COMMISSION REGULATION (EU) No 1035/2010

of 15 November 2010

imposing a provisional anti-dumping duty on imports of melamine originating in the People's Republic of China

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community [1] (the basic Regulation), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 4 January 2010, the Commission received a complaint concerning imports of melamine originating in the People's Republic of China lodged pursuant to Article 5 of the basic Regulation by Borealis Agrolinz Melamine GmbH, DSM Melamine BV and Zakłady Azotowe Puławy ('the complainants'), representing a major proportion, in this case more than 50 %, of the total Union production of melamine.

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

(3) On 17 February 2010, the Commission announced, by a notice published in the *Official Journal of the European Union* [2] ('the notice of initiation'), the initiation of an anti-dumping proceeding with regard to imports into the Union of melamine originating in the People's Republic of China ('the country concerned' or 'the PRC').

2. Parties concerned by the proceeding

(4) The Commission officially advised the complainants, exporting producers in the PRC, importers, traders, users, suppliers and associations known to be concerned, and the representatives of 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 view of the apparent high number of exporting producers in the PRC sampling was envisaged in the notice of initiation for the determination of dumping and injury in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and if so, to select a sample, all exporting producers in the PRC were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the investigation period (1 January 2009-31 December 2009).

(6) Seven replies were received to the sampling exercise from exporting producers or groups of exporting producers in the PRC. However two companies withdrew from further cooperation with the investigation at an early stage. Sampling was therefore no longer necessary and all parties were informed that a sample would not be selected.

(7) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the Chinese exporting producers known to be concerned, the Chinese authorities and to other Chinese exporting producers that made themselves known within the deadlines set out in the notice of initiation. Three Chinese exporting producer groups and one individual company 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. One further group requested IT only.

(8) 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 five exporting producers and related companies in the PRC, one producer in the United States of America which was the proposed analogue country as mentioned in the notice of initiation, and one producer in another possible analogue country, Indonesia. Questionnaire replies were also received from three Union producers and seven users cooperated by submitting a questionnaire reply. None of the importers supplied the Commission with any information or made themselves known in the course of this investigation.

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

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ C 40, 17.2.2010, p. 10.

(a) *Union producers*

— Borealis Agrolinz Melamine GmbH, Austria

— DSM Melamine BV (now OCI Melamine BV), the Netherlands

— Zakłady Azotowe Puławy, Poland

(b) *Exporting producers in the PRC*

— Sichuan Chemical Group: Sichuan Chemical Co., Ltd, Sichuan Jinhua Chemical Co., Ltd, New Tianfu Chemicals Co., Ltd and M&A Chemicals Corporation

— Sichuan Golden Elephant Group: Sichuan Golden Elephant Chemical Industry Group Co., Ltd and Sichuan Jade Elephant Melamine S&T Co., Ltd

— Shandong Liaherd Group: Shandong Liaherd Chemical Industry Co., Ltd, Shandong Lianhe Fengyuan Chemical Industry Co., Ltd and Yiyuan Lianhe Fertilizer Co., Ltd

— Tianjin Kaiwei Chemical Co., Ltd

— Henan Junhua Group: Henan Junhua Chemical Company Ltd and Haohua-Junhua Group Zhengyang Chemical Co., Ltd

(10) In view of the need to establish a normal value for the exporting producer that requested only IT and exporting producers to which MET might not be granted, a verification to establish normal value on the basis of data from Indonesia as analogue country took place at the premises of the following company:

(c) *Producer in Indonesia*

— DSM Kaltim Melamine (DKM)

3. **Investigation period**

(11) The investigation of dumping and injury covered the period from 1 January 2009 to 31 December 2009 ('investigation period' or 'IP'). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the investigation period (period considered).

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(12) The product concerned is melamine, currently falling within CN code 2933 61 00 and originating in the People's Republic of China.

(13) Melamine is a white crystalline powder obtained from urea. Melamine is mainly used in laminates, moulding powders, wood based panels and coating resins.

2. **Like product**

(14) The investigation has shown that melamine produced and sold by the Union industry in the Union, melamine produced and sold on the domestic market of the PRC and melamine imported into the Union from the PRC, as well as that produced and sold in Indonesia, which served as an analogue country, has essentially the same basic physical and chemical characteristics and the same basic end uses.

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

C. **DUMPING**

1. **Market Economy Treatment**

(16) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation. 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.

(17) Three exporting producer groups and one exporting producer from the PRC requested MET and replied to the MET claim form within the given deadline.

(18) For all these cooperating companies in 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.

(19) All of the cooperating exporting producers and groups in the PRC were found not to meet criteria to be granted MET. All companies involved in the production or commercialisation of melamine located in the PRC were invited to claim MET. Should one company in a group be denied MET then the group as a whole is also denied.

(20) For those companies producing urea from natural gas to manufacture melamine this denial was based on the grounds that the costs of the major input, natural gas, 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 natural gas market in the PRC.

(21) The natural gas market in the PRC is dominated by three State-owned companies. Companies that produce urea, which is then used by them to produce melamine, benefit from a low government fixed gas price for the production of urea. A company producing urea, which is a fertiliser and important for the Chinese agricultural and food industry, pays a significantly lower price for its gas compared to companies which need gas for other industrial uses. In addition to this dual-pricing mechanism, the price of natural gas for industrial use is itself distorted by State interference and is itself considerably lower than the world market price for gas.

(22) This low gas price allows these melamine producers to produce it at unnaturally reduced prices, taking advantage of the distorted low price of natural gas. Since natural gas forms a major part of the cost of urea (around 80 %) and that urea represents between 50 and 60 % of the cost of production of melamine, criterion 1 cannot be considered to be met for those companies in the PRC that produce urea from natural gas.

(23) Some companies do not produce urea themselves but purchase it from unrelated suppliers. However the urea market itself is also distorted by three main types of State interference. Firstly the existence of strict import quotas for urea and export taxes of 110 % during mid-season and 10 % during off-season in the IP. Secondly the Chinese government has exempted the domestic sale of urea from VAT since 1 July 2005. Thirdly the Chinese government is directly involved in the market through the State Fertilizer System, operating since 2004, whereby the State purchases urea directly from producers to keep in a strategic reserve and can also release quantities of urea in the domestic market. Urea producers also benefit from preferential electricity rates, preferential railway freight rates and, as mentioned above, preferential natural gas prices.

(24) The restraints on exports, in combination with the benefits in the case of domestic sales, have the effect of reducing export volumes of urea, thereby diverting supplies to the domestic market and creating a downward pressure on the domestic price. This low domestic price is directly caused by State interference in the urea market in the PRC. Accordingly, criterion 1 cannot be considered to be met for those companies in the PRC that do not produce urea but purchase it from third parties.

(25) In addition to the general situation described above, one group of companies did not meet the other requirements of criterion 1 as the holding company is fully State-owned and the individual companies within the group are majority State-owned. Accordingly, this group is subject to significant State interference in relation to important business decisions.

(26) Two companies did not meet either criterion 2 or criterion 3. One of them was not able to show complete accounting records and received office space from a public body for free. The other company did not keep its accounts in line with international accounting standards and was not able to demonstrate that their take over of a State-owned company was done at a fair value.

(27) One company did not demonstrate that it met criterion 3 as no interest was paid on the debt regarding the sale of its shares emanating from the privatisation process. More specifically, at the beginning of the privatisation process a shareholder was loaned back the capital it had invested. At subsequent transfers of the shares, the liability of the debt was used as a payment. Only after 10 years was the loan repaid by the then privately-owned holder of those shares without any interest ever charged or paid on the amount.

(28) One company was refused MET as its related sales company, dealing with the product concerned as well, failed to complete a MET claim form.

(29) The Commission officially disclosed the results of the MET findings to the companies concerned in the PRC, the authorities of the PRC and the complainants. 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.

(30) Several written submissions were provided and a hearing with some exporting producers took place. The exporting producers argued that in the PRC some 70 % of urea is mainly produced by using coal as the major input and only some 30 % of urea is produced from natural gas. However, as the State also interferes in the urea market, as set out in recitals 23 and 24, it does not change the conclusion that the costs of production of melamine are significantly distorted. The argument is therefore rejected.

(31) Other arguments brought forward in the written submissions and the hearing following disclosure were not such as to change the proposal to refuse MET to all companies that requested so.

(32) On the basis of the above, none of the cooperating companies in the PRC 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 refused for all these companies. The Advisory Committee was consulted and did not object to these conclusions.

2. **Individual Treatment**

(33) 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 that they meet the criteria set out in Article 9(5) of the basic Regulation.

(34) All of those companies and groups which requested MET also claimed IT in the event they would not be granted MET. In addition one group only claimed IT. On the basis of the information available, it was provisionally established that three of the five exporting producer companies or groups in the PRC met all the requirements for IT. One group of companies in the PRC was refused IT on the grounds that the holding is fully State-owned and the individual companies within the group are majority State-owned. Another company was refused IT as a related sales company failed to complete a MET/IT claim form. It was therefore not possible to assess the criteria for IT.

3. **Normal value**

(a) *Choice of the analogue country*

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

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

(37) The Commission examined whether other countries could be a reasonable choice of analogue country and questionnaires were sent to melamine producers in India, Iran, Indonesia and the United States of America. Only the melamine producers in the USA and Indonesia replied to the questionnaires.

(38) Following the examination of the replies, Indonesia was chosen as an analogue country which appears to be an open market with a low import duty and with significant imports from several third countries. In addition, it was found that the cost structure of an Indonesian producer was more comparable to a Chinese producer than the cost structure of a US producer and would therefore result in a more realistic normal value. The investigation showed no reason to consider that Indonesia was not adequate for the purpose of establishing normal value.

(39) Eventually, no interested party, including the complainants, argued that the USA was to be used as an appropriate analogue country for the present investigation.

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

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

(b) *Determination of normal value*

(42) Pursuant to Article 2(7)(a) of the basic Regulation normal value was established on the basis of verified information received from the producer in the analogue country.

(43) The product concerned was sold in representative quantities on the Indonesian domestic market.

(44) As sales on the domestic market to unrelated customers were not profitable during the investigation period, normal value was constructed using the cost of manufacturing of the Indonesian producer plus a reasonable amount for SG&A and for profit on the domestic market.

(45) SG&A costs and profit were established pursuant to Article 2(6)c on the basis of another reasonable method by comparing the SG&A costs and profit to the Union industry. The amount for SG&A used was considered reasonable as it was in line with the SG&A for the Union industry. The amount for profit was close

to that achieved by the Union industry in profitable years. There were no indications that such a profit would exceed the profit normally realised by other exporters or producers on sales of products of the same general category in the domestic market of the country or origin.

(c) *Export prices for the exporting producers granted IT*

(46) As all cooperating exporting producers granted IT made export sales to the Union directly to independent customers in the Union, the export prices were based on the prices actually paid or payable for the product concerned, in accordance with Article 2(8) of the basic Regulation.

(d) *Comparison*

(47) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments were made, where appropriate, 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.

(48) It is noted that normal value and export price were compared at the same level of indirect taxation, i.e. VAT included.

4. **Dumping margins**

(a) *For the cooperating exporting producers granted IT*

(49) Pursuant to Articles 2(11) and (12) of the basic Regulation, the dumping margins for the cooperating exporting producers granted IT were established on the basis of a comparison of a weighted average normal value established for the analogue country with each company's weighted average export price of the product concerned to the Union as established above.

(50) On this basis, the provisional dumping margins expressed as a percentage of the cif Union frontier price, duty unpaid, are:

Company	Provisional dumping margin
Sichuan Golden Elephant Chemical Industry Group Co., Ltd and its related company Sichuan Jade Elephant Melamine S&T Co., Ltd	44,9 %
Shandong Liaherd Chemical Industry Co., Ltd and its related companies Shandong Lianhe Fengyuan Chemical Industry Co., Ltd and Yiyuan Lianhe Fertilizer Co., Ltd	47,6 %
Henan Junhua Chemical Company Ltd and its related company Haohua-Junhua Group Zhengyang Chemical Co., Ltd	49,0 %

(b) *For all other exporting producers*

(51) In order to calculate the countrywide dumping margin applicable to all other exporting producers in the PRC, the level of cooperation was first established by comparing the volume of exports to the Union reported by the cooperating exporting producers with the equivalent Eurostat statistics.

(52) Given that cooperation from the PRC was low, i.e. 30 %, the countrywide dumping margin applicable to all other exporters in the PRC was established by comparing the normal value as established for Indonesia with export price data of the cooperating exporting producers to which neither MET nor IT was granted.

(53) On this basis the countrywide level of dumping was provisionally established at 65,6 % of the cif Union frontier price, duty unpaid.

D. **INJURY**

1. **Union production and Union industry**

(54) The complaint was lodged by the three main Union producers of melamine, having production facilities in Austria, Germany and Italy (Borealis), The Netherlands (DSM) and Poland (Puławy) which together accounts for over 90 % of total Union production during the IP. Two other producers with limited production did not object to the initiation of the investigation.

(55) All available information concerning Union producers, including information provided in the complaint and data collected from Union producers before and after the initiation of the investigation, was used in order to establish the total Union production.

(56) On that basis, the total Union production was estimated to be around 340 000 tonnes during the IP. This amount included the production of all Union producers that made themselves known and the estimated production of other producers which remained silent in the proceeding ('silent producers'). In the absence of any other information, the data indicated in the complaint in respect of the silent producers was used to establish the total Union production and consumption.

2. **Union consumption**

(57) Consumption was established on the basis of the total imports, derived from Eurostat, the total sales on the Union market of the Union industry, including an estimate of the sales of the producers that did not come forward. The estimate was based on the data provided in the complaint.

Table 1

	2006	2007	2008	IP
Volume (tons)	367 476	388 567	323 638	266 178
Indexed	*100*	*105*	*88*	*72*

Source: Eurostat and questionnaire replies.

(58) Consumption increased by 5 % between 2006 and 2007 and then decreased by 17 % between 2007 and 2008, and by 16 % during the IP. Overall, consumption decreased by 28 % during the period considered.

(59) The fall in melamine consumption can be attributed to the conjuncture, and in particular to the temporary contraction of the housing and construction markets which are the main markets for the main applications of melamine. Melamine is an important input material in this sector and is not expected to be replaced by any other materials. Hence, melamine demand is expected to resume together with the overall economic recovery.

3. **Imports into the Union from the country concerned**

(a) *Volume, price and market share of imports from the PRC*

(60) The investigation showed that the imports of melamine from the PRC developed as follows:

Table 2

Imports from the PRC	2006	2007	2008	IP
Volume (tonnes)	26 565	42 750	34 595	17 434
Indexed	*100*	*161*	*130*	*66*

Source: Eurostat.

(61) Chinese imports increased their presence in the Union market between 2006 and 2008. While the total consumption in the EU market has decreased by 12 % over the same period, Chinese exporters have increased the volume of their sales to the Union market by 30 %. As shown in the table below, there was also a gain in market share in that period.

(62) The situation reversed during the IP: whilst consumption decreased by 18 % the Chinese producers' volume of exports decreased even more. As with the export volume, the Chinese imports lost market share during the IP.

Table 3

Market share of the imports from the PRC	2006	2007	2008	IP
Market share	7,2 %	11,0 %	10,7 %	6,5 %
Indexed	*100*	*153*	*148*	*91*

Based on Eurostat, it would appear that the import price from China increased overall by 10 % during the period considered.

Table 4

	2006	2007	2008	IP
Average price/tonne	EUR 814	EUR 802	EUR 1 149	EUR 896
Indexed	*100*	*99*	*141*	*110*

Source: Eurostat.

(63) However, there was a high level of non-cooperation from Chinese exporters and the investigation showed that the average import price of the cooperating Chinese exporters, which represent around 30 % of total Chinese imports, was much lower than the Eurostat price and lower than the Union industry's price and was 806 EUR/tonne on average during the IP.

(64) Hence, at this stage of the investigation, it is considered that the verified price at the premises of the cooperating exporting producers in China should be taken into consideration for the injury and causality analysis.

(65) During the investigation some parties claimed that the melamine imported from China was of a lower quality than that produced by the Union industry and that it could not be used for certain applications such as surface applications. Given that this claim could not be substantiated it was not taken into consideration at this stage of the investigation.

(b) *Price undercutting*

(66) For the purposes of analysing price undercutting, the weighted average sales prices of the Union industry to unrelated customers on the Union market, adjusted, in particular for transport and handling costs, to an ex-works level, were compared to the corresponding weighted average prices of the cooperating exporters from the PRC to the first independent customer on the Union market, established on a cif basis.

(67) The comparison showed that during the IP, the dumped product concerned originating in the PRC sold in the Union undercut the Union industry's prices by 10,3 %.

4. **Economic situation of the Union industry**

(a) *Preliminary remarks*

(68) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators for an assessment of the state of the Union industry from 2006 to the end of the IP.

(b) *Production, production capacity and capacity utilisation*

Table 5

	2006	2007	2008	IP
Production (tonnes)	378 961	371 564	358 794	304 028
Indexed	*100*	*98*	*95*	*80*

	2006	2007	2008	IP
Capacity (tonnes)	442 000	442 000	396 200	396 200
Indexed	*100*	*100*	*90*	*90*
Capacity Utilisation	86 %	84 %	91 %	77 %
Indexed	*100*	*98*	*106*	*90*

Source: Questionnaire replies.

(69) As shown in the above table, the production of the Union industry decreased by 20 % during that period. The production capacity of the Union industry decreased by 10 % over the period considered.

(70) The Union industry decreased its production capacity to around 396 200 tonnes in 2008. However, in view of stagnating sales and decreasing production volumes, the utilisation of the available capacity decreased from 86 % in 2006 to 77 % in the IP. The main decrease occurred between 2008 and the IP.

(c) *Sales volume and market share*

(71) The sales figures in the table below relate to the volume sold to the first independent customer on the Union market.

Table 6

	2006	2007	2008	IP
Volume (tonnes)	254 707	274 211	241 867	215 469
Indexed	*100*	*108*	*95*	*85*
Market share	74 %	75 %	80 %	86 %
Indexed	*100*	*107*	*107*	*116*

Source: Questionnaire replies.

(72) While Union consumption dropped by 28 % during 2006 and the IP, the sales volume of the like product by the Union industry to independent customers on the Union market dropped by 15 %. Hence, the Union industry was able to increase its market share from 74 % in 2006 to 86 % in the IP.

(d) *Average unit prices of the Union industry and cost of production*

(73) Average ex-works sales prices of the Union industry to unrelated customers on the Union market decreased by 5 % over the period considered. A significant decrease in sales price by 26 % occurred between 2008 and the IP.

Table 7(a)

	2006	2007	2008	IP
Average Price/tonne	EUR 949	EUR 998	EUR 1 217	EUR 898
Indexed	*100*	*105*	*128*	*95*

Source: Questionnaire replies.

(74) It was found that the average cost of production of the Union industry decreased by 2 % between 2006 and the IP. However, during the same period, the Union industry was forced to keep its sales prices down in order to compete with the low-priced dumped imports. Consequently, the sales prices of the Union industry were significantly below the cost of production during the IP.

(75) The cost of production (COP) of the Union industry developed as follows during the period considered:

Table 7(b)

	2006	2007	2008	IP
Average COP/tonne	EUR 1 076	EUR 1 054	EUR 1 229	EUR 1 060
Indexed	*100*	*98*	*114*	*98*

Source: Questionnaire replies.

(e) *Stocks*

(76) Stocks represented around 5 % of the production volume in the IP. The Union industry decreased its stock levels by 68 % during the period considered, in particular between 2008 and the IP. However, this decrease in stocks should be seen in light of the lower level of activity following the downsizing of the Union industry.

Table 8

	2006	2007	2008	IP
Stocks (tonnes)	51 650	31 019	48 732	16 611
Indexed	*100*	*60*	*94*	*32*

Source: Questionnaire replies.

(f) *Employment, wages and productivity*

Table 9

	2006	2007	2008	IP
Employment — full-time equivalent (FTE)	706	688	613	606
Index	*100*	*97*	*87*	*86*
Labour cost (EUR/FTE)	57 736	57 248	63 273	61 025
Index	*100*	*99*	*110*	*106*
Productivity (unit/FTE)	537	540	585	502
Index	*100*	*101*	*109*	*94*

Source: Questionnaire replies.

(77) Due to the downsizing activities of the Union industry, the number of employees was reduced by 13 % in 2008, and by another 1 % during the IP. The decrease in the productivity should be seen in light of the general nature of downsizing activities, where the decrease in the number of employees follows the drop in production only after a certain delay. As regards labour costs, they increase slightly by 6 % over the period considered.

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

Table 10

	2006	2007	2008	IP
Profitability	– 9,9 %	– 2,4 %	– 1,3 %	– 18,0 %

	2006	2007	2008	IP
Year/year		– 7,5 %	+ 1,1 %	– 16,7 %
Cash flow (EUR thousand)	– 5 091	36 162	19 682	– 20 847
Year/year		41 253	– 18 480	– 40 529
Investments (EUR thousand)	29 070	14 630	32 540	21 465
Index	*100*	*50,3*	*112*	*74*
Return on investments	– 10 %	– 3 %	– 2 %	– 25 %
Year/year		+ 7 %	+ 1 %	– 23 %

Source: Questionnaire replies.

(78) Profitability of the Union industry was established by expressing the pre-tax net profit of the sales of the like product as a percentage of the turnover of these sales. Over the period considered the profitability of the Union industry decreased dramatically from a loss of 9,9 % in 2006 to a loss of 18 % in the IP. This situation occurred despite a decrease in the COP of the Union industry by 14 % between 2008 and the IP as shown in Table 7(b) above.

(79) The trend shown by the cash flow, which is the ability of the industry to self-finance its activities, reflects to a large extent the evolution of profitability. Consequently, the cash flow shows a substantial decrease during the period considered. The same can be said about the return on investments, which showed a similar development in line with the negative results achieved by the Union industry over the period considered.

(80) Following the above, the ability of the Union industry to invest became limited as the cash flow significantly deteriorated during the period considered. As a consequence, the investments dropped by 26,2 % during the period considered.

(h) *Growth*

(81) While the Union consumption decreased by 28 % between 2006 and the IP, the Union industry decrease its sales volume on the Union market by 15 %. When looking at the development over the period considered, the drop of 15 % in the sales volume of the Union industry was less pronounced than the decrease of 28 % in Union consumption. As a consequence, the market share of the Union industry increased by 12 percentage points during the same period.

(i) *Magnitude of the actual margin of dumping*

(82) The dumping margins for the PRC, specified above in the dumping section, are above *de minimis*. Given the volumes and the prices of the dumped imports, the impact of the actual margins of dumping cannot be considered to be negligible.

5. **Conclusion on injury**

(83) The investigation showed that a number of indicators pertaining to the economic situation of the Union industry significantly deteriorated during the period considered.

(84) Sales volume decreased by 15 %, production volume by 20 %, the utilisation of the production facilities dropped from 86 % to 77 %, employment had to be reduced by 14 %. In the same period prices were reduced by 5 %. A decrease in sales price by 26 % occurred between 2008 and the IP, hence profitability was dramatically low with negative consequences on investments and financial indicators such as cash flow and return on investment.

(85) Even if, in the context of a declining consumption, the Union industry managed to increase its market share by 12 percentage points in the Union market, the low level of prices on the Union market in particular during the IP led to a significant deterioration during the IP in particular of the financial situation of the Union industry. Indeed, prices did not allow covering the cost of production and the losses incurred were as high as – 18 % on turnover.

(86) On that basis, it is considered that the Union industry suffered material injury during the IP.

E. **CAUSALITY**

1. **Introduction**

(87) In accordance with Article 3(6) and 3(7) of the basic Regulation, it was examined whether the material injury suffered by the Union industry had been caused by the dumped imports from the country concerned. Furthermore, known factors other than the dumped imports, which might have injured the Union industry, were examined to ensure that any injury caused by those other factors was not attributed to the dumped imports.

2. **Effect of the dumped imports**

(88) It should be recalled that cooperation from Chinese exporting producers was very low in this investigation. The cooperating exporting producers represent around 29 % of the total imports of melamine during the IP.

(89) The Eurostat import statistics showed that overall, imports volume from China significantly decreased by 34 % during the period considered. In other words, these imports decreased relatively at a higher pace than consumption (– 28 %) during that period.

(90) With regards to prices, Eurostat indicate that the import price of Chinese melamine increased by 10 % during the period considered. It decreased significantly by 31 % in the period from 2008 to the IP. However, the verified information of the Chinese cooperating exporters which represent around 30 % of the total imports from China showed that the average Chinese import price was much lower than Eurostat. It was found that the cooperating producers were undercutting on average by 10,3 % the Union industry price during the IP.

(91) Given the high level of non-cooperation from the PRC it is considered that the verified price at the premises of the cooperating producers should prevail over the Eurostat price data.

(92) An analysis on a monthly basis of the import volume of melamine showed that the Chinese imports were massively present in the Union market in the first semester of the IP, when the crisis in the sector was at its peak, and held up to 15 % share of the Union market in the first semester of the IP. Given the structure and the production process of the Union industry, it had no choice other than lowering its sales price to keep market share. Even though the Chinese exporters had significantly reduced their exports to the Union in the second semester of the IP, the negative effect of their massive presence in the beginning of the IP and their low level of sales prices continued to affect the Union market and the Union industry in the remainder of the IP.

(93) The investigation showed that the Union industry suffered from serious cuts in production, a decrease in the rate of capacity utilisation, losses in sales volume and in employment in the period considered. The structure of the Union industry and the development of the above injury factors suggest that the deterioration in its economic situation was due to a certain extent to the crisis situation and the low demand on the market as explained in recitals 97 to 100 below. But it is also due to the low level of prices and the pressure exerted by the Chinese exports in particular between 2008 and the IP which did not allow it to cover its costs. As a result the losses accumulated during the IP were as high as – 18 % on turnover.

(94) Taking into account the distortion encountered during the MET investigation in the PRC, the high level of dumping found, and in view of the findings made in particular in recital 92 above, it is considered that even with a decreasing market share, the presence of low-priced dumped imports undercutting the Union industry price by over 10 % on the Union market played a role in further exacerbating the negative trend on sales prices on the Union market during the whole IP.

(95) On this basis a causal link between the dumped imports and the injury suffered by the Union industry can be established.

3. **Effect of other factors**

(96) The other factors which were examined in the context of the causality are the development of demand on the Union market, the economic crisis, the production cost of the Union industry, the export performance of the Union industry and the imports of melamine from other third countries.

(a) *Development of demand on the Union market and the economic crisis*

(97) It should be recalled that the main applications of melamine are in the housing and construction markets. Following the economic crisis, the housing and construction markets contracted which also resulted in a contraction of consumption not only on the Union market but on a global scale. Given that the EU is by far the largest worldwide market for melamine; the crisis has had a negative impact on that market. This was illustrated by a 28 % decrease in consumption, stoppages in production by the Union industry and a decrease in sales prices.

(98) The above facts and considerations thus suggest that a part of the injury suffered by the Union industry could be attributed to the economic crisis.

(99) However, as explained in recitals 88 to 95 above, it should be borne in mind that there were clear distortions on the Chinese market for melamine. Moreover, the dumped imports from the PRC were undercutting on average by 10 % the price of the Union industry during the IP thus further exacerbating the negative effects on the price level, in particular during the IP.

(100) In view of the undercutting practiced by the Chinese exporters and the selective increase of their presence during the IP as described in recital 92 above, even if it is considered that part of the material injury suffered by the Union industry can be attributed to the economic crisis, it is not such as to break the causal link between the dumped import and the material injury of the Union industry.

(b) *Production cost of the Union industry*

(101) The investigation showed that the production of melamine is capital intensive with a high proportion of fixed costs. The cost of production of the Union industry to produce melamine remained stable over the period considered but decreased by 14 % between 2008 and the IP as shown in Table 7(b) above. This should have allowed for a certain recovery in the profitability of the Union industry but the low level of price in the Union market and the undercutting practiced by the low-priced dumped imports from the PRC did not allow this situation to materialise.

(102) Accordingly, it is concluded that the cost of production is not a cause of the injury suffered by the Union industry.

(c) *Export performance of the Union industry*

(103) Although the analysis of injury and causation focused on the situation of the Union industry in the Union market, its export performance was examined as a potential other factor that may explain the injury found.

Table 11

	2006	2007	2008	IP
Exports (thousand tonnes)	84 103	78 956	68 560	85 146
Index	*100*	*94*	*82*	*101*

Source: questionnaire replies of the Union industry.

(104) The analysis showed that the export sales to unrelated parties made by the Union industry remained stable at around 85 000 tonnes, or 28 % of production during the period considered. The export performance of the complainants has thus been very good even during the crisis. Hence the injurious situation of the Union industry cannot be explained or attributed to exports.

(d) *Imports from other third countries*

(105) The trends in import volumes and prices from other third countries between 2006 and the IP were as follows:

Table 12

Other third countries	2006	2007	2008	IP
Imports (tonnes)	45 480	41 060	24 835	16 473
Index	*100*	*90*	*55*	*36*
Market share	12,3 %	10,6 %	7,7 %	6,2 %
Index	*100*	*86*	*62*	*50*
Price (EUR/tonne)	820	941	1 094	895
Index	*100*	*115*	*133*	*109*

Source: Eurostat.

(106) Apart from Iran and Saudi Arabia, imports from individual third countries were below the *de minimis* threshold of 1 % of market share of the Union market during the IP. The investigation showed that imports volume from third countries have decreased over the period considered. As regard to Iran and Saudi Arabia which accounted respectively for 4,4 % and 1,4 % of EU consumption during the IP, it was found that their pricing was higher that of the cooperating Chinese exporters. It is therefore considered that such quantities and prices would only have had a limited impact, if any, on the EU market.

(107) On the basis of the above, it was provisionally concluded that the imports from these third countries did not significantly contribute to the material injury suffered by the Union industry.

4. **Conclusion on causation**

(108) The above analysis showed that there was a substantial decrease in the volume of import and market share of the low-priced dumped imports originating in the PRC over the period considered. Nevertheless, these imports were made at significant dumped prices which were undercutting by 10 % the prices charged by the Union industry on the Union market during the IP. This negative effect on the sales price prevailing on the Union market lasted during the whole IP. Based on all facts and considerations, it was considered that there was a causal link between the dumped imports and the injury suffered by the Union industry during the IP.

(109) The examination of the other known factors which could have caused injury to the Union industry revealed that these factors did not appear to be such as to break the causal link established between the dumped imports from the PRC and the material injury suffered by the Union industry.

(110) Based on the above analysis, which has properly distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports, it was provisionally concluded that the dumped imports from the PRC have caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.

F. UNION INTEREST

1. Preliminary remark

(111) In accordance with Article 21 of the basic Regulation, it was examined whether, despite the provisional conclusion on injurious dumping, compelling reasons existed for concluding that it was not in the Union interest to adopt provisional anti-dumping measures in this particular case. The analysis of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users of the product concerned.

2. Interest of the Union industry

(112) The Union industry is composed of three producers with factories located in different Member States of the Union, employing directly over 600 people related to the like product.

(113) The Union industry has suffered material injury caused by the dumped imports from the PRC. It is recalled that most relevant injury indicators showed a negative trend during the period considered. In particular injury indicators related to the financial performance of the Union industry, such as profitability, cash flow and return on investments were seriously affected. In the absence of measures, it is considered that the recovery in the melamine sector will not be sufficient to allow the recovery of the Union industry's financial situation.

(114) It is expected that the imposition of provisional anti-dumping duties will restore effective trade conditions on the Union market, allowing prices of melamine to reflect the costs of the various components and the market conditions. It can be expected that the imposition of provisional measures and the recovery in the sector would enable the Union industry to make economies of scale in order to keep its market share with a positive impact on its economic situation and profitability.

(115) It was therefore concluded that the imposition of provisional anti-dumping measures on imports of melamine originating in the PRC would be in the interest of the Union industry.

3. Interest of users

(116) The cooperation by the users was relatively low in this case. 44 questionnaires were sent to the known users in the Union market and only seven replies could be considered to be sufficiently meaningful to assess their economic situation and the possible impact of anti-dumping measures on their activity. The cooperating users represented around 10 % of the EU consumption.

(117) According to the Union industry the share of melamine in the cost of production of the user's industry would be 3 % at most and 2 % on average. If this is confirmed by the further verification visits which will take place in the remainder of the investigation at the premises of the users, the impact of the proposed anti-dumping measures would be limited on the users' industry.

(118) Based on the few meaningful replies received from users, it would appear that the share of melamine in the users cost of production would be around 10 %. The possible impact of measures may therefore be negative depending on the level of their profitability which was not clearly disclosed by the users. As mentioned above verification visits will take place at the main users' premises in the remainder of the investigation. The Commission will also seek for more cooperation from the user industry.

(119) Some parties also suggested that because the market share held by the Union industry is very high a price increase which that industry will apply on melamine once measures are imposed may be the main impact of the imposition of anti-dumping measures in this case.

(120) Nevertheless, it is considered that not imposing measures on Chinese dumped imports may lead to further cuts in production by certain Union producers and then possible problems such as shortages of supply on the Union market, the largest market for melamine worldwide.

(121) Based on the above facts and considerations, it is considered that at this stage there are no substantiated elements which show that the impact of the imposition of provisional measures would be disproportionate as regard the activity of the user industry. Hence, it is considered that there are no compelling reasons not to impose provisional measures.

4. **Conclusion on Union interest**

(122) In view of the above, it was provisionally concluded that overall, based on the information available concerning the Union interest, there are no compelling reasons against the imposition of provisional measures on imports of melamine originating in the PRC.

G. **PROVISIONAL ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(123) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, provisional anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports.

(124) For the purpose of determining the level of these measures, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Union industry.

(125) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Union industry to cover its costs of production and to obtain 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 sales of the like product in the Union. It is considered that the profit that could be achieved in the absence of dumped imports should be based on the year 2003 which is the only year where profits were achieved by the Union industry and when Chinese imports were less present on the Union market. It is thus considered that a profit margin of 5 % of turnover could be regarded as an appropriate minimum which the Union industry could have expected to obtain in the absence of injurious dumping.

(126) On this basis, a non-injurious price was calculated for the Union industry for the like product. The non-injurious price was obtained by adding the abovementioned profit margin of 5 % to the cost of production.

(127) The necessary price increase was then determined on the basis of a comparison of the weighted average import price of the cooperating exporting producers in the PRC, duly adjusted for importation costs and customs duties with the non-injurious price of the Union industry on the Union market during the IP. Any difference resulting from this comparison was then expressed as a percentage of the average cif import value of the compared types.

2. **Provisional measures**

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

(129) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the People's Republic of China and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation, 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'.

(130) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.

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

(132) The dumping and injury margins established are as follows:

Company	Dumping margin	Injury margin
Sichuan Golden Elephant	44,9 %	46,5 %
Shandong Liaherd	47,6 %	47,8 %
Henan Junhua	49,0 %	53,9 %
All other companies	65,6 %	65,2 %

H. **DISCLOSURE**

(133) The above provisional findings will be disclosed to all interested parties which will be invited to make their views known in writing and request a hearing. Their comments will be analysed and taken into consideration where warranted before any definitive determinations are made. 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 purposes of any definitive findings,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of melamine, currently falling within CN code 2933 61 00 and originating in the People's Republic of China.

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and manufactured by the companies below shall be:

Company	Duty (%)	TARIC additional code
Sichuan Golden Elephant	44,9	A986
Shandong Liaherd	47,6	A987
Henan Junhua	49,0	A988
All other companies	65,2	A999

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

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

Article 2

1. Without prejudice to Article 20 of Council Regulation (EC) No 1225/2009, 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.

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

2. Pursuant to Article 21(4) of Council Regulation (EC) No 1225/2009, 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 6 months.

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

Done at Brussels, 15 November 2010.

For the Commission
The President
José Manuel BARROSO