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30 December 2014

Mr. Harald Schmid
Head of Section

Mr. Torbjorn Olausson
Ms. Maria Javorova

European Commission
Directorate-General for Trade
Directorate H
1049 Bruxelles, Belgique

By e-mail:

Trade-R589-Welded-Tubes-Dumping@ec.europa.eu

Pages: 7

Dear Ms. Javorova,

Dear Sirs,

Re: R589: Expiry review of anti-dumping measures concerning imports of certain welded pipes and tubes of iron or non-allow steel originating in, *inter alia*, Belarus.

Our client: Open Joint-stock Company "Mogilev Metallurgical Works"

Comments on the choice of an appropriate market economy third country

We write with regard to the choice of an appropriate market economy third country (hereinafter the "analogue country") for the purposes of establishing normal value for our client, OJSC "Mogilev Metallurgical Works" (hereinafter – Mogilev), the sole exporting producer of the product concerned in Belarus in the framework of the above-mentioned expiry review investigation.

Following ESTA's proposal in its Request for the expiry review,¹ the Commission provisionally selected the USA as an analogue country for the determination of normal value of the product concerned manufactured in Belarus².

Mogilev submits that the USA is not an appropriate analogue country under the present circumstances. Mogilev also submits that either Ukraine or Russia should instead be selected by the Commission services as an appropriate analogue country for determination of the normal value of Mogilev in the present review. As a matter of fact, the choice of Russia as a possible alternative analogue country is also acknowledged by ESTA itself in the Request.

1.1 The USA is not an appropriate choice of analogue country for the purposes of establishing normal value of Mogilev

The use of an analogue country is justified by the fact that Belarus is not considered as a market-economy country for the purposes of EU anti-dumping investigations.

In the original investigation in 2008, the Commission used the USA as an analogue market-economy third country for establishing the normal value of Mogilev pursuant to Article 2(7) of the Basic Regulation.

Mogilev submits,, however, that since the imposition of definitive anti-dumping duties against imports from Belarus five years ago, the choice of the USA as an analogue country in the case of Belarus has clearly become a far less appropriate choice than it may have been in the original investigation.

Indeed, the two key criteria that should guide the Commission in the selection of an appropriate analogue country in the EU antidumping investigations are 1) the existence of an, open and competitive market and 2) the existence of a representative domestic sales volume of like products that are comparable. In other words, the investigating authorities have a duty to select a third country in which the overall production capacity and the type of production resembles as closely as possible that of the investigated country.

¹ Request for expiry review, Part F.

² O.J. 2013, C372/21

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According to the established practice, the EU institutions, whenever possible, typically chose as the analogue country a third market economy country in which the like product is produced with the same manufacturing process and technical standards and, as much as possible, on a similar scale as in the non-market economy country concerned. For instance, in the *Vietnam/China leather shoes case* the Commission chose Brazil as analogue country, because its footwear industry, production range and export capacity were similar to the ones of Vietnam and China.

In this light, USA should clearly no longer be used as an analogue country for establishing normal value of Mogilev in the current review for the following reasons.

First of all, it should be recalled that data gathered from the USA in the original investigation were found not to be particularly representative or reliable since only *one* US producer cooperated with the Commission.³ Moreover, this sole producer, the identity of which remained undisclosed, was suspected of being related to one of the Community producers. Under such circumstances, it was very difficult to guarantee the completeness and correctness of the data submitted by such a producer since it may have had a direct interest in effectively shielding the Community market from the Belarusian imports of welded tubes. Clearly, the data provided by this sole cooperating producer from the USA cannot be considered particularly or even sufficiently reliable for the determination of normal value for the whole welded tube industry of Belarus since it cannot be excluded that such data would be affected by the particular economic strategy of this producer.

Mogilev therefore submits that the USA would most certainly be an *inappropriate* analogue country for the determination of its normal value since especially if, once again, only a single US producer that would be related to one of the EU producers cooperates with the current investigation irrespective of the fact that, as shown further below, the US market is clearly less comparable to that of Belarus than the Russian and/or Ukrainian markets..

1.2 Ukraine or Russia constitute the most appropriate choice as an analogue country for the purpose of establishing normal value of Mogilev

The following similarities between welded tubes industries in Ukraine/ Russia on and Belarus clearly confirm that Ukraine or Russia is the most appropriate analogue country(s):

³ Council Regulation (EC) No 1256/2008 of 16 December 2008, OJ L 343/1 of 19 December 2009, rec. 84.

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- The final product (welded tubes) produced in Ukraine or Russia is of a similar *quality* and has the most *similar technical specifications (standards)* to the welded tubes produced in Belarus.
- Welded tubes as produced in Ukraine and Russia well as welded tubes from Belarus were, prior to imposition of current anti-dumping measures, predominantly imported into the Eastern European Member States of the EU. This is a clear indicator that the products manufactured in Ukraine, Russia and Belarus compete for the same customers in the EU and hence have similar technical and quality parameters;
- Ukrainian and/or Russian industries of welded tubes have the *most similar level of development* compared to the one of Belarus. Most of the producing plants in these countries were built in the Soviet time under the same construction and technical rules and requirements;
- The share of the raw materials, energy and labour costs in the total manufacturing cost of the product concerned in Ukraine and Russia is comparable to that of Mogilev;
- Most of the producers in Ukraine and Russia use the *same raw material* for the production of the product concerned as Mogilev, i.e. steel in rolls which account for nearly 90% of the total manufacturing costs of the product concerned. Price and quality of steel coils used in the production of the welded tubes directly influence the resulting price and quality of the finished product. Most producers of welded tubes in Ukraine, Russia and Belarus use steel coils sourced mainly from Ukraine or Russia.⁴ It is therefore clear that comparability of the product concerned at the level of its main raw material as well as generally based on manufacturing processes and cost structures, is extremely important for the appropriateness of using either Ukraine or Russia as an analogue country for establishing normal value of Belarus.

Moreover, since Ukraine and Russia are subject to present expiry review of anti-dumping measures applicable to imports of welded tubes, it would be far more

⁴ There are at least six major producers of hot-rolled coils in Ukraine, i.e. OJSC "Azovstal", "Mariupol Metallurgical Plant", OJSC "Donetsk Metallurgical Plant", OJSC "Zaporozhstal", "Alchevsk Metallurgical Plant", "Dnepropetrovsk Tube Plant". Their total production capacity satisfies both the domestic and export demand in hot-rolled coils, including Russia and Belarus.

appropriate, for the purposes of sound administration, to choose Ukraine or Russia as an analogue country for establishing the normal value of the product concerned produced by Mogilev.

However, should exporters from either Ukraine or Russia fail to cooperate with the Commission on issues of dumping (and hence, do not provide the Commission services with data relating to their domestic prices), Mogilev submits that reliable data on domestic prices of the product concerned sold in Ukraine and Russia are available and could be used by the Commission services in order to establish its normal value, as will be explained below.

1.3 Domestic prices of product concerned in Russia and Ukraine

Data on domestic prices in Russia and Ukraine, which, as suggested by Mogilev, should be used for the determination of the normal value in the framework of the present expiry review, are taken from the weekly publications of "*Metal-Courier*"⁵ for the period of investigation.

You will find enclosed as Annex 1 a summary of these prices based on the monthly publications of Metal-Courier in the file named "*Summary of UA and RU exw prices IP (4Q2012-3Q2013).xlsx*". The respective pages of these publications with supporting evidence of the relevant prices of welded tubes are also provided in Annex 1.

Each corresponding page of Metal-Courier contains information on prices for various steel products, including welded tubes, both at producer's (ex-works) and retailer's (warehouse) levels. For the preparation of the summary of prices, only ex-works prices of the producers were taken into account.

For each country (Ukraine and Russia), the range of given prices of the respective types of welded tubes was averaged to compute *one average price per month per country*.

For Ukraine, the following two types of welded tubes were taken into account because they correspond the most closely to the product concerned in the present review:

- GOST 3262, 15-50mm

⁵ "Metal-Courier" is a weekly specialised magazine prepared by Metal Expert, one of the leading independent providers of market information for steel products in the CIS countries. For more information, please visit http://metalexpert-group.com/index_en.html

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- GOST 10704(5), 57-114mm

For Russia, the following three types of welded tubes were taken into account equally corresponding more closely to the product concerned in the present review:

- GOST 3262, 15-20mm
- GOST 3262, 25-50mm
- GOST 10704(5), 57-108mm

In Metal-Courier, prices for Ukraine are given in UAH, while prices for Russia are given in RUB. In order to convert these values into Euro, the official exchange rate for the respective periods provided for in the corresponding edition of Metal-Courier and/or taken from the official sources for respective countries was used.

The calculated average prices for the IP (Q4 2012 and 1Q-3Q 2013) were then adjusted by deducting the applicable VAT (18% for Russia and 20% for Ukraine) in order to arrive at a comparable ex-works price for the purposes of the determination of the normal value to be used in the dumping margin calculation of Mogilev.

Based on the prices reported in Metal-Courier, the average domestic selling prices of welded tubes in Ukraine and in Russia, *ex-works*, were as follows:

Domestic prices of welded tubes in Ukraine and Russia, Euro/MT, EXW

| | IP (Q4 2012 – 3Q 2013) |
|----------------|------------------------|
| Ukraine | 522 |
| Russia | 500 |

Source: Metal-Courier, own calculations⁶

1.4 Conclusion

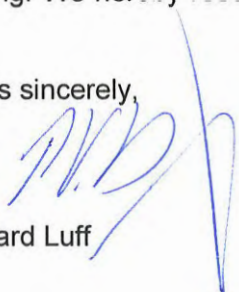
For the reasons set out at above and in accordance with the criteria set forth in Article 2(7) of the Basic Regulation, Ukraine or, alternatively, Russia should be chosen as the analogue country in the present antidumping proceedings. This request is also in line with the recommendations of the Applicant in the Request for expiry review, as noted above.

⁶ See Annex 1 with Excel table summarising monthly prices in Ukraine and Russia together with a detailed explanation on the methodology followed to compute the average monthly domestic sales prices (as well as copies of pages of Metal-Courier publications for the corresponding periods).

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We trust that the above comments will assist you in your decision with respect to the choice of the appropriate analogue country in this proceeding. We hereby reserve the right to make further comments on this issue.

Yours sincerely,



Richard Luff