Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China

COUNCIL REGULATION (EC) No 91/2009

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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 having consulted the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 26 September 2007, the Commission received a complaint lodged pursuant to Article 5 of Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community (the basic Regulation) by the European Industrial Fasteners Institute (EIFI, the complainant) on behalf of producers representing a major proportion, in this case more than 25 %, of the total Community production of certain iron or steel fasteners.

(2) This complaint contained evidence of dumping of certain iron or steel fasteners from the People's Republic of China (PRC) and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.

(3) On 9 November 2007, the proceeding was initiated by the publication of a notice of initiation[(2)] in the *Official Journal of the European Union* (the Notice of Initiation).

2. Non-imposition of 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 on imports of certain iron or steel fasteners from the PRC.

(5) On 4 August 2008, all interested parties were provided with an information document detailing the preliminary findings of the investigation at that stage of the

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investigation (the information document) and inviting the parties to comment on those findings.

(6) Subsequent to that date, the investigation was continued with regard to, *inter alia*, Community interest aspects and a detailed analysis of the product scope/product comparability carried out, as it had been disputed by various interested parties.

3. Parties concerned by the proceeding

(7) The complainant Community producers, other Community producers, the exporting producers, the importers, users, associations known to be concerned and representatives of the government of the PRC were officially advised of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(8) A number of interested parties made their views known in writing, in particular concerning the choice of analogue country, the type and quality differences between Chinese fasteners and those produced and sold by the Community producers, standing of the complainants and injury and Community interest aspects. Moreover, all interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(9) All interested parties (Community producers, Community importers and Chinese exporting producers) that had made submissions regarding the product scope attended an adversarial meeting organised in accordance with Article 6(6) of the basic Regulation under the auspices of the Hearing Officer on 18 September 2008 (adversarial meeting).

(10) Given the large number of known exporting producers in the PRC, as well as the large number of known Community producers and importers, sampling for the determination of dumping and injury was provided for in the Notice of Initiation, in accordance with Article 17 of the basic Regulation.

4. Sampling

4.1. Sampling of exporting producers in the PRC

(11) As stated above, in view of the large number of exporting producers in the PRC, sampling was proposed in the Notice of Initiation in accordance with Article 17(1) of the basic Regulation.

(12) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers were requested to make themselves known within 15 days from the date of the initiation of the investigation and to provide basic information on their exports and domestic sales, and the names and activities of all their related companies involved in the production and/or selling of the product concerned. The authorities in the PRC were also consulted.

(13) A total of 120 companies or groups of companies in the PRC came forward and provided the requested information within the given deadline. However, it appeared

from the data provided that some of these companies or groups did not produce fasteners themselves and some reported exports to the Community of fasteners produced by related companies. Those companies or groups that produced and exported the product concerned to the Community during the investigation period and expressed a wish to be included in the sample were considered as cooperating companies and were taken into account in the selection of the sample. These companies accounted for 110 out of the total of 120 companies or groups that made themselves known after initiation.

(14) Exporting producers which did not make themselves known within the aforesaid period were considered as not cooperating with the investigation.

(15) According to Article 17(1) of the basic Regulation, the exporters with the largest exported volume to the Community were selected so as to achieve the largest representative volume of exports which could reasonably be investigated within the time available.

(16) On this basis, a sample of nine Chinese exporting producers or groups was selected. The selected companies represented 61 % of the exports, by the cooperating companies, of the product concerned to the Community, and 39 % of the total exports from the PRC.

(17) In accordance with Article 17(2) of the basic Regulation, the cooperating exporting producers and the authorities of the PRC were given an opportunity to comment on the selection of the sample.

(18) A number of Chinese exporters argued that they should have been included in the sample because of particular circumstances regarding their companies, such as the fact that they manufactured specific product types allegedly not produced by the companies selected for the sample. However, the types of the iron or steel fasteners manufactured by exporters were not part of the criteria used to select the sample. As stated in recital 15, the criterion used was the exporters with the largest exported volume to the Community. This is in line with the requirements of Article 17(1) of the basic Regulation.

(19) Questionnaires were sent for completion to the sampled companies and replies from all of them were received within the given deadlines.

(20) Five companies not selected in the sample submitted replies to the questionnaire with a view to requesting individual examination in application of Articles 9(6) and 17(3) of the basic Regulation. Four of these requests were accepted. Since the other company did not produce the product concerned itself, its request was refused.

(21) Following the definitive disclosure, one exporter argued that the companies which were individually investigated should be counted as part of the sample for the application of Article 9(5) of the basic Regulation. Another exporter argued that the Commission should have enlarged the original sample, rather than accepting requests for individual examination under Article 17(3). In this respect, it should be noted that the sample is still considered sufficiently representative. Even after four of the

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sampled companies failed to cooperate, as mentioned in recital 62, the remaining sampled companies represented 54 % of the total exports by cooperating companies of the product concerned to the Community. Moreover, it is considered appropriate, for reasons of objectivity and transparency, to select a sample at the beginning of the proceeding, and maintain it throughout the proceeding unless there are grounds to consider that this sample is no longer representative. Finally, for the same reasons the sampling exercise should be considered as distinct and separate from the granting of individual examination under Article 17(3) of the basic Regulation.

4.2. Sampling of Community producers

(22) As stated, in view of the large number of producers in the Community, sampling was proposed in the Notice of Initiation in accordance with Article 17(1) of the basic Regulation.

(23) In order to enable the Commission to decide whether sampling would be necessary and if so to select a sample, Community producers were requested to make themselves known within 15 days from the date of the initiation of the investigation and to provide basic information on their production and sales, and the names and activities of all their related companies involved in the production and/or selling of the product concerned.

(24) A total of 46 Community producers that produced the product concerned in the Community during the investigation period and expressed a wish to be included in the sample within the aforesaid period were considered as cooperating companies and were taken into account in the selection of the sample.

(25) These Community producers represented over 30 % of the estimated production in the Community in 2006. These producers are considered to constitute the Community industry as mentioned in recital 114.

(26) The issue of the standing of the Community industry was questioned by some importers in the Community and also by some exporting producers. Indeed, certain interested parties provided, after the publication of the Notice of Initiation, lists of Community producers that allegedly had not been consulted as to their support or otherwise for the proceeding. A questionnaire was subsequently sent to all such producers. Moreover, several companies came forward on their own initiative without having received a questionnaire. However, none of the responses received from these producers has reduced the level of standing mentioned in the preceding recital. In fact, many of these companies supported the complaint.

(27) In accordance with Article 17(1) of the basic Regulation, the Community producers, from among those that constitute the Community industry, with the largest production volume were selected in the sample so as to achieve the largest representative volume of production of the like product produced in the Community which could reasonably be investigated within the time available.

(28) On this basis, a sample of seven producers was selected. The selected companies accounted for around 70 % of the production of the Community industry.

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After one sampled producer was considered as not cooperating, this percentage decreased to around 65 %.

(29) In accordance with Article 17(2) of the basic Regulation, the cooperating Community producers were given the opportunity to comment on the selection of the sample. No comments were received that warranted changes to the sample.

(30) Questionnaires were sent for completion to the sampled companies and replies from all of them were received within the given deadlines.

4.3. Sampling of Community importers

(31) As stated above, in view of the large number of importers in the Community, sampling was proposed in the Notice of Initiation in accordance with Article 17(1) of the basic Regulation.

(32) In order to enable the Commission to decide whether sampling would be necessary and if so to select a sample, Community importers were requested to make themselves known within 15 days from the date of the initiation of the investigation and to provide basic information on their imports and sales, and the names and activities of all their related companies involved in the production and/or selling of the product concerned.

(33) A total of 45 companies or groups of companies in the Community came forward and provided the requested information within the given deadline representing close to 29 % of the total imported volume in the Community.

(34) According to Article 17(1) of the basic Regulation, the Community importers with the largest sales volume were selected so as to achieve the largest representative volume which can reasonably be investigated. Therefore, the seven largest importers in terms of volumes of sales were selected to be part of the sample. Questionnaires were sent for completion to the sampled companies and replies from all of them were received within the given deadlines.

5. Market economy treatment (MET) and individual treatment (IT)

(35) In order to allow exporting producers in the PRC to submit a claim for MET or IT, if they so wished, claim forms were sent to the Chinese exporting producers known to be concerned, to the known associations of exporters and to the authorities of the PRC. 106 exporting producers requested MET pursuant to Article 2(7) of the basic Regulation. All these companies also claimed IT should the investigation establish that they did not meet the conditions for MET. Two other companies claimed only IT. All the nine companies selected in the sample claimed MET and IT.

6. Questionnaires and verification visits

(36) Questionnaires were sent to the sampled exporting producers in the PRC and the four exporting producers in the PRC who requested and were granted individual examination, the sampled Community producers and importers as well as to users in the Community. Replies were received from all 9 sampled exporting producers in the