

COMMISSION IMPLEMENTING DECISION

of 5.8.2019

concerning an application for refund of anti-dumping duties paid on imports of certain iron or steel fasteners originating in the People's Republic of China (only the Danish and English texts are authentic)

"This is the non-confidential version of the Commission Implementing Decision C(2019)5677 of 5 August 2019. 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."

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 Union¹, and in particular Article 11(8) thereof,

After informing the Member States,

Whereas:

A. PROCEDURE

Measures in force

- (1) By Regulation (EC) No 91/2009² the Council imposed a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China ('the PRC'). The rate of the definitive anti-dumping duty for all non-cooperating Chinese exporting producers was set at 85 %.
- (2) By Council Implementing Regulation (EU) No 924/2012³ the Council amended Regulation (EC) No 91/2009. As a result, the rate of the definitive anti-dumping duty for all non-cooperating Chinese exporting producers was set at 74.1 %.
- (3) On 27 March 2015, following an expiry review the measures were extended for five years by Commission Implementing Regulation (EU) 2015/519⁴.

¹ OJ L 176, 30.6.2016, p. 21.

² Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ L 29, 31.1.2009, p. 1).

³ Council Implementing Regulation (EU) No 924/2012 of 4 October 2012 amending Regulation (EC) No 91/2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ L 275, 10.10.2012, p.1)

- (4) On 28 February 2016, following a compliance report adopted by the WTO Dispute Settlement Body⁵, the measures were repealed by Commission Implementing Regulation (EU) 2016/278⁶.

Refund application

- (5) On 20 August 2014, [omissis] (the ‘applicant’) submitted an application for a refund of anti-dumping duties via the authorities of Denmark under Article 11(8) of Regulation (EU) 2016/1036 (the ‘basic Regulation’). The application related to duties paid on imports of certain iron or steel fasteners originating in the PRC subject to a duty rate of 85 % or 74.1 %, depending on the date of import.
- (6) The total amount of anti-dumping duties for which a refund is claimed is DKK [omissis]. The anti-dumping duties were levied by the customs authorities on 12 June 2014. The corresponding transactions were invoiced by [omissis] between 15 April 2009 and 10 December 2012.

Refund Investigation period

- (7) In accordance with point 3.6 of the Commission Notice concerning the reimbursement of anti-dumping duties⁷, for reasons of efficiency, the Commission decided to establish three refund investigation periods within which to calculate dumping margins. Those periods were (i) calendar year 2009, (ii) calendar year 2011, and (iii) calendar year 2012. No imports took place during calendar year 2010, which is why no refunds were claimed for that period.

B. THE APPLICANT'S ARGUMENTS

- (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 (5) was submitted within the time limits and with sufficient evidence and precise information on the amount of refund of anti-dumping duties claimed in accordance with Article 11(8) of the basic Regulation. Therefore, the application for those transactions is admissible under Article 11(8) of the basic Regulation.

D. MERITS OF THE APPLICATION

- (10) The applicant provided a statement of cooperation from the legal successor of the original exporting producer, [omissis], expressing its willingness to provide the

⁴ Commission Implementing Regulation (EU) No 2015/519 of 26 March 2015 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China, as extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 82, 27.3.2015, p.78).

⁵ WTO, Report of the Panel, WT/DS397/RW, 7 August 2015. WTO, Report of the Appellate Body, AB-2015-7, WT/DS397/AB/RW, 18 January 2016.

⁶ Commission Implementing Regulation (EU) 2016/278 of 26 February 2016 repealing the definitive anti-dumping duty imposed on imports of certain iron or steel fasteners originating in the People's Republic of China, as extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not (OJ L 52, 27.2.2016, p. 24).

⁷ Commission Notice concerning the reimbursement of anti-dumping duties (2014/C 164/09) (OJ C 164, 29.5.2014, p. 9).

Commission with all necessary evidence for the purpose of the refund investigation.

- (11) On 13 May 2016, the Commission invited *[omissis]* to fill in the claim form for market economy treatment in accordance with Article 2(7)(c) of the basic Regulation in force at the time of the imports and to reply to a questionnaire for exporting producers within 37 days (in other words, before 20 June 2016).
- (12) Upon its request, *[omissis]* received an extension of the deadline until 30 September 2016 and replied to the questionnaire on 28 September 2016. On 20 February 2017, the applicant informed the Commission that the exporting producer would not apply for market economy treatment.
- (13) The Commission therefore informed the applicant that the normal value would be established in accordance with Article 2(7)(a) of the basic Regulation, which is on the basis of the price or constructed value in a market economy third country (the 'analogue country'). The Commission invited the applicant 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.
- (14) On 4 and 5 April 2017, Commission officials carried out a verification visit at the premises of *[omissis]*. On 4 August 2017, a letter was sent to the applicant highlighting some shortcomings regarding the cooperation *[omissis]* and of the unrelated trader *[omissis]*. Those shortcomings concerned, in particular, the availability of key company documents, including those linking *[omissis]* to *[omissis]*. Moreover, the verification visit revealed that the questionnaire reply contained contradictory information with respect to the shareholders and the production and sale of the product concerned.
- (15) Following the letter of 4 August 2017 from the Commission to the applicant, upon its request a hearing took place with the applicant in the Commission's offices on 25 October 2017. During that hearing, the issues highlighted in the letter were discussed and it was decided that the Commission services would take a final decision on the potential shortcomings at the end of the procedure.
- (16) At the same time, the Commission drew the applicant's attention to Article 11(8) of the basic Regulation setting out that an application for a refund of anti-dumping duties should also include evidence of normal value and that failure to obtain cooperation from a producer in an analogue country could therefore lead to the rejection of the refund application.
- (17) On 22 December 2017, the applicant informed the Commission that the process of finding cooperation in the analogue country was proving difficult. The applicant noted, however, that it had promising contacts with some exporting producers in India. Further to that message, no further information was received from the applicant.
- (18) On 10 August 2018, the Commission informed the applicant that, given the lack of evidence on the normal value within a reasonable period of time, it intended to reject the application, in accordance with Article 11(8) of the basic Regulation. The applicant was granted a 30 day deadline (with a further extension) in order to provide the necessary information to complete the application.
- (19) On 28 September 2018, the expiry date of the extended deadline, the applicant had provided no information concerning the normal values, nor had the applicant provided such information in the meantime.

- (20) The Commission notes that, pursuant to Article 11(8) of the basic Regulation, it may reject an application for which evidence supporting the request for refunds is not forthcoming.
- (21) Given the expiry of the deadline to provide the required information for the calculation of the applicant's dumping margin on 28 September 2018, the Commission concluded that the applicant had failed to provide sufficient evidence to support its application within a reasonable period of time.
- (22) Therefore, a dumping margin meeting the requirements referred to in paragraph 2.4 of the Commission Notice could not be established.

E. DISCLOSURE

- (23) On 7 June 2019 a disclosure of the above findings on the basis of which it was intended to adopt a Commission Decision rejecting the refund application was sent to the applicant.
- (24) No comments were received following this disclosure.

F. CONCLUSION

- (25) On the basis of the fact that the application for a refund of anti-dumping duties was not supported by the evidence to substantiate the refund request, the application was rejected under Article 11(8) of the basic Regulation.
- (26) The applicant should be informed of its right under Article 263(4) of the Treaty on 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 iron or steel fasteners originating in the People's Republic of China for an amount of DKK [omissis] is rejected.

Article 2

This Decision is addressed to [omissis] and to the Kingdom of Denmark.

Done at Brussels, 5.8.2019

For the Commission

Cecilia MALMSTRÖM

Member of the Commission

