

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 451/2011

of 6 May 2011

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of coated fine paper originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

2. SUBSEQUENT PROCEDURE

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

- (3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures (the 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.

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(1) thereof,

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

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

- (5) One group of cooperating Chinese exporting producers (the exporting producer) claimed that it should have been heard prior to the imposition of provisional measures given that, according to that group, a provisional Regulation is an individual measure in the sense of Article 41 of the Charter of Fundamental Rights of the European Union ⁽³⁾.

Whereas:

1. PROVISIONAL MEASURES

- (1) The Commission, by Regulation (EU) No 1042/2010 ⁽²⁾ (the provisional Regulation) imposed a provisional anti-dumping duty (the provisional measures) on imports of coated fine paper (CFP) originating in the People's Republic of China (PRC).

- (6) With respect to the above stated claim, the following points should be highlighted: The basic Regulation delineates the rights of parties in the framework of anti-dumping proceedings and in this particular matter Article 7 sets out the procedural steps for imposition of provisional measures. Article 7 of the basic Regulation states, inter alia, that provisional measures, if any, can be imposed within 9 months from the initiation of a case. In the present proceeding the Commission conducted its investigation in line with the provisions of Article 6 of the basic Regulation and imposed provisional measures in line with the provisions of Article 7 of the basic Regulation while all interested parties that had requested so were heard and had the adequate opportunities to submit information and make comments.

- (2) The proceeding was initiated following a complaint lodged on 4 January 2010 by CEPIFINE, the European association of fine paper manufacturers (the complainant) on behalf of producers representing a major proportion, in this case more than 25 % of the total Union production of coated fine paper. The complaint contained *prima facie* evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 299, 17.11.2010, p. 7.

⁽³⁾ OJ C 364, 18.12.2000, p.1.

The Court of Justice has consistently held that ‘even if ... the principle of the right to a hearing requires exporters to be informed of the essential facts and considerations on the basis of which it is intended to impose provisional duties, a failure to respect that right cannot in itself have the effect of vitiating the regulation imposing definitive duties where, in the course of the procedure for the adoption of the latter regulation, the defect vitiating the procedure for the adoption of the corresponding regulation imposing provisional duties was remedied⁽¹⁾. In the present case, the Commission fulfilled its obligations to disclosure under the basic Regulation and the right to a fair hearing of the exporting producer was respected during the procedure leading to the adoption of this Regulation.

- (7) The provisional nature of measures adopted pursuant to Article 7 of the basic Regulation is *inter alia* reflected in the maximum period of six months for which they may be imposed as well as the fact that any provisional duty is secured only by guarantee. Furthermore, the Commission never prevented any party from coming forward with requests to hold more hearings prior to the 9 month deadline stipulated by law for the imposition of provisional measures should they have considered that there was a need to be heard further at that stage.
- (8) The exporting producer requested access to data used from the sole company in the United States of America (USA) that provided information in line with the provisions of Article 2(7)(a) for the establishment of normal value. It was claimed that otherwise the party was prevented from having access to the evidence on the basis of which provisional measures were imposed and that this both violated the party’s rights of defence and was contrary to the principle of good administration. The same party claimed that disclosure of confidential data pertaining to specific parties could be made available to the legal representatives of the group of the exporting producer. The legal representatives would undertake the obligation to guarantee the confidentiality of companies’ business secrets. The claim was backed by reference to the USA and the Canadian systems and to the Court of Justice of the European Union in *G.J. Dokter and Others v Minister van Landbouw, Natuur en Voedselkwaliteit*.
- (9) These requests had to be rejected. The exporting producer’s request referred to access of confidential data on prices provided by the aforesaid US company. The Commission could not grant the access to such detailed confidential business information. Giving access to such data would have been against Union law, notably Article 19 of the Basic Regulation since it would have led to an unauthorised disclosure of limited and sensitive business data of the US company. As to the proposed methodology on disclosing company’s business secrets to

legal representatives of other interested parties, unlike in the USA and Canadian systems, no such process is provided for by the basic Regulation. It is thus clearly outside the established EU legal framework for anti-dumping proceedings. In any event, the Court case cited above does not support any claim of access to confidential information. The judgment also refers to some inherent limits of the principle of the right of defence.

- (10) The exporting producer also requested access to evidence concerning: rolls used in web-fed printing produced by the Union producers, detailed information about one representative Union producer’s legal status, the activities and financial data of selected mills, detailed data related to the Union industry’s cost of production and product control numbers of the products of representative Union producers. Some of the requested information was outside the scope of the investigation as it related to products not covered by the investigation or the activity of Union producers that does not involve the production of CFP. Concerning other information requested, the Commission was not in a position to grant access to it, since pursuant to Article 19 of the basic Regulation this would have constituted an unauthorised disclosure of confidential business secrets.
- (11) The exporting producer also requested the disclosure of the names of the companies which opposed the investigation and did not request confidential treatment. Such a disclosure would have revealed the identity and position of producers that requested confidentiality; therefore it was not possible to reveal this information.
- (12) The provisional disclosure was as detailed as possible without disclosing confidential information and was thus not in breach of the exporting producer’s fundamental rights, its rights of defence or of the principle of good administration.
- (13) The injury analyses performed in the present anti-dumping and the parallel anti-subsidy investigation are identical, since the definition of the Union industry, the representative Union producers and the investigation period are the same in both investigations. For this reason, comments on injury aspects put forward in any of these proceedings were taken into account in both proceedings.

2.1. Investigation period

- (14) It is recalled that, as set out in recital (13) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 January 2009 to 31 December 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’).

⁽¹⁾ Judgment of 3 May 2001, joined cases C-76/98 P and C-77/98 P, Ajinomoto, ECR 2001 p. 3233, paragraph 67.

3. PRODUCT CONCERNED AND LIKE PRODUCT

3.1. Product concerned

- (15) Following provisional measures, the exporting producer and the complainant submitted further comments concerning the product definition. Some of these comments were a repetition of comments already addressed in the provisional Regulation.
- (16) The exporting producer reiterated that there is no substantial difference concerning basic characteristics between CFP in sheets and rolls suitable for use in sheet-fed printing machines (the product concerned) and rolls suitable for use in web-fed presses and that, therefore, CFP for web-fed printing should not have been excluded from the product scope. The party also argued that the Commission's finding that these products are not interchangeable was not supported.
- (17) It is recalled that the investigation found that CFP used in web-fed and sheet-fed printing processes are distinct product groups and are not interchangeable as described in recitals (18) and (20) of the provisional Regulation. The exporting producer itself also acknowledged that these products are not fully interchangeable.
- (18) It should be noted as well that no rolls for use in web-fed presses were imported from the PRC during the period considered. It may also be considered unlikely that these products would be imported in the future as sourcing these products from long distance is economically not viable for the reasons mentioned in recital (20) of the provisional Regulation.
- (19) It was further claimed by the exporting producer that the criteria defined in the provisional Regulation in recital (16), namely the technical characteristic of resistance to picking, was not appropriate to distinguish between CFP suitable for use in web-fed printing on the one hand and CFP used in sheet-fed printing on the other hand. It further claimed that the exclusion of web rolls was made on an arbitrary basis alleging that web-fed rolls produced by Union producers do not meet the criteria set in recital 16 of the provisional Regulation as regards the characteristics of resistance to picking.
- (20) The exporting producer also argued that the Commission fell short of its obligation to examine objectively the evidence presented by that exporting producer to the Commission's services before the provisional Regulation, namely the results of the testing conducted in its own laboratory measuring the resistance to picking of web rolls produced by the Union producers.
- (21) The test results presented by the exporting producer consisted of a summary of the test results performed in its own laboratory. Crucially, the results were not made available for inspection and comments by other interested parties, in particular, the Union industry, nor did the exporting producer submit a meaningful non-confidential summary thereof despite repeated reminders.
- (22) It is recalled that at the provisional stage the Commission concluded that the objectivity and reliability of the test was insufficient to base conclusions thereon. No further detailed information was provided by the exporting producer which could help further assess the reliability of the test. Since no non-confidential version of this test was provided, the companies whose web rolls were allegedly tested could not respond to the conclusions of the test. The Commission thus could not objectively check whether the submitted test results were reliable and correct and could be relied upon for the purposes of the investigation. On the basis of the facts available to the Commission, conclusions reached at provisional stage about the objectivity and reliability of the test could not be reconsidered since the information submitted under confidentiality could not be counterchecked by any reliable sources.
- (23) After the imposition of the provisional measures, the exporting producer presented the results of a further test conducted on its behalf by an external test laboratory and reiterated that CFP used in web-fed printing has been arbitrarily excluded from the scope of the investigation. The test reports stated that the resistance to picking has been measured on 25 samples of web-fed rolls provided and identified by the exporting producer to the laboratory as paper samples produced by Union producers. According to this report, none of the paper met both criteria set in recital 16 of the provisional Regulation.
- (24) The assessment of the test report brought to light that, first of all, the test report by the external laboratory related mostly to products for which these results were irrelevant as most of the samples tested were not in fact web rolls; secondly, the test report related to products which were not sufficiently identified as it could not be ascertained from the test report whether the paper tested was for sheet-fed printing or web-fed printing as the paper brand described in the report existed in both formats. Furthermore the test report provided no assurance that the sampled rolls indicated were indeed the ones that were tested.
- (25) In response to the external laboratory's test report, the complainant provided the results of the testing performed by one of the Union producers on the same samples of web rolls that were allegedly tested by the external laboratory. This test showed different results. The complainant attributed the differences to possibly different test conditions and thus a potential non-compliance with the ISO 3783:2006 standard, i.e. the standard according to which resistance to picking set in recital (16) of the provisional Regulation should be measured.

- (26) After disclosing the definitive findings, the exporting producer questioned the Commission's objectivity in rejecting the test result of the external laboratory. It claimed that the testing was carried out blindly by the independent expert and in accordance with the relevant ISO standard. It provided an affidavit of its manager explaining the sourcing process of the samples used in the testing in order to prove the independence, correctness and representativeness of the testing.
- (27) Firstly, the objectivity of the external laboratory test report was never questioned by the Commission and in this regard it is irrelevant that the testing was carried out blindly. On the other hand, doubts were raised as to the assurances on the selection and origin of the samples tested and not on the test itself. The arguments of the exporting producer did not remove these doubts as these were not comprehensive and were unclear in several aspects, for example the inclusion of products other than web rolls were claimed to have been caused by administrative errors or were blamed on mistakes by the suppliers in providing possibly wrong samples.
- (28) Since both the source as well as the samples of the allegedly tested products were not clear and the results of the testing by the different parties were contradictory, it was considered that the submitted test report of the external laboratory acting on behalf of the exporting producer did not conclusively demonstrate that the resistance to picking test was not appropriate to distinguish between CFP suitable for use in web-fed printing on the one hand and CFP used in sheet-fed printing on the other hand. Consequently, the test report did not demonstrate that CFP used in web-fed printing had been arbitrarily excluded from the scope of the investigation.
- (29) As regards the relevance of the resistance to picking as a distinguishing criterion for rolls suitable for web-fed printing, it is recalled that in the product definition the two product groups are distinguished from each other based on, among other things, the use of the products, i.e. whether the product is suitable for use in web-fed or sheet-fed printing as determined by the requirements of the presses on which they are used which is reflected in, *inter alia*, the characteristic of resistance to picking. Furthermore it is noted that resistance to picking is only one of the characteristics that distinguish CFP suitable for use in web-fed printing from CFP used in sheet fed printing; Recitals (16) and (18) of the provisional Regulation set out additional criteria which have not been contested by the exporting producer. The exporting producer claimed that humidity as defined in recital (18) of the provisional Regulation was not a distinct basic characteristic to distinguish products. During the investigation however differing claims in this regard were made by other parties. In any event, it was found that stiffness and resistance to picking are the most relevant factors.
- (30) In its responding submission the complainant acknowledged that there might be rolls that do not fully meet all the criteria for resistance to picking set in the provisional Regulation which could still be used in web-fed printing. However, it sustained its view that pick resistance is the only test that is able to identify with certainty that a roll is indeed suitable for web-fed printing, i.e. if a roll meets the picking resistance criteria in recital (16) of the provisional Regulation, it is certainly a web roll.
- (31) In support of the above claims concerning resistance to picking the exporting producer referred to arguments put forward by one of the complainant Union producers in anti-dumping and anti-subsidy investigations in the USA in which the Union producer allegedly acknowledged that web rolls cannot be differentiated based on pick resistance test or by any other measurement.
- (32) The complainant contested these statements of the exporting producer and claimed that contrary to what has been claimed, it follows from the proceedings in the USA that there is a clear dividing line distinguishing web rolls from CFP.
- (33) Firstly, it should be noted that the statements referred to by the exporting producer were presented in investigations under other jurisdictions and by different parties than the ones in the current proceeding and thus are not relevant. Secondly, the US authorities in the mentioned investigations concluded that there was a clear distinction between, on the one hand, CFP used in sheet-fed printing and, on the other hand, rolls suitable for use in web-fed printing. Cutter rolls were regarded as semi-finished products while rolls suitable for web fed printing were not considered as 'product concerned'. The US authorities did not explicitly define web rolls in their definition of the product scope. For this reason, the criterion of resistance to picking was not relevant in the definition of the product scope in the mentioned investigations.
- (34) Based on the above comments, the technical characteristic 'resistance to picking' was confirmed as being a reliable characteristic to describe CFP suitable for use in web-fed printing.
- (35) The comments put forward have however also revealed that there exist web rolls that can be used in web-fed printing even if they do not fully meet all the criteria of resistance to picking. For this reason it was considered necessary to further refine the definition of rolls suitable for use in web-fed printing.
- (36) In order to provide a further criterion to distinguish web rolls which do not fully meet all the criteria for resistance to picking, the complainant suggested that a roll which does not fully meet the picking resistance test but has an internal core size of less than 80 mm, should be considered as a web roll.

(37) The government of PRC and the exporting producer claimed that the addition of core size as a new element into the product definition constituted a revision of the definition of web rolls and thus the product concerned. It also claimed that the internal core size is not a suitable criteria as there exist web rolls with higher than 80 mm core size and cutter rolls with lower than 80 mm core size.

(38) The Commission endeavoured to further refine the definition of rolls suitable for use in web-fed printing and to give further clarification in order to distinguish even more clearly between the product concerned and other products, also with a view to minimizing the possibility of circumvention of the measures. The evidence submitted on the suitability of the core size as an alternative criterion in the definition however proved that this criterion would lead to the possible exclusion of the product concerned, i.e. cutter rolls with a core size of less than 80 mm from the measures. Therefore this criterion to define rolls suitable for use in web-fed printing was abandoned.

(39) The above is without prejudice to the reliability of the method according to which rolls suitable for use in web-fed printing have been excluded from the scope of the investigation as it was claimed by the Chinese group of exporting producers.

(40) No further comments were received concerning the exclusion of multi-ply paper from the product scope of the investigation.

(41) Based on the above, recitals (14) to (26) of the provisional Regulation are hereby confirmed.

3.2. Like product

(42) Since no comments were received with regard to the conclusions outlined in recital (27) of the provisional Regulation, the provisional findings with regard to the like product are hereby confirmed.

4. SAMPLING

(43) In the absence of any comments on sampling, recitals (28) to (30) of the provisional Regulation are hereby confirmed.

(44) The four producers referred to in recital (29) of the provisional Regulation that were considered to be representative of the Union industry as defined in recital (77) of the provisional Regulation are further referred to as 'representative Union producers'.

5. DUMPING

(45) Only one Chinese cooperating group (APP, the exporting producer) submitted comments on dumping as a follow-up to the imposition of provisional measures.

5.1. Market economy treatment (MET)

(46) With respect to criterion 1, APP alleged that the Commission's arguments relied solely on the alleged impossibility of verifying payment. It was consequently argued that the methods used by the party are in line with International Accounting Standards ('IAS').

(47) This had to be rejected. In this respect it is noted that the investigation revealed that it was not possible to establish the existence of payments with respect to transfer of companies' shares and cost of major raw material inputs. As to the accounting methods used it is noted that the methods followed were not in line with IAS (offsetting and related party disclosures).

(48) With respect to criteria 1 and 2, APP submitted that the Commission had dismissed the opinion of a well-known firm of accountancy advisors in a summary fashion on the grounds that it was irrelevant. Such dismissal would amount to an inadmissible rejection of an independent witness statement, thereby violating APP's right to a fair process. APP argued that its accounting advisors found the Commission's analysis on accounting procedures and principles flawed while some of the points that the Commission identified were, according to those advisors, not material.

(49) APP allegations were not backed by any evidence and had to be rejected. In this respect it is noted that the accountancy advisors referred to in the recital above do not appear to dispute the actual facts established in this investigation but rather attempted to present an analysis of some of the basic accounting principles, notably the prudence principle, the accrual principle, the principle of faithful representation and the materiality principle. It should be noted that those accountancy advisors were not present during the on-spot verification carried out by the Commission in the PRC in the course of which the Commission got first-hand knowledge about APP's actual practices relevant for the MET assessment. The Commission has explained in detail in writing to the party the deficiencies spotted and their links with the IAS accounting principles. The interpretation of these principles given by the accounting firm was not sufficiently substantiated or supported by evidence and could also not be reconciled with the actual facts established. Indeed, the evidence on file confirmed that the aforesaid accounting principles were not respected.

(50) APP submitted that its fundamental rights were breached. It was argued that the Commission imposed an excessive burden of proof on the party when investigating MET.

- (51) This claim had to be rejected. In this respect it is noted that the Commission has informed APP fully on the type of information requested with respect to MET and endeavoured to verify at every stage of the proceeding any information provided by the party. The fact that the information provided by the party does not confirm the compliance with IAS of its accounting methods does not imply the existence of an excessive burden of proof. MET is an exception to the normal regime for companies located in non-market economy countries and parties in such cases are simply requested to show that they complied with the rules set out in Article 2(7)(c) of the basic Regulation, failure to one criterion being enough to justify the refusal for granting MET. In this particular proceeding the investigation established that APP was not able to show that it complied with the requirements of Criterion 2.
- (52) APP also argued that there was a lack of objectivity in the MET assessment. It submitted that the MET decision was possibly influenced by the Commission's knowledge about the impact of the MET rejection on the group's dumping margin.
- (53) Moreover, these claims are unsubstantiated and thus had to be rejected. There is no indication that the MET decision was influenced by the Commission's knowledge about the impact of the MET rejection on the group's dumping margin. The MET analysis is a technical analysis of the fulfilment of the five clear criteria set out under Article 2(7)(c) of the basic Regulation and the MET analysis presented by the Commission was carried out on the basis of the MET criteria and without considering the impact of the outcome of that analysis on the exporting producer's potential dumping margin. In this respect it is recalled that the scheduling of the various segments of the on-spot verifications and the difference in the calendars followed (MET claim forms, anti-dumping questionnaires, analogue country data, export sales via related Union parties) together with the periods within which parties filed replies and subsequent amendments to their submissions demonstrates that the Commission was not able to establish any effect of a MET decision on the party's potential dumping at the time of MET disclosure. Finally, APP kept up to a late stage submitting new information and replacing information already on file thus it cannot be upheld that the Commission could be able to compute dumping margins on the basis of information that it did not have.
- (54) APP also argued that the Commission did not need to verify in full the party's replies in order to have a detailed picture of the data included in the party's reply to the anti-dumping questionnaire and that suspicions exist that the Commission had all the necessary data in order to calculate a dumping margin.
- (55) This claim had to be rejected. In this respect it is noted that in line with the provisions of Article 16 of the basic Regulation, the Commission verified all the information submitted by interested parties in order to arrive at a representative finding. The findings of the investigation were based on verified facts during a period of time that spread across four months and not on mere suspicions or any type of unverified statements or allegations.
- (56) APP submitted that the MET criteria should be read in light of their objective to ensure that prices are the result of normal market forces. In this respect it is noted that the purpose of the MET criteria is clearly set out under Article 2(7) of the basic Regulation and the Commission applied with respect to APP these clearly set out rules when analyzing its MET claim.
- (57) APP also claimed that the MET assessment had shortcomings, given that the verification of the reply to the anti-dumping questionnaire had established a 'reliable' cost of production, while the MET assessment points to a lack of ability to establish payments for inputs.
- (58) This interpretation of the findings has to be rejected as erroneous. It is recalled that the basic Regulation explicitly conditions the granting of MET and thus the reliability and use of an exporting producer's own price and cost data for the purpose of establishing normal value on the company successfully showing that it meets the requirements set out in Article 2(7)(c). If the aforementioned claim by APP were to be accepted it would simply 'by-pass' the findings of the MET assessment and the provisions of Article 2(7)(c) by using other type of information collected for other purposes. This is not in conformity with the provisions of the basic Regulation.
- (59) It is recalled that for APP two out of the four related exporting producers were found to produce only the multi-ply paperboard. Account taken of the fact that multi-ply paper board is excluded from the product scope as confirmed in recitals (40) and (41) above, it is concluded that the MET findings with respect to the two related exporting producers that produce only multi-ply paperboard within the APP group are not relevant for this proceeding.
- (60) In the absence of any other comments concerning MET, recitals (31) to (51) of the provisional Regulation are hereby confirmed.
- 5.2. Individual treatment (IT)**
- (61) In the absence of any comments on IT, recitals (52) to (55) of the provisional Regulation are hereby confirmed.

5.3. Normal value

5.3.1. Analogue country

- (62) No party disputed the selection of the USA as an analogue country for the definitive determination.
- (63) In the absence of any comments concerning the selection of the analogue country, recitals (56) to (63) of the provisional Regulation are hereby confirmed.

5.3.2. Determination of normal value

- (64) It is recalled that the normal value was calculated on the basis of the data provided by the sole cooperating producer in the analogue country (i.e. USA). Thus, normal value was established on the basis of prices of domestic sales of one US producer of the like product produced in the USA. During the IP this producer produced and sold in the US market the great majority of the types of the like product.
- (65) APP submitted that the Commission did not provide necessary information in relation to the normal value in the analogue country, such as comparability of the products, representativeness, cost structure, fair comparison mechanics and adjustments.
- (66) These claims had to be rejected. In this respect it is noted that, as explained under recital (9) above, the Commission provided to the party all relevant information concerning the data used in order to calculate normal value that could be released without infringing the provisions of Article 19 of the basic Regulation, i.e. assuring at the same time that any confidential data provided by the sole US producer is treated as such and is not disclosed to other parties. The information provided to the exporting producer was meaningful and offered it the possibility to understand the methodology used in line with the provisions of Article 2 of the basic Regulation.
- (67) In the absence of any other comments, recitals (64) to (67) of the provisional Regulation are hereby confirmed.

5.4. Export price

- (68) APP argued that the export sales of one of its companies cooperating with the investigation should not have been disregarded from the dumping margin calculation even if there are no matching products. It was also argued that the export quantities of this company were not small but substantial.
- (69) With respect to these claims it is noted that the sales values of the transactions in question were considered for the establishment of the export prices but no normal value for these transactions could be established since there were no comparable product types in the

analogue country and thus no comparison could be made. With respect to the export quantities of this particular company it is noted that they represented only a minor part of the total APP export sales and their price levels appeared to be in line with the overall APP export sales price levels. Finally, it should be pointed out that the great majority of export transactions were used for the purposes of determining whether or not the exports were dumped, i.e. those offering an absolute match to normal value established in the analogue country. Thus, APP claims with respect to export price had to be rejected as they cannot put into question the finding of injurious dumping given that the basis for the calculation is clearly representative. The fact, that a matching normal value in the analogue country does not necessarily exist for each and every export transaction is inherent to such a finding.

- (70) APP also submitted that the aforesaid export sales should have been used in the dumping margin calculations since the investigating authority has the possibility to identify similar product types used for the normal value calculation, adjust the export price to the normal value or construct a normal value to compare with the aforesaid export sales.
- (71) These claims had to be rejected as there were no product types in the analogue country that had been close enough to those exported to cover the differences by an adjustment for differences in physical characteristics. Equally, it was not possible to construct normal value for such product types. Neither similar product types in other normal value transactions were identifiable, nor any basis was available to make adjustments or otherwise construct normal value using selling, general administrative expenses and profit assumptions.
- (72) APP requested clarifications with respect to the reasonable profit margin used for constructing export price in accordance with Article 2(9) of the basic Regulation.
- (73) In this respect it is noted that the Commission revisited this point following new developments. It is recalled that as explained in recital (71) of the provisional Regulation a reasonable profit rate, much lower than the target profit for the Union industry was used. The Commission reviewed the available data and decreased the profit margin rate used for constructing export price to a rate equal to the weighted average rate reported by a series of unrelated Union importers of the product concerned, i.e. 4,5 %.
- (74) In the absence of any other comments, recitals (68) to (71) of the provisional Regulation, as modified above, are hereby confirmed.

5.5. Comparison

- (75) APP claimed to be unable to understand the basis of calculations of certain allowances with respect to normal value (namely the type of adjustments and their impact on the normal value) and export price (namely the methodology used and calculations made in order to arrive at several ratios).
- (76) With respect to normal value adjustments, as explained under recitals (9) and (66) above, the Commission provided to APP all the relevant data that could be provided, account taken of the provisions on confidentiality in the basic Regulation. Furthermore, the Commission checked with the cooperating party in the analogue country whether further information relating to adjustments could be disclosed in order to improve transparency. Having obtained the analogue country producer's agreement, more detailed information was indeed provided to APP following provisional disclosure, further elaborating on the normal value adjustments.
- (77) With respect to export price adjustments it is noted that APP received full disclosure. Then, following APP's request, clarifications were provided to APP following provisional disclosure further elaborating on the export price adjustments.
- (78) In the absence of any other comments, recitals (72) and (73) of the provisional Regulation are hereby confirmed.

5.6. Dumping margin

- (79) No pertinent comments with respect to the dumping margin were submitted. In the absence of any other comments, recital (74) of the provisional Regulation is hereby confirmed.
- (80) Taking into account the revised profit margin rate used for constructing export price for APP and on the basis of the methodology set out in recitals (31) to (73) of the provisional Regulation, the definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Exporting producer	Dumping margin
Gold East Paper (Jiangsu) Co., Ltd, Zhenjiang City, Jiangsu Province, PRC	43,5 %
Gold Huasheng Paper (Suzhou Industrial Park) Co., Ltd, Suzhou City, Jiangsu Province, PRC	43,5 %
Shangdong Chenming Paper Holdings Limited, Shouguang City, Shandong Province, PRC	63 %
Shouguang Chenming Art Paper Co., Ltd, Shouguang City, Shandong Province, PRC	63 %

- (81) On the basis of the facts stated in recital (76) of the provisional Regulation, the country-wide definitive dumping margin for the PRC was established using the definitive dumping margin established for the cooperating companies with the highest individual duty rate, i.e. 63 %. In the absence of any other comments, recital (76) of the provisional Regulation is hereby confirmed.

6. UNION PRODUCERS

- (82) The government of PRC commented that one of the representative producers was allegedly related to a Chinese company and thus should be excluded from the definition of the Union industry. The investigation however revealed that the products produced by the Chinese company referred to are not product concerned. Therefore the relationship does not have any impact on the injury analysis nor on the inclusion of this Union producer in the definition of Union industry.
- (83) In the absence of further comments on Union production, recitals (77) to (79) of the provisional Regulation are hereby confirmed.

7. INJURY

7.1. Union consumption

- (84) In the absence of comments on Union consumption, recitals (80) to (82) of the provisional Regulation are hereby confirmed.

7.2. Imports into the Union from the PRC

- (85) In the absence of comments on the level of imports into the Union from the PRC, recitals (83) to (84) of the provisional Regulation are hereby confirmed.

7.2.1. Price undercutting

- (86) To ensure that the dumping and undercutting and under-selling calculations follow a coherent approach, and for the reasons set out in recitals (68) to (71), the undercutting calculation has been revised to exclude the export sales of a company within the group of one cooperating exporting producer.
- (87) Based on the modified dataset used for the calculation, and also due to a minor calculation correction, the rate of price undercutting in recital (87) was slightly revised. The dumped imports undercut the Union producers' sales prices on average by 7,6 % in the IP.

7.3. Economic situation of the Union industry and the representative Union producers

7.3.1. Preliminary remarks

(88) One of the cooperating Chinese exporting producers (APP) claimed that the injury analysis should be done at the level of a properly defined Union industry that should be limited to Union producers that support the complaint and cooperate with the investigation. That producer suggests that the conclusions concerning material injury would be different, were some indicators such as market share established at the level of such 'properly defined' Union industry. The government of PRC commented that the injury analysis failed to analyze all injury indicators for the complainant and for the Union industry as a whole in a coherent and comprehensive fashion.

(89) Firstly it is noted that the statements of that producer seem to have been drawn on the basis of indicators calculated from different datasets and information than those established during the investigation and presented below and in the provisional Regulation. Consequently, these conclusions are factually wrong and are thus irrelevant.

(90) Secondly, it is the Commission's practice to evaluate macroeconomic factors for the indication of the injury suffered at the level of the Union industry as a whole, as it was explained in recital (89) of the provisional Regulation. In the present investigation, the Union industry was defined at the level of Union producers accounting for the total Union production (recital (77) of the provisional Regulation), regardless of whether producers supported the complaint or have been cooperating in the investigation. Given this broad definition, the exporting producer claims that Union industry has not been defined 'properly' is rejected.

(91) Microeconomic factors are analyzed at the level of the representative Union producers, regardless of whether these support the complaint or not. The representative producers covered 58 % of the Union production. None of the other Union producers came forward claiming that the Commission's conclusions on microeconomic factors would be unreliable or not substantiated. Therefore there are no reasons to put into question the findings established based on the information provided by the representative Union producers only.

(92) Further comments on the level of cooperation by one of the representative Union producers were received.

(93) It was claimed that one of the representative Union producers cooperated only partially as it was allegedly

related to another producer that did not cooperate in the investigation. The companies were alleged to be related as a consequence of transitional agreements concluded at the time of the acquisition by the cooperating Union producer of the CFP business segment of the other producer. It was alleged that through these transitional agreements the cooperating Union producer controls some of the mills which remained in the ownership of the partially acquired producer. To support its claim the exporting producer made reference to the Commission Decision⁽¹⁾ examining at the time of the acquisition whether the transaction should be considered as an acquisition within the meaning of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)⁽²⁾.

(94) This claim was already addressed in recital (91) of the provisional Regulation. It is recalled that the transitional agreements referred to did not show any relationship between the companies that would be extending beyond a normal business relationship between a buyer and a seller. In particular, the terms of the transitional agreements aim to administer the coated paper sales for a transitional period and according to these terms the Union producer only has functions comparable to a sales agent during the transitional period. Furthermore, in its consolidated audited accounts and in its reply to the questionnaire it reported commission income while acting as an agent for the mills concerned; no ownership and therefore no costs were recognized for these mills by the Union producer.

(95) According to the Commission Decision referred to above, the transaction between the companies was considered as an acquisition by the Union producer of part of the other companies' business, not the take-over of the company as such. The Decision does not suggest that the companies should be considered as one entity after the acquisition; in particular, there is no joint venture between the companies. It is also noted that the geographical scope examined in the above decision is EEA – wide and not EU wide. To note is also that in the Decision the Commission did not analyze the relationship between the companies in question within the meaning of Article 143 of the IPCCC⁽³⁾.

(96) In this regard, there are consequently no grounds to reconsider the provisional conclusions, i.e. that the two companies are not related in the sense of Article 143 of the IPCCC and that the Union producer in question cooperated fully with the investigation.

⁽¹⁾ Commission Decision of 31.10.2008 declaring a concentration to be compatible with the common market (Case No COMP/M.5283 - SAPPI / M-REAL) according to Council Regulation (EC) No 139/2004 (OJ C 324, 19.12.2008, p. 8.).

⁽²⁾ OJ L 24, 29.1.2004, p. 1.

⁽³⁾ Commission Regulation (EC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

- (97) The exporting producer also claimed that each affiliated company of the Union producers should have filled in a separate questionnaire reply as they were separate legal entities. The exporting producer claimed discrimination as it was requested to provide a separate MET claim for each entity within the group.
- (98) It is noted that in case of MET claims, a group of companies has the burden of proof of showing that all companies in the group fulfill the MET-criteria as the determination of whether or not MET should be granted is specific to the group. In the case of the questionnaires for Union producers, the purpose is to determine whether material injury to the Union industry (as a whole) exists during the IP. The claim of discrimination disregards the clear difference between the objectives of an injury investigation and a MET determination.
- (99) In any event, in the case of the Union producer in question it was considered that one questionnaire reply would be sufficient for a meaningful reply and analysis of the injury aspects. In particular, the reply provided a detailed breakdown of information at individual paper mill level and all the necessary data relating to all of the related producers/sellers of the like product could be verified during the verification visits.
- (100) In a subsequent submission the exporting producer also claimed that the same company failed to fully cooperate as it filed its questionnaire reply on behalf of a non-existing entity and that the audited accounts of the company do not reflect the data provided in its questionnaire reply. The conclusions in the preceding recital are relevant also in this regard.
- (101) Therefore the conclusions in recital (88) to (91) remain unaffected.
- 7.3.2. Data relating to the Union industry (macroeconomic indicators)*
- (102) The government of PRC argued that the macro-economic data used for the analysis is incomplete and inaccurate thus cannot be used as a positive evidence of material injury.
- (103) The on-spot verification at the complainant confirmed that the data used to establish macroeconomic indicators are directly collected from Union producers covering around 98 % of the total Union production and are sufficiently detailed to identify information about the product concerned. Assumption and / or estimations used were made on a reasonable and justifiable basis, e.g. cutter rolls were not taken into account because of their clearly insignificant volumes as witnessed in their proportion in the total sales volume of the representative Union producers. Therefore this claim had to be rejected.
- (104) The exporting producer claimed that the market share of the Union producers should also include imports from Switzerland as these come from a mill owned by one of the representative Union producer.
- (105) The geographical scope of anti-dumping investigations is the European Union. Therefore this claim had to be rejected.
- (106) It was also claimed that the complainant's market share increased remarkably during the period considered.
- (107) Market share is a macro indicator analyzed at the level of the whole Union industry and not at the level of the complainant. Secondly, the statement concerning the complainant's market share is factually erroneous.
- (108) In the absence of any further comments in this regard, the provisional findings set out in recitals (92) to (98) of the provisional Regulation are hereby confirmed.
- 7.3.3. Data relating to the representative Union producers (microeconomic indicators)*
- (109) The exporting producer commented that the injury analysis is flawed due to the fact that information about the paper mills that were acquired by the Union producer referred to in recital (93) was not included in the analysis of the microeconomic indicators for the years 2006-2008.
- (110) Following the arguments presented by this party the microeconomic indicators were adjusted to present a fully comparable trend over the years by excluding information about the acquired mills for all years under examination.
- (111) Following the modified scope of the data used for the analysis of the economic situation of the representative Union producers, as explained in the previous recital, the microeconomic indicators are definitively established as follows:

7.3.3.1. Average unit prices of the representative Union producers

- (112) Despite the slightly modified figures, the basic trends and the findings in recital (99) in the provisional Regulation concluding that prices of coated fine paper remained stable over the years are confirmed.

Table 5

Prices of the Union producers

Prices of the Union producers	2006	2007	2008	2009/IP
Average price (EUR/tonne)	692	717	691	699
Index	100	104	100	101

Source: Verified questionnaire replies.

7.3.3.2. Stocks

- (113) Stocks represented around 10 % of the production volume in the IP. The representative Union producers increased their stock levels by 10 % during the period considered, in particular between 2006 and 2007 and later between 2008 and the IP. Notably, this coincided with the surge in the low-priced dumped imports from the PRC.

Table 6

Stocks

Stocks	2006	2007	2008	2009/IP
Stocks (tonnes)	278 265	298 547	296 387	306 588
Index	100	107	107	110

Source: Verified questionnaire replies.

7.3.3.3. Employment, wages and productivity

Table 7

Employment

Employment	2006	2007	2008	2009/IP
Employment — full-time equivalent (FTE)	7 756	7 487	7 207	6 197
Index	100	97	93	80
Labour cost (EUR/FTE)	54 053	54 948	57 026	58 485
Index	100	102	105	108
Productivity (unit/FTE)	453	478	486	484
Index	100	106	107	107

Source: Verified questionnaire replies.

- (114) Due to the paper mill closures and consolidation of the representative Union producers, the number of employees was reduced substantially by 20 % (almost 1 600 jobs) during the period considered. Efficiency gains have been achieved by raising and maintaining a high output per employee even at a time of significant layoffs. Labour costs increased steadily, totalling an 8 % increase over the period considered.

- (115) The conclusions presented in recital (102) of the provisional Regulation are thus further supported by the slightly modified figures.

7.3.3.4. Profitability, cash flow, investments, return on investment

Table 8

Profitability

	2006	2007	2008	2009/IP
Profitability	- 1,08 %	- 0,20 %	- 2,49 %	2,88 %
Change (100=2006)		+ 0,88 %	- 1,41 %	+ 3,95 %
Cash flow (EUR thousand)	260 047	211 036	172 570	336 753
Index	100	81	66	129
Investments (EUR thousand)	151 900	151 027	127 845	87 875
Index	100	99	84	58
Return on investments	- 0,73 %	- 0,54 %	- 2,73 %	0,39 %
Change (100=2006)		+ 0,19 %	- 2,00 %	+ 1,12 %

Source: Verified questionnaire replies.

- (116) The profitability rate throughout the period considered was corrected to reflect more accurately the profitability level. However, the basic trend concerning profitability remains unaffected by the change. The representative Union producers incurred losses in the years 2006 to 2008 and the financial situation only turned positive in 2009 when the world price of pulp, the main raw material exceptionally decreased significantly as a result of the economic downturn. The drop in the price of pulp (- 19 %) was considered an abnormally large drop that directly contributed to the improved financial situation in the IP. It is to be noted that since the IP, pulp prices have returned to their pre-IP levels.

- (117) Subject to the slight modification of the figures, the findings concerning cash flow, investment and return on investment presented in recital (104) and (105) of the provisional Regulation are hereby confirmed.

- (118) The exporting producer claimed that the improvement of profitability should not be considered as a limited instance based on an exceptional drop of raw material costs as explained in recital (107) of the provisional Regulation. The drop in costs benefited both: all local as well as Chinese producers, not only the complainant. Therefore the breakthrough in profitability was not exclusively based on the drop in costs but was rather the result of a change in the pricing behaviour of the complainant.
- (119) Furthermore the exporting producer claimed that the profitability is driven by CFP prices, rather than the price of pulp. It was found, however, that when pulp prices sharply fell in 2009, CFP prices remained stable and profits rose as a consequence. Therefore given that prices remained stable, no correlation can be made between prices and profitability in this specific time period.
- (120) The profitability rate is an indicator that is analysed at the level of the representative Union producers and not at the level of the complainant, as suggested by the party. The analysis of information gathered showed a direct link between the exceptional fall in pulp prices, the main raw material and the increased profitability; whereby stable prices of the finished products indeed played a role in the improvement of profitability. While this was probably the case for other producers on the market as well, this does not affect the conclusion that this temporary improvement of profitability is due to the exceptional drop in raw material prices in the IP.

7.3.3.5. Ability to raise capital

- (121) The findings concerning the representative producers' ability to raise capital presented in recital (106) of the provisional Regulation are hereby confirmed.

7.4. Conclusion on injury

- (122) One exporting producer and the government of PRC claimed that there was no positive evidence that the complaining Union producers suffered material injury. On the contrary, the complainants presented overall stable economic results and increased profitability in the IP.
- (123) First of all, the state of the Union industry is analysed at the level of the representative Union producers and not at the level of complainants as suggested by the parties.
- (124) Secondly, as already pointed out in recitals (89) and (107) above, the conclusions of these parties seem to have been drawn from indicators calculated on the basis of different datasets and information than that which was established during the investigation and presented above and in the provisional Regulation. Consequently, these conclusions are factually wrong.

Furthermore, the parties' analysis was not consistent in the use of two different datasets for macro and micro indicators.

- (125) It was further claimed that the improvement of profitability should be regarded also as a consequence of the restructuring efforts of the industry including reduction of production, employment and increased productivity. In this case, the latter factors cannot be deemed to be the sole indicators of injury, but all injury indicators should be looked at together.
- (126) Article 3(5) of the basic Regulation lists the economic factors and indices to be evaluated in the examination of the impact of the dumped imports on the Union industry. Article 3(5) explicitly states that the list of factors is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance. Thus, while indicators have to be assessed individually, conclusions should be reached through the analysis of all factors.
- (127) Overall, the claims of the exporting producer and the government of China as presented above do not affect the conclusion reached at the provisional stage which is therefore hereby confirmed, i.e. that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.
- (128) Parties also commented repeatedly on the possible threat of further material injury in view of the huge capacity build-up by Chinese producers supported by State policies and subsidies. The scope of the investigation was the existence of material injury and not the threat of further material injury. Therefore these comments could not affect the findings and had to be disregarded.
- (129) Based on the above, the provisional findings set out in recitals (107) to (111) of the provisional Regulation are hereby confirmed.

8. CAUSALITY

- (130) The Commission received several comments on the provisional findings concerning the causal link between dumping and injury.

8.1. Effect of the dumped imports

- (131) Provisional findings concerning the effect of dumped imports were contested by several parties. The main argument brought forward was that Chinese imports did not have significant impact in terms of volume and

prices. It was argued that there was no surge of Chinese imports but rather these grew gradually over the years and therefore their impact was quite limited which should not be exaggerated for the purpose of the injury determination. It was further argued that Chinese prices, even if they were below Union prices, did not have any impact on the relatively stable prices of the Union industry. One of the cooperating Chinese exporting producers questioned the Commission's finding that there would be price suppression caused by Chinese prices. It pointed out that in 2009 when the Chinese prices declined further, the Union industry's prices not only recorded an increase but in fact allowed the Union industry to make profits.

(132) The evolution of Chinese imports was analyzed in detail in recitals (84) and (114) of the provisional Regulation. It was established that imports almost tripled over the period considered, especially in the years from 2006 to 2007 (+ 118 %) and from 2008 to the IP (+ 81 %). The increase in the volume therefore cannot be regarded as insignificant.

(133) In terms of prices Chinese imports undercut the prices of the representative Union producers by 7,6 % which is considered significant in a market where price transparency is high. As depicted in recital (112) above, indeed prices of the representative Union producers were stable over the period considered, with an exceptional increase in 2007, the year where Chinese exports did not grow. In 2009 the Union producers could keep their prices stable at the expense of losing further market share and their profitability derived from the combination of these stable prices and the decreased cost of raw material.

(134) The exporting producer claimed that CFP imports from PRC do not have an impact on the prices of the Union industry as these are not comparable to the CFP manufactured and sold by the representative Union producers as only 10 % of the sales of the representative Union producers were compared in the determination of the undercutting and non-injurious price level. It is noted that these determinations are made on the basis of fully comparable products that are directly matching in all characteristics so as to ensure a fair comparison. However, CFP produced by the Chinese and Union producers in general are comparable products as concluded in recital (42) and thus are competing with each other directly on the Union market.

(135) It was furthermore alleged that the finding that the CFP market is a commodity-market characterized by a high degree of transparency is incorrect as the Union producers sell around half of their products directly to end users. In contrast to this claim the representative Union producers sold the majority of their products

through merchants either directly or indirectly (so called 'indent sales' when products are directly shipped to the customer but ordering and invoicing process goes through merchants). Indeed merchants play a crucial role in both stocking products and providing price transparency to the market.

(136) Based on the above, the provisional findings set out in recitals (113) to (117) of the provisional Regulation are hereby confirmed.

8.2. Effect of other factors

8.2.1. *Development of consumption on the Union market and the economic crisis*

(137) One of the cooperating Chinese exporting producers and the government of PRC claimed that the decrease in Union production was the consequence of the global financial crisis and the sharp decline in consumption on the Union market, as witnessed by the negative trends shown by the Union producers' domestic sales, capacity utilization, employment and stock level, and should not be attributed to Chinese imports.

(138) To support its claim, the government of PRC quoted a Manifesto for Competitiveness and Employment launched by the paper and pulp industry in June 2009 ('Manifesto'). This document covers the whole paper and pulp industries sectors and serves a general policy purpose. On the basis of the information included in this document, no separate conclusions could be drawn for the production and sales of the product concerned. It is therefore not possible to conclude whether the statements or findings of the Manifesto in fact apply one-to-one to the product concerned. Since, in addition, the investigation did not bring to light a strong link between the financial crisis and the material injury suffered by the Union industry, this argument had to be rejected.

8.2.2. *Prices of raw materials*

(139) No new arguments were brought forward to reconsider the conclusions reached in recital (120) to (122) of the provisional Regulation and in recital (118) of this Regulation.

8.2.3. *Export performance of the representative Union producers*

(140) The revision of the microeconomic indicator as explained in recital (110) impacted the analysis of export performance of the representative Union producers to the extent that the decrease of their export sales in the period considered was 16 %. Export sales to unrelated parties made by these companies represented 26 % of their total sales.

(141) Contrary to the claim of one exporting producer, the evolution of export of the product concerned by the representative Union producers was addressed in the provisional Regulation in recitals (123) to (124). The above revision does not affect these conclusions reached at the provisional stage.

(142) The arguments and evidence brought forward concerning the effect of export performance of the Union industry thus did not cause a change in the conclusions reached at the provisional stage.

8.2.4. Imports from other third countries

(143) Arguments brought forward about the effect of imports from other third countries were already addressed in recitals (125) to (127) of the provisional Regulation.

8.2.5. Structural overcapacity

(144) It was claimed that injury suffered by the Union producers is caused by structural overcapacity. This factor was already analysed in recital (128) of the provisional Regulation.

(145) The main argument brought forward in this respect is that restructuring efforts of the Union industry were completed in 2009 by the consolidation of two large producers that resulted in the immediate improvement of the situation of the Union industry. As described in recital (93) of the provisional Regulation, restructuring efforts took place since 2000 up until the IP. The positive effect of the mentioned consolidation should have been reflected in the improvement of capacity utilisation and at least in stable sales volume but both these indicators deteriorated in the IP. On the other hand, it had been established that the improved profitability of the Union industry in the IP was caused primarily and directly by the exceptional one-off drop in pulp prices. Therefore the conclusions reached in recital (128) of the provisional Regulation that the restructuring efforts of the industry were undermined by the dumped imports are maintained.

8.3. Conclusion on causation

(146) Based on the above, the provisional findings as set out in recitals (129) to (132) of the provisional Regulation that the dumped imports from the PRC caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation are maintained. The provisional findings about the effect of the other known factors which could have caused injury to the Union industry were also confirmed: these factors are not such as to

break the causal link established between the dumped imports from the PRC and the injury suffered by the Union industry.

9. UNION INTEREST

9.1. Union industry

(147) No further comments or information was received regarding the interest of the Union producers and importers and traders. Therefore the provisional findings in recitals (134) to (138) of the provisional Regulation on the interest of these groups are hereby confirmed.

9.2. Importers and traders

(148) No further comments or information was received regarding the interest of importers and traders. Therefore the provisional findings in recitals (139) to (143) of the provisional Regulation on the interest of these groups are hereby confirmed.

9.3. Users

(149) Three additional printers and an association of European printers and publishers came forward after the publication of provisional measures. They claimed that the measures would have negative effects on the downstream industries as price increases could lead to the relocation of the printing industry leading to increased imports of downstream printed matter. The claim was supported by the fact that imports of printed matter from PRC increased rapidly in recent years and apparently took a considerable market share within European consumption for all printed matter.

(150) It was also claimed that measures would cause a shortage of supply on the market and longer delivery times for users.

(151) Most of these claims were not company specific and similar to claims already made at the provisional stage of the investigation and addressed in recitals (146) and (150) of the provisional Regulation. It is recalled that the cooperation of printers was limited and on the basis of the limited quantitative information received it was concluded that because of their profitability level and the share of CFP in their costs, printers are indeed sensitive to price increases. However, most printers had no or very limited direct purchases of Chinese paper in the IP and the amount of Chinese paper used by printers is in general low therefore the direct impact of the duty would be negligible. Most printers also stated that because of their need for short delivery times, the share of supplies directly from third countries would remain limited.

(152) As regards the claims concerning downstream printed matter from PRC it should be noted that the import statistics of printed matter cover a wide range of products that include final printed matter that is not printed on coated fine paper. Based on the information available it could not be assessed what part of the products imported from PRC is printed on the product concerned and what is printed on other types of paper. However, from information submitted it is known that printed matter originating in PRC is mostly comprised of some specific categories of books, children's books, calendars, packaging and greeting cards. Products that are more 'time sensitive' such as weekly/monthly magazines and other newsprint are less susceptible to being imported from PRC because of the time needed for transportation. While the printing of some printed products may be more susceptible to relocation, on the other hand there exist product types for which proximity and service are crucial and therefore would not be affected by foreign competition. Furthermore, even though paper is an important cost element for the printing industry, it is also a labour-intensive industry and thus labour costs may be a more significant driver in relocation trends. In summary, it cannot be excluded that imports of printed products that are printed on CFP will increase but it is not possible to estimate with any accuracy what the level of increase might be and how far this would play a role in the competitiveness of printing producers and therefore what direct impact price increases might have on the downstream Union printing industry.

(153) From information submitted, it is also known that the printing industry suffers from structural overcapacity that leads to the continuing restructuring of the sector. One of the driving forces towards the restructuring was also the consolidation of the paper manufacturers within the value chain. Any difficulty of the printing industry to increase prices is considered to be rather largely due to this structural overcapacity within the printing industry itself.

(154) The interested parties claiming possible shortages of supply did not quantify or give an estimate of the possible shortages. The claims in any case do not seem to be supported by the capacity utilization rate of the Union producers that was at 83 % in the IP leaving around one million tonnes of free capacity. On this basis, it is unlikely that shortages would occur.

9.4. Conclusion on Union interest

(155) In view of the above, the provisional findings concerning Union interest are confirmed, i.e. there are no compelling reasons against the imposition of definitive measures on imports of CFP originating in the PRC.

10. DEFINITIVE ANTI-DUMPING MEASURES

10.1. Injury elimination level

(156) One group of Chinese exporting producers requested further details for the method used to calculate the

target profit of 8 % used for the calculation of the non-injurious price. It referred to the complaint in which the target profit suggested was lower.

(157) The complainant on the other hand requested that the target profit should be set at minimum 10 %, basing its arguments on the expected profit margin used by independent rating agencies in their classification methodology and the profitability achieved by a producer active in another paper production segment that is not affected by Chinese imports.

(158) It should be clarified that the target profit as suggested in the complaint was examined based on the questionnaire replies and verification visits to the representative Union producers. More specifically, the cost of investment in machinery was considered. The target profit set on this latter basis was found to reflect the high up-front investment needs and risk involved in this capital-intensive industry in the absence of dumped and/or subsidised imports. Therefore a target profit of 8 % is considered as the level that the industry could obtain in the absence of dumped imports. As stated in recital (86), to ensure that the dumping and undercutting and underselling calculations follow a coherent approach and for the reasons set out in recitals (68) to (71), the calculation of the injury elimination level has been revised to exclude the export sales of a company within the group of the cooperating Chinese exporting producers.

(159) In all other aspects recitals (153) to (161) of the provisional Regulation are hereby confirmed.

10.2. Definitive measures

(160) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed on imports of coated fine paper originating in the PRC at the level of the lower of the dumping and injury margins found, in accordance with the lesser duty rule. In this case, the duty rate should accordingly be set at the level of the injury found.

(161) It is noted that an anti-subsidy investigation was carried out in parallel with the anti-dumping investigation concerning imports of coated fine paper originating in the PRC. Since, pursuant to Article 14(1) of the basic Regulation and Article 24(1), second subparagraph of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from

countries not members of the European Community ⁽¹⁾ (the basic anti-subsidy Regulation), no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation, it was considered necessary to determine whether, and to what extent, the subsidy amounts and the dumping margins arise from the same situation.

- (162) As concerns the subsidy schemes that constituted export subsidies within the meaning of Article 4(4)(a) of the basic anti-subsidy Regulation, the definitive dumping margin established for two Chinese exporting producers are partly due (i.e. 0,05 %) to the existence of countervailable export subsidies. With respect to other subsidy schemes, in view of the use of the lesser duty rule in this case and the amount of subsidisation found in the anti-subsidy investigation carried out in parallel, it was not considered necessary to further examine whether and to what degree the same subsidies are being offset twice when anti-dumping and countervailing duties are simultaneously imposed on the same imported product.
- (163) As concerns the country-wide definitive dumping and subsidy levels it is recalled that they were established using the definitive dumping margin and the definitive

subsidy margin established for the cooperating Chinese exporting producers with the highest individual duty rates i.e. 63 % for the definitive dumping margin and 16 % for the definitive subsidy margin.

- (164) It is recalled that the same injury elimination level applies for both the anti-dumping and the anti-subsidy investigations. In this respect it is noted that the injury elimination level is lower than the definitive dumping margins but higher than the definitive subsidy margins. It is thus considered appropriate to impose a definitive countervailing duty at the level of the established definitive subsidy margins and then impose a definitive anti-dumping duty up to the relevant injury elimination level.
- (165) On the basis of the above, and taking into account the findings set out in Council Regulation (EU) No 452/2011 of 6 May 2011 imposing a definitive countervailing duty on imports of coated fine paper originating in the People's Republic of China ⁽²⁾ and in light of Article 14 paragraph 1 last sentence of the basic Regulation that duty will not be imposed to the extent necessary to comply with the rule laid down in that sentence the rate of the definitive anti-dumping duty for the PRC and the rate at which such duties will be imposed are set as follows:

Company	Total subsidy margin	Out of which export subsidy	Dumping margin	Injury margin	Definitive CVD duty rate	Definitive AD duty rate	Definitive AD duty rate to be imposed
Gold East Paper (Jiangsu) Co., Ltd, Zhenjiang City, Jiangsu Province, PRC; Gold Huasheng Paper (Suzhou Industrial Park) Co., Ltd, Suzhou City, Jiangsu Province, PRC	12 %	0,05 %	43,5 %	20 %	12 %	20 %	8 %
Shandong Chenming Paper Holdings Limited, Shouguang City, Shandong Province, PRC; Shouguang Chenming Art Paper Co., Ltd, Shouguang City, Shandong Province, PRC	4 %	0 %	63 %	39,1 %	4 %	39,1 %	35,1 %
All other companies	12 %	0,05 %	63 %	39,1 %	12 %	39,1 %	27,1 %

11. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

- (166) In view of the magnitude of the dumping margin found and in the light of the level of the injury caused to the Union industry, and taking into account that no provisional measures were imposed in the parallel anti-subsidy investigation, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected to the extent of the amount of the provisional duty imposed.

- (167) One of the cooperating Chinese exporting producers claimed that the definitive collection of the provisional duty at the rates set out in Article 1(2) of Regulation (EU) No 1042/2010 would be contrary to Article 10 paragraph 3 second sentence of the basic Regulation. However, as clarified in this Regulation, and in particular in Article 1 paragraph 2 thereof, the definitive duty imposed by this Regulation is actually higher than the provisional duty which has been imposed. In these circumstances the provisional duty at the rates set out in Article 1(2) of Regulation (EU) No 1042/2010 should be definitively collected,

⁽¹⁾ OJ L 188, 18.7.2009, p. 93.

⁽²⁾ See page 18 of this Official Journal.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on coated fine paper, which is paper or paperboard coated on one or both sides (excluding kraft paper or kraft paperboard), in either sheets or rolls, and with a weight of 70 g/m² or more but not exceeding 400 g/m² and brightness of more than 84 (measured according to ISO 2470-1), currently falling within CN codes ex 4810 13 20, ex 4810 13 80, ex 4810 14 20, ex 4810 14 80, ex 4810 19 10, ex 4810 19 90, ex 4810 22 10, ex 4810 22 90, ex 4810 29 30, ex 4810 29 80, ex 4810 99 10, ex 4810 99 30 and ex 4810 99 90 (TARIC codes 4810 13 20 20, 4810 13 80 20, 4810 14 20 20, 4810 14 80 20, 4810 19 10 20, 4810 19 90 20, 4810 22 10 20, 4810 22 90 20, 4810 29 30 20, 4810 29 80 20, 4810 99 10 20, 4810 99 30 20 and 4810 99 90 20) and originating in the People's Republic of China.

The definitive anti-dumping duty does not concern rolls suitable for use in web-fed presses. Rolls suitable for use in web-fed presses are defined as those rolls which, if tested according to the ISO test standard ISO 3783:2006 concerning the determination of resistance to picking – accelerated speed method using the IGT tester (electric model), give a result of less than 30 N/m when measuring in the cross-direction of the paper (CD) and a result of less than 50 N/m when measuring in the machine direction (MD). The definitive anti-dumping duty does also not concern multi-ply paper and multi-ply paperboard.

2. The rate of the definitive anti-dumping duty shall be as follows:

Company	AD duty rate
Gold East Paper (Jiangsu) Co., Ltd, Zhenjiang City, Jiangsu Province, PRC; Gold Huasheng Paper (Suzhou Industrial Park) Co., Ltd, Suzhou City, Jiangsu Province, PRC	20 %
Shangdong Chenming Paper Holdings Limited, Shouguang City, Shandong Province, PRC; Shouguang Chenming Art Paper Co., Ltd, Shouguang City, Shandong Province, PRC	39,1 %
All other companies	39,1 %

3. With regard to the anti-dumping duty provided for in Article 1(2), 12 % will not be collected for Gold East Paper (Jiangsu) Co. and Gold Huasheng Paper (Suzhou Industrial Park) Co., 4 % for Shangdong Chenming Paper Holdings Limited and Shouguang Chenming Art Paper Co., Ltd and 12 % for all other companies in so far as the corresponding amount is collected in accordance with Regulation (EU) No 452/2011.

4. In the light of Article 1(2) and 1(3) above, the rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 and manufactured by the companies listed below shall be as follows:

Company	AD duty rate	TARIC additional code
Gold East Paper (Jiangsu) Co., Ltd, Zhenjiang City, Jiangsu Province, PRC; Gold Huasheng Paper (Suzhou Industrial Park) Co., Ltd, Suzhou City, Jiangsu Province, PRC	8 %	B001
Shangdong Chenming Paper Holdings Limited, Shouguang City, Shandong Province, PRC; Shouguang Chenming Art Paper Co., Ltd, Shouguang City, Shandong Province, PRC	35,1 %	B013
All other companies	27,1 %	B999

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

Article 2

Amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EU) No 1042/2010 shall be definitively collected at the rate set in Article 1 of that Regulation.

Article 3

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

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

Done at Brussels, 6 May 2011.

For the Council
The President
MARTONYI J.