Council Implementing Regulation (EU) No 805/2010 of 13 September 2010 re-imposing a definitive anti-dumping duty on imports of ironing boards originating in the People's Republic of China, manufactured by Foshan Shunde Yongjian Housewares and Hardware Co. Ltd, Foshan

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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 thereof,

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

Whereas:

A. **PROCEDURE**

(1) By Regulation (EC) No 452/2007[(2)] ('the contested Regulation'), the Council imposed definitive anti-dumping duties ranging from 9,9 % to 38,1 % on imports of 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 People's Republic of China ('PRC') and Ukraine.

(2) On 12 June 2007, one cooperating Chinese exporting producer, namely Foshan Shunde Yongjian Housewares and Hardware Co. Ltd ('Foshan Shunde'), lodged an application at the General Court ('the Court of First Instance' before the entry into force of the Lisbon Treaty) seeking the annulment of Regulation (EC) No 452/2007 in so far as it applies to the appellant[(3)].

(3) On 29 January 2008, the General Court rejected the application of Foshan Shunde.

(4) On 3 April 2008, Foshan Shunde lodged an appeal at the Court of Justice asking it to set aside the judgment of the General Court and seeking the annulment of Regulation (EC) No 452/2007 in so far as it concerns the appellant.

(5) On 1 October 2009, the Court of Justice in its judgment in case C-141/08 P ('the Court of Justice judgment') set aside the previous judgment of the General Court

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 805/2010. (See end of Document for details)*

of 29 January 2008. By its judgment the Court of Justice found that Foshan Shunde's rights of defence were adversely affected by the infringement of Article 20(5) of the basic Regulation. Therefore, the Court of Justice annulled the contested Regulation in so far as it imposes an anti-dumping duty on imports of ironing boards manufactured by Foshan Shunde.

(6) The General Court in case T-2/95[(4)] (the 'IPS case') has recognised that, in cases where a proceeding consists of several administrative steps, the annulment of one of those steps does not annul the complete proceeding. The anti-dumping proceeding is an example of such a multi-step proceeding. Consequently, the annulment of the contested Regulation in relation to one party does not imply the annulment of the entire procedure prior to the adoption of that Regulation. Moreover, according to Article 266 of the Treaty on the Functioning of the European Union, the Union institutions are obliged to comply with the Court of Justice judgment of 1 October 2009. This also implies the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the uncontested parts which are not affected by the Court of Justice judgment – as was held in case C-458/98 P[(5)] ('the IPS appeal case'). It should be noted that apart from the finding of an infringement of Article 20(5) of the basic Regulation, all other findings made in the contested Regulation remain automatically valid to the extent that the Court of Justice rejected all claims made in this respect.

(7) Following the Court of Justice judgment of 1 October 2009, a notice[(6)] was published concerning the partial reopening of the anti-dumping investigation concerning imports of ironing boards originating, inter alia, in PRC. The reopening was limited in scope to the implementation of the Court of Justice judgment in so far as Foshan Shunde is concerned.

(8) The Commission officially advised the exporting producers, importers and users known to be concerned, the representatives of the exporting country and the Union industry of the partial reopening of the investigation. 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.

(9) All parties who so requested within the above time-limit and who demonstrated that there were particular reasons why they should be heard were granted the opportunity to be heard.

(10) Representations were received from two exporting producers in the PRC (one being the party directly concerned, i.e. Foshan Shunde), the Union industry and two unrelated importers.

(11) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties on Foshan Shunde. They were granted a period within which to make representations subsequent to disclosure. The comments of the parties were considered and, where appropriate, the findings have been modified accordingly.

B. IMPLEMENTATION OF THE COURT OF JUSTICE JUDGMENT

1. Preliminary remark

(12) It is recalled that the reason for the annulment of the contested Regulation was that the Commission sent its proposal to impose a definitive anti-dumping duty to the Council before the end of the 10-day mandatory deadline as set out by Article 20(5) of the basic Regulation for receiving comments following the sending to interested parties of a definitive disclosure document.

2. Comments of interested parties

(13) Foshan Shunde argued that the Court of Justice judgment requires no implementing measures. According to the company the re-opening is illegal because there is no specific provision in the basic Regulation allowing for such an approach and because such re-opening would be in conflict with the 15-month statutory deadline for the completion of an investigation as set by Article 6(9) of the basic Regulation and the 18-month deadline as set out by Article 5.10 of the WTO anti-dumping agreement. Foshan Shunde submitted that the IPS case could not serve as a precedent because it was based on Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community[7] ('the old basic Regulation'), under which mandatory deadlines did not apply yet. Foshan Shunde also argued that if the Commission decided to proceed with the implementation of the Court of Justice judgment, this should be done on the basis of the Commission's definitive disclosure document dated 20 February 2007, where the party was attributed Market Economy Treatment ('MET') and no dumping was found for this company and not on the basis of the revised definitive disclosure document of 23 March 2007, where the Commission confirmed its provisional findings for Foshan Shunde of no MET and a 18,1 % dumping margin.

(14) The other Chinese exporting producer – Zheijiang Harmonic Hardware Products Co. Ltd ('Zheijiang Harmonic') submitted a number of arguments that were essentially identical with those made by Foshan Shunde, i.e. that there is no legal basis for the re-opening of the proceeding, and that no re-imposition of anti-dumping duties is by law possible beyond the time-limits set by the basic Regulation and WTO anti-dumping agreement. It also argued that reissuing a revised disclosure and granting a period to reply in line with Article 20(5) of the basic Regulation cannot correct the violation of Zheijiang Harmonic's rights of defence and the unlawful imposition of duties. It finally pointed out that the Commission could not re-impose anti-dumping measures based on information relating to 2005, a period that is more than four years prior to the initiation of the partial re-opening of the investigation as this would not be in line with Article 6(1) of the basic Regulation. Furthermore, Zheijang Harmonic argued that the Commission could not reopen the case because it has lost its objectivity and impartiality since the contested Regulation proposed by the Commission was partially annulled by the Court of Justice.

(15) The two unrelated Union importers/producers did not submit any information and data as to the legal merits of the re-investigation but rather emphasised their role as players in the Union's ironing boards market. One of them also pointed out the repercussions of the Court of Justice's annulment and the subsequent partial reopening of the investigation on their business.

(16) The Union industry argued that Union producers pay the price for the irregularity identified by the Court of Justice as they are left without protection against imports that were found to be dumped and causing injury. The Union industry proposed that the procedure be resumed at the stage where the Commission's irregularity occurred i.e. at the time when the Chinese company had to submit its comments on the Commission's revised definitive disclosure document of 23 March 2007, the party's comments be decided upon and the new proposal limited to the situation of Foshan Shunde be sent to the Council, with the aim of reinstating the anti-dumping duty on imports of ironing boards produced by Foshan Shunde. The Union industry also submitted that a similar approach was followed in the past (i.e. in the judgments in the IPS case, the IPS appeal case, and in Council Regulation (EC) No 235/2004[8] adopted following the judgment of the Court of Justice in case C-76/00 P Petrotub and Republica v Council). Moreover, according to this party the 15-month time-limit of the basic Regulation does not apply to the amendment of a Regulation imposing anti-dumping duties in order to implement a judgment of the Court of Justice of the European Union.

3. **Analysis of comments**

(17) It is recalled that the Court of Justice has rejected all the substantive arguments of Foshan Shunde referring to the merits of the case. Thus, the Union institutions' obligation is focused on correcting the part of the administrative procedure where the irregularity occurred in the initial investigation.

(18) The claim that the introduction of deadlines, 15 months and 18 months respectively, to conclude anti-dumping investigations prevents the Commission from following the approach underlying the IPS case was found to be unwarranted. It is considered that this deadline is not relevant for the implementation of a judgment of the Court of Justice of the European Union. Indeed, such deadline only governs the completion of the original investigation from the date of initiation to the date of definitive action, and does not concern any subsequent action that might have to be taken for instance as a result of judicial review. Furthermore, it is noted that any other interpretation would mean that a successful legal action brought by the Union industry would be without any practical effect for that party if it is accepted that the expiry of the time-limit to conclude the original investigation would not allow for the implementation of a judgment of the Court of Justice of the European Union. This would be at odds with the principle that all parties should have the possibility of effective judicial review.

(19) It is also recalled that the General Court in its judgment in joint cases T-163/94 and T-165/94[9] has held that even the soft deadline applicable under the old basic Regulation could not be stretched beyond reasonable limits and found that an investigation lasting for more than three years was too long. This contrasts with the