Commission Implementing Regulation (EU) 2017/336 of 27 February 2017 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China

COMMISSION IMPLEMENTING REGULATION (EU) 2017/336

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imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain heavy plate of 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 European Union ('the Union') of flat products of non-alloy or alloy steel (excluding stainless steel, silicon-electrical steel, tool steel and high-speed steel), hot-rolled, not clad, plated or coated, not in coils, of a thickness exceeding 10 mm and of a width of 600 mm or more or of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more ('heavy plate') originating in the People's Republic of China ('the PRC') by Commission Implementing Regulation (EU) 2016/1777[(2)] ('the provisional Regulation').

(2) The Commission initiated the investigation on 13 February 2016 by publishing a Notice of Initiation in the *Official Journal of the European Union* ('the Notice of Initiation') following a complaint lodged on 4 January 2016 by the European Steel Association ('Eurofer') on behalf of producers representing more than 25 % of the total Union production of heavy plate.

(3) As stated in recitals 28 and 29 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') and 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').

1.2. Registration

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2017/336. (See end of Document for details)*

(4) The Commission made imports of heavy plate originating in the PRC subject to registration as of 11 August 2016 by Commission Implementing Regulation (EU) 2016/1357[3] ('the registration Regulation'). The registration of imports ceased with the imposition of provisional measures on 8 October 2016.

(5) Interested parties had 20 days after the start of registration to submit comments. No comments were received.

1.3. **Subsequent procedure**

(6) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), Eurofer, an association of steel producers from the PRC ('CISA'), an exporting producer from the PRC, an importer of heavy plate in the Union referred to in recital 34 of the provisional Regulation ('one importer'), and an *ad-hoc* association of users in downstream industry (wind turbine towers) made written submissions making known their views on the provisional findings.

(7) The parties who so requested were granted an opportunity to be heard. Hearings took place with one exporting producer from the PRC, CISA and one importer.

(8) The Commission considered the oral and written comments submitted by the interested parties and, where appropriate, addressed them below.

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

— Network Steel S.L., Madrid, Spain,

— Primex Steel Trading GmbH, Düsseldorf, Germany,

— Salzgitter Mannesmann International GmbH, Düsseldorf, Germany.

(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 heavy plate originating in the PRC and definitively collect the amounts secured by way of provisional duty ('final disclosure').

(11) All parties were granted a period within which they could make comments on the final disclosure. Eurofer, CISA and one importer made their comments in written submissions following final disclosure and at a hearing. The comments submitted by the interested parties were considered and taken into account where appropriate.

1.4. **Sampling**

(12) CISA submitted that a sample of Union producers representing 28,5 % of the total sales of the Union industry was too small and did not cover enough sales.

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(13) As stated in recital 12 of the provisional Regulation the sample of Union producers was made on the basis of the biggest sales volume in the Union during the investigation period which could reasonably be investigated within the time available.

(14) Already for that reason, the argument has to be rejected. As indicated in recital 197 below, there is an almost complete matching of more than 90 % (by volume) and around 70 % (by Product Control Number ('PCN') used to differentiate product types for the investigation purposes) between the product types exported by the sampled exporting producers from the PRC and the product types sold by the sampled Union producers on the Union market.

(15) Following final disclosure CISA returned to this issue in their comments and at the hearing, stating that it is more than difficult to believe that there is an almost complete matching of PCNs if the majority of the PCNs are not sold by all three sampled Union producers. The Commission notes that the matching of PCNs was subsequently verified again, and the percentages given in recital 14 above were found to be correct.

(16) The Commission observes in this context that 'matching' means that for a product type exported by the sampled exporting producers from the PRC under a given PCN, there is at least one transaction for the product type under the same PCN for the sampled Union producers. A 90 % matching by volume means that 90 % of the import transactions of the sampled exporting producers from the PRC during the investigation period fall under a PCN for which there is at least one transaction for the sampled Union producers. A 70 % matching by PCN means that for 70 % of the product types that are imported under a given PCN, there is at least one matching transaction of the sampled Union producers.

(17) The Commission concludes therefore that the sample of Union producers is representative, even if the mere fact that it is based on the biggest volume that could reasonably be investigated was not sufficient.

(18) In the absence of further comments concerning the method of sampling, the provisional findings set out in recitals 11 to 24 of the provisional Regulation are confirmed.

1.5. **Individual examination**

(19) Recital 25 of the provisional Regulation noted that seven exporting producers in the PRC indicated that they wished to request individual examination under Article 17(3) of the basic Regulation.

(20) Whilst none of these exporting producers replied to the questionnaire and therefore no requests were considered to have been received, one of these seven exporting producers did return a Market Economy Treatment ('MET') claim form and following the publication of the provisional Regulation, requested that the Commission assess its MET claim.

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(21) Given that the exporting producer did not return a questionnaire, the company's request for individual examination was rejected, because the exporting producer has not demonstrated that it meets the conditions for being granted individual examination. It was in that context informed that the submission of the MET claim form alone was not sufficient to support their request. The Commission did not assess their MET claim, in accordance with Article 2(7)(d) of the basic Regulation, as they had not been sampled, nor had they successfully claimed individual examination.

(22) In the absence of any further comments concerning individual examination, the provisional findings set out in recital 25 of the provisional Regulation are confirmed.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Claims regarding the product scope

(23) Recitals 30 and 31 of the provisional Regulation set out the provisional definition of the product concerned.

(24) Recitals 34 and 41 of the provisional Regulation set out the claims of one importer and their assessment by the Commission regarding the product scope.

(25) Following the imposition of provisional measures one importer and CISA submitted further claims arguing along the same lines that certain product types, that is:

— structural steel of steel grade S500 and above,

— steels for case-hardening, quenching and tempering,

— pipeline steel,

— abrasion-resistant steel,

— other steel[(4)],

— all heavy plate with a thickness exceeding 150 mm,

referred to by them as ‘special heavy plate’ should be excluded from the product scope.

(26) The Commission notes that both ‘special heavy plate’ and other heavy plate can be made to measure, so this is not a relevant criterion to differentiate between them.

(27) A number of arguments supporting this claim for exclusion were brought forward, and they are individually analysed below.

(28) At the outset, the Commission recalls that according to the case-law, neither the basic Regulation nor the WTO Antidumping Agreement specifies the scope of the concept of ‘product under consideration’. The Court therefore considers that the Commission enjoys broad discretion when defining the product under consideration. In particular, there is no requirement for homogeneity or similarity between the products at issue. Rather, the Union Courts considered it relevant whether all products at issue share the same basic physical and technical characteristics. The General Court has also considered that end use and interchangeability may constitute relevant criteria.

(29) The Commission will first set out the analysis of those criteria in the present case, and then explain how it decided to exercise its broad discretion on that basis.

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2.1.1. *Difference in physical, chemical and technical properties*

(30) One importer claimed that 'special heavy plate' can be easily distinguished from the 'commodity heavy plate' by chemical properties such as the carbon content, physical properties such as the yield strength or the Brinell Hardness, technical properties such as the grade designations, or the thickness.

(31) CISA claimed that the most important criterion (by export volume) to differentiate 'special heavy plate' is the thickness of the plate, which covers more than half of the products to be excluded. CISA based this argument for exclusion from the product scope on the structure of the PCN used to group the different product types for the investigation purposes.

(32) The PCN structure is used to ensure that products with comparable costs and prices are compared — it does not say anything about the use of the product or the interchangeability of the product. In case of thickness, it also does not say anything about the physical, chemical or technical properties of the product. In particular, none of the interested parties could demonstrate that a heavy plate with a thickness of 155 mm would not have the same end use and not be interchangeable with a heavy plate of a thickness of 145 mm, all other parameters being equal.

(33) Furthermore, while there may be indeed these specific differences in the specific properties referred to in recital 30 above, this does not show that 'special heavy plate' does not share the same basic characteristics as 'commodity heavy plate'.

(34) Eurofer requested that the product definition remain unchanged and supported the arguments of the Commission set out in recitals 36 and 41 of the provisional Regulation.

(35) They further submitted that the dumped imports from the PRC include a wide range of steel grades and dimensions, and cover both alloy and non-alloy steel heavy plate. They finally noted that there is no 'specific requirement for homogeneity or similarity between the products' covered by the scope of the product concerned.

(36) Indeed, the Commission notes that it is common in anti-dumping investigations that the product scope covers hundreds or even thousands of product types which are not identical or homogeneous, but still share the same basic characteristics, as is the case in this investigation.

(37) Following final disclosure CISA, Eurofer and one importer returned to this issue in their comments and at the hearing:

(a) CISA did not raise any new substantial arguments.

(b) One importer claimed that 'special heavy plate' and 'commodity heavy plate' do not have the same basic physical, chemical and technical characteristics and that the fact that heavy plates can be made to measure cannot invalidate distinction by thickness between 'special heavy plate' and 'commodity heavy plate'.