# COMMISSION REGULATION (EC) No 896/2007

## of 27 July 2007

## imposing a provisional anti-dumping duty on imports of dihydromyrcenol originating in India

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:

1. PROCEDURE

1.1. **Initiation of the proceeding**

(1) On 11 November 2006, the Commission announced by a notice published in the *Official Journal of the European Union* [2] (notice of initiation), the initiation of an anti-dumping proceeding concerning imports into the Community of dihydromyrcenol originating in India.

(2) The anti-dumping proceeding was initiated following a complaint lodged on 29 September 2006 by the following Community producers: Destilaciones Bordas Chinchurreta S.A. and Sensient Fragrances S.A. (the complainants) representing a major proportion, in this case more than 25 %, of the total Community production of dihydromyrcenol. The 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.

1.2. **Parties concerned and verification visits**

(3) The Commission officially advised the complainants, other known producers in the Community, exporting producers in India, importers and users known to be concerned and their associations and the representatives of India of the initiation of the investigation. The 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. All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(4) In view of the apparent high number of Indian exporting producers and importers into the Community, sampling was envisaged in the notice of initiation for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all Indian exporting producers and all importers in the Community were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period 1 October 2005 to 30 September 2006. However, only two Indian exporting producers and two importers of the product concerned in the Community came forward and provided the requested information for sampling within the deadlines set out in the notice of initiation. Therefore, it was decided that sampling was not necessary.

[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 275, 11.11.2006, p. 25.

(5) The Commission sent questionnaires to all parties known to be concerned and to all other parties that requested so within the deadlines set out in the notice of initiation.

(6) Questionnaire replies were received from two Indian exporting producers, from four Community producers of the like product, from two importers not related to the exporting producers and from one user in the Community.

(7) The Commission sought and verified all the information it deemed necessary for a provisional determination of dumping, resulting injury and Community interest and carried out verification visits at the premises of the following companies:

a) *Community producers*

— Destilaciones Bordas Chinchurreta S.A., Granada, Spain,

— Sensient Fragrances S.A., Dos Hermanas (Sevilla), Spain,

— Takasago International Chemicals (Europe) S.A., Murcia, Spain.

b) *Exporting producers in India*

— Neeru Enterprises, Rampur,

— Privi Organics Limited, Mumbai.

1.3. **Investigation period**

(8) The investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (the 'investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2003 to the end of the IP (the 'period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. **Product concerned**

(9) The product concerned is dihydromyrcenol of a purity by weight of 93 % or more, originating in India (the 'product concerned'), normally declared within CN code ex 2905 22 90.

(10) The product concerned is a colourless to pale yellow liquid with a powerful, fresh lime-like, citrusy-floral and sweet odour with little or no terpenic undertones, soluble in paraffin oil and alcohol and insoluble in water. It belongs to the family of acyclic terpenic alcohols. Its chemical name is 2,6-dimethyloct-7-en-2-ol (CAS RN 18479-58-8).

(11) Typical applications of the product concerned are in detergents, soap fragrances and as a powerful supporting note in citrus and lime-type perfumes.

2.2. **Like product**

(12) The product concerned and dihydromyrcenol produced and sold on the domestic market of India, as well as dihydromyrcenol produced and sold in the Community by the Community industry, were found to have the same basic chemical and technical characteristics and end-uses. Therefore, these products are provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. **Normal value**

(13) For the determination of normal value the Commission first established, for each of the two co-operating 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) of the basic Regulation, the domestic sales of the like product were found to be representative for only one of the cooperating companies since the domestic sales volume of this company exceeded 5 % of its total export sales of the product concerned to the Community.

(14) The Commission subsequently identified for this company on the basis of purity 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. This was the case for all domestic types comparable to those exported to the Community.

(15) 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.

(16) Since for all product types 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 since at the same time 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.

(17) For the exporting producer which did not have representative domestic sales of the like product during the IP (see recital 13 above), normal value was determined on the basis of the domestic prices in the ordinary course of trade of the other exporting producer (see recitals 14 to 16 above), pursuant to Article 2(1) of the basic Regulation.

3.2. **Export price**

(18) All sales of the two cooperating exporting producers 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.

3.3. **Comparison**

(19) 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, discounts, commissions, credit costs and import charges were granted where applicable and justified.

3.4. **Dumping margins**

(20) Pursuant to Article 2(11) and (12) of the basic Regulation, dumping margins for the two co-operating exporting producers were established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type as established above.

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

| Company | Provisional dumping margin |
|---|---|
| Neeru Enterprises, Rampur | 3,3 % |
| Privi Organics Limited, Mumbai | 7,5 % |

(22) 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 India and the volume of exports to the Community reported by the cooperating exporting producers showed that the level of cooperation was high (more than 80 %). 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 with the investigation, at the level of the higher dumping margin found for the two cooperating companies. 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 for non-cooperation. Therefore, the residual dumping margin was calculated at the rate of 7,5 %.

## 4. INJURY

### 4.1. **Community production and Community industry**

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

(24) Of these five producers, a total of four replied to the questionnaire. However, one of these respondents did not expressly support the complaint, i.e. it did not take a position on it. Therefore, this company could not form part of the Community industry and, consequently, of the injury analysis. Nevertheless, the situation of this company was taken into account and examined as another factor of injury in part 5 — Causation.

(25) The three remaining co-operating producers represent more than 40 % of the total Community production of the like product. It is noted that one of them had made substantial imports of dihydromyrcenol from India in the IP. However, importation was not its core business and these imports were considered to have been made in reaction to the influx of dumped imports significantly depressing prices, in particular in order to improve its financial situation and to maintain its own production of the like product viable. Therefore, it was not considered appropriate to exclude this producer from the definition of the Community industry.

(26) On this basis it is considered that the three Community producers referred to in recital 25 above are deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation. They will hereinafter be referred to as the 'Community industry'.

### 4.2. **Determination of the relevant Community market**

(27) In order to establish whether or not the Community industry suffered injury and to determine consumption and the various economic indicators related to the situation of the Community industry, it was examined whether and to what extent the subsequent use of the Community industry's production of the like product had to be taken into account in the analysis.

(28) Dihydromyrcenol is used as an intermediate material for production of derivates, such as tetrahydromyrcenol and myrcetol, or in compounding fragrances. It was found in the investigation that the Community industry used certain quantities of dihydromyrcenol (around 10 % of its total production volume) internally, for the aforesaid purposes. To this end, dihydromyrcenol was simply transferred without invoice within the same company; it did not enter the free market, because it was used by the producer itself for further processing and/or compounding. Such situations are referred to as captive use.

(29) The Community industry also sold dihydromyrcenol to related parties in the Community and in third countries for resale or use by these parties. However, it was established in the investigation that these sales cannot be considered as being captive, i.e. sales on the captive market, because they were made at market prices and the buyers had a free choice of supplier. On the contrary, they should be considered as sales on the free market.

(30) The distinction between the captive and the free market is relevant for the injury analysis because products destined for captive use, i.e. internal use by the producers themselves in this case, are not exposed to direct competition with imports. By contrast, production destined for free market sale was found to be in direct competition with imports of the product concerned.

(31) In order to provide as complete a picture as possible of the situation of the Community industry, data have been obtained and analysed for the entire dihydromyrcenol activity and it was subsequently determined whether the production was destined for captive use or for the free market.

(32) For the following economic indicators relating to the Community industry, it was found that a meaningful analysis and evaluation had to focus on the situation prevailing on the free market: sales volume and sales prices on the Community market, market share, growth, profitability, return on investment, cash flow and export volume and prices.

(33) As regards other economic indicators, however, it was found on the basis of the investigation, that they could reasonably be examined only by referring to the whole activity. Indeed, production (for both the captive and the free market), capacity, capacity utilisation, investments, stocks, employment, productivity, wages and ability to raise capital depend upon the whole activity, whether the production is captive or sold on the free market.

(34) Finally, it is noted that the development of captive use by the Community industry was examined as other factor of injury in part 5 — Causation in order to establish whether it could have impacted on their situation.

4.3. **Community consumption**

(35) Community consumption was established on the basis of the volumes of the Community producers' own production destined for free sale on the Community market and for captive use by these producers and the volumes of imports into the Community obtained from Eurostat.

(36) In respect to Eurostat, it is noted that products other than dihydromyrcenol may be included in these statistics, since dihydromyrcenol is declared within an ex CN code. Data from Eurostat were thus compared with the Community industry's market knowledge. As a result, imports from Japan were excluded since they were considered to be entirely composed of products other than dihydromyrcenol as there is no known production of that product in Japan. For imports from third countries other than Japan, Eurostat statistics appeared to be reasonably precise (i.e. they appeared not to include significant volumes of products other than dihydromyrcenol which would substantially distort the picture) and, thus, no adjustments to these data were carried out for the purpose of the injury and causation analysis.

(37) In the first half of the period considered, the Community market for dihydromyrcenol was relatively stable. It started to increase in 2005 and in the IP it reached a level by 23 % higher than in 2003, i.e. around 4 400 000 kilograms.

| | 2003 | 2004 | 2005 | IP |
|---|---|---|---|---|
| Consumption (kg) | 3 586 447 | 3 571 795 | 3 819 904 | 4 409 093 |
| Index: 2003 = 100 | 100 | 100 | 107 | 123 |

*Source:* verified questionnaire replies from the Community industry, information collected from other Community producers, Eurostat.

4.4. **Imports from the country concerned**

4.4.1. *Volume, price and market share of dumped imports from the country concerned*

(38) The volume of dumped imports of the product concerned into the Community rose dramatically in 2004, i.e. by more than 1 600 %. It further almost doubled in 2005, before slowing down in the IP and closing at a level 2 963 % higher than at the beginning of the period considered, i.e. around 760 000 kilograms in the IP compared to around 25 000 kilograms in 2003.

| | 2003 | 2004 | 2005 | IP |
|---|---|---|---|---|
| Imports (kg) | 24 900 | 430 600 | 751 800 | 762 600 |
| Index: 2003 = 100 | 100 | 1 729 | 3 019 | 3 063 |

*Source:* Eurostat.

(39) The average import price dropped by almost 20 % in 2004, it increased to its original level in 2005 and increased by 11 % in the IP. As can be seen from recitals 41 and 42 below, the import prices were significantly below the Community industry prices in the IP.

| | 2003 | 2004 | 2005 | IP |
|---|---|---|---|---|
| Average import price (EUR/kg) | 3,45 | 2,79 | 3,45 | 3,81 |
| Index: 2003 = 100 | 100 | 81 | 100 | 111 |

*Source:* Eurostat.

(40) The market share of dumped imports from India increased by almost 17 percentage points during the period considered, i.e. from 0,7 % in 2003 to 17,3 % in the IP. Significant market share was gained in 2004, in line with the above described sharp increase in import volumes and steady Community consumption. In the IP, expressed in absolute terms, the Indian exporters, despite an increase in sales volumes, saw their market share decrease by 2,4 percentage points. However, bearing in mind that Community consumption only increased by 23 % over the period considered, it is evident that the presence of dumped imports from India on the Community market increased much more significantly over the period.

| | 2003 | 2004 | 2005 | IP |
|---|---|---|---|---|
| Market share | 0,7 % | 12,1 % | 19,7 % | 17,3 % |
| Index: 2003 = 100 | 100 | 1 736 | 2 835 | 2 491 |

*Source:* Eurostat.

4.4.2. *Price undercutting*

(41) For the purpose of analysing price undercutting, the import prices of the cooperating exporting producers were compared to the Community industry prices, on the basis of weighted averages for directly comparable product types (on the basis of purity) during the IP. The Community industry prices were adjusted to an ex-works level, and compared to CIF Community frontier import prices, plus customs duty. This price comparison was made for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts.

(42) On the basis of the cooperating exporting producers' prices, the undercutting margins found, and expressed as a percentage of the Community industry's prices, are 5,8 % and 7,4 %.

4.5. **Situation of the Community industry**

(43) 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.

(44) It is recalled that the existence of captive use of the like product by the Community industry had to be taken into account in the injury analysis. Certain injury indicators were thus examined by focusing on the situation prevailing on the free market, whilst certain others could reasonably be examined only by referring to the whole activity (see recitals 27 to 34 above).

a) *Production, capacity and capacity utilisation*

(45) The Community industry's production of the like product increased by 6 % over the period considered. Specifically, it remained stable in 2004, increased slightly by 2 % in 2005 and by additional 4 percentage points in the IP. Since production capacity remained stable, its utilisation has slightly improved in line with the increased production volumes.

| | 2003 | 2004 | 2005 | IP |
|---|---|---|---|---|
| Production (kg) | 2 212 266 | 2 210 328 | 2 265 113 | 2 350 588 |
| Index: 2003 = 100 | 100 | 100 | 102 | 106 |
| Capacity (kg) | 3 210 000 | 3 210 000 | 3 210 000 | 3 210 000 |
| Index: 2003 = 100 | 100 | 100 | 100 | 100 |
| Capacity utilisation | 69 % | 69 % | 71 % | 73 % |
| Index: 2003 = 100 | 100 | 100 | 102 | 106 |

*Source:* verified questionnaire replies.

b) *Stocks*

(46) There has been an overall increase in stocks between 2003 and the IP. The peak in 2004 coincides with a sudden drop in sales described in recital 47 below. In the IP, the level of stocks was by 8 % higher than in 2003.

| | 2003 | 2004 | 2005 | IP |
|---|---|---|---|---|
| Stocks (kg) | 118 204 | 222 907 | 166 724 | 127 440 |
| Index: 2003 = 100 | 100 | 189 | 141 | 108 |

*Source:* verified questionnaire replies.

c) *Sales volume, sales price and market share*

(47) Sales of the Community industry own production in the free market in the Community dropped suddenly by 7 % in 2004. In 2005 they recovered slightly above their original level and increased by 19 percentage points in the IP. However, given the increased consumption in 2005 and in the IP (see recital 37 above), the Community industry did not strengthen its market position. On the contrary, it hardly maintained its market share. Average sales prices of the Community production reflected the development of the market. They dropped dramatically in 2004, i.e. by 22 %, decreased by additional 10 percentage points in 2005 and remained more or less stable in the IP.

| | 2003 | 2004 | 2005 | IP |
|---|---|---|---|---|
| Sales in the EC (kg) | 1 233 633 | 1 147 959 | 1 274 430 | 1 506 740 |
| Index: 2003 = 100 | 100 | 93 | 103 | 122 |
| Market share | 34,4 % | 32,1 % | 33,4 % | 34,2 % |
| Index: 2003 = 100 | 100 | 93 | 97 | 99 |
| Sales price (EUR/kg) | 4,55 | 3,55 | 3,09 | 3,15 |
| Index: 2003 = 100 | 100 | 78 | 68 | 69 |

*Source:* verified questionnaire replies.

d) *Profitability*

(48) Profitability of the Community industry deteriorated dramatically over the period considered. From 12,3 % profit in 2003, the Community industry's production of the like product destined for sale on the free market turned significantly loss-making in 2004, in line with the above described drop in sales volumes and prices. In 2005, the loss margin doubled and in the IP the Community industry was making losses of almost 17 %.

| | 2003 | 2004 | 2005 | IP |
|---|---|---|---|---|
| Pre-tax profit margin | 12,3 % | – 7,5 % | – 15,8 % | – 16,9 % |
| Index: 2003 = 100 | 100 | – 60 | – 128 | – 137 |

*Source:* verified questionnaire replies.

e) *Investment, return on investment, cash flow and the ability to raise capital*

(49) Investment has significantly decreased over the period considered, reaching in the IP only 7 % of its 2003 level, which reflects the fact that the industry already operates modern equipment. As can be seen from the table under recital 45 above, no investments were made in the production capacity, although the market for dihydromyrcenol was expected to maintain its increasing trend. The return on investment, expressed in terms of net profits/losses of the Community industry and the net book value of its investments, developed in line with the investment and the profit/loss margins. Specifically, it decreased from 13,7 % in 2003 to – 26,9 % in the IP. Similarly, also the Community industry's cash flow has significantly deteriorated. From the cash inflow of around EUR 1 300 000 in 2003 it turned to cash outflow of more than EUR 60 000 in the IP. All these indicators clearly confirm the Community industry's inability to raise capital.

| | 2003 | 2004 | 2005 | IP |
|---|---|---|---|---|
| Investment (EUR) | 221 210 | 44 605 | 23 435 | 16 481 |
| Index: 2003 = 100 | 100 | 20 | 11 | 7 |
| Return on investment | 13,7 % | – 7,1 % | – 17,3 % | – 26,9 % |
| Index: 2003 = 100 | 100 | – 52 | – 127 | – 197 |
| Cash flow (EUR) | 1 328 345 | – 48 093 | 164 355 | – 61 724 |
| Index: 2003 = 100 | 100 | – 4 | 12 | – 5 |

*Source:* verified questionnaire replies.

f) *Growth*

(50) The Community industry maintained its market share at the price of significant losses accompanied by, *inter alia*, cash outflow. It is thus concluded that the Community industry could not benefit from the growth of the market.

g) *Employment, productivity and wages*

(51) The number of employees of the Community industry involved with the like product has diminished in spite of the increased production (see recital 45 above). In the IP the employment was 15 % lower than in 2003. Total labour cost has nevertheless increased. Specifically, it increased by 13 % in 2004, remained more or less stable in 2005, before declining slightly in the IP to a level 6 % higher than in 2003. In fact, the average labour cost increased by 24 % over the period considered. This increase was due to inflation (around 3 % in 2004 and 2005 in Spain) and to the changes in employment structure (higher share of qualified labour). Productivity expressed in output per worker per year increased by 24 % between 2003 and the IP.

| | 2003 | 2004 | 2005 | IP |
|---|---|---|---|---|
| Employment | 44,2 | 43,7 | 39,8 | 37,7 |
| Index: 2003 = 100 | 100 | 99 | 90 | 85 |
| Labour cost (EUR) | 1 401 693 | 1 580 371 | 1 554 698 | 1 480 157 |
| Index: 2003 = 100 | 100 | 113 | 111 | 106 |
| Average labour cost (EUR) | 31 741 | 36 206 | 39 033 | 39 282 |
| Index: 2003 = 100 | 100 | 114 | 123 | 124 |
| Productivity (kg per employee) | 64 329 | 65 588 | 72 904 | 79 546 |
| Index: 2003 = 100 | 100 | 102 | 113 | 124 |

*Source:* verified questionnaire replies.

h) *Magnitude of dumping, recovery from past dumping or subsidisation*

(52) As concerns the impact on the Community industry of the magnitude of the actual margins of dumping, given the volume and the prices of dumped imports from the country concerned, this impact cannot be considered to be negligible.

(53) Furthermore, there were no indications that the Community industry was recovering, during the IP, from the effects of any past dumping or subsidisation.

4.6. **Conclusion on injury**

(54) During the period considered the presence of low-priced dumped imports from India increased dramatically. In terms of volume, dumped imports of the product concerned increased by almost 3 000 % between 2003 and the IP. In terms of market share, they held more than 17 % of the Community market of dihydromyrcenol in the IP compared to only 0,7 % in 2003.

(55) Despite Community consumption of dihydromyrcenol having increased by 23 % during the period considered, the Community industry, in the IP, only managed to attain the same share on the Community market as in 2003, in particular thanks to an increase in sales of its production in 2005 and in the IP. However, as the above analysis of the economic indicators of the Community industry revealed, this could only be achieved at the price of severe losses, a fall in return on investment and cash outflow. In fact, the injury materialised in particular in terms of a significant drop in prices of the Community industry, which had a direct and significant negative impact on the financial situation of these companies. Specifically, the Community industry's prices fell from EUR 4,55 in 2003 to EUR 3,15 in the IP. This fall was not accompanied by any corresponding decrease in production cost. Therefore, the Community industry turned loss-making in 2004 and its losses from sales of dihydromyrcenol on the Community market further increased in 2005 and in the IP, when the sales revenues were hardly covering the Community industry's fixed cost. Such situation is clearly not sustainable in the long run.

(56) Taking into account all these factors, it is provisionally considered that the Community industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

5.1. **Introduction**

(57) In accordance with Articles 3(6) and (7) of the basic Regulation, the Commission examined whether the material injury suffered by the Community industry was caused by dumped imports of the product concerned. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined in order to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

5.2. **Effects of the dumped imports**

(58) First, it is recalled that the investigation revealed that dihydromyrcenol imported from India directly competes with dihydromyrcenol produced and sold by the Community industry, since it is alike in terms of its basic chemical characteristics, interchangeable and distributed via the same distribution channels.

(59) The significant increase in volume of the dumped imports from the country concerned (almost 3 000 %) and in their share on the Community market (by almost 17 percentage points) coincided with the deterioration of the financial situation of the Community industry. This deterioration included, *inter alia*, a drop of price level of the Community industry, resulting in a worsening of its financial results during the same period. The dumped imports undercut the prices of the Community industry by substantial margins so it can be reasonably concluded that they were responsible for the price suppression which led to the deterioration of the financial situation of the Community industry.

(60) One party argued that several manufactures of the product concerned in India have stopped production of this product and, thus, lowered the production capacity for the product concerned in India. It was concluded by this party that for the aforesaid reasons the imports from India were not posing a threat of injury to Community producers. In this respect, it was confirmed by the investigation that some of the producers mentioned in the complaint referred to in recital 2 above discontinued their production of dihydromyrcenol in the IP; however, it was also found that new capacities have been installed. In fact, at least one new Indian producer of dihydromyrcenol appeared in 2005. The claim should therefore be rejected.

(61) In view of the clearly established coincidence in time between, on the one hand, the surge of dumped imports at prices significantly undercutting the Community industry's prices and, on the other hand, the Community industry's price depression and worsened financial situation, it is provisionally concluded that the dumped imports played a determining role in the injurious situation of the Community industry.

5.3. **Effects of other factors**

5.3.1. *Performance of other Community producers*

(62) As indicated under recitals 23 to 26 above, there are five producers of the like product in the Community; two of them are not deemed to constitute the Community industry. The development of sales volume and market share of these two companies is analysed below. For confidentiality reasons actual figures cannot be disclosed. Thus, only indices are given.

(63) Sales in the Community of dihydromyrcenol produced by other Community producers declined by 12 % during the period considered. The corresponding market share has decreased even more significantly, i.e. by 28 %, because the market expanded in the same period.

| | 2003 | 2004 | 2005 | IP |
|---|---|---|---|---|
| Sales in the EC (kg)<br>Index: 2003 = 100 | 100 | 89 | 88 | 88 |
| Market share<br>Index: 2003 = 100 | 100 | 90 | 83 | 72 |

*Source:* information collected from other Community producers.

(64) In view of the above, it is provisionally concluded that the performance of the two other Community producers did not cause any injury to the Community industry.

5.3.2. *Captive use by the Community industry*

(65) As indicated under recitals 27 to 34 above, the Community industry's activities in respect of the like product include, *inter alia*, captive use of this product for production of derivates and/or perfume compounds. As further explained in the aforesaid recitals, it was considered appropriate to exclude the Community industry's captive use from the analysis of the injury indicators (where meaningful) and to examine it under other factors, i.e. other possible causes of the injury suffered by the Community industry.

(66) The Community industry' captive use has slightly declined over the period considered. Specifically, it declined by 14 % in 2004 and by an additional 14 percentage points in 2005, before increasing in the IP to around 240 000 kilograms, which is nevertheless 5 % less than in 2003. In relative terms, captive use represented about 10 % of the total production volume, with the exception of 2005, when it went down to 8 %.

| | 2003 | 2004 | 2005 | IP |
|---|---|---|---|---|
| Captive use (kg) | 249 809 | 215 100 | 179 954 | 236 323 |
| Index: 2003 = 100 | 100 | 86 | 72 | 95 |

*Source:* verified questionnaire replies.

(67) In view of the above, and taking into account that captive use represents only about 10 % of the output of the Community industry, it is provisionally concluded that its development could not substantially contribute to the material injury suffered by the Community industry.

5.3.3. *Export performance of the Community industry*

(68) In terms of volumes, the export performance of the Community industry slightly improved during the period considered. The volume of export sales increased by 8 % in 2004 and by additional 12 percentage points in 2005, before declining in the IP to a level 4 % higher than in 2003. In terms of unit prices, a fall by 26 % between 2003 and the IP can be seen from the table below. It should however be noted that the export sales price decreased at lower rates than the sales price in the Community and in absolute terms it remained considerably higher than the latter.

| | 2003 | 2004 | 2005 | IP |
|---|---|---|---|---|
| Export sales of EC production (units) | 743 445 | 803 219 | 890 242 | 774 802 |
| Index: 2003 = 100 | 100 | 108 | 120 | 104 |
| Export sales price (EUR/unit) | 4,55 | 4,05 | 3,57 | 3,36 |
| Index: 2003 = 100 | 100 | 89 | 79 | 74 |

*Source:* verified questionnaire replies.

(69) In this view it can be provisionally concluded that the export performance of the Community industry did not substantially contribute to the material injury suffered.

5.3.4. *Imports from other third countries*

(70) Imports from third countries other than India were also examined. It is recalled that imports from Japan resulting from Eurostat were disregarded for reasons given in recital 36 above. No other adjustments to Eurostat data were carried out for the purpose of this investigation.

(71) As can be seen from the table below, the volume of imports from other third countries has decreased over the period considered. After a slump in 2004 and 2005, it recovered in the IP to a level 4 % lower than in 2003. Such development clearly coincided with an increase in prices of these imports in 2004 and 2005 and their subsequent drop in the IP. In absolute terms, the price level of imports from other third countries remained significantly above the price level of imports from India throughout all of the period considered (refer to recital 39 above). The corresponding share of imports from other third countries on the Community market developed in line with their volumes and with the market expansion; it decreased by 22 % between 2003 and the IP.

| | 2003 | 2004 | 2005 | IP |
|---|---|---|---|---|
| Imports (kg) | 935 800 | 756 200 | 606 700 | 895 100 |
| Index: 2003 = 100 | 100 | 81 | 65 | 96 |
| Average import price (EUR/kg) | 4,04 | 4,79 | 4,75 | 4,08 |
| Index: 2003 = 100 | 100 | 119 | 118 | 101 |
| Market share | 26 % | 21 % | 16 % | 20 % |
| Index: 2003 = 100 | 100 | 81 | 61 | 78 |

*Source:* Eurostat.

(72) In view of the above, it is concluded that imports from third countries other than India did not cause any injury to the Community industry.

5.3.5. *The injury is self-inflicted*

(73) One party argued that the injury was self-inflected because the complainants depend on imports of the main raw materials employed in production of the like product and are thus not competitive against the other producers in the Community, or even globally. In this respect, the investigation has not established any substantial differences in sources and prices of the main raw materials used and paid for by the complainants and the other Community producers, or even the cooperating Indian producers, which could justify the aforesaid allegations. The claim should therefore be rejected.

5.4. **Conclusion on causation**

(74) In conclusion, it is confirmed that the material injury suffered by the Community industry, which is characterised especially by a decline in unit sales prices leading to a significant deterioration of the financial situation, was caused by the dumped imports from the country concerned. Although captive use and export performance might have to a certain extent contributed to the worsened performance of the Community industry, their development was not such as to break the causal link between the dumped imports and the injurious situation of the Community industry.

(75) Given the above analysis which has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is hereby confirmed that these other factors as such do not reverse the fact that the injury assessed must be attributed to the dumped imports.

(76) 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.

6. COMMUNITY INTEREST

6.1. **General remarks**

(77) The Commission examined whether, despite the provisional conclusion on the existence of injurious dumping, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and in accordance with Article 21(1) of the basic Regulation, the impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered on the basis of all evidence submitted.

6.2. **Interest of the Community industry**

(78) The injury analysis has clearly demonstrated that the Community industry has suffered from the dumped imports. The sharply increased presence of dumped imports in recent years caused a strong suppression of the prices. The Community industry, in order to maintain its market position and the volume of sales on the free market, which is decisive for the cost of production, is forced to sell at prices hardly covering fixed costs.

(79) In this context, without the imposition of measures, the position of the Community industry would not be sustainable in the long run. Although the direct employment in dihydromyrcenol production is moderate, much of the negative impact on it would be in one geographical area in Spain, where most of the Community production is concentrated. If measures are imposed and the import price restored to a non-dumped level, the Community industry would be able to compete under fair trade circumstances, on the basis of proper comparative advantage. It is expected that the sales volumes of the Community industry would rise and that the Community industry could thereby benefit from economies of scale. It is also expected that the Community industry will utilise the relief in price suppression imposed by dumped imports to raise moderately its own selling prices, since the measures will remove the undercutting found in the IP. These expected positive effects of measures would allow the Community industry to improve its critical financial situation.

(80) Imposing measures is therefore clearly in the interest of the Community industry. Non-imposition of measures may lead to discontinuation of dihydromyrcenol production or even closures in the Community.

6.3. **Interest of users and consumers**

(81) Consumer associations have neither made themselves known nor provided any information in accordance with Article 21(2) of the basic Regulation. Therefore, and given that dihydromyrcenol is only used as raw material or component in the manufacture of other intermediate or end-products (see recitals 11 and 28 above), the analysis has been limited to the effect of measures on users. Typical applications of dihydromyrcenol are in detergents, soap fragrances and in certain perfumes. The sectors concerned are thus laundry and home care products and beauty and personal care products. Questionnaires were sent to 13 known Community users of dihydromyrcenol and to four flavours and fragrances associations. The Commission requested, amongst other information, their comments on whether the imposition of anti-dumping measures would be in the interest of the Community and how these measures would affect them.

(82) One questionnaire reply was received from a manufacturer of a whole range of laundry, home and personal care products. It was pointed out that the product under investigation represents only a marginal fraction in all its intermediate and end-applications. In addition, this company was not using dihydromyrcenol originating in India, so it could not provide complete information. It was nevertheless assumed by this user that the imposition of measures could result in supply shortages and rising prices, which, in the long run, could result in price driven changes in perfume compositions. One other user contacted the Commission and informed that it was not using dihydromyrcenol originating in India. This company did not comment on the impact of possible measures. No representations were received from associations.

(83) In respect of the comments received, the investigation has established that no shortages in supply of dihydromyrcenol can reasonably be expected, since the capacity utilisation by the Community industry was only 73 % in the IP (see recital 45 above). Dihydromyrcenol is also produced in several third countries other than India. In addition, given the moderate dumping margins found, no substantial increase in prices is expected. In this view, and taking into consideration the marginal impact of dihydromyrcenol on the cost of downstream products, it is provisionally concluded that the imposition of anti-dumping measures is unlikely to have a substantial effect on the situation of users in the Community.

6.4. **Interest of unrelated importers/traders in the Community**

(84) 27 known importers/traders of the product concerned in the Community were approached. Three of these companies informed the Commission that they were not importing dihydromyrcenol from India. Only two importers not related to the exporting producers finally replied to the questionnaire. One of them indicated that it stopped importing from India during the IP, because its supplier decided to sell exclusively via certain other distributors. This importer did not comment on the likely impact of the measures since it was apparently no longer concerned. For the other cooperating importer, the Community sales of the product concerned represented less than 20 % of its total turnover, and its share on total imports of the product concerned from India was rather marginal. This company did not submit any specific comments concerning the likely impact of possible measures on its own business. It only indicated that any measures would encourage the Indian producers to adapt by improving their effectiveness, whilst the Community producers would be allowed, thanks to their protection, to maintain their inefficient production and would not be forced to restructure. In this respect it is noted that, as it was shown in recital 79 above, the anti-dumping measures would, contrary to the aforesaid allegations, allow the Community industry to increase sales volumes and improve its critical financial situation and, thus, they would create room for improving the production effectiveness. This argument should therefore be rejected.

(85) In view of the above, and taking into consideration in particular the low level of cooperation from unrelated importers/traders in the Community, it is provisionally concluded that any anti-dumping measures would not have a decisive adverse impact on their situation.

### 6.5. **Conclusion on Community interest**

(86) The above analysis showed that it is in the interest of the Community industry to impose measures, since those measures are expected to restrain the high level of imports at dumped prices and to eliminate the price undercutting by these imports, which proved to have a significant negative impact on the situation of the Community industry. The other Community producers are expected to also benefit from those measures.

(87) The analysis also demonstrated that users are not likely to be substantially affected by any anti-dumping measures.

(88) The low level of cooperation from unrelated importers/traders of the product concerned in the Community did not allow an in-depth analysis of their interest. It can however be concluded that these operators decided not to cooperate in the investigation because their activities would not be substantially affected should measures on imports of dihydromyrcenol from India be imposed.

(89) On balance, it is considered that imposing measures, i.e. removing injurious dumping, would allow the Community industry to improve its financial situation and maintain its activity and that the adverse effects that the measures may have on certain other economic operators in the Community are not disproportionate as compared to the beneficial effects for the Community industry.

(90) On the basis of the above, it is provisionally concluded that no compelling reasons of Community interest exist for not imposing anti-dumping measures in this case.

## 7. PROVISIONAL ANTI-DUMPING MEASURES

(91) In view of the provisional conclusions reached with regard to dumping, resulting injury and Community interest, provisional measures on imports of the product concerned from India should be imposed in order to prevent further injury being caused to the Community industry by dumped imports.

### 7.1. **Injury elimination level**

(92) 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 cover its costs and obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.

(93) On the basis of the information available, it was preliminarily found that a profit margin of 5 % of turnover could be regarded as an appropriate level that the Community industry could be expected to obtain in the absence of injurious dumping. In 2003, i.e. before the surge of dumped imports from India, the Community industry achieved a profit of 12,3 % for its sales of the like product on the free market (see recital 48 above). It was however deemed appropriate to adjust this profitability in order to reflect the fact that the Community and world market for dihydromyrcenol has grown and new capacities have been built and, as a result, the overall price level — irrespective of presence of dumped imports — has slightly decreased, whilst the cost of production per unit remained more or less unchanged. Thus, a profit in the absence of dumped imports of around 12 % did not appear to be reasonably justified; instead, a profit margin of 5 % of turnover was considered more appropriate in the current situation.

(94) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the average non-injurious price of products sold by the Community industry on the Community market. Any difference resulting from this comparison was then expressed as a percentage of the average import CIF value. These differences were for both cooperating exporting producers above the dumping margins found.

7.2. **Provisional measures**

(95) In the light of the foregoing, and in accordance with Article 7(2) of the basic Regulation, it is considered that a provisional anti-dumping duty for the cooperating exporting producers should be imposed at the level of the dumping margins found.

(96) It is recalled that the level of co-operation was high and, thus, it was considered appropriate to set the duty for the remaining companies, which had not cooperated in the investigation, at the level of the higher duty to be imposed on the cooperating companies (see recital 22 above). Therefore, the residual duty is set at the rate of 7,5 %.

(97) On the basis of the above, the rate of the provisional anti-dumping duty should be as follows:

| Producer | Proposed anti-dumping duty |
|---|---|
| Neeru Enterprises, Rampur | 3,3 % |
| All other companies (including Privi Organics Limited, Mumbai) | 7,5 % |

(98) The individual company anti-dumping duty rate specified in this Regulation was established on the basis of the findings of the present investigation. Therefore, it reflects the situation found during that investigation with respect to this company. This duty rate (as opposed to the countrywide duty applicable to 'all other companies') is thus exclusively applicable to imports of products originating in India and produced by this company and thus by the specific legal entity 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 that specifically mentioned, cannot benefit from this rate and shall be subject to the duty rate applicable to 'all other companies'.

(99) Any claim requesting the application of this 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 e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

(100) 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. However, the latter companies are invited, when they fulfil the requirements of Article 11(4) of the basic Regulation, second paragraph, to present a request for a review pursuant to that Article in order to have their situation examined individually.

8. FINAL PROVISION

(101) 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 duty,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A provisional anti-dumping duty is hereby imposed on imports of dihydromyrcenol of a purity by weight of 93 % or more, falling within CN code ex 2905 22 90 (TARIC code 2905 22 90 10), originating in India.

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

| Producer | Anti-dumping duty | TARIC Additional Code |
|---|---|---|
| Neeru Enterprises, Rampur, India | 3,3 % | A827 |
| All other companies | 7,5 % | 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*

Without prejudice to Article 20 of 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 3*

This Regulation shall enter into force on the day following 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, 27 July 2007.

*For the Commission*
Peter MANDELSON
*Member of the Commission*