



Brussels, 25.2.2021
C(2021) ~~1137~~ final

COMMISSION IMPLEMENTING DECISION

of 25.2.2021

**concerning an application for refund of anti-dumping duties and countervailing duties
paid on imports of electric bicycles originating in the People's Republic of China**

(only the French text is authentic)

This is the non-confidential version of the Commission Implementing Decision C(2021) 1137 final of 25.2.2021. 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 and countervailing duties paid on imports of electric bicycles originating in the People's Republic of China

(only the French 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 Union¹, and in particular Article 11(8) thereof,

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union², and in particular Article 21 thereof,

After informing the Member States,

Whereas:

A. PROCEDURE

Measures in force

- (1) By Commission Implementing Regulation (EU) 2019/72³ the Commission imposed a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China ('the PRC').
- (2) By Commission Implementing Regulation (EU) 2019/73⁴ the Commission imposed a definitive anti-dumping duty and definitively collected the provisional duty imposed on imports of electric bicycles originating in the PRC.

Refund application

- (3) On 28 October 2019, the French importer [*omissis*] ('the applicant') submitted through the authorities of France an application for a refund of anti-dumping duties and countervailing duties under Article 11(8) of Regulation (EU) 2016/1036 (the 'basic anti-dumping Regulation') and Article 21 of Regulation (EU) 2016/1037 (the 'basic anti-subsidy Regulation'). The application related to duties paid on imports of bicycles fitted with an auxiliary motor ('the product concerned') originating in the PRC subject to a duty rate of 33.4 %.

¹ OJ L 176, 30.6.2016, p. 21.

² OJ L 176, 30.6.2016, p. 55.

³ Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 5).

⁴ Commission Implementing Regulation (EU) 2019/73 of 17 January 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of electric bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 108).

- (4) The total amount of duties for which a refund is claimed is *[omissis]*. The duties were levied by the French customs authorities between 11 February 2019 and 6 August 2019. The corresponding transactions were invoiced by three Chinese exporting producers between 11 June 2018 and 29 July 2019.

Refund investigation period

- (5) In accordance with point 4(a) of the Commission Notice concerning the reimbursement of anti-dumping duties⁵ ('the Notice on reimbursement'), the Commission decided to establish the calendar year 2019 as the refund investigation period within which to calculate dumping margins.

B. ARGUMENT OF THE APPLICANT

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

C. ADMISSIBILITY

- (7) The application relating to the request referred to in recitals (3) and (4) is admissible. It was introduced in conformity with the relevant provisions of the basic anti-dumping Regulation and the basic anti-subsidy Regulation, notably in respect of time limits and evidence provided, and contained precise information on the amount of refund of anti-dumping and countervailing duties claimed.
- (8) However, five transactions submitted for refund were submitted outside the statutory six month time limit⁶ and two transactions submitted for refund did not relate to the electric bicycles. Moreover, in respect of another transaction, the applicant did not provide sufficient evidence that the dumping margin or the amount of countervailable subsidies on the basis of which duties were paid has been reduced or eliminated. Those transactions were rejected as inadmissible under Article 11(8) of the basic anti-dumping Regulation and Article 21 of the basic anti-subsidy Regulation. The Commission informed the applicant accordingly and provided him with further details on the inadmissibility of the transactions.
- (9) Therefore, the total amount of duties which could potentially be refunded is *[omissis]*, corresponding to transactions invoiced only by one of the three exporting producers mentioned in recital (4).
- (10) In order to obtain the necessary information for the refund investigation period, the Commission asked the concerned exporting producer whether it intended to claim market economy treatment ('MET'). The exporting producer informed the Commission that it had decided to not claim MET.
- (11) The Commission informed the applicant accordingly and informed them that they should also seek cooperation from a possible analogue country producer of electric bicycles in a market economy third country (an 'analogue country producer').

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

⁶ 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 (OJ L 176, 30.6.2016, p. 40).

- (12) However, as further explained in detail in the sections below, the applicant failed to provide the Commission with all the necessary information within a reasonable period of time as required by Article 11(8), third subparagraph, of the basic anti-dumping Regulation and Article 21(3) of the basic anti-subsidy Regulation.
- (13) Therefore, the Commission concluded that the application for refund relating to the request referred to in recitals (3) and (4) should be rejected since it was not duly supported by the necessary information to establish a new dumping margin.

Background

- (14) The applicant provided a statement of cooperation from the Chinese exporting producer [omissis] expressing its willingness to provide the Commission with all necessary evidence for the purpose of the refund investigation.
- (15) In accordance with Article 11(9) of the basic anti-dumping Regulation, in all reviews or refund investigations, provided that circumstances have not changed, the Commission has to apply the same methodology as in the investigation which led to the imposition of duty for which a refund is claimed. In the present case, this entails using the analogue country methodology with the possibility for the exporting producer to claim market economy treatment in accordance with Article 2(7)(a) of the basic Regulation as it was in force on 19 December 2017. This Article was applicable at the time of adoption of Regulation (EU) 2019/73.
- (16) On 15 June 2020, the Commission asked the exporting producer concerned whether it intended to claim MET. As aforementioned, the exporting producer informed the Commission that it had decided not to claim MET.
- (17) On 1 July 2020, the Commission informed the applicant accordingly. The applicant was also informed that, for the investigation to continue, it should seek cooperation from an analogue country producer.
- (18) On 15 July 2020, the applicant proposed a producer in Taiwan as an analogue country producer and informed the Commission that it had asked the Taiwanese company to provide a statement of cooperation.
- (19) The Commission clarified to the applicant that it should have first sought cooperation from a producer operating in the analogue country of the investigation that led to the imposition of duties, that is to say in the European Union, and only if this was not possible, can the applicant propose a cooperating producer in another appropriate analogue country.
- (20) On 31 July 2020, the applicant informed the Commission that it had not found any cooperating producer in the European Union and therefore reiterated its proposal to use a producer in Taiwan as the analogue country producer. However, the applicant did not provide any statement of cooperation from the Taiwanese company concerned.
- (21) On 10 August and 14 September 2020, the Commission reminded the applicant to provide proof of cooperation from the analogue country producer. In this respect, the Commission drew the applicant's attention to Section 3.5 of the Notice on reimbursement which provides that '*if the applicant fails to provide data for the calculation of normal values in line with Article 2(7)(a) of the basic [anti-dumping] Regulation, within a reasonable period of time, the Commission shall reject the application due to lack of supporting evidence*'. Despite this reminder, the applicant did not provide the requested evidence. In addition, it did not propose any other

method under Article 2(7)(a) of the basic Regulation and did not provide the data necessary to calculate normal values on the basis of such method.

- (22) On 29 October 2020, the Commission requested the applicant once again to submit the proof of cooperation from the analogue country producer and informed the applicant that if this evidence was not forthcoming by 13 November 2020, the Commission would reject the refund application. The applicant did not respond to the Commission's request.
- (23) The Commission noted that, pursuant to Article 11(8) of the basic anti-dumping Regulation, where the relevant evidence supporting the request for refund is not forthcoming within a reasonable period of time, the application shall be rejected.
- (24) Given the expiry of the deadline to provide the required information for the calculation of the applicant's dumping margin, the Commission concluded that the applicant failed to provide sufficient evidence to support its application within a reasonable period of time.
- (25) Therefore, the elimination or reduction of the dumping margin, meeting the requirements referred to in the provisions of Article 2(7) of the basic anti-dumping Regulation as it was in force on 19 December 2017, could not be established.
- (26) The Commission notes that an anti-subsidy investigation was carried out in parallel with the anti-dumping investigation and that the two investigations led to the imposition of anti-dumping duties and countervailing duties at the same time.
- (27) Indeed, as stated in Regulation (EU) 2019/73, in view of the use of the lesser duty rule and the fact that the definitive subsidy rates were lower than the injury elimination level, it was appropriate to impose a definitive countervailing duty at the level of the established definitive subsidy rates and then impose a definitive anti-dumping duty up to the relevant injury elimination level.
- (28) By constructing the duty imposed in this way, the Commission ensured that it complied with the obligation to avoid double counting of anti-dumping and countervailing duties under Article 14(1) 2nd subparagraph of the basic anti-dumping Regulation and Article 24(1) 2nd subparagraph of the basic anti-subsidy Regulation. As a direct consequence of the Commission's compliance with this obligation, recital (225) of Regulation (EU) 2019/73 informed importers of the product concerned that 'a refund of [the countervailing] duty paid can only be granted if it is shown that such duty exceeds the actual subsidy rate and the corresponding dumping margin'. This requirement is explained by the logic that since the collection of the countervailing duty aims at offsetting both the effects of the countervailable subsidy and the dumping margin (up to the level of the subsidy rate), the duty as such would still be payable in the form of an anti-dumping duty if the importer fails to show that the latter had been eliminated or reduced below the level of the countervailing duty paid.
- (29) Applying this reasoning to the application for refund of countervailing duties at issue, the Commission concluded that due to the lack of the necessary information to calculate a new dumping margin, it is not appropriate to calculate a new amount of countervailable subsidies, since its determination without establishing a new dumping margin would still lead to the rejection of the application for refund of both anti-dumping duties and countervailing duties.

D. DISCLOSURE

- (30) On 28 January 2021 a disclosure of the above findings on the basis of which it was intended to adopt a Commission Implementing Decision rejecting the refund application was sent to the applicant.
- (31) No comments were received following this disclosure.

E. CONCLUSION

- (32) On the basis of the fact that the application for a refund of anti-dumping and countervailing duties was not supported by the evidence to substantiate the refund request, the application was rejected under Article 11(8) of the basic anti-dumping Regulation and under Article 21 of the basic anti-subsidy Regulation.
- (33) The applicant is hereby informed that it has the 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 and countervailing duties paid on imports of electric bicycles originating in the People's Republic of China for an amount of *[omissis]* is hereby rejected.

Article 2

This Decision is addressed to *[omissis]* and to the French Republic.

Done at Brussels, 25.2.2021

For the Commission
Valdis DOMBROVSKIS
Executive Vice-President