Council Regulation (EC) No 383/2009 of 5 May 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pre- and post-stressing wires and wire strands of non-alloy steel (PSC wires and strands) originating in the People's Republic of China

COUNCIL REGULATION (EC) No 383/2009

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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:

1. **PROCEDURE**

1.1. **Provisional measures**

(1) The Commission, by Regulation (EC) No 1129/2008[(2)] of 14 November 2008 (the 'provisional Regulation') imposed a provisional anti-dumping duty on imports of certain pre- and post-stressing wires and wire strands of non-alloy steel ('PSC wires and strands') originating in the People's Republic of China ('PRC').

(2) It is noted that the proceeding was initiated following a complaint lodged by Eurostress Information Service (ESIS) on behalf of producers representing a major proportion of the total Community production of PSC wires and strands in this case more than 57 %.

(3) As set out in recital 13 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 January 2007 to 31 December 2007 ('investigation period' or 'IP'). The examination of the trends for the assessment of injury covered the period from 1 January 2004 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

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('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.

(5) The Commission continued its investigation with regard to Community interest aspects and carried out analyses of data contained in the questionnaire replies provided by some users in the Community after the imposition of the provisional anti-dumping measures.

(6) Four additional verification visits were carried out at the premises of the following user companies:

— Hormipresa SL, Santa Coloma de Queralt, Spain,

— Grupo Pacadar SA, Madrid, Spain,

— Strongforce Engineering plc, Dartford, United Kingdom,

— Hanson Building Products Limited, Somercotes, United Kingdom.

(7) 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 PSC wires and strands originating in 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.

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

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(9) One interested party has claimed that a specific type of strand with 19 wires should be excluded from the scope of the proceeding on the grounds that this product type was used for very specific applications, could not be used in concrete reinforcement or suspension elements or for stay-cable bridges, which are the main applications of the product concerned, and it was not produced in the Community. The Community industry was consulted and confirmed that the product described, i.e. strand of 19 wires but also strands of more than 19 wires, was not the product concerned. The claim has therefore been accepted and strands with 19 wires or more will be excluded from the product scope.

(10) In the absence of any other comments concerning the product concerned and the like product, recitals 14 to 20 of the provisional Regulation are hereby confirmed.

3. DUMPING

3.1. Market economy treatment (MET)

(11) One Chinese exporting producer contested the provisional findings with regard to the determination of MET and claimed that criteria 1 to 3 set out in Article 2(7)(c) of the basic Regulation were met.

(12) As regards criterion 1 of Article 2(7)(c) of the basic Regulation, the investigation with regard to MET determined that the electricity costs incurred by the exporting producer concerned and which constitute an important part in the total cost of manufacturing were unreliable. It has been found that electricity costs were invoiced via a third company in liquidation (instead of directly by the supplier of the electricity). It was explained that the company in liquidation which was originally the owner of the production facilities where the product concerned was produced but which was meanwhile in liquidation was still considered as the owner of part of the facilities. The electricity company would therefore still invoice all electricity consumption to the company in liquidation which in turn would invoice these costs to the exporting producer concerned.

(13) However, it was verified that the exporting producer purchased the production facilities during the IP in 2007 and was at least during part of the IP the legal owner of the production facilities. Furthermore, the amounts reported could not be reconciled with the exporting producer's accounts. Finally, subsequent to provisional disclosure, the company did not submit any information or evidence which would have shown the reliability of the electricity costs and which could thus have reversed the provisional findings in this respect.

(14) The same exporting producer reiterated that the limited duration of its business licence would not indicate significant State interference within the meaning of criterion 1 of Article 2(7)(c) of the basic Regulation as determined by the investigation on MET. In this regard it is noted that the limited duration of the business licence was found to be an obstacle for long-term business decisions and planning. In particular, it was found that companies in similar situations usually benefited from a significantly longer duration of business licences. However, subsequent to the provisional disclosure, it could be clarified that the timely extension of the business license of the exporting producer was a simple formality which could not be considered as an obstacle for long-term business decisions and planning anymore.

(15) On the above basis, it was concluded that in this particular case the duration of the business licence could not indeed be qualified as significant State interference within the meaning of criterion 1 of Article 2(7)(c) of the basic Regulation and the exporting producer's arguments were accepted. The provisional findings were revised accordingly.

(16) The exporting producer concerned also contested the findings that it did not fulfil the conditions set out in criterion 2 of Article 2(7)(c) of the basic Regulation, i.e. that it had one clear set of basic accounting records audited in line with international accounting standards. It is noted that the investigation concerning MET revealed that significant amounts of a recurring loan were booked under a wrong position. Although the exporting producer claimed that this finding would not correspond to the real facts

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it did not submit any convincing explanation or any valid evidence in support of its claim. This claim had therefore to be rejected.

(17) Finally, the same exporting producer claimed that there were no significant distortions carried over from the non-market economy system as set out in criterion 3 of Article 2(7)(c) of the basic Regulation. In particular, the exporting producer contested the finding that it could borrow money at an interest rate which was significantly below the market rate. However, the exporting producer did not provide any new information or evidence which could revise the provisional findings in this respect and this claim had therefore to be rejected.

(18) On the basis of the above, and despite the findings as described in recital 14, the findings on MET with regard to this exporting producer as set out in the provisional Regulation in recital 35 are hereby confirmed.

(19) In the absence of any other comments with regard to the determination of MET, the provisional findings as set out in recitals 25 to 36 of the provisional Regulation are hereby confirmed.

3.2. **Individual treatment (IT)**

(20) The exporting producer to which IT was not granted claimed that its decision-making was sufficiently independent from State interference within the meaning of Article 9(5)(c) of the basic Regulation.

(21) In support of this claim, the exporting producer was able to clarify the composition of the company's board of directors and the voting rights of its shareholders. Thus, the exporting producer could show that it was sufficiently independent from potential State interference in its price setting within the meaning of Article 9(5)(c) of the basic Regulation. In addition, the exporting producer, as mentioned in recital 14, could also demonstrate that the duration of its business licence cannot be qualified as significant State interference. As a consequence, since this exporting producer met the requirements for IT as set out in Article 9(5) of the basic Regulation an individual definitive duty should be calculated applicable to products produced and exported by it.

(22) As regards two of the exporting producers to whom IT was granted, new information available after the imposition of the provisional measures showed that key personnel of these companies were members of State bodies within the meaning of Article 9(5)(c) of the basic Regulation. Both companies omitted this information in their claim for MET/IT.

(23) It was considered that the omission of such information was misleading within the meaning of Article 18(1) of the basic Regulation and the information provided in their respective claims for MET/IT should be disregarded. The companies concerned were given the opportunity to provide further explanations in accordance with Article 18(4) of the basic Regulation. However, none of the companies concerned provided satisfactory explanations. On this basis IT was denied to the above companies.

(24) As regards the third company to which IT was granted, the Community industry questioned whether it was in fact a wholly foreign owned company and whether it therefore fulfilled the criterion set out in Article 9(5)(c) of the basic Regulation. However, all relevant payments and bank transfers when acquiring the company could be verified and reconciled during the investigation demonstrating that the company was a wholly foreign owned company. This claim had therefore to be rejected.

4. NORMAL VALUE

4.1. Analogue country

(25) Certain interested parties claimed that the choice of the analogue country was inappropriate. It was claimed, in particular, that due to the fact that only one producer of PSC wires and strands existed in the Turkish market, the level of competition in Turkey would be insufficient to base normal value on data concerning that producer.

(26) These parties, however, did not submit any new evidence in this regard but only reiterated the claims made prior to the imposition of the provisional measures. As outlined in recital 44 of the provisional Regulation, even though there was only one producer in Turkey, imports into Turkey were substantial, i.e. they accounted for more than 50 % of the total market. On this basis, and considering that none of the producers of other potential analogue countries cooperated in the present investigation, it is confirmed that Turkey constitutes an appropriate analogue country within the meaning of Article 2(7)(a) of the basic Regulation.

(27) In the absence of any other comments with regard to the analogue country, the provisional conclusions as outlined in recitals 40 to 45 of the provisional Regulation are hereby confirmed.

4.2. Method for calculating the normal value

(28) One exporting producer claimed that the normal value used was not appropriate since for most product types, as indicated in recitals 48 and 49 of the provisional Regulation, normal value was constructed on the basis of the costs of manufacturing of the Turkish producer. This exporting producer argued that normal value, for those product types exported by the Chinese exporters, should have been based on the cost of production of the Chinese exporters themselves.

(29) It is noted that the basic Regulation in Article 2(7)(a) expressly foresees that normal value shall be determined on the basis of the price or constructed value of a market economy country. Therefore, the fact that normal value was determined on the basis of constructed values does not allow the conclusion that the values used were inappropriate. It is noted that since MET was not granted to the exporter in question its costs related to the exported models were considered unreliable. The purpose of the selection of an analogue country is to establish reliable costs and prices based on the information gathered in an appropriate analogue country. Since it has been determined that Turkey was an appropriate choice there were no grounds to consider that costs related to the product concerned were not reliable or inappropriate.