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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.4.2008
COM(2008) 212 final

Proposal for a

COUNCIL REGULATION

of

amending Council Regulation (EC) No 1371/2005 imposing a definitive anti-dumping duty on imports of grain oriented flat-rolled products of silicon-electrical steel originating in the United States of America and Russia and repealing the anti-dumping duties imposed by Regulation (EC) No 1371/2005 on imports of grain oriented flat-rolled products of silicon-electrical steel originating in Russia

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Context of the proposal

- Grounds for and objectives of the proposal

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation').

- General context

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- Existing provisions in the area of the proposal

Regulation (EC) No 1371/2005 imposing a definitive anti-dumping duty on imports of grain oriented flat-rolled products of silicon-electrical steel originating in the United States of America and Russia.

Decision 2005/622/EC accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of grain oriented flat-rolled products of silicon-electrical steel originating in the United States of America and Russia.

Regulation (EC) No 41/2008 amending Regulation (EC) No 1371/2005 imposing a definitive anti-dumping duty on imports of grain oriented flat-rolled products of silicon-electrical steel originating in the United States of America and Russia.

- Consistency with other policies and objectives of the Union

Not applicable.

2. Consultation of interested parties and impact assessment

- Consultation of interested parties

Interested parties concerned by the proceeding have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- Collection and use of expertise

There was no need for external expertise.

- Impact assessment

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

3. Legal elements of the proposal

- Summary of the proposed action

On 23 February 2007, the Commission initiated a partial interim review of the anti-dumping measures in force in respect of imports of grain oriented flat-rolled products of silicon-electrical steel originating in, *inter alia*, Russia. The review was limited to an investigation of the need for the continuation, removal or amendment of the existing measures in respect of two Russian exporters that had merged to form one new corporate entity.

The attached proposal to amend Regulation (EC) No 1371/2005, is based on the definitive findings which showed that the level of dumping by the new merged entity was *de minimis* and that, therefore, the anti-dumping measures on imports of grain oriented flat-rolled products of silicon-electrical steel originating in Russia should be repealed and the proceeding terminated in accordance with Article 9(3) of the basic Regulation.

It is therefore proposed that the Council adopts the attached proposal for a Regulation which should be published in the *Official Journal of the European Union*.

- Legal basis

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

- Subsidiarity principle

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- Choice of instruments

Proposed instrument: Regulation.

Other means would not be adequate for the following reason:

Other means would not be adequate because the basic Regulation does not foresee alternative options.

4. Budgetary implication

The proposal has no implication for the Community budget.

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amending Council Regulation (EC) No 1371/2005 imposing a definitive anti-dumping duty on imports of grain oriented flat-rolled products of silicon-electrical steel originating in the United States of America and Russia and repealing the anti-dumping duties imposed by Regulation (EC) No 1371/2005 on imports of grain oriented flat-rolled products of silicon-electrical steel originating in Russia

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 Community¹ ('the basic Regulation'), and in particular Articles 9 and 11(3) thereof,

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

Whereas:

A. MEASURES IN FORCE

- (1) By Regulation (EC) No 1371/2005², the Council imposed a definitive anti-dumping duty on imports of grain oriented flat-rolled products of silicon-electrical steel ('GOES') originating in the United States of America ('USA') and Russia (the 'definitive Regulation').
- (2) By Decision 2005/622/EC³, the Commission accepted price undertakings offered by two co-operating exporting producers whose exports to the Community of GOES are subject to a company specific duty of 31,5% (AK Steel Corporation, USA) and 11,5% (Novolipetsk Iron and Steel Corporation ('NLMK'), Russia). The anti-dumping duties applicable to imports from all other companies, except Viz Stal, Russia, which is subject to a duty of 0%, are 37,8% for the USA and 11,5% for Russia.

B. REQUEST FOR REVIEW

¹ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

² OJ L 223, 27.8.2005, p.1. Regulation as last amended by Regulation (EC) No 41/2008 (OJ L 16, 19.1.2008, p.1).

³ OJ L 223, 27.8.2005, p. 42.

- (3) The Commission was notified in early-2007 that NLMK had acquired 100% of Viz Stal. Evidence was provided regarding the production, sales and distribution of GOES under the new corporate structure. As a consequence, the circumstances on the basis of which the measures were established appeared to have changed in a lasting way and the dumping margin under the new corporate structure appeared to be significantly different as compared to the level of the measures in force.
- (4) Having determined that there was sufficient *prima facie* evidence that the individual duties in force for NLMK and Viz Stal were no longer appropriate, and after consulting the Advisory Committee, the Commission initiated *ex officio*, by a notice ('notice of initiation') published in the *Official Journal of the European Union*, a partial interim review in accordance with Article 11(3) of the basic Regulation⁴. The investigation was limited to the examination of the level of dumping for the two Russian exporting producers NLMK and Viz Stal in order to calculate one single measure for the new joint company. As stated in the notice of initiation, this examination would be made on the basis of data collected during the investigation that led to the imposition of the existing measures.

C. PRODUCT UNDER REVIEW

- (5) The product under review is grain oriented flat-rolled products of silicon-electrical steel, of a thickness of more than 0,16 mm, currently classifiable within CN codes ex 7225 11 00 (of a width of 600 mm or more) and ex 7226 11 00 (of a width of less than 600 mm).
- (6) GOES are produced from hot-rolled coils of silicon alloyed steel of different thicknesses of which the particular grain structure is uniformly directed in order to allow for magnetic conductivity with a high degree of efficiency. Inefficiency with regard to this magnetic conductivity is called 'core loss', which is the prime indicator of the quality of the product.
- (7) The market is typically divided into high conductivity or high permeability grades and regular grades. The high permeability grades allow achieving lower core losses for any given thickness of the sheets. Such characteristics are especially relevant for industrial producers of electrical power transformers.

D. INVESTIGATION

- (8) The Commission advised the Community producers of GOES, all known Community importers and users as well as all known exporting producers in the USA and Russia of the initiation of the review.
- (9) The Commission requested information from all the above mentioned parties and from the other parties who made themselves known within the time limit set in the notice of initiation of the investigation. The Commission also gave the interested parties the opportunity to make their views known in writing and to request a hearing.

E. RESULTS OF THE INVESTIGATION

⁴ OJ C 39, 23.2.2007, p. 26

1. Determination of dumping

- (10) As stated above, the calculation of the dumping margin for the merged entity was based on the data collected during the investigation period of the investigation that led to the imposition of the existing measures ('the original investigation period'). On this basis, a weighted average of the dumping margins established for NLMK and Viz Stal results in a dumping margin of 0.7% for the new merged entity.

2. Lasting nature of changed circumstances

- (11) 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. In this regard, the new company, OJSC Novolipetsk Steel, co-operated in the investigation and provided relevant information. With regard to the product flow of this company's exports to the Community, co-operation was also obtained from the following unrelated companies:

- Tuscany Intertrade UK, Edinburgh, United Kingdom
- Moorfield Commodities Company, Lugano, Switzerland

On-spot investigations were made at the premises of both of these companies.

- (12) Formerly, NLMK exported to the Community via its related company Stinol AG (Switzerland). However, it was found that, since the beginning of 2006, all sales by NLMK to the Community were made via the independent traders Tuscany Intertrade UK and Moorfield Commodities Company. Stinol AG has become a dormant company since the end of 2005.
- (13) Viz Stal was formerly part of the Duferco group and exported via Duferco subsidiaries such as Duferco SA Switzerland and Duferco Commerciale Italy. Since May 2006, all of Viz Stal's sales to the Community have been made via the independent trader Moorfield Commodities Company.
- (14) It was also verified that, since its establishment, the new entity, OJSC Novolipetsk Steel, for its imports into the Community, has only sold via these two traders thereby continuing to use the same sales channels for sales of GOES to the Community market.
- (15) In regard to import prices from the two former companies, NLMK and Viz Stal, following the acceptance of a price undertaking in August 2005, NLMK submitted all relevant monitoring information, as required by the terms of the undertaking, to the Commission on a quarterly basis. Following the takeover by NLMK, Viz Stal voluntarily reported its sales since August 2006 under the framework of the undertaking. It was verified that the current price undertaking for the former NLMK was respected by both the former NLMK and Viz Stal companies.
- (16) It was found, in fact, that the prices at which Viz Stal, whose products are subject to 0% anti-dumping duty, sold GOES on the Community market since August 2006 were higher than those at which the company had sold during the original investigation period. It was also noted that Viz Stal accounted for the bulk of sales of both

companies during the original investigation period, and continued to export significantly greater quantities of GOES to the EC than NLMK.

- (17) Since the existing measures were imposed in August 2005, Community and world market prices have increased significantly. With continuing high world demand for steel products, it is not expected that market prices for GOES will fall in the short- to medium-term. In light of this fact, as well as the fact that Viz Stal (which continued in 2006 to account for significantly greater sales quantities of GOES to the EC than NLMK and was found not to be dumping during the original investigation) has increased its prices since August 2006, it is considered that the findings in recital (10) above are of a lasting nature.

F. CONCLUSION

- (18) It was found in the original investigation that NLMK and Viz Stal accounted for the entirety of known imports of GOES into the Community from Russia⁵. It was also found that OJSC Novolipetsk Steel continues to account for all exports of GOES from Russia to the Community. In light of this, as well as the fact that the dumping margin for OJSC Novolipetsk Steel is at a *de minimis* level, it is concluded that the anti-dumping measures on imports of GOES from Russia should be repealed and the proceeding terminated in accordance with Article 9(3) of the basic Regulation.
- (19) In light of this conclusion, the Commission decided by Decision 2008/XXXX/EC⁶ that the undertaking accepted from NLMK by Commission Decision 2005/622/EC should be repealed.

G. DISCLOSURE

- (20) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to repeal the measures on imports of GOES from Russia and to terminate the proceeding. All parties were given an opportunity to comment. The comments received were not of a nature to change the conclusions.
- (21) Following disclosure, the Community industry claimed that it has not been substantiated that, as mentioned in recital (17) above, market prices for GOES will not fall in the short- to medium-term and, as a result, the termination of the proceeding is not warranted. In support of its claim that the proceeding should not be terminated, the Community industry states that during the next two years, world capacities for production of GOES will be expanded by more than 40% and will significantly exceed demand. The bulk of these capacity increases will happen in the People's Republic of China. In these circumstances, the Community industry considers that Russia will be pushed away from the Chinese market and will re-direct its exports to the European Union ('EU'). In light of the above, the Community industry considers that the termination of the proceeding is not based on changed circumstances of a lasting nature.
- (22) It is noted, however, that the current investigation has examined the dumping margin for the new merged entity. This has been found to be at a *de minimis* level as described

⁵ See Recital (61) of Regulation (EC) No 1371/2005.

⁶ OJ L.....

in recitals (10) and (18) above. As stated in recital (11) above, an examination has been made as to whether or not this dumping margin, as well as the new structure of the company, can be considered to be of a lasting nature. The investigation has confirmed the lasting nature of these changed circumstances. The fact that Russian exporters might export additional quantities to the EU in the coming years does not alter the conclusion regarding the lasting nature of these changed circumstances,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(1) of Council Regulation (EC) No 1371/2005 shall be replaced by the following:

‘1. A definitive anti-dumping duty is hereby imposed on imports of grain oriented flat-rolled products of silicon-electrical steel of a thickness of more than 0,16 mm, originating in the United States of America, falling within CN codes ex 7225 11 00 (products of a width of 600 mm or more) (TARIC code 7225 11 00 10) and ex 7226 11 00 (products of a width of less than 600 mm) (TARIC codes 7226 11 00 11 and 7226 11 00 91).’

Article 2

The anti-dumping duties on imports of grain oriented flat-rolled products of silicon-electrical steel of a thickness of more than 0,16 mm, originating in Russia, falling within CN codes ex 7225 11 00 (products of a width of 600 mm or more) (TARIC code 7225 11 00 10) and ex 7226 11 00 (products of a width of less than 600 mm) (TARIC codes 7226 11 00 11 and 7226 11 00 91) imposed by Regulation (EC) No 1371/2005 are hereby repealed and the proceeding with respect to imports originating in Russia is hereby terminated.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President