Commission Implementing Regulation (EU) 2018/140 of 29 January 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cast iron articles originating in the People's Republic of China and terminating the investigation on imports of certain cast iron articles originating in India

COMMISSION IMPLEMENTING REGULATION (EU) 2018/140

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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)] ('the basic Regulation'), and in particular Article 9(2) and (4) thereof,

After consulting the Member States,

Whereas:

1. **PROCEDURE**

1.1. **Provisional measures**

(1) On 16 August 2017 the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the European Union ('the Union') of certain articles of lamellar graphite cast iron (also known as grey iron) or spheroidal graphite cast iron (also known as ductile cast iron), and parts thereof, originating in the People's Republic of China ('the PRC') by Commission Implementing Regulation (EU) 2017/1480[(2)] ('the provisional Regulation').

(2) The Commission initiated the investigation on 10 December 2016 by publishing a Notice of Initiation in the *Official Journal of the European Union* ('the Notice of Initiation') following a complaint lodged on 31 October 2016 by seven Union producers, namely Fondatel Lecompte SA, Ulefos Niemisen Valimo Oy Ltd, Saint-Gobain PAM SA, Fonderies Dechaumont SA, Heinrich Meier Eisengießerei GmbH & Co. KG, Saint-Gobain Construction Products UK Ltd and Fundiciones de Odena SA ('the complainants'), representing more than 40 % of the total Union production of certain cast iron articles.

(3) As stated in recital (33) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 October 2015 to 30 September 2016 ('the investigation period') and the examination of trends relevant for the assessment

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of injury covered the period from 1 January 2013 to the end of the investigation period ('the period considered').

1.2. **Subsequent procedure**

(4) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the complainants, the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('the CCCME'), the *ad hoc* association of unrelated importers Free Castings Imports ('FCI'), two unrelated importers, the Indian exporting producers, and seven Chinese exporting producers made written submissions making known their views on the provisional findings.

(5) The parties who so requested were granted an opportunity to be heard. Hearings took place with the CCCME, FCI, and the complainants. Two hearings were held with the CCCME chaired by the Hearing Officer in trade proceedings.

(6) The Commission considered the comments submitted by the interested parties and addressed them below.

(7) The Commission continued seeking and verifying all information it deemed necessary for its final findings. In order to verify the questionnaire replies of unrelated importers, verification visits were carried out at the premises of the following parties:

— Hydrotec Technologies AG, Wildeshausen, Germany

— Mario Cirino Pomicino SpA, Naples, Italy

(8) 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 cast iron articles originating in the PRC and definitively collect the amounts secured by way of provisional duty, and terminate the investigation on imports into the Union of cast iron articles originating in India ('final disclosure').

(9) All parties were granted a period within which they could make comments on the final disclosure. The CCCME, FCI, the Union industry and three exporting producers made their comments in written submissions following final disclosure and at hearings. The comments submitted by the interested parties were considered and taken into account.

1.3. **Provisional disclosure**

(10) The CCCME and Botou City Wangwu Town Tianlong Casting Factory submitted that the Commission's provisional disclosure was insufficient, thus affecting their rights of defence and asked the Commission to make further clarifications and disclosure.

(11) With regard to the dumping calculations, these parties requested additional information concerning the specific methodology followed for each product type, the normal value obtained based on those methodologies by product type, the dumping margins resulting from the different methodologies, the amounts used for SG&A and

profit and the sales volume of the different product types sold on the Indian market with the proportion of profitable transactions.

(12) The CCCME also asked the Commission to provide a list of product types with the total volume of exports by all sampled Chinese exporting producers per product type and the total volume of domestic sales by the Indian producers.

(13) In addition, the CCCME claimed that the Commission failed to disclose information concerning the specific product types of the analogue country producers and that the Chinese exporting producers and the CCCME were not in a position to identify whether there were differences that merited an adjustment, as they did not know the kind of products that were used to determine the normal value.

(14) The methodology followed to calculate the dumping margin was described in detail in recitals (61) to (98) of the provisional Regulation. In order to protect the commercially sensitive information of the cooperating Indian producers and the sampled exporting Chinese producers, detailed dumping calculations were disclosed only to the sampled exporting producers, including the methodology used to calculate the normal value for each product type.

(15) However, because the data used to determine the normal values pertained to only two groups of companies in the analogue country, it was not possible to provide aggregated figures concerning the normal value without disclosing commercially sensitive data relating to these parties. The normal value was therefore disclosed in ranges.

(16) The Commission did not perform overall aggregated calculations per product type sold by all sampled Chinese exporting producers. Rather, the Commission performed calculations per product type per exporting producer. In addition, the aggregated data requested by the CCCME for all sampled Chinese exporting producers and the analogue Indian producers concerning sales volumes per product type constitutes commerciallysensitive information within the meaning of Article 19 of the basic Regulation. Therefore, the Commission rejected this request.

(17) Nevertheless, a document detailing the technical characteristics of the full range of the product types sold in the analogue market and in the Union market by the sampled Indian producers was included in the non-confidential file before provisional disclosure.

(18) In order to support its request for further disclosure, the CCCME questioned the consistency of the undercutting and dumping margins published in the provisional Regulation and reiterated the same concerns following the final disclosure It claimed that, since India had been chosen as analogue country and since Chinese and Indian exporting producers had similar undercutting margins, a logical corollary was that the exporting producers of both countries should have equally similar dumping margins. The CCCME argued that the information available to it was not sufficient to understand and comment on the Commission's findings in this regard.

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(19) The Commission noted that, as explained in recital (179) of the provisional Regulation, the differences in the undercutting margins of the Indian and the Chinese exporting producers is explained by the difference of the product mix of the Chinese and Indian exports to the Union. The Commission recalled that the undercutting margins result from a comparison of the products exported by Chinese exporting producers with similar products sold by the Union industry, while the dumping margins of the Chinese exporting producers result from the comparison of the products exported from the PRC to the Union with similar products sold on the Indian domestic market. As such, and as recognised by the CCCME itself, a discrepancy between these two margins is a possible outcome.

(20) In addition, during the hearing held with the CCCME chaired by the Hearing Officer, on 8 September 2017, the Commission explained why the adjustment for non-refundable VAT on the dumping margin established for the Chinese exporting producers affected the comparison between the Indian and Chinese results. This adjustment was also subject to comments from the CCCME addressed below.

(21) With regard to the injury calculations the CCCME claimed that the Commission has disregarded the CCCME's request for full access to the volume and price effects, injury margin and injury indicators calculations, and any other confidential information on which those calculations were based. The CCCME stated in this respect that the Commission's obligation to respect confidentiality is not absolute and should be balanced against the rights of defence of the interested parties. As an example the CCCME noted that the Commission did not disclose to it the product characteristics that were used to compare prices on the Union industry side.

(22) The CCCME further suggested ways the Commission could strike what it claimed to be the required balance between confidentiality and rights of defence. This included, for instance, proposals to provide ‘aggregated disclosures’. The CCCME suggested that the Commission could provide the price undercutting calculations with the consolidated data of all sampled Chinese exporting producers and the consolidated data of all sampled Union producers. The CCCME considered that by providing such compiled data to interested parties that are not active themselves as economic actors on the market, the Commission would duly respect the confidentiality of the underlying data.

(23) The CCCME criticised the fact that the Commission has consistently prioritised confidentiality over the rights of defence of the CCCME, without any assessment of the specific circumstances, the position of the CCCME with respect to the information at stake and, more generally, without due regard for the importance of the rights of defence.

(24) The Commission did not agree with this assessment. It analysed individually each piece of information requested by the CCCME and on 25 August 2017 it provided all the information to the CCCME with the exception of information which was not existent, not part of the file, or was confidential. Where information was not part of the file, or confidential, the Commission appropriately reasoned its rejection to

disclose. In particular, the Commission did not perform overall aggregated undercutting calculations and undercutting calculations per product control number ('PCN' or 'product type'). Rather, it performed undercutting calculations per product type and per exporting producer. Therefore aggregated information was not used in the investigation and was therefore not part of the file.

(25) With respect to confidential information, the Commission recalled that it was under obligation to protect such information under Article 19 of the basic Regulation. Furthermore the Commission considered that the open file of the case made available to parties, including to the CCCME, contained all the information relevant for the presentation of their cases and used in the investigation. If the information was deemed confidential, the open file contained meaningful summaries thereof. All the interested parties, including the CCCME, had access to the open file and could consult it. With regard to the CCCME, is the Commission observed that although it represents, among others, the Chinese castings industry, it was not authorised by any individual sampled exporting producer to have access to its confidential information. Thus, the confidential disclosure sent to the individual sampled Chinese exporting producers could not be provided to the CCCME.

(26) In light of the above, the Commission considered that the CCCME and the exporting producer had been given the opportunity to fully exercise their rights of defence and rejected their claims.

(27) Following the final disclosure, the CCCME repeated its claim that it had not been placed in a position that fully allowed it to exercise its rights of defence. The CCCME did not ask for new information nor did it bring new arguments. In particular, the CCCME did not reply to the disclosure letter where the Commission addressed in details the questions it had submitted to the Hearing Officer on 15 September 2017. The Commission rejected this claim because, as set out in recitals (10) to (26) of this Regulation, it provided the CCCME with full access to non-confidential information and duly justified its rejection to disclose confidential information or information which was not part of the file.

1.4. **Sampling**

(28) The list of Chinese exporting producers included in the Annex to this Regulation was modified to include the names of two exporting producers which had been either omitted or misspelled in the provisional Regulation.

(29) During the investigation, a non-sampled Chinese exporting producer informed the Commission that it had changed its name. The Commission was satisfied with the evidence submitted. The list of Chinese exporting producers was modified accordingly.

1.5. **Individual examination**

(30) The CCCME called on the Commission to grant individual examination to the 18 non-sampled Chinese exporting producers who had formally requested such an examination in accordance with Article 17(3) of the basic Regulation.