

## COMMISSION REGULATION (EU) No 1242/2009

of 16 December 2009

## imposing a provisional anti-dumping duty on imports of certain cargo scanning systems originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

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 (the basic Regulation)<sup>(1)</sup>, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

## 1. PROCEDURE

### 1.1. Initiation

- (1) On 18 March 2009, the European Commission announced by a notice published in the *Official Journal of the European Union*<sup>(2)</sup> ('notice of initiation'), the initiation of an anti-dumping proceeding concerning imports into the Community of certain cargo scanning systems originating in the People's Republic of China ('PRC').
- (2) The anti-dumping proceeding was initiated following a complaint lodged on 2 February 2009 by the Community producer Smiths Detection Group Limited ('the complainant'), representing a major proportion, in this case more than 80 % of the total Community production of certain cargo scanning systems. This complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.

### 1.2. Parties concerned by the proceeding

- (3) The Commission officially advised the complainant, other known producers in the Community, the sole known exporting producer in the PRC, the representatives of the exporting country concerned, and producers in the United States of America ('USA'), which was envisaged as analogue country. In addition, the Commission contacted all known Community users of the product concerned/like product. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation. All interested parties who so

requested and showed that there were particular reasons why they should be heard were granted a hearing.

- (4) In order to allow the sole known exporting producer in the PRC to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if it so wished, the Commission sent claim forms to the exporting producer known to be concerned and to the authorities of the PRC. The sole known exporting producer in the PRC did not request MET pursuant to Article 2(7) of the basic Regulation but requested IT.
- (5) The Commission sent questionnaires to all parties known to be concerned and to all other parties that requested so within the deadlines set out in the notice of initiation.
- (6) Questionnaire replies were received from the sole known Chinese exporting producer, from two Community producers, from one producer in the USA which was envisaged as analogue country and from nine Community users.
- (7) The Commission sought and verified all the information it deemed necessary for the purpose of MET/IT and for a provisional determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:
  - (a) Community producers
 

Smiths Heimann SAS, Vitry (France) and Smiths Heimann GmbH, Wiesbaden (Germany), both related companies of Smiths Detection Group Limited
  - (b) Exporting producer in the PRC
 

Nuctech Company Limited, Beijing, People's Republic of China
- (8) In view of the need to establish a normal value for the exporting producer in the PRC which did not claim MET, a verification visit to establish normal value on the basis of data from an analogue country, the USA in this case, took place at the premises of the following company:

Rapiscan Systems Inc., Torrance, CA, USA

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

<sup>(2)</sup> OJ C 63, 18.3.2009, p. 20.

### 1.3. Investigation period and period considered

- (9) The investigation of dumping and injury covered the period from 1 July 2007 to 31 December 2008 (the 'investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2004 to the end of the IP ('the period considered'). With respect to the length of the IP it is noted that the 18-month period was selected due to the specific particularities of the product concerned/like product market, i.e. the existence of public procurement/tendering processes which entail long lead time periods for the materialisation of a transaction and the existence of relatively few transactions.

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product concerned

- (10) The product concerned is systems for scanning of cargo, based on the use of neutron technology or based on the use of X-rays with an X-ray source of 250 KeV or more or based on the use of alpha, beta or gamma radiations, currently falling within CN codes ex 9022 19 00, ex 9022 29 00, ex 9027 80 17 and ex 9030 10 00 and motor vehicles equipped with such systems currently falling within CN code ex 8705 90 90 originating in the People's Republic of China ('the product concerned').
- (11) Those scanners constitute advanced technology screening systems for monitoring freight. They help enhancing security and safety by detecting shipments of, *inter alia*, explosives, weapons, radioactive materials, narcotics, contraband and counterfeited goods. They are a key tool for customs administrations and port authorities, as well as for certain air cargo companies and other private actors specialised in safety and security matters, to identify suspect goods in unopened loads transiting by sea, road, air or rail.
- (12) The product concerned exists in different configurations depending on the item to be scanned and whether they have to be mobile or static. The main configurations are the following: stationary systems (that are permanently installed on a dedicated site), relocatable systems (that are light scanning systems that move on rails and can be relocated), rail systems, mobile systems (that have scanners incorporated in a motor vehicle), pass-through systems and portal systems. Within the same configuration, cargo scanning systems share the same general physical, technological and performance characteristics, serve for exactly the same purposes in terms of uses, are sold exclusively to end users and are produced using the same type of equipment.
- (13) The sole cooperating Chinese exporting producer claimed that the product scope of the product concerned should be radically reduced and should only include a certain part of the X-ray cargo scanning systems, i.e. non-mobile

cargo scanning systems based on the use of X-rays (with an X-ray source of more than 450 KeV), excluding cargo scanning systems containing Interlaced Dual-Energy (IDE), binocular stereoscopic (BS) and fast-scan technologies. It was submitted that certain technologies are not scientifically or technically suitable for cargo scanners. It was argued that, in some cases, technologies, end uses and consumer perception are different. The company claimed that alpha or beta radiation technologies are not scientifically or technically capable of being used with cargo scanners. It also argued that cargo scanners with neutron and gamma technology are not produced within the Community. Furthermore, it submitted that certain scanners are different (i.e. mobile cargo scanners, cargo scanners with fast-scan technology, cargo scanners with IDE technology and cargo scanners containing BS technology, cargo scanners with a certain energy level) and thus cannot be treated as the product concerned. It was finally claimed that certain product types are different and that some product types are not produced in the PRC or the Community

- (14) The investigation has shown that all technologies covered by the product scope can be used in cargo scanners and that all product types serve the same purpose which is to scan cargo by using the same main principal feature, i.e. the emission of radiation concentrated in scanning cargo. This is the reason why changes in the source or level of energy and also the better suitability of some technologies for specific types of the items to be scanned (e.g. organic items) could not warrant the exclusion of a certain product type. At the same time all product types, irrespectively of technologies, serve to satisfy the same sole aim pursued by the user of the product which is none other than to scan cargo. Furthermore, the calls for tender in the European Union typically do not exclude any type of technology, irrespectively of where the corresponding product is produced. It also appears that alpha and beta radiation technologies can be used for scanning certain type of cargo. In respect to product types not produced in the European Union, it is noted that this is not relevant as such. It follows from the constant practice of the Institutions that the definition of the product scope is based on whether the various types share the same basic physical and technical characteristics and essentially the same end uses. To limit the product scope only to exactly the same product types produced by the Community industry would make the product definition and any anti-dumping measure unworkable. As to the claim that certain X-ray cargo scanners should be excluded solely on the grounds that they are combined with certain types of technologies, it should be noted that the existence of any additional feature or functionality of an X-ray cargo scanner does not put into question the fact that this product is used in the same way as all other types of the product concerned and shares the same basic physical and technical characteristics. As regards the distinction between mobile and non-mobile cargo scanning systems, it should be noted that both serve the same purpose, use the same core technology and, in both, the scanning technology is integrated into a wider structure, be it a truck or a permanent installation. Finally, with respect to energy levels, it should be noted that both low and high

energy levels are used in cargo scanning and that, therefore, all product types share the same main physical and technical characteristics, provided that the energy level is within the limits defined in the notice of initiation. It would appear therefore illogical to exclude cargo scanners with certain energy level especially taking into account that calls for tenders usually do not specify the energy level and it is up to the cargo scanner supplier to determine the appropriate level in its offer. Consequently, all existing types are considered as one product for the purposes of this investigation.

- (15) It was also submitted that since the primary component of the product concerned (i.e. the accelerator) is not produced by the complainant, it should not be considered as a producer. In this respect, it is noted that cargo scanners and accelerators are different products. The production of accelerators is another type of business since accelerators are used in a variety of sectors and applications. Cargo scanning is only one application for accelerators. Worldwide, producers of cargo scanners do not normally produce accelerators. To the Commission's knowledge, only Nuctech is vertically integrated and produces also the upstream product.

## 2.2. Like product

- (16) The product concerned in the PRC, the one produced and sold on the US domestic market, which served as an analogue country, as well as the product produced and sold in the Community by the Community industry were found identical in terms of overall general physical and technical characteristics. Moreover, there is no difference in use between those products. This is confirmed by the fact that the products generally compete in public tendering processes, where they have to comply with the same standard requirements. These tenders are published by government authorities (usually the customs authorities who are purchasers/users of the product). Tenders contain detailed specifications of the product to be delivered, sometimes coupled with concrete requirements with respect to installation, service-related support and maintenance requirements. By definition any offer made by a producer in a tendering process normally entails that the competing products have the same basic physical and technical characteristics and uses. Furthermore, given the transparent nature of the market in terms of size (small volume of transactions) and number of participants (small number of participants), and the stringent requirements set out in the invitations to tender, the possibility to differentiate products is considerably reduced.
- (17) It is therefore provisionally concluded that all types of cargo scanning systems are alike within the meaning of Article 1(4) of the basic Regulation.

## 3. DUMPING

### 3.1. General methodology

- (18) The general methodology set out below has been applied to the sole cooperating exporting producer in the PRC.

### 3.2. Market economy treatment (MET)

- (19) 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 have shown that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

- (20) However, as explained in recital (4) above, the sole cooperating exporting producer in the PRC only requested Individual Treatment (IT). These criteria were therefore not investigated.

### 3.3. Individual treatment (IT)

- (21) As a general rule, 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. Briefly, and for ease of reference only, these criteria are set out below:

- in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;
- export prices and quantities, and conditions and terms of sale are freely determined;
- the majority of the shares belong to private persons. State officials appearing on the Boards of Directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;
- exchange rate conversions are carried out at the market rate; and
- state interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

- (22) The sole cooperating exporting producer in the PRC claimed IT and supplied all information necessary for the evaluation of its claim within the given deadlines.

- (23) On the basis of the information available and verified during the verification visit, it was found that there is strong likelihood of the existence of state interference in the trading activities of this company with respect to the product concerned. Indeed, the sole cooperating exporting producer in the PRC was not in a position to demonstrate that it is sufficiently independent from state interference as its controlling shareholder is a subsidiary of a public Chinese university. Moreover, any changes in the share structure of the company need to be approved in advance by the state authorities since state assets were used in the company's register capital. The Commission also noted the existence of a contract linked with a government-to-government agreement between the PRC and one other third country. This is a further indication of some form of state intervention with respect to the company's business activities and more specifically the ability to freely determine export prices and quantities, and conditions and terms of sale.
- (24) In this respect it is recalled that the Chinese company in question is the only exporting producer in the PRC of the product concerned. Thus, any individual duty established will also be the country-wide duty since the anti-dumping duty shall be imposed on a non-discriminatory basis on the imports of the product concerned from the sole source producing the product concerned in the PRC, found to be dumped and causing injury.
- (25) Account taken of the above, as well as of the fact that precise import/export statistics for the product concerned cannot be obtained through the Harmonized System and the Combined Nomenclature, it is provisionally established that the sole cooperating exporting producer could not be granted IT as set forth in Article 9(5) of the basic Regulation.
- 3.4. Normal value**
- 3.4.1. Analogue country**
- (26) According to Article 2(7)(a) of the basic Regulation, in case of imports from non-market economy countries and to the extent that MET could not be granted for countries specified in Article 2(7)(b) of the basic Regulation, normal value has to be established on the basis of the price or constructed value in an analogue country.
- (27) In the notice of initiation the Commission indicated its intention to use the United States of America (USA) as an appropriate analogue country for the purpose of establishing normal value for the PRC and invited the interested parties to comment thereon.
- (28) Comments were received from the sole cooperating exporting producer in the PRC expressing skepticism with regards to the use of USA as an appropriate analogue country. The main argument made against the use of this analogue country was the highly protected government procurement market in the USA with an emphasis on 'Buy American' leading to artificial prices on the USA market.
- (29) The Commission sought cooperation from producers in the USA. Letters and relevant questionnaires were sent to five known companies mentioned in the complaint. Out of all these companies, only one producer submitted in due time all the necessary information for the determination of normal value and finally agreed to cooperate with the investigation.
- (30) The Commission sent reminders to the US companies that were initially contacted. It also asked the complainant and the sole cooperating exporting producer in the PRC for comments concerning the selection of market economy third country.
- (31) The sole cooperating exporting producer in the PRC submitted that one company established in the USA and related to the complainant is not cooperating with the investigation in the envisaged analogue country. It was argued that due to the lack of cooperation of the subsidiary in the analogue country, the complainant should be qualified as non-cooperator and the proceeding should be terminated. The complainant stated that its related company in the USA did not qualify as a producer within the meaning of the European Union anti-dumping rules and therefore it did not mention it in the complaint.
- (32) The arguments put forward by the cooperating exporting producer are not convincing. The existence of simple shareholding links between Community producers and producers in a possible analogue country cannot be regarded as a compelling factor in the selection of the analogue country. What matters is whether production and sales in a country that is envisaged as a possible analogue country, can be considered as representative for the exports from the country concerned in order to establish normal value. There is no duty for any producer in an analogue country to cooperate with the Commission's anti-dumping investigation. Moreover, no specific information was submitted suggesting that the non-cooperation of the complainant's related company located in the USA would have unduly influenced the outcome of this investigation. This is even more obvious since one unrelated USA producer did cooperate with the investigation.
- (33) The investigation established that the USA is the only other market apart from the PRC and the Community where the product concerned/like product is manufactured. It was also shown that the USA has a competitive market for the like product. The like product is sold both to private clients and public bodies.

- (34) All sales to the USA Government are covered by the 'Federal Acquisition Regulation' which makes reference to the 'Buy American Act' in relation to the foreign acquisition of supplies. By this Act the US Government gives preference to domestic products in its purchases unless the exporting country has signed the plurilateral WTO Trade Agreement on Government Procurement. The Buy American Act contains exceptions to the general rule of domestic procurement in case of public interest and non-availability. The sole cooperating exporting producer in the PRC claimed that the Federal Acquisition Regulation and the Buy American Act distort the purchase of raw materials, increase purchase costs in particular for foreign-based companies, and prevent effective competition in the US market.
- (35) On the basis of the information available, it was found that sole cooperating Chinese exporting producer had participated in the past in one public tender procedure in the USA. The investigation has not shown any reason pointing to the conclusion that foreign producers, who are signatories to the plurilateral WTO Trade Agreement on Government Procurement, cannot participate in public tender procedures in the USA under the same conditions. Therefore, the argument that the US could not be used as an analogue country because of the Federal Acquisition Regulation cannot be accepted.
- (36) The investigation further revealed that the production volume of the cooperating US producer constitutes considerably more than 5 % of the volume of Chinese exports of the product concerned to the Community. As for the quality, technical specifications and standards of the like product in the USA, no major overall differences were found when compared to Chinese products. Therefore, the US market was deemed sufficiently representative for the determination of normal value for the PRC.
- (37) In view of all the above it was provisionally concluded that the USA constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

#### 3.4.2. Determination of normal value

- (38) Following the choice of the USA as an analogue country, normal value was calculated on the basis of the data verified at the premises of the sole cooperating US producer.
- (39) The domestic sales of the US producer of the like product were found to be representative compared to the product concerned exported to the Community by the sole cooperating exporting producer in the PRC.
- (40) An examination was also made as to whether the domestic sales could be regarded as having been made

in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers. The verification carried out at the USA producer showed that its sales volume, sold at a net sales price equal to or above the unit cost, represented more than 80 % of the total sales volume. Therefore, normal value was based on the actual domestic price per product type, calculated as a weighted average of the prices of all domestic sales of that product type made during the IP, irrespective of whether these sales were profitable or not.

- (41) It is noted that the cooperating US producer produced and sold in the US market only one type of the like product during the investigation period.
- (42) For the types of the product concerned for which no normal value could be calculated on the basis of data available in the analogue country, normal value was established on the basis of verified information from the Community industry for the same type of products. This was done in line with the provisions of Article 2(7)(a) of the basic Regulation stipulating that costs and prices of the Community industry may be used as any other reasonable basis when determining normal value in case of imports from non-market economy countries.
- #### 3.5. Export price
- (43) The sole cooperating exporting producer in the PRC made export sales to the Community only to public authorities following the award of public tenders.
- (44) The investigation revealed that the accounting of the company was deficient so that the exact details of export sales and prices could not be established with certainty for a number of transactions. Contracts awarding the tenders included on-spot construction works, and installation and service costs in the Community that could not always be traced back in the accounting of the company although they should normally be available. Furthermore, some export related costs were not reflected accurately in the accounts of the company thereby raising doubts as to their completeness. Thus, certain necessary adjustments to the export prices for the purpose of fair comparison with the normal value could not be established with the desirable degree of precision.

- (45) The company was informed of the aforesaid shortcomings and the possibility of applying Article 18 of the basic Regulation in order to establish the export price of the product concerned. The company was requested to comment thereon but the comments received were of a general nature that did not dispute the problems established.

(46) In view of the above the export prices of the product concerned were established pursuant to Article 18(1) of the basic Regulation on the basis of the prices paid for the product concerned.

### 3.6. Comparison

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

(48) 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. For the investigated exporting producer in the PRC, adjustments for differences in transport and insurance costs, packing costs, credit costs, warranty and guarantee costs, commissions, civil works and on-spot installation, and service costs have been made where applicable and justified. In this respect, as mentioned under recital (45), facts available pursuant to Article 18(1) of the basic Regulation have been used for the establishment of service costs.

### 3.7. Dumping margin

(49) Pursuant to Article 2(11) and (12) of the basic Regulation, the dumping margin for the sole cooperating exporting producer in the PRC was established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type as established above.

(50) Based on information available from the complaint and the cooperating Chinese exporting producer, there are no other known producers of the product concerned in the PRC. Therefore, the country-wide dumping margin to be established for the PRC should be equal to the dumping margin established for the sole cooperating exporting producer in the PRC.

(51) The provisional dumping margin for the PRC, expressed as a percentage of the CIF Community frontier price duty unpaid, is 36,6 %.

## 4. INJURY

### 4.1. Community production

(52) The investigation established that the like product is manufactured in the Community by two Community producers with manufacturing sites in France, Germany and the United Kingdom.

(53) The output of the above companies constitutes the total Community production.

(54) It is recalled that in this case there are only two Community producers and one exporting producer which represent the main share of the Community market. Therefore, no precise figures can be given in order to protect business proprietary information. In these circumstances, indicators are given in indexed form or ranges.

### 4.2. Definition of the Community industry

(55) The complaint was lodged on behalf of one Community producer representing more than 80 % of the total known Community production of the like product.

(56) The other Community producer cooperated initially with the investigation by submitting a questionnaire reply but later discontinued active participation in the investigation.

### 4.3. Community consumption

(57) It is recalled that there are no precise Eurostat import statistics for the product concerned. All interested parties were requested to provide information on the Community consumption. Information was cross-verified when possible with any available information from producers of the product concerned in China and USA, with European Union users as well as with information on contracts and tenders lost by the Community industry on the Community market. The Community consumption was thus established on the basis of the volume of sales in the Community of the like product produced by the Community industry, the volume of sales in the Community of the like product produced by the other known Community producer and the volume of imports of the product concerned from third countries. The date of signature of sales contracts resulting from tendering proceedings was used as the date to determine whether a transaction was taking place within a specific time period.

On this basis, the Community consumption developed as follows:

	2004	2005	2006	2007	IP
<i>Index: 2004=100</i>	100	59	112	118	200

*Source:* Questionnaire replies and subsequent submissions.

(58) The consumption of the product concerned and the like product in the Community doubled during the period considered due to increased security, anti-fraud and crime fight concerns. The purchase of a few units was EU-funded in the framework of a series of anti-fraud or border-protection initiatives.

#### 4.4. Imports from the country concerned

##### 4.4.1. Volume, price and market share of dumped imports from the country concerned

- (59) The volume of imports of the product concerned increased significantly throughout the period considered. Imports in the IP increased significantly since 2004.

	2004	2005	2006	2007	IP
Volume of imports	100	100	500	600	1 500

Index: 2004=100

Source: Questionnaire replies and subsequent submissions.

- (60) The average import price varies considerably from one import to another because the configuration of the system has a big impact on the average unit price. Consequently, the development of average unit prices is not meaningful as such.

	2004	2005	2006	2007	IP
Average import price	100	100	800	530	670

Index: 2004=100

Source: Questionnaire replies and subsequent submissions.

- (61) The market share of the imports from the country concerned more than quadrupled in the period considered. In this respect it should be also noted that imports from the country concerned constitute for the period considered the overwhelming majority of imports to the European Union.

	2004	2005	2006	2007	IP
PRC market share	0–10 %	0–10 %	20–30 %	30–40 %	40–50 %
Index: 2004=100	100	100	260	300	440

Source: Questionnaire replies and subsequent submissions.

##### 4.4.2. Undercutting

- (62) For the purpose of analysing price undercutting, the import prices of the cooperating exporting producer were compared to the Community industry tender prices during the IP, on the basis of comparable product configurations. This comparison was made for all transactions where both the Community industry and the exporting producer presented a bid and where these bids were made on the same terms and accepted by the awarding authority. The Community industry prices were adjusted to a net ex-works level, and compared to CIF

European Union frontier import prices plus applicable customs duties.

- (63) On the basis of the prices of the cooperating exporting producer, the weighted average undercutting margin found, expressed as a percentage of the Community industry's prices is between 20 and 25 %.

#### 4.5. Situation of the Community industry

##### 4.5.1. Preliminary remarks

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

- (65) It should be noted that this type of business is 'knowledge or know how-intensive' rather than 'machine-intensive' and it is based on production to order. This should be borne in mind when interpreting a number of injury indicators and determining their importance for the purposes of the injury analysis. The aforesaid indicators include information on average prices, return on assets, stock indicators, production capacity and capacity utilisation. With respect to average prices information is not considered significant because of the low volumes and differences in various types of scanning system from one year to another. As to return on assets and stocks indicators, information provided do not give an accurate picture since the former is based on assets that have already been depreciated while the latter is a reflection of a sale-to-order market. Production capacity and the capacity utilisation are also indicators that have only a very limited relevance because products are basically produced when contracts are ensured following the tendering processes.

##### 4.5.2. Injury indicators

###### Production, capacity and capacity utilisation

	2004	2005	2006	2007	IP
Production	100	75	89	163	166
Capacity	100	82	83	168	222
Capacity utilization	100	92	107	97	75

Index: 2004=100

Source: Questionnaire replies

- (66) During the period considered, the Community industry's production volume increased by 66 %. This positive trend is mainly due to the good export sales of the like product. The Community industry more than doubled its production capacity over the period considered for the same reason. Capacity utilisation of the Community industry went down by 25 % over the period considered.

*Stocks*

	2004	2005	2006	2007	IP
Stocks	100	164	127	118	118

*Index: 2004=100*

*Source: Questionnaire replies.*

- (67) The Community industry's stock level varied up and down throughout the period considered. However, the like product's market production is made on order and business stocks are always kept to the minimum possible level.

*Sales volume, sales price and market share*

	2004	2005	2006	2007	IP
Community sales volume	100	67	93	80	53
Market share	80–90 %	90–100 %	70–80 %	60–70 %	20–30 %
Index of market share	100	113	84	68	27
Sales price	100	87	107	87	116

*Index: 2004=100*

*Source: Questionnaire replies and subsequent submissions.*

- (68) Sales of the Community industry decreased during the period considered and in the IP were almost half of their original volume. The Community industry lost 73 % of its market share between 2004 and the end of the IP.
- (69) The average sales price of the Community industry's own production highly depends on the configuration of the scanner sold and the number of units sold per contract in each period. A comparison of the figures throughout the period considered is therefore not meaningful.

*Profitability*

	2004	2005	2006	2007	IP
Pre-tax profit margin	100	85	90	7	– 50

*Index: 2004=100*

*Source: Questionnaire replies*

- (70) Over the period considered the Community industry has become loss-making. The situation was particularly bad during the IP. It is evident that the profitability levels

observed in 2007 and during the IP put into question the survival of the Community industry.

*Investments, return on investment, cash flow and the ability to raise capital*

	2004	2005	2006	2007	IP
Investments	100	164	100	354	105
Return on investment	110-120 %	85-95 %	210-220 %	215-225 %	60-70 %
Cash flow	100	124	257	196	– 106

*Index: 2004=100*

*Source: Questionnaire replies.*

- (71) Investments remained low over the period considered. A major part of the investments was devoted to maintaining the Community industry's operating premises. The higher level of investment observed in 2007 concerns a new patent to improve the performance of the product concerned. It is recalled that this business is know-how intensive.
- (72) The return on investment, expressed in terms of net profits of the Community industry and the net book value of its investments shows a drop during the period considered, but is not a good injury indicator because it mainly reflects assets that had already been depreciated.
- (73) The cash flow situation of the Community industry deteriorated severely over the period considered.

*Employment, productivity and wages*

	2004	2005	2006	2007	IP
Employment	100	110	113	131	137
Average labour cost per worker	100	98	99	101	156
Productivity per worker	100	68	79	124	121

*Index: 2004=100*

*Source: Questionnaire replies.*

- (74) The number of employees of the Community industry involved with the like product increased during the period considered due to the good export performance of the complainant. The average labour cost per worker increased reflecting the wage level of more highly qualified personnel.



- (75) Productivity, expressed in terms of output per worker, increased by 21 % over the period considered. This is a reflection of increased activity for non-EU markets.

#### 4.5.3. Magnitude of dumping

- (76) Given the volume and the prices of dumped imports from the country concerned the impact on the Community market of the actual margin of dumping cannot be considered to be negligible.

#### 4.6. Conclusion on injury

- (77) During the period considered the presence of low-priced dumped imports from the PRC increased considerably. In terms of volume, imports from the country concerned reached very high levels by the end of the period considered. Market share of the product concerned in the Community increased by 440 % during the same period.
- (78) The analysis of the economic indicators of the Community industry revealed that there is injury in terms of decrease of sales volume (- 47 %), sales price and market share (- 73 %). This had a further direct negative impact on the financial situation of the Community industry. In fact, financial indicators confirm that the future of the Community industry is at risk and that the presence of dumped imports from the country concerned prevents it from increasing sales volumes and/or prices to levels that could restore its financial situation.
- (79) Injury was assessed for the whole Community industry (macro-economic indicators). On this basis, no significant differences were identified between the complainant and the rest of the Community industry.
- (80) In the light of the foregoing, it is provisionally established that a major proportion of the Community industry has suffered within the meaning of Article 3(5) of the basic Regulation.

### 5. CAUSATION

#### 5.1. Introduction

- (81) In accordance with Articles 3(6) and (7) of the basic Regulation, the Commission examined whether the dumped imports from the PRC had caused injury to the Community industry to a degree sufficient to be considered as material. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined in order to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

#### 5.2. Effects of the dumped imports

- (82) First, it is recalled that the investigation revealed that the cargo scanning systems imported from the country concerned directly competes with the products produced and sold by the Community industry not least because they compete in tender procedures.
- (83) The significant increase in volume of the dumped imports from the country concerned resulted in a deterioration of the economic situation of the Community industry. This deterioration included, *inter alia*, a decline in sales and price levels of the Community production sold in the Community during the same period.
- (84) The market share of the dumped imports increased by 440 % during the period considered, whilst the Community industry's market share decreased by more than two thirds. These negative changes for the Community industry occurred against the backdrop of a Community consumption that roughly doubled between 2004 and the IP.
- (85) The dumped imports undercut the prices of the Community industry so it can be reasonably concluded that they were responsible for the price suppression underlying the worsened financial situation of the Community industry.
- (86) In view of the clearly established coincidence in time between, on the one hand, the surge of dumped imports at prices undercutting the Community industry's prices and, on the other hand, the Community industry's loss of sales and production volume, decrease in market shares and price depression, it is provisionally concluded that the dumped imports played a determining role in the injurious situation of the Community industry.

#### 5.3. Effects of other factors

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

	2004	2005	2006	2007	IP
Export sales of Community production	100	83	42	96	108
Export sales price	100	76	56	35	65

Index: 2004=100

Source: Questionnaire replies.

(87) The export volume of the Community industry increased during the period considered. Exports represented the overwhelming majority (between 90 and 95 %) of the total volume of Community production in the IP. The Community industry sold during the IP the product concerned both to unrelated and related customers. The Community industry's non-EU sales consist of identical product types to those sold in the EU. The exports of the Community industry were usually profitable during the period considered although their profitability shows a downward trend. Export prices went down but still remained higher than the sale prices in the Community. The strong export performance suggests that this type of industry is viable and competitive.

(88) Therefore, the export performance of the Community industry helped sustain its business and did not contribute to the material injury suffered.

#### 5.3.2. Competition between Community producers

(89) The second producer in the Community is related to a long-established US producer of the product concerned. This producer did not manufacture the product concerned at the beginning of the period considered. It only entered into the market in 2007 and won two contracts during the IP. In this respect it should be noted that the contracts awarded relate to a tender where only this producer participated and to the award of a contract that was the result of a legal challenge. Moreover, related injury indicators of the second producer in the Community followed a similar pattern as that of the complainant. Thus any injury caused to the complainant which is clearly observed in the deterioration of the injury indicators during the period considered could not be attributed to this new player in the Community market.

#### 5.3.3. Imports from third countries

(90) Imports from third countries were quasi non-existent during the IP, like during the period considered. This is the conclusion derived from submissions of interested parties, given that the relevant Eurostat statistics are not detailed enough to show only the product concerned or a fair estimation. Indeed, the relevant information illustrate that there were only some sporadic imports from the USA which could not cause injury to the Community industry because of its insignificant number.

	2004	2005	2006	2007	IP
Volume of imports	100	0	0	0	100

Index: 2004=100

Source: Submissions of interested parties.

#### 5.3.4. The Community industry did not present a bid for all tendering processes taking place during the IP

(91) It is recalled that the Community market is mainly supplied by tenders. In view of the transparent nature of the market it has been observed that some tendering documents are a result of a process of exchanging views between the awarding authority and the producers prior to the publication of the tender as such. Thus, in these cases, tendering terms could seem to discourage other players from participating in bidding procedures. The investigation has confirmed that neither the Community industry nor the sole cooperating Chinese exporting producer presented a bid in each and every tendering process. The Community industry presented bids only when it could submit a reasonable commercial offer. No compelling factor was found to suggest that the clearly observed injury during the period considered results from the Community industry not participating in bids that were not deemed reasonable business options.

#### 5.3.5. Impact of non-price related factors of the product concerned

(92) The investigation has shown that tenders may not only cover the product concerned but also other elements such as maintenance, services or construction works. Moreover, price is not always the only award criteria. Awarding authorities may introduce further criteria, apart from price, such as criteria related to extra technical capabilities of the product or additional non-product-related elements. However, even if the award criteria contain such elements, the investigation has shown that price-related points account for a significant part of the points that can be awarded. The investigation also showed that no awarding authority excluded a bid on the basis that such bid did not include some extra features. In other words, the essential requirements were always met. Additional features typically do not come without a cost. The fact that the exporter concerned offered in some instances additional features beyond what was required simply demonstrates the low and injurious level of prices of the dumped imports.

(93) Considering all the above, only imports from the country concerned could have caused material injury to the Community industry.

#### 5.4. Conclusion of causation

(94) In conclusion, it is provisionally confirmed that the material injury to the Community industry, which is characterized by a decrease in EU sales and market share in the Community market as well as negative financial results, was caused by the dumped imports concerned. Indeed, the export performance of the Community industry, the imports from third countries, the competition between Community producers and the above-mentioned bid-related issues did not have a significant effect on the Community industry's negative developments.

(95) Given the above analysis which has properly distinguished and separated the effects of all the known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is hereby confirmed that these other factors as such do not reverse the fact that the injury assessed must be attributed to the dumped imports.

## 6. COMMUNITY INTEREST

### 6.1. General remarks

(96) The Commission examined whether, despite the provisional conclusion on the existence of injurious dumping, compelling reasons existed that could lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and in accordance with Article 21(1) of the basic Regulation, the impact of possible measures on all parties involved in this proceeding and also the consequences of not taking measures were considered on the basis of all evidence submitted.

### 6.2. Interest of the Community industry

(97) The injury analysis has clearly demonstrated that the Community industry has suffered from the dumped imports. The increased presence of dumped imports in recent years caused a suppression of sales prices and volumes in the Community market and a loss of market share for the Community industry. This prevented the Community industry from achieving profitability levels commensurate with its competitive strengths.

(98) Without the imposition of measures the already bad financial position of the Community industry would clearly deteriorate further and ultimately lead to the Community industry closing down. Measures would prevent a further substantial increase of dumped imports from the country concerned, which would allow the Community industry to, at least, maintain its current position on the market. The investigation has shown that any increase in the market share of the dumped imports from the country concerned is gained at the direct expense of the Community industry. Furthermore, it should also be noted that the market for the product concerned is likely to grow further in the medium to long term because of the increasing importance of security policy and the forthcoming implementation from non-EU countries (namely the USA) of the compulsory scanning of exports before they leave their point of departure in the European Union. In this respect, the Community industry has a clear interest not to see its position further worsening in order to benefit from the aforesaid future positive market developments.

(99) The imposition of measures will restore the import price to non-injurious levels, allowing the Community industry to compete under fair trade circumstances, on the basis of proper comparative advantage.

(100) It is therefore provisionally concluded that imposing measures would clearly be in the interest of the Community industry.

### 6.3. Interest of importers/distributors

(101) The likely impact of measures on importers/distributors has not been considered as no unrelated importers/distributors of the product concerned are known to exist in the Community.

### 6.4. Interest of upstream suppliers

(102) No upstream suppliers have made themselves known or provided information in accordance with Article 21 (2) of the basic Regulation.

### 6.5. Interest of users and consumers

(103) No representations were received from consumers' organisations following the publication of the notice of initiation of this proceeding. Therefore, and since the product concerned is not used in the production of consumer goods, the analysis has been limited to the effect of measures on users.

(104) Questionnaires were sent to all Customs authorities in the Community. No other users made themselves known after the publication of the proceeding. Customs authorities and/or Port Authorities of Malta, Belgium, the Netherlands, the United Kingdom, Spain, Portugal, the Czech Republic, Latvia and Slovakia cooperated with the investigation although each to a different extent. These users represent almost 6 million turnover of the product concerned and 15 % of the Community consumption during the IP. The investigation has shown that during the IP the aforesaid users bought 5 units of the product concerned from the sole cooperating Chinese exporting producer, one from a US producer and none from the Community industry.

(105) It is noted that during the period considered some users had several sources of supply. One of the users expressed concerns over the possibility to procure quickly and in line with its needs the product concerned. In this respect it is noted that the Community industry would clearly be in a position to supply, as it did in the past, the European operations of any user, account taken that the lead time between scheduling of a tender and awarding of a contract will enable the Community industry to respond to any demand without any noticeable problem.

- (106) Two cooperating users were concerned about the negative impact that measures could have both on competition and on stimulating innovative solutions but no concrete evidence was provided that could substantiate this claim. In this respect it should also be noted that any imposition of anti-dumping measures aims at correcting unfair trade practices and not halting competition. Furthermore, the number of players involved in this particular market and the type of products produced ('know-how intensive') ensure that innovation will remain one of the most important priorities of the market players.
- (107) The main general concern of Community users is that measures might have a negative impact on their budgets and increase the cost of investment by Customs administrations. However some users report that any customs-related procedures and, thus, any anti-dumping duties should be born by the seller of the product concerned. This could constitute absorption pursuant to Article 12 of the basic Regulation. In any event, the overall share of the product concerned in the users' budget would be low.
- (108) Furthermore, the product concerned is considered as a fixed asset investment because of its long useful life period (normally more than 10 years). Thus, any anti-dumping duties paid should be spread over the useful life of the cargo scanner.
- (109) The investigation has not shown any evidence suggesting that measures would have an impact on the activities of users or on the number of staff operating this type of systems, on customs personnel or on personnel responsible for any ancillary services.
- (110) It was also argued that public authorities within the EU abide by strict public procurement rules which ensure transparent selection procedures. To this extent it should be noted that public procurement procedures are not designed to counteract dumping practices. To the contrary, the existence of an indeed transparent market makes evident any attempt of unfair trade practices and enforces the need to correct the level playing field in the market.
- (111) The Community industry would clearly be in a position to benefit from any measures by increased economies of scale because of an increase in production and sales.
- (112) Account taken of the above, it is considered that, under the current circumstances, the imposition of measures against the PRC will not affect the Community users significantly.

## 6.6. Conclusion on Community interest

- (113) Having examined the various interests involved, it is provisionally concluded that, from an overall Community interest perspective, no interest outweighs the Community industry's interest to provisionally impose measures with the aim to eliminate trade distorting effects resulting from dumped imports.

## 7. PROVISIONAL ANTI-DUMPING MEASURES

- (114) In view of the conclusions reached above with regard to dumping, resulting injury and Community interest, provisional measures on imports of the product concerned from the PRC should be imposed in order to prevent further injury being caused to the Community industry by dumped imports.

### 7.1. Injury elimination level

- (115) The level of the provisional anti-dumping measures should be sufficient to eliminate the injury to the Community industry caused by the dumped imports, without exceeding the dumping margins found.
- (116) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports. The pre-tax profit margin used for this calculation was in the range of 12 to 16 % (exact figure can not be disclosed for reasons of confidentiality) of turnover. It was demonstrated that this was the profit level that could reasonably be expected in the absence of injurious dumping since this type of profit margins rests in line with what the Community industry was able to achieve before the appearance of Chinese imports into the Community. On this basis, a non-injurious price was calculated for the Community industry of the like product. The non-injurious price has been obtained by adding the above mentioned profit margin to the cost of production.
- (117) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the average non-injurious price of products sold by the Community industry on the Community market. Any difference resulting from this comparison was then expressed as a percentage of the average import CIF value. This difference was for the sole Chinese cooperating exporting producer above the dumping margin found.

## 7.2. Provisional measures

- (118) In the light of the foregoing, and in accordance with Article 7(2) of the basic Regulation, it is considered that the provisional anti-dumping measures should be imposed on imports originating in the PRC at the level of the dumping margin found.
- (119) On the basis of the above, the rate of the provisional anti-dumping duty for the PRC is 36,6 %.
- (120) It recalled that the market in the European Union is governed mainly by public tendering processes with a rather small market size and number of players involved it. Thus, for reasons of enhanced transparency and careful monitoring of the effectiveness of the measures, it is considered appropriate to request the relevant authorities of the Member States to provide to the Commission on a confidential and periodic basis information concerning awards of tenders.

## 8. FINAL PROVISION

- (121) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty,

HAS ADOPTED THIS REGULATION:

### Article 1

1. A provisional anti-dumping duty is hereby imposed on systems for scanning of cargo, based on the use of neutron technology or based on the use of X-rays with an X-ray source of 250 KeV or more or based on the use of alpha, beta or gamma radiations, currently falling within CN codes

ex 9022 19 00, ex 9022 29 00, ex 9027 80 17 and ex 9030 10 00 (TARIC codes 9022 19 00 10, 9022 29 00 10, 9027 80 17 10 and 9030 10 00 91) and motor vehicles equipped with such systems currently falling within CN code ex 8705 90 90 (TARIC code 8705 90 90 10) originating in the People's Republic of China.

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-European Union-frontier price, before duty, of the products described in paragraph 1 shall be 36,6 %.

3. The release for free circulation in the European Union 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. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

### Article 2

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.

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

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

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

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

Done at Brussels, 16 December 2009.

For the Commission  
The President  
José Manuel BARROSO