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⁽¹⁾ Text with EEA relevance

I

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

REGULATIONS

COUNCIL REGULATION (EC) No 925/2009

of 24 September 2009

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾ (the 'basic Regulation'), and in particular Article 9 thereof,

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

Whereas:

1. PROCEDURE

1.1. Provisional measures

- (1) The Commission, by Regulation (EC) No 287/2009⁽²⁾ (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China (the 'PRC').
- (2) The proceeding was initiated following a complaint lodged by Eurométaux (the 'complainant') on behalf of producers representing a major proportion, in this case more than 25 %, of the total Community production of aluminium foil.
- (3) As set out in recital 13 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2007 to 30 June 2008 ('investigation period' or 'IP'). The examination of the trends for the assessment of injury covered the period from 1 January 2005 to the end of the investigation period (period considered).

1.2. Subsequent procedure

- (4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures (provisional disclosure), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.
- (5) After the imposition of the provisional anti-dumping measures, the Commission continued its investigation with regard to dumping, injury and Community interest aspects and carried out further analyses and verification visits of data contained in the questionnaire replies provided by some exporting producers and producers in the Community.
- (6) Five additional verification visits were carried out at the premises of the following Community producers:
 - Novelis UK Limited, Bridgnorth, United Kingdom,
 - Novelis Luxembourg, Dudelange, Grand Duché de Luxembourg,
 - Novelis Foil France S.A.S., Rugles, France,
 - Grupa Kęty SA, Kęty, Poland,
 - Hydro Aluminium Inasa, S.A., Irurtzun, Spain.
- (7) One additional visit was carried out at the premises of the following company related to exporting producers:
 - Alcoa Transformación de Productos, S.L., Alicante, Spain.
- (8) Three additional visits were carried out at the premises of the following exporting producers:
 - Alcoa (Shanghai) Aluminium Products Co., Ltd, Shanghai and Alcoa (Bohai) Aluminium Industries Co., Ltd, Hebei,

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 94, 8.4.2009, p. 17.

— Shandong Loften Aluminium Foil Co., Ltd, Shandong,

— Zhenjiang Dinsheng Aluminium Industries Joint-Stock Limited Company, Jiangsu.

- (9) A visit was also carried out at the Shanghai Futures Exchange, Shanghai.
- (10) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures on imports of certain aluminium foil originating in Armenia, Brazil and the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.
- (11) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings have been modified accordingly.

1.3. Scope of the investigation

- (12) The Brazilian exporting producer argued that Russia should have been included in the scope of the investigation since, during the entire period considered import volumes and market shares from Russia were significant and even higher than the ones from Armenia. Furthermore, the Brazilian exporting producer alleged that import prices from Russia were at the same level as the prices of imports of the countries concerned and that there was prima facie evidence of dumping at the time of the initiation.
- (13) When analysing the complaint, the Commission came to the conclusion that there was no sufficient prima facie evidence of dumping with regard to Russia. Consequently, the non-inclusion of Russia in the complaint was considered warranted. In the absence of evidence of dumping, it is irrelevant whether import volumes and/or market shares of imports originating in Russia were indeed higher than the ones of one or more countries included in the scope of the investigation. The claim of the Brazilian exporting producer was therefore rejected.

2. PRODUCT CONCERNED AND LIKE PRODUCT

- (14) The downstream industry in the Community, i.e. the 'rewinders', reiterated that the product concerned should also include consumer rolls, i.e. aluminium foil weighing less than 10 kg, because if definitive measures were imposed solely on imports of aluminium foil weighing over 10 kg (jumbo reels), this could give rise

to an increase of exports of consumer rolls from the countries concerned at low prices. It was also argued that both products have basically the same characteristics, the only difference being the packaging.

- (15) In recitals 15 to 19 of the provisional Regulation it was concluded that consumer rolls and jumbo reels are different products in terms of physical characteristics and basic end-uses. The subsequent investigation confirmed these findings. Indeed, the physical differences between consumer rolls and jumbo reels go beyond the mere difference in packaging, as the product concerned has to be rewound before being repacked and resold to the final customer. It was also established that customers, sales channels and basic applications are different. It was therefore not considered appropriate to include consumer rolls in the product scope of the present investigation.
- (16) The allegation that imports of jumbo reels may be substituted by imports of consumer rolls is addressed in recitals 97 to 99.
- (17) In the absence of any other comments concerning the product concerned and the like product, the findings as set out in recitals 14 to 21 of the provisional Regulation are hereby confirmed.

3. MARKET ECONOMY TREATMENT (MET) AND ANALOGUE COUNTRY

3.1. Armenia

- (18) The sole exporting producer in Armenia contested the provisional findings as set out in recitals 24 to 31 of the provisional Regulation.
- (19) The company first stated that the Commission erred in considering that a company in Armenia would need to apply for MET, as in its opinion, Armenia was a market economy country under the terms of the WTO Anti-Dumping Agreement and that the inclusion of Armenia in the footnote to Article 2(7)(a) of the basic anti-dumping Regulation should be removed.
- (20) However as set out in recital 25 of the provisional Regulation, Armenia is specifically mentioned in the footnote to Article 2(7)(a) of the basic Regulation as being included among non-market economy countries. The treatment of exporting producers in non-market economy countries which are WTO members is set out in Article 2(7)(b). These provisions have been fully complied with in the current investigation. This argument was therefore again dismissed.

(21) The company then stated that it met the second MET criterion, which was provisionally found not to have been met in recitals 27 to 29 of the provisional Regulation. The company based its argument on the submission of the accounts for 2007 which had not been provided during the verification visit of the company prior to provisional measures being imposed. The company again stated that it did not believe that the second MET criterion demanded that the accounts of the company be prepared in line with international accounting standards and that Armenian national accounting standards were sufficient, as Armenia is a member of the WTO.

(22) This argument was rejected. The company is obliged to have one clear set of accounts in line with international accounting standards. The failures noted by the auditors for both the 2006 and 2007 financial years were such as to clearly show that their accounts were not prepared in line with IAS and therefore the company could not prove that the second MET criterion was met. The MET criteria actually point to international standards and WTO membership does not change this. Furthermore, WTO membership in itself is not a guarantee of the prevalence of market conditions in the economic activity of one company.

(23) The company further stated that it met the third MET criterion, which was provisionally found not to have been met in recital 30 of the provisional Regulation on grounds relating to the sale of shares by the Armenian State and also the State's granting of land to the company for free. The company stated that the issue of the land being given to the company for free was not significant and should not be cumulated with the other issue regarding shares, which the company also considers not significant.

(24) This argument was also rejected. The fact that the land was obtained for zero cost, and can be sold with the payment of its cadastral value to the State (which is significantly lower than its market value) makes that land an important and valuable asset for the company which does not appear in the company's accounts and therefore has a significant effect on the company's costs. In addition, the company failed to prove that the distortion caused by the sale of shares at a lower price than their nominal one was insignificant.

(25) It can therefore be concluded that the two issues concerning compliance with the third MET criterion point to a distortion carried over from a non-market economy situation.

(26) The finding that this company should be denied MET is confirmed.

3.2. The PRC

(27) One exporting producer in the PRC contested the provisional findings as set out in recital 32 of the provisional Regulation. They reiterated that the Commission should not have compared the price as quoted by the Shanghai Futures Exchange (the 'SHFE') and the London Metal Exchange (the 'LME') by taking both on a VAT-exclusive basis, and that without this adjustment the prices would be similar during the investigation period.

(28) This argument was rejected for the reasons as set out in recital 38 of the provisional Regulation as the price should be compared on a like-for-like basis. Chinese producers of the product concerned pay VAT on their purchases of primary aluminium. Most of this VAT is then reclaimed on the sale of the finished product, whether sold domestically (in which case all is reclaimable) or for export (in which case the Chinese government restricts the reclaim of VAT at certain rates for certain goods at certain times). The inclusion of a small amount of non-reclaimable VAT is not such as to have a substantial effect on the above conclusions.

(29) It should also be noted that the significant difference in price between the LME and the SHFE during the IP shows the state interference in the price setting mechanism for primary aluminium, a finding of the provisional Regulation (recital 32) which was confirmed following the Commission services visit to the SHFE.

(30) This visit confirmed that the State has a primary role in the price setting on the SHFE and interferes with the price setting mechanisms, in particular given its position as both a seller of primary aluminium and a purchaser via the State Reserve Bureau and other State bodies. In addition, the State sets daily price limits via the rules of the SHFE which have been approved by the state Regulator, the China Securities Regulatory Commission (the 'CSRC'). It is also clear that the SHFE is a closed exchange for Chinese-registered companies and Chinese citizens and that there is no effective arbitrage between the SHFE and international exchanges outside China. This is evidenced in the price significant differences between the SHFE and the international exchanges such as the LME. Furthermore where a SHFE futures contract ends in physical delivery, this can only take place in an approved warehouse within the PRC, unlike international exchanges where delivery can take place worldwide. These delivery rules ensure that the domestic Chinese market remains insulated from the worldwide market and that the price distortion benefits only Chinese companies.

- (31) The provisional findings as set out in recitals 22 to 40 are therefore confirmed.

3.3. The PRC and Armenia: Individual treatment (IT)

- (32) In the absence of comments, the provisional findings as regards the exporting producer in Armenia as set out in recital 42 of the provisional Regulation are confirmed.

- (33) One exporting producer in China contested the provisional finding as set out in recital 42 of the provisional Regulation that they should be denied IT. This denial was due to the company being majority State owned. The company stated that this should be reversed as the State ownership was through a company quoted on the Hong Kong Stock Exchange and there were no State officials on the Board of Directors.

- (34) These arguments were rejected. The company is majority State owned and therefore the Board of Directors, which runs the company, is answerable to the ultimate shareholder — the State. The company was also unable to prove, and provided no evidence to show, that the State could not interfere in the business decisions of the company through the decisions of their Board of Directors.

- (35) The provisional findings as set out in recitals 41 and 42 of the provisional Regulation are therefore confirmed.

3.4. Analogue country

- (36) In the absence of comments, the provisional findings that Turkey is an appropriate and reasonable analogue country, as set out in recitals 43 to 52 of the provisional Regulation are confirmed.

4. DUMPING

4.1. Brazil

- (37) In the absence of comments, the provisional findings as set out in recitals 53 to 68 of the provisional Regulation are confirmed.

4.2. Armenia

- (38) The sole exporting producer from Armenia contested the provisional findings as set out in recitals 69 to 77 of the

provisional Regulation. The company stated that deductions made under Article 2(9) of the basic Regulation for selling, general and administrative (SG&A) expenses and a reasonable amount of profit for sales through related companies were not justified.

- (39) On examination, it was found that certain sales were not made through related importers in the Community. In these circumstances, adjustments under Article 2(9) of the basic Regulation were not warranted and the calculations were revised accordingly.

4.3. PRC

- (40) In the absence of comments, the provisional findings as set out in recitals 78 to 82 of the provisional Regulation are confirmed.

- (41) To calculate the residual dumping margin for China, the provisional methodology as set out in recital 83 of the provisional Regulation was modified, such that the margin was calculated based on a weighted average of (i) the overall dumping margin calculated for the company to whom no MET and IT was granted, and (ii) the highest dumped transaction of that company applied to the export prices found in Comext (being representative of the non-cooperating Chinese exporters). On this basis, the countrywide level of dumping was established at 47,0 % of the cif Community frontier price, duty unpaid.

4.4. Definitive dumping margins

Country	Company	Definitive dumping margin
Brazil	Companhia Brasileira de Aluminio	27,6 %
	All other companies	27,6 %
PRC	Alcoa Bohai and Alcoa Shanghai	25,6 %
	Shandong Loften	33,7 %
	Zhenjiang Dingsheng	37,4 %
	All other companies	47,0 %
Armenia	RUSAL Armenal	33,4 %
	All other companies	33,4 %

5. INJURY

5.1. Community production and definition of the Community industry

(42) As mentioned in recital 87 of the provisional Regulation, the complaint was lodged by Eurométaux on behalf of four Community producers which cooperated in the investigation. One further producer supported the complaint and one producer opposed it. The five producers that were complainants or supported the complaint are therefore deemed to constitute the Community Industry (the 'CI') within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

(43) In the absence of any comments concerning the production and definition of the Community industry, recitals 86 to 87 of the provisional Regulation are hereby confirmed.

5.2. Community consumption

(44) The Armenian exporting producer contested the determination of the Community consumption by claiming that sales of the CI on the captive market should have been taken into consideration. The same company also claimed that the estimated data included in the complaint were not a reliable basis to establish consumption in the Community and made reference to an independent market study.

(45) As far as the alleged captive use is concerned, it was found that there was only a very limited volume destined for the captive market during the IP. This concerned only one Community producer for sales during the first year of the period considered. It was therefore considered that this had only a negligible, if any, impact at all on the overall situation.

(46) As far as the determination of the total Community consumption is concerned, it was considered that the methodology used at provisional stage was reasonable and has given a fairly complete picture of the actual situation. The Armenian exporting producer did not explain in what way the methodology used by the Community institutions was not reasonable and would, as a consequence, lead to unreliable results. The study quoted by the Armenian Exporting producer was not found to be directly relevant as it referred to different types of aluminium foil and included data for non-EU companies which could not be verified. Furthermore, the provisional findings for the total Community consumption included in Table 1 under recital 90 of the provisional Regulation were confirmed by other interested parties, including importers unrelated to the CI.

(47) On the basis of the above, it was concluded that the total Community consumption as established in the provisional Regulation gives a reliable picture of the actual situation.

(48) In the absence of any other comments concerning Community consumption, recitals 88 to 90 of the provisional Regulation are hereby confirmed.

5.3. Cumulative assessment of the effects of the imports concerned

(49) Subsequent to the provisional disclosure, the Brazilian exporting producer reiterated that the product originating in Brazil meets higher quality standards, such as a minimum tensile strength and elongation requirements allowing for a wider range of applications and sales to a wider range of customers compared to the product exported by the other two countries concerned. Thus, it was alleged that there were different market segments for aluminium foil depending on the quality of the product and that only the Brazilian product meets the standards to be sold in the high end market of branded products.

(50) The Brazilian exporter also reiterated that sales channels and distribution methods for its products were different. In particular, it was argued that the Brazilian exports were mainly made via traders while the Armenian and Chinese exporting producers sell directly to the rewinders in the Community. It was also claimed that the Brazilian exporter has long standing and stable business relationships with specific customers in the Community, while the exporters from Armenia and the PRC have only just recently entered the Community market.

(51) Finally, the same exporting producer argued that trends concerning import volumes and market shares were different from those of the other exporting countries which would show that the conditions of competition were indeed different.

(52) With regard to the first allegation, i.e. the difference in quality standards, the investigation revealed that despite quality differences, the aluminium foil market was mainly price driven and quality differences played only a minor role in the choice of a supplier. These findings were confirmed by the cooperating importers and users concerned. Thus, the unsubstantiated allegation of the Brazilian exporting producer, i.e. that the aluminium foil market was divided into several segments according to quality differences of the product, could not be confirmed during the present investigation and the claim made in this regard had to be rejected.

- (53) As far as the alleged different sales channels and distribution methods are concerned, it is noted that the Brazilian exporting producer does not contest that it sold its products both via an unrelated trader and directly to rewinders in the Community. On this basis, it was considered that sales channels were the same. The fact that the Brazilian exporter would have built up long standing business relations during the past years does not preclude, as such, those products being under the same conditions of competition with products of competitors newly entering a market. Indeed, the exporting producer did not claim or show that its customers would not switch to other suppliers should they consider it suitable. Therefore, the fact, that the Brazilian exporter has a long presence on the Community market does not allow the conclusion that its products are in different conditions of competition than the products imported from Armenia and the PRC. The claim made in this regard was consequently rejected.
- (54) Finally, regarding different import trends, the Brazilian exporting producer did not submit any additional information or evidence and the provisional findings as set out in recital 93 are thus hereby confirmed.
- (55) Subsequent to the provisional disclosure, the Armenian exporting producer argued that Armenian imports should be decumulated for the purpose of the injury analysis given the low import volumes, its low market share and the flat import trends as well as the allegedly significant quality differences between the product exported from Armenia and the ones exported from Brazil and the PRC.
- (56) This claim could not be accepted because it was found that all conditions for cumulation as set out in Article 3(4) of the basic Regulation were met:
- as provisionally established and as confirmed above in recitals 38 to 39, the dumping margin established for Armenia was above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation,
 - the volume of imports from Armenia was not negligible in the sense of Article 5(7) of the basic Regulation, i.e. its market shares attained 5,26 % as outlined in recital 96 (Table 4) of the provisional Regulation. It was also found that imports from Armenia grew significantly from 2006 to the end of the IP despite the re-entry of imports from the PRC and the significant imports from Brazil during the period considered,
 - with regard to the conditions of competition between the imported products from the countries concerned and, in particular, with regard to the arguments made in relation to significant quality differences between the products imported, as set out above in recital 52, it was found that the products from Armenia have similar basic physical and technical characteristics and were used in the same basic applications regardless of their specific quality. It is also noted that this exporting producer stated its intention to shift production to even higher quality converter foils which indicates that the argument concerning the allegedly bad quality of products produced may be exaggerated.
- (57) The claims made in this regard by the Armenian exporting producer were therefore rejected.
- (58) In the absence of any other comments made in relation to the cumulative assessment of the effects of the imports concerned in accordance with Article 3(4) of the basic Regulation, the provisional conclusions as set out in recitals 91 to 94 of the provisional Regulation are herewith confirmed.
- #### 5.4. Imports from the countries concerned
- ##### 5.4.1. Volume and market share of the countries concerned
- (59) In the absence of any comments with regard to the imports from the countries concerned, the findings as set out in recitals 95 and 96 of the provisional Regulation are herewith confirmed.
- ##### 5.4.2. Prices
- (60) In the absence of any comments with regard to the prices of the imports concerned, the findings as set out in recital 97 of the provisional Regulation are herewith confirmed.
- ##### 5.4.3. Price undercutting
- (61) The exporting producer in Brazil contested the methodology used to calculate the undercutting margin applicable to it. In this regard, the exporting producer claimed that the calculation of the undercutting margins was not made on the same level of trade. Thus, it was claimed that export sales from Brazil were mainly made to an unrelated importer which resells the product to rewinders whereas the CI's sales were made directly to the rewinders. Therefore, it was claimed that SG&A and profit of the trader should have been added to the export price. The investigation has revealed that contrary to what was alleged by the Brazilian exporting producer, exports sales were not mainly made to an unrelated importer as over 70 % of its exports sales were made directly to the rewinders. Likewise, the investigation has revealed that the CI sold the product concerned predominantly to rewinders, albeit some sales were made to traders. Therefore, it was decided, also in order to ensure that the comparison was nevertheless made on the same level of trade, to exclude sales made to the trader, and base the calculation of the price undercutting solely on direct sales to rewinders. Since these sales represented more than 70 % of the exporting producer's total sales to the Community, this was considered as representative.

- (62) Another argument put forward by the same exporting producer in Brazil was that an adjustment taking into consideration quality differences between the imported product and the CI product should have been made. However, the investigation clearly showed that the issue of quality is not a determining factor, as the end user choice is more determined by the price and not by eventual differences in quality (e.g. thickness of the foil).
- (63) On the basis of the above, the weighted average price undercutting, expressed as a percentage of the CI's sales prices to independent customers on an ex-works level, was 9,6 % for Brazil.
- (64) In the absence of any other comments with regard to the undercutting, the findings as set out in recitals 98 to 100 of the provisional Regulation are herewith confirmed.

5.5. Situation of the Community industry

- (65) As mentioned in recital 42, the injury factors were determined on the basis of the verified information of five Community producers. A sixth Community producer submitted a questionnaire reply after the provisional determination which could, however, no longer be verified and was therefore not taken into consideration in the definitive determination. Following the completion of all on-the-spot verification visits, some of the injury factors had to be revised on the basis of the evidence found in the visited companies. Therefore, in accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the CI and the evaluation of all economic factors having a bearing on the state of the CI during the period considered had to be revised accordingly.

5.5.1. Production, capacity and capacity utilisation

Table 1: Production, capacity and capacity utilisation

	2005	2006	2007	IP
Production in tonnes	50 952	48 467	40 071	32 754
Production (index)	100	95	79	64
Production capacity in tonnes	59 400	59 400	59 400	59 400
Production capacity (index)	100	100	100	100
Capacity utilisation	86 %	81 %	67 %	55 %
Capacity utilisation (index)	100	94	79	64

- (66) As can be seen from the table above, production volume from the CI still showed a clearly negative trend between 2005 and the IP. As far as the overall production capacity is concerned, the definitive findings confirmed the decrease of the capacity utilisation during the period considered.

5.5.2. Sales volume, market shares, growth and average unit price in the EC

- (67) The table below shows the CI performance in relation to its sales to independent customers in the Community.

Table 2: Sales volume, market share, prices and average unit prices in the Community

	2005	2006	2007	IP
Sales volume (tonnes)	43 661	45 191	37 207	30 310
Sales volume (index)	100	104	85	70
Market Share	48 %	53 %	34 %	33 %
Unit prices in EUR/tonne	2 566	3 045	3 219	3 068
Unit prices (index)	100	119	125	120

- (68) As provisionally established, while Community consumption increased by 4 % during the period considered, the CI's sales volume decreased by 30 %, i.e. the CI could not benefit from the increased consumption. Consequently, the CI's market share decreased from 48 % in 2005 to 33 % in the IP.
- (69) Thus, as far as the CI performance in relation to its sales to independent customers in the Community is concerned, the definitive findings did not significantly change the situation provisionally found.

5.5.3. Stocks

- (70) The figures below represent the volume of stocks at the end of each period.

Table 3: Stocks

	2005	2006	2007	IP
Stocks in tonnes	1 789	1 711	2 148	2 355
Stocks (index)	100	96	120	132

- (71) As mentioned in recital 107 of the provisional Regulation, the investigation revealed that stocks cannot be considered as a meaningful injury factor since the vast majority of production is made in response to orders. Therefore, the trends on stocks are given for information. Although the definitive findings now show a significant increase of 32 % of stock levels, this was found to be due to a spot light stock by one company and therefore not representative of any trend.

5.5.4. Investments and ability to raise capital

Table 4: Investments

	2005	2006	2007	IP
Investments (EUR)	7 090 015	807 899	1 355 430	3 998 397
Investments (index)	100	11	19	56

- (72) Investment of the CI decreased significantly; i.e. the trend established in the provisional Regulation in recital 108 is confirmed. In the absence of any significant change and comments with regard to investments made by the CI between 2005 and the IP, the findings as set out in recital 108 of the provisional Regulation are therefore herewith confirmed.

5.5.5. Profitability, return on investment and cash flow

Table 5: Profitability, return on investment and cash flow

	2005	2006	2007	IP
Profitability on EC sales	- 2,8 %	- 2,6 %	0,2 %	- 0,1 %
Return on total investments	- 43,7 %	- 439,1 %	19,3 %	- 1,3 %
Cash Flow	2 %	1 %	4 %	5 %

- (73) The table above shows that the profitability of the CI has slightly improved during the period considered, albeit remaining negative in the IP and in particular well below the target profit of 5 %. As shown in Tables 1 and 2 above, the investigation revealed that the deterioration of the CI was mainly translated in a significant decrease of the CI's production volume and sales volume. This indicates that the CI, faced with dumped imports, has lost sales volumes and market shares in an effort to eliminate losses. In conclusion, despite the CI achieving marginal profits in 2007, it again made small losses in the IP, and therefore, the CI can be regarded as having suffered material injury. The revised findings on profitability did not alter the provisional conclusions in this respect and the definitive findings do not detract from the conclusion that overall profitability remained very low, if not negative despite the fact that consumption increased substantially in 2007 and during the IP.
- (74) The return on investment was recalculated on the basis of the verified data from the CI using the same methodology as described in recital 110 of the provisional Regulation. As a result, this indicator was found to be positive in the year 2007, thus reflecting the small profit made by the CI during the same period.
- (75) As far as cash flow is concerned, the definitive findings were likewise revised on the basis of the verified data from the CI. This indicator confirms that the CI has tried to respond to the surge of dumped imports from the countries concerned by maintaining sales prices at the highest possible levels to the detriment of sales volumes and market shares.

5.5.6. Employment, productivity and wages

Table 6: Employment, productivity and wages

	2005	2006	2007	IP
Number of employees	482	460	386	343
Number of employees (Index)	100	95	80	71
Employment cost	13 618 746	13 031 854	10 882 109	9 642 041
Employment cost (index)	100	96	80	71
Average labour costs	28 226	28 359	28 195	28 122
Average labour costs (index)	100	100	100	100
Productivity (Ton/employee)	106	105	104	96
Productivity (index)	100	100	98	90

- (76) After revision of the data, it can be concluded that the trends with regard to employment, productivity and wages of CI between 2005 and the IP remained broadly the same as the ones already outlined in the provisional Regulation. In the absence of any significant change and comments, the findings as set out in recital 112 of the provisional Regulation are therefore herewith confirmed.

5.5.7. Magnitude of the dumping margin

- (77) In the absence of any comments received with regard to the above, the findings as set out in recital 113 of the provisional Regulation are herewith confirmed.

5.5.8. Recovery from past dumping

- (78) In the absence of any comments received with regard to the above, the findings as set out in recital 114 of the provisional Regulation are herewith confirmed.

5.5.9. Growth

- (79) In the absence of any comments received with regard to the above, the findings as set out in recital 115 of the provisional Regulation are herewith confirmed.

5.6. Conclusion on injury

- (80) In the absence of any other comments concerning the situation of the Community industry, the conclusion that the Community industry suffered material injury, as set out in recitals 116 to 118 of the provisional Regulation, is herewith confirmed.

6. CAUSATION

6.1. Effects of the dumped imports

- (81) The Armenian exporting producer claimed that the market share of the Armenian imports during the period considered was not, on average, enough as to cause the injury suffered by the Community industry. One of the exporting producers in the PRC claimed that imports from the PRC did not cause any injury because the CI's profitability showed an increasing trend in parallel to an increase in imports from the PRC.
- (82) As mentioned in recitals 91 to 94 of the provisional Regulation and as confirmed above in recitals 49 to 58, the conditions for the cumulation of imports from all countries under investigation in order to assess the impact of the dumped imports on the situation of the Community industry in accordance of Article 3(4) of the Basic Regulation were met. Consequently, an individual-country analysis of the imports from the countries concerned was considered inappropriate and the above claims had to be rejected.

- (83) As far as the development of the CI profitability is concerned, the revised figures did not dramatically change the injury picture as a whole. The CI saw its losses decrease between 2005 and 2006 while in 2007 the industry was marginally profitable (0,2 %). This profit level decreased in the IP and turned into a small loss of – 0,1 %.

- (84) It is also recalled that, as concluded in recital 121 of the provisional Regulation and recital 73, the deterioration of the CI mainly translated into a significant decrease of the CI's production volume and sales volume. This indicates that the CI, faced with dumped imports, lost sales volumes and market share in an effort to eliminate losses. In conclusion, despite the CI achieving small profits in 2007, it is confirmed that the CI has suffered material injury as the revised findings on profitability showed losses in the IP. Since the deterioration of the situation of the CI coincided with the increase in imports from the countries concerned, the conclusions set out in recital 123 of the provisional Regulation are herewith confirmed.

- (85) It is therefore concluded that the pressure exerted by the dumped imports, which significantly increased their volume and market share from 2006 onwards played a determining role in the injury suffered by the Community industry. The above claims are therefore rejected.

6.2. Effects of other factors

6.2.1. Imports originating in third countries other than the PRC, Armenia and Brazil

- (86) In the absence of any comments concerning imports originating in third countries other than the countries concerned, the conclusions reached in recitals 124 to 126 of the provisional Regulation are herewith confirmed.

6.2.2. Exports by the Community industry

- (87) In the absence of any comments concerning the export performance of the CI, the conclusions reached in recitals 127 and 128 of the provisional Regulation are herewith confirmed.

6.2.3. Imports by the Community industry

- (88) One exporting producer, by referring to certain market information, claimed that the volume imported by one of the Community producers from its related Chinese company was significant.

- (89) However, these allegations could not be confirmed since the verified figures of the relevant Chinese exporting producer and its related Community importer have confirmed the provisional conclusions reflected in recital 129 of the provisional Regulation.

6.2.4. *Self-inflicted injury*

- (90) Some interested parties reiterated that the Community producers would be more interested in the more lucrative Aluminium Converter Foil (ACF) market. It was claimed that ACF and the product concerned (also called Aluminium Household Foil) are produced on the same production lines and a switch between products is therefore relatively easy. Therefore, the decrease of the CI's production volume of the product concerned is due to the increase of the ACF production by the CI rather than the increase of imports from the countries concerned. It was argued that to the contrary, the increase of imports from the countries concerned was due to the insufficient supply of the CI on the Community market caused by the increased production of ACF. The findings in recital 132 of the provisional Regulation were criticised as they were based on the figures related to only one Community ACF producer.

- (91) The investigation has confirmed that the production volumes of ACF of the CI did not increase significantly. In fact, the further investigation has shown that none of the complainant and supporting Community producers shifted a significant part of its total production volume to ACF and therefore, the allegations made in this regard had to be rejected. On this basis it could not be concluded that substantial production capacities were indeed shifted from the product concerned to ACF. In fact, different types of foils can be produced by the same rolling machines and therefore, it can also be concluded that, should the profitability of the product concerned be restored under conditions of fair trade, more capacity may be made available by the CI to produce the product concerned. This therefore confirms the provisional conclusions reflected in recital 132 of the provisional Regulation.

6.2.5. *Development of consumption in the Community market*

- (92) In the absence of any comments concerning consumption in the Community market, the conclusions reached in recitals 133 and 134 of the provisional Regulation are hereby confirmed.

6.2.6. *Development of the CI's cost*

- (93) One exporting producer claimed that the CI had been able to increase its profit margins despite the increase in

the costs of raw materials, which contradicts the provisional conclusion reflected in recital 136 of the provisional Regulation, i.e. that the CI could not increase its sales prices at the same pace as the increase in the costs for raw materials. This claim had to be rejected. Firstly, even though the investigation finally revealed a slight improvement in the profitability for 2007, profit growth did not follow the same trend as the increased Community consumption. Secondly, the increase in costs when passed on to customers resulted in significant loss of sales volumes and market share, given the existence of dumped imports on the market which undercut the prices of the CI. The investigation also revealed that the decrease in production volume was linked to a surge of dumped imports whilst production capacities remained stable. As a result, production costs were allocated to lower production volumes, which increased the unit costs.

6.3. **Conclusion on causation**

- (94) In the absence of other comments in this respect, the conclusions in recitals 137 and 138 of the provisional Regulation are hereby confirmed.

7. **COMMUNITY INTEREST**

7.1. **Interest of the Community industry**

- (95) In the absence of any comments concerning the interest of the Community industry, the conclusions in recitals 142 to 145 of the provisional Regulation are hereby confirmed.

7.2. **Interest of importers**

- (96) In the absence of any comments concerning the interest of the importers, the findings set out in recitals 146 to 149 of the provisional Regulation are hereby confirmed.

7.3. **Interest of users**

- (97) The rewinders, which are the main users of the product concerned in the European Community, represented by the Aluminium Foil Association claimed that:

— contrary to the provisional findings in recital 153 of the provisional Regulation, the cost of transport of consumer reels from China would represent only a small percentage of the value of the goods (approximately 1 % of the sales price) and there would be almost no difference with the transport cost of the product concerned (approximately 0,2 % of the sales price),

- the large product mix offered by Community rewinders would not be an advantage as retailers would also be able to source the product concerned in large quantities through separate contracts from importers/traders of consumer reels,

- contrary to the provisional findings in recital 154 of the provisional Regulation, the production of ACF would remain the priority of the Community producers which are not interested in the production of the product concerned. In the event that definitive measures would be imposed, the supply of the product concerned in the Community would not be sufficient to meet the rewinders needs,

- contrary to the provisional findings in recital 163 of the provisional Regulation, definitive measures, if any, should also apply on products weighing less than 10 kg. Otherwise, these measures would lead to a surge of dumped imports of consumer reels, especially from China, with severe negative consequences for the Community rewinders, leading to a loss of 4 000 jobs in the Community. This view was supported by exporting producers from two countries concerned.

(98) The evidence submitted with regard to transport costs was considered reliable and could therefore be accepted. However, the risk that imports of the product concerned may be substituted by imports of the downstream product is not considered, in itself, a reason not to impose anti-dumping measures. Indeed, no evidence has been presented or obtained to the effect that such imports would increase in significant quantities and at prices undercutting those from the rewinders in the Community. Unfair trading practices of exporting producers of the downstream product would have to be examined separately on the basis of sufficient *prima facie* evidence. It is furthermore considered that a switch to the downstream products in the PRC in larger quantities would very likely take some time as it would require new investments in machinery and the establishment of new sales channels. Therefore, any effects will only be felt in the medium term. As far as the number of jobs in the downstream industry in the Community is concerned, this claim was not substantiated. The figures reported were therefore not regarded as reliable. On this basis, the provisional conclusions laid down in recitals 153 to 162 of the provisional Regulation are herewith confirmed.

(99) In the absence of any other comments with regard to the Community interest, the findings set out in recitals 150

to 163 of the provisional Regulation are hereby confirmed.

8. DEFINITIVE ANTI-DUMPING MEASURES

8.1. Injury elimination level

(100) One exporting producer claimed that the calculation of the injury elimination level should be based on the cost of production rather than the selling price of the product concerned. The same exporter claimed that the target profit used to calculate the injury elimination level was too high and should have been 1 % which would be more in line with the current market circumstances, in particular the economic downturn. Furthermore, this exporting producer reiterated that adjustments should have been made for differences in quality between the product exported and the one produced and sold by the CI on the Community market.

(101) As far as the first claim is concerned, i.e. the injury elimination level should be established on the basis of the cost of production, it is noted that using such methodology does not have any impact on the results and was therefore considered irrelevant. Regarding the level of the target profit, as mentioned in recital 165 of the provisional Regulation, a very conservative pre-tax profit margin for producers of 5 % was used. This was also proposed in the complaint and used in the previous investigation. However, the proposed target profit was not at a level which would allow the CI to maintain production capacities and new investments and had therefore to be rejected. Concerning the claim regarding the quality of the product, and as already outlined in recital 52 it was found that all product types have similar basic physical and technical characteristics and were used in the same basic applications regardless of their specific quality. In the absence of any evidence supporting these allegations, the provisional conclusions laid down in recitals 164 to 166 of the provisional Regulation are herewith confirmed.

(102) Another exporting producer argued that the injury elimination level should aim to establish sales prices that offset an actual loss. This had to be rejected, since the injury elimination level is the price level which the Community industry could reasonably achieve in the absence of dumped imports.

(103) The same exporting producer argued further that the target profit should be set at the level of the actual profit realised at the beginning of the period considered, in this case a loss. On this basis, the underselling margin would be *de minimis*.

- (104) This argument had to be rejected on the ground that the CI was still affected by a previous situation of dumping from Russia and the PRC as well as dumped imports originating from Brazil. Therefore, it was considered that a profit margin of 5 % would be the profit margin that could reasonably be achieved by an industry of this type in the sector under normal conditions of competition.
- (105) As mentioned above in recital 61, in order to ensure a comparison on the same level of trade, sales of the exporting producer in Brazil to its unrelated trader were excluded when calculating the price undercutting and consequently also the injury elimination level.
- (106) In the absence of any other comments concerning the injury elimination level, recitals 164 to 166 of the provisional Regulation are hereby confirmed.
- (107) The definitive countrywide injury margin for the PRC was calculated on the basis of the weighted average of (i) the injury margin of a company in the PRC to whom MET and IT were refused and (ii) the highest injury margin of that company applied to the export prices taken from Eurostat data (being representative of the non-cooperating Chinese exporters). On this basis, the countrywide injury margin was established at 30,0 % of the cif Community frontier price, duty unpaid.

8.2. Definitive measures

- (108) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level sufficient to eliminate the injury caused by the dumped imports without exceeding the dumping margin found.
- (109) The following rates of definitive anti-dumping duties are proposed:

Country	Company	Definitive dumping margin	Definitive injury margin	Definitive anti-dumping duty
Brazil	Companhia Brasileira de Alumínio	27,6 %	17,6 %	17,6 %
	All other companies	27,6 %	17,6 %	17,6 %
PRC	Alcoa Bohai and Alcoa Shanghai	25,6 %	6,4 %	6,4 %
	Shandong Loften	33,7 %	20,3 %	20,3 %
	Zhenjiang Dingsheng	37,4 %	24,2 %	24,2 %
	All other companies	47,0 %	30,0 %	30,0 %
Armenia	RUSAL Armenal	33,4 %	13,4 %	13,4 %
	All other companies	33,4 %	13,4 %	13,4 %

- (110) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

- (111) Any claim requesting the application of this individual company anti-dumping duty rate (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

8.3. Definitive collection of provisional duties

- (112) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected to the extent of the amount of the definitive duties imposed. Where the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties shall be released.

8.4. Form of the measures

- (113) In the course of the investigation, the sole cooperating exporting producer in Armenia and the sole cooperating exporting producer in Brazil offered price undertakings in accordance with Article 8(1) of the basic Regulation.
- (114) Both offers were examined. The Brazilian exporter's offer eliminates the injurious effects of dumping and limits to a sufficient degree the risk of circumvention. With regard to the Armenian exporter's offer, given the complex structure of the company group and its complex sales channels, a high risk of cross-compensation exists with sales of the same product to the same customers but from different origins as well as sales of different products to the same customers from different sales companies in the same group. The Armenian exporter submitted a substantially revised undertaking offer after the deadline set out in Article 8(2) of the basic Regulation. It is noted that in addition to the fact that the revised offer was submitted after the deadline, it cannot be accepted for the following reason: although the company offered to sell only directly to the first independent customer in the EU, i.e. without including its two related companies in the sales channel, the investigation showed that the company sold other products to the same customers in the EU. Moreover, the company announced that it planned to produce and sell a new product type, namely ACF, to the EU. As it is possible

that this new product type could be sold to the same customers in the EU, even the revised offer cannot limit the risk of cross-compensation to an acceptable degree.

- (115) By Decision 2009/736/EC ⁽²⁾ the Commission has accepted the undertaking offer from Companhia Brasileira de Aluminio (CBA). The Council recognises that the undertaking offer eliminates the injurious effect of dumping and limits to a sufficient degree the risk of circumvention. The offer from Rusal Armenal is rejected for the reasons set out in recital 114 and due to the problems found with their accounts, as explained in recitals 21 and 22.

- (116) To further enable the Commission and the customs authorities to effectively monitor the compliance of CBA with the undertaking, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty is to be conditional on (i) the presentation of an undertaking invoice, which is a commercial invoice containing at least the elements listed and the declaration stipulated in Annex II; (ii) the fact that imported goods are manufactured, shipped and invoiced directly by CBA to the first independent customer in the Community and (iii) the fact that the goods declared and presented to the customs authorities correspond exactly with the description on the undertaking invoice. Where the above conditions are not met, the appropriate anti-dumping duty shall be incurred at the time of acceptance of the declaration for release into free circulation.

- (117) Whenever, pursuant to Article 8(9) of the basic Regulation, the Commission withdraws its acceptance of an undertaking following a breach by referring to particular transactions and declares the relevant undertaking invoices to be invalid, a customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation.

- (118) Importers should be aware that a customs debt may be incurred, as a normal trade risk, at the time of acceptance of the declaration for release into free circulation as described in recitals 116 and 117 even if an undertaking offered by the manufacturer from whom they were buying, directly or indirectly, had been accepted by the Commission.

- (119) Pursuant to Article 14(7) of the basic Regulation, customs authorities should inform the Commission immediately whenever indications of a violation of the undertaking are found.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, Office N-105 4/92, 1049 Brussels, BELGIUM.

⁽²⁾ See page 50 of this Official Journal.

- (120) For the reasons stated above, the undertaking offered by CBA is considered acceptable by the Commission and that offered by Armenal not acceptable. The companies concerned have been informed of the essential facts, considerations and obligations upon which acceptance and rejection were based.
- (121) In the event of a breach or withdrawal of the undertakings, or in the event of withdrawal of acceptance of the undertakings by the Commission, the anti-dumping duty which has been imposed by the Council in accordance with Article 9(4) shall automatically apply by means of Article 8(9) of the basic Regulation.

9. MONITORING

- (122) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures include the following:
- (123) The presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.
- (124) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met, an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rates and the consequent imposition of a countrywide duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg and currently falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 10), originating in Armenia, Brazil and the People's Republic of China (the 'PRC').

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

Country	Company	Anti-dumping duty	TARIC additional code
Armenia	Closed Joint Stock Company Rusal-Armenal	13,4 %	A943
	All other companies	13,4 %	A999
PRC	Alcoa (Shanghai) Aluminium Products Co., Ltd and Alcoa (Bohai) Aluminium Industries Co., Ltd	6,4 %	A944
	Shandong Loften Aluminium Foil Co., Ltd	20,3 %	A945
	Zhenjiang Dingsheng Aluminium Co., Ltd	24,2 %	A946
	All other companies	30,0 %	A999
Brazil	Companhia Brasileira de Aluminio	17,6 %	A947
	All other companies	17,6 %	A999

3. Notwithstanding the first paragraph, the definitive anti-dumping duty shall not apply for imports released for free circulation in accordance with Article 2.

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

5. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex I. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

Article 2

1. Imports declared for release into free circulation which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in Decision 2009/736/EC, as amended from time to time, shall be exempt from the anti-dumping duty imposed by Article 1, on condition that:

- they are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Community, and
- such imports are accompanied by an undertaking invoice which is a commercial invoice containing at least the elements and the declaration stipulated in Annex II to this Regulation, and
- the goods declared and presented to the customs authorities correspond exactly with the description on the undertaking invoice.

2. A customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation:

- whenever it is established, in respect of imports described in paragraph 1, that one or more of the conditions listed in that paragraph are not fulfilled, or
- when the Commission withdraws its acceptance of the undertaking pursuant to Article 8(9) of the basic Regulation in a regulation or decision which refers to particular transactions and declares the relevant undertaking invoices to be invalid.

Article 3

Amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 287/2009 on imports of aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg and falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 10), originating in Armenia, Brazil and the PRC shall be definitively collected at the rate of the definitive duty imposed pursuant to Article 1. The amounts secured in excess of the rates of the definitive anti-dumping duties shall be released.

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.

Done at Brussels, 24 September 2009.

For the Council
The President
M. OLOFSSON

ANNEX I

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(5):

1. The name and function of the official of the entity issuing the commercial invoice.
2. The following declaration: 'I, the undersigned, certify that the (volume) of aluminium foil sold for export to the European Community covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.'
3. Date and signature.

ANNEX II

The following elements shall be indicated in the commercial invoice accompanying the companies' sales to the Community of goods which are subject to the undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.
2. The name of the company issuing the commercial invoice.
3. The commercial invoice number.
4. The date of issue of the commercial invoice.
5. The TARIC additional code under which the goods on the invoice are to be customs-cleared at the Community frontier.
6. The exact description of the goods, including:
 - the product code number (PCN) used for the purpose of the undertaking,
 - plain language description of the goods corresponding to the PCN concerned,
 - the company product code number (CPC),
 - TARIC code,
 - quantity (to be given in tonnes).
7. The description of the terms of the sale, including:
 - price per tonnes,
 - the applicable payment terms,
 - the applicable delivery terms,
 - total discounts and rebates.
8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.
9. The name of the official of the company that has issued the commercial invoice and the following signed declaration:

I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the Undertaking offered by [COMPANY], and accepted by the European Commission through Decision 2009/736/EC (*). I declare that the information provided in this invoice is complete and correct.

(*) OJ L 262, 6.10.2009, p. 50.'

COUNCIL REGULATION (EC) No 926/2009**of 24 September 2009****imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾ (the basic Regulation) and in particular Articles 9 and 10 thereof,

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

Whereas:

A. PROCEDURE**1. Provisional measures**

- (1) On 9 July 2008, the Commission published a notice⁽²⁾ initiating an anti-dumping proceeding on imports into the Community of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China (the PRC). On 8 April 2009, the Commission, by Regulation (EC) No 289/2009⁽³⁾ (the provisional Regulation) imposed a provisional anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the PRC.
- (2) The proceeding was initiated following a complaint lodged by the Defence Committee of the Seamless Steel Tube Industry of the European Union (the complainant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of certain seamless pipes and tubes of iron or steel.
- (3) As set out in recital 13 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2007 to 30 June 2008 ('investigation period'

or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2005 to the end of the IP (period considered).

2. Subsequent procedure

- (4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures (provisional disclosure), several interested parties made written submissions making their views known on the provisional findings. The parties who so requested were also granted the opportunity to be heard.
- (5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. In particular, the Commission sent an additional questionnaire to the sampled Community producers to collect further information concerning the market developments and the evolution of the main injury indicators after the end of the IP. Additional verification visits were carried out after the imposition of the provisional measures at the premises of the following producers of certain seamless pipes and tubes in the EU:

— Vallourec & Mannesmann Deutschland GmbH, Düsseldorf, Germany,

— Vallourec & Mannesmann France, Boulogne-Billancourt, France,

— Tenaris-Dalmine SpA, Dalmine, Italy,

— Tubos Reunidos SA, Amurrio, Spain,

— Productos Tubulares SA, Valle de Trápaga, Spain,

— in addition, a verification visit was carried out at the premises of the complainant at Boulogne-Billancourt, France.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ C 174, 9.7.2008, p. 7.

⁽³⁾ OJ L 94, 8.4.2009, p. 48.

- (6) The Commission also conducted a further desk analysis of the questionnaire replies of all four sampled exporting producers, including in particular the verification of the transaction listing provided by the following exporters:

— Hubei Xinyegang Steel Co., Ltd,

— Hengyang Valin Steel Tube Co., Ltd,

— Shandong Luxing Steel Pipe Co. Ltd,

— Tianjin Pipe International Economic & Trading Corporation.

- (7) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty (final disclosure). They were also granted a period within which they could make representations subsequent to this disclosure.

- (8) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings were modified accordingly.

3. Sampling

- (9) In the absence of any comments concerning the sampling of exporting producers in the PRC and of Community producers, the provisional findings in recitals 11 to 12 of the provisional Regulation are hereby confirmed.

B. PRODUCT CONCERNED AND LIKE PRODUCT

- (10) The product concerned is certain seamless pipes and tubes, of iron or steel, of circular cross section, of an external diameter not exceeding 406,4 mm with a

Carbon Equivalent Value (CEV) not exceeding 0,86 according to the International Institute of Welding (IIW) formula and chemical analysis ⁽¹⁾, originating in the PRC (the product concerned) and currently falling within CN codes ex 7304 19 10, ex 7304 19 30, ex 7304 23 00, ex 7304 29 10, ex 7304 29 30, ex 7304 31 20, ex 7304 31 80, ex 7304 39 10, ex 7304 39 52, ex 7304 39 58, ex 7304 39 92, ex 7304 39 93, ex 7304 51 81, ex 7304 51 89, ex 7304 59 10, ex 7304 59 92 and ex 7304 59 93 ⁽²⁾.

- (11) After the publication of the provisional Regulation, a clerical mistake was found in the numbering of the Technical Report mentioned in the footnote of recital 14 of the provisional Regulation for the determination of the Carbon Equivalent Value (CEV). The correct reference is Technical Report, 1967, IIW doc. IX-555-67 published by the International Institute of Welding (IIW).

- (12) After provisional disclosure, the China Iron and Steel Association (CISA) claimed that the CN codes covering the product concerned were also covering a number of other products which would fall outside the scope of the investigation such as products with an outside diameter exceeding 406,4 mm or with a CEV exceeding 0,86 and, as a consequence, the import figures used in the investigation would be overstated. In this respect, it has to be noted that products with an outside diameter exceeding 406,4 mm or with a CEV exceeding 0,86 according to the IIW formula and chemical analysis are not concerned by these proceedings. Furthermore, no evidence was found at any of the sampled exporting producers that these products are produced in the PRC in significant quantities. Therefore, it has been concluded that there is no credible evidence regarding the import of any significant quantities of such Chinese products into the EC.

- (13) Following the final disclosure, CISA reiterated the claim that oil country tubular goods (OCTG) should be excluded from the definition of the product concerned and pointed out that other countries, including the USA, treat OCTG as belonging to a separate market for the purpose of anti-dumping investigations. Similar claims were also made by the Chinese government (Mofcom).

⁽¹⁾ The CEV shall be determined in accordance with Technical Report, 1967, IIW doc. IX-555-67, published by the International Institute of Welding (IIW).

⁽²⁾ As defined in Commission Regulation (EC) No 1031/2008 of 19 September 2008 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 291, 31.10.2008, p. 1). The product coverage is determined in combining the product description in Article 1(1) and the product description of the corresponding CN codes taken together.

(14) The abovementioned claims have been analysed in detail and it has been found that the different types of seamless pipes and tubes, including OCTG, included in the product definition share the same basic physical, chemical and technical characteristics, which means that they belong to the same product category. The fact that these different product types differ to a certain extent in their characteristics, cost and selling prices is normal. Moreover, the fact that other investigating authorities carry out investigations into OCTG only may well be due to the particularities of such investigations, i.e. the scope of the underlying complaint. Indeed, it was found that the US authorities did not have to investigate whether OCTG share the same basic characteristics as other seamless pipes and tubes. Furthermore, the Community industry provided evidence of the interchangeability between plain-end OCTG and other products subject to the investigation.

(15) It was also argued that in defining the product concerned undue importance was given to elements such as the wall thickness, external diameter, and CEV threshold, whilst no proper attention had been paid to technical properties such as high pressure and high corrosion resistance and to the existence of special American Petroleum Institute (API) standards for OCTG.

(16) First of all, it must be noted that since the wall thickness is not used in the definition of the scope of the investigation, the external diameter and the CEV threshold remain the most appropriate elements to identify the product concerned. The external diameter is also an element used in distinguishing the product for statistical and customs purposes. As regards the CEV threshold, it defines the level at which a product can be welded and the threshold is set at 0,86 in order to separate products which can easily be welded from those which can not. Secondly, information provided by the Community industry shows that OCTG, as other types of tubes, may have both high and low corrosion/pressure resistance. Thus neither the corrosion nor the pressure resistance could be used as a criterion in defining the product concerned. Thirdly, the special API standards exist as regards OCTG and line pipes because they are used in the petroleum sector. However, tubes used in other sectors are also subject to similar standards, although issued by other organisations (e.g. ASTM). As a result, the fact that standards are issued by one or the other organisation cannot be an element to define the product scope of an anti-dumping investigation. In conclusion, neither CISA nor Mofcom has submitted valid alternative elements to better define the product scope, nor have they ever proposed criteria that would be more appropriate to define the product concerned,

apart from the high corrosion/pressure resistance mentioned above. In addition, neither party proposed a different CEV level as a more appropriate threshold. Therefore, the claims on the definition of the product concerned are rejected.

(17) In view of the above, it is definitively concluded that the product concerned incorporates, inter alia, OCTG used for drilling, casing and tubing in the oil industry, and recitals 14 to 19 of the provisional Regulation are hereby definitively confirmed.

C. DUMPING

1. Market economy treatment (MET)

(18) In the absence of any comments, the content of recitals 20 to 27 of the provisional Regulation concerning MET findings is hereby definitively confirmed.

2. Individual treatment (IT)

(19) Further to provisional disclosure, the complainant claimed that one exporting producer provisionally granted IT should not have received IT, as among other things, it was allegedly majority state owned.

(20) Further investigation showed that the Chinese state did (indirectly) have some stake in the said company, but during the IP the state was a minority shareholder. However, the shareholding changed significantly at the end of 2008 (post-IP) when the Chinese state acquired more shares of the holding company and the state thus became a majority shareholder. Consequently, the Commission considered that the exporting producer in question would not fulfil the requirements of Article 9(5) of the basic Regulation and should not be granted IT.

(21) Following the final disclosure, the said company reiterated its argument that the increased shareholding of the Chinese state occurred after the IP. Moreover, the company argued that the increase in shareholding was clearly and solely intended to provide financial support to the holding company because of the financial crisis. In particular, the said company claimed that the increased shareholding had no impact on the management structure, the composition of the Board of Directors and the commercial activities. It also claimed that the change in shareholding had no effect on the company's decisions regarding export activities that remain to be made independently from the state. The company also submitted that no evidence has been shown that in this case state influence would be such as to permit circumvention of measures if the company would be given an individual rate of duty.

(22) In order to be granted IT, exporting producers must demonstrate that they fulfil all the criteria enumerated in Article 9(5) of the basic Regulation. One of these criteria is that the majority of shares belong to private persons. However, as regards the said company, this criterion has not been met since the end of 2008.

(23) Consequently, despite the fact that the change of ownership happened only after the IP (but still before the conclusion of the investigation) and considering the prospective nature of the findings with regard to IT, it is concluded that this company should not be granted IT, as it did not fulfil the requirements of Article 9(5) of the basic Regulation.

(24) In the absence of any other comments concerning IT, the content of recitals 28 to 32 of the provisional Regulation, other than those concerning the company mentioned in recitals 19 to 23 above, is hereby definitively confirmed.

3. Normal value

3.1. *Analogue country*

(25) Following the provisional disclosure, three parties submitted that the USA was not an appropriate analogue country since the market conditions in the USA and in the PRC are significantly different. It was also submitted that the normal value calculation was based on the data of only one producer, related to a producer in the Community, and thus were not representative.

(26) It is noted that the basic Regulation requires that the analogue country be selected in a not unreasonable manner. The parties mentioned above failed to provide substantiated evidence that the choice of the USA was unreasonable. In particular, they did not question the competitiveness of the US market, the lack of which for example could have an impact on the level of prices established. It is also noted that none of the parties in question suggested any alternative choice for the analogue country.

(27) In view of the above, it is definitively concluded that the USA is an appropriate analogue country and recitals 33 to 38 of the provisional Regulation are hereby confirmed.

3.2. *Determination of normal value*

(28) In the absence of any comments concerning the determination of normal value, the provisional findings in recitals 39 to 44 of the provisional Regulation are hereby confirmed.

4. Export Price

(29) In the absence of any comments concerning the determination of export price, the content of recital 45 of the provisional Regulation is hereby confirmed.

5. Comparison

(30) Following provisional disclosure, one exporting producer pointed out that the simplification applied to the product control number (in order to increase the level of comparability between the product concerned and the like product from the analogue country) resulted in an unfair comparison as it treated several types of the seamless pipes and tubes as one product category. Following this comment, it was decided that a different regrouping of the product control numbers that would allow for a similar level of comparability can be applied — namely with regard to pipe diameter and wall thickness.

(31) Following provisional disclosure, Chinese export prices at ex-works level have been revised downwards in order to take into account all transport costs. At the same time, normal value was revised upwards due to some corrections concerning allowances for transport and discounts.

(32) In the absence of any other comments in respect of comparison, the content of recitals 46 and 47 of the provisional Regulation is hereby confirmed.

6. Dumping margin

(33) In the absence of any comments concerning the dumping margin calculation, and subject to the changes mentioned at recitals 30 and 31, the content of recitals 48 to 51 of the provisional Regulation is hereby confirmed.

(34) The amount of dumping finally determined, expressed as a percentage of the cif net free-at-Community-frontier price, before duty, is as follows:

Company	Definitive dumping margin
Shandong Luxing Steel Pipe Co. Ltd	64,8 %
Other cooperating companies	48,6 %
Residual	73,1 %

D. INJURY**1. Community production, Community industry and Community consumption**

(35) CISA claimed that, according to information released by a specialised agency (Steel Business Briefing), there were at least 40 Community producers in 2007 of the like product in the EU-27 with a production of around 5,8 million tonnes and this would contradict the relevant data contained in the provisional Regulation. CISA also claimed that, according to information released by the World Steel Association, Community consumption was of around 4,6 million tonnes in 2007, i.e. far higher than what was reported in recital 57 of the provisional Regulation. A Chinese exporting producer also made similar claims.

(36) The examination of the information provided showed that the figures reported refer to all seamless pipes and tubes and not to the like product as defined in the provisional Regulation and in recitals 10 to 17 above, and include other products such as large pipes and tubes (i.e. with a diameter exceeding 406,4 mm) and stainless steel pipes and tubes. This explains the discrepancy between the information mentioned in recital 35 above and that contained in the provisional Regulation. It should also be noted that names and locations of all known Community producers of the product concerned were contained in the non-confidential version of the complaint. If CISA had considered that there were any other producers of the product concerned in the EU, it should have provided in due course sufficient evidence to identify them, so that any such company would also have been considered.

(37) The claims mentioned above are therefore dismissed and the content of recitals 53 to 58 of the provisional Regulation is hereby confirmed.

2. Imports from the country concerned**(a) Volume, market share of the imports concerned and import prices**

(38) Following comments submitted by CISA, it is clarified that recital 60 of the provisional Regulation should be intended as meaning that the OCTG and power generation market segments each represented less than 5 % of total imports from the PRC. In the absence of any claims or other comments, recitals 59 to 63 of the provisional Regulation are hereby confirmed.

(b) Price undercutting

(39) An exporting producer, three Community producers and the complainant submitted comments relating to the calculation of the undercutting and injury margins. These comments were analysed and, where appropriate, the calculations were amended.

(40) One exporting producer claimed that the adjustments made to compare on a fair basis the prices of the Chinese imports and the prices of the corresponding product types sold by the Community industry were not adequate, since they did not include an amount for the selling, general and administrative expenses (SG&A) and profit of an independent importer. On the contrary, the complainant claimed that the level of these adjustments was excessively high. As for the claim of the exporting producer, it was found that often Chinese exporting producers and Community producers were selling to the same customers. Thus, a further adjustment to import prices was not justified. After examination of the evidence provided, it was concluded that the claims should be dismissed and the two parties were informed of the reasons therefor.

(41) The complainant claimed that the calculation of the differences in level of trade was incorrect since Chinese exporting producers also directly sold to users and that for such sales no level of trade adjustment is warranted. This claim was found to be correct for some Chinese exporting producers and the level of trade adjustment was accordingly revised. Furthermore, the exporting producer mentioned in recital 40 above argued that, because of significant differences in sales volumes between its own imports and the sales of the Community industry, the difference in level of trade should not be established by simply comparing the respective percentage of sales to users and suggested another formula for the calculation of the revised level of trade adjustment. However, the suggested formula was not considered appropriate since it would distort the result. Therefore, the claim was rejected.

(42) On the basis of the above, the methodology described in recital 64 of the provisional Regulation is hereby confirmed and the undercutting margin calculated as explained in recital 65 of the provisional Regulation is established at 29 %.

3. Situation of the Community industry

(43) CISA claimed that a number of sampled Community producers had not submitted completed replies, so that the representativeness of the sample would be impaired because of the low level of cooperation. It should be pointed out that, apart from the company indicated at point (ii) of recital 66 of the provisional Regulation, which only submitted partial information, all other companies in the sample have provided by the definitive stage of the investigation all the information requested. Even when excluding the sole company that had only provided partial information, the representativeness of the sample would in any case remain at about 60 % of the total Community production. The claim was therefore rejected.

- (44) CISA also claimed that, contrary to what is stated in recital 86 of the provisional Regulation, one major Community producer group had made, after the IP, substantial investments in expanding its production capacity for tubes in the nuclear power sector. This information was verified and it was found that the abovementioned investments were made in order to increase the production capacity for other products (stainless steel or welded pipes and tubes) than the like product. The claim was therefore rejected.
- (45) CISA and a Chinese exporting producer claimed that recital 87 of the provisional Regulation was incorrect in saying that the Community industry was still recovering from the past effect of dumping since there were at least three Romanian companies supporting the complaint, which were until mid 2006 themselves subject to anti-dumping measures. However, the statements in recital 87 clearly refer to the Community industry considered as a whole and not to individual companies. It is therefore normal that the situation of individual companies may differ one from another, without the general finding for the Community industry being put in question. The claim was therefore rejected.
- (46) In the absence of any other claims or comments, recitals 66 to 87 of the provisional Regulation are hereby confirmed.

4. Conclusion on injury

- (47) Mofcom, CISA and two Chinese exporting producers claimed that the Community industry was not in a vulnerable state at the end of the investigation period, particularly in view of its recent high levels of profit. The reasons why the Community industry was considered to be in a vulnerable situation at the end of the IP are detailed in recital 89 of the provisional Regulation. It was recognised therein that the injury suffered during the IP was not material, but it was also explained that, given the important share of dumped imports in the Community market, the Community industry was exposed to the injurious effects of such dumped imports, in case of significant changes in the overall market situation. In this respect, it should be borne in mind that the Community industry could benefit only partially from the substantial increase in consumption and that its market share had declined by five percentage points during the period considered, as indicated in recital 88 of the provisional Regulation. Moreover, the fact that an industry experiences good levels of profit during an exceptionally favourable period of very high market demand does not necessarily imply that it is structurally in a solid economic and financial situation, particularly if during previous periods the same industry was posting extremely low profits or even losses. As already mentioned in recital 86 of the provisional Regulation, the past poor economic performance caused by the existence of dumping practices had made it

impossible to maintain the level of investments appropriate to ensure the viability of the Community industry in the long term in such a highly capital intensive manufacturing sector. Finally, the EC market was again characterised at the end of the IP by the presence of a significant proportion of very low-priced dumped imports. This market situation was potentially very dangerous since already in past years, at times when the level of demand was at normal levels, a similar market situation (which was analysed in Council Regulation (EC) No 954/2006 ⁽¹⁾) had caused significant injury to the Community industry. The claim is therefore rejected.

- (48) One Chinese exporting producer also claimed that recital 89 of the provisional Regulation did not show that the change in market situations referred to therein was 'clearly foreseen and imminent', as requested by the WTO Anti-dumping Agreement (ADA). A change in the market situation was foreseeable because consumption cannot normally remain at exceptionally high levels for a long period. The analysis carried out in recitals 90 to 126 of the provisional Regulation shows a clear deterioration which in fact took place over a certain period of time. The fact that a certain period of time is necessary for a number of elements and indicators to evolve from positive to negative values is not inconsistent with the fact that, in the light of existing trends, such negative effects are already clearly foreseeable. At the end of the IP, the threat of injury was clearly foreseeable, and the starting of the negative trends which would lead to an injurious picture was imminent, since a certain slow down in demand had already taken place in the last months of the IP. The claim was therefore rejected.

- (49) In the absence of any other claim or comments, the conclusion on injury laid down in recitals 88 and 89 of the provisional Regulation is confirmed.

E. THREAT OF INJURY

1. Likely developments of Community consumption, imports from the country concerned and the situation of the Community industry after the investigation period

1.1. Analysis carried out after provisional measures

- (50) As mentioned in recital 5 above, an additional questionnaire was sent to sampled Community producers and to the complainant in order to obtain further information on the market developments and the evolution of the main injury indicators until March 2009. Latest import data available from Eurostat have also been carefully analysed. For the sake of completeness the figures relating to the period between the end of the IP and March 2009 (the post-IP period) are reported below. Since these figures relate to a period of 9 months only, no index is given for volumes.

⁽¹⁾ OJ L 175, 29.6.2006, p. 4.

- (51) After the IP, the Community consumption started to decrease substantially and at a faster pace than what was indicated in recital 91 of the provisional Regulation. In fact, the Community market has already contracted by almost 30 % ⁽¹⁾ in the period between the end of the IP and March 2009.

	2005	2006	2007	IP	Post-IP period
Community Consumption	2 565 285	2 706 560	3 150 729	3 172 866	1 720 968

- (52) At the same time, imports from the PRC also decreased significantly but, given the steeper decrease of Community consumption, the market share of these imports has increased to around 18 %. The prices of Chinese imports increased in line with what was indicated in recital 98 of the provisional Regulation.

PRC	2005	2006	2007	IP	Post-IP period
Imports Volume	26 396	136 850	470 413	542 840	306 866
Market Share	1,0 %	5,1 %	14,9 %	17,1 %	17,8 %
<i>Index (2005 = 100)</i>	100	491	1 451	1 663	1 733
Export Price	766,48	699,90	699,10	715,09	966,63
<i>Index (2005 = 100)</i>	100	91	91	93	138

- (53) In the same period, the production of the Community industry decreased significantly, so that the capacity utilisation of the sampled companies dropped to 60 % in March 2009. Sales of the Community industry on the Community market decreased substantially and in line with the decrease of Community consumption, so that the market share of the Community industry remained stable. As for prices, after having increased in the second half of 2008, they decreased in the first quarter of 2009, though remaining at values higher than during the IP.

Sampled Community producers	2005	2006	2007	IP	Post-IP period
Production	2 022 596	2 197 964	2 213 956	2 158 096	1 477 198
Capacity	2 451 187	2 469 365	2 446 462	2 398 283	1 889 180
Capacity Utilisation	83 %	89 %	90 %	90 %	78 %
<i>Index (2005 = 100)</i>	100	108	110	109	88

Community Industry	2005	2006	2007	IP	Post-IP period
EC sales Volume	1 766 197	1 907 126	2 061 033	2 017 525	1 093 175
Market Share	68,8 %	70,5 %	65,4 %	63,6 %	63,5 %
<i>Index (2005 = 100)</i>	100	102	95	92	90

⁽¹⁾ On the basis of a comparison carried out between monthly average volumes.

Sampled Community Producers	2005	2006	2007	IP	Post-IP period
EC Sales Price	983	1 047	1 188	1 192	1 415
<i>Index (2005 = 100)</i>	100	106	121	121	135

- (54) Finally, the profitability of the Community industry has decreased substantially and at a quicker pace than indicated in recital 110 of the provisional Regulation, so that it was negative (– 0,8 %) in the first quarter of 2009.

Sampled Community Producers	2005	2006	2007	IP	Post-IP period
Profitability	12,1 %	17,3 %	17,9 %	15,4 %	3,5 %
<i>Index (2005 = 100)</i>	100	143	147	127	20

- (55) In conclusion, the information additionally collected and verified at the definitive stage of the investigation confirms the analysis carried out in recitals 90 to 112 of the provisional Regulation.

information, the investigating authority had not displayed the 'special care' requested by the WTO ADA in threat of injury investigations.

1.2. Comments submitted by parties

- (56) One exporting producer claimed that the investigation of injury, contrary to that of dumping, had been extended beyond the IP, by basing the analysis also on information and data for the period after June 2008.

- (57) It is first of all recalled that the IP and the period considered are the basis on which the assessment of threat of injury was made in the provisional Regulation. However, in a threat of injury case, the injury found in the investigation period cannot — by definition — be material, otherwise that investigation would qualify as an investigation based on actual material injury. The investigating authority therefore needs to ascertain whether, although the injury was not material during the IP, the factors referred to in Article 3(9) of the basic Regulation lead to the conclusion that there is a threat of material injury. Therefore, the investigating authority is entitled to verify that the events taking place after the end of the IP do confirm the findings of threat of injury reached at the provisional stage.

- (58) Mofcom, CISA and one Chinese exporting producer considered that the source of the information used was not made clear in recital 91 of the provisional Regulation and that the forecasts and other information submitted by Community producers or the complainant and referred to in recitals 99, 101 and 108 of the provisional Regulation were not from an objective source of information. Mofcom also claimed that, by using such

- (59) It is confirmed that the detailed evidence relating to the various sources of the public information mentioned in recital 91 of the provisional Regulation was made available in the files open to consultation by interested parties well before the publication of the provisional Regulation. As for the forecasts and other information submitted by the Community industry, these were verified and were taken into account only when, and to the extent that, such information was considered reliable and accurate. The fact that the information submitted had been verified was already specifically mentioned in recital 100 of the provisional Regulation, and additional verification visits were carried out after the imposition of provisional measures, as indicated in recital 5 above.

- (60) The claims referred to in recitals 56 and 58 above are therefore rejected.

- (61) CISA claimed that in assessing the developments of the Chinese imports after the IP, account should have been taken not of the actual imports but of the level of orders intake, since actual imports take place normally after 3 to 4 months from the order. Given the time lag, any variation in the level of the EC market demand would be reflected in the actual imports only some months afterwards and this would explain why Chinese imports were still high in November and December 2008, notwithstanding the fact that the level of the demand in the EU market had already started to decrease. Similar comments were also made by a Chinese exporting producer.

(62) Actual imports are usually taken as the basis to assess the volumes and average prices of imports from a given country. Information relating to order intakes may be taken into account in order to support other information, but can rarely be backed up by sufficiently verifiable evidence. In any case, the analysis of the claim has showed that Community consumption had already started to decrease during the third quarter of 2008. Thus, this fact should have already been reflected, in case of a 3 to 4-month gap, in the level of the Chinese imports for the fourth quarter of 2008, which was instead relatively high. Moreover, should the above-mentioned 3 to 4-month gap be considered, the strong decrease in Chinese imports taking place in the first quarter of 2009 could be in anticipation of anti-dumping measures rather than due to the slowdown in demand. In fact, importers might have been less and less willing to place orders for goods which might have arrived at a moment when anti-dumping measures could possibly have already been imposed. In conclusion, it is considered that an analysis based on order intakes rather than on actual imports would have only added elements of uncertainty to the investigation without leading to any significantly different conclusion. Therefore, the claim made by CISA in this respect is rejected.

(63) Mofcom, CISA and a Chinese exporting producer claimed that, according to various press releases and/or financial statements published by a number of Community producers groups, 2008 remained a strong year in terms of their performance and this would therefore contradict the findings of threat of injury contained in the provisional Regulation, in particular recital 110 thereof.

(64) In examining this claim it was found that the information CISA was referring to did not specifically relate to the European entities involved in the production of the product concerned. As already mentioned in recital 44 above, a major group of companies is composed of various entities often manufacturing very different products. The general financial information relating to a company group as such may therefore not be representative of the economic situation relating to the specific entities producing the like product and selling it in the Community market. Finally, it is recalled that the information relating to the companies manufacturing the like product used during the investigation had been duly verified. The claim is therefore rejected.

(65) In the absence of any other claim specifically concerning recitals 90 to 112 of the provisional Regulation, the findings contained therein are confirmed.

2. Threat of injury

2.1. Development of volumes of dumped imports

(66) CISA claimed that the increase in Chinese imports mentioned in recital 114 of the provisional Regulation was the consequence of an increase in demand in the EU market. Similar comments were also submitted by Mofcom and a Chinese exporting producer. CISA also rejected the assessment that the development of Chinese imports could be the result of a market penetration strategy and underlined that, since Chinese exports were made by a large number of Chinese producers, it was impossible to think of them as elaborating a coordinated strategy.

(67) If it were true that the development of Chinese imports was correlated to the increase in demand in the EC market as claimed by CISA, the market share of such imports would have remained substantially stable, and would not have increased from 1 % to 17 % during the period considered. The substantial increase in the market share of the Chinese imports and its completely different evolution from the evolution of the market shares of the Community industry and any other import source, clearly point to the fact that other elements have underpinned the increase in Chinese imports. This conclusion is further supported by the fact that Chinese imports have consistently taken place at very low dumped prices, as it had been explained in recitals 63 to 65 of the provisional Regulation. Moreover, there is no need for exporters to coordinate a strategy in order to converge towards a similar behaviour. Once it becomes clear that to penetrate a market a certain very low level of prices is successful, a convergence towards such successful market strategy would probably take place without any need for exporters to coordinate. Therefore, the claims in recital 66 above are rejected and the findings in recital 114 of the provisional Regulation are confirmed.

(68) CISA also claimed that, contrary to the assessment made in recitals 115 and 116 of the provisional Regulation, imports from the PRC decreased significantly in the period after the IP. It is indeed true that, as indicated in recital 52 above, imports from the PRC decreased significantly during the post-IP period. However, the wording of recital 116 of the provisional Regulation makes it clear that what matters is not the absolute volume of such imports, but their relative importance in relation to consumption, in other words, their market share in the total Community market. As also indicated in recital 52 above, notwithstanding their decrease in absolute volume, Chinese imports of the product concerned have slightly increased their market share during the post-IP period. Therefore, considering the fact that (i) the assessment at the basis of the reasoning in recitals 115 and 116 of the provisional Regulation was made on the most recent reliable information concerning imports available at the time

of the provisional findings, i.e. imports data for November and December 2008, (ii) this data was coherent with the evolution of the Chinese imports until that moment, and (iii) the reasoning was based on relative and not absolute volumes, it is concluded that the assessment in recitals 115 and 116 of the provisional Regulation is not in contradiction with the findings mentioned in recital 52 above. It is in any case worth noting that, for the reasons mentioned in recital 134 of the provisional Regulation, the level of Chinese imports might be considered as an element of threat of injury even in the case that volumes would start to decrease proportionally more than the decrease in consumption, since the presence itself of substantial volumes of low-priced Chinese goods in a context of decreasing consumption will exert an important downward pressure on the general level of prices in the market. In any case, no single factor mentioned in Article 3(9) of the basic Regulation can necessarily give decisive guidance on the existence of a threat of injury. Rather, all the factors must be considered in their totality. The claim is therefore rejected and the findings in recital 115 of the provisional Regulation are confirmed.

to the EC for the period considered. As for the supposed reversal of the increasing trend in exports to the EC as regards the total Chinese exports of the product concerned in 2008, CISA failed to submit any decisive supporting evidence of its claim. In this respect, it should be noted that the data resulting from Chinese statistics clearly refer to a product scope significantly different from the product concerned; this clearly appears from the fact that exports to Europe, as shown in these statistics, are not only much more than the imports registered in Eurostat for the product concerned, but their evolution also shows a completely different trend. The evidence provided could therefore not be accepted. As for the projected actions by the Chinese government to stimulate internal demand, the evidence submitted cannot alter the analysis since the effects on demand cannot be established reliably. Moreover, it is unclear for most of the projects mentioned that they will be completed. Finally, some large pipeline projects referred to by CISA seem to be projects built with large welded pipes and not with the seamless pipes that are the subject of the present proceeding. The claims in recital 69 above are therefore rejected.

2.2. Availability of free capacity of the exporters

(69) CISA claimed that the analysis in recital 118 of the provisional Regulation was based on data from the sampled exporters, which were the most export-oriented companies, so that their data would not reflect correctly the overall situation concerning exports from the PRC. Instead, it is claimed that the share of Chinese exports to the EC out of the total Chinese exports indicated in recital 119 of the provisional Regulation changed trend in 2008, decreasing from 15 % to 11 %. Finally, the analysis in recitals 117 to 119 of the provisional Regulation ignored the evolution in demand for the Chinese domestic market, which was forecast to absorb a significant part of the output generated by the existing overcapacity. In this respect, reference was made to a number of projects and plans by the Chinese government to sustain internal demand. Mofcom also claimed that the development of the demand in the Chinese domestic market had not been examined in the provisional Regulation.

(70) The findings relating to the sampled companies in recital 118 of the provisional Regulation are clearly confirmed by the trends in the general export data referred to in recital 119 of the provisional Regulation, which showed an even more significant increase in the trend of exports

(71) CISA also considered that the re-direction scenario indicated in recital 119 of the provisional Regulation was misplaced because the Chinese exports to the USA would mainly consist of products (OCTG) not widely imported in the EC. CISA also claimed that prices to the EC were not necessarily lower than in other countries but, on the contrary, the EC has been an attractive market for Chinese exports so far. As regards this claim, it must be stated that the analysis carried out in recital 119 of the provisional Regulation was based on statistical data which does not contain detailed reference to specific product types. In any case, it should be noted that the production equipment necessary to manufacture the product concerned can, to a very large extent, be used for the production of various product types of seamless pipes and tubes. Therefore, even if a specific type of tube like OCTG is not extensively imported in the EC, this fact is not relevant for the consideration of potentially available free capacities since the equipment used for manufacturing this type of tube can easily be switched to produce other types of the product concerned, which are imported in much more substantial quantities into the EC market. Therefore, the claims in recital 66 above are rejected and the findings in recitals 117 to 119 of the provisional Regulation are confirmed.

2.3. Prices of the imports from the PRC

- (72) CISA claimed that, after the IP, prices of Chinese imports have increased substantially whilst prices of the Community industry have not followed the same trend, so that the undercutting existing during the IP would have been substantially reduced or even eliminated in the period after the IP.
- (73) As already indicated in recitals 98 and 122 of the provisional Regulation, it is confirmed that after the IP the prices of imports from various sources, including from the PRC, increased substantially, as did the prices of the Community industry. An analysis of the price lists of Community industry after the IP and of the prices of comparable products imported from the PRC has been carried out, and has shown that there has been a parallelism in price movements. In conclusion, no evidence was found to support the allegation that the undercutting found during the IP would have been substantially reduced or even be eliminated. The findings in recitals 120 to 123 of the provisional Regulation are therefore confirmed.

2.4. Level of inventories

- (74) In the absence of any comments on this point, the findings in recital 124 of the provisional Regulation are hereby confirmed.

2.5. Other elements

- (75) CISA claimed that the possible intervention of the Chinese government referred to in recital 125 of the provisional Regulation was pure conjecture. However, the investigation has shown that the individual treatment granted to one Chinese exporting producer at the provisional stage had to be withdrawn subsequently, as indicated in recitals 19 to 23 above, because of the increased level of state intervention, which was prompted by the worsening economic situation after the IP. This fact clearly supports the finding in recital 125 of the provisional Regulation and the claim is therefore rejected.

2.6. Conclusions

- (76) It is first of all noted that the finding of threat of injury has been made after taking into consideration, inter alia, the totality of the various factors referred to in Article 3(5) and 3(9) of the basic Regulation.
- (77) CISA claimed that the findings in the provisional Regulation had not complied with the standards required by the WTO for this type of investigation, i.e., that the findings should be supported by evidence and not be the result of allegation, conjecture or remote possibility;

that the projections and assumptions should show a high degree of likelihood; and that alternative explanations in arriving to a given conclusion should be examined.

- (78) The provisional Regulation indicates clearly on which basis the findings relating to the various elements of the investigation have been established. This was supported by the evidence indicated, such as: statistical data sourced from Eurostat, questionnaire replies by cooperating companies, information on non-sampled companies provided by the complainant, information contained in submissions made by interested parties, other information found on the Internet in the course of the investigation. All this information, where non-confidential, has been open to consultation by interested parties.
- (79) The elements relating to the threat of injury examination have been considered separately and in detail in the provisional Regulation and the degree of materialisation of the assumptions and forecasts made at the provisional stage was re-examined and verified — to the extent possible — at the definitive stage of the investigation, as set out in the findings in this Regulation. No facts, evidence or indication was found that would contradict the findings contained in the provisional Regulation. Therefore, the projections and assumptions contained in the provisional Regulation were not conjectures or allegations, but the result of a thorough analysis of the situation.

- (80) As for the alternative explanations and interpretations referred to in recital 78 above, including those presented by interested parties in their submissions, they have been duly examined during the investigation and addressed in this Regulation as well as in the provisional Regulation.
- (81) In conclusion, the examination of the facts taking place after the end of the IP as well as the analysis of the comments and observations made by the interested parties on the provisional Regulation and on the disclosure of the final findings have not revealed any evidence that would put in doubt the conclusion that the threat of material injury existed as of the end of the IP. Therefore, the claim made by CISA in recital 77 above is rejected and the findings in recital 126 of the provisional Regulation are hereby confirmed.

F. CAUSATION

1. Effect of the dumped imports

- (82) In the absence of any specific comments, recitals 128 to 135 of the provisional Regulation are hereby confirmed.

2. Effect of other factors

(a) Import and export activity of the Community industry

- (83) CISA claimed that the fact that Community industry imported the product concerned from the PRC and other countries demonstrated they did not have the capacity to meet the demand in the Community market. This was because the Community industry had not invested in new production capacity and concentrated heavily on the higher value segments of the market. In this respect, it should be recalled that it was explained in recital 136 of the provisional Regulation that such imports were estimated to be less than 2 % of the total imports from the PRC, and no evidence was provided to prove that this amount was higher.
- (84) CISA also questioned the exact reasons why the company group mentioned in recital 138 of the provisional Regulation had to carry out the mentioned imports. The issue was further examined and it is confirmed that for reasons of cost efficiency, the production of certain product types had been carried out by other non-European entities of the group. As already mentioned in recital 138 of the provisional Regulation however, it was verified that such imports had not been at prices undercutting the Community price for the same product types.
- (85) CISA finally pointed to an apparent inconsistency between the relatively positive estimation of the Community industry concerning their future export sales and the general economic trends for third country markets, which were instead forecasted to decline. In this respect, it is to be noted that the analysis of the export activity of the Community industry does not have any effect on the determinations relating to injury or threat of injury, which exclusively concern the activity of the Community industry for the like product in the EC market. If some of the Community producers have optimistic views about their export activities this may only have resulted in the overstatement of their forecasted general economic performance but not in their performance in the domestic market, which is kept separate in the analysis.
- (86) Therefore, the claims referred to in recitals 83 to 85 above are rejected and the findings contained in recitals 136 to 141 of the provisional Regulation are hereby confirmed.

(b) Imports from third countries

- (87) Moreover, CISA claimed that it is not sufficient to examine the average price of imports from other non-EU third countries, but that the exact nature of these products should also be considered. It is confirmed that a detailed analysis has been carried out in all instances where sufficiently detailed information on prices was made available by importers. Unfortunately, trade

statistics are not very detailed and, given the relatively low cooperation of importers in this investigation, little detailed information was available on prices on a product-by-product basis for imports from other countries. However, no substantiated information which would point to a conclusion different from what was indicated in recitals 142 to 145 of the provisional Regulation was provided by any party, so that the findings contained in those recitals of the provisional Regulation are hereby confirmed.

(c) Competition from other Community producers

- (88) In the absence of any specific comments on this point, recital 146 of the provisional Regulation is hereby confirmed.

(d) Cost of Production/Raw Material Costs

- (89) CISA claimed that the Community industry had modified its product mix in order to concentrate on product types having a higher selling price, in order to contain the effects of an increase in cost of production. This would show that the Community industry had sufficient means to reflect any increase in costs by increasing selling prices, contrary to what was indicated in recital 149 of the provisional Regulation.
- (90) There is no doubt that the Community industry has over time tried to maximise profit by reflecting increases in costs by increasing selling prices. This is however not a never-ending process, and there is a moment when such adjustments are no longer possible given the competition existing in the market. In a market where similar goods are sold at substantially lower prices, the margin to operate such mark up becomes smaller the higher the market share of such low priced goods is. The comments made by CISA therefore do not contradict the findings in recitals 147 to 149 of the provisional Regulation which are therefore confirmed.

(e) Shrinking of the Community market of seamless pipes and tubes due to economic downturn

- (91) Mofcom, CISA and a Chinese exporting producer claimed that the global economic downturn is at the basis of the economic problems suffered by the Community industry and concluded that it has broken the causal link between Chinese imports and any alleged injury or threat of injury. In this respect, it should be noted that CISA itself has recognised that the market consumption prevailing between 2005 and the IP was at exceptional levels and that the decrease in demand experienced after the IP may — to a very large extent — just be attributed to the market for this product coming back to its normal conditions. It is not clear therefore whether the global economic downturn can be considered as a cause of injury, since the information available only shows that the level of EC market consumption in the post-IP period

has come back to levels already considered as normal in the past. This would also suggest that it was the existence of exceptional levels of Community consumption during the period considered that had allowed the Community industry not to suffer material injury despite the significant market share and the substantial undercutting of dumped Chinese imports. In any case, recital 150 of the provisional Regulation does not exclude the possibility that the general economic downturn may have played a role in the injurious situation of the Community industry after the IP. However, it cannot be argued that the Community industry has only been negatively affected by the effects of the general economic crisis and that the dumped imports had no effect, when it is clear that the latter held a very substantial market share and significantly undercut the Community industry's prices. The claim that the economic downturn has broken the causal link referred to in recitals 128 to 135 of the provisional Regulation is therefore rejected, while the issue that the changed economic environment in comparison to the IP may have an effect on the determination of the level of the measures is addressed in recital 104 below.

- (92) The claims were, therefore, rejected and recital 150 of the provisional Regulation is hereby confirmed.

(f) Other factors

- (93) CISA commented that some Community producers have concluded framework contracts with customers at pre-agreed prices so that for them prices would have remained stable. At the same time they would have concluded similar fixed price agreements with suppliers of iron ore and other major inputs so that they would not be able to profit from the very sharp decrease in costs that these raw materials have been experiencing since immediately after the IP.
- (94) It is first of all noted that the fixed price agreements with customers were a practice that was limited in terms of the number of contracts and, given the periods covered, it cannot be considered as having had significant effects. This conclusion is confirmed by the fact that Community industry prices also have increased substantially. As for the fixed price agreements concerning major raw materials, this appears to be a worldwide spread practice which should therefore not put the Community producers at either an advantage or a disadvantage in respect of any other producer of the like product in the world market. Therefore, this cannot be

seen as a cause for breaking the causal link either. The claims in recital 93 above are therefore rejected.

3. Conclusion on causation

- (95) In the absence of any further comments on this point, recitals 151 to 153 of the provisional Regulation are hereby confirmed.

G. COMMUNITY INTEREST

1. Interest of the Community industry

- (96) The complainant, as well as a number of Community producers reiterated that the existence of anti-dumping measures was an essential element for them to continue as a going concern, given the injurious dumping practised. In the absence of any further comment, recital 155 of the provisional Regulation is hereby confirmed.

2. Interest of the other Community producers

- (97) In the absence of any specific comment on this point, recital 156 of the provisional Regulation is hereby confirmed.

3. Interest of unrelated importers in the Community

- (98) A user of the product concerned, which is also an importer, came forward to point out that the CN codes of the product it was importing had not been mentioned in the notice of initiation and it only became aware that the investigation was also covering these product types after the imposition of provisional measures. It claimed that it had to pay unforeseen anti-dumping duties for that reason. This importer was informed that the Notice of initiation contained a clear description of the product under investigation and that the CN codes were mentioned therein for information only. The correct customs classification of the product concerned is indeed one of the elements under investigation and it is therefore perfectly possible that the CN codes mentioned in the provisional Regulation differ to a certain extent from those indicated in the notice of initiation of the proceeding.
- (99) In the absence of any further comments on this point recital 157 of the provisional Regulation is hereby confirmed.

4. Interest of users

- (100) The user mentioned in recital 98 above also claimed that, should definitive measures be imposed on the product concerned, this would create serious problems of supply for its company, given the fact that EC producers are reluctant to supply it. This claim was examined and it was found that the problems encountered by this party in sourcing the product from Community producers related to past periods when, in the context of very high market demand, the supply of very limited quantities of such products was not considered as economically viable by certain Community producers. However, in periods of normal market demand this constraint should disappear, particularly when considering the fact that other users or importers of the same types of products may increase the level of Community demand for such products, given the imposition of measures. On the basis of these considerations, and also of the fact that the uses in question only represented a very limited fraction of the total consumption of the product concerned, it is concluded that the availability of sources of supply should not be an issue for the product concerned.
- (101) One other user, who is buying the like product exclusively from the Community industry, reiterated its support for the imposition of measures. No other users came forward to comment on the provisional findings. In the absence of any further comment, recital 158 of the provisional Regulation is hereby confirmed.

5. Conclusion on Community interest

- (102) In the absence of any specific comment, recital 159 of the provisional Regulation is definitively confirmed.

H. DEFINITIVE MEASURES

1. Injury elimination level

- (103) The complainant and a number of Community producers part of the Community industry claimed that the 3 % profit margin provisionally used for the calculation of the injury elimination level referred to in recitals 161 to 163 of the provisional Regulation was excessively low, when considering that this is a capital intensive industry with high fixed costs, and that the average profit margins achieved by the Community industry during the period considered were well above 3 %.
- (104) It is recognised that the like product requires a highly capital intensive production. However it is considered that the current market situation is not such as to allow for the making of a clear assessment about the

capacity utilisation rates for the near future and in particular for the years during which the measures will be in force, and this may have an impact on the determination of the margin of profit which should normally be achieved in a given market in the absence of dumping practices. Under these circumstances, and considering the fact that there is always the possibility for the Community industry to request a review of the measures in case of a change in circumstances, it was concluded that the moderate 3 % profit margin established at the provisional stage and in a previous investigation concerning the same product should be maintained. It is however noted that, should the market circumstances change significantly, such a 3 % profit margin may need to be revised.

- (105) The methodology for the calculation of the injury elimination level indicated in recitals 164 and 165 of the provisional Regulation was applied, subject to the small adjustment referred to in recital 41 above. The countrywide injury elimination level was calculated as the weighted average of the injury margins found for the most representative product types sold by an exporting producer not granted IT.
- (106) The injury margins thus established were lower than the dumping margins found.

2. Definitive measures

- (107) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, and in accordance with Article 9(4) of the basic Regulation, it is considered that a definitive anti-dumping duty should be imposed on imports of the product concerned originating in the PRC at the level of the lowest of the dumping and injury margins found, in accordance with the lesser duty rule, which is in all cases the injury margin.
- (108) On the basis of the above, the definitive duties should be as follows:

Exporting producer	Anti-dumping duty
Shandong Luxing Steel Pipe Co., Ltd	17,7 %
Other cooperating companies	27,2 %
All other companies	39,2 %

(109) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(110) Any claim requesting the application of an individual company anti-dumping duty rate (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

(111) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were also granted a period within which they could make representations subsequent to this disclosure. The comments submitted by the parties were duly considered and, where appropriate, the findings have been modified accordingly.

(112) In order to ensure equal treatment between any new exporters and the cooperating companies not included in the sample, mentioned in the Annex to this Regulation, provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporters which would otherwise be entitled to a review pursuant to Article 11(4) of the basic Regulation as Article 11(4) does not apply where sampling has been used.

3. Undertakings

(113) Following the disclosure of the essential facts and considerations on the basis of which it was intended to

recommend the imposition of a definitive anti-dumping duty, a number of non-sampled exporting producers in the PRC indicated their wish to offer a price undertaking in accordance with Article 8(1) of the basic Regulation. However, despite the fact that all necessary conditions were explained, no formal undertaking offer was submitted within the time limit set for this purpose by Article 8(2) of the basic Regulation and no extension of this time limit was requested. Under these circumstances, it is not necessary to further consider the issue of undertakings in the framework of this investigation.

1. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

(114) Since the investigation has shown that the threat of injury was imminent at the end of the IP as indicated in recital 126 of the provisional Regulation, taking into account the findings in recital 50 to 55 above which confirm a negative evolution of several injury indicators after the IP, and in view of the magnitude of the dumping margin found, it is concluded that injury would have occurred in the absence of provisional measures. It is therefore considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation be definitively collected,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of seamless pipes and tubes, of iron or steel, of circular cross section, of an external diameter not exceeding 406,4 mm with a Carbon Equivalent Value (CEV) not exceeding 0,86 according to the International Institute of Welding (IIW) formula and chemical analysis⁽²⁾, currently falling within CN codes ex 7304 19 10, ex 7304 19 30, ex 7304 23 00, ex 7304 29 10, ex 7304 29 30, ex 7304 31 20, ex 7304 31 80, ex 7304 39 10, ex 7304 39 52, ex 7304 39 58, ex 7304 39 92, ex 7304 39 93, ex 7304 51 81, ex 7304 51 89, ex 7304 59 10, ex 7304 59 92 and ex 7304 59 93⁽³⁾ (TARIC codes 7304 19 10 20, 7304 19 30 20, 7304 23 00 20, 7304 29 10 20, 7304 29 30 20, 7304 31 20 20, 7304 31 80 30, 7304 39 10 10, 7304 39 52 20, 7304 39 58 30, 7304 39 92 30, 7304 39 93 20, 7304 51 81 20, 7304 51 89 30, 7304 59 10 10, 7304 59 92 30 and 7304 59 93 20) and originating in the People's Republic of China.

⁽²⁾ The CEV shall be determined in accordance with Technical Report, 1967, IIW doc. IX-555-67, published by the International Institute of Welding (IIW).

⁽³⁾ As defined in Commission Regulation (EC) No 1031/2008 of 19 September 2008 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 291, 31.10.2008, p. 1). The product coverage is determined in combining the product description in Article 1(1) and the product description of the corresponding CN codes taken together.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, Office N105 04/092, 1049 Brussels, BELGIUM.

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

Company	Anti-Dumping duty (%)	TARIC Additional Code
Shandong Luxing Steel Pipe Co., Ltd, Qingzhou City, PRC	17,7	A949
Other cooperating companies listed in the Annex	27,2	A950
All other companies	39,2	A999

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

Article 2

The amounts secured by way of provisional anti-dumping duty pursuant to Commission Regulation (EC) No 289/2009 on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China shall be definitively collected at the rate of the provisional duty.

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

Done at Brussels, 24 September 2009.

Article 3

Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

- it did not export to the Community the product described in Article 1(1) during the investigation period (1 July 2007 to 30 June 2008),
- it is not related to any of the exporters or producers in the People's Republic of China which are subject to the measures imposed by this Regulation,
- it has actually exported to the Community the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Community,

the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend Article 1(2) by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate of 27,2 %.

Article 4

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

For the Council
The President
M. OLOFSSON

ANNEX

List of cooperating producers referred to in Article 1(2) under TARIC additional code A950

Company Name	City
Handan Precise Seamless Steel Pipes Co., Ltd	Handan
Hengyang Valin MPM Co., Ltd	Hengyang
Hengyang Valin Steel Tube Co., Ltd	Hengyang
Hubei Xinyegang Steel Co., Ltd	Huangshi
Jiangsu Huacheng Industry Group Co., Ltd	Zhangjiagang
Jiangyin City Seamless Steel Tube Factory	Jiangyin
Jiangyin Metal Tube Making Factory	Jiangyin
Pangang Group Chengdu Iron & Steel Co., Ltd	Chengdu
Shenyang Xinda Co., Ltd	Shenyang
Suzhou Seamless Steel Tube Works	Suzhou
Tianjin Pipe (Group) Corporation (TPCO)	Tianjin
Wuxi Dexin Steel Tube Co., Ltd	Wuxi
Wuxi Dongwu Pipe Industry Co., Ltd	Wuxi
Wuxi Seamless Oil Pipe Co., Ltd	Wuxi
Zhangjiagang City Yiyang Pipe Producing Co., Ltd	Zhangjiagang
Zhangjiagang Yichen Steel Tube Co., Ltd	Zhangjiagang

COMMISSION REGULATION (EC) No 927/2009**of 5 October 2009****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 6 October 2009.

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

Done at Brussels, 5 October 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MK	32,3
	ZZ	32,3
0707 00 05	TR	114,4
	ZZ	114,4
0709 90 70	TR	109,3
	ZZ	109,3
0805 50 10	AR	71,1
	CL	103,4
	TR	84,6
	UY	88,0
	ZA	70,3
	ZZ	83,5
0806 10 10	BR	235,1
	EG	159,5
	TR	94,4
	US	152,0
	ZZ	160,3
0808 10 80	BR	63,5
	CL	85,7
	NZ	44,5
	US	80,9
	ZA	66,2
0808 20 50	ZZ	68,2
	AR	82,8
	CN	51,8
	TR	97,2
	ZA	79,8
	ZZ	77,9

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 928/2009**of 5 October 2009****amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EC) No 877/2009 for the 2009/2010 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector ⁽²⁾, and in particular Article 36(2), second subparagraph, second sentence thereof,

Whereas:

- (1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups

for the 2009/2010 marketing year are fixed by Commission Regulation (EC) No 877/2009 ⁽³⁾. These prices and duties have been last amended by Commission Regulation (EC) No 918/2009 ⁽⁴⁾.

- (2) The data currently available to the Commission indicate that those amounts should be amended in accordance with the rules and procedures laid down in Regulation (EC) No 951/2006,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 877/2009 for the 2009/2010, marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 6 October 2009.

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

Done at Brussels, 5 October 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 253, 25.9.2009, p. 3.

⁽⁴⁾ OJ L 259, 2.10.2009, p. 3.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 6 October 2009

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 ⁽¹⁾	39,12	0,00
1701 11 90 ⁽¹⁾	39,12	3,17
1701 12 10 ⁽¹⁾	39,12	0,00
1701 12 90 ⁽¹⁾	39,12	2,87
1701 91 00 ⁽²⁾	40,52	5,31
1701 99 10 ⁽²⁾	40,52	2,18
1701 99 90 ⁽²⁾	40,52	2,18
1702 90 95 ⁽³⁾	0,41	0,27

⁽¹⁾ For the standard quality defined in point III of Annex IV to Regulation (EC) No 1234/2007.⁽²⁾ For the standard quality defined in point II of Annex IV to Regulation (EC) No 1234/2007.⁽³⁾ Per 1 % sucrose content.

DIRECTIVES

DIRECTIVE 2009/107/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 September 2009

amending Directive 98/8/EC concerning the placing of biocidal products on the market as regards the extension of certain time periods

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

before that date are to be systematically examined and, if found acceptable from the point of view of human and animal health and the environment, are to be included in the positive list set out in that Directive.

(3) Paragraphs 1(c)(i) and 2(c)(i) of Article 12 of Directive 98/8/EC provide for the protection of all information submitted for the purposes of that Directive for a period of 10 years, also commencing on 14 May 2000, unless a shorter period of protection has been granted in a particular Member State, in which case that shorter period of protection will apply on its territory. That protection concerns only information submitted in support of the inclusion in the positive list set out in Directive 98/8/EC of active substances used in biocidal products that were present on the market before the date of entry into force of Directive 98/8/EC (the 'existing' active substances).

(4) Once an existing active substance has been evaluated and included in the positive list set out in Directive 98/8/EC, its market is considered as harmonised, and the transitional rules for the placing on the market of products containing the active substance are replaced by the provisions of that Directive.

(1) Article 16(1) of Directive 98/8/EC ⁽³⁾ provides for a transitional period of 10 years, commencing on 14 May 2000, the date of entry into force of that Directive, during which Member States may apply their national rules or practices for placing biocidal products on the market and, in particular, authorise the marketing of biocidal products containing active substances that are not yet included in the positive list set out in that Directive, that is Annexes I, IA or IB thereto.

(2) Article 16(2) of Directive 98/8/EC establishes a 10-year work programme, also commencing on 14 May 2000, during which all the active substances contained in biocidal products that were present on the market

(5) In accordance with Article 16(2) of Directive 98/8/EC, the Commission has submitted a report on the progress achieved with the 10-year work programme, two years before its completion. It is expected, based on the findings of that report, that the review of a significant number of active substances will not be finalised by 14 May 2010. Furthermore, even for the active substances for which a decision on their inclusion in the positive list set out in Directive 98/8/EC has been adopted by 14 May 2010, a sufficient time period is necessary for Member States to transpose the relevant acts and to grant, cancel or modify authorisations for the relevant products, in order to comply with the harmonised provisions of Directive 98/8/EC. There is a serious risk that, at the end of the transitional period on 14 May 2010, national rules will no longer apply, while the relevant harmonised rules will not yet have been adopted. An extension of the 10-year work programme is therefore considered necessary, to permit the finalisation of the review of all active substances notified for evaluation.

⁽¹⁾ OJ C 182, 4.8.2009, p. 75.

⁽²⁾ Opinion of the European Parliament of 24 March 2009 (not yet published in the Official Journal) and Council Decision of 27 July 2009.

⁽³⁾ OJ L 123, 24.4.1998, p. 1.

- (6) It is also necessary for the end of the review programme to coincide with that of the transitional period, in such a way that national systems or practices will regulate the placing of biocidal products on the market until they are ready to be replaced by harmonised provisions.
- (7) In addition, for reasons of consistency and in order to avoid the loss of data protection while certain active substances are still under evaluation, the period of protection of all data submitted for the purposes of Directive 98/8/EC should be extended in order to coincide with the end of the review programme.
- (8) The extension of the review programme proposed may not be enough to finalise the evaluation of a number of active substances. On the other hand, a significantly longer extension might work against intensifying the efforts to complete the review programme in a timely manner. Any extension of the review programme and the corresponding transitional period for any remaining active substances after 14 May 2014 should be limited to a maximum of two years and should take place only if there are clear indications that the legal act intended to replace Directive 98/8/EC will not enter into force before 14 May 2014.
- (9) The measures necessary for the implementation of Directive 98/8/EC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (10) In particular, the Commission should be empowered to extend the review period and the corresponding transitional period for any remaining active substances for up to two years. Since those measures are of general scope and are designed to amend non-essential elements of Directive 98/8/EC, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (11) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽²⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 98/8/EC is hereby amended as follows:

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ C 321, 31.12.2003, p. 1.

1. Article 12 is amended as follows:

(a) paragraph 1(c)(i) is replaced by the following:

‘(i) until 14 May 2014 for any information submitted for the purposes of this Directive, except where such information is already protected under existing national rules relating to biocidal products. In such cases, the information shall continue to be protected in that Member State until the expiry of any remaining period of data protection provided for under national rules, but not beyond 14 May 2014 or, if applicable, not beyond the date to which the transitional period referred to in Article 16(1) is extended in accordance with Article 16(2);’

(b) paragraph 2(c)(i) is replaced by the following:

‘(i) until 14 May 2014 for any information submitted for the purposes of this Directive, except in the case where data are already protected according to existing national rules relating to biocidal products, in which case such data shall be protected in that Member State until the expiry of any remaining period of data protection provided for under those national rules, but not beyond 14 May 2014 or, if applicable, not beyond the date to which the transitional period referred to in Article 16(1) is extended in accordance with Article 16(2);’

2. Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. By way of further derogating from Articles 3(1), 5(1), 8(2) and 8(4), and without prejudice to paragraphs 2 and 3 of this Article, a Member State may, until 14 May 2014, continue to apply its current system or practice of placing biocidal products on the market. If a decision to include an active substance in Annex I or IA sets a later date for compliance with Article 16(3) than 14 May 2014, this derogation shall continue to apply for products including that active substance until the date set in that decision. A Member State may, in particular, in accordance with its national rules, authorise the placing on the market in its territory of a biocidal product containing active substances not listed in Annex I or IA for that product type. Such active substances must be on the market on the date referred to in Article 34(1) as active substances of a biocidal product for purposes other than those defined in Article 2(2)(c) and (d).’

(b) paragraph 2 is amended as follows:

(i) the first subparagraph is replaced by the following:

‘2. Following the adoption of this Directive, the Commission shall commence a 14-year work programme for the systematic examination of all active substances already on the market on the date referred to in Article 34(1) as active substances of a biocidal product for purposes other than those defined in Article 2(2)(c) and (d). Regulations shall provide for the establishment and implementation of the programme, including the setting of priorities for the evaluation of the different active substances and a timetable. Those regulations, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(4). Not later than two years before completion of the work programme, the Commission shall forward to the European Parliament and to the Council a report on progress achieved with the programme. Depending upon the conclusions of the report, it may be decided to extend the transitional period referred to in paragraph 1 and the 14-year period of the work programme for a period of no more than two years. That measure, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(4).’;

(ii) in the second subparagraph the words ‘During that 10-year period’ are replaced by the words ‘During that 14-year period’.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this

Directive by 14 May 2010. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 16 September 2009.

For the European Parliament

The President

J. BUZEK

For the Council

The President

C. MALMSTRÖM

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 24 September 2009

extending the period of application of the measures in Decision 2007/641/EC concluding consultations with the Republic of the Fiji Islands under Article 96 of the ACP-EC Partnership Agreement and Article 37 of the Development Cooperation Instrument

(2009/735/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Whereas:

Having regard to the Treaty establishing the European Community,

(1) The essential elements referred to in Article 9 of the ACP-EC Partnership Agreement have been violated.

Having regard to the ACP-EC Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 ⁽¹⁾ and revised in Luxembourg on 25 June 2005 ⁽²⁾, hereinafter referred to as 'the ACP-EC Partnership Agreement', and in particular Article 96 thereof,

(2) The values referred to in Article 3 of the Development Cooperation Instrument have been violated.

Having regard to the Internal Agreement between representatives of the governments of the Member States, meeting within the Council, on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement ⁽³⁾, and in particular Article 3 thereof,

(3) On 18 April 2007, pursuant to Article 96 of the ACP-EC Partnership Agreement and Article 37 of the Development Cooperation Instrument, formal consultations began with the ACP countries and the Republic of the Fiji Islands, during which the Fijian authorities gave specific commitments to remedy the problems identified by the European Union and to implement them.

Having regard to Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation ⁽⁴⁾, hereinafter referred to as 'the Development Cooperation Instrument', and in particular Article 37 thereof,

(4) Some substantive initiatives had been taken in respect of some of the commitments referred to in recital 3. Nevertheless, not only have important commitments concerning essential elements of the ACP-EC Partnership Agreement and the Development Cooperation Instrument yet to be implemented, but there have also recently been important regressive developments concerning a number of key commitments, such as the abrogation of the Constitution and a further substantial delay in holding elections.

Having regard to the proposal from the Commission,

(5) Decision 2007/641/EC ⁽⁵⁾ expires on 1 October 2009.

⁽¹⁾ OJ L 317, 15.12.2000, p. 3.

⁽²⁾ OJ L 287, 28.10.2005, p. 4.

⁽³⁾ OJ L 317, 15.12.2000, p. 376.

⁽⁴⁾ OJ L 378, 27.12.2006, p. 41.

⁽⁵⁾ OJ L 260, 5.10.2007, p. 15.

- (6) Therefore, it is appropriate to prolong the validity of Decision 2007/641/EC,

HAS DECIDED AS FOLLOWS:

Article 1

Decision 2007/641/EC is modified as follows:

1. in Article 3, the second paragraph is replaced by the following:

‘It shall expire on 31 March 2010. It shall be reviewed regularly at least once every six months, and without delay if new developments in the Republic of the Fiji Islands or new formal consultations with the ACP countries and the Republic of the Fiji Islands lead to specific commitments providing reasons to do so.’;

2. the Annex is replaced by the Annex to this Decision.

Article 2

This Decision shall enter into force on the day of its adoption.

Article 3

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 24 September 2009.

For the Council

The President

M. OLOFSSON

ANNEX

Draft letter

H.E. Ratu Epeli Nailatikau
Acting President of the Republic of the Fiji Islands
Suva
Republic of the Fiji Islands

Excellency,

The European Union attaches great importance to the provisions of Article 9 of the ACP-EC Partnership Agreement, hereinafter referred to as 'the Cotonou Agreement' and Article 3 of the Development Cooperation Instrument. The ACP-EC partnership is founded on respect for human rights, democratic principles and the rule of law, which form the essential elements of the Cotonou Agreement, and form the basis of our relations.

On 11 December 2006 the Council of the European Union condemned the military takeover in Fiji.

Under Article 96 of the Cotonou Agreement, and considering that the military takeover on 5 December 2006 constituted a violation of the essential elements listed in Article 9 of that Agreement, the European Union, hereinafter referred to as the 'EU', invited Fiji to consultations, as provided for in that Agreement, in order to thoroughly examine the situation and, where necessary, take steps to remedy it.

The formal part of those consultations began in Brussels on 18 April 2007. The EU was pleased that at the time the Interim Government confirmed a number of key commitments regarding human rights and fundamental freedoms, respect for democratic principles and the rule of law, as noted below, and proposed positive steps regarding their implementation.

Regrettably, there have since been a series of regressive developments, in particular in April 2009, meaning that Fiji is now in breach of a range of its commitments. This concerns notably the abrogation of the Constitution, the very substantial delay in holding the parliamentary elections, and human rights violations. Although implementation of the commitments has been substantially delayed, the majority of those commitments remain highly relevant to Fiji's present situation, and are therefore annexed to this letter. As Fiji has decided to break a number of key commitments, this has led to losses for Fiji in terms of development funds.

However, in the spirit of partnership forming the cornerstone of the Cotonou Agreement, the EU expresses its readiness to engage in new formal consultations as soon as there is a reasonable prospect for a positive conclusion to such consultations. The Interim Prime Minister has recently presented a roadmap for reforms and elections. The EU stands ready to engage in dialogue regarding this roadmap, and is prepared to consider whether it may serve as a basis for new consultations. Accordingly, the EU has decided to extend the existing appropriate measures for Fiji in order to create a window of opportunity for new consultations. While some of the appropriate measures are now out of date, it has been concluded that rather than update them unilaterally the EU prefers to further explore possibilities for new consultations with Fiji. Consequently, it is of particular importance that the Interim Government commits to an inclusive domestic political dialogue and to flexibility concerning the time frame for the coming roadmap. While the EU's position is and always will be guided by the essential elements of the revised Cotonou Agreement as well as its fundamental principles, notably regarding the pivotal role of dialogue and the fulfilment of mutual obligations, it is stressed that there are no foregone conclusions on the EU's side regarding the outcome of future consultations.

If new consultations result in substantial commitments from Fiji, the EU is committed to an early, positive review of these appropriate measures. Conversely, if the situation in Fiji does not improve, then further losses of development funds for Fiji are set to continue.

Until new consultations have taken place the EU invites Fiji to continue and intensify the enhanced political dialogue.

The appropriate measures are as follows:

- humanitarian aid as well as direct support to civil society may continue,
- cooperation activities under way and/or in preparation, in particular under the 8th and 9th European Development Funds, hereinafter referred to as 'EDF', may continue,

- the 9th EDF End-of-term Review may proceed,
- cooperation activities, which would help the return to democracy and improve governance, may be pursued, save under very exceptional circumstances,
- implementation of the sugar reform accompanying measures for 2006 may proceed. The financing agreement was signed at the technical level by Fiji on 19 June 2007. It is noted that the financing agreement includes a suspension clause,
- the Interim Government's acceptance on 19 June 2007 of the report of 7 June by the Pacific Islands Forum's independent election experts is in line with Commitment No 1 agreed on 18 April 2007 between the Interim Government and the EU. Consequently, the preparation and eventual signing of the multiannual indicative programme for sugar reform accompanying measures for 2008-2010 can proceed,
- the finalisation, signing at the technical level and implementation of the Country Strategy Paper and National Indicative Programme for the 10th EDF with an indicative financial envelope, as well as the possible allocation of an incentive tranche of up to 25 % of this sum, will be subject to respect of the commitments made with regard to human rights and the rule of law; notably that the Interim Government upholds the Constitution, that the independence of the judiciary is fully respected and that the Public Emergency Regulations, reintroduced on 6 September 2007, are lifted as soon as possible, that all allegations of human rights infringements are investigated or dealt with in accordance with the various procedures and forums under the laws of the Fiji Islands and that the Interim Government shall use best endeavours to prevent statements by security agencies destined to intimidate,
- the 2007 sugar allocation will be zero,
- the 2008 sugar allocation will become available, subject to evidence of credible and timely preparation of elections in accordance with the agreed commitments; notably regarding census, redrafting of boundaries and electoral reform in accordance with the Constitution, that measures will be taken to ensure the functioning of the Elections Office, including the appointment by a Supervisor of Elections by 30 September 2007 in accordance with the Constitution,
- the 2009 sugar allocation will become available subject to a legitimate government being in place,
- the 2010 allocation will depend on progress made in implementing the 2009 sugar allocation and the continuation of the democratic process,
- additional support for the preparation and implementation of key commitments, in particular in support of the preparation and/or holding of elections, could be considered over and above what is described in this letter,
- regional cooperation, and Fiji's participation in it, is unaffected,
- cooperation with the European Investment Bank and the Centre for the Development of Enterprise may continue subject to the timely fulfilment of commitments made.

Follow-up of the commitments will be in accordance with the commitments on monitoring in terms of regular dialogue, cooperation with missions and reporting, as referred to in Annex.

Furthermore, the EU expects Fiji to cooperate fully with the Pacific Islands Forum regarding the implementation of the recommendations by the Eminent Persons' Group, as endorsed by the Forum Foreign Ministers at their meeting in Vanuatu on 16 March 2007.

The European Union will continue to follow the situation in Fiji closely. Under Article 8 of the Cotonou Agreement, an enhanced political dialogue will be conducted with Fiji to ensure the respect for human rights, restoration of democracy and respect for the rule of law until both parties conclude that the enhanced nature of dialogue has served its purpose.

If there is a slowing down, breakdown or reversal in the implementation by the Interim Government of the commitments made, the EU reserves the right to adjust the appropriate measures.

The EU stresses that Fiji's privileges in its cooperation with the EU depend on respect for the essential elements of the Cotonou Agreement and for the values referred to in the Development Cooperation Instrument. In order to convince the EU that the Interim Government is fully prepared to follow-up on the commitments given, it is essential that early and substantial progress is made in the fulfilment of the agreed commitments.

Yours sincerely,

Done at Brussels,

For the Commission

For the Council

*Annex to the Annex***AGREED COMMITMENTS WITH THE REPUBLIC OF THE FIJI ISLANDS****A. Respect for Democratic Principles**

Commitment No 1

That free and fair parliamentary elections take place within 24 months from 1 March 2007 subject to the findings of the assessment to be carried out by the independent auditors appointed by the Pacific Islands Forum Secretariat. The processes leading to and the holding of the elections shall be jointly monitored, adapted and revised as necessary on the basis of mutually agreed benchmarks. This implies in particular that:

- by 30 June 2007 the Interim Government will adopt a schedule setting out dates for the completion of the various steps to be taken in preparation for the new parliamentary elections,
- the schedule specifies the timing of census, redrafting of boundaries and electoral reform,
- determination of boundaries and electoral reform shall be carried out in accordance with the Constitution,
- measures will be taken to ensure the functioning of the Elections Office including the appointment of a Supervisor of Elections by 30 September 2007 in accordance with the Constitution,
- the appointment of the Vice-President shall be made in accordance with the Constitution.

Commitment No 2

That the Interim Government, when adopting major legislative, fiscal and other policy initiatives and changes, shall take into account consultations with civil society and other relevant stakeholders.

B. Rule of Law

Commitment No 1

That the Interim Government shall use best endeavours to prevent statements by security agencies destined to intimidate.

Commitment No 2

That the Interim Government upholds the 1997 Constitution and guarantees the normal and independent functioning of constitutional institutions, such as the Fiji Human Rights Commission, Public Service Commission, Constitutional Offices Commission. The substantial independence and functioning of the Great Council of Chiefs will be preserved.

Commitment No 3

That the independence of the judiciary is fully respected, that it is allowed to work freely and that its rulings are respected by all concerned parties, in particular:

- that the Interim Government undertakes that the tribunal pursuant to Section 138(3) of the Constitution be appointed by 15 July 2007,
- that any appointment and/or dismissal of judges is henceforth carried out in strict conformity with constitutional provisions and procedural rules,
- that no instances whatsoever occur, of whatever form, of interference by the military and the police or by the Interim Government with the judicial process, including full respect for the legal profession.

Commitment No 4

That all criminal proceedings linked to corruption are dealt with through the appropriate judicial channels and that any other bodies that may be set up to investigate alleged cases of corruption will operate within constitutional boundaries.

C. Human Rights and Fundamental Freedoms

Commitment No 1

The Interim Government will take all necessary steps to facilitate that all allegations of human rights infringements are investigated or dealt with in accordance with the various procedures and forums under the laws of the Fiji Islands.

Commitment No 2

The Interim Government intends to lift the Public Emergency Regulations in May 2007 subject to any threats to national security, public order and safety.

Commitment No 3

The Interim Government is committed to ensuring that the Fiji Human Rights Commission functions with full independence and in accordance with the Constitution.

Commitment No 4

That the freedom of expression and the freedom of the media, in all its forms are fully respected as provided in the Constitution.

D. Follow-up of Commitments

Commitment No 1

That the Interim Government undertakes to maintain a regular dialogue to allow verification of progress made and gives EU and EC authorities/representatives full access to information on all matters linked to human rights, the peaceful restoration of democracy and the rule of law in Fiji.

Commitment No 2

That the Interim Government cooperates fully with eventual missions from the EU and the EC for assessing and monitoring progress.

Commitment No 3

That the Interim Government sends progress reports every three months starting 30 June 2007 regarding the essential elements of the Cotonou Agreement and the commitments.

It is noted that certain issues can only be effectively addressed through a pragmatic approach which acknowledges the realities of the present and which focuses on the future.

COMMISSION

COMMISSION DECISION

of 5 October 2009

accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of certain aluminium foil originating, inter alia, in Brazil

(2009/736/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

aluminium foil originating in Armenia, Brazil and the People's Republic of China ⁽³⁾.

Having regard to the Treaty establishing the European Community,

B. UNDERTAKING

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the 'basic Regulation'), and in particular Articles 8 and 9 thereof,

- (4) Subsequent to the adoption of provisional anti-dumping measures, the sole cooperating exporting producer in Brazil, Companhia Brasileira de Alumínio (CBA), offered a price undertaking in accordance with Article 8(1) of the basic Regulation. In this undertaking offer, CBA offered to sell the product concerned at or above price levels which eliminate the injurious effects of dumping found during the investigation. CBA offered one minimum import price ('MIP') for all different product types in order to limit the risk of circumvention.

After consulting the Advisory Committee,

- (5) The offer also provided for the indexation of the MIP, given that the price of the product concerned is directly linked to the price of the main raw material, primary aluminium, which is a world traded commodity with a published reference price on the London Metal Exchange ('LME').

Whereas:

A. PROCEDURE

- (1) By Regulation (EC) No 287/2009 ⁽²⁾, the Commission imposed provisional anti-dumping duties on imports into the Community of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China ('PRC').

- (6) The MIP offer from the company was based on the non-injurious price calculated for the investigation period on the basis of the sales prices of the Community industry.

- (2) Following the adoption of the provisional anti-dumping measures, the Commission continued the investigation of dumping, injury and Community interest. The investigation confirmed the provisional findings of injurious dumping relating to these imports.

- (7) CBA's undertaking offer also contained the provision that all sales would be made from CBA directly to the first independent customer in the Community and that CBA would undertake not to sell products other than those covered by the undertaking to customers purchasing products covered by the undertaking.

- (3) The definitive findings and conclusions of the investigation are set out in Council Regulation of 24 September 2009 (EC) No 925/2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain

- (8) CBA also agreed to undertake to provide the Commission with regular and detailed information concerning their exports to the Community, allowing for the undertaking to be monitored effectively by the Commission.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 94, 8.4.2009, p. 17.

⁽³⁾ See page 1 of this Official Journal.

C. COMMENTS OF PARTIES AND ACCEPTANCE OF THE UNDERTAKING

- (9) The Community industry indicated that the undertaking from Brazil could be acceptable under certain conditions, including the use of an artificial exchange rate from the USD to the EUR and a quantitative ceiling. Both of these arguments regarding the Brazilian undertaking have to be rejected on the following grounds. In respect of the claim that an artificial exchange rate should be used, it is noted that the LME price will be converted from USD into EUR using the published monthly exchange rate and therefore the amount in EUR is affected by exchange rate fluctuations, which is at the company's own risk. With regard to the second argument, the Commission does not see the relevance of a quantitative ceiling in this case, given the very competitive market for the product concerned in the European Community and given that no evidence was submitted or found during the investigation showing the necessity of such an element. No other comments were submitted in respect to this undertaking offer.
- (10) In view of the above, the undertaking offered by CBA is acceptable.
- (11) In order to enable the Commission to effectively monitor the company's compliance with the undertaking, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty will be conditional on (i) the presentation of an undertaking invoice containing at least the elements listed in Annex II to Regulation (EC) No 925/2009; (ii) the fact that the imported goods are manufactured by the said company, and shipped and invoiced directly by the said company to the first independent customer in the Community; and (iii) the fact that the goods declared and presented to customs correspond precisely to the description on the undertaking invoice. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty shall instead be payable.

- (12) To ensure that the undertaking is respected, importers have been made aware by the above-mentioned Council Regulation that the non-fulfillment of the conditions provided for by that Regulation, or the withdrawal by the Commission of the acceptance of the undertaking, may lead to a customs debt being incurred for the relevant transactions.
- (13) In the event of a breach or withdrawal of the undertaking or in case of withdrawal of acceptance of the undertaking by the Commission, the anti-dumping duty imposed in accordance with Article 9(4) of the basic Regulation shall automatically apply pursuant to Article 8(9) of the basic Regulation,

HAS DECIDED AS FOLLOWS:

Article 1

The undertaking offered by the exporting producer mentioned below in connection with the anti-dumping proceeding concerning imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China is hereby accepted.

Country	Company	Taric Additional Code
Brazil	Companhia Brasileira de Alumínio	A947

Article 2

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

Done at Brussels, 5 October 2009.

For the Commission
Catherine ASHTON
Member of the Commission

COMMISSION DECISION**of 5 October 2009****terminating the examination procedure concerning the measures imposed by the Eastern Republic of Uruguay affecting the importation and sale of whisky in Uruguay**

(2009/737/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

(c) a requirement to affix strip stamps on imported whiskies;

Having regard to the Treaty establishing the European Community,

(d) a requirement to pay taxes in advance on imports.

Having regard to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organisation ⁽¹⁾ and in particular Article 11(1) thereof,

(3) The complainant also claimed that these practices were causing adverse trade effects within the meaning of Article 2(4) of the Regulation.

(4) The Commission decided therefore, after consultation of the Advisory Committee established by the Regulation, that there was sufficient evidence to justify initiating an examination procedure for the purpose of considering the legal and factual issues involved. Consequently, an examination procedure was initiated on 23 October 2004 ⁽²⁾.

Whereas:

A. PROCEDURAL BACKGROUND

(1) On 2 September 2004 SWA (the Scotch Whisky Association) lodged a complaint under Article 4 of Regulation (EC) No 3286/94 (hereinafter 'the Regulation') on behalf of its members representing the Scotch whisky industry.

(2) The complainant alleged that the Community sales of Scotch whisky in the Eastern Republic of Uruguay were hindered by various obstacles to trade within the meaning of Article 2(1) of the Regulation. The alleged obstacles to trade were all directly linked to the IMESI excise taxes in Uruguay (IMESI — *Impuesto Específico Interno*), and they consisted in:

(a) the exclusion of whiskies matured for three or more years from the lowest category of taxation;

(b) a lack of transparency and predictability of the IMESI system;

B. THE FINDINGS OF THE EXAMINATION PROCEDURE

(5) During the investigation procedure, the Uruguayan authorities expressed their willingness to explore the prospects for a mutually satisfactory solution. The Commission services agreed to discuss possible means of addressing the issues raised in the Complaint. On the basis of the discussion, the Uruguayan authorities proposed to settle the case on the basis of the following elements:

(a) in response to the first practice of the Uruguayan authorities consisting in excluding from the lowest tax category all whiskies aged more than three years (and EU regulations require that whiskies be matured for at least 3 years), Uruguay proposed to withdraw this requirement with effect from 1 July 2005;

(b) as regards the discriminatory requirement to affix strip stamps on imported whisky bottles, Uruguay committed to amend its regulations by 30 June 2005, with an entry force within 90 days;

⁽¹⁾ OJ L 349, 31.12.1994, p. 71.

⁽²⁾ OJ C 261, 23.10.2004, p. 3.

(c) thirdly, SWA had also claimed that Uruguay's internal tax arrangements for spirits are in breach of GATT insofar as they are not administered in a uniform, impartial and reasonable manner. The Uruguayan authorities proposed to promote a change in the structure of the IMESI excise tax in order to 'bring it in line with the most usual tax systems at the international level' by 2006;

(d) concerning the fourth aspect, i.e. the requirement to pre-pay the import tax at a rate of 80 % of the customs value of the goods, we agreed that Uruguay could maintain its system of advance payment of the IMESI tax in order to prevent cases of tax evasion.

C. DEVELOPMENTS AFTER THE END OF THE INVESTIGATION

(6) The first two steps envisaged by Uruguayan authorities were implemented within the agreed deadlines, but the change of the IMESI structure was delayed until 2007, when, with the Decree No 520/2007 of 27 December 2007, Uruguay introduced a new legislation on its excise taxes.

(7) In early 2008 the Commission requested Uruguay a number of clarifications as regards the revisions to the structure of the specific internal tax, which have been provided in May 2009. The clarifications provided by the government of Uruguay confirmed that the

Uruguayan system is operating in a manner consistent with the relevant WTO obligations and Uruguay's engagements in the settlement.

D. CONCLUSION AND RECOMMENDATIONS

(8) In view of the above analysis, it is considered that the examination procedure has led to a satisfactory situation with regard to the obstacles that faced the trade as alleged in the complaint lodged by SWA. The examination procedure should therefore be terminated in accordance with Article 11(1) of the Regulation.

(9) The Advisory Committee has been consulted on the measures provided for in this Decision,

HAS DECIDED AS FOLLOWS:

Sole Article

The examination procedure concerning measures imposed by the Eastern Republic of Uruguay affecting the importation and sale of whisky in Uruguay is hereby terminated.

Done at Brussels, 5 October 2009.

For the Commission

Catherine ASHTON

Member of the Commission

COMMISSION DECISION

of 5 October 2009

repealing Directive 2009/124/EC amending Annex I to Directive 2002/32/EC of the European Parliament and of the Council as regards maximum levels for arsenic, theobromine, *Datura* sp., *Ricinus communis* L., *Croton tiglium* L. and *Abrus precatorius* L.

(notified under document C(2009) 7705)

(Text with EEA relevance)

(2009/738/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾, and in particular Article 5a thereof,

Having regard to Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed ⁽²⁾, and in particular Article 11(3) thereof,

Whereas:

- (1) Article 8 of Directive 2002/32/EC provides that measures adapting Annex I to that Directive are designed to amend non-essential elements of that Directive and are therefore to be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3) thereof.
- (2) Article 5a of Decision 1999/468/EC provides that the draft measures are to be submitted for scrutiny by the European Parliament and the Council and that the period for scrutiny is to be 3 months from the date of referral to them.
- (3) The draft Commission Directive amending Annex I to Directive 2002/32/EC of the European Parliament and

of the Council as regards maximum levels for arsenic, theobromine, *Datura* sp., *Ricinus communis* L., *Croton tiglium* L. and *Abrus precatorius* L. was referred to the European Parliament and the Council on 28 July 2009.

- (4) Commission Directive 2009/124/EC of 25 September 2009 amending Annex I to Directive 2002/32/EC of the European Parliament and of the Council as regards maximum levels for arsenic, theobromine, *Datura* sp., *Ricinus communis* L., *Croton tiglium* L. and *Abrus precatorius* L. ⁽³⁾ was erroneously adopted before the expiry of the scrutiny period.
- (5) It is therefore appropriate to repeal Directive 2009/124/EC without delay,

HAS ADOPTED THIS DECISION:

Article 1

Directive 2009/124/EC is repealed.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 5 October 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 140, 30.5.2002, p. 10.

⁽³⁾ OJ L 254, 26.9.2009, p. 100.

2009 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

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