

## COMMISSION IMPLEMENTING DECISION

of 17.05.2017

**concerning an application for refund of anti-dumping duties paid on imports of certain aluminium road wheels originating in the People's Republic of China  
(only the Italian text is authentic)**

*"The Decision has been expunged of personal data pursuant to Article 4.1(b) of Regulation (EC) No 1049/2001 of 30 May 2001. The applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to processing of personal data by the Community institutions and bodies and on the free movement of such data. When access is requested to documents concerning personal data, Regulation (EC) No 45/2001 becomes fully applicable."*

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union<sup>1</sup>, and in particular Article 11(8) thereof,

After informing the Member States,

Whereas:

### A. PROCEDURE

#### Measures in force

- (1) By Regulation (EU) No 964/2010<sup>2</sup> the Council imposed a definitive anti-dumping duty on imports of certain aluminium road wheels originating in the People's Republic of China ('China'). The rate of the definitive anti-dumping duty for all Chinese exporting producers was set at 22,3% (the 'original investigation').
- (2) On 23 January 2017, following an expiry review the measures were extended for five years.<sup>3</sup>

#### Refund application

- (3) Between 28 April 2011 and 23 June 2014, the Italian importer "[omissis]" ('the applicant') applied for a refund of anti-dumping duties via the authorities of Italy ('the application') under Article 11(8) of Regulation (EU) No 1225/2009 of 30 November

<sup>1</sup> OJL 176, 30.6.2016, p. 21

<sup>2</sup> Council Implementing Regulation (EU) No 964/2010 of 25 October 2010 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium road wheels originating in the People's Republic of China (OJ L 282, 28.10.2010, p.1).

<sup>3</sup> Commission Implementing Regulation (EU) No 2017/109 of 23 January 2017 imposing a definitive anti-dumping duty on imports of certain aluminium road wheels originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 18, 24.1.2017, p.1).

2009 on protection against dumped imports from countries not members of the European Community<sup>4</sup>. The application related to duties paid on imports of aluminium road wheels originating in China subject to the duty rate of 22,3 %.

- (4) The total amount of anti-dumping duties for which a refund is claimed is EUR "[omissis]". The anti-dumping duties were levied by the customs authorities between 29 October 2010 and 22 January 2014. The corresponding transactions were invoiced by "[omissis]" and its related company "[omissis]" ('the exporting producer') between 25 May 2010 and 22 November 2013.

### **Investigation period**

- (5) The application was recurrent. In accordance with point 3.6 of the Commission Notice concerning the reimbursement of anti-dumping duties ('the Commission Notice')<sup>5</sup>, for reasons of efficiency, the Commission decided to establish three refund investigation periods ('refund investigation period' or 'RIP') within which to calculate dumping margins. Therefore, the following three RIPs were used: from 1 April 2010 to 31 December 2011 ('first refund investigation period' or 'RIP1'), calendar year 2012 ('second refund investigation period' or 'RIP2') and calendar year 2013 ('third refund investigation period' or 'RIP3').

### **B. ARGUMENTS OF THE APPLICANT**

- (6) The applicant claimed that the dumping margin of the exporting producer in China, on the basis of which anti-dumping duties were paid, was eliminated or reduced below the level of the duty in force and, therefore, requested the anti-dumping duties paid to be reimbursed.

### **C. ADMISSIBILITY**

- (7) The application relating to most of the transactions referred to in recital (3) was submitted within the time limits and with sufficient evidence and precise information on the amount of refund of anti-dumping duties claimed. Therefore, the application for those transactions is admissible under Article 11(8) of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ('the basic Regulation').
- (8) However, for some transactions the application was submitted outside the statutory six-month time limit. These transactions are rejected as inadmissible under Article 11(8) of the basic Regulation.
- (9) For some other transactions the amount of the anti-dumping duty sought for refund was slightly amended following analysis of the evidence submitted by the applicant.
- (10) Therefore, the total amount of duties which could potentially be refunded is EUR "[omissis]".
- (11) The application is considered as duly supported by evidence as of 28 January 2016, the date on which full evidence on export prices and normal values was submitted.

### **D. MERITS OF THE APPLICATION**

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<sup>4</sup> OJ L 343, 22.12.2009, p.51

<sup>5</sup> Commission Notice concerning the reimbursement of anti-dumping duties (2014/C 164/09) (OJ C 164, 29.5.2014, p. 9).

## General

- (12) The applicant provided a statement of cooperation from the exporting producer expressing its willingness to provide the Commission with all evidence deemed necessary for the purpose of the refund investigation.
- (13) The Commission invited the exporting producer to fill in the claim form for market economy treatment in accordance with Article 2(7)(c) of the basic Regulation and to reply to a questionnaire for exporting producers within a specified time limit.
- (14) The exporting producer replied to the questionnaire and informed the Commission that it would not apply for market economy treatment. Consequently, normal value had to be established in accordance with Article 2(7)(a) of the basic Regulation, that is on the basis of the price or constructed value in a market economy third country ('analogue country').
- (15) On 9 December 2013, the Commission informed the applicant accordingly and invited it to seek cooperation from a producer of the like product in an analogue country in order to determine the normal value on the basis of the data collected from such producer.
- (16) The applicant made several attempts, but unsuccessful, to find cooperation in Turkey which was used as analogue market in the original investigation.
- (17) On 19 January 2015 the applicant communicated that a company established in Malaysia was willing to cooperate with the Commission and to provide the necessary information in order to determine the normal value in the framework of this refund application.
- (18) There are six known producers on the Malaysian market, and imports from at least two third countries (i.e. China and Indonesia). The level of competition was therefore high. The product produced in Malaysia was also considered to be alike with the product produced in China and no major differences were found. Malaysia was therefore considered as an appropriate market economy third country.
- (19) The Commission sought and verified all the information deemed necessary to determine the exporting producer's dumping margin. Verification visits were carried out at the premises of the following company:
  - "[omissis]", the exporting producer
  - "[omissis]", the producer in the analogue country.

## Normal value

- (20) As explained in recitals (14) to (17) the exporting producer did not apply for market economy treatment. Therefore the normal value has been established based on information collected in the analogue country Malaysia in accordance with Article 2(7)(a) of the basic Regulation, on the basis of the price or constructed normal value in this country.
- (21) It was analysed whether the domestic sales to unrelated customers of the cooperating producer in the analogue country were made in representative quantities and at a price level considered to be in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.
- (22) For all sales made in the ordinary course of trade, the normal value was established as the actual domestic price, calculated as the weighted average of the prices of all

domestic sales of that type made during the three refund investigation periods in accordance with Article 2(1) of the basic Regulation.

- (23) In all other cases, normal value was constructed based on the manufacturing costs of the product type sold in the domestic market plus an amount for selling, general and administrative ('SG&A') expenses and profits on the domestic market determined in accordance with Article 2(6) of the basic Regulation.
- (24) To construct the normal value, the value for SG&A expenses and for profits was based on actual data of the producer in the analogue country, pertaining to production and sales of the like product in the ordinary course of trade.

### **Export price**

- (25) In all cases, following Article 2(8) of the basic Regulation, the export price was established using the prices actually paid or payable for the product when sold for export from the exporting country to independent customers in the Union.

### **Comparison**

- (26) The normal value and the export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison, allowances duly justified were taken into account in order to adjust the price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments were made for inland freight, insurance and ocean freight.
- (27) For most product types exported from China to the Union for which no matching product type was found, adjustments were made to the normal value for physical differences in accordance with Article 2(10)(a) of the basic Regulation as described below and using the same methodology as in the investigation that led to the measures.
- (28) For product types exported that had the same size and same weight, but a different finishing than the corresponding product types sold on the domestic market, the normal value of the type with the less costly finishing ('normal' finishing) was used as normal value for the product type exported that had more expensive finishing ('special' finishing).
- (29) For product types that had different sizes and weights than any corresponding product types sold on the domestic market, the closed matching product type in terms of size and weight was taken as a basis and the cost of manufacturing of that type was extrapolated to the resembling product type in order to determine its normal value.

### **Dumping margin**

- (30) In accordance with Article 2(11) of the basic Regulation, the weighted average normal value by product type was compared with the weighted average export price of the corresponding type of the product concerned. This comparison showed the existence of dumping for all refund investigation periods.
- (31) The dumping margins were established separately for each of the investigation periods and amounted to 72,7% for RIP1, 78,6% for RIP2 and 74,9% for RIP3. These margins are all above the level of the definitive duty imposed.
- (32) The anti-dumping duty in force for "[omissis]" and its related company "[omissis]" was 22,3%.

## **E. REFUND CALCULATION**

- (33) For the transactions invoiced during the three refund investigation periods, the dumping margin was higher than the level of the duty in force applied for the same periods. Accordingly, the applicant could not establish that the dumping margin of its exporting producers was eliminated, or reduced below the level of the duty in force. The application for a refund of anti-dumping duties related to imports invoiced by the exporting producers during the three refund investigation periods is therefore rejected.

#### F. DISCLOSURE

- (34) On 6 March 2017, the cooperating exporting producers and the producer established in the analogue country received information on the treatment of their particular data and the resulting calculations of the export prices and the normal value. The cooperating companies did not make any comment.
- (35) On 3 April 2017, a disclosure of the above findings on the basis of which it was intended to propose to adopt a Commission Decision rejecting the application for a refund was sent to the applicant.

#### G. CONCLUSION

- (36) On the basis of the findings of this investigation, a comparison between the dumping margins established during the three investigation periods and the anti-dumping duty in force shows that the application for a refund of EUR "[omissis]" of anti-dumping duties paid submitted by the applicant should be rejected.
- (37) The applicant is hereby informed that it has the right under Article 263(4) of the Treaty of the Functioning of the European Union to bring an action before the General Court within two months of the notification of this Decision,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The refund application submitted by "[omissis]" in respect of anti-dumping duties paid on imports of certain aluminium road wheels originating in the People's Republic of China for an amount of EUR "[omissis]" is rejected.

#### *Article 2*

This Decision is addressed to "[omissis]" and to the Italian Republic.

Done at Brussels,

*For the Commission*  
*Cecilia MALMSTRÖM*  
*Member of the Commission*