Council Implementing Regulation (EU) No 1331/2011 of 14 December 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China

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imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China

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 submitted by the European Commission (the Commission) after having consulted the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EU) No 627/2011[(2)] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China (PRC).

(2) The proceeding was initiated as a result of a complaint lodged on 16 August 2010 (the complaint) by the Defence Committee of the Seamless Stainless Steel Tubes Industry of the European Union (the Defence Committee) on behalf of two groups of Union producers (the complainants) representing a major proportion, in this case more than 50 % of the total Union production of certain seamless pipes and tubes of stainless steel.

(3) It is recalled that, as set out in recital 14 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2009 to 30 June 2010 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the IP (the period considered).

B. SUBSEQUENT PROCEDURE

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose provisional measures (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. The Commission continued to seek information it deemed necessary for its definitive findings.

Individual examination

(5) With regard to the three claims for individual examination, it has been definitively decided that they could not be granted as they would render the investigation unduly burdensome and would prevent the completion of the investigation in good time. As stated in recital 6 of the provisional Regulation, the Commission had selected a representative sample, covering 25 % of the total imports recorded in Eurostat during the IP and over 38 % of the total volume of the cooperating exporters in the IP. As indicated in recital 13 of the provisional Regulation, two of the three sampled exporting producers constitute large groups. The size of the groups amounted to a particular burden for the present investigation in terms of both the investigative effort as well as analysis. In these circumstances, it was not possible to accommodate the claims for individual examination from additional exporting producers.

C. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(6) It is recalled that, as set out in recital 15 of the provisional Regulation, the product concerned is seamless pipes and tubes of stainless steel (excluding such pipes and tubes with attached fittings suitable for conducting gases or liquids for use in civil aircraft), originating in the PRC, currently falling within CN codes 7304 11 00, 7304 22 00, 7304 24 00, ex 7304 41 00, 7304 49 10, ex 7304 49 93, ex 7304 49 95, ex 7304 49 99 and ex 7304 90 00 (the product concerned).

(7) In the absence of any comment with regard to the product concerned following provisional disclosure, recitals 15 to 19 of the provisional Regulation are hereby confirmed.

2. Like product

(8) In the absence of any comment, recital 20 of the provisional Regulation is hereby confirmed.

D. DUMPING

1. Market economy treatment

(9) Following provisional disclosure, some parties contested some of the findings related to the MET determination as set out in recitals 21 to 43 of the provisional Regulation.

(10) One party claimed that the Commission did not disclose the price difference of raw materials between the EU and the PRC market. In this respect, it has to be noted that both the MET disclosure, as well as the provisional Regulation, disclose the nominal price difference between the EU, USA and PRC prices of raw materials. As stated in recital 27 of the provisional Regulation, this difference, on average and depending on

the steel grade, amounts to around 30 %. As far the sources of information that formed the basis for this comparison are concerned, the Commission used data available from cooperating Union producers and exporting producers in the PRC. These data have been cross-checked with some publicly available sources[(3)].

(11) It was further claimed that the Commission conducted no comparison of prices of iron ore imported into the PRC and international market prices. A related claim was that no data have been provided concerning the impact of iron ore on the cost of the raw material (billet, ingot, round bars) purchased by the producers of the product concerned. The reference to iron ore in recital 28 of the provisional Regulation was made in the context of comparative advantage to analyse a possible explanation for the low prices of billets, ingots and round bars in the PRC. Iron ore as well as nickel and chromium are main cost drivers in the production of stainless steel billets, ingots and round bars. But, due to the fact that the prices of iron ore, nickel and chromium are in general based on international market prices, their impact on the price difference between EU and PRC billets, ingots and round bars and finally on stainless seamless pipes and tubes can only be limited. Therefore, the findings that led to the rejection of criterion 1 of the MET claim were not based on iron ore prices but on the price difference between the raw materials, i.e. billets, ingots and round bars, directly used in the production of the product concerned; this price difference combined with the established State interference (export tax and no VAT refund) led to the conclusion that it has not been shown that criterion 1 for granting MET was fulfilled.

(12) One party reiterated on several occasions the same claim related to the procedural aspects of MET determination. The claim related to consultations with the Advisory Committee of Member States, namely the information transmitted to that committee in the course of the current investigation. The issue has been explained in two letters sent to the party and it was subject to several exchanges with the Hearing Officer. In this respect it has to be noted that pursuant to Article 19(5) of the basic Regulation exchanges of information relating to consultations made with the Advisory Committee of Member States shall not be divulged except as specifically provided for in the basic Regulation. Consequently, the provisions in force do not allow granting parties any access to the exchanges between the Commission and the Member States.

(13) The same party made certain claims related mainly to the issue of distortions on the market of raw materials. It was claimed that the stainless steel billets purchased on the PRC domestic market accounted for a portion only of the purchases of raw materials during the IP. In this regard, it is noted first and foremost that Article 2(7)(c) of the basic Regulation does not establish any threshold with regard to the proportion of raw materials purchases that would have to be affected by distortions. Article 2(7)(c) of the basic Regulation stipulates that costs of major inputs have to substantially reflect market values. Most importantly, however, the Commission explained that the distortions on the raw material market in the PRC concerned the main raw materials used in the production of seamless stainless steel pipes and tubes and not only billets. The main raw materials used in the production of seamless stainless steel pipes and tubes are stainless steel billets, ingots and round bars which represent more than 50 %

of the cost of production of the product concerned. Those raw materials collectively fall under HS Code 7218 10 (ingots and other primary forms of stainless steel). They are all subject to a 15 % export tax and are not subject to any refund of the 17 % VAT when exported. It is in this regard that distortions have been established leading to the conclusion that criterion 1 of the MET evaluation was not met by any of the sampled PRC exporting producers. For the company concerned, the raw materials used for the production of the product concerned purchased on the PRC domestic market account for a substantial part — around 30 % of purchases. It should be noted in addition that another major part is imported from related companies.

When focussing specifically on purchases from unrelated suppliers, even 56 % have been purchased domestically. Consequently, contrary to the party's claim, there was no misrepresentation of facts as far as the MET determination was concerned, neither in the communication with that party nor in the consultation process with the Advisory Committee, which was informed about all the arguments submitted. Consequently, the claim has to be rejected.

(14) One company claimed that the decision to deny MET should be individual and company specific whereas in the present case the institutions extended the general findings at the country level to individual producers. This argument cannot be accepted; indeed the analysis made by the institutions has been made individually for each sampled producer. It is true that the institutions have reached the same conclusion for the three of them but this is due to the fact that there is State interference in the decision-making process of each of them, as explained in the provisional Regulation.

(15) Having regard to the above, the finding that all MET claims should be denied, as established in recitals 21 to 43 of the provisional Regulation, is hereby confirmed.

2. **Normal value**

(a) *Analogue country*

(16) One party claimed that the USA should have been used as an analogue country. In this respect it has to be noted that the grounds for the decision not to use USA as an analogue country have been thoroughly laid down in recitals 46 to 48 of the provisional Regulation. In view of the fact that the party did not substantiate its claim and did not provide any additional arguments which could alter the findings with regard to the USA as a possible analogue country, the claim has to be rejected.

(17) At the same time it has to be stressed that the Commission continued efforts to obtain cooperation from an appropriate analogue country. Further to efforts referred to in recital 47 of the provisional Regulation the Commission contacted producers in Brazil, Canada, Malaysia, Mexico, South Africa, South Korea, Taiwan and Ukraine. Altogether 46 companies have been contacted, but no cooperation could be obtained.

(18) Having regard to the above, the provisional conclusion that the normal value should be based on prices actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit, as set out in recital 51 of the provisional Regulation, is hereby confirmed.

(b) *Determination of normal value*

(19) As detailed in recitals 49 to 51 of the provisional Regulation the normal value is based on prices actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit, of the closest resembling product types having the same diameter, steel grade and product type (e.g. cold or hot drawn).

(20) Parties' comments relating to prices actually paid or payable in the Union and well as those concerning adjustments (such as level of trade and quality perception) have been addressed in recitals 45 and 46 below.

(21) One company claimed that the normal value could be constructed on the basis of import prices of the stainless steel hollows into the US from the EU or into the EU by the Union producers. This claim has not been further substantiated. The company presented no arguments with regard to how such construction would be better suited for the determination of the normal value than the method used in the provisional Regulation. In particular it has not been substantiated why it would be more suitable to construct normal value on the basis of prices of hollows rather than basing it on prices of the Union industry for the like product.

(22) Furthermore, it has not been substantiated why the EU exports to the US should be considered. This alternative appears not suitable in particular in view of the fact that all cooperating US producers rely on imports from their EU parent companies as already mentioned in recital 48 of the provisional Regulation. Further, the high processing cost in the USA as stated in recital 48 of the provisional Regulation — the very reason why USA has been considered inappropriate as an analogue country — would make the method suggested not suitable.

(23) As far as exports from the US to the EU are concerned, this question has been dealt with explicitly in recital 49 of the provisional Regulation. It was considered that the US export prices would be tainted by the high production costs and that the volumes of such exports were very limited.

(24) The same company proposed to construct the normal value on the basis of the actual import prices of the stainless steel hollows by Union producers. However, the EU producer importing hollows from India into the EU, as mentioned in the complaint, does not cooperate in the current investigation. Neither do any of the sampled Union producers import hollows from any country outside the EU. Therefore, the proposed methodology cannot be used.

(25) Having regard to the above, the determination of normal value as set out in recitals 49 to 51 of the provisional Regulation is hereby confirmed.

3. **Export price**

(26) One party reiterated its claim that the date of order rather than the date of invoicing should be considered as being the date of sale to ensure a fair comparison. This claim has been made with reference to Article 2(10)(j) of the basic Regulation.