# Commission Implementing Regulation (EU) 2017/649 of 5 April 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China

## COMMISSION IMPLEMENTING REGULATION (EU) 2017/649

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## imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China

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(4) thereof,

Whereas:

### 1. PROCEDURE

#### 1.1. Provisional Measures

(1) On 7 October 2016 the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the Union of certain hot-rolled flat products of iron, non-alloy or other alloy steel whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated ('the product concerned') originating in the People's Republic of China ('PRC') by Commission Implementing Regulation (EU) 2016/1778[(2)] ('the provisional Regulation').

(2) The investigation had been initiated on 13 February 2016[(3)] following a complaint lodged on 4 January 2016 by the European Steel Association ('Eurofer' or 'the complainant') on behalf of producers representing more than 90 % of the total Union production of certain hot-rolled flat products of iron, non-alloy or other alloy steel.

(3) As stated in recital (23) of the provisional Regulation the investigation of dumping and injury covered the period from 1 January 2015 to 31 December 2015 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2012 to the end of the investigation period ('the period considered').

(4) As mentioned in recital (3) of the provisional Regulation, the Commission also initiated the following two investigations:

(a) on 13 May 2016[(4)], an anti-subsidy investigation on imports of the same product originating in the People's Republic of China;

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(b) on 7 July 2016[(5)], an anti-dumping investigation on imports of the same product originating in Brazil, Iran, Russia, Serbia and Ukraine.

1.2. **Registration**

(5) As stated in recital (4) of the provisional Regulation, the complainant submitted on 5 April 2016 a request for registration of imports of the product concerned from the PRC. On 2 June 2016, the complainant updated the request by providing more recent financial data, but on 11 August 2016, withdrew it.

1.3. **Subsequent procedure**

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

(7) As set out in detail from recital (135) and following below, one interested party was invited by the Commission services to request the intervention by the Hearing Officer in certain trade proceedings (‘the Hearing Officer’) on the accuracy of the provisional calculations and on his right to access confidential information. This hearing took place on 7 February 2017.

(8) The Commission continued seeking and verifying all information it deemed necessary for its definitive findings. In order to have at its disposal more comprehensive data on the Union's cost of production (per product type per quarter of the investigation period), the sampled Union producers were requested to provide additional data. All sampled Union producers submitted the requested information.

(9) 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 of the product concerned into the Union. All parties were granted a period within which they could make comments on the definitive disclosure.

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

1.4. **Product concerned and like product**

(11) Recital (24) of the provisional Regulation set out the provisional definition of the product concerned.

(12) Recitals (29) to (35) of the provisional Regulation set out the claim from a Chinese exporting producer and an importer to exclude tool steel and high-speed steel from the product scope, and the reasons why the Commission provisionally excluded tool steel and high-speed steel from the product scope.

(13) Following definitive disclosure, the complainant reiterated its comment that this claim was not well founded and that there is a risk of circumvention in case these claims would be accepted by the Commission. The Commission observed that it already

considered the risk of circumvention at provisional stage. As laid out in recital (34) of the provisional Regulation, it found that imports of tool steel and high-speed steel account volume-wise for about 1,25 % of total Chinese imports in 2015, and that they fall under different, specific CN codes. Furthermore, the Commission did not receive any evidence which would indicate a change in pattern of trade after the imposition of provisional measures, suggesting potential circumvention.

(14) For the reasons set out in recitals (32) to (34) of the provisional Regulation and absent any new facts or evidence, the Commission maintained its decision to exclude tool steel and high-speed steel from the product scope.

(15) Recitals (36) to (37) of the provisional Regulation set out the claim of an Italian user to exclude certain other product types from the product scope. As stated in recitals (38) and (39) of the provisional Regulation, the Commission provisionally rejected these requests but stated that it would further investigate this product exclusion request. Following the provisional disclosure, this Italian user reiterated its request.

(16) During an on spot verification visit in the premises of the company, the Commission sought to clarify the points raised by this user.

(17) However, the user did not bring forward any new element during these discussions. Accordingly, the Commission rejected these claims and confirmed its conclusions reached in recitals (38) and (39) of the provisional Regulation.

(18) Following final disclosure, the Italian user reiterated its request to exclude Interstitial-Free (IF) steel types, dual-phase steel types, high carbon steel types, and non-grain oriented steel types of the product concerned. This user referred to a discussion with Commission investigators, during which the user claims that the Commission officials would have accepted that there is a difference in terms of chemical characteristics and end-uses between ‘ordinary’ and other high-quality types of the product concerned. Moreover, this user referred to two other investigations where the Commission would have decided to exclude certain product types. The first case was an anti-circumvention investigation concerning certain aluminium foil from the People's Republic of China based on an alleged slight modification of the product. In that case, a particular type of aluminium foil used for further processing was allegedly excluded from the extension to the slightly modified product[(6)]. The second case concerned an investigation on certain corrosion resistant steels (CRS) originating in the People's Republic of China[(7)], where the product scope was so defined to exclude the automotive grades from the scope of the measures.

(19) The Commission rejected this request. First, the meeting at the premises of the company was an exchange of information to clarify some points which were raised by the user. The user cannot draw any legitimate expectations from such kind of informal meeting. Moreover, contrary to what is claimed by the user, the Commission investigators never agreed that there was a difference between certain types of the product concerned in terms of chemical characteristics and end-uses. Second, it is true that the current description and the CN codes of the product concerned do include a wide variety of types from a quality perspective. However, the production of high-

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quality types of the product concerned by both the Union and exporting producers is inherent to the production process of the product concerned, and higher quality types are made from the same basic material and on the same production equipment. Therefore, such argument is not sufficient to lead to the exclusion requested by the user. Third, the two cases to which the user refers are both ongoing and no final conclusions have been made. In addition, one of these cases (the case concerning the particular type of aluminium foil) concerns an anti-circumvention case, and is therefore not relevant. Fourth, for the different types of the product concerned, including the so-called high-quality types, it is not possible to identify the difference between the numerous types of the product concerned based on visual inspection, and therefore an exclusion would be unmanageable by customs authorities. Fifth, in many cases, the products cannot even be differentiated by chemical analysis or microstructural tests, since such specific characteristics only arise later during the further cold rolling process. In conclusion, these types of a relatively higher quality also fully meet the definition of the product concerned, and no convincing argument has been brought forward to exclude them from the scope of the product concerned.

(20) In the absence of any other comments regarding the product scope and the like product, the conclusions reached in recitals (24) to (28) of the provisional Regulation were confirmed.

(21) The product concerned is thus defined as certain flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated, originating in the PRC.

The product concerned does not include:

— products of stainless steel and grain-oriented silicon electrical steel,

— products of tool steel and high-speed steel,

— products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more, and

— products, not in coils, without patterns in relief, of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more.

The product concerned is currently falling within CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 00, 7208 38 00, 7208 39 00, 7208 40 00, 7208 52 10, 7208 52 99, 7208 53 10, 7208 53 90, 7208 54 00, 7211 13 00, 7211 14 00, 7211 19 00, ex 7225 19 10, 7225 30 90, ex 7225 40 60, 7225 40 90, ex 7226 19 10, 7226 91 91 and 7226 91 99.

## 2. DUMPING

### 2.1. Normal value

(22) After the imposition of provisional measures, and following definitive disclosure, the Chinese Iron and Steel Association (CISA) claimed that the difference between the injury and dumping margins raised doubts as to the accuracy of the Commission's methodology. CISA estimated that the normal value in the analogue

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country was 61 % higher than the target price for the Union industry. According to CISA, normal values provided by a producer which is related to the complainant, as it is the case for the present investigation, are sometimes abnormally high.

(23) Furthermore, CISA claimed that, if the data is factually correct, in view of such difference, the Commission should invalidate the choice of the USA as a valid analogue country, make adjustments to the data or use EU data instead.

(24) Under Union law, the Commission is entitled to use prices of companies related to EU producers when the analogue country is appropriate. This was the case for investigations on high fatigue performance steel concrete reinforcement bars (South Africa)[8] and on cold-rolled flat steel products (Canada)[9], as mentioned by CISA itself. The existence of a relationship between the analogue country producer and a Union producer does not invalidate or affect the determination of the normal value which is based on duly verified data.

(25) The calculations regarding the normal value were performed and validated according to the applicable legal rules. They are factually correct.

(26) The USA is a competitive market with ten domestic producers and substantial imports from several countries. It has anti-dumping and countervailing measures in force, which allows its companies to operate under normal conditions of competition. Therefore, the Commission sees no reason for not using USA prices. In addition, no supporting evidence was provided that would justify making an adjustment.

(27) After definitive disclosure, one interested part questioned again the choice of the USA as a valid analogue country in the present case, questioning the reliability of the normal value in that country which it found much too high as compared to the price on the Union market. Given that the data of the analogue country producer have been verified and have been found to be correct, that argument was rejected.

(28) As regards the suggestion for prices actually paid or payable in the Union, Article 2(7) of the basic Regulation only allows for the use of these prices when the use of prices in or exports of a market economy third country is not possible. Given that it is possible to use the US prices (analogue country method) in the present case, this suggestion was dismissed.

(29) The Commission hence confirmed its findings with regard to the normal value.

2.2. **Export prices**

(30) At provisional stage, the Commission made adjustments to transactions where the exporting producers export the product concerned to the Union through related companies acting as an importer.

(31) These adjustments were made with reference to the actual profit of the related importers.

(32) Because of the relationship between these exporting producers and the related traders/importers, the actual profits of related importers must however be considered