Council implementing Regulation (EU) No 964/2010 of 25 October 2010 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium road wheels originating in the People's Republic of China

COUNCIL IMPLEMENTING REGULATION (EU) No 964/2010

of 25 October 2010

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium road wheels 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 and 14(3) thereof,

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

Whereas:

1. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EU) No 404/2010[(2)] ('the provisional Regulation') imposed a provisional anti-dumping duty on imports of certain aluminium wheels originating in the People's Republic of China ('PRC').

(2) The proceeding was initiated as a result of a complaint lodged on 30 June 2009 by the Association of European Wheel Manufacturers (EUWA) ('the complainant') on behalf of producers representing a major proportion, in this case more than 50 % of the total Union production of certain aluminium wheels. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

2. SUBSEQUENT PROCEDURE

(3) 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.

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

(5) It is recalled that, as set out in recital (18) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2008 to 30 June 2009 ('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').

(6) 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 certain aluminium wheels originating in the PRC 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.

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

2.1. **Scope of investigation. Inclusion of imports from Turkey**

(8) One party, representing the interests of exporting producers, claimed that imports of the product concerned from Turkey should be included in the scope of the present investigation.

(9) Concerning the non-inclusion in the complaint of imports originating in Turkey, it should be noted that at initiation stage, there was no sufficient evidence of dumping, injury and causal link from this country to justify the initiation of an anti-dumping proceeding on such imports.

(10) To the contrary, the complainants submitted information that imports from Turkey of the product concerned were at non-dumped prices (see non-confidential version of the complaint, page 13, point 5, and annex 5.1.a.).

3. **PRODUCT CONCERNED AND THE LIKE PRODUCT**

(11) Following provisional measures some parties reiterated their arguments concerning differences between the Original Equipment Manufacturer ('OEM') and aftermarket ('AM') wheels, claiming that the two segments should be treated as two different products. Those parties claimed that OEM wheels should be excluded from the scope of the present investigation because the OEM and AM wheels are produced in accordance with different production processes, have different technical and physical characteristics, different channels of distribution and even different uses.

(12) It is recalled that, as stated in recital (21) of the provisional Regulation, both AM and OEM wheels can be produced by means of all production processes, in all diameters and weights, with all different types of finishing. OEM and AM wheels share the same physical and technical characteristics and are interchangeable.

(13) Some parties claimed that the ultimate consumer of OEM and AM wheels is different: for OEM it would be the car manufacturer and for AM it would be the car owner. Such an understanding is misguided. Although indeed the OEM wheels are

sourced by car makers the use of both OEM and AM wheels is the same: they are fitted on cars and similar vehicles. Hence they have the same ultimate user – the driver.

(14) The most common argument put forward was that the requirements for OEM wheels differ from those for AM wheels. According to that argument measures should not be imposed on OEM wheels because they are not interchangeable with AM wheels (they are purchased to meet the needs of different product markets and differ in terms of design, quality requirements, investment, production process, prices, and import penetration).

(15) Another argument was that OEM wheels are produced according to car makers' specifications while AM wheels are designed and manufactured according to specifications chosen by the wheel manufacturer without taking into account the requirements of a specific car model. Although the AM wheels are not nominally produced according to the specifications provided by the car makers, they will be fitted on different car models. In fact, eventually, they will be fitted on exactly the same car models for which the OEM wheels had been originally produced. The fact that specifications come from different sources cannot be considered as such as a proof of differences in physical and technical characteristics.

(16) Additional information was received from the Union producers and car makers. It confirmed that the same production processes (casting, flow forming, rolling, forging, 2-3 parts wheels) are used for both AM and OEM wheels. They are both produced in all weights and diameters. Inserts, the use of certain types of finishing and heat treatment are applicable to OEM and AM wheels alike.

(17) Some parties claimed that technical differences between the OEM and AM wheels were reflected in the fact that OEM wheels use primary aluminium whereas in the production of AM wheels aluminium would be often extracted from scrap. The Commission thoroughly analysed those comments. Also, additional information was received from car makers and EU producers. In particular those EU producers which manufacture both OEM and AM wheels attested that both primary aluminium and – although to a limited extent – aluminium extracted from scrap is used in the production of both types of wheels. Additional information collected in the investigation confirmed that the main criterion used to distinguish the type and quality of aluminium used is the percentage of silicium (7 % or 11 %). Both alloys are used for OEM and AM wheels alike.

(18) Differences in testing requirements are also not as such conclusive that OEM and AM wheels are two different products. It has to be noted that there is no general homogeneous set of requirements for aluminium wheels. Standards change according to producer and country. In the end it is not possible to establish a coherent dividing line between AM and OEM wheels on the basis of standards or requirements. According to the information on file, both OEM and AM wheels are subject to various tests (x-ray tests, chemical tests, leakage test, stress tests, anti-corrosion tests, wheel balancing tests, impact tests, radial endurance tests, bending tests, salt spray tests, CASS-tests (Copper-Accelerated Acetic Salt Spray test). Further, it appears that differences in testing as

well as differences in standards are an indication of a dividing line between different Member States rather than between OEM and AM wheels as two different products.

(19) According to the information on file, quality requirements imposed by the car industry lead to a highly standardized product which is easily interchangeable between all producers worldwide. In the AM segment quality requirements can also be laid down by the customers and those wheels also have to meet international and national requirements. Consequently, more stringent requirements or specifications may apply to certain wheels in both segments, meaning that some AM wheels might comply with more stringent standards than OEM wheels.

(20) The fact that AM wheels are customarily not installed on new cars and that car makers use wheels produced by selected manufacturers under their brand name is a sourcing decision which has no bearing on the conclusion on the interchangeability of OEM and AM wheels. Physically an AM wheel, i.e. a wheel bearing a brand name of a wheel manufacturer, could be installed on a new car.

(21) These conclusions are confirmed by the fact that car makers also source and sell aftermarket wheels. Some of these are sold under the car maker brand name (Original Equipment Supplier, OES), some under the brand name of the wheel manufacturer.

(22) Many comments concerned the requirements imposed by car manufacturers on suppliers of wheels (e.g. evidence of a fully-functioning ISO certified quality management system, assessment of quality performance based on experience from previous projects and delivery and field quality, product specific and project specific risk assessment). However, aluminium road wheels share the same physical, technical and chemical characteristics and uses regardless of imposed requirements which are not pertinent to those characteristics.

(23) It should finally also be recalled that many wheel manufacturers produce for both segments and OEM and AM wheels are produced on the same production lines. Producers active in one segment can enter the other segment.

(24) Finally, some parties argued that OEM and AM wheels should be considered as two different products because they fall under different customs subheadings.

(25) The current anti-dumping proceeding concerns aluminium road wheels (‘ARWs’) currently falling within CN codes ex 8708 70 10 and ex 8708 70 50. CN code 8708 70 10 concerns road wheels and parts and accessories thereof for industrial assembly. This means that the application of the lower duty rate foreseen therein is subject to the so-called end-use control. The two CN codes are split to indicate the difference in duty rate and to allow for the application of a lower rate for road wheels for industrial assembly. This however does not have any impact on the definition of the product concerned.

(26) In reply to parties comments it has to be noted first that the definition of the product concerned in an anti-dumping proceeding does not refer to product classifications under different customs headings. Hence, a product concerned in an anti-

dumping proceeding might encompass different CN codes. In fact such a situation is rather common.

(27) Secondly, wheels falling under both CN codes are the same. The only difference is the way they are channelled after importation.

(28) Thirdly, it has to be also noted that the volumes of imports under the CN code linked to industrial assembly are less than volumes of OEM imports declared by the cooperating car makers. This appears to imply that OEM wheels have been customs cleared under both CN codes. Given that it therefore seems that car makers import under both CN codes, formal differentiation based on end use would be extremely difficult.

(29) Consequently, the arguments put forward by interested parties are rejected and the conclusions of the provisional Regulation confirmed. OEM and AM wheels are considered to form one single product concerned.

3.1. **Motorcycle and trailer wheels**

(30) The product concerned by the present investigation are 'aluminium road wheels of the motor vehicles of CN headings 8701 to 8705, whether or not with their accessories and whether or not fitted with tyres, currently falling within CN codes ex 8708 70 10 and ex 8708 70 50 (TARIC codes 8708 70 10 10 and 8708 70 50 10)'. This definition conforms to the Notice of initiation published on 13 August 2009 and to the complaint at the origin of the case.

(31) Parties raised questions as to whether the investigation would also cover motorcycle and trailer wheels. The above mentioned definition implicitly excludes aluminium road wheels for motorcycles of heading 8711 and for trailers of heading 8716 which are in principle classified respectively under headings 8711 and 8716.

(32) Regarding trailer wheels, during the investigation, it was argued that, apart from the CN codes indicated in the Notice of initiation of the proceeding, another code which covers, inter alia, wheels for trailers (CN code 8716 90 90) could be used for imports into the Union to circumvent measures on the product concerned (although it appears that the code is not currently used for that purpose in practice).

(33) It was proposed that the present investigation should also cover aluminium wheels falling under CN code 8716 90 90.

(34) The Commission services informed all parties concerned by means of a note put in the file open for consultation by interested parties advising of the possible inclusion of the other CN code in the proceeding.

(35) However, as stated above, aluminium wheels which genuinely are intended for trailers and therefore are covered by CN code 8716 90 90, were not covered by the Notice of Initiation. It can therefore not be excluded that certain operators that produce and or trade in such wheels did not come forward in this investigation since they expected that such imports would not be covered, and thus were not aware of the abovementioned note. Under those circumstances, it is not appropriate to include such