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I

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

REGULATIONS

COUNCIL REGULATION (EC) No 282/2009

of 6 April 2009

amending Regulation (EC) No 1212/2005 imposing a definitive anti-dumping duty on imports of certain castings 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 ⁽¹⁾ (the 'basic Regulation'),

Having regard to Article 1(4) of Council Regulation (EC) No 1212/2005 of 25 July 2005 imposing a definitive anti-dumping duty on imports of certain castings originating in the People's Republic of China ⁽²⁾,

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

Whereas:

A. MEASURES IN FORCE

- (1) By Regulation (EC) No 1212/2005, the Council imposed a definitive anti-dumping duty on imports into the Community of castings of non-malleable cast iron of a kind used to cover and/or give access to ground or sub-surface systems, and parts thereof, whether or not machined, coated or painted or fitted with other materials, excluding fire hydrants, originating in the People's Republic of China ('PRC') ('the product concerned'), normally declared within CN codes 7325 10 50, 7325 10 92 and ex 7325 10 99 (Taric code 7325 10 99 10). Given the large number of cooperating parties, a sample of Chinese exporting producers was selected during the investigation which led to the imposition of the measures.
- (2) The sampled companies were attributed the individual duty rates established during the investigation. The cooperating non-sampled companies which were granted market economy treatment ('MET'), in accordance with the provisions of Article 2(7)(c) of the basic Regulation, were attributed the 0 % anti-dumping duty which was

established for the sole sampled company which was granted MET. The cooperating non-sampled companies which were granted individual treatment ('IT'), in accordance with the provisions of Article 9(5) of the basic Regulation, received the weighted average duty of 28,6 % established for the sampled companies that were granted IT. A countrywide duty of 47,8 % was imposed on all other companies.

- (3) Article 1(4) of Regulation (EC) No 1212/2005 gives the possibility to Chinese exporting producers which meet the four criteria set out in that Article to be granted the same treatment as the one mentioned in recital (2) above for the cooperating companies not included in the sample ('New Exporting Producer Treatment' or 'NEPT').

B. NEW EXPORTING PRODUCERS' REQUESTS

- (4) Six companies have requested to be granted NEPT. One company subsequently withdrew its request in the course of the investigation.
- (5) An examination has been carried out to determine whether each of the applicants fulfils the criteria for being granted NEPT as set out in Article 1(4) of Regulation (EC) No 1212/2005, by verifying that:
 1. it did not export to the Community the product concerned during the investigation period on which the measures are based (1 April 2003 to 31 March 2004) (the first criterion);
 2. it is not related to any of the exporters or producers in the People's Republic of China which are subject to the anti-dumping measures imposed by that Regulation (the second criterion);
 3. 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 of the product concerned to the Community (the third criterion);

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 199, 29.7.2005, p. 1.

4. it operates under market economy conditions defined in Article 2(7)(c) of the basic Regulation or alternatively that it fulfils the requirements to have an individual duty applied in accordance with Article 9(5) of the basic Regulation (the fourth criterion).
- (6) Since the fourth criterion implies that the applicants submit a claim for Market Economy Treatment ('MET') and/or Individual Treatment ('IT'), the Commission sent MET and IT claim forms to all Chinese applicants. Five Chinese applicant companies requested MET pursuant to Article 2(7) of the basic Regulation. One company requested only IT pursuant to Article 9(5) of the basic Regulation.
- (7) Questionnaires were sent to all applicants who were asked to supply evidence to demonstrate that they met the criteria mentioned above.
- (8) Exporting producers fulfilling these criteria may, pursuant to Article 1(4) of Regulation (EC) No 1212/2005, be granted either the 0 % duty rate applicable to companies to whom MET was granted in accordance with Article 2(7)(c) of the basic Regulation, or the weighted average duty rate of 28,6 % applicable to companies to whom individual IT was granted in accordance with Article 9(5) of the basic Regulation.
- (9) The Commission sought and verified all information it deemed necessary for the purpose of the determination of the fulfilment of the four criteria set out in Article 1(4) of Regulation (EC) No 1212/2005.

C. FINDINGS

- (10) The examination of the requests established that two companies did not export the product concerned to the Community after the investigation period on which the measures are based, nor did they enter into an irrevocable contractual obligation to export the product concerned to the Community. These companies did not meet the third criterion mentioned in recital (5) above and therefore could not be granted NEPT.
- (11) Two Chinese exporting producers could not show that they were not related to exporters or producers in the People's Republic of China which are subject to the anti-dumping measures imposed by Regulation (EC) No 1212/2005; indeed they could not successfully rebut evidence pointing to such a relationship. These companies did not meet the second criterion mentioned in recital (5) above and therefore could not be granted NEPT.

- (12) One Chinese exporting producer, Weifang Stable Casting, that only requested IT, provided sufficient evidence to prove that it meets all the four criteria mentioned at recital (5) above. This company in fact could prove that i) it did not export to the Community the product concerned during the period 1 April 2003 to 31 March 2004, ii) it is not related to any of the exporters or producers in the People's Republic of China which are subject to the anti-dumping measures imposed by Regulation (EC) No 1212/2005, iii) it actually exported a significant quantity of the product concerned to the Community starting from the year 2008, iv) it fulfils all the requirements for IT and can therefore be granted an individual duty in accordance with Article 9(5) of the basic Regulation. Therefore, this producer could be granted the weighted average duty rate for companies granted IT applicable to the cooperating companies not included in the sample (i.e. 28,6 %) in accordance with Article 1(4) of Regulation (EC) No 1212/2005, and be added to the list of exporting producers in Article 1(2) of that Regulation.

D. MODIFICATION OF THE LIST OF COMPANIES BENEFITING FROM INDIVIDUAL DUTY RATES

- (13) In consideration of the findings of the investigation as indicated in recital (12) above, it is concluded that the company Weifang Stable Casting should be added to the list of companies individually mentioned under Article 1(2) of Regulation (EC) No 1212/2005 with a duty rate of 28,6 %.
- (14) All the applicants and the Community Industry have been informed of the findings of the investigation and have had the opportunity to submit their comments. Their comments were taken into account where appropriate,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Regulation (EC) No 1212/2005 shall be replaced by the following:

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

Company	Anti-dumping duty (%)	Taric additional code
Shijiazhuang Transun Metal Products Co. Ltd, Xinongcheng Liulintun, Luancheng County, Shijiazhuang City Hebei Province, 051430 PRC	0	A675
Shaoshan Huanqiu Castings Foundry, Fengjia Village Yingtian Township, Shaoshan, Hunan, PRC	0	A676
Fengtai Handan Alloy Casting Co. Ltd Beizhangzhuang Town, Handan County, Hebei, PRC	0	A677
Shanxi Jiaocheng Xinglong Casting Co. Ltd Jiaocheng County, Shanxi Province, PRC	0	A678
Tianjin Jinghai Chaoyue Industrial and Commercial Co. Ltd Guan Pu Tou Village, Yang Cheng Zhuang Town Jinghai District, 301617 Tianjin, PRC	0	A679
Baoding City Maikesaier Casting Ltd Xin'anli Town, Tang County Hebei; Baoding 072350, PRC	0	A867
Baoding Yuehai Machine Manufacturing Co. Ltd No 333 Building A Tian E West Road Baoding, Hebei, PRC	0	A868
Shanxi Yuansheng Casting and Forging Industrial Co. Ltd No. 8 DiZangAn, Taiyuan, Shanxi, 030002, PRC	18,6	A680
Botou City Simencum Town Bai fo Tang Casting Factory Bai Fo Tang Village, Si Men Cum Town, Bo Tou City 062159, Hebei Province, PRC	28,6	A681
Hebei Shunda Foundry Co. Ltd, Qufu Road, Quyang 073100, PRC	28,6	A682
Xianxian Guozhuang Precision Casting Co., Ltd Guli Village, Xian County Hebei, Gouzhuang, PRC	28,6	A869
Wuxi Norlong Foundry Co. Ltd Wuxi New District Jiangsu, PRC	28,6	A870
HanDan County Yan Yuan Smelting and Casting Co. Ltd South of Hu Cun Village, Hu Cun Town Han Dan County, Hebei, PRC	28,6	A871
Tianjin Loiselet Art Casting Co. Ltd Dongzhuangke, Yangchenzhuang Jinghai, Tianjin, PRC	28,6	A872
Weifang Stable Casting Co. Ltd Fangzi District, Weifang City, Shandong Province, PRC	28,6	A931
Changan Cast Limited Company of Yixian Hebei Taiyuan main street, Yi County, Hebei Province 074200, PRC	31,8	A683
Shandong Huijin Stock Co. Ltd, North of Kouzhen Town Laiwu City, Shandong Province, 271114, PRC	37,9	A684
All other companies	47,8	A999'

Article 2

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

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

Done at Luxembourg, 6 April 2009.

For the Council
The President
J. POSPÍŠIL

COUNCIL REGULATION (EC) No 283/2009

of 6 April 2009

amending Regulation (EC) No 1858/2005 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, *inter alia*, in India

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 11(3) thereof,

Having regard to the proposal from the Commission, submitted following consultation with the Advisory Committee,

Whereas:

that the anti-dumping measures applicable to imports of steel ropes and cables originating, *inter alia*, in India should be maintained (the expiry investigation).

- (4) On 23 January 2006, the Council, by Regulation (EC) No 121/2006⁽⁵⁾, amended Regulation (EC) No 1858/2005 in view of a breach of the abovementioned price undertaking, and the acceptance of the undertaking was withdrawn on 22 December 2005 by Commission Decision 2006/38/EC⁽⁶⁾.

2. Request for an interim review

- (5) In 2007, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation (interim review). The request, limited in scope to the examination of dumping, was lodged by UML. UML claimed that its export prices to the Community had increased at a more rapid pace than the domestic prices in India, as confirmed by the decrease of the dumping margin. Thus UML argued that the circumstances on the basis of which measures were established had changed and that these changes were of a lasting nature.

A. PROCEDURE

1. Measures in force

- (1) On 12 August 1999, by Regulation (EC) No 1796/1999⁽²⁾ (the original investigation), the Council imposed a definitive anti-dumping duty on imports of steel ropes and cables (the product concerned) originating, *inter alia*, in India (the country concerned). The rate of the definitive anti-dumping duty applicable to the products manufactured by Usha Martin Limited (UML) was set at 23,8 %.
- (2) By Decision 1999/572/EC⁽³⁾ the Commission accepted a price undertaking from UML and as a result imports of the product concerned of Indian origin, produced by UML and covered by the undertaking, were exempt from the abovementioned definitive anti-dumping duty rate.
- (3) On 8 November 2005, following an expiry review pursuant to Article 11(2) of the basic Regulation, the Council, by Regulation (EC) No 1858/2005⁽⁴⁾, decided

- (6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission decided to initiate a partial interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping as far as UML is concerned. The Commission published a Notice of initiation on 9 January 2008 in the *Official Journal of the European Union*⁽⁷⁾ and commenced an investigation.

3. Parties concerned by the investigation

- (7) The Commission officially advised UML, the authorities of the exporting country and the representative organisation of the Community producers, the Liaison Committee of EU Wire Ropes Industries (EWRIS), of the initiation of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 217, 17.8.1999, p. 1.

⁽³⁾ OJ L 217, 17.8.1999, p. 63.

⁽⁴⁾ OJ L 299, 16.11.2005, p. 1.

⁽⁵⁾ OJ L 22, 26.1.2006, p. 1.

⁽⁶⁾ OJ L 22, 26.1.2006, p. 54.

⁽⁷⁾ OJ C 4, 9.1.2008, p. 22.

4. Questionnaires and verification visits

(8) Questionnaires were sent to UML and its related companies, all of which replied within the deadlines set for that purpose. The Commission sought and verified all the information it deemed necessary for its analysis and carried out verification visits at the premises of the following companies:

(a) India

— Usha Martin Limited (UML), Ranchi;

(b) United Arab Emirates (UAE)

— Brunton Wolf Wire Ropes FZCo, Dubai;

(c) United Kingdom

— Usha Martin UK Ltd (UMUK), Worksop.

5. Review investigation period

(9) The review investigation period of dumping covered the period from 1 October 2006 to 30 September 2007 (RIP).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(10) The product concerned by this partial interim review is commonly called steel wire rope (SWR) and is the same as that defined in the original and the expiry investigations which led to the imposition of measures currently in force. It consists of steel ropes and cables, including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm originating in India, currently classifiable within CN codes ex 7312 10 81, ex 7312 10 83, ex 7312 10 85, ex 7312 10 89 and ex 7312 10 98.

2. Like product

(11) It was found that SWR produced by UML and sold on the Indian domestic market and that exported by UML to the Community share the same basic physical, technical and chemical characteristics and uses. These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

(12) For a proper comprehension of the product concerned and the like product, it should be recalled that the process to produce SWR consists of closing a number of steel strands, which themselves are composed of a bundle of steel wires from steel wire rods. It is common practice in investigations to define product control numbers (PCN), which take into account detailed product characteristics, in order to differentiate amongst the various product types produced and sold by the exporting producer on the domestic market of the country concerned and those exported to the Community.

(13) The Community industry claimed that two key elements were not taken into account in the definition of the proposed PCNs for the dumping calculations, namely the type of core and the tensile strength of the wire component.

(14) However, for the purpose of establishing a dumping margin for UML, the PCNs were established in accordance with the company's own product coding system, in order to ensure that the physical characteristics of the products sold on the domestic market were comparable to those of the products exported to the Community.

(15) In the light of the above, it was not considered necessary to modify the PCNs and therefore the claim had to be rejected.

(16) UML argued that closely resembling product types should be included in the comparison of exported types with those sold on their domestic market, taking into account alleged minimal differences in the rope diameter, such as the arrangements of wires in the strands, the number of strands in combinations of strand/wire, or wire characteristics, such as galvanised as opposed to non-galvanised wires.

(17) It was however considered that the investigation reviewing alleged changed circumstances should be carried out as much as possible following the same parameters as those used in the previous investigations. Moreover, the examination of the claim showed that the possible impact on the findings of the investigation would have been insignificant. This claim was therefore rejected.

C. DUMPING

1. Normal value

- (18) For the determination of normal value it was first established whether UML's total volume of domestic sales of the like product were representative in comparison with its total export sales volume to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales is considered representative when the total domestic sales volume is at least 5 % of the total volume of corresponding export sales to the Community. It was found that all UML's sales were sold in the domestic market in representative volumes.
- (19) Subsequently, those types of the product concerned sold on the domestic market by UML that were identical and directly comparable to the types sold for export to the Community, were identified.
- (20) For each type sold by UML on the domestic market and found to be directly comparable with the types sold for export to the Community, it was established whether domestic sales were sold in representative volume for the purposes of Article 2(2) of the basic Regulation.
- (21) It was also examined whether the domestic sales of each type could be regarded as having been made in the ordinary course of trade, pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable sales to independent customers on the domestic market of each exported type of the product concerned during the RIP.
- (22) For those product types where more than 80 %, by volume, of sales on the domestic market were not below unit costs, i.e. where the average sales price of the product type concerned was equal to or higher than the average production cost for the product type concerned, normal value was calculated as the average price of all domestic sales of the product type in question irrespective of whether these sales were profitable or not.
- (23) For those product types where no more than 80 %, by volume, of sales on the domestic market were not below unit costs, normal value was calculated as the weighted average sales price of those transactions which were made at or above unit costs of the type in question.
- (24) In the cases where all transactions of a certain product type were sold at a loss on the domestic market, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore normal value had to be calculated in accordance with

Article 2(3) of the basic Regulation, i.e. on the basis of the manufacturing cost of the type concerned, plus an amount for selling, general and administrative (SG&A) expenses and a reasonable margin of profit. Pursuant to Article 2(6) of the basic Regulation the amounts of SG&A and profit were based on the average SG&A and profit of UML sales in the ordinary course of trade of the like product.

2. Export price

- (25) In all cases where the product concerned was exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.
- (26) In cases where sales were made via a related importer or trader, the export price taken into account was the resale price of that related importer or trader to independent customers in the Community. In accordance with Article 2(9) of the basic Regulation allowances were made for all costs incurred between importation and resale, including SG&A costs and the profit realised in the Community by the related importer during the RIP. Adjustments were made for inland and ocean freight, insurance costs, handling, packaging, credit costs and import duties, which were all deducted from the resale price in order to arrive at an ex-works basis.

3. Comparison

- (27) The average normal value was compared with the average export price for each type of the product concerned, on an ex-works basis and at the same level of trade. In accordance with Article 2(10) of the basic Regulation, and for the purpose of ensuring a fair comparison, adjustments were made for discounts, inland and ocean freight, insurance costs, handling, packaging and credit costs, which were all deducted from the export price in order to arrive at an ex-works basis.
- (28) Regarding the export sales to related companies, UML made a claim for a level of trade adjustment between domestic sales to dealers and export sales to UML's related companies on the ground that with both of them a long term working relationship existed.
- (29) The investigation found, however, that in the case of resale the related importers are merely an intermediate party between UML and unrelated Community customers. Therefore the comparison between domestic sales to traders and end-users and export resale to the same category of customers in the Community is unaffected by the level of trade of the intermediate parties. This claim was therefore rejected.

(30) UML made another claim for an adjustment regarding the adverse evolution of the exchange rates of the euro, the US dollar and the British pound compared to the Indian rupee during the RIP. This claim was rejected because the movement was not considered to be sustained and also because apart from the direct sales to unrelated customers in the Community in euro, the claimed allowance concerned transfer prices to related companies.

4. Dumping margin

(31) In accordance with Article 2(11) and (12) of the basic Regulation, a dumping margin was calculated, by comparing the weighted average normal value with the weighted average export price.

(32) Under the conditions described above, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned at the same level of trade.

(33) Expressed as a percentage of the net, free-at-Community-frontier price, duty unpaid, the dumping margin established for direct sales to unrelated companies in the Community during the RIP was 2,6 % whereas the one determined for sales via related companies was - 3,9 %, leading to an overall negative dumping margin of - 2,8 %.

D. LASTING NATURE OF CHANGED CIRCUMSTANCES

(34) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances which were found to exist could reasonably be said to be of a lasting nature.

(35) The investigation showed that since the expiry investigation, UML significantly restructured and in particular diversified its production and enlarged its worldwide sales network. However, this did not have any particular adverse impact on the investigation, given that the group's recording system from production to sale allows for full traceability.

(36) The Community industry alleged that UML exported to the Community SWR and strands of Indian origin via its related producers in the UK and UAE thereby changing the origin of the SWR sold on the Community market.

(37) In view of the above allegation and for sake of completeness, the various group transactions and transformation of strands into SWR by the related producers in the UK and UAE were also investigated. These transactions were not found to affect the findings of this review investigation.

(38) As regards the related producer in the UAE, it was found that it did not export any SWR purchased from UML in India to the Community during the RIP. All its sales transactions were checked and were found to have the rest of the world as destination.

(39) As regards the transformation of strands into SWR, it was found that this transformation was important at both related producers.

(40) As mentioned in recital 35, the Usha Martin group has restructured and diversified its production. It produces steel wire ropes not only in India but also in its other production facilities worldwide. The group is making further productivity and enhancement investments in India but is at the same time increasingly becoming a global player, investing in all parts of the world, including the Community.

(41) It is also worth noting that according to Eurostat average import prices of SWR from India to the Community have shown an increasing trend since 2004. Indeed the increase in average import prices from India has been much more marked than the increase in world average import prices.

(42) In the light of the above, it is expected that there will be no increase of imports of SWR and no reappearance of dumped imports into the Community of SWR of Indian origin, as a consequence of the repeal of the anti-dumping duty in force on UML.

(43) It is therefore considered that the circumstances that led to the initiation of this review are unlikely to change in the foreseeable future in a manner that would affect the findings of the current review. Therefore the changes are considered to be of a lasting nature.

E. ANTI-DUMPING MEASURES

(44) It follows from the above that, as provided for by Article 11(3) of the basic Regulation, and in the light of the findings of the investigation, i.e. the absence of dumping during the RIP and absence of indications of recurrence of dumping in the future, the anti-dumping measures applicable to imports of steel ropes and cables originating in India should be repealed in respect of UML.

(45) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the repeal of the anti-dumping duty in force on imports of steel ropes and cables originating in India in respect of UML, and were given the opportunity to comment.

(46) Interested parties made their views known. However these were not of a nature to change the above conclusions,

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 1(2) of Regulation (EC) No 1858/2005 shall be amended as follows, as far as Usha Martin Limited is concerned:

Country	Company	Rate of duty (%)	TARIC additional code
India	Usha Martin Limited 2A, Shakespeare Sarani Kolkata 700 071, West Bengal, India	0	8613

Article 2

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

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

Done at Luxembourg, 6 April 2009.

For the Council
The President
J. POSPÍŠIL

COUNCIL REGULATION (EC) No 284/2009**of 7 April 2009****amending Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund concerning certain provisions relating to financial management**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 161 third subparagraph thereof,

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Whereas:

(1) The unprecedented crisis hitting international financial markets has brought about major challenges for the Community, which necessitates a rapid response in order to counter effects on the economy as a whole and, in particular, to support investments in order to promote growth and employment.

(2) The regulatory framework for the 2007-2013 programming period has been adopted with a view to achieving further simplification in the programming and management of the European Regional Development Fund, the European Social Fund and the Cohesion Fund, their effectiveness and subsidiarity in terms of their implementation.

(3) The adaptation of certain provisions of Regulation (EC) No 1083/2006 ⁽¹⁾ is necessary in order to facilitate the

mobilisation of Community financial resources for the start-up of operational programmes and assisted projects within the framework of these programmes in such a manner as to accelerate implementation and the impact of such investments on the economy.

(4) It is necessary to strengthen the possibility of provision by the European Investment Bank (EIB) and the European Investment Fund (EIF) of assistance to Member States in the preparation and implementation of operational programmes.

(5) Taking account of the status of the EIB and EIF as financial entities recognised by the Treaty, when financial engineering operations are organised involving them as holding funds, it should be possible to directly award them a contract.

(6) In order to facilitate the use of financial engineering instruments, notably within the field of sustainable urban development, it is necessary to provide for the possibility of in-kind contributions being considered as eligible expenditure in the constitution of, or contributions to, funds.

(7) In order to support enterprises, and in particular small and medium-sized enterprises, it is also necessary to make more flexible the conditions governing the payment of advances within the framework of State aids under Article 87 of the Treaty.

(8) In order to accelerate the implementation of major projects, it is necessary to allow expenditures relating to major projects which have not yet been adopted by the Commission to be included in expenditure declarations.

(9) To bolster the financial resources of Member States thus facilitating the rapid start-up of operational programmes in a crisis context, it is necessary to amend the provisions concerning pre-financing.

⁽¹⁾ OJ L 210, 31.7.2006, p. 25.

(10) The payment of a payment on account at the beginning of operational programmes should allow a regular cash flow and facilitate payments to beneficiaries during programme implementation. For this reason provisions should be established for such payments on account for the Structural Funds: 7,5 % (for Member States of the European Union as constituted before 1 May 2004) and 9 % (for the Member States that acceded to the European Union on or after 1 May 2004) in order to accelerate the implementation of operational programmes.

(11) By reason of the principles of equality of treatment and of legal security, the amendments relating to Articles 56(2) and 78(1) should apply during the whole 2007-2013 programming period. Retroactive application is therefore necessary with effect from 1 August 2006, the date on which Regulation (EC) No 1083/2006 came into force. As the unprecedented crisis affecting international financial markets necessitates a rapid response in order to counter effects on the economy as a whole, other amendments should enter into force on the day following its publication in the *Official Journal of the European Union*.

(12) Regulation (EC) No 1083/2006 should therefore be amended,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1083/2006 is hereby amended as follows:

1. in Article 44, the second paragraph shall be amended as follows:

(a) point (b) shall be replaced by the following:

'(b) when the agreement is not a public service contract within the meaning of applicable public procurement law, the award of a grant, defined for this purpose as a direct financial contribution by way of donation to a financial institution without a call for proposals, if this is in accordance with a national law compatible with the Treaty;'

(b) the following point (c) shall be added:

'(c) the award of a contract directly to the EIB or the EIF;'

2. in Article 46(1), the following second subparagraph shall be added:

'The EIB or the EIF may, upon request of the Member States, take part in technical assistance activities referred to in the first subparagraph.'

3. Article 56(2) shall be replaced by the following:

'2. By way of derogation from paragraph 1, contributions in kind, depreciation costs and overheads may be considered as incurred expenditure by beneficiaries for the implementation of operations under the conditions laid down in the third subparagraph of this paragraph.'

By way of derogation from paragraph 1, contributions in kind, as regards financial engineering instruments as defined in Article 78(6), first subparagraph, can be treated as expenditure paid at the constitution of the funds or holding funds or contributing to those funds or holding funds, under the conditions established in the third subparagraph of this paragraph.

Expenditure mentioned in the first and second subparagraphs must fulfil the following conditions:

(a) the eligibility rules drawn up on the basis of paragraph 4 foresee the eligibility of such expenditure;

(b) the amount of the expenditure is duly justified by supporting documents having equivalent probative value to invoices, without prejudice to provisions set out in specific Regulations;

(c) in the case of contributions in kind, the co-financing from the Funds does not exceed the total of eligible expenditure, excluding the value of such contributions;'

4. Article 78 shall be amended as follows:

- (a) the last sentence of the first subparagraph of Article 78(1) shall be replaced by the following:

‘Expenditure paid by beneficiaries shall be supported by receipted invoices or accounting documents of equivalent probative value, unless otherwise provided in specific Regulations for each Fund.’;

- (b) in Article 78(2) point (b) shall be deleted;

- (c) Article 78(4) shall be replaced by the following:

‘4. When, in application of Article 41(3), the Commission refuses to make a financial contribution to a major project, the expenditure declaration following the adoption of the Commission decision must be rectified accordingly.’;

5. in Article 82(1), second subparagraph, points (a), (b) and (c) shall be replaced by the following:

- ‘(a) for Member States of the European Union as constituted before 1 May 2004: in 2007 2 % of the contribution from the Structural Funds to the operational programme,

in 2008 3 % of the contribution from the Structural Funds to the operational programme, and in 2009 2,5 % of the contribution from the Structural Funds to the operational programme;

- (b) for Member States that acceded to the European Union on or after 1 May 2004: in 2007 2 % of the contribution from the Structural Funds to the operational programme, in 2008 3 % of the contribution from the Structural Funds to the operational programme and in 2009 4 % of the contribution from the Structural Funds to the operational programme;

- (c) if the operational programme falls under the European territorial cooperation objective and at least one of the participants is a Member State that acceded to the European Union on or after 1 May 2004, in 2007 2 % of the contribution from the ERDF to the operational programme, in 2008 3 % of the contribution from the ERDF to the operational programme and in 2009 4 % of the contribution from the ERDF to the operational programme.’.

Article 2

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

However, Article 1(3) and Article 1(4)(a) shall apply from 1 August 2006.

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

Done at Luxembourg, 7 April 2009.

For the Council
The President
K. SCHWARZENBERG

COMMISSION REGULATION (EC) No 285/2009**of 7 April 2009****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 8 April 2009.

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

Done at Brussels, 7 April 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	JO	88,9
	MA	50,7
	SN	208,5
	TN	129,8
	TR	105,8
	ZZ	116,7
0707 00 05	JO	155,5
	MA	51,1
	TR	136,5
	ZZ	114,4
0709 90 70	MA	64,2
	TR	88,8
	ZZ	76,5
0709 90 80	EG	60,4
	ZZ	60,4
0805 10 20	CN	39,7
	EG	43,8
	IL	63,4
	MA	46,5
	TN	48,1
	TR	76,6
	ZZ	53,0
0805 50 10	TR	55,9
	ZZ	55,9
0808 10 80	AR	82,2
	BR	80,0
	CA	110,7
	CL	89,3
	CN	75,2
	MK	24,7
	NZ	113,4
	US	122,1
	UY	71,7
	ZA	78,7
ZZ	84,8	
0808 20 50	AR	78,9
	CL	102,0
	CN	59,2
	UY	52,8
	ZA	95,9
	ZZ	77,8

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 286/2009

of 7 April 2009

entering certain names in the register of protected designations of origin and protected geographical indications (Melva de Andalucía (PGI), Caballa de Andalucía (PGI), Ovos Moles de Aveiro (PGI), Castagna di Vallerano (PDO))

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

'Castagna di Vallerano' have been published in the *Official Journal of the European Union* ⁽²⁾.

Having regard to the Treaty establishing the European Community,

(2) As no objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, these names should be entered in the register,

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾, and in particular the first subparagraph of Article 7(4) thereof,

HAS ADOPTED THIS REGULATION:

Whereas:

Article 1

The names contained in the Annex to this Regulation are hereby entered in the register.

(1) In accordance with the first subparagraph of Article 6(2) and pursuant to Article 17(2) of Regulation (EC) No 510/2006, Spain's applications to register the names 'Melva de Andalucía' and 'Caballa de Andalucía', Portugal's application to register the name 'Ovos Moles de Aveiro' and Italy's application to register the name

Article 2

This Regulation shall enter into force on the 20th 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, 7 April 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ C 177, 12.7.2008, p. 18 (Melva de Andalucía), OJ C 177, 12.7.2008, p. 21 (Caballa de Andalucía), OJ C 184, 22.7.2008, p. 42 (Ovos Moles de Aveiro), OJ C 190, 29.7.2008, p. 7 (Castagna di Vallerano).

ANNEX

1. Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.6. Fruit, vegetables and cereals, fresh or processed

ITALY

Castagna di Vallerano (PDO)

Class 1.7. Fresh fish, molluscs and crustaceans and products derived therefrom

SPAIN

Melva de Andalucía (PGI)

Caballa de Andalucía (PGI)

2. Foodstuffs listed in Annex I to the Regulation:

Class 2.4. Bread, pastry, cakes, confectionery, biscuits and other baker's wares

PORTUGAL

Ovos Moles de Aveiro (PGI)

COMMISSION REGULATION (EC) No 287/2009**of 7 April 2009****imposing a provisional anti-dumping duty on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 7 thereof,

Whereas:

A. PROCEDURE**1. Initiation**

- (1) On 28 May 2008, the Commission received a complaint concerning aluminium foil originating in Armenia, Brazil and the People's Republic of China (PRC) lodged pursuant to Article 5 of the basic Regulation by Euro-métaux (the complainant) on behalf of producers representing a major proportion, in this case more than 25 %, of the total Community production of aluminium foil.
- (2) This complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.
- (3) On 12 July 2008, the proceeding was initiated by the publication of a notice of initiation in the *Official Journal of the European Union*⁽²⁾.

2. Parties concerned by the proceeding

- (4) The Commission officially advised the complainant Community producers, exporting producers in Armenia, Brazil and the PRC, importers, traders, users, suppliers and associations known to be concerned, and the representatives of Armenia, Brazil and the PRC 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.

(5) In order to allow exporting producers in Armenia and the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the Armenian exporting producer and Chinese exporting producers known to be concerned, the Armenian and Chinese authorities and to other Chinese exporting producers that made themselves known within the deadlines set out in the notice of initiation. The Armenian exporting producer and six Chinese exporting producers together with their related sales companies, where appropriate, requested MET pursuant to Article 2(7) of the basic Regulation, or IT should the investigation establish that they did not meet the conditions for MET.

(6) In view of the apparent high number of exporting producers in the PRC and importers in the Community the Commission indicated in the notice of initiation that sampling might be applied in this investigation for the determination of dumping and injury in accordance with Article 17 of the basic Regulation.

(7) 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 and importers in the Community 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 period 1 July 2007-30 June 2008.

(8) Six exporting producers in the PRC responded to the sampling exercise. However one company withdrew from further cooperation with the investigation at an early stage, leaving only five exporting producers remaining. Sampling was therefore no longer necessary and all parties were informed that a sample would not be selected.

(9) Eight importers/users responded to the sampling exercise. Sampling was therefore no longer necessary and all parties were informed that a sample would not be selected.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ C 177, 12.7.2008, p. 13.

- (10) Questionnaires were sent to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from one exporting producer in Armenia, five in the PRC and one in Brazil, and one producer in the analogue country, Turkey. Full questionnaire replies were also received from 6 Community producers and 8 importers/users cooperated by submitting a questionnaire reply. None of the final users supplied the Commission with any information or made themselves known in the course of this investigation.
- (11) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:
- (a) Community producers
- Alcomet PLC, Shumen, Bulgaria
 - Symetal Aluminium Foil Industry S.A./Elval Hellenic Aluminium Industry S.A. Mandra Attikis, Greece
- (b) Exporting producers in the PRC
- Alcoa (Shanghai) Aluminium Products Co., Ltd, Shanghai and Alcoa (Bohai) Aluminium Industries Co., Ltd, Hebei
 - North China Aluminium Co., Ltd, Hebei (North China)
 - Shandong Loftan Aluminium Foil Co., Ltd, Shandong (Shandong)
 - Zhenjiang Dinsheng Aluminium Industries Joint-Stock Limited Company, Jiangsu
- (c) Exporting producer in Armenia
- Closed Joint Stock Company 'Rusal-Armenal', Yerevan (Armenal) and related importers in Switzerland and Russia Rual Foil Limited, Rual Trade Limited, RTI Limited, Rusal Europe Limited and Rusal Marketing Limited
- (d) Exporting producer in Brazil
- Companhia Brasileira de Alumínio, São Paulo
- (e) Community unrelated importers/users
- Coutinho Caro + Co International Trading GmbH, Hamburg, Germany
 - Fora Folienfabrik GmbH, Radolfzell, Germany
 - ITS Foil, Film and Paper Products bv, Apeldoorn, The Netherlands
 - Groupe Sphere, Paris, France.
- (12) 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 Turkey as analogue country took place at the premises of the following company:
- (f) Producer in Turkey
- Assan Demir ve Sac Sanayi A.Ş., Tuzla (now Assan Alüminyum Sanayi ve Ticaret A.Ş.).
- 3. Investigation period and period considered**
- (13) 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 relevant for the assessment of injury covered the period from 1 January 2005 to the end of the investigation period (period considered).
- B. PRODUCT CONCERNED AND LIKE PRODUCT**
- 1. Product concerned**
- (14) In the notice of initiation the product concerned was defined as 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 reels of a width not exceeding 650 mm originating in Armenia, Brazil and the People's Republic of China which was normally declared within CN code ex 7607 11 10 at the time of opening of the proceeding.
- (15) The investigation revealed that the above product description included different products, and in particular so-called 'jumbo' and 'consumer' rolls. The differences between jumbo reels and consumer rolls is mainly the weight (normally jumbo reels weigh at least 150 kg), hence the need to rewind the aluminium foil in order to transform it into a consumer product allowing it to be used for packaging and other household applications.

(16) The CN code ex 7607 11 10 as set out in the notice of initiation was split in January 2009 into two codes: ex 7607 11 11 (aluminium foil of a thickness of less than 0,021 mm weighing 10 kg or less for consumer rolls) and ex 7607 11 19 (same but weighing over 10 kg for jumbo reels). The CN code refers to the weight of the roll of aluminium foil which is synonymous with the reel of the aluminium foil in the original product description. Both refer to the aluminium foil itself which is wound into a reel, or roll, onto a support.

(17) The downstream industry in the Community, i.e. the 'rewinders', claimed that the product concerned should also include consumer rolls because if measures are imposed solely on imports of aluminium foil weighing over 10 kg, this could give rise to exports of the downstream products i.e. aluminium foil weighing less than 10 kg. The rewind operation would take place in the exporting countries instead of Community countries and 'rewinders' in the Community would therefore be severely hurt. This matter is addressed below in recitals 150 to 162.

(18) Aluminium foil is manufactured by rolling aluminium ingots or foil-stock to the desired thickness. Once rolled the foil is annealed by a thermal process to make it pliable. Once rolled and annealed the foil is wound onto reels of a width not exceeding 650 mm. The dimension of the reel determines its use as the users of the foil (spoolers or rewinders) will mount it onto small end-rolls destined for retail sale.

(19) In light of the above considerations, it is concluded that the product concerned is 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 originating in Armenia, Brazil and the People's Republic of China falling within CN code ex 7607 11 19 (product concerned).

2. Like product

(20) The investigation has shown that aluminium foil produced and sold by the Community industry in the Community, aluminium foil produced and sold on the domestic markets of Armenia, Brazil and the PRC and aluminium foil imported into the Community from these countries, as well as those produced and sold in Turkey have essentially the same basic physical and technical characteristics of and the same basic end uses.

(21) It is therefore provisionally concluded that these products are alike within the meaning of Article 1(4) of the basic Regulation.

C. MARKET ECONOMY TREATMENT (MET) AND ANALOGUE COUNTRY

(22) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in Armenia and the PRC, normal value shall be determined in accordance with paragraphs 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. Briefly and for ease of reference only, these criteria are set out in summarised form below:

— business decisions are made in response to market signals, without significant State interference, and costs reflect market values,

— 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,

— there are no significant distortions carried over from the former non-market economy system,

— bankruptcy and property laws guarantee stability and legal certainty, and

— exchange rate conversions are carried out at market rates.

(23) The sole Armenian cooperating exporting producer and the five exporting producers from the PRC cooperating in this proceeding requested MET and replied to the MET claim form for exporting producers within the given deadlines.

(24) Armenal, the sole cooperating exporting producer from Armenia claimed that the application of Article 2(7) to Armenia was illegal because Armenia should be considered as having Market Economy Status according to World Trade Organisation (WTO) rules.

(25) However the treatment of Armenia as an economy in transition is in accordance with the basic Regulation, which explicitly mentions Armenia in the footnote to Article 2(7)(a). The argument is therefore dismissed.

(26) For all cooperating exporting producers in Armenia and the PRC, the Commission sought all information deemed necessary and verified information submitted in the MET claim at the premises of the companies in question.

1. Armenia

- (27) MET was refused to Armenal on the grounds that criteria 2 and 3 were not met. For criterion 2, the company's accounts for 2006 contained an adverse opinion from their auditors, and the company did not provide audited accounts for 2007.
- (28) The company argued that compliance with the auditing process (which was done in 2006) and a commitment to deliver audited accounts for 2007 in line with international accounting standards (IAS) would be enough to satisfy the requirements of criterion 2. Moreover, this company claimed that, even if the auditor delivers an adverse opinion as to the compliance of the accounts with international accounting standards (IAS), the fact that they have been audited in compliance with international auditing standards is enough to meet the requirements of criterion 2.
- (29) This argument cannot be accepted. First their audited accounts for 2007 were not submitted despite being requested by the Commission and second, as for the audited accounts for 2006, it has to be borne in mind that Article 2(7)(b) of the basic Regulation is an exception and, as such, it must be given a strict interpretation. It is clear that accounts should not only be audited in line with international auditing standards but also prepared in line with IAS. The argument is therefore rejected.
- (30) For criterion 3, the investigation found that the price paid to the State for a substantial percentage of the shares was around one third of its nominal value and the company received the land for free from the State. It has been claimed that the value at which the shares were acquired was the market value and, in addition the resulting distortions are not significant. Sufficient evidence to justify this claim was however not provided. Moreover, the company argued that they cannot sell the land concerned without paying the cadastral value to the State and the impact of owning the land is not significant. This argument cannot be accepted, given that, as indicated above, land is a key asset and has a direct and significant impact on the company's ability to operate and therefore on its financial situation.
- (31) On the basis of the above, it was therefore considered that MET should be rejected for Rusal Armenal. The Advisory Committee was consulted and did not object to that conclusion.

2. The PRC: Market economy treatment

- (32) All five of the cooperating exporting producers in the PRC were denied MET on the grounds that the costs of the major input, primary aluminium, did not substan-

tially reflect market values, as required by Article 2(7)(c) of the basic Regulation. The MET investigation determined that this was due to State interference in the aluminium market in the PRC. Prices for primary aluminium are based on the quotation of aluminium in the State-controlled Shanghai Non-ferrous Metal Exchange market (SHFE), limited to Chinese traders, while the worldwide reference is the quotation at the London Metal Exchange (LME). Quotation at the LME was on a monthly average basis more than 21 % higher than at the SHFE during the IP. Moreover, primary aluminium is not subject to VAT refunds and is subject to an export tax of 15 %. As a result, the vast majority of primary aluminium production is sold in the Chinese market causing a depression of the domestic primary aluminium price and an important cost advantage for producers of aluminium foil established in the PRC. Bearing in mind that primary aluminium accounts for ca. 70 % of the cost of production of aluminium foil, this difference is translated into a ca. 14 % cost advantage for Chinese producers, which is significant in a commodity market like that for aluminium foil.

- (33) Moreover, in addition to the general situation described above, three other companies do not fill other requirements of criterion 1. One of them is subject to significant State interference in relation to important business decisions; one received a large subsidy in the purchase of its main equipment; and the fixed assets of a third company did not reflect market values.
- (34) One company did not comply with criterion 2 as clear accounting errors were found that had not been commented upon by the auditors.
- (35) Concerning criterion 3, two companies did not fulfil its requirements. In the case of one company, distortions affected their land use rights: when the company changed its legal form in 1993 it did not transfer the land use rights straight away to the new entity as would be standard practice. In fact the land use rights were not transferred until 10 years later. There was no penalty clause in the contract in case of failure to transfer the deeds. Furthermore, during the year 2004, they did not pre-pay income tax either in the quarter required or at the end of the year. The company claims that irregularities found with the transfer of land-use rights do not have a relevant impact on the accounts, and the delay in the transfer was *de jure* but not *de facto*. Nevertheless, the ability to use a key asset such as land has per se a direct and significant impact on the company's ability to operate and therefore on its financial situation.
- (36) For the second company they received their land use right certificate before paying in full for it, and used this certificate to obtain a mortgage from a State-owned bank.

- (37) The Commission officially disclosed the results of the MET findings to the exporting producers concerned in the PRC, the authorities of the PRC and the complainant. They were also given an opportunity to make their views known in writing and to request a hearing if there were particular reasons to be heard.
- (38) One exporting producer argued that the comparison between aluminium prices should be a comparison between the LME price without VAT added to the SHFE price with VAT added. This would of course decrease the difference in price found during the investigation period but was rejected for reasons of proper comparability between the two exchanges.
- (39) Several parties have also alleged that the finding relating to aluminium prices is inconsistent with the Commission's practice because in previous merger cases (analysed in the light of competition rules) the Commission has considered that the market for primary aluminium is worldwide. However according to the wording of the Commission's decision of 2007 in the *Rio Tinto/Alcan* merger⁽³⁾, the argument concerning the SHFE was not put forward by any of the parties concerned and, therefore it was not possible for the Commission to analyse it. Notwithstanding this, even if this issue had been raised, the conclusions drawn by the Commission in competition cases concerning relevant geographical markets are taken in the light of a Notice which is applied only for the purposes of competition law⁽⁴⁾ and the provisions of this Notice are not necessarily applicable to or relevant for TDI law. The argument is therefore rejected.
- (40) On the basis of the above, none of the PRC companies that had requested MET could show that they fulfilled the criteria set out in Article 2(7)(c) of the basic Regulation. It was therefore considered that MET should be rejected for all these companies. The Advisory Committee was consulted and did not object to these conclusions.

3. The PRC and Armenia: Individual treatment

- (41) Pursuant to Article 2(7)(a) of the basic Regulation a countrywide duty, if any, is established for countries falling under Article 2(7) of the basic Regulation, except in those cases where companies are able to demonstrate, in accordance with Article 9(5) of the basic Regulation, that their export prices and quantities as well as the conditions and terms of the sales are freely determined, that exchange rates are carried out at market rates, and that any State interference is not such as to permit circumvention of measures if exporters are given different rates of duty.

⁽³⁾ OJ C 59, 4.3.2008, p. 1.

⁽⁴⁾ Commission Notice on the definition of relevant market for the purposes of Community competition law. OJ C 372, 9.12.1997, p. 5.

- (42) All exporting producers which requested MET also claimed IT in the event they would not be granted MET. On the basis of the information available, it was provisionally established that the company in Armenia, and four of the five companies in the PRC met all the requirements for IT. One company in the PRC was denied IT on the grounds of significant State interference in the business decisions of the company.

4. Analogue country

- (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 domestic prices or constructed normal value in an analogue country.
- (44) In the notice of initiation, the Commission indicated its intention to use Turkey as an appropriate analogue country for the purpose of establishing normal value and interested parties were invited to comment on this.
- (45) Armenal suggested Russia as a more appropriate analogue country for Armenia on the grounds that Russia and Armenia have similar conditions for access to raw material for the product concerned and use the same technology and know-how given that Armenal is a subsidiary of the Rusal group, which is the largest Russian aluminium foil producer. Armenal put forward also that the leading market position of Rusal in Russia is similar to the leading market position of Armenal in Armenia and both the Russian and Armenian markets and sales are affected by massively increasing Chinese exports at low prices. However, all these claims were not duly substantiated. The investigation also showed that the domestic market for the product concerned in Russia was small, and smaller than that of Turkey.

- (46) As an alternative choice to Russia as analogue country, Armenal stated that Turkey appeared to be the second appropriate choice.

- (47) Companies belonging to the Alcoa group proposed India as a more appropriate analogue country for the PRC. It was confirmed that the Indian market is not significantly larger than the Turkish one, and that competition is essentially arising from Chinese imports. Other suppliers to the Indian market are small and medium-sized enterprises (SMEs), most of which have no rolling mills and are using imported Chinese material as jumbo reels or directly in small rolls. Therefore neither Russia nor India was considered appropriate for the choice of the analogue country.

- (48) The Commission then examined whether Turkey was a reasonable choice of analogue country. It was concluded that Turkey, despite having only one producer of the product concerned, was an open market with a low import duty and significant imports from third countries. Furthermore, the investigation showed no reason, such as excessively high cost of raw materials or energy, to consider that Turkey was not adequate for the purpose of establishing normal value.
- (49) Having regard to the above, it was considered that Turkey was a more appropriate choice of analogue country for the purposes of the present investigation. No other interested party argued that India was to be used as an appropriate analogue country for the present investigation and Armenal considered that Turkey could also be an appropriate choice.
- (50) One producer in Turkey responded to the questionnaire sent to all producers of aluminium foil in Turkey.
- (51) The data submitted in the cooperating Turkish producer's reply was verified *in situ* and was found to be reliable information on which a normal value could be based.
- (52) It is therefore provisionally concluded that Turkey is an appropriate and reasonable analogue country in accordance with Article 2(7) of the basic Regulation.
- (56) Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.
- (57) The Commission then examined whether the domestic sales of each type of aluminium foil sold domestically in representative quantities could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable domestic sales to independent customers, of each exported product type, on the domestic market during the investigation period.
- (58) All of the domestic sales of each type of aluminium foil sold domestically in representative quantities were over 80 % profitable and therefore normal value was based on the actual domestic price of all transactions during the investigation period.
- (59) Wherever domestic prices of a particular product type could not be used in order to establish normal value, another method had to be applied. In accordance with Article 2(3) of the basic Regulation the Commission instead calculated a constructed normal value, as follows.

D. DUMPING

1. Brazil

- (53) Dumping was calculated for the single cooperating exporting producer in Brazil using the methodology as set out below.
- 1.1. *Normal value*
- (54) In accordance with Article 2(2) of the basic Regulation, the Commission first examined for the sole exporting producer whether the domestic sales of the product concerned to independent customers were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community. The domestic sales of the sole exporting producer in Brazil were representative during the investigation period.
- (55) The Commission then identified those product types sold domestically by that company which were identical or directly comparable with the types sold for export to the Community.
- (60) Normal value was constructed by adding to the exporter's manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit.
- (61) In all cases SG&A and profit were established pursuant to the methods set out in Article 2(6) of the basic Regulation. To this end, the Commission examined whether the SG&A incurred and the profit realised by the exporting producer on the domestic market constituted reliable data and in this case determined that it was suitable to be used to construct normal value.
- 1.2. *Export price*
- (62) In all cases the product concerned was exported to independent customers in the Community and therefore the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

1.3. Comparison

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

(64) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation, including adjustments for freight in the exporting country, ocean freight, handling, packaging, credit costs and bank charges. The company also requested, and was provisionally granted, a level of trade adjustment claimed under Article 2(10)(d)(i) of the basic Regulation.

1.4. Dumping margins

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

(66) In order to determine the dumping margin for non-cooperating exporting producers, the level of non-cooperation was first established. To this end, the volume of exports to the Community reported by the cooperating exporting producer was compared with the equivalent Eurostat import statistics.

(67) As the level of cooperation from Brazil was high (effectively 100 %), and since there was no reason to believe that any exporting producer deliberately abstained from cooperating, it was considered appropriate to set the residual dumping margin for any non-cooperating exporting producers in Brazil at the level of the highest margin imposed on a cooperating exporter.

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

Companhia Brasileira de Alumínio	27,6 %
All other companies	27,6 %

2. Armenia

2.1. Normal value

(a) Determination of normal value for the exporting producer not granted MET

(i) Analogue country

(69) 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 domestic prices or constructed normal value in an analogue country.

(70) As set out above, the Commission has decided to use Turkey as an appropriate analogue country for the purpose of establishing normal value.

(ii) Normal value

(71) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producer not granted MET was established on the basis of verified information received from the producer in the analogue country, i.e. on the basis of prices paid or payable on the Turkish market for comparable product types, in accordance with the methodology set out in recitals 43 to 52 above.

2.2. Export prices

(72) The cooperating exporting producer made some export sales to the Community directly to independent customers in the Community. The export prices for these sales were therefore based on the prices actually paid or payable for the product concerned, in accordance with Article 2(8) of the basic Regulation. However the vast majority of sales were made via related trading and importing companies in Russia, Switzerland and Germany. In these cases the export prices were constructed under the provisions of Article 2(9) of the basic Regulation, provisionally adjusting all costs between importation and resale, including a reasonable margin for selling, general and administrative costs and profits accruing based on the profit realised by an unrelated importer or trader of the product concerned.

2.3. Comparison

(73) Adjustments were made, where appropriate, in accordance with Article 2(10) of the basic Regulation, in respect of transport, insurance, handling and ancillary costs, packing, credit, bank charges and commissions and were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

2.4. Dumping margins

(a) For the cooperating exporting producer granted IT

(74) For the one cooperating exporting producer granted IT a dumping margin was established by making a comparison between its export price and a normal value from the analogue country, as described above.

(b) For all other exporting producers

- (75) As the level of cooperation from Armenia was high (effectively 100 %), and since there was no reason to believe that any exporting producer in this country deliberately abstained from cooperating, it was considered appropriate to set the residual dumping margin for any non-cooperating exporting producers in Armenia at the level of the highest margin imposed on the cooperating exporter.
- (76) On this basis the countrywide level of dumping was provisionally established at 37,0 % of the cif Community frontier price, duty unpaid.
- (77) The dumping margin expressed as a percentage of the cif import price at the Community border, duty unpaid, is provisionally the following:

Company	Provisional dumping margin
Closed Joint Stock Company 'Rusal-Armenal'	37,0 %
All other companies	37,0 %

3. The PRC

3.1. Normal value

(a) Determination of normal value for the exporting producers not granted MET but granted IT

- (78) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET was established on the basis of verified information received from the producer in the analogue country, i.e. on the basis of prices paid or payable on the Turkish market for comparable product types, in accordance with the methodology set out above.
- (79) Where sales on the domestic market to unrelated customers were representative and profitable, normal value was established on the basis of all prices paid or payable on the Turkish market for comparable product types, for sales in the ordinary course of trade as described in recitals 43 to 52. Where however sales were not representative or profitable, normal value was constructed using the cost of manufacturing of the Turkish producer plus SG&A and a reasonable value for profit on the domestic market.

3.2. Export prices for the exporting producers granted IT

- (80) For those cooperating exporting producers granted IT that made export sales to the Community directly to independent customers in the Community, the export prices were therefore based on the prices actually paid or payable for the product concerned, in accordance with Article 2(8) of the basic Regulation. For the one cooperating exporting producer group that sold via a related importer in the Community, the export price was constructed under the provisions of Article 2(9) of the basic Regulation, provisionally adjusting all costs between importation and resale, including a reasonable margin for selling, general and administrative costs and profits accruing based on the profit realised by an unrelated importer or trader of the product concerned.

3.3. Comparison

- (81) Adjustments were made, where appropriate, in accordance with Article 2(10) of the basic Regulation, in respect of transport, insurance, handling and ancillary costs, packing, credit, bank charges and commissions in all cases where they were found to be reasonable, accurate and supported by verified evidence.

3.4. Dumping margins

(a) For the cooperating exporting producers granted IT

- (82) Pursuant to Article 2(11) and (12) of the basic Regulation dumping margins for the cooperating exporting producers granted IT were established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type as established above. For the two related companies in the PRC granted IT, Alcoa Shanghai and Alcoa Bohai, data from both companies were averaged together to calculate a single dumping margin for the group concerned.

(b) For all other exporting producers

- (83) Given that cooperation from the PRC was very low, the countrywide dumping margin applicable to all other exporters in the PRC was calculated using the most dumped transactions of one cooperating exporting producer denied both MET and IT.
- (84) On this basis the countrywide level of dumping was provisionally established at 42,9 % of the cif Community frontier price, duty unpaid.

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

Company	Provisional dumping margin
Alcoa Bohai and Alcoa Shanghai	23,9 %
Shandong Loften	31,6 %
Zhenjiang Dingsheng	31,9 %
All other companies	42,9 %

E. INJURY

1. Community production and Community industry

- (86) Given the definition of the Community industry (CI) as set out in Article 4(1) of the basic Regulation, the output of all Community producers located in the Community and not related to any exporting producer concerned was considered for establishing the total volume of the Community production.

- (87) 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. During the IP, the output of the five cooperating producers represented over 60 % of the total Community production as established above in recital 86. The five cooperating producers are therefore deemed to constitute the Community industry (CI) within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

2. Community consumption

- (88) Community consumption was established on the basis of the sales volume on the Community market by the CI, the estimated sales data regarding the Community sales made by other producers as well as the imports from the countries concerned and other third countries based on Eurostat and on the information provided by the exporting producers concerned.

- (89) It is noted that the CN code ex 7607 11 10 on which basis import volumes were established in the present investigation comprised in addition to the product concerned, other types of aluminium foil, such as certain aluminium converter foil (ACF) (which is used mainly for long-term conservation of liquids and food stuffs) or other foil products, including consumer reels (see recital 15 above), which are not the product concerned. Therefore, it was not possible to retrieve from this broader category of products the data for

aluminium foil only and consequently, the total import volume of the product concerned had to be estimated. In this regard, the complainant submitted that certain imports made under the relevant code should be excluded because of their specific origin (i.e. from countries where there was no known production of aluminium foil) or their specific price levels which would indicate that these imports are not the product concerned. Likewise, imports made for inward processing were to be excluded because inward processing is economically not viable for aluminium foil due to the technical complexity and the high costs involved. It was considered that this methodology would give a reliable picture of the total import volumes of aluminium foil.

- (90) The reduction of the Community consumption of 8 percentage points in 2006 can be explained by the steep increase of aluminium prices on the international market, which increased by 33 % during that year and had a direct effect on the demand for aluminium foil.

Table 1

Consumption in the EU (volume)

	2005	2006	2007	IP
Consumption in tonnes	95 296	87 630	115 364	98 689
Consumption (Index)	100	92	121	104

3. Cumulative assessment of the effects of the imports concerned

- (91) The Commission examined whether imports of aluminium foil originating in Armenia, Brazil and the PRC should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.

- (92) The Brazilian exporter argued that import quantities as well as market shares from Brazil were decreasing during the period considered, while imports from the other two countries were increasing. Furthermore, the product imported from Brazil is allegedly of a higher quality than the one imported from the PRC and Armenia and sales channels and 'distribution methods' are different. This would indicate that the conditions of competition for Brazilian imports were different to the ones with regard to the imports from the other countries concerned. Therefore, at least one condition set out in Article 3(4) of the basic Regulation would not be met.

(93) This request could not be accepted for the reasons set out below:

— As outlined above in recitals 53 to 85, the dumping margin established in relation to the imports from each of the countries concerned was above the *de minimis* threshold as defined in Article 9(3) of the basic Regulation.

— The volume of imports from Armenia, Brazil and PRC was not negligible in the sense of Article 5(7) of the basic Regulation, i.e. their market shares attaining 5,2 %, 12,8 % and 30,7 % respectively in the IP (see Table 4 below). It was found that imports from Brazil remained stable from 2006 to the end of the IP despite the re-entry of imports from China and the arrival of imports from Armenia (see Table 3 below).

— With regard to the conditions of competition between the imported products from the countries concerned and the like Community product, the investigation revealed that imported products (from all countries concerned) and the Community produced products share the same basic physical characteristics despite possible quality differences and are used in the same applications. Sales channels were found to be similar in all cases (i.e. the products are mainly sold via rewinders to retailers and final consumers) despite the claims of the Brazilian exporter. As regards different 'distribution methods', this referred mainly to the way in which different customers were contacted and was not considered as a factor showing that the conditions of competition were different.

— With regard to the conditions of competition between the imports from the countries concerned, the investigation revealed that although import volumes from the countries concerned showed different trends in 2005 and 2006, after the anti-dumping duty applicable to the PRC was repealed (see recital 114), this is due to the fact that imports from PRC and Armenia (re)started only in 2006, while the Brazilian product was already established in the Community market. This alone does not allow the conclusion that conditions of competition are different between the three countries concerned. Between 2007 and the IP import volumes from the PRC and Armenia stabilised as well as the Brazilian imports.

— Finally, as can be seen from Table 2 below the average sales prices of Brazilian imports were found to be in line with the sales prices from the other countries concerned and followed the same trends over the period considered.

Table 2

Average import prices from the countries concerned

Unit Price (EUR/tonne)	2005	2006	2007	IP
the PRC	2 170	2 666	2 722	2 602
<i>Index</i>	0	100	102	98
Armenia	—	2 316	2 724	2 614
<i>Index</i>	—	100	118	113
Brazil	2 252	2 609	2 712	2 440
<i>Index</i>	100	116	120	108

(94) In the light of the above, it is provisionally considered that all the criteria set out in Article 3(4) of the basic Regulation were met and that imports from the countries concerned should be examined cumulatively.

4. Imports from the countries concerned

4.1. Volume and market share of the imports concerned

(95) Imports from the countries concerned increased from 13 499 tonnes in 2005 to 48 141 tonnes in the IP, an increase of 257 %. This was particularly marked between 2006 and 2007 when they rose by 276 %.

Table 3

Imports from the countries concerned

Imports (tonnes)	2005	2006	2007	IP
Armenia	0	65	5 477	5 195
<i>Index</i>	—	100	8 374	7 943
Brazil	13 452	12 672	12 556	12 628
<i>Index</i>	100	94	93	94
PRC	47	3 416	35 358	30 318
<i>Index</i>	—	100	1 035	888
Total countries concerned	13 499	16 153	53 391	48 141
<i>Index</i>	100	120	396	357

(96) The market share held by the countries concerned increased between 2005 and the IP from 14 % to 49 % i.e. by 35 percentage points. The increase was particularly marked between 2006 and 2007 when it went up by 28 percentage points.

Table 4*Market share of the countries concerned*

Market shares	2005	2006	2007	IP
Armenia	—	0,07 %	4,75 %	5,26 %
Brazil	14,12 %	14,46 %	10,88 %	12,80 %
PRC	0,05 %	3,90 %	30,65 %	30,72 %
Total countries concerned	14 %	18 %	46 %	49 %

4.2. Prices

- (97) From 2005 to the IP, prices of the imports from the countries concerned increased by 15 % from EUR 2 211/tonne to EUR 2 552/tonne, which reflected the increase in raw material prices, but to a lesser extent compared to the CI's prices (see Table 7 below).

Table 5*Prices of the imports concerned*

Unit prices (EUR/tonne)	2005	2006	2007	IP
Total countries concerned	2 211	2 530	2 719	2 552
Index	100	114	123	115

4.3. Price undercutting

- (98) For the purposes of analysing price undercutting, the weighted average sales prices per product type of the CI to unrelated customers on the Community market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports from the countries concerned to the first independent customer, established on a cif basis, with an appropriate adjustment for post-importation costs.
- (99) The CI's sales prices and the import prices from the countries concerned were compared at the same level of trade, namely to independent customers within the Community market.

- (100) During the IP, the weighted average price undercutting margins, expressed as a percentage of the CI's sales

prices, was 8,0 % for Armenia, 12,6 % for Brazil, and 20 % for the PRC. The total weighted average undercutting margin for all countries concerned was 10,0 % during the IP.

5. Situation of the Community industry

- (101) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the CI included an evaluation of all economic factors having a bearing on the state of the CI during the period considered.

5.1. Production, capacity and capacity utilisation**Table 6***Production, capacity and capacity utilisation*

	2005	2006	2007	IP
Production in tonnes	56 662	50 184	41 482	33 645
Production (index)	100	95	79	64
Production capacity in tonnes	61 144	60 142	56 873	55 852
Production capacity (index)	100	98	93	91
Capacity utilisation	86 %	83 %	73 %	60 %
Capacity utilisation (index)	100	97	85	70

- (102) The production volume of the CI showed a clear negative trend between 2005 and the IP. The production volume of the CI decreased by 36 % and the overall production capacity decreased by 9 %. This explains why capacity utilisation only declined by 30 % during the period considered, as otherwise, it would have declined even more.

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

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

Table 7

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

	2005	2006	2007	IP
Sales volume (tonnes)	43 972	45 540	37 531	30 589
Sales volume (index)	100	104	85	70
Market Share	47 %	52 %	33 %	31 %
Unit prices in EUR/tonne	2 574	3 052	3 229	3 081
Unit prices (index)	100	119	125	120

- (104) While the Community consumption varied during the period considered and finally increased by 4 % at the end of the IP compared to the beginning of the period considered, the sales volumes of the product concerned by the CI to independent customers on the Community market decreased by 30 %. This means that the CI could not benefit from the increased consumption, especially during 2007 and the end of the IP, and generally stable consumption during the period considered due to the dumped imports. Consequently, the CI's market share decreased by 16 percentage points between 2005 and the IP.
- (105) During the same period, average ex-works sales prices of the CI to unrelated customers on the Community market increased by 20 %, reflecting the significant increase of the price of the main raw material, i.e. aluminium. However, while the cost of aluminium increased by 27 %, the CI sales price only increased by 20 %. In fact, the CI was not able to pass on fully the overall cost increases to their customers.

5.3. Stocks

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

Table 8

Stocks

	2005	2006	2007	IP
Stocks in tonnes	3 300	2 936	3 260	3 068
Stocks (index)	100	89	99	93

- (107) 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. In any case, the level of stocks decreased by 7 % between 2005 and the IP.

5.4. Investments and ability to raise capital

Table 9

Investments

	2005	2006	2007	IP
Investments (EUR)	6 900 065	671 268	1 329 302	3 993 640
Investments (index)	100	10	19	58

- (108) Between 2005 and the IP, investments for the production of the like product diminished by 42 %. Following a sharp decline of 90 % between 2005 and 2006, it remained at a low level in 2007. During the IP, the value of the investments increased by 39 % but in comparison to 2005, it remained at a low level. During the investigation it was found that investments in buildings, plants and machinery were mainly made to maintain the production capacity. It is noted that these investments may also be used for the production of other aluminium foils which are not the product concerned. However, although it has not been possible to allocate the exact amounts to the product concerned in view of the low capacity utilisation mentioned before, it appeared that investments were in any case not made with the purpose to increase the overall production capacity, but to improve and further streamline the production process in order to save costs.

5.5. Profitability, return on investment and cash flow

Table 10

Profitability, return on investment and cash flow

	2005	2006	2007	IP
Profitability on EC sales	- 4,8 %	- 3,0 %	- 0,1 %	- 3,7 %
Return on total investments	- 90,3 %	- 718,8 %	- 9,7 %	- 85,7 %
Cash Flow	3 %	- 2 %	- 1 %	1 %

(109) Over the period considered, the profitability expressed as a percentage of net sales of the CI remained negative and followed the same trend of the Community consumption i.e. the investigation revealed a slight improvement in the context of increased Community consumption in the year 2007, but decreased again during the IP.

(110) The return on total investments (ROI) was calculated by expressing the pre-tax net profit of the like product as a percentage of the net book value of fixed assets allocated to the like product. This indicator was found to be negative during the period considered and was particularly pronounced between 2005 and 2006, where the return on investment dropped from -90 % to -719 %.

(111) With regard to the cash flow generated by the CI, a negative trend was found, resulting in a dramatic overall deterioration of the CI's financial situation in the IP.

5.6. Employment, productivity and wages

Table 11

Employment, productivity and wages

	2005	2006	2007	IP
Number of employees	528	492	412	370
Number of employees (Index)	100	93	78	70
Employment cost	12 868 631	12 653 345	10 281 921	9 116 970
Employment cost (Index)	100	98	80	71
Average labour costs	24 379	25 710	24 967	24 655
Average labour costs (Index)	100	105	102	101
Productivity (tonne/employee)	100	102	101	91
Productivity (Index)	100	102	101	91

(112) The number of personnel employed by the CI decreased overall by 30 % partly due to the restructuring process at the end of the period considered. Overall employment

costs decreased considerably, although average wages remained stable. The decrease in employment was not as fast as the decrease in production. As a consequence the CI was not able to maintain the same level of productivity as in 2005.

5.7. Magnitude of the dumping margin

(113) Given the volume and the price of the dumped imports, the impact of the actual margins of dumping cannot be considered negligible.

5.8. Recovery from past dumping

(114) In 2001, the Council imposed a definitive anti-dumping duty on aluminium foil originating in the PRC and Russia ⁽⁵⁾. These measures expired in May 2006 ⁽⁶⁾. The figures collected during the present investigation suggest that the CI had not recovered from past dumping practices and its situation deteriorated even more significantly after 2006 when the anti-dumping duties expired and dumped imports re-entered the Community market.

5.9. Growth

(115) The investigation showed that despite a relatively stable level of consumption, albeit with variation during the period considered, the CI lost sales volume (-31,4 %) and market share (-35 %) during the period considered.

6. Conclusion on injury

(116) The analysis of the injury indicators revealed that the situation of the CI deteriorated significantly over the period considered. All injury indicators follow a negative trend over the period considered, except unit selling prices due to the increase of prices of raw material and therefore, did not impact positively on the CI's profitability which remained negative throughout the period considered. In particular, in order not to lose more market share and to keep the production at a reasonable level, the CI had no other option than to follow the price levels set by the dumped imports and hence could not fully pass on to the customers the steep increase in the cost of the raw material. This resulted in the losses suffered by the CI and its financial situation deteriorated significantly during the period considered.

⁽⁵⁾ Council Regulation (EC) No 950/2001 (OJ L 134, 17.5.2001, p. 1).

⁽⁶⁾ OJ C 112, 12.5.2006, p. 2.

- (117) The decrease of sales volume also implied that the CI could not benefit from the relatively stable demand in the aluminium foil market over the period considered.
- (118) In light of the foregoing, it is provisionally concluded that the CI has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

F. CAUSATION

1. Introduction

- (119) In accordance with Article 3(6) and 3(7) of the basic Regulation, the Commission has examined whether the dumped imports of the product concerned originating in Armenia, Brazil and the PRC have caused injury to the CI to a degree that may be considered as material. Known factors other than the dumped imports, which could at the same time have injured the CI, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

2. Effect of the dumped imports

- (120) Imports from the countries concerned increased significantly by 257 % in terms of volume, and by 35 percentage points in terms of market share to reach 49 % of the Community market in the IP. At the same time the market share of the CI decreased by approximately 17 percentage points.
- (121) The average unit selling price per tonne of the imports from the countries concerned increased by only 15 % although the prices of raw material increased internationally by 27 %, undercutting the average CI prices by 10 % on average in the IP. The substantial increase in the volume of imports from the countries concerned and their gain in market share during the period considered, at prices which were significantly lower than those of the CI, coincided with the evident deterioration of the overall financial situation of the CI during the same period. This deterioration is seen, in particular, in terms of production volume and sales volume, which have decreased significantly. Furthermore, the increase of sales price did not increase at the same pace as the increase of costs for raw material. Although profit margins slightly improved between 2005 and the end of the IP, they remain negative throughout the period considered.

- (122) In the analysis of the effect of the dumped imports, it was found that price is an important element of competition because quality issues do not play a significant role. It should be noted that the prices of dumped imports were considerably below those of both the CI as well as those of exporters from other third countries.

- (123) It is therefore provisionally concluded that the pressure exerted by the imports concerned, which increased their volume and market share from 2005 onwards, and which were made at very low dumped prices, played a determining role in causing material injury.

3. Effect of other factors

- (a) *Imports originating in third countries other than the PRC, Armenia and Brazil*

Table 12

Imports originating in other third countries (quantity)

Imports (tonnes)	2005	2006	2007	IP
Russia	10 661	11 393	9 835	7 139
<i>Index</i>	100	107	92	67
Turkey	3 525	2 278	1 968	2 075
<i>Index</i>	100	65	56	59
Venezuela	3 446	1 346	1 814	1 039
<i>Index</i>	100	39	53	30
Other third countries	1 982	1 489	2 124	2 617
<i>Index</i>	100	75	107	132
Total	19 614	16 506	15 741	12 870
<i>Index</i>	100	84	80	66

Table 13

Imports originating in other third countries (average price per tonne)

Average prices (EUR)	2005	2006	2007	IP
Russia	2 366	2 718	2 905	2 743
<i>Index</i>	100	115	123	116
Turkey	3 124	2 977	3 027	2 948
<i>Index</i>	100	95	97	94
Venezuela	2 351	2 885	2 982	2 698
<i>Index</i>	100	123	127	115
Other third countries	2 325	2 728	3 123	3 307
<i>Index</i>	100	117	134	142
Total	2 541	2 827	3 009	2 924
<i>Index</i>	100	111	118	115

Table 14*Market shares*

Market shares (%)	2005	2006	2007	IP
Russia	11,19 %	13,00 %	8,52 %	7,23 %
Turkey	3,70 %	2,60 %	1,71 %	2,10 %
Venezuela	3,62 %	1,54 %	1,57 %	1,05 %
Other third countries	2,08 %	1,70 %	1,84 %	2,65 %
Total	20,6 %	18,8 %	13,6 %	13,0 %

(124) The main other exporting countries are Russia, Turkey and Venezuela representing market shares between 1,0 % and 7,3 % during the IP. The imports of the remaining other third countries individually only represented negligible market shares. As it can be seen from Table 11 above, import volumes of other third countries decreased significantly during the period considered, i.e. by 34 percentage points from 19 614 tonnes in 2005 to 12 870 tonnes in the IP. Likewise, market shares went down from 20,6 % in 2005 to 13 % during the IP.

(125) As regards import prices, it is noted that imports from the three main other exporting countries, i.e. Russia, Turkey and Venezuela were made at slightly lower prices than those of the CI sales price. However, their limited and even gradually shrinking market share was not considered as having had a negative effect on the situation of the CI. The prices of other third countries i.e. excluding Russia, Turkey, Venezuela and the three countries concerned, were found to be in average, higher than the CI prices (+ 7,8 %).

(126) It is therefore concluded that imports from other third countries have not had a significant impact on the state of the CI.

(b) Exports by the Community industry

(127) One exporting producer submitted that the unfavourable development of the EUR/USD exchange rate was the reason for a significant deterioration of the CI's export performance which has in turn caused the material injury to the CI.

(128) Exports of aluminium foil by the CI outside the Community were decreasing during the period considered (by 63 %). Likewise the export prices of the CI decreased during the period considered by 26 %. However, these exports represented only 6,6 % of the CI's total sales to unrelated parties in the IP and thus it was concluded that they did not have a significant impact on the material injury suffered by the CI.

(c) Imports of the Community industry

(129) One Community producer imported the product concerned from its related company in the PRC and resold it on the Community market. Although the resale prices were undercutting the CI prices, it should be noted that the volume of the Chinese imports only represented a minor part of the total imports from the PRC (between 1 % and 5 %). Furthermore, these imports were only made to maintain global customers who would have otherwise purchased the product concerned from the Chinese suppliers at dumped prices. Therefore, it was concluded that the low volume of imports of the Community producer concerned of the product concerned from the PRC did not break the causal link between the dumped imports and the material injury suffered by the CI.

(d) Self-inflicted injury

(130) One exporting producer claimed that the decrease in sales volume by the CI was not due to the imports under consideration but due to the fact that the CI decided to switch production and sales to the more lucrative ACF market.

(131) Rewinders claimed that the product concerned was in fact a by-product for the CI and used as a mere 'machine filler' in case demand for ACF would be low.

(132) However the investigation has provisionally concluded that these allegations are not founded. The production volumes of ACF of one of the largest Community producers have remained stable during the period considered, while its volume of sales of the product concerned has decreased significantly. Therefore, it can be provisionally concluded that there are significant spare capacities available in the CI. Spare capacities of the CI have indeed increased since capacity utilisation has decreased significantly (from 86 % to 60 %).

(e) *Development of consumption in the Community market*

- (133) It was considered whether the development of the consumption could have been a factor causing material injury to the CI.
- (134) As mentioned in recital 88, the Community consumption does not show a homogeneous trend. Although total Community consumption fell between 2005 and 2006, it increased again in 2007. It fell during the IP by 17 percentage points. However, the CI volume sales did not follow the same trend, as there was a steep decline in sales, especially between 2006 and 2007 (– 19 %), whilst at the same time the Community consumption increased by + 29 %. Furthermore, when considering the period considered, it appears that the CI did not achieve the same level of volume sales during the IP, compared to the beginning of the period considered (– 30 %), although Community consumption fell back to almost the same level at the end of the IP, with an overall increase of + 4 %.

(f) *Development of the CI's costs*

- (135) Since costs of raw material represent between 60 % and 65 % of the total production costs, the steep increase of aluminium price on the international market, which increased by 27 % during the period considered, led to a significant increase of the CI's costs.
- (136) However, while the cost of raw material increased by 27 %, the CI sales price only increased by 19 %, which means that the increase in cost could not be fully passed on to the customers.

4. Conclusion on causation

- (137) Based on the above, it is provisionally concluded that the material injury suffered by the CI cannot be attributed to imports from other third countries or attributed to a contraction in demand on the Community market, but to the surge of dumped imports during the period considered from the countries concerned. The coincidence in time between, on the one hand, the increase in dumped imports from Armenia, Brazil and the PRC, their increase in market share and the undercutting found and, on the other hand, the evident deterioration in the situation of the CI, leads to the conclusion that the dumped imports caused the material injury suffered by

the CI within the meaning of Article 3(6) of the basic Regulation. In particular, the CI could not increase its selling prices on the Community market due to the price pressure of the dumped imports. Thus, the overall cost increase could not be entirely passed on to the customers and profit margins remained significantly low, despite the steep increase of the Community consumption between 2006 and 2007, with a drastic impact on the CI's overall financial situation. The possible effect of other factors, mainly imports from other third countries' exports of the CI and the development of costs were analysed but found not to be a determining reason for the injury suffered by the CI.

- (138) 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 CI from the injurious effect of the dumped imports, it is provisionally concluded that the imports of aluminium foil from Armenia, Brazil and the PRC have caused material injury to the CI within the meaning of Article 3(6) of the basic Regulation.

G. COMMUNITY INTEREST

- (139) In accordance with Article 21 of the basic Regulation, it was examined whether, despite the conclusion on injurious dumping, compelling reasons exist for concluding that it is not in the Community interest to adopt measures in this particular case. The likely impact of possible measures on all parties involved in the proceeding and also the consequences of not taking measures have to be considered in this respect.
- (140) In order to assess the likely impact of the imposition or non-imposition of measures, information was requested from all interested parties which were either known to be concerned or which made themselves known. On this basis, the Commission sent questionnaires to the CI, to two unrelated importers and to 24 users.

- (141) As explained in recital 10, six CI producers and eight unrelated importers/users replied to the questionnaire.

1. Interests of the Community industry

- (142) The injurious situation of the CI resulted from its difficulty to compete with the low-priced dumped imports.

(143) The imposition of measures is expected to prevent further distortions of the market, suppression of prices and restore fair competition. The CI should then be able to increase the volume of its sales and to regain market share and thereby generate better economies of scale, thus achieving the necessary profit level to improve the industry's financial situation. This would allow the CI to continue investment in its production facilities, thus guaranteeing the CI's survival.

(144) Otherwise, should anti-dumping measures not be imposed, the deterioration of the situation of the CI would continue. The CI is particularly marked by a loss of revenue despite increasing unit selling prices. This is due to the falling sales volume and market shares of the CI due to the dumped imports. The CI was also not able to pass on the full raw material cost increase to its customers due to the price pressure from the dumped imports. Indeed, in view of the low revenue and the significantly worsening trend in the IP, it is most likely that the financial situation of the CI will deteriorate further in the absence of any measures. This would ultimately lead to further cuts in production, which would therefore threaten employment and investments in the Community. With the closure of the Community production, the aluminium foil users would become more dependent on suppliers outside the Community.

(145) Accordingly, it is provisionally concluded that the imposition of anti-dumping measures would allow the CI to recover from the injurious dumping suffered and would thus be in the interest of the CI.

2. Interest of unrelated importers

(146) The Commission sent questionnaires to all known importers/traders. As far as importers are concerned, two importers submitted a questionnaire reply. The volumes of the product concerned imported by these two importers represented 17,0 % of the total imports from the countries concerned into the Community and 8,0 % of the Community consumption.

(147) On the basis of information submitted by the importers concerned, it appears that profit margins on the product concerned are indeed relatively low. Therefore, it was claimed that eventual anti-dumping duties could not be passed on to the final customers who are mainly rewinders.

(148) First it should be noted that the investigation revealed that price increases can at least be partly passed on to the customers due to the fact that, as mentioned below, prices of aluminium foil are fluctuating significantly and important price increases in the past had already been passed on to the customers.

(149) Secondly, there are other supplying countries such as Russia, Venezuela or Turkey from where the product can be imported without any anti-dumping duty. Therefore, although it is not denied that the imposition of an anti-dumping duty may have a certain impact on these companies; this impact would be mitigated by the existence of other supplying countries.

3. Interest of users

(150) The Commission sent questionnaires to all known users in the Community of whom six replied to the questionnaire. The main users in the Community are the rewinders whose activities consist in trading wrapping material (aluminium foil, but also paper and plastic) after rewinding the imported product concerned into small rolls and repacking of the latter for industrial and retail sales business. Rewinders are not ACF customers. Rewinders represent 80 % of the Community consumption of the product concerned.

(151) In the event that anti-dumping measures were to be imposed, the rewinders were particularly concerned about (i) the risk of distortion of competition with rewinders in other third countries, (ii) the existence of a sufficient supply of aluminium foil in the Community and (iii) the impact of eventual measures on their industry segment.

3.1. Significant disadvantage vis-à-vis rewinders from other third countries

(152) It was claimed that if measures were imposed, producers of aluminium foil in the countries concerned, particularly in the PRC, would expand into the production of downstream products (i.e. rewinding the product concerned into consumer rolls of aluminium foil) for export to the Community to avoid paying the anti-dumping duties. Dumping would in that case allegedly take place on the level of the downstream product and consequently, rewinders in the Community could therefore be pushed out of the market.

(153) It should be noted that the transport cost of consumer reels is proportionally very high and therefore transport of this product to the Community may not be economically viable. Therefore, Community rewinders would still continue to benefit from natural advantages such as lesser transport costs and a wider product range to offer to the retailers.

3.2. Shortage of supply

(154) The rewinders have claimed that Community producers of jumbo reels are more interested in manufacturing ACF, which has a higher selling price than aluminium foil and allegedly are only supplying them with aluminium foil when demand for ACF is low. Since ACF and aluminium foil are produced on the same production line the switch from one product to the other would be easy and would not involve significant cost.

(155) The same interested parties argued that for that reason there is not enough (or at least an unstable) supply of aluminium foil in the Community resulting in a greater reliance on imports, especially from the countries concerned. However, at this stage on the basis of the verified information available, the investigation has shown that these allegations are not founded. Thus, the production volumes of ACF of one of the largest Community producers have remained stable during the period considered, while its volume of sales of aluminium foil has decreased significantly. This indicates that production of aluminium foil was not replaced by the production of ACF as claimed.

(156) In general, spare capacities of the CI have increased since capacity utilisation has decreased significantly (from 88 % to 62 %). Therefore, it was concluded that there are significant aluminium foil spare capacities available in the CI which could satisfy an increase in demand for the CI's product. On this basis, it could not be concluded that customers in the Community depend on imports of aluminium foil.

(157) The duties should not result in a shortage of supply. Alternative sources of supply from other third countries with no duties are available. Furthermore, other third countries also saw their market share shrinking, which indicate that there are spare capacities available in these

countries in order to supply the Community market should fair competition be restored.

3.3. Impact of eventual measures on rewinders

(158) These small end-rolls (consumer rolls) weigh less than 10 kg and are used for multipurpose short-life wrapping (mostly in households, catering and food and floristry retail businesses).

(159) The rewinders alleged that they are in a vulnerable position since they are between the aluminium foil producers and the major retail distribution chains which are imposing them very tight profit margins. The overall profitability of the rewinders was found to be ranging between - 2 % and + 2 %.

(160) Although rewinders are generally suppliers of a wide range of packaging products, aluminium foil is an important part (up to 70 %) of their turnover and given their low level of profitability, the impact of eventual measures would have a significant impact as they believe they would not be able to pass them on to their customers.

(161) Rewinders may still be able to pass the anti-dumping duty on to their customers, especially if prices of the main raw material remain relatively low compared to the very high price levels in 2006 and 2007. Furthermore, as mentioned in recital 149 there are other supplying countries available.

(162) On the basis of the above, it is provisionally concluded that the impact on users would not be as such that measures have to be considered to be against the overall Community interest.

4. Conclusion on Community interest

(163) Taking into account all of the above factors, it is concluded that the imposition of measures would not have a significantly negative effect on the situation of the users and importers of the product concerned. On this basis, it is provisionally concluded that there are no compelling reasons not to impose provisional anti-dumping measures.

H. PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

(164) In view of the conclusions reached with regard to dumping, resulting injury, causation and Community interest, provisional measures should be imposed in order to prevent further injury being caused to the CI by the dumped imports.

(165) In order to establish the level of duty, account has been taken of the level of the dumping margins found and of the amount of duty necessary to eliminate the injury suffered by the Community. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the CI to cover its costs of production and to obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community. The pre-tax profit margin for producers used was 5 %, as also proposed in the complaint and was used in original investigation proceeding. This profit level was confirmed during this investigation.

(166) 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 (see recitals 98 to 100 above), with the non-injurious price of products sold by the CI on the Community market. The non-injurious price has been obtained by adjusting the sales price of the CI by the actual loss during the IP and by adding the abovementioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value. For Armenia and Brazil given the high level of cooperation, the residual injury margin was set at the level of the margin found for the cooperating exporters concerned. For China, given the very low level of cooperation, the residual injury margin was calculated based on the most injurious exports of one cooperating exporting producer granted IT.

2. Provisional measures

(167) In the light of the foregoing, it is therefore considered that in accordance with Article 7(2) of the basic Regulation a provisional anti-dumping duty should be imposed at the level of the lower of the dumping and injury margins, in accordance with the lesser duty rule.

(168) 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 this investigation with respect to these companies. These duty rates (as opposed to residual duties applicable to 'all other companies' in Armenia, Brazil, and the PRC) are thus exclusively applicable to imports of products originating in the country concerned and produced by the 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 document 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'.

(169) Any claim regarding the application of these individual company anti-dumping duty rates (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⁽⁷⁾ 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. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

(170) On the basis of the above, the provisional duty rates are:

Country	Company	Dumping margin	Injury margin	Provisional duty rates
Brazil	Companhia Brasileira de Alumínio	27,6 %	25,9 %	25,9 %
	All other companies	27,6 %	25,9 %	25,9 %
PRC	Alcoa Bohai and Alcoa Shanghai	23,9 %	10,7 %	10,7 %
	Shandong Loften	31,6 %	28,3 %	28,3 %
	Zhenjiang Dingsheng	31,9 %	33,3 %	31,9 %
	All other companies	42,9 %	52 %	42,9 %
Armenia	RUSAL Armenal	37,0 %	20,0 %	20,0 %
	All other companies	37,0 %	20,0 %	20,0 %

⁽⁷⁾ European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

I. FINAL PROVISION

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on 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 People's Republic of China.

2. The rate of the provisional anti-dumping duty applicable to the net free-at-Community-frontier price, before duty, of the products manufactured by the companies below shall be:

Country	Company	Anti-dumping duty	TARIC Additional Code
Armenia	Closed Joint Stock Company Rusal-Armenal	20,0 %	A943
	All other companies	20,0 %	A999
The People's Republic of China	Alcoa (Shanghai) Aluminium Products Co., Ltd and Alcoa (Bohai) Aluminium Industries Co., Ltd	10,7 %	A944
	Shandong Loftan Aluminium Foil Co., Ltd	28,3 %	A945
	Zhenjiang Dingsheng Aluminium Co., Ltd	31,9 %	A946
	All other companies	42,9 %	A999
Brazil	Companhia Brasileira de Alumínio	25,9 %	A947
	All other companies	25,9 %	A999

3. The application of the individual duty rates specified for the companies in the People's Republic of China 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 the Annex. If no such invoice is presented, the duty rate applicable to all other companies shall apply.

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

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

Article 2

Without prejudice to Article 20 of Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

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

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

Done at Brussels, 7 April 2009.

For the Commission
Catherine ASHTON
Member of the Commission

ANNEX

The valid commercial invoice referred to in Article 1(3) of this Regulation must include a declaration signed by an official of the company and bearing the company's official stamp, in the following format:

1. The name and function of the official of the company which has issued 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 the People's Republic of China. I declare that the information provided in this invoice is complete and correct.'
-

COMMISSION REGULATION (EC) No 288/2009

of 7 April 2009

laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards Community aid for supplying fruit and vegetables, processed fruit and vegetables and banana products to children in educational establishments, in the framework of a School Fruit Scheme

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

the accompanying measures that should be adopted so as to ensure the Scheme's effectiveness.

Having regard to the Treaty establishing the European Community,

- (4) Pursuant to Article 152(1) of the Treaty, a high level of health should be ensured in the definition and implementation of all Community policies. So as to ensure that the products eligible for aid offer a high level of health protection to children and to promote healthy eating habits, the Member States should exclude products with added sugar, fat, salt or sweeteners from their strategy, except where, in duly justified cases, Member States provide in their strategy that such products may be eligible under their scheme. In all cases, a Member State's list of eligible products should be endorsed by the competent national health authority.

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 103h(f) in conjunction with Article 4 thereof,

Whereas:

(1) Council Regulation (EC) No 13/2009 ⁽²⁾ has amended Regulation (EC) No 1234/2007, in order to provide for Community aid under a School Fruit Scheme to supply fruit and vegetables, processed fruit and vegetables and banana products to children in regular attendance at one of the educational establishments administered or recognised by the competent authorities of a Member State.

- (5) School Fruit Schemes require accompanying measures in order to be effective. Accompanying measures should not be limited to certain geographical areas or educational establishments, excluding certain children from their scope. Therefore, Member States should aim to give most children of their scheme's target group access to accompanying measures.

(2) In order to ensure the orderly implementation of their School Fruit Scheme, Member States wishing to participate in the Scheme, at national or regional level, should draw up a prior strategy for its implementation. So as to ensure the added value of School Fruit Schemes set up under this Regulation, Member States should explain in their strategy how they will guarantee the added value of their scheme, especially where regular school meals are consumed at the same time as products financed under their School Fruit Scheme. Where Member States choose to implement more than one Scheme, they should draw up a strategy for each such Scheme.

- (6) In the interest of sound administration and budget management, Member States implementing a School Fruit Scheme should apply for Community aid on an annual basis.

(3) A Member State's strategy should contain the key elements referred to in Article 103ga(2) of Regulation (EC) No 1234/2007, namely the budget of its scheme, including the Community and national contribution, its duration, target group, eligible products and the involvement of relevant stakeholders, such as educational and health authorities, the private sector or the children's parents. A Member State's strategy should also describe

- (7) For the sake of transparency, an indicative allocation of Community aid per Member State, calculated on the basis of the allocation key referred to in Article 103ga(5) of Regulation (EC) No 1234/2007, should be provided for. In order to take demographic developments into account, the Commission should assess at least every three years whether that allocation is still up to date.

- (8) In order to maximise the full potential of available funds, Community aid that was indicatively attributed to Member States which did not notify their strategy to the Commission in time should be reallocated between the participating Member States that notified the Commission their willingness to use more than their initial allocation of Community aid.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 5, 9.1.2009, p. 1.

- (9) Not only costs incurred for purchasing fruit and vegetables, processed fruits and vegetables and banana products, but also some related costs that are directly linked to the implementation of a School Fruit Scheme, should be eligible for Community aid, if provided for in a Member State's strategy. However, in order to preserve the effectiveness of the Scheme, only a small percentage of aid should be allocated to these related costs. For financial management and control purposes, these costs should represent fixed amounts, calculated on a pro rata basis.
- (10) In the interest of sound administration, budget management and supervision, the conditions for granting aid, the approval of aid applicants and the conditions for a valid aid application should be specified. As regards the payment of the aid, the requirements to be met by applicants should be specified and rules on the lodging of applications, on the checks and sanctions to be applied by the competent authorities and on the payment procedure should be laid down.
- (11) To protect the Community's financial interests, adequate control measures should be adopted to combat irregularities and fraud. These control measures should involve full administrative checking supplemented by on-the-spot checks. The scope, content, timing and reporting of such control measures should be specified so as to ensure an equitable and uniform approach between Member States, taking account of their different implementation of the scheme.
- (12) Amounts unduly paid should be recovered and sanctions should be determined in order to deter applicants from fraudulent behaviour and serious negligence.
- (13) In order to assess the effectiveness of the School Fruit Scheme, and to allow peer review and the exchange of best practices, Member States should monitor and evaluate the implementation of their School Fruit Scheme on a regular basis and send their results and findings to the Commission. Where fruit and vegetables, processed fruit and vegetables and banana products are not distributed free of charge to the target group of their scheme, Member States should assess the impact of a parental contribution on the effectiveness of their Scheme.
- (14) Experience has shown that the beneficiaries of projects co-financed with Community aid are not always suf-

ficiently aware of the role played by the Community in the relevant project. The role of the Community in the School Fruit Scheme should therefore be clearly indicated in each participating educational establishment.

- (15) In order to allow the Member States sufficient time to set up their School Fruit Scheme, or to align their existing scheme with the new provisions, Member States may elaborate a strategy which contains only the main key element for the initial period from 1 August 2009 to 31 July 2010. They should also be able to postpone the adoption of accompanying measures during that transitional period.
- (16) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Scope and use of terms

1. This Regulation lays down rules for implementing for Regulation (EC) No 1234/2007 as regards Community aid for supplying fruit and vegetables, processed fruit and vegetables and banana products and for certain related costs to children in educational establishments, in the framework of a School Fruit Scheme.

2. Terms used in this Regulation shall have the same meaning as when used in Regulation (EC) No 1234/2007, unless this Regulation provides otherwise.

Article 2

Target group

The aid referred to in Article 103ga of Regulation (EC) No 1234/2007 shall be targeted at children in regular attendance at any of the educational establishments administered or recognised by the competent authorities of a Member State.

Article 3

Strategy

1. Member States wishing to set up a School Fruit Scheme shall draw up the strategy referred to in Article 103ga(2) of Regulation (EC) No 1234/2007.

2. A Member State's strategy shall not cover products that are listed in Annex I to this Regulation. However, in duly justified cases, such as where a Member State wants to ensure a broad assortment of products under its scheme or wants to make its scheme more attractive, a strategy may provide that such products may become eligible, if only limited amounts of the substances referred to in that Annex are added.

Member States shall ensure that their competent health authorities endorse the list of products that shall be eligible under their School Fruit Scheme.

3. Member States shall explain in their strategy how they will guarantee the added value of their School Fruit Scheme, especially where their strategy allows the consumption of regular school meals at the same time as products financed under their School Fruit Scheme. They shall describe their control measures in their strategy.

4. Member States shall describe in their strategy which accompanying measures they will adopt to ensure the successful implementation of their scheme. Those measures may focus on improving the target group's knowledge on the fruit and vegetable sector or healthy eating habits, such as the development of websites or the organisation of farm visits or gardening sessions.

5. Member States may choose the appropriate geographical and administrative level at which they wish to implement a 'School Fruit Scheme'. If they choose to implement more than one scheme, they shall provide a strategy for each scheme. A Member State which implements multiple schemes may establish a coordination framework.

Article 4

Aid for the supply of fruit and vegetables, processed fruit and vegetables and banana products to children

1. Member States setting up a School Fruit Scheme may apply for the aid referred to in Article 103ga of Regulation (EC) No 1234/2007 for a period running from 1 August to 31 July of one or more years, by notifying their strategy to the Commission by 31 January of the year in which that period starts.

2. Member States that already have a school fruit scheme, or other school distribution schemes that include fruit, prior to the

entry into force of this Regulation shall qualify for Community aid subject to the conditions set out in Article 103ga(6) of Regulation (EC) No 1234/2007. They shall notify their strategy to the Commission by the deadline provided for in paragraph 1.

3. Annex II to this Regulation provides for an indicative allocation of Community aid per Member State, calculated on the basis of the allocation key referred to in Article 103ga(5) of Regulation (EC) No 1234/2007. The Commission shall assess at least every three years whether Annex II is still consistent with that allocation key.

4. The allocations of Community aid reserved for Member States that did not notify the Commission by 31 January of the year in which the period referred to in paragraph 1 starts, or that requested only part of their initial allocation, shall be reallocated among the participating Member States which notified the Commission, by the deadline referred to in paragraph 1, of their willingness to use more than their initial allocation of Community aid.

The reallocation of Community aid referred to in the first subparagraph shall be implemented in proportion to the initial allocation of the Member State, calculated on the basis of the allocation key referred to in Article 103ga(5) of Regulation (EC) No 1234/2007.

The Commission shall decide on the definitive allocation of Community aid to the Member States by 31 March of the year in which the period referred to in paragraph 1 starts.

Article 5

Eligible costs

1. The following costs are eligible for the Community aid referred to in Article 103ga of Regulation (EC) No 1234/2007:

(a) costs for fruits and vegetables, processed fruit and vegetables and banana products covered by the School Fruit Scheme referred to in Article 3(1) and delivered to the educational establishment.

(b) related costs, which are costs that are directly linked to the implementation of a School Fruit Scheme and shall only include:

(i) costs for purchasing, renting, hiring and leasing of equipment, if provided for in the strategy;

in which the educational establishment to which the products are supplied is located.

(ii) costs for monitoring and evaluation referred to in Article 12, which shall be directly linked to the School Fruit Scheme;

2. Member State may select aid applicants from among the following bodies:

(iii) costs for communication, which shall include costs for the poster referred to in Article 14(1).

(a) educational establishments;

(b) educational authorities in respect of the products distributed to the children within their area;

Where costs for transport and distribution of the products covered by a School Fruit Scheme are invoiced separately, such costs shall not exceed 3 % of the costs for the products.

(c) suppliers and/or distributors of the products;

Where products are supplied free of charge to educational establishments, Member States may accept invoices for transport and distribution, subject to a ceiling set in the strategy of the Member State.

(d) organisations acting on behalf of one or more educational establishments or educational authorities and specifically established for that purpose;

The costs for communication referred to in point (b)(iii) of the first subparagraph may not be financed under other Community aid schemes.

(e) any other public or private body to manage:

(i) the distribution of fruit and vegetables, processed fruit and vegetables and banana products to educational establishments in the framework of a School Fruit Scheme set up under, or aligned with, this Regulation;

2. The total amount for costs under points (b)(i) and (iii) of the first subparagraph of paragraph 1 shall represent a fixed amount and be subject to a ceiling not exceeding 5 % of the Member State's envelope of Community aid, following the definitive allocation of Community aid referred to in Article 4(4).

(ii) the evaluation and/or communication.

Article 7

General conditions for approval of aid applicants

Approval shall be conditional on the following written commitments by the applicant to the competent authority:

For the year in which the evaluation exercise pursuant to Article 12 takes place, the total amount for costs under points (b)(i) and (ii) of the first subparagraph of paragraph 1 shall not exceed 10 % of the Member State's envelope of Community aid for the year in which the evaluation takes place, following the definitive allocation of Community aid referred to in Article 4(4).

(a) to use products financed under a School Fruit Scheme set up under, or aligned with, this Regulation for consumption by the children of its educational establishment or of the establishments in respect of which it will apply for aid;

Article 6

General conditions for granting the aid

1. Member States shall ensure that the aid provided for under their strategy shall be distributed to the aid applicants where these applicants have made a valid aid application to their competent authorities. An aid application shall only be valid if lodged by an applicant which has been approved for that purpose by the competent authorities of the Member State

(b) to repay any aid unduly paid for the quantities concerned, if it has been found that these products have not been distributed to the children referred to in Article 2 or have been paid for products that are not eligible under this Regulation;

(c) in case of fraud or serious negligence, to pay an amount equal to the difference between the amount initially paid and the amount to which the applicant is entitled;

- (d) to make supporting documents available to the competent authorities at their request;
- (e) to submit to any check decided on by the competent authority of the Member State, in particular the scrutiny of records and physical inspection.

Member States may make approval conditional on additional written commitments by the applicant to the competent authority.

Article 8

Specific conditions for the approval of certain applicants

If the aid is applied for by an applicant referred to in points (c) to (e) of Article 6(2), the applicant shall make a written commitment, in addition to those referred to in Article 7, to keep records of the names and addresses of the educational establishments or, where appropriate, educational authorities and the products and quantities sold or supplied to these establishments or authorities.

Article 9

Suspension and withdrawal of approval

If it is found that an applicant for aid no longer meets the conditions laid down in Articles 6, 7 and 8, or any other obligation under this Regulation, approval shall be suspended for a period of between one and twelve months or be withdrawn, depending on the seriousness of the irregularity. Such action shall not be taken in cases of *force majeure* or if the Member State finds that the irregularity was not committed deliberately or by negligence or was of minor importance. Approval, once withdrawn, may be restored at the applicant's request after a minimum period of 12 months.

Article 10

Aid applications

1. Aid applications shall be made in a manner which shall be specified by the competent authority of the Member State and shall include at least the following information:

- (a) the quantities distributed;
- (b) the name and address or identification number of the educational establishment or educational authority to which the information referred to in point (a) relates; and
- (c) the number of children in the respective educational establishment of the target group as identified in the strategy of the Member State.

2. Member States shall specify the frequency of applications in line with their strategy, but aid application periods shall not cover more than 5 months. If the scheme runs during more than 6 months of the period referred to in Article 4(1), the total number of aid applications per period shall be at least three.

3. Except in cases of *force majeure*, aid applications shall, in order to be valid, be correctly filled in and be lodged by the last day of the third month following the end of the period to which they relate.

4. The amounts shown in the application shall be supported by documentary evidence held available for the competent authorities. This evidence shall show the price of the delivered products and shall be receipted or accompanied by proof of payment.

Article 11

Payment of the aid

1. As regards suppliers, organisations or bodies referred to in points (c) to (e) of Article 6(2), aid shall only be paid:

- (a) on presentation of a receipt for the quantities actually delivered; or
- (b) on the basis of the report of an inspection made by the competent authority before final payment of the aid, establishing that the payment requirements have been met; or
- (c) if the Member State so authorises, on presentation of alternative proof that the quantities delivered for the purposes of this Regulation have been paid for.

2. The aid shall be paid by the competent authority within three months of the day of lodging of the correctly filled and valid aid application. The Member States shall determine the form and content of a valid aid application.

3. If the time limit referred to in Article 10(3) is overrun by less than two months the aid shall still be paid but reduced:

- (a) by 5 % if the overrun is one month or less;
- (b) by 10 % if the overrun is more than a month but less than two months.

Once the time limit referred to in Article 10(3) is overrun by two months, the aid shall be reduced by 1 % per additional day.

Article 12

Monitoring and evaluation

1. Member States shall monitor the implementation of their School Fruit Scheme on an annual basis. Monitoring shall draw upon the data originating from management and control obligations, including those set out in Articles 10 and 11. Member States shall provide for adequate structures and forms to ensure regular monitoring of programme implementation.

2. Member States shall evaluate the implementation of their School Fruit Scheme and assess its effectiveness. For the period running from 1 August 2010 to 31 July 2011, Member States shall notify the results of their evaluation exercise to the Commission by 29 February 2012. For subsequent periods, Member States shall evaluate the implementation of their scheme at least every five years and notify their results every five years following that date.

3. Where a Member State does not notify the results of its evaluation exercise by the date referred to in paragraph 2, or every five years following that date, the amount of the next allocation will be reduced as follows:

(a) by 5 % if the delay is one month or less;

(b) by 10 % if the delay is more than one month but less than two months.

Once the time limit referred to in subparagraph 1 is delayed by two months, the aid shall be reduced by 1 % per additional day.

Article 13

Controls and sanctions

1. Member States shall take all necessary measures to ensure compliance with this Regulation. These measures shall include full administrative checking of aid applications, which shall be supplemented by on-the-spot checks as specified in paragraphs 2 to 8.

2. Administrative checks shall be conducted on all aid applications and shall include checking of supporting documents as defined by the Member States, relating to product delivery. The administrative checks shall be supplemented by on-the-spot checks carried out in particular on:

(a) the records referred to in Article 8, including financial records such as purchase and sales invoices and bank extracts;

(b) use of the subsidised products in accordance with this Regulation, particularly if there are grounds for suspecting any irregularity.

3. The total number of on-the-spot checks carried out in respect of each period running from 1 August to 31 July shall cover at least 5 % of the aid distributed at national level and at least 5 % of all the applicants referred to in Article 6.

When the number of applicants in a Member State is less than hundred, the on-the-spot checks shall be carried out on the premises of five applicants.

When the number of applicants in a Member State is less than five, 100 % of the applicants shall be controlled.

4. On-the-spot checks shall be conducted throughout the period from 1 August to 31 July and shall cover a period of at least the previous twelve months.

5. The applicants subjected to on-the-spot checks shall be selected by the competent control authority taking due account of the different geographical areas, and on the basis of a risk analysis taking into consideration in particular the recurrent nature of errors and the findings of checks carried out in past years. The risk analysis shall also take account of the different amount of aid involved and type of applicants referred to in Article 6(2).

6. In cases where the applicant referred to in points (b) to (e) of Article 6(2) applies for the aid, the on-the-spot check carried out on the premises of the applicant shall be supplemented by on-the-spot checks on the premises of at least two educational establishments or at least of 1 % of the educational establishments stated on the applicant's roll, whichever is the greater.

7. Provided that the purpose of the control is not jeopardised, advance notice, strictly limited to the minimum time period necessary, may be given.

8. The competent control authority shall draw up a control report on each on-the-spot check. The report shall describe precisely the different items controlled.

The control report shall be divided into the following parts:

(a) a general part containing, in particular, the following information:

(i) the scheme, the period covered, the controlled aid applications, the quantities of products covered under the School Fruit Scheme, the participating educational establishments an estimate based on the available data of the number of children for which the aid was paid and the financial amount involved;

(ii) the responsible persons present;

(b) a part describing separately the checks carried out and containing, in particular, the following information:

(i) the documents checked;

(ii) the nature and extent of checks carried out;

(iii) remarks and findings.

9. For recovery of unduly paid amounts, Article 73(1), (3), (4) and (8) of Commission Regulation (EC) No 796/2004 ⁽¹⁾ shall apply *mutatis mutandis*.

10. Without prejudice to Article 9, in case of fraud or serious negligence for which he/she is responsible, the applicant shall, in addition to the recovery of unduly paid amounts in accordance with paragraph 9 of this Article, pay an amount equal to the difference between the amount initially paid and the amount the applicant is entitled to.

Article 14

European 'School Fruit Scheme' poster

1. Member States participating in the European 'School Fruit Scheme' shall communicate to the public that the scheme has received financial support from the European Community. In this respect, Member States may make use of a poster produced in accordance with the minimum requirements laid down in Annex III, which shall be permanently situated at a clearly

visible and legible place at the main entrance of the participating educational establishment.

2. Where Member States decide not to make use of the poster referred to in paragraph 1, they shall clearly explain in their strategy how they will inform the public about the European Community's financial contribution to their scheme. Posters, websites or any other instrument of information or publicity on a Member State's School Fruit Scheme shall in any event exhibit the European flag and the following sentence: 'Our (type of educational establishment) participates in the European "School Fruit Scheme" with the financial support of the European Community.'

3. References to the financial contribution made available by the European Community shall receive at least the same visibility as contributions from other private or public entities supporting a Member State's scheme.

Article 15

Notifications

1. Member States shall make the notifications referred to in Article 4(1) and (2) to the Commission, by 31 January of the year in which the period mentioned in Article 4(1) starts. These notifications shall be sent by e-mail to AGRI-HORT-SCHOOL-FRUIT@ec.europa.eu, in a format to be decided by the Commission.

Starting from 2010, Member States shall notify the Commission each year, following the end of the period referred to in Article 4(1) by 30 November of the year in which the period mentioned in Article 4(1) ends:

(a) the results of the monitoring exercise, where provided for under Article 12;

(b) the on-the-spot checks carried out pursuant to Articles 13 and 16 and the related findings.

2. The form and content of the notifications mentioned in paragraph 1 shall be defined on the basis of guidance made available by the Commission to the Member States. Those models shall not apply until the Management Committee of Common Organisation of Agricultural Markets has been informed.

⁽¹⁾ OJ L 141, 30.4.2004, p. 18.

3. The Commission shall publish the Member States' strategies and the results of their monitoring and evaluation exercise on a regular basis.

4. Where a Member State changes the strategy referred to in Article 3, it shall notify the Commission without delay of its new strategy, by e-mail to the address referred to in the first subparagraph of paragraph 1.

Article 16

Transitional provisions

1. For the period running from 1 August 2009 to 31 July 2010, Member States may draw up a strategy which contains only the following key elements: budget, target group and eligible products and, by derogation from Article 3(2), abstain from having their list of eligible products endorsed by their competent health authorities. They may also postpone the implementation of accompanying measures until the end of that period.

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

Done at Brussels, 7 April 2009.

2. For the period referred to in paragraph 1, and by way of derogation from Article 4(1) and (2), Member States may notify their strategy by 31 May 2009, whereas the Commission shall only decide on the definitive allocation of Community aid by 31 July 2009.

3. For the period referred to in paragraph 1, and by way of derogation from Article 11(2), aid shall be paid by the competent authority within four months of the day of lodging of the correctly filled and valid application referred to in Article 6(1), while the percentage of the on-the-spot checks referred to in Article 13(3) shall cover at least 10 % of the aid and 10 % of the aid applicants.

Article 17

Entry into force

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

It shall apply from 15 April 2009.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

ANNEX I

List of products that shall be excluded from a School Fruit Scheme that is co-financed with Community aid

Products with:

- Added sugar
 - Added fat
 - Added salt
 - Added sweeteners
-

ANNEX II

Indicative allocation of Community aid per Member State

Member State	Co-financing rate (in %)	Children 6-10 abs. numbers	EUR
Austria	50	439 035	1 320 400
Belgium	50	592 936	1 782 500
Bulgaria	75	320 634	1 446 100
Cyprus	50	49 723	175 000
Czech Republic	73	454 532	1 988 100
Denmark	50	343 807	1 034 000
Estonia	75	62 570	282 400
Finland	50	299 866	901 200
France	51	3 838 940	11 778 700
Germany	52	3 972 476	12 488 300
Greece	59	521 233	1 861 300
Hungary	69	503 542	2 077 900
Ireland	50	282 388	849 300
Italy	58	2 710 492	9 521 200
Latvia	75	99 689	450 100
Lithuania	75	191 033	861 300
Luxembourg	50	29 277	175 000
Malta	75	24 355	175 000
Netherlands	50	985 163	2 962 100
Poland	75	2 044 899	9 222 800
Portugal	68	539 685	2 199 600
Romania	75	1 107 350	4 994 100
Slovakia	73	290 990	1 276 500
Slovenia	75	93 042	419 200
Spain	59	2 006 143	7 161 900
Sweden	50	481 389	1 447 100
UK	51	3 635 300	11 148 900
EU 27	58	25 920 489	90 000 000

ANNEX III

Minimum requirements for the European 'School Fruit Scheme' poster

Poster size: A3 or bigger

Letters: 1 cm or bigger

Title: European 'School Fruit Scheme'

Content: At least the following wording taking into account the type of educational establishment:

'Our [type of educational establishment (e.g. nursery/pre-school/school)] participates in the European "School Fruit Scheme" with the financial support of the European Community.' The poster shall bear the emblem of the European Community.

COMMISSION REGULATION (EC) No 289/2009

of 7 April 2009

imposing a provisional anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 Communities ⁽¹⁾, (basic Regulation) and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE**1. Initiation**

- (1) On 9 July 2008, the Commission announced, by a notice published in the *Official Journal of the European Union* ⁽²⁾, the initiation of an anti-dumping proceeding with regard to imports into the Community of certain seamless pipes and tubes (SPT) of iron or steel originating in the People's Republic of China (the 'country concerned' or 'the PRC').
- (2) The proceeding was initiated as a result of a complaint lodged on 28 May 2008 by the Defence Committee of the Seamless Steel Tubes Industry of the European Union (complainant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of certain seamless pipes and tubes of iron or steel. The complaint contained evidence of dumping of the said product and of a foreseeable and imminent threat of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

2. Parties concerned by the proceeding

- (3) The Commission officially advised the complainant, other known producers in the Community, the exporting producers, importers, suppliers and users known to be concerned, as well as their associations, and the representatives of the exporting country, of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (4) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(5) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the exporting producers known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Ten (groups of) companies requested MET pursuant to Article 2(7) of the basic Regulation or IT should the investigation establish that they did not meet the conditions for MET.

(6) In view of the apparent high number of exporting producers, importers and Community producers, sampling was envisaged in the notice of initiation for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers, 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 July 2007 – 30 June 2008).

(7) After examination of the information submitted, and given the high number of exporting producers and Community producers which indicated their willingness to cooperate, it was decided that sampling was necessary with regard to these producers. Given the limited number of importers that indicated their willingness to cooperate it was decided that sampling was not necessary with regard to unrelated importers.

(8) The Commission sent questionnaires to the sampled exporting producers, sampled Community producers, to importers, and to all known users and user associations. Full questionnaire replies were received from the sampled exporting producers in the PRC, from all sampled Community producers with the exception of one company which only provided partial information, six importers and five users.

(9) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury or threat of injury and Community interest. Verification visits were carried out at the premises of the following companies.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ C 174, 9.7.2008, p. 7.

Exporting producers in the PRC

- Yan Link Steel Group (Hubei Xinyegang Steel Co., Ltd and Daye Special Steel Co., Ltd),
- Hengyang Valin Group (Hengyang Valin Steel Tube Co., Ltd and Hengyang Valin MPM Co., Ltd), and,
- Shandong Luxing Steel Pipe Co. Ltd.

Community producers

- Vallourec & Mannesmann France, Boulogne-Billancourt, France,
- Vallourec & Mannesmann Germany GmbH, Düsseldorf, Germany,
- Tenaris-Dalmine SpA, Dalmine, Italy,
- ArcelorMittal Tubular Products Ostrava, Ostrava, Czech Republic,
- ArcelorMittal Tubular Products Roman SA, Roman, Romania,
- Tubos Reunidos SA, Amurrio Spain,
- Productos Tubulares SA, Valle de Trapaga, Spain.

Related traders

- Almacenes Metalurgicos, SA, Barcelona, Spain.

Unrelated importers

- Jan van Meever BV, Meerkerk, the Netherlands,
- Comercial de Tubos SA, Alcalá de Henares, Spain.

Community user

- Erne Fittings GmbH, Schlins, Austria.

- (10) In light of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country took place at the premises of the following company:

- Vallourec & Mannesmann Tubes, Houston, Texas, USA.

3. Sampling

- (11) With regard to exporting producers the Commission selected, in accordance with Article 17 of the basic Regulation, a sample based on the largest representative volume of exports which can reasonably be investigated within the time available. The sample selected consists of four (groups of) companies, representing 70 % of the

export volume of the cooperating parties from the PRC to the Community. In accordance with Article 17(2) of the basic Regulation, the parties concerned were consulted and raised no objection.

- (12) With regard to Community producers, the Commission selected, in accordance with Article 17 of the basic Regulation, a sample based on the largest representative volume of production of the like product in the Community, which could reasonably be investigated within the time available. The sample selected consists of 5 groups of companies (a total of 9 companies), representing 62 % of total production in the Community. In accordance with Article 17(2) of the basic Regulation, the cooperating producers were consulted and raised no objection to the selected sample. Since the number of cooperating Community importers was limited, it was decided that in their case the use of sampling techniques was not necessary.

4. Investigation period

- (13) The investigation of dumping and injury covered the period from 1 July 2007 to 30 June 2008 (IP). The examination of trends relevant for the assessment of injury covered the period from 2005 to the end of the investigation period (period considered).

B. PRODUCT CONCERNED AND LIKE PRODUCT**1. Product concerned**

- (14) The product concerned is certain seamless pipes and tubes, of iron or steel, of circular cross-section, of an external diameter not exceeding 406,4 mm with a Carbon Equivalent Value (CEV) not exceeding 0,86 according to the International Institute of Welding (IIW) formula and chemical analysis⁽¹⁾, originating in the People's Republic of China (the product concerned). The notice of initiation (see recital 1 above) indicated that normally the product concerned is declared within CN codes ex 7304 11 00, ex 7304 19 10, ex 7304 19 30, ex 7304 22 00, ex 7304 23 00, ex 7304 24 00, ex 7304 29 10, ex 7304 29 30, ex 7304 31 80, ex 7304 39 58, ex 7304 39 92, ex 7304 39 93, ex 7304 51 89, ex 7304 59 92 and ex 7304 59 93 and that these CN codes were only given for information. However, the investigation established that three of these CN codes do not refer to the product concerned, i.e. ex 7304 11 00, ex 7304 22 00 and ex 7304 24 00, and that five other CN codes were missing, i.e. ex 7304 31 20, ex 7304 39 10, ex 7304 39 52, ex 7304 51 81 and ex 7304 59 10.

⁽¹⁾ The CEV shall be determined in accordance with Technical Report, 1967, IIW doc. IX-535-67, published by the International Institute of Welding (IIW).

- (15) The product concerned is used in a wide variety of applications, like for mechanical uses (including automotive and engineering), in the construction business for piling, for power generation like boiler tubes, as oil country tubular goods (OCTG) used for drilling, casing and tubing in the oil industry, and as line pipes to transport liquids or gases.
- (16) SPT take very different forms at the time of their delivery to the users. They can be e.g. galvanised, threaded, delivered as green tubes (i.e. without any heat treatment), with special ends, cut to size or not. There are many different parameters defining the properties of a tube, which explains why most of the SPT are made upon customers' order. SPT are normally connected by welding. However, in particular cases they can be connected by their thread or be used alone, although they remain weldable.
- (17) The investigation has shown that, despite differences in final applications of various types of seamless pipes and tubes, the different types of the product concerned all share the same basic physical, chemical and technical characteristics. They are therefore considered to constitute one single product.
- (18) An association of Chinese producers claimed that OCTG pipes and tubes should be excluded from the definition of product concerned because they have different uses, different specifications, and different characteristics and are not interchangeable with other pipes and tubes, and the volumes of export from the PRC to the EU are limited. However, the investigation showed that OCTG pipes and tubes have, *inter alia*, comparable chemical characteristics to other SPT types since they all fall within the 0,86 CEV threshold. Furthermore, they share other basic characteristics with the remaining SPT types, such as outside diameter and wall thickness. As far as the end-uses of the OCTG pipes and tubes are concerned, it was found that certain OCTG pipes and tubes are interchangeable with other non-alloy steel tubes. Given that OCTG pipes and tubes have the same essential characteristics as other seamless pipes and tubes and they are interchangeable to a certain extent, it was provisionally concluded that there were no grounds to exclude this type from the product definition.

2. Like product

- (19) The product concerned and the seamless pipes and tubes produced and sold on the domestic market of the PRC, and on the domestic market of the USA, which served provisionally as an analogue country, as well as the seamless pipes and tubes produced and sold in the Community by the Community industry were found to have the same basic physical, chemical and technical

characteristics and uses. Therefore, these products are provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Market economy treatment (MET)

- (20) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.
- (21) Briefly, and for ease of reference only, these criteria are set out in summarised form below:
1. business decisions and costs are made in response to market conditions and without significant State interference;
 2. accounting records are independently audited, in line with international accounting standards and applied for all purposes;
 3. there are no significant distortions carried over from the former non-market economy system;
 4. legal certainty and stability is provided by bankruptcy and property laws;
 5. currency exchanges are carried out at the market rate.
- (22) In the present investigation, three of the sampled exporting producers requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the given deadlines:
- Yan Link Steel Group (Hubei Xinyegang Steel Co., Ltd and Daye Special Steel Co., Ltd),
 - Hengyang Valin Group (Hengyang Valin Steel Tube Co., Ltd and Hengyang Valin MPM Co., Ltd), and,
 - Shandong Luxing Steel Pipe Co. Ltd.
- (23) For the abovementioned cooperating exporting producers, 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.
- (24) The investigation revealed that MET could not be granted to any of the three Chinese company groups as none of them fulfilled all the criteria set out in Article 2(7)(c) of the basic Regulation, for the following reasons.

- (25) All three (groups of) companies failed to demonstrate that they fulfil criterion 3 and significant distortions appear to have been carried over from the former non-market economy system – i.e. all three (groups of) companies benefited from preferential tax treatment and two (groups of) companies obtained assets below market value. Following disclosure of the MET findings two (groups of) companies claimed that the fact that they enjoyed special tax benefits could not be in contradiction with regard to criterion 3 as tax reductions would be applied in market economy countries as well. It is noted that the said companies were subject to several preferential tax policy treatments as they enjoyed an exemption from local income tax, and also received the so-called ‘2 years free, 3 years half’ tax holiday available to foreign invested companies and Sino-foreign joint ventures. In sum, these preferential tax regimes gave the companies a significant benefit which likely had an important impact on costs and prices during the IP. The third (group of) company(-ies) claimed that the tax benefit they enjoyed is not applicable anymore since 1 January 2008 and that it was a one-off tax reduction scheme that could not have any impact on the company costs in the following years and that on top of it the tax exemption was very minor. It is noted that this group of companies benefited from the tax reduction for domestically bought machinery in 2006 as well as in 2007 (i.e. during the IP). The benefit received cannot be considered insignificant and consequently it is concluded that it clearly had an important impact on costs and prices during the IP.
- (26) In addition, two (groups of) companies did not fulfil criterion 2 concerning accounting as one was found to offset accounts payable and receivables and the other had no complete financial statements and accrual principle was not applied consistently. Following disclosure of the MET findings one company claimed that because of its small size, the fact that it is not stock listed and that it is placed in a rural area, International Accounting Standards (IAS) would not be binding. This claim however has to be rejected as the breaches found were very serious, notably the audited accounts were incomplete in important areas and the accrual principle was not respected. These rather basic accounting principles have to be respected regardless of the legal status of the company, its size and location. The other group of companies claimed that the auditor insured that the balance sheet in the audited financial statement is in line with IAS and re-classified the already offset accounts as receivables and payables. It is noted that this claim was not made before the disclosure and in particular not during the verification visit and consequently cannot be verified. It is moreover noted that the said group of companies does not deny the offsetting practice, which in itself is simply not in line with IAS. Consequently, the argument is rejected.
- (27) Moreover, two groups of companies have not shown that decisions regarding their costs and inputs are made in response to market signals and without significant State interference, and therefore have not demonstrated that criterion 1 is fulfilled. Following disclosure, one company argued that the reasons invoked to reject the fulfilment of this criterion would not be based on objective evidence as the company would be free in its sales and pricing decision despite the stipulation found in its audited financial statements regarding pricing policy between associated parties. The company argued that this was not a restriction, but rather a disclosure requirement to the auditor when reviewing transactions amongst ‘associated parties’. However, this statement is not a sufficient explanation for an explicit stipulation in the audited financial statements that ‘where the price is determined by the state commodity department, then price of the state commodity department should prevail’. The argument is therefore rejected. The other company claimed that despite the fact that they are majority State-owned, it is in fact mainly controlled by a private enterprise and is free from State interference. The company, however, did not provide any new arguments that could alter the conclusion that considering the actual composition of the board of directors with majority of directors representing State-owned enterprises, the State interference cannot be excluded and that the company has not shown that the decisions are made without significant State interference and consequently failed this criterion. It is also noted that the disclosure of the MET findings for this group of companies included an example of a decision taken not in response to market signals and possibly under undue State influence (rental of land use right for free) and the company did not comment.
- ## 2. Individual treatment (IT)
- (28) Pursuant to Article 2(7)(a) of the basic Regulation, a countrywide 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.
- (29) All three Chinese companies or company groups, which requested MET, also claimed IT in the event that they would not be granted MET.
- (30) On the basis of the information available, it was found that two of the three companies or company groups demonstrated that they cumulatively met all the requirements for IT as set forth in Article 9(5) of the basic Regulation.

- (31) As far as the third company or company group is concerned, the majority of its shares are owned by the State. In addition, given the majority shareholding of the State, and its significant influence on the Chinese steel industry, possible circumvention cannot be excluded.
- (32) It was therefore concluded that IT should be granted to the following two exporting companies only:
- Hubei Xinyegang Steel Co.,
 - Shandong Luxing Steel Pipe Co. Ltd.

3. Normal value

3.1. Analogue country

- (33) In accordance with Article 2(7) of the basic Regulation, normal value for companies to which MET could not be granted was established on the basis of the prices or constructed value in an analogue country.
- (34) In the notice of initiation, the Commission indicated its intention to use the USA as an appropriate analogue country for the purpose of establishing normal value for the PRC and invited interested parties to comment on this.
- (35) One interested party commented on the choice of analogue country and suggested that Ukraine or India would be more appropriate for establishing a normal value.
- (36) The Ukraine was claimed to be a more appropriate choice as besides having free competition on its market, the production process and access to raw material would be similar to the situation in the PRC. It is noted that since 30 June 2006, there are anti-dumping duties imposed on imports of SPT originating in the Ukraine ranging between 12,3 % and 25,7 %. Although there are several producers on the Ukrainian market, the fact that dumping was found in 2006 points to possibly distorted market conditions and it appears doubtful to use those domestic prices and costs. In any event, no Ukrainian producer cooperated with the investigation.
- (37) The same interested party claimed that India would also be a better alternative than the USA and provided the name of an Indian producer of the like product. This producer, however, was not willing to cooperate. Considering that there is no cooperation offered by Indian producers, India cannot be selected as analogue country.
- (38) Moreover, the size of the US market, the number of domestic producers and the significant quantities of imports indicate that the US market is competitive and therefore provisionally selected as the most appropriate analogue country. As indicated under recital 10 above, one US producer cooperated with the investigation and provided all necessary information. Another US producer also provided some incomplete information which in general confirmed the information submitted by the cooperating US producer.
- #### 3.2. Determination of normal value
- (39) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET was established on the basis of the verified information received from the producer in the analogue country, in accordance with the methodology set out below.
- (40) In accordance with Article 2(2) of the basic Regulation, the Commission first established for the producer in the analogue country whether its total domestic sales of the product in question were representative during the IP, i.e. whether the total volume of such sales represented at least 5 % of Chinese export sales of the product concerned to the Community.
- (41) Next, for each type of the product in question sold by the US producer on its domestic market and found to be directly comparable with the type of product concerned sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the IP represented at least 5 % of the total volume of the comparable product type sold by Chinese producers for export to the Community.
- (42) The Commission subsequently examined whether each type of the product concerned sold domestically in representative quantities could be considered as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each product type the proportion of profitable sales to independent customers on the domestic market during the IP.
- (43) Where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type, and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.
- (44) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only.

4. Export price

- (45) In all cases the product concerned was exported to independent customers in the Community, and therefore, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

5. Comparison

- (46) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence. An adjustment was granted for ocean freight and insurance, handling, loading and ancillary expenses, inspection expenses, commissions and bank charges.

- (47) Where physical differences existed between the product in question sold domestically by the companies in the analogue country and the product concerned sold for export to the Community, an adjustment was made pursuant to Article 2(10)(a) of the basic Regulation. This adjustment corresponds to a reasonable estimate of the market value of the difference.

6. Dumping margins

- (48) The provisional dumping margins were expressed as a percentage of the cif Community frontier price, duty unpaid.
- (49) For the cooperating exporting producers which could be granted IT, individual dumping margins were established on the basis of a comparison of a weighted average normal value with a weighted average export price, in accordance with Article 2(11) and (12) of the basic Regulation.
- (50) The dumping margin for sampled companies not granted MET or IT and for the non-sampled cooperating companies was calculated as an average of the sampled four companies.
- (51) Given that the level of cooperation in the investigation was considered low, the cooperating companies representing about 40 % of all imports from the PRC during the IP, for the non-cooperating companies, the countrywide

margin was established using the highest margin found for representative types of one cooperating producer granted neither MET nor IT.

- (52) On this basis the provisional levels of dumping are as follows:

Company	Provisional dumping margin
Hubei Xinyegang Steel Co. Ltd	38 %
Shandong Luxing Steel Pipe Co. Ltd	47 %
Other cooperating companies	35 %
Residual	51 %

D. INJURY

1. Community production and Community industry

- (53) Within the Community, the like product is manufactured by 23 producers. The output of these 23 Community producers is therefore deemed to constitute the Community production within the meaning of Article 4(1) of the basic Regulation.
- (54) Of these 23 producers, a total of 15, most of them being members of the complaining association (ESTA), declared their interest in cooperating in the proceeding within the time limit set out in the notice of initiation and cooperated with the investigation. These 15 producers were found to account for a major proportion, in this case more than 90 %, of the total Community production of the like product. The 15 cooperating producers therefore constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will be hereafter referred to as the 'Community industry'. The remaining Community producers will be hereafter referred to as the 'other Community producers'. These other Community producers have not actively supported the complaint, but do not oppose it either.

- (55) As indicated under recital 12 above, a sample of five producers was selected, representing 62 % of the total Community production. These producers being groups of companies, the sample was constituted by 9 individual companies in total.

2. Community consumption

- (56) Community consumption was established on the basis of the volumes of the Community industry's sales to the EU, the import volumes data for the Community market obtained from Eurostat and, concerning the other Community producers, from estimations made by the complainant.

- (57) The Community market for the product concerned and the like product grew steadily between 2005 and the IP by approximately 24 %. The most significant increase occurred between 2006 and 2007 when consumption increased by 17 percentage points.

	2005	2006	2007	IP
Total EC consumption (tonne)	2 565 285	2 706 560	3 150 729	3 172 866
<i>Index (2005 = 100)</i>	100	106	123	124

- (58) In this respect it is important to note that the Community market of the product concerned is divided in these main market segments: Mechanicals and Construction (around 60 %), Power Generation (around 10 %), OCTG (around 8 %) and Line Pipe (around 8 %). The product concerned is therefore mainly used in the mechanicals and construction sectors, and these sectors have seen a very rapid progression in 2007.

3. Imports from the country concerned

(a) Volume of the imports concerned

- (59) The volume of imports into the Community of the product concerned from the PRC showed a spectacular increase throughout the period considered. Imports into the EU have increased by more than 20 times since 2005.

Imports	2005	2006	2007	IP
PRC tonnes	26 396	136 850	470 413	542 840
<i>Index (2005 = 100)</i>	100	518	1 782	2 057

- (60) The breakdown of imports from the PRC in the various market segments shows that Chinese imports are particularly present in Mechanicals and Construction (around 65 %) and Line Pipes (around 15 %), while OCTG and power generation account for less than 5 %.

(b) Market share of the imports concerned

- (61) The market share held by imports from the PRC stood at 1 % during 2005 and increased steadily by almost 16 percentage points throughout the period considered. In detail, it rose by 4 percentage points between 2005 and 2006, by further 10 percentage points between 2006 and 2007 and by 2 percentage points during the IP. In the IP, the market share of Chinese imports was 17,1 %.

Market share	2005	2006	2007	IP
PRC	1,0 %	5,1 %	14,9 %	17,1 %

- (62) However, the presence of the Chinese imports is not evenly distributed within the various segments which compose the Community market. The Chinese imports held during the IP a market share of about 38 % in the line pipes segment 19 % in mechanical and constructions, 9 % in OCTG, and around 7 % in the power generation segment.

(c) Prices

(i) Price evolution

- (63) From 2005 to 2007, the average price of imports of the product concerned originating in the PRC decreased sharply by 9 % and then increased by 2 percentage points from 2007 to the IP. Overall, the average price of imports of the product concerned originating in the PRC decreased by 7 % between 2005 and the IP.

Unit prices	2005	2006	2007	IP
PRC (EUR/tonne)	766,48	699,90	699,10	715,09
<i>Index (2005 = 100)</i>	100	91	91	93

(ii) Price undercutting

- (64) A model-to-model price comparison was made between the selling prices of the Chinese exporting producers and the Community industry's selling prices in the Community. To this end, Community industry's prices to unrelated customers have been compared with the prices of cooperating exporting producers of the country concerned. Adjustments were applied where necessary to take account of differences in the level of trade and post-importation costs.
- (65) For the purposes of calculating price undercutting, information from all sampled cooperating Community producers providing complete and verifiable information for the IP has been used. The comparison showed that, during the IP, the weighted average price undercutting margin, expressed as a percentage of the Community industry's sales prices, was 24 %.

4. Situation of the Community industry

- (66) 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. The data presented below relates to the whole Community Industry for sales and market shares, and to the sampled companies for all the remaining indicators. The data relating to three sampled companies was excluded because: (i) one company had been part of a large steel-working group until a spin-off in May 2007, which means that the information before and after the spin-off would not be comparable, (ii) another company had not submitted sufficiently detailed data, and (iii) one company could not provide actual figures for 2008 and a forecast for 2009. In order to have consistent information for the analysis of the injury indicators and the threat of injury analysis, the third company had to be excluded from the analysis of the injury indicators as well. However, given the relatively low weight of these three companies in the sample this exclusion does in no way affect the general picture shown by the indicators.

(a) Production

- (67) From a level of around 2 000 000 tonnes in 2005, the sampled producers' production increased to a peak in 2007 of more than 2 200 000 tonnes, due to increased demand as explained at recital 57 above, before decreasing in the IP. Overall, production increased over the period considered by 7 % to around 2 150 000 tonnes during the IP.

sample	2005	2006	2007	IP
Production (tonne)	2 022 596	2 197 964	2 213 956	2 158 096
<i>Index (2005 = 100)</i>	100	109	109	107

(b) Capacity and capacity utilisation rates

- (68) The production capacity was established on the basis of the nominal capacity of the production units owned by the sampled producers, taking into account interruptions in production as well as the fact that in certain cases part of the capacity had been used for other products manufactured with the same production lines.
- (69) The production capacity of the sampled producers remained stable, at a level of around 2 400 000 tonnes, throughout the period considered.

Sample	2005	2006	2007	IP
Production capacity (tonne)	2 451 187	2 469 365	2 446 462	2 398 283
<i>Index (2005 = 100)</i>	100	101	100	98
Capacity utilisation	83 %	89 %	90 %	90 %
<i>Index (2005 = 100)</i>	100	108	110	109

- (70) Capacity utilisation was 83 % in 2005, and increased to around 90 % for the remainder of the period considered. This reflects the variations in production volumes as described at recital 67 above. Overall, capacity utilisation moved up by only 7 percentage points, a small increase when compared to the substantial increase in consumption described at recital 57 above.
- (71) However, it is important to note that, due to the high level of consumption, the sampled producers were running at high production capacity rates. The possibility to obtain high rates of capacity utilisation is considered as an important element to reach satisfactorily levels of profitability for the like product. For example, the situation during the period considered clearly differs from the situation prevailing between 2002 and 2004, where, because of the pressure exerted by dumped imports originating, *inter alia*, in Croatia, Russia and Ukraine, the capacity utilisation of the Community industry only was of around 66 %–75 %, and the Community industry incurred losses of between 5 % and 10 %.

(c) *Stocks*

- (72) The level of closing stocks of the sampled producers increased by 16 % in 2006, and subsequently slightly decreased by 3 percentage points in 2007 and another percentage point IP. It should be noted that the vast majority of production is made in response to orders. Therefore, it is considered that the relevance of this indicator in the injury analysis is limited.

Sample	2005	2006	2007	IP
Closing stock (tonne)	142 303	165 070	160 668	159 924
<i>Index (2005 = 100)</i>	100	116	113	112

(d) *Sales volume*

- (73) The sales volume by the Community industry of its own production to unrelated customers on the Community market during the IP was around 2 000 000 tonnes, an increase of 14 % against its level in 2005. This increase is to be attributed to the substantial increase in consumption described in recital 56, the positive effect of which however was only partially reflected in the increased Community Industry sales.

Community industry	2005	2006	2007	IP
EC sales (tonne)	1 766 197	1 907 126	2 061 033	2 017 525
<i>Index (2005 = 100)</i>	100	108	117	114

- (74) It is to be noted that Chinese imports and Community Industry sales are in competition mainly on three market segments: mechanicals, construction and line pipes. Indeed, 65 % of Community Industry sales and around 80 % of Chinese imports are for these three market segments.

(e) *Market share*

- (75) During the period considered, the Community industry lost 5 percentage points of market share, which decreased from 69 % in 2005 to 64 % in the IP. This loss of market share reflects the fact that, notwithstanding a substantial increase in consumption, the Community industry was only able to benefit partially from it, due to the presence of massively increasing Chinese imports. It is recalled that the market share of the Chinese imports went up from 1 % to 17,1 % over the same period (see recital 61 above).

	2005	2006	2007	IP
Market share of the Community industry	68,8 %	70,5 %	65,4 %	63,6 %
<i>Index (2005 = 100)</i>	100	102	95	92

(f) *Growth*

- (76) Between 2005 and the IP, whilst the Community consumption increased by 24 %, the volume of sales by the Community industry on the Community market increased by only 14 %, and the Community industry's market share decreased by 5 percentage points. On the other hand, the volume of Chinese imports grew more than 20 times, and their market share increased by 16 percentage points over the same period. It is thus concluded that, although the Community industry experienced some growth, it could certainly not benefit fully from the substantially increased market demand, while the Chinese imports benefited from it in a more than proportional way.

(g) *Employment*

- (77) The employment level of the sampled producers steadily increased by 6 % between 2005 and 2007. It decreased by 6 percentage points between 2007 and the IP. Overall, employment of the sampled producers remained stable between 2005 and the IP at around 9 100 persons. This indicates that the sampled producers improved efficiency since, at the same time, production volumes increased by 7 % (see recital 67 above).

Sample	2005	2006	2007	IP
Employment (persons)	9 119	9 444	9 644	9 151
<i>Index (2005 = 100)</i>	100	104	106	100

(h) *Productivity*

- (78) Productivity of the sampled producers' workforce, measured as output (tonnes) per person employed per year, steadily increased over the period considered, and finished during the IP at a level 7 % higher than 2005. This is in line with the fact that employment remained stable over the period considered while at the same time production increased by 7 %.

Sample	2005	2006	2007	IP
Productivity (t per employee)	369	387	386	395
<i>Index (2005 = 100)</i>	100	105	105	107

(i) *Wages*

- (79) The average wage per employee increased by 7 % between 2005 and 2006, by a further 8 percentage points between 2006 and 2007 and remained almost stable between 2007 and the IP. Overall, the average wage per employee increased by 16 % over the period considered. The increase in average wage costs is partly due to the fact that job reductions for those Community producers where average wages were relatively low were balanced by staff increases by Community producers where average wages were relatively high. Since the average increase in wages was partly compensated by an important increase in productivity, the total impact in terms of labour costs was not particularly significant.

Sample	2005	2006	2007	IP
Annual labour cost per person (EUR)	46 527	49 968	53 704	54 030
<i>Index (2005 = 100)</i>	100	107	115	116

(j) *Factors affecting sales prices*

- (80) The sales prices of the sampled producers increased substantially by 21 % between 2005 and 2007, and remained stable during the IP. The increase in sale prices at the same time as the increase in sales volumes is explained by the fact that costs have been also increasing during the same period. The Community producers managed to reflect this increase in costs in their selling prices, and pass it on to their customers. It is therefore only during the IP that the increasing pressure by the Chinese products started to produce the first clear effects on sales prices, where the Community industry's prices remained stable despite an increase in costs of 4 percentage points.

Sample	2005	2006	2007	IP
Unit price EC market (EUR/t)	983	1 047	1 188	1 192
<i>Index (2005 = 100)</i>	100	106	121	121

- (81) As it can be seen from the table below, the increase in costs was mainly due to an increase in raw material prices. Indeed, the Community industry proved to be very efficient in containing increases in labour costs and other general costs. However, the increase in raw material prices could only be balanced by a corresponding increase in selling prices and this became more and more difficult over the period considered.

Sample	2005	2006	2007	IP
Total costs per tonne	863	863	974	1 007
<i>Index (2005 = 100)</i>	100	100	113	117
Raw material costs	498	532	603	622
<i>Index (2005 = 100)</i>	100	107	121	125

(k) Profitability and return on investments

- (82) During the period considered, the profitability of the sampled producers' sales of the like product, expressed as a percentage of net sales, increased from 12,1 % in 2005 to 17,9 % in 2007. It then decreased to 15,4 % in the IP. Profitability therefore increased by 3 percentage points between 2005 and the IP.

Sample	2005	2006	2007	IP
Profitability of EC sales to unrelated (% of net sales)	12,1 %	17,3 %	17,9 %	15,4 %
<i>Index (2005 = 100)</i>	100	143	147	127
ROI (profit in % of net book value of investments)	47,1 %	85,1 %	79,2 %	51,7 %
<i>Index (2005 = 100)</i>	100	181	168	110

- (83) The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the profitability trend. It increased from a level of 47 % in 2005 to 85 % in 2006. It decreased to 79 % in 2007 and further decreased to 52 % in the IP. Overall, the return on investments increased by 4,6 percentage points over the period considered.

(l) Cash flow and ability to raise capital

- (84) The net cash flow from operating activities was almost EUR 367 million in 2005. It increased to around EUR 684 million in 2006, to EUR 1 billion in 2007, before returning to around EUR 630 million in the IP. There were no indications that the Community industry encountered difficulties in raising capital.

Sample	2005	2006	2007	IP
Cash flow (EUR)	367 215 052	684 541 347	1 034 223 612	634 658 147
<i>Index (2005 = 100)</i>	100	186	282	173

(m) Investments

- (85) The sampled companies' annual investments in the production of the like product increased by 83 % between 2005 and 2006, by a further 94 percentage points between 2006 and 2007 and then only slightly increased in the IP. Overall, investments increased by around 185 % between 2005 and the IP. These Community industry's investments had, as main objectives, the improvement of product quality, the increased of plant efficiency, the development of new products and processes, the improvement of the industrial safety and environmental protection. They did not result in an increase of production capacity.

Sample	2005	2006	2007	IP
Net investments (EUR)	99 895 036	182 508 624	276 813 902	284 860 412
<i>Index (2005 = 100)</i>	100	183	277	285

(86) It is considered that the Community Industry has directed a very substantial amount of resources to investments during the period considered. This should be read in the context of the very low level of investments which was possible in previous years, when the profitability levels of the Community Industry were extremely low or even negative. Due to extended periods during which the CI was suffering, *inter alia*, from dumped imports originating in Croatia, Russia and Ukraine and during which investments had to be severely cut back ⁽¹⁾, the necessary level of investment could not be made. The improved level of profits during the period considered was therefore essential to allow the Community Industry to make those investments which had been postponed for so long. No investments were made with the purpose of increasing production capacity because of growing concerns about the possibility to profit from the increasing demand in the presence of the aggressive expansion of Chinese imports.

(n) *Magnitude of dumping margin and recovery from past dumping*

(87) Given the volume, the market share and the prices of the imports from the country concerned, the impact on the Community industry of the actual margins of dumping could be considered significant. It is important to recall that antidumping measures were imposed in 2006 to counteract the injurious dumping caused by imports from a number of other countries. The good financial results achieved by the Community industry during the period considered certainly allowed it to somewhat recover from the past dumping. However, it has also been shown that the Community industry could not benefit fully from the exceptional market expansion that took place during the analysis period (see recital 75 above), since the market shares previously held by the imports under measures have been substituted by low priced Chinese imports, which have also partially eroded the Community industry market shares. This certainly had an effect in limiting the full recovery of the Community industry and its inclination to invest and expand production capacity to follow the expansion in the market (see recital 86 above). It can therefore be concluded that the recovery of the Community industry from the past dumping cannot be considered as complete and that the Community industry remains vulnerable to the injurious effect possibly caused by the presence of substantial quantities of dumped imports in the Community market.

5. Conclusion on injury

(88) The data verified shows some signs of injury. In fact, in a market growing significantly (+ 24 %), the Community

Industry could increase its sales to the Community market only partially (+ 14 %), which led to a decrease of its market share (from 69 % to 64 %). However, in this context the Community industry managed to keep a sufficiently high level of capacity utilisation and prices, so that its profitability remained at good levels (around 15 % in the IP). In conclusion, any injury suffered by the Community industry was limited and did not lead to any significant economic problem.

(89) In the light of the foregoing, it is concluded that the Community industry has not suffered material injury in the IP within the meaning of Article 3(5) of the basic Regulation. It should also be underlined however, that the Community industry was coming from a period in which it had been subject to injurious dumping, which led to the adoption of antidumping measures in the year 2006. If the Community industry managed to partially recover from its past injurious situation this was mainly due to the very significant market expansion that took place between 2005 and the IP. Although the adoption of antidumping measures in June 2006 has eliminated the injurious effects of the dumping from a number of countries, there was in the Community market during the IP an important share of dumped products sold at very low prices, these being the Chinese imports. Should the market circumstances change and the market expansion observed during the period considered stop and the previous trend of growth reverse, the Community industry would be fully exposed to the possible injurious effect deriving from these dumped imports. It is therefore concluded that, although the Community industry had not suffered material injury during the IP, it was in a vulnerable state at the end of it.

E. THREAT OF INJURY

1. Likely development of Community consumption, imports from the country concerned and of the situation of the Community Industry after the investigation period

(90) In order to be able to assess whether the Community industry was possibly subject to a threat of injury, some of the elements established for the period considered and the IP had to be further analysed. This further analysis was conducted on the basis of the information collected in respect of the major injury indicators for the years 2008 and 2009. For this purpose, information had been requested to the sampled companies in their questionnaires, statistical information was updated and any other element submitted by the parties was analysed. On this basis, the following was established:

⁽¹⁾ See Council Regulation (EC) No 954/2006 of 27 June 2006, OJ L 175, 29.6.2006, p. 4, recitals 160 and 168. In 2001, the only profitable year during the IP of the previous investigation, investments amounted to EUR 65 million. By 2004 (a year in which the CI suffered heavy losses), this amount had to be reduced to EUR 26 million.

1.1. Community consumption

- (91) Community consumption, which has been increasing until the IP, is estimated to decrease considerably, by at least 30 % between the end of the IP and the year 2009. This estimate is based on available public information, which was also supported by data submitted by the complainant and the forecasts presented by the sampled Community producers.
- (92) Moreover, the complainant has submitted information by market segment forecasting an important decrease in all sectors, except for the OCTG segment, which is considered to be less affected by the otherwise generalised strong decrease in demand.

1.2. Imports from the PRC and related market share

- (93) Dumped imports from the PRC continued to increase substantially until the end of the IP. Their increasing trend on an annual basis is at least confirmed until the end of 2008. Given the shrinking consumption since the last months of 2008, their market share is expected to increase also in 2009.
- (94) Chinese imports are forecasted to remain mainly concentrated in the mechanicals and construction, as well as line pipe market segments, as indicated at recital 60 above.
- (95) Even, if as a result of the decreasing market, demand of the total imports volume will decrease – which decrease is however expected not to be significant – the Chinese imports will proportionally increase their market share in these segments where they have been historically strong. Indeed, it is likely that low-priced imports will become even more attractive in a market which is increasingly seeking cost reductions.
- (96) As a consequence, the estimated market share of Chinese imports is forecasted to increase. Depending on the development of consumption, the market share of Chinese imports could even increase by some percentage points between 2008 and 2009 given the aggressive policy of market expansion showed in recent years, see recital 61 above and 114 and 115 below.
- (97) As for the prices of imports of the product concerned, the association of Chinese exporters (CISA) has claimed that these prices have substantially increased after the IP.
- (98) It is confirmed that Eurostat data shows indeed such an increase after the IP. In this respect, it is noted that this increase in some cases is significant (up to 33 %-43 %). However, the investigation has shown that this increase is the reflection of a general price increase in certain raw materials (steel, iron scrap and pig iron) and energy costs which took place worldwide between April and October

2008 and that this increase has not eliminated price undercutting, which apparently remains substantial.

1.3. Production, production capacity and capacity utilisation of the CI

- (99) Production of the Community Industry is forecasted to decrease by between 20 and 35 percentage points between the IP and 2009. This trend was confirmed by the forecasts submitted by the sampled companies. From the analysis of these forecasts it can be inferred that the overall decrease in production also reflects the fact that within a general decrease of consumption, the demand for certain product types has decreased less than the demand for others so that a change in product mix is forecasted to take place.
- (100) From information submitted by the sample companies it appears that the production capacity is forecasted to remain stable in 2009, whereas capacity utilisation is forecasted to decrease sharply at a level close to 70 % in the same year. This is in line with the sharp drop in the consumption as described in recital 91. Indeed, verification visits have already shown: (i) a reduction in shifts (most commonly from 18 to 15 per week), (ii) increasing use of redundancy schemes and of staff temporary lay offs, (iii) extended closures during the holiday period. It is recalled that past investigations have already shown that at capacity utilisation rates of below 75 % the Community industry is unlikely to perform in a sustainable way (see recital 71 above).

1.4. EC Sales of the Community industry (volumes and prices)

- (101) Sales of the Community industry in the EC market are forecasted to decrease significantly, for the same reasons explained at recital 99 above, at least in line with the decrease of consumption but probably even more, according to the forecasts made by the sample Community producers.
- (102) Since the Community industry is forecasted to further lose market share on the EC market to dumped Chinese imports, it will be forced to rely more heavily on export markets. The sampled companies have indeed reported a decrease in sales in the Community higher than the decrease in total production, because production for exports would remain rather stable in comparison to the production of goods destined to the Community market. This is because the export activity of the Community industry is concentrated on OCTG (35 %), line pipes (25 %) and power generation (13 %), while mechanical and construction pipes only accounted for 16 % of the Community industry's exports (compared to 60 % of their EC sales, see recital 73 above).

- (103) The Community industry has submitted information showing that sale volumes have already decreased and/or are forecasted to decrease significantly, in particular on certain market segments where the presence of the Chinese goods exert more its penetrating strength (i.e. mechanicals and constructions and line pipes).
- (104) As far as sale prices are concerned, these have been forecasted by the sampled producers to remain stable on average in respect to the prices in the IP.
- (105) However, the development in selling prices would not be fully representative of the real price reduction which is expected to take place on a product by product basis. This would be because the Community industry tries to move to higher grade pipes, due to price pressure from Chinese imports. As a consequence, the share of lower grade products in the total sales of the Community Industry would decrease considerably more than the average decrease in total sales, thereby the weight of the products which have a higher selling price will be proportionally higher. This is the reason why the average decrease in price is forecasted to be more limited than the price decrease which will be suffered by those products which are in more direct competition with the Chinese dumped imports.
- (106) Therefore, information was collected from the Community industry relating to the price evolution of a number of representative product types which were found to be in direct competition with the dumped Chinese imports during the IP. On the basis of this analysis it was established that the prices of important product types which were imported in significant quantities from the PRC during the IP has increased in the second half of 2008 in order to partially reflect the increase in costs also mentioned at recital 98 above.

1.5. Prices/costs of the CI

- (107) The sampled companies were also requested to submit data relating to the forecasted evolution of their costs for the product concerned, as well as the major costs.
- (108) The data submitted shows that an overall increase in cost is likely. This is due to two main factors. Firstly, the decrease in manpower caused by the lower production and capacity utilisation rates is expected to not result in a corresponding decrease of labour costs because of the use of temporary unemployment and reduced working hours which may increase the average cost of labour. Secondly, the change in product mix towards high-value products (although not necessarily with a higher profitability) means that on average also costs (including raw material costs) would increase. Moreover, the obvious decrease in efficiency due to the reduced volumes and sub-optimal capacity utilisation would lead to a proportional increase in fixed costs.

1.6. Market share of the CI

- (109) The market share of the Community industry is forecasted to decrease by some percentage points between the IP and 2009, due to the increased pressure from dumped Chinese imports (see recitals 93 and 101 above), in a strongly decreasing European market.

1.7. Profitability of the CI

- (110) According to data submitted by the Community producers, the profitability of the Community industry has slightly decreased by 0,5 percentage point between the IP and the year of 2008. However, this profitability is reported to have fallen considerably by the end of year 2008 and is forecasted to be severely reduced to around 2 % for the year 2009.
- (111) It is recalled that already in the past it was shown that the profitability of the Community industry was particularly low in periods where the capacity utilisation rate was below 75 %. This has been proven to be the case during the period covered by the investigation concluded by Council Regulation (EC) No 954/2006 ⁽¹⁾, when the capacity utilisation had decreased significantly due to the pressure of dumped imports, *inter alia*, from Croatia, Russia and Ukraine.

1.8. Conclusion on the likely development of Community consumption, imports from the country concerned and the situation of the Community industry after the investigation period

- (112) The above analysis relating to the likely development of consumption, imports of dumped Chinese products and major injury indicators for the period between the IP and 2009 (see recitals 90 to 111 shows that a considerable deterioration of the economic situation of the Community industry is already taking place and is foreseen to continue if not further aggravate in the near future. This is clearly indicated by an evident reduction in production, EC sales volumes, market shares and profitability (around -13 percentage points). This assessment was made on the basis of data which relate to forecasts supported by sufficiently detailed evidence. In particular, the trends reflected for the period after the IP and until the end of 2008 could to a large extent be verified already in the course of the verification visits which took place. Further evidence (particularly relating to decrease in selling prices and volumes and for the year 2009) was submitted in the course of the investigation. Even if, as in the case of any forecast, there can be no certainty that the indicated trends will realise exactly as expected, it is considered very likely that this will be the case. It is therefore concluded that the Community industry has been facing a situation of material injury during the first months of 2009 already.

⁽¹⁾ OJ L 175, 29.6.2006, p. 4.

2. Threat of injury

- (113) In accordance with Article 3(9) of the basic Regulation, it was examined which facts, if any, would create a situation in which the dumped imports would cause injury to the Community industry. In this context, specific consideration was given to: (i) the development of dumped imports, (ii) the availability of free capacities of the exporters, (iii) the level of prices of the Chinese imports and (iv) the level of inventories.

2.1. Development of volumes of dumped imports

- (114) Imports from the PRC have spectacularly increased from 26 000 to 543 000 tonnes between 2005 and the IP, as explained at recital 59 above. These imports have consistently taken place at very low prices, which significantly undercut any other price offered in the Community market from other supply sources. The substantial increase of the market share held by these dumped imports (see recital 61 above) confirms that the development of these imports was not the consequence of an increase in demand. On the contrary, it would appear that such development was for its major part driven by an underlying strategy based on substituting the market place previously held by dumped imports from other sources (see recital 141 below), with the objective of penetrating aggressively a new market. The increase in import prices observed in the second part of 2008 was entirely due to a substantial increase in raw material costs, which has translated in a worldwide increase of the costs for seamless pipes and tubes and does not correspond to any intention to reduce the price differential with the prices of other suppliers in the EC market.

- (115) On this basis, it is considered that a direct correlation between development of consumption and level of the dumped imports cannot be established. It is instead considered that the increase in dumped imports between 2005 and the IP would have taken place anyway, even in a situation of stable consumption, with the only difference that it would have impacted more on the market shares of the other suppliers. It cannot be excluded that already during the period considered, should consumption have not increased at the pace at which it actually did, this would have caused material injury to the Community industry. Therefore, it is considered that a downward trend in the overall situation of the Community market would not have any considerable impact on the development of the volumes of dumped imports. In all likelihood, the aggressive strategy used to penetrate the Community market during the period considered will continue, with the overall objective of gaining market shares at the expenses of the other economic actors with dumped low-priced imports.

- (116) The most recent figures available, relating to the full year 2008, show imports of 507 589 tonnes, i.e. higher than

2007 although slightly lower than the IP. Moreover, figures relating to the last two months of 2008, show that imports have even increased in comparison to the same period of the previous year (84 000 tonnes in 2008 against 79 000 tonnes in 2007), notwithstanding the fact that the investigation has shown that clear signs of decrease in demand were already present in the Community market in November 2008. It can therefore be concluded that, according to the most recent information available, the volume of imports from the PRC can be considered as being at least stable. In this respect, it is noted that, even in the case where the development of the dumped imports would show in the short term a different trend in comparison to the past, i.e. they would remain stable or start to decrease, this information should always be read and analysed in the context of the development of consumption. In other words, the findings concerning this factor should not be based on a simple observation of the development of the volume of dumped imports in absolute terms, but should take due account of the market context in which this development is taking place and of whether or not they might have resulted in an increase or decrease of the market share held by these dumped imports. From the information available, it is clear that not only the dumped imports have shown a substantial increase of their market shares during the period considered, but they have also shown no sign of stopping or reversing this trend in a period when demand had already started to contract. As a consequence, the market share of the dumped Chinese imports is set to increase (see recital 96 above). Consequently, it is concluded that, given the expected substantial decrease in consumption, the pressure of these dumped imports on the Community market is likely to increase substantially.

2.2. Availability of free capacity of the exporters

- (117) The analysis of the information submitted by the sampled exporting producers has shown that an increase in capacity of at least 740 000 tonnes was forecasted to take place in these companies alone during the year 2008. Moreover, the CI alleges that two sampled companies plan the construction of seamless mills, the capacities of which are worth 500 000 tonnes by mid-2009. The verification of forecasted capacity increases can of course only be made once such capacity is on line; it is therefore difficult to assess the future availability of free capacity existing in the PRC. However, even by just considering the replies of the sampled Chinese exporters, it can be concluded that, in the light of the fact that the total Community consumption was calculated to be 3 300 000 tonnes during the IP, there is substantial available production capacity in China. In addition, the complainant submitted credible information about the commissioning of two new seamless pipe plants in the PRC in January 2009. These two plants, with a capacity of around 400 000 tonnes each, have the capacity to supply one quarter of the EC market alone.

- (118) Moreover, information provided by the Chinese Association of producers (CISA) sets the total Chinese production at around 20 million tonnes. The sampled Chinese producers have reported that, on average, their exports accounted for 27 % of their total sales during the IP, up from 17 %, which was their export ratio in 2005. It can therefore be concluded that over the period considered the Chinese exporters have substantially increased their inclination to export, which translated in a very considerable increase of exports in absolute terms, since the total sales of sampled producers grew by more than 56 % during the period considered. There is no indication that this trend, which is the combined effect of an increase in production with an increase of the rate of export, should be reversed in the near future.
- (119) The percentage of Chinese exports to the Community (as a percentage of total Chinese exports) significantly increased during the period considered from 1 % in 2005 to 9 % during the IP. This confirms that during the period considered a considerable shift has already taken place in the exporting activities and the Community has gained importance in the overall market strategy of the Chinese exporters. The other main markets are the USA with 36 % (up from 31 % in 2007), Algeria (6 %, up from 2 % in 2006) and South Korea (6 %, up from 3 % in 2005). On this basis, it can be expected that a significant part of the newly created excess capacity will be directed to the EC market. Moreover, a significant shrinking of some of these markets, and in particular of the US market, can be expected shortly so that the volumes freed from those markets could be easily re-directed to the EC. This re-direction might not have taken place more substantially until now because, according to Chinese statistics and information collected from the sampled Chinese producers, the prices in the EC market have been so far somewhat lower than in other markets. However, it can be expected that, in case of substantial reduction of the volumes sold in other markets, considerations regarding price levels will be easily disregarded in the face of the need to keep production output and capacity utilisation at sufficiently high levels. Moreover, it is expected that markets like the Community, where penetration has proven relatively easy and very successful will become the preferred target of any such re-direction policy.
- 2.3. Prices of the imports from the PRC*
- (120) Prices of the Chinese imports were during the period considered substantially lower not only than the prices of the Community industry, but also than prices from other countries. This is confirmed by the undercutting analysis mentioned at recitals 65 and 142 below. The very substantial and systematic (i.e. relatively homogeneous on a type by type basis) undercutting found has ensured the continuous expansion of the market share held by the dumped imports during the period considered. There was, therefore, during the period considered a clear link between the increase in market shares of the dumped imports and the decrease in market shares of sales from other sources, including the Community industry, and this could be obtained via the advantage gained by the conspicuous difference in selling prices. If this did not result in a material injury for the Community industry during the period considered, this is only because the expansion of the Community market provided the Community industry with sufficient ground to maintain its production, production capacity, sales and profitability levels.
- (121) There is no reason to believe that in an economic environment characterised by a substantial contraction in demand there may be a tendency for low prices to increase. On the contrary, from the supplier's side in a context of shrinking consumption, low prices are expected to be kept low, with the objective of gaining further market shares or at least maintaining and consolidating the existing ones. At the same time, those producers of goods incorporating the product concerned which were already buying low-priced goods will exert pressure to maintain such prices low or even decrease them, in order to contain their cost budgets. Producers that in the past had favoured higher priced products will tend to reduce their production costs whenever possible, and therefore give preference to lower priced inputs even if this may require some sacrifice in terms of, e.g. quality of the product and reliability of supply.
- (122) It has been mentioned at recital 98 above that prices of the Chinese imports have shown a certain increase after the IP. Because this increase above all reflects a worldwide increase in the price of some important raw materials, it cannot be excluded that such increase is only temporary and will be reverted as soon as the price of these raw material decreases. Moreover, this raw material being commodities, the increase observed in their prices has been reflected in the final price of seamless pipes and tubes by all producers to the extent possible. The Community industry also has been obliged to reflect such increase in costs in its selling prices which have therefore gone up. Consequently, since all prices in the market have shown an increase, the prices of the dumped imports continue to be substantially lower than the selling prices of the Community industry even in the period following the IP.

(123) In conclusion, the negative effect of the very low prices of the dumped imports is found to be twofold: (i) on the one hand, the significant price differential is likely to cause a shift towards the dumped imports, because users will be more likely to buy increasing quantities of goods that are sold at low prices; (ii) on the other hand, the existence of such low prices in the market is likely to be used by buyers as a negotiating tool to depress the prices offered by the Community producers and other sources, thereby causing a depressive effect in terms of both diminishing volumes and lower prices. While these effects can be questioned in situations where the price differentials are not substantial, in the case at stake, and considering the very high price undercutting found, the resulting damage is expected to be serious.

2.4. Level of the inventories

(124) This factor is not of any particular significance for the analysis because normally stocks are kept by traders (stockists) and not by producers. Although some allegations were made by the CI, no evidence could be found that stockpiling activities might have taken place to an extent which may significantly influence the market in the near future.

2.5. Other elements

(125) It should also be pointed out that none of the sampled Chinese producers was found to meet the MET criteria, *inter alia*, because these companies are all considered as still operating under State influence (all of them in fact fail at least either criterion 1 or 3). In a situation of worldwide economic crisis, it is likely that the Chinese government be tempted to further intervene to support these companies (or their suppliers), thereby helping them to keep their costs low, and maintaining, if not increasing, their price advantage in the EC market. In conclusion, it is considered that the Chinese exporters are operating in an environment that may easily provide them with opportunities to further maintain their price advantage even in the case that other suppliers of the Community market would reduce prices in order to reduce the gap with the prices of the dumped imports prevailing during the period considered. Even in the case that the pressure exerted by the significant undercutting shown by the dumped imports during the IP would lead to a reduction of the level of prices of the Community industry, a further reduction of prices made by the Chinese exporters with the objective of maintaining the differential observed during the IP cannot be ruled out.

3. Conclusion on threat of injury

(126) The threat of injury factors analysed at recitals 113 to 125 above need to be read in the context of the specific market situation that changed after the IP and is likely to remain at least in the near future in the EC market. In the context of a substantially decreasing consumption,

referred to at recital 91 above, Chinese imports constitute a significant threat of injury because of:

- (i) their historical volumes increase in absolute and relative terms in the Community market, which underlines a strategy of market penetration, coupled with a stable development after the IP, although in presence of a shrinking demand;
- (ii) their potential future increase in absolute and/or relative terms due to the existence of large unused production capacities in the PRC and the likely shrinking of other markets which could free further volumes to be re-directed to Europe; and
- (iii) the significant price difference compared to that of the like product in the Community or from other countries, which is likely to both favour a switch towards the Chinese dumped imports and to depress the level of prices in the Community market.

It is provisionally concluded that in the absence of measures the Chinese dumped imports would imminently cause material injury to the vulnerable Community industry, in particular, in terms of reduced sales, market share, production and profitability.

F. CAUSATION

1. Introduction

(127) In accordance with Article 3(6) and Article 3(7) of the basic Regulation, the Commission examined whether dumped imports have caused injury or constitute a threat of 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 or be the cause of a threat to the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

2. Effect of the dumped imports

(128) Between 2005 and the IP, the volume of the dumped imports of the product concerned originating in the PRC increased by more than 20 times from 26 273 tonnes to 542 840 tonnes, and their share of the Community market increased by more than 16 percentage points (from 1 % to 17,1 %). The average price of these imports decreased between 2005 and the IP, and remained significantly lower than the average price of all other supply sources.

(129) As indicated at recital 65 above, price undercutting of the Chinese imports was 24 % overall on a weighted average basis. It should also be pointed out that for the same period the same dumped imports were sold at prices significantly lower than imports from any other sources (see recital 143 below).

- (130) Imports from the PRC have not caused injury which can be considered material during the period 2005 to the IP. However, there is a clear coincidence in time between the substantial increase of the Chinese imports and the deterioration of some injury indicators, such as the decrease in the market share held by the Community industry, which decreased by 5 percentage points in a context of an increasing consumption. The increase in dumped Chinese imports has therefore been the reason why the Community industry has not been able to fully benefit from the increase in demand which took place in the Community market. It should also be noted in this respect that there is a clear coincidence in time between the rapid increase in the market share of the Chinese products and the corresponding substantial erosion of the market shares held by imports from Russia and Ukraine, which were their closest competitor in terms of prices.
- (131) Moreover, in view of the substantial undercutting of the Community industry's prices by imports from the PRC, it is considered that these dumped imports exerted an overall pressure on the prices in the Community market, starting from the IP, thereby preventing the Community industry from increasing its sales prices to the extent necessary to maintain the achieved level of profitability.
- (132) As mentioned at recital 89 above, notwithstanding the downward trend exerted on certain injury indicators by the Chinese imports, it was concluded that overall the injury suffered by the Community industry was not material. However, these findings are to be read in the light of the prospective analysis concerning the development of consumption, imports and certain injury indicators made for the period following the IP and reported at recitals 91 to 112 above.
- (133) As explained under recital 93 above, information relating to the most recent period between the IP and December 2008 shows that the volume of dumped imports has not decreased during the last two months of that year when compared to 2007, and this despite clear signs of an already decreasing Community consumption during the months of November and December 2008. This shows that the incipient reduction of consumption did not have any effect on the volume of imports which instead increase their market share. There is no reason to believe that in a similar, even worse short term scenario, this trend will be reversed.
- (134) However, even in case dumped imports would decrease to a certain extent in absolute terms, their market share is set to remain stable or increase in a market which is forecasted to contract relatively fast. Finally, even in the case that volumes of Chinese imports would start to decrease proportionally more than the decrease in consumption, it is considered that the presence itself of substantial volumes of low priced Chinese goods in a context of decreasing consumption should be considered as a cause of injury, because it will exert an important downward pressure on the general level of prices in the market. In a situation of oversupply, and with customers trying to reduce their production costs in order to maintain competitiveness, prices of inputs will be more likely to align towards their lowest level (which is the Chinese price). Considerations of quality and security of supply that for the moment may have played in favour of the Community industry are likely to play a lesser role and the Community industry will be obliged to reduce its prices because of the pressure exerted on the market by the low priced Chinese products.
- (135) In conclusion, considering that, although the Community industry had not suffered material injury during the period considered but was at the end of the IP in a vulnerable state (see recital 89), that all the conditions for the injury to fully appear after the IP are present (see recital 112 above), and the condition of threat of injury are also fulfilled as explained at recital 126 above, it is concluded that there is a causal link between the imminent threat of dumped Chinese imports and the injury that is foreseen to be suffered by the Community industry.
- ### 3. Effect of other factors
- #### 3.1. Import and export activity of the Community industry
- (136) It was found that some members of the Community industry imported limited quantities of the product concerned from the PRC and from other countries. These imports (estimated to be less than 2 % of the total imports from the PRC) were made in order to cover specific requests of customers which either ask products with specifications which are not produced by these Community producers, or request goods at an extremely low price. Given the very low quantities imported it is not considered that these imports may be considered as breaking the causal link identified above.
- (137) Furthermore, one group of Community producers is related to a Chinese exporting producer through a minority shareholding. It was, however, established that no export sales to the Community of that Chinese exporting producer are made to companies related to the said Community producer. Therefore, it has been concluded that such minority shareholding has no impact on the situation of the Community industry nor is it likely to have an impact in the future.

- (138) One group of Community producers has imported substantial quantities of steel pipes and tubes originating in Argentina and Mexico from related companies. These products were mostly high-value products such as line pipes and OCTG, and accounted for less than 10 % of Community production of that group. In addition, a model-by-model comparison showed that these imports did not undercut the Community industry's sales prices. Therefore, it has been concluded that these imports have not caused or are going to cause in the future any injury to the Community industry.
- (139) As it can be seen from the table below, the volume of export sales remained stable during the period considered. The export activity of the Community industry was also examined and it can be excluded that it would contribute to the injury of the Community industry. First of all, the possible effects of these activities have been properly isolated and examined during the investigation. Secondly, as mentioned at recital 102 above, the exports by the Community industry are forecasted to remain stable compared to decreasing production and sales in the Community market, as the exports focus on different market segments, as explained in recital 102 above.

Community industry	2005	2006	2007	IP
Export sales (tonne)	1 651 514	1 825 543	1 711 165	1 646 927
<i>Index (2005 = 100)</i>	100	111	104	100

3.2. Imports from third countries (Russia + Ukraine)

- (140) Imports from Russia and Ukraine have both decreased significantly in volumes during the period considered, as it can be seen from the table below. Their combined market share steadily dropped from 15,4 % in 2005 to 4,4 % during the IP. At the same time the average price of these sales had increased by 33 %. It is important to note that both Russian and Ukrainian imports have been subject to antidumping measures since 2006 (see also recital 86 above). Therefore, the prices reported in the tables below are not those at which the goods actually entered the EC market. If the antidumping duty applicable is added to these prices, the average price of imports from Russia and Ukraine increases at 860 EUR/tonne during the IP.
- (141) Given the consistent price difference between the average price at which imports from the PRC and imports from Russia and Ukraine entered the EC market, and the fact that Russian and Ukrainian imports were the obvious competitors to Chinese imports in the closest market-price range, it is concluded that the dramatic decrease in market shares of these two latter countries is due to the fact that the antidumping duties imposed have rendered these imports less competitive in respect of the Chinese dumped imports, which have consequently eroded the market share previously held by the Russian and Ukrainian imports. It is also noted that such erosion was already so substantial that any further expansion of the market share of the Chinese imports will occur at the expenses of their most obvious competitors in the closest market price range, which would be the Community Industry.

Russia + Ukraine	2005	2006	2007	IP
Volume of imports (tonnes)	395 926	255 394	172 155	140 910
<i>Index (2005 = 100)</i>	100	65	43	36
Market share of imports	15,4 %	9,4 %	5,5 %	4,4 %
Price of imports (EUR/tonne)	613	672	777	814
<i>Index (2005 = 100)</i>	100	110	127	133

Source: Eurostat.

3.3. Imports from other third countries

- (142) Imports from other countries have increased significantly in volumes and market prices between 2005 and the IP. However, their market share has remained substantially stable during the period. From the analysis of the market prices it is shown that the products originating in these countries have very high prices in comparison with the products produced and sold by the Community industry and the dumped Chinese imports.

Other third countries	2005	2006	2007	IP
Argentina				
Volume of imports (tonnes)	54 082	53 423	60 556	70 804
<i>Index (2005 = 100)</i>	100	99	112	131
Market share of imports	2,1 %	2,0 %	1,9 %	2,2 %
Japan				
Volume of imports (tonnes)	40 686	61 807	45 719	41 028
<i>Index (2005 = 100)</i>	100	152	112	101
Market share of imports	1,6 %	2,3 %	1,5 %	1,3 %
USA				
Volume of imports (tonnes)	25 866	18 006	26 875	41 226
<i>Index (2005 = 100)</i>	100	70	104	159
Market share of imports	1,0 %	0,7 %	0,9 %	1,3 %
Mexico				
Volume of imports (tonnes)	16 211	18 412	30 001	25 771
<i>Index (2005 = 100)</i>	100	114	185	159
Market share of imports	0,6 %	0,7 %	1,0 %	0,8 %
All others				
Volume of imports (tonnes)	63 107	64 620	77 647	90 788
<i>Index (2005 = 100)</i>	100	102	123	144
Market share of imports	2,5 %	2,4 %	2,5 %	2,9 %
Total other third countries				
Volume of imports (tonnes)	199 952	216 268	240 798	269 617
<i>Index (2005 = 100)</i>	100	108	120	135
Market share of imports	7,8 %	8,0 %	7,6 %	8,5 %
Price of imports (EUR/tonne)	1 332	1 911	1 875	1 709
<i>Index (2005 = 100)</i>	100	143	141	128

Source: Eurostat.

(143) Import prices from Argentina and Mexico have been, on average, substantially higher than average sales prices of the Community industry. As explained at recital 138 above, prices from Argentina and Mexico did not undercut Community industry's prices.

(144) Imports from Japan and the USA were also made, on average, at prices substantially higher than average sales prices of the Community industry. In addition, these imports have not gained market share at all. Therefore, these imports are not considered as being as possible source of injury for the Community industry either.

(145) Imports from all other countries are made in volumes which are so low that cannot be considered to cause any injury. It is therefore concluded that imports from sources other than China have not caused any injury to the Community industry and that there is no element to think that they could possibly contribute to injury in the near future.

3.4. Competition from the other Community producers

(146) There is no reason to think that the other Community producers not actively supporting the complaint have had a situation substantially different from that of the Community industry during the IP or are going to face a different one in the near future. There is no element to indicate that the behaviour of these producers may be a cause of injury of the Community industry in the foreseeable future.

3.5. Cost of production (raw materials)

(147) As it was mentioned in recital 80 above, the Community industry has managed to reflect the increase in costs which took place during the period considered by a sufficient increase in selling prices. Consequently, in the period 2005 – IP it can be stated that the Community industry has shown its capability under normal condition to operate efficiently and react appropriately to the changes in their purchase prices.

(148) As indicated at recital 107 above, costs have substantially increased for the period following the IP and are still forecasted to increase for the following period. Mainly because of a forecasted increase, in relative terms, of fixed costs due to the reduced capacity utilisation. It should be in any case considered that an increase in the overall average costs of the Community industry may also be caused by the shift in product mix to which the Community industry could be obliged because of the severe downward pressure exerted by the certain dumped Chinese product types.

(149) As indicated above at recital 105 above, because of the high undercutting the market for certain product types may be substantially reduced or totally precluded to the Community industry, thereby obliging it to shift

production to product types having a higher selling prices but proportionally higher production costs. Contrary to what has happened during the analysis period, however, the Community industry – because of the pressure exerted by the Chinese imports in terms of loss of market shares and sale price depression – does not appear to have any more sufficient means to reflect increase in costs in a corresponding increase in selling prices.

3.6. Downturn in the Community market of seamless pipes and tubes due to economic downturn

(150) As for the likely effects of decrease in consumption and shrinking demand, this will certainly have an effect on the overall performance of the Community industry. However, this likely negative effect will be rendered more or less significant depending on the development of the market share held by the Chinese imports. Even if the economic downturn could therefore be considered as being a possible cause of injury for the period stating from November 2008, this cannot in any way diminish the damaging injurious effects that will be caused by the existence of significant quantities of very low priced dumped Chinese imports in the EC market. For example, even in a situation of decreasing volumes, the Community industry might be able to maintain an acceptable level of prices and therefore limit the negative effects of a decrease in consumption, should there not be the unfair competition of very low priced dumped Chinese goods which will depress the general level of prices in the market. Therefore, the economic downturn cannot be considered as a possible cause breaching the causal link between the threat of injury and the dumped Chinese imports.

4. Conclusion on causation

(151) The coincidence in time between, on the one hand, the increase in dumped imports from the PRC, the increase in market shares and the undercutting found and, on the other hand, the existence of all elements pointing to a clear and imminent threat of injury which is going to cause a significant deterioration in the economic situation of the Community industry, leads to the conclusion that the dumped imports will be the cause of the material injury which would be suffered by the Community industry within the meaning of Article 3(6) of the basic Regulation if no protective action is taken against these imports.

(152) Other factors were analysed but were found not to be a determining reason for the injury which is likely to be suffered. In particular neither imports from other countries, nor costs, nor a general reduction in demand for the product concerned due to the economic downturn may in any way diminish the potentially disruptive effect of the threat exercised by the Chinese imports on the situation of the Community industry.

- (153) Based on the above analysis, which has properly distinguished and separated the effects of all known factors which may have had or are likely to have an effect on the situation of the Community industry from the likely injurious effect of the dumped imports, it is concluded that the imports from the PRC constitute an imminent threat to the Community industry within the meaning of Article 3(6) and Article 3(9) of the basic Regulation.

G. COMMUNITY INTEREST

- (154) The Commission examined whether, despite the conclusions on dumping, injury, threat of injury and causation, 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 Commission considered the likely impact of measures on all parties involved as well as the likely consequences of not taking measures.

1. Interest of the Community industry

- (155) In the light of the foregoing, measures would be imposed on imports from the PRC. It is expected that the imposition of these measures would lead to an increase in prices from that country and would provide the Community industry with an opportunity to improve its situation through the maintaining of a sufficient level of production volumes, sales and therefore market share. In the absence of measures it is expected that, in a context of decrease of consumption, imports from the PRC would continue at very low prices, thereby increasing their market share and exercising a depressive effect on the overall level of prices in the market. In this situation, the Community industry faces an imminent threat of injury due to the loss of volume caused by the presence of the Chinese imports and the possible decrease in price caused by the downward pressure on market prices created by the increasing presence of the Chinese imports in the Community market.

2. Interest of the other Community producers

- (156) There no indication that the interests of the other producers in the Community that have not actively supported the complaint would be different from those indicated for the Community industry. According to the information available in fact there is no reason why the analysis carried out for the Community industry would not equally apply to these other companies.

3. Interest of unrelated importers in the Community

- (157) Only six importers have cooperated in this investigation. Only one importer, which accounts for around 1,5 % of the total Chinese imports into the EC, buys exclusively from China; this importer has a profitability below 5 % and it is the only one to have expressed clear opposition to the possible imposition of measures. It is however worth noting that during the IP, the product concerned accounted for less than 10 % of company turnover. In addition, as anti-dumping duties will be imposed on all Chinese producers, it is likely that this importer will be able to pass on the cost increase to its customers, as his direct competitors are equally affected. All other cooperating importers also buy from other sources, including the Community industry (their sourcing from the Community industry varies between 25 % and 95 % of their needs) and their profitability is much higher.

4. Interest of the users

- (158) Only one of the only five cooperating users buys from China (around 20 % of purchases in volume, the balance is sourced mostly from the Community industry) and alleges that the imposition of measures would have a major impact on its business. However, the profitability of this company for products incorporating the product in question is very high, standing at more than 10 %. A calculation has shown that, even in the worst case, i.e. all Chinese material is purchased at the prices of the Community industry, and none of the price increase can be passed on to customers, the impact on the profitability of this user would be minor (around 1 % of turnover). It is therefore considered that the possible imposition of measures would in no way create a serious prejudice to the interests of this user.

5. Conclusion on Community interest

- (159) To conclude, it is expected that the imposition of measures on imports from the PRC would, in a context of decreasing consumption have no effect in terms of the volume offered in the EC market for which there is enough production capacity available from the Community industry. No negative effects can therefore be foreseen concerning security of supply (it is recalled that the product types imported are also produced by the Community industry). From the analysis it also appears that there are no major interests of importers or users which would be put at stake in case measures are imposed, and the relatively low cooperation of importers and users in this case supports this finding.

H. PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES

(160) In view of the conclusions reached with regard to dumping, injury, threat of injury, causation and Community interest, provisional measures should be imposed on imports of the product concerned originating in the PRC in order to prevent the emergence of material injury to the Community industry by the dumped imports which is imminent and would otherwise occur.

1. Injury elimination level

(161) The provisional measures on imports originating in the PRC should be imposed at a level sufficient to eliminate the threat of injury caused to the Community industry by the dumped imports, without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it is normally considered that any measures should allow the Community industry to cover its costs and obtain overall a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.

(162) The Community industry has claimed that a margin profit of 12 % would be necessary to ensure the normal competitive situation on the Community market, in the absence of injurious dumping. The association of Chinese exporters has admitted that a profit of 8 % can in some circumstances be considered as an appropriate margin of profit.

(163) However, an investigation based on threat of injury necessarily involves a more substantial number of assessments and assumptions than an investigation based on material injury in the IP. This is because the concept of threat of injury necessarily implies that predictions be made about the future materialisation of injury which was not present during the investigation period. In this uncertain scenario, it is considered a prudent approach to provisionally use the margin of profit which was established in the course of the last proceeding concerning the same product⁽¹⁾, i.e. 3 %. It is however recognised that this issue will need to be further examined at the definitive stage, when it will be possible to collect some more evidence in relation to the forecasted injury.

(164) In the light of this, the required price increase was then determined on the basis of a comparison, at the same level of trade, of the weighted average import price, as

established for the price undercutting calculations, with the non-injurious price of products sold by the Community industry on the Community market, determined as indicated at recital 162 above.

(165) Any difference resulting from the comparison mentioned at recital 163 above was then expressed as a percentage of the total cif import value established for the IP. Given that two of the cooperating Chinese producers were granted IT, and in view of the low level of cooperation, the provisional single countrywide injury elimination level was calculated as the highest injury margins found for representative product types sold by a non-market-economy exporting producer.

(166) The injury margin thus established for the PRC was significantly lower than the dumping margin found.

Name of company	Injury Margin
Hubei Xinyegang Steel Co., Ltd	15,6 %
Shandong Luxing Steel Pipe Co., Ltd	15,1 %
Other cooperating companies	22,3 %
All Other companies	24,2 %

2. Provisional measures

(167) In the light of the foregoing and pursuant to Article 7(2) of the basic Regulation, it is considered that a provisional anti-dumping duty should be imposed on imports of the product concerned originating in the PRC at the level of the lowest of the dumping and injury margins found, in accordance with the lesser duty rule, which is in all cases the injury margin.

(168) On the basis of the above, the proposed duty rates are:

Company	Anti-dumping duty (%)
Hubei Xinyegang Steel Co., Ltd	15,6 %
Shandong Luxing Steel Pipe Co., Ltd	15,1 %
Other cooperating companies	22,3 %
All other companies	24,2 %

⁽¹⁾ See Council Regulation (EC) No 954/2006 of 27 June 2006, OJ L 175, 29.6.2006, p. 4, recital 233.

(169) 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 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 those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(170) Any claim requesting the application of these individual company anti-dumping duty rates (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 accordingly be amended by updating the list of companies benefiting from individual duty rates.

(171) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporting producers, but also to those producers which did not have any exports to the Community during the IP.

I. FINAL PROVISION

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of seamless pipes and tubes, of iron or steel, of circular cross-section, of an external diameter not exceeding 406,4 mm with a Carbon Equivalent Value (CEV) not

⁽¹⁾ European Commission
Directorate-General for Trade
Direction H
Office Nerv-105
1049 Brussels, BELGIUM.

exceeding 0,86 according to the International Institute of Welding (IIW) formula and chemical analysis ⁽²⁾, falling within CN codes ex 7304 19 10, ex 7304 19 30, ex 7304 23 00, ex 7304 29 10, ex 7304 29 30, ex 7304 31 20, ex 7304 31 80, ex 7304 39 10, ex 7304 39 52, ex 7304 39 58, ex 7304 39 92, ex 7304 39 93, ex 7304 51 81, ex 7304 51 89, ex 7304 59 10, ex 7304 59 92 and ex 7304 59 93 ⁽³⁾ (TARIC codes 7304 19 10 20, 7304 19 30 20, 7304 23 00 20, 7304 29 10 20, 7304 29 30 20, 7304 31 20 20, 7304 31 80 30, 7304 39 10 10, 7304 39 52 20, 7304 39 58 30, 7304 39 92 30, 7304 39 93 20, 7304 51 81 20, 7304 51 89 30, 7304 59 10 10, 7304 59 92 30 and 7304 59 93 20) and originating in the People's Republic of China.

2. The rate of the provisional 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 listed below, shall be as follows:

Company	Anti-dumping duty (%)	TARIC additional code
Hubei Xinyegang Steel Co., Ltd, Huangshi City	15,6	A948
Shandong Luxing Steel Pipe Co., Ltd, Qingzhou City	15,1	A949
Companies listed in the Annex	22,3	A950
All other companies	24,2	A999

3. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

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

Article 2

Without prejudice to Article 20 of Council Regulation (EC) No 384/96, interested parties may request disclosure of the details underlying the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

⁽²⁾ The CEV shall be determined in accordance with Technical Report, 1967, IIW doc. IX-535-67, published by the International Institute of Welding (IIW).

⁽³⁾ As defined in Commission Regulation (EC) No 1031/2008 of 19 September 2008 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 291, 31.10.2008, p. 1). The product coverage is determined in combining the product description in Article 1(1) and the product description of the corresponding CN codes taken together.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

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

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

Done at Brussels, 7 April 2009.

For the Commission
Catherine ASHTON
Member of the Commission

ANNEX

List of cooperating producers referred to in Article 1(2) under Taric additional code 950

Company Name	City
Hengyang Valin MPM Co., Ltd	Hengyang
Hengyang Valin Steel Tube Co., Ltd	Hengyang
Handan Precise Seamless Steel Pipes Co., Ltd	Handan
Jiangsu Huacheng Industry Group Co., Ltd	Zhangjiagang
Jiangyin Metal Tube Making Factory	Jiangyin
Jiangyin City Seamless Steel Tube Factory	Jiangyin
Pangang Group Chengdu Iron & Steel Co., Ltd	Chengdu
Shenyang Xinda Co., Ltd	Shenyang
Suzhou Seamless Steel Tube Works	Suzhou
Tianjin Pipe (Group) Corporation (TPCO)	Tianjin
Wuxi Dexin Steel Tube Co., Ltd	Wuxi
Wuxi Dongwu Pipe Industry Co., Ltd	Wuxi
Wuxi Seamless Oil Pipe Co., Ltd	Wuxi
Zhangjiagang City Yiyang Pipe Producing Co., Ltd	Zhangjiagang
Zhangjiagang Yichen Steel Tube Co., Ltd	Zhangjiagang

REGULATION (EC) No 290/2009 OF THE EUROPEAN CENTRAL BANK

of 31 March 2009

amending Regulation (EC) No 63/2002 (ECB/2001/18) concerning statistics on interest rates applied by monetary financial institutions to deposits and loans vis-à-vis households and non-financial corporations

(ECB/2009/7)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank ⁽¹⁾, and in particular to Article 5(1) and Article 6(4) thereof,

Whereas:

(1) Since the entry into force of Regulation (EC) No 63/2002 of the European Central Bank of 20 December 2001 concerning statistics on interest rates applied by monetary financial institutions to deposits and loans vis-à-vis households and non-financial corporations (ECB/2001/18) ⁽²⁾ a number of improvements in respect of the reporting scheme for new loans to households and non-financial corporations have been identified. The existing reporting requirements should therefore be amended.

(2) The inclusion of a general breakdown of new loans, separately identifying the interest rates applied to and the volumes of those that are secured with collateral and/or guarantees should help to obtain more harmonised data at euro area level and facilitate comparisons across countries.

(3) The inclusion of a breakdown by size of new loans to non-financial corporations should provide further insights into the financing of small and medium-sized enterprises.

(4) The inclusion of a breakdown by initial period of interest rate fixation for new loans should provide more homogeneous information on interest rates by increasing the number of period of fixation categories and therefore increasing the homogeneity of each category.

(5) The separate reporting of interest rates charged on credit card debt (also referred to as credit card credit) will allow the monitoring of these interest rates and ensure the common treatment of this instrument in all euro area countries.

(6) The additional category of new loans to sole proprietors within 'loans for other purposes to households' will provide further information on the financing of unincorporated businesses and help in interpreting the general developments in loans to households.

(7) The additional reporting of new loans to non-financial corporations according to maturity should make it easier to distinguish rates applied to short and long-term financing.

(8) Clarification, redefinition and a more direct link to Regulation (EC) No 25/2009 of the European Central Bank of 19 December 2008 concerning the balance sheet of the monetary financial institutions sector (recast) (ECB/2008/32) ⁽³⁾ is necessary in respect of revolving loans and overdrafts.

(9) It is also necessary to adopt clearer rules in respect of stratification and selection of reporting agents by the national central banks (NCBs) and to specify the right of the Governing Council to check such procedures,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 63/2002 (ECB/2001/18) is amended as follows:

1. Article 2(3) is replaced by the following:

'3. The Governing Council shall be entitled to check compliance with Annex I.'

2. Annex I is amended in accordance with Annex I to this Regulation.

3. Annex II is replaced by Annex II to this Regulation.

4. Annex IV is replaced by Annex III to this Regulation.

⁽¹⁾ OJ L 318, 27.11.1998, p. 8.

⁽²⁾ OJ L 10, 12.1.2002, p. 24.

⁽³⁾ OJ L 15, 20.1.2009, p. 14.

Article 2

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

Article 1(3) shall apply from 1 June 2010.

Done at Frankfurt am Main on 31 March 2009.

For the Governing Council of the ECB

The President of the ECB

Jean-Claude TRICHET

ANNEX I

Annex I to Regulation (EC) No 63/2002 (ECB/2001/18) is amended as follows

1. Paragraph 7 of Section III of Part 1 is replaced by the following:

'7. NCBs define stratification criteria that allow the subdivision of the potential reporting population into *homogeneous strata*. Strata are considered homogeneous if the sum of the intra-stratum variances of the sampling variables is substantially lower than the total variance in the entire actual reporting population (*). The stratification criteria are linked to MFI interest rate statistics, i.e. there is a relationship between the stratification criteria and the interest rates and amounts that are to be estimated from the sample.

(*) i.e. the sum of the intra-stratum variances defined as $\sum_h \sum_{i \in h} \frac{1}{n} x_i - \bar{x}_h^{-2}$ is to be substantially lower than the total variance of the reporting population defined as $\sum_{i=1}^n \frac{1}{n} x_i - \bar{x}^{-2}$, where h indicates each stratum, x_i the interest rate for institution i, \bar{x}_h the simple average interest rate of stratum h, n the total number of institutions in the sample and \bar{x} the simple average of interest rates of all institutions in the sample.'

2. Paragraph 16 of Section V of Part 1 is replaced by the following:

'16. Each NCB chooses the most appropriate *allocation of the national sample size n* among the strata. Hence each NCB defines how many reporting agents n_h are drawn from the total of credit institutions and other institutions N_h in each stratum. The sampling rate n_h/N_h for each stratum h permits the estimation of the variance of each stratum. This implies that at least two reporting agents are selected from each stratum.'

3. Paragraph 20 of Section V of Part 1 is replaced by the following:

'20. If an NCB decides on a census of all credit institutions and other institutions in a stratum, the NCB may sample in that stratum at the level of *branches*. The precondition is that the NCB has a full list of branches that covers all the business of the credit and other institutions in the stratum, and has appropriate data in order to assess the variance of interest rates on new business vis-à-vis households and non-financial corporations across branches. For the selection and maintenance of the branches all of the requirements laid down in this Annex apply. The selected branches become notional reporting agents subject to all of the reporting requirements laid down in Annex II. This procedure is without prejudice to the obligation of credit or other institutions to which branches belong to be reporting agents.'

ANNEX II

'ANNEX II

REPORTING SCHEME FOR MONETARY FINANCIAL INSTITUTION INTEREST RATE STATISTICS

PART 1

TYPE OF RATE**I. Annualised agreed rate***General principle*

1. The type of rate that reporting agents provide for all instrument categories of deposits and loans referring to new business and outstanding amounts is the *annualised agreed rate* (AAR). It is defined as the interest rate that is individually agreed between the reporting agent and the household or non-financial corporation for a deposit or loan, converted to an annual basis and quoted in percentages per annum. The AAR covers all interest payments on deposits and loans, but no other charges that may apply. Disagio, defined as the difference between the nominal amount of the loan and the amount received by the customer, is considered as an interest payment at the start of the contract (time t_0) and is therefore reflected in the AAR.
2. If interest payments agreed between the reporting agent and the household or non-financial corporation are capitalised at regular intervals within a year, for example per month or quarter rather than per annum, the agreed rate is annualised by means of the following formula to derive the annualised agreed rate:

$$x = \left(1 + \frac{r_{ag}}{n} \right)^n - 1$$

with:

x as the AAR,

r_{ag} as the interest rate per annum that is agreed between the reporting agents and the household or non-financial corporation for a deposit or loan where the dates of the interest capitalisation of the deposit and all the payments and repayments of the loan are at regular intervals within the year, and

n as the number of interest capitalisation periods for the deposit and (re)payment periods for the loan per year, i.e. 1 for yearly payments, 2 for semi-annual payments, 4 for quarterly payments and 12 for monthly payments.

3. National central banks (NCBs) may require their reporting agents to provide the *narrowly defined effective rate* (NDER) for all or some deposit and loan instruments referring to new business and outstanding amounts, instead of the AAR. The NDER is defined as the interest rate, on an annual basis, that equalises the present value of all commitments other than charges (deposits or loans, payments or repayments, interest payments), future or existing, agreed by the reporting agents and the household or non-financial corporation. The NDER is equivalent to the interest rate component of the *annual percentage rate of charge* (APRC) as defined in Article 3(i) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC⁽¹⁾. The only difference between the NDER and the AAR is the underlying method for annualising interest payments. The NDER uses successive approximation and can therefore be applied to any type of deposit or loan, whereas the AAR uses the algebraic formula defined in paragraph 2 and is therefore only applicable to deposits and loans with regular capitalisation of interest payments. All other requirements are identical, which means that references in the remainder of this Annex to the AAR also apply to the NDER.

Treatment of taxes, subsidies and regulatory arrangements

4. The interest payments covered in the AAR reflect what the reporting agent pays on deposits and receives for loans. Where the amount paid by one party and received by the other differs, the point of view of the reporting agent determines the interest rate reported for the purposes of monetary financial institution (MFI) interest rate statistics.
5. Following this principle, interest rates are recorded on a gross basis before tax, since the pre-tax interest rates reflect what reporting agents pay on deposits and receive for loans.
6. Furthermore, subsidies granted to households or non-financial corporations by third parties are not taken into account when determining the interest payment, because the subsidies are not paid or received by the reporting agent.

⁽¹⁾ OJ L 133, 22.5.2008, p. 66.

7. Favourable rates that reporting agents apply to their employees are covered by MFI interest rate statistics.
8. Where regulatory arrangements affect interest payments, for example interest rate ceilings or the prohibition of remuneration of overnight deposits, these are reflected in MFI interest rate statistics. Any change in the rules determining regulatory arrangements, for example the level of administered interest rates or interest rate ceilings, is shown in MFI interest rate statistics as a change in the interest rate.

II. Annual percentage rate of charge

9. In addition to AARs, the reporting agents provide the APRC for new business in respect of consumer credit and loans to households for house purchases, i.e.:
 - one APRC for new consumer credit (see indicator 30 in Appendix 2), and
 - one APRC for new loans to households for house purchases (see indicator 31 in Appendix 2) ⁽¹⁾.
10. The APRC covers the 'total costs of the credit to the consumer', as defined in Article 3(g) of Directive 2008/48/EC. These total costs comprise an interest rate component and a component of other (related) charges, such as the cost of inquiries, administration, preparation of the documents, guarantees, credit insurance, etc.
11. The composition of the component of other charges may vary across countries, because the definitions in Directive 2008/48/EC are applied differently, and because national financial systems and the procedure for securing credits differ.

III. Convention

12. Reporting agents apply a standard year of 365 days for the compilation of the AAR, i.e. the effect of an additional day in leap years is ignored.

PART 2

BUSINESS COVERAGE

13. Reporting agents provide MFI interest rate statistics referring to outstanding amounts and to new business.

IV. Interest rates on outstanding amounts

14. *Outstanding amounts* are defined as the stock of all deposits placed by households and non-financial corporations with the reporting agent and the stock of all loans granted by the reporting agent to households and non-financial corporations.
15. An interest rate on outstanding amounts reflects the weighted average interest rate applied to the stock of deposits or loans in the relevant instrument category as at the time reference point as defined in paragraph 26. The weighted average interest rate is the sum of the AAR multiplied by the corresponding outstanding amounts and divided by the total outstanding amounts. It covers all outstanding contracts that have been agreed in all the periods prior to the reference date.
16. Bad loans are not included in the weighted average interest rates. Bad loans are defined in accordance with Annex II to Regulation (EC) No 25/2009 of the European Central Bank of 19 December 2008 concerning the balance sheet of the monetary financial institutions sector (recast) (ECB/2008/32) ⁽²⁾. The total amount of a loan partially or totally classified as a bad loan is excluded from interest rates statistics. Loans for debt restructuring at rates below market conditions, i.e. debt restructuring in relation to financially distressed debtors, are also excluded from interest rates statistics.

V. New business on overnight deposits, deposits redeemable at notice, credit card debt and revolving loans and overdrafts

17. In the case of overnight deposits, deposits redeemable at notice, (extended and convenience) credit card debt (also referred to as credit card credit) and revolving loans and overdrafts as defined in paragraphs 42 to 45 and 51, the concept of new business is extended to the whole stock. Hence, the debit or credit balance, i.e. the amount outstanding at the time reference point as defined in paragraph 29, is used as an indicator for *new business on overnight deposits, deposits redeemable at notice, credit card debt and revolving loans and overdrafts*.
18. The interest rates for overnight deposits, deposits redeemable at notice, credit card debt and revolving loans and overdrafts reflect the weighted average interest rate applied to the stock on these accounts at the time reference point as defined in paragraph 29. They cover the current balance sheet positions of all outstanding contracts that have been agreed in all the periods prior to the reference date.

⁽¹⁾ NCBs may grant derogations for consumer credit and loans to households for house purchase vis-à-vis non-profit institutions serving households.

⁽²⁾ OJ L 15, 20.1.2009, p. 14.

19. In order to calculate MFI interest rates on accounts that can either be a deposit or a loan, depending on their balance, reporting agents distinguish between the periods with a credit balance and the periods with a debit balance. The reporting agents report weighted average interest rates referring to the credit balances as overnight deposits and weighted average interest rates referring to the debit balances as overdrafts. They do not report weighted average interest rates combining (low) overnight deposit rates and (high) overdraft rates.

VI. New business in instrument categories other than overnight deposits, deposits redeemable at notice, credit card debt and revolving loans and overdrafts

20. The following paragraphs 21 to 25 refer to deposits with agreed maturity, repos and all loans other than revolving loans and overdrafts and credit card debt as defined in paragraphs 42 to 45 and 51.

21. New business is defined as any new agreement between the household or non-financial corporation and the reporting agent. New agreements comprise:

- all financial contracts, that specify for the first time the interest rate of the deposit or loan, and
- all new negotiations of existing deposits and loans.

Prolongations of existing deposit and loan contracts that are carried out automatically, i.e. without any active involvement of the household or non-financial corporation, and that do not involve any renegotiation of the terms and conditions of the contract, including the interest rate, are not considered as new business.

22. The new business rate reflects the weighted average interest rate applied to the deposits and loans in the relevant instrument category in respect of new agreements concluded between households or non-financial corporations and the reporting agent during the time reference period as defined in paragraph 32.
23. Changes in floating interest rates in the sense of automatic adjustments of the interest rate performed by the reporting agent are not new agreements and are therefore not considered as new business. For existing contracts, these changes in floating rates are therefore not captured in new business rates but only in the average rates on outstanding amounts.
24. A change from fixed to floating interest rates or vice versa (at time t_1) during the course of the contract, which has been agreed at the start of the contract (time t_0), is not a new agreement but part of the terms and conditions of the loan laid down at time t_0 . It is therefore not considered as new business.
25. A household or non-financial corporation is normally expected to take out a loan other than a revolving loan or overdraft in full at the start of the contract. It may, however, take out a loan in *tranches* at times t_1 , t_2 , t_3 , etc. instead of taking out the full amount at the start of the contract (time t_0). The fact that a loan is taken out in tranches is irrelevant for MFI interest rate statistics. The agreement between the household or non-financial corporation and the reporting agent at time t_0 , which includes the interest rate and the full amount of the loan, is covered by MFI interest rate statistics on new business.

PART 3

TIME REFERENCE POINT

VII. Time reference point for MFI interest rates on outstanding amounts

26. NCBs decide whether at national level the MFI interest rates on outstanding amounts, i.e. indicators 1 to 14 described in Appendix 1, are compiled as a snapshot of end-period observations or as implicit rates referring to period averages. The period covered is one month.
27. Interest rates on outstanding amounts as a *snapshot of end-month observations* are calculated as weighted averages of the interest rates applied to the stock of deposits and loans at a certain point in time on the last day of the month. At that point in time, the reporting agent collects the interest rates applicable and the amounts involved for all outstanding deposits and loans vis-à-vis households and non-financial corporations and compiles a weighted average interest rate for each instrument category. In contrast to *monthly* averages, MFI interest rates on outstanding amounts compiled as end-month observations only cover those contracts that are still outstanding at the time of the data collection.

28. Interest rates on outstanding amounts as *implicit rates referring to the average of the month* are calculated as quotients, with the accrued interest payable on deposits and receivable on loans during the reference month as the numerator, and the average stock during the month as the denominator. At the end of the reference month, the reporting agent reports the accrued interest payable or receivable during the month for each instrument category and the average stock of deposits and loans during the same month. In contrast to end-month observations, the MFI interest rates on outstanding amounts compiled as monthly averages also include contracts that were outstanding at some time during the month but are no longer outstanding at the end of the month. The average stock of deposits and loans during the reference month is ideally compiled as the average of daily stocks over the month. As a minimum standard, the average monthly stock is derived from daily balances for volatile instrument categories, i.e. at least overnight deposits, deposits redeemable at notice, extended credit card debt and revolving loans and overdrafts. For all other instrument categories, the average monthly stock is derived from weekly or more frequent balances. For a transitional period of not more than two years, for loans with agreed maturity over five years, the end-month observations are accepted.

VIII. Time reference point for new business on overnight deposits, deposits redeemable at notice, extended credit card debt and revolving loans and overdrafts

29. NCBs decide whether at national level the MFI interest rates on overnight deposits, deposits redeemable at notice, extended credit card debt and revolving loans and overdrafts, i.e. indicators 1, 5, 6, 7, 12, 23, 32 and 36 described in Appendix 2, are compiled as a snapshot of end-period observations or as implicit rates referring to period averages. The period covered is one month.
30. Analogous to the compilation of the interest rates on outstanding amounts contained in Appendix 1, the interest rates on overnight deposits, deposits redeemable at notice, extended credit card debt and revolving loans and overdrafts are compiled in either of the following manners:
- (a) a *snapshot of end-month observations* is calculated, i.e. weighted averages of the interest rates applied to the stock of these deposits and loans at a certain point in time on the last day of the month. At that time, the reporting agent collects the interest rates and the amounts involved for all overnight deposits, deposits redeemable at notice, extended credit card debt and revolving loans and overdrafts vis-à-vis households and non-financial corporations, and compile a weighted average interest rate for each instrument category. In contrast to monthly averages, MFI interest rates on outstanding amounts compiled as end-month observations only cover those contracts that are still outstanding at the time of data collection;
 - (b) *implicit rates referring to the average of the month* are calculated, i.e. quotients, with the accrued interest payable on deposits and receivable on loans as the numerator and the average daily stock as the denominator. At the end of the month, for overnight deposits, deposits redeemable at notice, extended credit card debt and revolving loans and overdrafts the reporting agent reports the accrued interest payable or receivable during the month and the average stock of deposits and loans during the same month. For overnight deposits, deposits redeemable at notice, extended credit card debt and revolving loans and overdrafts the average monthly stock is derived from daily balances. In contrast to end-month observations, the MFI interest rates on outstanding amounts compiled as monthly averages also include contracts that were outstanding at some time during the month, but are no longer outstanding at the end of the month.
31. Concerning accounts that can either be a deposit or a loan, depending on their balance, only the balance at a certain time on the last day of the month determines whether the account is an overnight deposit or an overdraft in that month, if MFI interest rates are compiled as a snapshot of end-month observations. If MFI interest rates are calculated as implicit rates referring to the average of the month, an assessment is made each day as to whether the account is a deposit or a loan. An average of the daily credit balances and the daily debit balances is then calculated to derive the average monthly stock for the denominator of the implicit rates. Furthermore, the flow in the numerator distinguishes between accrued interest payable on deposits and receivable on loans. Reporting agents do not report weighted average interest rates combining (low) overnight deposit rates and (high) overdraft rates.

IX. Time reference point for new business (other than overnight deposits, deposit redeemable at notice, extended credit card debt and revolving loans and overdrafts)

32. MFI interest rates on new business other than overnight deposits, deposits redeemable at notice, extended credit card debt, and revolving loans and overdrafts, i.e. all of the indicators described in Appendix 2 except indicators 1, 5, 6, 7, 12, 23, 32 and 36 are calculated as period averages. The period covered is (the whole of) one month.
33. For each instrument category, the reporting agents calculate the new business rate as a weighted average of *all* interest rates on new business operations in the instrument category during the reference month. These interest rates referring to the average of the month are transmitted to the NCB of the participating Member State in which the reporting agent is resident, together with weighting information on the amount of new business conducted during the reporting month for each instrument category. Reporting agents take into account the new business operations conducted during the entire month.

PART 4

INSTRUMENT CATEGORIES

X. General provisions

34. Reporting agents provide MFI interest rate statistics on outstanding amounts for the instrument categories specified in Appendix 1 and on new business for the instrument categories specified in Appendix 2. As defined in paragraph 17, the interest rates on overnight deposits, deposits redeemable at notice, revolving loans and overdrafts and extended credit card debt are interest rates on new business and are therefore included in Appendix 2. However, since the compilation method and the time reference point for the rates on overnight deposits, deposits redeemable at notice, extended credit card debt and revolving loans and overdrafts is the same as for the other indicators on outstanding amounts, indicators 1, 5, 6, 7, 12, 23, 32 and 36 of Appendix 2 are repeated in Appendix 1.
35. An instrument category specified in Appendices 1 and 2 is inapplicable at national level in some participating Member States and therefore ignored if resident credit and other institutions do not offer any products belonging to this category to households and non-financial corporations at all. Data are provided if some business exists, however limited.
36. For each instrument category defined in Appendices 1 and 2, and applied in the banking business of resident credit and other institutions with households and non-financial corporations resident in the participating Member States, the MFI interest rate statistics are compiled based on *all* of the interest rates applied to *all* of the products that fall within this instrument category. This means that NCBs may not define a set of national products within each instrument category on which MFI interest rate statistics are collected; instead, the rates on all products offered by each of the reporting agents are covered. As stated in paragraph 28 of Annex I, NCBs do not need to cover in the sample each product that exists at national level. However, they must not exclude a whole instrument category on the grounds that the amounts involved are very small. Hence, if an instrument category is only offered by one institution, then this institution is represented in the sample. If an instrument category did not exist in a participating Member State at the time of the initial drawing of the sample, but a new product belonging to this category is being introduced by one institution thereafter, this institution is included in the sample at the time of the next representativity check. If a new product is created within an existing instrument category at national level, the institutions in the sample cover it with the next reporting, as all reporting agents are required to report on all their products.
37. The exception to the principle of covering all interest rates applied to all products are interest rates on bad loans and loans for debt restructuring. As stated in paragraph 16, all bad loans, and loans for debt restructuring at rates below market conditions, i.e. applied to financially distressed debtors, are not covered by MFI interest rate statistics.

XI. Breakdown by currency

38. MFI interest rate statistics cover the interest rates applied by the reporting population. Data on deposits and loans in currencies other than euro shall not be required at the level of all participating Member States. This is reflected in Appendices 1 and 2 where all indicators refer to deposits and loans denominated in euro.

XII. Breakdown by sector

39. With the exception of repos, a sectoral breakdown shall be applied to all deposits and loans required for MFI interest rate statistics. Appendices 1 and 2 therefore distinguish between indicators vis-à-vis households (including non-profit institutions serving households) ⁽¹⁾ and vis-à-vis non-financial corporations ⁽²⁾. In addition, *separate data is reported for sole proprietors/unincorporated partnerships* as part of households, but only in respect of new business for 'other purposes'. NCBs may waive the requirement of separate identification of loans to sole proprietors when such loans constitute less than 5 % of the participating Member State's total household lending in terms of outstanding amounts, as calculated in accordance with Regulation (EC) No 25/2009 (ECB/2008/32).
40. Indicator 5 in Appendix 1 and indicator 11 in Appendix 2 refer to repos. Although the remuneration of repos is not independent of the holding sector in all participating Member States, no sector breakdown by households and non-financial corporations is required for repos at the level of all participating Member States. Furthermore, no maturity breakdown is required at the level of all participating Member States, as repos are assumed to be predominantly very short-term. The MFI interest rate on repos refers without differentiation to both sectors.
41. Indicators 5 and 6 in Appendix 2 refer to deposits redeemable at notice held by households. The interest rate and the weight for deposits redeemable at notice, however, at the level of all participating Member States refer to deposits redeemable at notice held by both households and non-financial corporations, i.e. both sectors are merged but allocated to households. At the level of all participating Member States, no sector breakdown is required.

⁽¹⁾ S. 14 and S. 15 combined, as defined in the European System of Accounts (ESA) 1995, contained in Annex A to Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community, OJ L 310, 30.11.1996, p. 1.

⁽²⁾ S. 11 as defined in the ESA 1995.

XIII. Breakdown by type of instrument

42. Unless otherwise stated in the following paragraphs 43 to 52, the instrument breakdown for MFI interest rates and the definitions of the types of instruments follow the asset and liabilities categories set out in Part 2 of Annex II to Regulation (EC) No 25/2009 (ECB/2008/32).
43. MFI interest rates on *overnight deposits*, i.e. indicators 1 and 7 in Appendix 2, cover all overnight deposits, whether or not they are interest bearing. Zero-interest overnight deposits are therefore captured by MFI interest rate statistics.
44. For the purpose of MFI interest rate statistics, *revolving loans and overdrafts*, i.e. indicators 12 and 23 in Appendix 2, have the same meaning as defined in Part 2 of Annex II to Regulation (EC) No 25/2009 (ECB/2008/32), regardless of their initial period of interest rate fixation. Penalties on overdrafts applied as component of other charges, for example in the form of special fees, are not covered by the AAR as defined in paragraph 1, because this type of rate only covers the interest rate on loans. Loans reported under this category are not reported under any other new business category.
45. For the purpose of MFI interest rate statistics, credit card debt has the same meaning as defined in Part 2 of Annex II to Regulation (EC) No 25/2009 (ECB/2008/32). Data on the interest rate is reported only in respect of *extended credit card debt*, in indicators 32 and 36. The interest rate on convenience credit is not reported separately, as it is by definition 0 %. However, the outstanding convenience credit card debt is included as part of the MFI interest rate statistics on outstanding amounts, together with the outstanding extended credit card debt. Neither extended nor convenience credit card debt is reported under any other new business indicator.
46. For the purpose of MFI interest rate statistics, *new loans to non-financial corporations (except revolving loans and overdrafts and credit card debt)*, i.e. indicators 37 to 54 in Appendix 2, comprise all loans other than (convenience and extended) credit card debt and revolving loans and overdrafts to enterprises, regardless of their amount, while indicators 62 to 85 refer to secured loans as defined in paragraph 60. Loans to non-financial corporations in Appendix 1 referring to outstanding amounts have the same meaning as defined in Part 2 of Annex II to Regulation (EC) No 25/2009 (ECB/2008/32) and cover revolving loans and overdrafts, and convenience and extended credit card debt.
47. For the purpose of MFI interest rate statistics, *new loans to households for consumption*, i.e. indicators 13 to 15, 30 and 55 to 57 in Appendix 2, are defined as loans, other than (extended or convenience) credit card debt or revolving loans and overdrafts, granted for the purpose of personal use in the consumption of goods and services, while indicators 55 to 57 refer to secured loans as defined in paragraph 60. Loans for consumption in Appendix 1 referring to outstanding amounts have the same meaning as defined in Part 2 of Annex II to Regulation (EC) No 25/2009 (ECB/2008/32) and cover revolving loans and overdrafts and convenience and extended credit card debt.
48. *Loans to households for house purchases*, i.e. indicators 6 to 8 in Appendix 1 and indicators 16 to 19 and 31 in Appendix 2, may be secured or unsecured, while indicators 58 to 61 refer to secured loans as defined in paragraph 60. MFI interest rate statistics cover secured and unsecured loans to households for house purchases without differentiation in indicators 16 to 19 and 31. For the purpose of MFI interest rate statistics, *new loans to households for house purchases*, i.e. indicators 16 to 19, 31 and 58 to 61 in Appendix 2, are defined as credit other than revolving loans and overdrafts or credit card debt, extended for the purpose of investing in housing, including building, garages and home improvements (refurbishment). Loans to households for house purchases in Appendix 1 referring to outstanding amounts have the same meaning as defined in Part 2 of Annex II to Regulation (EC) No 25/2009 (ECB/2008/32) and cover revolving loans and overdrafts and credit card debt.
49. For the purpose of MFI interest rate statistics, *new loans to households for other purposes*, i.e. indicators 20 to 22 and 33 to 35 in Appendix 2, are defined as loans other than revolving loans and overdrafts or credit card debt, granted for purposes such as business, debt consolidation, education, etc. Other loans to households in Appendix 1 referring to outstanding amounts have the same meaning as defined in Part 2 of Annex II to Regulation (EC) No 25/2009 (ECB/2008/32) and include revolving loans and overdrafts and credit card debt.
50. For MFI interest rates on outstanding amounts, loans for consumption, loans to households for house purchases and other loans to households for other purposes together cover all loans granted to households by resident credit and other institutions, including revolving loans and overdrafts and (convenience and extended) credit card debt.
51. For MFI interest rates on new business, extended credit card debt, revolving loans and overdrafts, loans to households for consumption, for house purchases and for other purposes cover all loans granted to households by resident credit and other institutions. Convenience credit card debt is not separately reported in MFI interest rate statistics new business, but is included as part of the corresponding outstanding amount items.

XIV. Breakdown by amount category

52. For other loans to non-financial corporations, i.e. indicators 37 to 54 and 62 to 85 in Appendix 2, three categories of amounts are distinguished: (a) 'up to and including EUR 0,25 million'; (b) 'over EUR 0,25 million up to and including EUR 1 million'; and (c) 'over EUR 1 million'. The amount refers to the single loan transaction considered as new business, rather than to all business between the non-financial corporation and the reporting agent.

XV. Breakdown by original maturity, notice period or initial rate fixation

53. Depending on the type of instrument and on whether the MFI interest rate refers to outstanding amounts or to new business, the statistics provide a breakdown by original maturity, period of notice and/or initial period of fixation of the rate. These breakdowns refer to *time bands* or ranges, for example an interest rate on a deposit with an agreed maturity of up to two years refers to an average rate across all deposits with an agreed original maturity between two days and a maximum of two years, weighted by size of the deposit.
54. The breakdown by original maturity and period of notice follows the definitions set out in Part 2 of Annex II to Regulation (EC) No 25/2009 (ECB/2008/32). A breakdown by original maturity is applied to all deposit categories other than repos referring to outstanding amounts and all lending categories referring to outstanding amounts as set out in Appendix 1. A breakdown by original maturity is also applied to new business on deposits with agreed maturity, and a breakdown by period of notice to new business on deposits redeemable at notice as set out in Appendix 2. Separate data on loans to non-financial corporations with an initial period of interest rate fixation up to one year in combination with original maturity above one year are reported for each size of loan band referred to in paragraph 52, as set out in Appendix 2.
55. The lending interest rates on new business in Appendix 2 are broken down by the initial period of interest rate fixation contained in the contract. For the purpose of MFI interest rate statistics, the *initial period of fixation* is defined as a predetermined period of time at the start of a contract during which the value of the interest rate will not change. The initial period of fixation may be shorter than or equal to the original maturity of the loan. The value of the interest rate is only considered to be unchangeable if it is defined as an exact level, for example as 10 %, or as a differential to a reference rate at a fixed point in time, for example as six-month EURIBOR plus two percentage points at a certain predetermined day and time. If at the start of the contract a procedure to calculate the lending rate is agreed between the household or non-financial corporation and the reporting agent for a certain period of time, for example six-month EURIBOR plus two percentage points for three years, this is not considered to be an initial rate fixation as the value of the interest rate may change during these three years. The MFI interest rate statistics on new lending business only reflect the interest rate that is agreed for the initial period of fixation at the start of a contract or after renegotiation of the loan. If after this initial period of fixation the interest rate automatically changes to a floating rate, this is not reflected in the MFI interest rates on new business but only in those on outstanding amounts.
56. The following periods of initial rate fixation are distinguished for loans to households:

For loans to households for consumption and other purposes:

- floating rate and up to (and including) one year initial rate fixation,
- over one year and up to (and including) five years initial rate fixation, and
- over five years initial rate fixation.

For loans to households for house purchase:

- floating rate and up to (and including) one year initial rate fixation,
- over one and up to (and including) five years initial rate fixation,
- over five and up to (and including) 10 years initial rate fixation, and
- over 10 years initial rate fixation.

57. The following periods of initial rate fixation are distinguished for loans to non-financial corporations up to EUR 0,25 million, over EUR 0,25 million up to EUR 1 million and over EUR 1 million:
- floating rate and up to (and including) three months initial rate fixation,
 - over three months and up to (and including) one year initial rate fixation,
 - over one year and up to (and including) three years initial rate fixation,
 - over three years and up to (and including) five years initial rate fixation,
 - over five and up to (and including) ten years initial rate fixation, and
 - over 10 years initial rate fixation.
58. For the purposes of MFI interest rate statistics, 'floating rate' is defined as the interest rate that is subject to interest revisions on a continuous basis (e.g. every day) or at the discretion of the MFI.

XVI. Breakdown by secured loans with collateral and/or guarantees

59. Loans to households and non-financial corporations secured with collateral and/or guarantees are additionally separately reported for all MFI interest rate statistics new business categories except credit card debt, revolving loans and overdrafts, and lending for other purposes.
60. For the purpose of MFI interest rate statistics, the breakdown of loans according to collateral/guarantees includes the total amount of new business loans which are collateralised using the 'funded' credit protection technique as defined in Article 4(31) and Annex VIII, Part 1, Sections 6-25 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) ⁽¹⁾ and/or guaranteed using the 'unfunded credit protection' technique as defined in Article 4(32) and Annex VIII, Part 1 Sections 26-29 of Directive 2006/48/EC, in such a way that the value of the collateral and/or guarantee is higher than or equal to the total amount of the loan. If an MFI applies a system different from the 'standardised approach' as defined in Directive 2006/48/EC for supervisory purposes, it may also apply the same treatment in the reporting of loans included under this breakdown.
61. NCBs may grant derogations in respect of the reporting of both interest rates applied to and business volumes of collateralised/guaranteed loans to non-financial corporations, indicators 62 to 85, if the national aggregate business volume of the corresponding item (indicators 37 to 54) covering all loans represents less than 10 % of the national aggregate business volumes of the sum of all loans in the same size category and less than 2 % of the business volumes for the same size and initial period of fixation category at euro area level. If derogations are granted, these thresholds are to be checked on an annual basis.

PART 5

REPORTING OBLIGATIONS

62. In order to derive aggregates referring to all participating Member States, three levels of aggregation are applied for each of the instrument categories listed in Appendices 1 and 2.

XVII. Statistical information at the level of the reporting agents

63. The first level of aggregation is carried out by the reporting agents as defined in paragraphs 64 to 69. However, NCBs may also ask reporting agents to provide data at the level of individual deposits and loans. The data is reported to the NCB of the participating Member State in which the reporting agent is resident.
64. If the interest rates on *outstanding amounts*, i.e. indicators 1 to 14 in Appendix 1, are compiled as a *snapshot of end-month observations*, then the reporting agents provide a weighted average interest rate referring to the last day of the month for each of the instrument categories.
65. If the interest rates on *outstanding amounts*, i.e. indicators 1 to 14 in Appendix 1, are compiled as *implicit rates referring to the average of the month*, reporting agents provide the accrued interest payable or receivable during the month and the average stock of deposits and loans during the same month for each of the instrument categories.

⁽¹⁾ OJ L 177, 30.6.2006, p. 1.

66. If the interest rates on *overnight deposits, deposits redeemable at notice, extended credit card debt and revolving loans and overdrafts*, i.e. indicators 1, 5, 6, 7, 12, 23, 32 and 36 in Appendix 2, are compiled as a *snapshot of end-month observations*, then the reporting agents provide a weighted average interest rate referring to the last day of the month for each of the instrument categories.
67. If the interest rates on *overnight deposits, deposits redeemable at notice, extended credit card debt and revolving loans and overdrafts*, i.e. indicators 1, 5, 6, 7, 12, 23, 32 and 36 in Appendix 2, are compiled as implicit rates referring to the average of the month, then the reporting agents provide the accrued interest payable or receivable during the month and the average stock of deposits and loans during the same month for each of the instrument categories.
68. For each of the instrument categories on *new business*, i.e. indicators 2 to 4, 8 to 11, 13 to 22, 30 to 31, 33 to 35 and 37 to 85 in Appendix 2, reporting agents provide a weighted average interest rate. In addition, reporting agents provide the amount of new business conducted in each instrument category during the month for each of indicators 2 to 4, 8 to 11, 13 to 22, 33 to 35 and 37 to 85 in Appendix 2.
69. Credit and other institutions that are permitted by an NCB to report MFI interest rate statistics *together as a group* are considered as one reporting agent and provide the data referred to in paragraphs 64 to 66 referring to the group as a whole. In addition, these reporting agents provide every year the number of reporting institutions within the group and the variance of interest rates across these institutions for each instrument category. The number of reporting institutions within the group and the variance refer to the month of October and are transmitted with the October data.

XVIII. National weighted average interest rates

70. The second level of aggregation is carried out by the NCBs. They aggregate the interest rates and related amounts of business for all their national reporting agents to a national weighted average interest rate for each instrument category. The data are reported to the European Central Bank (ECB).
71. For each of the instrument categories on *outstanding amounts*, i.e. indicators 1 to 14 in Appendix 1, NCBs provide a national weighted average interest rate.
72. For each of the instrument categories on *new business*, i.e. indicators 1 to 23 and 30 to 85 in Appendix 2, NCBs provide a national weighted average interest rate. In addition, NCBs provide for each of indicators 2 to 4, 8 to 23, 33 to 35 and 37 to 85 in Appendix 2 the amount of new business conducted at national level in each instrument category during the reference month. These amounts of new business refer to the *population total*, i.e. to the entire potential reporting population. Therefore, if a sampling approach is chosen for selecting the reporting agents, expansion factors are used at national level to derive the population total⁽¹⁾. The *expansion factors* are the inverse of the selection probabilities π_i , i.e. $1/\pi_i$. The estimated amount of new business for the population total, \hat{Y} , is then computed by means of the following generic formula:

$$\hat{Y} = \sum_{i \in S} \frac{y_i}{\pi_i}$$

with:

y_i as the amount of new business of institution i , and

π_i as probability of selecting institution i .

73. NCBs provide the MFI interest rates on outstanding amounts and on new business to the ECB with a detail of four decimal places. This is without prejudice to any decisions taken by the NCBs on the level of detail at which they wish to collect the data. The published results do not contain more than two decimal places.
74. NCBs document any (changes in) regulatory arrangements affecting MFI interest rate statistics in the methodological notes that are provided with the national data.
75. NCBs that choose a sampling approach for the selection of the reporting agents provide an estimate of the sampling error for the initial sample. A new estimate is provided after each maintenance of the sample.

⁽¹⁾ No expansion factors are required for the weighted average interest rates if the estimate from the sample is considered to equal the estimate for the entire potential reporting population (e.g. because all business in the instrument concerned is done by the sampled institutions).

XIX. Aggregated results for the participating Member States

76. The final level of aggregation of the instrument categories per participating Member State to the level of all participating Member States is carried out by the ECB.

PART 6

TREATMENT OF SPECIFIC PRODUCTS

77. The treatment of the products defined in the following paragraphs 78 to 86 is used as a reference for products with similar characteristics.
78. A *step-up (step-down) deposit or loan* is a deposit or loan with a fixed maturity to which an interest rate is applied that increases (decreases) from year to year by a pre-fixed number of percentage points. Step-up (step-down) deposits and loans are instruments with fixed interest rates over the whole maturity. The interest rate for the whole maturity of the deposit or loan and the other terms and conditions are agreed in advance at time t_0 when the contract is signed. An example of a step-up deposit is a deposit with an agreed maturity of four years, which receives 5 % interest in the first year, 7 % in the second, 9 % in the third and 13 % in the fourth. The AAR on *new business*, which is covered at time t_0 in MFI interest rate statistics, is the geometric average of the factors '1 + interest rate'. In line with paragraph 3, NCBs may request reporting agents to implement the NDER for this type of product. The AAR on *outstanding amounts* that is covered from time t_0 to t_3 is the rate applied by the reporting agent at the time of calculation of the MFI interest rate, i.e. using the example of a deposit with an agreed maturity of four years 5 % at time t_0 , 7 % at time t_1 , 9 % at time t_2 and 13 % at time t_3 .
79. For the purpose of MFI interest rate statistics, loans taken as part of 'lines of credit' have the same meaning as defined in and are classified as in Regulation (EC) No 25/2009 (ECB/2008/32). Only outstanding amounts, i.e. amounts withdrawn and not yet repaid in the context of a credit line are covered as new business and reflected in the MFI interest rate statistics in accordance with paragraph 17. Amounts available through a line of credit that have not been withdrawn or have already been repaid are *not* considered, whether as new business or as outstanding amounts.
80. An 'umbrella contract' allows the customer to draw loans on several types of loan accounts up to a certain maximum amount applying to all loan accounts together. At the time of the agreement on an umbrella contract, the form the loan will take and/or the date at which the loan will be drawn and/or the interest rate are not specified, but a range of possibilities may be agreed. Such an umbrella contract is *not* covered by MFI interest rate statistics. However, as soon as a loan agreed under an umbrella contract is drawn, it is covered under the corresponding item in MFI interest rate statistics, both in new business and outstanding amounts.
81. Saving deposits with a *basic interest rate plus a fidelity and/or growth premium* may exist. At the time the deposit is placed, it is not certain whether or not the premium will be paid. The payment depends on the future unknown saving attitude of the household or non-financial corporation. As a convention, such fidelity or growth premiums are not included in the AAR on *new business*. The AAR on outstanding amounts always covers the rates applied by the reporting agent at the time of calculation of MFI interest rates. Hence, if such a fidelity or growth premium is granted by the reporting agent, this is reflected in the statistics on *outstanding amounts*.
82. Loans may be offered to households or non-financial corporations with *associated derivative contracts*, i.e. an interest rate swap/cap/floor etc. As a convention, such associated derivative contracts shall not be included in the AAR on *new business*. The AAR on outstanding amounts always covers the rates applied by the reporting agent at the time of the calculation of MFI interest rates. Hence, if such a derivative contract is exercised and the reporting agent adjusts the interest rate charged to the household or non-financial corporation, this is reflected in the statistics on *outstanding amounts*.
83. Deposits may be offered comprising two components: a deposit with an agreed maturity to which a fixed interest rate is being applied and an embedded derivative with a return that is linked to the performance of a defined stock exchange index or a bilateral exchange rate, subject to a minimum guaranteed return of 0 %. The maturity of both components may be the same or may differ. The AAR on *new business* covers the interest rate for the deposit with agreed maturity, as it reflects the agreement between the depositor and the reporting agent and it is known when the money is placed. The return on the other component of the deposit, linked to the performance of a stock exchange index or a bilateral exchange rate, is only known *ex post* when the product matures and therefore cannot be covered by the new business rate. Hence, only the guaranteed minimum return (usually 0 %) is covered. The AAR on *outstanding amounts* always covers the interest rate applied by the reporting agent at the time of the calculation of MFI interest rates. Until the day of maturity, the rate on the deposit with agreed maturity is captured as well as the guaranteed minimum return on the deposit containing the embedded derivative. Only at maturity do the MFI interest rates on outstanding amounts reflect the AAR that is paid by the reporting agent.

84. Deposits with a maturity of over two years as defined in Part 2 of Annex II to Regulation (EC) No 25/2009 (ECB/2008/32) may contain *pension savings accounts*. The main part of pension savings accounts may be placed in securities and the interest rate on the accounts then depends on the yield of the underlying securities. The remaining part of pension savings accounts may be held in cash and the interest rate determined by the credit or other institution in the same way as for other deposits. At the time when the deposit is placed, the total return to the household from the pension savings account is not known and may also be negative. In addition, at the time the deposit is placed, an interest rate is agreed between the household and the credit or other institution which applies only to the deposit part; this does not apply to the part invested in securities. Hence, only the deposit part that is not invested in securities is covered by MFI interest rate statistics. The AAR on *new business* that is reported is the rate agreed between the household and the reporting agent for the deposit part at the time the deposit is placed. The AAR on *outstanding amounts* is the rate applied by the reporting agent to the deposit part of the pension savings accounts at the time of calculation of the MFI interest rate.
85. Saving plans for housing loans are long-term saving schemes that may provide a low return but, after a certain period of saving, give the household or non-financial corporation the right to a housing loan at a discounted rate. Following Part 2 of Annex II to Regulation (EC) No 25/2009 (ECB/2008/32), these savings plans are classified under deposits with agreed maturity over two years as long as they are used as a deposit. As soon as they are transformed into a loan, they are classified as loans to households for house purchases. Reporting agents report as *new deposit business* the interest rate that is agreed at the time the initial deposit is placed. The corresponding amount of new business is the amount of money that has been placed. The increase of this amount on the deposit over time is only covered by the *outstanding amounts*. At the time when the deposit is transformed into a loan, this new loan is recorded as *new lending business*. The interest rate is the discounted rate that is being offered by the reporting agent. The weight is the total amount of the loan that is being granted to the household or non-financial corporation.
86. In line with Part 2 of Annex II to Regulation (EC) No 25/2009 (ECB/2008/32), deposits placed according to the French regulated housing plan '*plan d'épargne-logement*' (PEL) are classified as deposits with an agreed maturity of over two years. The government regulates the conditions governing these PELs and fixes the interest rate, which remains unchanged over the entire maturity of the deposit, i.e. each 'generation' of PELs has the same interest rate attached to it. PELs are held for at least four years and each year the customer deposits a minimal pre-fixed amount but is allowed to increase the payments at any time during the course of the scheme. Reporting agents report as *new business* the initial deposit at the opening of a new PEL. The amount of money that is initially placed on the PEL may be very low, which means that the weight attached to the new business rate will also be relatively low. This approach ensures that the new business rate always reflects the conditions governing the current generation of PELs. Changes in the interest rate applied to the new PELs are reflected in the new business rate. The reaction of consumers in terms of a portfolio shift from other long-term deposits to pre-existing PELs is not reflected in the new business rates but only in the rates on outstanding amounts. At the end of the period of four years, the customer may either ask for a loan at a discounted rate or *renew the contract*. Since this renewal of the PEL is carried out automatically without any active involvement of the customer, and since the terms and conditions of the contract including the interest rate are not renegotiated, in line with paragraph 21 this renewal is not considered as new business. On renewing the contract, the customer is allowed to make additional deposits, provided that the outstanding amount does not exceed a defined ceiling and the contract does not exceed a defined maximum years of maturity. If the ceiling or maximum maturity are reached, the contract is frozen. The household or non-financial corporation keeps the borrowing rights and is still granted interest following the conditions prevailing at the time of opening of the PEL as long as the money is left in the bank's book. The government grants a *subsidy* in terms of an interest payment on top of the interest rate offered by the credit or other institution. In line with paragraph 6, only that part of the interest payment offered by the credit or other institution is captured in MFI interest rate statistics. The government subsidy, which is paid through but not by the credit or other institution, is ignored.

Appendix 1

Instrument categories for interest rates on outstanding amounts

An AAR or NDER is reported on a monthly basis for each of the categories included in Table 1.

Table 1

	Sector	Type of instrument	Original maturity, period of notice, initial period of interest rate fixation	Outstanding amount indicator	Reporting obligation	
Deposits in EUR	From households	With agreed maturity	Up to 2 years	1	AAR	
			Over 2 years	2	AAR	
	From non-financial corporations	With agreed maturity	Up to 2 years	3	AAR	
			Over 2 years	4	AAR	
	Repos			5	AAR	
Loans in EUR	To households	For house purchases	Up to 1 year	6	AAR	
			Over 1 and up to 5 years	7	AAR	
			Over 5 years	8	AAR	
		For consumption and other purposes	Up to 1 year	9	AAR	
			Over 1 and up to 5 years	10	AAR	
			Over 5 years	11	AAR	
	To non-financial corporations			Up to 1 year	12	AAR
				Over 1 and up to 5 years	13	AAR
				Over 5 years	14	AAR

Appendix 2

Instrument categories for interest rates on new business

An AAR or NDER is reported on a monthly basis for the categories included in Tables 2, 3, 4 and 5. The reporting of the AAR is accompanied by the related business amount if indicated in the tables by the word 'amount'.

Categories within Tables 2 (except indicators 33 to 35), 3 and 5 are mutually exclusive within each table. Therefore, a loan reported under any indicator in Table 2 (except indicators 33 to 35) and/or in Table 3 and/or Table 5 is not reported again under any other indicator in the same table, except for loans reported in indicators 33 to 35, which are also to be reported under indicators 20 to 22. All loans reported under any category in Table 3 must also appear in the corresponding category of Table 2. As for indicators in Table 4, these are sub-indicators of Table 2, and, if secured, of Table 3; therefore any loan reported under Table 4 must also appear in Table 2 or 3 as appropriate.

Table 5 refers only to APRC. Loans recorded in Table 5 are also be recorded in Tables 2, 3 and 4 as appropriate, taking into account the different methodology of APRC as contained in paragraph 9.

The concept of new business is extended to the whole stock, i.e. to outstanding amounts in the case of overnight deposit, deposits redeemable at notice, revolving loans and overdrafts and extended credit card debt, i.e. indicators 1, 5, 6, 7, 12, 23, 32, 36.

Table 2

	Sector	Type of instrument	Original maturity, period of notice, initial period of interest rate fixation	New business indicator	Reporting obligation
Deposits in EUR	From households	Overnight		1	AAR
		With agreed maturity	Up to 1 year maturity	2	AAR, amount
			Over 1 and up to 2 years maturity	3	AAR, amount
			Over 2 years maturity	4	AAR, amount
		Redeemable at notice (*)	Up to 3 months notice	5	AAR
			Over 3 months notice	6	AAR
	From non-financial corporations	Overnight		7	AAR
		With agreed maturity	Up to 1 year maturity	8	AAR, amount
			Over 1 and up to 2 years maturity	9	AAR, amount
			Over 2 years maturity	10	AAR, amount
Repos		11	AAR, amount		
Loans in EUR	To households	Revolving loans and overdrafts		12	AAR
		Extended credit card debt		32	AAR
	For consumption	Floating rate and up to 1 year period of initial rate fixation	13	AAR, amount	
		Over 1 and up to 5 years period of initial rate fixation	14	AAR, amount	
		Over 5 years period of initial rate fixation	15	AAR, amount	
	For house purchases	Floating rate and up to 1 year period of initial rate fixation	16	AAR, amount	

	Sector	Type of instrument	Original maturity, period of notice, initial period of interest rate fixation	New business indicator	Reporting obligation	
			Over 1 and up to 5 years period of initial rate fixation	17	AAR, amount	
			Over 5 and up to 10 years period of initial rate fixation	18	AAR, amount	
			Over 10 years period of initial rate fixation	19	AAR, amount	
		For other purposes	Floating rate and up to 1 year period of initial rate fixation	20	AAR, amount	
			Over 1 and up to 5 years period of initial rate fixation	21	AAR, amount	
			Over 5 years period of initial rate fixation	22	AAR, amount	
		For other purposes, of which: Sole proprietors	Floating rate and up to 1 year period of initial rate fixation	33	AAR, amount	
			Over 1 and up to 5 years period of initial rate fixation	34	AAR, amount	
			Over 5 years period of initial rate fixation	35	AAR, amount	
	To non-financial corporations	Revolving loans and overdrafts		23	AAR	
		Extended credit card debt		36	AAR	
		Loans up to an amount of EUR 0,25 mn	Floating rate and up to 3 months period of initial rate fixation	37	AAR, amount	
				Over 3 months and up to 1 year period of initial rate fixation	38	AAR, amount
				Over 1 and up to 3 year period of initial rate fixation	39	AAR, amount
				Over 3 and up to 5 years period of initial rate fixation	40	AAR, amount
				Over 5 and up to 10 years period of initial rate fixation	41	AAR, amount
				Over 10 years period of initial rate fixation	42	AAR, amount

	Sector	Type of instrument	Original maturity, period of notice, initial period of interest rate fixation	New business indicator	Reporting obligation
		Loans over an amount of EUR 0,25 mn and up to EUR 1 mn	Floating rate and up to 3 months period of initial rate fixation	43	AAR, amount
			Over 3 months and up to 1 year period of initial rate fixation	44	AAR, amount
			Over 1 and up to 3 years period of initial rate fixation	45	AAR, amount
			Over 3 and up to 5 years period of initial rate fixation	46	AAR, amount
			Over 5 and up to 10 years period of initial rate fixation	47	AAR, amount
			Over 10 years period of initial rate fixation	48	AAR, amount
		Loans over an amount of EUR 1 mn	Floating rate and up to 3 months period of initial rate fixation	49	AAR, amount
			Over 3 month and up to 1 year period of initial rate fixation	50	AAR, amount
			Over 1 and up to 3 years period of initial rate fixation	51	AAR, amount
			Over 3 and up to 5 years period of initial rate fixation	52	AAR, amount
			Over 5 and up to 10 years period of initial rate fixation	53	AAR, amount
			Over 10 years period of initial rate fixation	54	AAR, amount

(*) For this instrument category, households and non-financial corporations are merged and allocated to the household sector.

Table 3

New business loans with collateral and/or guarantees

	Sector	Type of instrument	Initial period of interest rate fixation	New business indicator	Reporting obligation
Loans in EUR	To households	For consumption	Floating rate and up to 1 year period of initial rate fixation	55	AAR, amount
			Over 1 and up to 5 years period of initial rate fixation	56	AAR, amount
			Over 5 years period of initial rate fixation	57	AAR, amount

	Sector	Type of instrument	Initial period of interest rate fixation	New business indicator	Reporting obligation
		For house purchases	Floating rate and up to 1 year period of initial rate fixation	58	AAR, amount
			Over 1 and up to 5 years period of initial rate fixation	59	AAR, amount
			Over 5 and up to 10 years period of initial rate fixation	60	AAR, amount
			Over 10 years period of initial rate fixation	61	AAR, amount
	To non-financial corporations	Loans up to an amount of EUR 0,25 mn	Floating rate and up to 3 months period of initial rate fixation	62	AAR, amount
			Over 3 months and up to 1 year period of initial rate fixation	63	AAR, amount
			Over 1 and up to 3 years period of initial rate fixation	64	AAR, amount
			Over 3 and up to 5 years period of initial rate fixation	65	AAR, amount
			Over 5 and up to 10 years period of initial rate fixation	66	AAR, amount
			Over 10 years period of initial rates fixation	67	AAR, amount
		Loans over an amount of EUR 0,25 mn and up to EUR 1 mn	Floating rate and up to 3 months period of initial rate fixation	68	AAR, amount
			Over 3 months and up to 1 year period of initial rate fixation	69	AAR, amount
			Over 1 and up to 3 years period of initial rate fixation	70	AAR, amount
			Over 3 and up to 5 years period of initial rate fixation	71	AAR, amount
		Over 5 and up to 10 years period of initial rate fixation	72	AAR, amount	
		Over 10 years period of initial rate fixation	73	AAR, amount	

	Sector	Type of instrument	Initial period of interest rate fixation	New business indicator	Reporting obligation
		Loans over an amount of EUR 1 mn	Floating rate and up to 3 months period of initial rate fixation	74	AAR, amount
			Over 3 months and up to 1 year period of initial rate fixation	75	AAR, amount
			Over 1 and up to 3 years period of initial rate fixation	76	AAR, amount
			Over 3 and up to 5 years period of initial rate fixation	77	AAR, amount
			Over 5 and up to 10 years period of initial rate fixation	78	AAR, amount
			Over 10 years period of initial rate fixation	79	AAR, amount

Table 4

New business loans to non-financial corporations with period of initial rate fixation below 1 year and original maturity over 1 year

	Sector	Type of instrument	All loans/collateralised/guaranteed loans by original maturity	New business indicator	Reporting obligation
Loans in EUR	To non-financial corporations	Loans up to an amount of EUR 0,25 mn	Floating rate and up to 1 year period of initial rate fixation, with original maturity over 1 year	80	AAR, amount
			Floating rate and up to 1 year period of initial rate fixation, with original maturity over 1 year, only collateralised/guaranteed loans	81	AAR, amount
		Loans over an amount of EUR 0,25 mn and up to EUR 1 mn	Floating rate and up to 1 year period of initial rate fixation, with original maturity over 1 year	82	AAR, amount
			Floating rate and up to 1 year period of initial rate fixation, with original maturity over 1 year, only collateralised/guaranteed loans	83	AAR, amount
		Loans over an amount of EUR 1 mn	Floating rate and up to 1 year period of initial rate fixation, with original maturity over 1 year	84	AAR, amount
			Floating rate and up to 1 year period of initial rate fixation, with original maturity over 1 year, only collateralised/guaranteed loans	85	AAR, amount

Table 5

New business loans to households

	Sector	Type of instrument	All loans	New business indicator	Reporting obligation
Loans in EUR	To households	For consumption	APRC	30	APRC
		For house purchase	APRC	31	APRC'

ANNEX III

'ANNEX IV

TRANSITIONAL PROVISIONS

Until and including the reference month of December 2010, paragraph 10 of Annex I reads as follows:

"The *minimum national sample size* is such that:

- (a) the maximum random error ⁽¹⁾ for interest rates on new business on average over all instrument categories does not exceed 10 basis points at a confidence level of 90 % ⁽²⁾; or
- (b) it covers at least 30 % of the resident potential reporting population; where 30 % of the resident potential reporting population is greater than 100, the minimum national sample size may nevertheless be limited to 100 reporting agents; or
- (c) the reporting agents in the national sample cover at least 75 % of the stock of euro-denominated deposits received from and at least 75 % of the stock of euro-denominated loans granted to households and non-financial corporations resident in the participating Member States."

Until and including the reference month of December 2010, paragraph 61 of Annex II reads as follows:

"NCBs may grant derogations in respect of the reporting of both interest rates applied to and business volumes of collateralised or guaranteed loans to non-financial corporations, indicators 62 to 85, if:

- the national aggregate business volume of the corresponding item (indicators 37 to 54) covering all loans represents less than 10 % of the national aggregate business volumes of the sum of all loans in the same size category and less than 2 % of the business volumes for the same size of loan and initial period of fixation category at euro area level; or
- the national aggregate business volume of the corresponding item covering all (secured and unsecured) loans for the corresponding size of loan and initial period of fixation category in relation to the indicators in the table below (former new business (NB) indicators 24 to 29 in Table 2 of Appendix 2 to Annex II) is lower than EUR 100 million in December 2008.

	Sector	Type of instrument	Original maturity, period of notice, initial period of interest rate fixation	Former new business indicator
Loans in EUR	To non-financial corporations	Loans up to (*) an amount of EUR 1 million	Floating rate and up to 1 year initial rate fixation	24
			Over 1 and up to 5 years initial rate fixation	25
			Over 5 years initial rate fixation	26
		Loans over an amount of EUR 1 million	Floating rate and up to 1 year initial rate fixation	27
			Over 1 and up to 5 years initial rate fixation	28
			Over 5 years initial rate fixation	29

(*) "Up to" means "up to and including".

If derogations are granted, the abovementioned thresholds are to be checked on an annual basis."

⁽¹⁾ $D = z_{\alpha/2} * \sqrt{\text{var}(\hat{\theta})} = z_{\alpha/2} * \sqrt{\text{var}(\hat{\theta})}$, with D as the maximum random error, $z_{\alpha/2}$ as the factor computed from the normal distribution or any suitable distribution according to the structure of the data (e.g. t-distribution) assuming a confidence level of $1-\alpha$, $\text{var}(\hat{\theta})$ as the variance of the estimator of parameter θ , and $\text{var}(\hat{\theta})$ as the estimated variance of the estimator of parameter θ .

⁽²⁾ The NCBs may directly translate the absolute measure of 10 basis points at a confidence level of 90 % into a relative measure in terms of the acceptable maximum variation coefficient of the estimator.

DIRECTIVES

COMMISSION DIRECTIVE 2009/27/EC

of 7 April 2009

amending certain Annexes to Directive 2006/49/EC of the European Parliament and of the Council as regards technical provisions concerning risk management

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions ⁽¹⁾, in particular Article 41(1)(g) thereof,

Whereas:

- (1) In order to ensure a coherent implementation and application throughout the EU of Directive 2006/49/EC, the Commission and the Committee of European Banking Supervisors set up a working group (Capital Requirements Directive Transposition Group — CRDTG) in 2006, entrusted with the task of discussing and resolving issues related to implementation and application of the Directive. According to the CRDTG, certain technical provisions included in Annexes I, II and VII of Directive 2006/49/EC need to be further specified in order to ensure their convergent application. Moreover, certain provisions are not commensurate with sound risk management practices of credit institutions. It is therefore appropriate to adjust these provisions.
- (2) Directive 2006/49/EC should therefore be amended accordingly.
- (3) The measures provided for in this Directive are in accordance with the opinion of the European Banking Committee,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/49/EC is amended as follows:

1. Annex I is amended as follows:

- (a) Point 8.B is replaced by the following:

B. TREATMENT OF THE PROTECTION BUYER

For the party who transfers credit risk (the protection buyer), the positions are determined as the mirror principle of the protection seller, with the exception of a credit linked note (which entails no short position in the issuer). If at a given moment there is a call option in combination with a step-up, such moment is treated as the maturity of the protection. In the case of first-to-default credit derivatives and nth-to-default credit derivatives, the following treatment applies instead of the mirror principle.

First-to-default credit derivatives

Where an institution obtains credit protection for a number of reference entities underlying a credit derivative under the terms that the first default among the assets shall trigger payment and that this credit event shall terminate the contract, the institution may offset specific risk for the reference entity to which the lowest specific risk percentage charge among the underlying reference entities applies according to Table 1 of this Annex.

⁽¹⁾ OJ L 177, 30.6.2006, p. 201.

Nth-to-default credit derivatives

Where the nth default among the exposures triggers payment under the credit protection, the protection buyer may only offset specific risk if protection has also been obtained for defaults 1 to n-1 or when n-1 defaults have already occurred. In such cases, the methodology set out above for first-to-default credit derivatives shall be followed appropriately modified for nth-to-default products.'

(b) In point 14, Table 1 is replaced by the following:

Table 1

Categories	Specific risk capital charge
Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or Member States' regional government or local authorities which would qualify for credit quality step 1 or which would receive a 0 % risk weight under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC.	0 %
Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or Member States' regional governments or local authorities which would qualify for credit quality step 2 or 3 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC, and debt securities issued or guaranteed by institutions which would qualify for credit quality step 1 or 2 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC, and debt securities issued or guaranteed by institutions which would qualify for credit quality step 3 under the rules for the risk weighting of exposures under point 29, Part 1 of Annex VI to Directive 2006/48/EC, and debt securities issued or guaranteed by corporates which would qualify for credit quality step 1, 2 or 3 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC. Other qualifying items as defined in point 15.	0,25 % (residual term to final maturity six months or less) 1,00 % (residual term to final maturity greater than six months and up to and including 24 months) 1,60 % (residual term to maturity exceeding 24 months)
Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or Member States' regional governments or local authorities or institutions which would qualify for credit quality step 4 or 5 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC, and debt securities issued or guaranteed by institutions which would qualify for credit quality step 3 under the rules for the risk weighting of exposures under point 26 of Part 1 of Annex VI to Directive 2006/48/EC, and debt securities issued or guaranteed by corporates which would qualify for credit quality step 4 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC. Exposures for which a credit assessment by a nominated ECAI is not available.	8,00 %
Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or Member States' regional governments or local authorities or institutions which would qualify for credit quality step 6 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC, and debt securities issued or guaranteed by corporates which would qualify for credit quality step 5 or 6 under the rules for the risk weighting of exposures under Articles 78 to 83 of Directive 2006/48/EC.	12,00 %

2. In Annex II, point 11 is replaced by the following:

'11. Where a credit derivative included in the trading book forms part of an internal hedge and the credit protection is recognised under Directive 2006/48/EC, no counterparty risk shall be deemed to arise from the position in the credit derivative. Alternatively, an institution may consistently include for the purposes of calculating capital requirements for counterparty credit risk all credit derivatives included in the trading book forming part of internal hedges or purchased as protection against a CCR exposure where the credit protection is recognised under Directive 2006/48/EC.'

3. In Annex VII, Part C, point 3 is replaced by the following:

'3. By way of derogation from points 1 and 2, when an institution hedges a non-trading book credit risk exposure using a credit derivative booked in its trading book (using an internal hedge), the non-trading book exposure shall not be deemed to be hedged for the purposes of calculating capital requirements unless the institution purchases from an eligible third party protection provider a credit derivative meeting the requirements set out in point 19 of Part 2 of Annex VIII to Directive 2006/48/EC with regard to the non-trading book exposure. Without prejudice to the second sentence of point 11 in Annex II, where such third party protection is purchased and recognised as a hedge of a non-trading book exposure for the purposes of calculating capital requirements, neither the internal nor external credit derivative hedge shall be included in the trading book for the purposes of calculating capital requirements.'

Article 2

1. Member States shall adopt and publish, by 31 October 2010 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 31 December 2010.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 7 April 2009.

For the Commission
Charlie McCREEVY
Member of the Commission

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 6 April 2009

amending Council Decision 79/542/EEC as regards the transport of animals by air, the transit of animals through certain third countries and the animal health certificates for certain meat from solipeds and for transit and storage of certain fresh meat

(notified under document number C(2009) 2273)

(Text with EEA relevance)

(2009/317/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption⁽¹⁾, and in particular the introductory phrase of Article 8, Article 8(4) and the third indent of Article 8(5) thereof,

Having regard to Council Directive 2004/68/EC of 26 April 2004 laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals, amending Directives 90/426/EEC and 92/65/EEC and repealing Directive 72/462/EEC⁽²⁾, in particular Article 6(1) thereof,

Whereas:

(1) Council Decision 79/542/EEC of 21 December 1976 drawing up a list of third countries or parts of third countries, and laying down animal and public health and veterinary certification conditions, for importation into the Community of certain live animals and their

fresh meat⁽³⁾ establishes the sanitary conditions for the importation into the Community of live animals, excluding equidae, and for the importation of fresh meat of such animals, including equidae, but excluding meat preparations.

(2) Article 6 of Decision 79/542/EEC concerns transport of live animals for importation into the Community. The transport of such animals by air presents a risk for animal health in the Community, due to insect vectors of animal diseases that could be present in the means of air transport. It is therefore appropriate to provide for measures for disinfection of the means of such transport in order to avoid the accidental introduction into the Community of potentially infected insect vectors together with imported animals.

(3) Decision 79/542/EEC provides that animals intended for import into the Community can transit only through third countries which are permitted to export animals of the same species to the Community. However, it is permitted to transit animals through certain third countries that are not permitted to export animals to the Community. Such transit is only permitted if the animals are intended for immediate slaughter once they have reached their final destination in the Community. The procedure for listing those third countries has been established taking into account several factors, in particular the animal health situation of the third country, the guarantees about the integrity of the animals during transit, the controls at the border inspection posts and at the final destination.

⁽¹⁾ OJ L 18, 23.1.2003, p. 11.

⁽²⁾ OJ L 139, 30.4.2004, p. 321; corrected by OJ L 226, 25.6.2004, p. 128.

⁽³⁾ OJ L 146, 14.6.1979, p. 15.

- (4) Animal welfare and traceability aspects should also be taken into account when considering the transport of animals to the Community from or via third countries. The Community rules currently in force lead to a situation where bovine animals for fattening must be transported on longer routes, in order to avoid transit through certain third countries that are not permitted to export animals to the Community. This has a negative impact on animal welfare. It is therefore appropriate to extend also to bovine animals for fattening the possibility for transit through third countries that are not permitted to export animals to the Community.
- (5) In addition, it is necessary to ensure an adequate animal health protection in the Community when animals for fattening are introduced after having transited through third countries that are not permitted to export animals to the Community. Appropriate measures should therefore be established, to be applied both during transit and at the final destination. Those measures should ensure the animal health status of the animals and the integrity of the consignment during transport, and limit further movements of the animals from the farms of destination in the Community.
- (6) The farms of destination should be specifically designated by the competent veterinary authority of the Member State of destination. When designating such farms, the competent veterinary authority should, in particular, ensure a control of the animals throughout the period from the date of arrival on the farm until the date of slaughter.
- (7) Decision 79/542/EEC, as amended by Commission Decision 2008/752/EC ⁽¹⁾, includes a reference to the compulsorily notifiable diseases listed in Annex A to Council Directive 90/426/EEC ⁽²⁾ in the animal health certificates for certain meat from domestic and wild solipeds. However, since only African horse sickness and glanders may be transmitted through the meat, those certificates should include specific references only to those diseases.
- (8) For reasons of clarity and consistency of Community legislation, the model of animal health certificate for 'Transit/Storage' should be deleted from Annex II to

Decision 79/542/EEC and Annex III to that Decision should be replaced.

- (9) Decision 79/542/EEC should therefore be amended accordingly.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Decision 79/542/EEC is amended as follows:

1. in Article 6(1), the following second subparagraph is added:

'Where the animals are transported by air, the crate or container in which they are transported and the surrounding area shall be sprayed with an appropriate insecticide immediately before the doors to the aircraft are closed and whenever the doors of the aircraft are opened subsequently before reaching the final destination.');

2. Annexes I, II and III are amended in accordance with the Annex to this Decision.

Article 2

This Decision shall apply from 1 March 2009.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 6 April 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

⁽¹⁾ OJ L 261, 30.9.2008, p. 1.

⁽²⁾ OJ L 224, 18.8.1990, p. 42.

ANNEX

Annexes I, II and III to Decision 79/542/EEC are amended as follows:

1. in Part 1 of Annex I, in the part concerning 'Specific conditions', point 'T' is replaced by the following:

“T: for transit through the territory of animals for direct slaughter or bovine animals for fattening which are consigned from a Member State and destined to another Member State in lorries which have been sealed with a serially numbered seal. The seal number must be entered on the health certificate issued in accordance with the model laid down in Annex F to Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine⁽¹⁾, for bovine animals and swine, and in accordance with Model I of Annex E to Council Directive 91/68/EEC of 28 January 1991 on animal health conditions governing intra-Community trade in ovine and caprine animals⁽²⁾, for ovine and caprine animals. In addition, the seal must be intact on arrival at the designated border inspection post of entry into the Community and the seal number recorded in TRACES. The certificate must be stamped at the exit point of the Community by the competent veterinary authorities prior to transiting one or more third countries with the following appropriate wording “ONLY FOR TRANSIT BETWEEN DIFFERENT PARTS OF THE EUROPEAN UNION VIA THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA/MONTENEGRO/SERBIA (*) (**)”

Bovine animals for fattening must be transported directly to the farm of destination designated by the competent veterinary authority of destination. Those animals must not be moved from that farm unless for direct slaughter.

⁽¹⁾ OJ 121, 29.7.1964, p. 1977/64.

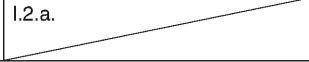
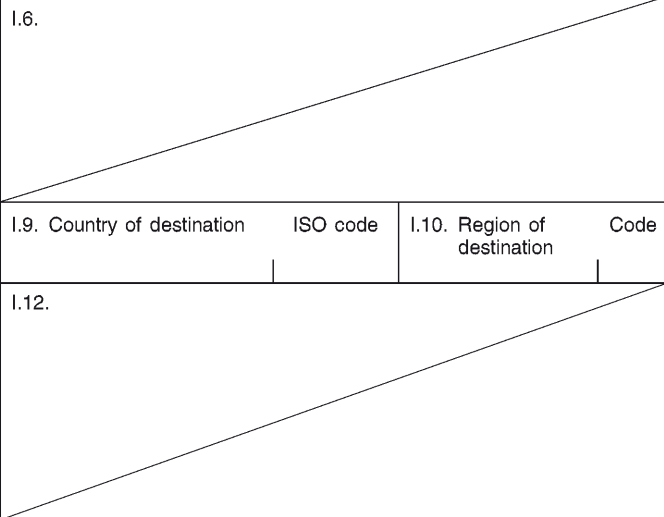

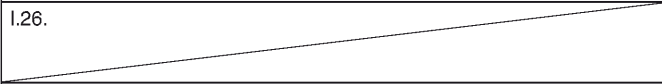
⁽²⁾ OJ L 46, 19.2.1991, p. 19.

(*) Delete country as applicable.

(**) Serbia does not include Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999.;

2. Part 2 of Annex II is amended as follows:

(a) the 'Model of veterinary certificate EQU' is replaced by the following:

COUNTRY		'Model EQU Veterinary certificate to EU		
Part I: Details of dispatched consignment	I.1. Consignor Name Address Tel. No		I.2. Certificate reference number I.3. Central Competent Authority I.4. Local Competent Authority	
	I.5. Consignee Name Address Postal code Tel. No		I.2.a. 	
	I.7. Country of origin	ISO code	I.8. Region of origin	Code
	I.9. Country of destination	ISO code	I.10. Region of destination	Code
	I.11. Place of origin Name Address Approval number		I.12. 	
	I.13. Place of loading		I.14. Date of departure	
	I.15. Means of transport Aeroplane <input type="checkbox"/> Ship <input type="checkbox"/> Railway wagon <input type="checkbox"/> Road vehicle <input type="checkbox"/> Other <input type="checkbox"/> Identification: Documentary references:		I.16. Entry BIP in EU I.17. 	
	I.18. Description of commodity		I.19. Commodity code (HS code)	
	I.21. Temperature of product Ambient <input type="checkbox"/> Chilled <input type="checkbox"/> Frozen <input type="checkbox"/>		I.20. Quantity	
	I.23. Identification of container/Seal number		I.22. Number of packages	
I.24. Type of packaging		I.25. Commodities certified for: Human consumption <input type="checkbox"/>		
I.26. 		I.27. For import or admission into EU <input type="checkbox"/>		
I.28. Identification of the commodities Species (Scientific name) Nature of commodity Treatment type Approval number of establishments Abattoir Cutting plant Cold store Number of packages Net weight				

COUNTRY

Model EQU

Part II: Certification	II. HEALTH INFORMATION	II.a. Certificate reference number	II.b.
	<p>II.1. Public health attestation</p> <p>I, the undersigned official veterinarian, declare that I am aware of the relevant provisions of Regulations (EC) No 178/2002, (EC) No 852/2004, (EC) No 853/2004 and (EC) No 854/2004 and hereby certify that the meat of domestic solipeds described above was produced in accordance with those requirements, in particular that:</p> <p>II.1.1. the meat comes from (an) establishment(s) implementing a programme based on the HACCP principles in accordance with Regulation (EC) No 852/2004;</p> <p>II.1.2. the meat has been obtained in compliance with the conditions set out in Section I of Annex III to Regulation (EC) No 853/2004;</p> <p>II.1.3. the meat fulfils the requirements of Regulation (EC) No 2075/2005 laying down specific rules on official controls for Trichinella in meat, and in particular, has been subject to an examination by a digestion method with negative results;</p> <p>II.1.4. the meat has been found fit for human consumption following ante and post-mortem inspections carried out in accordance with Section I, Chapter II and Section IV, Chapters III and IX of Annex I to Regulation (EC) No 854/2004;</p> <p>II.1.5. ⁽¹⁾ <i>either</i> [the carcass or parts of the carcass have been marked with a health mark in accordance with Section I, Chapter III of Annex I to Regulation (EC) No 854/2004;]</p> <p style="padding-left: 20px;">⁽¹⁾ <i>or</i> [the packages of meat have been marked with an identification mark in accordance with Section I of Annex II to Regulation (EC) No 853/2004;]</p> <p>II.1.6. the meat satisfies the relevant criteria set out in Regulation (EC) No 2073/2005 on microbiological criteria for foodstuffs;</p> <p>II.1.7. the guarantees covering live animals and products thereof provided by the residue plans submitted in accordance with Directive 96/23/EC, and in particular Article 29 thereof, are fulfilled;</p> <p>II.1.8. the meat has been stored and transported in accordance with the relevant requirements of Section I of Annex III to Regulation (EC) No 853/2004.</p> <p>II.2. Animal health attestation</p> <p>I, the undersigned official veterinarian, hereby certify, that the fresh meat described above:</p> <p>II.2.1. has been obtained in the territory with code: ⁽²⁾</p> <p>II.2.2. has been obtained from domestic solipeds, which:</p> <p style="padding-left: 20px;">⁽¹⁾ <i>either</i> [have remained in the territory described under point II.2.1 since birth, or for at least the last three months before slaughter;]</p> <p style="padding-left: 20px;">⁽¹⁾ <i>or</i> [have been introduced on (date) into the territory described under point II.2.1, from the territory with code: ⁽²⁾ that at that date was authorised to export this fresh meat to the European Community;]</p> <p style="padding-left: 20px;">⁽¹⁾ <i>or</i> [have been introduced on (date) into the territory described under point II.2.1, from the EU Member State ;]</p> <p>II.2.3. has been obtained from animals which were slaughtered on or between and ⁽³⁾ in a slaughterhouse around which, within a radius of 10 km, there has been no case/outbreak of African horse sickness or glanders during the previous 40 days or, in the event of a case of such diseases, the preparation of meat for exportation to the European Community has been authorised only after slaughter of all animals present, removal of all meat, and the total cleaning and disinfection of the establishment under the control of an official veterinarian;</p> <p>II.2.4. has been obtained and prepared without contact with other meats not complying with the conditions required above.</p> <p>II.3. Animal welfare attestation</p> <p>I, the undersigned official veterinarian, hereby certify, that the fresh meat described above derives from animals which have been treated in the slaughterhouse before and at the time of slaughter or killing in accordance with the relevant provisions of European Community legislation.</p>		

Notes

This certificate is meant for fresh meat, excluding minced meat, of domestic solipeds (*Equus caballus*, *Equus asinus* and their cross-breeds).

Fresh meat means all animal parts fit for human consumption whether fresh, chilled or frozen.

Part I

- Box reference I.8: provide the code of territory as appearing in Part 1 of Annex II to Decision 79/542/EEC (as last amended).
- Box reference I.11: Place of origin: name and address of the dispatch establishment.
- Box reference I.15: registration number (railway wagons or container and lorries), flight number (aircraft) or name (ship) is to be provided. In case of unloading and reloading, the consignor must inform the BIP of entry into the EU.
- Box reference I.19: use the appropriate HS code: 02.05 or 02.06.
- Box reference I.20: indicate total gross weight and total net weight.
- Box reference I.23: for containers or boxes, the container number and the seal number (if applicable) should be included.
- Box reference I.28: Nature of commodity: indicate "carcass-whole", "carcass-side", "carcass-quarters" or "cuts".
- Box reference I.28: Treatment type: if appropriate, indicate "deboned"; "bone in" and/or "matured". If frozen, indicate the date of freezing (mm/yy) of the cuts/pieces.

Part II

(¹) Keep as appropriate.

(²) Code of the territory as it appears in Part 1 of Annex II to Decision 79/542/EEC (as last amended).

(³) Dates: imports of this meat shall not be allowed when obtained from animals slaughtered either prior to the date of authorisation for exportation to the European Community of the territory mentioned under boxes I.7 and I.8, or during a period where restrictive measures have been adopted by the European Community against imports of this meat from this territory.

Official veterinarian

Name (in capital letters):

Qualification and title:

Date:

Place:

Signature:'

Stamp

(b) the 'Model of veterinary certificate EQW' is replaced by the following:

COUNTRY		'Model EQW Veterinary certificate to EU		
Part I: Details of dispatched consignment	I.1. Consignor Name Address Tel. No		I.2. Certificate reference number I.2.a.	
			I.3. Central Competent Authority	
			I.4. Local Competent Authority	
	I.5. Consignee Name Address Postal code Tel. No		I.6.	
	I.7. Country of origin	ISO code	I.8. Region of origin	Code
	I.9. Country of destination	ISO code	I.10. Region of destination	Code
	I.11. Place of origin Name Address Approval number		I.12.	
	I.13. Place of loading		I.14. Date of departure	
	I.15. Means of transport Aeroplane <input type="checkbox"/> Ship <input type="checkbox"/> Railway wagon <input type="checkbox"/> Road vehicle <input type="checkbox"/> Other <input type="checkbox"/> Identification: Documentary references:		I.16. Entry BIP in EU	
	I.18. Description of commodity		I.17.	
		I.19. Commodity code (HS code)	I.20. Quantity	
I.21. Temperature of product Ambient <input type="checkbox"/> Chilled <input type="checkbox"/> Frozen <input type="checkbox"/>		I.22. Number of packages		
I.23. Identification of container/Seal number		I.24. Type of packaging		
I.25. Commodities certified for: Human consumption <input type="checkbox"/>				
I.26.		I.27. For import or admission into EU <input type="checkbox"/>		
I.28. Identification of the commodities Species (Scientific name) Nature of commodity Treatment type Approval number of establishments (Abattoir Cutting plant Cold store) Number of packages Net weight				

COUNTRY

Model EQW

Part II: Certification	II. Health information	II.a. Certificate reference number	II.b.
	<p>II.1. Public health attestation</p> <p>I, the undersigned official veterinarian, declare that I am aware of the relevant provisions of Regulations (EC) No 178/2002, (EC) No 852/2004, (EC) No 853/2004 and (EC) No 854/2004 and hereby certify that the meat of wild solipeds belonging to the subgenus <i>Hippotigris</i> (Zebra) described above was produced in accordance with those requirements, in particular that:</p> <p>II.1.1. the meat comes from (an) establishment(s) implementing a programme based on the HACCP principles in accordance with Regulation (EC) No 852/2004;</p> <p>II.1.2. the meat was obtained in compliance with Section IV of Annex III to Regulation (EC) No 853/2004;</p> <p>II.1.3. the meat fulfils the requirements of Regulation (EC) No 2075/2005 laying down specific rules on official controls for <i>Trichinella</i> in meat, and in particular, has been subject to an examination by a digestion method with negative results;</p> <p>II.1.4. the meat has been found fit for human consumption following a post-mortem inspection carried out in accordance with Section I, Chapter II and Section IV, Chapters VIII and IX of Annex I to Regulation (EC) No 854/2004;</p> <p>II.1.5. ⁽¹⁾ <i>either</i> [the carcass or parts of the carcass have been marked with a health mark in accordance with Section I, Chapter III of Annex I to Regulation (EC) No 854/2004;]</p> <p style="padding-left: 20px;">⁽¹⁾ <i>or</i> [the packages of meat have been marked with an identification mark in accordance with Section I of Annex II to Regulation (EC) No 853/2004;]</p> <p>II.1.6. the meat satisfies the relevant criteria set out in Regulation (EC) No 2073/2005 on microbiological criteria for foodstuffs;</p> <p>II.1.7. the guarantees covering live animals and products thereof provided by the residue plans submitted in accordance with Directive 96/23/EC, and in particular Article 29 thereof, are fulfilled;</p> <p>II.1.8. the meat has been stored and transported in accordance with the relevant requirements of Section I of Annex III to Regulation (EC) No 853/2004.</p> <p>II.2. Animal health attestation</p> <p>I, the undersigned official veterinarian, hereby certify, that the fresh meat described above:</p> <p>II.2.1. has been obtained from wild animals that were killed between ⁽²⁾ and ⁽³⁾;</p> <p>II.2.2. has been obtained from wild animals which after killing were transported within 12 hours for chilling [to a collection centre, and immediately afterwards] ⁽¹⁾ to an approved game-handling establishment around which, within a radius of 10 km, there has been no case/outbreak of African horse sickness or glanders during the previous 40 days or, in the event of a case of such diseases, the preparation of meat for exportation to the European Community has been authorised only after removal of all meat, and the total cleaning and disinfection of the establishment under the control of an official veterinarian;</p> <p>II.2.3. has been obtained and prepared without contact with other meats not complying with the conditions required above.</p>		

Notes

This certificate is meant for fresh meat, excluding offal and minced meat, of solipeds belonging to the subgenus *Hippotigris* (Zebra) hunted in the wild. Fresh meat means all animal parts fit for human consumption whether fresh, chilled or frozen.

After importation, unskinned carcasses must be conveyed without delay to the processing establishment of destination.

Part I

- Box reference I.8: provide the code of territory as appearing in Part 1 of Annex II to Council Decision 79/542/EEC (as last amended).
- Box reference I.11: Place of origin: name and address of the dispatch establishment.
- Box reference I.15: registration number (railway wagons or container and lorries), flight number (aircraft) or name (ship) is to be provided. In case of unloading and reloading, the consignor must inform the BIP of entry into the EU.
- Box reference I.19: use the appropriate HS code: 02.08.90.
- Box reference I.20: indicate total gross weight and total net weight.
- Box reference I.23: for containers or boxes, the container number and the seal number (if applicable) should be included.
- Box reference I.28: Nature of commodity: indicate "carcass-whole", "carcass-side", "carcass-quarters" or "cuts".
- Box reference I.28: Treatment type: if appropriate, indicate "matured" or "unskinned". If frozen, indicate the date of freezing (mm/yy) of the cuts/pieces.
- Box reference I.28: Abattoir: any abattoir or game handling establishment.

Part II

- (¹) Keep as appropriate.
- (²) Dates. Imports of this meat shall not be allowed when obtained from animals killed or hunted either prior to the date of authorisation for exportation to the European Community of the territory mentioned under boxes I.7 and I.8, or during a period where restrictive measures have been adopted by the European Community against imports of this meat from this territory.
- (³) Code of the territory as it appears in Part 1 of Annex II to Decision 79/542/EEC (as last amended).

Official veterinarian

Name (in capital letters):

Qualification and title:

Date:

Place:

Signature:'

Stamp

(c) the model of animal health certificate 'TRANSIT/STORAGE' is deleted;

3. Annex III is replaced by the following:

'ANNEX III
(Transit and/or storage)

**Model TRANSIT/STORAGE
Veterinary certificate to EU**

COUNTRY

Part I: Details of dispatched consignment	I.1. Consignor Name		I.2. Certificate reference number		I.2.a.			
	Address		I.3. Central Competent Authority					
	Tel. No		I.4. Local Competent Authority					
	I.5. Consignee Name		I.6. Person responsible for the consignment in EU Name					
	Address		Address					
	Postal code		Postal code					
	Tel. No		Tel. No					
	I.7. Country of origin	ISO code	I.8. Region of origin	Code	I.9. Country of destination	ISO code	I.10. Region of destination	Code
	I.11. Place of origin Name		Approval number		I.12. Place of destination Custom warehouse <input type="checkbox"/>		Ship supplier <input type="checkbox"/>	
	Address				Name		Approval number	
				Address		Postal code		
I.13. Place of loading				I.14. Date of departure				
I.15. Means of transport Aeroplane <input type="checkbox"/> Ship <input type="checkbox"/> Railway wagon <input type="checkbox"/> Road vehicle <input type="checkbox"/> Other <input type="checkbox"/>				I.16. Entry BIP in EU				
Identification: Documentary references:				I.17. No.(s) of CITES				
I.18. Description of commodity				I.19. Commodity code (HS code)				
						I.20. Quantity		
I.21. Temperature of product Ambient <input type="checkbox"/> Chilled <input type="checkbox"/> Frozen <input type="checkbox"/>				I.22. Number of packages				
I.23. Identification of container/Seal number				I.24. Type of packaging				
I.25. Commodities certified for: Human consumption <input type="checkbox"/>								
I.26. For transit through EU to 3rd Country <input type="checkbox"/>				I.27.				
3rd country				ISO code				
I.28. Identification of the commodities Species Nature of commodity Treatment type Approval number of establishments Number of packages Net weight (Scientific name) Abattoir Cutting plant/ manufacturing plant								

COUNTRY

Model TRANSIT/STORAGE

Part II: Certification	II. HEALTH INFORMATION	II.a. Certificate reference number	II.b.
	<p>II.1. Animal health attestation</p> <p>I, the undersigned official veterinarian, hereby certify, that the fresh meat described above:</p> <p>II.1.1. comes from a country or region authorised for imports into the EC as laid down in Part 1 of Annex II to Decision 79/542/EEC at the time of slaughter; and</p> <p>II.1.2. complies with the relevant animal health conditions as laid down in the animal health attestation in the model certificate [BOV] [OVI] [POR] [EQU] [RUF] [RUW] [SUF] [SUW] [EQW] ⁽¹⁾ in Part 2 of Annex II to Decision 79/542/EEC; and</p> <p>II.1.3. is derived from animals which were slaughtered and processed on or between and ⁽²⁾;</p> <p>Notes</p> <p>This certificate is meant for transit and storage in accordance with Article 12(4) or Article 13 of Directive 97/78/EC of:</p> <ul style="list-style-type: none"> — fresh meat, including minced meat, of: <ul style="list-style-type: none"> (1) domestic bovine animals (including <i>Bubalus</i> and <i>Bison</i> species and their cross-breeds) (Model "BOV"); (2) domestic sheep (<i>Ovis aries</i>) or goats (<i>Capra hircus</i>) (Model "OVI"); (3) domestic porcine animals (<i>Sus scrofa</i>) (Model "POR"); — fresh meat, excluding minced meat, of: <ul style="list-style-type: none"> (4) domestic solipeds (<i>Equus caballus</i>, <i>Equus asinus</i> and their cross-breeds) (Model "EQU"); — fresh meat, excluding offal and minced meat, of: <ul style="list-style-type: none"> (5) farmed non-domestic animals of the order Artiodactyla (excluding bovine animals (including <i>Bison</i> and <i>Bubalus</i> species and their cross-breeds), <i>Ovis aries</i>, <i>Capra hircus</i>, Suidae and Tayassuidae), and of the families Rhinocerotidae and Elephantidae. (Model "RUF"); (6) wild non-domestic animals of the order Artiodactyla (excluding bovine animals (including <i>Bison</i> and <i>Bubalus</i> species and their cross-breeds), <i>Ovis aries</i>, <i>Capra hircus</i>, Suidae and Tayassuidae), and of the families Rhinocerotidae and Elephantidae (Model "RUW"); (7) farmed non-domestic animals belonging to the Suidae, Tayassuidae, or Tapiridae families (Model "SUF"); (8) wild non-domestic animals belonging to the Suidae, Tayassuidae, or Tapiridae families (Model "SUW"); (9) wild solipeds belonging to the subgenus <i>Hippotigris</i> (<i>Zebra</i>) (Model "EQW"). <p>Fresh meat means all animal parts fit for human consumption whether fresh, chilled or frozen.</p>		
<p>Part I</p> <ul style="list-style-type: none"> — Box reference I.8: provide the code of territory as appearing in Part 1 of Annex II to Decision 79/542/EEC (as last amended). — Box reference I.11: Place of origin: name and address of the dispatch establishment. — Box reference I.12: Address (and approval number if known) of the warehouse in a free zone, free warehouse, customs warehouse or ship chandler shall be included. — Box reference I.15: registration number (railway wagons or container and lorries), flight number (aircraft) or name (ship) is to be provided. In case of unloading and reloading, the consignor must inform the BIP of entry into the EU. — Box reference I.19: Box reference I.19: use the appropriate HS code: 02.01, 02.02, 02.03, 02.04, 02.05, 02.06, 02.08.90, 02.09 or 15.02. — Box reference I.20: indicate total gross weight and total net weight. — Box reference I.23: for containers or boxes, the container number and the seal number (if applicable) should be included. — Box reference I.28: Nature of commodity: indicate "carcass-whole", "carcass-side", "carcass-quarters", "cuts", or "minced meat". — Box reference I.28: Treatment type: if frozen, indicate the date of freezing (mm/yy) of the cuts/pieces. 			

Part II

(¹) Keep as appropriate.

(²) Date or dates of slaughter. Imports of this meat shall not be allowed when obtained from animals slaughtered either prior to the date of authorisation for exportation to the European Community of the territory mentioned under boxes I.7 and I.8, or during a period where restrictive measures have been adopted by the European Community against imports of this meat from this territory.

Official veterinarian

Name (in capital letters):

Qualification and title:

Date:

Place:

Signature:'

Stamp

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 271/2009 of 2 April 2009 concerning the authorisation of a preparation of endo-1,4-beta-xylanase and endo-1,4-beta-glucanase as a feed additive for weaned piglets, chickens for fattening, laying hens, turkeys for fattening and ducks for fattening (holder of the authorisation BASF SE)

(Official Journal of the European Union L 91 of 3 April 2009)

On page 6, in the Annex, column 7 'Minimum content', the unit 'TXT' should be 'TXU'.

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