Council Implementing Regulation (EU) No 987/2012 of 22 October 2012 reimposing a definitive anti-dumping duty on imports of ironing boards originating in the People's Republic of China, manufactured by Zhejiang Harmonic Hardware Products Co. Ltd

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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 thereof,

Having regard to the proposal from the European Commission ('the Commission') after consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

(1) By Regulation (EC) No 452/2007 of 23 April 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine[(2)] ('the contested Regulation'), the Council imposed definitive anti-dumping duties ranging from 9,9 % to 38,1 % on imports of ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and essential parts thereof, i.e. the legs, the top and the iron rest originating in the People's Republic of China ('China') and Ukraine.

(2) On 19 July 2007, one cooperating Chinese exporting producer, namely Zhejiang Harmonic Hardware Products Co. Ltd ('Harmonic'), lodged an application at the General Court seeking the annulment of the contested Regulation in so far as it applies to the applicant[(3)].

(3) On 8 November 2011, the General Court in its judgment in Case T-274/07 ('the General Court judgment') found that the failure to comply with the period prescribed by Article 20(5) of the basic Regulation was such as in fact to affect the rights of defence of Harmonic, and that the Commission had also infringed Article 8 of the basic Regulation, which conferred on Harmonic the right to offer undertakings up to the expiry of that period. Therefore, the General Court annulled Articles 1 and 2

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 987/2012. (See end of Document for details)*

of the contested Regulation in so far as they impose a definitive anti-dumping duty and collect definitively the provisional duty on ironing boards manufactured by Harmonic.

(4) According to Article 266 of the Treaty on the Functioning of the European Union ('TFEU'), the Union institutions are obliged to comply with the General Court judgment of 8 November 2011. It is established case-law (Case T-2/95[4], 'the IPS case') that, in cases where a proceeding consists of several administrative steps, the annulment of one of those steps does not annul the complete proceeding. The anti-dumping proceeding is an example of such a multi-step proceeding. Consequently, the annulment of the contested Regulation in relation to one party does not imply the annulment of the entire procedure prior to the adoption of that Regulation. Moreover, according to the Court's case-law, in order to comply with a judgment annulling a measure and to implement it fully, the institution which took the measure should resume the procedure at the very point at which the illegality occurred and replace that measure[5]. Finally, the implementation of a court ruling also implies the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the uncontested parts which are not affected by the General Court judgment, as was held in Case C-458/98 P[6]. It should be noted that apart from the finding of an infringement of Article 20(5) and of Article 8 of the basic Regulation, all other findings made in the contested Regulation remain automatically valid to the extent that the General Court dismissed all arguments made in this respect.

(5) Following the General Court judgment of 8 November 2011, a notice[7] was published concerning the partial reopening of the anti-dumping investigation concerning imports of ironing boards originating, inter alia, in China. The reopening was limited in scope to the implementation of the General Court judgment in so far as Harmonic is concerned.

(6) The Commission officially advised the exporting producers, the importers and users known to be concerned, the representatives of the exporting country and the Union industry of the partial reopening of the investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice.

(7) All parties who so requested within the above time limit, and who demonstrated that there were particular reasons why they should be heard, were granted the opportunity to be heard.

(8) Representations were received from one exporting producer in China (the party directly concerned, i.e. Harmonic) and one unrelated importer.

(9) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties on Harmonic. They were granted a period within which to make representations subsequent to disclosure, but none reacted at that stage.

B. IMPLEMENTATION OF THE GENERAL COURT JUDGMENT

1. Preliminary remark

(10) It is recalled that the reason for the annulment of the contested Regulation was that the Commission had sent its proposal to impose a definitive anti-dumping duty to the Council before the end of the 10-day mandatory deadline for receiving comments following the sending to interested parties of a definitive disclosure document, as provided for in Article 20(5) of the basic Regulation. Furthermore, the Commission had also infringed Article 8 of the basic Regulation, which conferred on Harmonic the right to offer undertakings up to the expiry of that period.

2. **Comments of interested parties**

(11) Harmonic stated that a breach of the rights of defence of the type identified by the General Court cannot be cured by the reopening of the investigation. The General Court judgment would require no implementing measures.

(12) For Harmonic, the only way for the Commission to comply with the General Court judgment, as required by Article 266 TFEU, would be to withdraw the measures permanently as far as Harmonic was concerned. The violation of Article 8 of the basic Regulation would require the EU institutions to restore Harmonic's right to offer price undertakings back in 2007.

(13) According to Harmonic, the reopening would be illegal because there is no specific provision in the basic Regulation allowing for such an approach, and because such reopening would be in conflict with the 15-month statutory deadline for the completion of an investigation laid down by Article 6(9) of the basic Regulation, and the 18-month deadline as set out by Article 5.10 of the WTO Agreement on Implementation of Article VI of the GATT 1994 ('Anti-dumping Agreement'). It alleged that the EU institutions cannot purport to reimpose measures based on their powers to adopt definitive measures (in particular Article 9 of the basic Regulation) and at the same time deny that these deadlines in the same provision of the basic Regulation apply.

(14) Harmonic submitted that the IPS case could not serve as a precedent because it was based on Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community[8] ('the old basic Regulation'), under which mandatory deadlines did not yet apply.

(15) Harmonic also argued that reissuing a revised disclosure and granting a period to reply in line with Article 20(5) of the basic Regulation could not correct the violation of Harmonic's rights of defence and the unlawful imposition of duties.

(16) According to Harmonic, once the Commission's proposal for definitive measures was submitted to the Council in 2007, the Commission irremediably lost its ability to make a proposal to the Council to impose duties against Harmonic without breaching the company's rights of defence. In Harmonic's view, the Commission would no longer be in a position to receive any comments with the required room for manoeuvre and consider Harmonic's proposal for an undertaking.

(17) Harmonic submits that its right to offer price undertakings within the prescribed period cannot be corrected by procedurally reopening the original investigation. In addition, Harmonic alleges that recital 68 of the contested Regulation apparently included the assessment of a formal price undertaking offered by Harmonic.

(18) Furthermore, Harmonic argued that the Commission could not reopen the case because it would have lost its objectivity and impartiality since the contested Regulation proposed by the Commission was partially annulled by the General Court.

(19) Lastly, Harmonic pointed out that the Commission could not reimpose anti-dumping measures based on information relating to 2005, being more than six years prior to the initiation of the partial reopening of the investigation, as this would not be in line with Article 6(1) of the basic Regulation.

(20) One unrelated Union importer/producer pointed out the repercussions of the General Court's annulment and of the subsequent partial reopening of the investigation on its business. It did not submit any information and data as to the legal merits of the reinvestigation, but rather referred to the comments submitted in the context of a previous reinvestigation that was concluded by Council Implementing Regulation (EU) No 805/2010 of 13 September 2010 re-imposing a definitive anti-dumping duty on imports of ironing boards originating in the People's Republic of China, manufactured by Foshan Shunde Yongjian Housewares and Hardware Co. Ltd, Foshan[9].

3. **Analysis of comments**

(21) It is recalled that the General Court has dismissed all the substantive arguments of Harmonic referring to the merits of the case. Thus, the Union institutions' obligation is focused on correcting the part of the administrative procedure in the initial investigation where the irregularity occurred.

(22) The claim that the introduction, pursuant to Article 6(9) of the basic Regulation, of a 15-month deadline to conclude anti-dumping investigations prevents the Commission from following the approach underlying the IPS case was found to be unwarranted. It is considered that this deadline is not relevant for the implementation of a judgment of the General Court. Indeed, such deadline only governs the completion of the original investigation from the date of initiation to the date of definitive action, and does not concern any subsequent action that might have to be taken, for instance as a result of judicial review. Furthermore, it is noted that any other interpretation would mean that, for example, a successful legal action brought by the Union industry would be without any practical effect for that party if the expiry of the time limit to conclude the original investigation would not permit the implementation of a judgment of the General Court. This would be at odds with the principle that all parties should have the right to effective judicial review.

(23) It is also recalled that the General Court in its judgment in Joined Cases T-163/94 and T-165/94[10] has held that even the soft deadline applicable under the old basic Regulation could not be stretched beyond reasonable limits, and that an investigation lasting for more than three years was too long. This contrasts with the