Council Regulation (EC) No 990/2004 of 17 May 2004 amending Regulation (EC) No 151/2003 imposing a definitive anti-dumping duty on imports of certain grain oriented electrical sheets originating in Russia

COUNCIL REGULATION (EC) No 990/2004

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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. Previous investigations and measures in force

(1) The Commission, by Decision No 303/96/ECSC[(2)], imposed a definitive anti-dumping duty on imports of certain grain-oriented electrical sheets originating in Russia ('the original investigation'). The rate of the anti-dumping duty imposed was 40,1 %. An undertaking offered in connection with such imports was accepted by the same Commission Decision.

(2) Further to a request lodged by the European Confederation of Iron and Steel Industries (Eurofer) on behalf of the Community industry of grain oriented electrical sheets, the Commission initiated an expiry review in accordance with Article 11(2) of Commission Decision No 2277/96/ECSC[(3)] (the 'basic Decision'). At the same time, the Commission also initiated on its own initiative an investigation in accordance with Article 11(3) of the basic Decision in order to examine the appropriateness of the form of the measures[(4)].

(3) In view of the expiry of the Treaty establishing the European Coal and Steel Community on 23 July 2002, the Council, by Regulation (EC) No 963/2002[(5)], decided that anti-dumping proceedings initiated pursuant to the basic Decision and still in force were to be continued and be governed by the provisions of the basic Regulation with effect from 24 July 2002. Likewise, any anti-dumping measures resulting from pending anti-dumping investigations were to be governed by the provisions of the basic Regulation from 24 July 2002.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 990/2004. (See end of Document for details)*

(4) As a result of the expiry review mentioned in recital (2), the Council, in January 2003, by Regulation (EC) No 151/2003[6], confirmed the definitive anti-dumping duty imposed by Commission Decision No 303/96/ECSC. However, the interim review limited to the form of the measures remained open at the conclusion of the expiry review.

2. Grounds for the reviews

2.1. Interim reviews limited to dumping

(5) The Commission received two requests for a partial interim review pursuant to Article 11(3) of the basic Decision which, pursuant to Article 1(3) of Council Regulation (EC) No 963/2002 were treated according to Article 11(3) of the basic Regulation.

(6) The requests were lodged by OOO VIZ — STAL (VIZ STAL), and Novolipetsk Iron and Steel Corporation ('NLMK') (VIZ STAL and NLMK are hereinafter referred to as 'the applicants'), both exporting producers from Russia. Both requests were based on the grounds that the applicants fulfilled the requirements to be granted market economy status and that their dumping margins had decreased substantially. Accordingly, they alleged that the continued imposition of the measure at its current level was no longer necessary to offset dumping.

(7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission, by notice, initiated, in August 2002, an investigation pursuant to Article 11(3) of the basic Regulation, with respect to VIZ STAL[7] (and subsequently, in October 2002, an investigation pursuant to Article 11(3) of the basic Regulation with respect to NLMK[8]. Both reviews were limited to the examination of dumping.

(8) The Commission officially advised the applicants as well as the representatives of the exporting country of the initiation of the interim reviews, and gave all interested parties the opportunity to make their views known in writing and to request hearings within the time limits set out in the notices of initiation.

(9) The applicants made their views known in writing. All parties who so requested were granted the opportunity to be heard.

(10) The Commission sent a questionnaire to the applicants and to one related importer in the Community, to which they replied within the time limits set in the notices of initiation.

(11) Furthermore, the Commission sent a claim form for market economy status pursuant to Article 2(7) of the basic Regulation to both applicants.

(12) The Commission sought and verified all the information it deemed necessary for the determination of dumping. Verification visits were carried out at the premises of the following companies:

Exporting producers in Russia:

— VIZ STAL, Yekaterinburg

— NLMK, Lipetsk

Related importer (of VIZ STAL)

— Duferco Commerciale S.p.A., Genoa

The investigation of dumping covered the period of 1 July 2001 to 30 June 2002 ('investigation period' or 'IP').

2.2. Interim review limited to the form of the measures

(13) As mentioned above in recital (2), the Commission decided on its own initiative to initiate an interim review in order to examine the appropriateness of the form of the measures in force (the 'ex-officio review'). In this respect, it was considered that enforcement problems have been encountered in the monitoring of the undertaking, with consequences on the remedial effect of the measures. The initiation of this proceeding and part of the investigation concerning this review was carried out simultaneously to the expiry review which concluded with the imposition of the existing measures by Council Regulation (EC) No 151/2003. The Commission officially advised the Community industry, the importers, the suppliers and the users known to be concerned, as well as the representatives of the exporting country, of the initiation of both investigations and gave interested parties the opportunity to make their views known in writing and to request a hearing within the time limits set out in the notice of initiation.

(14) As mentioned in recital (6) of Regulation (EC) No 151/2003, during the course of the abovementioned investigations, the Commission received two requests from the exporting producers concerned, namely VIZ STAL and NLMK, for the initiation of the interim reviews limited to the aspects of dumping, as explained in recital (6) of this Regulation. Since in both reviews, the aspects of dumping had to be investigated, which could eventually affect the level of the measures subject to the ex-officio review, it was considered appropriate to conclude this review together with the interim reviews limited to dumping in order to be able to take into account the eventually changed economic circumstances of the exporting producers concerned.

2.3. Joint conclusions

(15) Due to the fact that the three reviews concerned the same anti-dumping measure, it was considered appropriate, for reasons of sound administration, to conclude them simultaneously.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(16) The product concerned is the same as in the original investigation, i.e. grain oriented cold-rolled sheets and strips of silicon-electrical steel with a width of more than 500 mm originating in Russia ('GOES' or 'the product concerned'), falling within CN codes 7225 11 00 and ex 7226 11 00 (new CN-code since 1.1.2004). This product is used for electromagnetic appliances and in installations such as power and distribution transformers.

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(17) In the rather complex manufacturing process of GOES, grain structures are oriented uniformly in the direction of the rolling of the sheet or of the strip in order to allow it to conduct a magnetic field with a high degree of efficiency. The product in question has to comply with specifications concerning the magnetic induction, the pile factor, as well as the highest admissible level of re-magnetisation losses. In general, both sides of the product are covered with a thin isolating coating.

2. Like product

(18) It was established that GOES produced and sold in Russia had the same basic physical and technical characteristics as GOES produced in Russia and exported to the Community. Therefore, they were considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. INTERIM REVIEWS LIMITED TO DUMPING

1. Preliminary remarks

(19) The Council, by Regulation (EC) No 1972/2002[9], recognised that it is appropriate to allow normal value for Russian exporters and producers to be established in accordance with the provisions of Article 2(1) to (6) of the basic Regulation and amended the basic Regulation accordingly. However, in accordance with Article 2 of Regulation (EC) 1972/2002, this amendment should only apply to investigations initiated after its entry into force, i.e. from 8 November 2002. Consequently, since both interim reviews requested by the applicants were initiated prior to this date, the said amendment is not applicable to the present investigations. In this regard, all further references to the basic Regulation are to the version in force prior to the abovementioned amendment.

(20) Pursuant to Article 2(7)(b) of the basic Regulation, normal value can be determined in accordance with paragraphs 1 to 6 of the said Article only if the applicants show that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. that market economy conditions prevail for them in respect of the manufacture and sale of the like product concerned.

2. Market economy status (‘MES’)

(21) Claim forms for market economy status were submitted within the deadline set out in the notices of initiation by both applicants.

(22) It was found that for both applicants the decisions regarding prices, costs and inputs were made in response to market signals without significant state interference and the costs of major inputs reflected market values. The companies had one clear set of basic accounting records which were independently audited in line with international accounting standards and applied for all purposes. The production costs and the financial situation of the applicants were not subject to significant distortions carried over from the former non-market-economy system. Both companies were subject to bankruptcy and property laws which guaranteed legal certainty and stability for the operation of the firms. Finally, exchange-rate conversions were carried out at the market

rate. On the basis of the foregoing, it was concluded that the criteria set forth in Article 2(7)(c) of the basic Regulation were met.

(23) The Commission informed the applicants and the Community industry of the above determinations and granted them a possibility to comment. No comments were received from the interested parties. In view of the above, it was concluded that market economy status should be granted to both applicants.

3. NLMK

(24) Although this applicant requested the initiation of the current interim review, it did not subsequently provide the Commission with the information essential for the calculation of the dumping margin. In particular, during the on-spot investigation, costs of production could not be verified. Moreover, the information provided in the questionnaire reply was not supported by sufficient evidence and access to essential information was denied. In some instances, misleading information was provided. For example, as admitted by NLMK, the costs of production had been understated by some 50 % in the questionnaire reply for the financial year 2001 which overlapped with the investigation period by six months. The company actually failed to substantiate and demonstrate the veracity of its cost of production, as reported in the questionnaire reply. Under these circumstances, a proper verification of the questionnaire reply could not be carried out and the figures reported were considered unreliable.

(25) NLMK was informed that the information submitted was not verifiable and could therefore not be used. The applicant was granted the opportunity to provide further explanations. Furthermore, it was given the possibility to be heard in this matter. NLMK did, however, not come forward with any satisfactory explanation within the specified time limit.

(26) NLMK thus admitted the problems regarding, in particular, the verification of costs, but claimed that in order to determine its cost of production, data collected during another investigation concerning a similar product should be used. NLMK referred to the anti-dumping investigation initiated in May 2002[(10)] against imports of certain grain oriented electrical sheets and strips (flat-rolled products) of a width not exceeding 500 mm originating in, inter alia, Russia (‘small GOES’). NLMK was subject to this investigation and had submitted a questionnaire reply. Therefore, it argued that the information on the cost of production submitted in the framework of that proceeding should be used to determine costs in the present review. NLMK claimed that due to the similarity of both products, i.e. small GOES and the product concerned, costs would be practically identical.

(27) However, the investigation concerning small GOES and the present interim review covered different products and were subject to different IPs. Nevertheless, even if the costs of production of these two products would be practically identical in both investigations — which has not been established — it should be underlined that costs and prices related to different periods are not necessarily comparable. Moreover, the investigation concerning small GOES was terminated in February 2003 due to the withdrawal of the complaint by the Community industry[(11)]. Therefore, no