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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.6.2008
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Proposal for a

COUNCIL REGULATION

**imposing a definitive anti-dumping duty on imports of powdered activated carbon
originating in the People's Republic of China**

(presented by the Commission)

EXPLANATORY MEMORANDUM

(1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation').

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Council Regulation (EC) No 1011/2002 of 10 June 2002 imposing a definitive anti-dumping duty on imports of powdered activated carbon (PAC) originating in the People's Republic of China.

- **Consistency with other policies and objectives of the Union**

Not applicable.

(2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the investigation have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

(3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 13 June 2007, the Commission announced by a notice, published in the *Official Journal of the European Union* (OJ C 131, 13.06.2007, Notice of initiation (2007/C 131/09), p. 14), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation, concerning imports into the Community of PAC originating in the People's Republic of China.

The anti-dumping proceeding was initiated following a request for review lodged on 12 March 2007 by the European Chemical Industry Council (CEFIC) on behalf of producers representing a major proportion, in this case more than 50%, of the total Community production of PAC.

The enclosed Commission proposal for a Council Regulation contains the conclusions of the investigation on the continuation or recurrence of injurious dumping and on whether the maintenance of the anti-dumping measures is not against the overall interest of the Community.

It is proposed that the Council adopts the attached proposal for a Regulation which should be published in the *Official Journal of the European Union*.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason. The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision. indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal, is not applicable.

- **Choice of instruments**

Proposed instruments: Regulation.

Other means would not be adequate because the above-mentioned basic Regulation does not foresee alternative options.

(4) BUDGETARY IMPLICATION

The proposal has no implications for the Community budget.

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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 Community¹ ('the basic Regulation'), and in particular Articles 9 and 11(2) thereof,

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

Whereas:

1. PROCEDURE

1.1. Measures in force

- (1) By Regulation (EC) No 1006/96 of 3 June 1996², following an anti-dumping investigation, the Council imposed a definitive anti-dumping duty of EUR 323 per tonne on imports on powdered activated carbon originating in the People's Republic of China (PRC) ('the original investigation').
- (2) By Regulation (EC) No 1011/2002 of 10 June 2002³, following an expiry review pursuant to Article 11(2) of the basic Regulation, the Council renewed the imposition of the definitive anti-dumping duty on imports on powdered activated carbon originating in the PRC ('the first expiry review investigation').

1.2. Request for a review (Present investigation)

- (3) Following the publication of a notice of impending expiry⁴, the Commission received a request on 12 March 2007 for an expiry review pursuant to Article 11(2) of the basic Regulation.
- (4) The request was lodged by the European Chemical Industry Council (CEFIC) ('the applicant') on behalf of two producers representing a major proportion, in this case more than 50%, of the total Community production of powdered activated carbon. The request was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of dumping and injury to the Community industry.
- (5) Having determined, after consulting the advisory committee, that sufficient evidence existed for the initiation of the expiry review, the Commission initiated this review on

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 134, 5.6.1996, p.20.

³ OJ L 155, 14.6.2002, p.1.

⁴ OJ C 228, 22.9.2006, p.3.

13 June 2007, by a notice published in the *Official Journal of the European Union* (the "notice of initiation")⁵.

1.3. Parties concerned by the investigation

(6) The Commission officially advised the exporters/producers, the representatives of the exporting country, importers, suppliers, producers, users in the Community and the applicant 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. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(a) Sampling of exporters/producers in the PRC

(7) In view of the apparent large number of exporters/producers in the PRC (132 listed in the review request), it was considered appropriate to examine whether sampling should be used in the expiry review in conformity 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, the exporters/producers were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the expiry review and provide the Commission with the information requested in the notice of initiation. However, no exporter/producer replied to the sampling questions or otherwise made itself known in response to the notice of initiation and, thus, sampling for exporters/producers was not at issue.

(b) Sampling of Community importers

(8) In view of the apparent large number of importers in the Community (33 listed in the review request), it was considered appropriate to examine whether sampling should be used in the expiry review in conformity 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, importers in the Community were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the expiry review and provide the Commission with the information requested in the notice of initiation.

(9) However, since only three out of the 33 importers which were contacted replied to the sampling questions and agreed to co-operate, it was decided that sampling was not warranted in this case.

1.4. Questionnaires and verification

(10) Questionnaires were sent to the representatives of the exporting country and to all known importers, suppliers, producers, users in the Community and producers in the analogue country, the United States of America ('USA') (see recitals (22) to (24) below).

(11) Complete replies to the questionnaires were received from three suppliers of raw materials to the Community industry, three users, two Community producers supporting the request for the review, one additional producer opposing the proceeding

⁵ OJ C 131, 13.6.2007, p.14

and one producer in the analogue country. No exporting producer in the PRC cooperated.

(12) The Commission sought and verified all the information deemed necessary for its analysis and carried out verification visits at the premises of the following companies:

(a) Community producers

- Norit B.V., Amersfoort, the Netherlands, and Glasgow, United Kingdom
- CECA S.A., Paris and Bordeaux, France.

(b) Other producer

- Chemviron Carbon S.A., Feluy, Belgium

(c) Community suppliers

- Klasmann & Deilmann GmbH, Geeste, Niedersachsen, Germany
- Rheinbraun Brennstoff GmbH, Cologne, Germany
- WTL International Ltd., Macclesfield, Cheshire, United Kingdom

(d) Producer in the analogue country

- Norit Americas Inc., Marshall, Texas, USA

1.5. Review investigation period

(13) The investigation of the likelihood of continuation or recurrence of dumping and injury covered the period from 1 April 2006 to 31 March 2007 (review investigation period or 'RIP').

(14) The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2003 up to the end of the RIP ('period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

(15) The product under consideration is the same as in the original investigation and the subsequent expiry review, i.e. powdered activated carbon ('PAC') currently classifiable within CN code ex 3802 10 00. PAC is a micro-porous form of carbon, obtained from a variety of raw materials such as coal, lignite, peat, wood, olive stones or coconut shells, which are activated by means of steam or chemical process. PAC is a very fine powder. Activated carbons are also sold in granular forms (granulated activated carbon 'GAC') which are not covered by the measures in force nor by this review.

(16) As confirmed by the previous expiry review PAC is defined as consisting of at least 90 % by mass (% m/m) of particles with a size less than 0,5 mm.

(17) The general applications of PAC are water treatment (potable water as well as treatment of waste water), gas and air purification, solvent recovery, decolourisation of sugar, vegetable oils and fats, deodorisation and purification of different products in the chemical (i.e. organic acids), pharmaceutical (i.e. gastrointestinal capsule) and food industries (i.e. alcoholic and soft drinks).

- (18) The present investigation has confirmed that PAC produced and sold by Community producers and PAC imported from the PRC as well as PAC produced and sold in the the analogue country (USA) share the same basic physical and technical characteristics and are in all respects identical. Therefore, they are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF A CONTINUATION AND/OR RECURRENCE OF DUMPING

3.1. Preliminary remarks

- (19) In accordance with Article 11(2) of the basic Regulation, the purpose of an expiry review is to determine whether the expiry of the measures is likely to lead to a continuation or recurrence of dumping.

- (20) At the outset, the volumes exported to the Community during the RIP were examined. It should be noted that, since none of the Chinese exporting producers or any importer in the Community co-operated with the present investigation, export data were established in accordance with Article 18 of the basic Regulation, i.e. on the basis of information available. In this respect, it is recalled that no Chinese exporting producer or Community importer had also co-operated with the first expiry review investigation. However, since the imposition of a definitive anti-dumping duty in 1996, Eurostat statistics have been available for imports of PAC. These statistics have been confirmed by market research information submitted by the Community industry. On this basis, and in the absence of any other more reliable information, these statistics were used. They showed that during the RIP some 529 tonnes of PAC were imported from the PRC into the Community. This quantity is small in comparison with the quantity imported into the Community before the imposition of measures, but it still represented more than 1 % of the PAC consumption in the Community during the RIP. However, an indicative dumping calculation was made.

3.2. Likelihood of continuation of dumping

- (21) In the context of the likelihood of a continuation of dumping, it was investigated whether dumping of exports from the PRC was currently taking place. This was done on the grounds that, if dumping was taking place now, it could be an important indication that dumping would be likely to continue in the future, should the measures be allowed to expire.

(a) Analogue country

- (22) Since the PRC is an economy in transition, normal value was determined on the basis of information obtained in an appropriate market economy third country selected in accordance with Article 2(7) of the basic Regulation.

- (23) The USA were selected as an appropriate analogue country in the original and the first expiry review investigation. As indicated in the Notice of Initiation, the Commission envisaged using the USA as an appropriate analogue country also in the present expiry review investigation. In this respect, the investigation revealed that the USA were the most appropriate analogue country for the following reasons:

The USA are one of the largest producing countries of PAC world-wide. Figures submitted by the co-operating producer in the USA and the Community producers in the request for review showed that the production volume of both countries is comparable. Furthermore, as mentioned in recital (18), PAC produced and sold in the

USA was found to be a like product to PAC produced in the PRC and exported to the Community. Domestic sales made by the co-operating US-producer (in terms of volume) were representative when compared to the imports of PAC from the PRC into the Community. Finally, the level of competition in the USA was found to be very high. Indeed, in addition to the competition amongst several producers in the USA, there was also competition from imported PAC (mainly from the PRC, Sri Lanka and the Philippines), which could be imported during the RIP without quantitative restrictions or import duties. Furthermore, the main US producer of PAC was willing to co-operate.

- (24) Given the above, and as no comments were received on the choice of the analogue country by any of the interested parties, the USA was consequently selected as the most appropriate analogue country.

(b) Normal value

- (25) In accordance with Article 2(1) of the basic Regulation, it was considered whether the representative domestic sales of PAC in the USA were, considering the prices charged, made in the ordinary course of trade. In this respect, it was examined whether domestic sales were profitable. For this purpose, the full cost of production of each grade during the RIP was compared to the average price of the sales transactions of each grade made during the same period. It was found that the majority of sales were made at a profit. The investigation also revealed that all sales were made to independent customers. As a result the prices paid or payable for PAC by independent customers on the US domestic market in the ordinary course of trade were used to determine the normal value in accordance with Article 2(1) of the basic Regulation.

(c) Export price

- (26) As mentioned above, no Chinese exporting producer or any importer of PAC in the Community co-operated with this expiry review investigation. Therefore, the export price was determined on the basis of facts available in accordance with Article 18 of the basic Regulation. As already mentioned in recital (20) above and in the absence of any other more reliable information, this was done by reference to the average price from the Eurostat (TARIC) import statistics during the RIP.

(d) Comparison

- (27) For the purpose of ensuring a fair comparison between normal value and export price, account was taken of differences in factors, which were found to affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. In this regard, adjustments for differences in freight, insurance and inland transport costs were made. In the absence of any information from Chinese exporting producers, the adjustments on the export price were based on facts available, in this case on relevant information given in the review request.

(e) Dumping margin

- (28) The comparison of the weighted average normal value with the weighted average export price of all grades showed that exports of PAC to the Community were still being dumped at a substantial margin during the RIP. The dumping margin was equal to the amount by which the normal value exceeded the prices for exports to the

Community. The weighted average dumping margin exceeded 20 %. Although this dumping margin had to be based, to a large extent, on facts available because of the non-cooperation of Chinese exporting producers, it is nevertheless indicative of current Chinese export behaviour. Obviously, had there been cooperation by Chinese exporting producers, this would have allowed a more precise calculation.

3.3. Development of exports to the Community should measures expire

(29) It was also considered how exports of PAC from the PRC to the Community would develop should measures expire. For that purpose the spare production capacity in the PRC, the export volume and the domestic market in the PRC as well as the Chinese price behaviour to other third countries were examined. In the absence of co-operation from exporting producers, market research information submitted by the Community industry was used.

(f) Production capacity, domestic market in China and export volume

(30) The information available to the Commission showed that the PRC, with some 300 manufacturers, is the largest producer and exporter of activated carbons (granular and powdered) in the world. During the RIP, the Chinese production capacity of PAC was estimated at about 190 000 tonnes, of which around 70 000 tonnes were sold domestically and around 60 000 tonnes exported. A spare capacity of approximately 60 000 tonnes was thus available. It is noted that this spare capacity exceeds the Community consumption in the RIP.

(31) The main export markets for Chinese PAC are South East Asia, Japan, the Republic of Korea, the USA and Europe. However, according to the evidence submitted by the Community industry, the additional need for imported PAC in third countries would be minimal and the capability to absorb further Chinese exports therefore almost negligible. Furthermore, it should be noted that a number of potential export markets in the Asian region, such as India and Indonesia, apply high customs tariffs for PAC.

(32) On the basis of data available, it is estimated that the annual growth rate of domestic consumption, production and production capacity of PAC in the PRC will be around 5 %. Given that the USA imposed anti-dumping measures on Chinese steam activated PAC in April 2007 (i.e. after the IP), exports may even decrease. Thus, the spare capacities will certainly not decrease but in all likelihood even increase in the future.

(33) Furthermore, according to the information available to the Commission, the Chinese activated carbon industry is currently facing financial problems, in particular because the low capacity utilisation is leading to increased costs. This also increases the pressure to export at dumped prices in order to have better economies of scale.

(34) In these circumstances, should the measures be removed and the Community become an attractive export market, it is very likely that the Chinese producers will increase their capacity utilisation in order to export significant volumes and, thus, reduce their costs and improve their financial situation.

(g) Price behaviour on third country markets

(35) An analysis of the prices of Chinese exports to other third countries, such as the USA, revealed that exports of PAC were also made at very low prices even dumped at very significant rates (higher than the dumping margin established in the present expiry

review investigation, see recital (28) above). It is obvious that there is a history of Chinese dumping practices for this product.

- (36) Consequently, should the anti-dumping duty be removed, the Community market would most likely attract large quantities of low priced dumped Chinese PAC. In this respect, it should also be noted that Chinese imports remained, albeit in smaller quantities, present on the Community market since the imposition of anti-dumping measures in 1996, which will facilitate an increase of imports should measures be allowed to expire.

3.4. Conclusion on the likelihood of a continuation of dumping

- (37) Imports of Chinese PAC during the RIP were made above *de minimis* levels and were still dumped. It was established that dumping continued and that there is a strong likelihood that it would continue should measures be allowed to expire. Moreover, in such a case it is likely that exports of Chinese PAC to the Community will significantly increase (and return to at least the levels found in the original investigation) since there are significant spare capacities available in the PRC. The prices of these additional import quantities will in all likelihood be dumped at significant levels.

4. DEFINITION OF THE COMMUNITY INDUSTRY

- (38) The investigation showed that PAC is currently produced by a limited number of producers in the Community. The two applicant producers and two other producers, which did not cooperate in the investigation, are following the traditional process of mixing up the necessary raw material to obtain PAC by activation processes.
- (39) It was also found that certain other producers in the Community manufacture PAC by milling GAC imported from the PRC. On the basis of estimates provided by the Community industry, out of the GAC being imported from the PRC, approximately 10 000 tonnes are being milled into PAC in the Community. Indeed, one other producer that co-operated with the Commission during the investigation manufactured PAC using this method. However, as was the case in the first review investigation, these quantities have not been included in the calculation of total Community production and of Community consumption.
- (40) The two Community producers on whose behalf the request for the review was lodged co-operated with the investigation. They represented around 80% of Community production of PAC and therefore constitute the Community industry within the meaning of Article 4(1) and 5(4) of the basic Regulation.
- (41) As the Community industry is constituted by two Community producers, the information concerning the Community industry had to be indexed where appropriate to preserve confidentiality of sensitive data.

5. SITUATION ON THE COMMUNITY MARKET

5.1. Consumption on the Community market

- (42) Community consumption (EU-27) was established on the basis of:
- Sales on the Community market by the two co-operating Community producers
 - Sales on the Community market by non-cooperating Community producers of PAC (as estimated by the applicant)

– Import statistics as derived from Eurostat.

- (43) As already mentioned in recital (39), there are certain quantities of PAC being manufactured by milling GAC imported from the PRC, which have not been included in the calculation of Community consumption.
- (44) On the basis of the above, Community consumption of PAC has increased by 7% over the period considered. An increase between 2003 and 2005 of 10% was followed by a small decline in 2006; consumption remained thereafter stable during the RIP.

	2003	2004	2005	2006	RIP
Consumption (tonnes)	38 163	39 499	41 983	40 697	40 783
Index (2003 = 100)	100	104	110	107	107

5.2. Current imports from the PRC

(a) Volume and market share

- (45) Based on information from Eurostat, the development of volumes and market share of imports of PAC from the PRC is set out in the table below. The volume of imports from the PRC has increased over the period considered by 55%, but their market share remained overall below 2%.

	2003	2004	2005	2006	RIP
Volume of imports (tonne)	341	662	600	515	529
Index (2003 = 100)	100	194	176	151	155
Market share	0,9%	1,7%	1,4%	1,3%	1,3%

(b) Price behaviour of imports

- (46) The average import prices of PAC originating in the PRC, as derived from Eurostat and by adding post importation costs, customs and anti-dumping duties, marked a rather moderate increase of 8% over the period considered as shown in the following table.

	2003	2004	2005	2006	RIP
Price (EUR/tonne)	1 169	1 104	1 187	1 217	1 267
Index	100	94	102	104	108

(2003 = 100)					
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(47) In the absence of detailed sales data by exporting producers in the PRC, the Commission had to compare the adjusted import prices obtained from Eurostat with the average, ex-works sales prices of the Community industry as a whole, i.e. without distinction between different grades of PAC. This comparison has shown that the Chinese export prices during the RIP were 25% to 30% lower than the prices charged by the Community industry in the same period.

5.3. Imports from other third countries

(48) The imports of PAC from countries other than the PRC have increased significantly over the period considered from about 7 300 tonnes in 2003 to 10 000 tonnes in the RIP, representing market shares of around 19% and 25%, respectively. The major exporting countries have been Malaysia, Indonesia, the Philippines and the USA.

(49) While imports from the USA have halved, imports from Malaysia, Indonesia and the Philippines increased from 2 800 tonnes in 2003 to 6 200 tonnes in the RIP, representing a combined market share of the Community market of 15% during the RIP. The investigation showed that certain of the imports from the three above mentioned countries consist in PAC produced from coconut-shells, which, for reason of availability of the raw material concerned, Community producers are unable to produce themselves. Thus, parts of these imports have been triggered by the Community industry itself in order to complement their range of PAC on offer to Community users.

(50) In terms of prices, the average import prices from Malaysia, Indonesia and the Philippines were lower than those of the Community industry. Prices of imports from Malaysia and Indonesia were in the same range as the prices of imports of PAC originating in the PRC, whereas the prices of imports from the Philippines marked a considerable increase over the period considered (37%) and were 20% above the Chinese import prices in the RIP.

(51) Prices of imports from the USA were found to be significantly higher than those of the Community industry. The vast majority of these imports are speciality grades of PAC achieving high prices on the Community market.

(52) In summary, the investigation showed that some imports of PAC from third countries are complementary to the production of the Community industry. Other imports were made at prices largely above the average price charged by the Community industry. There are also other imports made at relatively low prices that may have a certain effect on the Community market. However, on the basis of the trends observed over the period considered, it appears that this situation is not likely to expand.

5.4. Economic situation of the Community industry

(a) Production, installed production capacity and capacity utilisation rate

(53) The ability to produce PAC can vary depending on the mix of low-activated (shorter time in oven) and high-activated (longer time in oven) compounds. Thus, the capacity shown in the table below has been established on the basis of a mix of high and low activated PAC actually produced.

	2003	2004	2005	2006	RIP
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Production (tonnes)	100	105	95	100	100
Installed production capacity (tonnes)	100	90	85	86	86
Capacity utilisation rate	100	118	112	118	116

- (54) The production of PAC by the Community industry has been stable over the period considered, with some fluctuations in 2004 and 2005.
- (55) Installed capacity decreased between 2003 and 2005. This decrease is attributable to environmental legislation introduced in 2003 by the local authorities in one Member State where one Community industry plant is located. As a consequence, the Community producer concerned had to stop the operation of one of its activation plants due to these environmental requirements.
- (56) As a direct consequence of the lower production capacities available, the capacity utilisation rate increased correspondingly.

(b) Sales volumes, market share of Community consumption, average sales price and growth

	2003	2004	2005	2006	RIP
Sales volumes	100	96	94	96	96
Market share	100	93	87	91	91
Average sales price	100	99	98	99	99
Growth	100	96	92	95	96

- (57) Sales volumes were 4% lower during the RIP in comparison with the beginning of the period considered. As Community consumption increased by 7% over the period considered (see recital (44) above), the market share of the Community industry decreased by 9% over the period considered. Despite this drop in market share, the Community industry's market share was kept above 50% throughout the period considered.
- (58) Average sales prices of the Community industry on the Community market have remained rather stable over the period considered. The stable sales prices in the presence of lower sales volumes resulted in a negative growth of 4% during the period considered, mirroring the decrease in sales volumes by the same percentage point.

(c) Stocks

	2003	2004	2005	2006	RIP

Stocks	100	138	115	97	85
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- (59) Given the interruption of one of the production lines in 2004 (see recital (55) above) and in order to be able to serve its customers, the Community industry had to temporarily increase its stocks. However, in the course of the following years, the level of stocks again reached the initial levels, at around 10 - 20% of production volumes.

(d) Profitability, return on investments and cash flow

	2003	2004	2005	2006	RIP
Profitability on Community sales	100	383	337	200	226
Return on investments	100	1 051	692	215	348
Cash Flow (in % of Community Sales)	100	143	119	100	128

- (60) These three indicators followed a similar pattern (albeit to a different degree) during the period considered, namely a sharp increase between 2003 and 2004 followed by a gradual decrease up to the end of the RIP.
- (61) The evolution of profitability, return on investment and cash flow between 2003 and 2004 should be seen in the light of the fact that, in 2003, the Community industry's financial performance was particularly poor, with its profitability on sales slightly above the break-even level. The poor performance of the Community industry in 2003 was due to the hardship faced by one of the Community producers in that year.
- (62) The decrease in profit between 2005 and 2006 is partly due to the costs that the Community industry incurred to meet certain environmental requirements (see recital (55) above).
- (63) The other co-operating producer of PAC, which mills imported GAC into PAC (see recital (39) above), alleged that the Community industry, in view of the increase in its profit levels of PAC between 2003 and 2006 as shown in the complaint, was able to cross-subsidise its sales of GAC. In other words it alleged that since PAC has been protected, the Community industry has been able to charge higher prices for PAC and, thus, allegedly charge less for its sales of GAC. For this reason, this party opposed the continuation of measures.
- (64) Concerning the alleged cross-subsidization between GAC and PAC produced by the Community industry, it is noted that this is partly outside the scope of this review since the profitability of sales of GAC has not been analysed in the framework of this investigation. As regards the profit levels, it is noted that while the Community industry marked a sharp increase in profitability between 2003 and 2004, this development was followed by a period of decline in 2006 and the RIP. As noted in recital (61) above, the sharp increase between 2003 and 2004 should be seen in relation to the poor financial performance of the Community industry in 2003 rather

than with the good financial performance in 2004. Moreover, over the period considered, the Community industry's profitability never exceeded 5,5% in relation to its sales of PAC on the Community market. Thus, the alleged possibility that the increase in profitability during the period considered was at levels that would have allowed the Community industry to subsidise its sales of other products had to be dismissed, as the profitability of sales of PAC during the period considered was too low to substantiate any cross-subsidization allegations.

(e) Employment, wages and productivity

	2003	2004	2005	2006	RIP
Number of employees	100	97	88	90	90
Wages/employee	100	100	99	100	97
Productivity (tonne/employee)	100	108	108	111	111

(65) As shown in the table above, the Community industry has reduced the number of employees over the period considered by around 10%. As the actual production has remained stable during the same period (see recital (54) above), the increase in productivity is mirroring these two developments.

(66) Moreover, wages have been rather stable during the period considered.

(f) Investments

	2003	2004	2005	2006	RIP
Investments (€)	100	70	71	135	135

(67) The table above shows that during 2006 and the RIP, the Community industry made significant investments. For reasons explained in recital (55), these investments were triggered by environment requirements.

(g) Ability to raise capital

(68) The Community industry did not report any difficulties in raising capital over the period considered.

(h) Magnitude of dumping

(69) As seen above, the facts available show that the dumping margin can be considered to be significant.

(i) Recovery from past dumping

(70) As already concluded in the previous expiry review, due to the anti-dumping measures in force, the Community industry has to a certain extent been able to recover from past dumping, but is still in a vulnerable situation.

5.5. Export activity of the Community industry

	2003	2004	2005	2006	RIP
Sales volumes (tonnes) for export	100	108	114	122	121
Average sales price (export)	100	94	96	99	101

- (71) Sales volumes for exports have increased throughout the period considered, by around 21% between 2003 and the RIP.
- (72) Average sales prices of exports sales have remained stable when comparing export sales prices in 2003 with those during the RIP. Whereas prices dropped somewhat in 2004, the Community industry was able to increase its prices as from 2005.

5.6. Conclusion on the situation on the Community market

- (73) Between 2003 and the RIP, the following indicators concerning the Community industry developed positively: profitability, return on investments, cash-flow and capacity utilisation and closing stocks. The unit sales prices and the production remained virtually stable. In addition, productivity increased and the Community industry was able to invest in order to meet certain environmental requirements.
- (74) Conversely, the following indicators developed negatively: sales volumes, market share and employment. Moreover, production capacity declined due to the aforementioned environmental requirements.
- (75) Overall, although the situation is mixed, positive developments appear to outweigh negative developments. In addition, when one compares the above trends with the ones found in the original investigation, it is clear that the anti-dumping measures in place had a positive impact on the economic situation of the Community industry. Nevertheless, it should be stressed that even indicators showing positive developments, such as, in particular, profitability and return on investment, are still far from reaching levels that could be expected if the Community industry had fully recovered from the past injurious dumping.
- (76) It is therefore concluded that, although the situation of the Community industry has improved, as compared to the period preceding the imposition of measures, the Community industry is still fragile.

6. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

- (77) The investigation has shown that the spare capacities in the PRC are significant, exceeding the Community consumption in the RIP. In addition, given the imposition of anti-dumping measures against imports of (steam-activated) PAC originating in the PRC by the USA, there is an imminent risk of trade diversion of the volumes previously exported to the USA should measures be allowed to lapse. This is an even greater risk since the prices at which PAC has been imported into the USA are even lower than those at which they are imported into the Community market.
- (78) Furthermore, the prices at which PAC is currently being imported have been established to be dumped and lie far below the average sales prices (and costs) of the Community industry.

- (79) Therefore, the combined effect of factors such as:
- the significant spare capacities found in the PRC,
 - the imminent risk of trade diversion due to the imposition of measures by the USA, and
 - the prevailing low level of the prices at which PAC originating in the PRC is being imported into the Community as well as into the USA

all point towards a serious risk for recurrence of injury should measures be allowed to lapse.

- (80) As shown above, although the situation of the Community industry has improved as compared to the one prevailing before the imposition of existing antidumping measures, it remains fragile. It is likely that if the Community industry were exposed to increased volumes of imports from the PRC at dumped prices it would result in a deterioration of its financial situation as found in the original investigation. On this basis, it is therefore concluded, that the repeal of the measures would in all likelihood result in the recurrence of injury to the Community industry.

7. COMMUNITY INTEREST

7.1. Preliminary remarks

- (81) In accordance with Article 21 of the basic Regulation, it was examined whether the continuation of the existing antidumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the various interests involved. The present investigation analysed a situation in which anti-dumping measures have already been in place and allowed for assessment of any undue negative impact on the parties concerned due to the current anti-dumping measures.

- (82) On this basis, it was examined whether, despite the conclusions on the likelihood of a continuation or recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

- (83) For this reason, questionnaires were sent out to, in addition to the three producers mentioned in recital (11), other producers (including those producers which are milling imported GAC into PAC), four Community suppliers, the three Community importers that agreed to co-operate (see recital (9) above) and 37 users mentioned in the application and/or known to the Commission.

7.2. Interest of the Community industry

- (84) It can reasonably be expected that the Community industry will continue to benefit from the measures currently imposed and further recover by regaining market share and improving its profitability. Should the measures not be maintained, it is likely that the Community industry will start again to suffer injury from increased imports at dumped prices from the country concerned and that its currently fragile financial situation will deteriorate.

- (85) On this basis, given that the Community industry represent more than a majority of Community production and that the two Community producers constituting the Community industry both have expressed support of continuation of measures, it can be concluded that the continuation of measures would be in the interest of the Community industry.

7.3. Interest of Community suppliers

- (86) The Commission received questionnaire replies from three Community suppliers of raw materials (lignite, peat and saw dust) to the Community industry. All three supported the continuation of measures and stated that a significant part of their sales would be at risk if measures would be allowed to lapse, putting in danger their financial stability.
- (87) It could therefore be concluded that the continuation of measures would be in the interest of the Community suppliers of the Community industry.

7.4. Interest of Community importers

- (88) As mentioned in recital (8), the Commission contacted 33 importers that were listed in the request to this review. Only three importers agreed to co-operate in the investigation. However, none of these three importers replied to the questionnaire sent by the Commission.
- (89) Thus, the lack of interest in co-operating with the investigation can indeed be considered as an indication that the importing activities of any importers of PAC would not be seriously affected by the continuation of measures.

7.5. Interest of Community users

- (90) As mentioned in recital (83) above, 37 users were contacted, many of whom were customers of the Community industry. In the end, only three questionnaire replies were received.
- (91) None of the three users accepted on-spot verification of their questionnaire responses. Nevertheless, from the examination of the unverified data it was found that PAC, on a weighted average, represents a very small proportion of the operation costs of the users concerned.
- (92) On this basis, it was concluded that activities of any users of PAC would not be seriously affected by the continuation of measures.

7.6. Conclusion on Community interest

- (93) Taking into account the interests of all parties that made themselves known during the investigation, it appears that there are no compelling reasons on the grounds of Community interest against the prolongation of the anti-dumping measures.

8. FINAL PROVISIONS

- (94) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures on imports of PAC would be maintained. They were also granted a period to make representations subsequent to disclosure.
- (95) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of PAC originating in the PRC should be maintained.

9. DUTIES

- (96) In view of the conclusions reached with regard to continuation of dumping, likelihood of recurrence of injury and Community interest, the anti-dumping measures on imports of PAC originating in the PRC should be maintained in order to prevent a recurrence of injury to the Community industry being caused by dumped imports.

- (97) The present level of anti-dumping duty, based on an injury elimination level of 38,6%, is set to €323/tonne (fixed duty).
- (98) With regards to the level of the duty, one interested party argued that, since the abolition of the VAT-rebate that Chinese exporting producers obtain when exporting goods derived from domestically purchased raw materials, the dumping margins must be lower.
- (99) However, in the complete absence of any form of co-operation by the Chinese exporting producers and the absence of a request for an interim review pursuant to Article 11(3) of the basic Regulation, this alleged change of the cost of production for exported goods could not be substantiated, and consequently was dismissed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports on powdered activated carbon falling within CN code ex 3802 10 00 (TARIC code 3802 10 00 20) originating in the People's Republic of China.
2. The amount of the definitive anti-dumping duty shall be EUR 323 per tonne (net weight).
3. 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 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code⁶, the amount of 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.

Article 2

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

Article 3

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

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

Done at Brussels,

For the Council
The President

⁶ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 214/2007 (OJ L 62, 1.3.2007, p. 6)