Council Implementing Regulation (EU) No 1039/2012 of 29 October 2012 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aluminium radiators 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 Union[(1)] ('the basic Regulation'), and in particular Article 9 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 402/2012[(2)] ('the provisional Regulation'), imposed a provisional anti-dumping duty on imports of aluminium radiators originating in the People's Republic of China ('PRC' or 'the country concerned').

(2) The proceeding was initiated on 12 August 2011[(3)], following a complaint lodged by the International Association of Aluminium Radiator Manufacturers Limited Liability Consortium (AIRAL S.c.r.l. - 'the complainant') on behalf of producers representing more than 25 % of total Union production of aluminium radiators.

(3) As set out in recital (14) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2010 to 30 June 2011 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2008 to the end of the IP ('the period considered').

1.2. Subsequent procedure

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose a provisional anti-dumping duty ('provisional

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 1039/2012. (See end of Document for details)*

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.

(5) 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.

(6) As already mentioned in recital (12) of the provisional Regulation, one group of related exporting producers claimed individual examination in accordance with Article 17(3) of the basic Regulation. The examination of those claims at the provisional stage was too burdensome to be carried out and was deferred to the definitive stage. It was thus decided to grant an individual examination to the group claiming it, i.e. the Sira Group. In respect of its operations in the PRC, the Sira Group is composed of Sira (Tianjin) Aluminium Products Co. Ltd and Sira Group (Tianjin) Heating Radiators Co. Ltd

(7) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of aluminium radiators originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty ('final disclosure'). All parties were granted a period within which they could make comments on this final disclosure.

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

2. PRODUCT CONCERNED AND LIKE PRODUCT

(9) As set out in recital (15) of the provisional Regulation, the product concerned is aluminium radiators and elements or sections of which such radiator is composed, whether or not such elements are assembled in blocks, excluding radiators and elements and sections thereof of the electrical type ('the product concerned'). The product concerned currently falls within CN codes, ex 7615 10 10, ex 7615 10 90, ex 7616 99 10 and ex 7616 99 90.

(10) After publication of provisional measures, one party claimed that steel radiators are interchangeable with the product concerned and the like product and asked the Commission to analyse and include the steel radiator market trend to compare it in particular with the market of aluminium radiators.

(11) Based on information available, it appears that aluminium radiators have different technical characteristics, especially as concerning the basic raw material (steel in one case and aluminium on the other), the weight, the thermal inertia and the heat conductibility. Furthermore, the information collected did not point to direct competition and interchangeability between the two products. Finally, the party did not provide any evidence to support its allegations. Based on the above, the claim was rejected.

(12) In the absence of other comments regarding the product concerned and the like product, recitals (15) and (23) of the provisional Regulation are hereby confirmed.

3. DUMPING

3.1. Market Economy Treatment ('MET') and Individual Treatment ('IT')

3.1.1. *Preliminary Remark*

(13) As already mentioned in recital (6) above, it was decided to grant an individual examination to the Sira Group. In respect of its operations in the PRC, the Sira Group is composed of Sira (Tianjin) Aluminium Products Co. Ltd and Sira Group (Tianjin) Heating Radiators Co. Ltd The Sira Group also claimed market economy treatment or individual treatment.

3.1.2. *MET*

(14) It is recalled that, as mentioned in recitals (30) to (31) of the provisional Regulation, none of the sampled parties had claimed MET.

(15) As mentioned above in recital (13), the Sira Group, which was granted individual examination after the imposition of provisional measures, claimed MET and submitted MET claim forms for the two companies involved in the production and commercialisation of the product concerned.

(16) Pursuant to Article 2(7)(b) of the basic Regulation, normal value for imports originating in the PRC shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation. Briefly and for ease of reference only, these criteria are set out in summarised form below:

— business decisions are made in response to market signals, without significant State interference, and costs reflect market values,

— firms have one clear set of independently audited accounting records,

— there are no distortions carried over from the non-market economy system,

— bankruptcy and property laws guarantee stability and legal certainty, and

— exchange rate conversions are carried out at market rates.

(17) The information provided by the two companies belonging to the Sira Group in the MET claim forms was duly analysed and further information was requested and obtained. In view of the findings it was not considered necessary to conduct a verification visit at the premises of the companies.

(18) The MET investigation demonstrated that the Sira Group failed to meet the requirements of criterion 1 because of State interference in decisions concerning the main raw material, aluminium. The cost of aluminium represents ca. 70 % of the cost of production of the product concerned. The investigation demonstrated that both producers in the Sira Group acquired the aluminium used for the production of the product concerned on the Chinese domestic market. Prices are based on the quotation

of aluminium in the State-controlled Shanghai Non-ferrous Metal Exchange market ('the Exchange' or 'SHFE'). The SHFE is a closed exchange for Chinese-registered companies and Chinese citizens and it is controlled by the State Securities Regulatory Commission. Several rules governing the functioning of the Exchange contribute to low volatility and depressed prices at the SHFE: daily price fluctuations are limited to 4 % above or below the settlement price of the previous trading day, trading happens at a low frequency (until the 15th day of each month), futures contracts are limited to a duration of up to 12 months, and transaction fees are charged by both the Exchange and brokers.

(19) Moreover, as concerns SHFE transactions, physical deliveries can only take place in an approved warehouse within the PRC, unlike international exchanges, where delivery can take place worldwide. Moreover, as the SHFE is a platform for physical exchanges only (no derivatives are sold), this completely insulates the Chinese aluminium market. As a consequence, arbitrage with the worldwide benchmark, the London Metals Exchange ('LME') or other markets is practically not possible and the exchange works in isolation from other world markets. Therefore, an equalization among these markets cannot take place. Aluminium price quotation at the LME was on a monthly average basis 14 % higher than at the SHFE during the IP.

(20) The State also interferes with the price setting mechanisms in the SHFE as it is both a seller and a purchaser, via the State Reserve Bureau and other State Bodies, of primary aluminium. In addition, the State sets daily price limits via the rules of the SHFE which have been approved by the State Regulator, the China Securities Regulatory Commission ('the CSRC').

(21) In addition, the investigation demonstrated that primary aluminium for export is subject to a 17 % VAT and is not refundable on export whereas VAT for domestically sold aluminium and on finished goods is refundable at 13 %. Moreover, primary aluminium for export is subject to a 17 % export tax. As a result, the vast majority of primary aluminium production is sold on the Chinese market causing a price depression of the domestic primary aluminium price and an important cost advantage for producers of aluminium radiators in the PRC. The Chinese State further interfered in the market during the IP as it eliminated the 5 % import duty on metals during the financial crisis.

(22) A further distortion by the Chinese State is in the form of interventions in the market by the State Reserves Bureau ('SRB') which is part of the National Development Reform Commission ('NDRC'). At the end of 2008 and the beginning of 2009 the SRB started buying up stocks of primary aluminium from smelters. This was a stimulus package aimed at limiting the effects of the global financial and economic crisis which cut demand. Those State-backed purchases absorbed most of the stocks in the domestic market in March and April 2009, driving up prices during the first half of 2009. The SRB sold primary aluminium back onto the market such as at the start of November 2010 when the SRB sold 96 000 tonnes by auction as reported by Bloomberg[(4)]. The Xinhua News Agency reported the stockpiling measures in December 2008, explaining that it was planned to accumulate 300 000 tonnes of aluminium at prices which were 10 % higher than the market price in a measure designed to prop up prices[(5)]. The SRB stockpiling plan involved buying from several Chinese smelters although around

half was to be bought from the Aluminium Corporation of China Ltd Furthermore, the Minister in charge of the NDRC explained that other parts of the stimulus package included relaxed export controls, electricity subsidies, reduced electricity prices and raising loan ceilings. The package is reported to have had an immediate effect on prices. The above demonstrates that the Chinese State has a primary role in the setting of prices of primary aluminium and that it interferes in the market.

(23) That the significant State interference, as described above, is clearly targeted is, inter alia, corroborated by the 12th 5 Year Development Plan for Aluminium (2011-15) in which the Government of China explicitly states its intention of 'adjusting tax and export tax rebates and other economic levers, and strictly control the total amount of expansion and exports of primary products'. This plan continues the policy which existed in the previous Aluminium Plan. Furthermore these plans have been implemented over many years and, as demonstrated above, during the IP several implementing measures were in operation.

(24) Thus, the multiple State-induced distortions in the Chinese primary aluminium prices affect the raw material prices. In addition, the producers enjoy an advantage from these distortions, in the sense that they normally make their purchases in the Chinese market from local suppliers using Chinese spot markets prices (or SHFE) as a benchmark. During the IP, these prices were around 15 % lower than the world market prices. In theory, Chinese companies can also buy certain quantities at LME prices when prices in the Chinese market are higher as a result of State intervention – whilst the opposite is impossible for non-Chinese operators.

(25) An examination of the questionnaire responses of both Sira (Tianjin) Aluminium Products Co. Ltd and Sira Group (Tianjin) Heating Radiators Co. Ltd showed that they purchased primary aluminium products at prices linked to the SHFE price in the IP and that their purchase prices had followed the SHFE index over a longer period.

(26) In addition, the investigation showed that one of the two companies concerned benefited from the 'two free three half' Business Income Tax rebate. This rebate system of the Chinese State means that once a company starts to realise a profit it pays no Business Income Tax for two years and then only pays half for the next three years. Such distortions are recorded as negative costs in the profit and loss account thereby increasing profitability.

(27) Under such circumstances, neither of the companies has been in a position to prove that their business decisions regarding acquisition of raw materials are not subject to significant State interference and that costs of major inputs substantially reflect market values. Therefore, they could not demonstrate that they fulfil criterion 1.

(28) In view of the above findings on criterion 1, it was considered, after consultation of the Advisory Committee, that MET should be rejected for the Sira Group.