

## COMMISSION REGULATION (EC) No 1130/2008

of 14 November 2008

## imposing a provisional anti-dumping duty on imports of certain candles, tapers and the like originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup> (the 'basic Regulation'), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

## 1. PROCEDURE

### 1.1. Initiation

- (1) On 16 February 2008, the Commission announced, by a notice ('notice of initiation') published in the *Official Journal of the European Union*<sup>(2)</sup>, the initiation of an anti-dumping proceeding with regard to imports into the Community of certain candles, tapers and the like originating in the People's Republic of China ('PRC' or country concerned).
- (2) The proceeding was initiated as a result of a complaint lodged on 3 January 2008 by certain producers of certain candles, tapers and the like representing a major proportion, in this case around 60 % of the total Community production of certain candles, tapers and the like. The complaint contained *prima facie* evidence of dumping of the said product and of material injury therefrom, which was considered sufficient to justify the initiation of an investigation.

### 1.2. Parties concerned by the proceeding

- (3) The Commission officially advised the complainants, the exporting producers, importers, other parties known to be concerned, and representatives of the PRC of the initiation of the proceeding. Interested parties were

given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

- (4) The complainants, other Community producers, exporting producers in the PRC, importers including large retail groups and suppliers of raw materials made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (5) In the notice of initiation, the Commission indicated that sampling for the determination of dumping and injury in accordance with Article 17 of the basic Regulation may be applied. In order to enable the Commission to decide whether sampling would be necessary, all known exporting producers in the PRC, Community importers and Community producers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period from 1 January 2007 to 31 December 2007.
- (6) As explained in recitals (33) to (40) below, forty one exporting producers in the PRC provided the requested information and agreed to be included in a sample. On the basis of the information received from the cooperating exporting producers, the Commission selected a sample of eight producers in the PRC or groups of related companies having the largest volume of exports to the Community. All exporting producers concerned, as well as their association and the authorities of the PRC, were consulted and agreed on the selection of the sample.
- (7) In order to allow exporting producers in the PRC to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent claim forms to the exporting producers in the PRC known to be concerned and the authorities of the PRC.
- (8) The Commission officially disclosed the results of the MET findings to the exporting producers concerned in the PRC, the authorities of the PRC and the complainants. They were also given an opportunity to make their views known in writing and to request a hearing if there were particular reasons to be heard.

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1.

<sup>(2)</sup> OJ C 43, 16.2.2008, p. 14.

- (9) One exporting producer which was not included in the sample because it did not meet the criteria set in Article 17(1) of the basic Regulation claimed an individual margin pursuant to Article 17(3) of the basic Regulation. It was considered however that individual examination would be unduly burdensome and would have prevented the timely completion of the investigation. Therefore, it was provisionally concluded that the request for an individual examination of the exporting producer could not be accepted.
- (10) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation, namely to 31 Community producers, 32 importers as well as two raw materials suppliers.
- (11) Replies were received from the complainant Community producers, six unrelated importers and two suppliers.
- (12) With regard to the country concerned by this investigation, the Commission received replies to the sampling form from forty one exporting producers in the PRC.
- (13) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:
- Producers located in the Community*
1. Bolsius International B.V., Schijndel, the Netherlands,
  2. Vollmar GmbH, Rheinbach, Germany,
  3. GIES-group
    - GIES Kerzen GmbH, Gline, Germany,
    - Promol Industria de Velas, Caldas da Reinha, Portugal,
    - Liljeholmens Stearinfabriks AB, Oskarshamn, Sweden.
- Exporting producers in the PRC and related companies in the PRC and in Hong Kong*
1. Aroma Consumer Products (Hangzhou) Co., Ltd., PRC,
  2. Dalian Bright Wax group:
    - Dalian Bright Wax Co., Ltd., PRC,
    - Dalian Bright Wax, Hong Kong,
  3. Dalian Talent Gift Co., Ltd., PRC,
  4. Gala-Candles (Dalian) Co., Ltd., PRC,
  5. Qingdao Kingking Applied Chemistry Co. Ltd., PRC,
  6. Ningbo Kwung's Home group:
    - Ningbo Kwung's Home Interior & Gift Co., Ltd., PRC,
    - Apple-Ann Home Creation (H.K.) Limited, Honk Kong,
  7. Ningbo Kwung's Wisdom group:
    - Ningbo Kwung's Wisdom Art & Design Co., Ltd., PRC,
    - Ningbo Kwung's Import and Export Co., Ltd., PRC,
    - Shaoxing Koman Home Interior Co., Ltd., PRC,
  8. Win Win Group:
    - Jiashan Jiahua Candle Arts & Crafts Co. Ltd., PRC,
    - Win Win Arts & Crafts Co., Ltd., PRC.
- Related importer in the Community*
- Gala Kerzen GmbH, Germany.

### 1.3. Investigation period

- (14) The investigation of dumping and injury covered the period from 1 January 2007 to 31 December 2007 (the investigation period or the 'IP'). The examination of trends relevant for the assessment of injury covered the period from 2004 to the end of the IP ('period considered').

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product concerned

- (15) The product concerned is certain candles, tapers and the like, other than memory lights and other outdoor burners, exported to the Community and originating in the PRC (candles). The production process to manufacture candles is rather simple and consists in heating raw materials (mainly paraffin wax and stearin) and shaping the candle in moulds or containers in a cooling process. Candles produce heat and light but are largely used for interior decoration purposes, e.g. in various candle holders, pillars and other decoration items.
- (16) Candles are normally declared within CN codes ex 3406 00 11, ex 3406 00 19 and ex 3406 00 90.
- (17) Memory lights and other outdoor burners are not part of the product concerned. These can be defined as products, the fuel of which contains more than 500 ppm of toluene and/or more than 100 ppm of benzene and/or have a wick with a diameter of at least 5 millimetres and/or are individually contained in a plastic container with vertical walls of at least 5 cm in height. It was considered that these criteria are setting a clear dividing line between the types of candles which are covered by this investigation and those which are not.
- (18) The investigation showed that there is a large number of different types of candles such as tapered candles, tea lights, as well as many other seasonal and special types produced in the PRC and sold on the Community market. The various types of candles can basically differ in size, shape, colour, perfumed or un-perfumed, etc, but all these types share the same basic chemical and technical characteristics and uses and they are to a large extent interchangeable. Therefore, it is considered that all candles covered by the present investigation are part of the same product family.
- (19) Certain interested parties made submissions and claims concerning the definition of the product concerned. It has been claimed that memory lights and outdoor candles have been unduly excluded from the product scope because the Community industry dominates this segment and because the technical criteria mentioned above in recital (17) are not unique in the sense that memory lights and other outdoor burners do not always exceed the above-mentioned characteristics. Moreover, they claimed that the distinction made between candles and memory lights and other outdoor burners was not supported by any standard or norms in the industry and was contradicting the assumption that tea lights and other candles were both included in the definition of the product concerned.
- (20) Other parties claimed that the production processes and the range of products produced in the PRC as well as the types of candles exported to the Community were very specific. In this context it was stated that in many instances exporters in the PRC export the product concerned together with other accessories such as glass cup and/or pillar candles whereby the export value includes all the items and not only candles. All these types should be excluded from the scope of the investigation.
- (21) It was also claimed that exporting producers in the PRC are producing to a large extent handmade or special candles with further refining operations, such as printing, scratching and lacquering. These are labour intensive types, called 'fancy' or 'special' candles, not manufactured in the Community. Accordingly these parties claimed that the special candles should also be excluded from the product scope of this investigation.
- (22) It should be noted that the above claims were not specific and did not include any supporting evidence showing that the product concerned was not correctly defined in the notice of initiation. In fact, as stated above, it was found that all types of the product concerned share the same basic chemical and technical characteristics and uses and they are to a large extent interchangeable. Concerning the claims made on memory lights and outdoor candles, it is noted that these products can be distinguished from other types of candles on the basis of the technical and chemical criteria mentioned in recital (17) above. The fact that on the one hand the Community producers may be dominant in this particular segment or on the other hand any allegation that the Community producers are not manufacturing certain types of the product concerned is irrelevant and does not alter the definition of the product concerned.
- (23) It should also be noted that the production processes, the variety of product types which are produced and sold in the Community market, the existence or the absence of norms are not *per se* valid reasons which are demonstrating that the definition of the product concerned should be revised.

### 2.2. Like product

- (24) Certain interested parties claimed that the so-called tea light type should be distinguished from other candles because they have different physical characteristics such as the size and the fact the wax is held in a container in order to prevent the wax from overflowing or dripping. Moreover, whilst the main use of candles is to produce light, the main purpose of tea light is to produce heat.

- (25) Certain interested parties argued that candles produced by the Community industry and sold on the Community market were not alike to the product concerned. They claimed in particular that the product concerned was largely sold in sets including other decoration items such as candle holders, pillars, other ceramic or glass items and that it was not possible to distinguish the value of the candle in the set. It was also argued that whilst Community producers were only selling standard types of candles, exporting producers in the PRC were selling large volumes of special types of candles which cannot be compared to the standard types.
- (26) Concerning the claim made on the use of certain candles types, it should be noted that during a hearing held in particular with the Association of candles producers in the PRC it was stated that domestic consumption in the PRC is significantly increasing in the last years and that candles sold domestically had the same main use as in the Community, namely interior decoration. In regard to the alleged difference in uses between candles (light) and tea lights (heat), it was found that these product types are interchangeable and that both types can be used for providing light and heat, but that, as stated in recital (15) above, they are both largely used for interior decoration purposes.
- (27) It is also recalled that, as mentioned in recital (18) above, there are various types of candles which basically can differ in size, shape or colour but all these types share the same basic chemical and technical characteristics and uses and they are to a large extent interchangeable. Therefore it is considered that the candle types covered by the present investigation are part of the same product family.
- (28) The criteria to be applied in the determination of the 'like product' are based on the technical and chemical characteristics, as well as the end uses or functions of the product and not on factors such as the shape, scent, colour or other features stated by the interested party. The differences in terms of size have no incidence on the definition of the product concerned and the like product, as no clear distinction can be made between the products belonging to the same product family in relation to their main basic technical and chemical characteristics, to the end use and to the perception of the users.
- (29) In view of the claims made and the evidence provided by interested parties and all other information available at this stage of the investigation, it is considered that no differences were found between the product concerned and candles produced and sold by the exporters/producers on their domestic market and by producers in the Community, which also served as an analogue country for the purpose of establishing the normal value with respect to the PRC. These candles have essentially the same basic technical and chemical characteristics and the same basic use. It is therefore provisionally concluded that all types of candles are considered to be alike within the meaning of Article 1(4) of the basic Regulation.
- (30) At the current stage of the investigation, the Commission has not received sufficient evidence that the physical characteristics and/or end use of tea lights are fundamentally different from those of other candles and should lead to conclude that tea lights and other candles are not part of the same product family. The investigation will further investigate and explore all substantiated claims which may be made on the like product issue.

### 3. SAMPLING

#### 3.1. Sampling of Community producers

- (31) In view of the large number of Community producers supporting the complaint, sampling was envisaged in the notice of initiation in accordance with Article 17(1) of the basic Regulation. On the basis of the analysis of the sampling returns, a sample of five producers was finally selected, based on the largest production volume criterion as foreseen in Article 17(1) of the basic Regulation.

#### 3.2. Sampling of importers

- (32) In view of the large number of importers identified from the complaint, sampling was also envisaged for importers in the notice of initiation in accordance with Article 17(1) of the basic Regulation. However, on the basis of the analysis of the number of sampling returns, it was not necessary to apply sampling for importers.

#### 3.3. Sampling for exporting producers in the PRC

- (33) In view of the large number of exporting producers in the PRC, sampling was envisaged in the notice of initiation for the determination of dumping, in accordance with Article 17(1) of the basic Regulation.
- (34) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers in the PRC were requested to make themselves known within 15 days from the date of the initiation of the investigation and to provide basic information on their export and domestic sales, their precise activities with regard to the production of candles and the names and activities of all their related companies involved in the production and/or selling of the product concerned.

(35) The authorities of the PRC and the producers' association were also consulted for the selection of a representative sample.

### 3.3.1. *Pre-selection of cooperating exporting producers*

(36) In total, 41 exporting producers, including groups of related companies in the PRC, came forward and provided the requested information within the given deadline set in the notice of initiation. All of them reported exports of candles to the Community during the IP and, save for one producer with rather insignificant export volumes, expressed a wish to participate in the sample. Thus, 40 exporting producers are considered to be co-operating in the present investigation ('co-operating exporters').

(37) Exporting producers which did not make themselves known within the aforesaid deadline or did not provide the requested information in due time, were considered as non-cooperating with the investigation. The comparison between Eurostat import data and the volume of exports to the Community of the product concerned reported for the IP by the companies mentioned in recital (36) suggests that the co-operation of Chinese exporting producers was very low as mentioned in recital (87) below.

### 3.3.2. *Selection of the sample of cooperating exporters in the PRC*

(38) In accordance with Article 17(1) of the basic Regulation, a sample was selected based on the largest representative volume of exports of candles in the Community which could reasonably be investigated within the time available. On the basis of the information received from the exporting producers, the Commission selected a sample of eight companies or groups of related companies having the largest volume of exports to the Community. Based on the sampling information, the selected companies accounted, in the IP, for more than 73 % of the total volume of exports to the Community of the product concerned reported by the co-operating exporting producers referred to in recital (36) above. It was therefore considered that such sample would allow limiting the investigation to a reasonable number of exporting producers which could be investigated within the time available while ensuring a high level of representation. All exporting producers concerned, as well as their association and the authorities of the PRC, were consulted and agreed on the selection of the sample.

(39) Two co-operating exporters not included in the sample requested to be included in the sample by suggesting that criteria such as (i) the product range of the exporting producers, (ii) type of customers in the Community, (iii) geographical representation, (iv) foreign investment

and (v) the degree of reliance in exports to the Community, should be taken into account in the selection of the sample.

(40) In this regard it is noted that none of these criteria are provided for in Article 17(1) of the basic Regulation regarding the selection of the sample. The requests were therefore rejected.

### 3.4. **Individual examination**

(41) One exporting producer which was not included in the sample because it did not meet the criteria set in Article 17(1) of the basic Regulation claimed an individual margin pursuant to Article 17(3) of the basic Regulation.

(42) As mentioned in recital (38) above, the sample was limited to a reasonable number of companies which could be investigated within the time available. The companies investigated for the purpose of the investigation of dumping in the PRC are listed in recital (13) above. In view of the verification carried out at the premises of a large number of sampled companies entailing the verification of Market Economy Treatment claims and questionnaire replies, it was considered that individual examinations would be unduly burdensome and would have prevented the timely completion of the investigation.

(43) Therefore, it was provisionally concluded that the request for an individual examination of the exporting producer could not be accepted.

## 4. **DUMPING**

### 4.1. **Application of Article 18 of the basic Regulation**

(44) In the course of the on-spot verification, one cooperating exporter, part of a group of companies, selected in the sample did not provide underlying documentation for a series of items such as domestic sales, export sales, movement of stocks, foreign currency receipts, bank deposits and fixed assets which were deemed necessary for the verification of its MET claim forms. In addition, (i) VAT declarations, (ii) special VAT invoices required by the authorities for the export tax rebate and (iii) income tax declarations statements certified by the authorities were not provided. Instead the documents provided on-spot were not certified and were considered to be misleading and containing incorrect information. Finally, discrepancies were detected between accounting documents submitted in the responses and documents presented on-spot. This meant that the veracity and accuracy of the MET claim forms could not be verified on-spot.

- (45) In view of this situation the exporter was informed that pursuant to Article 18 of the basic Regulation, it was envisaged to base the findings and conclusions on facts available and was given an opportunity to comment.
- (46) The exporter in its response essentially claimed that it did not keep accounting documents which are not legally required by the Chinese accounting law. However, it did not provide any documentation in support of its claim nor it did provide any justification as to why it had not kept and provided the official documents certified by the authorities in the PRC. Finally, in its comments it admitted the discrepancies found in its responses and in the documents which were presented on-spot.
- (47) Under these circumstances, the information provided by this group of related companies was disregarded and facts available were used, within the meaning of Article 18 of the basic Regulation.
- 4.2. Market economy treatment (MET)**
- (48) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.
- (49) Briefly, and for ease of reference only, these criteria are set out in a summarised form below:
1. business decisions and costs are made in response to market conditions, and without significant State interference;
  2. firms have one clear set of basic accounting records which are independently audited, in line with International Accounting Standards ('IAS') and applied for all purposes;
  3. there are no significant distortions carried over from the former non-market economy system;
  4. legal certainty and stability is provided by bankruptcy and property laws;
  5. exchange rate conversions are carried out at the market rate.
- (50) All sampled companies requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the given deadlines. The Commission sought and verified the information provided in the claim forms and all other information deemed necessary at the premises of the companies in question.
- (51) As explained in recitals (44) to (47) above Article 18 of the basic Regulation had to be applied to one MET applicant as it did not provide the requested information or provided misleading information during the on-spot verification.
- (52) The verification also established that five other cooperating exporting producers in the PRC did not meet the requirements of the criteria set forth in Article 2(7)(c) of the basic Regulation to be granted MET.
- (53) Two exporting producers did not fulfil criterion 2 since they could not demonstrate that their accounting records were independently audited in line with IAS. More specifically, it was found that the accounts of one exporting producer concerning loans to related parties were not in compliance with IAS 24 and IAS 32. In the case of the second exporting producer its accounts carried a number of inconsistencies and shortcomings and did not comply with IAS 1 and IAS 38 as far as its fixed assets were concerned.
- (54) One cooperating exporter did not meet the requirements of criteria 1 to 3. Firstly, it could not demonstrate that its decisions were made in response to market signals and without significant State interference because restrictions in its purchasing and selling activities were found to exist (criterion 1). Secondly, it did not demonstrate that its accounting records were audited in line with IAS, because the fixed assets accounts were not in compliance with IAS 1 and IAS 38 (criterion 2). Finally, distortions carried over from the non-market economy system were observed in the form of improper land-use right evaluations (criterion 3).
- (55) Another cooperating exporter could not demonstrate that it met criterion 1 since its decisions were not made in response to market signals and without significant State interference because of restrictions in its purchasing and selling activities.
- (56) One cooperating exporter could not demonstrate that it met criteria 1 and 3. It was found that its business decisions regarding investments were not taken without significant State interference. The local authorities influenced its business decisions and contributed financially to the construction of a technological centre (criterion 1). Distortions carried over from the non-market economy system were also observed in the form of improper land use right evaluations (criterion 3).
- (57) Two cooperating exporters demonstrated that they fulfilled the criteria of Article 2(7)(c) of the basic Regulation and could be granted MET. However, in view of the comments received after disclosure of the MET findings, the granting of MET for both companies will be further investigated.

### 4.3. Individual treatment (IT)

- (58) Pursuant to Article 2(7)(a) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation and are therefore granted individual treatment (IT).
- (59) The cooperating exporters which did not meet the MET criteria had also claimed IT in the event that they were not granted MET.
- (60) On the basis of information available, it was provisionally established that the following five exporting producers in the PRC meet all the requirements for IT as set forth in Article 9(5) of the basic Regulation:
- Aroma Consumer Products (Hangzhou) Co., Ltd.,
  - Dalian Bright Wax Co., Ltd.,
  - Dalian Talent Gift Co., Ltd.,
  - Gala-Candles (Dalian) Co., Ltd.,
  - Qingdao Kingking Applied Chemistry Co., Ltd.

### 4.4. Normal value

#### 4.4.1. Cooperating exporters granted MET

- (61) For the determination of normal value in accordance with Article 2(2) of the basic Regulation, the Commission first established, for each company granted MET, whether the domestic sales of the product concerned to independent customers were made in representative volumes, i.e. whether the total volume of such sales represented at least 5 % of the total export sales volume of the like product to the Community during the IP.
- (62) In the case of one cooperating exporter its domestic sales were found to be made in representative volumes. For the second exporting producer granted MET, however, it was established that it had no sales on the domestic market.
- 4.4.1.1. Cooperating exporters with representative domestic sales volume
- (63) The Commission subsequently identified those product types sold domestically by the exporting producer having overall representative domestic sales volume,

which were identical or directly comparable with the types sold for export to the Community.

- (64) Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the IP represented 5 % or more of the total volume of the comparable product type sold for export to the Community.
- (65) The Commission subsequently examined whether the domestic sales of the company concerned could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.
- (66) For product types not sold in representative quantities on the domestic market, as mentioned in recital (64) above or not sold in the ordinary course of trade, normal value had to be constructed on the basis of Article 2(6) of the basic Regulation. To this end, the selling, general and administrative ('SG&A') expenses and the weighted average profit realised by the company concerned on domestic sales of the like product were added to its own average cost of manufacturing during the IP.

#### 4.4.1.2. Cooperating exporters without representative domestic sales

- (67) For one cooperating exporter granted MET domestic sales could not be used in order to establish normal value. Normal value was thus constructed in accordance with Article 2(3) of the basic Regulation by adding to the company's manufacturing costs for the product concerned a reasonable amount for SG&A expenses and profit.
- (68) It was decided not to establish, the SG&A expenses and profit on the basis of Article 2(6)(a) because only one cooperating exporter with representative domestic sales was granted MET. Moreover, SG&A expenses and profits could not be established on the basis of Article 2(6)(b) as the cooperating exporter in question did not have representative sales of the same general category of products. SG&A expenses and profits had therefore to be determined based on any other reasonable basis in accordance with Article 2(6)(c) of the basic Regulation.
- (69) In the present case, it was considered that the weighted average SG&A expenses during the IP and a reasonable profit of 6,5 % established on the basis of Community industry data could be used to construct normal value for the said cooperating exporter granted MET. The above reasonable profit did not exceed the profit realised by the other co-operating exporting producer granted MET on its sales of the like product on the domestic market during the IP.

#### 4.4.2. Exporting producers not granted MET and analogue country

(70) According to Article 2(7)(a) of the basic Regulation, in economies in transition normal value for exporting producers not granted MET has to be established on the basis of the price or constructed value in a market economy third country ('analogue country').

(71) In the notice of initiation Brazil was proposed as an appropriate analogue country for the purpose of establishing normal value in the PRC. The Commission contacted known producers of candles in Brazil and sent questionnaires intended to collect the data deemed necessary for establishing normal value. However, no cooperation was received from producers in Brazil.

(72) The Commission continued to seek cooperation from other potential analogue countries. In this regard the co-operation of producers located in market economy countries such as Argentina, Canada, Chile, India, Indonesia, Israel, Malaysia, New Zealand, Taiwan and Thailand was explored. However, no co-operation from producers in any of these countries could be obtained.

(73) Since co-operation could not be obtained from producers in third market economy countries, the Commission explored any other possible reasonable basis for determining the normal value in the PRC. It was examined whether according to Article 2(7)(a) of the basic Regulation the prices for candles charged by third countries exporters on the Community market could be used as a basis for normal value. However, it was found that the CN codes under which candles are imported from third countries are not specific enough in their description and would have not allowed for a fair and proper comparison with the types exported from cooperating exporters in the PRC. Accordingly, it was considered that this information was unreliable and unrepresentative and it was thus not reasonable to establish normal value in the PRC on that basis.

(74) In view of the above, it was provisionally concluded that using the prices actually paid or payable in the Community for the like product, in accordance with Article 2(7)(a) of the basic Regulation, constituted a reasonable basis for establishing normal value in the PRC.

(75) The domestic sales of the Community producers included in the definition of Community industry were found to be made in representative volumes compared to the export volume of candles to the Community by the co-operating sampled exporting producers not granted MET.

(76) The sales prices of the Community producers were then duly adjusted in order to include a reasonable profit margin as foreseen under Article 2(7)(a) of the basic Regulation. A reasonable profit margin of 6,5 % was used. This margin was established on the basis of the weighted average profit achieved by the sampled Community producers in the first two years of the period considered in which market conditions were not influenced, to a large extent, by the imports from the PRC.

#### 4.5. Export Price

(77) Export sales prices were established on the basis of the prices actually paid or payable for the like product in accordance with Article 2(8) of the basic Regulation.

(78) Where export sales to the Community were made through a related trading company located in the Community, export prices were established on the basis of the resale prices to the first independent customers in the Community, pursuant to Article 2(9) of the basic Regulation. For sales channelled through related companies outside the Community, the export price was established on the basis of the resale prices to the first independent customers in the Community.

#### 4.6. Comparison

(79) The comparison between normal value and export price was made on an ex-works basis.

(80) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.

(81) On this basis, allowances for transport, ocean freight and insurance costs, handling loading and ancillary costs, packing costs, credit costs and commissions have been made where applicable and justified.

(82) For sales made through related traders based outside the Community, an adjustment was applied in accordance with Article 2(10)(i) of the basic Regulation, provided the trader could demonstrate that it was performing functions similar to that of an agent working on a commission basis. This adjustment was based on the actual SG&A incurred by the related traders, plus a profit margin established on the basis of data obtained from unrelated traders in the Community.

- (83) Where applicable, an allowance was made to the export price of the cooperating exporters concerned to reflect the difference between the value-added tax (VAT) paid and that reimbursed on the production and export of candles during the IP.

#### 4.7. Dumping margins

##### 4.7.1. For the cooperating exporters granted MET and IT

- (84) For the companies granted MET or IT, the weighted average normal value of each type of the product concerned exported to the Community was compared with the weighted average export price of the corresponding type of the product concerned, as provided for in Article 2(11) and (12) of the basic Regulation.
- (85) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Community frontier price, duty unpaid, are the following:

Company	Provisional dumping margin
Aroma Consumer Products (Hangzhou) Co., Ltd.	54,9 %
Dalian Bright Wax Co., Ltd.	12,7 %
Dalian Talent Gift Co., Ltd.	34,8 %
Gala-Candles (Dalian) Co., Ltd.	18,3 %
Ningbo Kwung's Home Interior & Gift Co., Ltd.	14,0 %
Ningbo Kwung's Wisdom Art & Design Co., Ltd.	0 %
Qingdao Kingking Applied Chemistry Co., Ltd.	16,7 %

##### 4.7.2. For other cooperating exporters

- (86) The weighted average dumping margin of the co-operating exporters not included in the sample was calculated in accordance with the provisions of Article 9(6) of the basic Regulation. This margin was established on the basis of the margins established for the sampled exporting producers, disregarding the margin of the exporting producer with a zero dumping margin and the margin of the company to which Article 18 of the basic Regulation has been applied. On this basis, the dumping margin calculated for the co-operating companies not included in the sample was provisionally established at 26,2 %.
- (87) With regard to all other exporters in the PRC, the Commission first established the level of cooperation. A

comparison was made between the total export quantities indicated in the sampling replies received from all cooperating exporting producers and the total imports from the PRC as derived from the Eurostat import statistics. The percentage of cooperation found was 46 %. On this basis, the level of cooperation was deemed to be low. It was, therefore, considered appropriate to set the dumping margin for the non-cooperating exporting producers at a level higher than the highest dumping margin established for the co-operating exporting producers. Indeed, information available would suggest that the low level of co-operation could be due to the fact that the non-cooperating exporting producers in the PRC have generally been dumping<sup>0</sup> at a higher level than any co-operating exporter during the IP. The dumping margin was therefore established at a level which corresponds to the highest dumping and injury margins established for representative product types.

- (88) On this basis, the country-wide level of dumping was provisionally established at 66,1 % of the CIF Community frontier price, duty unpaid.

- (89) This duty rate was also applied to the exporting producer to which the findings were made on the basis of facts available as explained in recital (51) above.

## 5. INJURY

### 5.1. Community production

- (90) All available information, including information provided in the complaint and data collected from Community producers before and after the initiation of the investigation was used in order to establish total Community production.

- (91) Based on this information, it was found that Community production was around 390 000 tonnes during the IP. This amount includes the possible production of producers which remained silent in the proceeding and producers which remained neutral in relation to the initiation of the investigation. These producers account for around 23 % of total Community production. It also includes producers which were opposed to the initiation of the investigation. These producers account for around 17 % of Community production.

### 5.2. Definition of the Community industry

- (92) The investigation showed that Community producers that support the complaint and agreed to cooperate in the investigation represented around 60 % of total Community production during the IP. These producers are therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

### 5.3. Community consumption

- (93) Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, plus imports from the PRC and other third countries, according to Eurostat. It developed as follows:

Table 1

Community Consumption	2004	2005	2006	IP
Tonnes	511 103	545 757	519 801	577 332
Index	100	107	102	113

Source: Eurostat and questionnaire replies.

- (94) Overall, Community consumption expanded by 13 % over the period considered. This expansion was interrupted by a temporary decrease of 5 % between 2005 and 2006 after which consumption recovered and increased by 11 % during the IP. The downturn in consumption in 2006 may partly be attributed to the sharp increase in the purchase price of the main raw material used in the production of candles, paraffin, as explained in recital (122) below.

### 5.4. Imports into the Community from the PRC

#### 5.4.1. Preliminary remark

- (95) As mentioned in recital (15) above, the investigation showed that Eurostat import statistics distinguish three main CN codes for declaring candles:

1. a first code including mainly plain, un-perfumed basic candle types;
2. a second code including various types of standard candles not plain and not tapered but also handmade, seasonal candles, sets including candles, etc., and
3. a third code including tapers, night lights and like, etc.

- (96) It was observed that certain exporting producers in the PRC declared sets including candles but also other items such as ceramic, glass, cloth and other similar decoration items under the category 2 above.

#### 5.4.2. Volume, price and market share of dumped imports

- (97) When using sampling to establish dumping it is the Commission practice to then examine whether there is positive evidence showing whether or not all the companies which were not sampled were effectively dumping their products on the Community market during the IP.
- (98) To investigate this issue, the Commission established the export prices charged by the co-operating exporting producers not included in the sample and the export prices of the non-cooperating exporters on the basis of Eurostat data, the questionnaires responses of the sampled exporting producers in the PRC and the sampling forms provided by all the cooperating companies in the PRC. In parallel, it was considered that by adding the average dumping margin found on the basis of the sampled exporting producers to the average export prices established for the sampled exporting producers found to be dumping, the level of non-dumped export prices would be set. The export prices established for the non-sampled exporting producers were then compared with the non-dumped export prices.

- (99) This price comparison showed that both (i) the cooperating exporting producers which were not included in the sample and (ii) the exporters which did not cooperate in the investigation had average export prices which were in all cases below the average non-dumped prices. On this basis it was considered that all the companies which were not sampled, namely co-operating and non-cooperating, were effectively dumping their products on the Community market.
- (100) It should be noted that one exporting producer in the PRC included in the sample was not found to be dumping its products on the Community market. Accordingly, its exports should be excluded from the analysis concerning the development of dumped imports on the Community market. However, in order to avoid any possibility of disclosing sensitive business data pertaining to the said producer, it was considered appropriate for confidentiality reasons not to present publicly available data, such as Eurostat, excluding the data of the exporter not found to be dumping on the Community market.
- (101) The first table below, therefore, comprises all imports of candles originating in the PRC and the second table shows the indexed data concerning the dumped imports on the Community market during the period considered.

Table 2a

All imports from PRC	2004	2005	2006	IP
<i>Imports (tonnes)</i>	147 530	177 662	168 986	199 112
<i>Index</i>	100	120	115	135
<i>Prices (EUR/tonne)</i>	1 486	1 518	1 678	1 599
<i>Index</i>	100	102	113	108
<i>Market share</i>	28,9 %	32,6 %	32,5 %	34,5 %
<i>Index</i>	100	113	112	119

Source: Eurostat.

- (102) Overall, imports from the PRC significantly increased from 147 530 tonnes in 2004 to 199 112 tonnes in the IP, i.e. by 35 % or by more than 51 000 tonnes over the period considered. The increase of the corresponding market share (+5,6 percentage points) was less pronounced because of the increase in Community consumption.
- (103) In line with the remarks made in recital (96) above, the investigation showed that the average price of imports from the PRC and the trends observed were influenced to a certain extent by the fact that certain products declared as candles include the value of sets with ceramic, glass, carton or other packaging materials.

Table 2b

Dumped imports PRC	2004	2005	2006	IP
<i>Imports (tonnes)</i>				
<i>Index</i>	100	120	115	136
<i>Prices (EUR/tonne)</i>				
<i>Index</i>	100	103	114	110
<i>Market share</i>				
<i>Index</i>	100	112	113	121

Source: Eurostat and questionnaire replies.

- (104) The dumped imports volumes from the PRC also increased significantly by 36 % over the period considered. The increase of the corresponding market share was less pronounced because of the increase in Community consumption. Eurostat data shows that the sales volume of dumped imports and thus market share were mainly gained in the first CN code, which includes the core product of the Community industry, and which represents a large share of exports from the PRC. In addition, it was found that despite a general downturn in consumption in the period between 2005 and 2006, the imports did not lose practically any share of the market they were holding.
- (105) Average prices for dumped imports from the PRC showed an increase of 10 % during the period considered but were still made at significant dumping, namely 38 % on average, during the IP. The average price of dumped imports decreased by over 3 % between 2006 and the IP and, as explained below, was undercutting the Community industry prices in that period.

#### 5.4.3. *Price undercutting*

- (106) For the purposes of analysing price undercutting, the weighted average sales prices per product type of the Community industry to unrelated customers on the Community market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports concerned to the first independent customer, established on a CIF basis with an appropriate adjustment for post-importation costs.
- (107) Based on the above methodology, the difference between the above mentioned prices, expressed as a percentage of the Community industry's weighted average price (ex-works), showed a price undercutting margin of 9 % on average.
- (108) It was also found that the undercutting of the core product of the Community industry was higher compared to that calculated for the other types of candles, namely 12,1 %. This further demonstrates the price pressure exerted by low-priced dumped imports during the IP on the Community industry.

### 5.5. **Economic situation of the Community industry**

#### 5.5.1. *Preliminary remarks*

- (109) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic indicators relevant to the assessment of the state of the Community industry from 2004 to the end of the IP.
- (110) As mentioned in recital (31) above, in view of the large number of producers supporting the complaint, it was decided to apply sampling for the purpose of the injury investigation. It was originally considered to include eight producers or groups of producers in the sample on the basis of the largest production criterion as foreseen in Article 17(1) of the basic Regulation. However, one Community producer which was encountering serious financial difficulties and two other Community producers, although fully supporting the complaint, could not offer full cooperation in the investigation. The remaining five producers, or groups of producers had during the IP a production volume representing 44 % of the total production of the co-operating companies. Thus, they were deemed to be representative for the purpose of the sample.

- (111) When applying sampling in the context of the injury investigation, it is the practice of the Commission to establish the injury indicators partly on the basis of the sampled producers and partly on the basis of data pertaining to all the producers included in the definition of the Community industry. The economic factors and indices related to company performance, such as prices, wages, profitability, cash flow, investment and return on investment, and the ability to raise capital, have been established on the basis of information obtained from the sampled companies. The volume factors such as production, production capacity and capacity utilisation, productivity, sales volume and market share, inventories, employment, growth, and magnitude of the dumping margin have been established at the level of the Community industry as a whole.

#### 5.5.2. Production, production capacity and capacity utilisation

Table 3

	2004	2005	2006	IP
<i>Production (tonnes)</i>	224 153	229 917	212 017	229 110
<i>Index</i>	100	103	95	102
<i>Production capacity (tonnes)</i>	279 362	281 023	291 902	301 327
<i>Index</i>	100	101	104	108
<i>Capacity Utilisation</i>	80 %	82 %	73 %	76 %
<i>Index</i>	100	102	91	95

Source: Questionnaire replies.

- (112) The investigation showed that one of the core products of the Community industry is the so-called tea light candle. It represents around 50 % of the production of the producers included in the definition of the Community industry.
- (113) As shown in the above table, the production of the Community industry increased slightly by 2 % over the period considered. The 8 % decrease in production observed between 2005 and 2006 was recovered during the IP in line with an increase of Community consumption by 11 %. The Community industry steadily increased its production capacity to around 300 000 tonnes during the IP but the utilisation of the available capacity was lower during the IP. Given that production is rather seasonal in the industry, full utilisation of capacity cannot be achieved over the year, however, the capacity utilisation of 76 % achieved during the IP was relatively low compared to 2004 and 2005 levels.

#### 5.5.3. Sales volume and market share

Table 4

Sales volume	2004	2005	2006	IP
<i>Tonnes</i>	203 388	202 993	193 524	208 475
<i>Index</i>	100	100	95	103
<i>Market share</i>	39,8 %	37,2 %	37,2 %	36,1 %
<i>Index</i>	100	93	93	91

Source: Questionnaire replies.

- (114) Sales volume of the product concerned by the Community industry to independent customers, mainly large retailers and distributors, on the Community market increased by 3 % during the IP compared to 2004. In line with the relatively low level of consumption in 2006 sales volume decreased by 5 % between 2005 and in 2006 but recovered during the IP in line with the recovery of Community consumption.
- (115) However, it was observed that the Community industry could not fully follow the expansion of Community consumption by 13 % over the period considered and in particular in the period 2005-2006 when the market grew by 11 %. As a consequence its market share decreased by 3,7 percentage point, from 39,8 % to 36,1 % during the IP.

#### 5.5.4. Average unit prices of the Community industry

- (116) Average ex-works sales prices to unrelated customers in the Community market decreased by 9 % over the period considered. This decrease occurred gradually over the period considered.

Table 5

	2004	2005	2006	IP
Average price euro per tonne	1 613	1 565	1 496	1 460
Index	100	97	93	91

Source: Questionnaire replies.

- (117) The above table shows that the price of the Community industry also decreased in the period from 2006 to the IP despite an increasing demand on the Community market.

#### 5.5.5. Stocks

- (118) The level of end of year stocks, which represents on average around 25 % of production, could be considered to be high during the period considered.

Table 6

	2004	2005	2006	IP
Stocks	52 742	76 643	53 814	56 189
Index	100	145	102	107
Stocks in % of production	25 %	33 %	25 %	24 %
Index	100	132	100	96

Source: Questionnaire replies.

- (119) The high stock level can however be explained by the seasonality of the product concerned, the fact that the types produced by the Community industry are mainly standard types and because of the wide range of products which exist and which should remain available to customers. Stock level was even higher in 2005 when, based on the negative evolution of sales volume compared to 2004, more stocks have been built up during the year. The slowdown of sales by the end of 2005 consequently led to high stock levels. It is not considered however that the inventories are a relevant injury indicator in the present case.

5.5.6. *Employment, wages and productivity*

Table 7

	2004	2005	2006	IP
<i>Employment — full-time equivalent (FTE)</i>	5 418	5 686	5 089	4 699
<i>Index</i>	100	105	94	87
<i>Labour cost (EUR/FTE)</i>	19 404	16 568	19 956	21 073
<i>Index</i>	100	85	103	109
<i>Productivity (tonne/FTE)</i>	52	49	57	64
<i>Index</i>	100	94	110	123

Source: Questionnaire replies.

- (120) The relatively high level of employment in 2005 was, mainly due to the hiring of temporary workers to cope with increased demand in that year. However, employment was reduced drastically from 2006 onwards and at the end of the IP, it was 13 % lower than in 2004. The increase in average labour cost was limited to 9 % during the period considered.
- (121) The increase of the labour force caused a slight drop in productivity in 2005, but the labour force made redundant during 2006 allowed for an increase in productivity even though production volumes decreased by 8 % between 2005 and 2006. The combination of higher sales and production volumes and in particular the lower employment explains the 23 % increase in productivity during the IP compared to 2004.

5.5.7. *Cost of production*

Table 8

	2004	2005	2006	IP
<i>Full cost of production (EUR/tonne)</i>	1 502	1 468	1 695	1 468
<i>Index</i>	100	98	113	98

Source: Questionnaire replies.

- (122) It is worth noting that the raw materials, mainly paraffin, represent around 50 % of the cost of production (COP). The above table shows that, apart from 2006, the COP remained stable over the period considered. The increase in 2006 is explained by the significant increase in paraffin prices between 2005 and 2006. The Community industry countered this sudden paraffin price increase by substituting, where technically possible paraffin with stearin. The stearin prices remained indeed more stable up to 2006 and were below paraffin prices even during the IP.
- (123) In addition, the investigation showed that the Community industry rationalised its production which was partly shifted to Member States in the European Community and at the same time had to reduce employment drastically, in particular from 2006 onwards, to reduce costs.
- (124) The combination of all these factors led to a situation where the Community industry managed to keep its COP during the IP to levels comparable to 2004.

## 5.5.8. Profitability, cash flow, investments, return on investment and ability to raise capital

Table 9

	2004	2005	2006	IP
Profitability	6,9 %	6,2 %	- 13,3 %	- 0,6 %
<i>Index</i>	100	90	- 193	- 9
Cash flow (1 000 EUR)	16 215	13 732	- 4 618	3 093
<i>Index</i>	100	85	- 28	19
Investments (1 000 EUR)	5 435	8 876	12 058	7 326
<i>Index</i>	100	163	222	135
Return on investments	5,7 %	4,9 %	- 10,7 %	- 0,1 %
<i>Index</i>	100	86	- 188	- 2

Source: Questionnaire replies.

(125) Profitability of the Community industry was established by expressing the pre-tax net profit of the sales of the like product as a percentage to the turnover of these sales. Over the period considered the profitability of the Community industry decreased from a profit of 6,9 % in 2004 to a loss of 0,6 % in the IP. Whilst the profitability of the Community industry in 2004 and 2005 was good, the situation dramatically changed in 2006 due to a combination of factors such as the increase in the COP and the reduction in sales prices. Although the average sales price further decreased during the IP, the reduction of the COP allowed for a result close to breakeven in that period.

(126) The trend shown by the cash flow, which is the ability of the industry to self-finance its activities, reflects to a large extent the evolution of profitability. Although cash flow returned to a positive situation during the IP, it was at a much lower level than during 2004 and 2005. The same comments can be made about the return on investments which was negative both in 2006 and during the IP.

(127) Despite the difficult situation, the Community industry continued to invest over the period considered. This suggests that the industry is not ready to give up production but considers the sector to be viable. The level of investments illustrates that the sector has the ability to raise the necessary capital.

## 5.5.9. Growth

(128) The sales of the Community industry between 2004 and the IP in the Community market increased by 3 %, but the Community industry could not fully follow the expansion of Community consumption which reached 13 %. As a consequence, market share decreased by almost 3,7 percentage points.

## 5.5.10. Magnitude of the actual margin of dumping

(129) One sampled exporting producer in the PRC representing a limited volume of exports to the Community was not found to be dumping its products on the Community market. For all the other sampled exporting producers however, the dumping margins, specified in recitals (84) to (89), above are significantly above *de minimis*. As explained in recital (99) above, all other exporting producers in the PRC not included in the sample, cooperating and non-cooperating, were assumed to be dumping on the Community market. Given the volumes and the prices of the dumped imports, the impact of the actual margin of dumping, established at 48 % on average, cannot be considered to be negligible.

## 5.6. Conclusion on injury

(130) Over the period considered it was found that the performance of the Community industry improved as regards some volume indicators such as production (+ 2 %), production capacity (+ 8 %), productivity (+ 23 %) and sales volume (+ 3 %).

- (131) However, all the indicators related to the financial situation of the Community industry significantly worsened during the period considered. Notwithstanding the Community industry's ability to raise capital for investments, return on investments became negative in the IP and cash flow declined by 81 % over the period considered. Average sales prices decreased by 9 % and profitability decreased from almost 6,9 % in 2004 to a loss of 0,6 % during the IP.
- (132) Moreover, other injury indicators pertaining to the Community industry also developed negatively during the period considered: capacity utilisation fell by 4 %, stocks increased by 7 % and employment fell by 13 %. The market share held by the Community industry also decreased from 39,8 % in 2004 to 36,1 %, namely by 3,7 percentage points. The Community industry was prevented from benefitting from the 13 % market increase as it could only increase its sales volume by 3 %.
- (133) The analysis of the costs, including raw material costs, showed that, despite a sharp increase in the price of the main raw materials, the Community industry managed to maintain unit costs in the IP at the 2004-2005 levels. However, despite an 11 % increase in demand between 2006 and the IP, sales prices decreased by 3 % and employment was drastically reduced. Profitability still remained negative during the IP.
- (134) In the light of the foregoing, it can be concluded that the Community industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.
- (135) Dumped imports increased in volume by 36 % on the Community market during the period considered. This increase was made at significantly dumped prices undercutting on average by 9 % the prices of the Community industry during the IP. As explained in recital (108) above the investigation revealed that undercutting by dumped imports was even more pronounced, namely 12,1 % in the core market segment of the Community industry. Accordingly, the market share held by exporters practicing dumping grew from around 27,5 % to around 33 %, an increase of more than 5 percentage points during the IP.
- (136) Based on the Eurostat import statistics it appears that dumped imports increased relatively more in the categories which include the core products produced and sold by the Community industry. Dumped imports in this segment of the market rose by 46 % and around 3,5 percentage points of market share were gained by dumped imports in that segment. This evolution should be seen in the light of the overall significant price undercutting and price pressure exercised by dumped imports on the Community market.
- (137) At the same time, the Community industry sales volume increased only by 3 % despite an overall increase in consumption by 13 %. Accordingly, its market share shrunk over the period considered from 39,8 % to 36,1 %, namely a loss of 3,7 percentage points of market share.
- (138) Moreover, it was observed that in 2006 the performances of the Community industry were particularly negative as they incurred significant losses compared to 2005. This situation coincided with the continued presence of high volumes of low-priced imports from the PRC on the Community market and a 5 % decrease in Community consumption. The overall sales volume of the Community decreased at the same pace as dumped imports, while the Community industry's prices fell by 5 % to follow the price level of dumped imports.

## 6. CAUSALITY

### 6.1. Introduction

- (135) In accordance with Articles 3(6) and 3(7) of the basic Regulation, it was examined whether the dumped imports of candles originating in the PRC have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

### 6.2. Effect of the dumped imports

- (136) The investigation showed that the candles exported from the PRC to the Community were sold at significantly

(141) Considering the period from 2006 to the end of the IP, it emerged that consumption increased by 11 %. The Community industry managed to increase its sales volume by 8 % but dumped imports increased significantly more (+18 %) overall. At the same time, prices of dumped imports fell by over 3 %. The Community industry could not benefit from the growth of the market and the reduced COP. Instead, it had to follow the decreasing trend in sales price and further decreased its prices by 2,5 % during the IP adding further losses to those incurred in 2006.

(142) It is considered that the continued pressure exercised by low-priced dumped imports on the Community market did not allow the Community industry to set its sales prices in line with its costs during the IP. This explains the loss in market share, the low level of sales prices and of the negative profitability achieved by the Community industry in that period. It is therefore provisionally concluded that the surge of low-priced dumped imports from the PRC had a considerable negative impact on the economic situation of the Community industry during the IP.

### 6.3. Effect of other factors

#### 6.3.1. Development of demand

(143) As mentioned in recital (94) above, the Community consumption of candles increased by 13 % between 2004 and the IP. As this allowed the Community industry to operate in an expanding market, the material injury suffered by the Community industry cannot be attributed to the evolution of consumption on the Community market.

#### 6.3.2. Non-dumped imports

(144) The investigation showed that the imports which were not found to be dumped were sold in the Community market at a relatively high price. Accordingly, it was considered that these imports did not contribute to the low level of sales prices and the injury suffered by the Community industry.

#### 6.3.3. Imports from other third countries

(145) The trends in import volumes and prices from other third countries between 2004 and the IP were as follows:

Table 10

Other third country	2004	2005	2006	IP
Total imports (tonnes)	18 189	19 723	18 031	19 447
Index	100	108	99	107
Market share	3,6 %	3,6 %	3,5 %	3,4 %
Index	100	100	97	94
Price (EUR/tonne)	2 643	2 690	3 028	3 207
Index	100	102	115	121

Source: Eurostat.

(146) The import volumes from third countries not concerned by this investigation increased by 7 % over the period considered but remained at a modest level during the IP. These probably mainly consist in high value niche products imported in particular from the United States of America (USA). The fact that the increase in Community consumption was more pronounced led to a loss of market share of 0,2 percentage points during the IP. The prices of these imports which were relatively high during the period considered increased by 21 % over that period.

(147) On the basis of the above, it was provisionally concluded these imports did not contribute to the material injury of the Community industry.

#### 6.3.4. Producers in the Community not included in the definition of the Community industry

(148) As suggested in recital (92) above, the information available on the market for candles in the Community indicates that producers representing around 40 % of Community production are not included in the definition of Community industry in this investigation.

(149) Certain Community producers, representing around 17 % of Community production, were opposed to the initiation of the investigation, because most were importing relatively large quantities of candles from the PRC. The impact of their imports from the PRC has been

taken into account in the analysis of the effect of dumped imports from the PRC made in recitals (136) to (142) above. The remaining Community producers, representing 23 % of Community production, either were silent or neutral concerning the initiation of the present investigation.

- (150) The analysis of data pertaining to the Community market suggested that all the other Community producers did not gain but lost market share on the sales of their own production during the period considered. The investigation did not point to any particular problem concerning the competition between Community producers, on the own-produced candles, or to any trade distorting effect which may explain the material injury found for the Community industry.
- (151) Based on the above, it was provisionally concluded that the producers not included in the definition of the Community industry did not contribute to the injury suffered by the Community industry.

#### 6.3.5. Export performance of the Community industry

- (152) Based on Eurostat and questionnaire replies from the sampled Community producers, total exports of candles outside the Community by the Community producers increased by 10 % over the period considered, namely from 47 701 tonnes in 2004 to 52 565 tonnes during the IP. The main export markets are Norway, Switzerland and the USA, where the price levels are in general relatively high. The investigation showed that the Community industry managed to increase its exports to third countries, in particular between 2005 and 2006, when Community consumption decreased by 5 %. This relatively good export performance was particularly beneficial during the IP.
- (153) In view of the above, it is considered that the export performance of the Community industry has not contributed to the injury suffered by that industry in the IP.

#### 6.3.6. Imports of candles by the Community industry

- (154) Some interested parties have claimed that the imports of candles from the PRC by the Community industry were a source of self-inflicted injury.
- (155) The investigation showed that some producers included in the definition of the Community industry imported candles originating in the PRC in order to complement

their range of products. However, the purchases made during the IP were found to be low, namely less than 5 %, compared to the sales volume of the Community producers concerned.

- (156) On that basis, it was provisionally concluded that the imports of the Community industry of the product concerned from the PRC have not contributed to the material injury they suffered during the IP.

#### 6.3.7. Relocation of production by the Community industry

- (157) Certain interested parties attributed the losses of capacity utilisation and market share incurred by the Community industry to the fact that they have relocated part of their production to other Member States in the Community, in particular in 2006. Moreover, they attributed the decrease in sales prices to the conditions of competition prevailing in these Member States where there is allegedly more pressure on sales prices.
- (158) The investigation showed that the production capacity of the Community, did not decrease, but steadily increased by 8 % during the period considered. In addition, it was found that the main increases in capacity were observed in the periods starting in 2006 and during the IP. Finally, it was also found that both the production and sales volume of the Community industry increased by 8 % between 2006 and the IP. Accordingly, the claim is contradicted by the findings of the investigation which showed that an increase in production capacity, production and stocks. As mentioned in recital (115) above, the loss in market share suffered by the Community industry was due to the fact that it could not fully benefit from the growth of the market that occurred in that period.
- (159) Furthermore, it was shown in recitals (122) to (124) above that the restructuring actions undertaken by the Community industry in particular in 2006 led to a substantial decrease of 14 % of its average COP in particular during the IP. There is no indication in the investigation that the Community industry significantly changed its mix of customers in the Community as alleged by the parties in question. Rather it is considered that the price pressure exerted by low price dumped imports from the PRC led to a low level of prices for candles on the Community market.
- (160) On that basis, the investigation did not point to a link between the relocation of production undertaken by the Community industry and the material injury it suffered during the IP.

6.3.8. *Impact of the existence of a cartel among European paraffin wax producers*

- (161) Certain parties claimed that the injury suffered by the Community industry was caused by the price increase in the main raw material, namely paraffin which occurred on the Community market. More specifically, they referred to a statement of objection issued by the Directorate General for Competition of the European Commission (DG Competition) in which a cartel amongst European paraffin wax producers was alleged to exist up to the beginning of 2005. Accordingly the parties asked the Commission to carefully examine the facts and follow any new developments in connexion with the impact of the cartel on the economic situation of the Community industry.
- (162) The investigation showed that the increase in the paraffin price did not only affect the Community market but also other markets in the world as the evolution of paraffin, an oil derivative, is closely linked to the evolution of the oil price.
- (163) Moreover as explained in recitals (122) to (124) above, the Community industry managed to control its costs during then IP. The paraffin price increase was countered by substituting paraffin with stearin. The Community industry also rationalised its production and managed to significantly reduce its costs which during the IP were kept to levels comparable to 2004 and 2005.
- (164) DG Competition has indeed conducted an investigation into the alleged existence of a cartel between certain producers of paraffin wax, the main raw material for the Community candle industry and officially issued its findings at the beginning of October 2008.
- (165) A first analysis of these findings in relation to the current anti-dumping investigation indicates that the Community industry sourced approximately one third of its paraffin needs from companies participating in the cartel during the IP, namely in 2007. The data verified during that period shows that the average price of paraffin purchased from companies participating in the cartel is in the same range as prices of paraffin purchased from other suppliers in the Community. It is also worth noting that the prices of paraffin purchased by the Community industry were found to be in line with the prices of paraffin in the PRC, the only information available on non-EU prices at this stage of the investigation.
- (166) DG Competition initiated its investigation early April 2005 and the period considered for the current investigation included slightly more than a year during which the cartel was found to exist. It could therefore be argued

that the year 2004 is not suitable or representative for the analysis of injury and causal link on the grounds of the existence of a cartel in that year.

- (167) Considering that it is not unreasonable to assume that the cartel ceased to exist when the investigation of DG Competition started, namely at the beginning of 2005, the trends concerning the economic situation of the Community industry, when the cartel was still existing, namely in 2004, and after when the cartel ceased to exist, namely in 2005, were compared. This comparison indicates that the trends concerning the injury picture of the Community industry remains approximately the same. Taking into account the developments of the injury indicators between 2005 and the IP would therefore not alter the injury picture and the conclusions reached in recitals (130) to (134) above.
- (168) Accordingly, based on information which is currently available, it would appear that the increase in the raw material costs and the cartel could not have had a material impact on the economic situation of the Community industry which was examined in depth from 2004 up to the end of 2007.
- (169) The possible impact the cartel may have had on the Community market will nevertheless be further investigated in the remainder of the investigation.

#### 6.4. Conclusion on causation

- (170) The above analysis has demonstrated that there was a substantial increase in the volume and market share of the low-priced dumped imports originating in the PRC between 2004 and the IP. In addition, it was found that these imports were made at significantly dumped prices which were far below the prices charged by the Community industry on the Community market for similar product types.
- (171) This increase in volume and market share of the low-priced dumped imports from the PRC coincided with an overall increase of the demand in the Community but also with the negative development of sales prices, a significant drop in the market share of the Community industry and a deterioration of the main indicators pertaining to its economic situation during the IP. The Community industry made substantial losses in 2006 and remained loss-making during the IP.
- (172) The examination of the other known factors which could have caused injury to the Community industry revealed that none of these could have had a significant negative impact on that industry in particular during the IP.

(173) Based on the above analysis, which has properly distinguished and separated the effects of all known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is provisionally concluded that the imports from the PRC have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

## 7. COMMUNITY INTEREST

### 7.1. Preliminary remark

(174) In accordance with Article 21 of the basic Regulation, it was examined whether, despite the conclusion on injurious dumping, compelling reasons existed for concluding that it is not in the Community interest to adopt provisional anti-dumping measures in this particular case. The analysis of the Community interest was based on an appreciation of all the various interests involved, including those of the Community industry, the raw material suppliers, the importers and the consumers of the product concerned.

### 7.2. Community industry

(175) The Community industry is composed of numerous small and medium size producers located throughout the Community, employing directly around 5 000 people and sourcing most of its raw material needs from Community suppliers. This means that there are many companies in the Community which depend on this industry. This broadens the economic implication of the candle industry and in particular its impact on the employment in the Community.

(176) The Community industry has continued to make efforts to raise capital and to invest in modernisation and automation of production processes in order to remain competitive. It was also observed that considerable efforts were made to restructure production, and to reduce costs. This shows that the industry is viable and not ready to abandon production.

(177) It is considered that the non-imposition of provisional anti-dumping measures would lead to a further deterioration of the economic situation of the Community industry, thus undermining the efforts, in particular the investments, made in recent years. In the short term this would imply company closures, not only in the candle but also likely in the upstream industry and subsequent job losses in the Community.

(178) It is expected that following the imposition of provisional anti-dumping duties, the price level of candles in the Community market would increase and would allow for a restoration of profitability of the Community industry. A price increase of 7 % would be sufficient to

allow this industry to quickly reach an acceptable level of profitability. In addition, the proposed measures will very likely put the Community industry in the position to regain at least part of the market share lost during the period considered with a further positive impact on its economic situation and profitability.

### 7.3. Importers

(179) A total of six replies to the importers' questionnaire were received, of which only two could be considered to be meaningful for the purpose of the Community interest analysis.

(180) The two importers that submitted meaningful replies and cooperated in the investigation were against the imposition of anti-dumping measures. These importers accounted for around 3 % of the total imports of candles from the PRC into the Community and 1 % of the Community consumption of candles during the IP. The turnover concerning the trade of candles corresponds to 3,4 % of the companies' activity.

(181) It was found that the gross margin realised by these importers on candles purchased from the PRC during the IP was between 15 to 25 % during the IP as they are mainly selling to distributors on the Community market. The direct impact of the introduction of provisional anti-dumping measures may thus not be negligible for these two cooperating importers if they cannot pass on the possible impact of measures to their customers. The investigation showed that the prices for candles to large customers such as distributors were relatively depressed during the IP but that retailers were achieving comfortable gross margins even on the retail of basic products. On that basis, it is considered that at least part or any purchase price increase due to anti-dumping measures could be passed on the various step of the distribution chain up to the level of retailers.

(182) In view of the small share the candle business represents on the turnover of the co-operating importers, i.e. only 3,4 %, and the likelihood that the importers would be able to pass at least part of any price increases further down the distribution chain, it is provisionally considered that the impact of the provisional measures on their financial situation will not be significant.

(183) Large retail groups, which imported large quantities of candles, during the IP, either did not offer to cooperate or submitted replies which were not meaningful for the analysis of the Community interest. It has therefore not been possible to accurately assess the full impact of the proposed anti-dumping measures on the profitability of these groups based on verified data.

(184) However, despite the lack of cooperation from these parties, the Commission searched publicly available information regarding the retail prices of candles and, in particular, for tea lights and made an assessment concerning the possible impact of the provisional anti-dumping measures may have on retailers. Tea lights covered up a large share of both the exports from the PRC and the Community industry's sales during the IP. Subsequently, the average duty payable on imports of candles imported from the PRC as well as the possible price increase for tea lights produced by the Community industry were compared.

(185) Based on public information, it was found that large retailers are achieving comfortable gross profit margins of several hundred percent in their candle business. In practical terms, this means that for a pack of basic candles sold at an indexed retail price of 100 to consumers the gross margin of retailers could be as high as an index of 70. Based on verified data the indexed price for the same pack imported from the PRC would be 30 and the imposition of provisional anti-dumping measures would lead to a duty indexed of 4 taking into account the respective market share of the dumped imports.

(186) If the large retailers would purchase the same pack of candles directly from the Community industry, their gross margin would remain high even if the price increase mentioned in recital (178) above would materialise. The purchase price of the pack in an indexed form would be around 35 for the retailers.

(187) This analysis leads to the conclusion that the impact, if any, the provisional measures may have on the retail companies would be very limited. There are indications that they could even be able to absorb most of the proposed measures without passing it to the consumers and without affecting their profit margin in a significant way.

(188) Under these circumstances, it was provisionally concluded that, on the basis of the information available, the effect of the anti-dumping measures, if any, will most likely not have a material impact on importers.

#### 7.4. Consumers

(189) Although candles are a typical consumer product, no cooperation was received from associations representing the interests of consumers. The potential impact the provisional anti-dumping measures may have on Community consumers was nevertheless examined in the light of data collected for the large retail groups in the Community.

(190) As explained in recitals (185) and (186) the retailers and in particular the large retail groups are achieving such high gross margins which are at a level that they should be able to absorb the provisional anti-dumping measures without passing any price increase to consumers.

(191) In these circumstances, it was provisionally concluded that there should be no material impact for consumers.

#### 7.5. Suppliers of raw materials

(192) One supplier of paraffin wax came forward and replied to the questionnaire intended for suppliers of raw materials used in the candle production. It is recalled that paraffin can represent up to 50 % of the COP of the product concerned.

(193) As mentioned in recital (175) above, the future situation of the Community industry is likely to affect positively the suppliers of raw materials. Provisionally, it is concluded that the imposition of anti-dumping measures is not against the interest of the raw material suppliers.

#### 7.6. Competition and trade distorting effects

(194) With respect to the Community market, if anti-dumping measures are imposed, the Chinese exporting producers concerned, given their strong market positions, will likely continue to sell their products, albeit at non-dumped prices. Given the large number of Community and Chinese producers, it is also likely that there will still be a sufficient number of major competitors on the Community market. It is therefore likely that importers, be they traders, distributors or retailers, and thus the consumers will continue to have the choice of different suppliers of candles.

(195) If, however, no measures were to be imposed, the future of the Community industry which held an important share of market would be at stake in the short and medium term. Allowing dumped imports from the PRC to enter the Community market without correcting the trade distorting effects could lead to the disappearance of many Community producers, thus less choice for the various operators, reduced competition and loss of a significant number of jobs on the Community market.

#### 7.7. Conclusion on Community interest

(196) Given the above, it is provisionally concluded that there are no compelling reasons against the imposition of provisional anti-dumping measures in the present case.

## 8. PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES

### 8.1. Injury elimination level

- (197) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional anti-dumping measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.
- (198) In order to establish the level of duty, account has been taken of the level of the dumping margins found and of the amount of duty necessary to eliminate the injury suffered by the Community industry.
- (199) Based on the data of the investigation it is considered that the profit that could be achieved in the absence of dumped imports should be based on the years 2004 and 2005 when the Community industry managed to reach profitable levels and when Chinese imports were less present on the Community market. It is thus considered that a profit margin of 6,5 % of turnover could be regarded as an appropriate minimum which the Community industry could have expected to obtain in the absence of injurious dumping. The necessary price increase was then determined on the basis of a comparison, per product type, of the weighted average import price of the sample exporting producers in the PRC, with the non-injurious price of the product types sold by the Community industry on the Community market during the IP. The non-injurious price has been obtained by adding to the cost of production of the Community industry the above mentioned profit margin of 6,5 %. Any difference resulting from this comparison was then expressed as a percentage of the CIF import value of the compared types.

### 8.2. Provisional measures

- (200) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping duties should be imposed in respect of imports originating in the PRC at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule.
- (201) 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 country-wide 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'.

- (202) The dumping and injury margins established are as follows:

Company	Dumping margin	Injury margin
Aroma Consumer Products (Hangzhou) Co., Ltd.	54,9 %	68,0 %
Dalian Bright Wax Co., Ltd.	12,7 %	5,2 %
Dalian Talent Gift Co., Ltd.	34,8 %	24,3 %
Gala-Candles (Dalian) Co., Ltd.	18,3 %	13,2 %
Ningbo Kwung's Home Interior & Gift Co., Ltd.	14,0 %	0 %
Ningbo Kwung's Wisdom Art & Design Co., Ltd.	0 %	N/A
Qingdao Kingking Applied Chemistry Co., Ltd.	16,7 %	0 %
Co-operating non-sampled companies	26,2 %	26,8 %
All other companies	66,1 %	62,8 %

- (203) In view of the fact that very often candles are imported in sets together with pillars, holders or other items, it was considered appropriate to determine the duties as fixed amounts on the basis of fuel content of the candles, including the wick as for this reason this form of measure appears appropriate for the product concerned.

## 9. DISCLOSURE

- (204) The above provisional findings will be disclosed to all interested parties which will be invited to make their views known in writing and request a hearing. Their comments will be analysed and taken into consideration where warranted before any definitive determinations are made. The provisional findings may have to be reconsidered for the purposes of any definitive findings;

HAS ADOPTED THIS REGULATION:

### Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of candles, tapers and the like, other than memory lights and other outdoor burners,, falling within CN codes ex 3406 00 11, ex 3406 00 19 and ex 3406 00 90 (TARIC codes 3406 00 11 90, 3406 00 19 90 and 3406 00 90 90), originating in the People's Republic of China.

For the purposes of this Regulation 'memory lights and other outdoor burners' means candles, tapers and the like which have one or more of the following characteristics:

- (a) their fuel contains more than 500 ppm of toluene;
- (b) their fuel contains more than 100 ppm benzene;
- (c) they have a wick with a diameter of at least 5 millimetres;
- (d) they are individually contained in a plastic container with vertical walls of at least 5 cm in height.

2. The rate of the provisional anti-dumping duty shall be a fixed amount of euro per tonne of the fuel (usually but not necessarily in the form of tallow, stearin, paraffin wax or other waxes, including the wick) content of the products manufactured by the companies as shown below:

Company	Amount of duty EURO per tonne of fuel	TARIC additional code
Aroma Consumer Products (Hangzhou) Co., Ltd.	593,17	A910
Dalian Bright Wax Co., Ltd.	81,87	A911
Dalian Talent Gift Co., Ltd.	375,90	A912
Gala-Candles (Dalian) Co., Ltd.	202,60	A913
Ningbo Kwung's Home Interior & Gift Co., Ltd.	0	A914
Ningbo Kwung's Wisdom Art & Design Co., Ltd.	0	A915
Qingdao Kingking Applied Chemistry Co., Ltd.	0	A916
Companies listed in Annex	396,93	A917
All other companies	671,41	A999

3. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

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

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

#### Article 2

1. Without prejudice to Article 20 of Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

2. Pursuant to Article 21(4) of Council Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

#### Article 3

Article 1 of this Regulation shall apply for a period of six months.

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

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

Done at Brussels, 14 November 2008.

For the Commission  
Catherine ASHTON  
Member of the Commission

<sup>(1)</sup> OJ L 253, 11.10.1993, p. 1.

## ANNEX

**Chinese cooperating exporting producers not sampled**

TARIC Additional Code A917

Company Name	City
Beijing Candleman Candle Co., Ltd.	Beijing
Cixi Shares Arts & Crafts Co., Ltd.	Cixi
Dalian All Bright Arts & Crafts Co., Ltd.	Dalian
Dalian Aroma Article Co., Ltd.	Dalian
Dalian Glory Arts & crafts Co., Ltd.	Dalian
Dandong Kaida Arts & crafts Co., Ltd.	Dandong
Dehua Fudong Porcelain Co., Ltd.	Dehua
Dongguan Xunrong Wax Industry Co., Ltd.	Dongguan
Xin Lian Candle Arts & Crafts Factory	Zhongshan
Fushun Hongxu Wax Co., Ltd.	Fushun
Fushun Pingtian Wax Products Co., Ltd.	Fushun
Future International (Gift) Co., Ltd.	Taizhou
Greenbay Craft (Shanghai) Co., Ltd.	Shanghai
Horsten Xi'an Innovation Co., Ltd.	Xian
M.X. Candles and Gifts (Taicang) Co., Ltd.	Taicang
Ningbo Hengyu Artware Co., Ltd.	Ningbo
Ningbo Junee Gifts Designers & Manufacturers Co., Ltd	Ningbo
Qingdao Allite Radiance Candle Co., Ltd.	Qingdao
Shanghai Changran Industrial & Trade Co., Ltd.	Shanghai
Shanghai Daisy Gifts Manufacture Co., Ltd.	Shanghai
Shanghai EGFA International Trading Co., Ltd.	Shanghai
Shanghai Huge Scents Factory	Shanghai
Shanghai Kongde Arts & Crafts Co., Ltd.	Shanghai
Shenyang Shengwang Candle Co., Ltd.	Shenyang
Shenyang Shenjie Candle Co., Ltd.	Shenyang
Taizhou Dazhan Arts & Crafts Co., Ltd.	Taizhou
Zhejiang Hong Mao Household Co., Ltd.	Taizhou
Zhejiang Neco Home Decoration Co., Ltd.	Taizhou
Zhejiang Ruyi Industry Co., Ltd.	Taizhou
Zhejiang Zhaoyuan Industry Co., Ltd.	Taizhou
Zhejiang Aishen Candle Arts & Crafts Co., Ltd.	Jiaying
Zhongshan Zhongnam Candle Manufacturer Co., Ltd.	Zhongshan