Council Implementing Regulation (EU) No 217/2013 of 11 March 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foils in rolls originating in the People's Republic of China

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THE COUNCIL OF THE EUROPEAN UNION,

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,

Having regard to the proposal submitted by the European Commission (the 'Commission') after having consulted the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The Commission, by Regulation (EU) No 833/2012[(2)] (the 'provisional Regulation') imposed a provisional anti-dumping duty (the 'provisional measures') on imports of certain aluminium foils in rolls originating in the People's Republic of China (the 'PRC').

(2) The proceeding was initiated following a complaint lodged on 9 November 2011 by the European association of Metals (Eurométaux) ('the complainant') on behalf of producers representing more than 50 % of the total Union production of certain aluminium foil in rolls. The complaint contained prima facie evidence of dumping of the product and of material injury resulting from the dumping, which was considered sufficient to justify the initiation of a proceeding. As set out in recital 17 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 October 2010 to 30 September 2011 (the 'investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from January 2008 to the end of the IP (the 'period considered').

1.2. Subsequent procedure

(3) 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. The parties who so requested were granted the opportunity to be heard. In particular, one exporting producer requested and was afforded hearings in the presence of the Hearing Officer of the Directorate-General for Trade.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) Following the publication of the provisional Regulation, three of the cooperating Chinese exporting producers stated that their names were incorrectly spelt in Article 1(2) of the provisional Regulation. Accordingly, a corrigendum to the provisional Regulation was published in the *Official Journal of the European Union*[3], in which the correct names of these companies were set out.

2. PRODUCT CONCERNED AND LIKE PRODUCT

(6) The product concerned is aluminium foil of a thickness of 0,007 mm or more but less than 0,021 mm, not backed, not further worked than rolled but whether or not embossed, in low weight rolls of a weight not exceeding 10 kg (the 'product concerned' or 'aluminium foil in rolls' or 'AHF'). The product concerned currently falls within CN codes ex 7607 11 11 and ex 7607 19 10.

(7) The product concerned is generally used as a consumer product for packaging and other household/catering applications. The product definition was not contested.

(8) The investigation has shown that aluminium foil in rolls produced in and exported from the PRC, aluminium foil in rolls produced and sold in the Union by the Union producers and aluminium foil in rolls produced and sold in Turkey (the analogue country) by the cooperating Turkish producer have the same basic physical and technical characteristics as well as the same basic uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

(9) In the absence of any comments regarding the product concerned and the like product, recitals 18 to 20 of the provisional Regulation are hereby confirmed.

3. SAMPLING

(10) In the absence of any comments on sampling, recitals 21 to 26 of the provisional Regulation are hereby confirmed.

4. DUMPING

4.1. Market economy treatment ('MET')

(11) After the provisional disclosure, comments were received from CeDo (Shanghai) Ltd ('CeDo') concerning the findings in regard to the criterion laid down in the third indent of point (c) of Article 2(7) of the basic Regulation. The company in its comments and during a hearing with the Hearing Officer contested the finding that its decisions on obtaining financing from abroad were subject to approval of the State and thus created a distortion in its financial situation. CeDo claimed that the Chinese 'Rules

for the Implementation of Registration of External Debts' did not have a distortive effect on its financial situation as its loan concerned an intra-group loan from a related company outside China and was based solely on intra-group financial considerations. The company further claimed that the approval to transfer interest and principal was automatically granted.

(12) Having re-examined the additional information provided by the company and the arguments put forward following the provisional disclosure, it was considered that, despite the existence of loan registration and repayment approval requirements, it could be established in this particular case of an intra-group loan that the financial situation of the company was not subject to significant distortions given that the company was found to have repaid the interest and principal sum in line with the terms of the loan agreement. In these circumstances, the company is found to meet the criterion laid down in the third indent of point (c) of Article 2(7) of the basic Regulation.

(13) In the absence of any other comments concerning MET, recitals 27 to 53 of the provisional Regulation are, subject to the above modification, hereby confirmed.

4.2. **Individual treatment ('IT')**

(14) In the absence of any comments on IT, recitals 54 to 56 of the provisional Regulation are hereby confirmed.

4.3. **Analogue country**

(15) No party disputed the selection of Turkey as an analogue country for the definitive determination.

(16) In the absence of any comments concerning the selection of the analogue country, recitals 57 to 64 of the provisional Regulation are hereby confirmed.

4.4. **Normal value**

(17) The normal value was calculated on the basis of the data provided by the sole cooperating producer in the analogue country (i.e. Turkey). Thus, normal value was established on the basis of prices of domestic sales and constructed normal value of one Turkish producer of the like product.

(18) The company Ningbo Favored Commodity Co., Ltd ('Ningbo Favored') questioned how the data of a single Turkish producer could be sufficiently representative to establish a dumping margin for the entirety of all Chinese exporting producers, and considered it to be surprising that the domestic prices in Turkey were significantly higher than in the Union. In regard to the Turkish market for aluminium foil, as mentioned in recital 63 of the provisional Regulation, Turkey was considered a suitable analogue country based on volumes and values of domestic production, import and export. With regard to the fact that the prices on the Turkish market are higher than in the Union, this is not a decisive factor in selecting a suitable analogue country market. In any event, the price difference can be partly explained by the fact that the Union industry was close to breakeven during the IP. If the Union industry is put in a

position whereby it can achieve a reasonable profit (i.e. 5 % as mentioned in recital 158 of the provisional Regulation), the price gap between Turkish prices and prices on the Union market will narrow.

(19) Ningbo Favored also submitted that the institutions did not provide sufficient information on the constructed normal value.

(20) In this respect it is noted that, as explained under recital 70, the Commission provided to the party all relevant information concerning the data used to calculate normal value that could be released without infringing the provisions of Article 19 of the basic Regulation, i.e. assuring at the same time that any confidential data provided by the sole Turkish producer is treated as such and is not disclosed to other parties. The information provided to the exporting producer was meaningful and offered it the possibility to understand the methodology used in line with the provisions of Article 2 of the basic Regulation. In addition, during a hearing which took place at the request of Ningbo Favored, the company was informed that for the purpose of the dumping calculation, full product control numbers ('PCNs') had been used and that in situations where the Turkish producer did not sell the exact same product type, the normal value was established by adjusting the closest PCN sold by the Turkish producer. Finally, Ningbo Favored and the other sampled Chinese exporters were provided with additional information regarding the establishment of the constructed normal value at the time the disclosure of the final findings was made. The above claims therefore had to be rejected.

(21) In the absence of any other comments, recitals 65 to 72 of the provisional Regulation are hereby confirmed.

4.5. **Export price**

(22) Ningbo Favored requested that the values of the export sales in the transaction-by-transaction listing should be converted from US dollars into Chinese currency using the monthly exchange rate supplied in the questionnaire, rather than the actual exchange rate at the time of the various transactions. In this respect, in accordance with Article 2(10)(j) on currency conversions of the basic Regulation, when the price comparison requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale. It is also noted that the instructions to the questionnaire provide explicitly that the amounts to be used are those in the accounting currency as booked in the accounting records of the respondent. The company had thus been duly informed of the exchange rate to be used. This claim could therefore not be accepted.

(23) Following the imposition of the provisional measures, an additional verification visit was carried out at the premises of one of the unrelated importers for whom the profit mentioned in recital 75 of the provisional Regulation was established. As a result, the profit margin used in constructing the export prices under Article 2(9) of the basic Regulation decreased.

(24) In the absence of any other comments, recitals 73 to 75 of the provisional Regulation, subject to the above modification, are hereby confirmed.

4.6. **Comparison**

(25) No pertinent comments were received with respect to the comparison. In the absence of any other comments, recitals 76 to 78 of the provisional Regulation are hereby confirmed.

4.7. **Dumping margins**

(26) No pertinent comments with respect to the dumping margins were submitted. In the absence of any other comments, recitals 79 to 81 of the provisional Regulation are hereby confirmed.

(27) As a result of the revision of the unrelated importers' profit as mentioned in recital 23, as well as following the correction of some clerical errors, the definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company name	**Dumping margin**
CeDo (Shanghai) Ltd	37,4 %
Ningbo Favored Commodity Co., Ltd	30,6 %
Ningbo Times Aluminium Foil Technology Co., Ltd	32,9 %
Other cooperating companies	34,9 %
Countrywide dumping margin	45,6 %

(28) On the basis of the facts stated in recital 81 of the provisional Regulation, the country-wide definitive dumping margin for the PRC was established using the most dumped transactions of the cooperating exporters. On this basis, the definitive dumping margin was found to be 45,6 %.

5. **INJURY**

5.1. **Union production and Union Industry**

(29) In the absence of comments on Union production and Union industry, recital 83 of the provisional Regulation is hereby confirmed.

5.2. **Union consumption**

(30) In the absence of comments on Union consumption, recitals 84 to 86 of the provisional Regulation are hereby confirmed.

5.3. **Imports into the Union from the PRC**

5.3.1. *Volume and market share*

(31) In the absence of comments on the level of imports into the Union from the PRC and market share, recitals 87 to 89 of the provisional Regulation are hereby confirmed.