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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 950/2001

of 14 May 2001

imposing a definitive anti-dumping duty on imports of certain aluminium foil originating in the People's Republic of China and Russia

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 Article 9 thereof,

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

Whereas:

A. **PROCEDURE**

1. **Initiation**

(1) On 18 February 2000, the Commission announced by a notice ('Notice of Initiation') published in the *Official Journal of the European Communities* [2] the initiation of an anti-dumping proceeding with regard to imports into the Community of certain aluminium foil originating in the People's Republic of China (hereafter referred to as 'the PRC') and Russia.

(2) The proceeding was initiated as a result of a complaint lodged in January 2000 by the European Association of Metals ('Eurometaux') on behalf of Alcan Europe, Elval, Eurofoil, Lawson Mardon Star Ltd, Pechiney Rhenalu and VAW Aluminium Business Unit Foil, together representing a major proportion, i.e. 71 %, of the Community production of certain aluminium foil. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-dumping proceeding.

2. **Investigation**

(3) The Commission officially advised the exporting producers, importers and users known to be concerned, the representatives of the exporting countries concerned, the complainants and other Community producers about 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 out in the Notice of Initiation.

(4) A number of parties made their views known in writing. All parties who so requested within the above time limit and who demonstrated that there were particular reasons why they should be heard were granted the opportunity to be heard.

(5) Questionnaires were sent to all parties known to be concerned and to all other companies which made themselves known within the deadlines set out in the Notice of Initiation. In order to allow exporting producers from China and Russia to submit a claim for market economy treatment ('MET') or individual treatment if they so wished, the Commission sent a market economy treatment and an individual treatment claim form to the Chinese and Russian companies known to be concerned. One Chinese company and one Russian company submitted a reply to the claim form.

(6) Replies were received from the six complaining Community producers, two unrelated importers in the Community, six users, one exporting producer in China, one exporting producer in Russia and one producer in the analogue country. Information was also received from another Community producer and from three suppliers of raw material.

(7) The Commission sought and verified all the information it deemed necessary for the purposes of a determination of dumping, injury and Community interest including the carrying out of verification visits at the following companies:

(a) *Exporting producer in the PRC*

— Bohai Aluminium Industries Ltd, Qinhuangdao

[1] L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation No 2238/2000, (OJ L 257, 11.10.2000, p. 2).
[2] OJ C 45, 18.2.2000, p. 2.

(b) *Exporting producer in Russia*

— Joint Stock Company United Company 'Siberian Aluminium', Moscow (including the related companies Metcare Management SA, registered in Panama City and Eximal Ltd, registered in Belize and the related selling company Sibirsky Aluminiun Foil Corp. (ex Hover Commercial Corp.) registered in the British Virgin Islands).

(c) *Unrelated importer in the Community*

— Countinho Caro + Co International Trading GmbH, Hamburg, Germany

(d) *Analogue producer*

— Alcan, Cleveland, Ohio, United States of America

(e) *Complainant Community producers*

— Alcan Europe, Rogerstone, United Kingdom
— Elval, Inofita Viotia, Greece
— Eurofoil, Dudelange, Luxembourg
— Lawson Mardon Star Ltd, Bridgnorth, United Kingdom
— Pechiney Rhenalu, France
— VAW Aluminium Business Unit Foil, Bonn (D), on behalf of VAW Grevenbroich, Grevenbroich, Germany, VAW SLIM SpA, Cisterna di Latina, Italy and VAW INASA SA, Irurzun, Spain

(f) *Community users*

— Fora Folienfabrik GmbH, Radolfzell, Germany
— ITS Foil and Film Rewinding bv, Apeldoorn, The Netherlands.

(8) The investigation of dumping and injury covered the period from 1 January 1999 to 31 December 1999 ('the investigation period' or IP). With respect to the trends relevant for the injury assessment, data covering the period from 1 January 1996 up to the end of the IP ('the period considered') was analysed.

3. **Provisional measures**

(9) Given the need to further examine certain aspects of dumping as well as the impact on the Community industry of the imports concerned, no provisional anti-dumping measures were imposed, additional information was requested and the investigation was continued. An on-the-spot investigation was carried out at the premises of an unrelated importer of the Russian exporting producer in Hamburg and a supplementary questionnaire on the same general category of products was sent to the same Russian exporting producer.

B. **PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT**

1. **Product under consideration**

(10) The product under consideration is aluminium foil of a thickness of 0,009 mm or more up to not more than 0,018 mm, not backed, not further worked than rolled, presented in reels of a width not exceeding 650 mm, currently classifiable within CN code ex 7607 11 10. The product concerned is commonly known as aluminium household foil ('AHF').

(11) AHF is manufactured by rolling aluminium ingots or foil-stock up to the desired thickness. Once rolled, the foil is annealed by a thermal process to make it pliable. Once rolled and annealed the AHF is presented on reels of a width not exceeding 650 mm. The dimension of the reel is determinant for its use, since the users of this product ('spoolers' or 'rewinders') will mount the AHF onto small end-rolls destined for retail sale. The AHF rewound onto smaller rolls, is then used for multi-purpose short-life wrapping (mostly in households, catering and food and floristry retail businesses).

(12) The investigation has shown that a clear dividing line exists between AHF and aluminium converter foil ('ACF'), given the differences in the basic physical characteristics and basic use of the products.

(13) Regarding the basic physical characteristics, it should be noted that AHF is generally produced in a thickness between 0,009 mm to 0,018 mm, whereas ACF is generally produced in thickness below 0,009 (standard 0,0065 mm) and above 0,018 mm (standard 0,020 mm to 0,040 mm), the thickness of the foil being a crucial element in the use of the product in terms of its convertibility. Furthermore, AHF is presented in reels of a width not exceeding 650 mm whereas ACF is presented in reels of 700-1200 mm. The information provided by the interested parties shows that the width of the reels cannot be altered once the foil has been annealed. In both cases it should be noted that the width of the reels is also a determinant element in the use of the product: AHF will be rewound onto smaller end-rolls of the same width as the reels, whereas ACF will be subsequently converted (i.e. printed, laminated, folded, etc.) and cut to the required size, in which case a larger size of the reel will allow a more efficient use of the product.

(14) The aforementioned differences in thickness and width determine to a large extent the basic use of the product. Indeed, AHF is used in multi-purpose short-term wrapping, mostly in households, catering and food and floristry retail businesses. ACF will be further transformed (converted) and then cut into the desired sizes and shapes for use in long term conservation of liquid (milk, UHT, fruit juices) and long-term packing (food, cosmetics, chocolate, cigarettes, pharmaceuticals, etc.).

(15) In conclusion, AHF and ACF are considered as two different products for the purpose of this investigation.

(16) Furthermore, it was also found that all AHF share essentially the same basic physical, technical and chemical characteristics and is used for the same purpose. AHF therefore constitutes a single product.

2. **Like product**

(17) The investigation has shown that the AHF produced in the PRC and in Russia and exported to the Community and that produced and sold in the Community by the Community industry share the same basic physical and chemical characteristics, i.e. a foil made of aluminium of a thickness between 0,009 mm and 0,018 mm and presented in reels of up to 650 mm in width. Furthermore, the end use is the same, i.e. it is used for multipurpose short-life wrapping.

(18) The same was found for the AHF produced and sold in the United States of America (USA), which served as analogue country. It should be noted that there were no domestic sales of AHF in Russia.

(19) In view of the above, it is concluded that the aforementioned AHFs are alike within the meaning of Article 1(4) of Council Regulation (EC) No 384/96 (hereafter referred to as the 'basic Regulation').

C. **DUMPING**

1. **Preliminary remarks**

(20) It was established that there was only one producer exporting to the Community in each of the countries concerned during the IP. They accounted for practically all exports to the Community from the countries concerned.

2. **Market economy treatment ('MET')**

(21) Pursuant to Article 2(7)(b) of the basic Regulation, normal value in the PRC and Russia is determined on the basis of the prices or constructed value of those producers which can demonstrate that they meet the criteria laid down in the said Article 2(7)(c), i.e. that they operate under market economy conditions. The sole exporting producers in the PRC and in Russia requested MET and were required to complete a claim form detailing all the relevant information required. The results of these investigations were conveyed to the Advisory Committee and, after consultation, it was decided to grant MET to the exporting producer in Russia only.

(a) *The PRC*

(22) The information submitted showed that the sole Chinese exporting producer was majority state-owned and that the chairman of the board of directors was appointed by a state-owned entity. It was therefore concluded that the absence of significant state interference in this case could not be guaranteed and thus that the criteria of the first indent of Article 2(7)(c) of the basic Regulation were not met. For this reason, it was concluded that this company could not be granted market economy treatment.

(23) The company concerned objected to the conclusion not to grant it market economy treatment mainly on the grounds that it was the USA partner in the joint venture that was solely responsible for the management of operations and, therefore, independence from state interference was guaranteed. However, in particular in view of the fact that the chairman of the board of directors was appointed by a state-owned entity this argument was not considered sufficient to invalidate the above findings.

(b) *Russia*

(24) The investigation showed that the decisions regarding costs and inputs were made in response to market signals without significant state interference and the costs of major inputs reflected market values. The company had one clear set of basic accounting records which were independently audited in line with international accounting standards. The production costs and the financial situation of the company were not subject to significant distortions carried over from the former non-market-economy system and the company was subject to bankruptcy and property laws which guaranteed stability. Finally exchange-rate conversions were carried out at the market rate. On the basis of the foregoing it was concluded that the criteria in Article 2(7)(c) of the basic Regulation were met and that this company should therefore be granted market economy treatment.

3. **Individual treatment**

(25) The sole Chinese exporting producer also claimed individual treatment, i.e. the determination of an individual dumping margin on the basis of the individual export prices of the company.

(26) The company concerned was unable to demonstrate that it was sufficiently independent from the Chinese authorities and that it fulfilled all the criteria required. In particular, since the company was majority state-owned it could not guarantee the absence of interference by the State on its export prices, quantities and terms and conditions of sale. Consequently, it was decided not to grant individual treatment to that company.

(27) In any case, since the investigation revealed that the export sales to the Community carried out by the cooperating Chinese exporting producer accounted for the totality of exports from the PRC to the Community during the IP, the question of individual treatment was of little relevance for this investigation since the country-wide duty was established on the basis of data relating to this sole exporting producer.

4. **Analogue country**

(28) In accordance with Article 2(7) of the basic Regulation, in order to establish normal value for the Chinese company not fulfilling the requirements of MET, an analogue market economy country had to be selected for the establishment of normal value. An analogue country had also to be selected for the investigation carried out with regard to imports originating in Russia. This was necessary in order to have data available in case the Russian exporting producer would not furnish the relevant data.

(29) For this purpose, the complainants had suggested Turkey. Turkey was also envisaged by the Commission as analogue country in the notice of initiation and interested parties were asked to provide comments.

(30) Within the time limit specified in the notice of initiation, the Chinese and Russian exporting producers objected to this choice on a number of grounds. The Chinese company submitted that Turkey was not appropriate as the analogue country in terms of access to raw materials, energy resources, technology used, scale of production, representativity of domestic sales and competitive situation. It argued that only Russia would meet these criteria on comparability with the PRC as regards the product concerned. Alternatively, the Chinese exporting producer considered that Venezuela was a more appropriate choice of analogue country than Turkey in terms of energy cost, production equipment and capacity. The Russian company itself submitted that there were substantial differences between Turkey and Russia in terms of the production process, the level of competition and energy costs.

(31) As far as Turkey is concerned, it was established that the cooperating producer did not have any domestic sales to unrelated customers. Therefore, in order to find a more appropriate analogue country, the Commission contacted certain known producers in a number of alternative analogue countries.

(32) The request by the Chinese exporting producer to use Russia as the analogue country could not be granted on a number of grounds. There were no domestic sales of the product concerned and there was only one producer active in Russia. In addition and as explained below, to a considerable extent information available as well as data from an analogue country had to be used for Russia as well.

(33) Producers in Venezuela and also in India were contacted, but they both failed to cooperate.

(34) Two producers in the USA were also contacted. One refused to cooperate but the other agreed to cooperate. It was established that the prices charged by this company were in the ordinary course of trade and reasonably reflected the market price level in the USA. Given that, in addition, the USA domestic market is the largest in the world, that it is open to imports due to a relatively low import duty and that there were several competing local producers, the USA was considered to be not an unreasonable choice of analogue country.

5. **The PRC**

(a) *Normal value*

(35) Normal value was established on the basis of the domestic prices of the USA analogue producer, which were considered representative. Indeed it was found that the volume of its sales was greater than the volume exported from the PRC to the Community.

(36) It was further established that USA sales of the like product had been made in the ordinary course of trade, in accordance with Article 2(4) of the basic Regulation. Normal value was, therefore, established on the basis of the weighted average prices actually paid for all domestic sales to unrelated customers.

(b) *Export price*

(37) The investigation showed that all export sales of the product concerned by the sole Chinese exporting producer were made to unrelated customers in the Community. The export prices were therefore calculated in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of the prices actually paid or payable by these independent customers.

(c) *Comparison*

(38) For the purposes of a fair comparison due allowance, in the form of adjustments, was made for differences under Article 2(10) of the basic Regulation which were demonstrated to affect price comparability. On this basis, adjustments were made with regard to transport, insurance, packing and credit.

(d) *Dumping margin*

(39) In accordance with Article 2(10) and (11) of the basic Regulation the dumping margins was established on basis of a comparison between the weighted average normal value and the weighted average export price at ex-factory level and at the same level of trade.

(40) The dumping margin, expressed as a percentage of the cif price at Community frontier level, is:

People's Republic of China: 26,8 %

6. **Russia**

(a) *Normal value*

(41) Pursuant to Article 2(3) and (4) of the basic Regulation, in the absence of any domestic sales of the like product, normal value had to be established on the basis of a constructed value. Normal value was constructed on the basis of the costs of manufacturing incurred by the exporting producer concerned for the exported product in question plus a reasonable amount for selling, general and administrative costs ('SG&A') and profits in accordance with Article 2(3) and (6) of the basic Regulation.

(42) In the absence of domestic sales by the exporting Russian producer in question or any other producer in Russia, the Commission envisaged establishing SG&A costs and profit on the basis of the production and sales of the same general category of products, i.e. plain foil and more specifically, ACF, for the company concerned in the domestic market, as required by Article 2(6)(b) of the basic Regulation.

(43) The company was requested to provide this information, first during the on-spot investigation and subsequently through a supplementary questionnaire. The company, however, refused to provide this information on the grounds of the allegedly large amount of work involved in preparing the information. Moreover, the investigation revealed a number of irregularities (as explained in more detail below) including difficulties in establishing the price level of energy costs, one of the major costs elements and the valuation of assets of the company. In view of the outstanding deficiencies and the refusal to provide any information on the same general category of products, normal value was established on the basis of Article 18 of the basic Regulation, as set out below.

(44) The constructed normal value was established using as much of the company's own information as possible. However, the following adjustments had to be made to the company's data for the reasons given below:

(45) With regard to energy costs, it was found that the company was charged an unusually low price by the majority-state-owned electricity company and it could not be established that this price reasonably reflected the costs associated with the production of electricity. The company was not able to demonstrate that the electricity bills had been paid in full, owing to the use of an open-account payment system. It was therefore concluded that the energy cost was not reliable and thus it was decided to use the average power tariff used by aluminium producers world-wide as published in the industrial press.

(46) With respect to depreciation, it was found that the majority of the assets was acquired at very low prices at auction following the bankruptcy of a previous legal entity in 1998. For the purposes of bringing the company's accounts into line with generally accepted accounting practice ('GAAP'), the company's auditor requested an independent valuation of property, plant and equipment. This appraisal led to a revised value which is now in line with the actual situation of the company. The company's amount for depreciation was adjusted accordingly in order to bring it into line with GAAP.

(47) Concerning SG&A costs and profit, it was decided, in the absence of any other Russian exporting producer or producer subject to investigation and of any reliable data concerning production and sales of the same general category of products in the domestic market, to establish them in accordance with Article 2(6)(c) of the basic Regulation. SG&A costs and profit were thus based on the representative domestic sales made in the ordinary course of trade by the analogue USA producer. The profit margin was based on data relating to the operations of the smelter and the foil mill in order to reflect the full profit realised on the production and sale of the product concerned.

(b) *Export price*

(48) All sales of the product concerned by the Russian company on the Community market were made via a related trading company registered in the British Virgin Islands, which in turn resold the AHF to an unrelated importer in the Community. The export price was therefore established on the basis of the prices paid or payable by an independent customer in the Community to the British Virgin Islands company.

(c) *Comparison*

(49) For the purposes of a fair comparison due allowance, in the form of adjustments, was made for differences under Article 2(10) of the basic Regulation which were demonstrated to affect price comparability. In this respect adjustments were made for transport, insurance, ancillary costs, credit, after-sales costs and commissions.

(d) *Dumping margin*

(50) In accordance with Article 2(10) and (11) of the basic Regulation, the dumping margins were established on the basis of a comparison between the weighted average normal value and the weighted average export price at ex-factory level and at the same level of trade.

(51) Since there was only one known producer of the product concerned in Russia, the Commission considered it appropriate to set the residual dumping margin at the level of the individual dumping margin established for the cooperating exporting producer in the country concerned.

(52) The dumping margins, expressed as a percentage of the cif price at Community frontier level, are:

— Joint Stock Company United Company 'Siberian Aluminium' 14,9 %

— All other companies 14,9 %.

D. COMMUNITY INDUSTRY

1. Definition of the Community production

(53) For the purpose of establishing whether the Community industry had suffered injury and, in this context, for determining consumption and the various economic indicators related to the situation of the Community industry, it had to be examined whether injury and consumption should be assessed in relation to the total Community production or whether this analysis should focus on the production in the Community destined for the open market.

(54) Part of the production in the Community is not offered for sale on the market but rather internally transformed by companies in their downstream facilities. This production is therefore considered to take place in a captive market. It was therefore examined whether a clear separation existed between the free and the captive market. It was found that the AHF that is transferred internally to the downstream integrated rewinders did not compete with AHF imported from the PRC and Russia or with that sold by the Community producers on the free market. On the basis of the above it was concluded that the examination of the impact of the dumped imports on the situation of the Community industry should focus on the free market. It should be noted that none of the complaining Community producers was found to be active in the captive market.

(55) In the Community free market, AHF is manufactured by the following companies:

— The six Community producers on whose behalf the complaint was lodged and which cooperated in the investigation;

— Two other producers who were not complainants, one of whom provided general information in support of the complaint and neither of whom opposed the proceeding (ILA Group (I) and Laminazione Sottile (I)).

(56) All these producers constitute therefore the total Community production within the meaning of Article 4(1) of the basic Regulation.

2. Definition of the Community industry

(57) It was examined whether the cooperating complaining Community producers represented a major proportion of the total Community production of the product concerned. Since the complainant Community producers accounted for 82 % of the non-captive Community production of AHF during the IP it was concluded that they constituted the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation. They are hereinafter referred to as the 'Community industry'. It should be noted that the complainant Community producers would also account for a major proportion of the entire Community production, i.e. including AHF destined for captive use.

E. INJURY

1. Community consumption

(58) Community consumption was determined on the basis of the information provided by the Community industry on the volume of its sales in the Community market, the information provided by another cooperating producer and estimates given in the complaint for the sales of a another Community producer on the Community market; the information provided by the cooperating exporting producers relating to their volume of exports to the Community, Eurostat information and information provided by importers and users of AHF in the Community.

(59) Consumption increased from 71 300 tonnes in 1996 to 80 742 in 1997 and to 88 032 tonnes in 1998. Consumption then decreased to 86 117 tonnes in the IP. Over the period considered consumption increased by 21 %.

2. Imports into the Community from the countries concerned

(a) *Cumulative assessment of the effects of the imports concerned*

(60) It was examined whether the effects of the imports concerned should be cumulatively assessed, taking account of the conditions set out in Article 3(4) of the basic Regulation.

(61) It was found that the dumping margins for both countries were more than *de minimis* as defined in Article 9(3) of the basic Regulation and the volume of imports from each of these two countries was not negligible. Furthermore a cumulative assessment was also found to be appropriate in light of the conditions of competition between the imports concerned and the conditions of competition between the imports concerned and the like Community product. Indeed, the investigation showed that AHF imported from the two countries concerned was found to be alike in all respects, and also to AHF manufactured and sold in the Community. The volume of imports from the two countries concerned were substantial and increased, for both countries, between 1996 and the IP. During the same period, their corresponding market shares also increased. Moreover, the prices of both Chinese and Russian imports were found to be below those of the Community industry during the period considered, while being sold via the same or similar channels of trade and under similar commercial conditions.

(62) For these reasons, it is concluded that the effects of the imports concerned should be cumulatively assessed.

(b) *Volume and market share of the dumped imports*

(63) The volume of imports of AHF from the countries concerned rose continuously from 622 tonnes in 1996 to 9 149 tonnes in 1997, 16 922 tonnes in 1998 and 16 387 tonnes in the IP.

(64) The share of the Community market held by the imports from the countries concerned increased from 0,9 in 1996, to 11,3 % in 1997, to 19,2 % in 1998 and decreasing slightly to 19,0 % in the IP.

(c) *Prices of dumped imports*

(i) Price evolution

(65) Between 1996 and 1997 the average unit prices of AHF imported from the countries concerned, at a customer-delivered level, increased from EUR 1,83/kg to EUR 2,02/kg, i.e. an increase of 10 %. Between 1997 and 1998, prices further increased by 31 % to EUR 2,57/kg. Between 1998 and the IP prices decreased by 17 % to EUR 2,14/kg. It should be noted that the prices of the imports concerned have remained below those of the Community industry throughout the period.

(ii) Price undercutting

(66) For the purpose of analysing price undercutting, the prices of AHF sold by the Community industry were compared to the prices of Chinese and Russian imports on the Community market in the IP.

(67) The prices of Chinese and Russian imports are those reported by the cooperating exporting producers in their response to the questionnaire duly adjusted, were appropriate, for customs duties and post-importation costs, at the level of the first unrelated customer, on a delivered basis. The prices of the Community industry are those reported in the responses to the questionnaires on their sales in the Community to their first unrelated customer on a delivered basis.

(68) The Russian exporting producer argued that an adjustment should be made to Russian prices to take account of the lower quality of the Russian AHF exported to the Community. It was alleged that Russian AHF was produced with a lower quality alloy (alloy 8011) whereas the Community produced AHF would be of a higher quality alloy (alloy 8006). The investigation showed that all except one Community producer used alloy 8011 in the production of AHF. However, on the basis of the information received from users it was found that the type of alloy does not determine the choice of AHF for users. Furthermore, it could not be ascertained that a difference in quality existed between AHF produced using the different alloys which commanded a price differential. In view of the above the adjustment could not be granted.

(69) On this basis, the price undercutting margins found per country, expressed as a percentage of the Community industry's prices amount to 1 % for the PRC and to 6 % for Russia. The aforementioned undercutting margins should, however, be seen in the light of the significant price depression suffered by the Community industry in the IP, as evidenced by the losses incurred by the Community industry.

3. **Situation of the Community industry**

(a) *Production, capacity and utilisation of capacity*

(70) Between 1996 and 1997 production remained at around 59 000 tonnes, despite the increase in consumption of 13 %. Between 1997 and 1998 production decreased by 9 % to around 54 000 tonnes, while consumption increased by a further 9 % over the same period. Between 1998 and the IP production remained stable.

(71) Between 1996 and the IP production capacity of the Community industry remained relatively stable at around 70 500 tonnes, with the exception of 1997 when production capacity amounted to 72 000. Production capacity has been calculated by taking account of the dedicated equipment for use in the production of AHF. Even though the same production facilities can technically be used to produce both AHF and ACF, due to the costs incurred when switching from one product to another, in practice Community producers dedicate equipment to the production of one or the other product.

(72) The capacity utilisation decreased as from 1997 as the result of a decrease in production. It should be noted that given the fixed costs involved in the production of AHF, a decrease in the rate of capacity utilisation has a significant impact on the production costs.

(b) *Inventories*

(73) When analysing inventories, it should be noted that AHF is produced to order. Any inventories are in fact dedicated quantities awaiting delivery to the customer. In this context, therefore, the evaluation of stocks does not appear to be relevant for the examination of the economic situation of the Community industry.

(c) *Volume of sales, market share and growth*

(74) Between 1996 and 1997, despite an increase in consumption of 13 %, sales decreased from 49 386 tonnes to 48 700 tonnes. Between 1997 and 1998 sales decreased by 7 % to 45 402 tonnes, against a further increase of consumption of 9 %. Between 1998 and the IP sales decreased slightly to 45 241 tonnes, whereas consumption decreased by 2 %.

(75) The market share of the Community industry decreased from 69,3 % in 1996, to 60,3 % in 1997 then decreased further to 51,6 % in 1998 and increased slightly to 52,5 % in the IP.

(d) *Prices and factors affecting prices*

(76) From 1996 to 1997 prices increased by 8 % from EUR 2,25/kg to EUR 2,44/kg while the Community industry's unit full costs increased by 7 %. Between 1997 and 1998 prices increased by a further 8 % to EUR 2,64/kg whereas the unit full costs only increased by 4 %. Between 1998 and the IP prices decreased by 14 % to EUR 2,28/kg whereas unit full costs only decreased by 5 %.

(77) In particular, between 1996 and 1997 the increase in the full cost of production is mostly due to an increase in the costs of raw materials, which represents around 55 % of the full costs of production. Since the increase in sales prices was greater than the increase in the full cost of production, the Community industry reduced its losses.

(78) Between 1997 and 1998, however, despite a decrease in the cost of raw materials (– 2 %), the full costs of production increased by 4 %, due to an increase in fixed unit production costs resulting from a decrease in production (– 9 %). However, sales prices of the Community industry increased by 8 %, therefore the Community industry improved its profitability.

(79) Between 1998 and the IP, the full unit cost of production of the Community industry decreased by 5 %, mainly due to a decrease in the raw material costs (– 9 %). In the same period the Community industry suffered a significant price depression, since its prices decreased well above the decrease in its full costs.

(80) It should be noted that the costs of the raw materials is in line with the prices of raw aluminium as quoted in the London Metal Exchange ('LME').

(e) *Profitability, cash flow, return on investment and ability to raise capital*

(81) Between 1996 and 1997 the profitability of the Community industry in terms of return on net sales in the Community market, improved slightly from – 2,2 % to – 1,3 % expressed on turnover. This slight improvement was due to an increase in the sales prices by the Community industry above the increase in unit full costs. Between 1997 and 1998 the Community industry further improved profitability to 3 % by raising its prices above its full costs. Between 1998 and the IP the Community industry suffered losses of – 7,3 % due to a severe price depression.

(82) Regarding cash flow and return on investments, these indicators could only be provided for the total of each of the companies concerned. Since the product concerned represents only one part of the overall activities of the companies, these indicators could not provide decisive guidance as to the situation prevailing in the AHF sector.

(83) None of the Community producers indicated that they had experienced any difficulties in their ability to raise capital. This appears to be related to the fact that most Community producers belong to globally organised groups of companies. However, it should be noted that the biggest Community producer of AHF has announced the planned closure of its manufacturing facility in the Community due, *inter alia*, to the deterioration of its financial situation.

(f) *Investments*

(84) Investments made throughout the period considered increased from around EUR 3 million in 1996 and in 1997 to around EUR 17 million in 1998 and around EUR 10 million in the IP. Investments represented around 2,5 % of the Community industry's turnover in 1996, 14,5 % in 1998 and 9,9 % in the IP. This shows the continuous efforts of the Community industry to modernise their equipment and to improve their competitiveness. Investments were made mostly in replacement of machinery in order to optimise productivity. Since the investments in this sector are depreciated over a long period of time (over 20 years), the level of the investments made in 1998 and the IP cannot be considered to have had the effect of depressing the profitability in the same period.

(g) *Employment, productivity and wages*

(85) The number of employees remained stable between 1996 and 1997 at 435, but dropped to 388 in 1998 and remained at that level in the IP. It should be noted that since employees work both in the production of AHF and other foil products, employment has been allocated on the basis of production volume.

(86) Productivity of the Community industry measures in terms of tons produced per employee increased by 3 % over the period considered. The figures on productivity largely reflect the allocations made to determine the level of employment.

(87) Regarding wages, between 1996 and the IP the total amount of wages increased by 7 %.

(h) *Magnitude of dumping margin*

(88) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

4. **Conclusion on injury**

(89) Between 1996 and the IP, the volume of imports of AHF originating in the countries concerned increased by 2,600 % from around 600 tonnes to over 16 000 tonnes. This resulted in an overall increase of market share by the imports concerned of 18 percentage points in a period where the consumption increased by 21 %. The prices of the imports concerned remained below those of the Community industry throughout the period considered.

(90) Between 1996 and the IP the situation of the Community industry deteriorated in terms of production (– 8 %) and sales volume (– 8 %), despite an increase in Community consumption, i.e. by 21 %. As a consequence, the Community industry's market share decreased sharply, from 69 % to 52 %, i.e. by 17 percentage points.

(91) In particular, between 1996 and 1997 the Community industry improved its profitability since its sales prices increased above the increase in full unit costs. During the same period the Community industry lost sales volume and market share. Between 1997 and 1998 the Community industry further improved its profitability by raising its prices above the increase in its full unit costs. This resulted in an improved profitability but at the expense of a further loss of volume of sales and market share. Between 1998 and the IP the Community industry decreased its sales prices well above the decrease in its full unit costs. This price suppression resulted in severe losses to the Community industry which reached – 7 % during the IP.

(92) After the IP one of the biggest Community producers announced the planned closure of its AHF production facilities in the Community since it could not sustain the losses it was suffering in this sector.

(93) In view of the above, as evidenced by the decrease in production and sales, loss of market share and price suppression leading to severe losses, it is concluded that in the IP the Community industry suffered material injury within the meaning of Article 3(1) of the basic Regulation.

F. **CAUSATION**

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

1. **Effect of the dumped imports from the countries concerned**

(95) The substantial increase in the volume of imports originating in the countries concerned and their gain of market share over the period considered, at prices which remained below those of the Community industry coincided with a deterioration of the situation of the Community industry in terms of production, sales volume, market share and price depression leading to significant losses during the IP.

(96) In particular, the volume of imports increased significantly from around 600 tonnes in 1996 to around 16 000 tonnes during the IP. The largest increase took place between 1997 and 1998, coinciding with the decrease in production and sales by the Community industry. The share of the Community market gained by the imports was matched by the loss of market share by the Community industry, whose sales volume decreased by 8 % over the period.

(97) Between 1996 and 1998 the Community industry increased sales prices, to match the increase in costs, with the resulting loss of volume of production, sales and market share but with a certain improvement in profitability. This improvement in profitability was more marked in 1998, the year when the average price differential between the prices of the imports concerned and those of the Community industry was at its lowest level.

(98) However, between 1998 and the IP the Community industry had to reduce its prices to match those of the imports concerned, in order to maintain volume of sales, with the resulting deterioration of profitability. It should be noted that the market for AHF is mature and price sensitive and that import prices from the countries concerned had decreased substantially between 1998 and the IP and undercut those of the Community industry during the IP.

(99) It is, therefore, considered that the pressure exerted by the imports concerned, which significantly increased their volume and market share at low prices caused a price depression for the Community industry resulting in a deterioration of its financial situation.

(100) In view of the above it is concluded that the dumped imports of AHF originating in the countries concerned have had a material impact on the injury suffered by the Community industry during the IP, within the meaning of Article 3(6) of the basic Regulation.

2. **Effect of other factors**

(101) In accordance with Article 3(7) of the basic Regulation, it was examined whether factors other than the dumped imports from the countries concerned might have contributed to the material injury suffered by the Community industry to an extent, that this injury could not be attributed to the dumped imports from the countries concerned. In this context, the following factors were examined: the volume and prices of imports originating in other third countries, the evolution of prices of raw materials and whether the Community industry might have suffered self-inflicted injury through a switch to ACF production.

(a) *Imports originating in other third countries*

(102) The volume of imports of AHF originating in other third countries remained stable at around 11 000 tonnes over the period concerned, with the exception of 1998 when imports from such countries amounted to 14 000 tons. These imports did not, therefore, benefit from the increase in consumption over the period considered and lost 3 percentage points of their share of the Community market.

(103) In particular, during the investigation period, imports originating in only three countries other than the countries concerned, i.e. Croatia, Turkey and Venezuela, had a share of the Community market above 2 %.

(i) Croatia

(104) Imports of AHF originating in Croatia on the basis of the information reported by Eurostat imports statistics, went from 1 758 tonnes in 1996 to 737 tonnes in 1997, to 1 478 tonnes in 1998 and to 1 778 tons in the IP. Their share of the Community market decreased by 0,4 percentage points over the period considered. The prices of those imports, at customer-delivered level, remained above those of the PRC, Russia and the Community industry throughout the period, although it cannot be excluded that products other than AHF (i.e. ACF) are also included.

(105) In view of the decreasing share of the Community market and the level of its prices it is concluded that imports originating in Croatia did not contribute to the material injury suffered by the Community industry.

(ii) Turkey

(106) Imports originating in Turkey increased from 4 935 tonnes in 1996 to 7 777 tonnes in 1998 and then decreased to 2 446 tonnes in the IP. Their share of the Community market increased from 6,9 % in 1996 to 8,8 % in 1998 and then decreased to 2,8 % in the IP. Information provided by cooperating users representing over 80 % of total imports of AHF originating in Turkey in the IP shows that between 1997 and the IP prices of Turkish imports were well above those of the countries concerned and in line with those of the Community industry.

(107) In view of the decrease in the volume and market share of the Turkish imports in the IP and the level of its prices it can be concluded that imports originating in Turkey did not break the causal link between the dumped imports and the material injury suffered by the Community industry.

(iii) Venezuela

(108) Imports originating in Venezuela went from 2 210 tonnes in 1996 to 1 533 tonnes in 1997, to 2 779 tonnes in 1998 and to 3 843 tonnes in the IP. Their share of the Community market increased from 3,1 % to 4,5 % over the same period. The prices of these imports as reported by Eurostat remained above those of the countries concerned and those of the Community industry, with the exception of 1998. It should be noted that the information reported by Eurostat was in line with that provided by a cooperating unrelated importer representing around 15 % of the total volume of imports into the Community from Venezuela in the IP.

(109) In view of the level of the prices of imports from Venezuela, imports of AHF from Venezuela did not break the causal link between the dumped imports and the material injury suffered by the Community industry in the IP.

(b) *Evolution of raw material prices*

(110) It has also been considered whether the injury suffered by the Community industry could be attributed to the evolution in the prices of primary aluminium, main raw material representing around 55 % of the full cost of production of the Community industry.

(111) Between 1996 and 1998 the prices of the Community industry could reflect the evolution in the prices of raw materials. However, between 1998 and the IP the Community industry's prices decreased by more than the decrease in its full costs, including the decrease in the prices of raw materials, thus incurring losses of 7,3 %. Consequently, it is considered that the evolution in the prices of the raw materials did not contribute to the material injury suffered by the Community industry in the IP.

(c) *Self-inflicted injury through a preference to produce ACF*

(112) It has been argued that the decrease in the production and sales volume of AHF has been self inflicted by the Community industry's preference to produce ACF which was alleged to generate higher profits than AHF. It was alleged that since equipment can be used to produce either AHF or ACF, the Community industry preferred to produce the higher value added ACF.

(113) The production of AHF by the Community industry decreased by 8 % between 1996 and the IP. In the same period, the production of ACF increased by 18 %. Between 1996 and the IP the share of the production of AHF in the total production of foils decreased from 25 % to 21 %.

(114) Firstly, although generally both AHF and ACF can technically be manufactured on the same equipment, in practice producers dedicate equipment to one or another foil product in order to gain efficiency and minimise the costs of changing set-up of the equipment. Secondly, the production of ACF has not increased in the same proportion as the decrease in the production of AHF but has followed the increase in consumption of ACF. Thirdly, the significant investments made by the Community industry in 1998 and in the IP indicate a commitment on the part of the Community industry to continue producing AHF. Finally, the Community industry had sufficient spare capacity to increase its production of AHF but it was prevented from using its spare capacity due to the significant increase in dumped imports.

(115) In view of the above it was concluded that the injury suffered by the Community industry was not self-inflicted by a switch to ACF products.

(d) *Conclusion on causation*

(116) The substantial increase in terms of volume and market share of imports from the countries concerned, the considerable decrease in their prices and the level of price undercutting and price depression found in the IP had material negative consequences on the volumes and prices of the Community industry's sales which in turn adversely affected a number of economic indicators, notably profitability. In addition, no other factors were found which could have contributed to the injury suffered by the Community industry.

(117) It is therefore concluded that the material injury suffered by the Community industry has been caused by imports of AHF originating in the PRC and Russia within the meaning of Article 3(6) of the basic Regulation.

G. **COMMUNITY INTEREST**

(118) In order to determine whether the Community interest called for intervention, an investigation was carried out into the likely effects of the imposition/non-imposition of anti-dumping measures on the economic operators concerned. For this purpose, information was requested from all interested parties, including the Community producers, raw material suppliers, importers/traders and users concerned.

1. **The Community industry**

(a) *Nature and structure of the Community industry*

(119) The Community industry is composed of six companies producing aluminium foils, of which AHF represented around 21 % of their total output in the IP. The production of the different types of foils is interdependent in that it broadens the basis for allocation of fixed costs and overheads of the total foil sector. Four out of the six Community producers are backwards integrated, i.e. they source aluminium foil stock from companies which belong to the same group.

(120) Production of AHF is capital intensive and highly automated. It was found that the Community industry dedicates equipment to the production of AHF in order to increase efficiency and minimise cost incurred in changes of set-up of machinery. The Community industry's workforce directly related to AHF amounted to around 388 employees during the IP. The total employment by these companies amounted to around 4 400 employees.

(b) *Viability of the Community industry*

(121) The Community industry appears to be viable and competitive. This is apparent, firstly, from its position in the Community market where it is a firmly established player and partner of the user industry; secondly, from the degree of investments and machinery replacement; thirdly, from its recent restructuring and efficiency gains through rationalisation of its production and modernisation of its machinery, and finally from its export performance, given that its exports of AHF accounted for between 13 % and 15 % of the total sales made by the Community industry over the period considered.

(122) In conclusion, the Community industry has proven to be a structurally viable industry, having restructured its manufacturing activities for the product concerned in order to retain productivity and efficiency.

(c) *Possible effects of taking measures or of not taking measures*

(123) Should anti-dumping measures not be imposed, the Community industry would continue to face price pressure of the dumped imports and the consequent price depression which led to the deterioration of its profitability. In the event that such a situation would continue, the Community producers could be forced to close down certain production lines or even entire plants devoted to the production of AHF.

(124) As already mentioned above, given the importance of AHF production to spread fixed costs and overheads of the entire aluminium foil production, the closure of AHF production lines could even lead to the closure of the total aluminium foil activity of the companies. This is illustrated by the announcement made by one Community producers in December 2000 of its plans to close down its manufacturing facilities in the UK.

(125) On the other hand, should anti-dumping measures be imposed, two effects could be expected. Firstly, the Community industry could increase its volume of sales, leading to a better utilisation of the capacity and an increase in market share. Secondly, prices might also increase moderately, although most likely not by the level of the anti-dumping duty since competition would still remain amongst Community producers, imports originating in the countries concerned and imports originating in other third countries.

(126) It is therefore expected that the decrease in unit costs as a result of the increased utilisation rate, combined with a modest price increase, will allow the Community industry to regain profitability and market share.

2. **Suppliers of raw material to the Community industry**

(127) As already mentioned above, four out of the six Community producers are backwards integrated, i.e. they source the raw materials (aluminium foil stock) from companies belonging to the same group.

(128) Three raw material suppliers provided information on the effects from the imposition/non-imposition of anti-dumping measures:

— Alcan Rolled Products UK, Newport, United Kingdom,

— Lawson Mardon Star Ltd, Bridgnorth, United Kingdom,

— Pechiney Rhenalu Neuf Brisach, Biesheim, France.

(129) On the basis of the information provided by these companies, it was found that sales of foil-stock to Community producers of AHF represented around 20 % of their total sales in the Community. Total sales of foil-stock to Community AHF producers decreased by 2 % between 1997 and the IP, whereas profits decreased by 5 %. The employment attributable to the production of foil-stock concerned amounted to around 380 in the IP.

(130) The raw material suppliers indicated that, should the Community producers cease producing AHF, it would be unlikely that they could find alternative customers. One of the raw material supplier also indicated that the closure of the Community industry could endanger its recycling line, since this line is dependent on the scraps generated in the production of AHF.

(131) Given the share of the suppliers overall activities represented by foil-stock intended for the Community AHF producers, it is likely that the decrease in the volume of sales or even closure of the latter would have a non-negligible impact on the economic activities of suppliers. On the other hand, the improvement in the situation of Community AHF producers is likely to be beneficial to Community suppliers in terms of increased sales of foil-stock, thus contributing to their overall employment.

3. **Unrelated importers/traders in the Community**

(132) In this respect, two out of three unrelated importers/traders responded to the questionnaire. Only one of them provided information relevant for the assessment of likely effects of imposing/non-imposing anti-dumping measures. However, this company did not import AHF from the countries concerned but only from another third country. Furthermore, imports of AHF represented a negligible proportion of its overall activities, i.e. less than 3 % of its total turnover. In view of the above it is concluded the imposition of anti-dumping measures would not affect the situation of Community importers/traders.

4. **Users of AHF in the Community**

(a) *Nature and structure of the user industry*

(133) Community users ('rewinders' or 'spoolers') purchase AHF in reels and rewind them into rolls in finished format for domestic consumption. The rewinding of AHF is an unsophisticated operation, where the value added to the AHF is low. No significant barriers to entry were found to exist in this sector.

(134) Seven out of 15 Community known users responded to the questionnaire. Two more users made themselves known but did not provide the necessary information. They were therefore not considered in the context of the analysis of the impact of any anti-dumping measure on users.

(135) The users responding to the questionnaire were:

— CeDo Household Products Ltd. Telford, United Kingdom, also on behalf on Poly-lina and Paclan,

— Childwood Ltd, Ashton-in-Makerfield, United Kingdom,

— Comital Cofresco SpA, Volpiano, Italy,

— Ecopla France, Saint Vincent de Mercuze, France,

— Fora Folienfabrik GmbH, Radolfzell, Germany,

— ITS Foil and Film Rewinding bv, Apeldoorn, The Netherlands,

— Vita Emballage A/S, Rødovre, Denmark.

(136) In terms of size, one of the cooperating rewinders is a large company which produces all types of disposable household products, such as aluminium foil, plastic foil, oven paper, freezer bags and bin liners. Another cooperating rewinder is backwards integrated with a AHF producer supplying captively to its downstream rewinding operation. The other five users are small and medium rewinders active in different wrapping products for domestic use.

(b) *Data gathered from the cooperating users*

(137) AHF was found to represent around 33 % on average of the total turnover of the cooperating users. The turnover reported by the cooperating users on the aluminium foil sector increased by 8 % between 1997 and 1998 and further increased by 3 % between 1998 and the IP. These users employed a total of around 2 300 in the IP out of which around 470 were directly or indirectly employed in the sector of aluminium foil.

(138) Cooperating users increased their purchases of AHF by 57 % between 1997 and the IP, from 23 000 tons in 1997 to 35 500 tons in the IP. In the IP their purchases represented 40 % of total sales made by Community producers, 64 % of total imports originating in the PRC and 72 % of total imports originating in Russia.

(139) As regards profitability on the sales of products incorporating AHF in the Community, it ranged between 0,1 % and 6 %, with a weighted average profit of around 3 % in the IP. Average profitability of rewinders went from 3,5 % in 1997 to 3,3 % in 1998 to 2,9 % in the IP. It should be noted that this weighted average profit reflects the situation of some users in a market where a certain over-capacity has been reported to exist.

(140) The investigation showed that AHF represented between 72 % and 85 % of the total cost of production of the end-products, representing on average 80 % of the total costs.

(c) *Effect of imposition/non-imposition of measures*

(141) If anti-dumping measures were imposed, since AHF was found to represent 80 % of rewinders' total cost of production, the proposed anti-dumping duties would be likely to result in a moderate increase in the costs of users.

(142) In this respect, it should be noted that even if the exporting producers concerned increased their prices by the full amount of the duty, prices of these imports would still remain below those practised by these countries in 1998, when prices of these imports were at their highest level.

(143) Should measures not be imposed, the eventual disappearance of the Community industry's manufacturing activities for AHF could create supply constraints which would have negative effects for users.

(d) *Arguments raised by cooperating users on the effects of the imposition of anti-dumping measures*

(i) Impossibility to pass on to customers any increase in costs

(144) Some users argued that increases in costs resulting from the imposition of anti-dumping measures could not be passed on to customers, mostly large retail stores which dictate prices given their large purchasing power.

(145) On the basis of the information provided by cooperating users it was found that sales prices of users fluctuate, largely following the evolution of the prices of aluminium as quoted on the LME and the prices of AHF. In this respect the prices of aluminium as quoted on the LME have fluctuated considerably in the period considered, with a maximum annual increase of 11 % and a maximum annual decrease of 9 %. Whilst the prices of users evolved from an index 100 in 1997 to an index 107 in 1999 and then to an index 96 in the IP. Fluctuations in the costs of users could therefore be reflected in their sales prices.

(146) Thus, it cannot be excluded that users can pass on to their customers the moderate price increases resulting from the imposition of anti-dumping measures.

(ii) Shortage of supply

(147) It was alleged that the Community industry is unwilling to supply AHF to users and prefers to concentrate its production on higher value-added products such as ACF. It was also argued that the Community industry's high utilisation of capacity prevents it from increasing its production as a result of the imposition of any anti-dumping measure. It was argued that this, together with the imposition of anti-dumping measures would lead to a shortage of supply of AHF in the Community market.

(148) As already mentioned in recital 114, the Community industry is committed to the production of AHF. Furthermore, the information provided by the cooperating users showed that their purchases of AHF from the Community industry increased by 62 % between 1997 and the IP. Furthermore, the Community industry was found to have sufficient spare capacity in its equipment dedicated to the production of AHF so as to increase its output of this product.

(149) Moreover, even if anti-dumping measures were imposed, it is likely that the exporting producers concerned would continue to export AHF to the Community, albeit at non-dumped or non-injurious prices respectively. In addition, a number of alternative sources of supply were found to exist, not subject to anti-dumping measures representing a share of around 13 % of the Community market in the IP.

(150) In view of the above, it is unlikely that the imposition of anti-dumping measures would lead to a shortage of supply in the Community market.

(iii) Product substitution

(151) It was argued that the imposition of anti-dumping measures would result in an increase in the price of the end-product, which in its turn would lead consumers to switch to other domestic wrapping products such as plastic foil and/or paper foil.

(152) The investigation showed that demand for AHF is largely inelastic to price variations, in view of the specific properties of AHF for packaging and wrapping. Indeed, AHF retains its characteristics at all temperatures; it acts as an impermeable barrier preventing food from absorbing or losing moisture, odour and flavour; it is highly hygienic and does not support micro-organisms; it is easily formable and it is particularly suited for food use given its general properties of lightness and strength.

(153) This was also illustrated by the fact that prices of aluminium, the raw material for the production of AHF fluctuated widely over the period but nevertheless consumption of AHF has increased by 21 % over the period considered.

(154) In conclusion, it is unlikely that the imposition of anti-dumping measures would lead to a significant switch from aluminium foil to other household wrapping products.

5. **Competition and trade distorting effects**

(155) With respect to the effects of possible measures on competition in the Community, some interested parties argued that duties would lead to the disappearance of the exporting producers concerned from the Community market, thus considerably weakening competition and increasing the already dominant position of Community rewinders backwards integrated with Community AHF suppliers.

(156) However, the exporting producers concerned would most likely continue to export AHF to the Community, albeit at non-injurious prices, as they have acquired a strong market position in the Community and since the Community industry does not have the necessary capacity to supply the entirety of the Community market. On the other hand, should anti-dumping measures not be imposed, it cannot be excluded that the Community industry would considerably reduce or cease its AHF manufacturing activities in the Community, thus reinforcing the position of exporting producers of AHF and considerably weakening competition on the Community market.

(157) Furthermore, a number of alternative sources of supply of AHF were found to exist to non-integrated rewinders, other than the countries concerned. In the IP, imports from these other third countries represented around 13 % of total consumption.

(158) Finally, as concerns the argument on the potential dominant position of the integrated Community rewinders, the investigation showed a limited consumer brand fidelity as well as the absence of significant barriers to entry specially of a technological nature. Therefore, it is unlikely that any rewinder will be allowed to behave in a manner significantly independent of customers and competitors.

(159) Given that the Community industry was not found to have the capacity to supply the entire Community market and that, as mentioned above, imports originating in the countries concerned would most likely continue to take place, competition would still remain strong after the imposition of any anti-dumping-measures. Thus, the imposition of anti-dumping duties, if any, would not limit the choice of the user industries or weaken competition.

6. **Conclusion on Community interest**

(160) Given the above reasons, it is concluded that no compelling reasons exist on grounds of Community interest not to adopt anti-dumping measures in the present case.

H. **DEFINITIVE ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(161) For the purpose of establishing the level of duty to be definitively imposed, account was taken of the dumping margins found and of the amount of the duty necessary to eliminate the injury sustained by the Community industry.

(162) In order to establish the level of duty adequate to remove injury caused by dumping, it was first necessary to establish a reasonable minimum pre-tax profit margin that the Community industry could have achieved in the absence of dumped imports. It was been found that a profit margin of 5 % constitutes an appropriate minimum, account being taken of the profitability achieved in ACF, a neighbouring product not subject to injurious dumping, and the need for long-term investments by the Community industry.

(163) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the non-injurious price of the AHF sold by the Community industry on the Community market in the IP. The non-injurious price has been obtained by adding to the sales price of the Community industry an amount equivalent to its average actual loss in the IP as well as the abovementioned profit margin of 5 %. The difference resulting from this comparison was then expressed as a percentage of the total cif import value, i.e. injury margin.

2. **Definitive duties**

(164) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, it is considered that definitive anti-dumping duties should be imposed at the level of the dumping margins found, unless the injury margins were found to be lower, in which case the latter will be applied.

(165) In the case of imports of the product concerned from Russia, the residual duty should be fixed on the basis of duty rate established for the sole cooperating exporting producer.

(166) On the basis of the above, the proposed definitive duties are as follows:

Country	Company	Rate of the AD duty
The PRC	All exporting producers	15,0 %
Russia	Joint Stock Company 'United Company Siberian Aluminium'	14,9 %
	All other exporting producers	14,9 %

(167) 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 country-wide 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'.

(168) 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 will, if appropriate, and after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

3. **Undertakings**

(169) The exporting producer in both China and in Russia offered an undertaking within the meaning of Article 8(1) of the basic Regulation. Regarding the Chinese exporting producer, given that MES was not granted, this undertaking could not be accepted as it did not contain the necessary guarantees on the part of the Chinese authorities to allow for adequate monitoring. In these circumstances, an anti-dumping duty should be imposed at the level of the definitive dumping margin established.

(170) The Russian exporting producer agreed to sell the product concerned at or above price levels which eliminate the injurious effects of dumping. Moreover, the regular and detailed reports which the company undertook to provide to the Commission will allow effective monitoring. Furthermore, the nature of the product and the sales structure of this company is such that the Commission considers that the risk of circumvention is limited.

(171) To further enable the Commission to effectively monitor the compliance of the company with an undertaking, when the request for release into free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty shall be conditional on the presentation of a commercial invoice containing at least the elements in the Annex. This level of information is also necessary to enable customs authorities to determine with sufficient precision that shipments correspond to the commercial documents, and that they are covered by the undertaking. Where no such invoice is presented, or where it does not correspond to the product concerned as presented to customs, the appropriate rate of anti-dumping duty will instead be payable.

(172) It should be noted that in the event of breach or withdrawal of the undertaking or a suspected breach, an anti-dumping duty may be imposed pursuant to Article 8(9) and (10) of the basic Regulation,

[1] European Commission, Directorate-General Trade, Directorate C, Terv 0/13, Rue de la Loi/Wetstraat 200, B-1049 Brussels

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of aluminium foil of a thickness of not less than 0,009 mm and not more than 0,018 mm, not backed, not further worked than rolled, in reels of a width not exceeding 650 mm, falling under CN code ex 7607 11 10 (TARIC code 7607 11 10 10) and originating in the People's Republic of China and Russia.

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

Country	Company	Rate of the AD duty %	TARIC additional code
The PRC	All exporting producers	15,0 %	—
Russia	Joint Stock Company 'United Company Siberian Aluminium', Studencheskaya Street, 33/4, Moscow, Russia	14,9 %	A255
	All other exporting producers	14,9 %	A999

3. Notwithstanding Article 1(1), the definitive anti-dumping duty shall not apply to imports released into free circulation in accordance with Article 2.

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

Article 2

1. Imports declared for release into free circulation under TARIC additional code A256 shall be exempt from the anti-dumping duties imposed by Article 1 if they are produced and shipped by Siberian Aluminium (Sayan Foil, Sayanagorsk), and invoiced directly by Rual Trade Limited, Suites 7B & 8B, 50 Town Range, Gibraltar to Sibirsky Aluminium GmbH, Graf-Adolf-Platz 1-2, D-40213, Düsseldorf, and provided that such imports are accompanied by a commercial invoice containing at least the elements listed in the Annex.

2. Exemption from the duty shall be conditional on the goods declared and presented to customs corresponding precisely to the description on the commercial invoice.

Article 3

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.

Done at Brussels, 14 May 2001.

For the Council

The President

A. LINDH

ANNEX

Necessary information for commercial invoices accompanying sales made subject to an undertaking

1. The invoice number
2. The TARIC additional code under which the goods on the invoice may be customs-cleared at the Community frontier
3. The exact description of the goods, including:
   — the product code number (PCN) (as established in the undertaking offered by the producing exporter in question),
   — CN code,
   — quantity (to be given in kg).
4. The description of the terms of the sale, including:
   — price per kg,
   — the applicable payment terms,
   — the applicable delivery terms,
   — total discounts and rebates.
5. Name of the company acting as an importer to which the invoice is issued directly by the company.
6. The name of the official of the company that has issued the invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by [COMPANY], and accepted by the European Commission through Decision 2001/381/EC. I declare that the information provided in this invoice is complete and correct.'