Council Regulation (EC) No 261/2008 of 17 March 2008 imposing a definitive anti-dumping duty on imports of certain compressors originating in the People's Republic of China

COUNCIL REGULATION (EC) No 261/2008

of 17 March 2008

imposing a definitive anti-dumping duty on imports of certain compressors 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), and in particular Article 9 thereof,

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

Whereas:

A. PROCEDURE

1. Initiation

(1) On 20 November 2006, the Commission received a complaint concerning imports of certain compressors originating in the People's Republic of China (PRC) lodged pursuant to Article 5 of the basic Regulation by Federazione ANIMA/COMPO (the complainant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of certain compressors.

(2) The complaint contained evidence of dumping and of material injury which was considered sufficient to justify the opening of a proceeding.

(3) On 21 December 2006, the proceeding was initiated by the publication of a notice of initiation in the *Official Journal of the European Union*[(2)].

2. Provisional measures

(4) Given the need to further examine certain aspects of the investigation, it was decided to continue the investigation without the imposition of provisional measures.

3. Parties concerned by the proceeding

(5) The Commission officially advised the exporting producers in the PRC, importers, traders, users and associations known to be concerned, the representatives of the PRC, the complainant Community producers and other Community producers known to be concerned of the initiation of the proceeding. Interested parties were given

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 261/2008. (See end of Document for details)*

the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

(6) In order to allow exporting producers to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the Chinese exporting producers known to be concerned and to the representatives of the PRC. Fourteen exporting producers, including groups of related companies, requested MET pursuant to Article 2(7) of the basic Regulation, or IT should the investigation establish that they do not meet the conditions for MET. One exporting producer requested only IT.

(7) In view of the apparent high number of exporting producers in the PRC, importers and producers in the Community, in the notice of initiation, the Commission indicated that sampling might be applied for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation.

(8) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in the PRC, Community importers and Community producers were asked to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the investigation period (1 October 2005 to 30 September 2006).

(9) As far as the exporting producers are concerned, in accordance with Article 17 of the basic Regulation, a sample was selected based on the largest representative volume of exports of certain compressors in the Community, which could reasonably be investigated within the time available. On the basis of the information received from the exporting producers, the Commission selected the six companies, or groups of related companies (the sampled companies) having the largest volume of exports to the Community. In terms of export volume the six sampled companies represented 93 % of the total exports of certain compressors from the PRC to the Community during the investigation period. In accordance with Article 17(2) of the basic Regulation, the parties concerned were consulted and raised no objection.

(10) With regard to the Community producers, given that only three groups of companies cooperated in the investigation, it was decided that sampling was not necessary.

(11) With regard to importers, given that only one importer cooperated in the investigation, it was decided that sampling was not necessary.

(12) Questionnaires were sent to all companies selected for sampling and to all other parties known to be concerned. Full replies were received from six exporting producers in the PRC, three producers in the Community and one importer. One producer in the Community replied only to the sampling questionnaire. No questionnaire replies were received from other interested parties.

***Changes to legislation:** There are currently no known outstanding effects for the Council Regulation (EC) No 261/2008. (See end of Document for details)*

(13) The Commission sought and verified all the information deemed necessary for a determination of dumping, resulting injury and Community interest and carried out verifications at the premises of the following companies:

(a) *Producers in the Community*

— ABAC Aria Compressa SpA of the ABAC Group, Torino Italy,

— FIAC SpA of the FIAC Group, Bologna, Italy,

— FINI SpA, Zola Predosa (BO), Italy,

(b) *Exporting producers in the PRC*

— Nu Air (Shanghai) Compressor and Tools Co. Ltd of the ABAC Group, Shanghai (Nu Air),

— Zhejiang Xinlei Mechanical & Electrical Co. Ltd, Wenling (Xinlei),

— Hongyou/Taizhou Group: 1. Zhejiang Hongyou Air Compressor Manufacturing Co. Ltd, Wenling (Hongyou); 2. Taizhou Hutou Air Compressors Manufacturing Co. Ltd, Wenling (Taizhou),

— Wealth Group: 1. Shanghai Wealth Machinery & Appliance Co. Ltd, Shanghai (Shanghai Wealth); 2. Wealth (Nantong) Machinery Co., Ltd, Nantong (Wealth Nantong),

— Zhejiang Anlu Cleaning Machinery Co., Ltd, Taizhou (Anlu),

— FIAC Air Compressors (Jiangmen) Co. Ltd of the FIAC Group Jiangmen (FIAC),

(c) *Related companies in the PRC*

— Wealth Shanghai Import-Export Co. Ltd, Shanghai (Wealth Import Export),

— FIAC Air Compressors (Hong Kong) Ltd of the FIAC Group (FIAC Hong Kong),

(d) *Unrelated importer in the Community*

— Hans Einhell AG, Landau, Germany.

(14) In view of the need to establish a normal value for exporting producers to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country, Brazil in this case, took place at the premises of the following companies:

(e) *Producers in Brazil*

— FIAC Compressores de ar do Brasil Ltda of the FIAC Group, Araquara,

— Schulz S/A, Joinville, Santa Catarina, Brasil.

4. Investigation period

(15) The investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (investigation period or IP). The examination of the trends

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 261/2008. (See end of Document for details)*

relevant for the assessment of injury covered the period from 1 January 2003 to the end of the investigation period (period considered).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(16) The product concerned is reciprocating compressors, giving a flow not exceeding 2 cubic metres (m^3) per minute, originating in the PRC (compressors or the product concerned), normally declared within CN codes ex 8414 40 10, ex 8414 80 22, ex 8414 80 28 and ex 8414 80 51.

(17) A compressor is typically made up of a pump, driven by an electric motor either directly or through a belt mechanism. In most cases the pressurised air is pumped into a tank and exits through a pressure regulator and a rubber hose. Compressors, in particular the larger ones, can have wheels to make them mobile. They can be sold alone or with accessories for spraying, cleaning, or inflating tyres and other objects.

(18) The notice of initiation of this proceeding also referred to reciprocating compressor pumps. The investigation showed that the reciprocating compressor pumps are one (but not the only) of the essential components of the compressors under investigation (they account for — depending on the model — between 25 % and 35 % of the total cost of the final product) and that they can also be sold separately as well as assembled on other compressors not falling within the scope of this investigation. The investigation also showed that they do not have the same technical and physical characteristics of the complete compressors and are not used for the same purposes. The complete compressor also contains other key components (e.g. the tank, the motor). Channels of distribution and customer perception of a pump on one hand and a complete compressor on the other hand also differ. Therefore, it is concluded that in this case reciprocating compressor pumps should not be considered as the product concerned.

(19) The product concerned is used for driving air-powered tools or for spraying, cleaning, or inflating tyres and other objects. The investigation has shown that, despite differences in shapes, materials and production process, the different types of the product concerned all share the same basic physical and technical characteristics and are basically used for the same purposes. They are therefore considered to constitute a single product for the purpose of this proceeding.

2. Like product

(20) The investigation showed that the basic physical and technical characteristics of the compressors produced and sold by the Community industry in the Community, compressors produced and sold on the domestic market in the PRC and on the domestic market in Brazil, which served as an analogue country, and compressors produced in the PRC and sold to the Community have essentially the same basic physical and technical characteristics and the same basic use.

(21) All these compressors are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

***Changes to legislation:** There are currently no known outstanding effects for the Council Regulation (EC) No 261/2008. (See end of Document for details)*

C. DUMPING

1. General

(22) Fourteen companies or groups of companies made themselves known representing 100 % of total exports of the product concerned to the EC. The level of cooperation was therefore high. Thirteen companies or groups of companies requested MET while one company requested only IT. As mentioned at recital 9, six companies were selected in the sample on the basis of their export volume.

2. Market Economy Treatment (MET)

(23) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with points 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation.

(24) 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; 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 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.

(25) Five companies or groups of companies of Chinese exporting producers included in the sample initially requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadlines. All of these groups included both producers of the product concerned and companies related to the producers and involved in the sales of the product concerned. Indeed, it is the Commissions consistent practice to examine whether a group of related companies as a whole fulfils the conditions for MET. The following groups had requested MET:

— Nu Air,

— Xinlei,

— Hongyou/Taizhou,

— Shanghai Wealth/Wealth Nantong,

— FIAC.