



**COUNCIL OF
THE EUROPEAN UNION**

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INFORMATION NOTE

from : the Legal Service
to : the Permanent Representatives Committee (Part 2)
Subject : Case before the Court of Justice of the European Union
- C-374/12 Valimar OOD v Nachalnik na Mitnitsa v Varna, Reference for a preliminary ruling from the Varhoven administrativen sad (Bulgaria)

1. By order of 30 July 2012, the Varhoven administrativen sad (Bulgaria) (Supreme Administrative Court of the Republic of Bulgaria), lodged on 6 August 2012, requested the Court of Justice to give a preliminary ruling pursuant to Article 267 of the TFEU, concerning the interpretation of Council Regulation (EC) No 384/1996 (1) of 22 December 1995 on protection against dumped imports from countries not members of the European Community¹ (now Council Regulation (EC) No 1225/2009² of 30 November 2009) ('the Basic Regulation') and the validity of) Council Regulation (EC) No 1279/2007 of 30 October 2007 imposing a definitive anti-dumping duty on certain iron or steel ropes and cables originating in the

¹ Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

² Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51).

Russian Federation, and repealing the anti-dumping measures on imports of certain iron or steel ropes and cables originating in Thailand and Turkey.³

2. The applicant, Valimar OOD, established under Bulgarian law with a registered office and administrative address in Varna, submits that Regulation (EC) No 1279/2007 is invalid insofar as it lays down an anti-dumping duty on imports of iron or steel ropes originating from the Russian Federation and manufactured by the Joint Stock Company Severstal-Metiz, because it was adopted contrary to Article 11(9) and (10) in conjunction with Article 2(8) of the higher-ranking Basic Regulation and it contains significant contradictions in relation to the facts and circumstances which served as a basis for determining the probability that injury to the Community industry would occur.
3. The Varhoven administrativen sad (Bulgaria) (Supreme Administrative Court of the Republic of Bulgaria) has put the following questions to the Court of Justice:

"1. Is Article 11(9) and the first sentence of Article 11(10) of Council Regulation (EC) No 384/1996 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (now Council Regulation (EC) No 1225/2009) of 30 November 2009) ('the Basic Regulation') in conjunction with Article 2(8) and (9) of that regulation to be interpreted as meaning that, if no change in circumstances is proved for the purpose of Article 11(9), those provisions take precedence over any implicit powers of the institutions arising from Article 11(3) of the Basic Regulation for determining the export price, including — as in the case of Council Regulation (EC) No 1279/2007 (3) — the implicit power of the institutions to assess the reliability of the export prices of Severstal-Metiz in the future by making a comparison with the minimum prices according to the price undertaking and the selling prices in third countries? Is the reply to that question affected if,

³ Council Regulation (EC) No 1279/2007 of 30 October 2007 imposing a definitive anti-dumping duty on certain iron or steel ropes and cables originating in the Russian Federation, and repealing the anti-dumping measures on imports of certain iron or steel ropes and cables originating in Thailand and Turkey (OJ 2007 L 285, p. 1).

as in the case of Severstal-Metiz and Council Regulation (EC) No 1279/2007, the institutions decide, when exercising their powers in connection with assessing the stability of the change in circumstances regarding the existence of dumping in accordance with Article 11(3) of the Basic Regulation, to vary the anti-dumping measure (reduce the duty rate)?

2. Does it follow from the reply to the first question that, in the circumstances which are described in the part of Council Regulation (EC) No 1279/2007 relating to the determination of the export price of Severstal-Metiz, and in view of the fact that in that regulation a change for the purpose of Article 11(9) of the Basic Regulation was not expressly proved which would justify the application of a new methodology, the Commission ought to have applied the method for determining the export price which was used in the context of the original investigation, in the present case in accordance with Article 2(8) of the Basic Regulation?

3. Taking into consideration the replies to the first and second questions: Was that part of Council Regulation (EC) No 1279/2007 which concerns the determination and imposition of individual anti-dumping measures in relation to imports of steel ropes and cables manufactured by Severstal-Metiz adopted contrary to Article 11(9) and (10) in conjunction with Article 2(8) of the Basic Regulation or on an invalid legal basis and, as such, is Council Regulation (EC) No 1279/2007 to be regarded as invalid in that part? "

4. The Council is, according to Article 23 of the Statute of the Court of Justice, entitled to submit observations within two months of receipt of the notification, in a case governed by Article 267 of the TFEU if the act, the validity or interpretation of which is in dispute, originates from the Council.
5. The Director-General of the Legal service of the Council has appointed Mrs Sonja BOELAERT and Mr Ivan GUROV, members of the Council Legal Service, as the Council's agent in this case. They are assisted by Mr Georg BERRISCH and Ms Nicola CHESAITES (Covington & Burling in Brussels).