

Council Regulation (EC) No 1458/2007 of 10 December 2007 imposing a definitive anti-dumping duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in the People's Republic of China and consigned from or originating in Taiwan and on imports of certain refillable pocket flint lighters originating in the People's Republic of China and consigned from or originating in Taiwan

COUNCIL REGULATION (EC) No 1458/2007

of 10 December 2007

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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<sup>(1)</sup> (the basic Regulation), and in particular Articles 9 and 11(2) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) In 1991, the Council, by Regulation (EEC) No 3433/91<sup>(2)</sup>, imposed a definitive anti-dumping duty of 16,9 % on imports of gas-fuelled, non-refillable pocket flint lighters originating, *inter alia*, in the People's Republic of China ('PRC' or 'China').
- (2) In 1995, by Council Regulation (EC) No 1006/95<sup>(3)</sup> the original *ad valorem* duty was replaced by a specific duty of ECU 0,065 per lighter.
- (3) Further to an investigation in accordance with Article 13 of the basic Regulation<sup>(4)</sup> the above measures were extended by Council Regulation (EC) No 192/1999<sup>(5)</sup> to (1) imports of gas-fuelled, non-refillable pocket flint lighters consigned from or originating in Taiwan and (2) imports of certain refillable lighters originating in the PRC or consigned from or originating in Taiwan with a free-at-Community frontier, duty unpaid value per piece below EUR 0,15.

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- (4) In 2001, the Council, by Regulation (EC) No 1824/2001<sup>(6)</sup> confirmed the definitive anti-dumping duties imposed by Regulation (EC) No 1006/95 as extended by Council Regulation (EC) No 192/1999 (existing measures) pursuant to Article 11(2) of the basic Regulation.
2. Request for a review
- (5) Following the publication of a notice of impending expiry<sup>(7)</sup> of the existing measures, on 16 June 2006, the Commission received a request to review these measures pursuant to Article 11(2) of the basic Regulation.
- (6) This request was lodged by BIC S.A., a Community producer representing more than 80 % of the total Community production of gas-fuelled, non-refillable pocket flint lighters. The request for an expiry review was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Community industry.
- (7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation, the Commission, by notice published in the *Official Journal of the European Union* (notice of initiation) initiated this review on 16 September 2006<sup>(8)</sup>.
3. Investigation
- 3.1. Investigation period
- (8) The investigation into the continuation and/or recurrence of dumping and injury covered the period from 1 July 2005 to 30 June 2006 (the ‘review investigation period’ or ‘RIP’). The examination of the trends relevant to the assessment of the likelihood of a continuation and/or recurrence of injury covered the period from 1 January 2003 to the end of the RIP (the period considered).
- 3.2. Parties concerned by the investigation
- (9) The Commission officially advised the applicant Community producer, the two other Community producers, the exporters/producers in the PRC and the importers known to be concerned, as well as the authorities in the PRC and Taiwan of the initiation of the expiry review. 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.
- (10) The applicant Community producer, two other Community producers opposing the maintenance of the anti-dumping measure and an importers’ association 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.

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- (11) In the notice of initiation the Commission indicated that sampling might be applied in this investigation for exporters/producers in the PRC. However, since none of the known exporters/producers in the PRC made themselves known, it was decided that sampling was not required.
- (12) Questionnaires were sent to the applicant Community producer, the two other Community producers, the 62 known exporters/producers in the PRC and 33 importers and the European Lighter Importers' Association (ELIAS). In addition, the producer in the proposed analogue country, Brazil, as well as eight producers in other possible analogue countries, were contacted and sent a questionnaire. Replies were only received from the applicant Community producer and the producer in Brazil, as well as a company in Malaysia, which had been contacted as an alternative analogue country. None of the known producers/exporters in the PRC replied to the questionnaire. Furthermore, none of the importers contacted replied to the questionnaire stating that they do not import the product concerned, but only electronic (piezo) lighters.
- (13) The Commission sought and verified all the information deemed necessary for its investigation and carried out verification visits at the premises of the following companies:
- Community producers:**
- BIC S.A. HQ — Clichy, France
  - BIC IBERIA S.A. — Tarragona, Spain
- Producer and related company in the analogue country:**
- BIC Amazonia S.A. — Manaus, Brazil
  - BIC Brasil S.A. — Cajamar, Brazil

#### B. PRODUCT CONCERNED AND LIKE PRODUCT

- (14) The product concerned is the same as in the investigation which led to the imposition of the existing measures, i.e. gas-fuelled, non-refillable pocket flint lighters. As described above in recital (3), the product scope was extended in 1999 to include gas fuelled, refillable pocket flint lighters incorporating a plastic tank body ('flint lighters' or 'the product concerned'). The product concerned is currently classified within CN codes ex 9613 10 00 and ex 9613 20 90 (TARIC codes 9613 10 00 11, 9613 10 00 19, 9613 20 90 21 and 9613 20 90 29).
- (15) One of the non-complainant producers in the Community claimed that the products produced and sold in the analogue country Brazil were not alike with the products produced in and exported from China into the Community. It was in particular argued that the lighters produced in Brazil were of a higher quality and had a longer lifetime than the ones produced in China. Quality differences as such are, however, not decisive when determining whether products are alike within the meaning of Article 1(4) of the basic Regulation. The investigation revealed that the lighters produced in China and the ones

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produced in Brazil had indeed the same basic technical, physical and chemical characteristics and end-uses. This claim was therefore rejected.

- (16) Consequently, as shown in the previous investigations mentioned in recitals (1) to (4), and as confirmed by the current investigation, gas-fuelled, non-refillable pocket flint lighters manufactured by Chinese exporting producers and sold in the PRC and on the Community market and the product manufactured and sold by the applicant Community producer on the Community market are in all respects identical or share at least the same basic physical and technical characteristics and no differences in usage exist among them. The same is true for those produced and sold in Brazil. These products are therefore alike within the meaning of Article 1(4) of the basic Regulation.

#### C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

##### 1. Preliminary remarks

- (17) As in the previous review investigations, the Chinese exporting producers did not cooperate. Therefore no reliable information on imports of the product concerned to the Community during the RIP could be gathered directly from the exporting producers. Under these circumstances, and in accordance with Article 18 of the basic Regulation, the Commission resorted to the use of the facts available, i.e. Eurostat, the request for the initiation of the review and the data published by the European Anti-Fraud Office (OLAF) on 30 January 2007 (OLAF/07/01) regarding the circumvention of the anti-dumping duty in force.

##### 2. Dumping during the investigation period

###### 2.1. Analogue country

- (18) The existing measures provide for a single, country-wide duty on all imports to the Community of the product concerned originating in the PRC. In accordance with Article 11(9) of the basic Regulation the Commission applied the same methodology as in the original investigation. Accordingly, the normal value was determined on the basis of the information obtained in a market economy third country (the analogue country).
- (19) Thailand was the analogue country in the original investigation. However, in the subsequent reviews, the Philippines was used as the analogue country since the Thai producers refused to cooperate and since the Philippines was found to be an appropriate choice of analogue country, in view, *inter alia*, of the size and openness of its domestic market.
- (20) In the notice of initiation of the present investigation the Commission indicated its intention to use Brazil as an appropriate analogue country for the purpose of establishing the normal value for the PRC. Brazil was considered appropriate in view of the size and openness of its domestic market and the fact

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that one Brazilian producer had agreed to cooperate fully in the investigation. Interested parties were invited to comment on this.

- (21) An importers' association opposed the choice of Brazil as analogue country, arguing that there was only one main producer in Brazil and that domestic prices were extremely high. One of the non-complainant Community producers claimed that the level of competition in Brazil was lower than the one on the Chinese domestic market and therefore the markets were not comparable. However, while the number of producers in Brazil was lower than the alleged number of producers in China, the investigation confirmed that there were two producers of the product concerned in Brazil as well as imports from the EU and the PRC. Regarding the lighters imported from the PRC, invoices obtained during the on-spot investigation in Brazil showed that these entered the country at very low prices, thus exerting a downward pressure on the prices charged on the Brazilian market. Moreover, none of the known producers contacted in other possible analogue countries, including the Philippines, agreed to cooperate. A company in Malaysia replied to the questionnaire for producers in the analogue country but since it appeared that this company did not produce lighters itself, Malaysia could not be considered as an analogue country.
- (22) In view of the foregoing it was concluded that Brazil was the most appropriate and reasonable analogue country in accordance with Article 2(7) of the basic Regulation.
- 2.2. Normal value
- (23) Pursuant to Article 2(7)(a) of the basic Regulation, normal value was established on the basis of verified information received from the producer in the analogue country.
- (24) The Commission first established that the total domestic sales of the Brazilian producer were made in sufficient quantities and could thus be considered representative within the meaning of Article 2(2) of the basic Regulation.
- (25) It was subsequently examined whether each type of the product concerned sold in representative quantities on the analogue country's domestic market could be considered as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. It was found that the sales volume on a per type basis, sold at a net sales price equal to or above the cost of production, represented 80 % or more of the total sales volume and the weighted average price of that type was equal to or above the cost of production. Therefore the actual domestic prices, calculated as a weighted average of the prices of all domestic sales made during the RIP, irrespective of whether these sales were profitable or not, could be used.
- (26) Normal value was thus determined, as set out in Article 2(1) of the basic Regulation, on the basis of prices paid or payable, in the ordinary course

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of trade, by independent customers on the domestic market of the analogue country.

2.3. Export price

(27) Since none of the Chinese producers cooperated, the export price of the product concerned was calculated on the basis of facts available in accordance with Article 18(1) of the basic Regulation, in this case Eurostat data.

2.4. Comparison

(28) In order to ensure a fair comparison of the normal value and the export price, due allowance, in the form of adjustments, was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments concerning transport, insurance, and credit costs were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

(29) One of the non-complainant Community producers argued that the lighters in Brazil were produced at higher costs due to higher quality standards, but did not submit any evidence to quantify and support this claim. Due to the non-cooperation of the Chinese exporting producers, the investigation did not reveal any indications which would have allowed adjusting the normal value based on alleged quality differences. This claim was therefore rejected.

2.5. Dumping margin

(30) In accordance with Article 2(11) of the basic Regulation the weighted average normal value established for the analogue country was compared with the weighted average export price on an ex-works basis. This comparison showed the existence of significant dumping, the dumping margin amounting to more than 150 %.

3. Development of imports should measures be allowed to lapse

3.1. Preliminary remarks

(31) It is recalled that measures have been in force since 1991. However, there is a long record of circumvention of the measures. In 1999 two kinds of circumvention practices were found: transshipment via Taiwan and the insertion of fake valves into the lighters to make them appear to be refillable and thus avoid the payment of the anti-dumping duty. Consequently, as stated in recital (3), the measures were extended in 1999 to counteract these practices. In 2001 an expiry review of the measures in force showed that they should be extended for a further five years given the likelihood of continuation and recurrence of dumping and injury.

3.2. Current imports and recent findings regarding circumvention of the measures

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- (32) Import volumes of the product concerned from the PRC and Taiwan in the RIP totalled 11,7 million pieces according to Eurostat. In reality, however, the imports into the Community are much higher since, as proven recently by OLAF, there is massive circumvention of Chinese lighters via Malaysia and Indonesia. According to data published by OLAF in January 2007 over 300 million flint lighters of Chinese origin were transhipped via Malaysia alone during the last four years. The sole purpose of the transhipments was to disguise the true Chinese origin of the goods and thus avoid the payment of the anti-dumping duties.
- (33) The OLAF investigation also found that a large amount of lighters imported from Indonesia did not, in fact, originate in that country. The investigation into their true origin is continuing. The applicant is planning to lodge a circumvention case against six countries in the Far East.
- (34) In addition to the circumvention by transhipment, as evidenced by OLAF, the applicant, in its review request, provided evidence of misdeclaration of flint lighters (product concerned) as so called electronic (piezo) lighters (not product concerned) in order to avoid the payment of the anti-dumping duty.
- (35) The importers' association ELIAS and one importer claimed that the Commission is drawing definitive conclusions from OLAF's ongoing investigation and stated that, it was not in the position to exercise validly their rights of defence and submit comments on the conclusions that the Commission has drawn from these confidential findings.
- (36) In this respect, it should be noted that the Commission used only published information to which all interested parties have access, which results were self-explanatory and could not be ignored in the context of this proceeding.
- 3.3. Evolution of production and capacity utilisation in the PRC
- (37) In the absence of cooperation by the Chinese exporting producers in the present and past review investigations, no verifiable data is available on their capacity and capacity utilization. According to the applicant's estimate the total production capacity in the PRC amounts to around 3,9 billion lighters per year, the majority of which are probably flint lighters. This estimate is in line with the data given by Chinese lighter manufacturers on their websites. For example, one single Chinese producer, Zhuoye Lighter Manufacturing Co Ltd, states on its homepage that the output of its three factories amounts to 700 million lighters per year. The producer in question does not, however, specify the breakdown between the product concerned and other types of lighters. According to the applicant, however, production can easily be switched between flint and electronic (piezo) lighters.
- (38) On the basis of the above it may be concluded that, in the light of the huge capacity available in the PRC and the apparent flexibility of the production process, which makes it easy to switch between different types of

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lighters, there is a strong likelihood of increased imports into the Community should measures be allowed to lapse. The proven circumvention practices further demonstrate that the Chinese exporters have a strong interest in the Community market.

#### 3.4. Chinese exports to other third countries

- (39) As none of the Chinese exporting producers cooperated, there is no verified information available regarding exports of flint lighters to other third countries. Moreover since third-country statistics available do not distinguish between flint and electronic (piezo) lighters it is not possible to make any comparison between export prices to the Community and export prices to other third countries.
- (40) The Community industry has demonstrated that it is successfully competing with Chinese imports on the US market where the Chinese have lost market share. This suggests that there would be a clear incentive for the Chinese producers to shift their exports to the Community market should the measures be allowed to lapse.
- (41) The importers rejected above conclusions claiming that the performance of the Community industry in the US market may not be due to its competitiveness but to a business decision to transfer profits from the Community to the USA. The importers further claimed that on the basis of the higher profit margins in the USA the Chinese exporting producers would not have any incentive to shift exports to the Community market.
- (42) The importers did not submit any evidence or any further reasoning neither with regard to the alleged profit transfers of the Community industry to the USA, nor the allegedly higher profit margins of the Chinese exporting producers in the US market. These claims were also not confirmed by the verified information available in the investigation file. They were therefore purely speculative and rejected.
- (43) It should be noted that the level of competition on the US market cannot be regarded as the unique reason to conclude that the Community industry should be achieving less profit. Other elements, such as customer expectations and price levels, should also be taken into account.
- (44) Additionally, the importers claimed that the Community and US markets are similar in the sense that the same safety requirements have to be fulfilled on both markets; it was found that a more stringent requirements with regard to child resistant lighters have been in force in the US since 1994; while such norms were only introduced in the Community in March 2007.

#### 4. Conclusion



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- (45) The investigation showed that, whilst the import volumes of the product concerned in the RIP were relatively low, the level of dumping found for these imports was significant.
- (46) In view of the huge capacity available in the PRC and the apparent attractiveness of the Community market to the Chinese exporting producers, as proven by the extensive circumvention practices, it may be concluded that there is a strong likelihood that the volumes of dumped imports into the Community would reach substantial levels should the existing measures be allowed to lapse.

#### D. DEFINITION OF THE COMMUNITY INDUSTRY

- (47) Within the Community, the like product is manufactured by three producers whose output constitutes the total Community production of the like product within the meaning of Article 4(1) of the basic Regulation.
- (48) It should be noted that as compared to the original investigation contrary to Swedish Match and Flamagas, the complainant's production is still mainly located in the EU (France and Spain).
- (49) The applicant Community producer, BIC S.A. represents about 80 % of the Community production of non-refillable lighters and therefore constitutes the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation. The other Community producers were not considered to form part of the Community industry since they did not fully cooperate but only submitted certain information in relation to the impact of the measures on their activities.

#### E. SITUATION ON THE COMMUNITY MARKET

##### 1. Preliminary remarks

- (50) For the reasons explained in recital (16) above, the analysis with regard to the situation on the Community market was based on collected data relating to gas-fuelled, non-refillable pocket flint lighters and gas-fuelled, refillable pocket flint lighters ('flint lighters' or 'the product concerned').
- (51) Further, as mentioned above, it was not possible to obtain data with regard to the activities of two Community producers which have manufacturing facilities in the Community market. Consequently, the Commission made use of facts available, in accordance with Article 18 of the basic Regulation, whenever more precise information was not available from other interested parties.
- (52) Given the fact that data regarding sales and production was available from only one interested party, the applicant, it is considered appropriate not to disclose absolute figures. They have therefore been replaced by the symbol '—' and indexes were provided.

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## 2. Consumption in the Community market

- (53) Apparent Community consumption of flint lighters was assessed on the basis of the volume of sales in the Community as provided by the Community industry, and imports from non-EU countries as reported by Eurostat. These figures do not include the sales of the non-cooperating EC producers.

Table 1 —Community consumption of flint lighters (000)

	2003	2004	2005	RIP
<b>Units</b>	529 550	575 394	661 378	727 715
<b>Index</b>	100	109	125	137
<b>Y/Y trend</b>		9 %	15 %	10 %

*Source: verified questionnaire replies and EU imports (Comext TARIC database)*

- (54) Apparent Community consumption increased by 37 between 2003 and the RIP.

## 3. Volume, market share and prices of imports from the PRC and Taiwan.

### 3.1. Import volume and market share

- (55) During the period considered, the import volume of flint lighters from China and Taiwan although remaining at low levels increased by 136 % between 2003 and the RIP and reached more than 11 million units during the IP. This translated in a market share of 1,6 %. Market shares increased from 0,9 % in 2003 to 1,6 % during the RIP.

Table 2 —Imports of flint lighters from China and Taiwan and market share (000)

	2003	2004	2005	RIP
<b>Import volume</b>	4 949	7 902	15 452	11 657
<b>Index</b>	100	160	312	236
<b>Market share</b>	0,9 %	1,4 %	2,3 %	1,6 %
<b>Unit price</b>	0,22	0,14	0,13	0,14
<b>Index</b>	100	66	60	65

*Source: verified questionnaire replies and EU imports (Comext TARIC database)*

## 4. Imports from other countries

- (56) Imports from other countries went up from around 276 million pieces to around 487 million pieces. It should be noted however that there are indication

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that a substantial part of these imports, in fact, originate in the PRC and Taiwan.

Table 3 —Imports of flint lighters from other countries and market share (000)

	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>RIP</b>
<b>Imports volume from Malaysia</b>	60 596	57 717	65 729	47 162
<b>Index</b>	100	95	108	78
<b>Market share</b>	11,4 %	10,0 %	9,9 %	6,5 %
<b>Unit price</b>	0,04	0,04	0,04	0,04
<b>Index</b>	100	95	93	89
<b>Imports volume from Indonesia</b>	51 968	56 907	68 524	72 012
<b>Index</b>	100	110	132	139
<b>Market share</b>	9,8 %	9,9 %	10,4 %	9,9 %
<b>Unit price</b>	0,05	0,04	0,04	0,04
<b>Index</b>	100	76	75	81
<b>Imports volume from Vietnam</b>	106 117	156 938	191 498	237 529
<b>Index</b>	100	148	180	224
<b>Market share</b>	20,0 %	27,3 %	29,0 %	32,6 %
<b>Unit price</b>	0,05	0,04	0,04	0,04
<b>Index</b>	100	92	87	91
<b>Imports volume from rest of the world</b>	53 294	56 377	65 025	119 268
<b>Index</b>	100	106	122	224

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Table 3 —Imports of flint lighters from other countries and market share (000)

<b>Market share</b>	10,1 %	9,8 %	9,8 %	16,4 %
<b>Unit price</b>	0,08	0,09	0,07	0,07
<b>Index</b>	100	101	81	83

## 5. Price evolution and price behaviour of the imports of the product concerned

(57) As mentioned above in recital (12), in the absence of cooperation from the Chinese exporting producers, no verified information was available with regard to price levels of imports of flint lighters. Evidence of circumvention via Indonesia and Malaysia was recently found by OLAF and there is some evidence of circumvention via several other Asian countries (Laos, Thailand, Vietnam and the Philippines). It seems that assembly factories enabling the circumvention of measures can be set up in East Asia within a few weeks. The successful circumvention of measures may explain why none of the Chinese exporters cooperated in the present proceeding.

(58) Thus, no definitive conclusion could be drawn with regard to the price evolution and price behaviour of the imports of the product concerned.

## 6. Economic situation of the Community industry

## 6.1. General comments

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

## 6.2. Production volume, production capacity and capacity utilisation

(60) Total production of flint lighters by the Community industry increased steadily over the period considered, i.e. by 22 %.

Table 4 —Production volume

	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>RIP</b>
<b>Production</b>	—	—	—	—
<b>Index</b>	100	109	120	122
<b>Y/Y trend</b>		9 %	10 %	1 %

*Source: verified questionnaire reply*

(61) As production increased at a higher rate than the increase in production capacity, capacity utilisation also increased over the period considered.

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Overall, the capacity utilisation rate has followed similar trends as those of production, increasing between 2003 and the RIP by three percentage points.

Table 5 —Production capacity and capacity utilization

	2003	2004	2005	RIP
<b>Production capacity</b>	—	—	—	—
<b>Index</b>	100	109	114	118
<b>Y/Y trend</b>		9 %	4 %	4 %
<b>Capacity utilization</b>	76 %	75 %	80 %	78 %
<b>Index</b>	100	100	105	103

Source: verified questionnaire reply

### 6.3. Stocks

- (62) Stocks remained stable during the period considered. The peak observed in the RIP is due to an intentional stock piling in view of the cessation of production activities during the summer period and should normalise after that period. This factor was therefore not considered meaningful in the determination of the injury picture.

Table 6 —Stock volume

	2003	2004	2005	RIP
<b>Stock</b>	—	—	—	—
<b>Index</b>	100	105	95	225
<b>Y/Y trend</b>		5 %	-10 %	137 %

Source: verified questionnaire reply

### 6.4. Sales volume, prices and market share

- (63) Sales volumes by the Community industry on the Community market decreased between 2003 and the RIP by 5 %, without, however, matching the expansion of the Community consumption, which substantially increased (by 37 %) during the same period. This increase in consumption means that the overall decrease of the Community industry's market share is of more than 14 percentage points (pp) over the period considered.
- (64) As far as average unit sales prices are concerned, they have slightly decreased between 2003 and the RIP with a decrease of 2 % between 2005 and the RIP.

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Table 7 —Sales volume, prices and market share

	2003	2004	2005	RIP
<b>Sales volume (units)</b>	—	—	—	—
<b>Index</b>	100	95	101	95
<b>Y/Y trend</b>		-5 %	7 %	-6 %
<b>Avg. prices (EUR/unit)</b>	—	—	—	—
<b>Index</b>	100	98	95	97
<b>Y/Y trend</b>		-1 %	-4 %	3 %
<b>Market share</b>	47,7 %	41,6 %	38,6 %	33 %
<b>Y/Y trend</b>		-6,1 pp	-3 pp	-5,6 pp

*Source: verified questionnaire reply*

## 6.5. Employment, productivity and wages

- (65) Over the period considered, employment increased by 5 %, i.e. at a lower pace than production in volume, which resulted in a significant increase of productivity (15 %). It should be noted that the increase in employment was the result of the hiring of new staff to be trained, in order to replace retiring staff.
- (66) Indeed, over the period considered the Community industry's labour costs (+ 7 %) only increased slightly. As a consequence, the proportion of labour costs in the total cost of production remained stable.

Table 8 —Employment, productivity and wages

	2003	2004	2005	RIP
<b>Employment</b>	816	856	856	859
<b>Index</b>	100	105	105	106
<b>Y/Y trend</b>		5 %	0 %	0 %
<b>Productivity (units per employee)</b>	—	—	—	—
<b>Index</b>	100	104	114	115
<b>Y/Y trend</b>		4 %	10 %	1 %

*Source: verified questionnaire reply*

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Table 8 —Employment, productivity and wages

<b>Labour costs (000 EUR)</b>	—	—	—	—
<b>Index</b>	100	99	104	107
<b>Y/Y trend</b>		-1 %	5 %	2 %

Source: verified questionnaire reply

6.6. Profits

(67) Profitability fell by 4,6 percentage points.

Table 9 —Profitability

	2003	2004	2005	RIP
<b>Profitability (%)</b>	—	—	—	—
<b>Y/Y trend</b>		-0,2 pp	-2,0 pp	-2,4 pp

Source: verified questionnaire reply

6.7. Investments

(68) Investments increased significantly between 2003 and the RIP i.e. by 60 %, and then substantially increased in 2005, by around 65 %, which was due to the Community industry's developing new production units. These investments related mainly to the reorganisation of the production from 2005 in order to restart production capacities. This increase, which was done with a limited increase in the workforce, has allowed the company to increase its productivity in terms of production per employee.

Table 10 —Investments

	2003	2004	2005	RIP
<b>Investments</b>	—	—	—	—
<b>Index</b>	100	111	165	160
<b>Y/Y trend</b>		11 %	49 %	-3 %

Source: verified questionnaire reply

6.8. Ability to raise capital

(69) The Community industry was not found to be experiencing difficulties in raising capital during the period considered.

6.9. Cash flow

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- (70) Cash flow decreased significantly over the period considered (– 50 %). This negative trend indicates that the industry is under pressure. This development is in line with the development of the overall profitability during the period considered. It should be noted that during the RIP, cash flow represented only 1 % of the total sales made in the Community which cannot be considered as excessive.

Table 11 —Cash flow

	2003	2004	2005	RIP
<b>Cash flow</b>	—	—	—	—
<b>Index</b>	100	74	72	50
<b>Y/Y trend</b>		-26 %	-4 %	-30 %

*Source: Verified questionnaire reply*

#### 6.10. Growth

- (71) Between 2003 and the RIP, the Community consumption increased by 37 %, while the volume of sales of the Community industry on the Community market decreased by 7 %. The Community industry lost around 14,7 percentage points of market share, whereas imports originating in the Far East increased theirs.
- (72) In recent years, although it is true that the market share between flint and electronic (piezo) lighters has been characterized by a slow shift from Flint to Electronic, the investigation has shown that market for flint lighters is growing. The investigation revealed that flint lighters still represents about 70 % of the Community market and continues to grow, given the overall increase of the Community consumption. However, the Community industry was not able to benefit from the growth in the market, as revealed by its loss of market share.

#### 6.11. Magnitude of the dumping margin

- (73) The analysis with regard to the magnitude of dumping must take into account the fact that there are measures in force in order to eliminate injurious dumping. As determined above in recital (32), the information available indicates that the Chinese exporting producers continue to sell to the Community at dumped prices. In accordance with Article 2(11) of the basic Regulation, the weighted average normal value established for the analogue country was compared with the weighted average export price. This comparison showed the existence of significant dumping, the dumping margin amounting to more than 150 %.



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(74) In light of the above, i.e. the high dumping margin, the huge capacity available in China and the circumvention practices, as evidenced by OLAF and the complainant, it can be concluded that dumped imports from China would with all likelihood increase considerably should measures be allowed to lapse.

6.12. Recovery from the effects of past dumping

(75) The situation of the Community industry did not improve during the period considered, since the extension of measures in 2001 through the previous expiry review. While noting that the Community industry was profitable throughout the period considered, profits fell continuously during that period. Likewise, while the industry maintained a rather high level of market share, this was continuously declining during the period considered. However, pressure from the Chinese imports remains (due to circumvention) and the indicators set out above also show that the Community industry is still fragile and vulnerable.

6.13. Export activity of the Community industry

(76) The investigation showed that the export activity of the Community industry developed as follows:

Table 12 —Community industry exports

	2003	2004	2005	RIP
<b>Volume (unit)</b>	—	—	—	—
<b>Index</b>	100	113	129	135
<b>Y/Y trend</b>		13 %	14 %	5 %
<b>Value (000' EUR)</b>	—	—	—	—
<b>Index</b>	100	107	134	147
<b>Y/Y trend</b>		7 %	25 %	10 %
<b>Average price (EUR/unit)</b>	—	—	—	—
<b>Index</b>	100	95	104	109
<b>Y/Y trend</b>		-5 %	9 %	5 %

Source: verified questionnaire reply

(77) Quantities exported by the Community industry grew significantly from 2003 to the RIP. This overall positive trend was concomitant to a slight increase

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in average prices, explained by a better competitive position in third country markets such as the US.

7. Conclusion on the situation of the Community industry
- (78) Sales volume decreased by 5 % between 2003 and the RIP which translated in a loss of market share from 47,7 % in 2003 to 33 % in the RIP. Unit prices decreased slightly from 2003 to the RIP, i.e. by 3 %, although raw material prices increased. The Community industry's profitability fell during the RIP. Production, production capacity and capacity utilisation rate increased which is, however, mainly due to the increase in export activities of the Community industry. Historically, the sector has always shown very high profitability level which is needed to recoup investments necessary to adapt the production to new security requirements and improve the overall competitiveness of the company. It is to be noted that the injury margin calculated for the RIP was over 60 %. Imports from the PRC and Taiwan were undercutting the Community industry prices by an average of 39 %.
- (79) Annual investments in the like product developed positively during the period considered i.e. increased by 60 %. These investments related mainly to the reorganization of the production from 2005 in order to restart production capacities. Employment increased by 5 %. Cash flow followed the same trend as profit during the RIP and decreased by 50 %.
- (80) Recitals (69) and (70) above show that the main injury factors (sales prices, sales volume, market share and profitability) decreased during the period considered and that the Community industry still suffered injury despite the measures in force. The injury is mainly translated in a loss of market share despite increasing consumption, but also in a decrease in profitability due to the price pressure from imports from the PRC and Taiwan. Thus, the increase of raw material costs could not be translated in higher selling prices.
- (81) Historically, the sector has always shown very high profitability levels. In the original investigation, for the purpose of establishing the injury elimination level, it was considered that any measure should allow the Community industry to cover its costs of production and to achieve a reasonable profit, namely 15 % on sales turnover. This percentage is needed to recoup investments necessary to adapt the production to new security requirements and improve the overall competitiveness of the company.
- (82) The somewhat negative situation of the Community industry, despite the measures in place, can be explained by the high degree of circumvention which characterises the sector, as found by OLAF.
- (83) The importers contested the findings of the Commission concerning the economic situation of the Community industry. The figures submitted to substantiate their claim did however not relate to the situation of the Community industry in Europe as far as gas-fuelled, non-refillable

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pocket flint lighters are concerned but to the worldwide activities of the Community producer's entire lighter division. These data were irrelevant in the determination of the Community industry's state and the argument had therefore to be rejected.

- (84) The importers claimed that the Community producer had shifted a significant part of its Community production from flint to piezo lighters. As a consequence, its market share for flint lighters showed a decreasing trend. The investigation revealed that this statement is incorrect. Indeed, the overall Community lighter market has been increasing over the last years and the share of flint lighters in the lighter market has been slightly decreasing but remained at a level of 70 % in 2006. In this perspective, it should be reminded that the flint market consumption increased over the period considered and that the share of flint lighters sold by the Community industry decreased over the period considered. The arguments put forward are therefore rejected.
- (85) The importers argued that the Community producer holds a monopoly in the Community and anti-dumping measures would enforce its position even further. This statement is incorrect as significant import volumes from third countries are entering the Community market. Furthermore, the complainant Community producer was also competing with other producers in the Community. Additionally, it should be noted that no evidence was submitted or was otherwise available indicating that the Community industry abused any alleged dominant position.
- (86) The overall positive economic situation of the complainant is partially explained by its ability to sell the product concerned, produced in the US and in the EU, at a higher unit price in the US market as the higher safety standard and the presence of a child proof device (the guard) on the product concerned allows the complainant to sell the product concerned at a higher price. Finally, it should be noted that flint lighters are massively represented in the US market and the relative growth of the lighter market, despite a constant reduction in the number of smokers, shows that the Community industry has been able to generate growth margins in a very competitive market.

#### F. LIKELIHOOD OF RECURRENCE OF INJURY

- (87) Although continuation of material injury, caused by fraudulent declaration of the product concerned and by circumvention of the product concerned originating in the PRC via other Asian countries, is supported by the findings of OLAF (see recital (33)), the analysis focused on the likelihood of recurrence of injury. In this respect two main parameters were analysed: (1) possible shift of export volumes of the product concerned from the US in the Community market, (2) the effects of those projected volumes and prices from the country concerned on the Community industry.
1. Shift of export volumes from the US to the Community market

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(88) The decrease in market share of the Chinese lighters in the US shows that important volumes could be transferred to the EU market at a very low price. Moreover, as mentioned above in recital (37) there are large production capacities of the product concerned available in the PRC which could be shifted to the EU. It is very likely that, should measures be repealed, imports originating in the PRC would probably be favoured with the perspective of higher price levels than in developing countries.

2. Effects of these imports in the Community

(89) Should measures be allowed to lapse, it is clear that, given the lower price and existing capacities of Chinese exporting producers, most injury indicators (mainly sales volume, cost of production and profitability) of the Community industry would go down significantly.

3. Conclusion on the likelihood of recurrence of injury

(90) In view of the above and given that the injury margin calculated for the RIP was over 60 % and that imports from the PRC and Taiwan were undercutting the Community industry prices by an average of 39 % it is concluded that the repeal of the measures would in all likelihood result in the recurrence of material injury to the Community industry.

(91) One of the non-complainant Community producers contested above conclusions by alleging that since low priced lighters are imported from various other sources, the repeal of the current measures would not have any effect on the actual situation of the Community industry. It was argued that if any injury at all, it is already existent caused by the imports from these other sources. However, this Community producer did not contest the availability of significant spare capacities in China and the incentive of the Chinese exporting producers to shift their exports to the Community market. Likewise, it did not submit any information or evidence showing a link between the imports of lighters from other third countries and the impact on the Community industry's financial situation. None of the arguments brought forward could therefore devalue the conclusions as outlined above in recitals (87) to (90). This claim was therefore rejected.

G. COMMUNITY INTEREST

1. Introduction

(92) In accordance with Article 21 of the basic Regulation it was examined whether a prolongation of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of Community interest was based on the consideration of all the various interests involved, i.e. those of the Community industry and other Community producers and the importers of the product under consideration.

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- (93) It should be recalled that, in the previous investigations, the adoption of measures and their subsequent extension was consistently found not to be against the interest of the Community.
- (94) On this basis it was examined whether, despite the conclusion that there exists a likelihood of recurrence of dumping and recurrence of injury, there are compelling reasons which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.
2. Interests of the Community industry
- (95) If the anti-dumping measures were repealed, dumped and low-priced imports on the Community market would massively increase and would accelerate the deterioration of the situation of the Community industry.
- (96) The Community industry is structurally viable, as shown by its positive result in non-EU markets, such as the US. It has continuously made investments, which have been possible thanks to its high profitability. However, it can be concluded that, without the continuation of anti-dumping measures, its situation will most likely deteriorate.
3. Interests of the other Community producers
- (97) One of the Community producers who did not submit a questionnaire reply claimed that the anti-dumping measures currently in force are detrimental to the European consumer. In particular, this producer claimed that price levels in the Community are higher in comparison to other third markets due to the existing measures. Moreover, this producer, who has relocated part of its production to the PRC, claimed that since the existing measures are also applicable to its exports of the product concerned manufactured in China to the Community, these measures would be damaging the interests of this company and by definition would therefore be against the Community interest.
- (98) This producer also argued that, since the Community industry had not recovered, the existing measures were inefficient and should not be renewed. Finally, it was claimed that any injury was due the fact that the Community industry did not adapt to the new global market.
- (99) As regards the alleged negative impact of the measures for consumers, the Community producer concerned did not submit any evidence supporting this claim.
- (100) This producer claimed that the anti-dumping measures constitute an obstacle to the development of its activities in China and have a negative impact on its expansion in the Far East, as well as a knock-on effect on its European production sites. This producer argued that the existing measure was negatively impacting on its overall profitability. However, the company indicated that it had recently increased its production in its EU facilities and

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continued to seek synergies with its production facilities in the Far East in order to broaden its product scope. Therefore, the alleged negative impact of the measures on its production facilities in the EU could not be verified.

- (101) The Community producer in question denied that it relocated its production and claimed instead that it simply built additional production lines in China producing different product types than in the Community, thus enlarging its product range. This allegedly favoured the production in the Community which increased. As already mentioned this producer did not submit any questionnaire reply and did thus not sufficiently cooperate in the present proceeding. None of the information submitted, partly outside the requested deadlines, could therefore be verified. Furthermore, the producer did not explain or show any link between the built-up of the production in China and the increase in production in the Community as claimed. No such link was apparent on the basis of the information included in the file. It could also not explain how these facts would have an impact on the conclusions outlined in recital (100) above or devalue these conclusions. This argument had therefore to be rejected.
- (102) Likewise, this company's imports should not be allowed to benefit from dumping at the expense of the Community industry. In any case, it should be noted that the remaining production site of this producer in the Community only produces the product concerned. New smaller flint lighters, which are also subject to the existing measure, are produced in China and India.
- (103) With regard to the interests of the other Community producers, both came forward and objected to the existing measures and their continuation. However, they could not substantiate their objections with any evidence of the measures having a detrimental effect on them.
- (104) On the basis of the above, it was concluded that the measures in force would not have a significant, negative impact on the other Community producers and would not significantly adversely affect their financial interests.
4. Interests of importers and traders
- (105) On behalf of its members, an importers association (the European Lighters Importers' Association (ELIAS)) and Polyconcept, another importer opposed the maintenance of the existing measures.
- (106) It should be noted that none of the individual importers filled out a questionnaire reply on the basis that they did not import the product concerned. Therefore there was no evidence available to calculate the precise impact of the measures on the importers.
- (107) ELIAS and Polyconcept gave some reasons as to why existing measures should be lapsed. As regard to their comments regarding the absence of injury and the economic performance of the applicant, it has been concluded that,

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without the continuation of anti-dumping measures, its situation will most likely deteriorate.

- (108) ELIAS and Polyconcept argued that EU market demand has moved from flint to electronic (piezo) lighters and will continue to do so in the future. Although there is a growing trend amongst the consumers to use electronic (piezo) lighters, flint lighters still represent about 70 % of the market. The consumption of flint lighters has indeed been increasing (as mentioned in recital (53) above, which shows the growth in the market, whereas the Community industry could not benefit from this growth, since it has not only lost sales, but also market share in the flint lighter market.
- (109) ELIAS and Polyconcept claimed that one of the reasons of alleged weak performance was the failure by the applicant to recognise changes in EU market demand. However, the Community industry is already producing electronic (piezo) lighters and is therefore in the position to meet any new demand for electronic (piezo) lighters.
- (110) Likewise, the reduction in smoking is also a trend in the US, whereas the Community industry has managed to increase its market share on what can be considered as a highly competitive market given the presence of many other producers, whether originating in the Far East or the EU. As far as production costs are concerned, the example of the US shows that the Community industry is able to compete with other Community producers having relocated their activities in Asian countries.

5. Interest of consumers

- (111) Consumers or consumer organisation did not come forward during the present investigation.
- (112) However, it was considered that the impact of the measures, for the reasons set out above, would not have a significant impact on the selling price to the final customer.

6. Conclusion on Community interest

- (113) Based on the above it is concluded that there are no compelling reasons on grounds of Community interest against the maintenance of the existing anti-dumping measures.

H. ANTI-DUMPING MEASURES

- (114) All interested parties were informed of the essential facts and considerations on the basis of which it is intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure. No evidence was put forward showing that the extension by Regulation (EC) No 192/1999 should be discontinued.

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- (115) It follows from the above that, as provided for under Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of gas-fuelled, non-refillable pocket flint lighters, and to certain refillable lighters, originating in China or consigned from or originating in Taiwan, imposed by Regulation (EEC) No 3433/91 as amended by Regulation (EC) No 1006/95 and as extended by Regulation (EC) No 192/1999 and Regulation (EC) No 1824/2001 should be maintained,

HAS ADOPTED THIS REGULATION:

*Article 1*

1 A definitive anti-dumping duty is hereby imposed on imports of gas-fuelled, non-refillable pocket flint lighters falling within CN code ex 9613 10 00 (TARIC code 9613 10 00 19) originating in the People's Republic of China.

2 The rate of the duty, applicable to the net, free-at-the Community frontier price, before duty, shall be set at EUR 0,065 per lighter.

*Article 2*

1 The anti-dumping duty mentioned in Article 1 is hereby extended on imports of gas-fuelled, non-refillable pocket flint lighters falling within CN code ex 9613 10 00 consigned from Taiwan, whether declared as originating in Taiwan or not (TARIC code 9613 10 00 11) and to imports of gas-fuelled, refillable pocket flint lighters, incorporating a plastic tank body, falling within CN code ex 9613 20 90 (TARIC code 9613 20 90 29), originating in the People's Republic of China or consigned from Taiwan, whether declared as originating in Taiwan or not (TARIC code 9613 20 90 21).

2 Gas-fuelled, refillable pocket flint lighters, incorporating a plastic tank body, with aco-operated free-at-Community-frontier, duty unpaid, value per piece equal to or greater than EUR 0,15, shall not be subject to the duty extended by paragraph 1, if such a price is specified in an invoice issued by an exporter located in the People's Republic of China or Taiwan to an unrelated importer in the Community.

*Article 3*

1 In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93<sup>(9)</sup>, the amount of the anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

*Article 4*

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.



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Done at Brussels, 10 December 2007.

*For the Council*

*The President*

L. AMADO

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- (1) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
- (2) OJ L 326, 28.11.1991, p. 1. Regulation as last amended by Regulation (EC) No 174/2000 (OJ L 22, 27.1.2000, p. 16).
- (3) OJ L 101, 4.5.1995, p. 38.
- (4) 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).
- (5) OJ L 22, 29.1.1999, p. 1.
- (6) OJ L 248, 18.9.2001, p. 1. Regulation as amended by Regulation (EC) No 155/2003 (OJ L 25, 30.1.2003, p. 27).
- (7) OJ C 321, 16.12.2005, p. 4.
- (8) OJ C 223, 16.9.2006, p. 7.
- (9) OJ L 253, 11.10.1993, p. 1.

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