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EUROPEAN COMMISSION

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2010/0127 (NLE)

Proposal for a

**COUNCIL REGULATION (EU) No .../..**

**imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cargo scanning systems originating in the People's Republic of China**

## 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 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community, repealing Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') and in particular Article 9 of Regulation (EC) No 1225/2009.

#### **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**

Provisional measures were imposed by Commission Regulation (EU) No 1242/2009 (OJ L 332, 17.12.2009, p.60).

#### **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 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 18 March 2009, the Commission initiated an anti-dumping proceeding concerning

imports of certain cargo scanning systems originating in the People's Republic of China.

The investigation found dumping of the product concerned, which caused injury to the Union industry. The investigation also found that it was not against the Union interest to impose anti-dumping measures. On this basis, provisional measures were imposed by Commission Regulation (EU) No 1242/2009. The continuation of the investigation has confirmed the essential provisional findings.

Therefore, it is proposed that the Council adopts the attached proposal for a Regulation in order to impose definitive measures on imports of certain cargo scanning systems originating in the People's Republic of China.

### **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community, repealing Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ('the basic Regulation')

### **Subsidiarity principle**

The proposal falls under the exclusive competence of the Union. 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 Union, 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 because the basic Regulation does not foresee alternative options.

## **4. BUDGETARY IMPLICATION**

The proposal has no implication for the EU budget.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community<sup>1</sup>, repealing Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community<sup>2</sup> ('the basic Regulation') and in particular Article 9 of Regulation (EC) No 1225/2009,

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

Whereas:

**1. PROVISIONAL MEASURES**

- (1) The Commission, by Regulation (EU) No 1242/2009<sup>3</sup> ('the provisional Regulation') imposed a provisional anti-dumping duty on imports of certain cargo scanning systems originating in the People's Republic of China ('PRC').
- (2) The proceeding was initiated as a result of a complaint lodged on 2 February 2009 by Smiths Detection Group Limited ('the complainant') on behalf of a producer representing more than 80% of the total Union production of certain cargo scanning systems. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

**2. SUBSEQUENT PROCEDURE**

- (3) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures (provisional disclosure), several interested parties made written submissions making known their

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<sup>1</sup> OJ L 343, 22.12.2009, p. 51.

<sup>2</sup> OJ L 56, 6.3.1996, p. 1.

<sup>3</sup> OJ L 332, 17.12.2009, p.60.

views on the provisional findings. The parties who so requested were granted the opportunity to be heard.

- (4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. In particular, the Commission continued its investigation with respect to EU consumption aspects. In this respect, the Commission contacted interested parties, notably users as well as producers of the product concerned, with a view to verify claims of parties with respect of a series of transactions.
- (5) It is recalled that, as set out in recital (9) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2007 to 31 December 2008 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2004 to the end of the investigation period ('period considered').
- (6) The sole cooperating Chinese exporting producer argued that there is no justification for the use of an IP of 18 months instead of the 12 months normally used in anti-dumping investigations. According to the Chinese company the IP should have simply covered the 2008 calendar year.
- (7) At the outset it should be noted that the Chinese party had not disputed the use of an IP of the 18 month during the provisional stage of the investigation. The claim was only made after the adoption of provisional measures. However, the IP was already announced in the notice of initiation of the proceeding and in the questionnaires, i.e. at the very beginning of the investigation. The specific reasons for selecting an IP of 18 months have been explained in recital (9) of the provisional Regulation. The party did not put forward any reason at all that put into question the justification concerning the existence of relatively few transactions in this market.
- (8) In order to ensure full comparability of the figures relating to the IP with those relating to previous years, any figures given in the parts on injury and causation given for the IP have been annualized.
- (9) The Chinese party also claimed that the selection of the IP was made in order to manipulate injury factors. The allegation has to be rejected.
- (10) The Commission was not and could not be aware at the starting point of the investigation of the complex set of data and figures related to injury indicators at the beginning of the investigation. These data were only established in the course of the investigation.
- (11) It should finally be noted that this investigation is not the first time that an IP is set for a period longer than 12 months (e.g. the 16 months IP on calcium metal originating in the PRC and Russia<sup>4</sup> or the 18 months IP on disodium carbonate originating in the USA<sup>5</sup>).
- (12) The Chinese company also submitted that the signature of the contract captures all transactions at a certain point of time regardless as to whether a sale is made through a

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<sup>4</sup> OJ L 104, 23.04.1994, p.5 (recital 5).

<sup>5</sup> OJ L 83, 13.04.1995, p.8 (recital 8).

tendering process or not and thus there is no need for an extended IP. This argument is not convincing because it does not address the basic problem of the relatively few number of transactions in this business. The date of signing of the contract was only used in order to have a sufficiently clear basis about the material elements of the sales and at the same time to have a well defined date in order to distinguish what should be part of the IP and the preceding periods respectively and what should be left out.

- (13) In the absence of any other comments concerning the IP, recital (9) of the provisional Regulation is hereby confirmed.
- (14) 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 certain cargo systems originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period of time within which they could make representations subsequent to this disclosure.
- (15) The oral and written comments submitted by the interested parties were considered and taken into account where appropriate.

### **3. PRODUCT CONCERNED AND LIKE PRODUCT**

- (16) Following provisional measures, the product definition was revisited in light of the sole cooperating Chinese exporting producer's comments and a detailed examination of the Union industry's claims. This process has led to the conclusion that no alpha or beta technology product can be used for cargo scanning. Therefore, it is considered warranted to exclude these two types of technologies from the product scope. No other representation was submitted that could put into doubt the provisional findings that all the remaining technologies (apart from alpha and beta) covered by the product scope can be used in cargo scanners and all product types serve the same purpose which is to scan cargo by using the same main principal feature, i.e. the emission of radiation concentrated in scanning cargo. Indeed, during the IP gamma-based units of the product concerned were sold in the EU.
- (17) In view of the above, it is concluded that all types of systems for scanning of cargo, based on the use of neutron technology or based on the use of X-rays with an X-ray source of 250 KeV or more or based on the use of gamma radiations, currently falling within CN codes ex 9022 19 00, ex 9022 29 00, ex 9027 80 17 and ex 9030 10 00 and motor vehicles equipped with such systems currently falling within CN code ex 8705 90 90 share the same basic physical and technical characteristics, have the same basic end-uses and compete with one another on the Union market. On this basis the conclusions in recitals (10) to (15) of the provisional Regulation are hereby confirmed to the extent they do not refer to alpha and beta radiation technologies.
- (18) In the absence of any other comments concerning the like product, recital (16) of the provisional Regulation is hereby confirmed.
- (19) In view of the above, it is definitively concluded that all types of cargo scanning systems as defined above are alike within the meaning of Article 1(4) of the basic Regulation.

## 4. DUMPING

### 1. Market economy treatment (MET)

- (20) The sole cooperating exporting producer in the PRC did not claim market economy treatment ('MET') and only requested individual treatment ('IT'). In the absence of any comments, recitals (19) and (20) of the provisional Regulation are hereby confirmed.

### 2. Individual treatment (IT)

- (21) In the absence of any comments on IT, recitals (21) to (25) of the provisional Regulation are hereby confirmed.

### 3. Normal value

#### 3.1. Analogue country

- (22) No party disputed the selection of the United States of America (USA) as an analogue country.

- (23) The sole Chinese exporting producer reiterated its comments on the non-cooperation of one company established in the USA related to the complainant. It argued that the complainant used data relating to its related company in the USA to compute the normal value in the complaint whereas during the investigation the complainant submitted that its related USA company is not a producer of the like product. The Chinese exporting producer submitted that the US related party of the complainant should have been obliged to cooperate with the investigation and failure to do so should be considered as a reason to treat the complainant as non-cooperator and thus terminate the proceeding. It was also argued that the Commission should have clarified and verified whether the USA company is a producer of the like product. Finally, the Chinese exporting producer disputed the use of the EU's non preferential rules of origin as an indicator of whether an economic operator could be considered as a producer of a product.

- (24) With respect to the comments relating to the use in the complaint of data derived from the complainant's related USA company, it is noted that information on normal value in the complaint was based on general USA prices which were publicly available on the US Government's GSA Advantages website. For two product types of the like product there were no such public available prices and the normal value had to be therefore constructed by the complainant on the basis of information from its production costs in the EU adjusted to a US level based on the complainant's knowledge of the US market.

- (25) Furthermore the sole Chinese exporting producer did not provide any evidence that could put into question the findings stated in recital (32) of the provisional Regulation.

- (26) EU anti-dumping law does not, in any event, contain a rule that a proceeding should be terminated because a producer in the analogue country decided not to cooperate in the investigation. The fact that the producer is related to the complainant, does not alter this conclusion. Moreover, the court case relied on by the sole cooperating Chinese exporting producer, i.e. T-249/06 (Interpipe), is also not relevant here because in that case, the question at issue was to what extent a subsidiary of the Community

producer was obliged to cooperate for the purposes of the injury determination. This is different to the submission of data for establishing normal value in the analogue country.

- (27) With respect to the argument put forward on the definition of the concept of a producer it is noted that the investigation has established that the complainant is producing the like product in the EU and this manufacturing activity confers origin in line with the EU non-preferential rules of origin. No need exists by law to provide any conclusion with respect to the status of legal entities that are not under investigation in the current proceeding, are not established in the EU or whose data was not used during the investigation for the establishment of any finding.
- (28) In the absence of any other comments concerning the selection of the analogue country, recitals (26) to (37) of the provisional Regulation are hereby confirmed.

### **3.2. Determination of normal value**

- (29) It is recalled that the normal value was calculated on the basis of the data provided by the sole cooperating producer in the analogue country (i.e. United States of America) and the Union industry. Thus, for one product type imported in the EU, normal value was established on the basis of prices of domestic sales of the US producer of the like product produced in the US. The cooperating US producer did not produce any other product types which could be compared to the product types imported from China into the EU. In order to have a broader basis for normal value, the Commission therefore also examined whether for other product types normal value could be established on any other basis, in line with the provisions of Article 2(7)(a) of the basic Regulation ('any other reasonable basis'). At provisional stage, it was found that verified information on costs of the Union industry could be used for some product types.
- (30) Following the imposition of provisional measures, the sole cooperating Chinese producer submitted comments with regard to the normal value.
- (31) The sole cooperating Chinese exporting producer claimed that the normal value should be adjusted downwards by an amount representing the cost difference between self-produced and externally purchased accelerators since the Chinese company is producing accelerators while the US producer and the Union industry purchases them.
- (32) As regards this claim, it should be noted that it was not accompanied by any factual evidence, despite the fact that the Commission requested such evidence in the course of the investigation.
- (33) The sole cooperating Chinese exporting producer requested the Commission to provide the exact specification of the specific model types used for the normal value calculation. In this respect it is noted that the Union industry and the analogue country producer consider this type of information as confidential. Indeed, if one disclosed the exact name of models, account taken of the fact that the models belonged only to one series and that the specific features of this series were already disclosed and of the fact that only a limited number of model types were used for the purpose of normal value calculations, then parties receiving such disclosure would be able to derive the actual prices charged for the specific model types or the cost and prices on the basis of which

normal value was constructed for various model types. Such information is indeed confidential by nature and therefore this request had to be rejected.

- (34) The sole cooperating Chinese exporting producer expressed doubts on the way the Commission determined the normal value derived from Union industry data. It submitted that actual sales prices should be used rather than price offers for tenders. First of all, it is pertinent to recall that data from the Union industry were used in order to have higher percentage of representativity of the comparison between normal value and the export sales made by the sole cooperating Chinese producer. Therefore, to the extent possible, for the types of product concerned for which no normal value could be established on the basis of information available in the US, normal value was established on the basis of verified information from the Union industry for the same types of products that was imported from China.
- (35) Thus, normal value was constructed for a number of product types (in any event other than mobile scanning systems) on the basis of standard costs, without taking into consideration any civil works or other on-site costs, and by adding a normal percentage for profit which was in any event significantly lower than the target profit used for the determination of the injury margin. The investigation established that the Union industry applies standard costs for all types of products it offers. The records concerning the preparation of these standard costs, the way they are calculated and their comparison to the real cost in standard costing were verified and found to be in order.
- (36) Furthermore, the Union industry's cost structure was compared with the cost structure of the US producer of the like product. It was found that (i) the profit margin of the US producer was higher than the profit margin used to construct normal value on the basis of data from the Union industry and (ii) the Union industry's cost structure is broadly similar to the one of the analogue country producer (the exact difference cannot be disclosed for reasons of confidentiality). Thus, the use of Union industry data for determining normal value is clearly in line with the provisions of Article 2(7)(a) of the basic Regulation.
- (37) The Chinese company also commented on the public tender on the basis of which the US producer of the like product sold mobile cargo scanning systems on the US market. It claimed that if the Commission uses a normal value on the basis of a tender that took place in 2005 and compares it with the export price relating to the IP, then such comparison cannot be considered to be fair. This allegation is not borne out by the facts established in the investigation. In the USA public tenders are organised to award a framework contract under which the winner of the tender can sell for a certain period of time. The framework contract did not, however, contain any prices. Such contract was indeed concluded in 2005, but the respective individual quotes for tender and signing of contracts took place in 2007, i.e. already within the IP. Therefore the Commission was satisfied that this tender should be taken into account in the IP and form part of the data for calculating the dumping margin.
- (38) The sole cooperating Chinese exporting producer also requested clarification as to why the normal value for the relocatable system like the one sold in Latvia by the Chinese exporting producer was not derived from the US producer's sales but rather from Union industry data. To this respect it is noted that the Commission could not use data

in the analogue country because such data had not been available from the cooperating analogue country producer.

- (39) In the absence of any other comments, recitals (38) to (42) of the provisional Regulation are hereby confirmed.

#### **4. Export price**

- (40) Following the imposition of provisional measures, the sole cooperating Chinese exporting producer submitted comments concerning the export price.

- (41) These comments were made in relation to transactions in the Netherlands, Finland and Poland with respect to specific cost items. The comments which could be corroborated with verified data were accepted and the calculation of the dumping margin was revised accordingly. Comments referring to some installation costs had to be rejected. In this respect it is recalled that, although relevant actual data on the price of different elements of the product concerned was requested at various stages of the investigation, the company never made any attempt to provide any proposal for a conclusive breakdown. The amounts provided subsequent to the disclosure of the provisional findings are new information, unsupported by accounting information or other evidence that could be verified

- (42) The Chinese company also clarified that it has made one sale outside public tenders. This representation is confirmed. Nevertheless, the investigation established that this sale was not a sale that occurred in the normal course of business. It was in fact a replacement product and the price to which it refers was agreed a number of years before the IP. The replacement product was of a completely different type as the original product. Therefore, this was not a transaction falling in the IP but a settlement of a contract concluded previously. Therefore, the export price relating to this transaction could not be retained in the calculation.

- (43) In the absence of any other comments, recitals (43) to (46) of the provisional Regulation are hereby confirmed.

#### **5. Comparison**

- (44) The sole cooperating Chinese exporting producer claimed that the comparison was made on the basis of truncated product control numbers that ignore the physical differences between the products to be compared. Moreover, the Chinese company submitted that accelerators, differences in types of chassis and energy levels should have been taken into consideration on price comparison.

- (45) As regards the first claim the following points should be highlighted. With respect to data derived from the Union industry, it is recalled that calculations were made with data directly linked to respective bids in public tenders, i.e. for product types that competed at the same level of trade at the same time and that were considered by the tendering authorities as being comparable. As to data derived from the US producer of the like product, the investigation established that the product type compared fulfils the strict rules set out under Article 1(4) of the basic Regulation, i.e. it is a product alike in all respects to the product under consideration. Therefore, the fact that not all physical differences are reflected in a product control number or a truncated product

control number does not prevent the Commission from making a fair comparison between normal value and export price. More importantly, differences that could affect price comparability were looked at. The information on file indicates that products delivered by the cooperating Chinese exporting producer often contain additional features as compared to those used as a basis for normal value. As a result, the normal value has been established conservatively.

- (46) With respect to the accelerators, types of chassis and energy levels it should be noted that the requested adjustments fall under Article 2(10) of the basic Regulation but the differences in factors claimed have not been demonstrated to affect price and price comparability since no such information was provided by the Chinese party that could warrant an adjustment.
- (47) The sole cooperating Chinese exporting producer submitted that the accelerator is an important component of the product concerned and should have been included in the product control number structure. The Commission did not include the accelerator in the product control number structure as none of the parties concerned presented any evidence that pointed to the fact that the accelerator was a factor distinguishing the different product types.
- (48) The sole cooperating Chinese exporting producer also requested identification and quantification of the adjustments made to the normal value in order to bring it back to an ex-works basis. Adjustments for warranty and credit costs were made to the normal value determined on the basis of the domestic sales prices of the sole US producer of the like product. Adjustments for transport costs, warranty costs, training costs, documentation costs and agent fees were made to the normal value determined on the basis of data of the Union industry. Concerning the request for quantification of these adjustments, the Commission is not able to disclose such data as this information is considered confidential by nature. It must be noted that the corresponding data when calculating the ex-works export price have also not been disclosed to the Union industry.
- (49) In the absence of any other comments, recitals (47) and (48) of the provisional Regulation are hereby confirmed.

## **6. Dumping margins**

- (50) The sole cooperating Chinese exporting producer criticized the fact that some sales were excluded from the dumping calculation. In this respect it is noted that the sales values of the transactions in question were originally considered for the establishment of the export prices. However, the normal value for these transactions could not be established. Thus, no comparison could be made between normal value and export price.
- (51) The Chinese exporting producer also claimed that the CIF values of the sales mentioned under recital (50) should have been included in the total CIF value which served as a denominator for the dumping calculations. This claim cannot be accepted. The calculation of a total dumping is the result of the division of the sum of the different dumping found (where a price comparison could be made) with the sum of the corresponding CIF values. The inclusion in the calculations of the CIF values of sales for which no comparison between normal value and export price could be made

due to a lack of an established normal value, would cause an arithmetical flaw in these calculations as the nominator and the denominator would no longer refer to comparable transactions.

- (52) In the absence of any other comments, recitals (49) and (50) of the provisional Regulation are hereby confirmed.
- (53) Taking into account the above, the definitive dumping margin, expressed as a percentage of the CIF Union frontier price duty unpaid, is 38,8%.

## **5. INJURY**

- (54) Comments on the findings concerning injury were received only from the sole cooperating Chinese exporting producer, some of which were a mere repetition of comments already addressed in the provisional Regulation.
- (55) Arguments concerning comments already addressed in the provisional Regulation are not repeated in this Regulation.

### **1. General remarks**

- (56) It is recalled that in this case the information presented refers to two Union producers and one exporting producer which represent essentially the Union market. Account taken of the above, no precise figures can be given in order to protect business proprietary information. Thus, indicators are given in indexed form or ranges.
- (57) In its reply to the provisional disclosure, the sole cooperating Chinese exporting producer requested that the injury analysis should be presented on an annualised basis. Although this does not alter the substance of the data, but only its presentation, the claim was considered warranted and thus the analysis presented hereunder is annualized throughout.
- (58) The Chinese company disputed the data provided in the company specific provisional disclosure document on its sales volume for the period considered (2004 up to end of IP). It is noted that the Commission provided an exhaustive and complete break down to the party of the compiled data. Feed-back received by the Chinese party was consequently cross checked with the available information provided by the authorities of Member States as users of the product concerned and the producers in the Union. Therefore, at the definitive stage of the investigation the details concerning the Chinese sales to the Union and its respective impact are known.
- (59) The sole cooperating Chinese exporting producer argued that where there is no bid from the Union industry its sales should be excluded from the injury and causation analysis. However it should be noted that the institutions cannot say that the fact that during the IP the Union industry did not bid in one specific tender but the Chinese exporting producer did in that case entailed a self-inflicted injury to such an extent that it breaks the causal link between injury and dumping. Moreover, to participate in a tender does not come without a cost (translations, agent, sometimes paying for the tendering etc.) so companies do not bid if they are not sure that they have a chance.
- (60) It was also claimed that where the complainant (Smiths Detection Group Limited) made offers exceeding the price ceiling specified in tenders, they should be excluded

from the injury and causation analysis. Nevertheless, the investigation has not brought to light any verifiable information confirming that such offers existed.

- (61) The sole cooperating Chinese exporting producer submitted that there is an asymmetry of the injury data. This is because sales volumes, market share and profit refer to sales by contract date while certain other injury factors were derived from the financial accounting of the complainant and therefore may not correspond in time. At the initiation of this investigation the Commission services had to set a clear-cut reference point for sales which would be applicable to all companies cooperating with the proceeding. It was decided that the contract date provided the best reference point because there is often a large time gap between tender initiation dates and the contract date, and also between the contract date and the final invoice date. In addition, several invoices often cover a contract and a contract can cover several years.
- (62) Having set the contract date as the reference point, it was not practicable to ask the Union producers to compile their entire questionnaire response on the basis of contract dates. To do so would have meant that they should have had to completely rework their accounting in a manner which is not normal practice and which would have introduced numerous ambiguities with the consequent negative impact on the quality of such information. Bearing in mind that it was not viable to use invoice dates as the reference point, the injury data was supplied in this case in the best manner possible for this product.
- (63) In the course of month ten of the investigation i.e. in their provisional disclosure response, the sole cooperating Chinese exporting producer also disputed the fact that the IP covered an 18-month period stating that it should have been limited to the calendar year of 2008. This claim had to be rejected because of the reasons supporting an 18-month period as explained in the provisional Regulation and above in recitals (5) to (11). Moreover, such change would have prevented the timely conclusion of the investigation because it would have meant asking all cooperating companies to re-submit their questionnaire responses on the basis of a revised IP.
- (64) The Chinese party also cast doubts as to whether the many EU companies related to the complainant were properly included in the Commission's injury analysis. However the verification of the complainant's questionnaire response was carried out with full cooperation of the entire group and the Commission was satisfied that the injury indicators and calculations were analysed properly for the entire group. As was clarified to the Chinese party before the adoption of provisional measures, the EU companies to which it refers have an insignificant role, if any, in the manufacturing and marketing of the relevant product. In fact, their role is limited to some functions referring to sales of the product under investigation (e.g. servicing) and the sale of products not falling within the scope of this Regulation.
- (65) The sole cooperating Chinese exporting producer finally claimed that, insofar as the Union industry could not meet the technical requirements of certain tenders or did not participate at all in the tenders, no dumping causing injury to the EU industry occurred for these transactions. This claim could not be accepted.
- (66) First of all it is noted that the fact that for some export transactions no normal value can be established does not put into question the finding of injurious dumping as long as the basis for the calculation is considered as representative. This was certainly the

case here (see above recital (50)). For the specific transactions in question the following should be noted. The transaction referring to technical requirement problems concerns one product type sold on the basis of one tender. The Chinese company, on the one hand, and the two Union producers on the other interpreted the tender quite differently. The Chinese company claimed towards the end of the investigation that the product type in question is quite different from a mobile scanner while the Union industry was of the opinion that this is mobile scanner. It is therefore clear that Union industry participated into this tender with the fair belief that it should offer a specific product type. Even more importantly, its participation entailed costs (translations, agent, paying for the tendering etc.). Thus, the fact that the final conclusion of the tendering process was that the Union industry did not present a bid on the same terms does not mean that such imports have automatically not contributed to injury.

- (67) As regards the remaining transactions the Chinese exporting producer refers to a transaction not falling in the IP, which as explained under recital (42), is in fact a settlement of a contract concluded previously, and to a transaction where the Union industry did not participate to the tender. With respect to the former transaction, no finding with respect to injury was made. With respect to the latter transaction, the conclusions of recital (59) apply.

## **2. Union production and Union industry**

- (68) In the course of month eleven of the investigation, a Romanian company came forward with the claim that it was an EU producer of certain cargo scanning systems during the IP. The Commission sought and verified information concerning the actual status of this company. According to information submitted both by the company and by other actors in this market, including the Chinese exporting producer, this company's involvement in the like product is closely linked to the production activities of a well-established Union producer of cargo scanning systems. Consequently, in the context of the current investigation, the only sale made by the Romanian company during the IP is considered to have been made by the Union producer of cargo scanning systems it has worked with.
- (69) As regards macro-economic indicators such as consumption, production, capacity utilization, stocks, sales volume, market share, employment, productivity and wages, as well as export sales, it should be noted that they have been analysed with respect to all Union producers.
- (70) In the absence of any other comments, the findings set out in recitals (52) to (56) of the provisional Regulation are hereby confirmed.

## **3. Union consumption**

- (71) The sole cooperating Chinese exporting party argued that the level of the Union consumption as set out in the provisional Regulation was not accurate. In this respect, the Commission contacted interested parties, notably users, with a view to collect further information on EU consumption during the period considered. On the basis of additional input provided by parties, it is considered that the EU consumption developed as follows:

	2004	2005	2006	2007	IP
Index: 2004=100	100	62	114	110	111

Source: Questionnaire replies and subsequent submissions

- (72) The consumption of the product concerned and the like product in the EU increased by 11% during the period considered.
- (73) The Chinese party claimed that actual consumption data should be disclosed rather than indexed information. In this regard it is noted that, as it has already been clearly explained in recital (54) of the provisional Regulation, there are a very limited number of parties involved in the production of certain cargo scanning systems in the EU and any disclosure of actual consumption data would lead to disclosure of actual sales of parties which is considered as information that is confidential by nature.
- (74) It was also submitted that consumption should take into account all units of the product concerned consumed on the EU market. In this regard it is noted that Union consumption figures take into consideration all sales of the product under investigation (whether they result from a tendering process or not) of all parties (to the extent known by the Commission). Data was cross checked and verified to the various sources available. However, the consumption figures only comprise actual sales and not the small number of transactions reported to the Commission which were either leased or donated. Had these transactions been included, the Chinese market share would have been even higher.
- (75) In the absence of any other comments, recitals (57) and (58) of the provisional Regulation, modified as set out in recitals (71) to (74) above, are hereby confirmed.

#### 4. Imports from the country concerned

*(a) Volume, price and market share of dumped imports of the product concerned*

- (76) As explained in recitals (57) and (58) above, volumes and market share of dumped imports of the product concerned were revised. The annualisation of data and update of volumes confirmed the conclusions in the provisional Regulation that imports and their market share have increased significantly since 2004. The Chinese party questioned the methodology employed to index this data. It is important to highlight that the actual data used, however indexed, at both provisional and definitive stage shows a significant increase of volume and market share of imports from the country concerned.
- (77) The volume of imports of the product concerned increased by more than 150% through the period considered.

	2004	2005	2006	2007	IP
Volume of imports	100	75	250	200	267

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*Index: 2004=100*

*Source: Questionnaire replies and subsequent submissions*

- (78) As stated in the provisional Regulation at recital (60), the average export price varied enormously according to the types of cargo scanner imported and no meaningful conclusions could be derived from this.
- (79) The market share of the imports from the country concerned more than doubled in the period considered.

	2004	2005	2006	2007	IP
PRC market share	15-25 %	20-30 %	40-50 %	30-40 %	40-50 %
Index: 2004=100	100	121	219	183	240

*Source: Questionnaire replies and subsequent submissions*

- (80) The sole cooperating Chinese exporting producer argued that post-IP volumes (in the form of tenders won during the IP that led to the signing of contracts after the IP) should also be examined. In accordance with the provisions of the basic Regulation, post-IP events are not taken into account, except in exceptional circumstances. The Chinese exporting producer did not invoke such exceptional circumstances. Moreover, for reasons of comparability it would have been necessary to also reallocate the sales in periods preceding the IP. The claim was therefore not accepted. Bearing in mind the increases of imports in terms of volume and market share shown above, this decision had in any event no impact on the factors examined in this case.

*(b) Undercutting*

- (81) The sole cooperating Chinese exporting producer submitted that the undercutting methodology used at the provisional stage was flawed. In its view it was not possible to compare its actual sales prices with the tender prices offered by the Union industry. In this respect it is noted that this methodology was considered to be the most appropriate because of the need of a fair comparison involving a product which is very complex in nature and involved in public procurement. No other viable methods were identified by interested parties.
- (82) It should be stated that although the methodology remained the same as described above, minor adjustments were made to the calculation which reduced the Union industry's prices and these were disclosed to the interested parties.
- (83) The revised comparison shows that, during the IP, imports of the product concerned were sold in the Union at prices which undercut the Union industry's prices by a range of 15 to 20%. It should be noted that the Chinese exporting producer claimed in its submissions that one of the reasons why it won contracts was because it offered a superior product specification. In terms of undercutting (and underselling) this could have led to adjustments being made and higher injury margins being calculated. No

such adjustment was made because this was not proven to be valid and there was no information to quantify them.

- (84) In the absence of any other comments, the rest of the information in recitals (59) to (62) of the provisional Regulation, modified as set out in recitals (76) to (83) above, is hereby confirmed.

## 5. Situation of the Union industry

### Preliminary remarks

- (85) It should be noted that the data for the injury indicators are presented differently in the definitive Regulation to take account of two issues, as stated above in recitals (57) and (69), namely the request of the sole cooperating Chinese exporting producer to annualize data for the 18 months IP and the compilation in the analysis of the macro indicators of data derived from the second Union producer.

### Injury indicators

#### *Production, capacity and capacity utilisation*

	2004	2005	2006	2007	IP
Production	100	75	94	173	151
Capacity	100	83	90	185	200
Capacity utilization	100	90	104	94	76

*Index: 2004=100*

*Source: Questionnaire replies*

- (86) During the period considered, the Union industry's production volume increased by 51%. This positive trend is mainly due to the good export sales of the like product. The Union industry doubled its production capacity over the period considered for the same reason. Capacity utilisation of the Union industry went down by 24% over the period considered.
- (87) Bearing in mind that the above figures relate to production, an important part of which is sold on markets outside the EU, it is not considered that these are important indicators in this case.

#### *Stocks*

	2004	2005	2006	2007	IP
Stocks	100	164	155	127	136

*Index: 2004=100*

*Source: Questionnaire replies*

- (88) The Union industry's stock level showed an upward and fluctuating trend through the period considered. However, this was not considered to be an important indicator because this industry operates on a production to order basis, stocks are always kept to a very low level and an important part of these stocks was earmarked for the export market.

*Sales volume, sales price and market share*

	2004	2005	2006	2007	IP
Union sales volume	100	67	93	100	76
Market share	65-75%	70-80%	55-65%	60-70%	45-55%
Index of market share	100	108	82	91	68

*Index: 2004=100*

*Source: Questionnaire replies and subsequent submissions*

- (89) Sales of the Union industry decreased during the period considered and in the IP were almost 25% less than their original volume. The Union industry lost around 20 percentage points of its market share between 2004 and the end of the IP.
- (90) The findings to sales prices at recital (69) of the provisional Regulation are confirmed.
- (91) The sole cooperating Chinese exporting producer reiterated its request to receive information on public tenders awarded to the complainant and on the extent to which certain tenders were taken into account in the framework of this investigation. However, to give such level of detail was not deemed appropriate for confidentiality reasons. It also sought further confirmation that the date of signature of sales contracts of tendering proceedings was used as the determining factor to calculate Union consumption. In this respect the institutions confirm that the methodology explained under recital (57) of the provisional Regulation was used for all parties. The same party also sought clarification that the data of the complainant referred to both of its production sites. In this respect, as stated under recital (7)(a) of the provisional Regulation, it is confirmed that the data reported by the complainant was compiled from both of its production sites.

*Profitability*

	2004	2005	2006	2007	IP
Pre-tax profit margin	100	85	90	7	-50

*Index: 2004=100*

*Source: Questionnaire replies*

- (92) Over the period considered the Union industry has become loss-making. The situation was particularly bad during the IP.

*Investments, return on investment, cash flow and the ability to raise capital*

	2004	2005	2006	2007	IP
Investments	100	164	100	354	105
Return on investment	110-120%	85-95%	210-220%	215-225%	60-70%
Cash flow	100	124	257	186	-71

*Index: 2004=100*

*Source: Questionnaire replies*

- (93) Investments remained low over the period considered. A major part of the investments was devoted to maintaining the Union industry's operating premises. The higher level of investment observed in 2007 concerns a new patent to improve the performance of the product concerned. It is recalled that this business is know-how intensive and not investment intensive.
- (94) The return on investment, expressed in terms of net profits of the Union industry and the net book value of its investments, shows a drop during the period considered, but is not a good injury indicator because it mainly reflects assets that had already been depreciated.
- (95) The cash flow situation of the Union industry deteriorated severely over the period considered.
- (96) Bearing in mind that the production of cargo scanning systems constituted a small part of the complainant company's activity, the ability to raise capital was not considered to be an important indicator in this case.

*Employment, productivity and wages*

	2004	2005	2006	2007	IP
Employment	100	110	129	160	167
Average labour cost per worker	100	98	102	106	106
Productivity per worker	100	68	73	109	135

*Index: 2004=100*

*Source: Questionnaire replies*

- (97) The employment, average labour cost per worker and productivity per worker increased during the period considered. However, these indicators are not considered to be important indicators in this case because much of the employment relates to production of certain cargo scanning systems sold on the export market.

### **Magnitude of dumping**

- (98) The findings of recital (76) of the provisional Regulation are confirmed.

### **Other comments**

- (99) In the absence of any other comments, the rest of the information in recitals (64) to (76) of the provisional Regulation, modified as set out in recitals (85) to (98) above, is hereby confirmed.

## **6. Conclusion on injury**

- (100) The findings contained in the provisional Regulation regarding the varying degrees of importance of the injury indicators in this particular proceeding remain valid. The most important injury factors are considered to be profitability, market share and undercutting because they reflect directly the fortunes of the Union industry in relation to its activity on the Union market. The reasons why certain other indicators are not that relevant are explained above.
- (101) As regards profitability, the Union industry has become loss making over the period considered and the market share of the Union producers has fallen by 24%. Furthermore, the Chinese exporting producer undercut the complainant by a range of 15 to 20%.
- (102) Indeed, the Chinese market share of the product concerned in the Union increased by 140% during the period considered while at the same time Union industry showed a significant decrease in sales volume (-24%) and market share (20 percentage points).
- (103) As explained in the general remarks preceding this injury analysis, the data has been presented in a different way to the provisional Regulation. Clearly, whether the data is shown in an annualised format or not, does not change the substance of the data but only its presentation. However, the injury data presented above (in respect of the macro indicators) also includes data of the second Union producer. It is thus concluded that the revised data shown above confirms the provisional injury conclusions, i.e. that an injurious situation existed over the period considered within the meaning of Article 3(5) of the basic Regulation.
- (104) Account taken of the above, it is considered that the conclusions regarding the material injury suffered by the Union industry as set out in the provisional Regulation are not altered due to the change of presentation referred to in recital (85). In the absence of any other comments in this respect, recitals (77) to (80) of the provisional Regulation, modified as set out in recitals (100) to (103) above, are hereby confirmed.

## **6. CAUSATION**

- (105) Comments on the findings concerning causation were received only from the sole cooperating Chinese exporting producer.

(106) It is recalled that the effects of dumped imports and other factors have been annualised for the reasons explained in recital (85).

### 1. Effects of the dumped imports

(107) The market share of the dumped imports increased by 140% during the period considered, whilst the Union's industry market share decreased by 32%. These negative changes for the Union industry occurred against the backdrop of the EU consumption that increased by 11% between 2004 and the IP (annualised figure).

### 2. Effects of other factors

#### Export performance of the Union industry

	2004	2005	2006	2007	IP
Export sales of Union production	100	93	123	245	233
Export sales price	100	107	60	63	70

*Index: 2004=100*

*Source: Questionnaire replies*

(108) The export volume of the Union industry increased during the period considered. Exports represented the overwhelming majority (between 85 and 95%) of the total volume of EU production in the IP.

#### Imports from third countries

(109) The sole cooperating Chinese exporting producer suggested that Commission failed to analyse imports from the USA and that more cargo scanners were sold to the EU by US companies than by the PRC during the IP, but this claim is not supported by actual facts and concrete verifiable evidence.

(110) Following provisional measures, the Commission actively sought to have more information on US imports but it finally confirmed the figures for the volume of imports from the USA established at provisional stage.

#### The Union industry did not present a bid for all tendering processes taking place during the IP

(111) The sole cooperating Chinese exporting producer criticized the consequences of the non-participation in some tenders of the Union industry. In this respect we note that the investigation took stock of the fact that not all parties (the Union industry, the sole cooperating Chinese exporting producer, other producers of certain cargo scanning systems) presented offers to each and every tendering process. No compelling factor was found to suggest that the clearly observed injury during the period considered results from the Union industry not participating in bids that were not deemed

reasonable business options. The existence of a reasonable business option as a determining factor in participating to a bid is confirmed by the fact that participation in a tender entails costs (translations, agent, sometimes paying for the tendering etc.) and companies do not bid if they are not sure that they have a chance.

### **Impact of non-price related factors of the product concerned**

- (112) The sole cooperating Chinese exporting producer insisted on claiming that the injurious effects of non-price related factors such as other technical factors should be further analysed under causation.
- (113) Indeed, the Union industry would have been technically able to match the same specifications as those of the Chinese product. However, this would have meant that the Union industry would have had to offer the product at a higher price. In fact, this issue reveals the full effect of the dumping of the sole Chinese exporter. Part of the dumping is due to the fact that the Chinese exporting producer simply offers a product with more features. Since Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114), allows the application of two award criteria only: 'the lowest price' and 'the most economically advantageous tender', the contract had to be quasi automatically awarded to the Chinese supplier engaged in dumping. The offers made by the Chinese exporter would have no longer been economically advantageous if they had not been dumped, i.e. if they had at least been higher in order to reflect the additional features.
- (114) It should finally be pointed out that the investigation showed that the complainant met all the technical specifications in tenders where both the complainant and the Chinese exporting producer presented a bid on the same terms.

### **Allegation of higher prices than the complainant**

- (115) The sole cooperating Chinese exporting producer also claimed that there were cases where tenders were awarded to the Chinese company in spite of the fact that it offered a higher price than the complainant. Thus, such transactions should be deemed not to have caused injury.
- (116) In this respect it should be noted that the investigation has established the existence of only one case of tendering process where at first sight it seems that the sole cooperating Chinese exporting producer won a tender in spite of the fact that it offered a higher price than the complainant. However, the investigation revealed that in reality this was not the case because the offer made by the Chinese company includes many additional features for the same price. If adjustments were to be made for all these additional features, the export price would have been lower entailing a higher dumping margin. No other verifiable information was presented to support the claim that other tenders existed where the Chinese company offered a higher price than the complainant.

### **Situation with respect to the other Union producer**

- (117) The sole cooperating Chinese exporting producer submitted that the other Union producer engaged in predatory pricing thus causing material injury to the Union industry and that this party is not injured by imports from China because it has discontinued its active cooperation.
- (118) First of all, it is recalled that the other Union producer has provided information with respect to this proceeding and the injury analysis is assessed for the whole Union industry. Moreover, it is pertinent to note that the claims of the Chinese party on predatory pricing are not supported by any factual evidence and cannot undermine the findings of the investigation as presented at recital (89) of the provisional Regulation.

### **3. Conclusion on causation**

- (119) In the absence of any other comments, recitals (81) to (95) of the provisional Regulation, modified as set out in recitals (105) to (118) above, are hereby confirmed.
- (120) In the light of the above, the provisional finding that the material injury to the Union industry was caused by the dumped imports is confirmed.

## **7. UNION INTEREST**

### **1. Interest of users**

- (121) Two users that had already sent representations at provisional stage insisted on their initial comments. They highlight their concerns about competition and technological developments, should definitive measures be imposed. Both concerns were, however, addressed in the provisional Regulation and nothing new was submitted that could confirm that competition and technological developments would be harmed at least in the short to medium term by the imposition of a definitive duty.

### **2. Conclusion on Union interest**

- (122) The two representations above have not altered the provisional conclusions. In the absence of any other comments, recitals (96) to (113) of the provisional Regulation are hereby confirmed.

## **8. DEFINITIVE ANTI-DUMPING MEASURES**

### **1. Injury elimination level**

- (123) The sole cooperating Chinese exporting producer made comments on the underselling calculation. Where warranted, adjustments were made at definitive stage.
- (124) The Chinese company submitted a claim in relation to the injury margin that was similar to the one in recital (51) of this Regulation. This claim had to be rejected for the same reasons as those stated in recital (51) .
- (125) The Chinese company also sought clarifications on the method used to set the pre-tax profit margin and in particular to which year this profit margin refers. In this respect it is noted that the pre-tax profit setting was the result of an analysis of data referring to the financial years 2006 and 2007.

(126) The calculations made on the definitive dumping margin and the definitive injury elimination level led to the later being lower than the former. In the absence of any other comments, recitals (114) to (117) of the provisional Regulation, modified as set out in recitals (123) to (126) of the present Regulation, are hereby confirmed.

## **2. Definitive measures**

(127) In view of the conclusions reached with regard to dumping, injury, causation and Union 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. This was calculated at 34% having fallen significantly since the provisional stage, when the duty rate was set at the level of the dumping found.

(128) On the basis of the above, the rate of the definitive anti-dumping duty for the PRC is 34%.

(129) In line with recital (120) of the provisional Regulation, for reasons of careful monitoring of the effectiveness of the measures, the relevant authorities of Member States are requested to provide to the Commission on a confidential and periodic basis information concerning EU public procurement proceedings leading to sales of cargo scanning systems.

## **9. DEFINITIVE COLLECTION OF THE PROVISIONAL DUTY**

(130) In view of the magnitude of the dumping margin found and given the level of the injury caused to the Union 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 the duty definitively imposed by the present Regulation. Since the definitive duty is lower than the provisional duty, the amounts secured in excess of the definitive duty rate shall be released,

HAS ADOPTED THIS REGULATION:

### *Article 1*

1. A definitive anti-dumping duty is hereby imposed on systems for scanning of cargo, based on the use of neutron technology or based on the use of X-rays with an X-ray source of 250 KeV or more or based on the use of gamma radiations, currently falling within CN codes ex 9022 19 00, ex 9022 29 00, ex 9027 80 17 and ex 9030 10 00 (TARIC codes 9022 19 00 10, 9022 29 00 10, 9027 80 17 10 and 9030 10 00 91) and motor vehicles equipped with such systems currently falling within CN code ex 8705 90 90 (TARIC code 8705 90 90 10) originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at- Union-frontier price, before duty, of the products described in paragraph 1 shall be 34%.

3. 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 Regulation (EU) No 1242/2009 on imports of systems for scanning of cargo, based on the use of neutron technology or based on the use of X-rays with an X-ray source of 250 KeV or more or based on the use of gamma radiations, currently falling within CN codes ex 9022 19 00, ex 9022 29 00, ex 9027 80 17 and ex 9030 10 00 (TARIC codes 9022 19 00 10, 9022 29 00 10, 9027 80 17 10 and 9030 10 00 91) and motor vehicles equipped with such systems currently falling within CN code ex 8705 90 90 (TARIC code 8705 90 90 10) 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 rate of the definitive anti-dumping 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*  
[...]