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

REGULATIONS

COUNCIL REGULATION (EC) No 925/2009

of 24 September 2009

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foil originating in Armenia, Brazil and 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 [1] (the 'basic Regulation'), and in particular Article 9 thereof,

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

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The Commission, by Regulation (EC) No 287/2009 [2] (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China (the 'PRC').

(2) The proceeding was initiated following a complaint lodged by Eurométaux (the 'complainant') on behalf of producers representing a major proportion, in this case more than 25 %, of the total Community production of aluminium foil.

(3) As set out in recital 13 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2007 to 30 June 2008 ('investigation period' or 'IP'). The examination of the trends for the assessment of injury covered the period from 1 January 2005 to the end of the investigation period (period considered).

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 94, 8.4.2009, p. 17.

1.2. Subsequent procedure

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

(5) After the imposition of the provisional anti-dumping measures, the Commission continued its investigation with regard to dumping, injury and Community interest aspects and carried out further analyses and verification visits of data contained in the questionnaire replies provided by some exporting producers and producers in the Community.

(6) Five additional verification visits were carried out at the premises of the following Community producers:

— Novelis UK Limited, Bridgnorth, United Kingdom,

— Novelis Luxembourg, Dudelange, Grand Duché de Luxembourg,

— Novelis Foil France S.A.S., Rugles, France,

— Grupa Kęty SA, Kęty, Poland,

— Hydro Aluminium Inasa, S.A., Irurtzun, Spain.

(7) One additional visit was carried out at the premises of the following company related to exporting producers:

— Alcoa Transformación de Productos, S.L., Alicante, Spain.

(8) Three additional visits were carried out at the premises of the following exporting producers:

— Alcoa (Shanghai) Aluminium Products Co., Ltd, Shanghai and Alcoa (Bohai) Aluminium Industries Co., Ltd, Hebei,

— Shandong Loften Aluminium Foil Co., Ltd, Shandong,

— Zhenjiang Dinsheng Aluminium Industries Joint-Stock Limited Company, Jiangsu.

(9) A visit was also carried out at the Shanghai Futures Exchange, Shanghai.

(10) 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 measures on imports of certain aluminium foil originating in Armenia, Brazil and the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.

(11) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings have been modified accordingly.

1.3. **Scope of the investigation**

(12) The Brazilian exporting producer argued that Russia should have been included in the scope of the investigation since, during the entire period considered import volumes and market shares from Russia were significant and even higher than the ones from Armenia. Furthermore, the Brazilian exporting producer alleged that import prices from Russia were at the same level as the prices of imports of the countries concerned and that there was prima facie evidence of dumping at the time of the initiation.

(13) When analysing the complaint, the Commission came to the conclusion that there was no sufficient prima facie evidence of dumping with regard to Russia. Consequently, the non-inclusion of Russia in the complaint was considered warranted. In the absence of evidence of dumping, it is irrelevant whether import volumes and/or market shares of imports originating in Russia were indeed higher than the ones of one or more countries included in the scope of the investigation. The claim of the Brazilian exporting producer was therefore rejected.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

(14) The downstream industry in the Community, i.e. the 'rewinders', reiterated that the product concerned should also include consumer rolls, i.e. aluminium foil weighing less than 10 kg, because if definitive measures were imposed solely on imports of aluminium foil weighing over 10 kg (jumbo reels), this could give rise to an increase of exports of consumer rolls from the countries concerned at low prices. It was also argued that both products have basically the same characteristics, the only difference being the packaging.

(15) In recitals 15 to 19 of the provisional Regulation it was concluded that consumer rolls and jumbo reels are different products in terms of physical characteristics and basic end-uses. The subsequent investigation confirmed these findings. Indeed, the physical differences between consumer rolls and jumbo reels go beyond the mere difference in packaging, as the product concerned has to be rewound before being repacked and resold to the final customer. It was also established that customers, sales channels and basic applications are different. It was therefore not considered appropriate to include consumer rolls in the product scope of the present investigation.

(16) The allegation that imports of jumbo reels may be substituted by imports of consumer rolls is addressed in recitals 97 to 99.

(17) In the absence of any other comments concerning the product concerned and the like product, the findings as set out in recitals 14 to 21 of the provisional Regulation are hereby confirmed.

3. **MARKET ECONOMY TREATMENT (MET) AND ANALOGUE COUNTRY**

3.1. **Armenia**

(18) The sole exporting producer in Armenia contested the provisional findings as set out in recitals 24 to 31 of the provisional Regulation.

(19) The company first stated that the Commission erred in considering that a company in Armenia would need to apply for MET, as in its opinion, Armenia was a market economy country under the terms of the WTO Anti-Dumping Agreement and that the inclusion of Armenia in the footnote to Article 2(7)(a) of the basic anti-dumping Regulation should be removed.

(20) However as set out in recital 25 of the provisional Regulation, Armenia is specifically mentioned in the footnote to Article 2(7)(a) of the basic Regulation as being included among non-market economy countries. The treatment of exporting producers in non-market economy countries which are WTO members is set out in Article 2(7)(b). These provisions have been fully complied with in the current investigation. This argument was therefore again dismissed.

(21) The company then stated that it met the second MET criterion, which was provisionally found not to have been met in recitals 27 to 29 of the provisional Regulation. The company based its argument on the submission of the accounts for 2007 which had not been provided during the verification visit of the company prior to provisional measures being imposed. The company again stated that it did not believe that the second MET criterion demanded that the accounts of the company be prepared in line with international accounting standards and that Armenian national accounting standards were sufficient, as Armenia is a member of the WTO.

(22) This argument was rejected. The company is obliged to have one clear set of accounts in line with international accounting standards. The failures noted by the auditors for both the 2006 and 2007 financial years were such as to clearly show that their accounts were not prepared in line with IAS and therefore the company could not prove that the second MET criterion was met. The MET criteria actually point to international standards and WTO membership does not change this. Furthermore, WTO membership in itself is not a guarantee of the prevalence of market conditions in the economic activity of one company.

(23) The company further stated that it met the third MET criterion, which was provisionally found not to have been met in recital 30 of the provisional Regulation on grounds relating to the sale of shares by the Armenian State and also the State's granting of land to the company for free. The company stated that the issue of the land being given to the company for free was not significant and should not be cumulated with the other issue regarding shares, which the company also considers not significant.

(24) This argument was also rejected. The fact that the land was obtained for zero cost, and can be sold with the payment of its cadastral value to the State (which is significantly lower than its market value) makes that land an important and valuable asset for the company which does not appear in the company's accounts and therefore has a significant effect on the company's costs. In addition, the company failed to prove that the distortion caused by the sale of shares at a lower price than their nominal one was insignificant.

(25) It can therefore be concluded that the two issues concerning compliance with the third MET criterion point to a distortion carried over from a non-market economy situation.

(26) The finding that this company should be denied MET is confirmed.

3.2. **The PRC**

(27) One exporting producer in the PRC contested the provisional findings as set out in recital 32 of the provisional Regulation. They reiterated that the Commission should not have compared the price as quoted by the Shanghai Futures Exchange (the 'SHFE') and the London Metal Exchange (the 'LME') by taking both on a VAT-exclusive basis, and that without this adjustment the prices would be similar during the investigation period.

(28) This argument was rejected for the reasons as set out in recital 38 of the provisional Regulation as the price should be compared on a like-for-like basis. Chinese producers of the product concerned pay VAT on their purchases of primary aluminium. Most of this VAT is then reclaimed on the sale of the finished product, whether sold domestically (in which case all is reclaimable) or for export (in which case the Chinese government restricts the reclaim of VAT at certain rates for certain goods at certain times). The inclusion of a small amount of non-reclaimable VAT is not such as to have a substantial effect on the above conclusions.

(29) It should also be noted that the significant difference in price between the LME and the SHFE during the IP shows the state interference in the price setting mechanism for primary aluminium, a finding of the provisional Regulation (recital 32) which was confirmed following the Commission services visit to the SHFE.

(30) This visit confirmed that the State has a primary role in the price setting on the SHFE and interferes with the price setting mechanisms, in particular given its position as both a seller of primary aluminium and a purchaser via the State Reserve Bureau and other State bodies. In addition, the State sets daily price limits via the rules of the SHFE which have been approved by the state Regulator, the China Securities Regulatory Commission (the 'CSRC'). It is also clear that the SHFE is a closed exchange for Chinese-registered companies and Chinese citizens and that there is no effective arbitrage between the SHFE and international exchanges outside China. This is evidenced in the price significant differences between the SHFE and the international exchanges such as the LME. Furthermore where a SHFE futures contract ends in physical delivery, this can only take place in an approved warehouse within the PRC, unlike international exchanges where delivery can take place worldwide. These delivery rules ensure that the domestic Chinese market remains insulated from the worldwide market and that the price distortion benefits only Chinese companies.

(31) The provisional findings as set out in recitals 22 to 40 are therefore confirmed.

3.3. **The PRC and Armenia: Individual treatment (IT)**

(32) In the absence of comments, the provisional findings as regards the exporting producer in Armenia as set out in recital 42 of the provisional Regulation are confirmed.

(33) One exporting producer in China contested the provisional finding as set out in recital 42 of the provisional Regulation that they should be denied IT. This denial was due to the company being majority State owned. The company stated that this should be reversed as the State ownership was through a company quoted on the Hong Kong Stock Exchange and there were no State officials on the Board of Directors.

(34) These arguments were rejected. The company is majority State owned and therefore the Board of Directors, which runs the company, is answerable to the ultimate shareholder — the State. The company was also unable to prove, and provided no evidence to show, that the State could not interfere in the business decisions of the company through the decisions of their Board of Directors.

(35) The provisional findings as set out in recitals 41 and 42 of the provisional Regulation are therefore confirmed.

3.4. **Analogue country**

(36) In the absence of comments, the provisional findings that Turkey is an appropriate and reasonable analogue country, as set out in recitals 43 to 52 of the provisional Regulation are confirmed.

4. **DUMPING**

4.1. **Brazil**

(37) In the absence of comments, the provisional findings as set out in recitals 53 to 68 of the provisional Regulation are confirmed.

4.2. **Armenia**

(38) The sole exporting producer from Armenia contested the provisional findings as set out in recitals 69 to 77 of the provisional Regulation. The company stated that deductions made under Article 2(9) of the basic Regulation for selling, general and administrative (SG&A) expenses and a reasonable amount of profit for sales through related companies were not justified.

(39) On examination, it was found that certain sales were not made through related importers in the Community. In these circumstances, adjustments under Article 2(9) of the basic Regulation were not warranted and the calculations were revised accordingly.

4.3. **PRC**

(40) In the absence of comments, the provisional findings as set out in recitals 78 to 82 of the provisional Regulation are confirmed.

(41) To calculate the residual dumping margin for China, the provisional methodology as set out in recital 83 of the provisional Regulation was modified, such that the margin was calculated based on a weighted average of (i) the overall dumping margin calculated for the company to whom no MET and IT was granted, and (ii) the highest dumped transaction of that company applied to the export prices found in Comext (being representative of the non-cooperating Chinese exporters). On this basis, the countrywide level of dumping was established at 47,0 % of the cif Community frontier price, duty unpaid.

4.4. **Definitive dumping margins**

Country	Company	Definitive dumping margin
Brazil	Companhia Brasileira de Aluminio	27,6 %
	All other companies	27,6 %
PRC	Alcoa Bohai and Alcoa Shanghai	25,6 %
	Shandong Loften	33,7 %
	Zhenjiang Dingsheng	37,4 %
	All other companies	47,0 %
Armenia	RUSAL Armenal	33,4 %
	All other companies	33,4 %

5. INJURY

5.1. Community production and definition of the Community industry

(42) As mentioned in recital 87 of the provisional Regulation, the complaint was lodged by Eurométaux on behalf of four Community producers which cooperated in the investigation. One further producer supported the complaint and one producer opposed it. The five producers that were complainants or supported the complaint are therefore deemed to constitute the Community Industry (the 'CI') within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

(43) In the absence of any comments concerning the production and definition of the Community industry, recitals 86 to 87 of the provisional Regulation are hereby confirmed.

5.2. Community consumption

(44) The Armenian exporting producer contested the determination of the Community consumption by claiming that sales of the CI on the captive market should have been taken into consideration. The same company also claimed that the estimated data included in the complaint were not a reliable basis to establish consumption in the Community and made reference to an independent market study.

(45) As far as the alleged captive use is concerned, it was found that there was only a very limited volume destined for the captive market during the IP. This concerned only one Community producer for sales during the first year of the period considered. It was therefore considered that this had only a negligible, if any, impact at all on the overall situation.

(46) As far as the determination of the total Community consumption is concerned, it was considered that the methodology used at provisional stage was reasonable and has given a fairly complete picture of the actual situation. The Armenian exporting producer did not explain in what way the methodology used by the Community institutions was not reasonable and would, as a consequence, lead to unreliable results. The study quoted by the Armenian Exporting producer was not found to be directly relevant as it referred to different types of aluminium foil and included data for non-EU companies which could not be verified. Furthermore, the provisional findings for the total Community consumption included in Table 1 under recital 90 of the provisional Regulation were confirmed by other interested parties, including importers unrelated to the CI.

(47) On the basis of the above, it was concluded that the total Community consumption as established in the provisional Regulation gives a reliable picture of the actual situation.

(48) In the absence of any other comments concerning Community consumption, recitals 88 to 90 of the provisional Regulation are hereby confirmed.

5.3. Cumulative assessment of the effects of the imports concerned

(49) Subsequent to the provisional disclosure, the Brazilian exporting producer reiterated that the product originating in Brazil meets higher quality standards, such as a minimum tensile strength and elongation requirements allowing for a wider range of applications and sales to a wider range of customers compared to the product exported by the other two countries concerned. Thus, it was alleged that there were different market segments for aluminium foil depending on the quality of the product and that only the Brazilian product meets the standards to be sold in the high end market of branded products.

(50) The Brazilian exporter also reiterated that sales channels and distribution methods for its products were different. In particular, it was argued that the Brazilian exports were mainly made via traders while the Armenian and Chinese exporting producers sell directly to the rewinders in the Community. It was also claimed that the Brazilian exporter has long standing and stable business relationships with specific customers in the Community, while the exporters from Armenia and the PRC have only just recently entered the Community market.

(51) Finally, the same exporting producer argued that trends concerning import volumes and market shares were different from those of the other exporting countries which would show that the conditions of competition were indeed different.

(52) With regard to the first allegation, i.e. the difference in quality standards, the investigation revealed that despite quality differences, the aluminium foil market was mainly price driven and quality differences played only a minor role in the choice of a supplier. These findings were confirmed by the cooperating importers and users concerned. Thus, the unsubstantiated allegation of the Brazilian exporting producer, i.e. that the aluminium foil market was divided into several segments according to quality differences of the product, could not be confirmed during the present investigation and the claim made in this regard had to be rejected.

(53) As far as the alleged different sales channels and distribution methods are concerned, it is noted that the Brazilian exporting producer does not contest that it sold its products both via an unrelated trader and directly to rewinders in the Community. On this basis, it was considered that sales channels were the same. The fact that the Brazilian exporter would have built up long standing business relations during the past years does not preclude, as such, those products being under the same conditions of competition with products of competitors newly entering a market. Indeed, the exporting producer did not claim or show that its customers would not switch to other suppliers should they consider it suitable. Therefore, the fact, that the Brazilian exporter has a long presence on the Community market does not allow the conclusion that its products are in different conditions of competition than the products imported from Armenia and the PRC. The claim made in this regard was consequently rejected.

(54) Finally, regarding different import trends, the Brazilian exporting producer did not submit any additional information or evidence and the provisional findings as set out in recital 93 are thus hereby confirmed.

(55) Subsequent to the provisional disclosure, the Armenian exporting producer argued that Armenian imports should be decumulated for the purpose of the injury analysis given the low import volumes, its low market share and the flat import trends as well as the allegedly significant quality differences between the product exported from Armenia and the ones exported from Brazil and the PRC.

(56) This claim could not be accepted because it was found that all conditions for cumulation as set out in Article 3(4) of the basic Regulation were met:

— as provisionally established and as confirmed above in recitals 38 to 39, the dumping margin established for Armenia was above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation,

— the volume of imports from Armenia was not negligible in the sense of Article 5(7) of the basic Regulation, i.e. its market shares attained 5,26 % as outlined in recital 96 (Table 4) of the provisional Regulation. It was also found that imports from Armenia grew significantly from 2006 to the end of the IP despite the re-entry of imports from the PRC and the significant imports from Brazil during the period considered,

— with regard to the conditions of competition between the imported products from the countries concerned and, in particular, with regard to the arguments made in relation to significant quality differences between the products imported, as set out above in recital 52, it was found that the products from Armenia have similar basic physical and technical characteristics and were used in the same basic applications regardless of their specific quality. It is also noted that this exporting producer stated its intention to shift production to even higher quality converter foils which indicates that the argument concerning the allegedly bad quality of products produced may be exaggerated.

(57) The claims made in this regard by the Armenian exporting producer were therefore rejected.

(58) In the absence of any other comments made in relation to the cumulative assessment of the effects of the imports concerned in accordance with Article 3(4) of the basic Regulation, the provisional conclusions as set out in recitals 91 to 94 of the provisional Regulation are herewith confirmed.

5.4. **Imports from the countries concerned**

5.4.1. *Volume and market share of the countries concerned*

(59) In the absence of any comments with regard to the imports from the countries concerned, the findings as set out in recitals 95 and 96 of the provisional Regulation are herewith confirmed.

5.4.2. *Prices*

(60) In the absence of any comments with regard to the prices of the imports concerned, the findings as set out in recital 97 of the provisional Regulation are herewith confirmed.

5.4.3. *Price undercutting*

(61) The exporting producer in Brazil contested the methodology used to calculate the undercutting margin applicable to it. In this regard, the exporting producer claimed that the calculation of the undercutting margins was not made on the same level of trade. Thus, it was claimed that export sales from Brazil were mainly made to an unrelated importer which resells the product to rewinders whereas the CI's sales were made directly to the rewinders. Therefore, it was claimed that SG&A and profit of the trader should have been added to the export price. The investigation has revealed that contrary to what was alleged by the Brazilian exporting producer, exports sales were not mainly made to an unrelated importer as over 70 % of its exports sales were made directly to the rewinders. Likewise, the investigation has revealed that the CI sold the product concerned predominantly to rewinders, albeit some sales were made to traders. Therefore, it was decided, also in order to ensure that the comparison was nevertheless made on the same level of trade, to exclude sales made to the trader, and base the calculation of the price undercutting solely on direct sales to rewinders. Since these sales represented more than 70 % of the exporting producer's total sales to the Community, this was considered as representative.

(62) Another argument put forward by the same exporting producer in Brazil was that an adjustment taking into consideration quality differences between the imported product and the CI product should have been made. However, the investigation clearly showed that the issue of quality is not a determining factor, as the end user choice is more determined by the price and not by eventual differences in quality (e.g. thickness of the foil).

(63) On the basis of the above, the weighted average price undercutting, expressed as a percentage of the CI's sales prices to independent customers on an ex-works level, was 9,6 % for Brazil.

(64) In the absence of any other comments with regard to the undercutting, the findings as set out in recitals 98 to 100 of the provisional Regulation are herewith confirmed.

5.5. **Situation of the Community industry**

(65) As mentioned in recital 42, the injury factors were determined on the basis of the verified information of five Community producers. A sixth Community producer submitted a questionnaire reply after the provisional determination which could, however, no longer be verified and was therefore not taken into consideration in the definitive determination. Following the completion of all on-the-spot verification visits, some of the injury factors had to be revised on the basis of the evidence found in the visited companies. Therefore, in accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the CI and the evaluation of all economic factors having a bearing on the state of the CI during the period considered had to be revised accordingly.

5.5.1. *Production, capacity and capacity utilisation*

Table 1: Production, capacity and capacity utilisation

	2005	2006	2007	IP
Production in tonnes	50 952	48 467	40 071	32 754
Production (index)	100	95	79	64
Production capacity in tonnes	59 400	59 400	59 400	59 400
Production capacity (index)	100	100	100	100
Capacity utilisation	86 %	81 %	67 %	55 %
Capacity utilisation (index)	100	94	79	64

(66) As can be seen from the table above, production volume from the CI still showed a clearly negative trend between 2005 and the IP. As far as the overall production capacity is concerned, the definitive findings confirmed the decrease of the capacity utilisation during the period considered.

5.5.2. *Sales volume, market shares, growth and average unit price in the EC*

(67) The table below shows the CI performance in relation to its sales to independent customers in the Community.

Table 2: Sales volume, market share, prices and average unit prices in the Community

	2005	2006	2007	IP
Sales volume (tonnes)	43 661	45 191	37 207	30 310
Sales volume (index)	100	104	85	70
Market Share	48 %	53 %	34 %	33 %
Unit prices in EUR/tonne	2 566	3 045	3 219	3 068
Unit prices (index)	100	119	125	120

(68) As provisionally established, while Community consumption increased by 4 % during the period considered, the CI's sales volume decreased by 30 %, i.e. the CI could not benefit from the increased consumption. Consequently, the CI's market share decreased from 48 % in 2005 to 33 % in the IP.

(69) Thus, as far as the CI performance in relation to its sales to independent customers in the Community is concerned, the definitive findings did not significantly change the situation provisionally found.

5.5.3. *Stocks*

(70) The figures below represent the volume of stocks at the end of each period.

Table 3: Stocks

	2005	2006	2007	IP
Stocks in tonnes	1 789	1 711	2 148	2 355
Stocks (index)	100	96	120	132

(71) As mentioned in recital 107 of the provisional Regulation, the investigation revealed that stocks cannot be considered as a meaningful injury factor since the vast majority of production is made in response to orders. Therefore, the trends on stocks are given for information. Although the definitive findings now show a significant increase of 32 % of stock levels, this was found to be due to a spot light stock by one company and therefore not representative of any trend.

5.5.4. *Investments and ability to raise capital*

Table 4: Investments

	2005	2006	2007	IP
Investments (EUR)	7 090 015	807 899	1 355 430	3 998 397
Investments (index)	100	11	19	56

(72) Investment of the CI decreased significantly; i.e. the trend established in the provisional Regulation in recital 108 is confirmed. In the absence of any significant change and comments with regard to investments made by the CI between 2005 and the IP, the findings as set out in recital 108 of the provisional Regulation are therefore herewith confirmed.

5.5.5. *Profitability, return on investment and cash flow*

Table 5: Profitability, return on investment and cash flow

	2005	2006	2007	IP
Profitability on EC sales	– 2,8 %	– 2,6 %	0,2 %	– 0,1 %
Return on total investments	– 43,7 %	– 439,1 %	19,3 %	– 1,3 %
Cash Flow	2 %	1 %	4 %	5 %

(73) The table above shows that the profitability of the CI has slightly improved during the period considered, albeit remaining negative in the IP and in particular well below the target profit of 5 %. As shown in Tables 1 and 2 above, the investigation revealed that the deterioration of the CI was mainly translated in a significant decrease of the CI's production volume and sales volume. This indicates that the CI, faced with dumped imports, has lost sales volumes and market shares in an effort to eliminate losses. In conclusion, despite the CI achieving marginal profits in 2007, it again made small losses in the IP, and therefore, the CI can be regarded as having suffered material injury. The revised findings on profitability did not alter the provisional conclusions in this respect and the definitive findings do not detract from the conclusion that overall profitability remained very low, if not negative despite the fact that consumption increased substantially in 2007 and during the IP.

(74) The return on investment was recalculated on the basis of the verified data from the CI using the same methodology as described in recital 110 of the provisional Regulation. As a result, this indicator was found to be positive in the year 2007, thus reflecting the small profit made by the CI during the same period.

(75) As far as cash flow is concerned, the definitive findings were likewise revised on the basis of the verified data from the CI. This indicator confirms that the CI has tried to respond to the surge of dumped imports from the countries concerned by maintaining sales prices at the highest possible levels to the detriment of sales volumes and market shares.

5.5.6. *Employment, productivity and wages*

Table 6: Employment, productivity and wages

	2005	2006	2007	IP
Number of employees	482	460	386	343
Number of employees (Index)	100	95	80	71
Employment cost	13 618 746	13 031 854	10 882 109	9 642 041
Employment cost (index)	100	96	80	71
Average labour costs	28 226	28 359	28 195	28 122
Average labour costs (index)	100	100	100	100
Productivity (Ton/employee)	106	105	104	96
Productivity (index)	100	100	98	90

(76) After revision of the data, it can be concluded that the trends with regard to employment, productivity and wages of CI between 2005 and the IP remained broadly the same as the ones already outlined in the provisional Regulation. In the absence of any significant change and comments, the findings as set out in recital 112 of the provisional Regulation are therefore herewith confirmed.

5.5.7. *Magnitude of the dumping margin*

(77) In the absence of any comments received with regard to the above, the findings as set out in recital 113 of the provisional Regulation are herewith confirmed.

5.5.8. *Recovery from past dumping*

(78) In the absence of any comments received with regard to the above, the findings as set out in recital 114 of the provisional Regulation are herewith confirmed.

5.5.9. *Growth*

(79) In the absence of any comments received with regard to the above, the findings as set out in recital 115 of the provisional Regulation are herewith confirmed.

5.6. **Conclusion on injury**

(80) In the absence of any other comments concerning the situation of the Community industry, the conclusion that the Community industry suffered material injury, as set out in recitals 116 to 118 of the provisional Regulation, is herewith confirmed.

6. **CAUSATION**

6.1. **Effects of the dumped imports**

(81) The Armenian exporting producer claimed that the market share of the Armenian imports during the period considered was not, on average, enough as to cause the injury suffered by the Community industry. One of the exporting producers in the PRC claimed that imports from the PRC did not cause any injury because the CI's profitability showed an increasing trend in parallel to an increase in imports from the PRC.

(82) As mentioned in recitals 91 to 94 of the provisional Regulation and as confirmed above in recitals 49 to 58, the conditions for the cumulation of imports from all countries under investigation in order to assess the impact of the dumped imports on the situation of the Community industry in accordance of Article 3(4) of the Basic Regulation were met. Consequently, an individual-country analysis of the imports from the countries concerned was considered inappropriate and the above claims had to be rejected.

(83) As far as the development of the CI profitability is concerned, the revised figures did not dramatically change the injury picture as a whole. The CI saw its losses decrease between 2005 and 2006 while in 2007 the industry was marginally profitable (0,2 %). This profit level decreased in the IP and turned into a small loss of – 0,1 %.

(84) It is also recalled that, as concluded in recital 121 of the provisional Regulation and recital 73, the deterioration of the CI mainly translated into a significant decrease of the CI's production volume and sales volume. This indicates that the CI, faced with dumped imports, lost sales volumes and market share in an effort to eliminate losses. In conclusion, despite the CI achieving small profits in 2007, it is confirmed that the CI has suffered material injury as the revised findings on profitability showed losses in the IP. Since the deterioration of the situation of the CI coincided with the increase in imports from the countries concerned, the conclusions set out in recital 123 of the provisional Regulation are herewith confirmed.

(85) It is therefore concluded that the pressure exerted by the dumped imports, which significantly increased their volume and market share from 2006 onwards played a determining role in the injury suffered by the Community industry. The above claims are therefore rejected.

6.2. **Effects of other factors**

6.2.1. *Imports originating in third countries other than the PRC, Armenia and Brazil*

(86) In the absence of any comments concerning imports originating in third countries other than the countries concerned, the conclusions reached in recitals 124 to 126 of the provisional Regulation are herewith confirmed.

6.2.2. *Exports by the Community industry*

(87) In the absence of any comments concerning the export performance of the CI, the conclusions reached in recitals 127 and 128 of the provisional Regulation are herewith confirmed.

6.2.3. *Imports by the Community industry*

(88) One exporting producer, by referring to certain market information, claimed that the volume imported by one of the Community producers from its related Chinese company was significant.

(89) However, these allegations could not be confirmed since the verified figures of the relevant Chinese exporting producer and its related Community importer have confirmed the provisional conclusions reflected in recital 129 of the provisional Regulation.

6.2.4. *Self-inflicted injury*

(90) Some interested parties reiterated that the Community producers would be more interested in the more lucrative Aluminium Converter Foil (ACF) market. It was claimed that ACF and the product concerned (also called Aluminium Household Foil) are produced on the same production lines and a switch between products is therefore relatively easy. Therefore, the decrease of the CI's production volume of the product concerned is due to the increase of the ACF production by the CI rather than the increase of imports from the countries concerned. It was argued that to the contrary, the increase of imports from the countries concerned was due to the insufficient supply of the CI on the Community market caused by the increased production of ACF. The findings in recital 132 of the provisional Regulation were criticised as they were based on the figures related to only one Community ACF producer.

(91) The investigation has confirmed that the production volumes of ACF of the CI did not increase significantly. In fact, the further investigation has shown that none of the complainant and supporting Community producers shifted a significant part of its total production volume to ACF and therefore, the allegations made in this regard had to be rejected. On this basis it could not be concluded that substantial production capacities were indeed shifted from the product concerned to ACF. In fact, different types of foils can be produced by the same rolling machines and therefore, it can also be concluded that, should the profitability of the product concerned be restored under conditions of fair trade, more capacity may be made available by the CI to produce the product concerned. This therefore confirms the provisional conclusions reflected in recital 132 of the provisional Regulation.

6.2.5. *Development of consumption in the Community market*

(92) In the absence of any comments concerning consumption in the Community market, the conclusions reached in recitals 133 and 134 of the provisional Regulation are hereby confirmed.

6.2.6. *Development of the CI's cost*

(93) One exporting producer claimed that the CI had been able to increase its profit margins despite the increase in the costs of raw materials, which contradicts the provisional conclusion reflected in recital 136 of the provisional Regulation, i.e. that the CI could not increase its sales prices at the same pace as the increase in the costs for raw materials. This claim had to be rejected. Firstly, even though the investigation finally revealed a slight improvement in the profitability for 2007, profit growth did not follow the same trend as the increased Community consumption. Secondly, the increase in costs when passed on to customers resulted in significant loss of sales volumes and market share, given the existence of dumped imports on the market which undercut the prices of the CI. The investigation also revealed that the decrease in production volume was linked to a surge of dumped imports whilst production capacities remained stable. As a result, production costs were allocated to lower production volumes, which increased the unit costs.

6.3. **Conclusion on causation**

(94) In the absence of other comments in this respect, the conclusions in recitals 137 and 138 of the provisional Regulation are hereby confirmed.

7. COMMUNITY INTEREST

7.1. **Interest of the Community industry**

(95) In the absence of any comments concerning the interest of the Community industry, the conclusions in recitals 142 to 145 of the provisional Regulation are hereby confirmed.

7.2. **Interest of importers**

(96) In the absence of any comments concerning the interest of the importers, the findings set out in recitals 146 to 149 of the provisional Regulation are hereby confirmed.

7.3. **Interest of users**

(97) The rewinders, which are the main users of the product concerned in the European Community, represented by the Aluminium Foil Association claimed that:

— contrary to the provisional findings in recital 153 of the provisional Regulation, the cost of transport of consumer reels from China would represent only a small percentage of the value of the goods (approximately 1 % of the sales price) and there would be almost no difference with the transport cost of the product concerned (approximately 0,2 % of the sales price),

— the large product mix offered by Community rewinders would not be an advantage as retailers would also be able to source the product concerned in large quantities through separate contracts from importers/traders of consumer reels,

— contrary to the provisional findings in recital 154 of the provisional Regulation, the production of ACF would remain the priority of the Community producers which are not interested in the production of the product concerned. In the event that definitive measures would be imposed, the supply of the product concerned in the Community would not be sufficient to meet the rewinders needs,

— contrary to the provisional findings in recital 163 of the provisional Regulation, definitive measures, if any, should also apply on products weighing less than 10 kg. Otherwise, these measures would lead to a surge of dumped imports of consumer reels, especially from China, with severe negative consequences for the Community rewinders, leading to a loss of 4 000 jobs in the Community. This view was supported by exporting producers from two countries concerned.

(98) The evidence submitted with regard to transport costs was considered reliable and could therefore be accepted. However, the risk that imports of the product concerned may be substituted by imports of the downstream product is not considered, in itself, a reason not to impose anti-dumping measures. Indeed, no evidence has been presented or obtained to the effect that such imports would increase in significant quantities and at prices undercutting those from the rewinders in the Community. Unfair trading practices of exporting producers of the downstream product would have to be examined separately on the basis of sufficient prima facie evidence. It is furthermore considered that a switch to the downstream products in the PRC in larger quantities would very likely take some time as it would require new investments in machinery and the establishment of new sales channels. Therefore, any effects will only be felt in the medium term. As far as the number of jobs in the downstream industry in the Community is concerned, this claim was not substantiated. The figures reported were therefore not regarded as reliable. On this basis, the provisional conclusions laid down in recitals 153 to 162 of the provisional Regulation are herewith confirmed.

(99) In the absence of any other comments with regard to the Community interest, the findings set out in recitals 150 to 163 of the provisional Regulation are hereby confirmed.

8. DEFINITIVE ANTI-DUMPING MEASURES

8.1. Injury elimination level

(100) One exporting producer claimed that the calculation of the injury elimination level should be based on the cost of production rather than the selling price of the product concerned. The same exporter claimed that the target profit used to calculate the injury elimination level was too high and should have been 1 % which would be more in line with the current market circumstances, in particular the economic downturn. Furthermore, this exporting producer reiterated that adjustments should have been made for differences in quality between the product exported and the one produced and sold by the CI on the Community market.

(101) As far as the first claim is concerned, i.e. the injury elimination level should be established on the basis of the cost of production, it is noted that using such methodology does not have any impact on the results and was therefore considered irrelevant. Regarding the level of the target profit, as mentioned in recital 165 of the provisional Regulation, a very conservative pre-tax profit margin for producers of 5 % was used. This was also proposed in the complaint and used in the previous investigation. However, the proposed target profit was not at a level which would allow the CI to maintain production capacities and new investments and had therefore to be rejected. Concerning the claim regarding the quality of the product, and as already outlined in recital 52 it was found that all product types have similar basic physical and technical characteristics and were used in the same basic applications regardless of their specific quality. In the absence of any evidence supporting these allegations, the provisional conclusions laid down in recitals 164 to 166 of the provisional Regulation are herewith confirmed.

(102) Another exporting producer argued that the injury elimination level should aim to establish sales prices that offset an actual loss. This had to be rejected, since the injury elimination level is the price level which the Community industry could reasonably achieve in the absence of dumped imports.

(103) The same exporting producer argued further that the target profit should be set at the level of the actual profit realised at the beginning of the period considered, in this case a loss. On this basis, the underselling margin would be *de minimis*.

(104) This argument had to be rejected on the ground that the CI was still affected by a previous situation of dumping from Russia and the PRC as well as dumped imports originating from Brazil. Therefore, it was considered that a profit margin of 5 % would be the profit margin that could reasonably be achieved by an industry of this type in the sector under normal conditions of competition.

(105) As mentioned above in recital 61, in order to ensure a comparison on the same level of trade, sales of the exporting producer in Brazil to its unrelated trader were excluded when calculating the price undercutting and consequently also the injury elimination level.

(106) In the absence of any other comments concerning the injury elimination level, recitals 164 to 166 of the provisional Regulation are hereby confirmed.

(107) The definitive countrywide injury margin for the PRC was calculated on the basis of the weighted average of (i) the injury margin of a company in the PRC to whom MET and IT were refused and (ii) the highest injury margin of that company applied to the export prices taken from Eurostat data (being representative of the non-cooperating Chinese exporters). On this basis, the countrywide injury margin was established at 30,0 % of the cif Community frontier price, duty unpaid.

8.2. **Definitive measures**

(108) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level sufficient to eliminate the injury caused by the dumped imports without exceeding the dumping margin found.

(109) The following rates of definitive anti-dumping duties are proposed:

Country	Company	Definitive dumping margin	Definitive injury margin	Definitive anti-dumping duty
Brazil	Companhia Brasileira de Aluminio	27,6 %	17,6 %	17,6 %
	All other companies	27,6 %	17,6 %	17,6 %
PRC	Alcoa Bohai and Alcoa Shanghai	25,6 %	6,4 %	6,4 %
	Shandong Loften	33,7 %	20,3 %	20,3 %
	Zhenjiang Dingsheng	37,4 %	24,2 %	24,2 %
	All other companies	47,0 %	30,0 %	30,0 %
Armenia	RUSAL Armenal	33,4 %	13,4 %	13,4 %
	All other companies	33,4 %	13,4 %	13,4 %

(110) The individual company 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 country concerned and produced by the companies 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 those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(111) Any claim requesting the application of this 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 [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.

8.3. **Definitive collection of provisional duties**

(112) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected to the extent of the amount of the definitive duties imposed. Where the definitive duties are lower than the provisional duties, amounts provisionally secured in excess of the definitive rate of anti-dumping duties shall be released.

8.4. **Form of the measures**

(113) In the course of the investigation, the sole cooperating exporting producer in Armenia and the sole cooperating exporting producer in Brazil offered price undertakings in accordance with Article 8(1) of the basic Regulation.

(114) Both offers were examined. The Brazilian exporter's offer eliminates the injurious effects of dumping and limits to a sufficient degree the risk of circumvention. With regard to the Armenian exporter's offer, given the complex structure of the company group and its complex sales channels, a high risk of cross-compensation exists with sales of the same product to the same customers but from different origins as well as sales of different products to the same customers from different sales companies in the same group. The Armenian exporter submitted a substantially revised undertaking offer after the deadline set out in Article 8(2) of the basic Regulation. It is noted that in addition to the fact that the revised offer was submitted after the deadline, it cannot be accepted for the following reason: although the company offered to sell only directly to the first independent customer in the EU, i.e. without including its two related companies in the sales channel, the investigation showed that the company sold other products to the same customers in the EU. Moreover, the company announced that it planned to produce and sell a new product type, namely ACF, to the EU. As it is possible that this new product type could be sold to the same customers in the EU, even the revised offer cannot limit the risk of cross-compensation to an acceptable degree.

(115) By Decision 2009/736/EC [2] the Commission has accepted the undertaking offer from Companhia Brasileira de Aluminio (CBA). The Council recognises that the undertaking offer eliminates the injurious effect of dumping and limits to a sufficient degree the risk of circumvention. The offer from Rusal Armenal is rejected for the reasons set out in recital 114 and due to the problems found with their accounts, as explained in recitals 21 and 22.

(116) To further enable the Commission and the customs authorities to effectively monitor the compliance of CBA with the undertaking, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty is to be conditional on (i) the presentation of an undertaking invoice, which is a commercial invoice containing at least the elements listed and the declaration stipulated in Annex II; (ii) the fact that imported goods are manufactured, shipped and invoiced directly by CBA to the first independent customer in the Community and (iii) the fact that the goods declared and presented to the customs authorities correspond exactly with the description on the undertaking invoice. Where the above conditions are not met, the appropriate anti-dumping duty shall be incurred at the time of acceptance of the declaration for release into free circulation.

(117) Whenever, pursuant to Article 8(9) of the basic Regulation, the Commission withdraws its acceptance of an undertaking following a breach by referring to particular transactions and declares the relevant undertaking invoices to be invalid, a customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation.

(118) Importers should be aware that a customs debt may be incurred, as a normal trade risk, at the time of acceptance of the declaration for release into free circulation as described in recitals 116 and 117 even if an undertaking offered by the manufacturer from whom they were buying, directly or indirectly, had been accepted by the Commission.

(119) Pursuant to Article 14(7) of the basic Regulation, customs authorities should inform the Commission immediately whenever indications of a violation of the undertaking are found.

[1] European Commission, Directorate-General for Trade, Directorate H, Office N-105 4/92, 1049 Brussels, BELGIUM.

[2] See page 50 of this Official Journal.

(120) For the reasons stated above, the undertaking offered by CBA is considered acceptable by the Commission and that offered by Armenal not acceptable. The companies concerned have been informed of the essential facts, considerations and obligations upon which acceptance and rejection were based.

(121) In the event of a breach or withdrawal of the undertakings, or in the event of withdrawal of acceptance of the undertakings by the Commission, the anti-dumping duty which has been imposed by the Council in accordance with Article 9(4) shall automatically apply by means of Article 8(9) of the basic Regulation.

9. **MONITORING**

(122) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures include the following:

(123) The presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.

(124) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met, an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rates and the consequent imposition of a countrywide duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg and currently falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 10), originating in Armenia, Brazil and the People's Republic of China (the 'PRC').

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

Country	Company	Anti-dumping duty	TARIC additional code
Armenia	Closed Joint Stock Company Rusal-Armenal	13,4 %	A943
	All other companies	13,4 %	A999
PRC	Alcoa (Shanghai) Aluminium Products Co., Ltd and Alcoa (Bohai) Aluminium Industries Co., Ltd	6,4 %	A944
	Shandong Loften Aluminium Foil Co., Ltd	20,3 %	A945
	Zhenjiang Dingsheng Aluminium Co., Ltd	24,2 %	A946
	All other companies	30,0 %	A999
Brazil	Companhia Brasileira de Aluminio	17,6 %	A947
	All other companies	17,6 %	A999

3. Notwithstanding the first paragraph, the definitive anti-dumping duty shall not apply for imports released for free circulation in accordance with Article 2.

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

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

Article 2

1. Imports declared for release into free circulation which are invoiced by companies from which undertakings are accepted by the Commission and whose names are listed in Decision 2009/736/EC, as amended from time to time, shall be exempt from the anti-dumping duty imposed by Article 1, on condition that:

— they are manufactured, shipped and invoiced directly by the said companies to the first independent customer in the Community, and

— such imports are accompanied by an undertaking invoice which is a commercial invoice containing at least the elements and the declaration stipulated in Annex II to this Regulation, and

— the goods declared and presented to the customs authorities correspond exactly with the description on the undertaking invoice.

2. A customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation:

— whenever it is established, in respect of imports described in paragraph 1, that one or more of the conditions listed in that paragraph are not fulfilled, or

— when the Commission withdraws its acceptance of the undertaking pursuant to Article 8(9) of the basic Regulation in a regulation or decision which refers to particular transactions and declares the relevant undertaking invoices to be invalid.

Article 3

Amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 287/2009 on imports of aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg and falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 10), originating in Armenia, Brazil and the PRC shall be definitively collected at the rate of the definitive duty imposed pursuant to Article 1. The amounts secured in excess of the rates of the definitive anti-dumping duties shall be released.

Article 4

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

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

Done at Brussels, 24 September 2009.

For the Council
The President
M. OLOFSSON

ANNEX I

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(5):

1. The name and function of the official of the entity issuing the commercial invoice.

2. The following declaration: 'I, the undersigned, certify that the (volume) of aluminium foil sold for export to the European Community covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.'

3. Date and signature.

ANNEX II

The following elements shall be indicated in the commercial invoice accompanying the companies' sales to the Community of goods which are subject to the undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.

2. The name of the company issuing the commercial invoice.

3. The commercial invoice number.

4. The date of issue of the commercial invoice.

5. The TARIC additional code under which the goods on the invoice are to be customs-cleared at the Community frontier.

6. The exact description of the goods, including:

   — the product code number (PCN) used for the purpose of the undertaking,

   — plain language description of the goods corresponding to the PCN concerned,

   — the company product code number (CPC),

   — TARIC code,

   — quantity (to be given in tonnes).

7. The description of the terms of the sale, including:

   — price per tonnes,

   — the applicable payment terms,

   — the applicable delivery terms,

   — total discounts and rebates.

8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.

9. The name of the official of the company that has issued the commercial invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the Undertaking offered by [COMPANY], and accepted by the European Commission through Decision 2009/736/EC (*). I declare that the information provided in this invoice is complete and correct.

(*) OJ L 262, 6.10.2009, p. 50.'