Commission Regulation (EU) No 833/2012 of 17 September 2012 imposing a provisional anti-dumping duty on imports of certain aluminium foils in rolls originating in the People's Republic of China

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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 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 20 December 2011, the European Commission (the 'Commission') announced, by a notice published in the Official Journal of the European Union[(2)] ('Notice of Initiation'), the initiation of an anti-dumping proceeding with regard to imports into the Union of certain aluminium foil in rolls originating in the People's Republic of China ('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 said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an investigation.

2. Parties Concerned by the Proceeding

(3) The Commission officially advised the complainant, other known Union producers, the exporting producers in the PRC, producers in the analogue country, importers, distributors, and other parties known to be concerned, and representatives of the PRC of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of Initiation.

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(4) The complainant, other Union producers, the exporting producers in the PRC, importers and distributors made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(5) In view of the apparent high number of Union producers, importers and exporting producers sampling was envisaged in the Notice of Initiation, in accordance with Article 17 of the basic Regulation.

(6) In order to enable the Commission to decide whether sampling would be necessary and if so, to select a sample, importers and exporting producers were asked to make themselves known to the Commission and to provide, as specified in the Notice of Initiation, basic information on their activities related to the product concerned (as defined in section 3 below) during the period from 1 October 2010 to 30 September 2011.

(7) As regards the Union producers, in the Notice of Initiation the Commission announced that it had provisionally selected a sample of Union producers on the basis of the information received from the cooperating Union producers prior to the initiation of the investigation. That sample consisted of the four largest known companies or groups of companies in the Union.

(8) As explained in recital (24) below, only two unrelated importers provided the requested information and agreed to be included in the sample. Therefore, in view of the limited number of cooperating importers, sampling was deemed to be no longer necessary. A third importing company provided a submission without submitting a questionnaire response.

(9) As explained in recital (26) below, 14 exporting producers in the PRC provided the requested information and agreed to be included in the sample. On the basis of the information received from these parties, the Commission selected a sample of four exporting producers having the largest volume of exports to the Union.

(10) In order to allow exporting producers to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent claim forms to all Chinese exporting producers known to be concerned and to the authorities of the PRC. Two companies came forward and requested MET, one company was part of the selected sample, the other not. Requests for IT were received from the companies in the sample and the company that requested MET but was not part of the sample.

(11) The Commission sent questionnaires to all exporting producers that made themselves known within the deadlines set out in the Notice of Initiation, namely the four sampled companies and all other companies in order to allow them to request individual examination. Questionnaires were also sent to other parties known to be concerned, namely the four sampled Union producers, the cooperating importers in the Union, users and an association of consumers.

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(12) Replies were received from three sampled exporting producers in the PRC, from the four sampled Union producers and two unrelated importers. Also six retailers replied to the user's questionnaire.

(13) The Commission has not received any claims for individual examination in accordance with Article 17(3) of the basic Regulation.

(14) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits were carried out at the premises of the following companies:

Producers in the Union

— CUKI Cofresco SPA, Volpiano (TO), Italy;

— Fora Folienfabrik GmbH, Radolfzell, Germany;

— ITS BV, Apeldoorn, The Netherlands;

— SPHERE Group, Paris, France.

Exporting producers in the PRC

— **[**[X1]CeDo (Shanghai) Ltd**]**, Shanghai;

— **[**[X1]Ningbo Favored Commodity Co., Ltd**]**, Ningbo;

— **[**[X1]Ningbo Times Aluminium Foil Technology Co., Ltd**]**, Ningbo;

— **[**[X1]Shanghai Blue Diamond Aluminium Foil Manufacturing Co., Ltd**]**, Shanghai.

Related importer in the Union

— CeDo Limited, Telford, UK

Producer in Turkey (analogue country)

— Sedat Tahir Ltd., Ankara

(15) In order to collect information concerning the cost of the major indirect raw material in the production of aluminium foil, i.e. primary aluminium, information from the Shanghai Futures Exchange ('SHFE' or 'Exchange'), the main trading patform for aluminium in China was sought. Information about world markets and prices was requested from the London Metal Exchange ('LME'), to which also an information visit was paid. The SHFE provided some written information following the request of the Commission. The Commission also proposed an information visit to SHFE which initially was accepted. However at a later stage, the SHFE considered that an approval from the Chinese government would be required for such a visit. The Chinese authorities on the other hand denied that such an approval would be necessary. Eventually the SHFE reversed its initial acceptance and decided not to accept the visit.

(16) An information visit was paid to Shanghai Metals Markets ('SMM'), a price information provider and publisher in Shanghai.

3. Investigation Period

(17) The investigation of dumping and injury covered the period from 1 October 2010 to 30 September 2011 (the ‘investigation period’ or the ‘IP’). The examination of

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trends relevant for the assessment of injury covered the period from January 2008 to the end of the IP ('period considered').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product Concerned

(18) 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.

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

2. Like Product

(20) 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.

C. SAMPLING

1. Sampling of Union Producers

(21) In view of the apparent large number of Union producers, sampling for the determination of injury was provided for in the notice of initiation, in accordance with Article 17 of the basic Regulation.

(22) In the Notice of Initiation the Commission announced that it had provisionally selected a sample of Union producers. This sample consisted of the four largest (groups of) companies, out of more than 30 Union producers that were known to produce the like product prior to the initiation of the investigation. The selection of the sample was done on the basis of the producers' sales volume, their size and geographic location in the Union and the proposed sample represented 44 % of the total estimated Union production during the IP. Interested parties were invited to consult the file for inspection by interested parties and to comment on the appropriateness of this choice within 15 days of the date of publication of the notice of initiation. After the deadline for comments, one interested party argued that the sample should have included a producer from the United Kingdom. In this respect, it is noted that a UK producer company (part of the Sphere Group) was indeed in the sample. No other interested party opposed the final sample and the sample was, consequently, confirmed.

2. Sampling of Unrelated Importers

(23) In view of the potentially large number of importers involved in the proceeding, sampling of importers was provided for in the Notice of Initiation in accordance with Article 17 of the basic Regulation.

(24) Only two unrelated importers provided the requested information and agreed to cooperate. Consequently, sampling was no longer deemed to be necessary.

3. Sampling of Exporting Producers

(25) In view of the apparent large number of exporting producers, sampling for the determination of dumping was provided for in the Notice of Initiation, in accordance with Article 17 of the basic Regulation.

(26) A total of 14 exporting producers in the PRC provided the requested information and agreed to be included in a sample. These companies exported around 7.800 tonnes, i.e. around 60 % of the Chinese exports to the EU market in the IP. On the basis of the information received from these parties, the Commission selected a sample of four exporting producers having the largest representative volume of production, sales and exports which could reasonably be investigated within the time available. One of the sampled companies subsequently withdrew its cooperation and another notified the Commission that the information it has provided to the Commission in its sampling form was erroneous. Based on this new information it was decided to exclude this company from the sample of companies. The Commission invited two further companies to be in the sample. The cooperating exporting producers, the Mission of the PRC to the EU and the complainant were consulted about the final composition of the sample. No interested party opposed this selection. Subsequently one of the newly sampled companies also withdrew its cooperation. The final sample thus included three exporting producers in the PRC covering around 30 % of the imports of the product concerned to the Union during the IP and representing 50 % of the sales volume of the 14 exporting producers which provided data for the sampling exercise.

D. DUMPING

1. Market Economy Treatment and Individual Treatment

1.1. *Market Economy Treatment (MET)*

(27) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

(28) Two companies, CeDo Shanghai Co. Ltd.(‘CeDo Shanghai’) and Shanghai Blue Diamond Co. Ltd. (‘Blue Diamond’), came forward and requested MET. Only CeDo Shanghai was selected to be part of the sample as explained above; the other company was not. However, following the judgement by the Court of Justice in Case C-249/10 P Brosmann Footwear (HK) and Others v Council of the European Union,