Commission Implementing Regulation (EU) 2016/1329 of 29 July 2016 levying the definitive anti-dumping duty on the registered imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1329

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levying the definitive anti-dumping duty on the registered imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation

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 10(4) thereof,

Whereas:

A. PROCEDURE

1. Introduction

(1) On 14 May 2015, following a complaint by the European Steel Association ('Eurofer' or 'the complainant'), the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of certain flat-rolled products of iron or non-alloy steel, or other alloy steel but excluding of stainless steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated and not further worked than cold-rolled (cold-reduced) ('cold-rolled flat steel products' or 'CRFS') originating in the People's Republic of China ('PRC') and the Russian Federation ('Russia') (together, referred to as 'the countries concerned') on the basis of Article 5 of the basic Regulation.

(2) The complainant submitted a request for registration pursuant to Article 14(5) of the basic Regulation on 12 November 2015. The Commission, by Commission Implementing Regulation (EU) 2015/2325[(2)] (the 'registration Regulation'), made the imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation subject to registration. By Article 1(2) of that Regulation, all interested parties were invited to make their views known in writing, to provide supporting evidence or to request to be heard within a fixed deadline. Comments on the registration were received from the complainant, the China Iron & Steel Association (CISA), the Ministry of Economic Development of the Russian Federation, Russian exporting producers, importers and/or users.

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(3) By Commission Implementing Regulation (EU) 2016/181[3], the Commission imposed a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation.

(4) The Commission's final analysis and determination with regard to dumping, injury, causation and Union interest are detailed in Commission Implementing Regulation (EU) 2016/1328[4] ('definitive Regulation'). The present regulation only addresses the issue of registration, the comments received in relation to registration and retroactive levying of the anti-dumping duty in question.

2. Procedure with regard to retroactivity after the imposition of provisional measures

(5) In order to examine whether the retroactive application of the definitive duties was warranted, the Commission analysed consumption, prices, imports and sales volumes prior and subsequent to the opening of the investigation. In the framework of that analysis the Commission also sent questionnaires to importers and/or users of the product concerned concerning their import volumes, import prices and inventories in the period following the investigation period, i.e. from 1 April 2015 to 31 January 2016. Replies were received from 22 unrelated and related importers and/or users. Furthermore, questionnaires were sent to the complainant and the five sampled Union producers concerning the sales in the period following the investigation period ('IP'), i.e. from 1 April 2015 to 31 January 2016. Replies were received from the complainant and all sampled Union producers.

(6) In order to verify the questionnaires replies mentioned in recital 5 above, on-spot verification visits were carried out of the data submitted by the following parties:

(a) Union producers
- ThyssenKrupp Germany, Duisburg, Germany
- ArcelorMittal Belgium NV, Ghent, Belgium
- ArcelorMittal Sagunto SL, Puerto de Sagunto, Spain

(b) Unrelated importers/users
- Duferco SA, Lugano, Switzerland
- Marcegaglia Carbon Steel, Mantova, Italy

(7) On 3 May 2016 a hearing with the Hearing Officer in trade proceedings was held at the request of Eurofer. This hearing was held within the framework of the anti-dumping proceeding concerning imports of certain cold rolled flat steel products originating in the People's Republic of China and the Russian Federation and one of the issues raised was the possible retroactive collection of the definitive anti-dumping duty.

(8) On the request of importers, the Commission services also held two hearings regarding the issue of retroactive collection of the anti-dumping duty.

(9) The Commission informed all parties of the essential facts and considerations on the basis of which it intended to levy a definitive anti-dumping duty on the

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registered imports of CRFS ('the additional disclosure'). All parties were granted a period within which they could make comments on the additional disclosure. The comments submitted by the interested parties were considered and taken into account where appropriate.

(10) Following the additional disclosure, several parties submitted comments. On 15 June 2016, one group of importers had a hearing with the Hearing Officer in trade proceedings. Following this hearing, one interested party submitted comments to the post-hearing submission.

B. RETROACTIVE LEVYING OF ANTI-DUMPING DUTIES

1. General principles for registration and retroactive levying of anti-dumping duties

(11) According to its Communication 'Steel: Preserving Sustainable Jobs and Growth in Europe'[(5)], the Commission will ensure that the industry gets actual relief significantly before provisional measures are imposed. This is achieved by registering imports prior to the adoption of provisional measures. This allows the Commission to retroactively apply definitive anti-dumping duties three months before the adoption of provisional measures, where the relevant legal conditions are met. Those legal conditions are set out in Articles 10(4) and 14(5) of the basic Regulation, which are based on Articles 10.6 and 10.7 WTO Anti-dumping Agreement ('WTO ADA').

(12) Those legal conditions set out a two-step mechanism to make sure that the remedial effect of the definitive anti-dumping duty to be applied is not undermined.

(13) Because it is the first case in which it is found that the conditions for retroactive collection of anti-dumping duties are met, the Commission considers it necessary to explain in detail the methodology that was applied to reach that conclusion.

(14) The first step, which is based on the idea of preventing the undermining of the remedial effect of duties, is registration pursuant to Article 14(5) of the basic Regulation and Article 10.7 WTO ADA, which besides registering imports also notifies interested parties, in particular importers, that definitive duties might be collected retroactively should the substantive conditions be met. The second step, in case prevention fails to preserve the remedial effect of the definitive duties is the retroactive levying of anti-dumping duties on products which were entered for consumption no more than 90 days prior to the date of application of provisional measures but not prior to the initiation of the investigation, pursuant to Article 10(4) of the basic Regulation and Article 10.6 WTO ADA.

(15) Any of those two steps can only be taken when the conditions set out in Article 10(4) of the basic Regulation and Article 10.6 WTO ADA are met.

(16) The Commission considers it appropriate to set out the manner in which it construes and applies the conditions 'further substantial rise in imports' and 'likelihood of seriously undermining the remedial effect of the definitive anti-dumping duty',

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set out in Article 10(4)(d) of the basic Regulation, when deciding on the retroactive imposition of anti-dumping duties.

(17) The second of the two alternative conditions of Article 10(4)(c) of the basic Regulation will always be met the moment the initiation of the procedure is published in the *Official Journal of the European Union*. It is therefore not necessary to provide further clarification on Article 10(4)(c) of the basic Regulation.

(18) Article 10(4)(d) of the basic Regulation provides the following:

> [i]n addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports which, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

(19) The Commission interprets Article 10(4)(d) of the basic Regulation as setting two conditions which need to be fulfilled in order to allow the Commission to levy the definitive anti-dumping duty retroactively (in addition to the conditions set out in Article 10(4)(c) of the basic Regulation and in the chapeau of Article 10(4), read in conjunction with Article 14(5) of the basic Regulation). The two conditions are as follows:

(a) in addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports; and

(b) this further substantial rise in imports, in the light of its timing and volume and other circumstances, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

1.1. *Further substantial rise in imports*

(20) In order to be able to make any determination concerning whether there is a further substantial rise in imports, a comparison of data is necessary[6]. In this respect, it has to be determined what periods of time need to be compared.

1.1.1. *Periods to be compared*

(21) On the one hand, the basic Regulation refers to the level of imports during the investigation period. On the other hand, the words ‘further’ and ‘in addition to’ imply that the level of imports in the investigation period should be compared with the level of imports after the investigation period.

(22) At the same time, the period to be compared to the investigation period cannot commence before one of the two alternative conditions in Article 10(4)(c) of the basic Regulation is met. Where importers only become aware of the likely dumping by the publication of the notice of initiation in the *Official Journal of the European Union*, that point should therefore be taken as starting point for the second period.

(23) The overall analysis aims at assessing whether the conditions for an application of the duty prior to the date of application of the provisional measures

are met. Therefore, the latter period should end with the imposition of the provisional measures at which moment the registration of imports[7] ceases to apply.

(24) Import statistics are only available on a monthly basis. The Commission would therefore use for the latter period the data for the full calendar month following the publication of the initiation in the *Official Journal of the European Union*, where awareness of the importers is triggered by initiation. Where awareness stems from a different basis, for example from a history of dumping over an extended period, it would be the month following the event triggering awareness, but the earliest the first full month after the investigation period. As for the end point, the Commission would establish two values: one including the month in which the provisional measures start, one excluding that month.

(25) The Commission would normally establish a monthly average level of imports for the whole investigation period which in principle lasts 12 months, and a monthly average for the level of imports between awareness and provisional measures. The starting and end points for the latter average are established as explained in the previous paragraph.

(26) Furthermore, the Commission would also establish the evolution of imports in absolute terms, their impact on the evolution of stocks of the product and on the market shares, and consumption of the product during the period considered.

1.1.2. *Extent of the rise to be qualified as substantial*

(27) Such a determination should be based on a case-by-case analysis. In addition to comparing monthly weighted averages, the Commission will also take all other relevant considerations into account. Those are in particular: the development of the overall consumption of the product concerned in the Union, the evolution of stocks, and the evolution of market shares. Hence, the analysis should be twofold, absolute and relative. A comparison between the two above monthly averages is thus an important, but not necessarily the decisive element in determining whether the further rise in imports is ‘substantial’.

1.1.3. *Rationale underlying this approach*

(28) Imports that enter the Union prior to registration can in no case be subject to anti-dumping duties. They are, however, relevant for determining whether or not imports that enter the Union after registration are likely to undermine the remedial effect of duties, for the following reason: Due, inter alia, to the existence of stocks, the remedial effect of duties (i.e. an increase of the price of imported products, either due to a price increase or due to the duty) is never immediate, but takes place only once stocks have been sold. A further substantial rise in imports prior to registration should normally lead to a substantial increase in stocks. That means that the remedial effect of duties is further delayed compared to a situation with normal stocks. Any further imports between registration and provisional measures, which come on top of stocks that substantially exceed the normal level, would further delay the remedial effect.

1.2. *The rise in imports is likely to seriously undermine the remedial effect of duties*