase its production capacity, it has to be noted that this occurred after the closure of ODDA, which, prior to its exit, held a significant market share on the Community market. In the absence of the Chinese imports which managed to take over the majority of ODDA's lost market share due to dumped prices, the CI could have expected to capture a much larger portion of it. On the other hand, an operator can never expect that all increase in consumption in its area will turn to it for supply and not to foreign sources.

(97) From the above, it is clear that even if the difficult financial and economic situation of the CI cannot be considered to be self-inflicted, the lack of profitability on the product concerned is also partly the result of high production costs and investment decisions.

5.4. **Conclusion on causation**

(98) In conclusion, it is confirmed that the Chinese dumped imports, which increased their market share significantly over the period considered, at prices undercutting those of the CI have substantially contributed to the difficult financial and economic situation of the CI. This, viewed in isolation, caused material injury. However, it cannot be denied that the significant losses incurred throughout the period considered have also to be partly attributed to the CI's cost structure.

(99) The investigation showed that the other known factors, such as costs, increased capacity and export performance of the Community industry even if they have contributed to the injury do not break the causal link between the injury suffered by the CI and the dumped imports from the PRC.

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

6. COMMUNITY INTEREST

(101) In accordance with Article 21 of the basic Regulation it has been examined whether compelling reasons exist for concluding that it is not in the Community interest to impose anti-dumping measures in this case. The likely impact of measures on all interested parties and also the consequences of not imposing measures were analysed.

6.1. Interest of the Community industry

(102) The injurious situation of the Community industry resulted from its difficulty to compete with the dumped imports, which increased sharply over the period considered and caused strong price depression on the Community market, preventing the Community industry from setting its prices at a level which would have covered its costs.

(103) It is considered that the imposition of measures would enable the Community industry to increase the price of DCD to a level that would allow it to turn the business profitable and thus maintain its presence on the Community market.

(104) Should measures not be imposed, the Community industry would be forced to continue to align its prices with those of the dumped imports in order to stay on the market. This would result in further financial losses. As the current situation, characterised by a lack of profitability over several years, is not sustainable, the non-imposition of measures would eventually lead to the disappearance of this product line and consequent job losses.

(105) In view of the above, it is concluded that the imposition of anti-dumping measures is in the interest of the Community industry.

6.2. Competition and trade distorting effects

(106) The cooperating exporting producers, as well as some users and importers have argued that the imposition of anti-dumping measures would exclude the Chinese imports from the Community market and, in the absence of imports from any other countries, result in the monopoly of the Community industry. The exporting producers and one importer have further pointed to the risk of a critical supply situation on the Community market should measures be imposed at a level which would prohibit imports from the PRC.

(107) It is considered, however, that in view of the strong market position that the Chinese exporting producers have obtained due to dumping practices and prices significantly undercutting those of the Community industry, the imposition of measures at the level described below would not drive them out of the Community market, but merely restore a level playing field allowing the Community industry and the Chinese exporting producers to compete on equal terms. Moreover, competition between the Chinese exporters and the Community industry on the Community market will remain, thus guaranteeing continuous supply from several sources.

(108) On the other hand, should anti-dumping measures not be imposed, it cannot be excluded that the Community industry would have to cease its manufacturing activities for this particular business, leading to the opposite scenario, i.e. the monopoly of the Chinese imports. Both scenarios, i.e. a monopoly by either of the two sources of supply have to be avoided. Indeed, both cooperating users have emphasised the need for two sources of supply.

(109) Hence, it is considered that the imposition of anti-dumping measures, at the level described below, would guarantee the maintenance of two sources of supply on the Community market.

6.3. Interest of users

(110) Two industrial users, one active in the pharmaceuticals sector and the other one in leather tanning, cooperated in the investigation. Both users purchase the product concerned directly from the PRC and also from the Community industry. A third user, producing specialised paper chemicals, reacted to the disclosure of the definitive findings of the investigation by providing comments on the expected effects of the imposition of anti-dumping duties.

(111) The user in the pharmaceuticals sector, where DCD is an important raw material in the production of metformine, a diabetes medicine, argued that any price increases resulting from the imposition of anti-dumping measures would have a negative effect on its competitiveness vis-à-vis producers outside the Community, mainly in India. Given that DCD accounts for a relatively important proportion of its cost, this user estimates that even a small price increase of DCD would affect the sales prices of metformine, and consequently have a negative impact on its market shares and competitiveness. However, the information made available to the Commission on the above user's costs and profitability indicates that the duty at the proposed level could at least partly be absorbed.

(112) In its comments to the disclosure of the definitive findings of the investigation, the above user argued that it would not be able to absorb the increase in raw material costs resulting from the imposition of an anti-dumping duty at the proposed level. It claimed that in order to maintain its competitiveness and stay on the market it has been obliged to constantly reduce its production costs. To this end it already had to restructure in the past. In addition, it has negotiated price reductions with its main supplier, the Community industry. The same user concludes that the imposition of an anti-dumping duty at the proposed level presents a concrete risk that it will have to close down its two production sites in France, both specialised in the production of metformine. Allegedly, this would result in 270 people losing their jobs.

(113) The Commission maintains, however, that even if it cannot be contested that the imposition of duties would affect the above user negatively in terms of lower margins with regard to its sales on the Community market, it should be stressed that a significant portion of the metformine produced by this user in the Community is further exported, hence exempted from any duties. Thus the imposition of a duty would only affect part of the metformine business. Moreover, in view of the profit margin disclosed by this user in its questionnaire response, it is clear that the duty could at least partly be absorbed and should not lead to significant price increases of metformine sold on the Community market. Hence, any risk of job losses seems very distant. It should also be noted, that the non-imposition of duties could lead to a situation where this user's main supplier would have to close down its activities, leaving this user with only one source of supply.

(114) The user in the paper chemicals sector also alleged that an anti-dumping duty at the proposed level would reduce its capability to stay competitive on the Community market, since its competitors outside the Community would continue to have access to DCD without having to pay any anti-dumping duties. However, since this user did not submit a questionnaire reply or further substantiate its claim, it is impossible to assess or quantify the effect of a duty on its business.

(115) It is recalled, however, that as described above, both cooperating users underlined the importance of maintaining two sources of supply. Therefore, it is considered that the imposition of anti-dumping measures at the level explained below would guarantee the long-term existence of alternative supply sources for the end-user sectors. The non-imposition of measures, on the other hand, would entail the risk that one supply source would be eliminated.

6.4. **Interest of unrelated importers**

(116) Four importers, one of them also using the product concerned, cooperated in the investigation. The largest of them, whose imports represented around 30 % of the totality of DCD imported from the PRC in the IP, pointed out that the imposition of anti-dumping duties would have an inevitable negative impact on its activities, leading eventually to its withdrawal from the DCD business, since in the absence of DCD production in other third countries it does not have an alternative supply source. This could lead to some organisational changes within the company.

(117) It cannot be excluded that the imposition of anti-dumping measures would affect some importers negatively. However, since anti-dumping measures would only restore competition on the Community market, and moreover, since end-users have emphasised the need for two sources of supply, it is considered that anti-dumping measures at the level proposed below should not prevent importers from selling the product concerned in the Community.

(118) In addition, since importers supply several different end-user sectors, where DCD constitutes a variable proportion of the cost of the end-product, it is considered that any price increases resulting from the imposition of anti-dumping measures could at least partly be passed on to users. It should also be noted in this context, that according to the information available, importers do not supply the biggest end-user sector, i.e. the pharmaceuticals, where allegedly any additional cost increases would be difficult to pass on to end-customers due to the competition with third countries.

(119) One importer which supplies DCD to the textile, paper, water treatment and fertiliser industries claimed that these industries do not require the higher quality DCD produced by the CI. It further argued that the above industries would have difficulties to pass any additional cost increases to their end-customers.

(120) It is not contested that the DCD produced by the CI may be of superior quality compared to the DCD produced by the Chinese exporting producers. However, the investigation has shown that the product concerned and the like product are essentially the same and have the same basic chemical, physical and technical characteristics and the same uses. Regarding the claim that the above industries could not pass an increase in raw material prices to their customers, it must be stressed, that in the absence of cooperation by these end-users this claim cannot be assessed and must hence be disregarded.

(121) It is also noteworthy that the profit margins amongst the cooperating importers vary. According to data provided by the importers at least part of any price increases resulting from the imposition of anti-dumping duties could be absorbed.

(122) Therefore, it is considered that the imposition of anti-dumping measures would not have a serious negative impact on importers.

6.5. **Conclusion on Community interest**

(123) The imposition of anti-dumping measures can be expected to enable the Community industry to regain profitability of the DCD business, thus allowing it to stay on the market. In view of the constantly deteriorating financial situation of the Community industry which has turned the entire business line unprofitable, there is a high risk that should measures not be imposed, the Community industry would have to consider withdrawing from the DCD business, resulting in inevitable job losses. This would create a monopoly for the Chinese exporting producers, which would be detrimental to the end-users of DCD, who have underlined the importance of maintaining a source of supply in the Community.

(124) In view of the significant undercutting established for the dumped imports, it is considered that the imposition of anti-dumping measures would merely restore a level playing field, maintaining two sources of supply for the users.

(125) It is therefore concluded that there are no compelling reasons on the grounds of Community interest not to impose anti-dumping measures.

7. **DEFINITIVE ANTI-DUMPING MEASURES**

7.1. **Injury elimination level**

(126) In view of the findings as described above and in order to adequately reflect the specific market situation of DCD, it is considered appropriate to adopt anti-dumping measures.

(127) The measures should be imposed at a level sufficient to restore a situation of fair competition between the CI and the exporting producers in the PRC.

(128) It has been considered that the circumstances of this particular case necessitate a special approach for the determination of the injury elimination level. In this respect there are three significant aspects that must be taken into account:

(i) given the conclusion on causation, the measures should not compensate for factors, which cannot be attributed to the dumped imports. However, it is impossible to precisely determine the contribution of these elements;

(ii) the dumping margin was calculated in an exceptional way: since MET/IT could not be granted to the cooperating exporting producers in the PRC and in the absence of an analogue country, the normal value had to be constructed, based on the Community industry's cost of production;

(iii) there are only two supply sources of DCD in the world: the Community industry located in Germany and some exporting producers in the PRC. This calls for a cautious approach in order not to create a monopoly and/or a critical supply situation on the Community market.

(129) It should also be noted that as of 1 July 2007 the VAT refund rate applicable to exports of DCD originating in the PRC was reduced from 13 % to 5 %. This will most likely lead to an increase in export prices of Chinese DCD, since the cost of producing DCD for exports will be higher.

(130) Under these circumstances, a more meaningful method had to be used for the determination of the injury elimination level related to the dumped imports. It was considered appropriate to focus on the injurious effects directly resulting from the undercutting practices of the Chinese exporting producers and to base the injury elimination level on the amount sufficient to eliminate the actual price undercutting and to add an element of profit (between 0 and 5 %) corresponding to the profit margin achieved by the Community industry in 2001 for the product concerned. This approach will allow the CI to charge higher prices and therefore to improve its financial and economic situation as far as it has been clearly impacted by the dumped imports.

(131) Following the disclosure of the definitive findings of the investigation, the CI claimed that the proposed level of duty would not ensure its viability, since it would not allow it to increase its prices to a level that would cover all of its cost of production. Instead it proposed a methodology which would provide a break-even point for the whole DCD production chain. However, this method had to be rejected as it was based on largely non-verified data and would have included other products beside the product concerned.

(132) It is therefore maintained that the duty based on the undercutting plus profit will eliminate the injury directly caused by the dumped imports, even if it does not remove fully all the financial and economic difficulties of the CI. Covering all costs of production would be an overcompensation in view of the factors other than dumped imports. It should also be taken into consideration that the CI benefits from a particular position in the market characterised by its proximity to customers.

(133) On the basis of the above, the necessary price increase was determined by using the weighted average import price, as established for the undercutting calculation, and adding an additional element of profit. The result was then expressed as a percentage of the total CIF import value.

(134) In view of the special circumstances, as described above, the Commission will closely monitor the market. Should the measure prove to be inadequate, or alternatively, lead to a shortage on the Community market and/or a monopoly by either party, the Commission will immediately address the situation by initiating an *ex officio* review on the basis of Article 11(3) of the basic Regulation and/or by applying Article 14(4) of the basic Regulation.

7.2. **Definitive measures**

(135) In the light of the foregoing, it is considered that in accordance with Article 9 of the basic Regulation, definitive anti-dumping measures on imports of the product concerned should be imposed.

(136) As the injury elimination level is lower than the dumping margin established, the definitive measures should be based on the injury elimination level.

(137) On the basis of the above, the duty rate, expressed as a percentage of the CIF Community border price, customs duty unpaid, is as follows:

Country	Company	Rate of duty (%)
PRC	All companies	49,1 %

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of 1-cyanoguanidine (dicyandiamide), falling within CN code 2926 20 00, originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the product described above shall be 49,1 %.

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

Article 2

This Regulation shall enter into force on the day following 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, 13 November 2007.

For the Council
The President
F. TEIXEIRA DOS SANTOS