

COMMISSION

COMMISSION DECISION

of 5 October 2009

accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of certain aluminium foil originating, inter alia, in Brazil

(2009/736/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

aluminium foil originating in Armenia, Brazil and the People's Republic of China ⁽³⁾.

Having regard to the Treaty establishing the European Community,

B. UNDERTAKING

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the 'basic Regulation'), and in particular Articles 8 and 9 thereof,

- (4) Subsequent to the adoption of provisional anti-dumping measures, the sole cooperating exporting producer in Brazil, Companhia Brasileira de Alumínio (CBA), offered a price undertaking in accordance with Article 8(1) of the basic Regulation. In this undertaking offer, CBA offered to sell the product concerned at or above price levels which eliminate the injurious effects of dumping found during the investigation. CBA offered one minimum import price ('MIP') for all different product types in order to limit the risk of circumvention.

After consulting the Advisory Committee,

- (5) The offer also provided for the indexation of the MIP, given that the price of the product concerned is directly linked to the price of the main raw material, primary aluminium, which is a world traded commodity with a published reference price on the London Metal Exchange ('LME').

Whereas:

A. PROCEDURE

- (1) By Regulation (EC) No 287/2009 ⁽²⁾, the Commission imposed provisional anti-dumping duties on imports into the Community of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China ('PRC').

- (6) The MIP offer from the company was based on the non-injurious price calculated for the investigation period on the basis of the sales prices of the Community industry.

- (2) Following the adoption of the provisional anti-dumping measures, the Commission continued the investigation of dumping, injury and Community interest. The investigation confirmed the provisional findings of injurious dumping relating to these imports.

- (7) CBA's undertaking offer also contained the provision that all sales would be made from CBA directly to the first independent customer in the Community and that CBA would undertake not to sell products other than those covered by the undertaking to customers purchasing products covered by the undertaking.

- (3) The definitive findings and conclusions of the investigation are set out in Council Regulation of 24 September 2009 (EC) No 925/2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain

- (8) CBA also agreed to undertake to provide the Commission with regular and detailed information concerning their exports to the Community, allowing for the undertaking to be monitored effectively by the Commission.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 94, 8.4.2009, p. 17.

⁽³⁾ See page 1 of this Official Journal.

C. COMMENTS OF PARTIES AND ACCEPTANCE OF THE UNDERTAKING

- (9) The Community industry indicated that the undertaking from Brazil could be acceptable under certain conditions, including the use of an artificial exchange rate from the USD to the EUR and a quantitative ceiling. Both of these arguments regarding the Brazilian undertaking have to be rejected on the following grounds. In respect of the claim that an artificial exchange rate should be used, it is noted that the LME price will be converted from USD into EUR using the published monthly exchange rate and therefore the amount in EUR is affected by exchange rate fluctuations, which is at the company's own risk. With regard to the second argument, the Commission does not see the relevance of a quantitative ceiling in this case, given the very competitive market for the product concerned in the European Community and given that no evidence was submitted or found during the investigation showing the necessity of such an element. No other comments were submitted in respect to this undertaking offer.
- (10) In view of the above, the undertaking offered by CBA is acceptable.
- (11) In order to enable the Commission to effectively monitor the company's compliance with the undertaking, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty will be conditional on (i) the presentation of an undertaking invoice containing at least the elements listed in Annex II to Regulation (EC) No 925/2009; (ii) the fact that the imported goods are manufactured by the said company, and shipped and invoiced directly by the said company to the first independent customer in the Community; and (iii) the fact that the goods declared and presented to customs correspond precisely to the description on the undertaking invoice. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate rate of anti-dumping duty shall instead be payable.
- (12) To ensure that the undertaking is respected, importers have been made aware by the above-mentioned Council Regulation that the non-fulfillment of the conditions provided for by that Regulation, or the withdrawal by the Commission of the acceptance of the undertaking, may lead to a customs debt being incurred for the relevant transactions.
- (13) In the event of a breach or withdrawal of the undertaking or in case of withdrawal of acceptance of the undertaking by the Commission, the anti-dumping duty imposed in accordance with Article 9(4) of the basic Regulation shall automatically apply pursuant to Article 8(9) of the basic Regulation,

HAS DECIDED AS FOLLOWS:

Article 1

The undertaking offered by the exporting producer mentioned below in connection with the anti-dumping proceeding concerning imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China is hereby accepted.

Country	Company	Taric Additional Code
Brazil	Companhia Brasileira de Alumínio	A947

Article 2

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

Done at Brussels, 5 October 2009.

For the Commission
Catherine ASHTON
Member of the Commission