EUROPEAN
COMMISSION

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COMMISSION IMPLEMENTING DECISION

of 20.7.2017

amending Commission Decision C (2011) 8810 concerning an application for a refund of anti-dumping duties paid on imports of certain compressors originating in the People's Republic of China
(only the German text is authentic)

"The Decision has been expunged of data pursuant to Article 4(2) of Regulation (EC) 1049/2001. The information withheld under Article 4(2) first indent concerns the identity of the undertaking that is the addressee of the Commission Decision and other commercially sensitive details. The disclosure of this information could confer an undue advantage to its competitors which could exploit this information to the detriment of the undertaking concerned, thereby undermining its commercial interests."

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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[1], and in particular Article 11(8) thereof,

After informing Member States,

Whereas:

A. PROCEDURE

Measures

(1) Council Regulation (EC) No 261/2008[2] of 17 March 2008 imposed a definitive anti-dumping duty on imports of certain compressors originating in the People's Republic of China ('China') (the 'original investigation'). The rates of the definitive anti-dumping duty for the Chinese exporting producers were set in the range between 10,6 % and 77,6 %.

(2) These measures expired in March 2010[3].

Refund Application

(3) Hans Einhell Oesterreich GmbH ('the applicant' or 'Einhell'), an Austrian importer, applied for a refund of anti-dumping duties via the competent Authorities of Austria under Article 11(8) of the basic Regulation in October 2009 ('the application').

(4) The application related to anti-dumping duties paid on imports of certain compressors originating in China and manufactured by Nu Air (Shanghai) Compressors and Tools Co. Ltd, Shanghai, ('Nu Air (Shanghai)' or 'the exporting producer'), subject to an individual duty rate of 13,7 %.

(5) The total amount of anti-dumping duties for which a refund was claimed was *"[omissis]"*.

(6) Following a refund investigation, on 6 December 2011, the Commission adopted decision C (2011) 8810.

(7) The Commission established that during the refund investigation period (from 1 September 2008 until 31 December 2009) the dumping margin of the exporting producer (10,7 %) was lower than the level of the duty applied for the same period

[1] OJ L 176, 30.6.2016, p. 21.
[2] OJ L 81, 20.3.2008, p. 1.
[3] Notice of the expiry of certain anti-dumping measures, OJ C 73, 23.3.2010, p. 39.

(13,7 %). Accordingly, the application for refund was accepted for an amount corresponding to the difference (i.e. 3 %) between the duty actually paid and the duty which would result from the application of the dumping margin established by the refund investigation. The total amount to be refunded for this period was therefore *"[omissis]"*.

The Judgement of the General Court of the European Union

(8) On 17 February 2012, the applicant lodged an application before the General Court of the European Union for annulment of Article 1 of Decision C (2011) 8810 insofar as that article grants it only a partial refund of the anti-dumping duties which it had paid.

(9) By its judgment of 18 November 2015[4] ('the 'judgment'), the General Court annulled Article 1 of Decision C (2011) 8810 in so far as that article does not grant the applicant a refund of the anti-dumping duties unduly paid beyond the amounts referred.

(10) As outlined in recitals (27) and (30) of Decision C (2011) 8810, while constructing the export price under Article 2(9), the anti-dumping duties paid were deducted from resale prices pursuant to Article 11(10) of the basic Regulation.

(11) Therein, the Commission compared the export prices during the original investigation period with the export prices during the refund investigation period per product type, where comparable, and found that some of the product types did not have a sufficient price increase to cover the anti-dumping duty paid, whereas some of them did. On that basis, the Commission found that there was no conclusive evidence for passing on of the duty altogether. It followed that all duties were fully deducted in the construction of the export price even for the product types where the price increase exceeded the duty amount.

(12) This methodology was found to be partly inconsistent with Article 11(10) of Council Regulation (EC) No 1225/2009[5]. The Court found that the deduction of the anti-dumping duty paid for all product types – even though for some of them the duty had been passed on – did not comply with Article 11(10) thereof.

(13) In accordance with Article 266 of the Treaty on the Functioning of the European Union, the calculation of the dumping margin for the applicant was corrected on the basis of that judgment.

(14) This Decision seeks to correct the aspects of Decision C (2011) 8810 found to be inconsistent with the basic Regulation, and which thus led to the annulment of parts of that Decision. All other findings made in Decision C (2011) 8810 remain valid.

B. NEW ASSESSMENT OF THE FINDINGS BASED ON THE JUDGMENT OF THE GENERAL COURT

(15) The aspect of the judgment that is addressed by this Decision is the calculation of the dumping margin, more specifically the construction of the export price in accordance with the interpretation by the General Court of Article 11(10) of Council Regulation (EC) No 1225/2009, now Article 11(10) of Regulation (EU) 2016/1036 ('the basic Regulation')[6].

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4 Case T-73/12 *Einhell Germany and Others v Commission*, ECLI:EU:T:2015:865.

5 OJ L 343, 22.12.2009, p. 51.

6 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, OJ L 176, 30.6.2016, p. 21.

(16) In light of the General Court's findings, the Commission revised the calculation of the dumping margin and did not deduct the anti-dumping duty from the resale price for those product types where the difference between the export price established during the refund investigation and the export price established during the original investigation was equal to or higher than the anti-dumping duty.

(17) Following the disclosure of the revised dumping calculation, the exporting producer agreed with the changed methodology in calculating its dumping margin in this respect. However, it submitted a number of new claims.

(18) The exporting producer submitted two claims requesting a correction of information provided during the refund investigation in 2011. The first of these claims requested to exclude certain product types from the dumping calculation since they were not produced in China. The second claim requested to correct the calculation of the dumping margin in certain transactions because of an alleged mistake in the CIF value reported by the exporting producer also during the refund investigation in 2011. Since both claims were based on new evidence which was not submitted during the original refund investigation, said evidence cannot be verified at this stage. Accordingly, it had to be rejected.

(19) In its comments to the disclosure, the applicant further claimed that the source of the error was not the original data provided by the exporting producer, but the incorrect application of a mathematical formula by the Commission when making the dumping calculation for the applicant's export sales. The Commission subsequently reviewed its calculations. However, this review showed that the calculations performed by the Commission were indeed correct. The Commission, then, further reviewed the original file. This latter review showed that, contrary to the applicant's statement, the Commission is in possession of evidence which shows that the incorrect information at issue was already present in the data submitted by the applicant in its submission of 26 April 2010. Therefore, its claim could not be accepted.

(20) The exporting producer submitted an additional claim concerning the use of the profit of the unrelated importer during the refund investigation period instead of the profit margin of the same unrelated importer from the original investigation for the construction of the export price under Article 2(9) of the basic Regulation.

(21) As the General Court did not rule on this issue, this claim, too, had to be rejected.

(22) The exporting producer further claimed the correction of a clerical error in calculating the dumping margin for one product type made in the initial refund investigation. The error was evident from the information already on file, and no additional evidence was needed to identify and correct the error. Although the error was not noticed after the disclosure in the refund investigation, the Commission accepts to correct this error for reasons of good administration.

(23) The comparison of the re-calculated weighted average export price with the weighted average normal value as found during the refund investigation by product type on an ex-factory basis showed the existence of dumping. The dumping margin established, expressed as a percentage of the CIF import price at the Union frontier, duty unpaid, is thus 7,8 %.

C. DISCLOSURE

(24) On 28 April 2017, the Commission informed the applicant of the above findings on the basis of which it was intended to propose to amend Decision C (2011) 8810. The applicant's comments were addressed in recital (19).

(25) Additionally, the applicant requested to impose on the customs authorities of the Member States certain obligations concerning the payments of the additional refund amounts established in the present Decision. However, the present refund decision is entirely performed under the procedure set out in Article 11(8) of Regulation (EU) 2016/1036 and does not relate to the repayment and remission provisions of the Union Customs Code[7]. The three year period contained in Article 103(1) of the Union Customs Code, does, accordingly, not apply to the present refund Decision. Therefore, the request cannot be accepted.

D. CONCLUSIONS

(26) On the basis of the above, an additional amount to be refunded was calculated. This amount is the difference (2,9 %) between the duty actually paid (13,7 %) and the duty which would result from the application of the revised dumping margin (7,8 %), less the already refunded amount (3 %) established by the refund investigation. Thus, the additional refund amounts to *"[omissis]"*. The application should be rejected in respect of the remaining *"[omissis]"*,

HAS ADOPTED THIS DECISION:

Article 1

Article 1 of Decision C (2011) 8810 shall be replaced by the following:

"The application submitted by Hans Einhell Oesterreich GmbH for a refund of anti-dumping duties paid on imports of certain compressors originating in the People's Republic of China is partially granted in the amount of EUR *"[omissis]"*."

Article 2

Since the amount of refund of anti-dumping duties paid established on the basis of Article 1 of Decision C (2011) 8810 as amended by this Decision (*"[omissis]"*) exceeds those partially granted pursuant to Article 1 of Decision C (2011) 8810 (*"[omissis]"*), the difference of *"[omissis]"* shall be refunded to Hans Einhell Oesterreich GmbH.

[7] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269, 10.10.2013, p. 1.

Article 3

This Decision is addressed to Hans Einhell Oesterreich GmbH, Brunner Strasse 81A, 1230 Wien, Austria and to the Republic of Austria.

Done at Brussels, 20.7.2017

For the Commission
Cecilia MALMSTRÖM
Member of the Commission