Commission 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

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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,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 16 February 2008, the Commission announced, by a notice ('notice of initiation') published in the *Official Journal of the European Union*[(2)], the initiation of an anti-dumping proceeding with regard to imports into the Community of certain candles, tapers and the like originating in the People's Republic of China ('PRC' or country concerned').

(2) The proceeding was initiated as a result of a complaint lodged on 3 January 2008 by certain producers of certain candles, tapers and the like representing a major proportion, in this case around 60 % of the total Community production of certain candles, tapers and the like. The complaint contained *prima facie* evidence of dumping of the said product and of material injury therefrom, which was considered sufficient to justify the initiation of an investigation.

1.2. Parties concerned by the proceeding

(3) The Commission officially advised the complainants, the exporting producers, importers, other parties known to be concerned, and representatives of the PRC of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(4) The complainants, other Community producers, exporting producers in the PRC, importers including large retail groups and suppliers of raw materials made their

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views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(5) In the notice of initiation, the Commission indicated that sampling for the determination of dumping and injury in accordance with Article 17 of the basic Regulation may be applied. In order to enable the Commission to decide whether sampling would be necessary, all known exporting producers in the PRC, Community importers and Community producers 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 from 1 January 2007 to 31 December 2007.

(6) As explained in recitals (33) to (40) below, forty one exporting producers in the PRC provided the requested information and agreed to be included in a sample. On the basis of the information received from the cooperating exporting producers, the Commission selected a sample of eight producers in the PRC or groups of related companies having the largest volume of exports to the Community. All exporting producers concerned, as well as their association and the authorities of the PRC, were consulted and agreed on the selection of the sample.

(7) In order to allow exporting producers in 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 exporting producers in the PRC known to be concerned and the authorities of the PRC.

(8) The Commission officially disclosed the results of the MET findings to the exporting producers concerned in the PRC, the authorities of the PRC and the complainants. They were also given an opportunity to make their views known in writing and to request a hearing if there were particular reasons to be heard.

(9) One exporting producer which was not included in the sample because it did not meet the criteria set in Article 17(1) of the basic Regulation claimed an individual margin pursuant to Article 17(3) of the basic Regulation. It was considered however that individual examination would be unduly burdensome and would have prevented the timely completion of the investigation. Therefore, it was provisionally concluded that the request for an individual examination of the exporting producer could not be accepted.

(10) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation, namely to 31 Community producers, 32 importers as well as two raw materials suppliers.

(11) Replies were received from the complainant Community producers, six unrelated importers and two suppliers.

(12) With regard to the country concerned by this investigation, the Commission received replies to the sampling form from forty one exporting producers in the PRC.

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

Producers located in the Community

1. Bolsius International B.V., Schijndel, the Netherlands,
2. Vollmar GmbH, Rheinbach, Germany,
3. GIES-group
   - GIES Kerzen GmbH, Gline, Germany,
   - Promol Industria de Velas, Caldas da Reinha, Portugal,
   - Liljeholmens Stearinfabriks AB, Oskarshamn, Sweden.

Exporting producers in the PRC and related companies in the PRC and in Hong Kong

1. Aroma Consumer Products (Hangzhou) Co., Ltd., PRC,
2. Dalian Bright Wax group:
   - Dalian Bright Wax Co., Ltd., PRC,
   - Dalian Bright Wax, Hong Kong,
3. Dalian Talent Gift Co., Ltd., PRC,
4. Gala-Candles (Dalian) Co., Ltd., PRC,
5. Qingdao Kingking Applied Chemistry Co. Ltd., PRC,
6. Ningbo Kwung's Home group:
   - Ningbo Kwung's Home Interior & Gift Co., Ltd., PRC,
   - Apple-Ann Home Creation (H.K.) Limited, Honk Kong,
7. Ningbo Kwung's Wisdom group:
   - Ningbo Kwung's Wisdom Art & Design Co., Ltd., PRC,
   - Ningbo Kwung's Import and Export Co., Ltd., PRC,
   - Shaoxing Koman Home Interior Co., Ltd., PRC,
8. Win Win Group:
   - Jiashan Jiahua Candle Arts & Crafts Co. Ltd., PRC,
   - Win Win Arts & Crafts Co., Ltd., PRC.

Related importer in the Community

- Gala Kerzen GmbH, Germany.

1.3. Investigation period

(14) The investigation of dumping and injury covered the period from 1 January 2007 to 31 December 2007 (the investigation period or the 'IP'). The examination of

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trends relevant for the assessment of injury covered the period from 2004 to the end of the IP ('period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(15) The product concerned is certain candles, tapers and the like, other than memory lights and other outdoor burners, exported to the Community and originating in the PRC (candles). The production process to manufacture candles is rather simple and consists in heating raw materials (mainly paraffin wax and stearin) and shaping the candle in moulds or containers in a cooling process. Candles produce heat and light but are largely used for interior decoration purposes, e.g. in various candle holders, pillars and other decoration items.

(16) Candles are normally declared within CN codes ex 3406 00 11, ex 3406 00 19 and ex 3406 00 90.

(17) Memory lights and other outdoor burners are not part of the product concerned. These can be defined as products, the fuel of which contains more than 500 ppm of toluene and/or more than 100 ppm of benzene and/or have a wick with a diameter of at least 5 millimetres and/or are individually contained in a plastic container with vertical walls of at least 5 cm in height. It was considered that these criteria are setting a clear dividing line between the types of candles which are covered by this investigation and those which are not.

(18) The investigation showed that there is a large number of different types of candles such as tapered candles, tea lights, as well as many other seasonal and special types produced in the PRC and sold on the Community market. The various types of candles can basically differ in size, shape, colour, perfumed or un-perfumed, etc, but all these types share the same basic chemical and technical characteristics and uses and they are to a large extent interchangeable. Therefore, it is considered that all candles covered by the present investigation are part of the same product family.

(19) Certain interested parties made submissions and claims concerning the definition of the product concerned. It has been claimed that memory lights and outdoor candles have been unduly excluded from the product scope because the Community industry dominates this segment and because the technical criteria mentioned above in recital (17) are not unique in the sense that memory lights and other outdoor burners do not always exceed the above-mentioned characteristics. Moreover, they claimed that the distinction made between candles and memory lights and other outdoor burners was not supported by any standard or norms in the industry and was contradicting the assumption that tea lights and other candles were both included in the definition of the product concerned.

(20) Other parties claimed that the production processes and the range of products produced in the PRC as well as the types of candles exported to the Community were very specific. In this context it was stated that in many instances exporters in the PRC export the product concerned together with other accessories such as glass cup and/or

pillar candles whereby the export value includes all the items and not only candles. All these types should be excluded from the scope of the investigation.

(21) It was also claimed that exporting producers in the PRC are producing to a large extent handmade or special candles with further refining operations, such as printing, scratching and lacquering. These are labour intensive types, called 'fancy' or 'special' candles, not manufactured in the Community. Accordingly these parties claimed that the special candles should also be excluded from the product scope of this investigation.

(22) It should be noted that the above claims were not specific and did not include any supporting evidence showing that the product concerned was not correctly defined in the notice of initiation. In fact, as stated above, it was found that all types of the product concerned share the same basic chemical and technical characteristics and uses and they are to a large extent interchangeable. Concerning the claims made on memory lights and outdoor candles, it is noted that these products can be distinguished from other types of candles on the basis of the technical and chemical criteria mentioned in recital (17) above. The fact that on the one hand the Community producers may be dominant in this particular segment or on the other hand any allegation that the Community producers are not manufacturing certain types of the product concerned is irrelevant and does not alter the definition of the product concerned.

(23) It should also be noted that the production processes, the variety of product types which are produced and sold in the Community market, the existence or the absence of norms are not *per se* valid reasons which are demonstrating that the definition of the product concerned should be revised.

2.2. Like product

(24) Certain interested parties claimed that the so-called tea light type should be distinguished from other candles because they have different physical characteristics such as the size and the fact the wax is held in a container in order to prevent the wax from overflowing or dripping. Moreover, whilst the main use of candles is to produce light, the main purpose of tea light is to produce heat.

(25) Certain interested parties argued that candles produced by the Community industry and sold on the Community market were not alike to the product concerned. They claimed in particular that the product concerned was largely sold in sets including other decoration items such as candle holders, pillars, other ceramic or glass items and that it was not possible to distinguish the value of the candle in the set. It was also argued that whilst Community producers were only selling standard types of candles, exporting producers in the PRC were selling large volumes of special types of candles which cannot be compared to the standard types.

(26) Concerning the claim made on the use of certain candles types, it should be noted that during a hearing held in particular with the Association of candles producers in the PRC it was stated that domestic consumption in the PRC is significantly increasing in the last years and that candles sold domestically had the same main use as