Commission Implementing Regulation (EU) 2016/90 of 26 January 2016 amending Council Implementing Regulation (EU) No 102/2012 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, inter alia, in Ukraine following a partial interim review pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009

COMMISSION IMPLEMENTING REGULATION (EU) 2016/90

of 26 January 2016

amending Council Implementing Regulation (EU) No 102/2012 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, *inter alia*, in Ukraine following a partial interim review pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] (the 'basic Regulation'), and in particular Article 11(3) thereof,

Whereas:

1. **PROCEDURE**

1.1. **Measures in force**

(1) The anti-dumping measures in force on imports of certain steel ropes and cables originating in Ukraine were originally imposed by Council Regulation (EC) No 1796/1999[(2)] (the 'original Regulation') and last extended by Council Implementing Regulation (EU) No 102/2012[(3)] (the 'measures in force').

(2) The measures in force take the form of an *ad valorem* duty at 51,8 %.

1.2. **Request for a review**

(3) The European Commission ('the Commission') received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation. The request was lodged by PJSC 'PA''Stalkanat-Silur' ('the applicant'), an exporting producer from Ukraine.

(4) The request was limited in scope to the examination of dumping as far as the applicant was concerned.

(5) In its request, the applicant provided *prima facie* evidence that the changes to its current structure, based on the merger of, *inter alia*, two unrelated exporting producers in Ukraine (only one of which was previously investigated individually), are of a lasting nature.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/90. (See end of Document for details)*

(6) Furthermore, the applicant claimed that on the basis of the applicant's own domestic prices, or on the basis of its constructed normal value (manufacturing costs, selling, general and administrative costs ('SG&A') and profit), instead of the analogue country's normal value used previously, the dumping margin of the applicant is significantly lower than the current level of the measures.

(7) Therefore, the applicant claimed that the continued imposition of the measures at the existing level was no longer necessary to offset the effects of injurious dumping as previously established.

1.3. **Initiation of a review**

(8) The Commission determined, after informing the Member States, that sufficient evidence existed to justify the initiation of a partial interim review and announced by a notice published in the *Official Journal of the European Union*[(4)] on 18 November 2014 the initiation of an investigation pursuant to Article 11(3) of the basic Regulation, limited in scope to the examination of dumping as far as the applicant is concerned.

1.4. **Product concerned and like product**

(9) The product concerned by the current review is the same as that in the original investigation and the last investigation which led to the imposition of the measures in force, i.e. steel ropes and cables, including locked coil ropes, excluding ropes and cables of stainless steel, with a maximum cross-sectional dimension exceeding 3 mm, originating in Ukraine (the 'product concerned' or 'SWR'), currently falling within CN code(s) ex 7312 10 81, ex 7312 10 83, ex 7312 10 85, ex 7312 10 89 and ex 7312 10 98.

(10) The product produced and sold in Ukraine, as well as in third countries, and that exported to the Union have the same basic physical and technical characteristics and end uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

1.5. **Parties concerned**

(11) The Commission officially advised the applicant, the known association of the Union industry and the Ukrainian authorities of the initiation of the interim review. Interested parties were given an opportunity to make their views known in writing and to be heard.

(12) The Commission sent a questionnaire to the applicant and received a reply within the set deadline. The Commission sought and verified all the information it deemed necessary for the determination of dumping. The verification was carried out at the premises of the applicant in Odessa, Ukraine.

1.6. **Review investigation period**

(13) The review investigation covered the period from 1 July 2013 to 30 September 2014.

2. RESULTS OF THE INVESTIGATION

2.1. Dumping

2.1.1. *Normal value*

(14) The total volume of export sales to the Union in the review investigation period was limited to two sales transactions only, and as explained in recital (26), these transactions were not considered representative. As also mentioned in recital (26), the export price was therefore determined on the basis of the export sales made by the applicant to third countries during the review investigation period in accordance with Article 2(9) of the basic Regulation. The sales volume to third country markets was used to assess the representativity of the domestic sales for the establishment of the normal value for the purposes of Article 2(2) of the basic Regulation

(15) For the determination of the normal value, it was first established whether the applicant's total volume of domestic sales of the like product to independent customers was representative in comparison with its total volume of exports to third countries. In accordance with Article 2(2) of the basic Regulation it was found that the domestic sales were representative as the total volume of domestic sales was at least 5 % of the total volume of export sales to third countries in the review investigation period.

(16) For each product type sold by the applicant on its domestic market and found to be directly comparable with the product type sold for export to third countries, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the total volume of that product type sold on the domestic market to independent customers during the review investigation period represented at least 5 % of the total sales volume of the comparable product type exported to third countries during the same period.

(17) It was also examined whether the domestic sales of each product type could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of domestic sales to independent customers which were profitable for each product type exported to third countries concerned during the review investigation period.

(18) For those product types where more than 80 % by volume of sales on the domestic market were above cost and the weighted average sales price of that type was equal to or above the unit cost of production, normal value, by product type, was calculated as the weighted average of the actual domestic prices of all sales of the product type in question, irrespective of whether those sales were profitable or not.

(19) Where the volume of profitable sales of a product type represented 80 % or less of the total sales, or where the weighted average price of that product type was below the unit cost of production, normal value was based on the actual domestic price, which was calculated as a weighted average price of only the profitable domestic sales of that product type made during the review investigation period.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/90. (See end of Document for details)*

(20) Wherever domestic prices of a particular product type sold by the applicant could not be used in order to establish normal value, the normal value was constructed in accordance with Article 2(3) of the basic Regulation.

(21) When constructing normal value pursuant to Article 2(3) of the basic Regulation, the amounts for selling, general and administrative costs and for profits have been based, pursuant to Article 2(6) of the basic Regulation, on the actual data pertaining to the production and sales, in the ordinary course of trade, of the like product, by the applicant.

(22) After final disclosure, the applicant claimed that its domestic sales to state-owned companies (SOEs) should be excluded from the normal value determination. The applicant argued that prices charged to SOEs were systematically higher than the prices charged to other customers on the domestic market based on a higher a risk of non-payment or significantly delayed payment, which was also reflected in the company's internal pricing policy. It was claimed that the higher prices were thus not linked to the characteristics of the product concerned. Secondly, the applicant claimed that where the normal value was constructed in accordance with Article 2(3) of the basic Regulation, only the selling, general and administrative ('SG&A') expenses incurred in the domestic sales to independent distributors should be used to ensure the comparability with the export sales which were made exclusively to the same type of customers.

(23) Regarding the applicant's request for exclusion of domestic sales to SOEs from the normal value determination, the evidence collected during the investigation confirmed that the sales prices for SOEs, per product type, were on average consistently higher than those charged to any other type of customers on the domestic market. This consistent price difference was a result of a combination of a number of specific factors affecting only this type of customer in the domestic market: (i) the identification by the applicant of sales to SOEs as having high risk of non-payment or seriously delayed payments; (ii) the fact that this policy is effectively applied by granting much longer credit periods to SOEs (including the possibility to further postpone the payment as reflected in the contract); (iii) the evidence of history of delayed payments; (iv) the fact that the Ukrainian law exempts SOEs to meet the claims of creditors in case of bankruptcy; (v) the fact that the sales to SOEs are made through complex tender procedures, where the provisions of the contract are not negotiable and a pre-set standard contract is used and finally that (vi) SOEs are not allowed by law to make advance payments for the purchase of goods. Thus, on the basis of these specific circumstances, the applicant's claim was accepted.

(24) Regarding the claim to use only the SG&A expenses incurred in the sales to independent distributors when the normal value is constructed, Article 2(6) of the basic Regulation provides that the amounts for SG&A expenses should be based on the actual data pertaining to the applicant's production and sales, in the ordinary course of trade, of the like product. In accordance with this Article, the data of the applicant was used pertaining to all sales (excluding the sales to SOEs) on the domestic market. Since sales prices to end-users on the domestic market were adjusted in accordance with Article

2(10)(d)(i) of the basic Regulation (as explained in recitals (30) and (31) below), they were put at a comparable level to domestic sales to independent distributors. This claim was therefore rejected.

(25) The applicant also argued that when constructing normal value pursuant to Article 2(3) of the basic Regulation a reasonable profit margin of 5 % should be used. Reference was made to a previous investigation concerning SWR where such profit margin was considered to be reasonable. The applicant further argued that alternatively, the level of profit should not exceed the level of profit achieved for sales to independent distributors as this sales level is comparable to the level of export sales. However, Article 2(6) of the basic Regulation provides that the amounts for SG&A expenses and for profits should be based on the actual data of the applicant pertaining to the production and sales, in the ordinary course of trade, of the like product. Since this data was available, it was therefore used in accordance with this Article. Therefore, the claim was rejected.

2.1.2. *Export price*

(26) There were only two sales transactions made to the Union during the review investigation period. They were not considered representative because of their limited volume and because they were made to only one customer with particular product specifications. Therefore the export price was established in accordance with Article 2(9) of the basic Regulation, which allows for constructing the export price on any reasonable basis. In this case the sales of the like product made by the applicant to third countries during the review investigation period were used as a basis for the calculation of the export price. Indeed, the sales to third countries were characterised by a significant volume to a large number of customers and the investigation did not reveal price distortions or other factors on the third countries' markets, which would suggest that the applicant's sales to these markets could not be used for the purpose of establishing the export price.

2.1.3. *Comparison*

(27) The average normal value and the average export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and export price, due allowance in the form of adjustments was made for the difference in transport and credit costs in accordance with Article 2(10) of the basic Regulation.

(28) The applicant also claimed an adjustment on the normal value for the difference in the level of trade pointing to the fact that its sales on the domestic market to retailers and end-users via regional sales centres were not comparable with the sales to independent distributors. The applicant further claimed that all export sales were made to independent distributors and were thus only comparable with the domestic sales to independent distributors. A weighted average price difference between sales to the two levels of trade on the domestic market was claimed to be a basis to calculate the adjustment in accordance with Article 2(10)(d)(i) of the basic Regulation.