# Commission Regulation (EC) No 287/2009 of 7 April 2009 imposing a provisional anti-dumping duty on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China

## COMMISSION REGULATION (EC) No 287/2009

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## imposing a provisional anti-dumping duty on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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 7 thereof,

Whereas:

### A. PROCEDURE

#### 1. Initiation

(1) On 28 May 2008, the Commission received a complaint concerning aluminium foil originating in Armenia, Brazil and the People's Republic of China (PRC) lodged pursuant to Article 5 of the basic Regulation by Eurométaux (the complainant) on behalf of producers representing a major proportion, in this case more than 25 %, of the total Community production of aluminium foil.

(2) This complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.

(3) On 12 July 2008, the proceeding was initiated by the publication of a notice of initiation in the *Official Journal of the European Union*[(2)].

#### 2. Parties concerned by the proceeding

(4) The Commission officially advised the complainant Community producers, exporting producers in Armenia, Brazil and the PRC, importers, traders, users, suppliers and associations known to be concerned, and the representatives of Armenia, Brazil and the PRC of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(5) In order to allow exporting producers in Armenia and the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the Armenian exporting producer

and Chinese exporting producers known to be concerned, the Armenian and Chinese authorities and to other Chinese exporting producers that made themselves known within the deadlines set out in the notice of initiation. The Armenian exporting producer and six Chinese exporting producers together with their related sales companies, where appropriate, requested MET pursuant to Article 2(7) of the basic Regulation, or IT should the investigation establish that they did not meet the conditions for MET.

(6) In view of the apparent high number of exporting producers in the PRC and importers in the Community the Commission indicated in the notice of initiation that sampling might be applied in this investigation for the determination of dumping and injury in accordance with Article 17 of the basic Regulation.

(7) In order to enable the Commission to decide whether sampling would be necessary and if so, to select a sample, all exporting producers in the PRC and importers in the Community were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period 1 July 2007-30 June 2008.

(8) Six exporting producers in the PRC responded to the sampling exercise. However one company withdrew from further cooperation with the investigation at an early stage, leaving only five exporting producers remaining. Sampling was therefore no longer necessary and all parties were informed that a sample would not be selected.

(9) Eight importers/users responded to the sampling exercise. Sampling was therefore no longer necessary and all parties were informed that a sample would not be selected.

(10) Questionnaires were sent to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from one exporting producer in Armenia, five in the PRC and one in Brazil, and one producer in the analogue country, Turkey. Full questionnaire replies were also received from 6 Community producers and 8 importers/users cooperated by submitting a questionnaire reply. None of the final users supplied the Commission with any information or made themselves known in the course of this investigation.

(11) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:

(a) *Community producers*

— Alcomet PLC, Shumen, Bulgaria

— Symetal Aluminium Foil Industry S.A./Elval Hellenic Aluminium Industry S.A. Mandra Attikis, Greece

(b) *Exporting producers in the PRC*

— Alcoa (Shanghai) Aluminium Products Co., Ltd, Shanghai and Alcoa (Bohai) Aluminium Industries Co., Ltd, Hebei

— North China Aluminium Co., Ltd, Hebei (North China)

— Shandong Loften Aluminium Foil Co., Ltd, Shandong (Shandong)

— Zhenjiang Dinsheng Aluminium Industries Joint-Stock Limited Company, Jiangsu

(c) *Exporting producer in Armenia*

— Closed Joint Stock Company 'Rusal-Armenal', Yerevan (Armenal) and related importers in Switzerland and Russia Rual Foil Limited, Rual Trade Limited, RTI Limited, Rusal Europe Limited and Rusal Marketing Limited

(d) *Exporting producer in Brazil*

— Companhia Brasileira de Aluminio, São Paulo

(e) *Community unrelated importers/users*

— Coutinho Caro + Co International Trading GmbH, Hamburg, Germany

— Fora Folienfabrik GmbH, Radolfzell, Germany

— ITS Foil, Film and Paper Products bv, Apeldoorn, The Netherlands

— Groupe Sphere, Paris, France.

(12) In view of the need to establish a normal value for exporting producers to which MET might not be granted, a verification to establish normal value on the basis of data from Turkey as analogue country took place at the premises of the following company:

(f) *Producer in Turkey*

— Assan Demir ve Sac Sanayi A.Ş, Tuzla (now Assan Alüminyum Sanayi ve Ticaret A.Ş.).

3. **Investigation period and period considered**

(13) The investigation of dumping and injury covered the period from 1 July 2007 to 30 June 2008 (investigation period or IP). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2005 to the end of the investigation period (period considered).

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(14) In the notice of initiation the product concerned was defined as aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in reels of a width not exceeding 650 mm originating in Armenia, Brazil and the People's Republic of China which was normally declared within CN code ex 7607 11 10 at the time of opening of the proceeding.

(15) The investigation revealed that the above product description included different products, and in particular so-called 'jumbo' and 'consumer' rolls. The

differences between jumbo reels and consumer rolls is mainly the weight (normally jumbo reels weigh at least 150 kg), hence the need to rewind the aluminium foil in order to transform it into a consumer product allowing it to be used for packaging and other household applications.

(16) The CN code ex 7607 11 10 as set out in the notice of initiation was split in January 2009 into two codes: ex 7607 11 11 (aluminium foil of a thickness of less than 0,021 mm weighing 10 kg or less for consumer rolls) and ex 7607 11 19 (same but weighing over 10 kg for jumbo reels). The CN code refers to the weight of the roll of aluminium foil which is synonymous with the reel of the aluminium foil in the original product description. Both refer to the aluminium foil itself which is wound into a reel, or roll, onto a support.

(17) The downstream industry in the Community, i.e. the 'rewinders', claimed that the product concerned should also include consumer rolls because if measures are imposed solely on imports of aluminium foil weighing over 10 kg, this could give rise to exports of the downstream products i.e. aluminium foil weighing less than 10 kg. The rewind operation would take place in the exporting countries instead of Community countries and 'rewinders' in the Community would therefore be severely hurt. This matter is addressed below in recitals 150 to 162.

(18) Aluminium foil is manufactured by rolling aluminium ingots or foil-stock to the desired thickness. Once rolled the foil is annealed by a thermal process to make it pliable. Once rolled and annealed the foil is wound onto reels of a width not exceeding 650 mm. The dimension of the reel determines its use as the users of the foil (spoolers or rewinders) will mount it onto small end-rolls destined for retail sale.

(19) In light of the above considerations, it is concluded that the product concerned is aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg originating in Armenia, Brazil and the People's Republic of China falling within CN code ex 7607 11 19 (product concerned).

2. **Like product**

(20) The investigation has shown that aluminium foil produced and sold by the Community industry in the Community, aluminium foil produced and sold on the domestic markets of Armenia, Brazil and the PRC and aluminium foil imported into the Community from these countries, as well as those produced and sold in Turkey have essentially the same basic physical and technical characteristics of and the same basic end uses.

(21) It is therefore provisionally concluded that these products are alike within the meaning of Article 1(4) of the basic Regulation.

C. **MARKET ECONOMY TREATMENT (MET) AND ANALOGUE COUNTRY**

(22) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in Armenia and the PRC, normal value

shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation. Briefly and for ease of reference only, these criteria are set out in summarised form below:

— business decisions are made in response to market signals, without significant State interference, and costs reflect market values,

— firms have one clear set of basic accounting records, which are independently audited in line with international accounting standards and are applied for all purposes,

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

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

— exchange rate conversions are carried out at market rates.

(23) The sole Armenian cooperating exporting producer and the five exporting producers from the PRC cooperating in this proceeding requested MET and replied to the MET claim form for exporting producers within the given deadlines.

(24) Armenal, the sole cooperating exporting producer from Armenia claimed that the application of Article 2(7) to Armenia was illegal because Armenia should be considered as having Market Economy Status according to World Trade Organisation (WTO) rules.

(25) However the treatment of Armenia as an economy in transition is in accordance with the basic Regulation, which explicitly mentions Armenia in the footnote to Article 2(7)(a). The argument is therefore dismissed.

(26) For all cooperating exporting producers in Armenia and the PRC, the Commission sought all information deemed necessary and verified information submitted in the MET claim at the premises of the companies in question.

1. **Armenia**

(27) MET was refused to Armenal on the grounds that criteria 2 and 3 were not met. For criterion 2, the company's accounts for 2006 contained an adverse opinion from their auditors, and the company did not provide audited accounts for 2007.

(28) The company argued that compliance with the auditing process (which was done in 2006) and a commitment to deliver audited accounts for 2007 in line with international accounting standards (IAS) would be enough to satisfy the requirements of criterion 2. Moreover, this company claimed that, even if the auditor delivers an adverse opinion as to the compliance of the accounts with international accounting standards (IAS), the fact that they have been audited in compliance with international auditing standards is enough to meet the requirements of criterion 2.

(29) This argument cannot be accepted. First their audited accounts for 2007 were not submitted despite being requested by the Commission and second, as for the audited accounts for 2006, it has to be borne in mind that Article 2(7)(b) of the basic Regulation