Council Regulation (EC) No 426/2008 of 14 May 2008 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 426/2008

of 14 May 2008

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

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'),

Having regard to Article 1(4) of Council Regulation (EC) No 1212/2005 of 25 July 2005 imposing a definitive anti-dumping duty on imports of certain castings originating in the People's Republic of China[(2)],

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, the Council imposed a definitive anti-dumping duty on imports into the Community of 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 People's Republic of China ('PRC') ('the product concerned'), normally declared within CN codes 7325 10 50, 7325 10 92 and ex 7325 10 99 (TARIC code 7325 10 99 10). Given the large number of cooperating parties, a sample of Chinese exporting producers was selected during the investigation which led to the imposition of the measures.

(2) The sampled companies were attributed the individual duty rates established during the investigation. The cooperating non-sampled companies which were granted market economy treatment ('MET'), in accordance with the provisions of Article 2(7)(c) of the basic Regulation, were attributed the 0 % dumping duty which was established for the sole sampled company which was granted MET. The cooperating non-sampled companies which were granted individual treatment ('IT'), in accordance with the provisions of Article 9(5) of the basic Regulation, received the weighted average duty of 28,6 % established for the sampled companies that were granted IT. A countrywide duty of 47,8 % was imposed on all other companies.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 426/2008. (See end of Document for details)*

(3) Article 1(4) of Regulation (EC) No 1212/2005 gives the possibility to Chinese exporting producers which meet the four criteria set out in that Article to be granted the same treatment as the one mentioned in recital (2) above for the cooperating companies not included in the sample ('New Exporting Producer Treatment' or 'NEPT').

B. NEW EXPORTING PRODUCERS' REQUESTS

(4) Nine companies have requested to be granted NEPT.

(5) An examination has been carried out to determine whether each of the applicants fulfils the criteria for being granted NEPT as set out in Article 1(4) of Regulation (EC) No 1212/2005, by verifying that:

1. it did not export to the Community the products described in recital (1) above during the investigation period (1 April 2003 to 31 March 2004);

2. it is not related to any of the exporters or producers in the People's Republic of China which are subject to the anti-dumping measures imposed by that Regulation;

3. it has actually exported to the Community the products concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Community;

4. it operates under market economy conditions defined in Article 2(7)(c) of the basic Regulation or alternatively that it fulfils the requirements to have an individual duty in accordance with Article 9(5) of the basic Regulation.

(6) Since the fourth criterion implies that the applicants submit a claim for MET or IT, the Commission sent MET and IT claim forms to all Chinese applicants. All Chinese applicant companies requested MET pursuant to Article 2(7) of the basic Regulation.

(7) Briefly, and for ease of reference only, the MET criteria are set out in summarised form below:

1. business decisions and costs are made in response to market signals and without significant State interference; and costs of major inputs substantially reflect market values;

2. firms have one clear set of basic accounting records which are independently audited in line with international accounting standards[3] and are applied for all purposes;

3. there are no significant distortions carried over from the former non-market economy system;

4. bankruptcy and property laws guarantee legal certainty and stability;

5. exchange-rate conversions are carried out at market rates.

(8) Questionnaires were sent to all applicants who were asked to supply evidence to demonstrate that they met the criteria mentioned above.

(9) Exporting producers fulfilling these criteria may be granted the duty rate applicable to the cooperating companies not included in the sample, pursuant to Article 1(4) of Regulation (EC) No 1212/2005.

C. FINDINGS

Companies which have submitted incomplete replies

(10) One Chinese company requesting NEPT did not submit any reply to the questionnaire and one company did not submit any reply to a deficiency letter of their questionnaire reply. It was therefore not possible to verify whether these companies fulfilled the criteria set out in Article 1(4) of Regulation (EC) No 1212/2005 and their request had to be rejected. These companies were informed that their application would not be considered any further and were given the opportunity to comment. No comments were received.

Companies which have submitted a complete reply

(11) Seven companies submitted complete replies to the questionnaires. The Commission sought and verified all information it deemed necessary for the purpose of the determination of the fourth criterion (MET/IT) set out in Article 1(4) of Regulation (EC) No 1212/2005. Verification visits were carried out at the premises of the seven following companies:

— Wuxi Norlong Foundry Co. Ltd (Wuxi New District, Jiangsu) (‘Norlong’),

— Baoding City Maikesaier Casting Ltd (Xinanli, Hebei) (‘Maikesaier’),

— XianXian Guozhuang Precision Casting Co. Ltd (Guozhuang, Hebei) (‘XianXian’),

— Changsha Wuxing Foundry Co. Ltd (Wangcheng County, Changsha) (‘Wuxing’) and related company Changsha J & J Sunshine Machinery and Electronic Co. Ltd (189 Wuyi Road, Changsha) (‘Sunshine’),

— Baoding Yuehai Machine Manufacturing Co. Ltd (Baoding, Hebei) (‘Yuehai’),

— HanDan County Yan Yuan Smelting and Casting Co. Ltd (Han Dan County, Hebei) (‘Yan Yuan’),

— Tianjin Loiselet Art Casting Co. Ltd (Jinghai, Tianjin) (‘Loiselet’).

(12) For each of the seven companies visited, it was verified whether the four criteria mentioned at recital (5) above were met.

(13) For two Chinese exporting producers, Maikesaier and Yuehai, the examination of the information submitted showed that they had provided sufficient evidence to prove that they meet the four criteria set out in Article 1(4) of Regulation (EC) No 1212/2005 and, concerning the last criterion, that they meet the five conditions for MET. Therefore, these two producers can be granted the weighted average duty rate for companies granted MET applicable to the cooperating companies not included in

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 426/2008. (See end of Document for details)*

the sample (i.e. 0 %) in accordance with Article 1(4) of Regulation (EC) No 1212/2005 and be added to the list of exporting producers of Article 1(2) of that Regulation.

(14) Four Chinese exporting producers, Norlong, XianXian, Yan Yuan and Loiselet provided sufficient evidence to prove that they meet the four criteria set out in Article 1(4) of Regulation (EC) No 1212/2005. However, concerning the last criterion, they could not show that they meet the conditions to be granted MET.

(15) For Norlong it was found that it had received a substantial public land-use right refund. Criterion 3 for MET was therefore not considered to be fulfilled. It was also concluded that in the light of the fact that criterion 3 could not be met, a final determination concerning criterion 1 could not be made. However, no evidence was found that this company did not fulfil the five criteria for IT.

(16) For XianXian it was found that it could not fulfil criteria 1, 2 and 3 for MET. The company did not submit sufficient evidence to show that it operated under market economy conditions and that its costs reflected market values. Furthermore, the company was found not to have one clear set of accounting standards audited in line with international accounting standards. Finally, it was found that the company had obtained land rent contracts at abnormally low prices in both absolute and relative figures.

(17) It was found that Yan Yuan did not meet criterion 2 for MET. The 2006 accounts of this company had not been audited, contrary to Chinese law and international accounting standards, and other accounting irregularities were also discovered, notably the fact that raw materials were purchased from private individuals, without invoicing.

(18) For Loiselet it was found that criteria 2 and 3 for MET were not met. In particular, it was established that most of the company's main assets did not appear in the accounts of the company. It also appeared that rental agreement for the land and buildings of the plant was not respected.

(19) In view of the conclusions reached on the accounting practices of XianXian, Yan Yuan and Loiselet, it cannot be concluded that their export prices are reliable enough to be used for an individual dumping margin calculation and therefore it cannot be concluded whether they fulfil the second criterion for IT. All other four criteria for IT are met. However, considering the fact, that their export prices would not be used to calculate the dumping margin, if these three companies fell under the weighted average duty rate of 28,6 % calculated for the sampled companies granted IT in the original investigation, it is concluded that, in the context of this examination, these companies can be granted the same treatment as those falling under the weighted average duty rate.

(20) Therefore, Norlong, XianXian, Yan Yuan and Loiselet can be granted the weighted average duty rate for companies granted IT applicable to the cooperating companies not included in the sample (i.e. 28,6 %) in accordance with Article 1(4) of Regulation (EC) No 1212/2005 and be added to the list of exporting producers of Article 1(2) of that Regulation.