Implementing Regulation of the Council (EU) No 270/2010 of 29 March 2010 amending Regulation (EC) No 452/2007 imposing a definitive anti-dumping duty on imports of ironing boards originating, inter alia, in the People's Republic of China

IMPLEMENTING REGULATION OF THE COUNCIL (EU) No 270/2010

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amending Regulation (EC) No 452/2007 imposing a definitive anti-dumping duty on imports of ironing boards originating, *inter alia*, 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 11(3) thereof,

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

Whereas:

1. **PROCEDURE**

1.1. **Measures in force**

(1) The Council, by Regulation (EC) No 452/2007[(2)], imposed a definitive anti-dumping duty on imports of ironing boards originating, *inter alia*, in the People's Republic of China ('PRC'). The measures consist of an *ad valorem* duty rate of 38,1 %, with the exception of five companies expressly mentioned which are subject to individual duty rates.

1.2. **Request for a review**

(2) In 2008, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation ('interim review'). The request, limited in scope to the examination of dumping, was lodged by a Chinese exporting producer Guangzhou Power Team Houseware Co. Ltd., Guangzhou ('Power Team' or 'the applicant'). The rate of the definitive anti-dumping duty applicable to the applicant is 36,5 %.

(3) In its request, the applicant claimed that the circumstances on the basis of which measures were imposed have changed and that these changes are of a lasting nature. The applicant provided *prima facie* evidence that the continued imposition of the measure at its current level is no longer necessary to offset dumping.

(4) In particular, the applicant has claimed that it now operates under market economy conditions, i.e. that it meets the criteria laid down in Article 2(7)(c) of the basic

Regulation. The applicant therefore alleged that its normal value should be determined in accordance with Article 2(7)(b) of the basic Regulation. A comparison of this normal value and its export prices to the European Union ('EU') indicated that the dumping margin appears to be substantially lower than the current level of the measure.

(5) Therefore, the applicant claimed that the continued imposition of measures at the existing level, which was based on the level of dumping previously established, was no longer necessary to offset dumping.

1.3. **Initiation of a review**

(6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission decided to initiate an interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping in respect of the applicant[(3)].

1.4. **Product concerned and like product**

(7) The product concerned by the interim review is the same as that in the investigation that led to the imposition of the measures in force ('original investigation'), i.e. 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 currently falling within CN codes ex 3924 90 00[(4)], 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.

(8) The product produced and sold on the Chinese domestic market and that exported to the EU, as well as that produced and sold in Ukraine (used as analogue country) have the same basic physical and technical characteristics and uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

1.5. **Parties concerned**

(9) The Commission officially advised the representative of the Union industry, the applicant and the representatives of the exporting country of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to be heard.

(10) The Commission sent a market economy treatment ('MET') claim form and a questionnaire to the applicant and received a reply within the deadline set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping, and a verification visit was carried out at the premises of the applicant.

1.6. **Review investigation period**

(11) The investigation of dumping covered the period from 1 January 2008 to 31 December 2008 ('the review investigation period' or 'RIP'). It is recalled that

the investigation period of the original investigation leading to the imposition of the measures was 1 January 2005 to 31 December 2005 ('the original investigation period').

2. RESULTS OF THE INVESTIGATION

2.1. Market Economy Treatment ('MET')

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

— business decisions are made in response to market signals, without significant State interference, and costs reflect market values,

— firms have one clear set of basic accounting records which are independently audited in line with International Accounting Standards ('IAS') and applied for all purposes,

— there are no significant distortions carried over from the former non-market economy system,

— bankruptcy and property laws guarantee stability and legal certainty,

— currency exchanges are carried out at market rates.

(13) The applicant requested MET pursuant to Article 2(7)(b) of the basic Regulation and was invited to complete a MET claim form.

(14) The investigation established that the applicant did not meet the MET criterion referred to in the first indent of Article 2(7)(c) (criterion 1) of the basic Regulation as regards costs of major inputs. It was established that after the investigation period in the original investigation, i.e. after 2005, export restrictions were imposed by the State on several steel products, including the main raw materials for the production of ironing boards, i.e. steel plate, steel pipes and steel wire. It is noted that the cost of these raw materials represent a significant part of the total raw materials cost. The imposition of export taxes decreased the incentive to export and thereby increased the volumes available domestically, leading in turn to lower prices. It was also found that a number of subsidy schemes were available for Chinese steel producers[(5)], as well as publicly available accounts of a number of steel producers confirm that the Chinese State is actively supporting the development of the steel sector in the PRC.

(15) As a consequence, domestic steel prices in the PRC were during the review investigation period far below prices on other sizeable world markets, notably steel prices in North America and North Europe[(6)], and these price differences cannot be explained by any competitive advantage in the production of steel.

(16) Moreover, from the information on the file, it was found that the applicant was benefiting from these artificially low and distorted prices of steel, as it purchased its raw materials on the domestic Chinese market.

(17) It was thus concluded that major inputs of Power Team do not substantially reflect market values. Consequently, it was concluded that the applicant has not shown that it fulfils all the criteria set out in Article 2(7)(c) of the basic Regulation and, thus, could not be granted MET.

(18) The applicant, the exporting country and the Union industry were given an opportunity to comment on the above findings. Comments were received from the applicant and the Union industry.

(19) The applicant put forward three main arguments within the deadline. Firstly, it stated that Power Team's raw material prices were still in line with domestic prices and that this finding was sufficient to fulfil criterion 1 in the original investigation. As a consequence, the company considered it a breach of Article 11(9) of the basic Regulation to compare the prices on the Chinese domestic market with prices on other international steel markets. In this context, the company also questioned the relevance of the North European and North American steel market prices to which a comparison was made. The applicant stated that there would be also prices of other international markets such as the Turkish export prices that were lower than the domestic prices in the PRC.

(20) It is indeed true that the applicant fulfilled criterion 1 in the original investigation, but failed criterion 2. It is however considered that there is no breach of Article 11(9) of the basic Regulation as there is no change in methodology to assess whether the company operates under market economy conditions and notably whether it still fulfils criterion 1. In both investigations, the original investigation and the review investigation, the question of raw materials reflecting market values was assessed. In both investigations one of the indicators examined was domestic steel prices, but in the original investigation there were no other significant factors that appeared to influence raw material prices. Thus, the methodology remained the same, only the findings were different.

(21) The review investigation revealed that after the original investigation period, i.e. since 2006, the circumstances have changed as several measures were imposed by the Chinese State to discourage exports of steel plate, pipes and wire by introducing an export tax and by eliminating the export VAT refund. This, together with the aforementioned subsidy schemes, had a distorting effect on the Chinese domestic steel prices because the price difference found between those prices and the domestic prices published for North America and North Europe, increased significantly to around 30 %. This price difference has not been challenged by the applicant following the disclosure of the MET findings.

(22) As regards the argument that the domestic North American and North European steel prices are not the only internationally relevant prices, it is noted that both steel markets were selected for a comparison of prices as both markets have a high consumption of steel and are competitive markets with several active producers. It could thus reasonably be assumed that those domestic prices were representative for competitive market prices. Moreover, the claim that Turkish export prices would be

lower than Chinese domestic prices was not further substantiated at this stage, i.e. no concrete prices were submitted within the deadline. Furthermore, no explanation as to why Turkish export prices, given the apparent relative small size of the Turkish export market compared to the domestic North American and North European markets, should be considered as more relevant.

(23) The company secondly claimed that it was discriminated in the application of EU law, as in a number of recent other cases in which steel constituted a major input, there were some Chinese steel companies fulfilling criterion 1. These cases were all examined and it was found that none of the companies involved in those cases was granted MET as they all failed to satisfy at least one other criterion of Article 2(7)(c) of the basic Regulation. Thus, for reasons of administrative economy, it was not necessary to expand on criterion 1 in great detail when it was clear that the company would fail for another reason. In any event, in none of those recent cases had the Commission concluded that there were no distortions on the Chinese domestic steel market, but on the contrary, in recent cases, MET was denied whenever raw material distortions could be identified[7].

(24) Lastly, the applicant argued that an adjustment of the normal value would be more appropriate than denying MET. However, an adjustment to the normal value appears inappropriate given that one of the criteria to be granted MET is that costs of major inputs have to reflect market values. If this is not the case, the consequence should rather be that MET is denied and the normal value will be replaced by an analogue country normal value, in particular if the raw materials constitute such a significant part of the cost of the inputs.

(25) To conclude, none of the arguments raised by Power Team were convincing or led to a different assessment of the findings.

(26) The Union industry pointed out that the Chinese State had massively intervened in the steel industry which already prompted the EU and the US to request WTO consultations to resolve this matter.

(27) On the basis of the above, the findings and the conclusion that MET should not be granted to Power Team were confirmed.

(28) Following the disclosure of the essential facts and considerations on the basis of which it was intended to recommend an amendment of Regulation (EC) No 452/2007, the applicant submitted further comments on the MET finding.

(29) The applicant mainly reiterated its argument that its main inputs would reflect market values in the PRC and that Chinese prices would be broadly in line with other international markets. While it acknowledged the fact that the price increase for the main inputs was less pronounced in the PRC in 2008 compared to other international steel markets, the applicant alleged that this was not due to any distortions but that other pure commercial factors could be the reason for the lower prices on the Chinese domestic market. The applicant pointed to increased production in 2008 and indicated that the existing anti-dumping or countervailing duties in place against exports of most