

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 82/2011

of 31 January 2011

imposing a definitive anti-dumping duty on imports of okoumé plywood originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 and terminating a partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the basic Regulation), and in particular Articles 9(4) and 11(2), (3), (5) and (6) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) The Council, following an anti-dumping investigation ('the original investigation'), by Regulation (EC) No 1942/2004 ⁽²⁾, imposed a definitive anti-dumping duty on imports of okoumé plywood originating in the People's Republic of China (PRC). The duty levels imposed ranged from 6,5 % to 23,5 % for four producers and 66,7 % for all other producers.

2. Request for an expiry review and *ex officio* initiation of a partial interim review

(2) Following the publication of a notice of impending expiry ⁽³⁾ of the anti-dumping measures in force on imports of okoumé plywood originating in the PRC, the Commission received a request for an expiry review pursuant to Article 11(2) of the basic Regulation.

(3) The expiry review was lodged by the European Federation of the Plywood Industry (FEIC) ('the applicant') on behalf of Union producers representing a major proportion, in this case more than 50 % of the Union production of okoumé plywood. The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and recurrence of injury to the Union industry.

(4) In addition, following a French court proceeding into anti-competitive behaviour of a number of French producers of okoumé plywood, it was considered that it could not be excluded that this could have had distorted the injury assessment in the original investigation. Therefore it was considered appropriate to also initiate in parallel an *ex officio* interim review pursuant to Article 11(3) of the basic Regulation to re-examine the injury situation of the Union industry in particular in comparison to the situation which prevailed in the investigation period of the original investigation.

(5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review and a partial interim review limited to the examination of injury pursuant to Articles 11(2) and 11(3) of the basic Regulation, the Commission published a notice of initiation of these reviews in the *Official Journal of the European Union* ⁽⁴⁾ (notice of initiation).

3. Investigation

3.1. Investigation period

(6) The investigation of the likelihood of continuation or recurrence of dumping covered the period from 1 October 2008 to 30 September 2009 (the 'review investigation period' or 'RIP').

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 336, 12.11.2004, p. 4.

⁽³⁾ OJ C 114, 19.5.2009, p. 11.

⁽⁴⁾ OJ C 270, 11.11.2009, p. 24.

- (7) The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2006 to the end of the RIP (the 'period considered').

3.2. Parties concerned by this investigation

- (8) The Commission officially advised the known Union producers, the exporting producers in the PRC, users and importers which were known to be concerned as well as the authorities of the PRC, of the initiation of the reviews.
- (9) Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limits set in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

4. Sampling

- (10) In view of the apparent high number of Union producers, importers and exporting producers in the PRC it was considered appropriate, in accordance with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, the above parties were requested to make themselves known within 15 days of the initiation of the review and to provide the Commission with the information requested in the notice of initiation.
- (11) Only one Chinese exporting producer came forward and provided the requested information within the given deadline. It was therefore decided that sampling was not necessary in respect of Chinese exporting producers. A questionnaire was sent to the only cooperating Chinese exporting producer, which however subsequently stopped cooperating and never submitted a reply to the questionnaire. Therefore, as explained in recital 20, in accordance with the provisions of Article 18(1) of the basic Regulation, the findings were based on the facts available.
- (12) Ten Union producers provided the requested information within the given deadline and agreed to be included in the sample. On the basis of the information received from the cooperating Union producers, the Commission selected a sample of five Union producers representing about 40 % of the sales by all Union producers to unrelated customers in the Union in the RIP and about 35 % of the production by all Union producers in the RIP. The sample was selected on the basis of the largest representative sales volume that could reasonably be investigated within the time available and taking into account the geographical spread of the Union producers.

- (13) The Commission sent questionnaires to the five sampled Union producers. Two of the sampled companies ceased cooperating after the sampling phase. Given that the three companies submitting questionnaire replies still represented about 30 % of the sales by all Union producers to unrelated customers in the Union during the RIP, it was considered that the sample was still representative.

- (14) The Commission also sent a mini-questionnaire to the five producers which had not been selected in the sample, the two which had stopped cooperation and two other known producers, in order to obtain information on economic indicators referring to a greater number of Union producers. Replies to these mini-questionnaires were received from seven producers.

5. Verification of information received

- (15) The Commission sought and verified all the information it deemed necessary for the purpose of the determination of the continuation or likelihood of recurrence of dumping and injury and the Union interest. Verification visits were carried out at the premises of the following companies:

5.1. Union producers

- GARNICA PLYWOOD SA (Spain),
- JEAN THÉBAULT SAS (France),
- JOUBERT ST-JEAN-D'ANGÉLY SAS (France).

5.2. Producers in the analogue country

- EKOL KONTRPLAK, Tasköprü (Turkey).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (16) The product concerned is the same as in the original investigation and is defined as follows: plywood consisting solely of sheets of wood, each ply not exceeding 6 mm thickness, with at least one outer ply of okoumé not coated by a permanent film of other materials, originating in the PRC, currently falling within CN code ex 4412 31 10 (previously ex 4412 13 10). The product concerned is used for a wide variety of end-uses. It is used in the building industry in exterior joinery and carpentry applications for boarding, shutter boards, exterior basements and balustrades and riverside panelling. It is also used for more decorative purposes in, inter alia, road transports (e.g. cars, coaches, caravans, camping cars), maritime transports (yachts), furniture industry and doors.

- (17) There are two main types of okoumé plywood, plywood made solely with okoumé ('full okoumé') and plywood with at least one of the outer faces made of okoumé ('faced okoumé'), the rest being made of other wood. Both main types of okoumé plywood have the same external appearance. Despite differences in mechanical properties, they all share the same basic physical characteristics, and are basically used for the same purposes.

2. Like product

- (18) As shown in the original investigation, and as confirmed in the present investigation, it has been established that the okoumé plywood manufactured in the PRC and sold domestically as well as the product manufactured and sold in the Union by the Union industry were found to have basically the same physical and technical characteristics and the same uses. Therefore, these products are considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

- (19) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was likely to continue or recur upon a possible expiry of the measures in force against the PRC.
- (20) As stated in recital 11, in accordance with Article 18 of the basic Regulation, and in absence of any cooperation by Chinese exporting producers, the analysis of likelihood of continuation or recurrence of dumping had to be based on information available to the Commission from other sources. In this respect, since no detailed information was available about the precise product types exported to the Union from the PRC, the comparison of normal value and export prices had to be limited to the two main types of okoumé plywood, referred to in recital 17.
- (21) As a consequence, the analysis was mainly based on Eurostat trade statistics. In addition, one Chinese exporting producer had submitted until June 2009 the periodic monitoring reports required under recital 61 of the Regulation (EC) No 1942/2004. To some extent, information from these reports could therefore be used in the analysis of likelihood of continuation or recurrence of dumping.

1. Normal value

1.1. Analogue country

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

- (23) In the notice of initiation Turkey, which had already been used as analogue country in the original investigation, was envisaged as an appropriate analogue country for the purpose of establishing normal value for the PRC in the present expiry review. Although invited to do so, none of the interested parties commented on the choice of Turkey. Therefore, on the basis of the information available at the time of selection, it was concluded that Turkey was the most appropriate analogue country.

1.2. Determination of normal value

- (24) One Turkish producer cooperated and submitted a questionnaire reply. Pursuant to Article 2(7)(a) of the basic Regulation, normal value was calculated on the basis of the data verified at the premises of that cooperating Turkish producer as set out below.
- (25) Normal value was established for both main product types described in recital 17. For one main product type normal value was based on the prices paid or payable on sales made in the domestic market of Turkey, as these were found to be made in representative quantities and in the ordinary course of trade. For the other main product type, which was produced by the Turkish producer but not sold on the domestic market, constructed normal value was used in accordance with Article 2(3) of the basic Regulation.
- (26) To construct normal value pursuant to Article 2(3) of the basic Regulation, the selling, general and administrative (SG & A) expenses incurred and the weighted average profit realised on domestic sales of the like product, in the ordinary course of trade, was added to the average cost of production during the RIP.

2. Export price

- (27) As stated above, in the absence of any cooperation from Chinese exporting producers and in accordance with Article 18 of the basic Regulation, the export price was established on the basis of available Eurostat trade statistics. Since Eurostat does not contain information per product type of okoumé plywood, in order to assess export prices for each of the two main types of okoumé plywood, these figures were adjusted on the basis of the price difference in per cent between full and faced okoumé plywood as observed for the Turkish cooperating producer. The price difference so obtained was then applied to the weighted average Eurostat prices.
- (28) As for the volumes, starting from the Eurostat total volumes, Chinese export volumes for each of the two main types of okoumé plywood have been calculated, on the basis of the proportion between full okoumé and faced okoumé observed in the monitoring reports referred to in recital 21, for the period overlapping with the RIP.

3. Comparison

- (29) In order to ensure a fair comparison between 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. On this basis, adjustments for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs were deducted where applicable and justified. In the absence of cooperation from Chinese exporting producers, the amounts for these allowances were established on the basis of facts available.

4. Dumping margin

- (30) The dumping margin found, expressed as a percentage of the CIF Union frontier price, duty unpaid was 34,2 %.

5. Likely development of imports should measures be repealed

5.1. Preliminary remarks

- (31) Further to the analysis of the existence of dumping during the RIP, the likelihood of continuation of dumping was also examined. In the absence of cooperation from any Chinese exporting producers, conclusions about volume of imports and spare capacity below are based on facts available in accordance with Article 18 of the basic Regulation, namely trade statistics and submissions by interested parties.

5.2. Volume of imports

- (32) According to Eurostat trade statistics, actual imports of okoumé plywood from the PRC into the Union significantly dropped since the original IP, but Chinese producers managed to maintain a presence on the Union market, holding a 4,7 % market share during the RIP.

5.3. Production capacity, spare capacity

- (33) In the absence of cooperation from Chinese exporting producers of okoumé plywood, the situation of the Chinese plywood industry as a whole (producing plywood from all species of wood) was examined. As indicated in recital 89 of Commission Regulation (EC) No 988/2004 ⁽¹⁾ imposing provisional anti-dumping duties in the course of the original investigation, plywood producers can and do produce plywood made up from different species of wood on the same equipment. The applicant provided a calculation of the volume of okoumé plywood produced in the PRC, based on the number of okoumé logs available on the Chinese market, which was estimated at around 900 000 m³ for the RIP. The applicant also estimated that around 85 % or 765 000 m³ are used for the production of plywood. The actual okoumé plywood production is difficult to

estimate, as is the product mix, which has an important impact on the possible quantities produced, and is unknown due to the lack of cooperation from any Chinese exporting producers. However, an estimation of production capacity based on okoumé logs clearly shows that, in any product mix scenario, the production capacity in the PRC is largely above the volumes consumed in the Union market (291 000 m³ in the RIP, see recital 41).

- (34) Furthermore, it was established both during the current review as well as in the original investigation, that plywood made from different wood species is produced by the same companies, on the same equipment. Therefore, it can be expected that, in the absence of measures, Chinese producers which are currently focussing on the production of other, less lucrative types of plywood may increasingly shift their production toward okoumé plywood. According to Chinese export statistics, Chinese exports of plywood accounted for more than 5 million m³ during the RIP, or around 17 times the Union market of okoumé plywood. Consequently, only a minor shift in product mix is needed to substantially increase the volumes of okoumé plywood available for export.

5.4. Volume and price of imports from the PRC to the Union and other third countries

- (35) In 2009 and based on Chinese export data, the Union was the destination for only a small portion (ca. 5 %) of Chinese exports of tropical plywood. As compared to the prices to other markets, these sales were made at relatively high sales prices. Therefore, it is likely that, should measures be repealed, a larger share of Chinese exports of okoumé plywood would be directed to the Union.

5.5. Conclusion on the likelihood of continuation of dumping

- (36) The investigation showed that the product concerned is still sold on the Union market at dumped prices and in not insignificant volumes. Moreover, the information available indicates that the production volumes in the PRC are very high and that the share of its exports to the Union is currently restrained due to the measures in place. In this respect, it can be expected that okoumé plywood currently exported to other countries at lower prices will be redirected to the Union market should measures be repealed. In addition, Chinese producers of plywood are expected to increase their production of okoumé plywood if measures would lapse as the Union market of okoumé plywood is relatively lucrative.
- (37) In view of these findings, it is therefore concluded that there is a likelihood of continuation of dumping should the current anti-dumping measures be allowed to lapse.

⁽¹⁾ OJ L 181, 18.5.2004, p. 5.

D. DEFINITION OF THE UNION INDUSTRY

(38) Within the Union, the like product is known to be manufactured by sixteen producers in Cyprus, France, Greece, Italy, Portugal and Spain. Total Union production is estimated at 235 000 m³. The Union producers accounting for the total Union production constitute the Union industry within the meaning of Article 4(1) of the basic Regulation. During the period considered in the original investigation, the Union market consisted of the EU-15 Member States. However, since okoumé plywood production in the new EU-12 Member States is rather insignificant, a comparison between the current and the original investigation will be meaningful.

(39) As mentioned in recital 10, a sample of three producers, representing about 30 % of the Union sales by all Union producers to unrelated customers during the RIP and about 26 % of production by all Union producers during the RIP, was investigated in detail. The sample consisted of the following companies:

— GARNICA PLYWOOD SA (Spain),

— JEAN THÉBAULT SAS (France),

— JOUBERT ST-JEAN-D'ANGÉLY SAS (France).

E. SITUATION ON THE UNION MARKET

1. Union consumption

(40) Union consumption of okoumé plywood was established on the basis of sales volumes of the Union industry and of other Union producers on the Union market and the volume of imports from third countries into the Union based on Eurostat data.

(41) Altogether, between the IP in the original investigation and the RIP of the current review, Union consumption has decreased by 35 %. During the period considered in the current review, Union consumption has decreased by 22 %. This is generally explained by the fact that okoumé plywood has to a certain extent been substituted by other tropical wood species, such as red canarium, bankirai or meranti. In 2008 and the RIP, the economic crisis and the consequent reduction of certain industrial activities contributed to the declining trend in demand for okoumé plywood in the Union.

	2006	2007	2008	RIP
Total Union consumption (m³)	375 105	382 976	339 914	291 421
<i>Index (2006 = 100)</i>	100	102	91	78

Source: Questionnaire replies, review request and Eurostat.

2. Volume, market share and prices of imports from the PRC

(42) Actual imports of the product concerned into the Union dropped from 83 606 m³ in the original IP to 23 531 m³ in 2006. Thereafter, these imports increased by more than 20 % between 2006 and 2008 and dropped sharply between 2008 and the RIP to 54 % of the 2006 level.

Imports (m ³)	2006	2007	2008	RIP
PRC	23 531	37 023	28 493	12 620
<i>Index (2006 = 100)</i>	100	157	121	54

Source: Eurostat.

(43) The corresponding market share increased by 3,4 percentage points between 2006 and 2007. It decreased by 1,3 percentage points between 2007 and 2008 and dropped further by 4,1 percentage points between 2008 and the RIP. Altogether, the market share of Chinese imports to the Union decreased by 2 percentage points over the period considered.

Market shares	2006	2007	2008	RIP
PRC	6,3 %	9,7 %	8,4 %	4,3 %

Source: Questionnaire replies, review request and Eurostat.

(44) Average prices of imports of the product concerned from PRC increased by 32 % between 2006 and the RIP. More specifically, these prices increased by 22 % between 2006 and 2007, further by 3 percentage points between 2007 and 2008 and by another 7 percentage points between 2008 and the RIP.

Imports (EUR/m ³)	2006	2007	2008	RIP
PRC	485	590	608	642
<i>Index (2006 = 100)</i>	100	122	125	132

Source: Eurostat.

3. Price undercutting

(45) For the purposes of analysing price undercutting the weighted average sales prices per product type of the sampled Union industry to unrelated customers on the Union market were compared with the corresponding weighted average prices of the imports concerned. The comparison was made after deduction of rebates and discounts.

- (46) On this basis it was established that on average Chinese imports undercut the Union industry's sales prices by 10 % during the RIP.
- (47) In the original investigation an adjustment was made for the difference in quality between the product concerned imported from the PRC and the like product sold by the Union industry. In the present investigation, the codification of product types in the questionnaires was adjusted in a way to take this into account. Therefore, as the quality difference was taken into account in the present investigation and since no data was received from Chinese exporting producers on eventual additional differences in quality, the adjustment made in the original investigation was not applied in the present investigation. During the IP of the original investigation, the products concerned originating in the PRC were sold in the Union at prices which undercut the Union industry's prices by margins ranging from 11 % to 52 %.

4. Economic situation of the Union industry

Preliminary remarks

- (48) All injury indicators listed in Article 3(5) of the basic Regulation have been analysed. Indicators on the production volume, production capacity, capacity utilisation, employment, sales volume, sales prices, productivity and market share have been analysed on the basis of data collected for the whole Union industry. As regards all other injury indicators, their examination was based on the information submitted by the sampled Union producers as verified at the premises of each company.

Data relating to the Union industry as a whole

(a) Production

- (49) The production volume of the Union industry increased by 31 % between 2006 and 2007 and dropped by 2 percentage points between 2007 and 2008 and by another 13 percentage points between 2008 and the RIP. Despite the 16 % increase in production volume between 2006 and the RIP, the production volume of the Union industry stays below the volumes found in the original investigation i.e. below 283 265 m³ in 2002 and 267 591 in the original IP.

	2006	2007	2008	RIP
Production (m³)	203 604	267 155	263 080	235 182
<i>Index (2006 = 100)</i>	100	131	129	116

Source: Questionnaire replies, review request and Eurostat.

(b) Production capacity and capacity utilisation

- (50) The production capacity of the Union industry has increased by 33 % between 2006 and 2007 and further by 12 percentage points between 2007 and 2008. Between 2008 and the RIP, production capacity remained stable. Altogether, production capacity of the Union industry increased by 45 % over the period considered. Capacity utilisation was 51 % in 2006 and it dropped further to 41 % during the RIP.

	2006	2007	2008	RIP
Production capacity (m³)	399 016	532 415	578 484	577 205
<i>Index (2006 = 100)</i>	100	133	145	145
Capacity utilisation	51 %	50 %	45 %	41 %
<i>Index (2006 = 100)</i>	100	98	89	80

Source: Questionnaire replies and review request.

(c) Employment

- (51) The employment level of the Union industry shows an increase of 11 % between 2006 and the RIP. More specifically, the number of people employed increased by 21 % between 2006 and 2007 and remained close to this level in 2008. Between 2008 and the RIP the number of employees dropped by 9 percentage points. As a consequence of company closures and restructuring, the employment level in the period considered never reached the levels noted during the original investigation.

	2006	2007	2008	RIP
Employment (persons)	883	1 064	1 060	983
<i>Index (2006 = 100)</i>	100	121	120	111

Source: Questionnaire replies and review request.

(d) Sales volume

- (52) Over the period considered, the Union sales volume of the Union producers to unrelated customers decreased by 16 %. Between 2006 and 2007, sales remained stable before dropping in 2008 and in the RIP. Sales volumes during the period considered were in the same order of magnitude as compared to the period considered in the original investigation.

	2006	2007	2008	RIP
Union sales volume (m³)	277 739	272 341	242 728	233 333
<i>Index (2006 = 100)</i>	100	98	87	84

Source: Questionnaire replies and review request.

(e) Sales prices

- (53) Between 2006 and 2007 average sales prices of the Union industry on the Union market to unrelated customers increased by 13 % and by a further 5 percentage points between 2007 and 2008. During the RIP, these prices turned back to the level of 2007. Altogether, Union sales prices have increased by 13 % over the period considered.

	2006	2007	2008	RIP
Unit price Union market (EUR/m³)	786	885	930	887
<i>Index (2006 = 100)</i>	100	113	118	113

Source: Questionnaire replies and review request.

(f) Productivity

- (54) Productivity of the Union producers' workforce, measured as annual output (cubic metres) per person employed, increased by 4 % over the period considered. This reflects the fact that production increased at a higher pace than the employment level and is an indication of the improved efficiency by the Union producers.

	2006	2007	2008	RIP
Productivity (m³ per employee)	231	251	248	239
<i>Index (2006 = 100)</i>	100	109	108	104

Source: Questionnaire replies and review request.

(g) Market share

- (55) The market share of the Union industry increased by almost 6 percentage points during the period considered. More specifically, it dropped by 3 percentage points between 2006 and 2007 and remained fairly stable between 2007 and 2008. Between 2008 and the RIP it increased by 8,6 percentage points to 80,2 %. The increase of the Union industry's market share over the period considered is reflecting a decrease in Union sales against a more pronounced decrease in Union consumption.

	2006	2007	2008	RIP
Market share Union producers	74,3 %	71,3 %	71,6 %	80,2 %

Source: Questionnaire replies, review request and Eurostat.

(h) Magnitude of the dumping margin and recovery from past dumping

- (56) During the RIP, despite the measures in force, substantial dumping continued albeit at an overall lower level than that established in the original investigation. Given the volume and the price of the dumped imports, the impact of the actual margin of dumping, which is significant, cannot be considered negligible. Although some recovery from the past dumping could be established, the Union industry remains vulnerable to the injurious effects of any dumped imports in the Union market.

- (57) Concerning the overall situation of the Union industry, it has been found that several producers have closed down since the original investigation. According to information available, the biggest Union producer of the original IP went bankrupt in 2008 and it first reduced and then completely stopped production. Two other Union producers sampled in the original investigation closed down in 2005 and 2006 respectively. Another French producer also closed down at the beginning of 2009. In addition, a Greek producer has substantially reduced production. These developments, even though they may have contributed to an increased market share of the remaining Union producers, show that the Union industry on the whole is still fragile and vulnerable.

Data relating to the sampled Union producers

(a) Stocks

- (58) The level of closing stock of the sampled Union producers increased by almost five times over the period considered. Compared to the period covered by the original investigation, where okoumé plywood was merely produced on order, higher volumes appear to be kept in stock during the period considered. This is particularly the case in 2008 and the RIP as a consequence of dropping sales volumes.

Sample	2006	2007	2008	RIP
Closing stock (m³)	1 419	3 954	6 805	6 589
<i>Index (2006 = 100)</i>	100	279	480	464

Source: Questionnaire replies.

(b) *Wages*

- (59) The annual labour cost of the sampled Union producers increased by 26 % over the period considered. More specifically, annual labour cost increased by 29 % between 2006 and 2007. Further, it dropped by 3 percentage points between 2007 and 2008. Between 2008 and the RIP it remained stable.

Sample	2006	2007	2008	RIP
Annual labour cost (EUR)	6 429 123	8 262 078	8 125 944	8 100 326
<i>Index (2006 = 100)</i>	100	129	126	126

Source: Questionnaire replies.

(c) *Profitability and return on investments*

- (60) The profitability level of the sampled Union producers was 4,3 % in 2006 and it improved to 9,8 % and 8,3 % in 2007 and 2008 respectively, before dropping to 5,9 % during the RIP. The return on investments ('ROI'), expressed as the profit in percent of the net book value of investments decreased by 51 % over the period considered or from 12,5 % in 2006 to 6,2 % in the RIP.

Sample	2006	2007	2008	RIP
Profitability of Union (% of net sales)	4,3 %	9,8 %	8,3 %	5,9 %
<i>Index (2006 = 100)</i>	100	230	193	137
ROI (profit in % of net book value of investments)	12,5 %	13,6 %	12,1 %	6,2 %
<i>Index (2006 = 100)</i>	100	109	97	49

Source: Questionnaire replies.

(d) *Cash flow and ability to raise capital*

- (61) The net cash flow of sampled Union producers from operating activities has increased by 32 % over the period considered. There were no indications that the Union industry encountered difficulties in raising capital.

Sample	2006	2007	2008	RIP
Cash flow (EUR)	10 507 019	11 414 266	15 892 091	13 853 776
<i>Index (2006 = 100)</i>	100	109	151	132

Source: Questionnaire replies.

(e) *Investments*

- (62) The sampled producers' annual investments in the production of the like product increased by 10 % between 2006 and 2007, by 100 percentage points between 2007 and 2008 and by a further 16 percentage points between 2008 and the RIP. Overall, investments increased by 126 % over the period considered.

Sample	2006	2007	2008	RIP
Net investments (EUR)	3 588 258	3 959 491	7 520 975	8 108 166
<i>Index (2006 = 100)</i>	100	110	210	226

Source: Questionnaire replies.

5. Conclusion on the economic situation of the Union industry

- (63) The analysis of the macroeconomic and microeconomic data shows that the Union industry is in a relatively stable situation. In particular, the profitability level of the sampled Union producers has recovered from the level of – 8,9 % found for the sampled producers in the original investigation and the average profitability level has remained between 4,3 % and 9,8 % throughout the period considered. The Union industry also managed to increase its market share in a shrinking market thanks to the measures in force.

F. LIKELIHOOD OF RECURRENCE OF INJURY

1. Impact of the projected volume of imports and price effects in case of repeal of measures

- (64) Although the Union industry seems to have stabilised and recovered from the effects of the dumped imports from PRC, they have not reached the level of production, sales and employment of the period before the original investigation. A number of Union producers closed down which also shows that the industry as a whole is still somewhat fragile.
- (65) A number of elements support the likelihood of recurrence of injury in case measures were allowed to lapse. Firstly, in the light of the current undercutting levels found for imports from the PRC and assuming that the current low level of import prices would continue or even be reinforced in order to gain lost market share, the Union industry would not be in a position to maintain the current price level. This likely depression of prices would indeed jeopardise the current recovery of the Union industry and undermine profitability.
- (66) Secondly, in view of the considerable production capacities of the Chinese exporting producers, it is also likely that (dumped) imports would increase at low price levels. This, in turn, would mean that the Union industry would lose sales on the market, and given the already low capacity utilisation rate during the RIP, this might lead to further reduction of production or even further closures of Union producers.
- (67) On the basis of the above, it is concluded that in case the measures are allowed to expire, there is a likelihood of a recurrence of injury from renewed dumped imports of the product concerned from the PRC.

Other considerations: access to raw material in Gabon

- (68) Okoumé is a tropical wood which grows predominantly in Gabon and to a lesser extent in Equatorial Guinea and

in Cameroon. The complainant association has provided evidence that the Gabonese government has prohibited, as of 1 January 2010, the export of unpeeled okoumé logs from Gabon with the aim of keeping the transformation of the logs into veneers in the country. It has been therefore examined whether such a ban, although it took place after the RIP, would have a substantial impact on the present analysis.

- (69) Information received in the investigation has indicated that Asian companies, which import/export more than 60 % of Gabonese logs, seem to be in a strong position to negotiate with the Société Nationale des Bois du Gabon (SNBG), the main exporter of okoumé wood and with the Gabonese government and appear less impacted by the decision than European companies. In the absence of the cooperation of Chinese exporting producers, no further impact assessment could be carried out in this respect.
- (70) The export ban entered into force on 1 January 2010 only, i.e. after the RIP and a transitory period until May 2010 applied to logs already cut at the end of 2009 which could still be exported. In order to examine the effect of entry into force of the export ban on the Union producers, additional information was requested from the members of the complainant association on 14 September 2010. Replies were received from four Union producers. Two of the sampled producers have their own peeling plant in Gabon and therefore appear not to be affected by the ban. However, all sampled producers confirmed the information that Chinese companies have a strong negotiating position to secure access to raw material and that the effectiveness of the enforcement of the law is still to be seen. Union producers confirmed that okoumé supply has decreased and prices have increased following the export ban on logs in Gabon and that the producers which have an okoumé peeling plant in the Union suffer the most from the new situation.
- (71) In any event, the ban applies in principle to all exports, i.e. also exports to the PRC. Therefore, the new legal situation in Gabon does not seem to affect the analysis in the present expiry review.

2. Conclusion on the likelihood of recurrence of injury

- (72) Based on the above analysis, it is concluded that the expiry of the measures would be likely to result in a recurrence of injury to the Union industry caused by dumped imports of the product concerned from the PRC.

G. INTERIM REVIEW LIMITED TO THE INJURY ASPECTS IN VIEW OF THE DECISION OF THE FRENCH CONSEIL DE LA CONCURRENCE

- (73) As mentioned in recital 4, a number of French producers were subject to a French court proceeding into anti-competitive behaviour due to which it was considered appropriate to initiate *ex officio* an interim review to re-examine the injury situation of the Union industry in particular in comparison to the situation which prevailed in the investigation period of the original investigation.
- (74) In the above mentioned court proceeding, the French Conseil de la Concurrence fined six French plywood producers for anti-competitive behaviour (i.e. applying the same price grills and simultaneous price increases) during the period November 1995 to May 2004. In its judgement of 29 September 2009, the Cour d'Appel de Paris confirmed the decision of the Conseil de la Concurrence although it somewhat reduced the level of the fines.
- (75) In the injury analysis of the original proceeding five European producers were sampled: three French, one Italian and one Portuguese. Two of the three French producers in the sample were later subject to the fines described above. In order to examine the possible influence of the above anti-competitive behaviour on the injury analysis, first the average sales prices of each of the companies in the original sample were compared. It was found that the two French producers which were later fined had indeed a higher average unit sales price than the other three companies in the sample. This price difference can be partially explained by the findings of the original investigation i.e. by a different product mix of these producers. However, when making the comparison on a more detailed level, it appears that unit sales prices of the two French producers in the original IP were also higher for both full okoumé plywood (7-30 % higher) and faced okoumé plywood (3-19 %).
- (76) Therefore, in a next step, the data of the two fined French companies were removed from the injury calculation and the injury picture of the original case was examined on the basis of the data from the remaining three sampled companies. As the macroeconomic indicators (production, productivity, sales, market share, employment and growth) were based on information provided by ten Union producers, the data of the other fined French companies was also removed from this calculation.
- (77) It was found that the findings of the original investigation concerning the so-called microeconomic indicators would not change significantly without the data from the fined French companies. Over the period considered in the original investigation, profitability of the sampled companies decreased from 3,5 % to – 8,9 %. If the fined French producers were excluded from the sample, profitability would have decreased from 3,1 % to – 6,5 %. Return on investment of the sampled companies decreased from 15,6 % to – 27,5 %; without the fined French producers it would have decreased from 19,3 % to – 38,9 %. Investments of the sampled companies dropped by 80 %; without the fined French producers it would have dropped by 86 %. Cash flow of the sampled producers decreased from 7,6 million EUR to 59 000 EUR; without the fined French producers it would have decreased from 1,5 million EUR to – 69 000 EUR. Concerning macroeconomic data of the Union industry as a whole, a more nuanced picture would be noted if the data from the fined French producers were excluded. Over the period considered in the original investigation, production of the Union industry decreased by 10 %; without the fined French producers it would have decreased by 1 %. Employment in the Union industry dropped by 9 %; without the fined French producers it would have remained stable. Sales value of the Union industry decreased by 7 %; without the fined French producers it would have increased by 5 %. Sales volume of the Union industry dropped by 10 %; without the fined French producers it would have increased by 1 %.
- (78) Therefore, even if the injury picture would look more nuanced when excluding the fined French companies, there would still have been material injury in the original investigation. This follows, in particular, from the development of the so-called microeconomic indicators.
- (79) It has also been examined whether the anti-competitive behaviour of the French producers could have had a potential effect on the injury picture of the current review. Firstly, since the cartel stopped in 2004, none of the indicators could directly be influenced by anti-competitive actions any longer. Therefore it was assessed whether indirectly, i.e. through the cost of the fines, there could still be an influence on the injury analysis. It has been found that none of the two French producers in the sample included the amount of the fine when calculating their profitability. Therefore it has been found that the past anti-competitive practices or the fines imposed had no effect on the current injury analysis.
- (80) Based on the above analysis, it is concluded that the anti-competitive behaviour of French producers did not affect the injury situation of the Union industry in particular in comparison to the situation which prevailed in the investigation period of the original investigation. Therefore, the partial interim review should be terminated.

H. UNION INTEREST

- (81) In accordance with Article 21 of the basic Regulation, it was examined whether there are compelling reasons not to maintain the existing anti-dumping measures. The determination of the Union interest was based on an appreciation of all the various interests involved. All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (82) It should be recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (83) On this basis it was examined whether, despite the conclusions on the likelihood of a continuation or recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

1. Interest of the Union industry and other Union producers

- (84) The continuation of the anti-dumping measures on imports from the country concerned would enhance the possibility for the Union industry to reach a reasonable level of profitability, as it would help avoiding that the Union industry is pushed out of the market by substantial volumes of dumped imports from the PRC. Indeed, there is a clear likelihood of injurious dumping in substantial volumes which the Union industry could not withstand. The Union industry would therefore continue to benefit from the maintenance of the current anti-dumping measures.
- (85) Accordingly, it is concluded that the maintenance of anti-dumping measures against the PRC would clearly be in the interest of the Union industry and other Union producers.

2. Interest of unrelated importers in the Union

- (86) Two unrelated Union importers cooperated in the investigation. Both opposed the continuation of the measures and claimed that the measures were ineffective, that Chinese products are not comparable to like products produced by the Union industry due to quality differences and expressed doubts about the competitiveness of the Union okoumé plywood industry.

However, none of these claims have been substantiated. In the absence of any evidence suggesting that the current anti-dumping measures in force considerably affected importers, it is concluded that the continuation of measures will not affect the Union importers to any significant extent.

3. Interest of users in the Union

- (87) Questionnaire replies were received from three users located in Italy, Greece and France respectively. Given that none of them purchased the product concerned from the PRC and in the absence of further evidence suggesting that the current anti-dumping measures in force considerably affected users, it can be concluded that the maintenance of the measures would not have a significant negative impact on users in the Union.

4. Conclusion on Union interest

- (88) It is thus considered that no compelling Union interest reasons exist against the maintenance of the measures in force.

I. ANTI-DUMPING MEASURES

- (89) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained.

Company	Rate of duty (%)
Nantong Zongyi Plywood Co. Ltd	9,6
Zhejiang Deren Bamboo-Wood Technologies Co. Ltd	23,5
Zhonglin Enterprise (Dangshan) Co. Ltd	6,5
Jiaxing Jinlin Lumber Co. Ltd	17
All other companies	66,7

- (90) They were also granted a period within which they could make representations subsequent to this disclosure. The submissions and comments were duly taken into consideration where warranted.

- (91) It follows from the above that, as provided for by Article 11(2) and Article 11(3) of the basic Regulation, the anti-dumping measures applicable to imports of okoumé plywood originating in the PRC should be maintained.

- (92) The individual company anti-dumping duty rates specified in this Regulation are solely applicable to imports of the product concerned produced by these companies and thus by the specific legal entities mentioned. Imports of the product concerned manufactured 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'.
- (93) Any claim requesting the application of these individual anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽¹⁾ forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, this Regulation will then be accordingly amended by updating the list of companies benefiting from individual duty rates.
- (94) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duty. These special measures include the presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the anti-dumping duty applicable to 'all other companies'.
- (95) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rates and the consequent imposition of a country-wide duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of okoumé plywood, defined as plywood consisting solely of sheets of wood, each ply not exceeding 6 mm thickness, with at least one outer ply of okoumé not coated

by a permanent film of other materials, currently falling within CN code ex 4412 31 10 (TARIC code 4412 31 10 10) and originating in the People's Republic of China.

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

Manufacturer	Rate of duty (%)	TARIC additional code
Nantong Zongyi Plywood Co. Ltd Xingdong Town, Tongzhou City, Jiangsu Province, People's Republic of China	9,6	A526
Zhejiang Deren Bamboo-Wood Technologies Co. Ltd Linhai Economic Development Zone, Zhejiang, People's Republic of China	23,5	A527
Zhonglin Enterprise (Dangshan) Co. Ltd Xue Lou Miao Pu, Dangshan County, Anhui Province 235323, People's Republic of China	6,5	A528
Jiaxing Jinlin Lumber Co. Ltd North of Ganyao Town, Jiashan, Zhejiang Province, People's Republic of China	17	A529
All other companies	66,7	A999

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

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

Article 2

The partial interim review in accordance with Article 11(3) of Regulation (EC) No 1225/2009 is hereby terminated.

Article 3

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

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, NERV-105, 1049 Bruxelles/Brussel, BELGIUM.

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

Done at Brussels, 31 January 2011.

For the Council
The President
MARTONYI J.

ANNEX

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

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