

COMMISSION IMPLEMENTING REGULATION (EU) 2021/1475**of 14 September 2021****extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2019/915 on imports of certain aluminium foil in rolls originating in the People's Republic of China to imports of certain aluminium foil in rolls consigned from Thailand, whether declared as originating in Thailand or not**

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⁾ ('the basic Regulation') and in particular Article 13 thereof,

Whereas:

1. PROCEDURE**1.1. Previous investigation and existing measures**

- (1) In March 2013, by Implementing Regulation (EU) No 217/2013, ⁽²⁾ the Council imposed a definitive anti-dumping duty on imports of certain aluminium foils in rolls ('small rolls') originating in the People's Republic of China ('PRC') following an anti-dumping investigation ('the original investigation'). The measures took the form of an ad valorem duty ranging between 14,2 % and 35,6 %.
- (2) In June 2019, by Implementing Regulation (EU) 2019/915, ⁽³⁾ the European Commission ('the Commission') maintained the definitive measures ('the measures in force') following an expiry review pursuant to Article 11(2) of the basic Regulation ('the review investigation').

1.2. Request

- (3) The Commission received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on imports of certain aluminium foil in rolls originating in the PRC by imports consigned from Thailand, whether declared as originating in Thailand or not, and to make such imports subject to registration.
- (4) The request was lodged on 9 November 2020. The applicant had requested anonymity both at application stage and for the duration of the investigation. The applicant duly substantiated its requests, which were accepted by the Commission as it considered there were sufficient grounds to grant the confidentiality of its identity.
- (5) The request contained sufficient evidence of a change in the pattern of trade involving exports from the People's Republic of China and Thailand to the Union that had taken place following the imposition of measures on small rolls. This change appeared to stem from the consignment of small rolls via Thailand to the Union after having undergone assembly operations in Thailand. The request also contained sufficient evidence showing that such assembly operations constituted circumvention as Chinese parts accounted for more than 60 % of the total value of the parts of the assembled product, while the value added during the assembly operations was less than 25 % of the manufacturing cost.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Implementing Regulation (EU) No 217/2013 of 11 March 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foils in rolls originating in the People's Republic of China (OJ L 69, 13.3.2013, p. 11).

⁽³⁾ Commission Implementing Regulation (EU) 2019/915 of 4 June 2019 imposing a definitive anti-dumping duty on imports of certain aluminium foil in rolls originating in the People's Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 146, 5.6.2019, p. 63).

- (6) Furthermore, the request contained sufficient evidence that the practice described above was undermining the remedial effects of the existing anti-dumping measures in terms of quantities and prices. In addition, there was sufficient evidence that the prices of small rolls consigned from Thailand were dumped in relation to the normal value previously established for small rolls.

1.3. Product concerned and product under investigation

- (7) The product concerned is aluminium foil of a thickness of 0,007 mm or more but less than 0,021 mm, not backed, not further worked than rolled, whether or not embossed, in low weight rolls of a weight not exceeding 10 kg, classified on the date of entry into force of Implementing Regulation (EU) 2019/915 under CN codes ex 7607 11 11 and ex 7607 19 10 (TARIC codes 7607 11 11 10 and 7607 19 10 10) and originating in the PRC ('the product concerned'). This is the product to which the measures in force currently apply.
- (8) The product under investigation is the same as that defined in the previous recital, currently falling under CN codes ex 7607 11 11 and ex 7607 19 10, but consigned from Thailand, whether declared as originating in Thailand or not (TARIC codes 7607 11 11 11 and 7607 19 10 11) ('the product under investigation').
- (9) The investigation showed that the small rolls exported from the PRC to the Union and those consigned from Thailand have the same basic physical and chemical characteristics and have the same uses, and are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

1.4. Initiation

- (10) Having determined, after having informed the Member States, that sufficient evidence existed for the initiation of an investigation pursuant to Article 13(3) of the basic Regulation, the Commission initiated an investigation and made imports of small rolls consigned from Thailand, whether declared as originating in Thailand or not, subject to registration, by Commission Implementing Regulation (EU) 2020/2161 on 21 December 2020 ⁽⁴⁾ ('the initiating Regulation').

1.5. Investigation period and reporting period

- (11) The investigation period covered the period from 1 January 2016 to 30 June 2020 ('the investigation period' or 'IP'). Data were collected for the IP to investigate, inter alia, the alleged change in the pattern of trade following the imposition of the measures on the product concerned and the existence of a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty. More detailed data were collected for the period from 1 July 2019 to 30 June 2020 ('the reporting period' or 'RP') in order to examine if imports were undermining the remedial effect of the measures in force in terms of prices and/or quantities and the existence of dumping.

1.6. Investigation

- (12) The Commission officially informed the authorities of the PRC and Thailand, the exporting producers in those countries, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation. Questionnaires and/or Exemption Claim Forms were made available to the producers/exporters in Thailand and the PRC and to the importers in the Union known to the Commission or which made themselves known within the deadlines specified in Article 3 of the initiating Regulation.

⁽⁴⁾ Commission Implementing Regulation (EU) 2020/2161 of 18 December 2020 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2019/915 on imports of certain aluminium foil in rolls originating in the People's Republic of China by imports of certain aluminium foil in rolls consigned from Thailand, whether declared as originating in Thailand or not, and making such imports subject to registration (OJ L 431, 21.12.2020, p. 42).

- (13) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set in the initiating Regulation. All parties were informed that the non-submission of all relevant information or the submission of incomplete, false or misleading information might lead to the application of Article 18 of the basic Regulation and to findings being based on the facts available.
- (14) Two Union producers came forward as interested parties, while no replies to questionnaires/exemption claim forms were received from any party in Thailand, the PRC or elsewhere.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

- (15) In accordance with Article 13(1) of the basic Regulation, the following elements should be analysed successively in order to assess possible circumvention:
- whether there was a change in the pattern of trade between the PRC, Thailand and the Union,
 - if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the anti-dumping measures in force,
 - if there is evidence of injury or the remedial effects of the anti-dumping measures in force were being undermined in terms of the prices and/or quantities of the product under investigation, and
 - whether there is evidence of dumping in relation to the normal values previously established for the product concerned.
- (16) In the present investigation, since the evidence provided by the applicants in the request pointed to assembly operations in Thailand, the Commission more specifically analysed whether the criteria set out in Article 13(2) of the basic Regulation were met, in particular:
- whether the assembly operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and whether the parts concerned are from the country subject to measures, and
 - whether the parts constitute 60 % or more of the total value of the parts of the assembled product and whether the added value of the parts brought in, during the assembly or completion operation, was greater than 25 % of the manufacturing costs.

2.2. Level of cooperation

- (17) Before initiation, the Government of Thailand provided names and addresses of a number of aluminium household foil producers in Thailand. As mentioned in recital (14) above, none of these or any other Thai producer/exporter came forward or submitted an exemption claim.
- (18) By Note Verbale of 11 February 2021, the Commission informed the Government of Thailand that, due to the absence of cooperation from any exporters/producers in Thailand, it intended to base its findings on the existence of circumvention practices on facts available in accordance with Article 18 of the basic Regulation. The Commission also stressed that a finding based on facts available may be less favourable to the party concerned and invited the Government of Thailand to comment.
- (19) The Government of Thailand replied to the Commission that it had been informed of Dingheng New Materials Co., Ltd.'s intention to cooperate, and that, should there be no cooperation from Thai exporting producers, the Commission may use facts available for the findings of circumvention practices with respect to exporting producers in Thailand.

- (20) The Commission noted that the company mentioned by the Government of Thailand did not cooperate in this investigation, but in the parallel anti-circumvention investigation concerning the imports of aluminium foil jumbo rolls. ⁽⁵⁾ In this investigation, no Thai producer of the product under investigation came forward.
- (21) Therefore, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the existence of circumvention practices set out below were based on facts available. In particular, the Commission relied on the information contained in the request, combined with other sources of information such as trade statistics on imports and exports (e.g. from Eurostat and Global Trade Atlas ('GTA')), as well as publically available data.

2.3. Change in the pattern of trade

- (22) Table 1 below shows the development of imports from the PRC and Thailand in the investigation period. ⁽⁶⁾

Table 1

Imports of small rolls during the investigation period (tonnes)

	2016	2017	2018	2019	RP
PRC	299	471	308	596	414
<i>index (base = 2016)</i>	100	157	103	199	139
Share total imports	8 %	10 %	6 %	7 %	5 %
Thailand	70	654	814	1 088	1 069
<i>index (base = 2016)</i>	100	934	1 163	1 555	1 527
Share total imports	2 %	13 %	17 %	12 %	14 %
Total imports	3 904	4 891	4 914	8 838	7 751

Source: Eurostat

- (23) Between 2016 and the end of the reporting period there was a large increase in imports from Thailand, which went from 70 tonnes to 1 069 tonnes. At the same time, its share of total imports increased from 2 % to 14 %. Imports from the PRC also increased but at a much smaller pace, from 299 to 414 tonnes. However, the Chinese share of total imports decreased from 8 % to 5 %, or, from quadrupling the amount of Thai imports to around only one third. In addition, imports from the PRC are still at volumes below the 610 tonnes in 2013, at the time of the original investigation.
- (24) Table 2 shows the development of exports of raw materials needed for the production of small rolls from the PRC to Thailand during the investigation period.

⁽⁵⁾ Commission Implementing Regulation (EU) 2020/2162 of 18 December 2020 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2015/2384 and Implementing Regulation (EU) 2017/271 on imports of certain aluminium foil originating in the People's Republic of China by imports of certain aluminium foil consigned from Thailand, whether declared as originating in Thailand or not, and making such imports subject to registration (OJ L 431, 21.12.2020, p. 48).

⁽⁶⁾ The import data presented in this Regulation cannot be compared as such to the data published following the original or review investigation. The previous investigation used data related to the EU28, including the United Kingdom, while the current investigation includes only the EU27 following the United Kingdom's withdrawal from the Union in 2020.

Table 2

Exports of raw materials from the PRC to Thailand in the investigation period ⁽⁷⁾ (tonnes)

	2016	2017	2018	2019	RP
Foil stock (tonnes)	50 111	52 950	62 799	68 755	71 668
<i>index (base = 2016)</i>	100	106	125	137	143
Jumbo rolls (tonnes)	31 931	37 697	49 686	63 988	69 248
<i>Index (base = 2016)</i>	100	118	156	200	217
Total raw materials (tonnes)	82 042	90 647	112 485	132 743	140 916
<i>index (base = 2016)</i>	100	110	137	162	172

Source: Global Trade Atlas

- (25) The main raw material for the production of aluminium household foil is primary aluminium. The raw aluminium is then processed to produce foil stock, which in turn is further worked into aluminium household foil in rolls weighing more than 10 kilograms ('jumbo rolls') and/or small rolls (weighing 10 kilograms or less). The information available to the Commission from the request shows that the production of the small rolls which are exported from Thailand to the EU is mainly done from the intermediate raw materials foil stock or jumbo rolls.
- (26) Table 2 shows that since 2016 there has been a continuous increase in the exports of these raw materials from China to Thailand. The Commission noted however that the two raw materials are not only used for the production of small rolls in Thailand. Foil stock, for example, is also used for the production of jumbo rolls in Thailand. These jumbo rolls are then either sold on the Thai domestic market, or exported to third countries, among which the EU. In addition, foil stock is used as a raw material in a number of other industries, such as the packaging industry or for isolation purposes. Therefore, only a portion of these foil stock imports is actually used in the small rolls production process.
- (27) In addition, the data in Table 2 for jumbo rolls also includes converter foil jumbo rolls, which fall under the same commodity codes but are not used for the production of aluminium household foil. It is unknown which percentage of the jumbo rolls imported into Thailand concerns aluminium converter foil, since such detailed Thai import data is not available. However, given the lack of evidence to the contrary, it is reasonable to assume that the ratio of converter foil production versus household foil production in Thailand remained stable throughout the IP. If anything, in light of the trend shown in Table 1 above, the production of household foil has increased. This means that the increasing trend which is seen for all types of jumbo rolls is also true for household foil jumbo rolls.
- (28) In any event, the fact that there is a significant increase in raw material import volumes from the PRC to Thailand indicates an increasing demand for such raw materials in Thailand. This can, at least in part, be explained by the increase in the production and exports of small rolls in and from Thailand.
- (29) The increase of Thai exports to the Union, the parallel decrease of Chinese imports compared with Thai imports of small rolls, and the increase in Chinese exports of raw materials to Thailand over the same period constitutes a change in the pattern of trade between China, Thailand and the Union within the meaning of Article 13(1) of the basic Regulation.

⁽⁷⁾ The foil stock quantities have been adapted, in as far as possible, to reflect foil stock which can actually be used to produce aluminium household foil, and not, for example, for the printing industry, based on the specific product descriptions in GTA.

2.4. Nature of circumvention practices for which there was insufficient due cause or economic justification

- (30) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes the consignment of the product subject to the existing measures via third countries, and the assembly of parts/completion operations in a third country in accordance with Article 13(2) of the basic Regulation.
- (31) Since no exporting producer cooperated in the investigation, findings in respect of the existence and nature of circumventing practices in Thailand was based on facts available pursuant to Article 18 of the basic Regulation as explained in section 2.2 above.
- (32) The applicant in its request provided evidence showing that small rolls in Thailand were produced by rewinding jumbo rolls sourced directly from the PRC or indirectly from Thai producers who source the raw materials to produce jumbo rolls from the PRC. ⁽⁸⁾ The applicant showed that:
- (1) Thai producers do not possess the machinery necessary to produce small rolls from primary aluminium, but only to rewind, cut, slit, anneal and perform other relatively minor operations on jumbo rolls. This is also corroborated by information on the websites of several Thai producers. ⁽⁹⁾
 - (2) Thai producers source their jumbo rolls either directly from the PRC, or from Thai jumbo rolls producers who source their raw material (foil stock) from the PRC. The latter practice is corroborated by the findings in the Commission's parallel investigation on jumbo rolls.
 - (3) All known Thai exporting producers of small rolls on which information is available to the Commission from the request and publicly available information are subsidiaries of Chinese companies which are able to, and do, produce small rolls in the PRC. This includes the assembly operation currently situated in Thailand, of which the applicant provided information.
- (33) The investigation has not revealed any evidence of due cause or economic justification for importing to the Union the small rolls from Thailand, other than avoiding the payment of the anti-dumping duties currently in force. In fact, information provided by the applicant shows that the website of a Thai small rolls producer explicitly mentioned the avoidance of antidumping duties as one of the reasons for establishing production in Thailand. ⁽¹⁰⁾

2.5. Start or substantial increase of operations

- (34) As far as assembly operations are concerned, Article 13(2) of the basic Regulation requires that the assembly operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation, while the parts concerned are from the country subject to measures.

⁽⁸⁾ The applicant provided information on an ongoing investigation by the European Anti-Fraud Office (OLAF) in coordination with the Member States' relevant authorities. According to the applicant, this investigation regarding the circumvention of the anti-dumping duties resulted in penalizing two Thai exporting producers. Due to confidentiality reasons concerning ongoing investigations by OLAF, no other information is currently publically available.

⁽⁹⁾ For example, <http://en.wohler.com.cn/index.php/News/view/id/6.html>

⁽¹⁰⁾ A copy of the webpage mentioning the anti-dumping duties was provided by the applicant in Annex 5 of the request. The current version of the website, which no longer mentions the avoidance of anti-dumping duties, is available here: <http://en.wohler.com.cn/index.php/News/view/id/6.html> (last accessed on 23 February 2021). To note that the company's LinkedIn page still mentions: 'Thailand factory is established for eliminating anti-dumping rate of European and Indian markets.' (<https://www.linkedin.com/company/qingdao-wohler-household-products-co-ltd/about/>, last accessed 25 February 2021). In addition, another website mentions 'to solve the problem of anti-dumping duty, we build another factory in Thailand': https://tigerhuang923.en.ec21.com/company_info.html (last accessed 25 May 2021). Another Thai company also mentions the fact that imports from Thailand are free from anti-dumping duties: <https://www.top-ranking.com.cn/news/view?id=1792&lang=en> (last accessed 25 February 2021).

- (35) Imports from Thailand to the EU were negligible in 2015 and 2016. The year 2017 saw a marked increase in exports to 654 tonnes in 2017, and further increases every year since then. The information provided by the applicant about Thai exporting producers as well as publicly available information show that the construction of small rolls production facilities in Thailand started in 2016 and 2017, and for one company in 2018. Therefore, the assembly operation started since the initiation of the anti-dumping investigation.
- (36) Due to the non-cooperation from Thai exporting producers, the Commission relied on the evidence provided by the applicant in the request and publically available information to establish the origin of the raw materials used in the assembly of the small rolls in Thailand. The Thai producers which are known to export their products to the Union are all subsidiaries of Chinese aluminium household foil producers who are subject to anti-dumping duties when exporting from the PRC. In addition, information from the applicant shows that one of the Thai companies claims to buy all their raw materials from the neighbouring company Dingheng New Materials Co. Ltd., which was shown in the parallel jumbo rolls investigation ⁽¹⁾ to circumvent the anti-dumping duties on jumbo rolls from China. The investigation has not uncovered any evidence showing that the raw materials used by Thai exporting producers are of an origin other than Chinese. Therefore, the parts concerned are from the country subject to measures.

2.6. Value of parts and added value

- (37) Article 13(2) of the basic Regulation states that, as far as assembly operations are concerned, another condition to establish circumvention is that the parts (of Chinese origin, in this case) constitute 60 % or more of the total value of the parts of the assembled product and that the added value of the parts brought in, during the assembly or completion operation, is less than 25 % of the manufacturing costs. Due to the non-cooperation of any Thai exporting producer, the Commission relied on the evidence provided by the applicant to establish whether the 60 % and 25 % thresholds were met.
- (38) Taking into account the equipment that the known exporting producers use in their factories, as shown on their respective websites and from information provided in the request, the production process in Thailand can entail at most certain finishing operations such as rewinding, slitting or annealing.
- (39) The applicant showed that for the production of small rolls from either jumbo rolls or foil stock, these raw materials account for almost 90 % of the total value of the parts of the assembled product. The applicant also showed that, for both raw materials, the added value of these parts was less than 18 % and less than 24 %, respectively.
- (40) The Commission therefore concluded that the criteria of Article 13(2) of the basic Regulation are met.

2.7. Undermining of the remedial effects of the duty

- (41) For the assessment of the possible undermining of the remedial effects of the existing measures in terms of the prices and/or quantities, the Commission used the export prices and volumes reported by Eurostat. The Commission compared the average non-injurious price as established in the 2019 expiry review investigation, with the weighted average export CIF prices, duly adjusted to include conventional customs duties and post clearance costs, the difference being the level of underselling.
- (42) This price comparison showed the existence of underselling of 29 %.
- (43) In addition, the investigation established that the quantities exported and found to be circumventing the existing measures are significant, representing almost 14 % of the total volume of imports of small rolls during the reporting period.
- (44) The Commission concluded therefore that the existing measures are undermined in terms of quantities and prices by the imports from Thailand subject to this investigation.

⁽¹⁾ OJ L 431, 21.12.2020, p. 48.

2.8. Evidence of dumping

- (45) In accordance with Article 13(1) of the basic Regulation, the Commission examined whether there was evidence of dumping in relation to the normal value established in the last expiry review for the like product.
- (46) To establish the export prices from Thailand the Commission used the average export price of small rolls during the reporting period, as reported by Eurostat. For the purpose of a fair comparison between the normal value and the export price, due allowance, in the form of adjustments, was made for differences which affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. The average export prices thus established were below the normal value as established in the last expiry review, which demonstrated the existence of dumping.

3. MEASURES

- (47) Based on these findings, the Commission concluded that the anti-dumping duty imposed on imports of small rolls originating in the PRC are being circumvented by imports of the product under investigation.
- (48) Therefore, in accordance with Article 13(1) of the basic Regulation, the anti-dumping measures in force should be extended to imports of the product under investigation.
- (49) Pursuant to Article 13(1), second paragraph of the basic Regulation, the measure to be extended should be the one established in Article 1(2) of Commission Implementing Regulation (EU) 2019/915 for 'all other companies', which is a definitive anti-dumping duty of 35,6 % applicable to the CIF net, free-at-Union-frontier price, before customs duty.
- (50) Pursuant to Article 13(3) of the basic Regulation, which provide that any extended measures should apply to imports which entered the Union under registration imposed by the initiating Regulation, the anti-dumping duty should be collected on those registered imports of the product under investigation.

4. DISCLOSURE

- (51) On 24 June 2021, the Commission disclosed to all interested parties the essential facts and considerations leading to the above conclusions and invited them to comment. No comments were received.
- (52) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed by Implementing Regulation (EU) 2019/915 on imports of certain aluminium foil in rolls originating in the People's Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036, is hereby extended to imports of aluminium foil of a thickness of 0,007 mm or more but less than 0,021 mm, not backed, not further worked than rolled, whether or not embossed, in low weight rolls of a weight not exceeding 10 kg, consigned from Thailand, whether declared as originating in Thailand or not, currently falling under CN codes ex 7607 11 11 and ex 7607 19 10 (TARIC codes 7607 11 11 11 and 7607 19 10 11).
2. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from Thailand whether declared as originating in Thailand or not, registered in accordance with Article 2 of Implementing Regulation (EU) 2020/2161 and Articles 13(3) and 14(5) of Regulation (EU) 2016/1036.
3. The amount of anti-dumping duties to be retroactively collected shall be that resulting from applying the anti-dumping duty of 35,6 % applicable to 'all other companies'.
4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Customs authorities are directed to discontinue the registration of imports established in accordance with Article 2 of Implementing Regulation (EU) 2020/2161.

Article 3

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate G Office:
CHAR 04/39
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

2. In accordance with Article 13(4) of Regulation (EU) 2016/1036, the Commission may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Implementing Regulation (EU) 2019/915, from the duty extended by Article 1.

Article 4

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 September 2021.

For the Commission
The President
Ursula VON DER LEYEN
