COMMISSION REGULATION (EC) No 287/2009

of 7 April 2009

imposing a provisional anti-dumping duty on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Article 7 thereof,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 28 May 2008, the Commission received a complaint concerning aluminium foil originating in Armenia, Brazil and the People's Republic of China (PRC) lodged pursuant to Article 5 of the basic Regulation by Eurométaux (the complainant) on behalf of producers representing a major proportion, in this case more than 25 %, of the total Community production of aluminium foil.

(2) This complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.

(3) On 12 July 2008, the proceeding was initiated by the publication of a notice of initiation in the *Official Journal of the European Union* [2].

2. Parties concerned by the proceeding

(4) The Commission officially advised the complainant Community producers, exporting producers in Armenia, Brazil and the PRC, importers, traders, users, suppliers and associations known to be concerned, and the representatives of Armenia, Brazil and the PRC of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

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

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

(7) In order to enable the Commission to decide whether sampling would be necessary and if so, to select a sample, all exporting producers in the PRC and importers in the Community were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period 1 July 2007-30 June 2008.

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

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

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ C 177, 12.7.2008, p. 13.

(10) Questionnaires were sent to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from one exporting producer in Armenia, five in the PRC and one in Brazil, and one producer in the analogue country, Turkey. Full questionnaire replies were also received from 6 Community producers and 8 importers/users cooperated by submitting a questionnaire reply. None of the final users supplied the Commission with any information or made themselves known in the course of this investigation.

(11) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:

(a) Community producers

— Alcomet PLC, Shumen, Bulgaria

— Symetal Aluminium Foil Industry S.A./Elval Hellenic Aluminium Industry S.A. Mandra Attikis, Greece

(b) Exporting producers in the PRC

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

— North China Aluminium Co., Ltd, Hebei (North China)

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

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

(c) Exporting producer in Armenia

— Closed Joint Stock Company 'Rusal-Armenal', Yerevan (Armenal) and related importers in Switzerland and Russia Rual Foil Limited, Rual Trade Limited, RTI Limited, Rusal Europe Limited and Rusal Marketing Limited

(d) Exporting producer in Brazil

— Companhia Brasileira de Aluminio, São Paulo

(e) Community unrelated importers/users

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

— Fora Folienfabrik GmbH, Radolfzell, Germany

— ITS Foil, Film and Paper Products bv, Apeldoorn, The Netherlands

— Groupe Sphere, Paris, France.

(12) In view of the need to establish a normal value for exporting producers to which MET might not be granted, a verification to establish normal value on the basis of data from Turkey as analogue country took place at the premises of the following company:

(f) Producer in Turkey

— Assan Demir ve Sac Sanayi A.Ş, Tuzla (now Assan Alüminyum Sanayi ve Ticaret A.Ş.).

3. **Investigation period and period considered**

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

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(14) In the notice of initiation the product concerned was defined as aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in reels of a width not exceeding 650 mm originating in Armenia, Brazil and the People's Republic of China which was normally declared within CN code ex 7607 11 10 at the time of opening of the proceeding.

(15) The investigation revealed that the above product description included different products, and in particular so-called 'jumbo' and 'consumer' rolls. The differences between jumbo reels and consumer rolls is mainly the weight (normally jumbo reels weigh at least 150 kg), hence the need to rewind the aluminium foil in order to transform it into a consumer product allowing it to be used for packaging and other household applications.

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

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

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

(19) In light of the above considerations, it is concluded that the product concerned is aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg originating in Armenia, Brazil and the People's Republic of China falling within CN code ex 7607 11 19 (product concerned).

2. **Like product**

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

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

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

(22) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in Armenia and the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation. Briefly and for ease of reference only, these criteria are set out in summarised form below:

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

— firms have one clear set of basic accounting records, which are independently audited in line with international accounting standards and are applied for all purposes,

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

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

— exchange rate conversions are carried out at market rates.

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

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

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

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

1. **Armenia**

(27) MET was refused to Armenal on the grounds that criteria 2 and 3 were not met. For criterion 2, the company's accounts for 2006 contained an adverse opinion from their auditors, and the company did not provide audited accounts for 2007.

(28) The company argued that compliance with the auditing process (which was done in 2006) and a commitment to deliver audited accounts for 2007 in line with international accounting standards (IAS) would be enough to satisfy the requirements of criterion 2. Moreover, this company claimed that, even if the auditor delivers an adverse opinion as to the compliance of the accounts with international accounting standards (IAS), the fact that they have been audited in compliance with international auditing standards is enough to meet the requirements of criterion 2.

(29) This argument cannot be accepted. First their audited accounts for 2007 were not submitted despite being requested by the Commission and second, as for the audited accounts for 2006, it has to be borne in mind that Article 2(7)(b) of the basic Regulation is an exception and, as such, it must be given a strict interpretation. It is clear that accounts should not only be audited in line with international auditing standards but also prepared in line with IAS. The argument is therefore rejected.

(30) For criterion 3, the investigation found that the price paid to the State for a substantial percentage of the shares was around one third of its nominal value and the company received the land for free from the State. It has been claimed that the value at which the shares were acquired was the market value and, in addition the resulting distortions are not significant. Sufficient evidence to justify this claim was however not provided. Moreover, the company argued that they cannot sell the land concerned without paying the cadastral value to the State and the impact of owning the land is not significant. This argument cannot be accepted, given that, as indicated above, land is a key asset and has a direct and significant impact on the company's ability to operate and therefore on its financial situation.

(31) On the basis of the above, it was therefore considered that MET should be rejected for Rusal Armenal. The Advisory Committee was consulted and did not object to that conclusion.

2. **The PRC: Market economy treatment**

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

(33) Moreover, in addition to the general situation described above, three other companies do not fill other requirements of criterion 1. One of them is subject to significant State interference in relation to important business decisions; one received a large subsidy in the purchase of its main equipment; and the fixed assets of a third company did not reflect market values.

(34) One company did not comply with criterion 2 as clear accounting errors were found that had not been commented upon by the auditors.

(35) Concerning criterion 3, two companies did not fulfil its requirements. In the case of one company, distortions affected their land use rights: when the company changed its legal form in 1993 it did not transfer the land use rights straight away to the new entity as would be standard practice. In fact the land use rights were not transferred until 10 years later. There was no penalty clause in the contract in case of failure to transfer the deeds. Furthermore, during the year 2004, they did not pre-pay income tax either in the quarter required or at the end of the year. The company claims that irregularities found with the transfer of land-use rights do not have a relevant impact on the accounts, and the delay in the transfer was *de jure* but not de facto. Nevertheless, the ability to use a key asset such as land has per se a direct and significant impact on the company's ability to operate and therefore on its financial situation.

(36) For the second company they received their land use right certificate before paying in full for it, and used this certificate to obtain a mortgage from a State-owned bank.

(37) The Commission officially disclosed the results of the MET findings to the exporting producers concerned in the PRC, the authorities of the PRC and the complainant. They were also given an opportunity to make their views known in writing and to request a hearing if there were particular reasons to be heard.

(38) One exporting producer argued that the comparison between aluminium prices should be a comparison between the LME price without VAT added to the SHFE price with VAT added. This would of course decrease the difference in price found during the investigation period but was rejected for reasons of proper comparability between the two exchanges.

(39) Several parties have also alleged that the finding relating to aluminium prices is inconsistent with the Commission's practice because in previous merger cases (analysed in the light of competition rules) the Commission has considered that the market for primary aluminium is worldwide. However according to the wording of the Commission's decision of 2007 in the *Rio Tinto/Alcan* merger ([3]), the argument concerning the SHFE was not put forward by any of the parties concerned and, therefore it was not possible for the Commission to analyse it. Notwithstanding this, even if this issue had been raised, the conclusions drawn by the Commission in competition cases concerning relevant geographical markets are taken in the light of a Notice which is applied only for the purposes of competition law ([4]) and the provisions of this Notice are not necessarily applicable to or relevant for TDI law. The argument is therefore rejected.

(40) On the basis of the above, none of the PRC companies that had requested MET could show that they fulfilled the criteria set out in Article 2(7)(c) of the basic Regulation. It was therefore considered that MET should be rejected for all these companies. The Advisory Committee was consulted and did not object to these conclusions.

3. **The PRC and Armenia: Individual treatment**

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

([3]) OJ C 59, 4.3.2008, p. 1.

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

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

4. **Analogue country**

(43) According to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET has to be established on the basis of the domestic prices or constructed normal value in an analogue country.

(44) In the notice of initiation, the Commission indicated its intention to use Turkey as an appropriate analogue country for the purpose of establishing normal value and interested parties were invited to comment on this.

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

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

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

(48) The Commission then examined whether Turkey was a reasonable choice of analogue country. It was concluded that Turkey, despite having only one producer of the product concerned, was an open market with a low import duty and significant imports from third countries. Furthermore, the investigation showed no reason, such as excessively high cost of raw materials or energy, to consider that Turkey was not adequate for the purpose of establishing normal value.

(49) Having regard to the above, it was considered that Turkey was a more appropriate choice of analogue country for the purposes of the present investigation. No other interested party argued that India was to be used as an appropriate analogue country for the present investigation and Armenal considered that Turkey could also be an appropriate choice.

(50) One producer in Turkey responded to the questionnaire sent to all producers of aluminium foil in Turkey.

(51) The data submitted in the cooperating Turkish producer's reply was verified *in situ* and was found to be reliable information on which a normal value could be based.

(52) It is therefore provisionally concluded that Turkey is an appropriate and reasonable analogue country in accordance with Article 2(7) of the basic Regulation.

D. **DUMPING**

1. **Brazil**

(53) Dumping was calculated for the single cooperating exporting producer in Brazil using the methodology as set out below.

1.1. *Normal value*

(54) In accordance with Article 2(2) of the basic Regulation, the Commission first examined for the sole exporting producer whether the domestic sales of the product concerned to independent customers were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community. The domestic sales of the sole exporting producer in Brazil were representative during the investigation period.

(55) The Commission then identified those product types sold domestically by that company which were identical or directly comparable with the types sold for export to the Community.

(56) Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.

(57) The Commission then examined whether the domestic sales of each type of aluminium foil sold domestically in representative quantities could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable domestic sales to independent customers, of each exported product type, on the domestic market during the investigation period.

(58) All of the domestic sales of each type of aluminium foil sold domestically in representative quantities were over 80 % profitable and therefore normal value was based on the actual domestic price of all transactions during the investigation period.

(59) Wherever domestic prices of a particular product type could not be used in order to establish normal value, another method had to be applied. In accordance with Article 2(3) of the basic Regulation the Commission instead calculated a constructed normal value, as follows.

(60) Normal value was constructed by adding to the exporter's manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit.

(61) In all cases SG&A and profit were established pursuant to the methods set out in Article 2(6) of the basic Regulation. To this end, the Commission examined whether the SG&A incurred and the profit realised by the exporting producer on the domestic market constituted reliable data and in this case determined that it was suitable to be used to construct normal value.

1.2. *Export price*

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

1.3. *Comparison*

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

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

1.4. *Dumping margins*

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

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

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

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

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

2. **Armenia**

2.1. *Normal value*

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

(i) Analogue country

(69) According to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET has to be established on the basis of the domestic prices or constructed normal value in an analogue country.

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

(ii) Normal value

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

2.2. *Export prices*

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

2.3. *Comparison*

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

2.4. *Dumping margins*

(a) For the cooperating exporting producer granted IT

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

(b) For all other exporting producers

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

(76) On this basis the countrywide level of dumping was provisionally established at 37,0 % of the cif Community frontier price, duty unpaid.

(77) The dumping margin expressed as a percentage of the cif import price at the Community border, duty unpaid, is provisionally the following:

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

3. **The PRC**

3.1. *Normal value*

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

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

(79) Where sales on the domestic market to unrelated customers were representative and profitable, normal value was established on the basis of all prices paid or payable on the Turkish market for comparable product types, for sales in the ordinary course of trade as described in recitals 43 to 52. Where however sales were not representative or profitable, normal value was constructed using the cost of manufacturing of the Turkish producer plus SG&A and a reasonable value for profit on the domestic market.

3.2. *Export prices for the exporting producers granted IT*

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

3.3. *Comparison*

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

3.4. *Dumping margins*

(a) For the cooperating exporting producers granted IT

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

(b) For all other exporting producers

(83) Given that cooperation from the PRC was very low, the countrywide dumping margin applicable to all other exporters in the PRC was calculated using the most dumped transactions of one cooperating exporting producer denied both MET and IT.

(84) On this basis the countrywide level of dumping was provisionally established at 42,9 % of the cif Community frontier price, duty unpaid.

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

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

E. **INJURY**

1. **Community production and Community industry**

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

(87) The complaint was lodged by Eurométaux on behalf of four Community producers which cooperated in the investigation. One further producer supported the complaint and one producer opposed. During the IP, the output of the five cooperating producers represented over 60 % of the total Community production as established above in recital 86. The five cooperating producers are therefore deemed to constitute the Community industry (CI) within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

2. **Community consumption**

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

(89) It is noted that the CN code ex 7607 11 10 on which basis import volumes were established in the present investigation comprised in addition to the product concerned, other types of aluminium foil, such as certain aluminium converter foil (ACF) (which is used mainly for long-term conservation of liquids and food stuffs) or other foil products, including consumer reels (see recital 15 above), which are not the product concerned. Therefore, it was not possible to retrieve from this broader category of products the data for aluminium foil only and consequently, the total import volume of the product concerned had to be estimated. In this regard, the complainant submitted that certain imports made under the relevant code should be excluded because of their specific origin (i.e. from countries where there was no known production of aluminium foil) or their specific price levels which would indicate that these imports are not the product concerned. Likewise, imports made for inward processing were to be excluded because inward processing is economically not viable for aluminium foil due to the technical complexity and the high costs involved. It was considered that this methodology would give a reliable picture of the total import volumes of aluminium foil.

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

Table 1

Consumption in the EU (volume)

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

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

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

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

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

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

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

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

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

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

Table 2

Average import prices from the countries concerned

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

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

4. **Imports from the countries concerned**

4.1. *Volume and market share of the imports concerned*

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

Table 3

Imports from the countries concerned

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

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

Table 4

Market share of the countries concerned

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

4.2. *Prices*

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

Table 5

Prices of the imports concerned

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

4.3. *Price undercutting*

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

(99) The CI's sales prices and the import prices from the countries concerned were compared at the same level of trade, namely to independent customers within the Community market.

(100) During the IP, the weighted average price undercutting margins, expressed as a percentage of the CI's sales prices, was 8,0 % for Armenia, 12,6 % for Brazil, and 20 % for the PRC. The total weighted average undercutting margin for all countries concerned was 10,0 % during the IP.

5. **Situation of the Community industry**

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

5.1. *Production, capacity and capacity utilisation*

Table 6

Production, capacity and capacity utilisation

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

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

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

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

Table 7

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

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

(104) While the Community consumption varied during the period considered and finally increased by 4 % at the end of the IP compared to the beginning of the period considered, the sales volumes of the product concerned by the CI to independent customers on the Community market decreased by 30 %. This means that the CI could not benefit from the increased consumption, especially during 2007 and the end of the IP, and generally stable consumption during the period considered due to the dumped imports. Consequently, the CI's market share decreased by 16 percentage points between 2005 and the IP.

(105) During the same period, average ex-works sales prices of the CI to unrelated customers on the Community market increased by 20 %, reflecting the significant increase of the price of the main raw material, i.e. aluminium. However, while the cost of aluminium increased by 27 %, the CI sales price only increased by 20 %. In fact, the CI was not able to pass on fully the overall cost increases to their customers.

5.3. *Stocks*

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

Table 8

Stocks

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

(107) The investigation revealed that stocks cannot be considered as a meaningful injury factor since the vast majority of production is made in response to orders. Therefore, the trends on stocks are given for information. In any case, the level of stocks decreased by 7 % between 2005 and the IP.

5.4. *Investments and ability to raise capital*

Table 9

Investments

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

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

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

Table 10

Profitability, return on investment and cash flow

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

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

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

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

5.6. *Employment, productivity and wages*

Table 11

Employment, productivity and wages

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

(112) The number of personnel employed by the CI decreased overall by 30 % partly due to the restructuring process at the end of the period considered. Overall employment costs decreased considerably, although average wages remained stable. The decrease in employment was not as fast as the decrease in production. As a consequence the CI was not able to maintain the same level of productivity as in 2005.

5.7. *Magnitude of the dumping margin*

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

5.8. *Recovery from past dumping*

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

5.9. *Growth*

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

6. **Conclusion on injury**

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

([5]) Council Regulation (EC) No 950/2001 (OJ L 134, 17.5.2001, p. 1).
([6]) OJ C 112, 12.5.2006, p. 2.

(117) The decrease of sales volume also implied that the CI could not benefit from the relatively stable demand in the aluminium foil market over the period considered.

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

F. CAUSATION

1. Introduction

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

2. Effect of the dumped imports

(120) Imports from the countries concerned increased significantly by 257 % in terms of volume, and by 35 percentage points in terms of market share to reach 49 % of the Community market in the IP. At the same time the market share of the CI decreased by approximately 17 percentage points.

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

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

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

3. Effect of other factors

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

Table 12

Imports originating in other third countries (quantity)

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

Table 13

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

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

Table 14

Market shares

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

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

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

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

(b) *Exports by the Community industry*

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

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

(c) *Imports of the Community industry*

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

(d) *Self-inflicted injury*

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

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

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

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

(133) It was considered whether the development of the consumption could have been a factor causing material injury to the CI.

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

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

(135) Since costs of raw material represent between 60 % and 65 % of the total production costs, the steep increase of aluminium price on the international market, which increased by 27 % during the period considered, led to a significant increase of the CI's costs.

(136) However, while the cost of raw material increased by 27 %, the CI sales price only increased by 19 %, which means that the increase in cost could not be fully passed on to the customers.

4. **Conclusion on causation**

(137) Based on the above, it is provisionally concluded that the material injury suffered by the CI cannot be attributed to imports from other third countries or attributed to a contraction in demand on the Community market, but to the surge of dumped imports during the period considered from the countries concerned. The coincidence in time between, on the one hand, the increase in dumped imports from Armenia, Brazil and the PRC, their increase in market share and the undercutting found and, on the other hand, the evident deterioration in the situation of the CI, leads to the conclusion that the dumped imports caused the material injury suffered by the CI within the meaning of Article 3(6) of the basic Regulation. In particular, the CI could not increase its selling prices on the Community market due to the price pressure of the dumped imports. Thus, the overall cost increase could not be entirely passed on to the customers and profit margins remained significantly low, despite the steep increase of the Community consumption between 2006 and 2007, with a drastic impact on the CI's overall financial situation. The possible effect of other factors, mainly imports from other third countries' exports of the CI and the development of costs were analysed but found not to be a determining reason for the injury suffered by the CI.

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

G. **COMMUNITY INTEREST**

(139) In accordance with Article 21 of the basic Regulation, it was examined whether, despite the conclusion on injurious dumping, compelling reasons exist for concluding that it is not in the Community interest to adopt measures in this particular case. The likely impact of possible measures on all parties involved in the proceeding and also the consequences of not taking measures have to be considered in this respect.

(140) In order to assess the likely impact of the imposition or non-imposition of measures, information was requested from all interested parties which were either known to be concerned or which made themselves known. On this basis, the Commission sent questionnaires to the CI, to two unrelated importers and to 24 users.

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

1. **Interests of the Community industry**

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

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

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

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

2. **Interest of unrelated importers**

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

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

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

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

3. **Interest of users**

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

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

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

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

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

3.2. *Shortage of supply*

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

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

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

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

3.3. *Impact of eventual measures on rewinders*

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

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

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

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

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

4. **Conclusion on Community interest**

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

H. PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

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

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

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

2. Provisional measures

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

(168) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates (as opposed to residual duties applicable to 'all other companies' in Armenia, Brazil, and the PRC) are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this document with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(169) Any claim regarding the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [7] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

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

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

[7] European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

I. **FINAL PROVISION**

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

HAS ADOPTED THIS REGULATION:

Article 1

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

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

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

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

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

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

Article 2

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

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

Article 3

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

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

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

Done at Brussels, 7 April 2009.

For the Commission
Catherine ASHTON
Member of the Commission

ANNEX

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

1. The name and function of the official of the company which has issued the commercial invoice.

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