



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**COUNCIL REGULATION**

**imposing a definitive countervailing duty and definitively collecting the provisional countervailing duty imposed on imports of styrene-butadiene-styrene thermoplastic rubbers originating in Taiwan**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

1. On 26 August 1999, the Commission opened an anti-subsidy proceeding concerning imports of styrene-butadiene-styrene thermoplastic rubbers (SBS) originating in Taiwan.
2. On 24 May 2000, the Commission, by Regulation (EC) No 1092/2000, imposed a provisional countervailing duty on imports of SBS originating in that country.
3. The attached proposal for a Council Regulation is based on the definitive findings on subsidy, injury, causation and Community interest, which confirmed the necessity to impose definitive countervailing measures.
4. It is, therefore, proposed that the Council adopt the attached proposal for a Regulation, which should be published in the *Official Journal of the European Communities* not later than 25 September 2000.

Proposal for a

## **COUNCIL REGULATION**

### **imposing a definitive countervailing duty and definitively collecting the provisional countervailing duty imposed on imports of styrene-butadiene-styrene thermoplastic rubbers originating in Taiwan**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community<sup>1</sup>, and in particular Articles 14 and 15 thereof,

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

Whereas:

#### **A. PROVISIONAL MEASURES**

- (1) By Commission Regulation (EC) No 1092/2000<sup>2</sup> (hereinafter referred to as "the provisional duty Regulation") provisional countervailing duties were imposed on imports into the Community of styrene-butadiene-styrene thermoplastic rubber (hereinafter referred to as "SBS") falling within CN codes ex 4002 19 00 and ex 4002 99 and originating in Taiwan.
- (2) As a result of a parallel anti-dumping investigation, provisional anti-dumping duties were imposed under Commission Regulation (EC) No 1091/2000<sup>3</sup> on imports into the Community of SBS originating in Taiwan.

#### **B. SUBSEQUENT PROCEDURE**

- (3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional measures, several interested parties submitted comments in writing. In accordance with the provisions of Article 11(5) of Council Regulation (EC) No 2026/97 (hereinafter referred to as the 'basic Regulation'), all interested parties who requested a hearing were granted an opportunity to be heard by the Commission.

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<sup>1</sup> OJ L 288, 21.10.1997, p.1.

<sup>2</sup> OJ L 124, 25.5.2000, p. 26.

<sup>3</sup> OJ L 124, 25.5.2000, p. 12

- (4) The Commission continued to seek and verify all information deemed necessary for its definitive findings.
- (5) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive countervailing duties on imports of SBS originating in Taiwan and the definitive collection of amounts secured by way of provisional duties on these imports.

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

- (6) The oral and written comments submitted by the interested parties were considered and, where deemed appropriate, taken into account for the definitive findings.
- (7) Having reviewed the provisional findings on the basis of the information gathered since then, it is concluded that the main findings as set out in the provisional Regulation should be hereby confirmed.

### **C. PRODUCT CONCERNED AND LIKE PRODUCT**

- (8) The product concerned is styrene-butadiene-styrene thermoplastic rubber, which is currently classifiable within CN codes ex 4002 19 00 and ex 4002 99.
- (9) One Community importer claimed that SBS imported from Taiwan has a different fluidity and resistance than SBS produced in the Community. However, the Commission investigation revealed that producers in Taiwan produce different types of SBS with exactly the same composition as those types produced in the Community. The investigation also showed that, although the quality of imports of SBS from Taiwan may have been lower for one company during the years 1995 and 1996 when this company started its production of SBS, the quality quickly attained a level comparable to the quality of SBS produced in the Community. Finally, the investigation showed that Community users do not make any quality differentiation between SBS from Taiwan and from the Community. The Commission concluded that SBS imported from Taiwan and SBS produced in the Community share the same characteristics and the same level of quality.
- (10) Another Community importer claimed that dry and oil-extended SBS should be considered as two different products, arguing that dry and oil-extended SBS are used by different industries. However, different producers and users of SBS confirmed to the Commission that many Community users, especially in the footwear industry, do not differentiate dry and oil-extended SBS. It is therefore concluded that the markets of dry and oil-extended SBS cannot be distinguished.
- (11) The same company also argued that dry and oil-extended SBS are close to other types of products, such as SIS, which are also produced by the Community producers of SBS. The company claimed that there is no justification for distinguishing SBS from these other products. However, the investigation showed that dry and oil-extended SBS have exactly the same physical composition of butadiene and styrene, the only difference being the addition of oil at the end of the production process. This physical composition clearly distinguishes SBS from other products such as SIS (styrene-isoprene-styrene). It is therefore concluded that dry and oil-extended SBS should be

considered as one distinct product for the purpose of this investigation within the meaning of Article 1(4) of the basic Regulation.

- (12) As no other arguments were presented, the findings set out in recitals 15 to 18 of the provisional duty Regulation are hereby confirmed.

## **D. SUBSIDIES**

- (13) The findings made in the provisional duty Regulation concerning the countervailable subsidies obtained by the exporting producers are hereby definitively confirmed, unless it is expressly found otherwise in this document.

### **I. GENERAL ISSUES**

#### **1. Calculation of prevailing commercial interest rate**

- (14) It had been provisionally decided to apply a general interest rate of 9% for the purpose of this investigation. This rate was determined on the basis of the information obtained during the investigation which was considered appropriate for this purpose. The Government of Taiwan (GOT) challenged the reliability of this rate.
- (15) In view of this claim, the generally applicable interest rate has been recalculated by the Commission. The relevant benchmark interest rate is set at 7.99% and has been obtained by taking the average commercial interest rates charged during the investigation period by 8 major domestic banks in Taiwan. These interest rates are publicly available and are part of the monthly financial statistics published by the Economic Research Department of the Central Bank of the Republic of China.

#### **2. Application of the interest rate in the calculation of the amount of the subsidy**

- (16) The GOT argued that the methodology whereby interest is added to the face value of the subsidy cannot be applied to the alleged subsidisation amounts on tax credits since the tax credits, which the companies have claimed, are only utilised in the annual tax return which is made by 31<sup>st</sup> March of the following year. The GOT claimed therefore that no benefit is conferred on them until this date.
- (17) In response to this argument, it is considered that since the benefit consists of a reduction of direct tax which is payable every year, the benefit itself will recur annually. Therefore, the benefit should also include the interest element of not having to borrow an amount equal to such tax savings on the open market.

### **II. INDIVIDUAL SCHEMES**

#### **1. Loans at preferential interest rates: incentives for automation and anti-pollution incentives**

- (18) These schemes were described in recitals 32 to 41 of the provisional duty Regulation. They are based on Article 21(1) of the Statute for Upgrading Industries (hereinafter referred to as SUI).

- (19) The GOT claimed that these loans are generally available to almost all Taiwanese companies and therefore they are not specific and are accordingly not countervailable. It is claimed that eligibility is not limited to certain enterprises; that eligibility for the programme is objective.
- (20) As regards these claims, it was verified that the Taiwanese authorities limit access to “investment in important enterprises or projects relating to industrial upgrading or improvement of industrial structure” which are “in line with the government industrial policy for assisting the sound development of industries” (Article 21 of the SUI). The provisions of this Article cannot be considered objective since the criteria are not neutral, economic in nature and horizontal in application because it is known in advance that certain enterprises are more likely than others to be in a position to benefit from these loans just by reason of the type of business sector they are in. Therefore, benefits from this scheme will inevitably be more relevant to some sectors than to others. Thus, the above claim is rejected.
- (21) In conclusion, this scheme is considered specific because it is limited to certain enterprises within the meaning of Article 3(2)(a) of the Basic Regulation. The provisional findings as described in recital 37 of the provisional duty Regulation are therefore confirmed.

#### Calculation of the subsidy amount

- (22) The benefits to the exporting producers have been calculated as explained in recitals 38 to 40 of the provisional duty Regulation.
- (23) The benefits obtained by the two companies in the provisional duty Regulation were 0.07%. This is now reduced to 0.06% for Chi Mei due to the change in the interest rate applied.
2. Import duty exemption: purchases of new equipment and anti-pollution equipment
- (24) The legal bases for this alleged countervailable subsidy scheme are Additional notes 3 and 9 of Chapter 84, Additional notes 4 and 5 of Chapter 85 and Additional notes 1 and 2 of Chapter 90 of the Customs Import Tariff and Classification of Import & Export Commodities of the Republic of China (hereinafter referred to as the "Customs Code").
- (25) The GOT claimed that this programme does not meet any of the definitions of a subsidy as set forth in Article 2 of the basic Regulation, notably because there is no direct transfer of funds, there are no goods or services provided and there is no price or income support. This claim has to be rejected because this scheme involved a financial contribution by the GOT in the form of import duties which are otherwise due being foregone, in accordance with Article 2(1)(a)(ii) of the basic Regulation, and a benefit is conferred thereby.
- (26) The GOT also claimed that this scheme, which is described in recitals 44 to 54 of the provisional duty Regulation, is treated as a regular part of the domestic Customs schedule and even if the Customs programme were a subsidy, it is not countervailable under Article 3(2)(a) of the basic Regulation.

- (27) In particular, it was claimed that the access to this import duty exemption scheme is available to all Taiwanese companies who wish to purchase equipment which is not produced locally and it can therefore not be considered specific because the range of companies who wish to take advantage of such an exemption is not limited and is administered on the basis of objective and neutral criteria.
- (28) The provisions of the Additional Notes of the Customs Code, are considered not to be economic in nature and horizontal in application of Article 3(2)(b) of the basic Regulation since the use of this scheme is limited only to certain enterprises. In order to benefit from this scheme, enterprises must be incorporated and qualified manufacturers or technical service industries, who will use this scheme to import machinery, equipment and instruments for prevention of air pollution, water contamination, noise or vibration, or for environmental inspection and test or wastage disposal, research and experiment or for examination and analysis under the headings of the specific Chapters of the Customs Code.
- (29) The above claims are rejected and the provisional findings, as described in recital 52 of the provisional duty Regulation, confirmed.

#### Calculation of the subsidy amount

- (30) The benefits to the exporting producers have been calculated as explained in recital 53 of the provisional duty Regulation.
- (31) The benefits obtained by the two exporting companies were 0.05% to 0.04% respectively.

#### 3. Import duty exemption: imports of raw material

- (32) This alleged countervailable subsidy scheme, which is described in recitals 55 to 60 of the provisional duty Regulation has as its legal basis Additional note 6 of Chapter 29 of the Customs Code.
- (33) The GOT claimed that this programme does not meet any of the definitions of a subsidy as set forth in Article 2 of the basic Regulation, notably because there is no direct transfer of funds, there are no goods or services provided and there is no price or income support. This claim has to be rejected because this scheme involved a financial contribution by the GOT in the form of import duties which are otherwise due being foregone, in accordance with Article 2(1)(a)(ii) of the basic Regulation, and a benefit is conferred thereby.
- (34) The GOT claimed that this scheme is treated as a regular part of the domestic Customs schedule and even if the Customs programme were a subsidy, it is not countervailable under Article 3(2)(a) of the basic Regulation.
- (35) It was claimed that such import duty exemptions for imports of raw materials not produced or sufficiently available on the local market are not in fact limited to certain enterprises, because the criteria for allowing such exemptions are objective and neutral.
- (36) This scheme is explicitly limited to given manufacturers, which are subject to the factory administration rules, for the importation of specifically listed raw materials, in this case chemicals, which are exclusively used in the manufacturing of plastics,

artificial fibre, rubber and petrochemical intermediates by chemical reaction, and provided that, in addition, such chemicals are not yet produced or sufficiently supplied in Taiwan. As a result, the Commission finds that this scheme is explicitly limited to certain enterprises which comply with the conditions contained in the provisions of the specific Additional Note of the Customs Code. Such conditions are not considered to be neutral or economic in nature and horizontal in application.

- (37) One exporter pointed out that it would appear that all calculations have been made on the company level, except for the import duty exemption for raw materials; the company therefore argued that the level of subsidy also should be calculated at the company level.
- (38) In reply to this argument it should be clear that if the benefit of a subsidy is limited to a particular product, the denominator for allocation of subsidy amount should reflect only sales (or exports) of that product. If this is not the case, the denominator should be the recipient's total sales (or exports).
- (39) The Commission, in its calculations, has followed this approach, as was correctly stated by the companies, for the import duty exemption on raw materials. In this particular case, benefits were only identified for the product concerned and consequently the corresponding sales denominator was used. For all other described schemes, it was found that the benefits were not limited to a particular product and therefore the total sales was used as denominator.
- (40) The provisional findings as described in recital 60 of the provisional duty Regulation are therefore confirmed.

#### Calculation of the amount of the subsidy

- (41) The benefits to the exporting producers have been calculated as explained in recital 62 of the provisional duty Regulation.
- (42) The benefits obtained by the two exporting companies concerned range from 0.61% to 0.97%.

#### 4. Tax credits and tax exemptions

- (43) Since no comments were received regarding these schemes, the conclusions of recitals 22 to 31 of the provisional duty Regulation are hereby confirmed.

#### 5. Amount of countervailable subsidies



- (44) The following domestic subsidy rates for the co-operating companies were established:

	Chi Mei Corporation	Lee Chang Yung Chemical Industry Corporation
Tax credits and tax exemptions	0,42%	0,32%
Loans at preferential interest rates	0,06%	0,07%
Import duty exemption	1,02%	0,65%
<b>Total amount of subsidy</b>	<b>1,50%</b>	<b>1,04%</b>

## E. INJURY

### 1. Definition of the Community industry

- (45) Since no comments were received regarding the definition of the Community industry, the conclusions of recital 67 of the provisional duty Regulation are hereby confirmed.

### 2. Consumption in the Community

- (46) Since no comments were received on consumption in the Community, its assessment as indicated in recital 68 of the provisional duty Regulation is hereby confirmed.

### 3. Imports of SBS from Taiwan to the Community

#### a) Volume of imports, market share, and average import price

- (47) Since no comments were received concerning the volume of imports from Taiwan in the Community, the market share, and the average price of imports, the assessments indicated in recitals 69 to 72 of the provisional duty Regulation are hereby confirmed.

#### b) Price undercutting

- (48) It is recalled that price undercutting was provisionally established on the basis of a comparison between the export price (cif Community frontier, duties paid) and prices charged by the Community industry (ex-works). The sales prices considered for similar product types were those to independent customers after deduction of discounts and rebates.

- (49) As mentioned in recital 9 above, some comments were received concerning the comparability of different product types but it was found that SBS imported from Taiwan and SBS produced in the Community share the same characteristics.

- (50) These comments did not affect the conclusions of the provisional Regulation, which led to an average price-undercutting margin, expressed as a percentage of the Community industry's average selling prices, of 12,3%.

#### 4. Economic situation of the Community industry

- (51) One Community importer pointed out that stocks and profitability have not been calculated for 1995. As stated in recitals 81 and 82 of the provisional duty Regulation, the exact figures of stocks and profitability could not be obtained accurately because of changes of accounting systems in one company and changes of structure in an other company. In any event, the investigation showed that the profitability was higher in 1995 than in 1996. This reinforces the injury determination.
- (52) Since no other comments were received regarding the figures for production, capacity, sales volume, sales price, market share, stocks, profitability, investments and employment of the Community industry, the conclusions of recitals 76 to 84 of the provisional duty Regulation are hereby confirmed.
- (53) On the basis of the above it was concluded that the Community industry is suffering material injury as set out in recital 90 of the provisional duty Regulation.

### F. CAUSATION

#### 1. Effect of the subsidised imports

- (54) The Government of Taiwan (GOT) and one Community importer claimed that the high level of market share of the Community industry (89% during the investigation period) showed that the Community industry could not suffer injury caused by imports from Taiwan, with a much smaller market share (6,1%). In the present case it has been determined that the imports from Taiwan, with a strong pressure on prices on a competitive and transparent market (12,3% undercutting during the investigation period), represented a considerable pressure on the Community industry. In order to maintain its market share, the Community industry had to follow the downward price trend (-47% price reduction from 1995 to the investigation period). As a result, the Community industry suffered heavy losses (profitability shifted from +14,9% to -9,8% from 1996 to the investigation period). Finally, it is considered that the high market share of the overall Community industry did not protect it from the unfair subsidized competition of Taiwan, and that the price pressure due to Taiwanese imports is a major cause of the injury suffered by this industry.

#### 2. Other factors

- (55) The GOT claimed that the increased investments made by Community producers has created a stronger competition amongst those producers and resulted in injury caused by such competitive forces. However, the investigation revealed that investments, as stated in recital 83 of the provisional duty Regulation, have fluctuated since 1995 and do not show a upward trend as claimed by the GOT. The investments remained at a rather low level, which would correspond to normal upgrading of machinery. The most important investments were made by the producers prior to 1995 at the time they were establishing their production units.
- (56) The GOT also claimed that the injury suffered by the Community industry could be caused by an increase in the prices of raw materials. However, the prices of raw materials, as stated in recital 108 of the provisional duty Regulation, have been fluctuating since 1995 and do not show any particular trend. It is more likely that their

variation is cyclical, and therefore they cannot reasonably explain the constant depreciation of SBS prices since 1995.

- (57) One Community importer argued that the injury suffered by the Community industry could be caused by an increase of costs of production and selling and general administration costs. However, the investigation revealed that, while these costs remained roughly at the same level over the period 1995-1999, the Community producers sales value decreased dramatically (by 39%), due to the price decrease.

### 3. Conclusion

- (58) Given that no other arguments were received regarding the cause of the injury suffered by the Community industry, the conclusion that imports of SBS from Taiwan have caused injury to the Community industry, as stated in recitals 110 and 111 of the provisional duty Regulation, is hereby confirmed.

## **G. COMMUNITY INTEREST**

### 1. Interest of the Community industry

- (59) Since no comments were received regarding the interest of the Community industry, the conclusions of recitals 113 to 117 of the provisional duty Regulation are hereby confirmed.

### 2. Impact on users

- (60) Following the adoption of the Regulation imposing provisional measures, two Community importers expressed concerns about the impact of measures on their customers. It should be noted that one of these companies imported from a Taiwanese producer which did not co-operate in this proceeding, and this importer was subject to a provisional cumulated subsidy and dumping duty rate of 28,2%. However, if definitive measures are imposed, all importers will have the option to purchase SBS from Community producers, from one of the co-operating producers in Taiwan, or from another source not subject to measures.
- (61) As a result, it is estimated that the average price increase caused by definitive measures should be 1,1%. It was confirmed during the investigation that such an increase in prices would be likely to have a limited impact on users. The impact of duties on several typical users was examined, where SBS accounted for 40% of their cost of production. It was found that the imposition of measures would bring down the profitability by 0.3% in average for that part of their business relating to SBS.
- (62) Furthermore, as most Community users purchase the main part of their SBS from Community producers, they would not experience any price increase for the greater part of their purchases.
- (63) Finally, since no further evidence was provided by the Community importers, and since the Community users did not make any comments, the conclusion of recital 123 of the provisional duty Regulation is hereby confirmed.

### 3. Conclusion

- (64) The new arguments received regarding the determination of the Community interest, are not considered to be such as to reverse the conclusion that no compelling reasons exist against the imposition of countervailing measures. The provisional findings are therefore confirmed.

## H. DEFINITIVE COURSE OF ACTION

- (65) In view of the conclusions reached regarding subsidies, injury, causation and Community interest, it is considered that definitive countervailing measures should be taken in order to prevent further injury being caused to the Community industry by subsidised imports from Taiwan.

### 1. Injury elimination level

- (66) As explained in recital 127 of the provisional duty Regulation, a non-injurious level of prices was determined by adding to the sales price of the Community industry its average actual loss and by further adding a profit margin of 8% which would cover the Community industry's cost of production and allow a reasonable profit to be obtained in the absence of subsidised imports from the country concerned.

### 2. Form and level of the duty

- (67) In accordance with Article 24 (1) of the basic Regulation no product shall be subject to both anti-dumping and countervailing duties for the purposes of dealing with one and the same situation arising from dumping or from export subsidisation. The subsidy schemes concerned by this proceeding did not constitute export subsidies within the meaning of Article 3(4)(a) of the basic Regulation. As such, the subsidies affect both the export prices and the domestic prices of the exporting producers, thus not affecting the margin of dumping.

- (68) In accordance with Article 15(1) of the Basic Regulation the countervailing duty rate should correspond to the subsidy margin, unless the injury margin is lower.

- (69) This led to the following countervailing duty rates for the co-operating producers in Taiwan:

–	Chi Mei Corporation	1,5%
–	Lee Chang Yung Chemical Industry Corporation	1,0%

- (70) As explained in recital 129 of the provisional duty Regulation, the co-operating exporting companies accounted for less than 30 % of the SBS imported into the European Community during the period of investigation and originating in Taiwan.

- (71) The investigation has revealed the existence of countervailable subsidies which are available to the non-co-operating exporters. It is considered that the absence of co-operation is the result of the use and benefit by those producers of the countervailable subsidies at a level above the de-minimis level. In accordance with the provisions of Article 28 of the basic Regulation and based on the information contained in the

complaint and the findings of the investigation, and in order to avoid rewarding non-co-operation, it is considered appropriate to establish a residual level of countervailing duty at 8,2%.

## **I. COLLECTION OF THE PROVISIONAL DUTY**

- (72) In view of the amount of the countervailable subsidies found for the exporting producers, and in light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional countervailing duty under Regulation (EC) No 1092/2000 be definitively collected to the extent of the amount of definitive duties imposed,

HAS ADOPTED THIS REGULATION:

### *Article 1*

1. A definitive countervailing duty is hereby imposed on imports of styrene-butadiene-styrene thermoplastic rubbers, falling within CN codes ex 4002 19 00 and ex 4002 99 (TARIC codes: 4002 19 00 10, 4002 99 10 10 and 4002 99 90 91) and originating in Taiwan.
2. The rate of the definitive countervailing duty applicable to the net, free-at-Community frontier price, before duty, for products produced by the following companies, shall be as follows:

Company	Rate of duty	TARIC additional code
Chi Mei Corporation, Tainan, Taiwan	1.5 %	A127
Lee Chang Yung Chemical Industry Corporation, Taipei, Taiwan	1.0 %	A128
All other Taiwanese companies	8.2 %	A999

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

### *Article 2*

The amounts secured by way of the provisional countervailing duties on imports originating in Taiwan under Regulation (EC) No 1092/2000 shall be collected at the rate of the duty definitively imposed. Amounts secured in excess of the definitive rate of countervailing duties shall be released.

*Article 3*

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

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

Done at Brussels,

*For the Council*  
*The President*