Council Implementing Regulation (EU) No 917/2011 of 12 September 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China

COUNCIL IMPLEMENTING REGULATION (EU) No 917/2011

of 12 September 2011

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles 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,

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

Whereas:

A. PROCEDURE

1. Provisional measures

(1) The Commission, by Regulation (EU) No 258/2011[(2)] ('the provisional Regulation'), imposed a provisional anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China ('China').

(2) A corrigendum[(3)] was published on 31 May 2011 in order to correct certain typographical errors, in particular the names of certain Chinese exporting producers that were misspelled in Annex I to the provisional Regulation.

(3) Following the verification of certain claims received after the publication of the corrigendum which were found to be warranted, it was noticed that certain other names were misspelled. The correct names for all companies subject to the weighted average duty are listed in Annex I to this Regulation.

(4) It is recalled that the proceeding was initiated as a result of a complaint lodged by the European ceramic tiles manufacturer's Association (CET) ('the complainant') on behalf of producers representing a major proportion, in this case more than 30 % of the total Union production of ceramic tiles. As set out in recital 24 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 April 2009 to 31 March 2010 ('investigation period' or 'IP'). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 1 January 2007 to the end of the IP ('period considered').

2. Subsequent procedure

(5) 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 and hearings with the Hearing officer were held upon request of two interested parties.

(6) The Commission continued to seek information it deemed necessary for its definitive findings.

(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 ceramic tiles originating in China and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period of time within which they could make representations subsequent to this disclosure.

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

3. Parties concerned by the proceeding

3.1. *Sampling of Chinese exporting producers*

(9) When selecting the sample of exporting producers, an applicant 'group' of companies was included due to the fact that the combined export volume of the two producers included in the alleged group made them together the third largest exporter by volume to the Union market. These companies claimed a relationship based on Article 143(1)(b) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code[(4)] which provides that parties shall be deemed to be related if 'they are legally recognised partners in business'. The investigation subsequently revealed that these companies were not related in this sense and, as mentioned in recital 35 of the provisional Regulation, these two producers were treated as separate entities.

(10) Several exporting producers made submissions claiming that these companies should have been excluded from the sample for submitting false or misleading information. These producers further claimed that, consequently, the weighted average dumping margin should have been calculated without taking into account the two sampled companies.

(11) In this regard, it is noted that the information provided by these parties prior to the selection of the sample was considered sufficient to consider them as related and given their combined export sales volume to the Union market they were included in the sample. Following the on-spot verification visits at the premises of these two companies, the issue of their relationship was examined in detail. The information

provided by the companies in support of their claim to be related was verified but found to be insufficient for them to be regarded as related, contrary to the companies' own view on this matter. As a result, it was concluded that these companies could not be considered to be related in the sense of Article 143(1)(b) of Regulation (EEC) No 2454/93. As the companies cooperated in the investigation, including by providing information with regard to their alleged relationship, it is considered that there are no grounds to exclude them from the sample. In these circumstances, this claim is rejected.

(12) Moreover, even assuming that selecting other companies into the sample during the investigation would have led to a considerably larger volume of exports towards the Union market during the IP being covered, it would have been difficult, within the time available, to investigate any newly selected companies. Therefore, in spite of the fact that these companies have turned out not to be related, the sample continues to comply with the criteria foreseen in the basic Regulation. Finally it is pointed out that there was no evidence that the companies deliberately alleged being related in order to be included in the sample.

(13) In the absence of any other comments, recitals 5 and 6 of the provisional Regulation are hereby confirmed.

3.2. *Sampling of Union producers*

(14) Following the imposition of the provisional measures, one party claimed that none of the Union producers supporting the complaint had provided sample responses and should therefore be regarded as not cooperating with the proceeding. This argument was maintained following final disclosure.

(15) With respect to the claim that the lack of sample responses would indicate that the Union producers supporting the complaint did not cooperate, it is recalled that CET was the legal representative of all complaining companies. As required, CET also provided on behalf of the complainants the complementary information concerning the data for the IP. As detailed in the Notice of initiation, information in view of selecting a sample was only required for companies that had not already supplied all necessary information. It follows that the complaining producers were fully cooperating since they provided all the necessary information at the complaint stage and the necessary updates as regards the IP data were provided on their behalf by their legal representative during the investigation.

(16) One interested party claimed that the division of the Union industry into different segments and the geographical coverage of the sample meant that it was not statistically valid. In this respect it is recalled that the Union ceramic tiles industry is highly fragmented with over 500 producers. It was also found that the industry was represented in all three industry segments, i.e. large, medium and small companies. In order to ensure that the results of large companies did not dominate the injury analysis but that the situation of the small companies, collectively accounting for the biggest share of the Union production, was properly reflected, it was considered that all segments (i.e. small, medium-sized and large companies) should be represented in

the sample. Within each of the segments, the largest companies were chosen, provided that geographical representativeness could be assured.

(17) One interested party also claimed that the Commission had failed to show that the sample remained representative after the withdrawal of the Polish producer and that it was in any event insufficiently representative in terms of sales volume in the Union market.

(18) It is correct that one Polish producer decided to cease cooperation and therefore had to be excluded from the sample. However, it is not necessary for a sample to reflect the exact geographical spread and weight of the producing Member States in order to be representative. Given the fact that geographical spread is only one of the factors to take into account to ensure representativeness, such an approach would not have been administratively practicable. Rather, it is sufficient that the sample largely reflects proportions of the major manufacturing countries involved. Assessed against this criterion, it was found that the withdrawal of the Polish company did not affect the overall representativeness of the sample. On this basis, it is confirmed that the sample of Union producers was sufficiently representative within the meaning of Article 17 of the basic Regulation.

(19) As concerns the claim of the overall representativity of the sample, it is recalled that given the fact that the Union industry is highly fragmented, it is unavoidable that the companies in the sample cover a relatively small portion of the overall Union production. In any event Article 17 of the basic Regulation sets out that investigations may be limited to samples which are either statistically valid, or which constitute the largest representative volume of production, sales, or exports which can be reasonably investigated, without, however, indicating any specific quantitative threshold as to the level of such representative volume. In view of the above it is confirmed that the sample selected was representative within the meaning of Article 17 of the basic Regulation.

(20) One interested party claimed that the Commission failed to include in the sample Union producers which offer low sales prices and which are located in countries like Poland and the Czech Republic; therefore, the sample so obtained would not be representative of the Union producers' average sales prices.

(21) In response to the above claim, the Commission found that the average sales prices of the Union industry's sample were in the same range as the average sales prices in the publicly available statistics. In any event, and as explained in recital 125, the investigation has shown that even taking into consideration publicly available prices for those countries, the final findings would not change in any meaningful way.

(22) A number of parties made comments concerning the methodology used to select the Union industry sample as compared to the selection of the sample of Chinese exporters, which was solely based on export volume.

(23) As to the different methodologies used for selecting a sample of Union producers on the one hand and Chinese exporting producers on the other hand, it should

be noted that the methodologies were used according to the objectives of the sampling exercise. Concerning the Union industry, the Commission had to assess the situation of the whole industry and therefore the criteria that would ensure the most representative picture of the entire sector were chosen. As far as the Chinese exporters are concerned, it was considered appropriate to choose a sample based on the largest volume of exports of the product concerned and thus the largest exporters were sampled. It is also noted that there is no obligation in Article 17 of the basic Regulation for both samples to be selected on the basis of the same criteria. Furthermore, in this case, before finalising the sample of Chinese exporting producers, the cooperating parties in China as well as the Chinese authorities were given the opportunity to comment on the proposed sample. Comments were received with regard to the composition of the sample but not with regard to its representativity.

(24) Following the final disclosure, an importers' association claimed that Article 17 of the basic Regulation implied that samples of Union producers and of exporting producers should be made on the basis of the same criteria. Several Chinese parties continued to claim following final disclosure that there was discrimination between the treatment of Chinese exporting producers and Union producers in choosing the respective samples.

(25) In response to the claim following the final disclosure that the same criteria should be applied in the selection of the samples of Union producers and exporting producers, for the reasons outlined in recital 23, it is considered that these samples may be made on the basis of different criteria. In these circumstances, this claim is rejected.

(26) With regard to the fact that, as mentioned in recital 23, no comments were received in relation to the representativity of the sample, these parties claimed that, at the time of selecting the samples, the Chinese parties were not informed that different selection criteria were being used for the selection of the samples and so could not comment on this fact.

(27) Concerning the fact that the Chinese parties were not informed of the different criteria used in selecting the samples, it is standard practice, in line with Article 17(2) of the basic Regulation, to consult parties on the composition of proposed samples for their own category, e.g. exporting producers will only be consulted on the proposed sample of exporting producers. In these circumstances, these parties' claim regarding the inability to comment on the different selection criteria for the different samples at the time of selection of the samples is disregarded.

(28) Following final disclosure, one interested party claimed that by taking the different segments into account for the selection of the sample, the Commission breached Article 4(1) of the basic Regulation that lays down that the analysis should be made in relation to the Union industry as a whole and not to certain groups or types of companies.

(29) The claim that the division of the sample in three segments is in breach of Article 4(1) of the basic Regulation cannot be upheld. As can be derived from recital 23, the sample selected represented the whole Union industry and not only a specific group