Commission Implementing Regulation (EU) 2015/1429 of 26 August 2015 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan

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imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan

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)], and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The European Commission ('the Commission') by Implementing Regulation (EU) 2015/501[(2)] ('the provisional Regulation') imposed provisional anti-dumping duties on imports of stainless steel cold-rolled flat products originating in the People's Republic of China ('the PRC') and Taiwan ('the countries concerned').

(2) The Commission initiated the investigation following a complaint lodged on 13 May 2014 by Eurofer ('the complainant') on behalf of complaining Union producers of stainless steel cold rolled flat products ('SSCR'). The complainant represents around 50 % of the total Union production of SSCR. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Registration

(3) Following a request by the complainant supported by the required evidence, the Commission adopted on 15 December 2014 Implementing Regulation (EU) No 1331/2014[(3)] making imports of stainless steel cold-rolled flat products originating in the PRC and Taiwan subject to registration as of 17 December 2014 ('the Registration regulation').

(4) Interested parties claimed that the decision for registration of imports was unfounded, as the conditions were not met pursuant to Article 14(5) of the basic Regulation. However, these claims were not substantiated or based on factual evidence. At the time the decision was taken to register imports the Commission had sufficient *prima facie* evidence justifying the need to register imports: imports and market shares

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from these countries sharply increased. The claims in this regard had therefore to be rejected.

1.3. **Subsequent procedure**

(5) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional anti-dumping measures ('the provisional disclosure'), several interested parties made written submissions making known their views on the provisional findings. One Chinese exporter, one Taiwanese exporter and the complainant requested and were afforded hearings in the presence of the Hearing Officer in trade proceedings on 24 April 2015, 27 April 2015 and 7 July 2015 respectively. The Hearing Officer in trade proceeding was also available, upon request by any interested party, to verify how confidential information had been used by the Commission services responsible for the investigation.

(6) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

(7) In addition, verification visits were carried out at the premises of the following companies:

Analogue country producers:

— AK Steel Corporation, Ohio, USA

— NAS North American Stainless, Kentucky, USA

Unrelated importers:

— Acciai Vender SpA, Parma, Italy

— Inox Market Service S.R.L, Padova, Italy

— Nova Trading SA, Torun, Poland

Users:

— Franke SpA, Peschiera del Garda, Italy

— Indesit Company SpA, Fabriano, Italy

(8) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to impose a definitive anti-dumping duty on imports of SSCR originating in the countries concerned and the definitive collection of the amounts secured by way of provisional duty ('the final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

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

1.4. **Sampling**

(10) One company contested the finding in recital 14 of the provisional Regulation that it was not an exporting producer. However, the company did not provide any

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additional information that could change the position taken by the Commission in the provisional Regulation as described in recital 14 of the provisional Regulation.

(11) In the absence of other comments concerning the method of sampling of Union producers, exporting producers in the PRC and Taiwan and unrelated importers, the provisional findings in recitals 7 to 22 of the provisional Regulation are confirmed.

1.5. Investigation period and period considered

(12) As stated in recital 25 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 January 2013 to 31 December 2013 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2010 to the end of the investigation period ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Introduction

(13) As set out in recital 26 of the provisional Regulation, the product concerned is flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced) originating in the PRC and Taiwan, currently falling within CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81 and 7220 20 89 ('the product concerned').

(14) Stainless steel cold-rolled flat products are used in a wide range of applications, for example in the production of household appliances (for example the interior of washing machines and dishwashers), welded tubes and medical devices as well as in the food processing and automotive industries.

(15) The investigation has shown that the different types of the product concerned all share the same basic physical, chemical and technical characteristics and are basically used for the same purposes.

2.2. Claims regarding the product scope

(16) Interested parties reiterated their claims brought forward at the provisional stage that narrow and precision strips should be excluded from the scope of the investigation. They reiterated their claim that the Directorate-General for Competition of the Commission had decided to exclude this product type from the relevant product market in its analysis of the Outokumpu/Inoxum merger case[(4)]. In addition, interested parties argued that both demand-side and supply-side substitution between 'standard' SSCR and precision strips is limited. However, as already stated in recital 31 of the provisional Regulation, the market definition in an anti-dumping case is defined by the physical characteristics of the product concerned and not the demand-side and supply-side substitution.

(17) Following final disclosure, one interested party reiterated their claim that the market definition in a merger case is relevant for the product definition in an anti-

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dumping case. In support of this argument, they state that in addition to physical, technical and chemical characteristics of the product, the EU institutions may take account of a number of other factors such as use, interchangeability, consumer perception, distribution channels, manufacturing process, cost of production and quality. Allegedly, the four parameters 'use, interchangeability, consumer perception and manufacturing process' are synonymous with demand-side and supply-side substitution.

(18) Without assessing the claim whether 'use, interchangeability, consumer perception and manufacturing process' are indeed synonymous with demand-side and supply-side substitution, the list of elements given above goes far beyond these four criteria. The argument that the market definition in a merger case is relevant for the product definition in an anti-dumping case cannot therefore be accepted.

(19) Following final disclosure, another interested party claimed that in the assessment of whether precision strips should fall under the definition of the product concerned, the issue that the Union industry was allegedly not able to sell this product type 'in the past' should be taken into account. In this respect, recital 30 of the provisional Regulation clearly states that the Union industry is able to fully supply this market segment. Without any more precise definition of 'in the past', it is impossible to check whether this claim is factually correct or even relevant. In any event, precision strips share the basic physical, technical and chemical characteristics of the product concerned.

(20) An interested party claimed that even if imports of speciality products account for less than 1 % of the total imports, as the Commission set out in recital 101 of the provisional Regulation, allegedly the Commission discriminated part of the market by not excluding them. This party argued that the companies that deal with speciality products would allegedly not find other suppliers for these speciality products. No further substantiation was provided.

(21) In this respect, it is noted that the statement in recital 101 of the provisional Regulation is taken out of context. The statement was made in the context of cumulative assessment of imports from the PRC and Taiwan, not in respect of the product scope of the investigation. Indeed, it is not disputed that these speciality products share the same basic physical characteristics as the 'standard' SSCR.

(22) The Commission therefore rejected these claims and maintained the product scope of the investigation unchanged.

2.3. **Conclusion**

(23) The provisional findings in recitals 26 to 32 of the provisional Regulation are confirmed.

3. **DUMPING**

3.1. **The PRC**

3.1.1. *Market economy treatment ('MET')*

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(24) As explained in recital 34 of the provisional Regulation, none of the exporting producers concerned by this investigation claimed MET.

3.1.2. *Analogue country*

(25) In the provisional Regulation, the United States of America ('USA') were selected as an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation. Two exporting producers claimed that the USA is not a suitable analogue country for the purpose of establishing the normal value due to the fact that the production process and the raw materials used are different in the PRC and in the USA. In addition, one exporting producer argued that Taiwan is a better choice for the analogue country, since the cost of production of Chinese mills is much closer to the one of Taiwanese mills than it is to the one of USA mills. According to the exporting producer, this is because major Taiwanese SSCR producers use substantial quantities of intermediate materials, namely black coils from the PRC. Those black coils are made from nickel pig iron ('NPI'), the raw material used almost exclusively in the PRC. Another exporting producer claimed that the producers in the USA are in one way or another related to certain Union producers and that the factual findings regarding the size of the market in the USA are inaccurate.

(26) Differences between the USA and the PRC in the sourcing of nickel, one of the primary raw materials in the production of SSCR, do indeed exist. Whilst in both countries the SSCR producers use certain quantities of utility nickel, stainless steel scrap is the main source of nickel in the USA and NPI in the PRC. However, such a difference does not render the USA an inappropriate analogue country in this case, as the final products produced in the USA and in the PRC are still comparable as found in recital 29 of the provisional regulation and in recital 15 above. As explained in recitals 39 and 40 of the provisional Regulation, the USA is considered an appropriate analogue country on the basis of certain criteria. In light of the size of and the level of competition on the SSCR market in the USA, as well as taking into account the available cooperation of only two countries, the differences in the sourcing of nickel and the production process, do not invalidate the choice of the USA. On the other hand, an argument based on the use of NPI and the related production process in the PRC affects the appropriateness of Taiwan as an alternative analogue country as well as any other country in the world in the same manner. NPI is produced and, due to export barriers, traded and used almost exclusively in the PRC. It follows, and it was established, that NPI is not used in Taiwan, the alternative analogue country. The main raw materials used in the production of the product concerned in Taiwan are utility nickel and, as noted by one of the exporting producers, black coils purchased mainly from the PRC. As also stated in recital 39 of the provisional Regulation the raw materials used in the USA and Taiwan are mainly the same. Moreover, in line with Article 2(10) of the basic Regulation adjustments can be claimed in order to take into account certain differences provided that there is a demonstrated price effect and an adjustment is proven to be warranted taking into account the use of an analogue country under Article 2(7)(a) of the basic Regulation.