Commission Regulation (EC) No 1071/2007 of 18 September 2007 imposing a provisional anti-dumping duty 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

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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:

A. PROCEDURE

1. Initiation

(1) On 20 December 2006, pursuant to Article 5 of the basic Regulation, 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 concerning 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 or the country concerned).

(2) The proceeding was initiated following a complaint lodged on 20 November 2006 by three Community producers (the complainants) representing a major proportion, in this case more than 30 %, of the total Community production of Coke 80+. The complaint contained *prima facie* evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The product concerned was already subject to anti-dumping measures from June 2000 until 2004. The measures were imposed provisionally by Commission Decision No 1238/2000/ECSC[(3)] and definitively by Commission Decision No 2730/2000/ECSC[(4)] (the previous measures), but the measures were suspended in March 2004 by Commission Decision 2004/264/EC[(5)] due to a temporary change in market conditions. The suspension was extended by Council Regulation (EC) No 2117/2004[(6)] until 15 December 2005, when the measures expired.

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2. Parties concerned by the proceeding

(4) The Commission officially advised the complaining producers and other known Community producers, the representatives of the PRC, exporting producers in the PRC, importers/traders and users known to be concerned, as well as associations known to be concerned 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. One exporter in the PRC, as well as producers, users and one importer in the Community made their views known in writing. All parties who so requested within the given time limit and showed that there were particular reasons why they should be heard were granted a hearing.

(5) In view of the apparent large number of exporting producers and importers involved in the investigation, the application of sampling techniques was envisaged in the notice of initiation, in accordance with Article 17 of the basic Regulation.

(6) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers and importers were requested to make themselves known and to provide information as specified in the notice of initiation. Only one exporting producer came forward to cooperate. It was consequently decided that sampling was not necessary.

(7) Also as far as the importers of Coke 80+ are concerned, given that only one importer indicated its willingness to cooperate, it was decided that sampling was not necessary.

(8) In order to allow the sole cooperating exporting producer in the PRC to submit a claim for market economy treatment (MET) pursuant to Article 2(7) of the basic Regulation or individual treatment (IT) pursuant to Article 9(5) of the basic Regulation, if it so wished, the Commission sent a MET/IT claim form to the sole Chinese cooperating company. This exporting producer requested neither MET nor IT.

(9) The Commission sent questionnaires 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 the sole Chinese cooperating exporting producer, from five Community producers, from one importer and from 36 users. In addition, several users submitted comments without replying to the questionnaire. Submissions were made also by the European Foundry Association (CAEF), acting also on behalf of its members, comprising national foundry associations from 17 EU Member States.

(10) The Commission sought and verified all information it deemed necessary for the purpose of a preliminary determination of dumping, resultant injury and Community interest. Verification visits were carried out at the following companies:

(a) *Community producers*

— Industrial Química del Nalón, SA, Oviedo, Asturias, Spain,

— Industrias Doy Manuel Mórate, SL, Oviedo, Asturias, Spain,

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— Italiana Coke SpA, Savona, Italy,

— OKD, OKK, a.s., Ostrava-Přívoz, Czech Republic,

— Productos de Fundición, S.A., Baracaldo, Vizcaya, Spain;

(b) *Unrelated importer in the Community*

— ThyssenKrupp MinEnergy GmbH, Essen, Germany;

(c) *Users in the Community*

— Rockwool International A/S and its subsidiary Rockwool A/S, Denmark; both in Hedehusene, Denmark;

— Fritz Winter Eisengiesserei GmbH & Co, Stadttalendorf, Germany.

(11) In the absence of any claims for MET or IT, and since a normal value for exporting producers in the PRC should be established on the basis of data from the selected analogue country, a verification visit took place at the premises of the following companies:

Producers of the analogue country USA

— Tonawanda Coke Co., New York;

— Erie Coke Co., Pennsylvania.

3. Investigation period

(12) The investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (investigation period or IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 2003 to the end of the IP (period considered).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(13) The product concerned is coke of coal in pieces with a diameter of more than 80 mm (Coke 80+) originating in the People's Republic of China (the product concerned), normally declared within CN code ex 2704 00 19.

(14) Coke of coal in pieces with a diameter of more than 80 mm (Coke 80+) is prepared from bituminous coal which is an organic sedimentary rock extracted from the ground. Steel industry uses primarily small and medium sized coke (Coke 80–; also called blast furnace coke), whereas cast iron and isolation industries use large size coke (Coke 80+; also called foundry coke) for their cupolas. Both types of coke fall under the same CN code.

(15) The investigation showed that all types of the product concerned, despite differences in coal raw materials qualities, differences in the production methods and different lump sizes, have the same basic technical and chemical characteristics and are used as a combustion agent for use in cupola ovens.

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(16) It is therefore concluded that the product concerned is foundry coke originating in the PRC, that is to say coke of coal in pieces with a diameter of more than 80 mm of a kind used in cupola ovens. It is also concluded that all foundry coke is one single product since it always has the same basic technical and chemical characteristics and the same use.

2. Like product

(17) The investigation showed that Coke 80+ produced and sold in the Community by the Community industry, that produced in the PRC and sold for export to the Community and that produced and sold in the analogue country (the USA) have the same basic physical, technical and chemical characteristics and uses. They are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

1. Cooperation

(18) As mentioned in recital 6, only one Chinese exporting producer cooperated in the proceeding. The export sales made by this exporting producer represented less than 30 % of the total Coke 80+ imports originating in China sold to the Community during the IP. It is therefore concluded that the level of cooperation was very low. The representatives of the PRC were informed that such low level of cooperation may lead to the application of Article 18 of the basic Regulation.

2. Normal value

(a) Analogue country

(19) In the notice of initiation, it was envisaged to use the USA as an appropriate analogue country for the purpose of establishing normal value for the PRC and interested parties were invited to comment on the appropriateness of this choice. No comments or objections were received from any parties in this respect.

(20) The USA has a relatively large and open domestic market for Coke 80+, with five domestic producers (during the IP) and a sufficient level of imports. In addition, similar processes as in the PRC are used for the production of the product concerned.

(21) The suitability of other countries which were considered as possibly having Coke 80+ production was also examined. For Australia, the only country where evidence of the production of the product concerned was found, information provided by the sole Australian producer indicated that the Australian domestic market is very limited.

(22) On the basis of the above, it was concluded that the USA was a suitable choice as an analogue country. Accordingly, cooperation was sought from the American Association of coke producers.

(b) Determination of normal value

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(23) Pursuant to Article 2(7) of the basic Regulation, normal value was established on the basis of the verified information received from two cooperating companies in the USA.

(24) As far as the determination of normal value is concerned, the Commission first established, in accordance with Article 2(2) of the basic Regulation, that the domestic sales to independent customers of the like product manufactured by the two cooperating producers in the USA were representative, i.e. that the total volume of such sales represented at least 5 % of the total export volume of the product concerned to the Community. In this respect, it should be noted that the product concerned consists of one single product type.

(25) The Commission subsequently examined whether the above domestic sales could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. It was found that more than 95 % of sales by volume on the domestic market were profitable.

(26) As a result, normal value was established as the weighted average of the ex-works domestic sale prices to unrelated customers made by the two cooperating producers in the USA.

3. Export price

(27) In view of the limited cooperation from the PRC, the export price was mainly based on the best information available, in accordance with Article 18 of the basic Regulation. Since January 2006, there is no specific TARIC code for Coke 80+. As a consequence, Eurostat figures could not be used to calculate Chinese export prices of Coke 80+ or volume for the IP. However, detailed information on quantities and prices of Coke 80+ imported from China during the IP could be obtained from the customs authorities of importing Member States.

(28) As such information relating to imports of the product concerned during the IP was the best information available in accordance with Article 18 of the basic Regulation, it was used to assess the volume and price of Chinese exports during the IP. However, in consideration of the fact that the sole cooperating exporting producer had submitted information on export prices, this information was also considered and was found to be in line with the information obtained from the abovementioned customs authorities. The weighted average net ex-works export price established on the basis of this data was EUR 107,73 per tonne.

4. Comparison

(29) The normal value and export prices were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments concerning differences in physical characteristics, discounts,