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ANTIDUMPING 80
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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL IMPLEMENTING REGULATION re-imposing a definitive anti-dumping duty on imports of ironing boards originating in the People's Republic of China, manufactured by Zhejiang Harmonic Hardware Products Co. Ltd

COUNCIL IMPLEMENTING REGULATION (EU) No…/2012

of

re-imposing a definitive anti-dumping duty on imports of ironing boards originating in the People's Republic of China, manufactured by Zhejiang Harmonic Hardware Products Co. Ltd

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 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 from the European Commission ("the Commission") after consulting the Advisory Committee,

[1] OJ L 343, 22.12.2009, p. 51.

Whereas:

A. PROCEDURE

(1) By Regulation (EC) No 452/2007 of 23 April 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine[1] ("the contested Regulation"), the Council imposed definitive anti-dumping duties ranging from 9,9 % to 38,1 % on imports of ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and essential parts thereof, i.e. the legs, the top and the iron rest originating in the People's Republic of China ("China") and Ukraine.

(2) On 19 July 2007, one co-operating Chinese exporting producer, namely Zhejiang Harmonic Hardware Products Co. Ltd ("Harmonic"), lodged an application at the General Court seeking the annulment of the contested Regulation in so far as it applies to the applicant[2].

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1 OJ L 109, 26.4.2007, p. 12.

2 Case T-274/07 Zhejiang Harmonic Hardware Products Co. Ltd v Council of the European Union.

(3) On 8 November 2011, the General Court in its judgment in Case T-274/07 ("the General Court judgment") found that the failure to comply with the period prescribed by Article 20(5) of the basic Regulation was such as in fact to affect the rights of defence of Harmonic, and that the Commission had also infringed Article 8 of the basic Regulation, which conferred on Harmonic the right to offer undertakings up to the expiry of that period. Therefore, the General Court annulled Articles 1 and 2 of the contested Regulation in so far as they impose a definitive anti-dumping duty and collect definitively the provisional duty on ironing boards manufactured by Harmonic.

(4) According to Article 266 of the Treaty on the Functioning of the European Union ("TFEU"), the Union institutions are obliged to comply with the General Court judgment of 8 November 2011. It is established case law (Case T-2/95[1], "the IPS case") that, in cases where a proceeding consists of several administrative steps, the annulment of one of those steps does not annul the complete proceeding. The anti-dumping proceeding is an example of such a multi-step proceeding. Consequently, the annulment of the contested Regulation in relation to one party does not imply the annulment of the entire procedure prior to the adoption of that Regulation. Moreover, according to the Court's case law, in order to comply with a judgment annulling a measure and to implement it fully, the institution which took the measure should resume the procedure at the very point at which the illegality occurred and replace that measure[2]. Finally, the implementation of a court ruling also implies the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the uncontested parts which are not affected by the General Court judgment, as was held in Case C-458/98 P[3]. It should be noted that apart from the finding of an infringement of Article 20(5) and of Article 8 of the basic Regulation, all other findings made in the contested Regulation remain automatically valid to the extent that the General Court dismissed all arguments made in this respect.

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1 Case T-2/95 Industrie des poudres sphériques (IPS) v Council [1998] ECR II-3939.
2 Case C-415/96 Spain v Commission [1998] ECR I-6993, paragraph 31.
3 Case C-458/98 P Industrie des poudres sphériques (IPS) v Council [2000] ECR I-08147.

(5) Following the General Court judgment of 8 November 2011, a notice[1] was published concerning the partial reopening of the anti-dumping investigation concerning imports of ironing boards originating, *inter alia*, in China. The reopening was limited in scope to the implementation of the General Court judgment in so far as Harmonic is concerned.

(6) The Commission officially advised the exporting producers, the importers and users known to be concerned, the representatives of the exporting country and the Union industry of the partial reopening of the investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the notice.

(7) All parties who so requested within the above time-limit, and who demonstrated that there were particular reasons why they should be heard, were granted the opportunity to be heard.

(8) Representations were received from one exporting producer in China (the party directly concerned, i.e. Harmonic) and one unrelated importer.

(9) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties on Harmonic. They were granted a period within which to make representations subsequent to disclosure, but none reacted at that stage.

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[1] OJ C 63, 2.3.2012, p. 10.

B. IMPLEMENTATION OF THE GENERAL COURT JUDGMENT

1. Preliminary remark

(10) It is recalled that the reason for the annulment of the contested Regulation was that the Commission had sent its proposal to impose a definitive anti-dumping duty to the Council before the end of the 10-day mandatory deadline for receiving comments following the sending to interested parties of a definitive disclosure document, as provided for in Article 20(5) of the basic Regulation. Furthermore, the Commission had also infringed Article 8 of the basic Regulation, which conferred on Harmonic the right to offer undertakings up to the expiry of that period.

2. Comments of interested parties

(11) Harmonic stated that a breach of the rights of defence of the type identified by the General Court cannot be cured by the reopening of the investigation. The General Court judgment would require no implementing measures.

(12) For Harmonic, the only way for the Commission to comply with the General Court judgment, as required by Article 266 TFEU, would be to withdraw the measures permanently as far as Harmonic was concerned. The violation of Article 8 of the basic Regulation would require the EU institutions to restore Harmonic's right to offer price undertakings back in 2007.

(13) According to Harmonic, the reopening would be illegal because there is no specific provision in the basic Regulation allowing for such an approach, and because such re-opening would be in conflict with the 15-month statutory deadline for the completion of an investigation laid down by Article 6(9) of the basic Regulation, and the 18-month deadline as set out by Article 5.10 of the WTO Agreement on Implementation of Article VI of the GATT 1994 ("Anti-dumping Agreement"). It alleged that the EU institutions cannot purport to re-impose measures based on their powers to adopt definitive measures (in particular Article 9 of the basic Regulation) and at the same time deny that these deadlines in the same provision of the basic Regulation apply.

(14) Harmonic submitted that the IPS case could not serve as a precedent because it was based on Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community[1] ("the old basic Regulation"), under which mandatory deadlines did not yet apply.

(15) Harmonic also argued that reissuing a revised disclosure and granting a period to reply in line with Article 20(5) of the basic Regulation could not correct the violation of Harmonic's rights of defence and the unlawful imposition of duties.

[1] OJ L 209, 2.8.1988, p. 1.

(16) According to Harmonic, once the Commission's proposal for definitive measures was submitted to the Council in 2007, the Commission irremediably lost its ability to make a proposal to the Council to impose duties against Harmonic without breaching the company's rights of defence. In Harmonic's view, the Commission would no longer be in a position to receive any comments with the required room for manoeuvre and consider Harmonic's proposal for an undertaking.

(17) Harmonic submits that its right to offer price undertakings within the prescribed period cannot be corrected by procedurally reopening the original investigation. In addition, Harmonic alleges that recital (68) of the contested Regulation apparently included the assessment of a formal price undertaking offered by Harmonic.

(18) Furthermore, Harmonic argued that the Commission could not reopen the case because it would have lost its objectivity and impartiality since the contested Regulation proposed by the Commission was partially annulled by the General Court.

(19) Lastly, Harmonic pointed out that the Commission could not re-impose anti-dumping measures based on information relating to 2005, being more than six years prior to the initiation of the partial reopening of the investigation, as this would not be in line with Article 6(1) of the basic Regulation.

(20) One unrelated Union importer/producer pointed out the repercussions of the General Court's annulment and of the subsequent partial reopening of the investigation on its business. It did not submit any information and data as to the legal merits of the re-investigation, but rather referred to the comments submitted in the context of a previous re-investigation that was concluded by Council Implementing Regulation (EU) No 805/2010 of 13 September 2010 re-imposing a definitive anti-dumping duty on imports of ironing boards originating in the People's Republic of China, manufactured by Foshan Shunde Yongjian Housewares and Hardware Co. Ltd, Foshan[1].

3. Analysis of comments

(21) It is recalled that the General Court has dismissed all the substantive arguments of Harmonic referring to the merits of the case. Thus, the Union institutions' obligation is focused on correcting the part of the administrative procedure in the initial investigation where the irregularity occurred.

[1] OJ L 242, 15.9.2010, p. 1.

(22) The claim that the introduction, pursuant to Article 6(9) of the basic Regulation, of a 15-month deadline to conclude anti-dumping investigations prevents the Commission from following the approach underlying the IPS case was found to be unwarranted. It is considered that this deadline is not relevant for the implementation of a judgment of the General Court. Indeed, such deadline only governs the completion of the original investigation from the date of initiation to the date of definitive action, and does not concern any subsequent action that might have to be taken, for instance as a result of judicial review. Furthermore, it is noted that any other interpretation would mean that, for example, a successful legal action brought by the Union industry would be without any practical effect for that party if the expiry of the time-limit to conclude the original investigation would not permit the implementation of a judgment of the General Court. This would be at odds with the principle that all parties should have the right to effective judicial review.

(23) It is also recalled that the General Court in its judgment in Joined Cases T-163/94 and T-165/94[1] has held that even the soft deadline applicable under the old basic Regulation could not be stretched beyond reasonable limits, and that an investigation lasting for more than three years was too long. This contrasts with the IPS case, where the implementation of a previous Court of Justice judgment occurred almost seven years after the initiation of the original investigation, and the Court of Justice judgment contains no indication that deadlines were an issue.

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[1] Joined Cases T-163/94 and 165/94 NTN Corporation and Koyo Seiko Co. Ltd v Council [1995] ECR II-01381.

(24) Therefore, it is concluded that Article 6(9) of the basic Regulation only applies to the initiation of proceedings and the conclusion of the investigation initiated pursuant to Article 5(9) of the basic Regulation, and not to a partial reopening of an investigation with a view to implementing a judgment of the General Court.

(25) This conclusion is in line with the approach taken for the implementation of WTO panels and Appellate Body reports, where it is accepted that institutions could amend deficiencies of a regulation imposing anti-dumping duties in order to comply with dispute settlement body reports, including in cases concerning the Union[1]. In such cases it was felt necessary to adopt special procedures to implement WTO panel and Appellate Body reports because of the lack of direct applicability of such reports in the Union legal order, contrary to the implementation of the judgments of the General Court which are directly applicable.

(26) It is recalled that Article 9 of the basic Regulation does not concern deadlines for conducting anti-dumping investigations. It concerns general issues related to terminations without measures and the imposition of definitive duties.

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[1] European Communities-Antidumping Duties on Imports of Cotton-Tyle Bed Linen from India: Recourse to Article 21.5 of the DSU by India WT/DS141/AB/RW (8 April 2003), paragraphs 82-86; Council Regulation (EC) No 1515/2001 of 23 July 2001 on the measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters (OJ L 201, 26.7.2001, p.10); Council Regulation (EC) No 436/2004 of 8 March 2004 amending Regulation (EC) No 1784/2000 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain malleable cast iron tube or pipe fittings originating in Brazil, the Czech Republic, Japan, the People's Republic of China, the Republic of Korea and Thailand (OJ L 72, 11.3.2004, p. 15) following Reports adopted by the Dispute Settlement Body of the WTO.

(27) With respect to the arguments submitted on the application of Article 6(1) of the basic Regulation, it is noted that no infringement of Article 6(1) of the basic Regulation could be established since the Commission has not opened a new proceeding but reopened the original investigation to implement the General Court judgment.

(28) As regards Harmonic's allegation concerning the breach of its right to offer price undertakings, it should be noted that Harmonic's argument is twofold. First, Harmonic alleges that it is not legally, practically or realistically possible for the Commission to retroactively backdate a price undertaking for a period of almost five years. Second, Harmonic claims that on the one hand, recital (68) of the contested Regulation includes the assessment of a formal price undertaking offered by Harmonic, whilst on the other hand, the Commission sustains that any price undertakings that could have been submitted by Harmonic would have been rejected anyway, because they would be impractical to monitor.

(29) Regarding Harmonic's allegation on the reopening of the original investigation in order to remedy the infringement of its right to offer price undertakings within a prescribed period, the reopening is justified given that Harmonic's right to offer undertakings was infringed in the context of the original investigation. In any event, in the absence of a formal price undertaking offered by Harmonic, the discussion of its potential effects is devoid of purpose.

(30) In addition, as to Harmonic's interpretation of recital (68) of the contested Regulation, it should be pointed out that that recital simply reflects the fact that there were discussions about potential price undertakings proposed by some exporting producers, and the reasons why the institutions deemed undertakings in general impractical at that point in time. Harmonic's claim that the recital apparently includes the assessment of a (non-submitted) formal price undertaking offered by Harmonic is thus unfounded.

(31) Moreover, it is noted that the arguments put forward in recital (68) of the contested Regulation do not prejudge offers of formal price undertakings that could be made at a later stage, but set out the reasons why the acceptance of price undertakings is unlikely in this case, in particular if the concerns about their practicability are not properly addressed. As provided for in Article 8(3) of the basic Regulation, undertakings offered need not be accepted if their acceptance is considered impractical.

4. Conclusion

(32) Account taken of the comments made by the parties and the analysis thereof, it was concluded that the implementation of the General Court judgment should take the form of re-disclosure to Harmonic and all other interested parties of the revised definitive disclosure document of 23 March 2007, on the basis of which it was proposed to re-impose an anti-dumping duty on imports of ironing boards manufactured by Harmonic.

(33) On the basis of the above, it was also concluded that the Commission should give Harmonic and all other interested parties enough time to provide comments on the revised definitive disclosure document of 23 March 2007, and then evaluate such comments in order to determine whether to make a proposal to the Council to re-impose the anti-dumping duty on imports of ironing boards manufactured by Harmonic on the basis of the facts relating to the original investigation period.

C. DISCLOSURE

(34) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to implement the General Court judgment.

All interested parties were given an opportunity to comment, applying the 10-day period prescribed in Article 20(5) of the basic Regulation.

(35) Harmonic and all other interested parties received the revised definitive disclosure document dated 23 March 2007 on the basis of which it was proposed to re-impose the anti-dumping duty on imports of ironing boards manufactured by Harmonic on the basis of the facts relating to the original investigation period.

Harmonic and all other interested parties were given an opportunity to comment on the above-mentioned revised definitive disclosure document dated 23 March 2007.

(36) Article 8 of the basic Regulation conferred on Harmonic the right to offer undertakings up to the expiry of the 10-day period prescribed in Article 20(5) of the basic Regulation.

(37) Neither Harmonic nor any other interested party submitted any comment or offered any undertaking within the established deadline.

D. DURATION OF MEASURES

(38) This procedure does not affect the date on which the measures imposed by the contested Regulation will expire pursuant to Article 11(2) of the basic Regulation. It is noted in this regard that on 25 April 2012, a notice of initiation of an expiry review of the anti-dumping measures applicable to imports of ironing boards originating in the People's Republic of China and Ukraine[1] was published in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

[1] OJ C 120, 25.4.2012, p. 9.

Article 1

(1) A definitive anti-dumping duty is hereby re-imposed on imports of ironing boards, whether or not free-standing, with or without a steam soaking and/or heating top and/or blowing top, including sleeve boards, and essential parts thereof, i.e. the legs, the top and the iron rest originating in the People's Republic of China, currently falling within CN codes ex 3924 90 00, ex 4421 90 98, ex 7323 93 00, ex 7323 99 00, ex 8516 79 70 and ex 8516 90 00 (TARIC codes 3924 90 00 10, 4421 90 98 10, 7323 93 00 10, 7323 99 00 10, 8516 79 70 10 and 8516 90 00 51) and manufactured by Zhejiang Harmonic Hardware Products Co. Ltd, Guzhou (TARIC additional code A786).

(2) The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, shall be 26,5 %.

(3) Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

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