# Council Regulation (EC) No 393/2009 of 11 May 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain candles, tapers and the like originating in the People's Republic of China

## COUNCIL REGULATION (EC) No 393/2009

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## imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain candles, tapers and the like originating in the People's Republic of China

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

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

Whereas:

1. **PROCEDURE**

1.1. **Provisional measures**

(1) The Commission, by Regulation (EC) No 1130/2008 of 14 November 2008 imposing a provisional anti-dumping duty on imports of certain candles, tapers and the like originating in the People's Republic of China[(2)] (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of certain candles, tapers and the like originating in the People's Republic of China (PRC).

1.2. **Subsequent procedure**

(2) 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 their views known on the provisional findings. The parties who so requested were granted an opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(3) The Commission continued its investigation with regard to Community interest aspects and carried out further analyses of information provided by importers, retailers and trade associations in the Community after the imposition of the provisional anti-dumping measures.

**Changes to legislation:** *There are currently no known outstanding effects for the Council Regulation (EC) No 393/2009. (See end of Document for details)*

(4) The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly. To this end further verification visits were carried out at the following companies:

Unrelated importers in the Community:

— Koopman International BV, Amsterdam, Netherlands,

— Salco Group PLC, Essex, UK.

Verification visits were also carried out at the premises of the companies mentioned in recital 31.

(5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures on imports of certain candles, tapers and the like 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.

(6) It is recalled that the investigation of dumping and injury covered the period from 1 January 2007 to 31 December 2007 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 2004 to the end of the IP (period considered).

(7) Some interested parties argued that the choice of the year 2007 as investigation period was flawed because certain events, such as changing export subsidy and labour policies of the PRC, and fluctuations in exchange rates, which took place in 2007 and 2008, played a role in the injury analysis.

(8) It should be noted that according to Article 6(1) of the basic Regulation, the investigation period should cover a period immediately prior to the initiation of the proceeding. It is recalled that the present investigation was initiated on 16 February 2008. As to the examination of trends relevant for the assessment of injury, this normally covers three or four years prior to initiation, ending in line with the dumping investigation period. Consequently, the claim was rejected.

(9) One interested party contested the percentage mentioned in recital 2 of the provisional Regulation which represents the complainants in terms of total Community production.

(10) After examination of the claim, it should be noted that the figure of 60 % indicated in recital 2 of the provisional Regulation refers to the overall support for the investigation, including complainants and Community producers who supported the complaint and agreed to cooperate in the investigation, rather than to the percentage of the Community production covered by the complainants only. This is confirmed by recital 92 of the provisional Regulation. As to the percentage in recital 2 of the provisional Regulation, this should read '34 %'.

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

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2.1. **Product concerned**

(11) The product concerned was provisionally defined as certain candles, tapers and the like, other than memory lights and other outdoor burners, exported to the Community and originating in the PRC ('candles' or 'product concerned').

(12) For the purpose of imposing provisional measures, although the various types of candles could differ in size, shape, colour, and other features such as scent, etc., it was considered that all the types of candles included in the definition of the product concerned share the same basic chemical and technical characteristics and uses and they would be to a large extent interchangeable.

(13) Comments made at that time by interested parties did not justify the exclusion of certain types of candles from the scope of the investigation, in particular the so-called 'fancy' or 'decorative' candles. The parties did not make any submission identifying dividing features which would have allowed to clearly distinguishing between the various types of candles which should be included and those which should be excluded from the scope of the investigation. In addition, contrary to certain claims, the investigation did not point to findings of dumping and injury within the sampled companies investigated varying significantly according to the types of candles. It was therefore provisionally considered that all candle types covered by the present investigation were part of the same product and should be covered by the investigation.

(14) Following the imposition of provisional measures, it was claimed again that exporting producers in the PRC were producing to a large extent handmade or decorative candles with further refining operations. It was repeated that they were labour-intensive and that they were produced in limited quantities by Community producers. It was also reiterated that the customer perception towards decorative candles was different compared to classical and standard types of candles. For example, it was argued that unlike classical candles, decorative types are not destined to be burned or used to provide heat but were intended to be kept as decorative items as long as possible unaltered.

(15) It was also claimed that it would be relatively easy to discern decorative candles from other types of candles, such as tea lights and tapered candles, taking into account that decorative candles have at least one of the following features: (i) are multicoloured and have multiple layers; (ii) have special shapes; (iii) have carved surface with decorations and (iv) have additional decorations of material other than wax/paraffin.

(16) Other interested parties claimed that 'birthday' candles are not manufactured in the Community but almost exclusively in the PRC and should therefore also be excluded from the present proceeding.

(17) It was also argued that the so-called tea lights could replace candles for the purpose of producing light, but other types of candles could not replace tea lights for the purpose of producing heat. Therefore these two product types would lack interchangeability as is the case between memory lights and other outdoor burners

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which are not part of the product concerned and other types of candles, including tea lights. Consequently it was claimed that tea lights should also be excluded from the present proceeding.

(18) Concerning the claim on decorative candles, the distinguishing features mentioned by the parties are very general and would not allow for a clear distinction to be made between the types of candles which should be included and those that should be excluded from the scope of the investigation and not made subject to measures. Many standard types of candles have more than one colour, they may have a specific shape or one or more additional decorations, for example on the occasion of specific celebrations during the year. In addition, the information provided by the parties and collected in the investigation, in particular on the product types and the product control numbers as they were defined, would not always allow for a clear distinction between the various types of candles based on the above-mentioned features. It should be firstly noted that the fact that certain product types are, allegedly, not produced by Community producers would not automatically lead to the exclusion of these types from the definition of the product concerned. Secondly, it cannot be ruled out that certain types of candles are not produced by Community producers because of injurious dumping. In the case of the so-called birthday candles, the parties concerned did not provide any evidence that these types of candles were actually not produced in the Community, nor did they explain the reasons why such candles would not be produced in the Community. In addition, as is the case for the decorative candles, no clear dividing lines between the birthday candles and the other types of candles were provided to allow an eventual exclusion of these product types. These comments are also valid for the so-called handmade candles. It is noteworthy that, as mentioned in recital 26, the claim that handmade candles are not produced in the Community was not correct.

(19) Concerning the claim made on the use of certain candles types, namely to produce light and/or heat, it is recalled that in recital 26 of the provisional Regulation it was mentioned that interchangeability between various types of candles existed and that candles were largely used for interior decoration purposes and not for the main purpose of producing heat. No information which would contradict this statement was provided by parties. Concerning the claims made on memory lights and outdoor candles, it is confirmed that these products can be distinguished from other types of candles on the basis of the technical and chemical criteria mentioned in recital 17 of the provisional Regulation.

(20) In summary, it was considered that the claims made by the parties were not sufficiently specific and were not supported by substantiating evidence showing that the product concerned was not correctly defined in the provisional Regulation. It is recalled that all types of candles included in the product concerned share the same basic chemical and technical characteristics. In addition, in the present case, it was found that candles had the same or similar uses and that they are in many instances interchangeable. They are produced by candle producers in the PRC and exported via the same sales channels and are thus part of the same product.

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(21) In the absence of any further comments concerning the definition of the product concerned, recitals 15 to 23 of the provisional Regulation are hereby confirmed.

2.2. **Like product**

(22) Certain parties contested the findings made in recital 28 of the provisional Regulation where the criteria applied in the determination of the 'like product' were mainly based on the technical and chemical characteristics, as well as the end uses or functions of the product. Other factors, such as the shape, scent, colour or other features stated by the interested party, were not considered to be relevant for the definition of the like product. Indeed, possible variations in terms of size have no incidence on the definition of the product concerned and the like product, in particular because no clear distinction could be made between the product types belonging to the same product in relation to their main basic technical and chemical characteristics, to the end use and to the perception of the users.

(23) In this context, it should be underlined that the parties did not contest the fact that all types of candles share the same basic chemical and technical characteristics or that all types of candles are all made of the same raw material, mainly wax, that they are produced by the same producers and upon export they are sold via the same sales channels or to similar customers on the Community market.

(24) The main arguments made by interested parties relied on the fact that the types of candles produced in the PRC and exported to the Community are not like the types manufactured in the Community by Community producers. All claims were carefully examined, but did not provide any new substantial element in comparison to the claims made and addressed at the provisional stage.

(25) The claim stated in recital 14 for the definition of the product concerned was also made in the context of the like product. It was argued that exporting producers in the PRC produce to a large extent handmade, or labour-intensive decorative candles with further refining operations and various different shapes which are not produced or are produced in limited quantities by Community producers. Hence, it was claimed that these types of candles are not like those produced by Community producers.

(26) The investigation has shown that this statement is not correct. Whilst the producers included in the definition of the Community industry may be concentrating on the standard candles segment of the market, available information indicates that there are a large number of producers in the Community which produce decorative candles, including handmade and labour-intensive candles, in certain Member States such as Estonia, France, Germany, Greece, Italy, Poland and Slovenia.

(27) In view of the claims made and the evidence provided by interested parties and all other information available from the investigation, it is considered that the product concerned and candles produced and sold by the exporting producers on their domestic market and by producers in the Community, which also served as an analogue country for the purpose of establishing the normal value with respect to the PRC, could be considered as like products in accordance with Article 1(4) of the basic Regulation.