Council Implementing Regulation (EU) No 1243/2010 of 20 December 2010 imposing a definitive anti-dumping duty on imports of ironing boards originating in the People's Republic of China produced by Since Hardware (Guangzhou) 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(4) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) Following an anti-dumping investigation concerning imports of ironing boards originating in the People's Republic of China ('PRC' or 'the country concerned') and Ukraine ('the first investigation'), anti-dumping measures were imposed by Council Regulation (EC) No 452/2007 of 23 April 2007[(2)]. That Regulation entered into force on 27 April 2007.

(2) It is recalled that the rate of the definitive anti-dumping duty imposed on ironing boards produced by the Chinese exporting producer Since Hardware (Guangzhou) Co., Ltd. ('Since Hardware') was 0 % while it ranged between 18,1 % and 38,1 % for other Chinese exporting producers. Following a subsequent interim review. these duty rates were increased to up to 42,3 % pursuant to Implementing Regulation of the Council (EU) No 270/2010 of 29 March 2010 amending Regulation (EC) No 452/2007[(3)].

2. Initiation of the current proceeding

(3) On 2 October 2009, the Commission announced, by a notice published in the *Official Journal of the European Union*[(4)] ('notice of initiation'), the initiation of an anti-dumping investigation pursuant to Article 5 of the basic Regulation concerning imports into the Union of ironing boards originating in the PRC, limited to Since Hardware. In the notice of initiation, the Commission also announced the initiation of a review pursuant to Article 2(3) of Regulation (EC) No 1515/2001 ('review pursuant

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 1243/2010. (See end of Document for details)*

to Regulation (EC) No 1515/2001') in order to allow for any necessary amendment of Regulation (EC) No 452/2007 in the light of the WTO Appellate Body report entitled 'Mexico — Definitive Anti-dumping Measures on Beef and Rice' (AB-2005-6)[(5)] (the 'WTO Appellate Body report').

(4) The anti-dumping investigation was initiated following a complaint lodged on 20 August 2009 by three Union producers, Colombo New Scal S.p.A., Pirola S.p.A. and Vale Mill (Rochdale) Ltd. ('the complainants'), representing a major proportion of the total Union production of ironing boards.

(5) It is recalled that a new anti-dumping investigation based on Article 5 of the basic Regulation was initiated against Since Hardware rather than an interim review pursuant to Article 11(3) of the basic Regulation, in the light of the WTO Appellate Body report. This report stipulates in paragraphs 305 and 306 that an exporting producer not found to be dumping in an original investigation has to be excluded from the scope of the definitive measure imposed as a result of such investigation and cannot be made subject to administrative and changed circumstances reviews.

(6) Since Hardware submitted that the Commission could not initiate a new anti-dumping investigation based on Article 5 of the basic Regulation against one company as it thereby violated the general principle enshrined in GATT Article VI and the WTO Anti-dumping Agreement (WTO ADA) as well as that in the basic Regulation that anti-dumping proceedings are directed against imports of countries and not of individual companies. In particular, Since Hardware claimed that the Commission had breached Articles 9(3) and 11(6) of the basic Regulation by initiating an anti-dumping investigation based on Article 5 instead of Article 11(3) of the basic Regulation. Since Hardware also argued that in the absence of a direct effect of WTO rules in the Union legal order, the Commission could not decide to ignore the above provisions of the basic Regulation in order to implement a WTO ruling automatically, without prior modification by the Council of the basic Regulation.

(7) In this respect, it is acknowledged that anti-dumping proceedings are normally initiated against imports from a country and not from individual companies. However, the present case is an exception to the above rule in view of the following special circumstances. The WTO Appellate Body report provides in paragraphs 216 to 218 that Article 5.8 of the WTO ADA requires an investigative authority to terminate the investigation in respect of an exporter found not to have a margin above *de minimis* in an original investigation and, in paragraph 305, that the exporter consequently must be excluded from definitive anti-dumping measures and cannot be subject to administrative and changed circumstances reviews. It is true that the lack of direct effect of WTO rules means that the legality of measures adopted by the Union Institutions (the 'Institutions') cannot normally be reviewed in the light of the WTO agreements. However, this does not mean, in this particular case, that the Institutions must ignore WTO rules, and in particular the WTO Appellate Body report. Regulation (EC) No 1515/2001 was adopted specifically to allow the Institutions to bring a measure taken under the basic Regulation into conformity with the rulings contained in a report adopted by the Dispute Settlement Body as mentioned in recital (4) of Regulation (EC)

No 1515/2001 without a prior amendment of the basic Regulation. Regulation (EC) No 1515/2001 thus, in particular, allows the Institutions to formally exclude exporters which have been found, during an earlier original investigation, not to be dumping, from the scope of the Regulation which was adopted at the end of that investigation. In order to do so, the review of Regulation (EC) No 452/2007 was opened pursuant to Regulation (EC) No 1515/2001.

(8) Moreover, none of the provisions of the basic Regulation exclude the opening of a new anti-dumping investigation based on Article 5 of the basic Regulation against one company. Also, Union legislation must, so far as possible, be interpreted in a manner that is consistent with international law, in particular where the provisions at issue are intended to give effect to an international agreement concluded by the Union. Since the WTO ADA on the one hand allows WTO members to impose duties to counteract harmful dumping, but on the other hand has been interpreted by the Appellate Body in the WTO Appellate Body report as not allowing reviews of companies found not to be dumping during an original investigation, the basic Regulation must therefore be interpreted to allow the Union to open an investigation based on Article 5 of the basic Regulation in a case like the present one.

(9) By Council Implementing Regulation (EU) No 1241/2010 of 20 December 2010[(6)] Since Hardware was excluded from the scope of Regulation (EC) No 452/2007.

(10) Therefore, in view of the special circumstances of the case, the initiation of an anti-dumping investigation based on Article 5 of the basic Regulation against Since Hardware is lawful.

3. Parties concerned

(11) The Commission officially advised Since Hardware, the importers and Union producers known to be concerned, the representatives of the country concerned, and producers in potential analogue countries of the initiation of the proceeding. The 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 of initiation.

(12) In order to allow Since Hardware to submit a claim for market economy treatment (‘MET’) or individual treatment (‘IT’), if it so wished, the Commission sent a claim form to the exporting producer. The Commission also sent a questionnaire to Since Hardware. The exporting producer submitted a filled-in MET/IT claim and replied to the questionnaire.

(13) In view of the high number of Union producers, sampling was envisaged in the notice of initiation for the determination of contribution to injury, in accordance with Article 17 of the basic Regulation. Five Union producers came forward and provided the requested information for sampling within the deadlines set out in the notice of initiation.

(14) From the above five Union producers, only the three complainants formed part of the Union industry in the first investigation. Given the specificities of this case, as set out in recitals (57) to (60), it was decided to send questionnaires only to these

three Union producers while the other two Union producers were requested to submit any additional comments which might assist the Commission in ascertaining whether imports of the products manufactured by Since Hardware have caused injury to the Union industry. All three complainant Union producers submitted questionnaire replies. The other two Union producers did not submit further comments on the proceeding.

(15) The Commission also sent questionnaires to all known producers in potential analogue countries and to all importers known to be concerned and not related to Since Hardware. As concerns unrelated importers in the Union, there were initially two companies cooperating in the investigation. However, one of them was not in the position to continue cooperation. The other importer was the same company as one of the non-complainant Union producers. It submitted a reply to the importers' questionnaire. In addition, one trade association also cooperated in the investigation and submitted comments.

(16) The Commission sought and verified all the information it deemed necessary for the purpose of assessing MET and for the determination of dumping, contribution to injury and Union interest. A verification visit was carried out at the premises of Since Hardware in Guangzhou in the PRC and of Vale Mill (Rochdale) Ltd. in the UK.

(17) The Commission informed interested parties that given the complex legal background linked to the present investigation (see recital (3) *et seq*. above), it considered it more appropriate not to impose provisional measures in this case but to continue the investigation. No objection was raised by any party.

(18) Interested 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 and were given an opportunity to comment. The comments submitted by the parties were considered and, when appropriate, the findings have been modified accordingly.

4. Investigation period

(19) The investigation of dumping and price undercutting covered the period from 1 July 2008 to 30 June 2009 (the 'investigation period' or 'IP'). The examination of import volumes of Since Hardware products relevant for the assessment of the contribution to injury covered the period from 1 January 2006 to the end of the IP (the 'period considered'). However, because of the specificities of this case – namely that another original investigation concerning the same product and third country took place only some years ago, and because the duties resulting from that investigation are still in place - in the injury analysis reference to the investigation period of that earlier investigation will also be made ('IP of the first investigation').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(20) The product concerned is 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 PRC and produced by Since Hardware (Guangzhou) Co., Ltd. ('the product concerned'), currently falling within CN codes ex 3924 90 00, ex 4421 90 98, ex 7323 93 90, ex 7323 99 91, ex 7323 99 99, ex 8516 79 70 and ex 8516 90 00.

(21) The investigation showed that there are different types of ironing boards and their essential parts depend mainly on their construction and size, their construction material and accessories. However, all different types have the same basic physical characteristics and uses.

(22) The exporting producer claimed that the essential parts of ironing boards should not be covered by the investigation because ironing boards and their essential parts (i.e. legs, tops and iron rests) do not constitute a single product and therefore could not be part of the same product concerned in one investigation. This argument was not confirmed by the investigation. It was found in the present investigation that essential parts of ironing boards should be covered since legs, tops and iron rests determine the characteristics of the finished product and cannot have an end-use other than being incorporated into the final product (i.e. the ironing board) and, as such, they are not a distinct product. This is in line with a number of other investigations in which finished products and key components were considered as one single product. Consequently, similarly to the first investigation, all existing types of ironing boards and their essential parts thereof are considered as one product for the purposes of this investigation.

2. **Like product**

(23) No differences were found between the product concerned and the ironing boards and the essential parts thereof produced by the complainants and other cooperating Union producers and sold on the Union market which finally also served as an analogue country. They both share the same physical characteristics and uses and are interchangeable one with the other.

(24) Consequently, ironing boards and the essential parts thereof produced and sold in the Union and the product concerned are considered like products within the meaning of Article 1(4) of the basic Regulation.

C. **DUMPING**

1. **Market Economy Treatment (MET)**

(25) 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 Article 2 of the basic Regulation for those producers which were found to meet the criteria laid down in Article 2(7)(c) thereof, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in a summarised form below:

— business decisions are made in response to market signals, and without significant State interference; costs of major inputs substantially reflect market values;