

COMMISSION IMPLEMENTING REGULATION (EU) 2022/1041**of 29 June 2022**

making imports of certain lightweight thermal paper originating in the Republic of Korea subject to registration following the re-opening of the investigation in order to implement the judgment of the General Court of 2 April 2020 in Case T-383/17, as upheld by the Court of Justice in Case C-260/20 P, with regard to Commission Implementing Regulation (EU) 2017/763

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 14 thereof,

Whereas:

1. PROCEDURE**1.1. Adoption of measures**

- (1) On 17 November 2017, the Commission ('the Commission') published Commission Implementing Regulation (EU) 2016/2005 imposing a provisional anti-dumping duty on imports of certain lightweight thermal paper originating in the Republic of Korea ⁽²⁾. On 3 May 2017, the Commission published Commission Implementing Regulation (EU) 2017/763 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain lightweight thermal paper originating in the Republic of Korea ⁽³⁾ ('the regulation at issue').

1.2. The Judgments in cases T-383/17 and C-260/20 P

- (2) By application lodged at the Registry of the General Court on 20 June 2017, the Hansol Group (Hansol Paper Co. Ltd. and Hansol Artone Paper Co. Ltd.) ('Hansol') brought an action for annulment of Implementing Regulation (EU) 2017/763 insofar as it concerned Hansol (Case T-383/17). Hansol challenged the legality of the regulation at issue on a number of accounts. In one of its pleas in law, Hansol disputed the construction of certain normal values pursuant to Article 2(3) of the basic Regulation. In another plea in law, Hansol argued that the Commission had made a manifest error of assessment in the weighting of sales in the European Union to independent customers as compared with sales to related converters. Hansol claimed that this alleged calculation error distorted the calculation of the dumping margin and also, inter alia, the undercutting margin.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 310, 17.11.2016, p. 1.

⁽³⁾ OJ L 114, 3.5.2017, p. 3.

- (3) On 2 April 2020, the Court issued its judgement in Case T-383/17, annulling Implementing Regulation (EU) 2017/763 in so far that it concerned the goods manufactured by Hansol ⁽⁴⁾. The General Court found that the Commission had infringed Article 2(1) of the basic Regulation when determining to construct normal value pursuant to Article 2(3) of the basic Regulation for a product type sold by Hansol Artone Paper Co. Ltd., whereas the same product type had representative domestic sales by Hansol Paper Co. Ltd. The General Court also found that the alleged weighting error was established and that the Commission should have taken into account the quantities sold by Schades Nordic, one of Hansol Group's related converters in the Union, to independent customers. The Commission had therefore infringed Article 2(11) of the basic Regulation as the calculations made by the Commission did not reflect the full extent of dumping practiced by Hansol. Lastly, the General Court held that this weighting error also affected the calculation of the undercutting margin, since the Commission had used the same weighting for that calculation. The General Court also found that the Commission had committed an error when applying Article 2(9) of the basic Regulation by analogy, when it deducted SG&A costs and a profit margin for the resales of the product concerned by the related selling entity in the EU, for the purposes of establishing the export price of that product in the context of the determination of the injury.
- (4) On 11 June 2020, the Commission asked the Court of Justice to set aside the judgement of the General Court by lodging an appeal (Case C-260/20 P). On 12 May 2022, the Second Chamber of the Court rejected the appeal and it upheld the findings of the General Court. ⁽⁵⁾ The Court of Justice noted however that, contrary to what the General Court had found, the Commission did not err when applying Article 2(9) of the basic Regulation by analogy in this case.
- (5) As a result, Implementing Regulation (EU) 2017/763 is annulled insofar as it concerns Hansol.

2. GROUND FOR REGISTRATION

- (6) The Commission analysed whether it is appropriate to make the imports of the product concerned subject to registration. In that context, the Commission took the following considerations into account.
- (7) Article 266 TFEU provides that the Institutions must take the necessary measures to comply with the Courts' judgments. In case of annulment of an act adopted by the Institutions in the context of an administrative procedure, such as anti-dumping investigations, compliance with the General Court's judgement consists in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated ⁽⁶⁾.
- (8) According to the case-law of the Court of Justice, the procedure for replacing the annulled act may be resumed at the very point at which the illegality occurred ⁽⁷⁾. That implies in particular that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the anti-dumping procedure. In a situation where for instance a Regulation imposing definitive anti-dumping measures is annulled, that means that subsequent to the annulment, the anti-dumping proceeding is still open, because the act concluding the anti-dumping proceeding has disappeared from the Union legal order ⁽⁸⁾, except if the illegality occurred at the stage of initiation.
- (9) As explained in the reopening Notice, and since the illegality did not occur at the stage of initiation but at the stage of the investigation, the Commission decided to reopen the investigation in so far as it concerns Hansol and resumed it at the point at which the irregularity occurred.

⁽⁴⁾ ECLI:EU:T:2020:139.

⁽⁵⁾ ECLI:EU:C:2022:370.

⁽⁶⁾ Joined cases 97, 193, 99 and 215/86 *Asteris AE and others and Hellenic Republic v Commission* [1988] ECR 2181, paragraphs 27 and 28; and Case T-440/20 *Jindal Saw v European Commission*, EU:T:2022:318.

⁽⁷⁾ Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques v Council* [2000] I-8147, paragraphs 80 to 85; Case T-301/01 *Alitalia v Commission* [2008] II-1753, paragraphs 99 and 142; Joined Cases T-267/08 and T-279/08 *Région Nord-Pas de Calais v Commission* [2011] II-0000, paragraph 83.

⁽⁸⁾ Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques v Council* [2000] I-8147, paragraphs 80 to 85.

- (10) According to the case-law of the Court of Justice, the resumption of the administrative procedure and the eventual re-imposition of duties cannot be seen as contrary to the rule of non-retroactivity ⁽⁹⁾. The Notice of Re-opening informed interested parties, including importers, that any future liability, if warranted, would emanate from the findings of the re-examination.
- (11) Based on its new findings and the outcome of the reopened investigation, which is unknown at this stage, the Commission may adopt a regulation revising, where warranted, the applicable duty rate. That revised rate, if any, will take effect as from the date on which the Regulation at issue entered into force.
- (12) For this purpose, the Commission requested national customs authorities to await the outcome of the re-examination before deciding on any repayment claim concerning the anti-dumping duties annulled by the General Court with respect to Hansol. Customs authorities are thus directed to put on hold any claims for reimbursements of the annulled duties until the outcome of the re-examination is published in the Official Journal.
- (13) Furthermore, should the re-opening investigation lead to the re-imposition of measures, duties should also be collected for the period during which the re-opening investigation are carried out.
- (14) In this respect, the Commission notes that registration is a tool provided in Articles 14(5) of the basic Regulation so that measures may subsequently be applied against imports from the date of the registration. ⁽¹⁰⁾ In the present case, the Commission deems it appropriate to register imports concerning Hansol with a view to facilitating the collection of anti-dumping duties once their levels are revised in line with the General Court ruling.
- (15) In line with the jurisprudence of the Court of Justice ⁽¹¹⁾, contrary to registration taking place during the period before the adoption of provisional measures, the conditions of Article 10(4) of the basic Regulation are not applicable to the case at hand. Indeed, the purpose of registration in the context of Court implementation is not to allow the possible retroactive collection of duties imposed by trade defence measures as envisaged in those provisions. The purpose is rather to safeguard the effectiveness of the measures in place, without undue interruption from the date of entry into force of the regulations at issue until the re-imposition of the corrected duties, by ensuring that the collection of the correct amount of duties is possible in the future.
- (16) In light of the above considerations, the Commission considered that there were grounds for registration pursuant to Article 14(5) of the basic Regulation.

3. REGISTRATION

- (17) On the basis of the above, imports of the product concerned produced by Hansol (Hansol Paper Co. Ltd. and Hansol Artone Paper Co. Ltd.) must be made subject to registration.
- (18) As indicated in the reopening Notice, the final liability for payment of anti-dumping duty, if any, from the date of entry into force of the anti-dumping regulation at issue will emanate from the findings of the re-examination.
- (19) No duty higher than the duty established in the regulation at issue may be collected for the period between the publication of the notice of re-opening and the date of entry into force of the results of the re-opening investigation.
- (20) The current anti-dumping duty applicable to Hansol is EUR 104,46 per tonne net.

⁽⁹⁾ Case C-256/16 *Deichmann SE v Hauptzollamt Duisburg*, Judgment of the Court of 15 March 2018, paragraph 79 and *C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs*, judgment of 19 June 2019, paragraph 5.

⁽¹⁰⁾ Case T-440/20 *Jindal Saw v European Commission*, EU:T:2022:318, paragraphs 154 – 159.

⁽¹¹⁾ Case C-256/16 *Deichmann SE v Hauptzollamt Duisburg*, paragraph 79 and Case C-612/16, *C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs*, judgment of 19 June 2019, paragraph 58.

HAS ADOPTED THIS REGULATION:

Article 1

1. The Customs authorities shall, pursuant to Article 14(5) of Regulation (EU) 2016/1036 and Article 24(5) of Regulation (EU) 2016/1037, take the appropriate steps to register the imports of certain lightweight thermal paper weighing 65 g/m² or less; in rolls of a width of 20 cm or more, a weight of the roll (including the paper) of 50 kg or more and a diameter of the roll (including the paper) of 40 cm or more ('jumbo rolls'); with or without a base coat on one or both sides; coated with a thermos-sensitive substance on one or both sides; and with or without a top coat, currently falling under CN codes ex 4809 90 00, ex 4811 90 00, ex 4816 90 00 and ex 4823 90 85 (TARIC codes: 4809 90 00 10, 4811 90 00 10, 4816 90 00 10, 4823 90 85 20), originating in the Republic of Korea and produced by the Hansol Group (Hansol Paper Co. Ltd. and Hansol Artone Paper Co. Ltd) (TARIC additional code C874).
2. Registration shall expire nine months after the date of entry into force of this Regulation.
3. The rate of the anti-dumping duty that can be collected on imports of certain lightweight thermal paper, currently falling under CN codes ex 4809 90 00, ex 4811 90 00, ex 4816 90 00 and ex 4823 90 85 (TARIC codes: 4809 90 00 10, 4811 90 00 10, 4816 90 00 10, 4823 90 85 20), originating in the Republic of Korea and produced by the Hansol Group (Hansol Paper Co. Ltd. and Hansol Artone Paper Co. Ltd) between the re-opening of the investigation and the date of entry into force of the results of the re-opening investigation shall not exceed that imposed by Implementing Regulation (EU) 2017/763.
4. The national customs authorities shall await the publication of the relevant Commission Implementing Regulation re-imposing the duty before deciding on the claim for repayment and remission of anti-dumping duties insofar as imports concerning the Hansol Group (Hansol Paper Co. Ltd. and Hansol Artone Paper Co. Ltd) are concerned.

Article 2

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, 29 June 2022.

For the Commission
The President
Ursula VON DER LEYEN
