Council implementing Regulation (EU) No 510/2010 of 14 June 2010 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cargo scanning systems originating in the People's Republic of China

COUNCIL IMPLEMENTING REGULATION (EU) No 510/2010

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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)] repealing Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(2)], ('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:

1. PROVISIONAL MEASURES

(1) The Commission, by Regulation (EU) No 1242/2009[(3)] ('the provisional Regulation') imposed a provisional anti-dumping duty on imports of certain cargo scanning systems originating in the People's Republic of China ('PRC').

(2) The proceeding was initiated as a result of a complaint lodged on 2 February 2009 by Smiths Detection Group Limited ('the complainant') on behalf of a producer representing more than 80 % of the total Union production of certain cargo scanning systems. The complaint contained evidence of dumping 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 anti-dumping 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 and verify all information it deemed necessary for its definitive findings. In particular, the Commission continued its

investigation with respect to EU consumption aspects. In this respect, the Commission contacted interested parties, notably users as well as producers of the product concerned, with a view to verify claims made by the parties with respect to a series of transactions.

(5) It is recalled that, as set out in recital (9) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2007 to 31 December 2008 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2004 to the end of the investigation period ('period considered').

(6) The sole cooperating Chinese exporting producer (the 'Chinese producer') argued that there is no justification for the use of an IP of 18 months instead of the 12 months normally used in anti-dumping investigations. According to the Chinese producer, the IP should have simply covered the 2008 calendar year.

(7) At the outset it should be noted that the Chinese producer had not disputed the use of an IP of 18 months during the provisional stage of the investigation. The claim was only made after the adoption of provisional measures. However, the IP was already announced in the notice of initiation of the proceeding and in the questionnaires, i.e. at the very beginning of the investigation. The specific reasons for selecting an IP of 18 months have been explained in recital (9) of the provisional Regulation. The party did not provide any arguments that put into question the justification concerning the existence of relatively few transactions in this market.

(8) In order to ensure full comparability of the figures relating to the IP with those relating to previous years, any figures given in the parts on injury and causation given for the IP have been annualised.

(9) The Chinese producer also claimed that the selection of the IP was made in order to manipulate injury factors. The allegation has to be rejected.

(10) The Commission was not and could not have been aware at the starting point of the investigation of the complex set of data and figures related to injury indicators at the beginning of the investigation. These data were only established in the course of the investigation.

(11) It should finally be noted that it is not the first time that an IP is set for a period longer than 12 months (e.g. the 16 months IP on calcium metal originating in the PRC and Russia set by Commission Regulation (EC) No 892/94[(4)] or the 18 month IP on disodium carbonate originating in the USA set by Commission Regulation (EC) No 823/95[(5)]).

(12) The Chinese producer also submitted that the signature of the contract captures all transactions at a certain point in time regardless as to whether a sale is made through a tendering process and thus there is no need for an extended IP. This argument is not convincing because it does not address the basic problem of the relatively few number of transactions in this market. The date of signature of the contract was used only in order to have sufficiently clear knowledge of the material elements of the sales

as well as to have a well defined date in order to distinguish what should be part of the IP and the preceding periods respectively and what should be left out.

(13) In the absence of any other comments concerning the IP, recital (9) of the provisional Regulation is hereby confirmed.

(14) 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 cargo systems 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.

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

3. PRODUCT CONCERNED AND LIKE PRODUCT

(16) Following provisional measures, the product definition was revisited in light of the comments by the Chinese producer and a detailed examination of the claims made by the Union industry. This process has led to the conclusion that no alpha or beta technology product can be used for cargo scanning. Therefore, it is considered warranted to exclude these two types of technologies from the product scope. No other representation was submitted that could put into doubt the provisional findings that all the remaining technologies (apart from alpha and beta) covered by the product scope can be used in cargo scanners and all product types serve the same purpose, namely to scan cargo by using the same main principal feature, i.e. the emission of radiation concentrated in scanning cargo. Indeed, during the IP, gamma-based units of the product concerned were sold in the EU.

(17) In view of the above, it is concluded that all types of systems for scanning of cargo, based on the use of neutron technology or based on the use of X-rays with an X-ray source of 250 KeV or more or based on the use of gamma radiations, currently falling within CN codes ex 9022 19 00, ex 9022 29 00, ex 9027 80 17 and ex 9030 10 00 and motor vehicles equipped with such systems currently falling within CN code ex 8705 90 90 share the same basic physical and technical characteristics, have the same basic end-uses and compete with one another on the Union market. On this basis, the conclusions in recitals (10) to (15) of the provisional Regulation are hereby confirmed to the extent they do not refer to alpha and beta radiation technologies.

(18) In the absence of any other comments concerning the like product, recital (16) of the provisional Regulation is hereby confirmed.

(19) In view of the above, it is definitively concluded that all types of cargo scanning systems as defined above are alike within the meaning of Article 1(4) of the basic Regulation.

4. DUMPING

1. Market economy treatment (MET)

(20) The Chinese producer did not claim market economy treatment ('MET') and only requested individual treatment ('IT'). In the absence of any comments, recitals (19) and (20) of the provisional Regulation are hereby confirmed.

2. **Individual treatment (IT)**

(21) In the absence of any comments on IT, recitals (21) to (25) of the provisional Regulation are hereby confirmed.

3. **Normal value**

3.1. *Analogue country*

(22) No party disputed the selection of the United States of America (USA) as an analogue country.

(23) The Chinese producer reiterated its comments on the non-cooperation of one company, established in the United States of America ('US'), related to the complainant. It argued that the complainant used data relating to its related company in the US to compute the normal value in the complaint, whereas during the investigation the complainant submitted that its related US company was not a producer of the like product. The Chinese exporting producer submitted that the US related party of the complainant should have been obliged to cooperate with the investigation and failure to do so should be considered as a reason to treat the complainant as non-cooperator and thus terminate the proceeding. It was also argued that the Commission should have clarified and verified whether the US company is a producer of the like product. Finally, the Chinese exporting producer disputed the use of the EU's non preferential rules of origin as an indicator of whether an economic operator could be considered as a producer of a product.

(24) With respect to the comments relating to the use in the complaint of data derived from the complainant's related US company, it is noted that information on normal value in the complaint was based on general US prices which were publicly available on the US Government's GSA Advantages website. For two product types of the like product there were no such publicly available prices and the normal value had therefore to be constructed by the complainant on the basis of information from its production costs in the EU adjusted to a US level based on the complainant's knowledge of the US market.

(25) Furthermore, the Chinese producer did not provide any evidence that could put into question the findings stated in recital (32) of the provisional Regulation.

(26) EU anti-dumping law does not, in any event, contain a rule that a proceeding should be terminated because a producer in the analogue country has decided not to cooperate in the investigation. The fact that the producer is related to the complainant does not alter this conclusion. Moreover, the court case relied on by the Chinese producer, i.e. T-249/06 (Interpipe), is irrelevant in this context because in that case, the question at issue was to what extent a subsidiary of the Community producer was

obliged to cooperate for the purposes of the injury determination. This is different to the submission of data in order to establish normal value in the analogue country.

(27) With respect to the argument put forward on the definition of the concept of a producer, it is noted that the investigation has established that the complainant is producing the like product in the EU and this manufacturing activity confers origin in line with the EU non-preferential rules of origin. No need exists by law to provide any conclusion with respect to the status of legal entities that are not under investigation in the current proceeding, are not established in the EU or the data of which was not used during the investigation for the establishment of any finding.

(28) In the absence of any other comments concerning the selection of the analogue country, recitals (26) to (37) of the provisional Regulation are hereby confirmed.

3.2. *Determination of normal value*

(29) It is recalled that the normal value was calculated on the basis of the data provided by the sole cooperating producer in the analogue country (i.e. United States of America) and the Union industry. Thus, for one product type imported in the EU, normal value was established on the basis of prices of domestic sales of the US producer of the like product produced in the US. The cooperating US producer did not produce any other product types which could be compared to the product types imported from China into the EU. In order to have a broader basis for normal value, the Commission also examined whether for other product types normal value could be established on any other basis, in line with the provisions of Article 2(7)(a) of the basic Regulation ('any other reasonable basis'). At the provisional stage, it was found that verified information on costs of the Union industry could be used for some product types.

(30) Following the imposition of provisional measures, the Chinese producer submitted comments with regard to the normal value.

(31) The Chinese producer claimed that the normal value should be adjusted downwards by an amount representing the cost difference between self-produced and externally purchased accelerators, since the Chinese company produces accelerators while the US producer and the Union industry purchases them.

(32) As regards this claim, it should be noted that it was not accompanied by any factual evidence, despite the fact that the Commission requested such evidence in the course of the investigation.

(33) The Chinese producer requested the Commission to provide the exact specification of the specific model types used for the normal value calculation. In this respect it is noted that the Union industry and the analogue country producer consider this type of information as confidential. Indeed, if one disclosed the exact name of models, account taken of the fact that the models belonged only to one series and that the specific features of this series were already disclosed, and that only a limited number of model types were used for the purpose of normal value calculations, then parties receiving such disclosure would be able to derive the actual prices charged for the specific model types or the cost and prices on the basis of which normal value was