

## I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

## REGULATIONS

## COUNCIL REGULATION (EC) No 261/2008

of 17 March 2008

**imposing a definitive anti-dumping duty on imports of certain compressors originating in the People's Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup> (the basic Regulation), and in particular Article 9 thereof,

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

Whereas:

**A. PROCEDURE**

**1. Initiation**

- (1) On 20 November 2006, the Commission received a complaint concerning imports of certain compressors originating in the People's Republic of China (PRC) lodged pursuant to Article 5 of the basic Regulation by Federazione ANIMA/COMPO (the complainant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of certain compressors.
- (2) The complaint contained evidence of dumping and of material injury which was considered sufficient to justify the opening of a proceeding.
- (3) On 21 December 2006, the proceeding was initiated by the publication of a notice of initiation in the *Official Journal of the European Union*<sup>(2)</sup>.

**2. Provisional measures**

- (4) Given the need to further examine certain aspects of the investigation, it was decided to continue the investigation without the imposition of provisional measures.

**3. Parties concerned by the proceeding**

- (5) The Commission officially advised the exporting producers in the PRC, importers, traders, users and associations known to be concerned, the representatives of the PRC, the complainant Community producers and other Community producers known to be concerned of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.
- (6) In order to allow exporting producers to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the Chinese exporting producers known to be concerned and to the representatives of the PRC. Fourteen exporting producers, including groups of related companies, requested MET pursuant to Article 2(7) of the basic Regulation, or IT should the investigation establish that they do not meet the conditions for MET. One exporting producer requested only IT.
- (7) In view of the apparent high number of exporting producers in the PRC, importers and producers in the Community, in the notice of initiation, the Commission indicated that sampling might be applied for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation.

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

<sup>(2)</sup> OJ C 314, 21.12.2006, p. 2.

- (8) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in the PRC, Community importers and Community producers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the investigation period (1 October 2005 to 30 September 2006).
- (9) As far as the exporting producers are concerned, in accordance with Article 17 of the basic Regulation, a sample was selected based on the largest representative volume of exports of certain compressors in the Community, which could reasonably be investigated within the time available. On the basis of the information received from the exporting producers, the Commission selected the six companies, or groups of related companies (the sampled companies) having the largest volume of exports to the Community. In terms of export volume the six sampled companies represented 93 % of the total exports of certain compressors from the PRC to the Community during the investigation period. In accordance with Article 17(2) of the basic Regulation, the parties concerned were consulted and raised no objection.
- (10) With regard to the Community producers, given that only three groups of companies cooperated in the investigation, it was decided that sampling was not necessary.
- (11) With regard to importers, given that only one importer cooperated in the investigation, it was decided that sampling was not necessary.
- (12) Questionnaires were sent to all companies selected for sampling and to all other parties known to be concerned. Full replies were received from six exporting producers in the PRC, three producers in the Community and one importer. One producer in the Community replied only to the sampling questionnaire. No questionnaire replies were received from other interested parties.
- (13) The Commission sought and verified all the information deemed necessary for a determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:
- (a) *Producers in the Community*
- ABAC Aria Compressa SpA of the ABAC Group, Torino Italy,
  - FIAC SpA of the FIAC Group, Bologna, Italy,
  - FINI SpA, Zola Predosa (BO), Italy,
- (b) *Exporting producers in the PRC*
- Nu Air (Shanghai) Compressor and Tools Co. Ltd of the ABAC Group, Shanghai (Nu Air),
  - Zhejiang Xinlei Mechanical & Electrical Co. Ltd, Wenling (Xinlei),
  - Hongyou/Taizhou Group: 1. Zhejiang Hongyou Air Compressor Manufacturing Co. Ltd, Wenling (Hongyou); 2. Taizhou Hutou Air Compressors Manufacturing Co. Ltd, Wenling (Taizhou),
  - Wealth Group: 1. Shanghai Wealth Machinery & Appliance Co. Ltd, Shanghai (Shanghai Wealth); 2. Wealth (Nantong) Machinery Co., Ltd, Nantong (Wealth Nantong),
  - Zhejiang Anlu Cleaning Machinery Co., Ltd, Taizhou (Anlu),
  - FIAC Air Compressors (Jiangmen) Co. Ltd of the FIAC Group Jiangmen (FIAC),
- (c) *Related companies in the PRC*
- Wealth Shanghai Import-Export Co. Ltd, Shanghai (Wealth Import Export),
  - FIAC Air Compressors (Hong Kong) Ltd of the FIAC Group (FIAC Hong Kong),
- (d) *Unrelated importer in the Community*
- Hans Einhell AG, Landau, Germany.
- (14) In view of the need to establish a normal value for exporting producers to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country, Brazil in this case, took place at the premises of the following companies:
- (e) *Producers in Brazil*
- FIAC Compressores de ar do Brasil Ltda of the FIAC Group, Araquara,
  - Schulz S/A, Joinville, Santa Catarina, Brasil.
- 4. Investigation period**
- (15) The investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (investigation period or IP). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2003 to the end of the investigation period (period considered).

## B. PRODUCT CONCERNED AND LIKE PRODUCT

### 1. Product concerned

(16) The product concerned is reciprocating compressors, giving a flow not exceeding 2 cubic metres (m<sup>3</sup>) per minute, originating in the PRC (compressors or the product concerned), normally declared within CN codes ex 8414 40 10, ex 8414 80 22, ex 8414 80 28 and ex 8414 80 51.

(17) A compressor is typically made up of a pump, driven by an electric motor either directly or through a belt mechanism. In most cases the pressurised air is pumped into a tank and exits through a pressure regulator and a rubber hose. Compressors, in particular the larger ones, can have wheels to make them mobile. They can be sold alone or with accessories for spraying, cleaning, or inflating tyres and other objects.

(18) The notice of initiation of this proceeding also referred to reciprocating compressor pumps. The investigation showed that the reciprocating compressor pumps are one (but not the only) of the essential components of the compressors under investigation (they account for — depending on the model — between 25 % and 35 % of the total cost of the final product) and that they can also be sold separately as well as assembled on other compressors not falling within the scope of this investigation. The investigation also showed that they do not have the same technical and physical characteristics of the complete compressors and are not used for the same purposes. The complete compressor also contains other key components (e.g. the tank, the motor). Channels of distribution and customer perception of a pump on one hand and a complete compressor on the other hand also differ. Therefore, it is concluded that in this case reciprocating compressor pumps should not be considered as the product concerned.

(19) The product concerned is used for driving air-powered tools or for spraying, cleaning, or inflating tyres and other objects. The investigation has shown that, despite differences in shapes, materials and production process, the different types of the product concerned all share the same basic physical and technical characteristics and are basically used for the same purposes. They are therefore considered to constitute a single product for the purpose of this proceeding.

### 2. Like product

(20) The investigation showed that the basic physical and technical characteristics of the compressors produced

and sold by the Community industry in the Community, compressors produced and sold on the domestic market in the PRC and on the domestic market in Brazil, which served as an analogue country, and compressors produced in the PRC and sold to the Community have essentially the same basic physical and technical characteristics and the same basic use.

(21) All these compressors are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

## C. DUMPING

### 1. General

(22) Fourteen companies or groups of companies made themselves known representing 100 % of total exports of the product concerned to the EC. The level of cooperation was therefore high. Thirteen companies or groups of companies requested MET while one company requested only IT. As mentioned at recital 9, six companies were selected in the sample on the basis of their export volume.

### 2. Market Economy Treatment (MET)

(23) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with points 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

(24) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:

1. business decisions and costs are made in response to market signals and without significant State interference; costs of major inputs substantially reflect market values;
2. firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes;
3. there are no significant distortions carried over from the former non-market economy system;
4. bankruptcy and property laws guarantee legal certainty and stability;
5. exchange rate conversions are carried out at market rates.

- (25) Five companies or groups of companies of Chinese exporting producers included in the sample initially requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadlines. All of these groups included both producers of the product concerned and companies related to the producers and involved in the sales of the product concerned. Indeed, it is the Commissions consistent practice to examine whether a group of related companies as a whole fulfils the conditions for MET. The following groups had requested MET:
- Nu Air,
  - Xinlei,
  - Hongyou/Taizhou,
  - Shanghai Wealth/Wealth Nantong,
  - FIAC.
- (26) For the abovementioned cooperating exporting producers included in the sample, the Commission sought all information deemed necessary and verified the information submitted in the MET claim at the premises of the companies in question as deemed necessary.
- (27) The investigation showed that MET could not be granted to three of the abovementioned five Chinese exporting producers that had requested MET as none of these companies or groups of companies met criterion 2 as summarised in recital 24. In addition, one of the groups of companies did not fulfil criterion 3 either.
- (28) Two companies or groups of companies (FIAC and Nu Air) fulfilled all the criteria as summarised in recital 24 and could be granted MET.
- (29) One company (Taizhou) part of the group of companies (Hongyou/Taizhou) and one company (Wealth Shanghai/Nantong Wealth) could not demonstrate that they fulfilled criterion 2 as summarised in recital 24 since they were not found to have accounting practices and accounting standards that were in line with international accounting standards. The group of companies (Hongyou/Taizhou) and the company (Wealth Shanghai/Nantong Wealth) could therefore not be granted MET.
- (30) One company (Xinlei) could not demonstrate that it fulfilled criterion 2 as summarised in recital 24 since its accounting practices and accounting standards were not in line with international accounting standards. Moreover, the company could not fully demonstrate payment for its land use rights. It did therefore not meet criterion 3 as summarised in recital 24 either. Accordingly, it could not therefore be granted MET.
- (31) One unrelated importer objected to the granting of MET to Nu Air, on the basis of some alleged inconsistencies in the audited accounts for 2004 and 2005. Nu Air, however, could show that there were no inconsistencies and clarify the points raised by that importer. Accordingly, this objection was dismissed.
- (32) The same importer objected to the granting of MET to FIAC, in view of the fact that the company had negotiated in 2002 a preliminary agreement with the regional authorities, which would have given them the use of a plot of land without charge for a maximum of three years, pending the lands expropriation formalities. However, the agreement expired without FIAC ever making any use of it or acquiring a title for this land. On the other hand, FIAC was able to demonstrate that it always paid rental for the premises used in its activities. This argument was therefore dismissed.
- (33) One company (Hongyou) of the group of companies (Hongyou/Taizhou) objected that it should not be refused MET due to issues arising in another company (namely, Taizhou). However, on the basis of the Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs code<sup>(1)</sup>, Hongyou and Taizhou are to be considered as related parties. Therefore, as Taizhou could not be granted MET, Hongyou could not be granted MET neither.
- (34) On the basis of the above, three of the five Chinese sampled companies or groups of companies that had requested MET could not show that they fulfil all the criteria set out in Article 2(7)(c) of the basic Regulation.
- (35) It was therefore considered that MET should be granted to two companies (FIAC and Nu Air) and rejected for the remaining three companies/groups of companies. The Advisory Committee was consulted and did not object to the conclusions of the Commissions services.

### 3. Individual treatment (IT)

- (36) Pursuant to Article 2(7)(a) of the basic Regulation, a country wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation.

<sup>(1)</sup> OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 214/2007 (OJ L 62, 1.3.2007, p. 6).

- (37) All exporting producers who requested MET also claimed IT in the event that they would not be granted MET. One company (Anlu) had only requested IT.
- (38) Of the four sampled companies or groups of companies that could either not be granted MET (Xinlei, Honyou/-Taizhou, Wealth Shanghai/Nantong Wealth) or had not requested MET (Anlu), three companies or groups (Xinlei, Anlu and Wealth Shanghai/Nantong Wealth) fulfilled all the criteria set out in Article 9(5) and could be granted IT.
- (39) It was found that Taizhou failed to demonstrate that it cumulatively met all the requirements for IT as set forth in Article 9(5) of the basic Regulation. Namely, the severe problems with the accounting system of the company made it impossible to verify whether the criterion stipulated in Article 9(5)(b) of the basic Regulation that export prices and quantities, and conditions and terms of sale are freely determined, was fulfilled.
- (40) The IT claim of Taizhou was thus rejected.

#### 4. Normal Value

##### 4.1. Companies or groups of companies which could be granted MET

- (41) As far as the determination of normal value is concerned, the Commission first established, in accordance with Article 2(2) of the basic Regulation, for those exporting producers in the sample that could be granted MET whether their domestic sales of the product concerned to independent customers were representative, i.e. whether the total volume of such sales represented at least 5 % of their total export sales volume of the product concerned to the Community. Since the two companies or groups of companies had almost non-existent sales on the domestic market, it was considered that the product was not sold in representative quantities so as to provide an appropriate basis for the establishment of the normal value.
- (42) Since domestic sales could not be used in order to establish normal value, another method had to be applied. In this regard, the Commission used a constructed normal value, in accordance with Article 2(3) of the basic Regulation. Normal value was constructed on the basis of the companies or groups of companies manufacturing costs of the product concerned. When constructing normal value pursuant to Article 2(3) of the basic Regulation, a reasonable amount for selling, general and administrative (SG&A) expenses and profit is added to the manufacturing costs. The SG&A expenses and profit could not be established on the basis of the chapeau of Article 2(6) of the basic Regulation since none of the companies or groups of companies had representative domestic sales. They

could not be established on the basis of Article 2(6)(a) because there was no other company to which MET could be granted. Moreover, SG&A expenses and profits could not be established on the basis of Article 2(6)(b) as none of the companies or groups of companies had representative sales, in the ordinary course of trade, of the same general category of products. SG&A expenses and profits were therefore determined in accordance with Article 2(6)(c) (any other reasonable method) on the basis of the SG&A expenses and profits incurred by the cooperating producer in the analogue country. Publicly available information showed that this profit margin did not exceed the profit made by other known producers of the same general category of products (i.e. electrical machinery) in the PRC during the IP.

##### 4.2. Companies or groups of companies which could not be granted MET

- (43) According to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET has to be established on the basis of the prices or constructed value in an analogue country.
- (44) In the notice of initiation, the Commission indicated that it envisaged using Brazil as an appropriate analogue country for the purpose of establishing normal value for the PRC. Interested parties were invited to comment on this. No interested parties objected to this proposal.
- (45) There are four known producers in Brazil, making about 220 000 compressors per year, and imports are about 30 000 units. The Commission sought cooperation from all known producers in Brazil.
- (46) Two Brazilian producers cooperated in the investigation. One of them is related to a Community producer, the FIAC Group. The investigation showed that this producer had generally high prices, mainly due the fact that he produced a small volume of sophisticated compressors for medical purposes which were not directly comparable to the product concerned. Due to the very different characteristics of the product and the market, it would be difficult to establish the necessary adjustments in order to use this data as normal value for the Chinese-produced compressors. The second cooperating Brazilian producer was found to produce some compressor models comparable to the ones exported to the Community by the Chinese exporting producers. Therefore, the prices in the Brazilian market of the comparable models of this Brazilian producer sold in the ordinary course of trade were used as a basis for establishing normal value for the exporting producers not granted MET.

## 5. Export price

- (47) The exporting producers made export sales to the Community either directly to independent customers or through related or unrelated trading companies located inside and outside the Community.

### 5.1. Companies or groups of companies which could be granted either MET or IT

- (48) Where export sales to the Community were made either directly to independent customers in the Community or through unrelated trading companies, export prices were established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

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

### 5.2. Companies or groups of companies which could not be granted MET/IT

- (50) For the two sampled Chinese exporting companies that were granted neither MET nor IT (Taizhou/Honyou Group), the data on their export sales could not be used to establish individual dumping margins for the reasons explained above in recital 29. Therefore, a dumping margin was calculated as set out in recital 55.

## 6. Comparison

- (51) The normal value and export prices were compared on an ex-works basis and at the same level of trade. For the purpose of ensuring a fair comparison between the normal value and export prices, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.
- (52) On this basis, for those Chinese exporting producers that could be granted MET/IT, allowances for differences in level of trade, transport and insurance costs, handling, loading and ancillary costs, packing costs, credit costs and after sales costs (warranty/guarantee) were made where applicable and justified. For the other companies, an average adjustment based on the adjustments mentioned before was made.
- (53) For the sales channelled through related traders based outside the Community, an adjustment was applied in

accordance with Article 2(10)(i) of the basic Regulation, where these companies have been shown to perform functions similar to that of an agent working on a commission basis. This adjustment was based on the SG&A of the trading companies plus a profit data obtained an unrelated trader in the Community.

## 7. Dumping margins

- (54) The dumping margins, expressed as a percentage of the cif import price at the Community border, duty unpaid, are the following:

Zhejiang Xinlei Mechanical & Electrical Co., Ltd, Wenling	77,6 %
Zhejiang Hongyou Air Compressor Manufacturing Co., Ltd, Wenling and Taizhou Hutou Air Compressors Manufacturing Co. Ltd, Wenling	76,6 %
Shanghai Wealth Machinery & Appliance Co., Ltd, Shanghai and Wealth (Nantong) Machinery Co., Ltd, Nantong	73,2 %
Zhejiang Anlu Cleaning Machinery Co., Ltd, Taizhou	67,4 %
Nu Air (Shanghai) Compressor and Tools Co., Ltd, Shanghai	13,7 %
FIAC Air Compressors (Jiangmen) Co., Ltd, Jiangmen	10,6 %
Cooperating companies not included in the sample (listed in Annex)	51,6 %
All other companies	77,6 %

- (55) For the two sampled companies which were granted neither MET nor IT, the dumping margin was calculated as a weighted average of the margins established for the three companies or groups of companies granted IT but not MET.
- (56) For the cooperating companies not included in the sample, the dumping margin was calculated as a weighted average of the margins established for all the companies in the sample.
- (57) Given the high level of cooperation (100 %), referred to at recital 22, a country-wide average dumping margin was set at the highest level applicable to any of the sampled companies.

## D. INJURY

## 1. Community production

(58) In the light of the definition of Community industry as set out in Article 4(1) of the basic Regulation, the output of the following Community manufacturers was considered for inclusion in the definition of the Community production at the initiation of the investigation:

— four complainant Community manufacturers: CHINOOK SpA, FERRUA SYSTEM BLOCK Srl, FIAC SpA and FINI SpA,

— one other producer in the Community who fully cooperated in the investigation and who supported the proceeding: ABAC Aria Compressa SpA of the ABAC Group. It is noted that the ABAC Group sold this company to another company in 2007,

— six other Community producers listed in the complaint. Those companies received a sampling questionnaire, but only one of them expressed the wish to further cooperate with the proceeding within the time limits indicated in the notice of initiation. However, this producer stopped cooperating shortly thereafter and did not provide a full questionnaire reply,

— 20 other manufacturers listed in the complaint, which assemble the like product using parts produced by the abovementioned Community producers and/or imported from third countries. There is also a very limited production of the like product coming from manufacturers in the industrial-use compressors sector. Questionnaires were sent to all of them but none replied to the questionnaire.

(59) Two of the complaining producers ceased cooperating shortly after the initiation of the proceeding and did not reply to the sampling questionnaire.

*Exclusion of a Community manufacturer from the definition of the Community production for reasons of significant imports within the period considered*

(60) The investigation has shown that all three cooperating (groups of) companies, in addition to their own Community manufacturing, had also imported increasing amounts of the product concerned for resale on the Community market. As shown by the investigation, all cooperators decided to delocalise part of their production, at least for the part that was mostly exposed to the increasing dumped imports from the PRC. The imports by the cooperating (groups of) companies were predominantly from their respective related sister companies or subsidiaries established in the PRC.

(61) It was thus examined whether, despite those import volumes, the centre of interest of those companies was within the Community.

(62) As far as the volume of imports by the cooperating manufacturers in the Community is concerned, it was established that two of these (groups of) companies (company A and B) imported increasing but relatively low quantities of the product concerned (throughout the period considered the volumes of resale of the product concerned originating in the PRC remained inferior to the respective net sales of own production of these companies). Moreover, those companies kept their headquarters and R & D activities in the Community. It is therefore concluded that the centre of interest for companies A and B is still in the Community and that despite their imports from the PRC they should be considered as part of the Community production.

(63) With regard to the other cooperating group of companies (company C), it was established that in the period considered not only there was a considerable increase in the proportion of the imported product sold on the Community market, but that, starting from 2005, this proportion exceeded the volumes of the like product manufactured and sold within the Community. During the investigation period the volumes of resale of the product concerned originating in the PRC constituted the vast majority of the total sales of company C on the Community market.

(64) It was considered whether, despite the significant import volumes, the imported volumes could be considered to complement the product range or to be of a temporary nature. It appeared, however, that the imports of company C cannot be considered to complement the product range, but are based on a strategic decision to outsource the production of the product concerned to the PRC in a move to lower the cost of production and to be in a position to compete with the other Chinese imports. It was established that during the investigation period many models produced in the PRC were also produced in Italy by another company of the same group. Therefore, the compressors produced in the PRC were in direct competition with compressors produced by the same group in Italy. In view of the above and considering the significance of resale of imported products in the total sales of company C, it could thus not be concluded that company C's centre of interest for the manufacturing of the product concerned is still within the Community. It appeared likely that company C would continue or even increase imports of the like product from the country concerned for the resale on the Community market, which would mean that company C should be considered as an importer rather than a Community producer.

- (65) Therefore, it is concluded that company C should not be included in the definition of Community production.
- (66) To conclude, the Community production of certain compressors within the meaning of Article 4(1) of the basic Regulation has been defined as all the production by all the companies referred to in recital 58, minus the production of the company C. In the absence of co-operation of a number of producers and assemblers in the Community, the output was estimated on the basis of information gathered during the investigation and data submitted in the complaint.

## 2. Community industry

- (67) The proceeding was initiated as a result of a complaint lodged by the Italian federation ANIMA representing four companies manufacturing compressors and one producer supporting the complaint (as detailed in the recital 58). Despite the abovementioned lack of cooperation from two complaining companies and the exclusion of one Community manufacturer from the definition of the Community production, the two remaining Community producers that properly cooperated with the investigation were found to account for a major proportion of the total Community production, in this case around 50 %. These two cooperating producers are therefore deemed to constitute Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

- (68) The remaining producers listed in the complaint and detailed in recital 58, minus the company excluded from the definition of the Community production, will be hereinafter referred to as 'the other Community producers'. None of these other Community producers opposed the complaint.

## 3. Community consumption

- (69) Community consumption was established on the basis of the sales volumes of company Cs and the Community industry's own production destined for the Community market, the import volumes data on the Community market obtained from Eurostat and, concerning the sales of the other Community producers from information available in the complaint.
- (70) Throughout the period considered, the Community market for the product concerned and the like product has declined by 6 % reaching in the IP around 3 066 000 pieces. More specifically, the Community consumption decreased in 2004 by 7 % before increasing slightly by 1 percentage point in 2005 and it stabilised at this level in the IP. The drop in the Community consumption can be attributed to the shrinking sales of the producers in the Community and to reduced imports from other third countries (mainly US and Japan).

	2003	2004	2005	IP
EU Consumption (pieces)	3 270 283	3 053 846	3 075 358	3 065 898
Index	100	93	94	94

## 4. Imports from the country concerned

### (a) Volume

- (71) The volume of imports of the product concerned into the Community rose massively between 2003 and the IP. They rose during the period considered by 182 % and reached over 1 600 000 pieces. In detail, imports from the country concerned increased by 66 % between 2003 and 2004, by a further 110 percentage points in 2005, and by six percentage points in the IP.

### (b) Market share

- (72) The market share held by exporters in the country concerned increased by more than 35 percentage points throughout the period considered and reached 53 % in the IP. The Chinese exporters increased their market share between 2003 and 2004 by 13 percentage points and by another 20 percentage points in 2005. In the IP, the market share of the exporters from the country concerned increased slightly by another percentage point.

	2003	2004	2005	IP
Volume of imports from the PRC (pieces)	574 795	953 001	1 586 614	1 622 702
Index	100	166	276	282
Market share of imports from the PRC	17,6 %	31,2 %	51,6 %	52,9 %



(c) *Prices*(i) *Price evolution*

- (73) Prices of the imports of the product concerned in the table below are based on the data submitted by cooperating exporters and verified during the investigation. During the period considered, there was an overall increase of the average price of imports of the product concerned originating in the PRC that rose by 6 % between 2003 and the IP. The increasing price trend is possibly a reflection of the change in the product mix, as Chinese manufacturers gradually start the production and export of more advanced and more expensive compressors.

	2003	2004	2005	IP
Price of imports from the PRC (EUR/piece)	35,15	34,61	35,70	37,27
Index	100	98	102	106

(ii) *Price undercutting*

- (74) A comparison for comparable models of the product concerned was made between the sampled exporting producers' and the Community industry's average selling prices in the Community. To this end, Community industry's ex-works prices to unrelated customers, net of all rebates and taxes have been compared with the cif Community frontier prices of exporting producers of the PRC, duly adjusted for unloading and customs clearance costs. Given that Community industry normally sells its Community production directly to retailers, whereas the Chinese goods are sold to retailers via related or unrelated importers and/or traders, an adjustment to the import price was made where appropriate to ensure that the comparison is made at the same level of trade. The comparison showed that during the IP the product concerned sold in the Community undercut the Community industry's prices by between 22 % and 43 %, depending on the exporter concerned.

## 5. Situation of the Community industry

- (75) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.
- (76) Given that the Community industry comprises only two producers, data relating to the Community industry is presented in an indexed format and/or in ranges in order to preserve confidentiality, pursuant to Article 19 of the basic Regulation. It is recalled that the data presented below only refers to the like product produced in the Community by the Community industry, thereby excluding stand-alone pumps and compressors manufactured by the related companies of the Community industry in the PRC and subsequently resold in the Community.

(a) *Production*

- (77) The Community industry's production decreased significantly between 2003 and the IP. Specifically, it declined by 16 % in 2004, by a further 23 percentage points in 2005 and another 7 percentage points in the IP. In the IP the Community industry's production volume ranged between 300 000 pieces and 400 000 pieces.

	2003	2004	2005	IP
Production (pieces)	Cannot be disclosed			
Index	100	84	61	54

(b) *Capacity and capacity utilisation rates*

- (78) The production capacity increased slightly by 3 % between 2003 and 2004, increased further by 9 percentage point in 2005 and stabilised on that level during the IP. The increase in the production capacity in 2005 is attributable to the investment made by one Community producer into an additional production line for compressors serving a higher segment of the market. During the IP, the Community industry's production capacity ranged between 600 000 pieces and 800 000 pieces.
- (79) The capacity utilisation rate of the Community industry constantly fell during the period considered and in the IP it was less than half of its level in 2003. This reflects a fall in the production levels. During the IP the Community industry's capacity utilisation ranged between 40 % and 50 %.

	2003	2004	2005	IP
Production capacity (pieces)	Cannot be disclosed			
Index	100	103	112	112
Capacity utilisation	Cannot be disclosed			
Index	100	81	54	48

(c) *Stocks*

- (80) The level of closing stocks increased in 2004 by 37 %, by a further 45 percentage points in 2005, before decreasing by 138 percentage points in the IP. During the IP the Community industry's stocks ranged between 10 000 and 20 000 pieces. Considering that the production of the like product in the Community is predominantly done on order, the level of inventories is not considered to be a useful injury indicator for this product.

	2003	2004	2005	IP
Closing stocks (pieces)	Cannot be disclosed			
Index	100	137	182	44

(d) *Sales volume*

- (81) The sales by the Community industry of its own production on the Community market steadily decreased throughout the period considered. Specifically, it fell by 19 % in 2004, by a further 24 percentage points in 2005 and by another nine percentage points in the IP. During the IP the sales volume of the Community industry ranged between 200 000 pieces and 300 000 pieces.

	2003	2004	2005	IP
EC sales volume (pieces)	Cannot be disclosed			
Index	100	81	57	48

(e) *Market share*

- (82) The market share of the Community industry constantly declined throughout the period considered. In detail, the index reflecting the evolution of the Community industry's market share fell by 13 % in 2004, by 27 percentage points in 2005 and by a further nine percentage points in the IP. During the IP the market share of the Community industry ranged between 5 % and 10 %.

	2003	2004	2005	IP
Market share of the Community industry	Cannot be disclosed			
Index	100	87	60	51

(f) *Growth*

- (83) Between 2003 and the IP, when the Community consumption decreased by 6 %, the volume of sales of the Community industry on the Community market decreased much more by a massive 52 %. During the period considered the Community industry's market share almost halved, while dumped imports gained more than 35 percentage points of market share, reaching 53 %. It is thus concluded that there was no growth from which the Community industry could have benefited.

(g) *Employment*

- (84) The employment level of the Community industry showed a steady decline throughout the period considered. It decreased by 10 % in 2004, by further 16 percentage points in 2005, and by another five percentage points in the IP. During the IP, the Community industry's employment devoted to the production and sales of the like product ranged between 150 and 200 persons.

	2003	2004	2005	IP
Employment	Cannot be disclosed			
Index	100	90	74	69

(h) *Productivity*

- (85) The productivity of the Community industry's workforce, measured as output (pieces) per person employed per year, declined in 2004 by 7 %, by a further 10 percentage points in 2005, and by another five percentage points in the IP. During the IP, the productivity of the Community industry ranged between 1 500 and 2 000 pieces per employee. The steady decrease in the productivity is a reflection of the declining production that was falling throughout the period considered on a somewhat quicker pace than the corresponding employment.

	2003	2004	2005	IP
Productivity (pieces per employee)	Cannot be disclosed			
Index	100	93	83	78

(i) *Labour costs*

- (86) The average labour cost per employee increased by 8 % between 2003 and 2004 and stabilised on that level in 2005 before slightly decreasing the IP by one percentage point. The 2004 increase was due in particular to a wage rise negotiated by one of the Community industry producers following a dispute with its trade unions. In addition, this negotiated increase in wages was preceded by a strike in 2003 and the resulting unpaid hours relatively lowered the annual labour cost in comparison to the following years.

	2003	2004	2005	IP
Annual labour cost per employee (EUR)	Cannot be disclosed			
Index	100	108	108	107

(j) *Factors affecting Community prices*

- (87) The unit prices of the Community industry's sales of own production to unrelated customers increased by 20 % between 2003 and the IP. Specifically, the average sales price increased by 9 % in 2004, by a further 13 percentage points in 2005, before slightly dropping by two percentage points in the IP. During the IP, the average unit price ranged between EUR 100 and EUR 150.

	2003	2004	2005	IP
Unit price EC market (EUR)	Cannot be disclosed			
Index	100	109	122	120

- (88) The increase in the average unit price is a reflection of the Community industry's gradual partial shift of the production towards upper segment of the market, i.e. higher quality, better performance, bigger capacity and consequently more costly and expensive models of the like product.
- (89) Given the volume and the level of price undercutting, these imports were certainly a factor affecting prices.

(k) *Profitability and return on investments*

- (90) During the period considered the profitability of the Community industry's own production sales in the Community, expressed as a percentage of net sales, remained negative but improved throughout the period considered. The negative profitability improved in 2004 and further in 2005 when the level of losses was relatively the lowest and only slightly deteriorated in the IP. During the IP, the profitability of the Community industry ranged between – 3 % and – 10 %.

	2003	2004	2005	IP
Profitability of EC sales (% of net sales)	Cannot be disclosed			
Index	– 100	– 93	– 28	– 32
ROI (profit in % of net book value of assets)	Cannot be disclosed			
Index	– 100	– 85	– 19	– 20

- (91) The return on investment (ROI), expressed as the profit in percent of the net book value of investments, followed the above profitability trend. It also remained negative during the period considered. It improved in 2004 and further in 2005, before slightly deteriorating in the IP. In the IP, the ROI ranged between – 30 % and – 15 %.

(l) *Cash flow*

- (92) The net cash flow for operating activities remained also negative through the period considered, but clearly improved and was only slightly negative in the IP, ranging between EUR – 100 000 and EUR 0.

	2003	2004	2005	IP
Cash flow (EUR)	Cannot be disclosed			
Index	– 100	– 67	– 9	– 1

(m) *Investment and ability to raise capital*

- (93) The Community industry's annual investment in the production of the like product increased in 2004 by 72 % and by a further 75 percentage points in 2005, before slightly declining by seven percentage points in the IP. The net investment during the IP was, however, relatively low and ranged between EUR 1 300 000 and EUR 2 300 000. The increase can be attributed to an investment made by one of the Community producers for leasing a new building with a view to centralise and modernise the production process as well as some investment by the Community industry intended for maintenance and renewal of existing equipment but also in new equipment and modules in an attempt to improve competitiveness of their product vis-à-vis the dumped imports from China.

	2003	2004	2005	IP
Net investments (EUR)	Cannot be disclosed			
Index	100	172	247	240

(94) No evidence was provided to the Commission in respect of a reduced or increased ability to raise capital over the period considered.

(n) *Magnitude of dumping margin*

(95) Given the volume, the market share and the prices of the imports from the country concerned, the impact on the Community industry of the magnitude of the actual margins of dumping cannot be considered to be negligible.

(o) *Recovery from past dumping*

(96) In the absence of any information on the existence of dumping prior to the situation assessed in the present proceeding, this factor is considered irrelevant.

## 6. Conclusion on injury

(97) Between 2003 and the IP, the volume of the dumped imports of the product concerned originating in the PRC increased massively, by 182 % and their share of the Community market grew by over 35 percentage points. The average prices of the dumped imports were considerably lower than those of the Community industry during the period considered. Moreover, during the IP, the prices of imports from the PRC significantly undercut those of the Community industry. On a weighted average basis, price undercutting was in the IP, between 22 % and 43 %.

(98) Some indicators experienced a positive development between 2003 and the IP. Average unit sales price increased by 20 %, the production capacity indicator rose by 12 % and there was an increase in the investment by 140 %. However, it has been shown in recitals 78, 88 and 93 that particular reasons explain these developments. In addition, as indicated above in recital 90, the profitability throughout the period considered showed signs of recovery as losses declined significantly between 2003 and the IP. However, it is to be remembered that the profitability remained negative and the level of losses in the IP cannot be considered negligible.

(99) A significant deterioration in the situation of the Community industry has been found over the period considered. Most of the injury indicators developed negatively between 2003 and the IP: production volume declined by 46 %, capacity utilisation more than halved, Community industry's sales declined by 52 % and the corresponding market share almost halved, employment decreased by 31 %, and productivity fell by 22 %.

(100) In the light of the foregoing, it is concluded that the Community industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

## E. CAUSATION

### 1. Introduction

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

### 2. Effects of the dumped imports

(102) The significant increase in the volume of the dumped imports by 182 % between 2003 and the IP, and of its corresponding share of the Community market, i.e. by 35 percentage points, as well as the undercutting found (between 22 % and 43 % during the IP) generally coincided with the deterioration of the economic situation of the Community industry, as explained in recital 99. In addition, dumped prices were, on average, considerably below those of the Community industry throughout the period considered. It is considered that these dumped imports exerted a downward pressure on the prices, preventing the Community industry from increasing its sales prices to a level that would have been necessary to realise a profit and that the dumped imports had a significant negative impact on the situation of the Community industry. Moreover, it appears that the Community industry lost a significant part of its market share to those increased volume of dumped imports. The decreased sales volumes lead to a relative increase of the fixed costs of the CI which had a negative impact on the financial situation as well. Therefore, there is a clear causal link between imports from the PRC and the material injury suffered by the Community industry.

### 3. Effects of other factors

#### *Export performance of the Community industry*

(103) As can be seen from the table below, during the period considered there was a decrease by 33 % of the volume of export sales, which however was not as profound as the decrease of the EC sales, described in recital 81. During the IP the export sales ranged between 100 000 pieces and 150 000 pieces. The average unit price of export sales remained stable between 2003 and the IP and ranged between EUR 100 and EUR 150.

	2003	2004	2005	IP
Export sales (pieces)	Cannot be disclosed			
Index	100	89	74	77
Export unit price (EUR)	Cannot be disclosed			
Index	100	100	102	100

- (104) Given the price stability on the export markets and the relatively smaller drop in the export volumes, it is considered that even if export activity might have contributed to the injury suffered by the Community industry, but did not do so to such an extent as to break the causal link.

*Rise in the costs of production*

- (105) One interested party claimed that the rise in the costs of production of the Community industry could not have been caused only by the rise in the price of the raw materials (notably metal parts), but also by other causes thereby pointing to self-inflicted injury. It is noted that that party was not specific about the causes which would point to self-inflicted injury.
- (106) The investigation showed that the unit costs of production of the Community industry have increased by around 8 % between 2003 and the IP. The increase could be partly attributed to the apparent rise in the price of raw materials. The investigation showed that some part of the cost increase is due to the deteriorated cost structure and in particular the unit fixed costs, that rose as a result of significant reduction in the number of units produced. Still, the bulk of the increase is to be attributed to the noticeable rise in the price of components used for the production of models in the upper segment of the market.
- (107) However, the rise in the average unit cost of production has been more than compensated by the increase of the average unit selling price (see recital 87) that resulted in improvement of (although still negative) profitability, as described in recital 90. It therefore considered that the rise in the cost of production did not contribute to the injury suffered by Community producers.

*Imports from other countries*

- (108) Based on Eurostat data, the volume of imports into the Community of the like product originating from the rest of the world (i.e. excluding the PRC) declined by 33 % in 2004, by a further seven percentage points in 2005, before recovering slightly by nine percentage points in the IP. Overall, the drop between 2003 and the IP amounts to 31 %. The corresponding market share held by imports from the rest of the world declined from 35 % in 2003 to 26 % in the IP.
- (109) No detailed information was available concerning the price of imports from the rest of the world. Given that Eurostat data does not take account of the product mix, this data could not be used for any reasonable comparison with the Community industry's prices. The investigation did not give any indication that the prices of imports from the rest of the world would undercut the Community prices.
- (110) Given the declining volume and market share and given the lack of any evidence to the contrary, it is concluded that imports from the rest of the world did not cause material injury, if at all, to the Community industry.

	2003	2004	2005	IP
Imports from the rest of the world (pieces)	1 164 228	780 921	699 129	807 893
Index	100	67	60	69
Market share of imports from the rest of the world	35,6 %	25,6 %	22,7 %	26,4 %

*Competition from other producers in the Community*

- (111) As indicated under recital 65, one producer in the Community was excluded from the definition of the Community production. In addition, a number of producers and assemblers did not cooperate in this proceeding (see recital 58). Based on information obtained in the course of the investigation from cooperating producers and the complaint, it is estimated that sales volumes of these other producers in the Community for the EC market was around 1 000 000 pieces in the year 2003 and declined significantly throughout the period considered, reaching about 400 000 pieces in the IP. Similarly, the corresponding market share declined throughout the period considered from 31 % in 2003 to 13 % in the IP. These producers therefore did not gain any sales volume and market share at the expense of the Community industry. To the contrary, similarly to the Community industry, they lost a big portion of their sales and market share to the dumped imports from China.
- (112) Given the above, and given the absence of information to the contrary, it is concluded that other producers in the Community have not contributed to the injury suffered by the Community industry.

	2003	2004	2005	IP
EC sales of other producers in the Community (estimation in pieces)	1 039 780	919 375	510 659	399 891
Index	100	88	49	38
Market share of other producers in the Community	31,4 %	29,7 %	16,4 %	12,9 %

*Decline of consumption on the Community market*

- (113) As seen under recital 70, consumption declined by about 200 000 pieces or 6 % throughout the period considered. However, it is to be noted that during the same period, the decline in the Community industry's sales on the Community market was much more profound both in absolute (sales dropped by between 250 000 and 300 000 pieces) and relative terms (sales dropped massively by 52 %). At the same time, while the Community industry lost almost half of its market share (see recital 82), the market share of the Chinese compressors increased by 35 percentage points (see recital 71). It is thus concluded that the decline of consumption did not cause the injury suffered by the Community industry.

**4. Conclusion on causation**

- (114) The coincidence in time between, on the one hand, the massive increase in dumped imports from the PRC, the corresponding increase in market shares and the undercutting found and, on the other hand, the deterioration in the situation of the Community industry, leads to the conclusion that the dumped imports caused the material injury suffered by the Community industry within the meaning of Article 3(6) of the basic Regulation.

- (115) The investigation showed that the export performance of the Community industry might have contributed to a limited degree to the injury suffered, but not to an

extent that would break the causal link. Other known factors were analysed but were found not to have contributed to the injury suffered. The rise in the unit cost of the production of the Community industry was found to be more than offset by the simultaneous increase in the selling price, and it was consequently considered that it could not have contributed to the injury suffered. As concerns imports from other third countries, given their declining volumes and market share and in view of the lack of possibility for a proper price comparison with the Community prices, it was concluded that these imports did not cause the injury. Concerning competition from the other producers in the Community, given their declining sales volumes and lost market share to the dumped imports, it was established that their activity did not contribute to the injury suffered. Regarding the decline in consumption, given that it was smaller than the decrease in sales in the Community of the Community producers and that it coincided with the significant increase of the dumped imports from China, it was concluded that it, as such, did not cause the injury.

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

## F. COMMUNITY INTEREST

(117) The Council and Commission examined whether compelling reasons existed which would lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and pursuant to Article 21(1) of the basic Regulation, the Council and Commission considered the likely impact of measures for all parties concerned. The Commission services originally sent a final disclosure in the sense of Article 20(4), first sentence, of the basic Regulation, in which the orientation was not to impose measures. Pursuant to that disclosure, certain operators, in particular two cooperating producers in the Community, put forward certain arguments which have led to a re-examination of the issue. The most important of these arguments will be discussed below.

### 1. Interest of cooperating producers in the Community

(118) Without prejudice to the definition of Community industry (see recital 67), it is important to bear in mind that, as mentioned in recital 60, all cooperating groups of companies in the Community set up production facilities in the PRC and imported increasing amounts of the product concerned for resale on the Community market. As mentioned in recital 58, one group of companies sold its Community-based production facility to another company in 2007, i.e. after the IP. Considering that it is a post-IP development and that throughout the period considered this group was manufacturing the like product in the Community, its interests are discussed under this heading and the group is referred to as a producer in the Community.

(119) The investigation showed that should measures not be imposed, the Community industry would possibly continue to suffer injury. Indeed, there would likely be a further deterioration of the situation of the Community industry and a further decline of their market share.

(120) On the other hand, if measures were to be imposed, this could allow for an increase in prices and/or sales volumes (and market share) which would in turn provide the Community industry with the possibility to improve its financial and economic situation.

(121) As far as the possible development of the market share of the Community industry is concerned, should measures be imposed, it is to be noted that all cooperating producers claimed during the proceeding that this would result in reversing the current process of delocalisation and in moving (at least some part of) the production back to the Community.

(122) In this regard, the analysis of the detailed data submitted by two cooperating producers in the Community and their related subsidiaries in the PRC clearly showed that in the particular economic situation prevailing in the PRC over the last few years, there were important cost differences in favour of producing the product concerned destined for the Community market in the PRC rather than in the Community. These differences and the dumping practiced by the Chinese exporters in the Community market might have led all cooperating producers in the Community to delocalise (part of) their production in the first place.

(123) It was therefore examined whether the imposition of anti-dumping duties, which in the case of the exporters related to the producers mentioned in recital 122 are relatively low, would, regarding at least two of the cooperating producers, change the main economic parameters that have led to the process of delocalisation. It was established that the full cost of compressors sold in the Community and produced in the PRC (including, *inter alia*, manufacturing costs, selling, general and administrative expenses, ocean freight, conventional duty and a possible anti-dumping duty) would be in the same order of magnitude, although slightly lower, as the full cost of producing and selling alike compressors in the Community.

(124) Moreover, these two companies reiterated their position that should measures reduce the level of price undercutting suffered from the Chinese dumped products, they would be in a position to increase and/or restart their production in the Community using the existing idle capacities.

(125) Therefore, it cannot be excluded, as claimed by two of the cooperating producers in their submissions following the disclosure, that those producers could use their substantial spare capacities in Europe. This appears to be possible in view of the fact that the proposed measures would come close to levelling the cost of goods, delivered onto the Community market, produced in the PRC and in the Community. Consequently, it can not be excluded that those producers will increase their production in the Community as a consequence of the imposition of measures. Finally, it can not be excluded that, if duties on exports from their related producers in the PRC would reduce the difference in the cost of the goods delivered to the Community market, produced in the PRC and in the Community, those producers would prefer not to concentrate all production outside of the Community, in order to specialise production of certain models in certain locations, or to diversify risk.



(126) As far as a third cooperating producer is concerned, its related company in the PRC was not included in the sample for calculating dumping margins and would therefore, in case of imposing measures, fall, in principle, under the average duty of 51,6 % applicable to cooperating, non-sampled companies. Given that it was not included in the sample, the Commission does not possess verified information regarding the production costs of that Chinese company. Therefore, it cannot be excluded that in that case the full cost of compressors sold in the Community and produced in the PRC (including, *inter alia*, manufacturing costs, selling, general and administrative expenses, ocean freight, conventional duty and possible anti-dumping duty) would exceed the full cost of producing and selling alike compressors in the Community.

(127) Following disclosure, the Italian association of compressor manufacturers that lodged the complaint (ANIMA) stressed the need for the anti-dumping measures in order to allow the producers to continue manufacturing in the Community and their economic survival. They made it clear that even if the related Chinese suppliers of some European producers would be subject to relatively high anti-dumping duties, they would still be in favour of imposing measures.

(128) An evaluation of the potential benefit of the Community industry in case measures were imposed was carried out. It has been noted that not imposing measures might lead to a further deterioration of the situation of the Community industry and further decline of their market share. This would probably lead to the loss of a number of jobs as well as of the investment that had been made to build production capacity in the Community. These elements also, although difficult to quantify, need to be taken into account in the overall assessment of the Community interest. On the other hand, should anti-dumping duties be imposed, it cannot be excluded that an increase in the production in the Community may occur, possibly involving a relocation of some portion of the production back to the Community. This could lead to an increase of employment and may have an additional impact on the upstream industry, supplying semi-finished products to the Community producers of compressors.

## 2. Interest of other Community producers

(129) These producers did not cooperate in the investigation. Their market share is similar to the one held by the Community industry. In view of the lack of cooperation and the fact that most of these producers did not take any clear position on this proceeding, there are no indications of what would be the interest of these producers. Following disclosure one non-cooperating producer and two complaining producers that did not cooperate further in this proceeding (see recital 59) as well as the Italian association of compressor manufacturers (ANIMA) came forward to repeat the arguments mentioned in recital 127. They clearly stated that they are in favour of imposing measures.

## 3. Interest of (unrelated) importers, consumers and other economic operators in the Community

(130) During the IP, the only cooperating unrelated importer imported around 20 % of the Community's total import volume of the product concerned originating in the PRC. In the absence of alternative cooperation and given the above percentage, this importer is deemed representative of the situation of unrelated importers. This cooperating party indicated that it is against the imposition of anti-dumping measures on imports of this particular product from the PRC. During the IP, the activity of resale of the product concerned accounted for between 2 % and 8 % of this importers total company turnover. In terms of workforce, between 30 and 70 persons are directly involved in the purchasing, trading and resale of the product concerned.

(131) Cooperation was also sought from consumer associations as well as all known retailers, distributors, traders and/or other economic operators involved in the distribution chain in the Community. However, no cooperation was obtained. Given that only one unrelated importer cooperated in this proceeding and given the lack of participation of any other economic operators in the Community or consumer associations, it was considered appropriate to analyse a global, overall potential impact of possible measures on all these parties. Overall, it was concluded that the situation of consumers and economic operators involved in the distribution chain in the Community could be negatively affected by the possible measures.

## 4. Conclusion on Community interest

(132) For the reasons expressed in recitals 125 and 126, in this specific case, it can not be excluded that the cooperating producers in the Community might take the opportunity to benefit from the measures by recovering some of the production lost due to the injurious dumping by utilising the existing idle capacities.

(133) It is recognised that, imposition of measures may have a negative effect on consumers and all economic operators in the distribution chain in the Community. However, it is also clear that if production in the Community is increased (and, therefore, probably, the number of people employed in this production in the Community is increased) the measures would create certain benefits for the Community.

(134) Article 21 of the basic Regulation refers to the need to give special consideration to the need to remedy the trade distorting effects of injurious dumping and to restore effective competition, although this particular provision has to be seen in the overall framework of the Community interest test as laid down in the aforementioned Article. Thus, the effects of imposing measures or not imposing measures on all parties concerned have to be examined.

- (135) In conclusion, in view of the high dumping and injury margins, it is considered that, in this particular case, on the basis of the information submitted there is not enough evidence to conclude that the possible imposition of measures would be clearly disproportionate and against the Community interest.
- (136) Should, however, in spite of the imposition of duties, the situation prevailing prior to the imposition of measures (in particular the 53 % market share of imports from the PRC and the relatively small market share of cooperating producers in the Community) remain unchanged, the cost of the possible duty to be borne by consumers and economic operators in the Community (including importers, traders and retailers) might be considered, in the long run, to be greater than the benefit for the Community industry. Therefore, the measures will be imposed for two years, and certain reporting requests will be made to, in particular, Community producers.

#### G. DEFINITIVE MEASURES

##### *Estimated injury elimination level*

- (137) The level of any anti-dumping measures should be sufficient to eliminate the injury to the Community industry caused by the dumped imports, without exceeding the dumping margins found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports. Given that the Community industry was not profitable with regard to the like product throughout the entire period under consideration, it was considered that a profit margin of 5 % achieved by this industry on other products of the same category they produced and sold during the IP, is an appropriate level that the Community industry could be expected to obtain also with regard to the like product in the absence of injurious dumping.
- (138) The necessary price increase was then determined on the basis of a comparison, per product type, of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of the like product sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry in order to reflect the abovementioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.
- (139) The abovementioned price comparison showed that the calculated injury margins are between 61,3 % and 160,8 % and in case of all companies are higher than the respective dumping margins. In the light of the foregoing and pursuant to Article 9(4) of the basic Regulation, it is considered that a definitive anti-dumping duty should be imposed in respect of imports of certain

compressors originating in the PRC at the level of the dumping margins.

##### *Definitive measures*

- (140) Consequently, the anti-dumping duties should be as follows:

Zhejiang Xinlei Mechanical & Electrical Co., Ltd, Wenling	77,6 %
Zhejiang Hongyou Air Compressor Manufacturing Co., Ltd, Wenling and Taizhou Hutou Air Compressors Manufacturing Co., Ltd, Wenling	76,6 %
Shanghai Wealth Machinery & Appliance Co., Ltd, Shanghai and Wealth (Nantong) Machinery Co., Ltd, Nantong	73,2 %
Zhejiang Anlu Cleaning Machinery Co., Ltd, Taizhou	67,4 %
Nu Air (Shanghai) Compressor and Tools Co., Ltd, Shanghai	13,7 %
FIAC Air Compressors (Jiangmen) Co., Ltd, Jiangmen	10,6 %
Cooperating companies not included in the sample (listed in Annex)	51,6 %
All other companies	77,6 %

- (141) The individual anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the PRC and produced by these companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to this specifically mentioned, cannot benefit from this rate and shall be subject to the countrywide duty.
- (142) Any claim requesting the application of an individual company anti-dumping duty rate (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duties.

(143) Measures are imposed to allow the producers in the Community to recover from the injurious effect of dumping. To the extent that there would be any initial imbalance between the potential benefit for producers in the Community and the cost for consumers and other economic operators in the Community, this imbalance could be offset by an increase and/or restart of the production in the Community. However, as already indicated above, given the magnitude of the burden of the possible duties and considering that the envisaged scenario of increased production in the Community might also not materialise, it is considered prudent, in such exceptional circumstances, to limit the duration of measures to a period of two years only.

(144) This period should be enough for the producers in the Community to increase and/or restart their production in Europe, while at the same time not significantly endanger the situation of consumers and other economic operators in the Community. It is considered that the period of two years will be the most appropriate to analyse whether the imposition of measures had indeed the effect of increasing European production and thereby balancing the negative effects on importers and consumers.

#### Implementation

(145) It is also considered appropriate to closely monitor the situation on the Community market, following the imposition of measures, in view of possibly reviewing the measures expeditiously should it appear that the duties are not reaching their intended effect, i.e. allowing for ensuring the viability of existing producers in the short term and the improvement of their economic and financial situation in the medium term.

(146) To this effect, the producers in the Community will be invited by the Commission to report to it periodically on the evolution of a number of key economic and financial indicators. Also importers and other operators involved may be so invited, or provide such information of their own initiative. On the basis of these data the Commission will make a periodic assessment of the situation of imports and Community production, so as to be in a position to act swiftly should this be necessary.

(147) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties. They were also granted a period within which they could make representations subsequent to this disclosure. The comments submitted by the parties were duly considered, and, where appropriate, the findings have been modified accordingly. All parties were given detailed responses to the comments they have submitted.

(148) In order to ensure equal treatment between any new exporters and the cooperating companies not included in the sample, mentioned in the Annex to this Regulation, provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporters which would otherwise be entitled to a review pursuant to Article 11(4) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of reciprocating compressors (excluding reciprocating compressor pumps), giving a flow not exceeding 2 cubic metres (m<sup>3</sup>) per minute, falling within CN codes ex 8414 40 10, ex 8414 80 22, ex 8414 80 28 and ex 8414 80 51, (TARIC codes 8414 40 10 10, 8414 80 22 19, 8414 80 22 99, 8414 80 28 11, 8414 80 28 91, 8414 80 51 19 and 8414 80 51 99) and originating in the People's Republic of China.

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

Company	Duty	TARIC additional codes
Zhejiang Xinlei Mechanical & Electrical Co., Ltd, Wenling	77,6 %	A860
Zhejiang Hongyou Air Compressor Manufacturing Co., Ltd, Wenling and Taizhou Hutou Air Compressors Manufacturing Co., Ltd, Wenling	76,6 %	A861
Shanghai Wealth Machinery & Appliance Co., Ltd, Shanghai and Wealth (Nantong) Machinery Co., Ltd, Nantong	73,2 %	A862
Zhejiang Anlu Cleaning Machinery Co., Ltd, Taizhou	67,4 %	A863
Nu Air (Shanghai) Compressor and Tools Co., Ltd, Shanghai	13,7 %	A864
FIAC Air Compressors (Jiangmen) Co., Ltd, Jiangmen	10,6 %	A865
Cooperating companies not included in the sample (listed in Annex)	51,6 %	A866
All other companies	77,6 %	A999

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

4. Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

- it did not export to the Community the product described in paragraph 1 in the period between 1 October 2005 and 30 September 2006 (investigation period),
- it is not related to any exporter or producer in the People's Republic of China which is subject to the anti-dumping measures imposed by this Regulation,
- it has actually exported to the Community the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Community,

- it operates under market economy conditions, as defined in Article 2(7)(c) of the basic Regulation, or alternatively that it fulfils the requirements to have an individual duty in accordance with Article 9(5) of that Regulation,

the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend paragraph 2 by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty of 51,6 %.

#### Article 2

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

It shall apply until 21 March 2010.

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

Done at Brussels, 17 March 2008.

For the Council  
The President  
I. JARC

#### ANNEX

#### CHINESE COOPERATING EXPORTING PRODUCERS NOT SAMPLED TARIC Additional code A866

Fini (Taishan) Air Compressor Manufacturing Co., Ltd.	Taishan
Lacme Dafeng Machinery Co., Ltd.	Dafeng
Qingdao D&D Electro Mechanical Technologies Co., Ltd. and Qingdao D&D International Co., Ltd.	Qingdao
Shanghai Liba Machine Co., Ltd.	Shanghai
Taizhou Sanhe Machinery Co., Ltd.	Wenling
Taizhou Dazhong Air Compressors Co., Ltd.	Wenling
Taizhou Shimge Machinery & Electronic Co., Ltd.	Wenling
Quanzhou Yida Machine Equipment Co., Ltd.	Quanzhou