Council Regulation (EC) No 925/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China

COUNCIL REGULATION (EC) No 925/2009

of 24 September 2009

imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China

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 Article 9 thereof,

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

Whereas:

1. PROCEDURE

1.1. Provisional measures

(1) The Commission, by Regulation (EC) No 287/2009[(2)] (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China (the 'PRC').

(2) The proceeding was initiated following a complaint lodged by Eurométaux (the 'complainant') on behalf of producers representing a major proportion, in this case more than 25 %, of the total Community production of aluminium foil.

(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 the trends for the assessment of injury covered the period from 1 January 2005 to the end of the investigation period (period considered).

1.2. Subsequent procedure

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

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 925/2009. (See end of Document for details)*

(5) After the imposition of the provisional anti-dumping measures, the Commission continued its investigation with regard to dumping, injury and Community interest aspects and carried out further analyses and verification visits of data contained in the questionnaire replies provided by some exporting producers and producers in the Community.

(6) Five additional verification visits were carried out at the premises of the following Community producers:

— Novelis UK Limited, Bridgnorth, United Kingdom,

— Novelis Luxembourg, Dudelange, Grand Duché de Luxembourg,

— Novelis Foil France S.A.S., Rugles, France,

— Grupa Kęty SA, Kęty, Poland,

— Hydro Aluminium Inasa, S.A., Irurtzun, Spain.

(7) One additional visit was carried out at the premises of the following company related to exporting producers:

— Alcoa Transformación de Productos, S.L., Alicante, Spain.

(8) Three additional visits were carried out at the premises of the following exporting producers:

— Alcoa (Shanghai) Aluminium Products Co., Ltd, Shanghai and Alcoa (Bohai) Aluminium Industries Co., Ltd, Hebei,

— Shandong Loften Aluminium Foil Co., Ltd, Shandong,

— Zhenjiang Dinsheng Aluminium Industries Joint-Stock Limited Company, Jiangsu.

(9) A visit was also carried out at the Shanghai Futures Exchange, Shanghai.

(10) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping measures on imports of certain aluminium foil originating in Armenia, Brazil and the PRC and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which they could make representations subsequent to this disclosure.

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

1.3. **Scope of the investigation**

(12) The Brazilian exporting producer argued that Russia should have been included in the scope of the investigation since, during the entire period considered import volumes and market shares from Russia were significant and even higher than the ones from Armenia. Furthermore, the Brazilian exporting producer alleged that import prices from Russia were at the same level as the prices of imports of the countries concerned and that there was prima facie evidence of dumping at the time of the initiation.

(13) When analysing the complaint, the Commission came to the conclusion that there was no sufficient prima facie evidence of dumping with regard to Russia. Consequently, the non-inclusion of Russia in the complaint was considered warranted. In the absence of evidence of dumping, it is irrelevant whether import volumes and/or market shares of imports originating in Russia were indeed higher than the ones of one or more countries included in the scope of the investigation. The claim of the Brazilian exporting producer was therefore rejected.

2. PRODUCT CONCERNED AND LIKE PRODUCT

(14) The downstream industry in the Community, i.e. the 'rewinders', reiterated that the product concerned should also include consumer rolls, i.e. aluminium foil weighing less than 10 kg, because if definitive measures were imposed solely on imports of aluminium foil weighing over 10 kg (jumbo reels), this could give rise to an increase of exports of consumer rolls from the countries concerned at low prices. It was also argued that both products have basically the same characteristics, the only difference being the packaging.

(15) In recitals 15 to 19 of the provisional Regulation it was concluded that consumer rolls and jumbo reels are different products in terms of physical characteristics and basic end-uses. The subsequent investigation confirmed these findings. Indeed, the physical differences between consumer rolls and jumbo reels go beyond the mere difference in packaging, as the product concerned has to be rewound before being repacked and resold to the final customer. It was also established that customers, sales channels and basic applications are different. It was therefore not considered appropriate to include consumer rolls in the product scope of the present investigation.

(16) The allegation that imports of jumbo reels may be substituted by imports of consumer rolls is addressed in recitals 97 to 99.

(17) In the absence of any other comments concerning the product concerned and the like product, the findings as set out in recitals 14 to 21 of the provisional Regulation are hereby confirmed.

3. MARKET ECONOMY TREATMENT (MET) AND ANALOGUE COUNTRY

3.1. Armenia

(18) The sole exporting producer in Armenia contested the provisional findings as set out in recitals 24 to 31 of the provisional Regulation.

(19) The company first stated that the Commission erred in considering that a company in Armenia would need to apply for MET, as in its opinion, Armenia was a market economy country under the terms of the WTO Anti-Dumping Agreement and that the inclusion of Armenia in the footnote to Article 2(7)(a) of the basic anti-dumping Regulation should be removed.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 925/2009. (See end of Document for details)*

(20) However as set out in recital 25 of the provisional Regulation, Armenia is specifically mentioned in the footnote to Article 2(7)(a) of the basic Regulation as being included among non-market economy countries. The treatment of exporting producers in non-market economy countries which are WTO members is set out in Article 2(7)(b). These provisions have been fully complied with in the current investigation. This argument was therefore again dismissed.

(21) The company then stated that it met the second MET criterion, which was provisionally found not to have been met in recitals 27 to 29 of the provisional Regulation. The company based its argument on the submission of the accounts for 2007 which had not been provided during the verification visit of the company prior to provisional measures being imposed. The company again stated that it did not believe that the second MET criterion demanded that the accounts of the company be prepared in line with international accounting standards and that Armenian national accounting standards were sufficient, as Armenia is a member of the WTO.

(22) This argument was rejected. The company is obliged to have one clear set of accounts in line with international accounting standards. The failures noted by the auditors for both the 2006 and 2007 financial years were such as to clearly show that their accounts were not prepared in line with IAS and therefore the company could not prove that the second MET criterion was met. The MET criteria actually point to international standards and WTO membership does not change this. Furthermore, WTO membership in itself is not a guarantee of the prevalence of market conditions in the economic activity of one company.

(23) The company further stated that it met the third MET criterion, which was provisionally found not to have been met in recital 30 of the provisional Regulation on grounds relating to the sale of shares by the Armenian State and also the State's granting of land to the company for free. The company stated that the issue of the land being given to the company for free was not significant and should not be cumulated with the other issue regarding shares, which the company also considers not significant.

(24) This argument was also rejected. The fact that the land was obtained for zero cost, and can be sold with the payment of its cadastral value to the State (which is significantly lower than its market value) makes that land an important and valuable asset for the company which does not appear in the company's accounts and therefore has a significant effect on the company's costs. In addition, the company failed to prove that the distortion caused by the sale of shares at a lower price than their nominal one was insignificant.

(25) It can therefore be concluded that the two issues concerning compliance with the third MET criterion point to a distortion carried over from a non-market economy situation.

(26) The finding that this company should be denied MET is confirmed.

3.2. **The PRC**

(27) One exporting producer in the PRC contested the provisional findings as set out in recital 32 of the provisional Regulation. They reiterated that the Commission should not have compared the price as quoted by the Shanghai Futures Exchange (the 'SHFE') and the London Metal Exchange (the 'LME') by taking both on a VAT-exclusive basis, and that without this adjustment the prices would be similar during the investigation period.

(28) This argument was rejected for the reasons as set out in recital 38 of the provisional Regulation as the price should be compared on a like-for-like basis. Chinese producers of the product concerned pay VAT on their purchases of primary aluminium. Most of this VAT is then reclaimed on the sale of the finished product, whether sold domestically (in which case all is reclaimable) or for export (in which case the Chinese government restricts the reclaim of VAT at certain rates for certain goods at certain times). The inclusion of a small amount of non-reclaimable VAT is not such as to have a substantial effect on the above conclusions.

(29) It should also be noted that the significant difference in price between the LME and the SHFE during the IP shows the state interference in the price setting mechanism for primary aluminium, a finding of the provisional Regulation (recital 32) which was confirmed following the Commission services visit to the SHFE.

(30) This visit confirmed that the State has a primary role in the price setting on the SHFE and interferes with the price setting mechanisms, in particular given its position as both a seller of primary aluminium and a purchaser via the State Reserve Bureau and other State bodies. In addition, the State sets daily price limits via the rules of the SHFE which have been approved by the state Regulator, the China Securities Regulatory Commission (the 'CSRC'). It is also clear that the SHFE is a closed exchange for Chinese-registered companies and Chinese citizens and that there is no effective arbitrage between the SHFE and international exchanges outside China. This is evidenced in the price significant differences between the SHFE and the international exchanges such as the LME. Furthermore where a SHFE futures contract ends in physical delivery, this can only take place in an approved warehouse within the PRC, unlike international exchanges where delivery can take place worldwide. These delivery rules ensure that the domestic Chinese market remains insulated from the worldwide market and that the price distortion benefits only Chinese companies.

(31) The provisional findings as set out in recitals 22 to 40 are therefore confirmed.

3.3. The PRC and Armenia: Individual treatment (IT)

(32) In the absence of comments, the provisional findings as regards the exporting producer in Armenia as set out in recital 42 of the provisional Regulation are confirmed.

(33) One exporting producer in China contested the provisional finding as set out in recital 42 of the provisional Regulation that they should be denied IT. This denial was due to the company being majority State owned. The company stated that this should be reversed as the State ownership was through a company quoted on the Hong Kong Stock Exchange and there were no State officials on the Board of Directors.