COUNCIL REGULATION (EC) No 500/2009

of 11 June 2009

amending Regulation (EC) No 1212/2005 imposing a definitive anti-dumping duty on imports of certain castings originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Article 11(3) thereof,

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

Whereas:

A. MEASURES IN FORCE

(1) By Regulation (EC) No 1212/2005 [2] the Council imposed definitive anti-dumping duties on imports of certain castings originating in the People's Republic of China (PRC) (definitive measures Regulation). Individual duty rates ranged from 0 % to 37,9 %, and the residual duty level was set at 47,8 %. A joint undertaking offer was accepted from a number of companies together with the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCME) by Commission Decision 2006/109/EC [3] and Council Regulation (EC) No 268/2006 [4]. In view of several new exporting producer requests, the definitive measures Regulation was amended from time to time — most recently in April 2009 [5].

B. INITIATION OF REVIEW INVESTIGATION AND PROCEDURE

(2) On 8 November 2007, the Commission received a request for an interim review, pursuant to Article 11(3) of the basic Regulation. The request was lodged by Eurofonte (the applicant), acting on behalf of nine European producers. The applicant alleged that there was a lack of clarity as to the scope of the measure as set out in the definitive measures Regulation. The applicant alleged that the product scope should be clarified as far as castings of ductile iron are concerned and in particular whether this kind of castings should fall within the definition of the product concerned.

(3) Having determined that sufficient evidence existed for the initiation of a partial interim review, and after consulting the Advisory Committee, the Commission, by a notice (the review Notice of initiation) published in the *Official Journal of the European Union* [6], initiated an investigation in accordance with Article 11(3) of the basic Regulation. The investigation was limited in scope to the definition of the product subject to the measures in force.

(4) The Commission advised the known Community producers, importers and users, the representatives of the exporting country as well as all known exporters in the PRC of the initiation of the review. The Commission requested information from all abovementioned parties and from those other parties who made themselves known within the time limit set in the review Notice of initiation. The Commission also gave interested parties the opportunity to make their views known in writing and to request a hearing.

(5) Fifteen Community producers, nine importers in the Community unrelated to Chinese exporting producers, one Community user and 17 Chinese exporting producers submitted a questionnaire reply.

(6) Hearings were granted upon request to six interested parties: to the applicant, one Community producer and four importers.

C. PRODUCT CONCERNED

(7) The product concerned, as defined in Article 1 of the definitive measures Regulation, is castings of non-malleable cast iron of a kind used to cover and/or give access to ground or sub-surface systems, and parts thereof, whether or not machined, coated or painted or fitted with other materials, excluding fire hydrants, originating in the PRC and falling within CN codes 7325 10 50, 7325 10 92 and ex 7325 10 99 (Taric code 7325 10 99 10).

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 199, 29.7.2005, p. 1.
[3] OJ L 47, 17.2.2006, p. 59.
[4] OJ L 47, 17.2.2006, p. 3.
[5] OJ L 94, 8.4.2009, p. 1.
[6] OJ C 74, 20.3.2008, p. 66.

(8) In the product definition part of the same Regulation, notably in recital 18, it is mentioned that castings are made of grey or ductile iron and that despite certain differences described in recitals 20 to 21, it is concluded in recitals 22 and 29 that all types of castings have the same basic physical, chemical and technical characteristics, they are basically used for the same purposes and can be regarded as different types of the same product.

(9) According to several parties, the term used in Article 1 of the definitive measures Regulation to describe the product subject to the measures (castings of non-malleable cast iron) does not cover castings made of ductile iron. Some parties made reference to another CN subheading concerning tube or pipe fittings of malleable cast iron (CN code 7307 19 10) where the relevant explanatory note of the Combined Nomenclature states that spheroidal cast iron (ductile iron) is malleable. It was therefore claimed that castings made of ductile iron would not be covered by the Regulation, even if in the descriptive part of that Regulation it is stated that all types of castings can be regarded as different types of the same product.

D. FINDINGS OF THE INVESTIGATION

1. Preliminary comments

(10) Several interested parties claimed that a product scope review would not be the appropriate investigation to tackle the above issue, but that the Commission would have to initiate either a new anti-dumping investigation pursuant to Article 5 of the basic Regulation or an anti-circumvention review pursuant to Article 13 of the basic Regulation.

(11) Given that the purpose of the investigation is primarily to examine the scope of the original investigation and to adapt, if necessary, the operative part accordingly, a review of the product scope based on Article 11(3) of the basic Regulation is in this particular case the appropriate procedure. A new investigation pursuant to Article 5 of the basic Regulation and an anti-circumvention investigation pursuant to Article 13 of the basic Regulation each address different circumstances. The former may, inter alia, be used to launch an investigation into a product which was not investigated in the original investigation (for example by using a different product definition or originating in countries not subject to measures). The latter may be used as the basis for an investigation of whether there is circumvention with regard to a product subject to measures. These two types of investigation are therefore not appropriate in the present circumstances.

(12) The initiation of this review was therefore warranted to ensure the proper application of the anti-dumping measures.

2. Analysis of the original investigation

(13) In a first step, the original investigation was analysed in order to determine if that investigation had fully covered not only castings made of grey iron, but also those made of ductile cast iron.

(14) It is firstly noted that in the Notice of initiation of the original investigation [1], the product is described as 'certain articles of non-malleable cast iron of a kind used to cover and/or to give access to ground or sub-surface systems, (…) originating in the People's Republic of China (…), normally declared within CN codes 7325 10 50, 7325 10 92 and 7325 10 99'.

(15) The words 'normally declared under' clarify that the CN codes mentioned in the Notice of initiation were — as they usually are — given 'for information only'. Thus, interested parties could not assume that only products covered by those CN codes would form part of the investigation. Complementary to the information on the product scope given in the Notice of initiation, the information in the non-confidential version of the original complaint that was accessible to all interested parties of the proceeding and that was sent to all exporting producers, importers and users listed in the complaint contained further information.

(16) In the non-confidential version of the complaint, the definition of the product concerned is exactly the one published in the Notice of initiation. Further explanations of that general description follow in points 3.2-3.7 of the complaint. It follows from various elements in those points that the complaint covered products made of both grey and ductile cast iron. For instance, in point 3.5, it is mentioned that 'the product is made of non-malleable cast iron, which can be grey or ductile cast iron'. Furthermore, the production process of castings made of both grey and ductile cast iron is described in point 3.4 of the non-confidential version of the complaint.

(17) Moreover, there was no indication that the Notice of initiation was intended to be more limited than the scope of the complaint.

[1] OJ C 104, 30.4.2004, p. 62.

(18) Furthermore, during the original investigation, dumping and injury data was collected concerning castings made from both grey and ductile cast iron. In particular, in the questionnaires that were sent to known interested parties and to those interested parties who made themselves known and requested a questionnaire, both types were included in the description of the product types which had to be reported in the product classification (product control numbers). Therefore, it was clear to all cooperating parties that received a questionnaire that castings made of grey and of ductile cast iron were covered by the investigation. Moreover, the fact that the product classification contained both types ensured that all findings concerning dumping, injury, causality and Community interest of the original investigation related to castings made of grey and ductile cast iron.

(19) In addition, the final disclosure text sent to all interested parties and the definitive measures Regulation mentioned at several points that castings can either be made of grey or of ductile cast iron (see in particular recitals 18, 20 and 21). The differences between both types of castings were examined and explained (see aforementioned recitals). Finally, the conclusion drawn in the definitive measures Regulation as stipulated in recital 22 is that the investigation had shown that despite the differences in terms of grey or ductile cast iron, all types of castings share the same basic physical, chemical and technical characteristics, that they are basically used for the same purposes and that they can be regarded as different types of the same product.

(20) In the light of the foregoing, it can be concluded that the original investigation covered both castings made of grey and of ductile cast iron. Even assuming that this was not fully clear from the Notice of initiation alone, interested parties had several possibilities to learn that the investigation covered castings made of grey and ductile cast iron, as it was mentioned in the non-confidential version of the complaint, the questionnaires and as it was disclosed at definitive stage to interested parties.

(21) After disclosure of the final findings of this review, one interested party claimed that the Notice of initiation of the original investigation had to clearly indicate the product scope. Given that this Notice of initiation only mentioned castings made of non-malleable cast iron, an importer of castings made of malleable cast iron could be reassured that its products were not covered by the investigation and had no need to consult the non-confidential version of the complaint.

(22) In view of the wording of the original Notice of initiation it cannot be argued that castings made of ductile cast iron were explicitly or implicitly excluded from the definition of the product concerned. As a starting point it must be noted that in the original Notice of initiation, first paragraph, it was said that the Commission received 'a complaint (…), alleging that imports of certain castings, originating in the People's Republic of China (…), are being dumped and are thereby causing material injury to the Community industry'. Secondly, section two (product) mentioned that castings made of non-malleable cast iron of a kind used to cover and/or to give access to ground or sub-surface systems would be covered, but without further specifying what could be understood as 'non-malleable'. It is recalled in this context that the CN codes mentioned in the Notice of initiation were explicitly 'only given for information' and thus can not be argued to have limited the product scope of the original investigation. Thus, the Notice of initiation already contained elements indicating to the importer or exporting producer of castings made of ductile iron of a kind to cover or give access to ground or sub-surface systems that ductile castings could be covered by the investigation. In view of the above, this argument is rejected.

(23) In any case, even assuming that this was not the case, the review Notice of initiation was clear on that matter. It noted in section 3 (ground for the review) that whereas the descriptive part of the definitive measures Regulation also covered castings made of ductile cast iron, on this point the scope of the operative part of that Regulation might have to be clarified. It explicitly invited all operators to make their views known, and to submit any evidence supporting those views. However, the importer concerned has not submitted any evidence that one or more of his supplier(s) which are subject to the duty had not understood that the original investigation also covered castings of ductile iron. In this context, it should also be noted that the review Notice of initiation underlined in section 9 that any party wishing to do so could claim another review on the basis of Article 11(3) of the basic Regulation. However, no exporter whose products are subject to the duty has claimed that it did not understood, during the original investigation, that also castings of ductile iron were covered, and that, therefore, now, an additional review should be launched to recalculate the duty applicable to his products, including those of ductile iron.

(24) In view of the above, the argument made by the interested party is rejected.

3. **Comparison between ductile iron castings and grey iron castings**

(25) In order to clarify whether the findings with regard to castings made of grey and ductile cast iron as set out in the definitive measures Regulation were indeed correct, it was examined whether ductile iron castings and grey iron castings were rightly considered to share the same physical, chemical and technical characteristics and end uses, as indicated in the definitive measures Regulation.

(a) *Physical, chemical, technical characteristics and interchangeability*

(26) In terms of *physical characteristics*, the final form of the casting is influenced by the purpose and installation conditions of the product but in any case the product has to conform to the standards in force, as laid down in, inter alia, EN 1561, EN 1563, EN 124 and EN 1433.

(27) Concerning the *chemical characteristics* of castings, both grey and ductile cast iron are alloys of iron and carbon. While there are slight differences in the structure of the raw material and also the materials added during the production process (e.g. magnesium) the final products do not show a significant difference in this respect.

(28) It is noted that due to the magnesium added during the production process of ductile iron, the microstructure of the cast iron changes from a flake/lamellar form (grey cast iron) to a spheroidal structure. The more accurate term for ductile iron is therefore 'spheroidal graphite cast iron'.

(29) As concerns the *technical characteristics*, the investigation demonstrated that ductile cast iron, in contrast to grey cast iron, has technical properties that allow the material to resist higher rupture stress and, more importantly, to be deformed to a significantly higher extent under compressive stress without fracture, i.e. ductile cast iron possesses plastic ductility whereas grey cast iron breaks under compressive stress, i.e. is brittle. The investigation has also shown that despite this difference, other basic mechanical/technical characteristics such as the moulding ability, wear resistance and elasticity are comparable for grey cast iron and ductile cast iron.

(30) Moreover, the differences between grey and ductile cast iron mentioned above only affect the required design of the casting (i.e. whether a locking device is required), but not the fitness for the purpose of the casting, which is to cover and/or give access to ground or sub-surface systems.

(31) Cast iron products serving the abovementioned end uses must fulfil the requirements of standards EN 124 (manhole covers and gully tops) and EN 1433 (channel gratings). Both standards specify that cast iron materials have to meet the requirements of either EN 1561 or EN 1563 (i.e. grey or ductile cast iron). Therefore, both grey and ductile cast iron fulfil the requirements of the standards, so they can be considered as being *interchangeable*.

(b) *End uses*

(32) Consumers perceive both types of casting to be the same product used to cover manholes, resist traffic load, provide safe and easy access to buried networks or to collect surface water (gratings). Both types provide long term durable solutions.

(c) *Conclusion*

(33) It is consequently concluded that although there are slight differences between the two product types, they were rightly considered as a single product as they share the same physical, chemical and technical characteristics, can be used for the same purposes and are interchangeable. This confirms the findings of the original investigation and recitals 18 and 20-22 of the definitive measures Regulation.

(34) After final disclosure, several interested parties contested these findings and stressed that already in the original investigation, it was erroneously concluded that castings made of grey and of ductile cast iron share the same characteristics and should be regarded as one single product for the purpose of the investigation. These parties argued that several factors would demonstrate that both types of castings are not comparable and should be treated as different products. In particular, these parties mentioned (i) the differences in the production process which lead to (ii) completely different physical, chemical and technical characteristics and (iii) a different cost structure and lastly (iv) a different consumer perception. To support this claim, several expert opinions as well as publications in professional journals were submitted to the Commission. These experts' opinions mainly highlighted the differences between ductile cast iron and grey cast iron in the graphite structure as well as the technical differences, i.e. the fact that ductile iron can be deformed under compressive stress whereas grey iron breaks under the same conditions.

(35) In this respect, it is noted that this investigation confirmed that there are indeed differences between both product types, i.e. castings made of grey cast iron and castings made of ductile cast iron. The fact that magnesium is added during the production process of a casting made of ductile cast iron changes the graphite structure from flake/lamellar to spheroidal and gives it different mechanical properties such as a certain deformability under compressive stress. In addition, castings made of ductile cast iron normally require a special design to lock it with the surface. However, it is recalled that it is consistent practice to examine if products or product types share the same basic physical, chemical and technical characteristics and are basically used for the same purposes in order to determine whether they should form one single product for the purpose of an anti-dumping investigation. This means that product types do not have to be identical in all aspects from a scientific (or other) point of view, but that certain differences can be accepted as long as the abovementioned basic characteristics are shared. Moreover, it is recalled that the proceeding is not against imports of the material as such, i.e. cast iron, but against *castings used to cover and/or give access to ground or sub-surface systems and parts thereof*. This investigation confirmed that a casting made of ductile cast iron shares the same basic characteristics as a casting made of grey cast iron (see arguments in recitals 24-30 above). Thus, the argument that castings made of grey cast iron and castings made of ductile cast iron do not share the same basic characteristics is rejected.

4. **Channel gratings**

(36) In the framework of this investigation, two companies claimed that drainage systems covered by standard EN 1433 should not fall under the scope of the measures. To support their claim, the interested parties pointed out that in the definitive measures Regulation only another standard (EN 124) applicable to manhole covers and gully tops, is mentioned, and that the original investigation clearly focussed on manhole covers.

(37) The complainant argued that the review Notice of initiation setting out the grounds of this partial interim review did not mention the issue of channel gratings and that therefore the arguments in this regard should be ignored. This argument is however rejected in view of the fact that the review Notice of initiation also stipulated that the product scope should be clarified. The fact that a special focus was given to the question whether castings made of ductile cast iron are covered by the measures does not exclude that other claims regarding the product scope can be analysed.

(38) It was firstly examined if channel gratings were covered by the original investigation.

(39) As stated in recital 14, the Notice of initiation of the original investigation described the product under consideration as 'certain articles of non-malleable cast iron of a kind used to cover and/or to give access to ground or sub-surface systems, and parts thereof, (…)'. As channel gratings are articles used to cover ground or sub-surface systems and parts thereof, the Notice of initiation had to be read as covering channel gratings as a type of castings.

(40) Moreover, the non-confidential version of the original complaint explicitly stated that the product concerned 'is usually named by reference to its purpose that is manhole top (or manhole covers), gully top *or channel grating* and surface box' (see point 3.2). Another reference to channel gratings as being part of the product concerned can be found in point 3.5 (efficient surface water drainage) and 3.6.

(41) Moreover, channel gratings were also included in the description of the product types which had to be reported in the questionnaire (product control numbers) and all cooperating parties that received a questionnaire had to report sales of channel gratings as well. Thus, all findings concerning dumping, injury, causality and Community interest of the original investigation also included channel gratings.

(42) Furthermore, in the definitive measures Regulation which was also disclosed to all interested parties, notably in the recitals 15-17, it is mentioned that castings are generally comprised of a frame which is embedded in the ground and either a cover or a grate which sits flush with any surface. Recital 17 mentions that cover and grates are available in any shape including but not limited to triangular, circular, square or rectangular. In the same vein, in recital 19 it is stated that the different possible presentations of castings such as manhole covers, gully tops and surface boxes, are sufficiently similar and therefore constitute one single product for the purpose of the investigation. Thus, the wording of the definitive measures Regulation indicates that channel gratings were also included as a type of a possible presentation of castings.

(43) To conclude, channel gratings were included in the product scope of the original investigation, and this could have been determined on the basis of the above.

(44) After final disclosure, one interested party claimed that neither the Notice of initiation nor the definitive measures Regulation was clear with regard to the inclusion of channel gratings in the scope of the investigation. This party argued that whereas the Notice of initiation was at least unclear with regard to channel gratings, recital 16 of the definitive measures Regulation specified clearly that 'castings must allow for *safe and easy access to the underground chamber*, may it be for the purpose of man entry or visual inspection'. As linear drainage systems do not allow for access of human beings to an underground chamber, but serve the purpose of draining water, it would be clear that channel gratings were not covered.

(45) It is not refuted that channel gratings/linear drainage systems which are usually composed of a drain channel and a grate on the top mainly serve the purpose of draining water from a surface. However, they also allow for safe and easy access to an underground chamber which would be, in this case, the drain channel. Should, for instance, the drain channel be blocked by leaves or other objects, a person could after having lifted the grate, access the drain channel to remove the blockage. Even assuming that the drain channel cannot be considered as forming part of the underground chamber as the whole casting should give access to it, it can still be argued that the channel grating covers a linear cavity in the earth that has been dug to allow for water drainage. It is further emphasised that the sentence in the recital in question mentioned that the access can be for the purpose of *visual inspection* which is undoubtedly possible for channel gratings. In addition, the sentence quoted by that party has to be read in context, i.e. together with recital 15 and the beginning of recital 16. As mentioned above, there it is stipulated that 'castings are generally comprised of a frame, which is embedded in the ground, and either a cover or *a grate*, which sits flush with any surface used by pedestrians and/or vehicles and which directly withstand the weight and impact of pedestrian and/or vehicle traffic. (…) Castings serve the purpose of covering an underground chamber and must bear load resistance of motored vehicles and/or pedestrian traffic. The cover *or grate* is required to remain secure within the frame in order to avoid noise pollution, human injury and vehicle damage.'. The investigation showed that the channel gratings are generally comprised of a drain channel which is embedded in the ground, and a grate, which sits flush with any surface used by pedestrians and/or vehicles and which directly withstand the weight and impact of pedestrian and/or vehicle traffic. Moreover, the channel grating can also be used to give access and/or gain entry to an underground chamber and they also must bear load resistance of motored vehicles and/or pedestrian traffic. Therefore, the argument that channel gratings were clearly not covered is rejected.

(46) In a second step, in order to clarify whether the findings with regard to channel gratings were indeed correct, it was further examined if channel gratings share the same basic physical and technical characteristics as other types of castings and could therefore rightly be considered as constituting, together with the other types of castings, one single product.

(47) The investigation confirmed that channel gratings are castings made of grey or ductile cast iron, and that they are generally comprised of a frame which is embedded in the ground and a grate which sits flush with any surface. The frame is placed directly on top of a chamber top. The channel gratings are used to cover the ground and allow for visual inspection.

(48) While it is true that the main purpose of a channel grating is to drain the surface from excessive water so that vehicles or planes can safely use the road/runway, this does not exclude that channel gratings also serve the purpose of covering an underground chamber, as stated above, and they also must bear load resistance of vehicles. Moreover, other types of castings (such as gully tops), too, have the function of draining excessive water.

(49) Concerning the argument of the missing standard EN 1433 in the definitive measures Regulation, it is noted that in recitals 26 and 27 reference was made to EN 124 in the like product part in connection with a claim by interested parties that castings produced and sold in the PRC and the castings produced and sold by the Community industry are not alike. This, in turn, does not mean that products covered by EN 1433 were not covered. The reference (or not) of a specific EN norm in a Regulation is given for information only, but does not mean that there is no other norm that could be applicable. Moreover, the standard EN 1433 was a new standard at the time of the original investigation period (April 2003-March 2004), applicable from August 2003, and co-existed with the national standards until August 2004. Therefore, at the time of data collection during the original investigation, this standard was not fully operational and existed in parallel to other standards covering the same product.

(50) Therefore, it is confirmed that this particular presentation of a casting shares the same basic physical, technical and chemical characteristics as other manhole covers, gully tops or surface boxes.

(51) In light of the above, it is clarified that products falling under EN1433 were subject to the product scope and should remain subject to the measures as the difference in the main purpose found cannot be considered significant enough to justify an exclusion of this presentation of a casting.

5. **Necessity for the amendment of the operative part of the definitive measures Regulation — final remarks**

(52) In view of the above analysis, it was finally considered appropriate to examine whether the wording of Article 1 of the definitive measures Regulation and recitals 18-29 of that Regulation is in line with the findings of the original investigation and the findings above. Put differently, the question was examined whether there was, perhaps, no need for an amendment of the operative part of the final measures Regulation after all, and whether it could be argued that the current version of Article 1 already clearly covered castings of ductile iron. In this respect, the comments received from the interested parties on the product definition part of the definitive measures Regulation were also duly considered.

(53) It is recalled that Article 1(1) of the definitive measures Regulation sets out that castings made of 'non-malleable' cast iron should be covered. It is further recalled that the investigation showed that ductile cast iron possesses plastic ductility (see recital 30).

(54) The question thus arose whether ductile cast iron must always be considered as 'non-malleable' from a technical point of view despite the fact that it possesses plastic ductility. In material science 'malleability' refers to a material's ability to deform under compressive stress which is often characterised by the material's ability to form a thin sheet by hammering or rolling. In this context, it was claimed by the Community industry that the notion of castings made of 'non-malleable' cast iron in Article 1 of the definitive measures Regulation could refer to all castings that are not made from malleable cast iron, and this would include castings made from grey cast iron and ductile cast iron. It was thus claimed that in this sense, it could indeed be argued that also castings made from ductile cast iron, as opposed to malleable cast iron, are non-malleable and thus covered by Article 1 of the definitive measures Regulation since its entry into force.

(55) However, it is noted that ductility and malleability do not always correlate with each other; for instance, gold is both ductile and malleable, but lead is only malleable. Moreover, during the review investigation evidence was provided that ductile cast iron is not only deformable under tensile stress, but also under compressive stress to a certain degree. Therefore, it appears that from a technical point of view, it is difficult to argue that ductile cast iron must always be regarded as non-malleable (in which case there might be no need for an amendment of the operative part of the definitive measures regulation).

(56) Nevertheless, the fact remains that castings of ductile cast iron were covered by the original investigation. In order to exclude any possible ambiguity in the interpretation, the definitive measures Regulation should be revised accordingly. In particular, it should be clarified that the product scope covers castings of non-malleable cast iron and of spheroidal graphite cast iron (ductile iron). Moreover, an additional CN Code should be included, i.e. CN Code ex 7325 99 10, referring to 'other cast articles made of iron and steel of malleable cast iron'. This is necessary to ensure that the anti-dumping duty which was determined to be appropriate for (inter alia) such castings of ductile cast iron during the original investigation will as of now be certainly levied on them.

6. **Retroactivity**

(57) In the review Notice of initiation, interested parties were explicitly invited to comment on a possible retroactive effect the conclusions might have. The issue of retroactivity was addressed by several parties during the hearings and in the submissions. In general, all parties except the Community industry expressed their opposition to the retroactive application of the results of the review.

(58) In this respect, it is noted that the current investigation showed that the operative part of the definitive measures Regulation should be amended in order to clarify the product scope and that an additional CN Code should be added. Moreover, it also seems that during the past period, some operators have based their commercial conduct on the assumption that castings of ductile iron were not covered by the anti-dumping duty. Retroactively subjecting imports of such castings into the Community to the anti-dumping duty could seriously affect the economic operations of those operators. In view of those factors, it is deemed more appropriate that the clarification of the product scope should have an effect exclusively for the future.

E. **CONCLUSION**

(59) In view of the above findings, it is considered appropriate to revise Regulation (EC) No 1212/2005 in order to clarify the scope of the product covered by that Regulation and to insert that the product scope covers castings of non-malleable cast iron and of spheroidal graphite cast iron (ductile iron). Moreover, an additional CN Code should be included, i.e. CN Code ex 7325 99 10.

(60) The findings and the proposal has been disclosed to the parties concerned and their comments were taken into account where appropriate,

HAS ADOPTED THIS REGULATION:

Article 1

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

'1. A definitive anti-dumping duty is hereby imposed on imports of castings of non-malleable cast iron and spheroidal graphite cast iron (ductile iron) of a kind used to cover and/or to give access to ground or sub-surface systems, and parts thereof, whether or not machined, coated or painted or fitted with other materials, excluding fire hydrants, originating in the People's Republic of China, currently classifiable within CN codes 7325 10 50, 7325 10 92, ex 7325 10 99 (Taric code 7325 10 99 10), and ex 7325 99 10 (Taric code 7325 99 10 10).'.

Article 2

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

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

Done at Luxembourg, 11 June 2009.

For the Council
The President
G. SLAMEČKA