

## V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON  
COMMERCIAL POLICY

## EUROPEAN COMMISSION

**Notice regarding the anti-dumping measures in force on imports of certain iron or steel fasteners originating in the People's Republic of China, following the recommendations and rulings adopted by the Dispute Settlement Body of the World Trade Organisation on 28 July 2011 in the EC — Fasteners dispute (DS397)**

(2012/C 66/06)

This notice is published pursuant to Council Regulation (EC) No 1515/2001 on the measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters <sup>(1)</sup> (the WTO enabling Regulation).

On 28 July 2011, the Dispute Settlement Body of the WTO (DSB) adopted the Appellate Body Report and the Panel Report as modified by the Appellate Body Report on the case 'European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China' (Reports) <sup>(2)</sup>.

In these Reports, it was found, inter alia, that the EU acted inconsistently with:

- Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement with respect to Article 9(5) of Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community <sup>(3)</sup> (the EU basic AD Regulation) as applied in the investigation on the imports of certain iron or steel fasteners originating in the People's Republic of China (the fasteners investigation);
- Articles 6.4, 6.2 and 2.4 of the WTO Anti-Dumping Agreement with respect to certain aspects of the dumping determination in the fasteners investigation;
- Article 4.1 of the WTO Anti-Dumping Agreement with respect to the definition of the Union industry;

- Articles 3.1 and 3.2 of the WTO Anti-Dumping Agreement with respect to the consideration of the volume of dumped imports in the fasteners investigation;
- Articles 3.1 and 3.5 of the WTO Anti-Dumping Agreement with respect to the causation analysis; and
- Articles 6.5 and 6.5.1 of the WTO Anti-Dumping Agreement with respect to the treatment of confidential information.

After consulting the Advisory Committee, the purpose of this notice is to initiate a review based on the WTO enabling Regulation and to inform interested parties of the manner in which the above mentioned findings in regard to the measures in force on imports of certain iron or steel fasteners originating in the People's Republic of China will be taken into account. These measures were imposed by Council Regulation (EC) No 91/2009 of 26 January 2009 <sup>(4)</sup> (the fasteners regulation) following an investigation carried out by the Commission initiated on 9 November 2007. The investigation period (IP) was from 1 October 2006 to 30 September 2007.

**1. Findings regarding Articles 6.10 and 9.2 of the WTO Anti-Dumping Agreement with respect to Article 9(5) of the EU basic AD Regulation as applied in the fasteners investigation**

Article 9(5) of the EU basic AD Regulation provides that individual exporting producers in non-market economy countries which do not receive market economy treatment pursuant to

<sup>(1)</sup> OJ L 201, 26.7.2001, p. 10.

<sup>(2)</sup> WTO, Report of the Appellate Body, AB-2011-2, WT/DS397/AB/R, 15 July 2011. WTO, Report of the Panel, WT/DS397/R, 29 September 2010. The reports can be downloaded from the WTO's website ([http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds397\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds397_e.htm)).

<sup>(3)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(4)</sup> OJ L 29, 31.1.2009, p. 1.

Article 2(7)(c) of the EU basic AD Regulation will be subject to a countrywide duty rate unless such exporters can demonstrate that they meet the conditions for individual treatment laid out in Article 9(5) of the EU basic AD Regulation.

(a) *Reviews of measures in force*

Following the Reports and pursuant to the WTO enabling Regulation, the Commission is hereby initiating a review of the treatment accorded to certain interested parties in the fasteners investigation, namely those parties which consider to have been discouraged from cooperating and requesting individual treatment because of the administrative burden entailed by, or because they considered that they did not meet all criteria in, Article 9(5) of the EU basic AD Regulation.

The Commission hereby invites any exporting producer in the People's Republic of China whose exports to the European Union are currently subject to the anti-dumping measures in force on imports of certain iron or steel fasteners originating in the People's Republic of China, and which considers to have been discouraged from cooperating and requesting individual treatment because of the administrative burden entailed by, or because they considered that it did not meet all criteria in, Article 9(5) of the EU basic AD Regulation and that such measures should be reviewed in the light of the legal interpretations regarding Article 9(5) of the EU basic AD Regulation contained in the reports, to request a review on the basis of Article 1 of the WTO enabling Regulation.

The measures reviewed may be repealed, amended or maintained in order to comply with the recommendations and rulings of the DSB.

(b) *Procedure and deadline*

To be considered in this review, interested parties shall come forward no later than 30 days following the publication of this notice in the Official Journal and shall:

- (i) state that the anti-dumping measure to which the applicant's exports to the European Union are subject is based on the circumstances mentioned in Section (a) above; and
- (ii) contain information on export quantities to the European Union and export prices within the meaning of Article 2 of the EU basic AD Regulation covering the investigation period on the basis of which the applicable anti-dumping duty was based.

Any written application for a review shall be addressed to the following address:

European Commission  
Directorate-General for Trade  
Directorate H — Fasteners investigation  
Office: N105 04/092  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË

Fax +32 22993704  
E-mail: TRADE-AD-FASTENERS-DSB@ec.europa.eu

The Commission will process the applications for reviews based on the WTO enabling Regulation within a reasonable period of time. Reviews will be initiated only if a duly

substantiated application is received. The initiation will be published in the *Official Journal of the European Union* — Series C.

Parties requesting a review should be aware that if the findings require an amendment of the measures in force, such amendment may result in a decrease or an increase in the level of the measures.

Once a review has been initiated, the Commission reserves the right to finalise it even if the party requesting the review decides to withdraw the review request.

**2. Findings regarding Articles 6.4, 6.2 and 2.4 of the WTO Anti-Dumping Agreement with respect to certain aspect of the dumping determination in the fasteners investigations**

Following the DSB Reports, the Commission intends to re-disclose to all interested parties that participated in the fasteners investigation more precise information regarding the product characteristics which were found to be pertinent in the determination of the normal value that was used in the comparison with the product concerned. Interested parties will be invited to comment on this re-disclosure. The comments received will be examined and the findings resulting there from will be further disclosed to all interested parties that participated in the fasteners investigation.

**3. Findings regarding Article 4.1 of the WTO Anti-Dumping Agreement with respect to the definition of the Union industry**

Following the DSB Reports, the Commission intends to re-examine its definition of the Union industry and the level of representativity of that industry and ascertain whether the percentage of production of fasteners of that industry out of the total estimated production represents a major proportion in the sense of the WTO Anti-Dumping Agreement, taking into account all valid submissions received from EU producers having come forward within the deadline laid down in the Notice of initiation<sup>(1)</sup>. The results will be disclosed to all concerned interested parties having come forward at the time of the fasteners investigation and they will be invited to comment.

**4. Findings regarding Articles 3.1 and 3.2 of the of the WTO Anti-Dumping Agreement with respect to the consideration of the volume of dumped imports in the fasteners investigation**

Following the Reports, the Commission intends to revise its injury assessment by excluding imports for which no dumping was found. The results will be disclosed to all concerned interested parties having come forward at the time of the fasteners investigation and they will be invited to comment.

<sup>(1)</sup> OJ C 267, 9.11.2007, p. 31.

#### **5. Findings regarding Articles 3.1 and 3.5 of the WTO Anti-Dumping Agreement with respect to the causation analysis**

Following the DSB Reports, the Commission intends to reassess whether dumped imports have caused injury to the Union industry taking into account the EU industry's specific export performance instead of the overall export statistical data reported by Eurostat. The results will be disclosed to all concerned interested parties having come forward at the time of the investigation and they will be invited to comment.

#### **6. Findings regarding Articles 6.5 and 6.5.1 of the WTO of the WTO Anti-Dumping Agreement with respect to the treatment of confidential information**

Following the Reports, the Commission intends to invite the two relevant Union producers to provide appropriate statements of the reasons why confidential information was not susceptible of non-confidential summary. The Commission also intends to disclose the Eurostat data on total EU production of fasteners as originally presented. The Commission will inform in due course all interested parties having come forward at the time of the investigation to consult the non-confidential file and they will be invited to comment.

#### **7. Other recommendations and rulings**

The Commission intends to consider comments by parties in the fasteners investigation who claim to have been adversely affected by the disclosure of findings with regard to market economy treatment or with respect to any other DSB recommendations or rulings.

In line with Article 3 of the WTO enabling Regulation, any measures adopted pursuant to that Regulation following a review will not have retroactive effect.

The right to submit a request for an interim review in accordance with Article 11(3) of the EU basic AD Regulation remains unaffected.

#### **8. Hearing Officer**

Interested parties may request the intervention of the Hearing Officer of the Directorate-General for 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 organise 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 further information and contact details interested parties may consult the Hearing Officer's web pages on the Directorate-General for Trade's website ([http://ec.europa.eu/trade/tackling-unfair-trade/hearing-officer/index\\_en.htm](http://ec.europa.eu/trade/tackling-unfair-trade/hearing-officer/index_en.htm)).

#### **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 of the Council 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 <sup>(1)</sup>.

---

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