Council Regulation (EC) No 500/2009 of 11 June 2009 amending Regulation (EC) No 1212/2005 imposing a definitive anti-dumping duty on imports of certain castings originating in the People's Republic of China

COUNCIL REGULATION (EC) No 500/2009

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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 11(3) thereof,

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

Whereas:

A. **MEASURES IN FORCE**

(1) By Regulation (EC) No 1212/2005[(2)] the Council imposed definitive anti-dumping duties on imports of certain castings originating in the People's Republic of China (PRC) (definitive measures Regulation). Individual duty rates ranged from 0 % to 37,9 %, and the residual duty level was set at 47,8 %. A joint undertaking offer was accepted from a number of companies together with the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCME) by Commission Decision 2006/109/EC[(3)] and Council Regulation (EC) No 268/2006[(4)]. In view of several new exporting producer requests, the definitive measures Regulation was amended from time to time — most recently in April 2009[(5)].

B. **INITIATION OF REVIEW INVESTIGATION AND PROCEDURE**

(2) On 8 November 2007, the Commission received a request for an interim review, pursuant to Article 11(3) of the basic Regulation. The request was lodged by Eurofonte (the applicant), acting on behalf of nine European producers. The applicant alleged that there was a lack of clarity as to the scope of the measure as set out in the definitive measures Regulation. The applicant alleged that the product scope should be clarified as far as castings of ductile iron are concerned and in particular whether this kind of castings should fall within the definition of the product concerned.

(3) Having determined that sufficient evidence existed for the initiation of a partial interim review, and after consulting the Advisory Committee, the Commission, by a notice (the review Notice of initiation) published in the *Official Journal of the European Union*[(6)], initiated an investigation in accordance with Article 11(3) of the

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basic Regulation. The investigation was limited in scope to the definition of the product subject to the measures in force.

(4) The Commission advised the known Community producers, importers and users, the representatives of the exporting country as well as all known exporters in the PRC of the initiation of the review. The Commission requested information from all abovementioned parties and from those other parties who made themselves known within the time limit set in the review Notice of initiation. The Commission also gave interested parties the opportunity to make their views known in writing and to request a hearing.

(5) Fifteen Community producers, nine importers in the Community unrelated to Chinese exporting producers, one Community user and 17 Chinese exporting producers submitted a questionnaire reply.

(6) Hearings were granted upon request to six interested parties: to the applicant, one Community producer and four importers.

C. PRODUCT CONCERNED

(7) The product concerned, as defined in Article 1 of the definitive measures Regulation, is castings of non-malleable cast iron of a kind used to cover and/or give access to ground or sub-surface systems, and parts thereof, whether or not machined, coated or painted or fitted with other materials, excluding fire hydrants, originating in the PRC and falling within CN codes 7325 10 50, 7325 10 92 and ex 7325 10 99 (Taric code 7325 10 99 10).

(8) In the product definition part of the same Regulation, notably in recital 18, it is mentioned that castings are made of grey or ductile iron and that despite certain differences described in recitals 20 to 21, it is concluded in recitals 22 and 29 that all types of castings have the same basic physical, chemical and technical characteristics, they are basically used for the same purposes and can be regarded as different types of the same product.

(9) According to several parties, the term used in Article 1 of the definitive measures Regulation to describe the product subject to the measures (castings of non-malleable cast iron) does not cover castings made of ductile iron. Some parties made reference to another CN subheading concerning tube or pipe fittings of malleable cast iron (CN code 7307 19 10) where the relevant explanatory note of the Combined Nomenclature states that spheroidal cast iron (ductile iron) is malleable. It was therefore claimed that castings made of ductile iron would not be covered by the Regulation, even if in the descriptive part of that Regulation it is stated that all types of castings can be regarded as different types of the same product.

D. FINDINGS OF THE INVESTIGATION

1. Preliminary comments

(10) Several interested parties claimed that a product scope review would not be the appropriate investigation to tackle the above issue, but that the Commission would

have to initiate either a new anti-dumping investigation pursuant to Article 5 of the basic Regulation or an anti-circumvention review pursuant to Article 13 of the basic Regulation.

(11) Given that the purpose of the investigation is primarily to examine the scope of the original investigation and to adapt, if necessary, the operative part accordingly, a review of the product scope based on Article 11(3) of the basic Regulation is in this particular case the appropriate procedure. A new investigation pursuant to Article 5 of the basic Regulation and an anti-circumvention investigation pursuant to Article 13 of the basic Regulation each address different circumstances. The former may, inter alia, be used to launch an investigation into a product which was not investigated in the original investigation (for example by using a different product definition or originating in countries not subject to measures). The latter may be used as the basis for an investigation of whether there is circumvention with regard to a product subject to measures. These two types of investigation are therefore not appropriate in the present circumstances.

(12) The initiation of this review was therefore warranted to ensure the proper application of the anti-dumping measures.

2. **Analysis of the original investigation**

(13) In a first step, the original investigation was analysed in order to determine if that investigation had fully covered not only castings made of grey iron, but also those made of ductile cast iron.

(14) It is firstly noted that in the Notice of initiation of the original investigation[(7)], the product is described as ‘certain articles of non-malleable cast iron of a kind used to cover and/or to give access to ground or sub-surface systems, (…) originating in the People’s Republic of China (…), normally declared within CN codes 7325 10 50, 7325 10 92 and 7325 10 99’.

(15) The words ‘normally declared under’ clarify that the CN codes mentioned in the Notice of initiation were — as they usually are — given ‘for information only’. Thus, interested parties could not assume that only products covered by those CN codes would form part of the investigation. Complementary to the information on the product scope given in the Notice of initiation, the information in the non-confidential version of the original complaint that was accessible to all interested parties of the proceeding and that was sent to all exporting producers, importers and users listed in the complaint contained further information.

(16) In the non-confidential version of the complaint, the definition of the product concerned is exactly the one published in the Notice of initiation. Further explanations of that general description follow in points 3.2-3.7 of the complaint. It follows from various elements in those points that the complaint covered products made of both grey and ductile cast iron. For instance, in point 3.5, it is mentioned that ‘the product is made of non-malleable cast iron, which can be grey or ductile cast iron’. Furthermore, the

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production process of castings made of both grey and ductile cast iron is described in point 3.4 of the non-confidential version of the complaint.

(17) Moreover, there was no indication that the Notice of initiation was intended to be more limited than the scope of the complaint.

(18) Furthermore, during the original investigation, dumping and injury data was collected concerning castings made from both grey and ductile cast iron. In particular, in the questionnaires that were sent to known interested parties and to those interested parties who made themselves known and requested a questionnaire, both types were included in the description of the product types which had to be reported in the product classification (product control numbers). Therefore, it was clear to all cooperating parties that received a questionnaire that castings made of grey and of ductile cast iron were covered by the investigation. Moreover, the fact that the product classification contained both types ensured that all findings concerning dumping, injury, causality and Community interest of the original investigation related to castings made of grey and ductile cast iron.

(19) In addition, the final disclosure text sent to all interested parties and the definitive measures Regulation mentioned at several points that castings can either be made of grey or of ductile cast iron (see in particular recitals 18, 20 and 21). The differences between both types of castings were examined and explained (see aforementioned recitals). Finally, the conclusion drawn in the definitive measures Regulation as stipulated in recital 22 is that the investigation had shown that despite the differences in terms of grey or ductile cast iron, all types of castings share the same basic physical, chemical and technical characteristics, that they are basically used for the same purposes and that they can be regarded as different types of the same product.

(20) In the light of the foregoing, it can be concluded that the original investigation covered both castings made of grey and of ductile cast iron. Even assuming that this was not fully clear from the Notice of initiation alone, interested parties had several possibilities to learn that the investigation covered castings made of grey and ductile cast iron, as it was mentioned in the non-confidential version of the complaint, the questionnaires and as it was disclosed at definitive stage to interested parties.

(21) After disclosure of the final findings of this review, one interested party claimed that the Notice of initiation of the original investigation had to clearly indicate the product scope. Given that this Notice of initiation only mentioned castings made of non-malleable cast iron, an importer of castings made of malleable cast iron could be reassured that its products were not covered by the investigation and had no need to consult the non-confidential version of the complaint.

(22) In view of the wording of the original Notice of initiation it cannot be argued that castings made of ductile cast iron were explicitly or implicitly excluded from the definition of the product concerned. As a starting point it must be noted that in the original Notice of initiation, first paragraph, it was said that the Commission received ‘a complaint (…), alleging that imports of certain castings, originating in the People’s Republic of China (…), are being dumped and are thereby causing material injury to the

Community industry'. Secondly, section two (product) mentioned that castings made of non-malleable cast iron of a kind used to cover and/or to give access to ground or sub-surface systems would be covered, but without further specifying what could be understood as 'non-malleable'. It is recalled in this context that the CN codes mentioned in the Notice of initiation were explicitly 'only given for information' and thus can not be argued to have limited the product scope of the original investigation. Thus, the Notice of initiation already contained elements indicating to the importer or exporting producer of castings made of ductile iron of a kind to cover or give access to ground or sub-surface systems that ductile castings could be covered by the investigation. In view of the above, this argument is rejected.

(23) In any case, even assuming that this was not the case, the review Notice of initiation was clear on that matter. It noted in section 3 (ground for the review) that whereas the descriptive part of the definitive measures Regulation also covered castings made of ductile cast iron, on this point the scope of the operative part of that Regulation might have to be clarified. It explicitly invited all operators to make their views known, and to submit any evidence supporting those views. However, the importer concerned has not submitted any evidence that one or more of his supplier(s) which are subject to the duty had not understood that the original investigation also covered castings of ductile iron. In this context, it should also be noted that the review Notice of initiation underlined in section 9 that any party wishing to do so could claim another review on the basis of Article 11(3) of the basic Regulation. However, no exporter whose products are subject to the duty has claimed that it did not understood, during the original investigation, that also castings of ductile iron were covered, and that, therefore, now, an additional review should be launched to recalculate the duty applicable to his products, including those of ductile iron.

(24) In view of the above, the argument made by the interested party is rejected.

3. **Comparison between ductile iron castings and grey iron castings**

(25) In order to clarify whether the findings with regard to castings made of grey and ductile cast iron as set out in the definitive measures Regulation were indeed correct, it was examined whether ductile iron castings and grey iron castings were rightly considered to share the same physical, chemical and technical characteristics and end uses, as indicated in the definitive measures Regulation.

(a) *Physical, chemical, technical characteristics and interchangeability*

(26) In terms of *physical characteristics*, the final form of the casting is influenced by the purpose and installation conditions of the product but in any case the product has to conform to the standards in force, as laid down in, inter alia, EN 1561, EN 1563, EN 124 and EN 1433.

(27) Concerning the *chemical characteristics* of castings, both grey and ductile cast iron are alloys of iron and carbon. While there are slight differences in the structure of the raw material and also the materials added during the production process (e.g. magnesium) the final products do not show a significant difference in this respect.