Council Regulation (EC) No 239/2008 of 17 March 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of coke of coal in pieces with a diameter of more than 80 mm (Coke 80+) originating in the People's Republic of China

COUNCIL REGULATION (EC) No 239/2008

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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:

A. PROVISIONAL MEASURES

(1) On 20 December 2006, the Commission published a notice[(2)] initiating an anti-dumping proceeding on imports into the Community of coke of coal in pieces with a diameter of more than 80 mm (Coke 80+) originating in the People's Republic of China (the PRC). On 19 September 2007, the Commission, by Regulation (EC) No 1071/2007[(3)] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of Coke 80+ originating in the PRC.

(2) It is noted that the proceeding was initiated following a complaint lodged by three Community producers, representing around 40 % of the total Community production of Coke 80+. It is noted that an understated figure of 'more than 30 %' was mentioned in recital 2 of the provisional Regulation; however, following further investigation it was found that the complainants in fact represented around 40 % of the total Community production.

(3) As set out in recital 12 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (investigation period or IP). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2003 to the end of the IP (period considered).

B. SUBSEQUENT PROCEDURE

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 239/2008. (See end of Document for details)*

(4) Following the imposition of provisional anti-dumping duties on imports of Coke 80+ originating in the PRC, several interested parties submitted comments in writing. The parties who so requested were also granted the opportunity to be heard.

(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. In particular, the Commission intensified the investigation with regard to Community interest aspects. In this connection, one additional verification visit was carried out after the imposition of the provisional measures at the following company:

— La Fonte Ardennaise, Vivier-Au-Court, France — user in the Community.

(6) In addition, an information-gathering visit was made to the European Foundry Association (CAEF) in Düsseldorf, Germany. In order to clarify certain alleged implementation problems, a visit was also carried out to customs authorities in Antwerp, Belgium as well as in Duisburg, Germany.

(7) 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 Coke 80+ 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.

(8) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings were modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

(9) In the absence of any comments concerning the product concerned and like product, recitals 13 to 17 of the provisional Regulation are hereby confirmed.

(10) In view of the above, it is definitively concluded that the product concerned and Coke 80+ produced and sold in the analogue country, the USA, as well as the one produced and sold by the Community industry on the Community market are alike, within the meaning of Article 1(4) of the basic Regulation.

D. DUMPING

(11) In the absence of any comments concerning the level of cooperation, the selection of the analogue country and the determination of normal value, recitals 18 to 28 of the provisional Regulation are hereby confirmed.

(12) With reference to price comparison, the sole cooperating exporter objected to the rejection by the Commission of its claim relating to post-screening operations in the dumping calculation, arguing that a similar claim had been taken into consideration for the purpose of injury calculations. The claim was therefore accepted and an additional adjustment was made to the normal value.

(13) The estimation of the value of the adjustment made for differences in physical characteristics at provisional stage has been reviewed to reflect the value of the

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differences in calorific value indicators and size spread between the product produced in the analogue country and the Chinese exported product.

(14) In the absence of any other comments in this respect, recitals 29 to 31 of the provisional Regulation are hereby confirmed.

(15) The definitive dumping margin was established on the basis of a comparison of a weighted average ex-works normal value with a weighted average ex-works export price, in accordance with Article 2(11) and (12) of the basic Regulation. After applying the adjustments referred to in recitals 12 and 13, the revised definitive country-wide dumping margin, expressed as a percentage of the cif Community frontier price, duty unpaid, is 61,8 %.

E. INJURY

1. Community production and Community industry

(16) In the absence of any comments concerning the definition of Community production and Community industry, recitals 34 and 35 of the provisional Regulation are hereby confirmed.

2. Community consumption

(17) As set out in recital 36 of the provisional Regulation, the Commission continued its investigation in particular as regards one component of the Community consumption, namely the import volumes during the period considered. However, no new and substantiated information was received in this respect. Therefore, and in the absence of any arguments from any interested parties putting into question the method used to establish the Community consumption, recitals 36 and 37 of the provisional Regulation are hereby confirmed.

3. Imports from the country concerned

(a) Volume and market share of the imports concerned; import prices

(18) As set out in recitals 36 and 41 of the provisional Regulation, the Commission continued its investigation on the import volumes and prices during the period considered. It is noted that there was a clerical error in recital 42 of the provisional Regulation as prices decreased by 43 % from 2004 to the IP and not by 35 %, as stated in the said recital.

(19) However, no new and substantiated information was received regarding import volumes and prices. Therefore, and in the absence of any arguments from any interested parties questioning the method used to establish the volume and prices of the imports concerned, recitals 38 to 42 of the provisional Regulation are hereby confirmed.

(b) Price undercutting

(20) The cooperating exporting producer and one user have argued that in order to carry out the undercutting calculation on a fair basis, when comparing the prices charged by the Community industry for the like product and the import prices of

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the product concerned, an adjustment should be made for differences in physical characteristics. Certain Community industry producers, on the other hand, argued that while in a hypothetical situation Coke 80+ from some Community producers may warrant a higher price based on specific quality characteristics, the data available to the Commission establish that the users do not pay any higher price for the better quality characteristics, particularly in an environment of suppressed prices caused by predatory dumping. According to these Community industry producers, the user industry's purchase decisions are, instead, solely based on the price quoted for the Chinese product. Therefore, adjustments for differences in physical characteristics are not warranted. However, since the verified information provided by interested parties suggests that there are differences between the moisture, ash, volatile material and sulphur content of the like product and the product concerned, which under normal market conditions could be expected to have an effect on prices, the claim of the cooperating Chinese producer and the user was accepted and an additional adjustment was made to take into account these differences.

(21) Furthermore, in order to compare the product concerned and the Coke 80+ produced by the Community industry at the same level of trade, in addition to those post-importation costs incurred by importers in the Community that were mentioned in recital 43 of the provisional Regulation, an adjustment was made in the price undercutting calculation also for unloading costs. For the sake of clarity it is also mentioned that an adjustment for the profit margin of unrelated importers was made in the price undercutting calculation already at the provisional stage, albeit not specifically mentioned in recital 43 of the provisional Regulation. This adjustment has been made on the basis of the verified profitability reported by the cooperating unrelated importer during the IP, being in the range of 5-10 %[(4)].

(22) The provisional undercutting margin for the PRC was accordingly amended and it is concluded that, during the IP, the product concerned originating in the PRC was sold in the Community at prices which undercut the Community industry's sales prices, when expressed as a percentage of the latter, by 5,7 %.

4. Situation of the Community industry

(23) In the absence of any new and substantiated information or argument concerning production, production capacity and capacity utilisation rates, sales volume, market share, growth, stocks, investments and magnitude of the dumping margin, the findings in recitals 46 to 50, 53 to 54 and 60 to 61 of the provisional Regulation are hereby confirmed.

(a) Sales prices in the Community

(24) Sales prices in the Community stated in recital 51 of the provisional Regulation were corrected and are shown in the table below. The slight revisions do not affect the conclusions drawn with regard to the Community sales prices in recitals 51 and 52 of the provisional Regulation.

	2003	**2004**	**2005**	**IP**

Unit price EC market(EUR/ tonne)	154	191	243	198
Index (2003 = 100)	100	124	158	129

(b) Profitability, return on investment, cash flow and ability to raise capital

(25) The calculation of the profitability figures as laid down in the provisional Regulation was revised and an error was corrected. The correct figures, presented in the table below, do not affect the conclusions on the general trend of the evolution of profitability of the Community industry, even though they give an even bleaker picture of the state of the Community industry: the profitability of the Community industry dropped dramatically from 16,2 % in the 2005 to – 3,8 % during the IP. Following that correction, also the figures on return on investments (ROI), expressed as the profit in percent of the net book value of investments, have been adjusted. Cash flow figures remain the same as in the provisional Regulation, but are presented in the table below for the sake of clarity.

	2003	**2004**	**2005**	**IP**
Profitability of EC sales to unrelated customers (% of net sales)	8,1 %	15,0 %	16,2 %	-3,8 %
Index (2003 = 100)	100	185	200	-47
ROI (profit in % of net book value of investments)	2,2 %	19,2 %	13,3 %	-13,3 %
Index (2003 = 100)	100	460	340	-180
Cash flow(1 000 EUR)	17 641	13 633	34 600	4 669
Index (2003 = 100)	100	77	196	26

(26) In the absence of any new comments in this particular regard, the conclusions set out in recital 58 of the provisional Regulation on the Community industry's ability to raise capital are hereby confirmed.