Commission Regulation (EU) No 1242/2009 of 16 December 2009 imposing a provisional anti-dumping duty on imports of certain cargo scanning systems originating in the People's Republic of China

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THE EUROPEAN COMMISSION,

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

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 Community ('the basic Regulation')[(1)], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 18 March 2009, the European Commission announced by a notice published in the *Official Journal of the European Union*[(2)] ('notice of initiation'), the initiation of an anti-dumping proceeding concerning imports into the Community of certain cargo scanning systems originating in the People's Republic of China ('PRC').

(2) The anti-dumping proceeding was initiated following a complaint lodged on 2 February 2009 by the Community producer Smiths Detection Group Limited ('the complainant'), representing a major proportion, in this case more than 80 % of the total Community production of certain cargo scanning systems. This complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.

1.2. Parties concerned by the proceeding

(3) The Commission officially advised the complainant, other known producers in the Community, the sole known exporting producer in the PRC, the representatives of the exporting country concerned, and producers in the United States of America ('USA'), which was envisaged as analogue country. In addition, the Commission contacted all known Community users of the product concerned/like product. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation. All interested parties

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who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

(4) In order to allow the sole known exporting producer in the PRC to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if it so wished, the Commission sent claim forms to the exporting producer known to be concerned and to the authorities of the PRC. The sole known exporting producer in the PRC did not request MET pursuant to Article 2(7) of the basic Regulation but requested IT.

(5) The Commission sent questionnaires to all parties known to be concerned and to all other parties that requested so within the deadlines set out in the notice of initiation.

(6) Questionnaire replies were received from the sole known Chinese exporting producer, from two Community producers, from one producer in the USA which was envisaged as analogue country and from nine Community users.

(7) The Commission sought and verified all the information it deemed necessary for the purpose of MET/IT and for a provisional determination of dumping, resulting injury and Community interest. Verification visits were carried out at the premises of the following companies:

(a) Community producers

Smiths Heimann SAS, Vitry (France) and Smiths Heimann GmbH, Wiesbaden (Germany), both related companies of Smiths Detection Group Limited

(b) Exporting producer in the PRC

Nuctech Company Limited, Beijing, People's Republic of China

(8) In view of the need to establish a normal value for the exporting producer in the PRC which did not claim MET, a verification visit to establish normal value on the basis of data from an analogue country, the USA in this case, took place at the premises of the following company:

Rapiscan Systems Inc., Torrance, CA, USA

1.3. Investigation period and period considered

(9) 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 IP ('the period considered'). With respect to the length of the IP it is noted that the 18-month period was selected due to the specific particularities of the product concerned/like product market, i.e. the existence of public procurement/tendering processes which entail long lead time periods for the materialisation of a transaction and the existence of relatively few transactions.

2. PRODUCT CONCERNED AND LIKE PRODUCT

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2.1. **Product concerned**

(10) The product concerned is 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 alpha, beta or 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 originating in the People's Republic of China ('the product concerned').

(11) Those scanners constitute advanced technology screening systems for monitoring freight. They help enhancing security and safety by detecting shipments of, *inter alia*, explosives, weapons, radioactive materials, narcotics, contraband and counterfeited goods. They are a key tool for customs administrations and port authorities, as well as for certain air cargo companies and other private actors specialised in safety and security matters, to identify suspect goods in unopened loads transiting by sea, road, air or rail.

(12) The product concerned exists in different configurations depending on the item to be scanned and whether they have to be mobile or static. The main configurations are the following: stationary systems (that are permanently installed on a dedicated site), relocatable systems (that are light scanning systems that move on rails and can be relocated), rail systems, mobile systems (that have scanners incorporated in a motor vehicle), pass-through systems and portal systems. Within the same configuration, cargo scanning systems share the same general physical, technological and performance characteristics, serve for exactly the same purposes in terms of uses, are sold exclusively to end users and are produced using the same type of equipment.

(13) The sole cooperating Chinese exporting producer claimed that the product scope of the product concerned should be radically reduced and should only include a certain part of the X-ray cargo scanning systems, i.e. non-mobile cargo scanning systems based on the use of X-rays (with an X-ray source of more than 450 KeV), excluding cargo scanning systems containing Interlaced Dual-Energy (IDE), binocular stereoscopic (BS) and fast-scan technologies. It was submitted that certain technologies are not scientifically or technically suitable for cargo scanners. It was argued that, in some cases, technologies, end uses and consumer perception are different. The company claimed that alpha or beta radiation technologies are not scientifically or technically capable of being used with cargos scanners. It also argued that cargo scanners with neutron and gamma technology are not produced within the Community. Furthermore, it submitted that certain scanners are different (i.e. mobile cargo scanners, cargo scanners with fast-scan technology, cargo scanners with IDE technology and cargo scanners containing BS technology, cargo scanners with a certain energy level) and thus cannot be treated as the product concerned. It was finally claimed that certain product types are different and that some product types are not produced in the PRC or the Community

(14) The investigation has shown that all technologies covered by the product scope can be used in cargo scanners and that all product types serve the same purpose

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which is to scan cargo by using the same main principal feature, i.e. the emission of radiation concentrated in scanning cargo. This is the reason why changes in the source or level of energy and also the better suitability of some technologies for specific types of the items to be scanned (e.g. organic items) could not warrant the exclusion of a certain product type. At the same time all product types, irrespectively of technologies, serve to satisfy the same sole aim pursued by the user of the product which is none other than to scan cargo. Furthermore, the calls for tender in the European Union typically do not exclude any type of technology, irrespectively of where the corresponding product is produced. It also appears that alpha and beta radiation technologies can be used for scanning certain type of cargo. In respect to product types not produced in the European Union, it is noted that this is not relevant as such. It follows from the constant practice of the Institutions that the definition of the product scope is based on whether the various types share the same basic physical and technical characteristics and essentially the same end uses. To limit the product scope only to exactly the same product types produced by the Community industry would make the product definition and any anti-dumping measure unworkable. As to the claim that certain X-ray cargo scanners should be excluded solely on the grounds that they are combined with certain types of technologies, it should be noted that the existence of any additional feature or functionality of an X-ray cargo scanner does not put into question the fact that this product is used in the same way as all other types of the product concerned and shares the same basic physical and technical characteristics. As regards the distinction between mobile and non-mobile cargo scanning systems, it should be noted that both serve the same purpose, use the same core technology and, in both, the scanning technology is integrated into a wider structure, be it a truck or a permanent installation. Finally, with respect to energy levels, it should be noted that both low and high energy levels are used in cargo scanning and that, therefore, all product types share the same main physical and technical characteristics, provided that the energy level is within the limits defined in the notice of initiation. It would appear therefore illogical to exclude cargo scanners with certain energy level especially taking into account that calls for tenders usually do not specify the energy level and it is up to the cargo scanner supplier to determine the appropriate level in its offer. Consequently, all existing types are considered as one product for the purposes of this investigation.

(15) It was also submitted that since the primary component of the product concerned (i.e. the accelerator) is not produced by the complainant, it should not be considered as a producer. In this respect, it is noted that cargo scanners and accelerators are different products. The production of accelerators is another type of business since accelerators are used in a variety of sectors and applications. Cargo scanning is only one application for accelerators. Worldwide, producers of cargo scanners do not normally produce accelerators. To the Commission's knowledge, only Nuctech is vertically integrated and produces also the upstream product.

2.2. **Like product**

(16) The product concerned in the PRC, the one produced and sold on the US domestic market, which served as an analogue country, as well as the product produced

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and sold in the Community by the Community industry were found identical in terms of overall general physical and technical characteristics. Moreover, there is no difference in use between those products. This is confirmed by the fact that the products generally compete in public tendering processes, where they have to comply with the same standard requirements. These tenders are published by government authorities (usually the customs authorities who are purchasers/users of the product). Tenders contain detailed specifications of the product to be delivered, sometimes coupled with concrete requirements with respect to installation, service-related support and maintenance requirements. By definition any offer made by a producer in a tendering process normally entails that the competing products have the same basic physical and technical characteristics and uses. Furthermore, given the transparent nature of the market in terms of size (small volume of transactions) and number of participants (small number of participants), and the stringent requirements set out in the invitations to tender, the possibility to differentiate products is considerably reduced.

(17) It is therefore provisionally concluded that all types of cargo scanning systems are alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. General methodology

(18) The general methodology set out below has been applied to the sole cooperating exporting producer in the PRC.

3.2. Market economy treatment (MET)

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

(20) However, as explained in recital (4) above, the sole cooperating exporting producer in the PRC only requested Individual Treatment ('IT'). These criteria were therefore not investigated.

3.3. Individual treatment (IT)

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

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

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