COUNCIL IMPLEMENTING REGULATION (EU) No 1243/2010

of 20 December 2010

imposing a definitive anti-dumping duty on imports of ironing boards originating in the People's Republic of China produced by Since Hardware (Guangzhou) Co., Ltd.

THE COUNCIL OF THE EUROPEAN UNION,

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 9(4) thereof,

Having regard to the proposal submitted by the European Commission after having consulted the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) Following an anti-dumping investigation concerning imports of ironing boards originating in the People's Republic of China ('PRC' or 'the country concerned') and Ukraine ('the first investigation'), anti-dumping measures were imposed by Council Regulation (EC) No 452/2007 of 23 April 2007 [2]. That Regulation entered into force on 27 April 2007.

(2) It is recalled that the rate of the definitive anti-dumping duty imposed on ironing boards produced by the Chinese exporting producer Since Hardware (Guangzhou) Co., Ltd. ('Since Hardware') was 0 % while it ranged between 18,1 % and 38,1 % for other Chinese exporting producers. Following a subsequent interim review. these duty rates were increased to up to 42,3 % pursuant to Implementing Regulation of the Council (EU) No 270/2010 of 29 March 2010 amending Regulation (EC) No 452/2007 [3].

2. Initiation of the current proceeding

(3) On 2 October 2009, the Commission announced, by a notice published in the *Official Journal of the European Union* [4] ('notice of initiation'), the initiation of an anti-dumping investigation pursuant to Article 5 of the basic Regulation concerning imports into the Union of ironing boards originating in the PRC, limited to Since Hardware. In the notice of initiation, the Commission also announced the initiation of a review pursuant to Article 2(3) of Regulation (EC) No 1515/2001 ('review pursuant to Regulation (EC) No 1515/2001') in order to allow for any necessary amendment of Regulation (EC) No 452/2007 in the light of the WTO Appellate Body report entitled 'Mexico — Definitive Anti-dumping Measures on Beef and Rice' (AB-2005-6) [5] (the 'WTO Appellate Body report').

(4) The anti-dumping investigation was initiated following a complaint lodged on 20 August 2009 by three Union producers, Colombo New Scal S.p.A., Pirola S.p.A. and Vale Mill (Rochdale) Ltd. ('the complainants'), representing a major proportion of the total Union production of ironing boards.

(5) It is recalled that a new anti-dumping investigation based on Article 5 of the basic Regulation was initiated against Since Hardware rather than an interim review pursuant to Article 11(3) of the basic Regulation, in the light of the WTO Appellate Body report. This report stipulates in paragraphs 305 and 306 that an exporting producer not found to be dumping in an original investigation has to be excluded from the scope of the definitive measure imposed as a result of such investigation and cannot be made subject to administrative and changed circumstances reviews.

(6) Since Hardware submitted that the Commission could not initiate a new anti-dumping investigation based on Article 5 of the basic Regulation against one company as it thereby violated the general principle enshrined in GATT Article VI and the WTO Anti-dumping Agreement (WTO ADA) as well as that in the basic Regulation that anti-dumping proceedings are directed against imports of countries and not of individual companies. In particular, Since Hardware claimed that the Commission had breached Articles 9(3) and 11(6) of the basic Regulation by initiating an anti-dumping investigation based on Article 5 instead of Article 11(3) of the basic Regulation. Since Hardware also argued that in the absence of a direct effect of WTO rules in the Union legal order, the Commission could not decide to ignore the above provisions of the basic Regulation in order to implement a WTO ruling automatically, without prior modification by the Council of the basic Regulation.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ L 109, 26.4.2007, p. 12.
[3] OJ L 84, 31.3.2010, p. 13.
[4] OJ C 237, 2.10.2009, p. 5.
[5] WT/DS295/AB/R, 29 November 2005.

(7) In this respect, it is acknowledged that anti-dumping proceedings are normally initiated against imports from a country and not from individual companies. However, the present case is an exception to the above rule in view of the following special circumstances. The WTO Appellate Body report provides in paragraphs 216 to 218 that Article 5.8 of the WTO ADA requires an investigative authority to terminate the investigation in respect of an exporter found not to have a margin above *de minimis* in an original investigation and, in paragraph 305, that the exporter consequently must be excluded from definitive anti-dumping measures and cannot be subject to administrative and changed circumstances reviews. It is true that the lack of direct effect of WTO rules means that the legality of measures adopted by the Union Institutions (the 'Institutions') cannot normally be reviewed in the light of the WTO agreements. However, this does not mean, in this particular case, that the Institutions must ignore WTO rules, and in particular the WTO Appellate Body report. Regulation (EC) No 1515/2001 was adopted specifically to allow the Institutions to bring a measure taken under the basic Regulation into conformity with the rulings contained in a report adopted by the Dispute Settlement Body as mentioned in recital (4) of Regulation (EC) No 1515/2001 without a prior amendment of the basic Regulation. Regulation (EC) No 1515/2001 thus, in particular, allows the Institutions to formally exclude exporters which have been found, during an earlier original investigation, not to be dumping, from the scope of the Regulation which was adopted at the end of that investigation. In order to do so, the review of Regulation (EC) No 452/2007 was opened pursuant to Regulation (EC) No 1515/2001.

(8) Moreover, none of the provisions of the basic Regulation exclude the opening of a new anti-dumping investigation based on Article 5 of the basic Regulation against one company. Also, Union legislation must, so far as possible, be interpreted in a manner that is consistent with international law, in particular where the provisions at issue are intended to give effect to an international agreement concluded by the Union. Since the WTO ADA on the one hand allows WTO members to impose duties to counteract harmful dumping, but on the other hand has been interpreted by the Appellate Body in the WTO Appellate Body report as not allowing reviews of companies found not to be dumping during an original investigation, the basic Regulation must therefore be interpreted to allow the Union to open an investigation based on Article 5 of the basic Regulation in a case like the present one.

(9) By Council Implementing Regulation (EU) No 1241/2010 of 20 December 2010 (*) Since Hardware was excluded from the scope of Regulation (EC) No 452/2007.

(*) See page 8 of this Official Journal.

(10) Therefore, in view of the special circumstances of the case, the initiation of an anti-dumping investigation based on Article 5 of the basic Regulation against Since Hardware is lawful.

3. **Parties concerned**

(11) The Commission officially advised Since Hardware, the importers and Union producers known to be concerned, the representatives of the country concerned, and producers in potential analogue countries of the initiation of the proceeding. The interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(12) In order to allow Since Hardware to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if it so wished, the Commission sent a claim form to the exporting producer. The Commission also sent a questionnaire to Since Hardware. The exporting producer submitted a filled-in MET/IT claim and replied to the questionnaire.

(13) In view of the high number of Union producers, sampling was envisaged in the notice of initiation for the determination of contribution to injury, in accordance with Article 17 of the basic Regulation. Five Union producers came forward and provided the requested information for sampling within the deadlines set out in the notice of initiation.

(14) From the above five Union producers, only the three complainants formed part of the Union industry in the first investigation. Given the specificities of this case, as set out in recitals (57) to (60), it was decided to send questionnaires only to these three Union producers while the other two Union producers were requested to submit any additional comments which might assist the Commission in ascertaining whether imports of the products manufactured by Since Hardware have caused injury to the Union industry. All three complainant Union producers submitted questionnaire replies. The other two Union producers did not submit further comments on the proceeding.

(15) The Commission also sent questionnaires to all known producers in potential analogue countries and to all importers known to be concerned and not related to Since Hardware. As concerns unrelated importers in the Union, there were initially two companies cooperating in the investigation. However, one of them was not in the position to continue cooperation. The other importer was the same company as one of the non-complainant Union producers. It submitted a reply to the importers' questionnaire. In addition, one trade association also cooperated in the investigation and submitted comments.

(16) The Commission sought and verified all the information it deemed necessary for the purpose of assessing MET and for the determination of dumping, contribution to injury and Union interest. A verification visit was carried out at the premises of Since Hardware in Guangzhou in the PRC and of Vale Mill (Rochdale) Ltd. in the UK.

(17) The Commission informed interested parties that given the complex legal background linked to the present investigation (see recital (3) *et seq*. above), it considered it more appropriate not to impose provisional measures in this case but to continue the investigation. No objection was raised by any party.

(18) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and were given an opportunity to comment. The comments submitted by the parties were considered and, when appropriate, the findings have been modified accordingly.

4. **Investigation period**

(19) The investigation of dumping and price undercutting covered the period from 1 July 2008 to 30 June 2009 (the 'investigation period' or 'IP'). The examination of import volumes of Since Hardware products relevant for the assessment of the contribution to injury covered the period from 1 January 2006 to the end of the IP (the 'period considered'). However, because of the specificities of this case – namely that another original investigation concerning the same product and third country took place only some years ago, and because the duties resulting from that investigation are still in place - in the injury analysis reference to the investigation period of that earlier investigation will also be made ('IP of the first investigation').

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(20) The product concerned is ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and essential parts thereof, i.e. the legs, the top and the iron rest originating in the PRC and produced by Since Hardware (Guangzhou) Co., Ltd. ('the product concerned'), currently falling within CN codes ex 3924 90 00, ex 4421 90 98, ex 7323 93 90, ex 7323 99 91, ex 7323 99 99, ex 8516 79 70 and ex 8516 90 00.

(21) The investigation showed that there are different types of ironing boards and their essential parts depend mainly on their construction and size, their construction material and accessories. However, all different types have the same basic physical characteristics and uses.

(22) The exporting producer claimed that the essential parts of ironing boards should not be covered by the investigation because ironing boards and their essential parts (i.e. legs, tops and iron rests) do not constitute a single product and therefore could not be part of the same product concerned in one investigation. This argument was not confirmed by the investigation. It was found in the present investigation that essential parts of ironing boards should be covered since legs, tops and iron rests determine the characteristics of the finished product and cannot have an end-use other than being incorporated into the final product (i.e. the ironing board) and, as such, they are not a distinct product. This is in line with a number of other investigations in which finished products and key components were considered as one single product. Consequently, similarly to the first investigation, all existing types of ironing boards and their essential parts thereof are considered as one product for the purposes of this investigation.

2. **Like product**

(23) No differences were found between the product concerned and the ironing boards and the essential parts thereof produced by the complainants and other cooperating Union producers and sold on the Union market which finally also served as an analogue country. They both share the same physical characteristics and uses and are interchangeable one with the other.

(24) Consequently, ironing boards and the essential parts thereof produced and sold in the Union and the product concerned are considered like products within the meaning of Article 1(4) of the basic Regulation.

C. **DUMPING**

1. **Market Economy Treatment (MET)**

(25) 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 Article 2 of the basic Regulation for those producers which were found to meet the criteria laid down in Article 2(7)(c) thereof, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in a summarised form below:

— business decisions are made in response to market signals, and without significant State interference; costs of major inputs substantially reflect market values;

— firms have one clear set of basic accounting records which are independently audited in line with International Accounting Standards ('IAS') 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;

— currency exchanges are carried out at market rates.

(26) Since Hardware requested MET pursuant to Article 2(7)(b) of the basic Regulation and was invited to complete a MET claim form.

(27) The investigation established that Since Hardware did not meet the MET criterion referred to in the first indent of Article 2(7)(c) (criterion 1) of the basic Regulation as regards costs of major inputs. Moreover, the investigation established that Since Hardware did not meet the MET criterion referred to in the second indent of Article 2(7)(c) (criterion 2) of the basic Regulation. The major MET findings are set out below.

(28) As regards criterion 1, i.e. that business decisions are made in response to market signals, without significant State interference, and costs reflect market values, it is noted that Since Hardware claimed to have started to purchase its main raw materials (steel products) on the domestic Chinese market, unlike in the investigation period in the first investigation when Since Hardware imported these raw materials. Therefore, it was examined if the Chinese domestic market for the main raw materials could be considered as reflecting market values.

(29) It was established that after the investigation period in the first investigation, i.e. after 2005, export restrictions were imposed by the State on several steel products, including the main raw materials for the production of ironing boards, i.e. steel plate, steel pipes and steel wire. It is noted that the cost of these raw materials represent a significant part of the total raw material cost of the product concerned. The imposition of export taxes decreased the incentive to export and thereby increased the volumes available domestically, leading in turn to lower prices. However, in June 2009 (at the end of the IP), the Chinese policy towards the steel sector appears to have changed again: the export tax was abolished and a new VAT rebate on steel products was introduced which creates a more favourable environment for exports. The new policy which no longer discourages exports coincides with the drop in steel prices on other world markets and with the alignment of Chinese domestic prices with international steel prices, i.e. a situation of no danger of increased prices in the domestic market. These repeated changes in the steel export tax/VAT regime over time apparently took place in order to regulate the Chinese domestic steel market and prices. Thus, the State continued to exercise an important influence on the domestic steel market and, thus, the steel prices in the PRC for these particular raw materials do not freely follow world market trends.

(30) Indeed, many studies and reports as well as publicly available accounts of a number of steel producers [1] confirm that the Chinese State is actively supporting the development of the steel sector in the PRC.

(31) As a consequence, domestic steel prices in the PRC were, during the first half of the investigation period, far below prices on other sizeable world markets, notably steel prices in North America and North Europe [2], and these price differences cannot be explained by any competitive advantage in the production of steel. In the second half of the IP, world steel prices dropped significantly in Europe and in North America while Chinese domestic prices dropped to a much lesser extent. Thus the price difference between Chinese and international steel prices practically disappeared by the end of the IP. However, the measures taken by the Chinese government to regulate the Chinese steel market have essentially lead to a situation where the raw material prices continue to be the result of State intervention that has a direct influence on company decisions when acquiring raw materials.

(32) Given that Since Hardware purchased its raw materials during this IP on the Chinese domestic market, it was benefiting from these artificially low and distorted prices of steel during the IP.

[1] For instance 'The State-Business Nexus in China's Steel Industry — Chinese Market Distortions in Domestic and International Perspective' by Prof. Dr. Markus Taube & Dr. Christian Schmidkonz of THINK!DESK China Research & Consulting dated 25 February 2009; the study prepared by the EU Chamber of Commerce in China with Roland Berger focusing on overcapacities which are the result inter alia of the state intervention dated November 2009 (http://www.euccc.com.cn/view/static/?sid=6388); 'Money for Metal: A detailed Examination of Chinese Government Subsidies to its Steel Industry' by Wiley Rein LLP, July 2007; 'China Government Subsidies Survey' by Anne Stevenson-Yang, February 2007; 'Shedding Light on Energy Subsidies in China: An Analysis of China's Steel Industry from 2000-2007' by Usha C.V. Haley; 'China's Specialty Steel Subsidies: Massive, Pervasive and Illegal' by the Specialty Steel Industry of North America; 'The China Syndrome: How Subsidies and Government Intervention Created the World's Largest Steel Industry' by Wiley Rein & Fielding LLP, July 2006.

[2] Source: Steel Business Briefing.

(33) It was thus concluded that major inputs of Since Hardware do not substantially reflect market values. Consequently, it was concluded that Since Hardware has not shown that it fulfils criterion 1 set out in Article 2(7)(c) of the basic Regulation and, thus, could not be granted MET.

(34) Moreover, the company could not demonstrate that it has one clear set of basic accounting records which are independently audited in line with IAS and applied for all purposes, as the accounts, and in particular the capital verification report, were silent on an important transaction that happened during the IP. Moreover, the auditors did not comment on this important transaction. In addition, a booking of a significant amount has been found which did not respect the principle of fair representation of accounts under IAS. The auditor did not comment on this either. It was thus concluded that the company also failed to demonstrate that it fulfils criterion 2 set out in Article 2(7)(c) of the basic Regulation.

(35) Since Hardware, the authorities of the country concerned and the Union industry were given an opportunity to comment on the above findings. Comments were received from Since Hardware and the Union industry.

(36) Since Hardware put forward three main arguments on the MET finding. Firstly, it stated that the MET decision was made after the Commission had requested and obtained the company's domestic sales and costs which would have been in breach of the second subparagraph of Article 2(7)(c) of the basic Regulation. Second, although Since Hardware did not disagree with the evolution of steel prices as such, it claimed that the Chinese raw material prices were still in line with prices in other countries and that the price paid by Since Hardware on the Chinese market was above the prices of several steel markets in market-economy countries world-wide. In this context, the company also questioned the relevance of the North European and North American steel market prices to which a comparison was made. Since Hardware stated that prices of other international markets such as the Turkish or Ukrainian export prices would also be available, and that these were lower than the domestic prices in the PRC. Third, Since Hardware argued that MET could not be denied to a company active in one industry (ironing boards) for factors relating exclusively to another industry (steel) and that the Commission could not offset subsidies in the upstream market through the rejection of a MET claim in the downstream market. Moreover, Since Hardware claimed that it was an unreasonable burden of proof to require a small ironing boards company to provide evidence that the Chinese steel industry is not subsidised.

(37) Concerning the first argument of Since Hardware, it is noted that pursuant to Article 2(7)(c) of the basic Regulation, a determination whether Since Hardware meets the five relevant criteria shall be made and this determination shall remain in force throughout the investigation. As the present investigation is limited to one exporting producer, the Commission verified the MET claim and the anti-dumping questionnaire reply at the same time, in the framework of the same on-spot investigation. The MET claim was investigated on its own merits and irrespective of the effects which it might have on the calculation of the dumping margin. In fact, detailed dumping calculations for Since Hardware could not be made before the MET determination in the absence of data from an appropriate market economy country. Hence there was no breach of Article 2(7)(c) of the basic Regulation.

(38) Concerning the second claim of Since Hardware, the investigation revealed that although the price difference diminished in the second half of the IP and was practically eliminated at the end of the IP, it is maintained that this alignment of Chinese prices to international market prices was also the result of State intervention. Indeed, in 2009, when prices on international steel markets had plummeted due to the financial and economic crises, the State abolished the export taxes previously imposed, thereby allowing for an alignment of domestic prices with international prices without the danger of a significant price increase for these important raw materials on the domestic market. This shows that the market for the raw materials necessary to produce the product concerned continued to be the subject of State intervention also in the second half of the IP.

(39) It is noted that the additional price information submitted by Since Hardware supported the finding that the main raw materials for the production of ironing boards in the first half of the IP were on average significantly cheaper on the Chinese domestic market than on other sizeable world markets. A comparison was made between Chinese domestic steel prices and domestic prices on other markets which are comparable to the Chinese market in terms of volume (EU, USA and Canada) as they have a high consumption of steel and there are several active producers. Other markets suggested by Since Hardware such as Turkey and Ukraine (domestic and export markets) have not been found to be representative in terms of size and/or number of producers of these particular raw materials and thus not comparable to the Chinese domestic market.

(40) It is also recalled that the basic Regulation puts the burden of proof on the company that claims MET to demonstrate that it fulfils the relevant criteria. As the Commission established a number of elements pointing to the cost of major inputs not reflecting market values, it is consequently for the company to come up with elements that would refute this.

(41) Furthermore, the basic Regulation in Article 2(7)(c) provides explicitly for the possibility to examine whether decisions of firms regarding, inter alia, inputs are made in response to market signals reflecting supply and demand and without significant State interference and whether costs of major inputs substantially reflect market values. Consequently, if a company does not fulfil these conditions, as outlined above, MET can be refused. It is also noted that Since Hardware used to import its raw materials during the first investigation but switched to Chinese sourcing due to lower prices on the Chinese market.

(42) With regard to the identified accounting issues, Since Hardware claimed that they did not relate to Since Hardware's accounts and, in any event, did not mean that the company did not fully comply with international accounting standards. Since Hardware also claimed that the accounting mistake identified was immaterial.

(43) The fact that the Chinese companies may not be subject under their domestic law to comply with certain accounting standards has no bearing on whether their accounts may be assessed in the light of those standards for the purpose of a MET determination. The fair presentation of financial statements is a basic IAS and it is up to the company to show that any infringement of those standards does not constitute a breach of the second criterion of Article 2(7)(c) of the basic Regulation. This has not been done either for the transaction in question or the wrong booking. In any event, the latter cannot be considered as immaterial as represents a sizeable percentage of total exports to the Union in the investigation period.

(44) To conclude, none of the arguments raised by Since Hardware were such as to lead to a different assessment of the findings. On the basis of the above, the findings and the conclusion that MET should not be granted to Since Hardware were confirmed. It is thus definitively concluded that MET should not be granted to Since Hardware.

2. **Individual treatment (IT)**

(45) Pursuant to Article 2(7) of the basic Regulation, a country-wide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria for individual treatment set out in Article 9(5) of the basic Regulation. Briefly, and for ease of reference only, these criteria are set out below:

— in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;

— export prices and quantities, and conditions and terms of sale are freely determined;

— the majority of the shares belong to private persons; State officials appearing on the board of directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;

— exchange rate conversions are carried out at the market rate; and

— State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

(46) Since Hardware, as well as requesting MET, also claimed IT in the event of it not being granted MET.

(47) The investigation showed that Since Hardware met all the above criteria and it is concluded that IT should be granted to Since Hardware.

3. **Normal value**

(48) According to Article 2(7) of the basic Regulation, in case of imports from non-market-economy countries and to the extent that MET could not be granted, for countries specified in Article 2(7)(b) of the basic Regulation, normal value has to be established on the basis of the price or constructed value in a market economy third country (analogue country).

(49) In the notice of initiation, the Commission indicated its intention to use the United States of America ('USA') as an appropriate analogue country for the purpose of establishing normal value for the PRC, but no producer from the USA cooperated in the investigation. Subsequently, Turkish and Ukrainian companies were also approached but there was no cooperation from them either.

(50) As no third country producer cooperated, Union producers were approached on the basis of Article 2(7)(a) of the basic Regulation and one of them cooperated.

(51) No comments on using the information obtained from a Union producer for establishment of normal value were received from Since Hardware. Thus, the normal value was established pursuant to Article 2(7)(a) of the basic Regulation on the basis of verified information received from the cooperating Union producer.

(52) The domestic sales of the Union producer of the like product were found to be representative in terms of volume when compared to the product concerned exported to the Union by Since Hardware.

(53) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for Since Hardware was established on the basis of verified information received from the sole cooperating Union producer, i.e. on the basis of prices paid or payable on the Union market for comparable product types, where these were found to be made in the ordinary course of trade, or on constructed values, where no domestic sales in the ordinary course of trade for comparable product types were found, i.e. on the basis of the cost of manufacturing of ironing boards manufactured by the Union producer plus a reasonable amount for selling, general and administrative (SG&A) expenses and for profit. The profit margin used is in line with the one used in the first investigation.

4. **Export price**

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

5. **Comparison**

(55) The normal value and export price were compared on an ex-works basis. In order to ensure a fair comparison between normal value and export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. On this basis, allowances for transport costs, insurance, handling charges, credit costs and indirect taxes were made where applicable and justified.

6. **Dumping margin**

(56) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. This comparison showed the existence of dumping.

(57) The dumping margin of Since Hardware as a percentage of the net, free-at-Union-frontier price was found to be 51,7 %.

D. **INJURY**

1. **General**

1.1. *Specificities of this investigation*

(58) The examination of material injury suffered by the Union industry is normally based on all dumped imports originating in one or more exporting countries, in accordance with Article 3(2) of the basic Regulation.

(59) However, in this case, a full analysis of injury in respect of all imports of ironing boards originating, *inter alia*, in the PRC was already carried out in the framework of the first investigation. Indeed, in that investigation the Commission established that dumped imports of ironing boards originating, *inter alia*, in the PRC had caused material injury to the Union industry. These findings, made in accordance with the provisions of Article 3 of the basic Regulation, were based on an assessment of the effects of all imports originating in the PRC and Ukraine, with the sole exclusion of imports of ironing boards produced by Since Hardware which had been found to be sold at non-dumped prices.

(60) As a result, during the IP, anti-dumping duties were applicable to all imports from those countries (only Since Hardware was subject to a zero duty). As the Union industry was already protected against the harmful effects of these imports during the IP, it was impossible to perform a normal full injury analysis. Therefore, a specific approach was developed, adapted to the specificities of this investigation, in which the Institutions focused on particular injury indicators. The information requested from the Union industry focused on whether Since Hardware had been undercutting its prices and on what was the profitability of those prices. Furthermore, the Union industry was invited to provide any other information that, in its view, indicated that Since Hardware's exports to the Union had caused it injury.

(61) In this context, the Commission examined i) the development of dumped imports of ironing boards produced by Since Hardware; ii) whether those imports had been made at prices undercutting the sales prices of the Union industry and what was the profitability of the Union industry prices; and iii) any information provided by the Union industry indicating that Since Hardware's exports to the Union had caused it injury, e.g. concerning the Union industry's losses of customers and orders to Since Hardware and the profitability of their Union sales during the IP.

1.2. *Definition of the Union industry*

(62) The complaint was lodged by three Union producers representing a major proportion of the total known Union production of ironing boards, i.e. in this case approximately 40 % of the estimated Union production. None of the other Union producers opposed the initiation of the present proceeding.

(63) As stated in recital (11), from the five producers which replied to the sampling questions only the three complainants formed part of the Union industry in the first investigation. As stated above, in light of the specificities of this case, questionnaires were sent only to the three selected Union producers that also formed part of the Union industry in the first investigation.

1.3. *Union consumption*

(64) Based on information provided by the Union industry, it appears that the consumption of ironing boards in the Union has remained substantially stable since the publication of Regulation (EC) No 452/2007, having only slightly increased in proportion with the population increase of the Union due to the latest Union enlargement in 2007. The estimated Union consumption thus amounted to about 8,5 to 9 million units during the period considered.

1.4. *Union production*

(65) Ironing board producers can be found in several Member States including Belgium, the Czech Republic, France, Germany, Italy, Poland, Portugal, the Netherlands, Spain and the United Kingdom. The total volume of annual Union production of ironing boards can be estimated at above 5 million units.

2. **Imports from Since Hardware**

2.1. *Status of imports*

(66) As described in recitals (22) to (54), this investigation has shown that imports from Since Hardware have been dumped on the Union market.

2.2. *Volume of dumped imports*

(67) Over the period considered, Since Hardware's exports to the Union increased strongly, by 64 % [1]. On the other hand, the imports of other Chinese and Ukrainian producers have constantly decreased following the imposition of provisional duties in 2006 (confidential data based on Member States' reports in accordance with Article 14(6) of the basic Regulation):

Volume of imports of ironing boards produced by Since Hardware

Indices for confidentiality reasons	2006	2007	2008	IP
Since Hardware	100	119	176	164
PRC (excluding Since Hardware) and Ukraine	100	94	87	83

2.3. *Market share of dumped imports*

(68) Given that Union consumption has remained substantially stable over the period considered except for the slight increase between 2006 and 2007, as mentioned in recital (61), the market share of Since Hardware has developed in line with its import volumes shown. It should be noted that in 2006, the Union market share of Since Hardware represented about one fifth of the total market share of the other Chinese and Ukrainian producers, whereas by the IP, Since Hardware's market share amounted to almost half of the total market share of the other Chinese and Ukrainian producers. Both the substantial increase of Since Hardware's import volume and its market share can be explained by the fact that it has been the only Chinese producer that has had a zero anti-dumping duty and therefore its market opportunities have actually improved since the imposition of provisional duties in 2006. This can also be confirmed by the pronounced opposite, positive development of their import volumes as compared to the deteriorating trend of the import volumes of the other Chinese and Ukrainian producers. Indeed when looking at the period considered, the following converse evolution of market shares has been found:

Market share of imports of ironing boards produced by Since Hardware

Indices for confidentiality reasons	2006	2007	2008	IP
Since Hardware	100	113	166	155
PRC (excluding Since Hardware) and Ukraine	100	89	82	79

(69) It is clear from the above tables that Since Hardware has managed to significantly increase its import volumes and market share [2].

[1] Although this finding is already sufficient – together with the other findings relating to the period considered – to find injury, it is noted that it is confirmed by the fact that when compared to the IP of the first investigation, the volume of imports of ironing boards produced by Since Hardware - which was already significant during the aforementioned IP - has approximately doubled by the current IP.

[2] Although also this finding is already sufficient – together with the other findings relating to the period considered – to find injury, it is noted that it is confirmed by the fact that when compared to the IP of the first investigation, the market share of Since Hardware grew by 89 % by the current IP.

(70) In addition, the Union industry has claimed to have lost numerous client orders to Since Hardware in the past years. Indeed clear indications have been found that certain important customers of the Union industry have changed suppliers, sourcing more products from Since Hardware and fewer from the Union industry than before.

(71) For instance, the data gathered by the Commission in the first investigation show that a Union producer sold a significant number of pieces to a Union customer in the IP of the first investigation (2005), whereas in the current investigation it has stated that it sold considerably less (between 10 % and 30 % of that quantity) to the same customer in the current IP. By contrast, Since Hardware sold a small number of pieces to this Union customer in the IP of the first investigation, but sold much more (between 300 % and 500 % of that quantity) to that customer during the IP of the current investigation.

(72) Furthermore, the data gathered by the Commission in the first investigation show that the sales of an Union producer to another Union customer in the IP of the first investigation dropped considerably (between 30 % and 50 %) in the current IP. Again by contrast, whereas Since Hardware sold nothing to this customer in the IP of the first investigation, it sold a substantial quantity in the current IP. That quantity is between 60 % and 80 % of the quantity by which the Union producer's sales to that customer went down between the IP of the first investigation and the current IP.

2.4. *Undercutting*

(73) For the purpose of analysing price undercutting, the import prices of Since Hardware were compared to the Union industry's prices, on the basis of weighted averages for comparable product types during the IP. The Union industry's prices were adjusted to an ex-works level, and compared to CIF Union frontier import prices, plus customs duties where applicable. This price comparison was made for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts.

(74) The average undercutting margin found for Since Hardware, expressed as a percentage of the Union industry's price, is 16,1 %.

(75) It is noted that the Union industry's prices were found to be overall loss-making in the IP.

3. **Conclusion on injury**

(76) The above-mentioned facts show that the Union industry suffered injury due to the dumped quantities sold by Since Hardware on the Union market which might otherwise have been supplied by the Union industry.

E. **CAUSATION**

(77) As shown above, Since Hardware offered its products, during the IP, at heavily dumped prices which strongly undercut the Union industry's prices. As a result, it succeeded to sell quantities during the IP which were much higher than, for instance, in 2005 or 2006. Since Hardware thus caused the injury which was found above.

(78) One importer stated that the EUR/USD exchange rate was the cause of the strong presence of Since Hardware ironing boards on the Union market rather than dumping practices. However, if this was true, all imports invoiced in USD would have been advantaged in their competition with goods invoiced in euro. Instead, as set out in recitals (64) and (65), imports from other Chinese and Ukrainian producers, also selling in USD, have constantly decreased between 2006 and the IP i.e. in the period during which the EUR/USD exchange rates have every so often changed, in contrast with the significant increase of imports from Since Hardware throughout the same period. Therefore this claim was rejected.

(79) No further comments were received. It is therefore concluded that no factor appears to exist that could break the causal link between the dumped imports from Since Hardware and their contribution to injury which was found above.

F. **UNION INTEREST**

(80) As mentioned in recital (12), one trade association cooperated in the investigation. In addition, the cooperating Union producers and importers were also asked to comment on whether in their view the imposition of a possible anti-dumping duty on Since Hardware would change the conclusion regarding Union interest reached in recitals (51) to (62) of Regulation (EC) No 452/2007.

(81) According to the Union producers, the imposition of an anti-dumping duty on Since Hardware would not change the conclusions on Union interest as established by Regulation (EC) No 452/2007.

(82) The cooperating trade association stated that imposing an anti-dumping duty on Since Hardware would normally have a negative impact on the profitability of the importers and retailers or distributors concerned. However, according to the trade association, their

members – including large retail stores – also confirmed that the product under investigation is one upon which price increases such as those resulting from anti-dumping measures can be passed on without impacting substantially on consumers' perception. Therefore, no concrete element was submitted which would change the conclusions on Union interest as established by the above two Regulations.

(83) In view of the above it is concluded that the imposition of an anti-dumping duty on Since Hardware would leave the conclusions regarding Union interest reached in recitals (51) to(62) of Regulation (EC) No 452/2007 substantially unaffected. No reasons were put forward as to why that analysis would not apply, *mutatis mutandis*, to the imposition of an anti-dumping duty on Since Hardware.

G. **COMMENTS FROM INTERESTED PARTIES FOLLOWING DISCLOSURE**

(84) Written and oral representations were made following final disclosure of the findings from the Union industry and from Since Hardware. The Union industry agrees with the findings disclosed. Since Hardware's comments were examined, however, none of them were such as to alter the above conclusions. The main arguments raised by Since Hardware were as follows.

(85) Since Hardware reiterated its earlier claims concerning the alleged illegality of initiating an original investigation against one company and concerning the allegedly incorrect MET findings. These claims have been described and rebutted in recitals (4) to (10) and (33) to (41). Regarding some detailed points made by Since Hardware on the first point (a number of which were made during a hearing) the following can be observed:

(86) i) Since Hardware argued that the last sentence of Article 9(3) of the basic Regulation is not a provision implementing any provision of the WTO AD Agreement, and as such cannot be affected by any findings made by a WTO Panel. However, Article 9(3) does not *oblige* the Institutions to use a review to investigate claims of dumping against companies for whom, during an original investigation, *de minimis* or no dumping was found. It merely foresees that these 'may' be investigated in any subsequent review carried out pursuant to Article 11of the basic Regulation. It is clear, however, that after the adoption of that provision, the WTO Appellate Body report, has established that doing so would violate the WTO ADA. Therefore, it is possible for and incumbent upon [1] the Institutions to use the flexibility that the word 'may' provides, and not to use a review to investigate such claims. The same conclusion has already been drawn in at least one earlier investigation [2].

(87) ii) Since Hardware repeated that in its view an original investigation against one company would not be possible under the basic Regulation. On top of what has been said on this in recitals (5) and (8) above, the following can be noted. It is true that many of the provisions quoted by Since Hardware are phrased in a manner which reflects a normal situation, namely an original investigation against a country as a whole. However, Since Hardware has not been able to point to any provision which prohibits an original investigation against only one company in the specific circumstances of this case.

(88) iii) Since Hardware argued that Regulation (EC) No 1515/2001 permits the bringing into conformity with WTO dispute settlement rulings of existing anti-dumping measures, but nothing else. This, firstly, means, that Since Hardware does not object to Article 1 of Regulation (EC) No 1515/2001, which formally excludes Since Hardware from the scope of Regulation (EC) No 452/2007 in a manner which makes clear that on the basis of that Regulation no duty will apply to its imports. Regarding Since Hardware's allegation that Regulation (EC) No 1515/2001 permits nothing else, it should however be emphasised that this Regulation is based on the basic Regulation. In particular, it is based on the fact, as explained above, that nothing in that Regulation prohibits conducting an original investigation against only one company in the specific circumstances of this case. As suggested by Since Hardware, certain language in the disclosure which may have been confusing on this point has been removed.

(89) iv) Since Hardware claimed to be discriminated against, since in its view the findings in the WTO Appellate Body report are equally applicable to companies that received a zero duty in a review investigation. The most important point that can be made here is that the WTO Appellate Body report simply does not concern that situation. Those companies are therefore in a different situation.

(90) v) Since Hardware argued that the Commission was conducting a *de facto* review of its zero duty. This view cannot be accepted. Firstly, contrary to what Since Hardware alleges, the injury analysis conducted above is not limited to confirming that during the first investigation injury was found. On the contrary, it focuses on

[1] In light of the obligation to interpret Union law as much as possible in conformity with the Union's international obligations.

[2] Steel welded tubes from *inter alia* Turkey, concerning the company Noksel, OJ L 343, 19.12.2008, recital (143).

the actual detrimental effects of Since Hardware's behaviour after that investigation on the Union industry, whilst taking into account that a normal injury analysis is not possible in this case. Secondly, the fact that the duty will expire earlier than after the normal five years does not mean that the investigation is a *de facto* review. In quite a number of investigations, for various reasons, durations of less than five years have been adopted. In this case, the Institutions consider that, whereas on the one hand Since Hardware should not derive any benefits from having started dumping after the first investigation, it should, on the other hand, not suffer any unjustified negative effects. For instance, should, no expiry review be requested for Regulation (EC) No 452/2007, it would appear discriminatory to continue the duty on Since Hardware after the expiry of that Regulation.

(91) vi) Since Hardware argued that its rights are infringed by the choice for an original investigation, because if it had been investigated by means of a review, Article 11(9) of the basic Regulation would apply (there is an obligation, in a review, to use the same methodology as that used in the original investigation). However, Since Hardware has not pointed to any issue which would indicate that in this investigation the Institutions used a methodology which was different to that used in the first investigation Secondly, even if Since Hardware could point to the use of a different methodology, this would be a result of the fact that the WTO Appellate Body report leads to the conclusion that it was incumbent on the Institutions to not investigate the claims against Since Hardware by means of a review.

(92) vii) Finally, Since Hardware suggested that the Institutions should have investigated the claims against it by means of a review, and then, in case a duty were imposed upon it and the PRC would successfully challenge this in WTO dispute settlement, remove that duty but only prospectively. However, it would clearly be inappropriate to knowingly violate WTO rules, whereas, like in this case, a method of investigating the case can be found which is in line with the basic Regulation, interpreted in light of WTO rules. Moreover, without prejudice to the validity of such claims, it is clear that such a course of action could lead to damage claims by the companies concerned against the Institutions.

(93) Regarding the MET findings, Since Hardware argued that it had an excessive burden to prove that it complied with the criteria for MET, in particular as far as State interference in the prices of its main raw materials were concerned. However, MET is an exception to the general rule and any derogation from, or exception to, a general rule must be interpreted strictly. MET can only be granted if it is shown that market economy conditions prevail for the exporting producer in question. As already mentioned in recital (37), the burden of proof lies with the exporting producer wishing to avail itself of market economy status. The claim must contain sufficient evidence. There is no obligation for the Commission to prove that the exporting producer does not satisfy the MET criteria. The Commission has to assess whether the evidence supplied by the exporting producer is sufficient to show that the MET criteria are fulfilled. As the Commission established a number of elements pointing to significant State interference concerning the cost of major inputs, it is consequently for the company to demonstrate that this State interference does not exist and/or that it did not affect the company's decisions (criterion 1 of Article 2(7)(c) of the basic Regulation). In any event, as set out in recitals (31) and (40), Since Hardware has also failed to show that it fulfils criterion 2 of Article 2(7)(c) of the basic Regulation concerning accounting for which it has claimed an excessive burden to prove.

(94) Further to the above, Since Hardware made two new claims in its comments on the final disclosure document. First, Since Hardware claimed that the normal value should have been adjusted in accordance with Article 2(10)(k) of the basic Regulation because the raw materials (steel products) in the PRC are lower-priced than in the analogue country market. This claim cannot be accepted. Indeed, it is recalled that Since Hardware was denied MET. Consequently, the normal value is established in accordance with Article 2(7)(a) of the basic Regulation on the basis of the price or constructed value in a market economy third country. This necessarily implies that prices and costs in the PRC are considered to be unreliable for the establishment of normal value and may not be used to determine or otherwise adjust the latter. It is further noted that an adjustment under Article 2(10)(k) of the basic Regulation as claimed by Since Hardware cannot be made if it is not shown that customers would consistently pay different prices for the like product on the domestic market, in this case in the analogue country market, because of a difference in raw material prices. Since Hardware has not demonstrated any such price difference.

(95) Second, Since Hardware has claimed that the Commission did not carry out a sufficiently detailed injury analysis in the present investigation. It also claimed that in line with Article 3(3) of the basic Regulation, the Commission should have investigated all injury indicators. It should be noted however, that the Commission has found (see in particular part D) that dumped imports from Since Hardware substantially increased over the period considered while their sales prices were found to be largely undercutting those of the Union industry. This finding is based on an objective examination of positive evidence. It thus complies with Article 3 of the basic Regulation.

(96) It is true that not all of the factors set out in Article 3(5) of the basic Regulation have been examined. However, it should be recalled that in a situation where Since Hardware was not yet found to be dumping, namely during the first investigation, it was already found, by

examining those factors, that the dumped imports from the PRC caused injury. Examining those factors once again would have been of no use, since even assuming that all those factors would now have become positive, that would be (at least in part) due to the fact that the Union industry is now protected against all [1] dumped exports from the PRC and Ukraine (except those from Since Hardware). Moreover, no factor has been identified that would break the causal link between the dumped imports from Since Hardware and their negative effects on the Union industry. Finally, not imposing measures against Since Hardware would be discriminatory vis-à-vis the exporting producers subject to the measure imposed following the first original investigation.

H. DEFINITIVE ANTI-DUMPING MEASURES

(97) In view of the above conclusions reached with regard to dumping, resulting contribution to injury, causation and Union interest, definitive measures on imports of the product concerned from the PRC, produced by Since Hardware, should be imposed.

1. Injury elimination level

(98) The level of the definitive anti-dumping measures should be sufficient to eliminate the injury to the Union industry caused by the dumped imports, without exceeding the dumping margins found. As stated in recital (72), the Union industry's prices were found to be overall loss-making during the IP. Therefore, it would not be appropriate to base the duty merely on the margin of undercutting.

(99) 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 and obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports. The pre-tax profit margin used for this calculation was 7 % of turnover. As mentioned in recital (63) of Regulation (EC) No 452/2007, it was demonstrated in the course of the first investigation that this was the profit level that could reasonably be expected in the absence of injurious dumping. On this basis, a non-injurious price was calculated for the like product of the Union industry. For this purpose, information was collected from the Union industry to calculate the weighted average of their actual profit/loss margin during the current IP. The non-injurious price has been obtained by deducting the thus calculated actual profit/loss margin of the Union industry from their sales prices and adding the above mentioned target profit margin of 7 %.

(100) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculation, with the average non-injurious price of products sold by the Union industry on the Union market. Any difference resulting from this comparison was then expressed as a percentage of the average import CIF value. An injury elimination level of 35,8 % was thus established, which was below the dumping margin found for Since Hardware.

2. Exclusion of Since Hardware from the definitive anti-dumping measure imposed by Regulation (EC) No 452/2007

(101) In the context of the review pursuant to Regulation (EC) No 1515/2001 and in the light of the WTO Appellate Body report as adopted by the WTO Dispute Settlement Body, and in particular paragraphs 305 and 306 thereof, Implementing Regulation (EU) No 1241/2010 excluded Since Hardware from the definitive anti-dumping measure imposed by Regulation (EC) No 452/2007.

(102) A new measure may now be imposed on Since Hardware.

3. Form and level of measure

(103) In the light of the foregoing, and in accordance with Article 9(4) of the basic Regulation, it is considered that a definitive anti-dumping duty should be imposed on imports of the product concerned originating in the PRC and produced by Since Hardware at the level eliminating the injury.

(104) On the basis of the above, the definitive duty rate for these imports is 35,8 %.

(105) In accordance with Article 11(2) of the basic Regulation, anti-dumping measures normally apply for five years, unless there are specific grounds or circumstances which call for a shorter period. In the current case, it is considered appropriate to limit the duration of the measure so that it lasts until the expiry of the anti-dumping measures applicable to imports of the product concerned originating, *inter alia*, in the PRC imposed by Regulation (EC) No 452/2007. This will give the opportunity to consider at the same time any request for expiry review of the measures in force for all imports originating, *inter alia*, in the PRC. Of course, operators concerned, and in particular Since Hardware and/or the Union industry may, before 27 April 2012, request other reviews, in particular an interim review, of this Regulation provided that all requirements for doing so are complied with.

[1] Admittedly, during a certain period, due to the annulment by the Court of Justice of Regulation (EC) No 452/2007 in as far as Foshan Shunde is concerned, *de facto* a zero duty also applied to that company, but this does not make any material difference, in particular because this only arose a number of years after the entry into force of that Regulation.

(106) Any claim requesting the application of this individual company anti-dumping duty rate (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, this Regulation will then be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

A definitive anti-dumping duty is hereby imposed on imports of ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and essential parts thereof, i.e. the legs, the top and the iron rest originating in the People's Republic of China and produced by Since Hardware (Guangzhou) Co., Ltd., falling within CN codes ex 3924 90 00, ex 4421 90 98, ex 7323 93 90, ex 7323 99 91, ex 7323 99 99, ex 8516 79 70 and ex 8516 90 00 (TARIC codes 3924 90 00 10, 4421 90 98 10, 7323 93 90 10, 7323 99 91 10, 7323 99 99 10, 8516 79 70 10 and 8516 90 00 51).

Article 2

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

Manufacturer	Duty rate	Taric additional code
Since Hardware (Guangzhou) Co., Ltd., Guangzhou	35,8 %	A784

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

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*. Unless reviewed under Article 11 of Regulation (EC) No 1225/2009, it shall remain in force until 27 April 2012.

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

Done at Brussels, 20 December 2010.

For the Council
The President
J. SCHAUVLIEGE

[1] European Commission, Directorate General for Trade, Directorate H, Office N-105 4/92, 1049 Brussels, BELGIUM.