Council Regulation (EC) No 703/2009 of 27 July 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of wire rod originating in the People's Republic of China and terminating the proceeding concerning imports of wire rod originating in the Republic of Moldova and Turkey

COUNCIL REGULATION (EC) No 703/2009

of 27 July 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 Article 9 thereof,

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

Whereas:

A. **PROCEDURE**

1. **Provisional measures**

(1) The Commission, by Regulation (EC) No 112/2009[(2)] (the provisional Regulation) imposed a provisional anti-dumping duty on imports of wire rod originating in the People's Republic of China (PRC) and the Republic of Moldova (RM).

(2) It is noted that the proceeding was initiated following a complaint lodged by Eurofer (the complainant) on behalf of producers representing a major proportion, in this case more than 25 %, of the total Community production of wire rod.

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 an opportunity to be heard. The Commission continued to seek and verify all information it deemed necessary for its definitive findings. To this end an additional verification visit was carried out at the following company:

Producer in the Community:

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 703/2009. (See end of Document for details)*

— Celsa UK Holding Limited, Cardiff, United Kingdom

(4) The Commission also continued its investigation with regard to Community interest aspects and carried out analysis of data contained in the questionnaire replies provided by some users in the Community.

(5) It is recalled that as set out in recital (13) of the provisional Regulation the investigation of dumping and injury covered the period from 1 April 2007 to 31 March 2008 (investigation period or IP). With respect to the trends relevant for the injury assessment, the Commission analysed data covering the period from 2004 to the end of the IP (period considered).

(6) Some interested parties argued that the choice of the year 2004 which was taken into account for the injury assessment was flawed because allegedly the year 2004 was an exceptionally good year in terms of high demand and profit margins. They therefore claimed that 2004 should be excluded from the period considered.

(7) It should be noted that according to Article 6(1) of the basic Regulation, the investigation period should cover a period immediately prior to the initiation of the proceeding. It is recalled that the present investigation was initiated on 8 May 2008. As to the examination of trends relevant for the assessment of injury, this normally covers three or four years prior to initiation, ending in line with the dumping investigation period. In the present proceeding this practice was applied. Therefore, whether the year 2004, or any other year falling within the period considered, was exceptional or not does not seem to be relevant to the choice of this period.

(8) 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 wire rod originating in the PRC and the definitive collection of the amounts secured by way of the provisional duty, and the termination of the proceeding concerning imports of wire rod originating in the RM and Turkey. They were also granted a period within which they could make representations subsequent to this disclosure.

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

B. PRODUCT CONCERNED AND LIKE PRODUCT

(10) The product concerned is bars and rods, hot-rolled, in irregularly wound coils, of iron, non-alloy steel or alloy steel other than of stainless steel originating in the PRC, the RM and Turkey (the product concerned or wire rod), normally declared within CN codes 7213 10 00, 7213 20 00, 7213 91 10, 7213 91 20, 7213 91 41, 7213 91 49, 7213 91 70, 7213 91 90, 7213 99 10, 7213 99 90, 7227 10 00, 7227 20 00, 7227 90 10, 7227 90 50 and 7227 90 95. The product concerned does not include stainless steel wire rod.

(11) Following the provisional disclosure, one interested party claimed that wire rod falling under CN code 7213 91 90 should not be included in the definition of the

product concerned because the powers of attorney issued to the complainant and its legal representative did not cover this specific product type.

(12) In this respect it should be noted, firstly, that the complaint included the abovementioned CN code. Secondly, the product concerned is defined, at the outset of the investigation, based primarily on the basic physical, chemical and technical characteristics. The relevant CN codes under which imports of the product concerned are declared are finally determined only during the investigation, and in particular when imposing final duties. This is also clear from the text of the notice of initiation which states that the relevant CN codes are only given for information[(3)]. In addition, it was concluded that the wire rod declared under the above mentioned CN code does have the basic characteristics which are set out in the notice of initiation, and that it therefore does fall within the scope of the product concerned. Consequently this claim was rejected.

(13) One exporting producer and one user alleged that a specific type of wire rod, namely 'tire cord', classified under the CN code 7213 91 20, would differ significantly from other types of wire rod with respect to the physical and technical characteristics, end uses, interchangeability and consumer perceptions. Consequently, they claimed that tire cord should be excluded from the scope of this investigation.

(14) The abovementioned claim and specific arguments have been analysed in detail. Firstly, it was established that the different types of wire rod, including tire cord, included in the product definition share the same basic physical, chemical and technical characteristics, which means that they belong to the same product category.

(15) Secondly, even if it can be argued that tire cord is a relatively more sophisticated and expensive type compared to other types of wire rod covered within the scope of the current investigation, it does not mean that tire cords imported from the PRC have characteristics which are significantly different from tire cords produced in the Community.

(16) Furthermore the investigation showed that there were imports of tire cord from the country concerned during the period considered. Although these imports were made in limited quantities, it showed that exporting producers concerned by the current investigation had the capability to produce this type of wire rod.

(17) Hence, based on the above facts and considerations, the exclusion of tire cord from the scope of the investigation was not considered to be warranted. The claim had therefore to be rejected.

(18) In the absence of any other comments concerning the product concerned or the like product, recitals (13) to (14) of the provisional Regulation are hereby confirmed.

C. DUMPING

1. Market Economy Treatment (MET)

1.1. *PRC*

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 703/2009. (See end of Document for details)*

(19) In the absence of any other comments with regard to the MET status of Chinese exporting producers, the conclusions of recitals (27) to (31) of the provisional Regulation are hereby confirmed.

1.2. *RM*

(20) It is recalled that the sole cooperating Moldovan exporter failed to meet any of the five MET criteria. Following the provisional disclosure, the company reiterated its previous comments on the Commission's decision not to grant it MET, which had already been analysed and addressed in the MET and provisional disclosures. The Moldovan exporter disputed the findings regarding all five MET criteria, but did not support its claims by providing any evidence in support thereof.

(21) In particular, the exporter claims that the Commission contradicts itself when considering that the so called authorities of the Transnistrian region of the RM are considered as playing the role of 'the State' when assessing criterion 1, and not so when assessing criterion 4. In this respect, it is noted that the so called authorities of the Transnistrian region of the RM are clearly in a position to interfere in the company's management. Therefore this has a direct impact in the assessment of criterion 1. On the other hand, the so called authorities of the Transnistrian region of the RM, as they are not recognised, do not ensure a legal stability and certainty as required under criterion 4. Therefore this claim had to be rejected.

(22) Regarding criterion 1, the exporter argued, in particular, that its management is composed of private persons and that no connection has been established between its top management and the so called authorities of the Transnistrian region of the RM. However, the investigation revealed that the President and other management staff of the company actively participate in the legislative bodies of the so called authorities of the Transnistrian region of the RM. Therefore this claim had to be rejected.

(23) Regarding criterion 2 the company argued, in particular, that the reserved opinion of the audit report on the company's financial statements was immaterial. However, this reserved opinion refers to the value of all fixed assets and cannot therefore be considered as immaterial. During the verification the company was not able to clarify this reserve. No additional evidence has been provided in this respect. Therefore this claim had to be rejected.

(24) Regarding criterion 3, the company repeated its argument that, following its privatisation, it was subsequently re-sold to its current holders at arm's length and therefore any previous distortions would have been eliminated. No evidence supporting this claim was however provided and the conclusion in recital (45) of the provisional Regulation is therefore confirmed.

(25) Regarding criterion 5, the company, claimed in particular that the fact that its financial statements are in US dollars, and not in the so called Transnistrian rouble currency (TMR rouble) makes the issue irrelevant. However, the fact remains that the TMR rouble is used in several of the company's daily operations, and therefore the

conversion rate of the TMR rouble into other currencies is not irrelevant for assessment under this criterion. Therefore this claim had to be rejected.

(26) Therefore these claims did not change the provisional conclusions not to grant MET to the Moldovan cooperating exporting producer, and the conclusions of recitals (32) to (49) of the provisional Regulation are hereby confirmed.

2. **Individual treatment (IT)**

(27) In the absence of any comments on IT, recitals (50) to (53) of the provisional Regulation are hereby confirmed.

3. **Normal value**

3.1. *Turkey*

(28) One exporting producer pointed out that revised and verified data regarding its domestic sales had not been taken into consideration in the establishment of normal value. Another exporting producer argued that the constructed normal value had been incorrectly calculated due to a clerical error. These claims were verified and corrections were made, when appropriate.

(29) Another exporting producer argued that its export sales consisted only of a 'non-standard' type of the product concerned, whereas domestic sales were a mix of 'standard' and 'non-standard' types. It claimed that this methodology resulted in an unfair comparison and that the normal value should be calculated by comparing only the prices of 'non-standard' export and domestic sales.

(30) The investigation, however, could not demonstrate sufficient differences between 'standard' and 'non-standard' products, as claimed by the exporting producer, that would affect their comparability. Both categories fall under the product description of the like product. Additionally the investigation revealed that both types were sold by the company at the same price. Accordingly, this claim had to be disregarded.

(31) In the absence of any other comments with regard to the methodology for calculating normal value for Turkey, the provisional conclusions as outlined in recitals (54) to (63) of the provisional Regulation are hereby confirmed.

3.2. *PRC and RM*

(32) No comments were received concerning the normal value for the PRC and the RM established as described in recital (64) of the provisional Regulation. Therefore the provisional conclusions are confirmed.

4. **Analogue country**

(33) Turkey was provisionally chosen as analogue country for the reasons set out in recitals (65) to (74) of the provisional Regulation. Following provisional disclosure, the complainant, argued against the use of Turkey as analogue country, instead of Brazil as initially envisaged. The complainant re-stated the arguments submitted at the provisional stage (a) claiming that there is sufficient competition in the Brazilian