II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 964/2010

of 25 October 2010

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

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 Article 9 and 14(3) thereof,

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

Whereas:

1. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EU) No 404/2010 [2] ('the provisional Regulation') imposed a provisional anti-dumping duty on imports of certain aluminium wheels originating in the People's Republic of China ('PRC').

(2) The proceeding was initiated as a result of a complaint lodged on 30 June 2009 by the Association of European Wheel Manufacturers (EUWA) ('the complainant') on behalf of producers representing a major proportion, in this case more than 50 % of the total Union production of certain aluminium wheels. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

2. SUBSEQUENT PROCEDURE

(3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional measures ('provisional disclosure'), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted the opportunity to be heard.

(4) The Commission continued to seek information it deemed necessary for its definitive findings.

(5) It is recalled that, as set out in recital (18) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2008 to 30 June 2009 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the IP ('the period considered').

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

(7) The oral and written comments submitted by the interested parties were considered and taken into account where appropriate.

2.1. Scope of investigation. Inclusion of imports from Turkey

(8) One party, representing the interests of exporting producers, claimed that imports of the product concerned from Turkey should be included in the scope of the present investigation.

(9) Concerning the non-inclusion in the complaint of imports originating in Turkey, it should be noted that at initiation stage, there was no sufficient evidence of dumping, injury and causal link from this country to justify the initiation of an anti-dumping proceeding on such imports.

(10) To the contrary, the complainants submitted information that imports from Turkey of the product concerned were at non-dumped prices (see non-confidential version of the complaint, page 13, point 5, and annex 5.1.a.).

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ L 117, 11.5.2010, p. 64.

3. **PRODUCT CONCERNED AND THE LIKE PRODUCT**

(11) Following provisional measures some parties reiterated their arguments concerning differences between the Original Equipment Manufacturer ('OEM') and after-market ('AM') wheels, claiming that the two segments should be treated as two different products. Those parties claimed that OEM wheels should be excluded from the scope of the present investigation because the OEM and AM wheels are produced in accordance with different production processes, have different technical and physical characteristics, different channels of distribution and even different uses.

(12) It is recalled that, as stated in recital (21) of the provisional Regulation, both AM and OEM wheels can be produced by means of all production processes, in all diameters and weights, with all different types of finishing. OEM and AM wheels share the same physical and technical characteristics and are interchangeable.

(13) Some parties claimed that the ultimate consumer of OEM and AM wheels is different: for OEM it would be the car manufacturer and for AM it would be the car owner. Such an understanding is misguided. Although indeed the OEM wheels are sourced by car makers the use of both OEM and AM wheels is the same: they are fitted on cars and similar vehicles. Hence they have the same ultimate user – the driver.

(14) The most common argument put forward was that the requirements for OEM wheels differ from those for AM wheels. According to that argument measures should not be imposed on OEM wheels because they are not interchangeable with AM wheels (they are purchased to meet the needs of different product markets and differ in terms of design, quality requirements, investment, production process, prices, and import penetration).

(15) Another argument was that OEM wheels are produced according to car makers' specifications while AM wheels are designed and manufactured according to specifications chosen by the wheel manufacturer without taking into account the requirements of a specific car model. Although the AM wheels are not nominally produced according to the specifications provided by the car makers, they will be fitted on different car models. In fact, eventually, they will be fitted on exactly the same car models for which the OEM wheels had been originally produced. The fact that specifications come from different sources cannot be considered as such as a proof of differences in physical and technical characteristics.

(16) Additional information was received from the Union producers and car makers. It confirmed that the same production processes (casting, flow forming, rolling, forging, 2-3 parts wheels) are used for both AM and OEM wheels. They are both produced in all weights and diameters. Inserts, the use of certain types of finishing and heat treatment are applicable to OEM and AM wheels alike.

(17) Some parties claimed that technical differences between the OEM and AM wheels were reflected in the fact that OEM wheels use primary aluminium whereas in the production of AM wheels aluminium would be often extracted from scrap. The Commission thoroughly analysed those comments. Also, additional information was received from car makers and EU producers. In particular those EU producers which manufacture both OEM and AM wheels attested that both primary aluminium and – although to a limited extent – aluminium extracted from scrap is used in the production of both types of wheels. Additional information collected in the investigation confirmed that the main criterion used to distinguish the type and quality of aluminium used is the percentage of silicium (7 % or 11 %). Both alloys are used for OEM and AM wheels alike.

(18) Differences in testing requirements are also not as such conclusive that OEM and AM wheels are two different products. It has to be noted that there is no general homogeneous set of requirements for aluminium wheels. Standards change according to producer and country. In the end it is not possible to establish a coherent dividing line between AM and OEM wheels on the basis of standards or requirements. According to the information on file, both OEM and AM wheels are subject to various tests (x-ray tests, chemical tests, leakage test, stress tests, anti-corrosion tests, wheel balancing tests, impact tests, radial endurance tests, bending tests, salt spray tests, CASS-tests (Copper-Accelerated Acetic Salt Spray test). Further, it appears that differences in testing as well as differences in standards are an indication of a dividing line between different Member States rather than between OEM and AM wheels as two different products.

(19) According to the information on file, quality requirements imposed by the car industry lead to a highly standardized product which is easily interchangeable between all producers worldwide. In the AM segment quality requirements can also be laid down by the customers and those wheels also have to meet international and national requirements. Consequently, more stringent requirements or

specifications may apply to certain wheels in both segments, meaning that some AM wheels might comply with more stringent standards than OEM wheels.

(20) The fact that AM wheels are customarily not installed on new cars and that car makers use wheels produced by selected manufacturers under their brand name is a sourcing decision which has no bearing on the conclusion on the interchangeability of OEM and AM wheels. Physically an AM wheel, i.e. a wheel bearing a brand name of a wheel manufacturer, could be installed on a new car.

(21) These conclusions are confirmed by the fact that car makers also source and sell aftermarket wheels. Some of these are sold under the car maker brand name (Original Equipment Supplier, OES), some under the brand name of the wheel manufacturer.

(22) Many comments concerned the requirements imposed by car manufacturers on suppliers of wheels (e.g. evidence of a fully-functioning ISO certified quality management system, assessment of quality performance based on experience from previous projects and delivery and field quality, product specific and project specific risk assessment). However, aluminium road wheels share the same physical, technical and chemical characteristics and uses regardless of imposed requirements which are not pertinent to those characteristics.

(23) It should finally also be recalled that many wheel manufacturers produce for both segments and OEM and AM wheels are produced on the same production lines. Producers active in one segment can enter the other segment.

(24) Finally, some parties argued that OEM and AM wheels should be considered as two different products because they fall under different customs subheadings.

(25) The current anti-dumping proceeding concerns aluminium road wheels ('ARWs') currently falling within CN codes ex 8708 70 10 and ex 8708 70 50. CN code 8708 70 10 concerns road wheels and parts and accessories thereof for industrial assembly. This means that the application of the lower duty rate foreseen therein is subject to the so-called end-use control. The two CN codes are split to indicate the difference in duty rate and to allow for the application of a lower rate for road wheels for industrial assembly. This however does not have any impact on the definition of the product concerned.

(26) In reply to parties comments it has to be noted first that the definition of the product concerned in an anti-dumping proceeding does not refer to product classifications under different customs headings. Hence, a product concerned in an anti-dumping proceeding might encompass different CN codes. In fact such a situation is rather common.

(27) Secondly, wheels falling under both CN codes are the same. The only difference is the way they are channelled after importation.

(28) Thirdly, it has to be also noted that the volumes of imports under the CN code linked to industrial assembly are less than volumes of OEM imports declared by the cooperating car makers. This appears to imply that OEM wheels have been customs cleared under both CN codes. Given that it therefore seems that car makers import under both CN codes, formal differentiation based on end use would be extremely difficult.

(29) Consequently, the arguments put forward by interested parties are rejected and the conclusions of the provisional Regulation confirmed. OEM and AM wheels are considered to form one single product concerned.

3.1. **Motorcycle and trailer wheels**

(30) The product concerned by the present investigation are 'aluminium road wheels of the motor vehicles of CN headings 8701 to 8705, whether or not with their accessories and whether or not fitted with tyres, currently falling within CN codes ex 8708 70 10 and ex 8708 70 50 (TARIC codes 8708 70 10 10 and 8708 70 50 10)'. This definition conforms to the Notice of initiation published on 13 August 2009 and to the complaint at the origin of the case.

(31) Parties raised questions as to whether the investigation would also cover motorcycle and trailer wheels. The above mentioned definition implicitly excludes aluminium road wheels for motorcycles of heading 8711 and for trailers of heading 8716 which are in principle classified respectively under headings 8711 and 8716.

(32) Regarding trailer wheels, during the investigation, it was argued that, apart from the CN codes indicated in the Notice of initiation of the proceeding, another code which covers, inter alia, wheels for trailers (CN code 8716 90 90) could be used for imports into the Union to circumvent measures on the product concerned (although it appears that the code is not currently used for that purpose in practice).

(33) It was proposed that the present investigation should also cover aluminium wheels falling under CN code 8716 90 90.

(34) The Commission services informed all parties concerned by means of a note put in the file open for consultation by interested parties advising of the possible inclusion of the other CN code in the proceeding.

(35) However, as stated above, aluminium wheels which genuinely are intended for trailers and therefore are covered by CN code 8716 90 90, were not covered by the Notice of Initiation. It can therefore not be excluded that certain operators that produce and or trade in such wheels did not come forward in this investigation since they expected that such imports would not be covered, and thus were not aware of the abovementioned note. Under those circumstances, it is not appropriate to include such wheels in the proceeding. On the other hand, since there appears to be an especially high risk of circumvention with the use of the aforementioned CN code, it is appropriate to introduce a TARIC code with which the development of the level of imports of wheels under that code can be precisely monitored. On the basis of Article 14(3) of the basic Regulation, a provision to this effect is included in the operative part of this Regulation.

4. MARKET ECONOMY TREATMENT (MET), INDIVIDUAL TREATMENT (IT) AND ANALOGUE COUNTRY

4.1. Market Economy Treatment (MET)

(36) All sampled exporting producers contested the provisional findings as set out in recitals (26) to (53) of the Provisional Regulation.

Criterion 1

(37) First, it has to be underlined that in the PRC, primary aluminium accounts for more than 50 % of the cost of production of an aluminium wheel. Three of the four sampled companies have claimed that the decision to deny MET should be individual and company specific whereas in the present case the Commission, by stating that there is State interference in decisions concerning the acquisition of the main raw material (aluminium) as indicated in recitals (30) to (37) of the provisional Regulation, has denied MET on a general country-wide basis. This argument cannot be accepted; indeed the analysis made by the Commission has been made individually for each sampled producer. It is true the Commission has reached the same conclusion for the four of them but this is due to the fact that there is State interference in the decision making process of each of them as explained in recitals (30) to (37) of the provisional Regulation. The Commission would have not arrived to the same conclusion for any company operating in the PRC showing that it acquires the vast majority of the aluminium alloy it consumes at London Metal Exchange (LME) prices with the usual mechanisms used by any company in the sector established in the rest of the world. If this were to be the case, it would have been possible for this company to be granted MET even if established in the PRC in case of fulfilment of the other Criteria.

(38) Having regard to the above, the conclusions drawn in the said recitals and in recital (48) of the provisional Regulation are hereby confirmed.

(39) Concerning State interference in other business decisions, none of the three groups referred to in recital (38) of the provisional Regulation has provided additional evidence that could allow arriving to different conclusions. In particular, it has been argued that that the judgement of the General Court in case Zheijiang Xinan v Council [1] provides that 'the concept of' significant State interference 'cannot be assimilated to just any influence on the activities of an undertaking or to just any involvement in its decision-making process, but must be understood as meaning action by the State which is such as to render the undertaking's decisions incompatible with market economy conditions'. Having regard to this judgement, exporters claim that the European Institutions should apply it and analyze in detail whether the actions taken by the State when running the company are incompatible with market economy conditions. In this respect, it has to be pointed out that the said judgement is presently under appeal. Therefore, the said judgement of the General Court shall take effect only as from the date of decision on the appeal. Consequently, the Institutions are in a position to maintain that State interference found in the present case is sufficient to conclude that Criterion 1 is not fulfilled. Having regard to the above, the conclusions of recital (38) of the provisional Regulation are hereby confirmed.

Criterion 2

(40) None of the two groups which, according to the conclusions reached at provisional stage, did not comply with the requirements of Criterion 2 has contested these provisional conclusions. It is therefore confirmed, as indicated in recitals (39) and (49) of the provisional Regulation that two of the sampled groups do not have their respective accounts prepared and audited in line with International Accounting Standards.

Criterion 3

(41) It has been claimed by Baoding Lizhong group that Article 2(7)(c) of the basic Regulation explicitly requires that the distortions are caused by the former non-market economy system; the group claimed that since it would have allegedly always operated as privately-held group, distortions cannot be the result of the 'former' non-market economy system as the group never operated as State-owned companies. The argument cannot be

[1] Case T 498/04. Zheijiang Xinan Chemical Industrial Group Co. Ltd, paragraph 85.

accepted. As established in the present case, production costs and financial situation of companies can be subject to significant distortions carried over from the former non-market economy system regardless if a company has operated as a Sate-owned company or not.

(42) In addition, Baoding Lizhong group, YHI Manufacturing (Shanghai) Co. Ltd and CITIC Dicastal reiterated the arguments already put forward before the adoption of the provisional Regulation and insisted on the fact that the advantages enjoyed by the companies are not significant. However, as explained in recital (50) of the provisional Regulation, the investigation revealed that distortions on the financial situation of the groups were significant.

(43) Furthermore, YHI Manufacturing (Shanghai) Co. Ltd has put forward that tax exemptions granted to foreign companies do not represent a specific subsidy and, according to the WTO case law concerning countervailing measures the burden of proof of specificity is with the investigating authorities [1]. In its submission, YHI Manufacturing (Shanghai) Co. Ltd also refers to Article 4(5) of the Anti-Subsidy basic Regulation [2] which states that 'any determination of specificity (…) shall be clearly substantiated on the basis of positive evidence'. The company mentions as well Article 4.2(b) of the Anti-Subsidy basic Regulation (objective criteria or conditions governing the eligibility of a subsidy implicating the specificity does not exist) and Article 10 of the Agreement on Subsidies and Countervailing Measures defining a countervailing duty as 'a duty levied for the purpose of offsetting any subsidy bestowed directly or indirectly upon the manufacture, production or export of a merchandise'. Finally, YHI Manufacturing (Shanghai) Co. Ltd suggests that 'if the Commission Services want to offset subsidies provided by the by the Chinese government, the proper process to do so is through an anti-subsidy investigation'.

(44) Concerning this interpretation of the anti-dumping legislation, it must be said that it is not correct since the criteria of the Anti-Subsidy basic Regulation cannot be applied in the context of a MET analysis. The basic Anti-dumping Regulation provides for the examination of whether the production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market economy system and, as stated above, actions that imply the involvement of the State in shaping the business environment through measures that are typical of a non-market economy should be considered as a State influence carried over from the former non-market economy system.

(45) Having regard to the above, the conclusions of recitals (40) to (44) and (50) to (52) of the provisional Regulation are hereby confirmed.

Other considerations

(46) Exporters have reiterated their claims addressed in recitals (46) – (47) of the provisional Regulation that, pursuant to Article 2(7)(c) of the basic Regulation, determination whether the producers meet the criteria to be granted MET shall be made within three months of the initiation of the investigation whereas, in the present case, this determination was made beyond this three months deadline. To support their argument exporters quoted the judgement of the General Court in Case T-299/05 [3]. In particular, exporters have put forward that, by the time of the sending of the disclosure on MET, the Commission had received all the answers to the anti-dumping questionnaires sent to exporters as well as the answers to the questionnaires sent to the companies established in the analogue country, therefore, being in possession of the data contained in the answers to these questionnaires, the Commission services had all the information necessary to calculate the dumping margin under the regular methodology and under the analogue country methodology. The exporters arrive then to the conclusion that, as such, the Commission was in a position to know what the effect of its MET decision would be in terms of the calculation of the dumping margin. Having regard to the above, exporters do not exclude that the MET decision was taken on the basis of the effects on dumping.

(47) This argument cannot be accepted. First, contrary to what it has been stated, by the time of the sending of the disclosure on MET, the Commission did not have all the information necessary to calculate the dumping margin. Indeed, in the circumstances of the present case, the information contained in the answers to the anti-dumping questionnaires and in the questionnaires sent to the companies established in the analogue country was neither complete nor correct and therefore the Commission was not in a position to calculate the dumping margins at that moment. Indeed, verification visits had to be carried out to gather information and data which were necessary to make an accurate

[1] European Communities-Countervailing Measures on Dynamic random Access memory Chips from Korea, WT/DS299/R, Panel Report 17 June 2005, para 7186.

[2] Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidized imports from countries not members of the European Community (OJ L 188, 18.7.2009).

[3] Shanghai Excell M&E Enterprise Co. Ltd and Shanghai Adeptech Precision Co. Ltd vs Council.

calculation of the dumping margins. These visits only started to take place more than two weeks after the sending of the disclosure on MET. Therefore, in the absence of data obtained during the verification visits, it was materially impossible for the Commission to make dumping calculations before the sending of the disclosure on MET and take MET decision on the basis of the effects on dumping.

(48) Second, the exporters have not presented any evidence to demonstrate that the decision with regard to MET would have been different had it been adopted within the three moths period.

4.2. **Conclusion**

(49) The finding that all companies that had requested MET should be denied MET, as established in recital (53) of the provisional Regulation is hereby confirmed.

4.3. **Individual treatment (IT)**

(50) Both sampled groups which were provisionally denied IT due to state interference which was found to be such as to permit circumvention of measures if individual exporters are given different rates contested the provisional finding as set out in recital (55) of the provisional Regulation. Baoding Lizhong claims that there is no State interference and it also puts forward that from the wording of Article 9(5)(c) and (e) it does not suffice that there is some State interference for IT to be refused and that the explicit wording of Article 9(5) allows that there is some State interference and still to grant IT provided that there is still sufficient independence from the State and that the State interference is not such as to permit circumvention. This would only be the case if State officials were holding a majority of key functions and could interfere with daily business decisions.

(51) The second group claimed that the majority of its shares belongs to private persons and the risk of circumvention is non-existing because the group supplies exclusively car makers in the OEM market and for each wheel model the contract with a car-maker stipulates specifically the production site which is audited prior to, as well as in the course of the life of the contract.

(52) Regarding the claims made by Baoding Lizhong, the risk of circumvention has been re-examined. Indeed, the State interference is not such as to permit circumvention. Accordingly, IT can be granted to Baoding Lizhong.

(53) As regards CITIC Dicastal, it is a State-owned company directly controlled by the State (the majority of its shares belong to the State). The State interference is such that it permits circumvention of measures if it obtains a different rate of duty. In other words, production of other State-controlled companies could be re-directed through CITIC Dicastal. Concerning the other argument put forward by CITIC Dicastal, the fact that it supplies exclusively car makers in the OEM market does not prevent it from supplying to other clients in the future. It can therefore be concluded that CITIC Dicastal should be denied IT.

4.4. **Analogue country**

(54) A number of interested parties have contested the choice of Turkey as analogue country. Their arguments cannot be accepted: first, because comments arrived well beyond the legal deadline to submit comments on the choice of the analogue country (the deadline expired on 24 August 2009) and second, because they cannot be taken into consideration from a substantial point of view.

(55) The arguments can be summarized as follows:

1. One of the cooperating companies in Turkey (Hayes Lemmerz) is related to an EU producer and both cooperating companies are members of EUWA (the association representing European producers which has submitted the complaint). This cannot be accepted. Indeed, the fact that one of the companies in the Analogue country is related to an EU company and that both companies are members of the same association as the complainants cannot be considered a relevant criteria to exclude Turkey as analogue country given that the criteria to be taken into account when analysing the appropriateness of an analogue country have to be based exclusively on facts such as the degree of competition in the domestic market of the analogue country and the non-existence of significant differences in the production process between producers in the analogue country and the Non-Market-Economy exporter.

2. It has also been argued that the production process in China is not comparable to Turkey because Chinese companies have access to cheaper raw material. This claim cannot be taken into account. On the one hand, access to cheaper aluminium is due to a distortion on prices caused by State interference. As explained above, the PRC benefits from a unique world position in terms of access to the cheapest possible prices for raw materials and no comparable situation can be found in other countries. On the other hand, the investigation has shown that the production process is practically identical in China and in Turkey.

3. Finally, it has been claimed that there is insufficient competition at domestic level because domestic production is mainly used for exports and there are entry barriers to imports from outside the EU. These claims cannot be taken into consideration. Indeed, the EU market is much more than six times larger than the Turkish market and there are no barriers to entry; it is therefore reasonable that Turkey sends to the EU a significant part of its production. Moreover, there is sufficient competition in the domestic Turkish market because there are at least five domestic producers and there are not barriers to imports from the EU.

(56) Having regard to the above, the provisional conclusion that Turkey is an appropriate and reasonable analogue country, as set out in recital (63) of the provisional Regulation is hereby confirmed.

4.5. **Dumping**

4.5.1. *Calculation*

(57) Two exporting producers have contested the provisional findings as set out in recitals (57) to (77) of the provisional Regulation. It has been claimed that, according to Article 2(11) of the basic Anti-dumping regulation, dumping calculations should be based on 'all export transactions to the Community'; in other words, they consider that 100 % of the transactions should be taken into consideration when calculating dumping margins. It has been also argued that the most expensive transactions, in particular for one of the companies investigated, have not been taken into account when calculating dumping margins.

(58) In relation to the argument regarding the number of transactions to be taken into account, it has to be pointed out that Article 2(11) of the basic Anti-dumping Regulation establishes that dumping calculations should be based on 'all export transactions to the Community' but they should be 'Subject to the relevant provisions governing fair comparison'. This means that, if it is impossible to reach a reasonable matching for 100 % of the products, it will not be possible to take into account 100 % of the export transactions. This is considered reasonable provided the calculations are based on a sufficiently large percentage of total export transactions. In the present case, around 85 % of the transactions were taken into account.

(59) Concerning the claim that the most expensive transactions have not taken into account, a new dumping calculation has been made in order to take them into consideration. An additional number of product types have been added to the ones used for the calculation made at provisional level. This has allowed to include in the calculations as many transactions as possible, also ensuring that the weighted average unit price of all export transactions per exporting company is as close as possible to the weighted average unit price of export transactions (of this company) which has been used to calculate the dumping margin. In this way, the value of all export transactions, even the most expensive ones, has been considered. Normal values for these additional product types have been calculated following the methodology explained in recital (70) of the provisional Regulation. With this new calculation dumping margins have decreased in particular for YHI.

(60) The methodology followed for the determination of Normal Value, Export Price and Comparison is the same as the one described in recitals (64) to (75) of the provisional Regulation. The only changes for the new calculations concern the increase of the number of transactions taken into account and the consideration that the average price of the export transactions used for the calculation of dumping for any given company should not be substantially different from the average export price of all transactions of this company.

(61) It has been claimed that the analysis of the Commission does not take into consideration the evolution of exchange rates, in particular the appreciation of the American Dollar over the Euro, and of costs of primary aluminium and international freight. This allegation is not grounded, as the Commission services, according to their practices, have included all types of verifiable costs in their analysis of the market of the product concerned during the IP.

(62) The Chinese producer YHI claimed that the computation of allowances in its individual dumping calculation was inaccurate. The Commission accepted this claim and performed a new calculation, which gave a dumping margin result of 23,81 %, i.e. 2,14 % less than what previously calculated.

4.5.2. *Definitive dumping margins*

Company	Definitive dumping margin
YHI Manufacturing (Shanghai) Co. Ltd	23,81 %
Zhejiang Wanfeng Auto Wheel Co. Ltd	60,29 %
Baoding Lizhong	67,66 %
Other cooperating companies	44,23 %
All other companies	67,66 %

5. **INJURY**

(63) The Commission received comments on the provisional findings concerning injury. Some of those comments were a repetition of comments already addressed in the provisional Regulation.

(64) Arguments already addressed in the provisional Regulation are not repeated in this Regulation.

5.1. **Imports from the PRC**

(65) Parties claimed that the methodology of calculating imports has not been sufficiently explained. Those criticisms, however, have not been substantiated.

(66) It is recalled that at the provisional stage the methodology was based on the complaint but cross-checked with other sources (data provided by cooperating producers, users, exporters). In view of parties' comments these data have been analyzed once again and the provisional conclusions are hereby confirmed.

(67) It is recalled that three notes providing detailed information on methods of calculation of production, imports and sales were included in the file open for consultation by interested parties on the day of publication of provisional Regulation.

(68) Because the CN codes covered by the present investigation contain also other products than the product concerned, most of the comments concerned the methodology used by the Commission to exclude product non-concerned from the volumes reported.

(69) CN code 8708 70 50 covers aluminium wheels and parts and accessories thereof, of aluminium. Corresponding data were extracted in tonnes from Comext without any further adjustment at this stage, assuming, as suggested in the complaint, that parts and accessories are of minor importance.

(70) CN code 8708 70 10 covers, inter alia, aluminium wheels and parts and accessories thereof, of aluminium. Here also, corresponding data extracted in tonnes from Comext were duly adjusted in accordance with the methodology described in the complaint.

(71) Comments submitted by parties were in great part critical of this approach without however suggesting a more suitable or reliable alternative. The criticisms related mainly to the fact that parties, unaware of which method the Commission was about to apply could not comment. It is recalled that the non-confidential version of the complaint, setting out in a detailed manner the exclusion methodology, was available in the non-confidential file as from the initiation of the proceeding. The Commission cross checked the data provided in the complaint and could not establish anything that would undermine the reasonableness of the method chosen. Further, in view of the fact that parties did not propose an alternative method of exclusion, their comments were considered as unsubstantiated.

(72) A second set of comments related to the method of conversion of volumes initially expressed in tonnes into units for the two CN codes. Here again the Commission followed the method suggested in the complaint and subsequently corroborated by the questionnaire replies of Chinese exporters. Such methodology suggests that the average weight per unit imported from China is around 9 kg per wheel. The unit weight of products imported from other third countries has been estimated at around 10 kg per unit in accordance with the complaint but cross checked with available information received during the present investigation from different parties.

(73) In their post-provisional submissions parties claimed that 10 instead of 9 kg should be used as an average weight as this would be the average weight of imported OEM wheels. As specified in the provisional Regulation, the average weight of 9 kg has been based on data provided by the sampled exporting producers. Therefore it is concluded that it is the most reasonable method of conversion reflecting the average weight of Chinese imports. In any case, conversion based on 10 kg for OEM wheels showed that there would be no impact on final conclusions.

(74) The conclusions in recitals (86) to (88) in the provisional Regulation are hereby confirmed.

5.1.1. *Volume and prices of imports from the PRC*

(75) The conclusions drawn from, i.a., Eurostat data reported in recitals (86) and (89) of the provisional Regulation have been confirmed by the questionnaire replies of the exporting producers. Given that the data emanates from different sources, naturally the trends may differ slightly depending on the segment and company. In any event, they confirmed low price levels which combined with the high undercutting levels and steep increase in volumes of imports from the PRC, stresses the accuracy of the overall conclusion in this case.

(76) Data and trends have also been checked for OEM and AM segments considered separately. The provisional regulation mistakenly stated in recital (89) that prices for years 2006 to 2008 had to be based on Eurostat because the exporters' questionnaires did not provide relevant data. The statement should have related to a split between OEM and AM transactions. The split can only be established on the basis of transaction-by-transaction listings provided by exporters.

(77) As for AM unit prices data shows a more or less flat levels with a slight increase at the end of the period. They ranged from 25 to 34 EUR in 2006, from 24 to 32 EUR in 2007, from 25 to 29 EUR in 2008 and from 26 to 36 EUR in the IP. For confidentiality reasons those ranges have been modified upwards or downwards by 15 % at maximum.

Price range for China AM imports (based on sample of exporters)	+/– 15 %	+/– 15 %
2006	25	34
2007	24	32
2008	25	29
IP	26	36

(78) OEM unit prices of imports from the PRC show a decrease of more than 15 % over the period considered. Further details cannot be disclosed due to confidentiality reasons as explained in the section on the calculation of the injury elimination level below.

(79) One party claimed that the Chinese import prices increased between 2008 and the IP when most of the injury indicators suffered from a significant decline. Indeed there has been a nominal increase of Chinese import prices (although by only 1,6 %) [1]. It has to be stressed however that over the entirety of the period considered they decreased by 8 %.

(80) Overall, low price levels have been confirmed for both segments, which combined with high undercutting and steep increase of imports from the PRC confirms the conclusions in this case.

5.2. **Separate injury analysis for OEM and AM segments**

(81) One of the main comments received after the imposition of provisional measures was that a separate analysis of all injury indicators for OEM and AM segments should have been conducted.

(82) One party referred in that regard to Commission Regulation (EC) No 1888/2006 [2] as well as Council Regulation (EC) No 682/2007 [3] concerning imports of sweetcorn originating in Thailand, claiming that such segment-specific analysis was conducted there. That party further claimed that by not following the sweetcorn case the Commission was in breach of WTO requirements.

(83) In the sweetcorn case a reference was made to the relevant WTO provisions that pursuant to the Appellate Body 'where investigating authorities undertake an examination of one part of a domestic industry, they should, in principle, examine, in like manner, all of the other parts that make up that industry, as well as examine the industry as a whole' [4]. This case demonstrates clearly that the approach followed in the present case is in line with the Institution's practice hitherto and compliant with the WTO Anti-Dumping Agreement [5]. Segmental analysis is possible but it has to be accompanied by an analysis of the whole industry.

[1] There was a clerical error in recital (90) of the provisional Regulation which stated that the increase amounted to 0,5 % (it was 0,5 EUR and 1,6 %).

[2] Commission Regulation (EC) No 1888/2006 of 19 December 2006 imposing a provisional anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ L 364, 20.12.2006, p. 68).

[3] Council Regulation (EC) No 682/2007 of 18 June 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ L 159, 20.6.2007, p. 14).

[4] WT/DS184/AB/R, 23.8.2001, United States – Anti-dumping Measures on Certain Hot-Rolled Steel Products from Japan.

[5] Recitals (50) – (51) of Regulation (EC) No 1888/2006.

(84) It is recalled that in the current proceeding at the provisional stage the two segments have been considered together, however, some indicators have been analysed separately for OEM and AM wheels (undercutting, consumption, market shares). In view of comments submitted by parties the Commission conducted further analysis and some additional indicators have been analysed at the segment level (see below). As shown below, this analysis confirms that the trends for the product concerned considered as a whole in general correspond to those for OEM and AM segments considered separately.

5.2.1. *Consumption*

(85) The table below demonstrates the development of the Union consumption of aluminium road wheels in the OEM and AM segment, considered separately. More detailed information on split between OEM and AM imports has been provided above in the section on imports. Data on the split was based on various sources of information provided by cooperating EU producers, users and exporting producers in the country concerned.

Units (in 000)	2006	2007	2008	IP
Total Union Consumption	58 607	62 442	58 313	49 508
Index 2006 = 100	100	107	99	84
Consumption OEM	43 573	44 009	42 076	34 915
Index 2006 = 100	100	101	97	80
Consumption AM	15 033	18 432	16 237	14 592
Index 2006 = 100	100	123	108	97

(86) Total Union consumption decreased by 16 % over the period considered from 58,6 million units to 49,5 million units. The same trend could be observed in both segments. The consumption of OEM wheels decreased by 20 % from 43,5 million units to 34,9 million units, whereas the consumption of AM wheels decreased by 3 % from 15 to 14,5 million units.

5.2.2. *Imports from the PRC and market shares for OEM and AM segments*

(87) Many comments referred to the Commission's conclusions with regard to the size of OEM and AM segments on the EU aluminium wheel market, in particular to the market share of imports. In particular parties argued that the Commission miscalculated the market share of OEM imports. Following these comments further investigation was conducted with regard to market share of imported OEM and AM wheels. It is recalled that the provisional Regulation specified market shares of OEM and AM imports from the PRC. These market shares have been specified on the basis of information on file at the provisional stage, based on data provided by the EU producers, exporters as well as car makers. On that basis it was established that the market share of OEM imports would account for around 3 % (conservative calculation) but it could reach up to 6 %.

(88) In view of criticisms expressed by the interested parties all data was re-verified and this verification confirmed the provisional findings. A detailed explanation of all investigative steps and all sources of information used to establish the share of both segments in imports not only from the country concerned but also from other third countries has been included in a note to the file open for consultation by interested parties. This note demonstrates the variety of sources used in order to obtain relevant information.

(89) In addition, in reply to parties' comments that the market share of 3 % was small, it has to be stressed that a market share of even 3 % cannot be considered small on a price sensitive market like the one in the case at hand. This is particularly true in view of the price depression described below in recital (116). Moreover, there has been also a significant increase in volumes and market share of imports from the PRC.

Import volumes in 000 units OEM	2006	2007	2008	IP
PRC	455	476	508	1 183
Index 2006 = 100	100	105	112	260
Market share (%)	1 %	1 %	1 %	3 %
Import volumes in 000 units AM	2006	2007	2008	IP
PRC	3 247	4 667	5 301	4 954
Index 2006 = 100	100	144	163	153
Market share (%)	22 %	25 %	33 %	34 %

5.3. **Price undercutting**

(90) It is recalled that at the provisional stage undercutting was calculated for the product concerned considered as a whole as well as for both segments separately. The split has been based on the transaction-by-transaction listings provided by the sampled EU producers and exporters by identifying sales to car manufacturers.

(91) The ranges of undercutting disclosed in recitals (95) and (98) of the provisional Regulation were recalculated due to most notably changes in the dumping calculations (see above). They were also refined with regard to the customs tariff applied. Namely, at the provisional stage a uniform 4,5 % customs duty rate was applied. This approach has been followed at the definitive stage in the calculation of the general undercutting (for both segments). This was due to the fact that not all of the OEM imports have been declared under the CN code linked with a lower 3 % duty rate.

(92) Some parties reiterated their comments that the level of undercutting should be calculated by reference to the value added component of the price only (excluding aluminium cost). As stated in recital (96) of the provisional Regulation using such methodology would indeed increase the level of undercutting. Since the level of undercutting established with reference to the full price (as percentage) was already substantial this method was not further explored.

(93) Undercutting calculated for the product concerned as a whole ranges from 20 % to 38 %. Undercutting remains substantial for both segments (between 15 % and 29 % for OEM and 49 % and 63 % for AM).

6. SITUATION OF THE UNION INDUSTRY

6.1. **Definition of the Union industry and macro and micro injury indicators**

(94) One party claimed that the Commission applied an incorrect definition of the Union industry and Union production and that the injury assessment had to be based on information related solely to the complainants and supporters of the complaint and not on the basis of the total Union production.

(95) The Union industry was defined as provided for in Article 4(1) of the basic Regulation. The assessment of the situation of the entire Union production complies with the basic Regulation. The argument that the injury assessment was based on an incorrect definition of the Union industry must thus be rejected. Consequently, all arguments concerning the development of trends of injury indicators where data of sampled and cooperating producers was used as a basis of analysis had to be rejected.

(96) Another more general comment was that non-confidential versions of producers' questionnaires and mini-questionnaires were deficient. The Commission examined those comments in detail and requested improved non-confidential versions, where warranted. Those were included in the file open for consultation by interested parties, thereby fully allowing proper defence of rights.

(97) Some parties claimed that some EU producers should have been excluded due to the fact that they did not provide full information about their activities. The parties further claimed that this exclusion would have had an impact on standing. However, these claims are not supported by the facts since the EU producers in question have indeed provided all relevant information. Therefore, they have to be rejected.

(98) One importer also claimed that it should have been classified as EU producer due to the fact it had outsourced the manufacturing process to the country concerned while many other activities were conducted in the EU (e.g. design). This company outsourced the manufacturing process while retaining in the Union some activities e.g. testing of wheels. Given however, that manufacturing process takes place in the country concerned, this importer cannot be considered as EU producer in the anti-dumping proceeding. In the light of the above, this claim had to be rejected.

(99) Some parties conducted analysis of injury indicators on a company basis. Such an approach must be rejected as injury analysis is conducted for the EU industry as a whole.

6.2. **Macroeconomic indicators**

6.2.1. *Sales and market share*

(100) Subsequent to the publication of the provisional Regulation, parties requested data with a split between OEM and AM segments. Table below demonstrates the sales and market share data with a split between OEM and AM segments:

	2006	2007	2008	IP
Sales volume entire Union industry OEM in 000 units	36 820	36 240	34 932	28 719
Index 2006 = 100	100	98	95	78
Sales volume entire Union industry AM in 000 units	8 626	10 443	7 962	7 075
Index 2006 = 100	100	121	92	82
Market share OEM (%) (EU producers' share of total OEM consumption)	84,5 %	82,3 %	83 %	82,3 %
Index 2006 = 100	100	97	98	97
Market share AM (%) (EU producers' share of total AM consumption)	57,4 %	56,7 %	49 %	48,5 %
Index 2006 = 100	100	99	85	84

(101) Different sources of information were used to establish the split, most notably data provided by EU producers during the investigation, data from the complaint as well as data collected at pre-initiation stage.

(102) The above table demonstrates a downward trend with regard to sales and market shares for both OEM and AM segment.

6.2.2. *Contractual landscape*

(103) As specified in recital (112) of the provisional Regulation, the Commission continued to look into the tenders awarded during the IP which however would be executed thereafter. Data already on file has been supplemented by new information received from the EU wheel manufacturers and car makers. This data confirmed the orders of magnitude of purchases and trends with regard to market shares of European and Chinese suppliers. It is reinforced by arguments submitted by car makers according to which the share of Chinese imports increased because of enhanced competitiveness and quality and improved capabilities of production processes.

6.3. **Microeconomic indicators**

6.3.1. *Cost of production*

(104) One party claimed that the data on profitability reported in recital (117) of the provisional Regulation did not match with those on sales and cost of production in recitals (89) and (122) of the provisional Regulation. This was due to a clerical mistake in calculating the cost of production leading to the use of a wrong set of data. This error has been corrected and the cost of production figures are shown in the table below.

In Euro	2006	2007	2008	IP
Average cost of production (per unit)	48,1	49,4	48,7	49,1

(105) The correction did not affect the trend established at the provisional stage. The average cost of production remained stable over the period considered.

6.3.2. *Profitability*

(106) In reply to parties' requests to provide data with a split between OEM and AM, the profitability has been calculated separately for the OEM and AM segments. The trends and orders of magnitude have been confirmed.

In %	2006	2007	2008	IP
Profitability total	3,2	0,7	– 1,5	– 5,4
Profitability OEM	3,1	0,4	– 1,4	– 5,7
Profitability AM	5,2	5,7	– 3,3	– 2,4

(107) As demonstrated in the table above the profitability has been affected in both OEM and AM segments. It fell by 8,8 percentage points over the period considered in the OEM and by 7,6 percentage points in the AM segment. Consequently the orders of magnitude and trends for OEM and AM segments considered separately coincide with those for the product concerned considered as a whole (a drop by 8,7 percentage points).

6.3.3. *Return on investment*

(108) Parties pointed out possible inaccuracies in the calculation of return on investment. The figures reported take into consideration all items making up the return of investment, including depreciation. The claims have to be thus rejected.

6.4. **Conclusion on injury**

(109) The conclusions on injury as set out in recitals (80) – (123) of the provisional Regulation are hereby confirmed. The Union industry suffered material injury, which was reflected most notably in decreasing profitability. Some injury indicators have been analysed separately for OEM and AM segments. The trends and orders of magnitude of developments of these indicators correspond to those established for the whole product concerned.

7. **CAUSATION**

7.1. **Impact of the imports from the PRC**

(110) Some parties claimed that the decline in Union industry's production and sales was a result of decreasing consumption (which allegedly also triggered decrease in capacity). The provisional Regulation indeed did not contest that the consumption on the Union market has been shrinking. Although it is possible that factors other than dumped imports from the PRC (economic crisis and imports from Turkey) might have contributed to the injury suffered by the EU industry, the impact of those other factors is not such as to break the causal link as stated in recitals (136) – (152) of the provisional Regulation. In any case, as outlined in recitals (126) et seq of the provisional Regulation there is an evident link between the significant increase in Chinese import volumes at low prices and the injury observed with the Union industry. Furthermore, as outlined in recital (103) of the provisional Regulation and contrary to parties' claims capacity remained stable over the period considered (most notably between 2006 and 2008, with a decrease of 4 % between 2008 and the IP).

(111) Some parties referred to statements published by Union producers on their Internet sites and to the fact that dumped imports from the PRC were not mentioned among causes of injury. Irrespective of any public statements by the Union producers (which in any case do not exclude Chinese imports as possible cause of injury) the data on file demonstrates clearly that there is a causal link between the injury suffered by the Union industry and the dumped imports from the PRC.

(112) Some parties claimed that the loss in profitability was due to the decreasing production volumes. Hence, producers were unable to amortize their fixed costs over the smaller number of wheels produced. However, the drop in production was due to loss in market share which was due to import penetration by Chinese imports.

(113) Some parties claimed that the imports from the PRC could not have been the cause of injury suffered by the Union industry because year 2007 saw a drop in profitability despite stable prices and sales. It is recalled that between 2006 and 2007 there has been an increase in market share of imports from the PRC and a 40 % increase in terms of volumes. On those grounds the claim had to be rejected.

(114) The conclusions set out in recitals (126) – (130) of the provisional Regulation are hereby confirmed.

7.2. **Effects of other factors**

7.2.1. *Segmental split*

(115) Parties reiterated their claims that the injury to the Union industry which channels most of its sales to the OEM segment could not have been caused by Chinese imports which concentrate predominantly on the AM segment and have limited OEM presence. It is recalled that these comments have been addressed in the provisional Regulation,in recitals (131) – (135).

(116) After imposition of the provisional measures some parties referred to recital (133) of the provisional Regulation which stated that 'there are indications that car makers use Chinese prices to force down the EU industry prices'. Those parties claimed that the Institutions cannot base their findings on indications but on positive evidence only. Parties further pointed out that no information on the file open for consultation by interested parties was made available in order to evidence such claims.

(117) The high commercial sensitivity of this type of information has to be underlined at the outset. On top of the information at Commission's disposal, further information was provided by the parties. This additional information confirmed conclusions based on evidence at Commission's disposal at the provisional stage showing a pattern of clear downward price pressure. The Commission has further build up the file with regard to price pressure aspect. A detailed submission has been provided by the Union producers. It provided the Commission with a further insight into the details of the bidding process and confirmed the conclusions with regard to the downward price pressure and the use of Chinese offers as benchmark to exercise such pressure. Indeed in some cases the target price set out by the car makers (which constitutes the starting point of negotiations) was already set below the Union producers' costs and was thus unsustainable from the outset. In some cases even offers below that level have been unsuccessful.

(118) According to the information at the Commission's disposal some car makers just indicate to their bidders that they should lower prices in line with Chinese offers; some other are using quotes from companies which were not participating in the tenders; some others finally do not even restrict their tenders and anybody can bid (even those that would never meet the requirements).

(119) Car manufacturers claimed that the price is not a determining factor in their sourcing decisions. Indeed the information on file demonstrates that there can be other considerations, however price plays a predominant role.

(120) The conclusions set out in recitals (131) – (135) of the provisional Regulation are hereby confirmed.

7.2.2. *Impact of imports from Turkey*

(121) Parties claimed that the Commission underestimated the impact of Turkish imports as a cause of injury suffered by the Union industry. It is recalled that the provisional Regulation in recitals (136) – (137) recognized that the lower prices of Turkish imports might have had some negative impact on the situation of the Union industry but not such as to break, on its own, the causal link between dumped imports from the PRC and the injury suffered by the Union industry.

(122) The impact of imports from Turkey has also been considered per segment. It has been established that ¾ of the Turkish imports were OEM. It was confirmed that the trends and orders of magnitude established for OEM and AM segments considered together corresponded to those for both segments considered separately. According to the information on file (provided by different cooperating parties) the AM prices of Turkish imports decreased over the period considered. As for prices of Turkish OEM imports those remained relatively stable.

(123) Parties pointed out that prices of imports from Turkey decreased significantly between 2008 and the IP. However, as noted in recital (137) of the provisional Regulation the price differential has been still considerably lower that that between Chinese import prices and the EU producers' prices.

(124) In view of comments of one party that Turkey should have been included in the complaint (see recital (9) et seq above), it has to be noted that the non-inclusion of Turkey does not break the causal link between the Chinese exports of the product concerned and the injury suffered by the Union industry.

(125) On these grounds therefore, claims put forward by the parties have to be rejected. In the light of the foregoing, and in absence of any other comments, recitals (136) – (137) of the provisional Regulation are herby confirmed.

7.2.3. *Impact of imports from other countries*

(126) Some parties claimed that the market share of imports from third countries other than the PRC increased between 2006 and 2008. It has to be noted that the share of imports from third countries remained stable with small variations in the range of 1 %. Therefore, this claim had to be rejected.

(127) Some countries mentioned imports from South Africa as contributing to the injury suffered by the Union industry because of their volume and/or prices. As outlined in recital (99) of the provisional Regulation the market share of the South African imports, even if they increased in terms of volumes, has been stable since 2007 (at the level of 1,4 % with an increase of 0,6 % between 2006 and 2007). The Commission received information that the majority of those imports were intended for the OEM market. As far as the prices of South African OEM imports are concerned the Commission received contradictory information. On the basis of Eurostat data it can be concluded that they increased from 43 to 51 EUR. These data would be also in line with information provided by one EU producer. Therefore, the claim with regard to impact of South African imports has to be rejected.

(128) The conclusions of provisional Regulation in recitals (136) – (138) with regard to imports from third countries taken together or in isolation are therefore confirmed.

7.2.4. *Impact of economic crisis*

(129) Parties reiterated their arguments on the impact of financial crisis. Those comments, most notably the drop in car production, have been addressed in the provisional Regulation.

(130) As stated in recital (142) of the provisional Regulation the downward trend started well before the economic crisis and coincided in time with the market penetration by the imports from the PRC.

(131) The conclusions set out in recitals (139) – (144) of the provisional Regulation are hereby confirmed.

7.2.5. *Competition between Union producers and concentration on the EU market*

(132) Parties claimed that the structure of the Union industry contributed to the injury suffered by the Union industry. However, as specified in recitals (146) and (147) of the provisional Regulation data collected during the investigation demonstrates that larger and smaller companies have been similarly affected.

7.2.6. *Management decisions by Union producers*

(133) Some parties claimed that the causes of injury lied in wrong management decisions by the Union producers. Those comments referred to the producers mentioned in recital (124) of the provisional Regulation which have either closed or gone under insolvency proceedings. It is recalled that the provisional Regulation mentioned 30 companies whereas the comments of parties refer to only 4. In general those comments have not been substantiated. In any case the data on file demonstrates clearly the causal link between injury suffered by the Union industry and imports from the PRC. This conclusion is reinforced by the fact that despite closures the market share of remaining companies did not go up.

7.2.7. *Imports from third countries by the EU industry*

(134) Some parties claimed that one EU producer offered cheaper wheels from third countries thereby contributing to the injury suffered by the EU industry. These allegations however have not been confirmed by evidence. Above all it was not clear whether such imports would have affected any significant quantities. Therefore the claim had to be rejected.

7.2.8. *Aluminium prices and supply contracts of the Union industry*

(135) It was claimed that the average cost of production remained stable despite the changes in the aluminium prices. Parties claimed that the losses suffered by the Union producers were due to the fact that they entered into long-term contracts for supply of aluminium which did not allow for price adjustment in line with the decreasing LME prices. The information on file submitted by cooperating Union producers contradicted such claims. They had to be therefore rejected.

7.2.9. *Exchange rate fluctuations*

(136) It has also been argued that the injury to the Union producers is likely to decrease as a result of the appreciation of the RMB to the EUR. The fluctuation in currency would push up the prices of the dumped imports that are traded in EUR so as to close the price gap between the dumped imports and Union producer prices.

(137) In this context it should be noted that the investigation has to establish whether the dumped imports (in terms of prices and volume) have caused (or are likely to cause) material injury to the Union industry or whether such material injury was due to other factors. In this respect, Article 3(6) of the basic Regulation states that it is necessary to show that the price level of the dumped imports cause injury. It therefore merely refers to a difference between price levels, and there is thus no requirement to analyse the factors affecting the level of those prices.

(138) The likely effect of the dumped imports on the Union industry's prices is essentially examined by establishing price undercutting, price depression and price suppression. For this purpose, the dumped export prices and the Union industry's sales prices are compared, and export prices used for the injury calculations may sometimes need to be converted into another currency in order to have a comparable basis. Consequently, the use of exchange rates in this context only ensures that the price difference is established on a comparable basis. From this, it becomes obvious that the exchange rate can in principle not be another factor of the injury.

(139) The above is also confirmed by the wording of Article 3(7) of the basic Regulation, which refers to known factors other than dumped imports. The list of the other known factors in this Article does not make reference to any factor affecting the price level of the dumped imports.

(140) However, even in the event that this factor was taken into account, given the likely pressure on consumer prices in a context of a market downturn, it is unlikely that importers buying from the country concerned would be able to increase prices to retail as a result of the appreciation of the RMB. Furthermore, exchange rates as such are very difficult to predict. Finally, an appreciation of the RMB against the EUR has been seen post IP. All these elements make it impossible to conclude that the currency fluctuations will have an upward effect on prices of dumped imports from the country concerned.

(141) In view of the foregoing it cannot be concluded that the development of exchange rate could be another factor causing injury.

7.2.10. *Increasing demand for steel wheels*

(142) Some parties claimed that the injury suffered by the Union industry was due to the fact that in times of economic crisis consumers turned to less expensive steel wheels, or to smaller cars which would allegedly more frequently be equipped with steel wheels. This argument was alleged to be reinforced by the fact that aid schemes introduced by different European countries incentivised sales of smaller cars. On the other hand, other parties claimed that although aid schemes indeed might have incentivised sales of smaller cars those cars were better equipped and fitted with aluminium wheels.

(143) Additional analysis has been conducted on the basis of data available, since there are no general statistics concerning steel wheels. Data on the level of consumption of steel wheels could be retrieved by comparing data on car production in the EU (recital (141) of the provisional Regulation) and consumption of OEM wheels (see recital (85) above).

	2006	2007	2008	IP
Production of cars in the EU (in 000 units)	16 198	17 103	15 947	13 443
Amount of wheels used in car production (production*4.5 wheel)	72 891	76 963	71 761	60 493
Consumption of OEM aluminium wheels in the EU (in 000 units)	43 573	44 009	42 076	34 915
Consumption of steel wheels in the EU (in 000 units)	29 318	32 954	29 685	25 578
Share of OEM aluminium wheels	59 %	57 %	58 %	57 %
Share of steel wheels	40 %	42 %	41 %	42 %

(144) The table demonstrates that the consumption of steel wheels decreased by 12 % between 2008 and the IP. The share of aluminium wheels in production of new cars decreased by 1 percentage points between 2008 and the IP (period affected by the economic crisis). The share of steel wheels in the production of new cars in the EU increased by 1 percentage points over the same period.

(145) It can be concluded that the share of aluminium and steel wheels in the production of new cars remained stable. Besides, trends of consumption and production of aluminium wheels also do not support the above argument. Therefore, it had to be rejected.

7.3. **Conclusion on causation**

(146) None of the arguments submitted by the interested parties demonstrates that the impact of factors other than dumped imports from the PRC is such as to break the causal link between the dumped imports and the injury found. The conclusions on causation in the provisional Regulation are hereby confirmed.

8. **UNION INTEREST**

(147) In view of parties' comments the Commission conducted further analysis of all arguments pertaining to the Union interest. All issues have been examined and the conclusions of the provisional Regulation confirmed.

8.1. **Interest of importers**

(148) As announced in recital (160) of the provisional Regulation the Commission further investigated the impact of duties on companies that import and resell their own branded ARWs, the production of which they have outsourced to the PRC. It has been established that although the impact of duties on such a company would most probably be more than impact on other types of importers as defined in recitals (159) – (160) of the provisional Regulation, it would still not be disproportionate in view of global effects on the whole Union industry.

(149) Based on price data provided for the IP by one cooperating importer (outsourcer) it was established that the profit margins achieved by such company would be sufficient to shoulder the effects of the duties. The margins achieved by that company were higher than the proposed duties.

8.2. **Interest of users**

(150) After imposition of provisional measures parties reiterated general comments on high cost impact of measures without providing evidence substantiating such claims. It is recalled that the cost impact analysis was based on data provided by the cooperating car manufacturers. Only three companies provided such data before imposition of provisional measures and only this data could form the basis of the Commission's conclusions.

(151) As stated in recital (165) of the provisional Regulation, the cost impact of measures is limited,with a maximum cost impact of 0,223 % (if accepting that all price levels would go up by 22,3 %). However even this maximum cost impact appears limited in view of the turnover achieved by car makers.

(152) Some parties claimed that the cost increase due to measures would force them to delocalize their production. However, in view of the limited cost impact a decision to delocalize car production mentioned by some car makers would seem disproportionate to the cost impact established. The claims had to be therefore rejected.

(153) It has to be also noted that the arguments on high cost impact contradict with comments of some car manufacturers that they rely on Chinese supplies to a very limited extent.

(154) The conclusions on cost impact of measures in the provisional Regulation are hereby confirmed.

8.3. **Variety of sources of supply**

(155) The complainant submitted that imposition of measures would be in the interest of car industry. By ensuring that the Union industry would remain operational it would ensure a variety of sources of supply.

(156) Other parties, most notably users, reiterated their arguments with regard to the competition on the EU market. They also claimed that imports from the PRC were essential to cover the demand on the EU market with EU producers being unable to provide sufficient capacities. Whereas the capacity utilisation rate remained at the level of 92 % in the years 2006 and 2007, there has been a dramatic drop to 84 % in 2008 and 73 % in the IP. These data clearly demonstrates that there are, especially currently, sufficient free capacities which could be used for increased production. Further, the argument of insufficient capacities on the part of the Union industry contradicts with other claims by the car industry namely those of substantially reduced demand for OEM wheels. The claims therefore had to be rejected.

(157) One party also claimed that the Chinese producers were not producing the same product types as the European ARW manufacturers. These claims had to be rejected in view of the level of PCN matching found in this case (depending on the calculation performed, as explained in recital (93), the matching ratio would be 92 % for the undercutting calculation for the product concerned considered as a whole and 77 % for OEM and AM segments considered separately).

(158) The conclusions in recital (166) of the provisional Regulation are hereby confirmed.

8.4. **South Korea**

(159) Parties reiterated their comments with regard to the negative impact of the duties in the present case when combined with other factors, like the competitive advantage given to South Korean car manufacturers on the basis of the Free Trade Agreement. These comments have not been substantiated by any new evidence. It should be noted that there is no evidence that FTA would result in injury to the car industry and that in any event a safeguard instruments is available under the FTA in question as a remedy. The conclusions in recitals (167) and (168) of the provisional Regulation are hereby confirmed.

8.5. **Conclusion on Union interest**

(160) The conclusions in recitals (153) – (171) of the provisional Regulation are hereby confirmed.

9. **PROVISIONAL MEASURES**

9.1. **Injury elimination level**

(161) Most of the comments received concerned the calculation of the injury elimination level. Parties questioned the methodology of this calculation as such and complained about insufficient disclosure.

9.1.1. *Disclosure*

(162) It is recalled that the methodology for calculation of the injury elimination level has been explained in detail in the note included in the file open for consultation by interested parties on the date of publication of provisional measures. All interested parties also received this note together with the disclosure letter sent on the same day.

(163) A second note has been included in the file open for consultation by interested parties in reply to comments submitted after the imposition of provisional measures.

(164) It is recalled that PCNs used for the calculation per car maker were clearly identified in the above mentioned note. However, precise data on price and volume items could not be disclosed due to confidentiality reasons.

(165) As regards imports from China, data on quantities exported, on CIF Union border value and weighted average unit sales prices could not be disclosed as they were based on transactions made by two exporters. The disclosure hence would breach the confidentiality requirements as contained in the basic Regulation.

(166) As regards transactions made by the Union producers on the EU market, providing more detailed information would only be meaningful if given individually for each of the producers. This is however not possible since it would be in breach of the abovementioned confidentiality requirements.

(167) On these grounds, it is therefore considered that the detailed information on the methodology applied in calculating the duty (including among others the PCNs used and split by car maker) has provided the parties with sufficient information to allow them to fully exercise their rights of defence, while respecting the confidentiality requirements provided for in the basic Regulation.

9.1.2. *Methodology*

(168) It is recalled that underselling was computed on the basis of data relating to ARW purchases made by car makers. For the reasons set out in particular in recitals (174) – (177) of the provisional Regulation, this approach encompasses only ARWs destined for the OEM segment. Car makers which cooperate with the investigation confirmed that they purchase ARWs pursuant to tender proceedings. Given the nature of tender proceedings, models that are 'dual-sourced' have to be the same in all respects, whether purchased from the PRC or the EU. In order to ensure the highest possible level of comparison between imported Chinese and EU products, comparison has been made PCN per PCN separately for each large car maker identified in the data supplied by both EU sampled producers and cooperating Chinese exporters. Contrary to claims by some parties this level of duties is not an outcome of any kind of adjustment but it recognizes that the duty has to be set at a level appropriate to remedy the injury suffered by the Union industry.

9.1.2.1. Information used as the basis for the calculation

(169) Parties claimed that the injury elimination level calculation was conducted on the basis of tenders although information on tenders was neither requested in the investigation nor made available in the file open for consultation by interested parties.

(170) Although tenders were mentioned in the description of the methodology applied to calculate the duty level, this reference was only a reference to the type of sourcing procedure applied by car makers which guaranteed that dual-sourced wheels would be the same and that a higher level of comparability could be achieved. It was not a reference to documentation or sources of information on the basis of which calculations were conducted.

(171) To the contrary, the calculations were conducted in accordance with the usual practice on the basis of the transaction-by-transaction listings provided by the sampled exporting producers and EU manufacturers. The PCN matching was conducted at the level of car maker, i.e. within a group of transactions identified as exporters' and EU producers' sales to this specific car maker. These data were fully verified.

9.1.2.2. Adjustments

(172) Parties' comments further related to adjustments made in the calculation. The Commission accepted some of those comments.

(173) It is recalled that the CIF prices of Chinese exporters were adjusted upwards by adding 7,6 %: 4,5 % customs duty plus 3,1 % other importation cost. In order to construct a target price on the basis of the actual EU manufacturers' sales price, two additions had to be made:

1. add 5,4 % on a turnover basis to reach the level of cost of production (note that this is the weighted average loss for EU wheel producers found for the IP),

2. add 3,2 % on a turnover basis to cost of production (computed under (1)) to cater for a reasonable profit and to arrive at a target price. The 3,2 % correspond to the profit achieved by the Union industry in 2006, the first year of the period considered, when the financial results of Union producers were not yet affected by injurious dumping.

(174) As regards customs duties, at the provisional stage import prices have been adjusted upwards by 4,5 %. This duty corresponds to the customs duty applied to CN code 8708 70 50. However, it is CN code 8708 70 10 which in principle concerns aluminium road wheels for the industrial assembly (i.e., OEM), and not CN code 8708 70 50. A duty of 3 % is applicable to imports under this code. Given the methodology used to determine the injury elimination level, which is based on the OEM segment, and in view of comments by parties after the imposition of provisional measures, it is appropriate, in order to ensure consistency in the approach, to use a duty rate of 3 %.

(175) With regard to target profit parties claimed that this profit margin has been calculated for both OEM and AM producers and might thus inflate the calculation based on OEM transactions only. In view of parties' comments, the Commission adjusted these calculations by applying rates of loss and profit calculated for OEM wheels only (-5,7 % and 3,1 % respectively, see recital (106) et seq. above).

(176) On the other hand parties argued that the level of profit should be adjusted downwards in order to reflect the impact of the crisis. However, it is a consistent practice to apply the profit margin which the industry would have achieved in the absence of dumping practices. Other causes of injury, even if contributing, are not singled out in the calculation of target profit.

(177) Certain parties claimed that the methodology used to calculate the injury elimination level was in breach of the methodology prescribed by the basic Regulation. However, the basic Regulation does not prescribe any particular method to establish the injury elimination level. The method to establish such a level must be examined in terms of the specific facts of the case. As explained in the provisional Regulation and elsewhere in this Regulation, the facts of the case support the use of the methodology applied by the Institutions. Further, it has to be noted that the undercutting levels disclosed in the provisional Regulation and above in recital (93) are an indication that the underselling levels using the approach suggested by certain parties would be much higher.

(178) Taking into account these changes the duty rate amounts to 22,3 %.

9.1.2.3. Applicability of 'OEM duty' to AM sales

(179) One party claimed that it was inappropriate that the calculation of the injury elimination level was based only on OEM sales while the duty was also applicable to AM wheels. However, as explained above (and also in points (174) – (177) of the provisional Regulation), this approach is appropriate in this case, in particular since 85 % of Union producers' sales relate to the OEM segment.

(180) The approach applied by the Commission whereby the calculation of the injury elimination element has been limited only to the OEM was the most appropriate. A different approach did not seem appropriate because it would lead to a situation where a set of export data geared more to AM would be compared to that of the EU industry selling predominantly to the OEM segment.

(181) The approach applied is justified and reasonable given that the aim of the measure is to eliminate injury of the EU industry. It ensures that the duty was not set at a level higher than what is necessary to eliminate injury.

9.1.2.4. Impracticability and the obligation to establish an individual duty for those operators having been granted IT

(182) One party caimed that unlike the first paragraph of Article 9(5) of the basic Regulation, the second paragraph does not provide for the possibility not to specify the individual duty. Consequently, it argued that the exception linked to impracticability could not be applied in the present case and that the obligation to establish an individual duty rate for those exporters having been granted IT remains.

(183) Certain parties further claimed that impracticability was only due to the methodology applied; hence it was 'self-induced' by the Commission. The parties alleged that the Commission had at its disposal all data submitted by the AM exporting producers enabling it to include AM sales in the calculation of the injury elimination level.

(184) Finally, certain parties claimed that since the Commission was able to calculate undercutting separately for OEM and AM segments it must have been able to calculate underselling. A final argument was that AM prices could be compared with OEM prices since the PCN construction did not make any distinction between the two segments.

(185) Regarding the first argument, it is true that Article 9(5) of the basic Regulation is based on the presumption that if an operator is granted IT, it will be possible to specify an individual duty for it. However, in this particular case, doing so would be impracticable and/or inappropriate. That is because, as explained above, for determining the injury elimination level it is necessary to focus on OEM sales. Moreover, regarding all producers having been granted IT, a duty also based on their AM-sales would be inappropriately high, i.e. in excess of what would be warranted in the circumstances of this particular case in order to eliminate injury. That is because, as explained above, an injury elimination level of 22,3 % is sufficient to protect Union producers on their primary market (OEM). A duty which would also be based on those producers' AM-sales – which, in all three cases of producers granted IT, would be higher – would therefore be unduly high.

(186) It also has to be mentioned that the reference to lack of reliable data in recital (182) of the provisional Regulation did not relate to the quality of data provided but to the type of data used for the calculation (PCN matching per car maker, i.e. comparing the models sourced from the PRC and EU by a specific car maker). The type of procedure used to source wheels on the OEM segment gave the opportunity to achieve a greater level of comparability. The same type of data, due to the fact that different procedures are used, could not be provided for the AM-sales.

(187) The exercise of establishing injury on the basis of Article 3 of the basic Regulation is legally separate from setting the level of the duty. The latter exercise is conducted once injury has been established with a view to setting a level of duty which would be sufficient to remedy injury. Consequently, the Commission conducted this calculation in accordance with the chosen methodology. Also the fact that the PCN structure did not include the criterion of sales channels is not linked to the methodology applied when establishing the injury elimination level.

(188) Parties' arguments related to the application of impracticability exception as well as to the unconditional character of the obligation to establish an individual duty rate have to be rejected.

9.1.2.5. Representativity of transactions used

(189) Parties' criticisms related also to the fact that the injury elimination level calculation was arbitrary because it selected only few unrepresentative transactions.

(190) First and foremost, parties claimed that the calculation was based on an unrepresentative volume of import transactions from the PRC. Such an approach allegedly contradicts the WTO Anti-Dumping Agreement [1] as it cannot be considered as based on positive evidence. Complainant argued that the fact that most of the EU industry sales were OEM was of no importance since the purpose of the underselling calculation is to determine the average amount by which the price of dumped imports should be raised in order not to cause injury. The underselling calculation must be representative for the dumped imports and not for the sales of EU industry. Another party claimed that such an approach contradicted Institutions' own practice as normally the individual undercutting and underselling is weighted per PCN on the basis of share of undercutting and underselling quantities of exports rather than quantities sold by EU industry.

(191) It is recalled that the injury elimination margin reflects (based on the sample) the situation of around 85 % of the EU industry sales, which are directed to the OEM segment. It was the choice of methodology, and not the technicalities of the calculation as such, that was driven by the specific situation on the EU market where the majority of sales are directed to the OEM segment. This choice led the Commission to compare prices at the level of car maker, achieving a greater level of comparability and at the same time ensuring that the injury elimination level is not overstated.

(192) It is further recalled with regard to representativity that the matching ratio of export transactions used in proportion with all exports by sampled Chinese exporters into the OEM segment was found to be more than 55 %. Such a ratio was considered representative given the methodology used in calculating the injury elimination level.

9.1.2.6. Duty based on undercutting

(193) One party claimed that the injury margin should have been based on undercutting pursuant to the practice established in the Council Regulation (EC) No 1531/2002 [2] imposing a definitive anti-dumping duty on imports of colour television receivers originating in the People's Republic of China, the Republic of Korea,

[1] Agreement on Implementation of Article IV of the General Agreement on Tariffs and Trade 1994.

[2] Council Regulation (EC) No 1531/2002 of 14 August 2002 imposing a definitive anti-dumping duty on imports of colour television receivers originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand and terminating the proceeding regarding imports of colour television receivers originating in Singapore (OJ L 231, 29.8.2002, p. 1).

Malaysia and Thailand. Indeed in this case the duty was based on price undercutting taking account of the fact that factors other than the dumped imports appeared to have contributed to the injury to the Union industry and secondly that on a worldwide basis this industry had for a number of years realised no or extremely low profits ([1]).

(194) It should be noted that the factors that led to the decision to set the level of duties at the level of price undercutting are not applicable to the present case. Unlike in colour television receivers case ([2]) the product concerned is not characterised by low levels of profitability. The profitability decreased substantially as a result of low priced imports from the country concerned. Also the imports from other third countries remained stable over the period considered.

9.2. **Conclusion on injury elimination level**

(195) The approach in the provisional Regulation with regard to the methodology used is hereby confirmed. Taking into account parties' comments on adjustments the re-calculated level of the duty amounts to 22,3 %.

10. **ALLEGATION OF CIRCUMVENTION**

(196) Parties alleged that measures can possibly be circumvented, pointing to notably recent increase of imports of ARWs from countries without known local production. Competent authorities have been alerted about those developments and possibilities and the issue will be closely monitored.

11. **UNDERTAKING**

(197) One unrelated importer expressed an interest to offer a price undertaking. Although no formal price undertaking was offered, it is noted that Article 8 of the basic Regulation limits the possibility to offer price undertakings exclusively to exporters. The Commission's practice not to accept undertaking offers from importers was also accepted by the European Court of Justice ([3]), arguing, inter alia, that the acceptance of an undertaking offered by an importer would have the effect of encouraging him to continue to obtain supplies at dumped prices.

(198) Two cooperating Chinese exporting producers offered a price undertaking in accordance with Article 8(1) of the basic Regulation. However, the product concerned exists in a multitude of product types, for which prices vary significantly (for one company even up to 300 %), thus posing a very high risk of cross-compensation. In addition, the product types will evolve in design and finishing. It was therefore considered that the product is not suitable for a price undertaking. In addition, one of the companies did receive neither Market Economy Status nor Individual Treatment, whereas for the other company, major accounting problems were identified and its structure and product range (production of OEM/AM) was considered too complex. The undertaking offers therefore were rejected.

12. **CUSTOMS DECLARATION**

(199) Statistics of aluminium wheels are frequently expressed in number of pieces. However, there is no such supplementary unit for aluminium wheels specified in the Combined Nomenclature laid down in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ([4]). It is therefore necessary to provide that not only the weight in kg or tonnes but also the number of pieces of the product concerned and of certain products of CN code ex 8716 90 90 for imports is entered in the declaration for release for free circulation.

13. **DEFINITIVE COLLECTION OF PROVISIONAL DUTY**

(200) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation be definitively collected,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of aluminium road wheels of the motor vehicles of CN headings 8701 to 8705, whether or not with their accessories and whether or not fitted with tyres, currently falling within CN codes ex 8708 70 10 and ex 8708 70 50 (TARIC codes 8708 70 10 10 and 8708 70 50 10) and originating in the People's Republic of China.

([1]) Ibid, para 229.
([2]) Ibid, para 231.
([3]) Nashua Corporation and others vs Commission and Council, joined cases C-133/87 and C-150/87, ECR 1990 page I-719 and Gestetner Holdings plc vs Council and Commission, C-156/87, ECR 1990 p. I-781.

([4]) OJ L 256, 7.9.1987, p. 1.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price before duty, of the product described in paragraph 1 shall be 22,3 %.

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

Article 2

Amounts secured by way of provisional anti-dumping duties pursuant Regulation (EU) No 404/2010 on imports of certain aluminium road wheels, currently falling within CN codes ex 8708 70 10 and ex 8708 70 50 (TARIC codes 8708 70 10 10 and 8708 70 50 10), and originating in the People's Republic of China, shall be definitively collected.

Article 3

Where a declaration for release for free circulation is presented in respect of imports of aluminium road wheels of vehicles of CN heading 8716, whether or not with their accessories and whether or not fitted with tyres, and currently falling within CN code ex 8716 90 90, TARIC code 8716 90 90 10 shall be entered in the relevant field of that declaration.

Member States shall, on a monthly basis, inform the Commission of the number of pieces imported under this code, and of their origin.

Article 4

Where a declaration for release for free circulation is presented in respect of the products mentioned under Articles 1 and 3, the number of pieces of the products imported shall be entered in the relevant field of that declaration.

Article 5

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

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

Done at Luxembourg, 25 October 2010.

For the Council

The President

S. VANACKERE