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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.2.2008
COM(2008) 86 final

Proposal for a

COUNCIL REGULATION (EC) No .../..

of [...]

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of coke of coal in pieces with a diameter of more than 80 mm (Coke 80+) originating in the People's Republic of China

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Article 5 of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation').

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

Not applicable.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

On 20 December 2006, the Commission initiated an anti-dumping proceeding concerning imports of coke of coal in pieces with a diameter of more than 80 mm (Coke 80+) originating in the People's Republic of China.

The investigation found dumping of the product concerned, which caused injury to the Community industry. The investigation also evidenced that there was no compelling Community interest aspect against the imposition of anti-dumping measures. On this

basis, provisional measures were imposed by means of Commission Regulation (EC) No 1071/2007. The continuation of the investigation has confirmed the essential provisional findings.

Therefore, it is suggested that the Council adopts the attached proposal for a Regulation in order to impose definitive measures on imports of coke of coal in pieces with a diameter of more than 80 mm (Coke 80+) originating in the People's Republic of China.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instrument: Regulation.

Other means would not be adequate for the following reason:

Other means would not be adequate because the basic Regulation does not foresee alternative options.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community¹ (the 'basic Regulation') and in particular Article 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

- (1) On 20 December 2006, the Commission published a notice² initiating an anti-dumping proceeding on imports into the Community of coke of coal in pieces with a diameter of more than 80 mm ('Coke 80+') originating in the People's Republic of China ('the PRC'). On 19 September 2007, the Commission, by Regulation (EC) No 1071/2007³ ('the provisional Regulation') imposed a provisional anti-dumping duty on imports of Coke 80+ originating in the PRC.
- (2) It is noted that the proceeding was initiated following a complaint lodged by three Community producers, representing around 40 % of the total Community production of Coke 80+. It is noted that an understated figure of 'more than 30 %' was mentioned in recital (2) of the provisional Regulation; however, following further investigation it was found that the complainants in fact represented around 40 % of the total Community production.
- (3) As set out in recital (12) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2003 to the end of the IP ('period considered').

B. SUBSEQUENT PROCEDURE

¹ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

² OJ C 313, 20.12.2006, p. 15.

³ OJ L 244, 19.9.2007, p. 3.

- (4) Following the imposition of provisional anti-dumping duties on imports of Coke 80+ originating in the PRC, several interested parties submitted comments in writing. The parties who so requested were also granted the opportunity to be heard.
- (5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. In particular, the Commission intensified the investigation with regard to Community interest aspects. In this connection, one additional verification visit was carried out after the imposition of the provisional measures at the following company:
 - La Fonte Ardennaise, Vivier-Au-Court, France – user in the Community.
- (6) In addition, an information gathering visit was made to the European Foundry Association (CAEF) in Düsseldorf, Germany. In order to clarify certain alleged implementation problems, a visit was also carried out to customs authorities in Antwerp, Belgium as well as in Duisburg, Germany.
- (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 Coke 80+ originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.
- (8) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings were modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

- (9) In the absence of any comments concerning the product concerned and like product, recitals (13) to (17) of the provisional Regulation are hereby confirmed.
- (10) In view of the above, it is definitively concluded that the product concerned and Coke 80+ produced and sold in the analogue country, the USA, as well as the one produced and sold by the Community industry on the Community market are alike, within the meaning of Article 1(4) of the basic Regulation.

D. DUMPING

- (11) In the absence of any comments concerning the level of cooperation, the selection of the analogue country and the determination of normal value, recitals (18) to (28) of the provisional Regulation are hereby confirmed.
- (12) With reference to price comparison, the sole cooperating exporter objected to the rejection by the Commission of its claim relating to post-screening operations in the dumping calculation, arguing that a similar claim had been taken into consideration for the purpose of injury calculations. The claim was therefore accepted and an additional adjustment was made to the normal value.
- (13) The estimation of the value of the adjustment made for differences in physical characteristics at provisional stage has been reviewed to reflect the value of the differences in calorific value indicators and size spread between the product produced in the analogue country and the Chinese exported product.
- (14) In the absence of any other comments in this respect, recitals (29) to (31) of the provisional Regulation are hereby confirmed.
- (15) The definitive dumping margin was established on the basis of a comparison of a weighted average ex-works normal value with a weighted average ex-works export

price, in accordance with Article 2(11) and (12) of the basic Regulation. After applying the adjustments referred to in recitals (12) and (13) above, the revised definitive country wide dumping margin, expressed as a percentage of the CIF Community frontier price, duty unpaid, is 61,8 %.

E. INJURY

1. Community production and Community industry

- (16) In the absence of any comments concerning the definition of Community production and Community industry, recitals (34) and (35) of the provisional Regulation are hereby confirmed.

2. Community consumption

- (17) As set out in recital (36) of the provisional Regulation, the Commission continued its investigation in particular as regards one component of the Community consumption, namely the import volumes during the period considered. However, no new and substantiated information was received in this respect. Therefore, and in the absence of any arguments from any interested parties putting into question the method used to establish the Community consumption, recitals (36) and (37) of the provisional Regulation are hereby confirmed.

3. Imports from the country concerned

(a) Volume and market share of the imports concerned; import prices

- (18) As set out in recitals (36) and (41) of the provisional Regulation, the Commission continued its investigation on the import volumes and prices during the period considered. It is noted that there was a clerical error in recital (42) of the provisional Regulation as prices decreased by 43 % from 2004 to the IP and not by 35 %, as stated in the said recital.
- (19) However, no new and substantiated information was received regarding import volumes and prices. Therefore, and in the absence of any arguments from any interested parties questioning the method used to establish the volume and prices of the imports concerned, recitals (38) to (42) of the provisional Regulation are hereby confirmed.

(b) Price undercutting

- (20) The cooperating exporting producer and one user have argued that in order to carry out the undercutting calculation on a fair basis, when comparing the prices charged by the Community industry for the like product and the import prices of the product concerned, an adjustment should be made for differences in physical characteristics. Certain Community industry producers, on the other hand, argued that while in a hypothetical situation Coke 80+ from some Community producers may warrant a higher price based on specific quality characteristics, the data available to the Commission establish that the users do not pay any higher price for the so-called better quality characteristics, particularly in an environment of suppressed prices caused by predatory dumping. According to these Community industry producers, the user industry's purchase decisions are, instead, solely based on the price quoted for the Chinese product. Therefore, adjustments for differences in physical characteristics are not warranted. However, since the verified information provided by interested parties suggests that there are differences between the moisture, ash, volatile material and sulphur content of the like product and the product concerned, which under normal

market conditions could be expected to have an effect on prices, the claim of the cooperating Chinese producer and the user was accepted and an additional adjustment was made to take into account these differences.

- (21) Furthermore, in order to compare the product concerned and the Coke 80+ produced by the Community industry at the same level of trade, in addition to those post-importation costs incurred by importers in the Community that were mentioned in recital (43) of the provisional Regulation, an adjustment was made in the price undercutting calculation also for unloading costs. For the sake of clarity it is also mentioned that an adjustment for the profit margin of unrelated importers was made in the price undercutting calculation already at the provisional stage, albeit not specifically mentioned in recital (43) of the provisional Regulation. This adjustment has been made on the basis of the verified profitability reported by the cooperating unrelated importer during the IP, being in the range of 5-10 %⁴.
- (22) The provisional undercutting margin for the PRC was accordingly amended and it is concluded that, during the IP, the product concerned originating in the PRC was sold in the Community at prices which undercut the Community industry's sales prices, when expressed as a percentage of the latter, by 5,7 %.

4. Situation of the Community industry

- (23) In the absence of any new and substantiated information or argument concerning production, production capacity and capacity utilisation rates, sales volume, market share, growth, stocks, investments and magnitude of the dumping margin, the findings in recitals (46) to (50), (53) to (54) and (60) to (61) of the provisional Regulation are hereby confirmed.

(a) Sales prices in the Community

- (24) Sales prices in the Community stated in recital (51) of the provisional Regulation were corrected and are shown in the table below. The slight revisions do not affect the conclusions drawn with regard to the Community sales prices in recitals (51) and (52) of the provisional Regulation.

	2003	2004	2005	IP
Unit price EC market (EUR/tonne)	154	191	243	198
<i>Index (2003 = 100)</i>	<i>100</i>	<i>124</i>	<i>158</i>	<i>129</i>

(b) Profitability, return on investment, cash flow and ability to raise capital

- (25) The calculation of the profitability figures as laid down in the provisional Regulation was revised and an error was corrected. The correct figures, presented in the table below, do not affect the conclusions on the general trend of the evolution of profitability of the Community industry, even though they give an even bleaker picture of the state of the Community industry: the profitability of the Community industry dropped dramatically from 16,2 % in the 2005 to -3,8 % during the IP. Following that correction, also the figures on return on investments (ROI), expressed as the profit in percent of the net book value of investments, have been adjusted. Cash flow figures

⁴ For confidentiality reasons, this figure is given only in ranges.

remain the same as in the provisional Regulation, but are presented in the table below for the sake of clarity.

	2003	2004	2005	IP
Profitability of EC sales to unrelated customers (% of net sales)	8,1%	15,0%	16,2%	-3,8%
<i>Index (2003 = 100)</i>	<i>100</i>	<i>185</i>	<i>200</i>	<i>-47</i>
ROI (profit in % of net book value of investments)	2,2%	19,2%	13,3%	-13,3%
<i>Index (2003 = 100)</i>	<i>100</i>	<i>460</i>	<i>340</i>	<i>-180</i>
Cash flow (1 000 EUR)	17 641	13 633	34 600	4 669
<i>Index (2003=100)</i>	<i>100</i>	<i>77</i>	<i>196</i>	<i>26</i>

- (26) In the absence of any new comments in this particular regard, the conclusions set out in recital (58) of the provisional Regulation on the Community industry's ability to raise capital are confirmed.

(c) Employment, productivity and wages

- (27) Productivity figures of the Community industry's workforce stated in recital (59) of the provisional Regulation were also corrected and are shown in the table below. These corrected figures show that the productivity of the Community industry's workforce, measured as output (tonnes) per person employed per year, increased slightly from 2003 to the IP. In addition, the annual labour costs per employee are, for the sake of clarity, reproduced in more detailed figures than in the provisional Regulation.

	2003	2004	2005	IP
Number of employees	680	754	734	767
<i>Index (2003 = 100)</i>	<i>100</i>	<i>111</i>	<i>108</i>	<i>113</i>
Productivity (tonnes/employee)	1 211	1 348	1 299	1 266
<i>Index (2003 = 100)</i>	<i>100</i>	<i>111</i>	<i>107</i>	<i>105</i>
Annual labour cost per employee (EUR)	28 096	27 784	29 453	30 502
<i>Index (2003 = 100)</i>	<i>100</i>	<i>99</i>	<i>105</i>	<i>109</i>

5. Conclusion on injury

- (28) Following disclosure of the provisional Regulation, one user claimed, with reference to recitals (64) and (67) of the provisional Regulation, that the Commission had based its provisional conclusions on injury – and consequently also causation – exclusively on the allegedly negative development of certain market indicators over a very short time period instead of assessing injury over a period of three to four years, as was the

common practice. The user based this argument on an assumption that the Community industry was not suffering any injury up until the end of 2005, since the previous measures were allowed to lapse at the end of 2005. Since the IP ended in September 2006, this would mean that the injurious situation of the Community industry would have presented itself only during a few months in 2006.

- (29) In this regard, it is noted firstly that recital (64) of the provisional Regulation, wherein reference is made to the development of certain injury indicators from 2005 to the IP, must be read in conjunction with the preceding recital (63), where the development of injury indicators up to 2005 is commented. It is clear from these recitals of the provisional Regulation concerning injury indicators, that the Commission followed its usual practice and examined the development of injury indicators over a period of almost four years, i.e., from the beginning of 2003 to September 2006. As is mentioned in recital (63), the year 2004 was an exceptional year in the Coke 80+ market, resulting from low supply on the market due to low imports from the PRC and closure of some plants previously producing Coke 80+ in the Community. The exceptional nature of the market situation in 2004, which was still reflected in the indicators of the following year, has not been disputed by any interested party. It is precisely because the peaks experienced in 2004 and 2005 are considered exceptional that the Commission, in this case, has had to pay particular attention to the development of injury indicators between 2003 and the IP. It is recalled that the key financial indicators, in particular profitability, experienced a dramatic drop not only from 2005 to the IP, but also when comparing 2003 to the IP.
- (30) In addition, it should be noted that drawing any conclusions as to the state of the Community industry at the end of 2005 from the fact that producers in the Community did not follow through an application for an expiry review of the previous measures would be purely speculative.
- (31) Therefore, the claim that the Commission has analysed the injury picture only concerning some months in 2006 must be rejected.
- (32) The above revised factors, i.e. profitability, return on investment and productivity of the Community industry, leave unaffected the trends as set out in the provisional Regulation. Also the revised undercutting margin still remained well above the *de minimis* level. On this basis, it is considered that the conclusions regarding the material injury suffered by the Community industry as set out in the provisional Regulation are not altered. In the absence of any other new and substantiated information or arguments, they are therefore definitively confirmed.

F. CAUSATION

1. Effect of the dumped imports

- (33) As mentioned in recital (22) above, it is definitively concluded that during the IP, the average prices of imports from the PRC undercut the average Community industry prices by 5,7 %. The revision of the undercutting margin leaves unaffected the conclusions on the effect of the dumped imports set out in recitals (67) to (69) of the provisional Regulation.

2. Exchange rate fluctuations

- (34) One user has claimed that developments on the market after the IP show that the situation prevailing during the IP was exceptional and the prices started to increase again after the IP. This user claimed that the temporary drop in prices during the IP

was largely due to the unfavourable exchange rate from the USD to EUR, the fact that prices for Coke 80+ are generally expressed in USD on world markets and the difficulty to adjust prices, which are generally negotiated annually, to the new currency situation. In this regard, it is noted that the investigation has shown that the sales prices of the Community industry producers within the EU are generally expressed not in USD, but in EUR or other European currencies. Furthermore, the post-IP development of higher prices claimed by this user, which would coincide with an even weaker USD as compared to the EUR, does not support the logic of the argument that falling Coke 80+ prices were caused by a negative USD-EUR exchange rate trend.

3. Self-inflicted injury

- (35) One user has submitted that the alleged injury of the Community industry caused by decreasing prices was mainly attributable to the aggressive pricing policy operated by some European producers selling at prices below the Chinese import prices. However, the investigation has not shown evidence of a general "aggressive pricing policy" between certain European producers. It was found that competition between the European producers mainly takes place in the regional markets and not on a Community-wide level, since due to considerable transport costs the producers usually sell in their geographic proximity. Lower prices possibly charged by some producers have thus not caused injury to other European producers. Moreover, the fact that there is competition between certain European producers does not mean that the Chinese dumped import prices have not forced those producers to outbid each other even more than they would do in a situation of fair competition by the Chinese producers, and thus to sell at unsustainable prices.
- (36) This user has also argued that the biggest share of increase in consumption from 2003 to the IP was taken by the Community producers and not by the Chinese imports. While this might be true in absolute terms, it is not so in relative terms: the investigation has shown that the Chinese imports, which had a 24 % market share in 2003, took almost half of the increase in the consumption from 2003 to the IP.
- (37) The same user also asserted that in an environment of growing consumption, the Community industry was unable to increase its market share because it did not increase its production capacity. Therefore, the increase in Community consumption had to be met by Chinese imports. However, the fact that the Community industry did not increase its capacity in pace with the growing consumption can be seen rather as a consequence of the uncertain investment environment created by the price pressure from the dumped Chinese imports than a cause for injury for the Community industry.
- (38) It is noted that the Community industry had about 120.000 tonnes spare capacity during the IP, the utilization of which was not economically viable due to the price pressure from the dumped Chinese imports. Furthermore, one Community producer cut down its production significantly from 2005 to the IP and has post-IP ceased the production of Coke 80+. The specific nature of this industry means that temporary shutting down of the production process destroys the production equipment (ovens) and restarting would require large additional investments. In a market situation characterised by a significant price depression it did not make economic sense to invest in restarting closed-down ovens or building new ones.
- (39) One interested party also claimed that increased labour costs were a major cause of the alleged injury to the Community industry. However, the investigation has shown that the overall increase in number of Community industry employees is attributable only

to one producer, which in parallel increased its productivity. The other Community industry producers kept their level of employment fairly stable although facing decreasing production. This can be explained by the nature of the production process of this industry, where the personnel needed to keep the production facility running remains practically unchanged, regardless of whether the company is operating on full capacity or less, causing productivity to decrease in line with the production.

- (40) In any case, even if some Community industry producers have incurred unnecessarily high labour costs when decreasing production, this cannot be a significant cause of injury, given the minimal effect the changes in labour costs have had on the overall profitability of the Community industry. By way of illustration, the increase in labour costs (EUR 1,8 million) explains less than 1 percentage point loss of the Community industry's overall profitability, which plummeted from 16,2 % to -3,8 % from 2005 to the IP (around EUR 39 million reduction in profits).

4. Prices of raw materials; natural disadvantages in terms of access to raw materials

- (41) With regard to prices of raw material as further described in recital (75) of the provisional Regulation, it is noted that revised calculations have shown that during the period considered, the basic raw material used in the production of Coke 80+, coking coal, represented around 60 % of the Community industry's cost of manufacturing of Coke 80+.
- (42) One interested party argued that the increased costs of the main raw material, coking coal, hit the Community industry relatively harder than the Chinese industry due to the latter's easy access to the raw material, thus making the Community industry uncompetitive even in the absence of dumped imports. In this regard, it is firstly noted that in view of the very limited cooperation from Chinese exporting producers, no general conclusions can be drawn as to the facility of access to raw materials by Chinese exporting producers. It must also be noted that one Community industry producer, which accounts for a significant portion of the total Community industry production, uses locally sourced coking coal. In addition, as was already noted in recital (76) of the provisional Regulation, up to the IP the Community industry was able to pass on the increase in raw material prices to the sales prices. Additionally, it is noted that according to available market information, also China is partly resorting to imported raw materials, currently importing significant quantities of coking coal from Australia.
- (43) Another interested party implied that the causation analysis is incorrect, since it doubts how the Community industry, which was profitable in 2003, could have suffered losses during the IP and no longer be able to cover the high cost of raw materials, even though the increase of Community industry's sales prices between 2003 and the IP was far more significant than the impact of the increase in raw material prices.
- (44) In this regard it is noted that while it is true that the sales prices of the Community industry were higher during the IP than in 2003 (see recital (51) of the provisional Regulation), the raw material prices, which are the main component of the cost of production, were proportionally even higher (see recital (75) of the provisional Regulation as well as recital (41) above). The claim is therefore rejected.

5. Conclusion on causation

- (45) In the absence of any further new and substantiated information or argument, recitals (67) to (80) of the provisional Regulation are hereby confirmed, with the exception of the revisions made to recitals (67) and (75) as stated above.
- (46) In the light of the above, the provisional finding of existence of causal link between the material injury suffered by the Community industry and the dumped Chinese imports is confirmed.

G. COMMUNITY INTEREST

1. Developments after the investigation period

- (47) Comments relating to the need to take into consideration certain important post-IP developments have been received both from certain Community industry producers as well as from the cooperating exporting producer and users. These comments relate in particular to significant increases of the market price of Coke 80+, as regards the price of Chinese imports as well as the Community industry's sales prices.
- (48) The said interested parties have attributed the increase of import prices mainly to certain measures put recently in place by the Chinese government to discourage the export of energy-intensive materials, including coke, such as an export tax hike and restrictive distribution of export licenses. One user has argued that those measures are likely to be long-lasting in view of the structural changes in Chinese policy, whereby semi-raw energy goods such as Coke 80+ are retained for domestic market to generate locally sourced added value. Community industry producers have, on the other hand, asserted that the current high price level is temporary and subject to changes at any time at the sole discretion of the PRC government. The same user has also claimed that the profitability of the Community producers is currently at high levels due to significantly increased sales prices after the investigation period. According to this user, the sales prices of the Community industry are set for a long-term upward trend due to significant increase in consumption in the stone wool industry, absence of any increases in production capacity in the EU and, especially, dramatic changes in Chinese policy having significantly reduced exports from the PRC.
- (49) In so far as this user implied that the alleged longevity of (i) the restricted Chinese exports and (ii) the allegedly high level of profitability of the Community industry negates the justification of imposing anti-dumping measures, it is noted firstly that while it is true that the Chinese government has put in place measures that discourage the export of energy-intensive materials, no information is available to draw conclusions on the permanence of these measures. On the contrary, experience gathered in the past, notably in 2004 and 2005, showed that the policy to influence exports could be reversed rather quickly. Secondly, in accordance with Article 6(1) of the basic Regulation, information concerning dumping and injury relating to a period subsequent to the investigation period shall, normally, not be taken into account.
- (50) Significant increases observed in the prices of Chinese imports of Coke 80+ have, however, been acknowledged in recital (112) of the provisional Regulation and have been taken into account in the choice of minimum import price ('MIP') as the form of the measure. The continuing trend of high import prices beyond injurious levels also after the provisional Regulation is confirmed by published market reports as well by information available to the Commission concerning imports of Coke 80+ from the PRC carried out after the imposition of the provisional measures. This circumstance is again reflected in the choice of the proposed definitive measure, a minimum import price, as set out in recital (75) below.

- (51) Certain Community industry producers have claimed that the high import price levels observed after the IP were attributable also to the ocean freight rates for bulk carriage, which increased significantly after the IP, inflating the CIF price of the product concerned. They argued that since the minimum import price is determined on a CIF basis, it does not address the issue of imports at dumped prices, as the import prices meet the MIP when they include the ocean freight. In this regard, it is noted firstly that in accordance with Article 6(1) of the basic Regulation, post-IP information concerning dumping shall, normally, not be taken into account. In addition, the said Community industry producers have even failed to elaborate how the alleged ocean freight rate increases should, in their view, be taken into account in this regard.
- (52) The said Community industry producers have also argued that a MIP based on the cost of raw material during the IP fails to adequately remove the injury caused by the dumped imports, since a significant increase in ocean freight rates after the IP would affect the cost of the principal raw material, the coking coal, which is mainly sourced overseas by the Community industry. In this regard, it is again reiterated that in accordance with Article 6(1) of the basic Regulation, post-IP information shall, normally, not be taken into account. In addition, the Community industry producers have not quantified the effect the alleged increase of ocean freight rates would have on the Community industry's cost of production of Coke 80+, except for providing some published market reports on ocean freight rates. These do not, however, allow making sufficiently detailed calculations on the impact for the Community industry as a whole, taking into account in particular that the Community industry producers acquire their raw material from several different sources and since one of the major Community industry producers would not be affected by the ocean freight increases, since it uses locally sourced raw material. The argument of the Community industry producers must thus be rejected.

2. Interest of the Community industry

- (53) In addition to the comments related to post-IP developments addressed above in recitals (47) to (50), one user also claimed that the analysis of the interest of the Community industry for the imposition of measures rests exclusively on the findings relating to the IP, without reflecting the entire injury investigation period. In this regard, it is noted that the analysis of possible consequences for the Community industry of imposing anti-dumping measures or not imposing them is deduced from the injury analysis, which the Commission has, as elaborated in recitals (28) and (29), conducted regarding the development of injury indicators over the whole period considered. This claim is therefore rejected.
- (54) In the absence of any new and substantiated information or argument in this respect, the conclusion made in recitals (82) to (84) of the provisional Regulation regarding the interest of the Community industry are hereby confirmed.

3. Interest of unrelated importers/traders in the Community

- (55) In the absence of any comments from importers/traders, the conclusions made in recitals (85) to (87) of the provisional Regulation are hereby confirmed.

4. Interest of users

(a) Stone-wool producers

- (56) In the absence of any new and substantiated information or argument in this particular respect, recitals (89) to (91) of the provisional Regulation are hereby confirmed.

Consequently, it is also confirmed that a duty at the level of the underselling margin would have a very limited effect on the cost of production of the cooperating stone wool producer, with a hypothetical maximum increase of around 1 %, as stated in recital (98) of the provisional Regulation.

(b) Foundries

- (57) After the provisional stage, the Commission intensified the investigation as regards the possible impact of measures on users, in particular foundries. To this end, additional information was requested from CAEF and national foundry associations. The information received confirms the provisional finding, based on users' questionnaire responses as mentioned in recitals (93) and (94) of the provisional Regulation, that the effect of Coke 80+ in the total cost of production of foundries is relatively moderate. While the share of Coke 80+ in the users' cost of production depends on the product, it was found to range generally between 2 % and 5 %.
- (58) As for the profitability of the foundries mentioned in recital (93) of the provisional Regulation, it was found to range between 2 % and 6 %. This is in line with the information provided by CAEF, based on a study of the profitability of 93 foundries in 2006, according to which the average profitability of the foundry industry was 4,4 % (the average margin being 2,8 % for foundries producing for the automotive sector and 6,4 % for those producing for mechanical engineering sector).
- (59) The additional information mentioned above has also confirmed the provisional findings that a duty at the level of the underselling margin would have a very limited effect on the foundries' cost of production, with a hypothetical maximum increase of around 1 %. It is noted that for a large part of the foundries included in the analysis mentioned in recital (93) of the provisional Regulation, this percentage is even well below 1 %.
- (60) Some interested parties have, however, argued that given the low average profit margin of European foundries, they cannot sustain considerable price increases of Coke 80+, which they can hardly pass on to their customers. In this regard it is noted that it cannot be excluded that some foundries might not be able to sustain the current price levels of Coke 80+. However, the price increases after the IP appear not to be attributable to the anti-dumping measures, since the MIP imposed by the provisional Regulation is well below the current market price level and since the price increases started already before the provisional measures were imposed.

(c) Security of supply

- (61) Some users have also reiterated their earlier claims relating to the security of supply of Coke 80+ and argued that measures would dramatically affect the EC user industry, for which Coke 80+ is a raw material of strategic importance. They have, however, at the same time asserted that imposition of anti-dumping measures will only marginally, if at all, affect Chinese exports. Moreover, the form and the level of the anti-dumping measures adopted in this case is designed to function as a safety-net for the Community industry but without artificially distorting the market to the detriment of the user industry. The investigation has shown that any risk of scarcity of supply, if at all, may stem from possible increased domestic demand in China and the current Chinese policy to discourage energy intensive exports but not from the anti-dumping measure.

5. Conclusion on Community interest

- (62) The above additional analysis concerning the interest of the users in the Community has not altered the provisional conclusions in this respect. Even if in certain cases the burden would need to be fully borne by the user/importer, any negative financial impact on the latter would in any event be negligible. On this basis, it is considered that the conclusions regarding the Community interest as set out in the provisional Regulation are not altered. In the absence of any other comments, they are therefore definitively confirmed.

H. DEFINITIVE MEASURES

1. Injury elimination level

- (63) The pre-tax profit margin used in the provisional Regulation to calculate the injury elimination level was based on the average profit margin attained by the Community industry during 2003-2005, provisionally calculated as being 15,3 % of turnover. This was considered as the profit margin before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports.
- (64) Several interested parties contested the profit margin level provisionally used. One user claimed that the 15,3 % profit ratio is excessive, arguing that the profit levels achieved by the Community industry in 2004 and 2005 were exceptional, occurring at a time when the shortages of Chinese Coke 80+ were so significant that the then existing anti-dumping measures were suspended. This user argued that there was no valid justification for using a profit margin significantly higher than the one found used in the previous investigation. It is noted that the profit margin used at the definitive stage of the previous investigation was 10,5 %.
- (65) The cooperating Chinese exporting producer echoed the argument that the provisionally used profit margin is distorted by the high profits in 2004 and 2005 achieved due to exceptional market conditions. This exporting producer claimed that Coke 80+ is a commodity type product and that a profit rate of 5 % would be more in line with profit rates previously used for commodity type products.
- (66) Some Community industry producers have, on the other hand, claimed that a 15,3 % profit margin is not adequate for injury elimination, since the said producers have historically achieved higher profit levels in the absence of price depression caused by dumped imports. They have claimed that the 15,3 % profit margin would not be sufficient to allow the Community producers to make investments required to meet compulsory environmental standards and to rejuvenate or reactivate closed-down production facilities. It was claimed that such revamping of the Community production would allow the Community producers to meet the increased demand for Coke 80+. The Community producers in question have, however, not presented an exact figure of the profit margin level that they would consider reasonable.
- (67) It is firstly noted that in light of the revised profitability findings mentioned in recital (25), it was found that the weighted average profitability reached over 2003-2005 was actually 13,1 %, instead of the 15,3 % mentioned in recital (107) of the provisional Regulation.
- (68) Secondly, the methodology used to determine the injury elimination level was re-examined following comments received. It was considered that the years used as benchmark could indeed be considered unrepresentative in normal circumstances to the extent that 2004 was an exceptionally good year in terms of profits (15 %) because of a significant shortage of Chinese Coke 80+ on the market. This exceptional

situation was reflected again in 2005 (16,2 %). On the other hand, in 2003 the Community industry was likely still in the process of recovering from past dumping, reflected in a somewhat lower profit margin (8,1 %). Instead, the target profit of 10,5 % used in the previous investigation was based on three consecutive years (1995-1997) at a time before increased market penetration of Chinese imports. Therefore, it seems to reflect more appropriately the profitability that this type of industry can achieve in the absence of dumped imports.

- (69) As for the claims of certain Community producers for a profit margin necessary to enable investments, it is noted that such criterion is irrelevant when determining the injury elimination level. Indeed, the profit margin used when calculating the target price that will remove the injury in question must be limited to the profit margin which the Community industry could reasonably count on under normal conditions of competition, i.e. in the absence of the dumped imports.
- (70) On the basis of the above, it is concluded that the Community industry could reasonably expect to achieve a pre-tax profit margin of 10,5 % in the absence of dumped imports and this profit margin was used in the definitive findings.
- (71) The Chinese import prices as adjusted for the calculation of price undercutting (see recitals (20) and (21)) were compared, for the IP, with the non-injurious price of the like product sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry in order to reflect the profit margin, as now revised (see recital (70)). The difference resulting from this comparison, when expressed as a percentage of the total CIF import value, amounted to 25,8 %, i.e. less than the dumping margin found.
- (72) Given that no exporting producer had requested individual treatment, a single country-wide injury elimination level was calculated for all exporters in the PRC.

2. Definitive measures

- (73) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the lowest of the dumping and injury margins found, in accordance with the lesser duty rule. In this case, the duty rate should accordingly be set at the level of the injury found.
- (74) On the basis of the above, the definitive duty should amount to 25,8 %.

3. Form of the measures

- (75) The provisional Regulation imposed an anti-dumping duty in the form of a minimum import price. Given that the considerations for choosing a MIP as the form of the measure mentioned in recital (112) of the provisional Regulation are still valid, and in the absence of any comments against this choice, the MIP as the form of the measure is hereby confirmed.
- (76) As set out in recital (117) of the provisional Regulation, the Commission analysed further the feasibility of an indexation system to be applied to the MIP. For this purpose, the Commission looked into different indexation options, in particular the evolution of the price of coking coal, the main raw material of Coke 80+. Also certain Community industry producers had claimed that the MIP should be linked to the cost of coking coal. However, it was found that the fluctuation of the price of Coke 80+ is not sufficiently explained by the evolution of the price of coking coal or any other major input. Therefore, it was decided that the MIP should not be indexed.

(77) The amount of the minimum import price results from the application of the injury margin to the export prices used in the calculation of the injury elimination level during the IP. The definitive minimum import price thus calculated amounts to EUR 197 per tonne.

4. Implementation

(78) In the absence of any comments concerning the implementation of measures, recitals (114) to (116) of the provisional Regulation are hereby confirmed.

(79) There was concern as to the applicability of these measures in respect of the method of measuring of the Coke as to determine the proportions of Coke 80+ and Coke 80-present in a mixed shipment. The investigation has shown that importers of Coke 80+ impose strict criteria for, *inter alia*, size and moisture and that upon arrival of the purchased product in the Community, control measurements are made by the importer to ensure that these criteria are respected. The main users of Coke in the EC are certified under ISO 9001:2000 or equivalent quality management systems requiring certificates of origin and certificate of conformity with each shipment. Such certificates of conformity confirming also dimensional specifications may be requested by the implementing customs authorities for the purpose of verifying the accuracy of the particulars contained in the declaration.

(80) The two ISO standards applied by the industry are ISO 728:1995 and ISO 18238:2006 determining respectively the method of measuring and the method of sampling of Coke to be measured. The fact that these standards are already applied by the importing industry shows that such standards are applicable and therefore relevant for the implementation of these measures.

I. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY

(81) In view of the magnitude of the dumping margin found and given the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty imposed by the provisional Regulation should be definitively collected to the extent of the amount of definitive duties imposed. As the definitive duty is lower than the provisional duty, amounts provisionally secured in excess of the definitive rate of anti-dumping duty should be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of coke of coal in pieces larger than 80 mm in maximum diameter (Coke 80+) falling within CN code ex 2704 00 19 (TARIC code 2704 00 19 10) and originating in the People's Republic of China. The diameter of the pieces shall be determined in accordance with the norm ISO 728:1995.

2. The amount of the definitive anti-dumping duty applicable for products described in paragraph 1 shall be the difference between the minimum import price of EUR 197 per tonne and the net, free-at-Community-frontier price, before duty, in all cases where the latter is less than the minimum import price.

3. The anti-dumping duty shall also apply, *pro rata*, to coke of coal in pieces with a diameter of more than 80 mm when shipped in mixtures containing both coke of coal in pieces with a diameter of more than 80 mm and coke of coal in pieces with smaller diameters unless it is determined that the quantity of coke of coal in pieces with a diameter of more than

80 mm does not constitute more than 20 % of dry net weight of the mixed shipment. The quantity of coke of coal in pieces with a diameter of more than 80 mm contained in mixtures may be determined in accordance with Articles 68 to 70 of Council Regulation (EEC) No 2913/92⁵ wherein, *inter alia*, it is stated that the customs authorities may require the declarant to present other documents for the purpose of verifying the accuracy of the particulars contained in the declaration and to examine the goods and take samples for analysis or for detailed examination. In cases where the quantity of coke of coal in pieces with a diameter of more than 80 mm is determined on the basis of samples, the samples shall be selected in accordance with the norm ISO 18238:2006.

4. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93⁶, the minimum import price set out above shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable. The duty payable will then be equal to the difference between the reduced minimum import price and the reduced net, free-at-Community-frontier price, before customs clearance.

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

Article 2

Amounts secured by way of the provisional anti-dumping duty pursuant to Commission Regulation (EC) No 1071/2007 on imports of coke of coal in pieces larger than 80 mm in maximum diameter (Coke 80+) originating in the People's Republic of China shall be definitively collected at the rate of the definitive duty imposed pursuant to Article 1. The amounts secured in excess of the amount of the definitive duty shall be released.

Article 3

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

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

Done at Brussels,

For the Council
The President
[...]

⁵ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Council Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁶ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 214/2007 (OJ L 62, 1.3.2007, p. 6).