Commission Implementing Regulation (EU) 2018/186 of 7 February 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain corrosion resistant steels originating in the People's Republic of China

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)], and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) On 10 August 2017 the European Commission (hereinafter referred to as 'the Commission') imposed a provisional anti-dumping duty on imports into the Union of certain corrosion resistant steels ('CRS') originating in the People's Republic of China ('the PRC' or 'the country concerned') by Commission Implementing Regulation (EU) 2017/1444[(2)] ('the provisional Regulation') under Article 7 of Regulation (EU) 2016/1036 ('the basic Regulation').

(2) The investigation was initiated on 9 December 2016[(3)] following a complaint lodged on 25 October 2016 by the European Steel Association ('Eurofer' or 'the complainant') on behalf of producers representing more than 53 % of the total Union production of certain corrosion resistant steels.

(3) As stated in recital 30 of the provisional Regulation the investigation of dumping and injury covered the period from 1 October 2015 to 30 September 2016 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2013 to the end of the investigation period ('the period considered').

1.2. Registration

(4) The Commission made imports of the product concerned originating in and consigned from the PRC subject to registration by Commission Implementing

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Regulation (EU) 2017/1238[4]. The registration of imports ceased with the imposition of provisional measures on 11 August 2017.

1.3. **Subsequent procedure**

(5) Subsequent to the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('the provisional disclosure'), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.

(6) During the definitive stage of the investigation, hearings took place with the International Steel Trade Association ('ISTA') on 13 November 2017 and the Chinese Iron and Steel Association ('CISA') on 17 November 2017.

(7) The Commission continued seeking and verifying all information it deemed necessary for its definitive findings. In order to have at its disposal information regarding the registration of imports, the sampled Union producers, Eurofer and all known importers were requested to provide additional data. The sampled Union producers, Eurofer and six importers submitted questionnaire replies.

(8) In order to verify the questionnaires replies mentioned in recital 7 above, on-spot verification visits were carried out of the data submitted by:

— Eurofer, Brussels, Belgium,

— Vergalle NV, Oudenaarde, Belgium.

(9) As announced in recital 22 of the provisional Regulation, at definitive stage verification visits were carried out at the premises of the following traders/importers related to sampled exporting producers in the PRC:

Hebei Iron and Steel Group ('HBIS'):

— Duferco Deutschland GmbH, Ratingen, Germany,

— Duferco SA, Lugano, Switzerland.

(10) The Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports into the Union of corrosion resistant steels originating in the PRC and definitively collect the amounts secured by way of provisional duty ('the definitive disclosure'). All parties were granted a period within which they could make comments on the final disclosure. Following definitive disclosure, one party requested and received additional company-specific explanations. The Commission received no comments on these additional explanations.

(11) The comments submitted by the interested parties were considered and taken into account where appropriate.

1.4. **Individual treatment**

(12) In Recital 21 of the provisional Regulation the Commission noted that three groups of exporting producers in the PRC requested individual treatment under Article 17(3) of the basic Regulation. Recital 22 of the provisional Regulation explained the reasons why the examination of such requests was not possible at the provisional stage.

(13) Following the imposition of provisional anti-dumping measures, the group of companies referred to in recital 23 of the provisional Regulation claimed that its request for individual treatment should be examined at the definitive stage (i) on the grounds that it was the only Chinese exporting producer supplying certain products into the Union market; (ii) because of the peculiarities of its products which is a reiteration, without new elements in support, of a previous claim readdressed in recital 23 of the provisional Regulation; and (iii) because WTO law lays down the obligation to determine individual dumping margins for each known producer (unless a restricted number of exceptions occur). The party also claimed that overall the number of exporters could not be considered to be 'so large' as to make the determination of individual margins impracticable.

(14) With regard to the first two claims, it is confirmed that the product range already covered in the sample is considered representative as the sample is considered representative accounting for almost half of the total Chinese imports to the Union.

(15) With regard to the third claim, the Commission confirms the conclusion reached at the provisional stage that the number of requests for individual treatment (by three groups of exporting producers in the PRC, composed of several individual undertakings) was so large as to make individual examinations unduly burdensome and prevent the completion of the investigation in good time. Indeed, after an assessment of the workload expected to be generated by the requests, the Commission decided that no individual treatment could be granted at definitive stage as the number of entities to be additionally investigated and the number of different locations to be visited for the verification would have been unduly burdensome and prevented completion of the investigation in good time in view of the timeline of the investigation and the resources available on the Commission's side. The Commission already investigated 22 entities in seven locations as part of the sample.

(16) Moreover, as noted in recital 9 above, important verifications which are normally performed at the provisional stage of an investigation, had already to be postponed to the definitive stage of the investigation given the size of the case and the number of interested parties to be investigated in this case, thus putting an additional burden on the investigation.

(17) It is also recalled that the sample of the exporting producers accounts for almost half of the total Chinese import volumes of the product concerned to the Union during the investigation period. The groups requesting individual treatment would account altogether for less than 5 % of the total imports.

(18) Finally, the Commission also refers to the principle of non-discrimination that could be breached if only one additional group is individually examined and not

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the other two companies/groups outside the sample who also requested individual examination.

(19) Following definitive disclosure, the group of companies referred in recital 13 above reiterated its request for individual examination on the grounds that (i) it is a non-integrated producer of the product concerned with different cost structure and profit composition from the exporting producers in the sample; (ii) the Commission, allegedly, did not intend to give an earlier decision on the individual examination in order to deprive interested parties of the opportunity to provide comments on the issue; (iii) according to WTO law, refusal of requests for individual examination should be an exception; (iv) the Commission had verified all sampled exporting producers before April 2017 and (v) the principle of non-discrimination is not an issue since, according to case law, the Commission should have assessed the MET claims from the other two companies/groups outside the sample who also requested individual examination.

(20) None of the grounds laid down above undermines the overall conclusion that the examination of individual examination requests was not possible. Firstly, the alleged difference in cost structure and profit composition cannot on its own justify a request for individual examination. Rather, all companies having requested an individual examination are in the same factual and legal situation. In addition, the company always can ask for a refund or an interim review, if the applicable conditions are met. Secondly, the Commission never prevented interested parties from providing comments on the issue. Thirdly, the Commission recalls that WTO law clearly states, in Article 6.10 of the Anti-Dumping Agreement, that in cases where the number of [exporters] involved is so large as to make [individual examination] impracticable the authorities may limit their examination to a reasonable number of interested parties by using samples. Applying this rule does not discourage voluntary replies. Fourthly, the Commission completed the verification of the sampled groups only in October 2017. Lastly, the Commission notes that the burden of carrying out the analyses of requests from three additional companies/groups was developed *ad abundum* in the provisional Regulation and the recitals 15 to 17 above.

(21) In the absence of any further comments concerning individual examination, the provisional findings set out in recitals 21 to 24 of the provisional Regulation are confirmed.

1.5. **Market economy treatment ('MET')**

(22) Recital 25 of the provisional Regulation noted that two groups of non-sampled cooperating producers in the PRC had submitted MET claim forms within their request for individual treatment. As the Commission decided not to grant individual treatment to these groups, their MET claims were not assessed.

(23) In the absence of any comments concerning MET, the provisional findings set out in recital 25 of the provisional Regulation are confirmed.

1.6. **Product concerned and like product**

(24) Recital 31 of the provisional Regulation set out the definition of the product concerned. This definition is definitively confirmed. As mentioned at recital 34 of the provisional Regulation certain parties continued to request clarification on the definition of the product concerned. Such clarifications were issued on a case by case basis.

(25) It is clarified that TARIC code 7225 99 00 35 that was in recital 31 and Article 1 of the provisional Regulation should be removed as it was included by mistake since it was already allocated to another product subject under measures. This code has not been used by importers to the Union market of the product concerned.

(26) In the absence of any comments regarding the product concerned and the like product, the conclusions reached in recitals 31 to 39 of the provisional Regulation are confirmed.

2. DUMPING

2.1. Normal value

(27) The details for the calculation of the normal value are set out in recitals 40 to 51 of the provisional Regulation.

(28) After the imposition of provisional measures, CISA claimed that the difference between the injury and dumping margins raised doubts as to the accuracy of the Commission's findings and calculations, or the choice of the analogue country. CISA estimated that the normal value in the analogue country was 21 % higher than the target price for the Union industry and that the average sale price of the analogue country producer was higher than the (already high) prices in Brazil. According to CISA, the fact that normal value was constructed for most sales of the sampled exporting producers also casted doubts about the choice of the analogue country or the quality of the data obtained in Brazil. Ultimately, CISA asked the Commission to invalidate the choice of Brazil as an analogue country.

(29) The last claim seems to contradict CISA's statement of 24 March 2017 that Brazil appeared ‘to be the best choice among several candidate countries, i.e. Canada, Australia and Brazil, especially after comparing the size of each market and market power of the cooperating producers’.

(30) On substance, Brazil is a competitive market with three domestic producers and substantial imports, predominantly from China, representing a Brazilian domestic market share of around 15 %. It has no anti-dumping and countervailing measures in force and its companies operate under normal conditions of competition. Therefore, Brazil is an appropriate choice.

(31) As to the quality of data and calculations, the data of the analogue country producer are verified for accuracy and they were found reliable. The calculations are performed in line with the applicable legal rules of the basic Regulation. They are factually correct.