Commission Implementing Regulation (EU) 2015/2385 of 17 December 2015 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foils originating in the Russian Federation

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2385

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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 9(4) thereof,

Whereas:

A. PROCEDURE

1. Provisional Measures

(1) The European Commission (the Commission) imposed on 4 July 2015 a provisional anti-dumping duty on imports of certain aluminium foils originating in the Russian Federation (Russia) by Implementing Regulation (EU) 2015/1081[(2)] (the provisional Regulation).

(2) The proceeding was initiated on 8 October 2014 following a complaint lodged on 25 August 2014 by AFM Aluminiumfolie Merseburg GmbH, Alcomet AD, Eurofoil Luxembourg SA, Hydro Aluminium Rolled Products GmbH and Impol d.o.o. (the complainants) on behalf of producers representing more than 25 % of the total Union production of aluminium foils. The complaint contained prima facie evidence of dumping of the said product and of resulting material injury that was considered sufficient to justify the initiation of the investigation.

2. Subsequent procedure

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

(4) The intervention of the Hearing Officer in trade proceedings was requested by the sole exporter, Rusal group, and five users. The hearing with the exporter took

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place in the presence of a representative of Russia on 14 October 2015. The main points discussed were the application of Article 2(9) of the basic Regulation for the calculation of export price and the impact of imports of aluminium converter foils (ACF) from the People's Republic of China (PRC) on the situation of the Union industry. The hearing with the users took place on 23 October 2015, after the deadline for submitting comments to the final disclosure. The main points discussed were the alleged circumvention of the anti-dumping measures on imports of AHF from the PRC, the impact of the imports from third countries on the injury suffered by the Union industry, the impact of the imposition of anti-dumping measures on imports of aluminium household foil (AHF) from Russia on users, and the possibility to use the minimum import price as type of measures.

(5) In addition, on 27 October 2015 five rewinders requested a confrontational hearing with the complainants. However, the complainants have not shown interest in participating in such hearing.

(6) The Commission considered the oral and written comments submitted by the interested parties and, where appropriate, modified the provisional findings accordingly.

(7) 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 certain aluminium foils originating in Russia and definitively collect the amounts secured by way of provisional duty (the definitive disclosure). All parties were granted a period within which they could make comments on the definitive disclosure.

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

3. Sampling

(9) Following provisional disclosure, one of the sampled Union producers sold all its activity including equipment, rights permits, obligations concerning employees and its existing contracts to a new company. As this change took place after the investigation period, it is not relevant for the injury assessment under Article 6(1) of the basic Regulation.

(10) In the absence of comments concerning the method of sampling, the provisional findings set out in recitals 7 to 13 of the provisional Regulation are confirmed.

4. Investigation period and period considered

(11) As set out in recital 19 of the provisional Regulation the investigation of dumping and injury covered the period from 1 October 2013 to 30 September 2014 (the investigation period). The examination of trends relevant for the assessment of injury covered the period from 1 January 2011 to the end of the investigation period (the period considered).

(12) After provisional disclosure, the Russian authorities argued that as the investigation period also included data for the last quarter of 2013, the determination of trends in the injury analysis did not meet the requirement of the objectiveness laid down in Article 3(2) of the basic Regulation.

(13) The investigation period was set in accordance with Article 6(1) of the basic Regulation. In addition, the Commission relied on a sufficiently representative period of time for the examination of trends of all relevant economic factors and indices having a bearing on the state of the industry i.e. the investigation period and 3 complete financial years prior to the investigation period. The fact that there is some overlapping between the investigation period and one of the years included in the period considered does not affect the objective determination of the injury carried out by the Commission. This claim was therefore rejected.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(14) As set out in recital 20 of the provisional Regulation, the product concerned is aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg (jumbo rolls) originating in Russia, currently falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 10) (the product concerned). The product concerned is commonly known as aluminium household foil (AHF).

(15) Following the provisional disclosure, several interested party claimed that the Russian imports did not compete with the AHF manufactured by the Union industry, however without further explaining this claim or substantiating it. Therefore, this claim was rejected.

(16) In the absence of any other comments regarding the product concerned and the like product, the conclusions reached in recitals 21 to 28 of the provisional Regulation are confirmed.

C. DUMPING

(17) The details of the dumping calculation are set out in recitals 29 to 52 of the provisional Regulation.

(18) Following the provisional disclosure, Rusal group contested the adjustments made to the export price as described in recitals 40 to 42 of the provisional Regulation. Rusal group claimed that deduction of sales, general and administrative (SG&A) expenses and profit of the related trader are only warranted in case of delivery duty paid (DDP) transactions and not in case of delivery at place of destination (DAP) and cost, insurance and freight (CIF) transactions.

(19) In reply to this claim, it is noted that the Commission constructed the export price in accordance with Article 2(9) of the basic Regulation due to the existing association between the producers and their related trader. The investigation showed that this association applies to all types of transactions regardless of their commercial terms. Moreover, Rusal group did not provide any evidence on why the profit margin

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used would not be reasonable. The claims made in this regard are therefore considered unsubstantiated and should be rejected. With regard to SG&A expenses, it is the party claiming the excessiveness of the adjustment who shall provide specific evidence and calculations justifying its claim and, in particular, to give the alternative rate of adjustment that it suggests where applicable. Rusal group however failed to provide any of this in its submission following the provisional disclosure.

(20) On the basis of above, the claim of the exporting producer was rejected.

(21) Following the final disclosure Rusal group reiterated its disagreement concerning the adjustments made for SG&A and profit under Article 2(9) of the basic Regulation for DAP and CIF transactions. Rusal group is not contesting the application of Article 2(9) given the involvement of the related trader in all types of transactions (i.e. DDP, DAP and CIF). However, with regards to the transactions performed under CIF and DAP terms, Rusal group contests the applicability of the adjustments under the second and third subparagraph of Article 2(9), in particular SG&A and profit. In its view, under CIF and DAP terms the delivery of the goods to the buyer is made prior to importation, and therefore these adjustments are not applicable. In its submission Rusal group listed a number of cases where apparently the Commission did not make adjustments under Article 2(9). Finally, the Rusal group claims that, in the alternative, should the Commission maintain that the application of Article 2(9) requires an automatic adjustment for reasonable SG&A costs and profit, then the Commission services should recognise that the trader was an integrated department of the exporting producer in CIF and DAP transactions, and consequently apply Article 2(8) of the basic Regulation to those transactions.

(22) In reply to this, the Commission confirms that, in the case of Rusal an adjustment for a reasonable margin for SG&A and profits under the second and third subparagraph of Article 2(9) should be applied for all types of transactions. Although the delivery of the goods for the CIF transactions is made prior to the release into free circulation of the goods and even if the responsibility for the customs clearance is on the buyer (as opposed to transactions under DDP terms), this does not change the fact that the sales are performed by the related trader which is bearing SG&A costs and which is normally seeking to make a profit for its services. In light of the fact that the trader is related to the exporting producer, Article 2(9) of the basic Regulation implies that the data of such trader is by definition unreliable and that its SG&A costs and profits should be established by the investigating authority on a reasonable basis. Besides, Article 2(9) of the basic Regulation does not preclude adjustments being made for costs incurred before importation, inasmuch as those costs are normally borne by the importer. Therefore, the complete exclusion of adjustments for SG&A and profit for what concerns sales performed under CIF terms is not justifiable. Indeed, the fact that the related company performs only certain functions does not prevent the Commission from making the adjustments under Article 2(9) of the basic Regulation but could be reflected in a lower amount of SG&A to be deducted from the price at which the product concerned is first resold to an independent buyer. In any event, the interested party who intends to dispute the extent of the adjustments made on the basis of Article 2(9) of the

Basic Regulation has a burden of proof. Hence, if this party deems the adjustments to be excessive it must supply specific evidence and calculations justifying those claims. As regards DAP transactions, it should be mentioned that the places of delivery are well inside the EU customs territory and therefore the difference with respect to the degree of involvement of the trader as compared to sales under DDP terms is even smaller. As for the past cases mentioned by the Rusal group it is important to note first that the Commission's position is in line with the case-law of the Union Courts. Second, the Commission enjoys a wide discretion in the sphere of measures to protect trade and, when exercising that discretion, is not bound by its past assessments. In any event, the factual situation in each of the cases referred to by the Rusal group differed. As regards finally the alternative claim to apply Article 2(8) of the basic Regulation, the Commission refers to the reasoning in this recital and in recital 19 and reiterates that the mere fact of association between the exporter and the related company is enough to enable the Commission to treat the actual export prices as unreliable because the existence of association between the exporter and related company is one of a number of reasons for which the actual export prices may be regarded as unreliable.

(23) Concerning the quantification of the adjustment for SG&A, following the receipt of comments to the provisional disclosure, the Commission invited Rusal group to identify the part of SG&A that they considered not-applicable or unreasonable for CIF and DAP transactions and to provide evidence thereof as required by case-law. However, no evidence was provided in this respect because Rusal group conditioned the submission of any information upon the Commission's acceptance of its legal interpretation of Article 2(9) of the basic Regulation. In the absence of any element provided by the Rusal group in this respect, the claim should be rejected.

(24) In the absence of any further comment, the provisional findings as set out in recitals 29 to 52 of the provisional Regulation are confirmed and the definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, remain unchanged:

Company	Definitive dumping margin
Rusal group	34,0 %
All other companies	34,0 %

D. INJURY

1. Definition of the Union industry and Union production

(25) The change mentioned in recital 9 above did not affect the definition of the Union industry.

(26) In the absence of any comments with respect to the definition of the Union industry and Union production, the conclusions set out in recitals 53 to 55 of the provisional Regulation are confirmed.

2. Union consumption