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►**B** **COUNCIL IMPLEMENTING REGULATION (EU) No 1039/2012**

of 29 October 2012

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aluminium radiators originating in the People's Republic of China

(OJ L 310, 9.11.2012, p. 1)

Corrected by:

►**C1** Corrigendum, OJ L 136, 25.5.2016, p. 19 (1039/2012)

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imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aluminium radiators originating in the People's Republic of China

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 Union [1] ('the basic Regulation'), and in particular Article 9 thereof,

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

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The Commission, by Regulation (EU) No 402/2012 [2] ('the provisional Regulation'), imposed a provisional anti-dumping duty on imports of aluminium radiators originating in the People's Republic of China ('PRC' or 'the country concerned').

(2) The proceeding was initiated on 12 August 2011 [3], following a complaint lodged by the International Association of Aluminium Radiator Manufacturers Limited Liability Consortium (AIRAL S.c.r.l. - 'the complainant') on behalf of producers representing more than 25 % of total Union production of aluminium radiators.

(3) As set out in recital (14) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2010 to 30 June 2011 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2008 to the end of the IP ('the period considered').

1.2. Subsequent procedure

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose a provisional anti-dumping duty ('provisional disclosure'), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.

[1] OJ L 343, 22.12.2009, p. 51.
[2] OJ L 124, 11.5.2012, p. 17.
[3] OJ C 236, 12.8.2011, p. 18.

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(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

(6) As already mentioned in recital (12) of the provisional Regulation, one group of related exporting producers claimed individual examination in accordance with Article 17(3) of the basic Regulation. The examination of those claims at the provisional stage was too burdensome to be carried out and was deferred to the definitive stage. It was thus decided to grant an individual examination to the group claiming it, i.e. the Sira Group. In respect of its operations in the PRC, the Sira Group is composed of Sira (Tianjin) Aluminium Products Co. Ltd and Sira Group (Tianjin) Heating Radiators Co. Ltd

(7) All 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 on imports of aluminium radiators originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). All parties were granted a period within which they could make comments on this final disclosure.

(8) The oral and written comments submitted by the interested parties were considered and taken into account where appropriate.

2. PRODUCT CONCERNED AND LIKE PRODUCT

(9) As set out in recital (15) of the provisional Regulation, the product concerned is aluminium radiators and elements or sections of which such radiator is composed, whether or not such elements are assembled in blocks, excluding radiators and elements and sections thereof of the electrical type ('the product concerned'). The product concerned currently falls within CN codes, ex 7615 10 10, ex 7615 10 90, ex 7616 99 10 and ex 7616 99 90.

(10) After publication of provisional measures, one party claimed that steel radiators are interchangeable with the product concerned and the like product and asked the Commission to analyse and include the steel radiator market trend to compare it in particular with the market of aluminium radiators.

(11) Based on information available, it appears that aluminium radiators have different technical characteristics, especially as concerning the basic raw material (steel in one case and aluminium on the other), the weight, the thermal inertia and the heat conductibility. Furthermore, the information collected did not point to direct competition and interchangeability between the two products. Finally, the party did not provide any evidence to support its allegations. Based on the above, the claim was rejected.

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(12) In the absence of other comments regarding the product concerned and the like product, recitals (15) and (23) of the provisional Regulation are hereby confirmed.

3. DUMPING

3.1. Market Economy Treatment ('MET') and Individual Treatment ('IT')

3.1.1. *Preliminary Remark*

(13) As already mentioned in recital (6) above, it was decided to grant an individual examination to the Sira Group. In respect of its operations in the PRC, the Sira Group is composed of Sira (Tianjin) Aluminium Products Co. Ltd and Sira Group (Tianjin) Heating Radiators Co. Ltd The Sira Group also claimed market economy treatment or individual treatment.

3.1.2. *MET*

(14) It is recalled that, as mentioned in recitals (30) to (31) of the provisional Regulation, none of the sampled parties had claimed MET.

(15) As mentioned above in recital (13), the Sira Group, which was granted individual examination after the imposition of provisional measures, claimed MET and submitted MET claim forms for the two companies involved in the production and commercialisation of the product concerned.

(16) Pursuant to Article 2(7)(b) of the basic Regulation, normal value for imports originating in the PRC 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 independently audited accounting records,

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

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

— exchange rate conversions are carried out at market rates.

(17) The information provided by the two companies belonging to the Sira Group in the MET claim forms was duly analysed and further information was requested and obtained. In view of the findings it was not considered necessary to conduct a verification visit at the premises of the companies.

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(18) The MET investigation demonstrated that the Sira Group failed to meet the requirements of criterion 1 because of State interference in decisions concerning the main raw material, aluminium. The cost of aluminium represents ca. 70 % of the cost of production of the product concerned. The investigation demonstrated that both producers in the Sira Group acquired the aluminium used for the production of the product concerned on the Chinese domestic market. Prices are based on the quotation of aluminium in the State-controlled Shanghai Non-ferrous Metal Exchange market ('the Exchange' or 'SHFE'). The SHFE is a closed exchange for Chinese-registered companies and Chinese citizens and it is controlled by the State Securities Regulatory Commission. Several rules governing the functioning of the Exchange contribute to low volatility and depressed prices at the SHFE: daily price fluctuations are limited to 4 % above or below the settlement price of the previous trading day, trading happens at a low frequency (until the 15th day of each month), futures contracts are limited to a duration of up to 12 months, and transaction fees are charged by both the Exchange and brokers.

(19) Moreover, as concerns SHFE transactions, physical deliveries can only take place in an approved warehouse within the PRC, unlike international exchanges, where delivery can take place worldwide. Moreover, as the SHFE is a platform for physical exchanges only (no derivatives are sold), this completely insulates the Chinese aluminium market. As a consequence, arbitrage with the worldwide benchmark, the London Metals Exchange ('LME') or other markets is practically not possible and the exchange works in isolation from other world markets. Therefore, an equalization among these markets cannot take place. Aluminium price quotation at the LME was on a monthly average basis 14 % higher than at the SHFE during the IP.

(20) The State also interferes with the price setting mechanisms in the SHFE as it is both a seller and a purchaser, via the State Reserve Bureau and other State Bodies, of primary aluminium. In addition, the State sets daily price limits via the rules of the SHFE which have been approved by the State Regulator, the China Securities Regulatory Commission ('the CSRC').

(21) In addition, the investigation demonstrated that primary aluminium for export is subject to a 17 % VAT and is not refundable on export whereas VAT for domestically sold aluminium and on finished goods is refundable at 13 %. Moreover, primary aluminium for export is subject to a 17 % export tax. As a result, the vast majority of primary aluminium production is sold on the Chinese market causing a price depression of the domestic primary aluminium price and an important cost advantage for producers of aluminium radiators in the PRC. The Chinese State further interfered in the market during the IP as it eliminated the 5 % import duty on metals during the financial crisis.

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(22) A further distortion by the Chinese State is in the form of interventions in the market by the State Reserves Bureau ('SRB') which is part of the National Development Reform Commission ('NDRC'). At the end of 2008 and the beginning of 2009 the SRB started buying up stocks of primary aluminium from smelters. This was a stimulus package aimed at limiting the effects of the global financial and economic crisis which cut demand. Those State-backed purchases absorbed most of the stocks in the domestic market in March and April 2009, driving up prices during the first half of 2009. The SRB sold primary aluminium back onto the market such as at the start of November 2010 when the SRB sold 96 000 tonnes by auction as reported by Bloomberg ([1]). The Xinhua News Agency reported the stockpiling measures in December 2008, explaining that it was planned to accumulate 300 000 tonnes of aluminium at prices which were 10 % higher than the market price in a measure designed to prop up prices ([2]). The SRB stockpiling plan involved buying from several Chinese smelters although around half was to be bought from the Aluminium Corporation of China Ltd Furthermore, the Minister in charge of the NDRC explained that other parts of the stimulus package included relaxed export controls, electricity subsidies, reduced electricity prices and raising loan ceilings. The package is reported to have had an immediate effect on prices. The above demonstrates that the Chinese State has a primary role in the setting of prices of primary aluminium and that it interferes in the market.

(23) That the significant State interference, as described above, is clearly targeted is, inter alia, corroborated by the 12th 5 Year Development Plan for Aluminium (2011-15) in which the Government of China explicitly states its intention of 'adjusting tax and export tax rebates and other economic levers, and strictly control the total amount of expansion and exports of primary products'. This plan continues the policy which existed in the previous Aluminium Plan. Furthermore these plans have been implemented over many years and, as demonstrated above, during the IP several implementing measures were in operation.

(24) Thus, the multiple State-induced distortions in the Chinese primary aluminium prices affect the raw material prices. In addition, the producers enjoy an advantage from these distortions, in the sense that they normally make their purchases in the Chinese market from local suppliers using Chinese spot markets prices (or SHFE) as a benchmark. During the IP, these prices were around 15 % lower than the world market prices. In theory, Chinese companies can also buy certain quantities at LME prices when prices in the Chinese market are higher as a result of State intervention – whilst the opposite is impossible for non-Chinese operators.

([1]) www.bloomberg.com
([2]) http://news.xinhuanet.com/english/2008-12/26/content_10564812.htm

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(25) An examination of the questionnaire responses of both Sira (Tianjin) Aluminium Products Co. Ltd and Sira Group (Tianjin) Heating Radiators Co. Ltd showed that they purchased primary aluminium products at prices linked to the SHFE price in the IP and that their purchase prices had followed the SHFE index over a longer period.

(26) In addition, the investigation showed that one of the two companies concerned benefited from the 'two free three half' Business Income Tax rebate. This rebate system of the Chinese State means that once a company starts to realise a profit it pays no Business Income Tax for two years and then only pays half for the next three years. Such distortions are recorded as negative costs in the profit and loss account thereby increasing profitability.

(27) Under such circumstances, neither of the companies has been in a position to prove that their business decisions regarding acquisition of raw materials are not subject to significant State interference and that costs of major inputs substantially reflect market values. Therefore, they could not demonstrate that they fulfil criterion 1.

(28) In view of the above findings on criterion 1, it was considered, after consultation of the Advisory Committee, that MET should be rejected for the Sira Group.

(29) In view of the above, the other MET criteria set out in Article 2(7)(b) of the basic Regulation were not further analysed.

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

(31) Following the MET disclosure, the Sira Group commented on the proposed MET findings. However, since the Sira Group labelled its comments as limited by nature, the Commission dealt with the issues raised on a bilateral basis by means of a specific disclosure document. The comments did not lead to changes in the findings concerning criterion 1.

(32) Further to the above and in the absence of any comments, recitals (30) to (31) of the provisional Regulation are hereby confirmed.

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3.1.3. *IT*

(33) Pursuant to Article 2(7)(a) 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 set out in Article 9(5) of the basic Regulation. Briefly, and for ease of reference only, these criteria were set out in recital (32) of the provisional Regulation.

(34) Both related exporting producers of the Sira Group claimed IT in case MET would not be granted. These claims were examined. The investigation showed that they fulfilled all the conditions of Article 9(5) of the basic Regulation.

(35) The Sira Group was therefore granted IT.

(36) On 28 July 2011, the Dispute Settlement Body of the WTO ('DSB') adopted an Appellate Body report and a Panel report as modified by the Appellate Body report on the case 'European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China' ([1]) ('reports').

(37) In the reports, it was found, inter alia, that Article 9(5) of the basic Regulation was inconsistent with Articles 6.10, 9.2 and 18.4 of the WTO Anti-Dumping Agreement and Article XVI:4 of the WTO Agreement. Article 9(5) of the basic Regulation provides that individual exporting producers in non-market economy countries which do not receive market economy treatment pursuant to Article 2(7)(c) of the basic Regulation will be subject to a countrywide duty rate unless such exporters can demonstrate that they meet the conditions for individual treatment laid out in Article 9(5) of the basic Regulation ('the DSB finding on Article 9(5) of the basic Regulation').

(38) Any exporting producer in the PRC which considers that this Regulation should be reviewed in the light of the legal interpretations regarding Article 9(5) contained in the reports is invited to request a review on the basis of Article 2 of Council Regulation (EC) No 1515/2001 of 23 July 2001 on the measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters ([2]) ('the WTO enabling Regulation').

([1]) WTO, report of the Appellate Body, AB-2011-2, WT/DS397/AB/R, 15 July 2011. WTO, report of the Panel, WT/DS397/R, 29 September 2010. The reports can be downloaded from the WTO's website (http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds397_e.htm).

([2]) OJ L 201, 26.7.2001, p. 10.

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(39) The relevant Union institution may repeal, amend or maintain the measures reviewed in order to reflect the review findings. Parties requesting a review should be aware that if the findings relating to them require an amendment of the measures, such amendment may result in a decrease or an increase in the level of the measures.

(40) Further to the above, no comments were received concerning the granting of IT and recitals (32) to (34) of the provisional Regulation are hereby confirmed.

3.2. **Analogue country**

(41) In the absence of any comments regarding analogue country, recitals (35) to (41) of the provisional Regulation are hereby confirmed.

3.3. **Normal value**

(42) The same methodology was used for establishing normal value for the Sira Group as the one described in recitals (42) to (46) of the provisional Regulation. In the absence of any comments regarding normal value, recitals (42) to (46) of the provisional Regulation are hereby confirmed.

3.4. **Export price**

(43) The Sira Group export price was calculated in line with Article 2(9) of the basic Regulation because exports were made at transfer prices which were deemed unreliable. Export prices were therefore calculated on the basis of the resale prices to the first independent customers on the Union market, with appropriate deductions for costs and profit being made to adjust the export price to an ex works level. Adjustments were made to the resale price to the first independent buyer in the Union for all costs including duties and taxes, incurred between importation and resale, as well as a reasonable margin for SG&A and profits. With respect to the profit margin, the profit realised by the cooperating unrelated importer of the product concerned was used since the actual profit of the related importer was not considered reliable because of the relationship between the exporting producer and the related importer.

(44) In respect of the sampled exporters, in the absence of any comments regarding export price, recital (47) of the provisional Regulation is hereby confirmed.

3.5. **Comparison**

(45) Certain comments were made concerning the comparison between the normal value and the export price.

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(46) Metal Group Ltd contested the comparison between the normal value and the export price on the grounds that the comparison made was not fair because of the matching methodology used and the company claimed differences in physical characteristics.

(47) Regarding the comparison made, Metal Group suggested an alternative method based simply on weight. This methodology was rejected because it ignores other important fields included in the product type comparison system, e.g. power, which therefore ensures better comparability.

(48) The claim for physical differences made by Metal Group Ltd was threefold and submitted after the deadline for submitting comments had passed. None of the three claims in this respect had been mentioned in the questionnaire response (which specifically asked for such claims to be made). Furthermore, these claims were not raised during the verification visit which would have given the investigation team the opportunity to verify their validity and magnitude.

(49) The first claim involved the type of aluminium alloy used in production. In this respect, it was claimed that the Chinese standard of this alloy was not the same as the alloy of the same name used in the Union. Whilst it is clear that these alloys are not identical, no evidence was submitted to prove that any difference in cost existed.

(50) The second claim involved the use of an alleged cheaper version of finishing powder. Again, no evidence was submitted to prove this claim and it must be stated that this finishing powder constituted such a low percentage of the full cost of production that it would have only a marginal impact.

(51) The third claim was that no internal anti-corrosion coating was applied by the company in contrast to the product produced in the EU. As in the two cases above, no evidence was submitted to prove this claim.

(52) In view of the above, the claim for differences in physical characteristics was rejected.

(53) In the absence of any further comments, recitals (48) to (50) of the provisional Regulation are hereby confirmed.

3.6. **Dumping margins**

(54) In respect of the Sira Group, the dumping margin was calculated on the basis of the methodology mentioned in recital (51) of the provisional Regulation and was set at 23,0 %.

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(55) In the absence of any further comments, recitals (51) to (54) of the provisional Regulation are hereby confirmed.

4. INJURY

4.1. Total Union production

(56) In the absence of comments concerning the total Union production, recitals (55) to (57) of the provisional Regulation are hereby confirmed.

4.2. Union consumption

(57) In the absence of comments concerning the Union consumption, recitals (58) to (61) of the provisional Regulation are hereby confirmed.

4.3. Imports from the country concerned

4.3.1. *Prices of imports and price undercutting*

(58) After disclosure of the provisional findings, one party claimed that the price undercutting margin of 6,1 % found during the IP was low and could not have caused material injury to the Union industry.

(59) The undercutting practiced by Chinese exporters should, however, be seen in the light of the pressure it has exercised on the Union market and the impact it had on the Union industry price level. The investigation showed that price pressure due to low-priced dumped imports did not allow the Union industry to set prices at a level allowing it to cover for the costs and to achieve a reasonable margin of profit, in particular during the IP.

(60) As mentioned in recital (65) of the provisional Regulation, the investigation confirmed that the import prices from the PRC were dumped and were always below the sale prices of the Union industry during the period considered. The constant undercutting practised by the Chinese exporters allowed their sales volume and market share to expand in particular during the IP. Moreover, it was found that the price difference on certain types of radiators was considerably higher than the average undercutting found. Hence, the negative impact of the undercutting found on the Union market and the Union industry cannot be understimated. The claim was thus rejected.

(61) The same party reiterated that the Chinese radiators were of inferior quality compared to the ones produced in the Union and that they therefore could not be the cause of any injury to the Union industry.

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(62) This claim was, however, not substantiated and the investigation did not reveal facts which could support this claim. As stated in recital (23) of the provisional Regulation, the investigation showed that the aluminium radiators produced in and exported from the PRC and the aluminium radiators produced and sold in the Union by the Union producers have the same basic physical and technical characteristics as well as the same basic uses. Moreover, they are also completely interchangeble and look identical in particular to the public. They are therefore considered to be alike within the meaning of the Article 1(4) of the basic Regulation.

(63) It is noteworthy that the price undercutting and the injury elimination level are determined on the basis of a detailed comparison of Chinese and Union products types. Hence, any alleged difference between the various types of radiators is taken into account in the detailed price comparison. Based on the above, the claim was rejected.

(64) In the absence of any other comments concerning imports from the country concerned, recitals (62) to (67) of the provisional Regulation are hereby confirmed.

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

(65) In the absence of other comments concerning the preliminary remarks, recitals (68) to (71) of the provisional Regulation are hereby confirmed.

4.4.1. *Production, production capacity and capacity utilisation*

(66) In the absence of comments concerning production, production capacity and capacity utilisation, recitals (72) to (74) of the provisional Regulation are hereby confirmed.

4.4.2. *Sales volume and market share*

(67) In the absence of comments concerning the development of sales volume and market share of the Union industry, recital (75) of the provisional Regulation is hereby confirmed.

4.4.3. *Growth*

(68) In the absence of comments concerning growth, recital (76) of the provisional Regulation is hereby confirmed.

4.4.4. *Employment*

(69) In the absence of comments concerning employment, recitals (77) and (78) of the provisional Regulation are hereby confirmed.

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4.4.5. *Average unit prices in the Union and cost of production*

(70) In the absence of comments concerning average unit prices in the Union and cost of production, recitals (79) and (80) of the provisional Regulation are hereby confirmed.

4.4.6. *Profitability, cash flow, investments, return on investments and ability to raise capital*

(71) In the absence of comments concerning profitability, cash flow, investments, return on investments and ability to raise capital, recitals (81) to (83) of the provisional Regulation are hereby confirmed.

4.4.7. *Stocks*

(72) In the absence of comments concerning stocks, recital (84) of the provisional Regulation is hereby confirmed.

4.4.8. *Magnitude of the actual dumping margin*

(73) In the absence of any comments concerning the magnitude of the actual dumping margin, recital (85) of the provisional Regulation is hereby confirmed.

4.4.9. *Conclusion on injury*

(74) The investigation confirmed that most of the injury indicators showed a declining trend during the period considered. Therefore, the conclusion reached in recitals (86) to (89) of the provisional Regulation that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation is confirmed.

5. CAUSATION

5.1. **Introduction**

(75) In the absence of any comments to recital (90) of the provisional Regulation, that recital is hereby confirmed.

5.2. **Effect of the dumped imports**

(76) In the absence of any comments concerning the effect of the dumped imports, recitals (91) to (95) of the provisional Regulation are hereby confirmed.

5.3. **Effect of other factors**

5.3.1. *Imports from third countries*

(77) In the absence of any comments concerning imports from third countries, recital (96) of the provisional Regulation is hereby confirmed.

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5.3.2. *Economic crisis*

(78) One party claimed that the cause of the injury, if any, suffered by the Union industry was the economic crisis which prevailed in the construction and housing sector, and particularly in certain Member States such as Spain and Italy, considered by this party as the main sales markets for the Union industry.

(79) The investigation, however, revealed that the Union industry also sold large volumes of radiators in other Member States than Spain and Italy. Furthermore, the market of the product concerned and the like product goes beyond the construction and housing markets of Spain and Italy. Nevertheless, even if it cannot be excluded that the economic crisis had an impact on the Union market, the presence of increasing volumes of low-priced Chinese dumped imports intensified any negative effects the economic downturn may have had during the period considered and prevented the Union industry from benefitting from the general economic recovery during the IP. The claim was therefore rejected.

(80) In the absence of other comments concerning the economic crisis, recitals (97) to (100) of the provisional Regulation are hereby confirmed.

5.3.3. *Development of the Union industry cost of production*

(81) It was claimed that the increase in the price of aluminium which constitutes a large share of the cost to produce the like product was the cause of the injury suffered by the Union industry.

(82) However, it is rather considered that in a market governed by fair competition, prices can be set at a level as to cover costs and to achieve a reasonable profit margin. As confirmed in recital (60) above, the average import prices from the PRC were continuously undercutting the Union industry prices during the period considered. When costs increased, the Union industry could not increase its prices accordingly in view of the continued price pressure. Hence, this claim was rejected.

(83) In the absence of any other comments concerning the development of the Union industry cost of production, recitals (101) to (103) of the provisional Regulation are hereby confirmed.

5.3.4. *Export performance of the sampled Union industry*

(84) One party claimed that the level and the decrease in the Union industry export sales had a major influence on its overall economic performance during the period considered.

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(85) The investigation showed, however, that although the Union industry export sales decreased during the period considered, they remained an important part, accounting for 51 % of the Union industry total sales in the EU in the IP and for 27 % of the Union industry total production in the IP. Thus, as stated in recital (106) of the provisional Regulation, export sales gave the Union industry the possibility to achieve economies of scale and could therefore not be considered to have caused the material injury suffered by the Union industry during the period considered. The trend and the level of the Union industry export sales are not such as to break the causal link between the injury and the low-priced dumped imports from the PRC. Therefore, the claim was rejected.

(86) The same party has requested disclosure of the Union industry exports' values and thus prices, since only exports' volumes were published in the provisional Regulation. However, this data cannot be disclosed since they are considered confidential.

(87) In the absence of other comments concerning the export performance of the sampled Union industry, recitals (104) to (106) of the provisional Regulation are hereby confirmed.

5.4. **Conclusion on causation**

(88) One party claimed that the decision of the Union industry to increase production capacity in 2008 combined with the difficult economic situation which also prevailed in the following years are the main causes of the decrease of the Union industry's capacity utilisation and its negative profitability. It was thus claimed that injury was caused by various domestic factors, such as the economic crisis and the wrong investment decisions made by the Union industry.

(89) However, an injury analysis is assessed taking into account all the injury factors together, of which capacity utilisation and profitability are only two. The investigation of injury showed in particular that the Union industry sales volume decreased by 16 % over the period considered, while imports from the PRC increased by 77 % over the period considered and the market share increased from 13 % to 24 % over the period considered. Even during the IP, when consumption increased compared to 2009, the Union industry market share kept shrinking. Notwithstanding the deterioration of other injury factors, another sign of the difficult economic situation suffered by the Union industry is illustrated by the Union industry stock levels which increased significantly over the period considered. Therefore, the increased production capacity of the Union industry in 2008 should be analysed together with all these other elements, in order to have a complete picture.

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(90) Although the economic crisis had a certain negative impact on the Union industry's situation, it cannot be ignored that the low-priced Chinese dumped imports increased significantly over the period considered and thus intensified any negative effects the economic downturn may have had during the period considered and prevented the Union industry from benefitting from the general economic recovery during the IP.

(91) The investigation showed that there was a 9 % increase in consumption between 2009 and the IP, while the Union industry market share kept decreasing and even with a better general economic situation, the Union industry was unable to recover, because it was always under pressure of the low-priced dumped imports from the PRC. Based on the above, the claim was thus rejected.

(92) In the absence of other comments concerning the conclusion on causation, recitals (107) to (110) of the provisional Regulation are hereby confirmed.

6. UNION INTEREST

(93) There was no cooperation from users in this investigation and despite the efforts after publication of provisional findings no, users came forward.

(94) Based on information available, it was found that the main purchasers of aluminium radiators are large building companies, distributors and wholesalers, which resale them to specialised chains or retailer shops for sales to smaller construction companies or end users. An assessment of the possible impact the imposition of definitive duties may have on the parties concerned revealed that even with a potential price increase per element of aluminium radiator imported of 61 %, which is the highest anti-dumping duty proposed, this price increase seems to be quite low, since the product concerned is usually part of large projects, where its price is only a small portion of the total business costs. Therefore, even taking into account the worst case scenario, it seems that the resulted price increase could be easily absorbed in the chain of downstream sales.

(95) In the absence of comments concerning the Union interest, recitals (111) to (118) of the provisional Regulation are hereby confirmed.

7. DEFINITIVE ANTI-DUMPING MEASURES

7.1. Injury elimination level

(96) It was claimed that the profit margin used to calculate the amount of duty necessary to remove the effects of the injurious dumping

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was too high. It was argued that the margin of 7,4 %, achieved by the sampled Union producers in the year 2008, was exceptional and unrealistic. The economic crisis which hit the market in the following years made it impossible to reach such a level of profit.

(97) It should be noted that this profit margin was verified during the investigation as the profit margin reached by the sampled companies under normal market conditions, namely in the absence of injurious dumping. It cannot be concluded that the economic crisis had no impact on the Union industry's situation, but the volume of low-priced dumped imports from the PRC undercutting the prices of the Union industry kept increasing over the whole period considered to the detriment of the Union industry prices and market share. It is therefore clear that the dumped imports from the PRC have intensified any effect of the economic downturn on the Union industry. Therefore, this claim was rejected.

(98) It was also claimed that the post-importation cost used to calculate undercutting and injury margins (0,2 %, including all the costs necessary to release the goods for free circulation into the EU, such as the handling cost and customs clearance fee, but excluding the import duty) was underestimated. According to this party, the post-importation cost should include the handling cost, customs clearance fee and in-land freight estimated to 3,5 %. In order to calculate undercutting and underselling, the price at the EU border is compared with the ex-works price of Union industry producers. The price at EU border must include all the costs necessary to release the goods for free circulation into the EU, (i.e. customs clearance fee and handling costs), but not any in-land freight, as claimed by the party. Therefore, this claim was rejected.

(99) In the absence of other comments concerning the injury elimination level, the methodology described in recitals (119) to (123) of the provisional Regulation is hereby confirmed.

7.2. **Form and level of the duties**

(100) In the light of the foregoing, it is considered that, in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed on imports of the product concerned at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule. Accordingly, all duty rates should be set at the level of the injury margins found.

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(101) The proposed definitive anti-dumping duties are the following:

Country	Company	Dumping margin	Injury margin	Definitive duty
PRC	Zhejiang Flyhigh Metal Products Co., Ltd.	23,0 %	12,6 %	12,6 %
	Metal Group Co., Ltd.	70,8 %	56,2 %	56,2 %
	Sira Group (Sira (Tianjin) Aluminium Products Co. Ltd. and Sira Group (Tianjin) Heating Radiators Co. Ltd.)	23,0 %	14,9 %	14,9 %
	Other cooperating companies	32,5 %	21,2 %	21,2 %
	All other companies (country-wide dumping margin)	76,6 %	61,4 %	61,4 %

(102) 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 in respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of the products originating in the PRC and produced by the companies and thus by the specific legal entities mentioned. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(103) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duties. These special measures include the presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex II to this Regulation. Imports not accompanied by such an invoice shall be made subject to the residual anti-dumping duty applicable to all other exporters.

(104) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This

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investigation may, inter alia, examine the need for the removal of individual duty rates and the consequent imposition of a country-wide duty.

(105) Any claim requesting the application of an individual 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 instance, that name change or that change in the production and sales entities. If appropriate, this Regulation will then be amended accordingly by updating the list of companies benefiting from individual anti-dumping duty rates.

(106) In order to ensure a proper enforcement of the anti-dumping duty, the country-wide 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.

(107) In order to ensure equal treatment between any new exporters and the cooperating companies not included in the sample, mentioned in Annex I to this Regulation, provision should be made for the weighted average duty imposed on the latter companies to be applied to any new exporters which would otherwise be entitled to a review pursuant to Article 11(4) of the basic Regulation as that Article does not apply where sampling has been used.

7.3. **Definitive collection of provisional anti-dumping duties**

(108) In view of the magnitude of the dumping margins found and given the level of the injury caused to the Union industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, be definitively collected to the extent of the amount of the definitive duties imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of aluminium radiators and elements or sections of which such radiator is composed, whether or not such elements are assembled in blocks, excluding radiators and elements and sections thereof of the electrical type, currently falling within CN codes ex 7615 10 10, ex 7615 10 90, ex 7616 99 10 and ex 7616 99 90 (TARIC codes 7615 10 10 10, 7615 10 90 10, 7616 99 10 91, 7616 99 90 01 and 7616 99 90 91) and originating in the People's Republic of China.

([1]) European Commission, Directorate-General for Trade, Directorate H, Office: NERV-105, 08/020, 1049 Bruxelles/Brussel BELGIQUE/BELGIË.

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

Company	Definitive duty	TARIC additional code
Zhejiang Flyhigh Metal Products Co., Ltd.	12,6 %	B272
Metal Group Co. Ltd.	56,2 %	B273
Sira (Tianjin) Aluminium Products Co. Ltd.	14,9 %	B279
Sira Group (Tianjin) Heating Radiators Co. Ltd.	14,9 %	B280
Companies listed in Annex I	21,2 %	
All other companies	61,4 %	B999

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

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

Article 2

The amounts secured by way of the provisional anti-dumping duty pursuant to Regulation (EU) No 402/2012 on imports of aluminium radiators originating in the People's Republic of China, shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 3

Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

— it did not export to the Union the product described in Article 1(1) during the investigation period (1 July 2010 to 30 June 2011),

— it is not related to any of the exporters or producers in the People's Republic of China which are subject to the measures imposed by this Regulation,

— it has actually exported to the Union the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union,

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the Council, acting by simple majority on a proposal submitted by the Commission after consulting the Advisory Committee, may amend Article 1(2) by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to the weighted average duty rate of 21,2 %.

Article 4

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

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

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ANNEX I

PRC COOPERATING EXPORTING PRODUCERS NOT SAMPLED

Name	TARIC additional code
Jinyun Shengda Industry Co., Ltd.	B274
►C1 Ningbo Ephraim Radiator Equipment Co., Ltd. ◄	B275
Ningbo Everfamily Radiator Co., Ltd.	B276
Ningbo Ningshing Kinhil Industrial Co., Ltd.	B277
Ningbo Ninhshing Kinhil International Co., Ltd.	B278
Yongkang Jinbiao Machine Electric Co., Ltd.	B281
Yongkang Sanghe Radiator Co., Ltd.	B282
Zhejiang Aishuibao Piping Systems Co., Ltd.	B283
Zhejiang Botai Tools Co., Ltd.	B284
Zhejiang East Industry Co., Ltd.	B285
Zhejiang Guangying Machinery Co., Ltd.	B286
Zhejiang Kangfa Industry & Trading Co., Ltd.	B287
Zhejiang Liwang Industrial and Trading Co., Ltd.	B288
Zhejiang Ningshuai Industry Co., Ltd.	B289
Zhejiang Rongrong Industrial Co., Ltd.	B290
Zhejiang Yuanda Machinery & Electrical Manufacturing Co., Ltd.	B291

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ANNEX II

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

(1) the name and function of the official of the entity issuing the commercial invoice;

(2) the following declaration:

‘I, the undersigned, certify that the (volume) of aluminium radiators and elements or sections of which such radiator is composed, sold for export to the European Union covered by this invoice, was manufactured by (company name and registered seat) (TARIC additional code) in the People’s Republic of China. I declare that the information provided in this invoice is complete and correct.

Date and signature’.