

## V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON  
COMMERCIAL POLICY

## EUROPEAN COMMISSION

**Notice of initiation of an anti-subsidy proceeding concerning imports of wireless wide area  
networking (WWAN) modems originating in the People's Republic of China**

(2010/C 249/08)

The Commission has received a complaint pursuant to Article 10 of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community<sup>(1)</sup> ('the basic Regulation'), alleging that imports of wireless wide area networking (WWAN) modems, originating in the People's Republic of China, are being subsidised and are thereby causing material injury to the Union industry.

**1. Complaint**

The complaint was lodged on 2 August 2010 by OPTION NV ('the complainant'), the sole producer of wireless wide area networking (WWAN) modems in the European Union, representing 100 % of the total Union production.

**2. Product under investigation**

The product subject to this investigation is wireless wide area networking (WWAN) modems with a radio antenna and providing Internet Protocol (IP) data connectivity for computing devices and including Wi-Fi routers comprising a WWAN modem (WWAN/Wi-Fi routers) ('the product under investigation').

**3. Allegation of subsidisation**

The product allegedly being subsidised is the product under investigation, originating in the People's Republic of China ('the country concerned'), currently falling within CN codes ex 8517 62 00 and ex 8471 80 00. These CN codes are given for information only.

It is alleged that the producers of the product under investigation originating in the People's Republic of China have

benefited from a number of subsidies granted by the Government of the People's Republic of China.

The subsidies consist, *inter alia*, of income tax programmes (e.g. income tax exemptions or reductions under the two free/three half programme, income tax reductions for high or new technology industries, income tax credits for domestically owned companies purchasing domestically produced equipment), indirect tax and import tariff programmes (e.g. value-added tax ('VAT') and tariff exemptions on imported equipment), preferential lending schemes (e.g. policy loans including export financing from State-owned commercial banks and government policy banks), grant programmes (e.g. the Development Fund for the Electronics and Information Industry ('IT Fund'), the state key technologies renovation project fund, famous brands awards), government provision of goods and services for less than adequate remuneration (e.g. provision of land use rights) as well as of local government preferential policies, including benefits in special zones and industrial parks (e.g. preferential policies in Shenzhen, Shanghai, Beijing, Xian).

It is alleged that the above schemes are subsidies since they involve a financial contribution from the Government of the People's Republic of China or other regional Governments (including public bodies) and confer a benefit to the recipients, i.e. to the exporting producers of the product under investigation. They are alleged to be contingent upon export performance and/or upon the use of domestic over imported goods and/or limited to certain enterprises or groups of enterprises and/or products and/or regions, and therefore specific and countervailable.

**4. Allegation of injury**

The complainant has provided evidence that imports of the product under investigation from the country concerned have increased overall in absolute terms and in terms of market share.

<sup>(1)</sup> OJ L 188, 18.7.2009, p. 93.

The *prima facie* evidence provided by the complainant shows that the volume and the prices of the imported product under investigation have, among other consequences, had a negative impact on the quantities sold, the level of the prices charged and the market share held by the Union industry, resulting in substantial adverse effects on the overall performance, the financial situation and the employment situation of the Union industry.

## 5. Procedure

Having determined, after consulting the Advisory Committee, that the complaint has been lodged by or on behalf of the Union industry and that there is sufficient evidence to justify the initiation of a proceeding, the Commission hereby initiates an investigation pursuant to Article 10 of the basic Regulation.

The investigation will determine whether the product under investigation originating in the country concerned is being subsidised and whether this subsidisation has caused injury to the Union industry. If the conclusions are affirmative, the investigation will examine whether the imposition of measures would not be against Union interest.

### 5.1. Procedure for the determination of subsidisation

Exporting producers<sup>(1)</sup> of the product under investigation from the country concerned and the authorities of the country concerned are invited to participate in the Commission investigation.

#### 5.1.1. Investigating exporting producers

##### (a) Sampling

In view of the potentially large number of exporting producers in the country concerned involved in this proceeding and in order to complete the investigation within the statutory time-limits, the Commission may limit the exporting producers to be investigated to a reasonable number by selecting a sample (this process is also referred to as 'sampling'). The sampling will be carried out in accordance with Article 27 of the basic Regulation.

In order to enable the Commission to decide whether sampling is necessary, and if so, to select a sample, all exporting producers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission. These parties have to do so within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified, by providing the Commission with the following information on their company or companies:

- name, address, e-mail address, telephone and fax numbers and contact person,
- the turnover in local currency and the volume in units of the product under investigation sold for export to the

Union during the investigation period ('IP') 1 April 2009 to 31 March 2010 for each of the 27 Member States<sup>(2)</sup> separately and in total,

- the turnover in local currency and the volume in units of the product under investigation sold on the domestic market during the IP (1 April 2009 to 31 March 2010),
- the precise activities of the company worldwide with regard to the product under investigation,
- the names and the precise activities of all related companies<sup>(3)</sup> involved in the production and/or sales (export and/or domestic) of the product under investigation,
- any other relevant information that would assist the Commission in the selection of the sample.

The exporting producers should also indicate whether, in the event that they are not selected to be in the sample, they would like to receive a questionnaire in order to fill it in and thus claim an individual subsidy margin in accordance with section (b) below.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is selected to be part of the sample, this will imply completing a questionnaire and accepting a visit at its premises in order to verify its response ('on-spot verification'). If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The Commission findings for non-cooperating exporting producers are based on facts available and the result may be less favourable to that party than if it had cooperated.

In order to obtain the information it deems necessary for the selection of the sample of exporting producers, the Commission will also contact the authorities of the exporting country concerned and may contact any known associations of exporting producers.

<sup>(2)</sup> The 27 Member States of the European Union are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

<sup>(3)</sup> In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognized partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, 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 directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife, (ii) parent and child, (iii) brother and sister (whether by whole or half blood), (iv) grandparent and grandchild, (v) uncle or aunt and nephew or niece, (vi) parent-in-law and son-in-law or daughter-in-law, (vii) brother-in-law and sister-in-law (OJ L 253, 11.10.1993, p. 1). In this context 'person' means any natural or legal person.

<sup>(1)</sup> An exporting producer is any company in the country concerned which produces and exports the product under investigation to the Union market, either directly or via third party, including any of its related companies involved in the production, domestic sales or exports of the product concerned. Non-producing exporters are normally not entitled to an individual duty rate.

All interested parties wishing to submit any other relevant information regarding the selection of the sample, excluding the information requested above, must do so within 21 days of the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified.

If a sample is necessary, the exporting producers may be selected based on the largest representative volume of exports to the Union which can reasonably be investigated within the time available. All known exporting producers, the authorities of the exporting country concerned and associations of exporting producers will be notified by the Commission of the companies selected to be in the sample.

All exporting producers selected to be in the sample will have to submit a completed questionnaire within 37 days from the date of notification of the sample selection, unless otherwise specified.

Companies that had agreed to their possible inclusion in the sample but were not selected to be in the sample shall be considered to be cooperating ('non-sampled cooperating exporting producers'). Without prejudice to section (b) below, the countervailing duty that may be applied to imports from the non-sampled cooperating exporting producers will not exceed the weighted average margin of subsidisation established for the exporting producers in the sample.

(b) Individual subsidy margin for companies not included in the sample

Non-sampled cooperating exporting producers may request, pursuant to Article 27(3) of the basic Regulation, that the Commission establish their individual subsidy margins ('individual subsidy margin'). The exporting producers wishing to claim an individual subsidy margin must request a questionnaire in accordance with section (a) above and return it duly completed within the deadlines specified below. The completed questionnaire reply must be submitted within 37 days of the date of the notification of the sample selection, unless otherwise specified.

However, exporting producers claiming an individual subsidy margin should be aware that the Commission may nonetheless decide not to determine their individual subsidy margin if, for instance, the number of exporting producers is so large that such determination would be unduly burdensome and would prevent the timely completion of the investigation.

(c) Cooperation with the authorities of the exporting country

Questionnaires will also be sent to the authorities of the exporting country concerned.

## 5.2. Procedure for the determination of injury

Injury means material injury to the Union industry, or threat of material injury to the industry, or material retardation of the

establishment of such an industry. A determination of injury is based on positive evidence and involves an objective determination of the volume of subsidised imports, their effect on prices in the Union market and the consequent impact of those imports on the Union industry. In order to establish whether the Union industry is materially injured, Union producers of the product under investigation are invited to participate in the Commission investigation.

### 5.2.1. Investigating Union producers

In order to obtain the information it deems necessary for its investigation with regard to Union producers the Commission will send questionnaires to the known Union producers and to any known association of Union producers. All Union producers and associations of Union producers are invited to contact the Commission immediately by fax or by e-mail, but no later than 15 days after the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified, in order to make themselves known and request a questionnaire.

The Union producers and the associations of Union producers must submit the completed questionnaire within 37 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. The completed questionnaire will contain information on, *inter alia*, the structure of their company(ies), the financial situation of the company(ies), the activities of the company(ies) in relation to the product under investigation, the cost of production and the sales of the product under investigation.

### 5.3. Procedure for the assessment of Union interest

Should the existence of subsidisation and injury caused thereby be established, a decision will be reached as to whether the adoption of countervailing measures would be against the Union interest pursuant to Article 31 of the basic Regulation. Union producers, importers and their representative associations, users and their representative user associations, suppliers and their representative associations and representative consumer associations are invited to make themselves known within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. In order to participate in the investigation, the representative consumer organisations have to demonstrate, within the same deadline, that there is an objective link between their activities and the product under investigation.

Parties that make themselves known within the above deadline may provide the Commission with information on whether the imposition of measures would not be against Union interest within 37 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. This information may be provided either in a free format or by completing a questionnaire prepared by the Commission. In any case, information submitted pursuant to Article 31 will only be taken into account if supported by factual evidence at the time of submission.

#### 5.4. **Other written submissions**

Subject to the provisions of this notice, all interested parties are hereby invited to make their views known, submit information and provide supporting evidence. Unless otherwise specified, this information and supporting evidence should reach the Commission within 37 days of the date of publication of this notice in the *Official Journal of the European Union*.

#### 5.5. **Possibility to be heard by the Commission investigation services**

All interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this notice in the *Official Journal of the European Union*. Thereafter, a request to be heard should be submitted within the specific deadlines set by the Commission in its communication with the parties.

#### 5.6. **Procedure for making written submissions and sending completed questionnaires and correspondence**

All submissions, including information submitted for the selection of the samples, completed questionnaires and updates thereof, made by interested parties must be made in writing in both paper and electronic format, and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. If an interested party cannot provide its submissions and requests in electronic format for technical reasons, it must immediately inform the Commission.

All written submissions, including the information requested in this notice, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Limited' <sup>(1)</sup>.

Interested parties providing 'Limited' information are required to furnish non-confidential summaries of it pursuant to Article 29(2) of the basic Regulation, which will be labelled 'For inspection by interested parties'. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such confidential information may be disregarded.

<sup>(1)</sup> This document is a confidential document pursuant to Article 29 of Council Regulation (EC) No 597/2009 (OJ L 188, 18.7.2009, p. 93) and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures. It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

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#### 6. **Non-cooperation**

In cases where any interested party refuses access to or does not provide the necessary information within the time-limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 28 of the basic Regulation.

Where it is found that any interested party has supplied false or misleading information, the information may be disregarded and use may be made of facts available.

If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 28 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

#### 7. **Hearing Officer**

Interested parties may request the intervention of the Hearing Officer of DG Trade. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes on the confidentiality of documents, requests for extension of time-limits and requests by third parties to be heard. The Hearing Officer may organize a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised.

A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this notice in the *Official Journal of the European Union*. Thereafter, a request to be heard must be submitted within specific deadlines set by the Commission in its communication with the parties.

The Hearing Officer will also provide opportunities for a hearing involving parties to take place which would allow different views to be presented and rebuttal arguments offered on issues pertaining, among others, to subsidisation, injury, causal link and Union interest. Such a hearing would, as a rule, take place at the latest at the end of the fourth week following the disclosure of provisional findings.

For further information and contact details interested parties may consult the Hearing Officer's web pages on the website of the Directorate General for Trade: ([http://ec.europa.eu/trade/issues/respectrules/ho/index\\_en.htm](http://ec.europa.eu/trade/issues/respectrules/ho/index_en.htm)).

#### 8. Schedule of the investigation

The investigation will be concluded, according to Article 11(9) of the basic Regulation within 13 months of the date of the publication of this notice in the *Official Journal of the European Union*. According to Article 12(1), second subparagraph of the

basic Regulation, provisional measures may be imposed no later than nine months from the publication of this notice in the *Official Journal of the European Union*.

#### 9. Processing of personal data

Any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and the Council<sup>(1)</sup> on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

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<sup>(1)</sup> OJ L 8, 12.1.2001, p. 1.