



Brussels, 24.1.2018
C(2018) ~~293~~ final

COMMISSION IMPLEMENTING DECISION

of 24.1.2018

**concerning an application for refund of anti-dumping duties paid on imports of certain tube and pipe fittings originating in the People's Republic of China
(only the German text is authentic)**

This is the non-confidential version of the Commission Implementing Decision C(2018) 293 final of 24 January 2018. The Decision has been expunged of personal 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.

COMMISSION IMPLEMENTING DECISION

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concerning an application for refund of anti-dumping duties paid on imports of certain tube and pipe fittings originating in the People's Republic of China (only the German text is authentic)

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 ('the basic Regulation')¹, and in particular Article 11(8) thereof,

After informing the Member States,

Whereas:

A. PROCEDURE

- (1) By Council Regulation (EC) No 803/2009², the Council imposed a definitive anti-dumping duty on imports of certain tube and pipe fittings originating in *inter alia* the People's Republic of China ('China'). The rate of the anti-dumping duty for all Chinese companies was set at 58,6%.
- (2) By Commission Implementing Regulation (EU) 2015/1934³, the European Commission ('the Commission') imposed a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in China ('the anti-dumping measures in force'), following an expiry review pursuant to Article 11(2) of the basic Regulation. The rate of the anti-dumping duty for all Chinese companies was set at 58,6%.

Refund application

- (3) On 2 March 2015, [*omissis*], ('the applicant'), a German importer, submitted via the relevant German Authority an application for a refund of anti-dumping duties pursuant to Article 11(8) of the basic Regulation. The application related to duties paid on imports of certain tube and pipe fittings originating in China and subject to the duty rate of 58,6%, the anti-dumping measures in force.

¹ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8.6.2016 (OJ L 176, 30.6.2016, p. 21) repealing Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

² Council Regulation (EC) No 803/2009 of 27 August 2009 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China and Thailand, and those consigned from Taiwan, whether declared as originating in Taiwan, or not, and repealing the exemption granted to Chup Hsin Enterprise Co. Ltd. and Nian Hong Pipe Fittings Co. Ltd. (OJ L 233, 4.9.2009, p. 1).

³ Commission Implementing Regulation (EU) 2015/1934 of 27 October 2015 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 282, 28.10.2015, p. 14).

- (4) The total amount of anti-dumping duties for which a refund is claimed is *[omissis]* and relates to three import transactions customs cleared in 2011 and 2012. The import transactions were invoiced by *[omissis]*. *[omissis]* and the applicant are related within the meaning of the Union's customs legislation⁴.
- (5) When the goods first entered into free circulation into the Union, they were not subject to any anti-dumping duties. Following a post-clearance customs inspection, the relevant German Customs Authority reclassified the imported goods into CN codes 7307 9990 98 and 7307 9980 98 respectively and thus determined that the goods were subject to the anti-dumping duty in force.
- (6) Consequently, a decision establishing the anti-dumping duties to be levied on the imported goods was adopted on 5 September 2014. The decision refers to the three import transactions mentioned in recital (4).

Refund investigation periods

- (7) The Commission established a refund investigation period from 1 July 2011 to 30 September 2012 ('RIP') within which to calculate a new dumping margin.

B. ARGUMENTS OF THE APPLICANT

- (8) 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

- (9) The application relating to the transactions referred to in recital (4) was submitted within the time limits and with sufficient evidence and precise information on the amount of refund of anti-dumping duties claimed. The applicant identified and indicated as the exporting producer of the goods concerned *[omissis]* and provided a statement of cooperation from *[omissis]* expressing its willingness to provide the Commission with all evidence deemed necessary for the purpose of the refund investigation. Therefore, the application was considered admissible under Article 11(8) of the basic Regulation.
- (10) The total amount of duties which could potentially be refunded is *[omissis]*.
- (11) As stated in recital (9), the applicant provided a statement of cooperation from *[omissis]*. Therefore, the Commission invited *[omissis]* to fill in the claim form for

⁴ In accordance with Article 127 of Commission Implementing Regulation (EU) 2015/2447 of 24.11.2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, two persons shall be deemed to be related if one of the following conditions is fulfilled: (a) they are officers or directors of the other person's businesses; (b) they are legally recognized partners in business; (c) they are employer and employee; (d) a third party directly or indirectly owns or controls or holds 5% or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they control a third person directly or indirectly; (h) they are members of the same family. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related only if they fall within the criteria referred to in the previous paragraph. For the purposes of letter (e), (f) and (g) of the first paragraph, one person is deemed to control another when the former is legally or operationally in a position to exercise direction over the latter. (OJ L 343, 29.12.2015, p. 558). In this context 'person' means any natural or legal person.

market economy treatment and to reply to a questionnaire for exporting producers within a specified time limit.

- (12) *[omissis]* replied only partially to the questionnaire, prompting the Commission to ask for additional information to clarify amongst other things the business processes of the company. The additional information provided clearly stated that *[omissis]* did in fact not produce the product concerned but sourced it via an unrelated trading company from a Chinese producer.
- (13) Based on this information, the Commission concluded that it was not possible to collect the necessary information to establish both the export price and the normal value for a producer and was therefore not in a position to determine whether the dumping margin, on the basis of which duties were paid, has been eliminated, or reduced to a level which is below the level of the duty in force.
- (14) Moreover, pursuant to Article 11(9) of the basic Regulation refund investigations must be carried out following the same methodology as in the investigation which led to the duty. The investigation that led to the duty established the anti-dumping duty on the basis of the dumping margins of exporting producers rather than exporters.
- (15) The requirements described in the analysis of the admissibility of the refund application are therefore not met.
- (16) On the basis of the evidence submitted, a dumping margin cannot be established for *[omissis]* which is not a producer. Therefore, the application was not duly supported by evidence to substantiate the refund request and, thus, it should be rejected under Article 11(8) of the basic Regulation.

D. DISCLOSURE

- (17) On 18 August 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. The applicant made comments that can be summarised as follow:
 - (a) The statements of the Commission that *[omissis]* is not a producer of the product concerned and therefore it was not possible for the Commission to collect the necessary information to establish the normal value are not in line with the basic Regulation and the evidence submitted.
 - (b) Although the provisions of the basic Regulation do not require that the information on the normal value and the export price is provided by a producer, evidence was provided that *[omissis]* processed the product concerned in four steps: cutting, welding, sand blasting, painting. Therefore, *[omissis]* can be considered as a producer even if the raw material used sourced from local traders.
 - (c) The Commission has not yet taken a decision on the granting of market economy treatment ('MET') status for *[omissis]*.
- (18) Furthermore, the applicant asked to be heard and a hearing with the Hearing Officer for trade proceedings was held. The Hearing Officer made available for inspection by interested parties the open version of the hearing report.
- (19) The comments under recital (17) a. and (17) b. do not contain any new elements supporting the refund application. Indeed, *[omissis]* reported itself in its additional information referred to in recital (12) that it did not produce the product concerned and

that it did only the limited processing described in recital (17) b.. Therefore, these comments cannot be taken into account and are dismissed.

- (20) As for the comment under recital (17) c. is concerned, during the hearing mentioned in recital (18) the Commission clarified that MET status can be requested by a producer only, not by a company which is only an exporter.
- (21) During the hearing, in response to the assessment that *[omissis]* cannot be considered the producer of the product concerned, the applicant claimed that according to the basic Regulation, evidence on normal value and export prices did not necessarily have to be provided for a producer, but can also be provided for an exporter.
- (22) First, as noted in recital (14) above, the same methodology as in the investigation leading to the measures should be employed in any refund investigation as the present one. In the investigation leading to the measures the duty was based on the dumping margins of the exporting producers and not exporters.
- (23) Second, the determination of a normal value is an essential step of the calculation of the dumping margin for the purposes of the refund investigation. In accordance with Article 2(1) of the basic Regulation a normal value must be determined for a producer. As explained in recitals (12) and (13) above *[omissis]* was found not to be a producer of the product concerned and no other producers of the product concerned were cooperating in the present investigation. This prevented the determination of normal value in this case. Therefore, it is noted that the dumping margin must be determined for an exporting producer.
- (24) On 13 December 2017 a second 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. The applicant did not make any comment.

E. CONCLUSION

- (25) It is concluded that the application for a refund of anti-dumping duties was not supported by the evidence to substantiate the refund request and therefore the application has to be rejected under Article 11(8) of the basic Regulation.
- (26) The applicant is hereby informed that he has the right under Article 263(4) of the Treaty of the Functioning of the European Union to bring an action before the Court of Justice 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 tube and pipe fittings originating in the People's Republic of China for an amount of *[omissis]* is rejected.

Article 2

This Decision is addressed to *[omissis]* and to the Federal Republic of Germany.

Done at Brussels, 24.1.2018

For the Commission
Cecilia MALMSTRÖM
Member of the Commission