Council Regulation (EC) No 161/2006 of 23 January 2006 amending Regulation (EC) No 950/2001 imposing a definitive anti-dumping duty on imports of certain aluminium foil originating, inter alia, in Russia

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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. PROCEDURE

1. Measures in force

(1) Following an investigation (the original investigation), the Council, by Regulation (EC) No 950/2001[(2)], imposed a definitive anti-dumping duty of 14,9 % on imports of certain aluminium foil (AHF) originating in Russia. Following the acceptance of an undertaking from the Russian exporting producer 'United Company Siberian Aluminium', joint stock company, which has since changed its name[(3)] to Open Joint Stock Company Rusal Sayanal (Sayanal), imports from this exporter were exempted from the anti-dumping duty by Commission Decision 2001/381/EC[(4)].

2. Request for an interim review

(2) A request for a partial interim review of Regulation (EC) No 950/2001 was received from Sayanal, an exporting producer of AHF subject to a price undertaking and part of the Russian Aluminium group of companies (Rusal).

(3) In its request pursuant to Article 11(3) of the basic Regulation, Sayanal claimed that the circumstances with regard to dumping, on the basis of which the measures in force were established, had changed and that these changes were of a lasting nature. Sayanal further alleged and provided *prima facie* evidence to show that a comparison of normal value based on its own costs or domestic prices and export prices to the Community would lead to a reduction of dumping significantly below the level of the current measures (14,9 %). Therefore it claimed that the continued imposition of

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 161/2006. (See end of Document for details)*

measures at the existing levels, which were based on the level of dumping previously established, was no longer necessary to offset dumping.

3. Initiation

(4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review, the Commission, by a notice published in the *Official Journal of the European Union*[(5)], initiated a partial interim review limited in scope to the examination of dumping in accordance with Article 11(3) of the basic Regulation and commenced its investigation.

(5) The Commission officially advised the applicant, as well as the representatives of the exporting country, of the initiation of the interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing.

(6) The Commission also sent a questionnaire to the applicant and received a reply within the deadline. The Commission sought and verified all the information it deemed necessary for the determination of dumping and carried out verification visits at the premises of the following companies:

— Sayanal, Sayanogorsk, Russia, and its related companies within the Rusal group:
— SAZ, Sayanogorsk, Russia (aluminium smelter),
— Rusal Sayanskaya Folga, Dmitrov, Russia (processor of small rolls),
— Trading House Russian Foil, Moscow, Russia,
— Trading House Safoil, Moscow, Russia,
— Rual Trade (BVI) Limited, Moscow, Russia,
— Sibirsky Aluminium GmbH, Düsseldorf, Germany.

4. Review investigation period

(7) The investigation of dumping covered the period from 1 October 2003 to 30 September 2004 (the investigation period or IP).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(8) The product concerned by the current review is the same as that defined in the original investigation, i.e. certain aluminium foil of a thickness of not less than 0,009 mm and not more than 0,018 mm, not backed, not further worked than rolled, in reels of a width not exceeding 650 mm originating in Russia, currently classifiable under CN code 7607 11 10.

2. Like product

(9) Unlike in the previous investigation, Sayanal and its related companies sold AHF also on the Russian domestic market. Whereas the product concerned sold to the EC is in the form of ‘jumbo reels’, sales on the Russian domestic market were in

the form of 'small rolls'. Small rolls are processed from jumbo reels, by cutting them to smaller lengths and packaging them for sale to end-users. However, it was found that AHF in jumbo reels and small rolls both shared the same physical and chemical characteristics and uses.

(10) Consequently, both AHF produced and sold on the Russian domestic market and that exported to the Community have the same basic physical and chemical characteristics and uses and are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. RESULTS OF THE INVESTIGATION

1. Normal value

(11) Sales on the domestic market are made by Sayanal via Trading House Russian Foil (THRF) to Rusal Sayanskaya Folga (RSF), which processes the jumbo reels into small rolls and then sells them to independent customers within Russia.

(12) There are no sales of jumbo reels to independent customers in Russia, and no representative sales of small rolls to independent customers in the Community. As such, no proper comparison on a model-to-model basis could be made. Therefore normal value was constructed according to Article 2(3) of the basic Regulation on the basis of the company's cost of production plus a reasonable amount for selling, general and administrative costs (SG&A) and for profits.

(13) Article 2(5) of the basic Regulation provides for the cost of manufacturing to be adjusted where 'costs associated with the production and sale of the product under investigation are not reasonably reflected in the records of the party concerned'.

(14) The investigation established that the related smelting company was charged a very low price for its electricity, which is generated at the Sayano-Shushenskoe Hydro-Electricity Plant, compared to prices charged in third countries with comparable hydro-electricity plants. The prices are set by the Regional Energy Commission. These prices were considered abnormally low and not reflecting the normal costs. Therefore they were adjusted on the basis of the 2004 price of electricity for energy-intensive manufacturing in another representative market, i.e. Norway, which was found to be EUR 14/MWh.

(15) As regards the SG&A, they were determined on the basis of the company's own data pursuant to the chapeau of Article 2(6) of the basic Regulation. However, an adjustment was necessary in order to reflect the fact that, as pointed out in recital 12, the company does not sell the same type of AHF rolls on the EC and Russian markets and that, in addition, these types are sold at a different level of trade.

(16) For the same reason, the profit on domestic sales had to be adjusted as well. In order to make such adjustment, and given the existence of intra-group transfer prices, it was considered appropriate to determine the profit on the basis of the profit margin (32,1 %) found for the audited consolidated accounts of the Rusal Group, expressed as a percentage of total costs.

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2. Export price

(17) Sales to the EU are made through a series of sales companies within the Rusal group: THRF, Trading House Safoil (Safoil), Rual Trade (BVI) Limited (Rual) and Sibirsky Aluminium GmbH (SAG).

(18) Where sales were made via a related importer in the Community, the export price was constructed on the basis of the resale prices to independent customers. Adjustments were made for all costs incurred between importation and resale by that importer, including SG&A expenses, and a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation. The latter was based on the profit margin found for an unrelated importer in the previous investigation.

(19) For sales made through a related company outside the Community, the export price was established on the basis of the resale price paid by the first independent buyer in the Community.

3. Comparison

(20) The comparison of the export price with the constructed normal value was made on an ex-factory basis and at the same level of trade. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were demonstrated to affect prices and price comparability. On this basis, allowances for differences in transport costs, handling costs, insurance and duty payments were made, where applicable, and justified. Adjustments were also made where the export sales were made via a related company located in a country other than the country concerned or the Community, pursuant to Article 2(10)(i) of the basic Regulation.

4. Dumping margin

(21) As provided for under Article 2(11) of the basic Regulation, the weighted average constructed normal value by type was compared with the weighted average net ex-works export price of the corresponding type of the product concerned.

(22) The comparison as described above did not show the existence of any dumping.

D. LASTING NATURE OF CHANGED CIRCUMSTANCES

(23) In accordance with Article 11(3) of the basic Regulation it was also examined whether the changed circumstances could reasonably be said to be of a lasting nature.

(24) In this respect, it was considered first of all that Sayanal has complied with its price undertaking through its subsidiary sales company in the Community, Sibirsky Aluminium GmbH (SAG), since the imposition of measures. At the same time, Sayanal has retained a substantial share of the Community market, indicating that it is able to compete at non-dumped price levels.