Council Regulation (EC) No 926/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China

COUNCIL REGULATION (EC) No 926/2009

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(1)] (the basic Regulation) and in particular Articles 9 and 10 thereof,

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

Whereas:

A. PROCEDURE

1. Provisional measures

(1) On 9 July 2008, the Commission published a notice[(2)] initiating an anti-dumping proceeding on imports into the Community of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China (the PRC). On 8 April 2009, the Commission, by Regulation (EC) No 289/2009[(3)] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the PRC.

(2) The proceeding was initiated following a complaint lodged by the Defence Committee of the Seamless Steel Tube Industry of the European Union (the complainant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of certain seamless pipes and tubes of iron or steel.

(3) As set out in recital 13 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2007 to 30 June 2008 ('investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2005 to the end of the IP (period considered).

2. Subsequent procedure

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 926/2009. (See end of Document for details)*

(4) 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 their views known on the provisional findings. The parties who so requested were also granted the opportunity to be heard.

(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. In particular, the Commission sent an additional questionnaire to the sampled Community producers to collect further information concerning the market developments and the evolution of the main injury indicators after the end of the IP. Additional verification visits were carried out after the imposition of the provisional measures at the premises of the following producers of certain seamless pipes and tubes in the EU:

— Vallourec & Mannesmann Deutschland GmbH, Düsseldorf, Germany,

— Vallourec & Mannesmann France, Boulogne-Billancourt, France,

— Tenaris-Dalmine SpA, Dalmine, Italy,

— Tubos Reunidos SA, Amurrio, Spain,

— Productos Tubulares SA, Valle de Trapaga, Spain,

— in addition, a verification visit was carried out at the premises of the complainant at Boulogne-Billancourt, France.

(6) The Commission also conducted a further desk analysis of the questionnaire replies of all four sampled exporting producers, including in particular the verification of the transaction listing provided by the following exporters:

— Hubei Xinyegang Steel Co., Ltd,

— Hengyang Valin Steel Tube Co., Ltd,

— Shandong Luxing Steel Pipe Co. Ltd,

— Tianjin Pipe International Economic & Trading Corporation.

(7) 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 seamless pipes and tubes of iron or steel originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty (final disclosure). They were also granted a period within which they could make representations subsequent to this disclosure.

(8) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings were modified accordingly.

3. **Sampling**

(9) In the absence of any comments concerning the sampling of exporting producers in the PRC and of Community producers, the provisional findings in recitals 11 to 12 of the provisional Regulation are hereby confirmed.

B. PRODUCT CONCERNED AND LIKE PRODUCT

(10) The product concerned is certain seamless pipes and tubes, of iron or steel, of circular cross section, of an external diameter not exceeding 406,4 mm with a Carbon Equivalent Value (CEV) not exceeding 0,86 according to the International Institute of Welding (IIW) formula and chemical analysis[(4)], originating in the PRC (the product concerned) and currently falling within CN codes ex 7304 19 10, ex 7304 19 30, ex 7304 23 00, ex 7304 29 10, ex 7304 29 30, ex 7304 31 20, ex 7304 31 80, ex 7304 39 10, ex 7304 39 52, ex 7304 39 58, ex 7304 39 92, ex 7304 39 93, ex 7304 51 81, ex 7304 51 89, ex 7304 59 10, ex 7304 59 92 and ex 7304 59 93[(5)].

(11) After the publication of the provisional Regulation, a clerical mistake was found in the numbering of the Technical Report mentioned in the footnote of recital 14 of the provisional Regulation for the determination of the Carbon Equivalent Value (CEV). The correct reference is Technical Report, 1967, IIW doc. IX-555-67 published by the International Institute of Welding (IIW).

(12) After provisional disclosure, the China Iron and Steel Association (CISA) claimed that the CN codes covering the product concerned were also covering a number of other products which would fall outside the scope of the investigation such as products with an outside diameter exceeding 406,4 mm or with a CEV exceeding 0,86 and, as a consequence, the import figures used in the investigation would be overstated. In this respect, it has to be noted that products with an outside diameter exceeding 406,4 mm or with a CEV exceeding 0,86 according to the IIW formula and chemical analysis are not concerned by these proceedings. Furthermore, no evidence was found at any of the sampled exporting producers that these products are produced in the PRC in significant quantities. Therefore, it has been concluded that there is no credible evidence regarding the import of any significant quantities of such Chinese products into the EC.

(13) Following the final disclosure, CISA reiterated the claim that oil country tubular goods (OCTG) should be excluded from the definition of the product concerned and pointed out that other countries, including the USA, treat OCTG as belonging to a separate market for the purpose of anti-dumping investigations. Similar claims were also made by the Chinese government (Mofcom).

(14) The abovementioned claims have been analysed in detail and it has been found that the different types of seamless pipes and tubes, including OCTG, included in the product definition share the same basic physical, chemical and technical characteristics, which means that they belong to the same product category. The fact that these different product types differ to a certain extent in their characteristics, cost and selling prices is normal. Moreover, the fact that other investigating authorities carry out investigations into OCTG only may well be due to the particularities of such investigations, i.e. the scope of the underlying complaint. Indeed, it was found that the US authorities did not have to investigate whether OCTG share the same basic characteristics as other seamless pipes and tubes. Furthermore, the Community industry provided evidence of the interchangeability between plain-end OCTG and other products subject to the investigation.

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(15) It was also argued that in defining the product concerned undue importance was given to elements such as the wall thickness, external diameter, and CEV threshold, whilst no proper attention had been paid to technical properties such as high pressure and high corrosion resistance and to the existence of special American Petroleum Institute (API) standards for OCTG.

(16) First of all, it must be noted that since the wall thickness is not used in the definition of the scope of the investigation, the external diameter and the CEV threshold remain the most appropriate elements to identify the product concerned. The external diameter is also an element used in distinguishing the product for statistical and customs purposes. As regards the CEV threshold, it defines the level at which a product can be welded and the threshold is set at 0,86 in order to separate products which can easily be welded from those which can not. Secondly, information provided by the Community industry shows that OCTG, as other types of tubes, may have both high and low corrosion/pressure resistance. Thus neither the corrosion nor the pressure resistance could be used as a criterion in defining the product concerned. Thirdly, the special API standards exist as regards OCTG and line pipes because they are used in the petroleum sector. However, tubes used in other sectors are also subject to similar standards, although issued by other organisations (e.g. ASTM). As a result, the fact that standards are issued by one or the other organisation cannot be an element to define the product scope of an anti-dumping investigation. In conclusion, neither CISA nor Mofcom has submitted valid alternative elements to better define the product scope, nor have they ever proposed criteria that would be more appropriate to define the product concerned, apart from the high corrosion/pressure resistance mentioned above. In addition, neither party proposed a different CEV level as a more appropriate threshold. Therefore, the claims on the definition of the product concerned are rejected.

(17) In view of the above, it is definitively concluded that the product concerned incorporates, inter alia, OCTG used for drilling, casing and tubing in the oil industry, and recitals 14 to 19 of the provisional Regulation are hereby definitively confirmed.

C. DUMPING

1. Market economy treatment (MET)

(18) In the absence of any comments, the content of recitals 20 to 27 of the provisional Regulation concerning MET findings is hereby definitively confirmed.

2. Individual treatment (IT)

(19) Further to provisional disclosure, the complainant claimed that one exporting producer provisionally granted IT should not have received IT, as among other things, it was allegedly majority state owned.

(20) Further investigation showed that the Chinese state did (indirectly) have some stake in the said company, but during the IP the state was a minority shareholder. However, the shareholding changed significantly at the end of 2008 (post-IP) when the Chinese state acquired more shares of the holding company and the state thus became

a majority shareholder. Consequently, the Commission considered that the exporting producer in question would not fulfil the requirements of Article 9(5) of the basic Regulation and should not be granted IT.

(21) Following the final disclosure, the said company reiterated its argument that the increased shareholding of the Chinese state occurred after the IP. Moreover, the company argued that the increase in shareholding was clearly and solely intended to provide financial support to the holding company because of the financial crisis. In particular, the said company claimed that the increased shareholding had no impact on the management structure, the composition of the Board of Directors and the commercial activities. It also claimed that the change in shareholding had no effect on the company's decisions regarding export activities that remain to be made independently from the state. The company also submitted that no evidence has been shown that in this case state influence would be such as to permit circumvention of measures if the company would be given an individual rate of duty.

(22) In order to be granted IT, exporting producers must demonstrate that they fulfil all the criteria enumerated in Article 9(5) of the basic Regulation. One of these criteria is that the majority of shares belong to private persons. However, as regards the said company, this criterion has not been met since the end of 2008.

(23) Consequently, despite the fact that the change of ownership happened only after the IP (but still before the conclusion of the investigation) and considering the prospective nature of the findings with regard to IT, it is concluded that this company should not be granted IT, as it did not fulfil the requirements of Article 9(5) of the basic Regulation.

(24) In the absence of any other comments concerning IT, the content of recitals 28 to 32 of the provisional Regulation, other than those concerning the company mentioned in recitals 19 to 23 above, is hereby definitively confirmed.

3. **Normal value**

3.1. *Analogue country*

(25) Following the provisional disclosure, three parties submitted that the USA was not an appropriate analogue country since the market conditions in the USA and in the PRC are significantly different. It was also submitted that the normal value calculation was based on the data of only one producer, related to a producer in the Community, and thus were not representative.

(26) It is noted that the basic Regulation requires that the analogue country be selected in a not unreasonable manner. The parties mentioned above failed to provide substantiated evidence that the choice of the USA was unreasonable. In particular, they did not question the competitiveness of the US market, the lack of which for example could have an impact on the level of prices established. It is also noted that none of the parties in question suggested any alternative choice for the analogue country.