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COUNCIL REGULATION (EC) No 1784/2000

of 11 August 2000

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain malleable cast iron tube or pipe fittings originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand

(OJ L 208, 18.8.2000, p. 8)

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imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain malleable cast iron tube or pipe fittings originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand

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] and in particular Articles 9 and 10(2) thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EC) No 449/2000 [2], hereinafter the 'provisional Regulation'), imposed a provisional anti-dumping duty on imports into the Community of malleable cast iron tube or pipe fittings originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand, whereas no duties were imposed on imports originating in Croatia and the Federal Republic of Yugoslavia because their market shares had provisionally been found to be *de minimis*.

B. SUBSEQUENT PROCEDURE

(2) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose a provisional anti-dumping duty on imports from Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand and not to adopt provisional measures on imports originating in Croatia and the Federal Republic of Yugoslavia, interested parties who so requested were granted an opportunity to be heard by the Commission. They also made written submissions making their views known on the provisional findings.

(3) The Commission continued to seek and verify all information deemed necessary for the definitive findings.

(4) Further verification visits were carried out at the premises of the following importers/traders which had replied to the questionnaire:

— Jannone SA, Spain,

— Nefit BV, The Netherlands,

— Thisa SA, Spain.

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

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[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30.04.1998, p. 18).

[2] OJ L 55, 29.2.2000, p. 3.

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(6) The oral and written arguments submitted by the parties were considered, and, where appropriate, the provisional findings have been modified accordingly.

C. THE INITIATION OF THE PROCEEDING

(7) Some interested parties reiterated their claim concerning the non-inclusion of certain third countries in the investigation, namely Bulgaria, Poland, Turkey and the United States of America in the sense that this non-inclusion would be discriminatory and therefore invalidate the initiation of the proceeding.

(8) In this respect, it is confirmed that no proceeding could be initiated as regards Bulgaria and Poland since no dumping existed on the basis of the evidence of normal value and export price information for the Bulgarian and Polish products provided by the complainant in the same manner as for the countries concerned by the present investigation. With regard to the imports from the United States of America and Turkey, the information available indicated *de minimis* import levels. This claim should therefore be rejected.

D. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. *Product under consideration*

(9) The provisional Regulation described the product under consideration as threaded malleable cast iron tube or pipe fittings ('malleable fittings' or 'fittings'), which are joined by a screwing joining system, falling within CN code ex 7307 19 10. This definition is hereby confirmed.

(10) Following the disclosure of the provisional findings, one interested party argued that, in addition to CN code 7307 19 10, other CN codes should also fall within the scope of the investigation since the product under consideration was also imported into the Community under these latter codes. It claimed, moreover, that the investigation should be extended to unthreaded fittings, since these were imported into the Community, where they were threaded and sold.

(11) With respect to the first point, the imports of malleable fittings verified during the investigation had in all cases been done under CN code 7307 19 10 which, as set out in the Notice of Initiation, identifies the product under consideration. Consequently the import data used in the present investigation correctly relate to the product under consideration. If there were to be instances in which malleable fittings would be imported under other CN codes, this has to be considered as a misclassification, and the attention of customs officials will be duly drawn to this issue.

(12) With regard to the second point, unthreaded fittings do not fall within the definition of the product under consideration. In fact, they are an intermediate product necessitating further manufacturing steps which give the product under consideration one of its essential characteristics, i.e. its joining mechanism. As a consequence, unthreaded fittings as such are not in competition with the product under consideration and are not interchangeable with it. Moreover, the investigation showed that the threading represents a significant step in the manufacturing process in terms of value added to the malleable fitting, in particular in consideration of the high level of labour involved in that step. Therefore, they cannot be considered to form one single product together with threaded malleable fittings, i.e. the product under consideration.

(13) Given the above, the provisional findings as regards the product under consideration are hereby confirmed.

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2. *Like product*

(14) In recital 13, of the provisional Regulation, the Commission found that malleable fittings produced by the Community industry and sold on the Community market as well as malleable fittings produced in the countries concerned and exported to the Community were like products, since there were no differences in the basic physical and technical characteristics and uses of the existing different types of malleable fittings.

(15) Following the disclosure of the provisional findings, certain interestered parties argued that Community-produced malleable fittings were not a like product to those imported from the countries concerned, because the cast iron used for the Community-produced fittings was, in general, white heart, whereas black heart was used for the imported ones.

(16) The investigation has shown that black heart and white heart fittings undergo a different annealing process. In the case of white heart fittings, it lasts 80 to 120 hours at a temperature of 1 100º. In the case of black heart fittings, it lasts between 50 to 80 hours, at a temperature of 900º. These different processes result in a differing carbon content, white heart fittings being almost completely decarburised, whereas the carbon content of black heart fittings is reduced to a lesser degree. As a result, white heart fittings are in general somewhat more elastic, resistent and easier to galvanise than black heart fittings, which, in turn, are easier to thread and are somewhat more suitable for applications in which pressure tightness is of importance.

(17) However, the investigation has shown that there is no difference in market perception distinguishing between white heart fittings and black heart fittings as in all respects other than the carbon content they have closely resembling characteristics, the same end uses and are thus interchangeable. This has been confirmed by the fact that the importers/traders which purchase both black heart malleable fittings from the countries concerned and white heart malleable fittings produced by the Community industry, sell them to the users without making a distinction between the two grades of material. As to the users of the product under consideration, the investigation has confirmed that they do not differentiate between white heart or black heart fittings to any significant degree.

(18) This is also suggested by the fact that both white heart and black heart fitings are included in the European Standard EN 10242 and in the International standard ISO 49, which specify the requirements for the design and performance of the malleable fittings. As concerns, in particular, the grade of the material to be used, both white heart and black heart are admitted.

(19) Given the above, and since no new evidence was submitted on this, the provisional findings as regards the like product are confirmed.

E. FINDINGS WITH RESPECT TO CROATIA AND THE FEDERAL REPUBLIC OF YUGOSLAVIA

(20) As regards Croatia and The Federal Republic of Yugoslavia, it is confirmed that the volume of imports originating in those countries represented 0,4 % and 0,3 % of the total Community consumption, respectively. As import volumes were considered negligible in accordance with Article 9(3) of the Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (hereinafter the ‘basic Regulation’), the proceeding should be terminated with the respect to imports originating in these two countries.

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F. **DUMPING**

1. ***Market economy countries***

1.1. **Normal value**

1.1.1. *Application of Article 18 of the basic Regulation*

(21) As stated in Section 3.4 of the provisional Regulation, only one Japanese company and its related importer replied to the Commission's questionnaire for exporting producers. The information provided by the Japanese company, however, was incomplete and in some instances incorrect and findings had to be made in accordance with Article 18 of the Basic Regulation. After adoption of provisional measures, these findings were reviewed. This led to a substantially revised assessment of the normal value, as provisionally established.

(22) The Thai exporting producer for which normal value was determined in accordance with Article 18 of the basic Regulation (see recital 96; of the provisional Regulation) claimed that the Commission should reconsider its decision to use as facts available the highest dumping margin found for transactions of this exporter in cases in which no normal value of other Thai companies was available.

(23) This argument was rejected. The application of Article 18 of the basic Regulation in the present case is considered appropriate and necessary in order to avoid giving a bonus for non-cooperation, thus ensuring a fair treatment vis-à-vis all other parties, which had fully cooperated in the proceeding.

1.1.2. *Normal value based on domestic sales*

(24) The Brazilian exporting producer claimed that Article 2(2) of the basic Regulation places the Commission under an obligation to investigate whether the prices of the domestic sales of product types sold at volumes below 5 % of the volume exported to the Community are representative for the Brazilian market. It also argued that, as the average profit margin of such sales was reasonably high, the prices of such sales were representative and should have been used to establish the normal value.

(25) It is the consistent practise of the Community institutions not to use prices of products or product types that are not sold in representative quantities in order to determine the normal value. Only when sales volumes are equal to or exceed the 5 % threshold will the Commission consider that the sales are sufficiently representative to form a basis for normal value. No factors were found which would justify a deviation from the normal practice by using a volume of sales lower than the 5 % threshold.

(26) The Brazilian exporting producer stated that the Commission used different and inconsistent methodologies in order to establish the percentage of financing expenses and of other selling, general and administrative costs (S&A), on the basis of the turnover for the like product on the one hand and on the basis of total turnover on the other hand.

(27) This argument cannot be accepted. The investigation revealed that the exporting producer was unable to show the correctness and reliability of the figures reported in the reply to the questionnaire and the Commission had therefore no option but to use facts available in accordance with Article 18 of the basic Regulation, in order to establish the amount of finance expenses and of other SG&A. Moreover, no evidence was provided showing that the approach followed by the Commission did not reasonably reflect the expenses incurred for sales of the like product.

(28) The Czech exporting producer contested the fact that the Commission had considered the producing company, which was

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at the same time selling on the domestic market, and its related, wholly owned domestic sales company as one economic entity. It argued that the Commission should not have added the SG&A expenses of both companies in order to establish the cost of production, on the grounds that both companies sold the product concerned to different levels of trade.

(29) As far as the SG&A expenses are concerned it is the Community Institutions' normal practice to consider all costs associated with the production and sale of the product under consideration, irrespective of the fact that these costs were incurred in one single company or in two or more companies forming one single entity. Moreover the investigation revealed that one of the characteristics of the two related companies in question was the absence of a clear distinction between the expenses borne by the respective legal entities. This was clearly confirmed during the verification when it was established that the related sales company was booking expenses in its accounting records that were in fact linked to the activity of the producing company. The approach taken at the provisional stage is therefore confirmed.

1.1.3. *Constructed normal value*

(30) The Brazilian exporting producer contested the method used to establish the profit margin when constructing the normal value. It argued that only domestic sales of product types made in representative quantities in relation to the exported quantities should be taken into account. It furthermore argued that product types sold on the domestic market which were not exported at all and certain product types sold on the domestic market having a different threading than the ones exported to the Community should have been excluded. In addition, the company claimed that an adjustment for the profit margin of the latter types, allegedly having a higher profit margin, should at least have been granted. Finally, it claimed that loss-making sales should not have been excluded in order to establish the profit margin.

(31) The profit margin used in order to construct normal value has been established in line with Article 2(6) of the basic Regulation, namely based on actual data pertaining to sales, in the ordinary course of trade, of the like product, by the Brazilian exporting producer under investigation. In order to consider whether sales were indeed made in the ordinary course of trade, the Community Institutions have applied their consistent practice as described in recital 23 of the provisional Regulation, which provides that loss making sales of a given product type are included in the profit calculation, except when they represent 20 % or more of the total quantity of that type sold on the domestic market. No information has been provided which would justify a deviation from normal practice and the results as provisionally established are therefore confirmed.

(32) The cooperating Korean company disputed the Commission's methodology for calculating the domestic profit margin, claiming that the calculation of constructed normal values resulted in unreasonably high margins.

(33) The profit margin used in the constructed value is the accurately assessed and actual profit realised on all sales in the ordinary course of trade on the domestic market, in line with Article 2(6) of the basic Regulation and the consistent practice of the Community institutions.

(34) The same Korean company also submitted that certain selling expenses relating to domestic sales should be excluded from the domestic SG&A expenses included in the constructed normal values.

(35) In fact, the relevant selling expenses incurred on domestic sales — packing and transportation costs — were already deducted to ensure a fair comparison between the normal value and the export price. This was done based on adjustments claimed and

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granted for these expenses in the form of domestic allowances. The correct approach adopted in the provisional Regulation is therefore confirmed.

(36) The Korean company claimed that for certain exported product types which were not sold domestically normal value should have been calculated by reference to sales prices on the domestic market of closely resembling product types.

(37) This argument can in principle be accepted. However, some of the product types sold domestically in sufficient quantities and that were presented as being comparable with product types for which no domestic sales existed were seen to differ substantially both in terms of cost of manufacturing and of their physical characteristics such as weight, size of exits etc. In order for the Commission to be able to use these prices to establish normal value the estimation and application of numerous and significant adjustments would have been required. It was therefore concluded and is hereby confirmed that the use of constructed normal values in such cases is the most accurate and appropriate basis for establishing normal value.

1.2. **Export price**

(38) The Brazilian exporting producer argued that export sales made via the related importer in the Community were excluded without any justification.

(39) It has been pointed out in recital 41 of the provisional Regulation that these sales represent a negligible part of the exports and could as such not have had a material impact on the findings. In fact, the dumping calculations excluding the quantities sold via the related importer cover more than 97 % of the total quantity exported to the Community, i.e. a fully representative quantity. It is therefore considered justified to exclude these sales.

1.3. **Comparison**

(40) The Brazilian exporting producer contested the fact that the Commission did not use the product control numbers (PCN's) identifying product types as proposed in the questionnaire for comparing normal values and export prices.

(41) It is confirmed that the originally proposed PCN's were not retained. This was done since the on-the-spot verification showed that product types with different characteristics resulting in different costs and market values were grouped under the same PCN's. In order to make a fair and accurate comparison between normal value and export price as required by Article 2 (10) of the Basic Regulation, the internal product categorisation of the company was used. This led to a comparison of normal values and export prices of identical product types.

(a) Physical characteristics

(42) The Brazilian exporting producer also claimed an adjustment for differences in physical characteristics between the domestic and export product types.

(43) It should be noted that where the Community Institutions compared domestic normal valu and export prices of identical product types, no further allowance for differences in physical characteristics was warranted. For product types for which no identical types were sold on the domestic market in representative quantities and in the ordinary course of trade, the normal value was constructed based on the cost of manufacture of the exported types so that also for those types no further physical differences existed and therefore no further adjustment was warranted.

(44) One Thai exporting producer objected to the Community Institutions' decision to reject a level of trade adjustment (see recital

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105 of the provisional Regulation). It claimed that price differences existed for certain product types depending on their physical characteristics.

(45) Although the company qualified its claim as a level of trade adjustment, it was in fact requesting an allowance for differences in physical characteristics. Following the disclosure of the Commission's provisional findings, the company substantially modified the claim made in the questionnaire reply so that it referred to other physical characteristics than the ones originally specified. The Community Institutions were no longer in a position to verify the substance of the newly alleged price difference at this late stage of the proceeding. In this respect it should be noted that the questionnaire sent to the exporter clearly indicated that it was essential for a claim to be made accurately and in time to allow the Commission to investigate it. Consequently, the claim was rejected and provisional findings are confirmed.

(b) Import charges and indirect taxes ('duty drawback')

(46) As announced in recital 47 of the provisional Regulation, the claim made by the Brazilian exporting producer for an adjustment to the normal value for refund of certain indirect taxes was further examined. This examination led to the conclusion that the claim made by the company was excessive and unjustified. The amount that was actually refunded on export sales made to the Community and at the same time borne by the product concerned when consumed in Brazil was only a fraction of the amount claimed. The allowance provisionally granted was therefore revised accordingly.

(c) Level of trade

(47) The Brazilian and the Czech exporting producer reiterated both their claim for an allowance to the normal value for differences in level of trade with regard to sales made to an OEM customer in the Community.

(48) Based on the clarifications provided by both companies, adjustments were made. This was done under Article 2 (10)(d)(ii) of the Basic Regulation, as the companies did not sell at both levels concerned on their domestic markets.

(d) Credit costs

(49) The cooperating Korean company alleged that it incurred no credit costs on export sales and that the calculations should be adjusted accordingly.

(50) This claim was found to be in contradiction with the company's questionnaire response. The Commission took into account the payment terms agreed with the customers both in the Community and in Korea and reported by the company in its own reply to the questionnaire. Consequently the claim was rejected.

(e) Currency conversions

(51) The Brazilian exporting producer claimed that the Commission should have used daily exchange rates, instead of the monthly average rates.

(52) Given the important devaluation of the Brazilian Real in January 1999 and the material impact on the dumping calculations, this argument was accepted and exceptionally daily rates were used for the definitive dumping calculations.

(53) The same exporting producer also claimed that the Commission should have used the exchange rate at the date of payment of the invoice rather than at the date of the invoice.

(54) The Basic Regulation provides in Article 2(10)(j) that currency conversions shall be made using the rate of exchange on the

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date of sale, which was considered to be the date of invoice. Other alternative dates are the date of contract, purchase order or order confirmation, but only if those more appropriately reflect the material terms of safe. However, the exchange rate at the date of payment cannot be used. Consequently the claim had to be rejected.

2. ***Non-Market economy countries***

2.1. **Individual treatment**

(55) As stated in the provisional Regulation, the Commission has further investigated the request for individual treatment made by one of the Chinese producers.

(56) During the investigation period the company sold most of its production destined for export to a Chinese State-owned trader. Consequently, it had no control regarding prices, quantities or the destination of its export sales. These tasks were entirely under the control of the State-owned trader. Furthermore, the information provided on export activities was very incomplete, in particular regarding sales from the trader to customers in the Community since the trader did not cooperate.

(57) Another Chinese producer claimed to be fully independent from State interference and stressed that its private status averted any risks of circumvention.

(58) As in the above case the company made most of its export transactions via a Chinese State-owned trader and had no knowledge of the price charged to the Community customer by the trader. This State interference was sufficient to introduce a risk of possible future circumvention of the countrywide duty should this company receive its own individual duty rate. Consequently, the claim could not be accepted.

(59) Finally, a third company alleged that the Commission applied the rules regarding individual treatment in a discriminatory manner by refusing to grant it such treatment while individual treatment was granted in another case with identical facts. It claimed that the reason for not receiving individual treatment was that it was subject to certain laws on foreign investment that provide for tax rebates and salary setting rules, and that other companies, in other anti-dumping proceedings, although subject to the same laws nevertheless did obtain individual treatment.

(60) The company was specifically set up in order to obtain an income tax benefit. This tax benefit was only available for companies which export at least 70 % of their production and the investigation showed that this threshold was fully applied in practice. On this basis, it was decided that the company was not eligible for individual treatment. It is also pointed out that, as far as the alleged discrimination is concerned, no company in similar circumstances received individual treatment.

(61) In the light of the above it is concluded that the three Chinese companies failed to demonstrate a degree of independence from the authorities so that the risk of circumvention of the countrywide duty is removed. Their requests for individual treatment are therefore rejected.

3. ***Dumping margin for companies investigated***

(62) In the absence of any comments by the interested parties it was decided to apply the methods set out in the provisional Regulation for cooperating and non cooperating companies.

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(63) The definitive dumping margins, expressed as a percentage of the cif import price at the Community border, are:

3.1. **Brazil**

Indústria de Fundiáo Tupy Ltda: 34,8 %,

Others: 34,8 %.

3.2. **The Czech Republic**

Moravské Zelezárny a.s.: 26,1 %,

Others: 26,1 %.

3.3. **Japan**

Hitachi Metals Ltd: 47,3 %,

Others: 65,7 %.

3.4. **Korea**

Yeong Hwa Metal Co. Ltd: 13,4 %,

Others: 23,4 %.

3.5. **Thailand**

BIS Pipe Fitting Industry Company Ltd: 22,1 %,

Siam Fittings Co. Ltd: 12,4 %,

Thai Malleable Iron & Steel Co. Ltd: 6,3 %,

Others: 22,1 %.

3.6. **China**

All companies: 49,4 %.

Croatia and the Federal Republic of Yugoslavia

(64) In view of the finding of *de minimis* market shares for the imports of the product concerned originating in both Croatia and the Federal Republic of Yugoslavia, it was decided not to calculate a dumping margin for imports of the product concerned from these countries.

G. DEFINITION OF THE COMMUNITY INDUSTRY

(65) Two interested parties reiterated their claim that because one Community producer imported the product under consideration from certain countries concerned, i.e. from China and Thailand, it should not be considered as belonging to the Community industry. Moreover, it was claimed by some interestered parties that certain Community producers imported malleable fittings from certain other third countries, namely Bulgaria and Turkey, and that therefore, likewise, they should not be considered as forming part of the Community industry.

(66) As to the first point, the Commission further investigated the issue. However no evidence of any such imports was found.

(67) As to the second point, the investigation confirmed that these imports, although having taking place in certain instances, were minimal by comparison with the Community-produced sales of the Community producers concerned, thus not affecting their status as producers of the like product in the Community.

(68) Therefore, these arguments should be rejected. For these reasons, and in the absence of any other new information, the findings on the definition of the Community industry as described in recitals 133 and 134 of the provisional Regulation are confirmed.

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H. **INJURY**

1. ***Imports from the countries concerned***

1.1. **Cumulative assessment of the effects of the imports concerned**

(69) The interested parties concerned reiterated the argument that their imports should not be assessed cumulatively with the other imports concerned. These claims were further analysed, on the basis of the conditions set out in Article 3(4) of the basic Regulation.

1.1.1. *Brazil*

(70) The Brazilian producing exporter reiterated its claim that exports of malleable fittings from Brazil should not be cumulated with the exports from the rest of the countries concerned, in view of the different trade patterns, in particular as regards the import volume and the pricing.

(71) It should be noted that the dumping margin found for Brazil is substantial. As to the volume of imports, they were 4 188 tonnes in the IP, corresponding to a market share of 6,9 % and thus were far from being negligible.

(72) As to the conditions of competition between imported products, and the conditions of competition between the imported products and the like Community product, the further analysis of the relevant factors has shown that although the trend of Brazilian import volumes and those of the imports from the other countries concerned were not in all cases identical during the injury investigation period, the difference among them was not such as to justify a non-cumulative assessment. Indeed, the trend of the Brazilian imports was found to be unstable, thus following a similar trend as compared with some of the other countries concerned, namely Japan, South Korea and Thailand. As regards the prices of the Brazilian imports, they were likewise found to be unstable: they increased between 1995 and 1996 by around 13 %, then gradually decreased between 1996 and 1998 by around 10 % in total and, finally, increased again between 1998 and the IP by around 2 %. A similarly unstable pattern was also found for almost all the other countries concerned. Therefore, although not being always identical during the IIP the difference among the prices was not such as to justify a non-cumulative assessment.

(73) All the countries concerned operate within the same or similar channels of distribution, as confirmed by the fact that some traders imported or purchased the product under consideration from both various countries concerned and the Community producers.

(74) As to market perception of the Brazilian imported products and the Community produced products, the investigation has confirmed that there is no difference, as evidenced also by the aforementioned similarities found in the distribution channels.

(75) For these reasons, it is concluded that the effect of Brazilian imports should be assessed cumulatively with the effects of the imports originating in the other countries concerned.

1.1.2. *The Czech Republic*

(76) The Czech producing exporter argued that exports of malleable fittings from the Czech Republic should not be cumulatively assessed with those originating in the other countries concerned on the grounds that they competed neither with the fittings imported from the other countries concerned nor with those manufactured and sold by most of the Community industry. The Czech exporting producer in this respect claimed that its

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fittings were mainly sold on a limited part of the Community market.

(77) The investigation has however shown that a significant proportion of the Czech exports was actually directed into several Member States. Moreover, even when considering that the rest of the Czech exports are concentrated in one Member State only, this cannot in itself be considered as an element on the basis of which a non-cumulative assessment could be justified in view of the size of this market, in view of the significant imports originating in the other countries concerned coming into this market and in view of the fact the Community industry also has significant sales in this market.

(78) On this basis, the provisional findings regarding the appropriateness of the cumulative assessment of imports from the Czech Republic are confirmed.

1.1.3. *The Republic of Korea*

(79) The Korean producing exporter argued that exports from the Republic of Korea should not be cumulated with those from the other countries concerned on the grounds of the specific technical characteristics of its product, which has taper external threads and taper internal threads (taper/taper fittings), with in the rest of the Community the malleable fittings generally have taper external threads and parallel internal threads (taper/parallel fittings). It was claimed that the Korean imports, which were only made to the United Kingdom market, were in competition only with the fittings of the sole British producer, which manufactured taper/taper fittings as well. It has been argued moreover that, during the IP, only a negligible part of the United Kingdom market was supplied by taper/parallel threaded fittings. As a consequence, injurious dumping could, if at all, only be assessed on a regional basis.

(80) As concerns any regional assessment of injurious dumping, it should be noted that not all the conditions set out in this respect in Article 4(1)(b) of the basic Regulation were met. Indeed, during the IIP, not only the British producer, but also other Community producers and exporting producers from the countries concerned and from other third countries sold the product under consideration on the United Kingdom market. The investigation showed moreover that, in particular in the IP, significant quantities of taper/parallel fittings have been sold in the United Kingdom market, representing a share of the local consumption of the product under consideration well above 20 %, which cannot be considered negligible.

(81) On this basis, the appropriateness of the cumulative assessment of the imports from Korea with those originating in the other countries concerned is confirmed.

1.1.4. *Thailand*

(82) The Thai producing exporter reiterated its claim that exports of malleable fittings from Thailand should not be cumulated with the exports from the rest of the countries concerned, in view of the fact that the Thai imports decreased over the IIP when expressed as a percentage of the total imports into the Community, i.e. comprising all imports both from the countries concerned and from the other third countries.

(83) It should be noted, firstly, that according to Article 3(3) of the basic Regulation, consideration shall be given to the volume of dumped imports which, when expressed in relative terms, has to be calculated in relation to production or consumption in the Community. In the current investigation, the imports from the countries concerned have been expressed in relation to the consumption in the Community. On this basis, the market share of Thailand was above 1 % during the IP, thus not negligible according to the Community legislation. Secondly, during the

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IP, the Thai imports constituted more than 3 % of the overall imports into the Community, thus being clearly above the WTO *de minimis* threshold.

(84) As to the import trends observed over the IIP and as shown above, the development of Thai imports was not different to the trends observed for the other countries concerned, justifying them not to be cumulated with these other countries. Therefore, having in addition regard to the findings on the dumping which is considerable, and the channels of distribution used, the appropriateness of the cumulative assessment of the imports from Thailand with those originating in the other countries concerned is confirmed.

1.1.5. *Conclusion on cumulation*

(85) On the basis of the above, the investigation has confirmed that the conditions of cumulation, as set out in Article 3(4) of the basic Regulation, are met since for all the countries concerned dumping margins above the *de minimis* level and volume of the imports negligible have been found. Furthermore, as concerns the conditions of competition between, on the one hand, the imported products and, on the other hand, the imported products and the like Community product, these were found to be comparable. Indeed, the investigation showed that, in all cases, the imported products and those of the Community industry have the same physical and technical characteristics, that the pricing trends are similar, significantly undercutting the Community industry's prices, and that all imported products as well as the Community-produced products are sold through the same or similar channels of distribution. Therefore, the provisional findings regarding the appropriateness of the cumulative assessment of the imports from the countries concerned are confirmed.

1.2. **Price undercutting**

1.2.1. *Adjustments for black and white heart fittings*

(86) Some interested parties claimed that adjustments should be made in the price comparison between imported products (black heart fittings) and the Community produced product (in general white heart fittings) on the grounds of the different perception of the market and of the difference in the production process (in particular in the annealing process, since white heart malleable fittings commanded a higher cost of production because of the increased energy consumption than black heart malleable fittings), which was reflected in the selling prices.

a) Market perception

(87) In this respect it has been found that, as described above (paragraph 2.2.), in those instances in which both black and white heart malleable fittings were sold by the same party, and therefore any distinction in market perception should have been observable, no such distinction was actually observed, in any event not in terms of pricing differences. As to the users of the product under consideration, the investigation has confirmed that they do not differentiate between white heart or black heart fittings. On the basis of the above, it was therefore not possible to grant an adjustments on the grounds of the alleged difference between white and black heart fittings.

b) Cost of production and selling price

(88) Moreover, as concerns alleged differences in the cost of production and any effects on the selling prices, the data available allowed the detailed verification of the manufacturing colt structure of both black and white heart fittings. While the energy consumption in order to obtain the complete decarburization of white heart fittings is greater than the energy consumption used

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to obtain the only partially decarburized black heart fittings, the investigation has shown not only that the cost for energy represents a small proportion of the total manufacturing cost, but also that in terms of actual energy consumption and the cost related thereto, the difference between the two processes is not significant and depends more on the specific production set up and its energy efficiency of the producer concerned.

(89) In addition, as concerns the selling prices, it was found that where Community-produced black heart and white heart fittings were sold on the same markets, the prices for black heart fittings, contrary to the claim by some interested parties, were in some cases even higher. Moreover, information available showed that in those cases where wholesalers and distributors purchased both black heart malleable fittings from the countries concerned and white heart malleable fittings from the Community industry, they often resold them at the same prices and did not specify the difference between the two in terms of the two grades of cast iron.

(90) These arguments are therefore rejected.

1.2.2. *Adjustments for market segments*

(91) Some interested parties claimed that the market of the malleable fittings falls into three segments, depending on the price bracket and the reliability of the product as manufactured by certain Community producers as well as by certain exporting producers. It was consequently claimed that the price comparison should be undertaken on the basis of three different market segments (high, medium, low) in which different Community and exporting producers were present.

(92) Although no elements were provided allowing any objective and clean division of the market in three specific segments, it was examined whether other methods of price comparison based on such alleged market segments would lead to different results of the price undercutting. As a result of this examination, no significant differences have been found as compared to the methodology applied at the provisional stage, i.e. the comparison of the weighted average ex-works prices of the Community producers to the weighted average export prices of each exporting producer concerned, for each type of malleable fittings.

(93) In conclusion, although the investigation has shown that certain differences in perceived segments may exist, no objective criteria are apparent in order to correspondingly categorise the Community industry and exporting producers. Therefore, the methodology applied at the provisional stage is confirmed.

1.2.3. *Conclusion on price undercutting*

(94) Before the above background, price undercutting margins were reviewed on the basis of the evidence submitted by interested parties and amended where appropriate. As regards Japan, the revised weighted average price undercutting expressed as a percentage of the Community industry's prices decreased to 16,2 %. With respect to the other countries concerned, the provisional weighted average price undercutting expressed as a percentage of the Community industry's prices are confirmed.

2. ***Situation of the Community industry***

2.1. **Choice of economic indicators**

(95) With respect to the injury assessment, one interested party argued that the determination of the impact of the dumped imports was not valid since certain injury factors set out in Article 3(4) of the WTO Anti-dumping Agreement had not been examined.

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(96) In this respect it should be noted that the WTO Anti-dumping Agreement and the basic Regulation do not require that each factor be analysed in the exactly same way. Moreover, in the specific case, all the relevant factors considered as having a bearing on the state of the Community industry have been taken into account in the context of the injury assessment. The claim is therefore rejected.

2.2. **Analysis of trends**

(97) The Czech exporting producer further alleged that the Community industry had not suffered material injury in the sense of Article 3 of the basic Regulation since the Commission had in several instances taken 1995 as a starting point for its analysis whereas, had 1996 been taken as a starting point, several economic indicators would actually show a positive trend.

(98) In this respect it should be noted, firstly, that dumping and the injury suffered by the Community industry must be found during the IP. In order to establish whether such injury exists, *inter alia*, the developments and trends found in the years preceding the IP are only used in order to have a better understanding of findings relating to the IP. In this current case, since the investigation period started in April 1998, it has been deemed appropriate, in order to obtain a meaningful picture of the evolution of the injury indicators, to take into account at least three calendar years (1995-1997) prior to the IP. Secondly, even if 1996 were taken as reference year, the result of the injury analysis would not change. On the contrary, the injury suffered by the Community industry would be even more evident in the development of certain injury indicators as profitability and stocks. The other injury indicators would have followed the same negative trend, with the exception of the investments, and of the production volume, the increase of which however resulted in higher stocks.

(99) For these reasons, the above argument is rejected

2.3. **Conclusion on injury**

(100) In view of the above, the provisional findings as regards the material injury suffered by the Community industry set in recital 160 of the provisional Regulation, are confirmed.

I. **CAUSATION**

1. ***Impact of the imports concerned***

(101) Some interested parties claimed that the assessment of the causal link was flawed since the Community industry was able to increase its prices during the IIP, while the evolution of the production and the production capacity, as well as the decrease of the employment and the lack of profitability were caused by factors other than the dumped imports, namely, in particular, the Community industry's decision to rationalise production and the necessity to comply with the European environmental standards. Moreover one interested party questioned the provisional finding concerning the closure of the manufacturing plant of malleable fittings located in Germany, claiming that the producers facilities had actually been relocated to Austria and, as consequence, this element could not be considered as a sign of the injury suffered by the Community industry.

(102) As a general remark it must be underlined that the injury suffered by the Community industry must be assessed by reference to the IP. As to the earlier years and the trends established over these years, they explain the background underlining the injury established. As regards the current proceeding, the investigation established that the Community industry underlook restructuring efforts in 1995, with the effect of and as evidenced by the decrease of production and employment, the significant level of investments and the low level of profitability in that

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particular year. The results of these restructuring efforts began to materialise in 1996, as indicated by the rising production and the better financial results (profitability improved by 3,6 percentage points between 1995 and 1996). However, these results and the further benefits which could have been reasonably expected to accrue to the Community industry from these efforts have been frustrated by the developments on the market. Indeed, as from 1996, the import volumes from the countries concerned began to increase and their prices started to decrease, whereas simultaneously, the Community industry began to suffer a continuous decline of its sales volume and market share, throughout the rest of the IIP. The contraction of the sales of the Community industry entailed a rise of its stocks and a decline of its profitability, which, although rising between 1995 and 1996, then decreased by 2,3 percentage points between 1996 and the IP to –9 %.

(103) As regards more specifically the development of the Community industry's sales prices, the investigation has shown that the rise of 5 % between 1995 and the IP of the average sales price of the Community industry occurred in two phases, one between 1995 and 1996, when the whole market experienced a general price increase, and the second one between 1997 and 1998, when only the Community industry and other third countries raised their prices, while the prices of the countries concerned decreased significantly. These price developments should be seen in the light of the fact that the price pressure of the imports concerned had an impact on the volume of the sales and on the market shares of the Community industry rather than on its price level. Indeed, when faced with low-priced imports originating in the countries concerned, the Community industry had the possibility of either maintaining its prices with a risk of losing market shares, or following the low prices of dumped imports with the aim of maintaining the sales volumes. It decided to maintain its prices, but the consequences on the sales volume had an impact on the profitability, which turned negative after 1996.

(104) Secondly, as to the development of the Community industry's production volumes, and in particular the aspect of the closure of the manufacturing plant located in Germany, the investigation has confirmed that this plant was indeed closed at the end of 1995 and that the related facilities were not relocated to Austria as claimed by one interested party. Actually only a small amount of stocks were transferred there.

(105) On the basis of the above, the findings as described in recital 170 of the provisional Regulation are confirmed.

2. ***Imports from other third countries***

(106) Some interested parties questioned the provisional findings of the Commission on the effect on the situation of the Community industry of imports of the product under consideration from other third countries, namely Turkey, Bulgaria and Poland.

(107) According to Eurostat, during the IIP, imports from other third countries decreased in volume by around 14 % while market shares decreased by around 1 percentage point. As to the prices, they increased on average by around 15 % and were 17 % higher than the average prices of the imports from the countries concerned.

2.1. **Turkey**

(108) More specifically, as concerns Turkey, during the IP the weighted average price of imports was around 10 % higher than the weighted average price of the imports concerned and, during the IP, its market share remained stable at around 1 % of Community consumption.

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2.2. **Bulgaria**

(109) As to Bulgaria, although the import volumes increased during the IIP from 43 to 1 109 tonnes, in relative terms these imports are not such as to alter the conclusions on the causal link between the injury suffered by the Community industry and the imports from the countries concerned: indeed, in the IP, they represented 1,8 % of the total market as compared to a market share of 28,6 % of the imports concerned. In addition, during the IIP their price increased by around 11 % and, in the IP, was around 5 % higher than the weighted average price of the imports concerned.

2.3. **Poland**

(110) With respect to Poland, market shares remained fairly stable during the IIP, and the average price was around 27 % higher than the average price of the imports concerned.

2.4. **Conclusion on other third countries**

(111) In conclusion, given the above, even if imports from other third countries may have contributed to the material injury suffered by the Community industry, it is hereby confirmed that they are not such to have broken the causal link between the dumping and the injury found.

3. ***Substitution effect***

(112) Some interested parties questioned the provisional findings as regards the substitution of fittings made of materials such as copper and plastic for those made of malleable cast iron and the effect of this alleged substitution on the situation of the Community industry.

(113) The issue has been further investigated and it has been confirmed that indeed the substitution of cast iron by different materials, such as copper and plastic, took place mainly in the 1980's. Afterwards, the substitution effect slowed down and the utilisation of malleable fittings remained stable, in particular for those uses where physical durability, resistance as well as a specific tensile strength and elongation are required. Therefore, any substitution effect cannot have significantly contributed to the injury suffered by the Community industry as evidenced by the relatively stable consumption established in the course of the present investigation.

4. ***Conclusion on causation.***

(114) In the light of the above, the provisional findings as described in recitals 155 to 170, of the provisional Regulation on causation are confirmed.

J. COMMUNITY INTEREST

1. ***Interest of users***

(115) One interested party claimed that the interest of the fire protection industry had not been duly taken into account.

(116) It should be noted that no users belonging to the fire protection industry made themselves known during the investigation. This fact can be considered in itself as an indication that this sector is not significantly concerned by the imposition or non-imposition of anti-dumping measures. This conclusion is reinforced by the findings established for the cooperating users belonging to other sectors, for which the product under consideration represents around 1 % of their total costs.

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2. ***Conclusion on Community interest***

(117) In the absence of any further new information on Community interest and on the basis of the facts available, the findings as described in recitals 171 to 179 of the provisional Regulation are confirmed.

K. DEFINITIVE ANTI-DUMPING MEASURES

1. ***Injury elimination level***

(118) For the purpose of establishing the level of measures definitively to be imposed, it is hereby confirmed that the prices of the dumped imports should be increased to a non-injurious level. On the basis of the injury margin thus established and of the dumping margins found, whichever is the lower in accordance with Article 9(4) of the basic Regulation, the level of duty then established. In the absence of any new information, the methodology used for establishing the injury margin as described in recital 181 of the provisional Regulation is hereby confirmed.

2. ***Croatia and Yugoslavia***

(119) As the market shares found were *de minimis* it is proposed not to impose any anti-dumping duty on imports of malleable fittings originating in Croatia and Yugoslavia and to terminate the proceeding in respect of imports originating in these countries.

3. ***Definitive duties***

(120) In the light of the foregoing, it is considered that a definitive anti-dumping duty should be imposed on the imports originating in the remaining countries concerned.

(121) As regards the residual duty to be applied to the noncooperating exporting producers, in those cases where the level of cooperation has been high, the residual duty was fixed at the level of the highest anti-dumping duty found for the cooperating exporting producers. In those cases where the level of cooperation has been low, the residual duty was fixed at the level of the highest dumping or injury margin found for a representative range of exported types of the cooperating producing exporters, whichever was the lower.

(122) On the basis of the above, the proposed definitive duty rates, expressed as a percentage of the cif Community border price, customs duty unpaid, are as follows:

Country	Company	Definitive duty (%)
Brazil	Indústria de Fundição Tupy Ltda	34,8
	Others	34,8
Czech Republic	Moravské Zelezárny a.s.	26,1
	Others	26,1
Japan	Hitachi Metals Ltd	26,9
	Others	33,6
Republic of Korea	Yeong Hwa Metal Co. Ltd	13,4
	Others	23,4

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Country	Company	Definitive duty (%)
Thailand	BIS Pipe Fitting Industry Company Ltd	22,1
	Siam Fittings Co. Ltd	12,4
	Thai Malleable Iron & Steel Co. Ltd	6,3
	Others	22,1
China	All companies	49,4

(123) 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, e.g. 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.

4. ***Undertakings***

(124) It will be recalled that the exporting producer in the Czech Republic has offered a price undertaking in accordance with Article 8(1) of the basic Regulation. Subsequent to the imposition of provisional anti-dumping measures, also the exporting producer in Korea and one of the exporting producers in Thailand have offered price undertakings in accordance with Article 8(1) of the basic Regulation. The Commission considers that the undertakings offered can be accepted since they eliminate the injurious effect of the dumping. Moreover, the regular and detailed reports which the companies undertook to provide to the Commission will allow an effective monitoring. Furthermore, the sales structure of these exporters is such that the Commission considers that there is little risk of circumventing the undertaking offered.

(125) The Japanese exporting producer also made proposals for offering an undertaking. However, the level of cooperation of this company throughout the investigation, and the accuracy and reliability of the data it had provided was poor (See recital 21). Therefore, the Commission was not, therefore, satisfied that an undertaking from this company could be effectively monitored. Furthermore, the structure of the company's export sales' sector, with more than one related importer involved, was considered to increase the risk of circumvention. The offers were therefore rejected.

(126) In order to ensure the effective respect and monitoring of the undertakings, when the request for release for free circulation pursuant to the undertakings is presented, exemption from the duty is conditional upon presentation to the relevant Member States' customs' services of a valid undertaking invoice issued by the exporting producers from whom the undertakings are accepted and containing the information listed in the Annex.

([1]) European Commission
Directorate-General for Trade
Directorate C
DM 24 8/38
Rue de la Loi/Wetstraat 200
B-1049 Bruxelles/Brussel.

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Where no such invoice is presented or when it does correspond to the product presented to the customs' services, the appropriate rate of anti-dumping duty will be payable in order to avoid circumvention of the undertakings.

(127) In the event of a breach or withdrawal of the undertakings an anti-dumping duty may be imposed, pursuant to Articles 8(9) and 10 of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. 1. A definitive anti-dumping duty is hereby imposed on imports of threaded malleable cast iron tube or pipe fittings, falling within CN code ex 7307 19 10 (TARIC code 7307 19 10 10) and originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be as follows for products originating in:

Country	Definitive duty (%)	TARIC additional code
Brazil	►M1 32,0 ◄	—
Czech Republic	26,1	►M2 — ◄
Japan	33,6	A999
People's Republic of China	49,4	—
Repubic of Korea	23,4	A999
Thailand	22,1	A999

3. The above rates shall not apply to the products manufactured by the companies listed below, which shall be subject to the following anti-dumping duty rates:

Country	Company	Definitive duty (%)	TARIC additional code
Japan	Hitachi Metals Ltd Seavans North 2-1, Shibaura 1-Chome Minato-Ku Tokyo 105-8614 Japan	26,9	A092
Republic of Korea	Yeong Hwa Metal Co Ltd 363-6, Namyang-dong, Chinhae, Kyongman Republic of Korea	13,4	A093

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Country	Company	Definitive duty (%)	TARIC additional code
Thailand	BIS Pipe Fitting Industry Co Ltd 107 Moo 4, Petchkasem Rd., Omnoi, Kratumban Samutsakorn 74130 Thailand	22,1	A094
	Siam Fittings Co. Ltd 100/1-100/2, Moo 2, Settakit 1 Road, Omnoi, Krathumban Samutsakorn 74130 Thailand	12,4	A095
	Thai Malleable Iron & Steel Co. Ltd 469/19 Rama III Road, Yannawa, Bangkok 10120 Thailand	6,3	A096

4. Notwithstanding Article 1 (1), the definitive duty shall not apply to imports realised for free circulation in accordance with the provisions of Article 2.

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

Article 2

1. Imports shall be exempt from the anti-dumping duties imposed by Article 1 provided that they are produced and sold for export to the Community by the companies mentioned in paragraph 3, declared under the appropriate TARIC additional code and that the conditions set in paragraph 2 are met.

2. When the request for release for free circulation is presented, exemption from the duties shall be conditional upon presentation to the competent Member State's customs services of a valid ‘Undertaking Invoice’ issued by the exporting companies mentioned in paragraph 3 containing the essential elements listed in the Annex to this Regulation. Exemption from the duty shall further be conditional on the goods declared and presented to customs corresponding precisely to the description on the ‘undertaking invoice’.

3. Imports accompanied by an ‘undertaking invoice’ shall be declared under the following TARIC additional codes:

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Country	Company	Taric additional code
Republic of Korea	Yeong Hwa Metal Co., Ltd 363-6, Namyang-dong, Chinhae Kyongman Korea	A093
Thailand	BIS Pipe Fitting Industry Co., Ltd 107 Moo 4, Petchkasem Road, Omnoi, Kratumban Samutsakorn 74130 Thailand	A094

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Article 3

The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EC) No 449/2000 shall be collected at the rate of the duty definitively imposed. Amounts secured in excess of the definitive rate of anti-dumping duties shall be released. Where the definitive duties are higher than the provisional duties, only the amounts secured at the level of the provisional duties shall be definitively collected.

Article 4

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

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

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ANNEX

Elements to be indicated in the undertaking invoice referred to in Article 2(2):

1. The Taric additional code under which the goods on the invoice may be customs-cleared at Community borders (as specified in the Regulation),
2. The exact description of the goods, including:
   - — the product reporting code number (PRC) (as established in the undertaking offered by the producing exporter in question), including type number, diameter, and surface,
   - — CN code,
   - — quantity (to be given in units),
3. The description of the terms of the sale, including:
   - — price per unit,
   - — the applicable payment terms,
   - — the applicable delivery terms,
   - — total discounts and rebates,
4. Name of the unrelated importer to which the invoice is issued directly by the company,

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

   ‘I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by … (company), and accepted by the European Commission pursuant to Regulation (EC) No 449/2000 or Decision C(2000) 2452. I declare that the information provided in this invoice is complete and correct.’